

TOTALitarian OIL



**TOTAL Oil:
fuelling the oppression in Burma**



About the Burma Campaign UK

The Burma Campaign UK (BCUK) is the only national organisation in the UK dedicated to campaigning for human rights and democracy in Burma. BCUK aims to increase pressure on the regime for reform through economic and political pressure. To increase economic pressure on the regime we discourage tourism and investment, while pushing for economic sanctions. To increase political pressure on the regime we lobby British and European government, and key international organisations such as the European Union, United Nations and others.

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However, the report reflects the views of the authors and responsibility for any error rests with the authors alone.

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“To observe businessmen who come to Burma with the intention of enriching themselves is somewhat like watching passers-by in an orchard roughly stripping off blossoms for their fragile beauty, blind to the ugliness of despoiled branches, oblivious of the fact that by their action they are imperilling future fruitfulness and committing an injustice against the rightful owners of the trees.”

Aung San Suu Kyi

Letters from Burma

“Total has become the main supporter of the Burmese military regime.”

Aung San Suu Kyi

Le Monde

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An Investor's Perspective

Co-operative Financial Services (CFS) was formed in 2002 to bring The Co-operative Bank and Co-operative Insurance Society (CIS) under common leadership. CFS is one of the larger financial services organisations in the UK, with more than seven million customers and over £30 billion of assets.

Via regular customer consultation, the bank and CIS aim to build up a picture of what matters to customers in terms of ethics and sustainability, and reflect this in how they manage and provide products and services. The bank screens business applications against a customer driven Ethical Policy, whilst CIS engages with the companies in which it invests, and seeks to change behaviour via dialogue and a process of shareholder activism. Both the bank and CIS, via their Sustainable Procurement and Supplier Policy, seek to avoid relationships with suppliers that have a significant involvement in Burma.

CFS is happy to support the production of this report, and looks forward to a progressive response from TOTAL and others involved in Burma.

With the support of 98% of customers, the bank's Ethical Policy includes a commitment not to invest in regimes where there is a systematic abuse of human rights. In 2000, faced with a continuing unacceptable situation in Burma and the call for the severing of business relations by a range of organisations, governments and the Burmese democratic community, this Policy was extended to exclude businesses with operations in Burma. In line with this, the bank screens all finance applications against this commitment and has declined to fund any business with operations in Burma. This has resulted in finance worth millions of pounds being denied to such businesses.

The bank is proud to have supported The Burma Campaign UK (BCUK) in its campaigns and has been a part of the Burma sanctions coalition for a number of years.

Since 2001, CIS has called upon companies investing in Burma to justify their involvement in light of the extraordinary business risks that such activity imposes upon shareholders. Subsequently, many large businesses have withdrawn from the country; however, some remain.

Companies such as TOTAL have cited a policy of constructive engagement as a justification for their continued presence. However, to date, they have been unable to demonstrate how this has made a decisive impact upon the regime.

TOTAL's investors are concerned about the legal challenges faced in Europe, the outcome of the court case involving TOTAL's business partner, Unocal, and the material contingent liabilities these may present. These could serve to undermine TOTAL's license to operate, tarnish its reputation, and ultimately impact long-term shareholder value.

CIS is also concerned about the degree to which companies such as TOTAL can influence the political process in favour of single company interests, e.g. with regard to the position of the French government on Burma, and the potential for this to undermine economic and social revival.

In correspondence with TOTAL, CIS has questioned the degree to which the company's current approach is commercially sustainable or meets society's expectations in relation to corporate responsibility. CIS has asked the company to explore avenues to end its' direct financing of the regime and to outline any legal and practical implications relating to this.

Barry Clavin
Ethical Policies Manager

Jo Allen
Head of Engagement Strategy

Executive Summary

Burma is ruled by a military dictatorship renowned for both oppressing and impoverishing its people, while enriching itself and the foreign businesses that work with it. TOTAL Oil, the fourth largest oil company in the world, is in business with Burma's dictatorship. It has been in Burma since 1992 against the wishes of Burma's elected leaders, many of whom are being detained by the Junta. Aung San Suu Kyi, Burma's pro-democracy leader, has said that *"Total has become the main supporter of the Burmese military regime."*¹ She told the French weekly *Le Nouvel Observateur* that *"TOTAL knew what it was doing when it invested massively in Burma while others withdrew from the market for ethical reasons."* She added, *"the company must accept the consequences. The country will not always be governed by dictators."*²

The National League for Democracy (NLD), led by Aung San Suu Kyi, won 82 percent of the seats in Burma's 1990 election. It has called on foreign companies not to invest in Burma because of the role investment plays in perpetuating dictatorship in that country. All the major ethnic leaderships from Burma have whole-heartedly supported this position too. Therefore, the mandate from which companies are asked not to invest in Burma comes from within the country.

This report gathers together much of the available evidence relating to TOTAL's role in fuelling the oppressive dictatorship in Burma. Broadly, it covers human rights abuses associated with TOTAL's gas pipeline, TOTAL's financing of Burma's dictatorship and TOTAL's influence on French foreign policy and therefore on European Burma policy as a whole. TOTAL's presence in Burma has consequences far beyond its 63-kilometre pipeline across Burmese territory. Its destructive influence goes to the heart of international policy towards one of the world's most brutal regimes. For that reason, it is essential for all those who want change in Burma to deal with the problem of TOTAL Oil. As long as TOTAL remains in Burma, the dictatorship will be satisfied that the chances of real pressure against it are unlikely.

This report has been produced to coincide with the launch of a new international campaign calling for TOTAL's withdrawal from Burma. The campaign comprises 29 organisations across 18 countries.³



The report's findings:

French foreign policy: One of the most significant consequences of TOTAL's presence in Burma is its influence on French foreign policy. In order to protect TOTAL's interests, the French government has become an obstacle to any strengthening of the EU's Common Position⁴ on Burma – particularly with regard to economic sanctions. TOTAL's influence on the French government ensures an EU policy that is devoid of any serious sanction against Burma's dictators.

Financing dictatorship: TOTAL's project provides significant annual revenue to the regime. Some sources estimate as much as \$450million.⁵ Natural gas is now Burma's largest single source of export revenue, accounting for around 30% of export earnings in 2002/03. TOTAL's investment in Burma has helped the regime to build its military capacity and therefore its control of the country's population. It has therefore impeded the prospect of democratic change.

Human rights abuse: TOTAL was fully aware of the dangers inherent in deploying Burmese Army troops in an area where civilian families were living. The company was equally aware of its clear civil responsibility to protect the villagers in the pipeline area from these dangers. Despite this, the company opted to employ, through MOGE (Myanmar Oil and Gas Enterprise), the services of an Army internationally renowned for its extreme and unrelenting brutality. In doing so it unleashed a terrible and lasting devastation on the communities of the region and for this, TOTAL must bear responsibility.

Legal challenges: TOTAL's pipeline partner Unocal's decision (December 2004) to settle out of court rather than to go before a jury to defend itself against allegations of human rights abuses should worry TOTAL. A similar case has been accepted for investigation by a French court for allegations against TOTAL. In the US the evidence was strong enough to go trial, this could well prove to be the case in France too.

Drugs, guns and money laundering: There are serious allegations that TOTAL's money has been used by the regime to cover its money laundering activities through MOGE in order to purchase arms.

Failure of constructive engagement: The 'constructive engagement' that TOTAL claims to have been carrying out in Burma over the last decade has not resulted in a single democratic reform by the regime.

Benefits of TOTAL's withdrawal from Burma: A withdrawal by TOTAL would end the company's support for the regime, deter future foreign investment in Burma and open the way to a French foreign policy that no longer undermines Burma's pro-democracy movement.

Taking action! The report recommends that civil society organisations concerned with making corporations accountable for their actions join the international coalition on TOTAL. It recommends that individuals visit www.burmacampaign.org.uk or email info@burmacampaign.org.uk to request TOTAL campaign postcards and materials.

Background on Burma

Burma, situated between India, China, Tibet, Laos, Bangladesh and Thailand, is one of the largest countries in Southeast Asia. For the last forty-three years it has been ruled by a military dictatorship with a reputation for brutality. In 1990 the National League for Democracy (NLD) won a landslide election victory in Burma. But the result has never been honoured. The NLD, led by Nobel Peace laureate Aung San Suu Kyi, has called on foreign companies not to invest in Burma. TOTAL Oil is Burma's largest foreign investor and one of the military dictatorship's greatest sources of support. A new international coalition across 18 countries is calling for TOTAL's withdrawal from Burma. This report explains why.

The Problem

Burma's ruling military has an appalling record:

- Rape as a weapon of war against ethnic women and children;⁶
- Widespread use of forced labour described by the International Labour Organisation (ILO) as a 'crime against humanity';⁷
- More than 1,350 political prisoners, many of whom are routinely tortured;⁸
- Between 600,000 and one million internally displaced people forced from their lands;⁹
- A continuous exodus of Burmese to neighbouring countries. Thailand alone absorbs an estimated million or more Burmese in search of better life opportunities;
- One of the largest armies in Asia despite having no external enemies;¹⁰
- Nearly half of the regime's budget spent on the military while only two to four percent spent on health;¹¹
- The death of one in ten babies before their fifth birthday.¹²



Business and the Dictatorship

Though foreign trade and investment can often be of crucial importance to the people and economies of developing countries, in Burma the reverse is true. A regime responsible for the impoverishment and oppression of a whole nation survives through foreign investment, revenue from exports and illegal narcotics.¹³

It is clear that fifteen years of constructive engagement, whereby businesses and governments cooperated with the regime in the hope that reform would result, have been a failure. The pro-investment advocates have ignored the uncompromising nature of the regime, the connection between the military's economic base and its political support, and the leverage that economic pressure provides the NLD in its negotiations with the military.¹⁴

One of the most worrying consequences of investment and trade with Burma is the way it has enabled the regime to expand the armed forces. In 1988 there were 200,000 personnel, there are now an estimated 400,000. The regime's ultimate target is half a million military personnel.¹⁵

Military spending fluctuated between a third and a half of the regime's budget during the 1990s. A country of around 50 million people has one of the largest armies in Asia, and yet has no external enemies.

**Natural gas is now
Burma's largest
single source of
export revenue**

The high proportion of the state budget spent on the military has resulted in an allocation to education and health that ignores the needs of Burma's people. In 2000, the World Health Organisation ranked Burma near rock bottom, 190 out of 191 countries, in health care delivery. The people of this resource-rich country are slipping further into poverty. UNICEF reports that 36 percent of children under five years old in Burma are moderately to severely underweight,¹⁶ while the United Nations Development Programme (UNDP) reports that one in ten babies die before their fifth birthday.¹⁷

There can be no doubt that the greatest obstacle to peace and prosperity in Burma is the military dictatorship itself.

The NLD has asked the world to cut the lifelines that keep the regime alive. Like Nelson Mandela and the ANC during the Apartheid regime in South Africa, Aung San Suu Kyi and the NLD have called for economic sanctions and for foreign companies to stay away.

The regime depends on foreign investment and foreign trade for a substantial part of its income. It is essential to cut those lifelines in order to force the regime to the negotiating table. As long as the regime and its associates are financially secure, they have no incentive to reform. When the regime finds it difficult to satisfy the political constituency that supports it, it will have to consider change.

The Economist Intelligence Unit (EIU) reports that total revenue from gas exports since the Yetagun and Yadana gas fields commenced operations in 1998 has risen dramatically from zero in 1997/8 to US\$921 million in 2002/03.¹⁸ Natural gas is now Burma's largest single source of export revenue since the Yadana and Yetagun gas fields came online, accounting for just under 30% of export earnings in 2002/03.¹⁹

TOTAL: a short profile

TOTAL and French foreign policy have always been closely intertwined. TOTAL was born out of the aftermath of World War I. WWI was the first war fought with large-scale use of oil. Tanks, armoured vehicles, and trucks replaced cavalry on horseback, horse and carts. Oil began to replace coal as fuel for the Navy and merchant fleets. Speaking days after the end of WWI, Senator Berenger, who was in charge of France's oil policy, described oil as "the blood of victory."²⁰ Oil was now vital for the projection of international power. Compagnie Française des Pétroles (CFP) – now TOTAL – was established as France's vehicle for securing the oil it needed to project international power.

Compagnie Française des Pétroles (CFP) was formed in 1924 at the instigation of the French government. It was initially privately owned, although the government approved all members of its board. Its first oil production project was as a partner in the Iraqi Petroleum Company, which began producing crude oil near Kirkuk in 1927. Following a parliamentary review in 1928, it was decided further steps had to be taken to ensure CFP prioritised French interests. Many foreign shareholders were forced out of the company and the state took 25 percent ownership. Following these reforms, one French political deputy described CFP as being ready to become "the industrial arm of government action."²¹

War again spurred the creation of another constituent part of TOTAL, this time Elf. In the aftermath of World War II, French president Charles de Gaulle decreed that French oil production should be equal to that of France's oil consumption. CFP was already over-stretched in the Middle-East, so two new bodies were set up, the Bureau de Recherches Pétroliers (BRP), and Régie Autonome des Pétroles (RAP). Their mission was to find oil away from the Middle East, preferably within the French empire. They were very successful, securing major oil reserves in Algeria. BRP and RAP were merged in 1965, and later became Elf.

The TOTAL brand name was launched in 1954 as the marketing name used for its petrol stations. In 1985 CFP changed its name to Total CFP, and in 1991 the company dropped CFP from its name. In 1999 TOTAL merged with Petrofina to become Totalfina, and a year later Totalfina and Elf merged to become TotalFinaElf. In 2003 the company reverted to being called simply TOTAL.

In 2003, TOTAL was at the centre of France's largest-ever corporate corruption scandal. Thirty-seven defendants were put on trial for illegally siphoning 350 million euros (£245m) from Elf in illegal kickbacks. Based on a seven-year investigation by the French authorities, the trial exposed that in the early 1990s Elf had been paying millions to French political parties to buy their support. Bribes were paid to smooth Elf's operations around the world, ranging from £10 million to the president of Gabon, right through to £3.2 million to the ex-wife of Elf's former Chairman to buy her silence about the widespread corruption. Bribes were paid to several other African leaders, and business and political figures around the world.

TOTAL today

TOTAL is now the world's fourth-largest oil and gas company, ranking only behind Exxon, BP and Shell. TOTAL operates in more than 130 countries and has over 110,000 employees. In 2003 Total reported net income (profit) of £4.8 billion (7billion euros). Its chemicals division is also one of the world's largest chemical companies, with reported sales of 17.3 billion euros in 2003.²²

TOTAL operates a network of almost 16,000 service stations worldwide. Its exploration and production division has activities in 43 countries with production in 27 of these countries. It is the largest oil refiner in Europe, selling 3.7 million barrels of petroleum products per day.²³

The company has around 540,000 shareholders. 36% in France, 41% in the rest of Europe, 21% in the USA, and 2% in the rest of the world.²⁴ Total is the largest company in France, with a market capitalisation of £69bn (100bn euros).²⁵

TOTAL Oil in Burma: a brief history

In 1988, Burma's regime launched a bid for tenders for the development of the Burmese gas fields. On July 9, 1992, TOTAL signed a contract for shared production with the State Company, MOGE (Myanmar Oil and Gas Enterprise) to exploit and develop the Yadana field in the Gulf of Martaban.

At first the holder of all the shares in the project, TOTAL then ceded some of them to various partners – in 1993 to American company, Unocal (28.26 % of the shares), in 1995 to the Thai company PTT-EP (Petroleum Authority of Thailand exploration and production public Co. Ltd. 25.5%), and then in 1997 to MOGE (15%), maintaining 31.24% of the shares as operator of the project.

After tests revealed the presence of significant gas reserves, the consortium signed a thirty-year take-or-pay sales contract with the Petroleum Authority of Thailand (PTT) in 1995. This meant that PTT were committed contractually to paying for Yadana gas even if they later found themselves unable to take it. The gas was contracted to be sold on to EGAT (the Electricity Generating Authority of Thailand). A pipeline crossing the Tenasserim region of Burma for a distance of 63 kilometers (about 40 miles) was built in order to carry the gas to Thailand. A separate company, the Moattama Gas Transportation Company (MGTC) - owned in the same proportionate amounts by Total, Unocal PTT-EP and MOGE - built both this and the 346-kilometre sub-sea pipeline bringing the gas from the offshore platform to land.



TOTAL Oil in Burma: a brief history (continued)

Today TOTAL's project provides significant annual revenue to the regime. Some sources estimate as much as \$450million annually.²⁶ Whilst TOTAL claims that the Yadana project provides it with less than 1% of its own overall profits, although this is hard to verify due to lack of transparency, it is clear that the company is one of the regime's main pillars of financial support.

The TOTAL pipeline has been closely associated with serious human rights abuses - including forced labour, forced relocation, forced portering (carrying of munitions), beatings, torture, rape and the use of civilians as human mine sweepers.²⁷ The revenue from the pipeline has also been associated with weapons purchases by the military. In particular, the acquisition of Russian MIG fighter planes and helicopters.

Despite this, TOTAL maintains it plays a positive role in Burma – making the case for constructive engagement with the regime and attempting to spotlight its humanitarian work in the area of the pipeline. The company claims to have ‘concern’ for the plight of Aung San Suu Kyi and the national reconciliation process in Burma. TOTAL is, however, contractually bound not to engage in any “*political activities*” judged unsuitable by the military authorities: “*The Contract shall be terminated in its entirety by MOGE if irrefutable evidence is brought that (TOTAL) is involved willingly with political activities detrimental to the Government of the Union of Myanmar.*”²⁸

The Oil and Gas Journal in April 2003 indicated that the TOTAL-led consortium is now also involved in a further project in Burma. The consortium has been working on the development of Sein and Badamayar fields in the Gulf of Martaban adjacent to the Yadana field and will be drilling wells at Sein and Badamayar over the next 4-5 years. The \$40 million cost of developing Sein field is said to include a platform and an inter-field pipeline.²⁹

TOTAL's presence in Burma continues to influence French foreign policy, which in turn has affected the foreign policy of the EU as a whole towards Burma. The effect has been a weaker EU Common Position towards Burma's military dictatorship. It is likely that the French government will block UN Security Council and EU action on Burma for as long as TOTAL remains in the country.



One of TOTAL's gas rigs in Burma.

The TOTAL pipeline has been closely associated with serious human rights abuses - including forced labour, torture and rape

Human Rights Abuses

Securing the pipeline

After the oil companies signed contracts with Burma's military in the early 1990s, life changed dramatically for the people inhabiting what's become known as the pipeline region. In 1991, to 'secure' the area for TOTAL and other foreign oil companies, the entire pipeline region was militarized; thousands of troops renowned for their extreme brutality were drafted into an area where the civilian families of farmers, plantation workers and fishing communities were living. In all, at least 16 battalions have either been stationed in the area or patrolled the pipeline corridor at one time or another since 1991.³⁰

TOTAL and other oil companies active in the pipeline region have long denied any contractual arrangement with the Burmese military to provide security for their projects. TOTAL's own website makes this plain: "*TOTAL has...never had a contractual relationship, either direct or indirect, with the Army, and has not provided it with financial or logistical support. Neither MGTC (Moattama Gas Transportation Company - responsible for piping gas from the offshore Yadana production platform to the Thai border) nor its operator, TOTAL, has ever had any authority over the Army or given it instructions.*"³¹

Other reports, however, dramatically contradict this, suggesting that not only was security identified as a key concern by the Yadana consortium, but that it made requests and payment for security services to partner MOGE, who then deployed the Burmese Army.

The Production Sharing Contract (PSC) between TOTAL and MOGE signed on July 9, 1992 makes direct reference to the security issue. Under "*Rights And Obligations of MOGE and Contractor*" it reads: "*MOGE shall: assist and expedite (TOTAL's) execution of the Work Programme by providing at cost...security protection and rights of way and easements as may be requested by (TOTAL).*"³² It is made explicit (in the PSC contract) that security personnel were to be "*made available from resources under MOGE's control*"³³ – i.e. the Burmese Army.

A US Department of State unclassified cable, obtained by the Thailand-based organisation Earthrights International (ERI), details a 1995 meeting between US Embassy personnel and Unocal's Manager for Special Projects, Joel Robinson. In this meeting, Robinson states that Unocal and TOTAL did hire and pay the Army for pipeline security through MOGE. He also admits that the companies not only directed military activities in the region but also gave the Army responsibility for building helipads for the project.



Workers lay the Yadana Gas Pipeline through the Tenasserim region in Burma

Human Rights Abuses (continued)

Robinson states that TOTAL/Unocal foreign staff were not permitted access to these helipad sites until after they were completed, indicating that no monitoring of the Army's labour practices can have been carried out in this instance. As improbable as it might seem that a foreign company would entrust the Burmese military regime with such responsibilities, given its long and well-known practices of forced labour, forced portering and violence, it appears that this is exactly what happened.

*"He stated forthrightly that the companies have hired the Burmese military to provide security for the project and pay for this through the Myanmar Oil and Gas Enterprise (MOGE)."*³⁴

US Embassy Cable

*"It would hardly be surprising for the Burmese military to have access to the company's aerial photos, precision surveys, and topography maps since TOTAL and Unocal used these to show the military where they need helipads built and facilities secured."*³⁵

US Embassy Cable

A letter to Unocal dated 1st February 1996 (uncovered by the American Unocal lawsuit) written by TOTAL's Business Development Manager, Hervé Chagnoux, also appears to confirm that the companies did employ the Army as security for their project and further suggests that TOTAL accepted that accusations of forced labour by the troops could not simply be dismissed:

*"As far as forced labour used by the soldiers in charge of security on our gas pipeline project is concerned, we must admit between ourselves, TOTAL and Unocal, that we're probably in a grey area."*³⁶

Other statements from TOTAL and its partners, and from soldiers employed to work on the Yadana project, further suggest that security was provided by the Army for the benefit of the Consortium. Some statements make clear that the companies knew only too well what the consequences of this security arrangement were likely to be:

*"Military presence in the region was reinforced to ensure protection of the area."*³⁷

Mr. Thierry Desmarest, TOTAL CEO

*"Obviously the government has told us they will make the area safe."*³⁸

Herve Madeo, TOTAL, Director Total Myanmar Exploration Production 1992-1999

*"Unless the area is pacified, the pipeline won't last for its thirty-year duration."*³⁹

TOTAL Executive

*"All indirect aid to the army will have to go through MOGE."*⁴⁰

Yetagun project impact assessment, 1996

*"The strategic commander told us we had to take security of the gas pipeline in June 1993. He said we had to make sure the whole area was safe from the rebel group because the foreigners are going to come into this area and start to survey the pipeline very soon."*⁴¹

Soldier providing security for the pipeline

*"[An] immediate issue for the project is the fact that military security will ... have to be increased or relocated to enable the pipeline to be built. There is a potential for any continuation of the past harsh policies of the army to be blamed on companies involved... It is impossible to provide guarantees... It needs to be recognized that the local people have been and probably will continue to be subject to heavy levies of money and food from the military."*⁴²

Yetagun project impact assessment, 1996

What is certain is that security was prioritized for the viability and success of the project by the companies involved. Equally certain is that TOTAL was fully aware of the implications for local people of importing a heavy military presence into the area. Again, their own website confirms this: *“TOTAL was well aware that the Army’s presence in the region could have negative consequences for villages in the area.”*⁴³ *Although the heightened Army presence provided some reassurance for the construction team as far as security was concerned, it was aware of the burden that the troops’ presence might put on the villages near the pipeline.”*⁴⁴

Given the company’s knowledge of the consequences of militarisation, the evidence that TOTAL/Unocal made requests and payments to MOGE for security provided, and the fact that the company itself stresses in its own materials the need to ensure *“that the security measures implemented do not negatively impact the local population”*⁴⁵, it is clear that TOTAL must bear responsibility for the terrible consequences of militarisation for the people of the pipeline region in Burma.

The consequences of militarisation

As a direct consequence of the militarisation of the pipeline region, countless human rights violations against the local population have occurred over the years. First hand testimony from victims, witnesses and Army defectors from the area testify to a litany of abuses including forced labour, forced relocation, torture and rape carried out by pipeline security troops - some of which have become known to local communities as the ‘TOTAL battalions’ (Light Infantry brigades 273 and 282 who set up barracks around 1995-1996).

Forced Labour

The accusation that the Yadana project has benefited from the heavy use of forced labour by Burmese citizens, including children, the elderly, and the infirm, is well-documented. There are countless reports that Burmese soldiers in the pipeline region conscripted thousands of civilians to perform forced labour for the benefit of the pipeline. As onshore work commenced, the military directed the construction of service roads and helipads, as well as their own camps and barracks, through the use of forced labour.

Typically the Army called on village heads to send forced labourers on a rotational basis. Each group coming for one to two weeks leaving only when a replacement group arrived. Hundreds of acres of land were cleared, bamboo and trees cut down, stumps dug out and ground levelled. Villagers dug wells and trenches, built fences, cut thatch and made posts and boards to build barracks. Villagers had to supply their own shelter in which to sleep during conscription and their own food and water. They worked through the heat of the day under threat of punishment and ill treatment. Testimonials from villagers paint a grim picture:

*“They did not give us any food... they even did not allow us to make huts for ourselves. Most of us used plastic sheets or sacks for our beds so many got malaria, colds and coughs... We had about 10 people who were 60 to 70 years old...if you had headache, coughing, cold and a little fever they did not let us take a rest.”*⁴⁶

Villager from the pipeline region

*“For three weeks we had to dig the mound with only seven people... At that time we were beaten by soldiers... (Because the soldiers thought we were not working, they) called all of us and punished us... They asked us to jump like frogs.”*⁴⁷

Villager from the pipeline region

*“They kicked us when we did not have enough strength to take out the stumps. At that time I wanted to take revenge against them in my heart, but I dared not.”*⁴⁸

Villager from the pipeline region

Human Rights Abuses (continued)

“The mountain (on Heinze Island) that we had to carry sand up had 345 steps. When we were carrying the sand I saw a teenager from Paung Htaw village take a break to eat during the work, and he was beaten four times.” ⁴⁹

Villager from the pipeline region

Forced labour also included the widespread practice of forced ‘portering’, by which villagers were forced not only to carry heavy loads - arms and supplies for soldiers patrolling the pipeline route - but also in extreme cases to act as human minesweepers:

“In 2001, I had to go porter about ten times. Most of the portering we did was for battalion 282 and battalion 273. They are patrolling for pipeline security, and we had to carry their food and supplies whenever they needed us.” ⁵⁰

Villager from the pipeline region

“When he came [home], he had lost his left eye, and his arms and legs were wounded and swollen. His back was bruised and swollen severely. I saw the scar from the rope on both of his arms and legs.” ⁵¹

Villager from the pipeline region

“Before our village was relocated, the soldiers killed many villagers in my village. Even though they were civilians, the soldiers did not trust them, so they were killed. One person from every house had to go to clear mines. The villagers had to go all over the place to find out whether the land mines were set up or not. We were very frightened of the land mines.” ⁵²

Villager from the pipeline region

“When we were patrolling for the safety of the pipeline, we always used the villagers as porters. Even in one company, we separated into many groups to split up all over the area that we had to take responsibility for securing the project. Therefore we needed the villagers to porter. Each separate group took six or seven porters.” ⁵³

Soldier providing security for the pipeline

“When I saw the porters working very hard, and they were yelled at by the sergeants I wondered, ‘why didn’t the foreigners use equipment or vehicles to make their heliports, so the civilians and the soldiers would not be tired or suffer from that?’” ⁵⁴

Soldier providing security for the pipeline

That TOTAL was aware of forced labour in the vicinity of the pipeline is absolutely clear. However, the company has consistently played down both the frequency of occurrence and the link with their project: “Certain incidents” they grudgingly admit on their website “may have escaped TOTAL’s attention in the very early phases of the project.” ⁵⁵



Photo: EarthRights International

A villager who was forced to become a porter for the Burmese military regime. After being injured, he managed to escape but did not dare return home for fear of being punished, kidnapped or killed

“I know that in the early days of the execution of this project, military units in the area of the project were using conscripted labor.” ⁵⁶

John Imle, former President of Unocal

“What I know is that in the very early stages of the project, in the very first months, we learnt about the use of forced labor by the army... and we decided voluntarily to pay the people who had been conscripted.” ⁵⁷

Michel Viillard, head of TOTAL Myanmar

“Military housing and local infrastructure is provided by underpaid or unpaid labour. The harsh conditions of those carrying out such labour – including young children – and the testimony of local people who will go to extremes to avoid it, belie the government claim that such work is voluntary.” ⁵⁸
Yetagun project impact assessment, 1996

However, a French parliamentary mission in 1999 investigating evidence of abuse in the pipeline region points to TOTAL's integral role in fostering the use of forced labour and other abuses: *“the link between the military presence, the acts of violence against the populations and the forced labour is established as a fact. TOTAL had to be aware of that.”* ⁵⁹ United States courts have also registered sufficient evidence to show that forced labour and other abuses occurred in the construction of the Yadana pipeline. According to the 2000 District Court opinion in *Doe v. Unocal Corp*: *“Unocal knew that the military had a record of committing human rights abuses; that the project hired the military to provide security for the Project; that the military, while forcing villagers to work and relocate, committed numerous acts of violence; and that Unocal knew or should have known that the military did commit, was committing, and would continue to commit these tortuous acts.”* ⁶⁰

Forced Relocation

As a key part of the effort to secure the pipeline region for TOTAL and other oil companies, villages had to be moved. Through early 1993 Karen communities that lay east of the Ye-Tavoy road were particularly targeted for relocation to create a secure corridor for the pipelines. Karen villages 15 to 20 miles both north and south of the pipeline routes were forced to move to the Ye-Tavoy road – closer to military outposts – to create a labour pool and eliminate threats from armed ethnic groups. This relocation area became the pipeline corridor and the timing of the relocations coincided with the negotiation of the pipeline deals and an attack on Nat-E-Taung in late 1991. The pattern of relocations further suggests that the impending pipelines were related directly to the relocations and gave the regime further pretext to control the population in this particular area. ⁶¹ Bullets enclosed with written relocation orders were sometimes sent to village heads as a stark symbol of what would happen to those who refused to leave. Villagers were not compensated for their losses. The relocations and evictions devastated communities. Those who did not flee to Thailand or escape into the jungle have since endured routine and systematic forced labour and a life defined by fear.

The companies active in the pipeline region have consistently denied that any relocations took place for the benefit of their projects. Reports from villagers consistently contradict this denial. The US Department of Labour reported in 1998 that *“in preparation for clearing the pipeline route ... on a recent visit to the pipeline (a US Embassy) officer was told by villagers that relocations did occur.”* ⁶² The Electricity Generating Authority of Thailand (EGAT), the major purchaser of Yadana gas, has also publicly acknowledged that people were relocated to facilitate pipeline construction. A half-page advertisement in the Bangkok post on April 17, 1995, paid for by EGAT, unequivocally confirms this:

“The Myanmar government aims to complete its part of the gas pipeline system by 1996. The pipeline will pass through Karen villages in Laydoozoo district, Mergui-Tavoy province and in Mon villages, Ye-Tawai province. Myanmar has recently cleared the way by relocating a total of 11 Karen villages that would otherwise obstruct the passage of the gas resource development project.” ⁶³

Human Rights Abuses (continued)

Further abuses

In addition to rampant forced labour and relocations, abuses such as extrajudicial killings, torture, rape and extortion by pipeline security forces dramatically increased after the Yadana Project began. Documentation of human rights abuses in the pipeline region has been rigorous. Since 1995, EarthRights International (ERI) field staff have collected first hand testimonies from several hundred victims, witnesses and Army defectors interviewed from the pipeline corridor. The testimony of villagers who have encountered pipeline security forces and from soldiers themselves is compelling:

“[O]n the way back from the video shop, four men wearing uniforms grabbed [a woman] and took her to the side of the road. And these four men covered her face with clothes and stripped her and rapidly raped her one by one.” ⁶⁴

Villager from the pipeline region

“They killed my brother.... He had seven children. He was 28 years old. He also owned land and was a farmer. He was not rich or poor, just average.... [The military] ordered him to come, but he did not know why. They told him to come with the village headman, and two others. At that time, my husband and I were on the farm. And we heard the sound of automatic gunfire.... He was a normal villager, just working very hard for his family.” ⁶⁵

Villager from the pipeline region

Amnesty International released a report in June 2001 documenting serious human rights abuses committed by at least two Light Infantry Battalions (LIBs) who have regularly provided pipeline security (LIB 273 and 282) and are known locally as the ‘TOTAL battalions’. Amnesty reports the testimony of one villager abused by ten soldiers from LIB 273:

“I was tied with a rope...beaten on my back, hit with a rifle butt and cane stick...I was forced to lie on my stomach while they put two wooden rods on my back while a soldier stood on each side of the rods. They dug a hole and put me in it... I was kept under the hot sun all day.” ⁶⁶

Inadequate safeguards

Despite openly recognizing the likely consequences of militarisation, TOTAL continues to deny responsibility for any of the abuses that have occurred as a consequence of the Yadana project. The company claims instead that it has made all efforts possible to prevent abuses occurring, and lobbied the Army to prevent forced labour being used in the pipeline region. They say they did this through Village Communication Committees which were set up, according to the company’s website, so TOTAL could “*stay constantly and directly informed of the situation in the field so that it could respond very quickly if an incident occurred.*” ⁶⁷

“*Since fieldwork commenced in 1994*”, TOTAL maintains, “*(it) has always monitored the Army’s actions very closely to prevent forced labor.*” ⁶⁸ In fact, TOTAL actually claims that far from its presence proving damaging to the communities of the region “*(its) actions protected the villagers from the risks associated with a temporarily heightened military presence.*” ⁶⁹

In this regard, it’s worth referring to a photograph displayed on page 17 of a TOTAL brochure – The Yadana Gas Development, published in November 1995. This photo clearly shows members of one of TOTAL’s Village Communication Committees (VCC) standing outside an office. The office belongs to the Union Solidarity Development Association (USDA) – a pro-government militia/political group who provide a civilian front for the regime. USDA were responsible for the brutal attack/assassination attempt on Aung San Suu Kyi and her supporters in May 2003. Senior General Than Shwe is USDA President and members of his family are heavily involved in the organisation.

This photograph was either taken in error – in that the USDA signboard and office formed an unintentional backdrop to the photo. Or TOTAL had – in this instance – used USDA personnel as a conduit through which villagers were supposed to pass information concerning the use of forced labour.

Either way, the photograph is extremely worrying. USDA clearly had a major presence within this village. If the VCC was based anywhere in the vicinity of this USDA office or its staff, doubt has to be cast on this Committee's ability to provide a safe channel of communication for villagers. That the photograph was published and distributed widely by TOTAL (and Unocal) in various publications is more worrying still; indicating as it does either complete ignorance of who and what USDA were (giving strength to the proposition that USDA formed the foundations of this VCC) or conscious disregard.

If TOTAL intended to make use of the USDA network in this village (whether in ignorance or full knowledge of who and what USDA represented), then this was a grave error on the company's part for which it must be held accountable. If the choice was made in full knowledge, then it was TOTAL's clear intention to ensure no incidents of abuses in this area were reported. If carried out in ignorance, then the company was negligent in its duty to protect the people in this area of operation.

Either way, far from protecting villagers from the excesses of the Army in this village, TOTAL will have achieved no more than fortification of the regime's informer network; guaranteeing that reports of abuses were not passed on.

This incident renders highly questionable TOTAL's claims of effective monitoring of the Army's actions in the pipeline region. A hasty, and otherwise utterly unnecessary, re-print by TOTAL of The Yadana Gas Development brochure took place in July 1996. Having compared the two documents carefully, the only amendment to the original document, of any substance whatsoever, is the replacement of the USDA photograph with an innocuous one. Clearly, TOTAL realised their error and attempted, belatedly, to cover it up.

Compensation

TOTAL has actually taken some action to compensate victims of forced labour in the pipeline region:

"When cases of forced labor were brought to light", TOTAL explain on their website "(TOTAL) provided assistance to the victims or their families, in the form of cash or other contributions, and made sure that the money was received by the intended beneficiary." ⁷⁰

"When a case of forced labour is brought to our attention, we make every effort to offer compensation." ⁷¹

Jean-Pierre Cordier, President of TOTALFinaElf's Ethics Committee

Despite this, the company still pointedly refuses to admit any responsibility for these abuses:

"MGTC, which was building the pipeline, provided victims of forced labor whose cases were reported by the villages, with support in kind or in cash, calculated as if the people concerned had been employed, not conscripted. The same process was applied when equipment such as boats or buffalo carts were requisitioned. These humanitarian gestures were not compensation, since neither TOTAL nor MGTC was even indirectly the cause or beneficiary of the forced labor."

TOTAL Oil website

Human Rights Abuses (continued)

The French parliamentary mission investigating abuses in the pipeline region in 1999, however, has judged otherwise, finding that the partnership - the absolute interdependence of the companies and the military - rendered corporate attempts at separation and line-drawing arbitrary and misleading. Their investigation concluded that this security relationship was the fundamental cause of human rights abuses in the region.

"It seems artificial to separate the construction of the pipeline... from the measures taken by the Burmese regime to ensure its safety... These security measures were what generated forced labor and population displacements in the area." ⁷²

French Parliamentary Mission

"The mission considers that TOTAL and Unocal did not deliberately use forced labor for the construction of the pipeline but indirectly benefited from it due to the militarisation of the area. For this reason, the delegation is not in favor of TOTAL's establishment in Burma... The presence of the world's 4th biggest oil company in Burma is currently damaging to France's image as well as to the company worldwide." ⁷³

French Parliamentary Mission

The presence of the world's 4th biggest oil company in Burma is currently damaging to France's image as well as to the company worldwide

Culpability

According to the 1992 TOTAL-MOGE Production Sharing Contract (PSC), Total contracted MOGE to "assist and expedite (its) execution of the Work Programme by providing at cost... security protection and rights of way and easements as may be requested by (TOTAL)." ⁷⁴ For this purpose MOGE, being a creature of the military dictators, secured the services of the Burmese Army – with what proved to be devastating consequences for the people of the region.

TOTAL had to have known that the security protection it requested - provided to them at cost by MOGE – would come in the form of the Burmese Army. Denials of any direct or indirect contract with the Burmese Army are meaningless when it is irrefutable that TOTAL contracted MOGE to provide them security, and when it is made explicit (in the PSC contract) that security personnel were to be "made available from resources under MOGE's control."⁷⁵ There was only one organisation which could have fulfilled the contractual obligations, namely the Burmese Army.

There can be no doubt either that TOTAL was fully aware of the Army's reputation for brutality when they contracted MOGE to provide security. The wealth of information and human rights reports, dating back into the 1980s and detailing explicit atrocities routinely carried out by the Army, stand as testament that TOTAL knew the nature of the beast that would be providing the security. An Amnesty report, for example, released in August 1991 provides evidence that in 1991 the Burmese Army were "continu(ing) to seize arbitrarily, ill-treat and extrajudicially execute members of ethnic and religious minorities in rural areas of the country."⁷⁶ The report refers to the "Army's de facto power to detain arbitrarily, torture or ill-treat and even kill people in its custody with impunity."⁷⁷

TOTAL has frequently sought to deflect blame and responsibility for abuses occurring in the pipeline region by arguing that: "it did everything possible to avoid abuses by the military" ⁷⁸ and that it "always monitored the Army's actions very closely to prevent forced labor." ⁷⁹ "Aware of the risk that the Army might requisition villagers for forced labor, we provided effective protection for inhabitants... TOTAL made it very clear to government officials that forced labor was unacceptable and ensured that the Army did not resort to this practice in the pipeline region."⁸⁰ One of its key "imperatives" the company stresses when operating in "challenging areas" like Burma has always been to ensure that "security measures implemented do not negatively impact the local population." ⁸¹

In more recent years, TOTAL has admitted that it was “*well aware that the Army’s presence in the region could have negative consequences for villages*”,⁸² and that some “*incidents*” of forced labour and other abuses would be “*inevitable in this fairly challenging political and cultural environment.*”⁸³ Contradicting its claims of having “*ensured*” a forced labour free pipeline region, TOTAL has acknowledged that “*victims of forced labor*”⁸⁴ did exist in the pipeline region, and that its “*teams knew immediately what was happening in the field and were able to intercede in cases of abuse.*”⁸⁵ In a letter written by TOTAL’s Business Development Manager, Hervé Chagnoux, to UNOCAL on February 1, 1996 the company acknowledges that: “*as far as forced labour used by the soldiers in charge of security on our gas pipeline project is concerned, we must admit... we’re probably in a grey area.*”⁸⁶ In 2003, TOTAL grudgingly admitted “*Certain incidents may have escaped TOTAL’s attention in the very early phases of the project.*”⁸⁷ Some eleven years after some of these acknowledged incidents took place, one might have expected some greater admission of responsibility and willingness to recompense from a company of TOTAL’s standing. Recorded payments though, made by TOTAL to villagers it acknowledges as having been forcibly hired by the Army in 95/96, and on other occasions since that time, do not, the company stresses, constitute compensation but merely “*assistance*” as TOTAL “*was neither the cause nor beneficiary of the forced labor.*”⁸⁸

There is a vast wealth of evidence that human rights abuses occurred on a massive scale at the hands of the battalions drafted in to provide security for TOTAL’s pipeline. One of the world’s largest and most influential oil companies; in direct partnership with the Burmese state; with access “*at all appropriate levels*”⁸⁹ to the military authorities (which in the case of a military dictatorship, means the Head of State), failed absolutely in its civil duty to protect the people of the pipeline region from abuse. Whilst TOTAL may suggest that some villages, where its Programme staff had a presence, escaped the worst excesses of a marauding Burmese Army, villagers in the broader vicinity of the pipeline certainly did not. Proud claims by TOTAL of its “*careful monitoring*”⁹⁰ appear disingenuous, once it’s understood that such monitoring as there was, was selective, limited and restricted. The monitoring has been restricted to a selected number of villages “*near the pipeline*”⁹¹ which fall within what TOTAL chooses to identify as its zone of responsibility. For TOTAL, the “*pipeline region*” seems almost to be defined as that area immediately under the pipe.

TOTAL was fully aware of the dangers inherent in deploying Burmese Army troops in an area where civilian families were living. The company was equally aware of its clear civil responsibility to protect the villagers in the pipeline area from these dangers. Despite this, the company opted to employ, through MOGE, the services of an Army internationally renowned for its extreme and unrelenting brutality. In doing so it unleashed a terrible and lasting devastation on the communities of the region and for this, TOTAL must bear responsibility.

Domestic pipeline

A domestic pipeline built and operated by MOGE and carrying gas from the Yadana field - from Kanbawk to MyaingKalay - is currently also proving a heavy burden on the people of the region. The pipeline supplies gas to a new cement factory in MyaingKalay. A litany of recent human rights violations associated with this development project have been reported. Although the pipeline itself is not operated by the Yadana consortium, the consortium is benefiting and generating revenue through use of the regime’s infrastructure – infrastructure blatantly built using forced labour.

*“Over the past year, our villagers have had to do many forms of forced labour for the soldiers. We’ve had to build the military outpost, porter for the soldiers, construct the railway, and dig the route for the Kanbawk-Myi Ka Lay gas pipeline. Currently we are forced to porter, maintain the Kanbawk-Myi Ka Lay gas pipeline, serve as people militia, build the roads and bridges, and sometime clean bushes around the military camp and pagoda.”*⁹²

Villager on the Kanbawk-MyaingKalay pipeline

The Lawsuits

Human rights abuses associated with TOTAL's Yadana pipeline are currently being examined in unprecedented legal cases. There were four lawsuits related to the Yadana pipeline consortium members until December 2004; two against TOTAL (in France and Belgium) and two against Unocal (in the US at both state and federal court level). However, in December 2004, Unocal decided to settle out of court with plaintiffs who had suffered human rights abuses in the 1990s. Various commentators consider that Unocal's decision to settle out of court was in order to avoid facing trial. It is thought that Unocal must have concluded that there was a high risk that the court would decide against it.

The TOTAL Case in France

In August 2002, Burmese citizens brought a judicial action before French courts for acts constituting the crime of *'illegal confinement'*. The case is against Thierry Desmarest, President Director General of TOTAL, and Mr. Hervé Madeo. Mr Desmarest was in charge of the Yadana project when acts of forced labour occurred, and Mr Madeo was Director of the On-Site Operator, TOTAL Myanmar Exploration Production (TMEP), from 1992 to 1999.

It is the first time TOTAL, the fourth largest oil company in the world, has faced a formal complaint about its Burma operation in its home country.⁹³ The complaint has been brought by two Burmese who were forced to work on the pipeline construction site begun by TOTAL in 1994. One of them was 13 at the time of the events, in 1995-96.⁹⁴

The plaintiffs explain in their testimony the circumstances in which they were forced to evacuate their villages and live in the jungle, on the pipeline construction site, and then to work there. They describe the behaviour of the Burmese Army battalions in the field, nicknamed by these workers as the *'TOTAL battalions'*. They describe how death threats and physical and verbal violence by the military resulted in a climate of fear. And also how they were deprived of food and medical care, which constitutes aggravating circumstance in the crime of illegal detention. The plaintiffs maintain that *'foreigners'*, that is, TOTAL executives, were present at the site, and therefore could not be unaware of what was going on.⁹⁵

There are several charges against the executives of TOTAL and its local subsidiary: recruiting and paying battalions of the Burmese Army, promoting a situation of forced labour on the construction site with full knowledge of the facts, and continuing to do so despite the repeated criticism of widespread forced labour in Burma by bodies such as the International Labour Organisation.

In October 2002, a French examining magistrate began investigating possible charges of illegal confinement during the building of the gas pipeline in Burma. The complaint specifically named the oil giant's chief executive, Thierry Desmarest, and the former head of TOTAL's operations in Burma, Hervé Madeo but the Prosecutor's office has not yet decided who should be answerable to the allegations. The first witnesses have been heard and eight new victims have subsequently joined the proceedings.

In October 2003, the operations director of the project, and one of the named defendants, was heard by the instructing judge. This was the first time that a representative from TOTAL had been called to provide an explanation in this matter before French justice.

In May 2004, an important step was taken when Sherpa, a French non-governmental organisation, organised the trip to France of a witness and a plaintiff involved in the case. These two Burmese refugees in Thailand then had, for the first time, the opportunity to confirm before the examining judge their previous statements.

On January 11th 2005, the court in Nanterre presided over by a panel of three judges, decided that on the initial instruction of the investigating judge, the case should proceed.

The TOTAL Case in Belgium

TOTAL is also facing prosecution in Belgium. A civil action for crimes against humanity and complicity in crimes against humanity was lodged in April 2002 by four Burmese plaintiffs, each a former victim of human rights abuses. Torture suffered by the plaintiffs includes cigarette burns, 'the iron road' (having a steel bar rolled up and down the shins until the skin and flesh is torn off), and blows to the head leading to damage to the optical nerve.

The plaintiffs accuse TOTAL, Thierry Desmarest and Hervé Madeo of complicity in crimes against humanity. They want to demonstrate that TOTAL provided moral and financial support to Burma's ruling military, in full knowledge of the consequences of this support with respect to massive human rights violations by the regime. They specifically claim that TOTAL and its managers provided logistical and financial support to Burmese battalions in the area of TOTAL's gas project, and that these battalions were known as 'TOTAL Battalions'. They also accuse TOTAL of knowing about the systematic and generalised use of forced labour by its Burmese partners related to the pipeline, and allege that TOTAL's internal mail and documents prove this knowledge. The plaintiffs also argue that TOTAL's provision of 'compensation' to 463 victims of forced labour in 1996 is evidence of its knowledge of the practice at the time.⁹⁶

The only precedent with regard to crimes against humanity, judged by the Belgian courts applying the Law of universal competence (which allows cases against non-Belgian citizens for particular crimes even if committed outside of Belgium), is the case of the four Rwandan citizens from Butare. They were found guilty of crimes against humanity and given sentences between 12 – 20 years imprisonment.

Unocal pays to avoid trial

Unocal, a US oil company and consortium partner of TOTAL's, has been facing similar charges to TOTAL – for human rights abuses connected with the Yadana pipeline in Burma. The original lawsuit was brought on behalf of fifteen Burmese villagers who were victims of human rights abuses in the pipeline area. In *Doe v. Unocal*, the story of one plaintiff illustrates the tragic consequences of Burmese 'security' in the pipeline area:

In December 1994, Jane Doe I, a young Burmese mother whose identity must remain secret for her own safety, was cooking by a fire in her village while holding her 2-month old baby. Burmese soldiers came to her house looking for her husband, who had fled forced labour orders given by the military to work on the gas pipeline project. The soldiers were also angry that Jane Doe I had not moved to the prescribed area after the forced relocation of her village for the pipeline project.⁹⁷

In retaliation, the soldiers kicked Jane Doe I so hard that she fell into the fire with her baby in her arms. She was knocked unconscious, and her baby was badly burned. Jane Doe I then tried for days to get medical attention for her baby, but the baby later died from her wounds.⁹⁸

When confronted with these and other accounts of human rights abuse in the pipeline area, Unocal's President at the time, John Imle, said: *"If you threaten the pipeline, there's gonna be more military. If forced labour goes hand in glove with the military, yes, there will be more forced labour. For every threat to the pipeline there will be a reaction."*⁹⁹

Unocal's decision in December 2004 to negotiate an out-of-court settlement has serious consequences for TOTAL. TOTAL and Unocal are inextricably linked on this issue, and therefore if Unocal lacked confidence in its defence, one can assume that TOTAL is in an extremely difficult position too. In fact, TOTAL, as operator of the pipeline project, has had a greater degree of control than Unocal over what has happened in the pipeline region. The risk to TOTAL following Unocal's decision must now seem even greater.

Fatal Transaction

What was paid

Clear financial figures have been impossible to obtain regarding the company's investment in, and returns from the Yadana project due to lack of transparency. TOTAL and project partners are subject to a gagging clause in their Contract which rules against release of relevant data and information.¹⁰⁰ However, according to various press reports, the consortium has invested around US\$1.2 billion in the project since 1992 (shared pro-rata by all four partners). MOGE took up its 15% stake in the project in 1997 – having contracted a loan in order to do so. This loan was seemingly obtained from project partners, although there is also some suggestion a Japanese company was involved.¹⁰¹

The Production Sharing Contract (PSC) between TOTAL and MOGE, dated July 9, 1992, makes clear that a series of additional payments have been made to MOGE since the project began:

- TOTAL was required to make a minimum spend of **US\$10 million** during the Appraisal period of the project (during which it was determined that the discoveries had commercial viability). Any deficiency in this commitment was paid to MOGE in cash.¹⁰²
- A **US\$15 million** signatory bonus was paid by TOTAL to the military authorities in 1992. Partners later reimbursed a percentage - equal to their interest share.¹⁰³
- Income tax is now being paid at 30% after a three-year no-payment period.¹⁰⁴
- Undisclosed Royalties have been paid regularly for Natural Gas produced.¹⁰⁵
- Production bonuses have been paid when average daily production of gas has reached certain levels. **US\$5 million** was paid by TOTAL to MOGE on approval of its Development plan for the Yadana field. A further **US\$2 million** was paid to MOGE when average daily Natural Gas Production hit 150 million cubic feet per day (for 90 consecutive days). **US\$3 million** was paid when it hit 300 million cubic feet. **US\$4 million** when it hit 600 million cubic feet. Escalating bonuses are still due once daily averages of 900 and 1200 million cubic feet are reached.¹⁰⁶
- TOTAL contracted to make payments of **US\$50,000 per year** during the Appraisal period for training and education of MOGE personnel. This has increased to **US\$100,000 per year** during the Development and Production stages of the project.¹⁰⁷
- The PSC refers to a sum of **US\$40 million** to be reimbursed by TOTAL to MOGE once MOGE took up its 15% stake (which it did in 1997). This sum represents “*costs incurred*” by MOGE in relation to the Contract Area and has been paid by way of “*payment out of production*” to MOGE since commercial production commenced. What these costs consist of is not specified.¹⁰⁸

What they've made

The Yadana pipeline came online in 1998. The export production threshold of 525 million cubic feet per day was reached in early 2001 and output was averaging 611 million cubic feet of gas per day in 2002, (with PTT taking 587 million cubic feet per day and Burma the balance for domestic consumption). Contractually, Burma is entitled to up to 20% of Yadana's production for domestic consumption.¹⁰⁹

Although financial details have not been made public, cumulative cash flow has been positive for all project partners since 2001-2002. Because MOGE took up its 15% stakeholding in 1997, investing US\$150 million to join the consortium – and then needed to fully reimburse the loan contracted

for this purpose - this delayed profit taking for the military authorities for a few years. In addition, revenues in cash to the regime - in the form of bonuses, tax revenues and royalties - were reduced by the value of domestic gas deliveries from the Yadana field so for this reason cash flow for the regime didn't become positive until 2002.

Since then, however, the Yadana project has provided substantial revenues to the Burmese authorities and project partners. Low estimates have placed annual government revenues from the project at US\$ 200 million.¹¹⁰ However, others have put it closer to US\$ 450 million¹¹¹ once taxes and reduced import costs are taken into account. The Economist Intelligence Unit (EIU) reports that total revenue from gas exports since the Yetagun and Yadana gas fields commenced operations in 1998 has risen dramatically from zero in 1997/8 to US\$921 million in 2002/03.¹¹²

The Oil and Gas Journal reported in 2003 that the Yadana consortium's recent installation of a medium compression platform will now ramp up maximum gas delivery to 850 million cubic feet per day increasing revenue still further.¹¹³

What is clear is that the Yadana field - with a proven recoverable reserve of 6.5 trillion cubic feet - promises to be a key ongoing source of hard currency for the regime over the next three decades. Natural gas is now Burma's largest single source of export revenue since Yadana and Yetagun came online, accounting for around 30% of export earnings in 2002/03.¹¹⁴

Drugs, Guns and Gas

The gas pipeline has also been associated with weapons purchases by the military. In particular, the acquisition of Russian MIG fighter planes.

Jane's Defence Weekly reported in July 2001¹¹⁵ that Rangoon was buying 10 MiG-29 jet fighters from the Russian Aircraft-building Corporation for US\$130 million and that the money was coming from Thai gas purchases. The down-payment for the MIGs (30 percent of the total) came in the same week that the state-owned Petroleum Authority of Thailand paid Burma US\$100 million in royalties for gas due to be piped ashore from fields in the Gulf of Martaban. Before the Thais made this payment under the terms of its 1995 contract, Burma had almost depleted its foreign exchange reserves. According to Robert Karniol, Asia editor of Jane's Defence Weekly, the Russians had been unwilling to sell aircraft to Burma until revenue began to flow from the Martaban gas field.¹¹⁶

There have also been reports that TOTAL and other oil companies were linked to the junta's narcotics network.¹¹⁷ Francois Casanier has investigated the connection between TOTAL, the junta and arms purchases for l'Observatoire Geopolitique des Drogues.¹¹⁸ He suggests that the regime accelerated the production of heroin in the early 1990s in order to pay for weapons. The regime laundered heroin money through seemingly legitimate operations, and for this purpose used MOGE.¹¹⁹

One example of these operations, according to Casanier, was the huge cash credits received from banks in the Northern Thai city of Mai Sai into MOGE's bank accounts, held in Singapore. Mai Sai is situated on Thailand's border with Burma and is connected by bridge to the Burmese town of Tachilek. Casanier explains that Burmese officers made regular flights to Tachilek from Rangoon, bringing parcels of bank notes, received from heroin sales, to be deposited in Mae Sai banks.¹²⁰

In 1992, in the year that TOTAL paid its US\$15million signatory bonus to MOGE, Burma was able to purchase 24 Soviet-era helicopters from the Polish company PZL. A Bangkok based Polish diplomat at that time said, "*the Burmese paid us with TOTAL money.*"¹²¹

Fatal Transaction (continued)

Casanier suggests that TOTAL's payment to MOGE in 1992 was used to hide the regime's revenue from illegal narcotics, which was being deposited in MOGE accounts on a regular basis. He suggests that it is distinctly possible that the regime used TOTAL's signature bonus payments as part payment for the Polish helicopters. The suggestion is that they did this in part to make the additional funds necessary for the helicopters, which amounted to far more than TOTAL's US\$15 million, look legitimate.¹²² The implication of Casanier's investigation is that TOTAL's finance to MOGE was used to cover up a money-laundering operation involving heroin revenue for arms purchases.

A Rangoon based company called Setraco, headed by French businessman Jean Pichon, a former military attaché in France's Bangkok embassy,¹²³ was implicated in the brokering of this PZL deal for Burma in 1992¹²⁴ (although PZL denies this).¹²⁵ Thanks to a favour to him by Burma's former dictator, Ne Win, he is thought to be the only foreigner living in Burma with a Burmese passport; he has reportedly been in the good books of the junta since undisclosed services rendered during his previous activities as military attaché to the French embassy in Bangkok.¹²⁶

Setraco is a subsidiary/affiliate of the better known Brenco International. Brenco, headed by Franco-Brazilian businessman Pierre Falcone, was the company at the heart of the international arms scandal involving the son of former French president Mitterrand in 2000. Falcone and his colleagues were arrested in 2000 for assisting in the completion in 93/94 of Russian arms sales worth more than US\$500 million to the Angolan regime of Jose Eduardo dos Santos for his campaign against Jonas Savimbi's anti-Marxist UNITA opposition.¹²⁷



Burma has bought MiG-29s from Russia

Yuzo/The Irrawaddy

TOTAL and French foreign policy

One of the most significant consequences of TOTAL's presence in Burma is its influence on French foreign policy. In order to protect TOTAL's interests, the French government has become an obstacle to any strengthening of the EU's Common Position¹²⁸ on Burma. It could be argued that TOTAL, through the French government, is ensuring that Burma's dictators are protected from any significant EU sanction.

Chirac and Desmarest have been travel companions on numerous official foreign trips since the mid-1990s. Recently, they travelled together to Algeria¹²⁹ (2003) and Libya¹³⁰ (2004). In June 2004, President Chirac awarded Thierry Desmarest one of France's highest accolades, the Legion of Honour, for distinguished service to France. The closeness of the two men, and of the French state and TOTAL Oil, is widely reported.

The Economist has raised concerns over the Chirac-Desmarest relationship. In April 2003 it asked: *"what of the fairness of mentioning President Chirac and Mr Desmarest in the same breath? The French government has no stake in Total, but the company is still a "national champion" in the classic French manner. It is deeply cosy with the government..."*¹³¹

President Chirac has twice publicly expressed support for the Burmese regime. Once at the Asia-Pacific summit in Bangkok in 1996 (where he was accompanied by Desmarest), and again in an interview to the Far Eastern Economic Review in April 1997.¹³² In contradiction with European decisions, and opposing the views of most other democracies, Mr Chirac declared that he favoured the immediate and unconditional admission of the Burmese military dictatorship into ASEAN.¹³³

As Le Monde Diplomatique put it: *"...Jacques Chirac supported Burma's application to join Asean in a statement to the Far Eastern Economic Review in May 1997. Here again support for economic interests took precedence over full consideration for the human rights situation. It seems that some dictatorships are more acceptable than others - providing of course that their presence facilitates international investment."*¹³⁴

In 1996 Burma's regime launched 'Visit Myanmar' year; a major push to attract tourism and bring in much needed foreign currency. The regime used millions of Burmese as forced labourers in its push to build tourist infrastructure. This mass conscription was described by the International Labour Organisation in 1998 as a 'crime against humanity'.

However, France's ambassador to Burma at the time, Bernard Pottier, was supportive of the regime's new initiative. Writing in Le Figaro with a series of articles he praised the "new look" of the Burmese generals, who "set the country on the right path to economic liberalism."¹³⁵

In 1996 the World Tourism Fair was held in Paris and the regime's tourism minister at the time, General Kyaw Ba, was invited as a guest of honour at the instigation of Mr Pottier.¹³⁶ Incredibly, the organisers awarded the newly created Gulliver prize for cultural discovery to a programme in Burma.

When TOTAL was threatened with a lawsuit in the United States for human rights abuses connected to its Burma pipeline, the French government's intervention made clear TOTAL's place within French foreign policy.

In a briefing (amicus curiae) to the US court, the Republic of France said that it: *"respectfully objects to the exercise of personal jurisdiction by this court over TOTAL, a corporate citizen of France, on the ground that it would conflict with the sovereignty and laws of France..."* It continued, *"Maintenance of this action against TOTAL in the United States courts will conflict with France's foreign policy interests."*

TOTAL and French foreign policy (continued)

More recently, the French government's efforts to protect TOTAL and the dictatorship's interests have been unabashed. During the summer of 2004, in both EU negotiations over Burma's acceptance into the Asia Europe Meeting (ASEM), and on negotiations to strengthen the EU Common Position on Burma, France worked hard for decisions that will have delighted the generals in Rangoon.

Capitulation on ASEM (Asia Europe Meeting)

ASEM is a regular forum of summits between Asia and Europe. Prior to October 2004, the grouping comprised 15 European Union states, seven countries from the Association of South East Asian Nations¹³⁷ (ASEAN - excluding Burma, Laos and Cambodia); the Republic of Korea, Japan and China. During 2004 plans for ASEM expansion were made. The ten new EU states, Cambodia, Laos and controversially Burma, were all candidate countries for ASEM membership.

The EU had insisted for a number of years that Burma could not be a member of ASEM due to its human rights record and lack of political reform. Asia, however, insisted that if Burma were refused membership, Asia would veto the membership of the ten new EU states. Countries such as the UK, Denmark and Czech Republic argued for a tough position on ASEM. The EU threatened that if Burma did not meet certain conditions, then the EU would not attend the ASEM enlargement summit in Vietnam in October 2004.

The ten new EU states wanted to be part of ASEM. However, some also understood that rewarding the regime with ASEM membership, when it continued to flout the opinion of the UN, and of European and Asian governments, was the wrong signal to send. They feared this would strengthen the regime and would seriously undermine Burma's pro-democracy movement.

The French position, however, appeared to amount to a willingness to break from the collective decision-making norms on policy toward Burma, in order to support Burma's entry to ASEM. It is reported that Mr Chirac stated that even if all the other 24 member states of the EU decided to boycott the ASEM summit in Vietnam, he intended to go.¹³⁸ There were other countries who were also willing to support Burma's dictators in their application to join ASEM, but it is widely thought that France led the block of sympathisers, and that France's agenda was clear from the beginning. The EU, divided publicly – with France leading the call for an EU backdown - eventually capitulated to Asia's demand that Burma be allowed into ASEM.

Weakened EU Common Position

In October 2004, the EU considered for the first time a targeted investment ban against the dictatorship in Burma. A key reason for considering a strengthened Common Position was to send a clear message to the regime that, despite its acceptance into ASEM, the EU was not 'going soft'. By the end of the negotiations on the extent of the new measures, France had successfully emasculated them. The measures, as they currently stand, have no real impact and can legitimately be described as meaningless. The most profitable sector for Burma's dictators, oil and gas, was entirely omitted from the sanctions imposed.

Press reports and the views of diplomats at the time point to the determination of the French government to protect TOTAL's interests in Burma by weakening the EU measures agreed. Here are just a few examples:

Le Monde

*"One European diplomat said that very meticulous work had been done on the terms of these sanctions, particularly because the French were anxious not to harm the activities of the oil giant Total."*¹³⁹

The Observer

*“Last Sunday, Burmese pro-democracy leader, Aung San Suu Kyi, began her tenth year incarcerated by the brutal Burmese military regime. Last week the European Union set out a list of sanctions covering every Burmese industry other than its money-spinners - oil, gas and timber. For this egregious dilution, blame the French. It’s French oil firm Total that stands to gain from the rich reserves that will be extracted in coming years. And it’s been the French who have been vetoing strong sanctions.”*¹⁴⁰

The Financial Times

*“After pressure from France, EU Ambassadors have now decided to make clear that the ban on such investments does not refer to arrangements already in place, which can even be extended or prolonged. Paris was particularly concerned about investment in Burma’s oil and gas sector.”*¹⁴¹

Guardian

*“France’s president, Jacques Chirac, said in Hanoi he hoped additional EU sanctions would not be necessary because they ‘will hurt the poorest people’. But France fears its investments in Burma, including those of Total Oil, may also be hurt. Measures announced by EU foreign ministers in Brussels yesterday appear significantly weaker as a result of French lobbying.”*¹⁴²

BBC on line

*“There were harsh exchanges, and just two days later the 25 EU states formally announced they would extend their sanctions on Burma’s generals, to ban any new investments in Burmese state-owned firms. But international critics say those new sanctions are full of loopholes. French President Jacques Chirac seemed to cast doubt on their effectiveness, saying he hoped the EU’s sanctions policy would not damage the operations of the French oil firm Total, which has large investments in Burma.”*¹⁴³

Other attempts to reduce pressure on Burma

TOTAL has also been trying to influence American government policy on Burma. The USA is the only country in the world that has imposed effective economic sanctions against Burma. In 1997, it introduced a ban on new investment in Burma, and in 2003 sanctions were strengthened to include imports and financial transactions.

TOTAL is a member of the American Petroleum Institute (API). The API is lobbying the US government to drop unilateral sanctions against Burma.¹⁴⁴ The API is also a key member of USA*Engage, a corporate lobbying group set up to stop the USA using unilateral sanctions. USA*Engage is also fighting for the repeal of the Alien Tort Claims Act – the law under which Unocal, TOTAL’s partner in the Yadana gas field, was taken to court to face charges of complicity with human rights abuses.¹⁴⁵

It’s clear that as long as TOTAL remains in Burma, the French government will provide succour to Burma’s dictators, irrespective of the appalling consequences this has for Burma’s people. There has been a view, held in some quarters, that attacks on TOTAL’s Burma operation are part of an Anglo-Saxon conspiracy to undermine France’s business interests. This is ironic, given that the UK has called for its own companies to withdraw from Burma,¹⁴⁶ and the US has banned its companies from investing in Burma.¹⁴⁷ It is also the case that the international coalition calling for TOTAL’s withdrawal from Burma has been involved for a decade in campaigns against companies throughout the EU and US, irrespective of nationality. The criteria for such campaigns has always been to target those companies who have supported Burma’s dictatorship. Despite this, the French government continues to protect and work for TOTAL’s best interests at the expense of the people of Burma.

TOTAL in the United Kingdom

The fourth largest oil company in the UK

Supplies 11 percent of petrol, other fuels and lubricants used in the UK

Processes 15 percent of gas used in the UK

Biggest supplier of plastics in the UK

Brands include TOTAL petrol stations, Bostik glues and Spontex cleaning products

TOTAL has several subsidiaries operating in the UK. Its oil and gas subsidiary, TOTAL UK is the fourth largest oil company in the UK. It has an annual UK turnover of £2.2bn – equivalent to every person in the UK spending £36.66 per year on TOTAL fuel products. It is active at all levels of the oil, gas and chemicals market. It has over 900 petrol service stations, selling 3.5 billion litres of fuel and lubricants a year - equivalent to 11 percent of the UK market.¹⁴⁸ Over 1 million people in the UK have a TOTAL tops loyalty card.

TOTAL UK is also the fourth-largest oil company in terms of North Sea production and reserves. It has two refineries; at Milford Haven (South Wales) and Killingholme (Lincolnshire), as well as a lubricant blending plant at Ferrybridge (West Yorkshire) and a bitumen plant at Preston (Lancashire). TOTAL operates the St Fergus Gas Terminal in Scotland, which processes around 15 per cent of the UK's daily gas requirements from some 20 fields.

TOTAL BUTLER is another subsidiary operating in the UK. It is one of the largest suppliers of domestic fuel oil in the UK. It also supplies oil to schools, hospitals and commercial businesses.

TOTAL's chemical subsidiary, ATOFINA UK is one of the largest suppliers of plastics materials in the UK and a major supplier of chemicals for use in industry. Its brands include Bostik Findley - now the largest adhesives & sealants company in the UK, Spontex cleaning products and Mapa professional cleaning products.

TOTAL's Investors

In December 2001, eight of the largest UK and continental European investors joined forces to put pressure on companies with interests in Burma, amid continuing evidence of human rights abuses. The funds, which manage global assets with a combined value of around £400 billion, released a statement on investment principles and Burma. They stated that their *"concerns have been raised by the continuing presence of a military dictatorship, which came to power as a result of a military takeover, and the continuing scale of flagrant human rights and other abuses. We are mindful of the influence of foreign direct and indirect investment provided by companies, whose shares we own, and are concerned that this may play a role in sustaining the current military regime."*

Since then, a number of institutional investment funds have been involved in a process of engagement with TOTAL over its presence in Burma. TOTAL's responses to investors' concerns have often been vague or simply failed to address the fundamental issues.

Some examples include:

- No explanation as to what political reform has resulted from TOTAL's constructive engagement with the regime.
- No response to the concern that TOTAL has helped the regime finance its military build up and maintain power over Burma's people.
- The continued denial that abuses - linked to their pipeline - have taken place. There is considerable evidence that the Company was aware that pipeline security forces were committing such abuses.

TOTAL's main defence has been that as long as there are no legal restrictions placed on it by the EU or UN, it will remain in Burma. This is a particularly convenient stance, given TOTAL's influence on French foreign policy, which ensures that such restrictions will not emerge from either the EU or the UN. Its second key argument is that it looks after its staff well and funds a variety of community programmes in Burma. Neither of these arguments address the company's support for the dictatorship, its association with human rights abuses, the lack of redress for villagers affected and its lobby activities which benefit Burma's dictatorship.

Shareholders are paying renewed attention to the significant material risk posed by operating under this repressive regime. Some investors, such as the Co-operative Insurance Society (CIS) in the UK, have said that TOTAL needs to reconsider the case for withdrawal from Burma in order to remain attractive in the capital markets. Its sister business, The Co-operative Bank, has been a part of the Burma sanctions coalition for a number of years, and refuses to finance business with a strategic involvement in the country. Both the bank and CIS, via their Sustainable Procurement and Supplier Policy, seek to avoid relationships with suppliers that have a significant involvement in Burma.

Two court cases against TOTAL (in France and Belgium) together with a major international campaign against the company, serve to further damage the company's reputation, heighten public mistrust and undermine its license to operate.

Important, but as yet unanswered, questions that investors should be asking now are:

- Whether and how TOTAL is exploring avenues to end its direct financing of the regime.
- Why it is upholding its current strategy of constructive engagement with the Burmese military given the absence of positive, tangible outcomes.
- How its policy on Burma relates to its overall business strategy and squares with its stated commitment to corporate responsibility.

The international campaign on TOTAL

The international campaign on TOTAL Oil aims to force the company to withdraw from Burma in order to end the company's support for the regime, deter future foreign investment in Burma and open the way to a French foreign policy that no longer undermines Burma's pro-democracy movement.

The political fallout from the withdrawal of Burma's largest European investor would be greater than any other company withdrawal so far. It would represent the greatest deterrent to potential investors in Burma to date. In the long term, it would reduce investment and therefore revenue to the regime. It would also end TOTAL's influence on French government policy, which weakens the EU position on Burma. TOTAL's withdrawal could open the way to a tougher French position and therefore a tougher EU policy against Burma.

Who is in the coalition?

The coalition on TOTAL Oil is represented in 18 countries and comprises the following organisations:

Actions Birmanie (Belgium)
Afrika Azsia Forum (Hungary)
Asienhaus Burma Initiative (Germany)
Assistenza Birmania (Italy)
Australia Burma Council
Burma Action Ireland
Burma Bureau (Germany)
Burma Campaign South Africa
Burma Campaign UK
Burma Center Netherlands
Campaign for Democracy in Burma (Finland)
Christian Solidarity Worldwide (UK)
Danish Burma Committee
Finnish Burma Committee
Karen Service Team (Germany)
Federation of Trade Unions – Burma (FTUB)
Friends of the Earth (England, Wales, Northern Ireland)
Friends of the Earth Scotland
Future in our hands (Norway)
Info-Birmanie (France)
International Federation for Human Rights (FIDH) (France)
Ligue des Droits de l'Homme (France)
Norwegian Burma Committee
The Peace People (Ireland)
Polish Burma Solidarity
Swedish Burma Committee
Swiss Burma Association
US Campaign for Burma
World Development Movement (UK)

We are encouraging as many civil society organisations that support the cause of democracy in Burma or the cause of corporate accountability to join the coalition. To join or to see a current list of coalition members please visit www.burmacampaign.org.uk

Take Action!

The campaign against TOTAL Oil is the largest international campaign ever launched against a company in Burma. You can support the campaign by contacting TOTAL Oil and asking them to pull out of Burma now.

You can send an email to TOTAL via our website: www.burmacampaign.org.uk

Or you can post a campaign postcard.

To request TOTAL campaign postcards and materials:

e-mail info@burmacampaign.org.uk

call 020 7324 4710

or write to:

The Burma Campaign UK
28 Charles Square
London N1 6HT



To Total Oil

I am very concerned that Total Oil is in a joint business venture with Burma's brutal military dictatorship. By working so closely with the dictatorship you are funding a regime that imprisons and tortures political opponents, has been condemned by the United Nations for its widespread use of forced labour and that uses rape as a weapon of war in its persecution of ethnic minorities.

Burma's democracy leaders have asked companies not to invest in Burma. I urge you to end your business partnership with Burma's military dictatorship and pull out of Burma now!

Name: _____

Address: _____

Email: _____

Signed: _____

The Burma Campaign UK will not pass your details on to any other organisation.

Please tick this box if you do not wish to be contacted by us in the future.

(Return this card to us and we will forward it to Total Oil)

affix
stamp
here

**Chief Executive Officer
Total Oil
c/o The Burma Campaign UK
28 Charles Square
London N1 6HT**

Frequently used arguments defending TOTAL

1. If TOTAL leaves Burma, an Asian company will take its place, or the regime will simply get a bigger share of the project and therefore more revenue.

It is often reported that the majority of investment in Burma comes from the Asian region. However, this is only true in terms of commitments to invest, with Asian countries committing approximately US\$ 4.26 billion, or about 60 percent of total commitments since 1990. In the last ten years Western countries only committed about US\$ 2.89 billion. However, Western countries disbursed more than 80 percent of the investments that they committed. Asian countries only disbursed about 31 percent of committed investment.¹⁴⁹

While European investments have been some of the strategically most important to the regime, the recent exodus of companies, as well as the decision of many not to invest in Burma, provides an opportunity to further undermine the regime's support base. Asian investors have not flooded into the investment gap. Instead many have taken a cautious approach to investment in Burma as a result of the regime's mismanagement of the economy. However, their attitude may well change and this is why Europe must, in addition to applying an EU investment ban, push for UN mandatory sanctions on Burma. Until such UN sanctions can be put in place, the EU must ensure that no major European company tips the economic balance of power yet further in the regime's favour. The major benefit of TOTAL's withdrawal would be to remove the main obstacle to a more progressive French foreign policy that would be supportive of such a sanctions policy - foreign policy that supports Burma's democrats and not its dictators.

The blow to political and economic confidence in the regime and in Burma of Europe's largest investor withdrawing will prevent much more investment revenue from going to Burma in the future.

According to the argument (1) above, TOTAL would have invested and remained in Nazi Germany, just to prevent an Italian company possibly taking its place. The company says that the only restriction on investment it would accept is a legal one. Ethics and morality seem not to have any place.

2. If TOTAL leaves, the regime will buy its share of the project and may benefit.

A withdrawal from Burma by TOTAL would likely mean the sale of its assets to another party, possibly the regime itself. In the short term, this would, at a minimum, have no negative impact on the regime's finances and at worst increase the regime's revenue from the project (if it buys TOTAL's share in the venture). However, the political fallout from the withdrawal of Burma's largest European investor would be greater than any other company withdrawal so far. It would represent the greatest deterrent to potential investors in Burma to date. In the long term, it would reduce investment and therefore revenue to the regime. It would also end TOTAL's influence on French government policy, which weakens the EU position on Burma. TOTAL's withdrawal could open the way to a tougher French position and therefore a tougher EU policy against Burma.

3. TOTAL has community projects directly helping ordinary Burmese.

If TOTAL is genuinely concerned about ordinary Burmese, it can afford to continue to pay for the programmes when it leaves Burma. It is, after all, the 4th largest oil company in the world. It could see this continued funding as reparations for those who have suffered because of the investment it has made in Burma. In the same way that Unocal is accepting they have a responsibility to those who suffered atrocious human rights abuses as a consequence of their investments.

4. TOTAL is not political but it does believe in constructive engagement.

There is a general confusion in TOTAL's statements regarding the 'apolitical' nature of the company, the positive political role it can play, and its policy of constructive engagement.

If TOTAL is not political, it simply cannot carry out the 'constructive engagement' it claims to be

involved in with regime. Unless, such engagement has nothing to do with democratic reform or other political matters - in which case it is not what most would understand as 'engagement'. TOTAL is actually contractually bound not to engage in any "political activities" judged unsuitable by the military authorities: "The Contract shall be terminated in its entirety by MOGE if irrefutable evidence is brought that (TOTAL) is involved willingly with political activities detrimental to the Government of the Union of Myanmar." ¹⁵⁰ It is clear that after more than a decade in the country not one single democratic reform has resulted from the company's presence in Burma.

The policy of constructive engagement has been tried and has failed. The regime has been more 'engaged' by the international community in the last two years than ever before, and the result has been the ousting of all the regime's 'pragmatists'; the attack on Aung San Suu Kyi's convoy; her arrest and extended detention; and the refusal to allow the NLD any real participation in a process of national reconciliation. Engagement, as practiced by companies and governments, has made the regime more confident in carrying out its oppression of Burma's people.

Despite what TOTAL says, it has clearly acted politically in pursuit of its own interests because it insists on remaining in Burma against the wishes of the party elected by Burma's people - to the delight of the dictatorship that oppresses that party. It also continues to have political influence over French foreign policy toward Burma, which protects Burma's oil and gas sector, protects the dictatorship and therefore undermines the chances of democratic change.

5. With economic development comes political reform.

The regime spends 50% of its budget on the military. Revenue from TOTAL's gas project fuels this expenditure. The regime spends less on health than any other country in the world.¹⁵¹ Public services in Burma are collapsing. Burma's people are getting poorer. TOTAL's presence does not contribute to 'economic development', but instead the perpetuation of a dictatorship that holds back such development. After 15 years of foreign investment the situation remains dire:

- Burma spends half its budget on the military and just 19p per person per year on health¹⁵²
- 43 percent of children in Burma suffer from malnutrition¹⁵³
- 60 percent of children do not complete primary education¹⁵⁴
- Under 5 mortality rates, at over 10 percent of children, and more than double the east Asian and Pacific average¹⁵⁵
- Public expenditure on health as a percentage of GDP is 0.3 percent, the lowest in the world¹⁵⁶

While the regime and its associates grow richer, they see no need to reform; the system is working for them. As long as they can continue to benefit from investment such as TOTAL's, while maintaining a tight control on Burmese society, they have no incentive to reform.

6. TOTAL has neither been the cause nor the beneficiary of abuses that have occurred in the pipeline region. The company bears no responsibility for the actions of the Army.

TOTAL has admitted it was fully aware of the dangers inherent in deploying Burmese Army troops in an area where civilian families were living. Despite this, TOTAL entered into a contract with MOGE, giving the green light to the employment of an Army renowned for its extreme and unrelenting brutality. In doing so it unleashed a terrible and lasting devastation on the communities of the region and for this, TOTAL clearly bears responsibility.

There are countless reports that Burmese soldiers providing security in the pipeline region conscripted thousands of civilians to perform forced labour for the benefit of the pipeline. As onshore work commenced, the military directed the construction of service roads and helipads for the pipeline project, as well as their own camps and barracks, through the use of forced labour.

Frequently used arguments defending TOTAL (contd.)

A French parliamentary mission in 1999 investigating evidence of abuse in the pipeline corridor emphasised TOTAL's integral role in fostering the use of forced labour and other abuses: *"the link between the military presence, the acts of violence against the populations and the forced labour is established as a fact. TOTAL had to be aware of that."*¹⁵⁷ The mission judged that the partnership - the absolute interdependence of the companies and the military - rendered corporate attempts at separation and line-drawing arbitrary and misleading. Their investigation concluded that this security relationship was the fundamental cause of human rights abuses in the region.

TOTAL has itself admitted that abuses have taken place, committed by pipeline security forces. The company has indeed compensated people who were forced to work by the regime's security forces in the region, though it continues to deny responsibility.

It is also testimony to the strength of evidence provided in the case against Unocal, TOTAL's consortium partner in Burma, that the case was accepted despite every appeal made by Unocal to stop it. A similar process is taking place against TOTAL in the French court, where it has been accepted that the case should be investigated. As operator of the project, TOTAL carries greater responsibility than Unocal for events that have taken place in the region.

7. TOTAL has met with Aung San Suu Kyi and she is happy for them to be in Burma.

In January 2003, the Burma Campaign UK met with Aung San Suu Kyi to discuss this claim by TOTAL and established that it is untrue.

8. TOTAL's withdrawal will impact on ordinary people in Burma.

Three quarters of Burma's people live off the land and an extremely tiny proportion of the population works for TOTAL. It is clear, therefore, that relatively few of Burma's 50 million people will be affected if TOTAL withdraws from Burma. Those who work for TOTAL do matter, but we are faced with a stark choice: allow the regime to obtain finance that will ensure its survival, thereby condemning Burma to continued violence and impoverishment; or make a concerted effort to cut the regime's financial lifelines while limiting the effects on ordinary people.

The call for companies not to invest in Burma comes from Burma. The NLD, led by Aung San Suu Kyi, won 82 percent of the seats in Burma's 1990 election. The NLD has called for international sanctions against the regime. All the major ethnic leaderships from Burma have whole-heartedly supported the case for sanctions and a ban on investment. The mandate for such sanctions comes from within Burma and could not be clearer or more legitimate.

TOTAL and the regime export Burma's energy while the people of Burma live with severe energy shortages. Even on this level, the project does nothing for the country; it only enriches the dictatorship and its business partners.

9. How will TOTAL's withdrawal influence the generals?

The regime depends on foreign investment and foreign trade for a substantial part of its income. It is essential to cut those lifelines in order to force the regime to the negotiating table. As long as the regime and its associates are financially secure, they have no incentive to reform. When the regime finds it difficult to satisfy the political constituency that supports it, it will have to consider change.

BRIEF AMICUS CURIAE OF THE REPUBLIC OF FRANCE

The Republic of France, by undersigned counsel, respectfully submits this brief as amicus curiae in support of the motion to dismiss of defendant TOTAL. France submits this brief pursuant to the mandate of the Supreme Court in *Asahi Metal Industry v Superior Court*, 480 U.S 102 (1987), that the courts of the United States consider in determining whether to exercise personal jurisdiction over a foreign defendant such as TOTAL the effect of such assertion of jurisdiction on the procedural and substantive policies of the foreign country, in this case France. France respectfully objects to the exercise of personal jurisdiction by this court over TOTAL, a corporate citizen of France, on the ground that it would conflict with the sovereignty and laws of France.

(...)

“Maintenance of this action against TOTAL in the United States courts will conflict with France’s foreign policy interests. France supports human rights and is a signatory to numerous human rights treaties and conventions. France believes that economic development inter alia, through regional cooperation projects such as the Yadana gas pipeline, will contribute to the liberalization and democratization process of countries like Burma. Total’s investment in Burma does not contradict French foreign policy. Civil litigation against TOTAL based on its investments in Burma would jeopardize TOTAL’s investment in Burma and thereby interfere with the views of the French government who considers that the economic isolation of Burma would be counterproductive.”

Footnotes

- ¹ “La firme française TOTAL est devenue le principal soutien du système militaire birman”, a déclaré Mme Aung San Suu Kyi, chef de file de l’opposition et Prix Nobel de la Paix au journal Le Monde (20/7/96).
- ² AFP, Paris, May 17 2000.
- ³ For current list of members visit: www.burmacampaign.org.uk
- ⁴ The EU agrees a Common Position on Burma. Because a consensus is needed to establish the Common Position, countries that choose to, have a de facto veto on measures they disagree with.
- ⁵ Impe, Anne-Marie (2001) Silence TOTAL, Vivant univers no. 452 , March-April. EIU, Burma Country report, 4th quarter 1996 estimates \$400 million.
- ⁶ Shan Women’s Action Network and Shan Human Rights Foundation. May 2002. Licence to Rape. Chiang Mai: SWAN and SHRF. Online at www.shanwomen.org and www.ibiblio.org/obl/docs/License_to_rape.pdf
- ⁷ ILO Commission of Inquiry. July 1998. Forced Labour in Myanmar (Burma). Report by the Commission of Inquiry appointed under article 26 of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29). Online at www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar.htm For updated information on the practice of forced labour in Burma, please see CEACR 2002. Observations Concerning ILO Convention No. 29, Forced Labour (1930) – Myanmar.
- ⁸ Amnesty International. 22 December 2003. Public Statement: Amnesty International’s Second Visit to Myanmar. AI Index: 16/037/2003. Online at web.amnesty.org/library/Index/ENGASA160372003?open&of=ENG-MMR
- ⁹ Global IDP Database. Updated November 2003. Available online at [http://www.db.idpproject.org/Sites/idpSurvey.nsf/wCountries/Myanmar+\(Burma\)](http://www.db.idpproject.org/Sites/idpSurvey.nsf/wCountries/Myanmar+(Burma))
- ¹⁰ The junta has expanded the military from 200,000 in 1988 to about 400,000 today. See Andrew Selth. 2002. Burma’s Armed Forces: Power without Glory. Norwalk: Eastbridge, pp. 77-79.
- ¹¹ Figures from UNICEF cited in Oehlers, Alfred and Alice Khin Saw Win. November 2003. “The Crisis in Burma’s Public Health System”. Unpublished document.
- ¹² United National Development Programme: Human Development Report 2003. Online at www.undp.org/hfr2003/
- ¹³ The Ministry of Defence is likely to account for a significant proportion of the central government’s consumption of imported goods and services, without this being accounted for in national accounts. See Andrew Selth. 2002. Burma’s Armed Forces: Power Without Glory. Norwalk: EastBridge, pp. 136-137.
- ¹⁴ Philip S. Robertson: “Sanctions Are Working in Burma”. Online commentary, Irrawaddy, 26 August 2003. Online at www.irrawaddy.org/com/2003/com31.html
- ¹⁵ Andrew Selth. 2002. Burma’s Armed Forces: Power Without Glory. Norwalk: EastBridge, pp.77-79.
- ¹⁶ UNICEF: At a Glance: Myanmar. Online at www.unicef.org/infobycountry/myanmar.html
- ¹⁷ United National Development Programme: Human Development Report 2003.
- ¹⁸ Personal communication, EIU December 2004.
- ¹⁹ EIU Country report, August 2003.
- ²⁰ The Prize, Daniel Yergin, Page 183, Pocket Books 1991.
- ²¹ The Prize, Daniel Yergin, Page 190, Pocket Books 1991.
- ²² Total.com
- ²³ Total.com
- ²⁴ Total annual report 2003 page 10.
- ²⁵ Finance.yahoo.com 21 January 2005.

- ²⁶ Impe, Anne-Marie (2001) Silence TOTAL, Vivant univers no. 452 , March-April. EIU, Burma Country report, 4th quarter 1996 estimates \$400 million.
- ²⁷ A practice whereby civilians are forced to walk ahead of soldiers in areas that are mined.
- ²⁸ Total Contract, page 85. PSC TOTAL-MOGE, 9 July 1992.
- ²⁹ Oil and Gas Journal, BANGKOK, April 2003.
- ³⁰ Total Denial, July 1996. ERI field data on file with authors.
- ³¹ Total in Myanmar – a sustained commitment, 2003.
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TOTAL Oil: fuelling the oppression in Burma

This report investigates the role of French oil giant TOTAL Oil in fuelling the oppressive dictatorship in Burma.

TOTAL Oil is the fourth largest oil company in the world and one of the biggest foreign investors in Burma. Its joint venture with Burma's dictatorship in the Yadana gas project in southern Burma earns the military regime hundreds of millions of dollars every year.

Widespread systematic human rights abuses have been associated with the TOTAL pipeline, including forced labour, torture and rape. In addition, tougher European Union sanctions against Burma have been blocked by the French government in its effort to protect TOTAL's interests in the country.

This report has been produced to coincide with the launch of an international campaign calling for TOTAL's withdrawal from Burma.



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