



September 20, 2011

Ms. Meredith Cross
Director, Division of Corporate Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-4628

Re: Comments of EarthRights International on Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Ms. Cross,

I am writing to comment on a number of matters regarding Section 1504 of the Dodd-Frank Act and Release No. 34-63549, and to address some contentions contained in recent comment letters received by the Commission on this provision.

ERI applauds the Commission for conducting a fair and open rulemaking process, and for proposing rules that by and large track the plain language of Section 1504. In that they require project reporting, do not grant categorical exemptions, decline to limit the projects for which reporting is required to “material” projects, and plan to publish both the issuers’ payment disclosures and a separate compilation, the Commission’s proposals are prudent and appropriate, implementing the letter of the law, declining to exercise discretion where no discretion has been granted by Congress, and avoiding loopholes that would undermine Congress’s intent.

This Comment focuses on three issues: 1) The applicability of the recent decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Business Roundtable v. SEC*, ___ F.3d ___, No. 10-1305, 2011 U.S. App. LEXIS 14988 (D.C. Cir. July 22, 2011), to Section 1504; 2) the economic costs and benefits of some of the Commission’s proposed rules on project-level reporting; and 3) the statutory requirement that the Commission make public all payments disclosed pursuant to Section 1504.

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I. Organizational Information

EarthRights International (ERI) is a non-governmental organization based in Washington, DC, Thailand, and Peru that works with communities and local groups around the globe to address issues of corporate accountability and liability for human rights and environmental harms. ERI has extensive experience working with communities in Burma, Peru, Nigeria and other countries that are affected by extractive projects. A member of Publish What You Pay (PWYP), ERI has a particular interest in government revenue transparency in weak governance zones and zones of conflict. Robust project-level reporting, full publication of disclosures, and a no-exemptions policy will be particularly important for countries like Burma, where a repressive and secretive military regime funded largely by oil, gas, and mining operations continues to hide revenue information from citizens and international investors alike.

II. Previous Comments

In previous submissions, ERI has supported a number of interpretations of Section 1504 that would ensure the provision's usefulness to civil society groups in the regions where we work. Specifically, on December 2, 2010, ERI submitted a Comment¹ recommending:

- Fact-based inquiry into control, and reporting on a proportionate-share basis for all non-consolidated joint ventures
- Coverage of all issuers – domestic and foreign – without categorical exemptions
- Monitoring of Level I ADRs to determine whether it may be necessary to include them in the disclosure requirements in the future
- No exemptions for contract confidentiality clauses or conflicting local laws

On January 26, 2011, ERI submitted a supplementary Comment,² recommending:

- Inclusion of production share, in-kind payments, security and social payments, and infrastructure upgrades in the required disclosures.
- Filing, rather than furnishing of disclosures in the annual report, in order to allow shareholders who are misled and harmed by material misstatements to hold companies liable for their disclosures

ERI would also like to call the Commission's attention to submissions by two grassroots Burmese civil society groups, the Human Rights Foundation of Monland (HURFOM) and the Ta'ang Students and Youth Organization (TSYO). In Comments submitted on July 15³ and June

¹ ERI's December 2 Comment is available on the Commission's website at <http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-116.pdf>.

² ERI's January 26 Comment is available on the Commission's website at <http://www.sec.gov/comments/s7-42-10/s74210-8.pdf>,

³ HURFOM's Comment is available on the Commission's website at <http://www.sec.gov/comments/s7-42-10/s74210.shtml>.

28, 2011,⁴ respectively, HURFOM and TSYO underlined the dangers of providing disclosure exemptions for operations in countries that prohibit such disclosures by law, the need for true project-level disclosure, and the urgency of a release that would require disclosure for payments made to the Burmese government in 2012. Both organizations explain that timely project-level disclosures would greatly empower them to hold the Burmese government accountable for the revenues it receives from particular projects that are associated with political instability, human rights abuses, land confiscation, and environmental destruction. According to these groups, Section 1504, if properly implemented, will help them ensure that the communities benefit from natural resource revenues.

III. Comments on the Proposed Rules for Project-Level Reporting and Publication

A. Applicability of the Proxy Access Ruling

The Commission has received a number of comments and seen some media attention focusing on the implications of the recent ruling in *Business Roundtable v. SEC*, ___ F.3d ___, No. 10-1305, 2011 U.S. App. LEXIS 14988 (D.C. Cir. July 22, 2011) for particular provisions of the Dodd-Frank Act – among them Section 1504. The truth is, however, that *Business Roundtable* does not, for the most part, apply to Section 1504, at least with respect to project level reporting and the publication of disclosures. Moreover, industry proposals would depart significantly from the requirements and intent of the statute and, if adopted, could weaken the regulations’ ability to withstand a legal challenge. (See Parts B and C, *infra*, for why the Commission’s proposed rules satisfy *Business Roundtable*’s requirements, assuming that it *does* apply.)

Business Roundtable and the other precedents on which it builds impose a stringent interpretation on the requirement for the Commission under the Exchange Act to consider the effects of certain types of new rules on “efficiency, competition, and capital formation,” 15 U.S.C. §§ 78c(f), 78w(a)(2), 80a-2(c). Specifically, the Commission is required to apprise itself of the economic consequences of a given rule; otherwise, its rulemaking is arbitrary and capricious. *Chamber of Commerce of the United States v. SEC*, 412 F.3d 133, 144 (D.C. Cir. 2005). Where the Commission’s analysis inconsistently or opportunistically frames the costs and benefits, contradicts itself, fails to adequately quantify costs or explain why such costs cannot be quantified, neglects to respond to substantial problems raised by commenters, or does not consider reasonable alternatives, it may be inadequate. *Business Roundtable*, 2011 U.S. App. LEXIS 14988 at *8-9.

Crucially, however, the rules struck down in *Business Roundtable* are fundamentally different from the proposed rules for Section 1504 in that *they were not mandated by statute*. The court in *Business Roundtable* took great issue with the Commission’s decision to issue rules that would facilitate proxy access for shareholder nominees. This action was originally based on the Commission’s longstanding authority under the Exchange Act, although a provision was subsequently written into the Dodd-Frank Act explicitly authorizing – *but not mandating* – the

⁴ TSYO’s Comment is available on the Commission’s website at <http://www.sec.gov/comments/s7-42-10/s74210-92.pdf>.

Commission to regulate proxy access.⁵ It was the Commission’s proactive view that proxy access was a problem and that companies would enjoy improved governance if shareholder nominees could more easily contest elections. And one of the biggest problems the D.C. Circuit identified with this decision was the fact that the Commission failed to consider whether there would be a real net gain in value from issuing rules at all. *Business Roundtable*, 2011 U.S. App. LEXIS 14988 at *16-17 (Commission must consider costs of rule facilitating particular conduct, even if that conduct is already authorized by law); *id.* at *27-29 (same); *Id.* at *26 (Commission failed to explain why existing provisions were inadequate).

By contrast, in the case of Section 1504, Congress has required the Commission to issue very specific rules with regard to government payment disclosure, leaving very little room for discretion. At least with respect to project-level reporting and publication of disclosures, the Commission has acted conservatively and hued closely to the language of the statute. For example, given the statutory text, the Commission has no choice but to require project-level reporting and disclose the payment information submitted in issuers’ annual reports, and it has no authority under the statute to provide exemptions. Thus, regardless of the fact that to do otherwise would severely undermine the efficacy of the law, it would be inconsistent to apply *Business Roundtable*’s strict rule, which presumes that the Commission is exercising discretion to issue regulations that may or may not be warranted. It is, in fact, the industry proposals that would require the Commission to take unjustified liberties with a statute that is quite clear on its face; if the Commission were to adopt them, they would leave the regulations open to challenge for inconsistency with the statutory scheme.

Similarly, the court faulted the Commission in *Chamber of Commerce* for failing to consider reasonable alternatives that are not “uncommon or unknown.” 412 F.3d at 145. Here, the alternatives proposed by industry commenters are frivolous and completely out of bounds. The Commission has no obligation to consider suggestions that flatly contradict the text of the statute – like defining “project” as “country” – or would fly in the face of logic by undermining the law’s usefulness for its intended beneficiaries – like withholding the disclosures and publishing only a country-level aggregated compilation.

Finally, although it has promulgated rules pursuant to a non-discretionary mandate from Congress, we assume that the Commission will respond to industry commenters’ proposals and cost estimates, as *Business Roundtable* requires. The remainder of this submission considers the economic costs and benefits of project-level reporting and publication rules and questions some of the cost estimates suggested by industry commenters.

B. Project-Level Reporting

A number of Comments by issuers and industry representatives have criticized the Commission’s proposal for requiring project-level reporting and have called on the Commission to limit the projects on which reporting is required to “material” projects. These comments have generally focused on three issues: 1) the cost of developing systems to report at the project level, especially

⁵ Likewise, the rules challenged and overturned in *Chamber of Commerce of the United States v. SEC*, 412 F.3d 133, 136 (D.C. Cir. 2005), and *Am. Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166 (D.C. Cir. 2010), were initiated by the Commission under pre-existing discretionary authority, rather than being mandated by Congress.

if “non-material” projects are included; 2) the lack of benefit to investors of reporting on “non-material” projects; 3) the potential for project-level disclosure to reveal commercially sensitive information or expose companies to violations of local laws prohibiting such disclosure.

As a matter of statutory interpretation, interpreting project-level reporting to mean country-level reporting or limiting disclosure to “material” projects contradicts Congress’ language and intent and would leave the promulgated rules vulnerable to legal challenge. Regardless, on closer inspection, industry’s three major objections appear overblown, if not completely misleading. On balance, the proposed rules promote efficiency and capital formation, and would not undermine U.S. or other issuers’ competitiveness.

i. Statutory Language and Congressional Intent

As a preliminary matter, we note that the Commission has acted conservatively and appropriately in determining that Section 1504 requires project-level disclosures. The plain language of the statute clearly calls for reporting on “the type and total of such payments made for *each project . . .*”⁶ and then, in a separate sub-clause, requires reporting “the type and total amount of such payments made to each government.”⁷ Congress could not have meant to allow the Commission to define “project” as all activities within a given country; this would make the former sub-clause meaningless, as it would be redundant of the latter.⁸

Moreover, the statute requires disclosure on “each” project, not just those that are “material.” Clearly, Congress knew how to limit disclosures if it wanted to do so; it chose to explicitly restrict disclosure of payments to those that are “not de minimis,”⁹ and could easily have provided an analogous limitation for projects.

Finally, it is important to note that Section 1504, while primarily an investor protection statute, was crafted to provide benefits to the residents of resource-rich countries as well.¹⁰ Congress was quite explicit in noting that the rules are intended to “support the commitment of the Federal Government to international transparency efforts.”¹¹ Thus in developing its rules, the Commission should give weight to the benefits the rules will bring to local governments, and communities affected by oil, gas, and mineral development.

ii. Costs of project-level reporting

⁶ Exchange Act, 15 U.S.C. 78m §13(q)(2)(A)(i).

⁷ *Id.* §13(1)(2)(A)(ii)

⁸ *See, e.g., TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.”) (internal quotations omitted).

⁹ Exchange Act §13(q)(1)(C)(i)(II).

¹⁰ *See* 156 Cong. Rec. S3316 (daily ed. May 6, 2010) (Statement of Sen. Cardin in support of Amendment No. 3732 to the Restoring American Financial Stability Act (S3217), noting benefits to investors and people of resource-rich nations); 156 Cong. Rec. S5902-01, S5913 (daily ed. July 15, 2010) (statement of co-sponsor Sen. Leahy noting that Section 1504 would allow “American people and investors” to better know investment risk, and “citizens of these resource-rich countries to know what their governments are receiving from extractive companies).

¹¹ Exchange Act, 15 U.S.C. 78m §13(q)(2)(E).

Industry comments on the costs of project-level reporting raise the specter of tens or even hundreds of millions of dollars in compliance costs, although they give little or no support for these estimates. ERI is, of course, not in a position to calculate the disclosure costs for any given issuer and cannot offer competing figures. However, a number of factors lead us to question the accuracy of the assertions from industry participants.

First, some companies already report project-level payments in certain countries in one form or other and under a variety of regimes, although the practice is, admittedly, not as universal or as developed as would be required under the Commission's proposed rules. As HURFOM points out in its July 15 submission, for example, Exxon already reports its government payments for the Chad-Cameroon pipeline project, and the Improved Petroleum Revenue Group of Companies reports project-level payments in Egypt.¹²

Second, some EITI countries are already moving toward project-level disclosure. For instance, EITI reports for Mali disclose payments at the mine level,¹³ and the EITI Implementation Team for Indonesia – which includes, among other major companies, Chevron Corp. – has developed a protocol for project-level disclosure, simply because that is the level at which the companies keep track of most types of government payments and is therefore the most convenient way for them to report.

Third, it is unclear that companies can save much time or money by reporting government payments at the material project or country level. The European Parliament recently asked the Commission to develop legislation applicable to all European markets requiring reporting on “each project and country”¹⁴ in which a company invests. If that request is adopted as expected, all U.S.-registered issuers with operations or presence in Europe will be subject to project-level reporting, regardless of the U.S. rules; in fact, divergent rules would require the companies to incur *higher* costs by reporting two sets of figures.

Regardless of what the measure Europe ends up adopting, companies must keep records of their subsidiaries' payments to governments as part of the books and records provisions of the Foreign Corrupt Practices Act, so the chief costs of reporting these payments will be in the presentation of the data rather than any need to institute new tracking systems. To the extent that it may be necessary to implement new accounting and reporting systems to keep track of government payments, then the companies presumably will need to develop mechanisms for receiving and attributing information on individual payments *no matter what form the final rules take*.¹⁵ The Commission's proposed rule simply asks companies to provide that information in its raw form,

¹² See HURFOM Letter at 3. See also Comment of Oxfam America at 11 n.15, submitted to the Commission on Feb. 21, 2011, available at <http://www.sec.gov/comments/s7-45-10/s74210-76.pdf>.

¹³ Revenue Watch Institute, *EITI Reports: Results & Analysis – Mali*, at <http://data.revenuewatch.org/eiti/country/mali.php>.

¹⁴ Samuel Rubinfeld, “EU Parliament Adopts Oil, Gas Transparency Initiative,” WSJ BLOG – CORRUPTION CURRENTS, Sept. 13, 2011, at <http://blogs.wsj.com/corruption-currents/2011/09/13/eu-parliament-adopts-oil-gas-transparency-initiative>.

¹⁵ None of the Comments even attempts to quantify the savings that would supposedly accrue if disclosure were limited to “material” projects, as compared to disclosure of all projects. The Commission should attempt to estimate the difference in costs, but it is not required to accept commenters' bare assertions that their “marginal costs would be reduced very significantly.” Aug. 1, 2001 Shell Letter at 1.

rather than requiring them to process it and disclose only those payments from projects they deem to be “material.” Seen in that light, the Commission’s proposed rule could actually save issuers time and money, by allowing them to submit data without having to go through this sifting process.

iii. Benefits to investors and other stakeholders

Industry commenters consistently undervalue the benefits to investors from the Commission’s proposed rules, which may be difficult to quantify but are nonetheless quite significant and, moreover, were explicitly contemplated by Congress. Moreover, these commenters completely miss the fact that Section 1504 was enacted with more than just investors and businesses in mind.

1. Efficiency and capital formation benefits to investors

The benefits to investors from project-level reporting are many. First, the risk profiles of individual projects within a given country may vary greatly depending on a number of factors. For example, regional unrest, personal interest by powerful government figures, degree of community opposition, and environmental sensitivity may operate to make one project in, say, Burma more subject to political currents or popular demands than others. Project-level disclosures will enable investors to better understand these risks, whereas country-level reporting would allow companies to mask particularly salient projects by aggregating payments with those from less risky projects. For example, unusually high signing bonus payments for a particular project may be a proxy for political influence, whereas unusually low tax or royalty payments may signal that a project is located in a zone vulnerable to attacks or community unrest. As Calvert Investments noted in its Comment of November 12, 2010, project-level disclosures would assist in its “calculation of cost curves that determine whether and for how long a project may remain economic,” using a model that takes into account political, social, and regulatory risks.¹⁶ These signalling benefits would not be available to investors if information were made on a country-level basis, as investors would not be able to use the data to attribute political and regulatory risk at the project level.¹⁷

It is well established that increased financial transparency has salutary effects for market efficiency, as disclosures can be captured in stock prices or used to appraise projects that may be “value-destroying,” as well as helping to reduce liquidity risk.¹⁸ The reduction of information asymmetries through robust disclosure can, in turn be linked to increased capital formation through the ability to more efficiently allocate scarce capital.¹⁹ Project-level disclosures under Section 1504 will serve this function – they will promote capital formation by decreasing

¹⁶ See Comment of Calvert Investments at 2, submitted to the Commission on Nov. 15, 2010, *available at* <http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-49.pdf>.

¹⁷ Moreover, industry commenters’ suggestion that aggregation to the country level would help investors because they would not have to sort through reams of overwhelming numbers in order to find relevant information is disingenuous at best. Section 1504 required issuers to provide *both* the raw project-level data and the data aggregated at the country level but broken down by payment type. Thus to the extent that country level information is useful, it will be available *in addition* to project-level data.

¹⁸ See, e.g., Ashan Habib, *Corporate Transparency, Financial Development and the Allocation of Capital: Empirical Evidence*, 44 ABACUS 1, 5-8 (2008) (citing numerous quantitative studies).

¹⁹ *Id.* at 17.

information asymmetry and providing more security and certainty to investors as to extractive companies' levels of risk exposure.²⁰

2. Civil Society and Communities

The benefits to civil society and communities of project-level disclosure are significantly greater than those of country-level reporting. As noted in the submissions of numerous civil society groups, which represent communities who are among Section 1504's intended beneficiaries, project-level data will enable locals to know how much their governments earn from the resources that are removed from their own territory. This will empower them to advocate for a fairer share of revenues, double-check government-published budget data, and better calibrate their expectations from the extractive companies.

For example, an ERI report in 2009 calculated that, based on contracts and other documents turned over in the course of litigation, the Burmese regime has received billions of dollars from the Yadana gas project (operated by U.S.-registered issuer Total and owned by, among others, Chevron Corp.) that are not accounted for in Burma's national budget as revealed to the International Monetary Fund.²¹ Communities in the project-affected area knew little about the value of the gas that was extracted from and transported across their land, enjoy few benefits from the revenues that accrued to the government, and have been subject to widespread human rights abuses associated with the project. Because Burma does not practice revenue transparency, this information is generally not available; it was only because the relevant contracts were subject to discovery in U.S. litigation that these figures could even be estimated. Robust project-level reporting would enable other Burmese communities to understand the value of their natural resources and advocate for fairer treatment from their government.

Moreover, local governments in resource-rich areas are often highly dependent on revenue sharing formulas whereby national governments – who typically receive the vast majority, if not the entirety, of resource revenues – redistribute a fixed percentage of those revenues to the region of origin.²² Project-level reporting will enable both local government officials and civil society watch-dogs to monitor the revenue that flows back to the regions from the center and ensure that they receive what is promised – a benefit that would be unavailable if revenue streams were not differentiated below the country level.

3. The Red Herring of “Material” Project Reporting

²⁰ See also Cynthia A. Williams, *The Securities and Exchange Commission and Corporate Social Transparency*, 112 HARVARD LAW REVIEW 1197, 1276-89 (1999) (concluding that both “social” and “economic” investors have interest in so-called social disclosures, as they provide financially relevant information).

²¹ See EarthRights International, *TOTAL IMPACT: THE HUMAN RIGHTS, ENVIRONMENTAL, AND FINANCIAL IMPACTS OF TOTAL AND CHEVRON'S YADANA GAS PROJECT IN MILITARY-RULED BURMA (MYANMAR)* 43 (2009), submitted concurrently herewith.

²² In the Niger Delta, for example, oil and gas revenues are collected by the federal government and redistributed to the states on the basis of a number of factors, including the “derivation rule,” which requires that 13% of revenues from a given locality must be remitted to the place of origin. See Wumi Iledare & Rotimi Suberu, *Framework Paper: Oil and Gas Resources in the Federal Republic of Nigeria* at 3-4, from the Conference on Oil and Gas in Federal Systems, March 3-4, 2010, World Bank Headquarters, Washington, DC, available at http://siteresources.worldbank.org/EXTOGMC/Resources/336929-1266445624608/Framework_Paper_Nigeria2.pdf.

Many of the benefits of project-level disclosure would be illusory if the Commission were to permit issuers to report only on “material” projects. This is because the key unit of reporting is the payment, not the project. In other words, it makes little sense to limit disclosure to “material” *projects* (whatever that would mean) when Section 1504 is predicated on the notion that *all* non-de minimis payments are relevant to investors and civil society groups alike.

Allowing issuers to exclude payments made on projects that are deemed non-material presupposes that no payments arising from such projects are relevant to investors. This assumption is unwarranted. Outsized (or undersized, as the case may be) payments linked to minor industry projects may expose companies to investment risk and signal matters of concern – extortion and bribery, for example, or problems with financial controls – just as surely as payments related to megaprojects. Moreover, countries that wish to obscure their natural resource revenue streams would have a strong incentive to shift issuers’ payments to these non-material projects to the maximum extent possible. Thus, a materiality limitation could encourage evasion and an overall deterioration in the quality of data reported.

For civil society and communities, the insufficiency of material project reporting is even more manifest. A project that is not “material” to an issuer’s investors from a financial point of view may still be one that has serious impacts on standards of living in the communities affected by the issuer’s operations. Since the Commission typically evaluates materiality only with respect to “the reasonable investor,”²³ it is not an appropriate concept to import into a statute that was explicitly intended to provide benefits to a wider range of stakeholders.²⁴

iv. Project-Level Reporting and Confidential Information

Industry commenters have claimed that project-level reporting could release sensitive confidential information, harming them in two ways. First, the disclosure of payment information about a project in a given country could leave them at a competitive disadvantage by allowing other companies to outbid them or by putting other governments on notice of what they might be able to demand from that company. Second, companies might risk violating local laws or contractual provisions prohibiting disclosure. Neither of these objections withstands scrutiny, and providing exemptions based on them would risk undermining the effectiveness of the law.

1. Competitiveness

The notion that Section 1504 disclosures could release information that damages companies’ competitiveness appears superficially reasonable. However, the contract terms giving rise to the payments that are required by Section 1504 are generally known to industry participants already.

²³ See, e.g., Comment of Royal Dutch Shell plc at 1, received by the Commission on Aug. 1, 2011 (proposing limitation of disclosure to “those projects that *a reasonable investor* considers important”) (emphasis added).

²⁴ For this reason, if the Commission does decide to limit disclosure to those connected with “material” projects, we submit that a specialized definition of the term “material” should be developed for Section 1504 that explicitly takes into account the interests of non-investor beneficiaries. BP, for example, recognizes that the concept of materiality might need to be more expansive in the Section 1504 context. Comment of BP p.l.c. at 6, received by the Commission on Feb. 11, 2011 (“We accept that other users have an interest in payment information that would be below the materiality levels ordinarily adopted by extractive industry issuers.”).

Several countries publish all their contracts on-line. A team of researchers at Columbia University that conducted a wide-ranging survey of confidentiality clauses in industry contracts found that many resource extraction contracts can be purchased through commercial database services.²⁵ In fact, the Columbia researchers concluded that while information on these matters was widely available to industry, it was much less accessible to the public²⁶ – exactly the sort of information asymmetry that hinders effective capital formation, and that Section 1504 was tailored to remedy.

Moreover, the disclosures required by Section 1504 simply do not involve the commercial terms and trade secrets that could seriously undercut companies' competitiveness. Companies need not disclose projected reserves, contract terms, business models, proprietary technology, or future contracts or transactions. Nor would knowledge of the payments companies make to governments enable competitors to somehow intuit this information, as they would need to know much more about companies' expenses and production numbers in order to do so. The letter from the Qatari Minister of Energy and Industry that ExxonMobil submitted in a Comment to the Commission demonstrates that this is the case.²⁷ In that letter, the Minister lists three categories of information that he designates as "commercially sensitive," and prohibits companies from disclosing such information. These categories are: production costs, revenue, and reserves – none of which is covered by Section 1504.

The suggestion that payments should be concealed because they might undercut companies' bargaining position with other governments rings false as well. Experts have noted that host state negotiators may lack the capacity to negotiate terms that adequately protect the public interest when working out extractive contracts.²⁸ Industry's argument amounts to a complaint by industry that the SEC should create loopholes in the law explicitly to assist them to keep struggling developing world governments in the dark as to what a fair price for their resources should be.

2. Disclosure Prohibition Laws and Contractual Provisions

There is reason to doubt industry commenters' claims that *any* of the four countries identified by industry representatives actually has or implements laws prohibiting project-level payment disclosures.²⁹ Civil society groups from Cameroon have demonstrated convincingly that no

²⁵ Peter Rosenblum & Susan Maples, *CONTRACTS CONFIDENTIAL: ENDING SECRET DEALS IN THE EXTRACTIVE INDUSTRIES* 13, 42 (Revenue Watch Institute 2009).

²⁶ *Id.* at 27.

²⁷ Dec. 23, 2009 Letter from Abdulla Bin Hamad al-Attiyah, Deputy Premier Minister of Energy & Industry of the State of Qatar, to ExxonMobil Qatar Inc., annexed to Comment of ExxonMobil, received by the Commission on Mar. 15, 2011, *available at* <http://www.sec.gov/comments/s7-42-10/s74210-73.pdf>.

²⁸ *See, e.g., Summary Report* at 3-4, from Responsible Contracting Expert Workshop, June 25-26, 2009, Paris France, *available at* <http://198.170.85.29/Report-on-Ruggie-responsible-contracting-workshop-25-26-Jun-2009.pdf>.

²⁹ One comment purports to add one more name to the list of states that restrict transparency: the U.S.. *See* Comment of King & Spaulding LLP, received by the Commission on Sept. 8, 2011, *available at* <http://www.sec.gov/comments/s7-42-10/s74210-110.htm>. The comment suggests that disclosure of payments at the lease level would conflict with confidentiality provisions of the Outer Continental Shelf Lands Act, 43 U.S.C. 1352. But that law only guarantees the confidentiality of "privileged or proprietary information," 43 U.S.C. 1352(c). The commenter does not show why the payments covered by Section 1504 should be treated as privileged or proprietary, and if there were any question, Section 1504 itself appears to decide that such information is to be divulged in the public interest.

disclosure prohibition exists.³⁰ The letter from Qatar’s Minister of Energy and Industry explicitly states that no disclosure prohibition laws have been drafted and goes on to prohibit interim disclosure of categories of payments that are not covered by Section 1504. A number of companies already report on their payments to the Angolan and Chinese governments, and Petrobras has stated explicitly that it knows of no laws that would limit its ability to disclose such information in any of the countries where it operates, which includes Angola and China.³¹

A legal opinion from Chinese lawyers, opining that the Chinese government might treat some Section 1504 disclosures as state or business secrets, does not ground this conclusion in any clearly written law or regulation. Instead, the determination appears to amount to a general concern that China is sensitive about information related to its natural resources and prefers to keep such information secret.³² Moreover, the legal opinion appears to be based on erroneous assumptions. Its determination that production entitlement, royalty, and bonus payments would constitute state secrets is predicated on the belief that such payments could be used to deduce sensitive information like reserves and future discoveries,³³ which, as noted above, they could not. And it concludes that such data may also constitute business secrets only if they are unknown to the public; however, as noted above, payment data is generally known to industry competitors, if not to the general public.³⁴

As a matter of policy, creating exemptions for foreign disclosure laws would be deeply counterproductive to the congressional intent of Section 1504. As TSYO and HURFOM note, governments like the Burmese regime – which are simultaneously among the most opaque, resource extraction-dependent, and unstable in the world – would not hesitate to take advantage of such an exception to deprive investors and civil society alike of crucial information.³⁵ Nor is this a hypothetical danger. The letter from the Qatari Minister of Energy & Industry, in which the Minister describes new laws that are being drafted in response to Section 1504 “to control the disclosure of such information,”³⁶ shows clearly that countries with an interest in combatting transparency may already be crafting legislative responses in hopes that such a loophole will be available.

³⁰ Comment of RELUFA, received by the Commission on Mar. 14, 2011, *available at* <http://www.sec.gov/comments/s7-42-10/s74210-74.pdf>; Comment of RELUFA, received by the Commission on July 11, 2011, *available at* <http://www.sec.gov/comments/s7-42-10/s74210-96.pdf>.

³¹ Comment of Petrobras at 5, received by the Commission on Feb. 21, 2011, *available at* <http://www.sec.gov/comments/s7-42-10/s74210-25.pdf>.

³² Jun He Law Offices, Legal Opinion at 4, provided to Shell (China) Limited on Jan. 26, 2011, annexed as Appendix C to Comment of Royal Dutch Shell p.l.c., received by the Commission on May 17, 2011, *available at* <http://www.sec.gov/comments/s7-42-10/s74210-90.pdf>. Even if true – a contention that seems highly doubtful given Petrobras’s history of disclosure – this is hardly the sort of policy that would be appropriate for the SEC to recognize and encourage when promulgating rules to implement a law that is specifically aimed to support U.S. efforts to promote international transparency.

³³ *Id.*

³⁴ *See Freeman v. Bureau of Land Mgmt.*, 526 F. Supp. 2d 1178 (D. Or. 2007) (in FOIA context, information known widely to competitors but not to public at large does not count as commercial secret).

³⁵ June 28, 2011 TSYO Comment at 1; July 15, 2011 HURFOM Comment at 1-2.

³⁶ Qatar Letter, annexed to March 15, 2011 Exxon Letter at 5.

Finally, as to contract confidentiality clauses, the Columbia University researchers note that it is standard practice to include an exemption from confidentiality where required by law.³⁷ Indeed, it would seem that an extractive company's counsel would be negligent if such a basic provision were not included in the boilerplate language of the company's form contract.³⁸ If exemptions were provided for contract confidentiality clauses, then companies and countries seeking to avoid disclosure could simply write disclosure prohibitions into their contracts; the Commission should not encourage contract drafting that enables companies to evade its regulatory reach.

C. Publication of Payment Information and the Compilation

Some industry commenters have suggested that – especially in light of *Business Roundtable* – the Commission should keep confidential the raw payment data submitted by issuers and instead, publish only a statutorily required compilation that summarizes the amount *each country* receives in revenue. This recommendation is based on two misleading premises: 1) the Commission has the discretion under Section 1504 to *not* publish payment disclosures, and 2) withholding this information would protect industry from conflicting national laws prohibiting disclosure, and from exclusion from future projects based on issuers' obligation to disclose project-level payment information.

i. The Clear Congressional Mandate to Disclose

The Commission does not, in fact, have discretion to withhold the project-level payment information included in annual reports pursuant to sub-clause (q)(2)(A) of Section 1504. The very text of the statute makes clear that this information is to be included in the annual report it submits to the SEC – which is, of course, published on the SEC website.³⁹

Most of the rest of the statute would make little sense if that information were meant to be withheld. For example, the requirement that the disclosures be made in an interactive data format,⁴⁰ with electronic tags identifying particular information about each payment,⁴¹ is meaningless unless it is meant to allow investors and other users of the data to digest it more efficiently. If the raw data were meant to be viewed only by the Commission for the purpose of developing a public compilation, there would be little reason to make it available in such a user-friendly manner. Moreover, the list of enumerated categories of information for which electronic tags are statutorily required includes “such other information as the Commission may determine is necessary or appropriate *in the public interest or for the protection of investors.*”⁴² In other

³⁷ CONTRACTS CONFIDENTIAL at 23, 27.

³⁸ The Jun He Legal Opinion notes that Shell's contracts in China typically include a confidentiality exception for disclosures to the stock exchanges and government of Shell's home country. The opinion concludes that since the US is not Shell's home, Section 1504 would not trigger this exception. *Id.* at 5. If Shell has indeed failed to secure a contractual exemption for disclosures required by all regulatory authorities to which it is subject, then it is not the Commission's function to reward such an oversight. On balance, though, it seems unlikely that the provision would be interpreted as narrowly as the opinion proposes.

³⁹ Moreover, Section 1504's architects have confirmed that they intended for the compilation to be made available *in addition* to the disclosures. Comment of Sens. Cardin, Kerry, Leahy, & Schumer and Rep. Frank, received by the Commission on Mar. 1, 2011, *available at* <http://www.sec.gov/comments/s7-42-10/s74210.shtml>.

⁴⁰ Exchange Act §13(q)(2)(D)(i).

⁴¹ *Id.* §13(q)(2)(D)(ii).

⁴² *Id.* §13(q)(2)(D)(ii)(VII).

words, the electronic tags on individual payments are meant to be seen by investors and the public.

Industry commenters base their proposal on a sub-clause mandating that a compilation of Section 1504 disclosure shall be made available to the public, on-line, *to the extent practicable*.⁴³ But by its terms, this provision would allow the Commission to refrain from publishing the compilation entirely if it were not practicable (for example, if the Commission were not provided with sufficient appropriations). If that were the case and industry's proposal were implemented, then *none* of the information on payments would ever be made public, and investors and the public would enjoy none of the benefits of increased revenue transparency. Congress cannot, therefore, have intended for the compilation to serve as a replacement for publishing project-level payment information.

Moreover, under industry's proposal, investors and the public would not even be able to sort out how much revenue governments receive from each company, as the compilation would be aggregated to the level of how much each country receives in each revenue category across all issuers. Yet industry ignores not just the civil society groups who are the intended secondary beneficiaries of Section 1504, but also the very investors and shareholders the Commission is ordinarily charged with protecting. Industry's proposal would, of course, eviscerate the intent of Congress, which was to allow investors to assess investment risk for particular issuers.

ii. Competitiveness and Transparency

As noted above, industry commenters' contentions that publication of Section 1504 disclosures threatens projects in countries that prohibit such disclosures and whose contracts have confidentiality clauses are overblown and misleading. But if it were true that Section 1504 disclosures are prohibited by law or contract, requiring the Commission to withhold the disclosures would not protect companies from the consequences of breaching such restrictive provisions. The very act of reporting to the U.S. government would constitute the breach; any further publication by the Commission would not subject the companies to further liability.

As to the idea that issuers subject to disclosure will not be awarded future projects by governments that wish to hide payment data, this contention is difficult to credit. Section 1504 covers the vast majority of major international oil companies, including many important foreign competitors like Petrochina, Shell, and Lukoil.⁴⁴ The idea that all important companies – some of whom have unique technical expertise and capacity that cannot be matched by national oil companies or most unlisted competitors – would be excluded from projects simply because of a transparency initiative is simply not believable.

Moreover, it is demonstrably untrue. For example, StatoilHydro announced in January that it had been granted operator status for two promising deep-water blocks and participant status in

⁴³ *Id.* §13(q)(3)(A).

⁴⁴ See Comment of American Petroleum Institute, Attachment B, received by the Commission on Oct. 12, 2010, available at <http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specializeddisclosures-27.pdf>.

three other blocks in Angola.⁴⁵ Yet Statoil is one of the most proactively transparent oil companies in the world on government payments, while Angola is regularly cited as one of the chief opponents of disclosure.⁴⁶ If transparency were a major determinant in the awarding of projects, then it is hard to imagine that Statoil could have won its bid, especially after the enactment of Section 1504, which applies to Statoil as a registrant with the Commission.

IV. Conclusion

For the foregoing reasons, ERI believes that the Commission has satisfied any existing statutory requirement to develop rules that take into consideration the effects of project-level reporting and publication of disclosures on capital formation, market efficiency, and competitiveness. By proposing rules requiring full project-level reporting and publication of project-level disclosures, the Commission follows the strict mandate of the law, declines to exercise discretion where none is granted, and provides a boon to investors, a boost to markets, and a tremendous benefit to the people of resource-rich countries.

We respectfully request that the Commission promptly promulgate these rules as proposed, and offer our further assistance and insights as required.

Sincerely,



Jonathan Kaufman
Staff Attorney
EarthRights International

Cc:

The Honorable Luis A Aguilar
Commissioner
US Securities and Exchange Commission

The Honorable Elisse Walter
Commissioner
US Securities and Exchange Commission

Mr. Mark Cahn
General Counsel
US Securities and Exchange Commission

⁴⁵ See Camilla Knudsen, *Statoil sees work in 5 concessions in Angola*, REUTERS AFRICA, Jan. 24, 2011, at <http://af.reuters.com/article/investingNews/idAFJOE70N0HX20110124>.

⁴⁶ In fact, Angola is one of the four countries listed by industry commenters as prohibiting revenue disclosures.

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Division of Corporation Finance
Securities and Exchange Commission



EARTHRIGHTS INTERNATIONAL

TOTAL IMPACT:

The Human Rights, Environmental, and Financial Impacts of Total
and Chevron's Yadana Gas Project in Military-Ruled Burma
(Myanmar)



A Report by EarthRights International, September 2009

TOTAL IMPACT:

The Human Rights, Environmental, and Financial Impacts of Total and Chevron's Yadana Gas Project in Military-Ruled Burma (Myanmar)

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Cover Photos: Refugees from Yadana Project area flee to refugee camps on the Thailand-Burma border; soldier patrols Yadana pipeline region; Yadana pipeline during construction © EarthRights International, 2000



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About EarthRights International (ERI)

EarthRights International is a nongovernmental, nonprofit organization that combines the power of law and the power of people in defense of human rights and the environment, which we define as “earth rights.” We specialize in fact-finding, legal actions against perpetrators of earth rights abuses, training grassroots and community leaders, and advocacy campaigns. Through these strategies, ERI seeks to end earth rights abuses, to provide real solutions for real people, and to promote and protect human rights and the environment in the communities where we work.

Acknowledgments

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We could not do our work without the partnership and strategic collaboration of the many NGOs and civil society organizations working for human rights and environmental protection in Burma, especially those based on the Thailand-Burma border. We thank all of you

Most importantly, ERI acknowledges the people of Burma. Many individuals from the Yadana pipeline region of Burma took great risks to offer their testimony, for no reward other than participating in the truth-telling process. Their names and other identifying information have been kept confidential for their own safety, but we hope that in time they will be among those credited with restoring respect for human rights and the environment in Burma.

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Methodology

EarthRights International (ERI) began documenting human rights abuses connected to the Yadana gas project in 1994, collecting witness and victim testimony in Burma (Myanmar) and on the Thailand-Burma border. This report draws primarily on original research and investigations collected by ERI from 2008-2009 in Burma and along the Thailand-Burma border. ERI interviewed current residents and recent refugees from the pipeline region, defected soldiers from the Burma Army and Navy, former expatriate staff on the Yadana Project, current and former International Labour Organization Burma staff, and shareholders and investors in Total and Chevron. This includes well over one hundred formal interviews as well as a numerous informal contacts and field reports. This report also draws on several hundred other pertinent interviews conducted by ERI in Burma and on its borders from 1994-2009.

ERI has over 15 years of experience documenting human rights abuses in the Yadana pipeline region, as published in previous ERI reports and publications, including *The Human Cost of Energy* (2008), *Total Denial Continues* (first edition 2000; updated second edition 2003), *More of the Same (Supplemental Report)* (2001), and *Total Denial* (1996). These are available at www.earthrights.org.

This report references documents that became public through the 2004 partial trial of the lawsuit *Doe v. Unocal*, a landmark human rights case in which ERI, representing Burmese villagers, sued Unocal in US court for the company's complicity in human rights abuses along the Yadana pipeline.

The research area for this report represents 40 villages in the pipeline area. These include 15 villages that the consortium recognizes as "pipeline villages" (Zinba, Michaunglaung (old), Michaunglaung (new), Eindayaza, Khaw Hlaing, Kyat Shut, Kaleinaung, Kanbauk, Ohbingwin, Pyin Gyi, Mi Chaung Ei, The Chaung, Kaung Mu, Zardi, and Paung Daw), and 25 other villages in the pipeline area that are not recognized by the consortium as "pipeline villages" (Ya Pu, Law Ther, Alersakan, Kwethonyima, Singu, Pyingyi, Ler Gyi, Karen Shin Ta Pee, Burmese Shin Ta Pee, Yebone, Pwa Shin Ma, Min Tha, Nat Gyin Sein (Plaw mu ga), Maw Gyi, Ma Ya Chaung, Chaung Sone, Ta Line Ya, Nan Gye, Sin Thay, Ta Hlaing Myaw, Nein Lein, Paut Pin Gwin, Ma Yan Chaung, Maung Nen, Kyat Ta Yan).

ERI's research indicates that human rights abuses perpetrated by the Burma Army's pipeline security battalions providing security for the Yadana Project and the companies extends well beyond the 25 villages that Total and Chevron recognize as within their sphere-of-responsibility, as they define the "pipeline corridor". Therefore, this report also draws on interviews with residents and recent refugees from these pipeline-affected villages.

ERI attempted on multiple occasions to meet with representatives of Total in-person or receive written responses to specific and general issues around the Yadana Project, both after the release of the 2008 ERI report *The Human Cost of Energy*, and prior to the publication of this report and the complementary ERI

report *Getting It Wrong* (September 2009). To date, these efforts have been unsuccessful. Total has not met with ERI nor responded to specific questions that were faxed and emailed by ERI to Total's management (See Appendix B). ERI has met and communicated with CDA Collaborative Learning Projects (CDA), a Massachusetts-based organization hired by Total to visit Burma and the pipeline area to help the company better understand its impacts. These discussions helped inform this report.

Finally, ERI maintains communications with various stakeholders inside and outside of Burma who for security reasons cannot be identified.

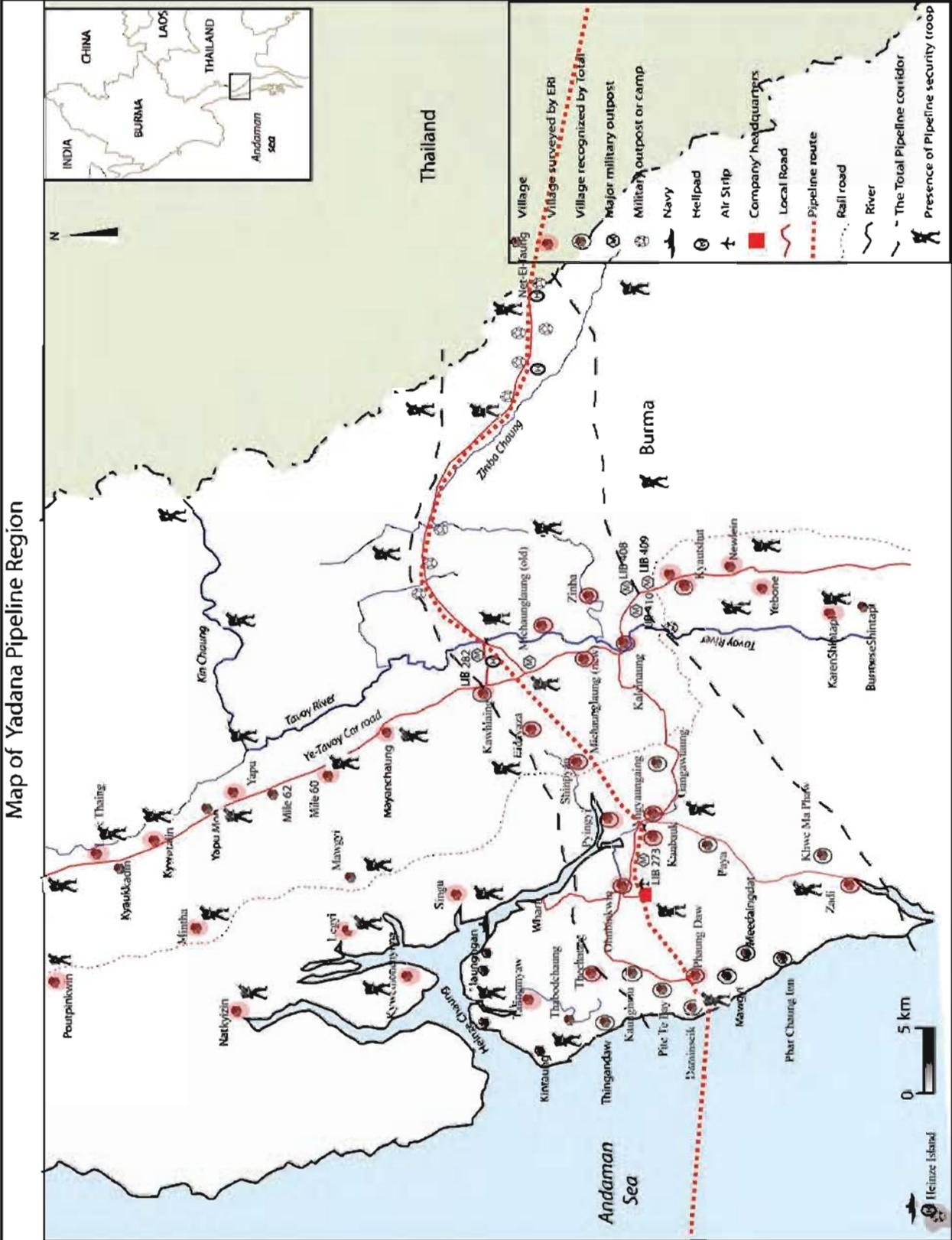
Acronyms

AOW	Arakan Oil Watch
ANU	Australian National University
AP	Associated Press
ASEAN	Association of Southeast Asian Nations
ATCA	Alien Tort Claims Act
BEW	Burma Economic Watch
CDA	CDA Collaborative Learning Projects
CSR	Corporate Social Responsibility
ECDF	Ethnic Community Development Forum
ERI	EarthRights International
EIA	Environmental Impact Assessment
ERM	Environmental Resource Management
EITDA	Extractive Industries Transparency Disclosure Act
EITI	Extractive Industries Transparency Initiative
FBR	Free Burma Rangers
FPIC	Free Prior and Informed Consent
GDP	Gross Domestic Product
HRIA	Human Rights Impact Assessment
IB	Infantry Battalion
IDP	Internally Displaced Person
ILO	International Labour Organization
IMF	International Monetary Fund
HURFOM	Human Rights Foundation of Monland
KNU	Karen National Union
KOGAS	Korea Gas Corporation
Kt	Kyat
LIB	Light Infantry Battalion
MOGE	Myanmar Oil and Gas Enterprise
NCGUB	National Coalition Government of the Union of Burma
NBER	National Bureau of Economic Research
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
PONREPP	Post-Nargis Recovery and Preparedness Plan
PSC	Production Sharing Contract
PTT	Petroleum Authority of Thailand
PTTEP	Petroleum Authority of Thailand Export and Production
PWYP	Publish What You Pay
SIA	Social Impact Assessment
SPDC	State Peace and Development Council
SGM	Shwe Gas Movement

Acronyms cont'd

TB	Tuberculosis
TBBC	Thailand Burma Border Consortium
Tcf	Trillion cubic feet
UN	United Nations
UNDP	United Nations Development Programme
UNSC	United Nations Security Council
US	United States of America
US\$	US Dollar
WDI	World Development Indicators

Map of Yadana Pipeline Region



Since the early 1990s, one of the world's most controversial development projects has impacted a remote section of military-ruled Burma (Myanmar),¹ and has been a subject of confusion to investors and policymakers worldwide. Traversing Burma's Tenasserim region, home to a number of ethnic groups, the Yadana gas pipeline to Thailand operated by Total (France) and Chevron (US) continues to be linked to severe human rights abuses committed by the Burma Army providing security for the companies and their pipeline. New evidence also suggests that the project's billion dollar revenues have contributed to high-level corruption and authoritarianism in the country: This report provides original and detailed calculations of these revenues, reveals their offshore location, and raises important questions about the relationship between the military regime's increasing gas revenues and its overall authoritarian behavior.

Historically, Total and Chevron have denied responsibility for the well-established negative impacts of the Yadana Project, including bold claims to have eradicated abuses in the local project area, such as forced labor. The oil companies are also misinforming the international community about the effects of their socio-economic program in the pipeline corridor.

EarthRights International releases this report and its companion, *Getting It Wrong: Flawed "Corporate Social Responsibility" and Misrepresentations Surrounding Total and Chevron's Yadana Gas Pipeline in Military-Ruled Burma (Myanmar)*, to provide clarity and direction for those stakeholders and policymakers committed to improving corporate behavior and the lives of the people of Burma.

Total and Chevron continue to share an exceedingly close relationship to the notorious Burma Army, a required and unspoken feature of doing business in Burma's extractive industries. This reality of doing business with the Burma Army gives companies little to no opportunity to avoid complicity in the foreseeable behavior of their business partner and thus a company's decision to proceed with a large-scale development project in military-ruled Burma is in itself a dubious choice with serious ethical and legal dimensions.

Apart from the direct human rights impacts of their project, Total and Chevron have generated an increasingly hefty profit for the Burmese regime, known as the State Peace and Development Council (SPDC). Contrary to conventional analysis suggesting that support from China has enabled the generals of the SPDC to ignore international and domestic pressure to change, this report demonstrates that Total and Chevron's pipeline project has been a leading external contributor to the Burmese military regime's political intransigence. Through multi-billion dollar profits generated from the Yadana Project since 2000, the SPDC has the material wealth that enables it to both ignore pressure from western governments and to deny the democratic demands of the people of Burma.

This report also reveals for the first time the questionable role played by Singapore, which has allowed the generals of the SPDC to store their ill-gotten gains in two banks

¹ In 1989, the ruling military regime changed the name of the country from "Burma" to "Myanmar," which is closer to the historical, Burmese-language name. At that time, the regime also unilaterally changed place names: "Rangoon" became "Yangon," and so forth. EarthRights International refers to the country as Burma.

within its territory while the people of Burma continue to live in abject poverty amidst the lowest social spending in Asia.

Local communities in Burma know all too well the harsh truths of large-scale “development” in their country and the lucrative incentives perpetuating the ruling generals’ repression and authoritarianism. The investment community and policymakers deserve to know the truth as well, and as a matter of urgency should act on it.

Two western oil companies are currently partnered with the Burmese military regime in a remote corner of southern Burma (Myanmar) on one of the world's most controversial development projects: The Yadana Gas Project by the France-based Total and the US-based Chevron. *Yadana*, which means "treasure" in Burmese, is a large-scale project that transports natural gas from the Andaman Sea across Burma's Tenasserim region to Thailand, where it generates electricity for the Bangkok metropolitan area. The gas is transported through an overland pipeline that passes through the dense jungle and rugged terrain of a secluded and environmentally sensitive ethnic area in southeast Burma.

From the project's beginning, the Burma Army has been tasked with providing security for the companies and the pipeline and has committed widespread and systematic human rights abuses against local people.¹

EarthRights International (ERI) has been documenting human rights abuses related to the Yadana Project since 1994, and new evidence collected through 2009 attests to the on-going violent abuses committed by the Burma Army providing security for the companies and the project. Abuses include extrajudicial killings, torture, and other forms of ill-treatment; widespread and systematic forced labor; and violations of the rights to freedom of movement and property.

Based on new and original evidence, this report further documents the Burma Army's role in the construction phase of the Yadana Project as well as its continuing connection to the companies and the pipeline. Rather than acknowledge its inherent and close relationship with Burma's armed forces, Total has traditionally denied the connections between its company and the Burma Army in its project area, raising important ethical questions about the company's willingness to misrepresent its material risks to investors and shareholders.

In addition to the localized human rights impacts in the pipeline region, the Yadana Project has been a significant factor in keeping the Burmese military regime financially solvent. This report documents for the first time the aggregate revenue generated by the Yadana Project for the ruling SPDC, from 2000 to 2008. Rather than contribute to Burma's economic development, the billion dollar revenues from the project have instead contributed to high-level corruption: the revenue is not accounted for in Burma's national budget and according to reliable sources it is stored in two offshore banks in Singapore. Moreover, there are apparent correlations between the SPDC's increasing financial wherewithal and its overall authoritarian behavior.

While the severity and seriousness of the human rights and financial impacts of the Yadana Project are logical focal points of concern, the environmental impacts of the project cannot be discounted. This report presents information that details serious problems with Total's Environmental Impact Assessment (EIA), a document which ERI obtained through US courts and which is now part of the public record; details of which are published here for the first time.² Villagers in the pipeline corridor also report ongoing adverse impacts associated with an ill-conceived environmental protection group established and supported by Total in the pipeline corridor.

Rather than acknowledge or attempt to mitigate these and other known impacts of the Yadana Project, Total CEO Christophe de Margerie has publicly told critics to “go to hell” and instead focused resources on public relations, including claims that the Yadana gas has made neighboring Bangkok a cleaner city.³

Total has also systematically whitewashed their complicity in abuses and authoritarianism in Burma in three key ways: first, and most directly, Total has commissioned a number of impact assessments by the US-based CDA Collaborative Learning Projects (CDA), which the corporations tout as evidence that the Yadana Project hurts no one and benefits many. These impact assessments and their fundamental flaws are the subject of the ERI report *Getting it Wrong* (2009). Second, the companies repeatedly misuse both these impact assessments and third-party reports and statements, asserting that others support their claims that there are no abuses in the pipeline area. Third, the companies promote their local “socio-economic” program and declare that it provides economic, educational, and health benefits to every person in the pipeline corridor.

While many of the companies’ socio-economic efforts might be desirable in theory, local villagers argue that these programs have not worked the way the companies claim they do, if at all. Moreover, ERI has found that the true effectiveness of these local projects have never been independently or fully examined and verified; and regardless of the effectiveness of these programs, they do not exonerate the companies from accountability for complicity in human rights violations and they do not erase the deeper national impacts connected to the revenue stream from the Yadana Project to the SPDC.

Total and Chevron’s impacts in Burma are profound. ERI makes several specific demands of the companies and calls on the corporate and investment community and policymakers to seriously consider the ethics of Total and Chevron’s operations in Burma, and to heed the recommendations included at the end of this report.

Part I: TOTAL ABUSE: Continuing Human Rights Abuses along the Yadana Pipeline

“The situation in our village was very good before Total worked here. We did farming, raised cattle and worked on our plantations peacefully, so our lives were better. After Total came, we were forced to go porter, carrying things for soldiers, we were forced to work on many things. Our farms and garden were destroyed and our durian and rubber plantations were gone with the pipeline.”

Local villager in the Yadana pipeline corridor, 2008⁴

a. Background to the Project

The Yadana Natural Gas Project in Burma is operated by Total (France), Chevron (US), the Petroleum Authority of Thailand (PTTEP), and the Myanmar Oil and Gas Enterprise (MOGE).⁵ The Yadana Project officially began in 1992 when Total signed a contract with the Burmese military regime to develop offshore natural gas fields in the Andaman Sea.⁶ The gas deposit, called Yadana, holds approximately 5.3 trillion cubic feet (tcf) of natural gas. It was originally discovered in the early 1980s but lacked financing for the remainder of the decade. After a bidding process around 1991 that included Total, Unocal, the Thai company PTTEP, and MOGE, Total signed the 1992 PSC. Unocal—now Chevron—formally joined the consortium in 1993, followed by PTTEP.⁷

In February 1995, PTTEP’s parent company, PTT, signed a 30 year sales agreement to construct the pipeline across a remote, ethnic region of Southeast Burma, and to purchase the Yadana gas for Thailand’s domestic market. In Burma, the pipeline covers a mere 60 kilometers (40 miles) overland; a length that defies its attendant militarization and severe impacts.⁸

Meanwhile, a separate consortium of Petronas (Malaysia), Nippon Oil (Japan), PTTEP, and MOGE operate the Yetagun Project, which was constructed around the same time as Yadana and exploits a separate natural gas field also in the Andaman Sea. Like Yadana, the Yetagun gas is transported to Thailand through a pipeline. The pipelines follow virtually identical routes onshore in Burma, and converge to one pipeline at the Thailand-Burma border.



Yadana pipeline during construction
© EarthRights International

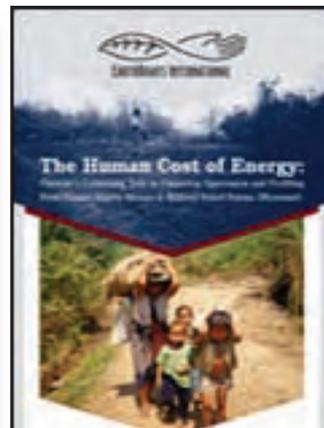
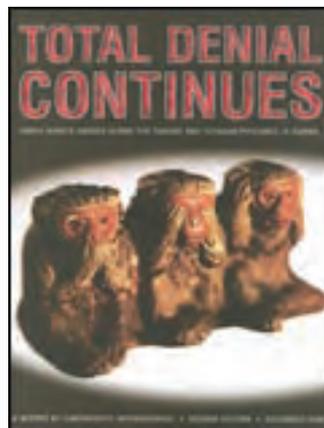


Refugees fleeing from a Burma Army attack
in Tenasserim Division, photo in 1997
© EarthRights International

b. History of Earth Rights Abuses

In 1996, ERI published *Total Denial*, the first comprehensive report on the impact of the Yadana Project, providing detailed information and evidence of forced labor, forced portering, killings, torture, land confiscation, and other human rights impacts of the pipeline. Based on firsthand documentation and testimony collected in Burma and on its borders, ERI has since published six additional advocacy reports and a variety of other publications exposing ongoing human rights and environmental abuses connected to the Yadana Project.⁹

Beginning in 1996, Burmese villagers took action to sue the companies in the United States and in European courts for complicity in forced labor, murder, rape, and crimes against humanity.¹⁰ ERI was co-counsel in the US case against Unocal Corporation for the company's role in abuses committed by the Burma Army connected to the Yadana Project. In 2005, the company compensated the villagers in a historic settlement.¹¹ Likewise, a lawsuit brought by Burmese villagers in France against Total for complicity in forced labor was also settled in 2005.¹²



Thursday, September 4, 2003

USA

Oil, blood linked in Burma
Human rights group renews abuse allegations at Chevron pipeline

Business targeted for rights abuse
Case against Unocal tests whether big global firms can be sued for aiding regimes, such as Burma, labeled as human-rights violators.

US groups come under spotlight over Burma
An energy company faces the possibility of being held liable for abuses by the Burmese army.

Unocal to Settle Rights Claims
Oil-gas giant faces landmark trial over slavery in Myanmar

Rights Victims in Burma Want a U.S. Company to Pay
The El Segundo firm agrees to pay to a landmark case brought by villagers claiming Myanmar pipeline.

Suit Alleges Army Abuses While Pipeline Was Built

Los Angeles Times

UPSTREAM
VOL. 3 • WEEK 10 • 6 March 1998

Oil majors in dock over Burma abuse

Destructive engagement

Le gaz rapporte un milliard de dollars à la junte birmane
UN RAPPORT met en lumière les flux financiers entre le consortium qui exploite le gaz et le régime birman.

« Collusion compromettante » pour Total, dit KBC

As a result of public awareness of the ongoing human rights abuses connected to the companies' project in Burma, both Total and Chevron have been subject to numerous shareholder resolutions, advocacy and divestment campaigns, and consumer boycotts worldwide, initiated by a variety of non-governmental, civil society, labor, and religious organizations.¹³

Within this historical context of abuses, this chapter documents the current and ongoing human rights impacts connected to the Yadana Project and committed by pipeline security battalions. The evidence collected by ERI in 2008-2009 and documented in this report includes widespread and systematic forced labor; violations of the rights to freedom of movement, and property; extrajudicial killings, torture, and other forms of ill treatment.



Villager forced to porter for pipeline security soldiers, and beaten, photo in 1997
© EarthRights International

c. Ongoing Human Rights Impacts of Total and Chevron's Project

"Before the company, the situation was normal. No military presence, no forced labor."

– Local resident, Michauglaung Village, 2009¹⁴

"The work we have to do for the military is still happening."

– Local resident, Michauglaung Village, 2008¹⁵

i. Systematic Violations of the Right to be Free from Forced or Compulsory Labor

Forced labor is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."¹⁶ The use of forced labor is prohibited both by international treaties and customary international law¹⁷ and is recognized as a modern form of slavery.¹⁸ The Universal Declaration of Human Rights calls for a prohibition on all forms of slavery, which includes forced labor.¹⁹ Under the Rome Statute of the International Criminal Court, forced labor can be prosecuted as a crime against humanity when committed as part of a widespread or systematic attack against a civilian population.²⁰

Forced labor is also prohibited under Burmese law, which renders the requisition of forced labor illegal and makes its use a criminal offense.²¹ Moreover, as a member of the International Labour Organization (ILO), Burma is obligated to uphold the ILO's eight fundamental, or core conventions, including the Abolition of Forced Labour Convention, (ILO No. 105), which prevents the use of forced labor "as a method of mobilizing and using labour for purposes of economic development."²²

ERI has documented the widespread and systematic use of forced labor by Burma Army pipeline security battalions providing security for the companies and the Yadana Project.²³ Recent investigations confirm that forced labor by pipeline security battalions continue to occur in at least 40 villages in the pipeline area. The nature and patterns of reported cases have been consistent and systematic.

This report documents instances and ongoing patterns of forced labor on Yadana Project-related infrastructure, including on: security barracks along the pipeline and on local roads; forced security in villages and over portions of the pipeline itself; forced labor on Burma Army plantations in the Yadana pipeline area; and forced labor in the form of "taxes" paid in-kind by local villagers to the Burma Army.

Forced Labor via the Village Head

Forced labor in Burma and in the pipeline area is typically procured in a particular and systematic way: The Burma Army Infantry Battalions (IBs) and Light Infantry Battalions (LIBs) that provide security for the Yadana Project commonly send verbal or written or-

ders to the *village head* requiring them to gather a certain number of workers. One worker from each household, usually, or enough workers to complete a given task are then gathered and put to task.²⁴ As one villager from Zinba Village told ERI, “the orders [for forced labor] come from the soldiers through the village headman.”²⁵

The “village head” is thus a difficult and unpopular position of local distinction in Burma’s villages and in the pipeline corridor. In the pipeline region and in other parts of the country, village heads are commonly selected by the villagers themselves through appointment or nomination. The village head is required to manage the Burma Army’s demands for food, money, and labor from local villagers, and must persuade villagers to comply with those demands, facing sometimes violent repercussions from the Army for non-compliance. According to one former village head in the pipeline corridor:

I used to be a village headman [in a pipeline corridor village]. Our village is close to the military camp so often the military would come to our village and ask for a meeting. Being a village head is something that in our village people don’t want to be too much, since you have to deal with many things and many people...So in our village the village head will keep change in every one or two year.²⁶

Another former village head added: “Nobody wants to be a village headman because we often have to talk to the soldiers and do not get any payment. I myself I had to become a village headman once. We rotate the village head on a rotational basis.”²⁷

Another villager from the pipeline corridor added a testimony consistent with numerous reports from the pipeline area, saying that the village headman was “severely beaten by the soldiers by gun because he complained to the soldiers about the order to move our village.”²⁸

Forced Labor on Project-Related Infrastructure

Forced labor on project-related infrastructure is often demanded by pipeline security battalions, including the building of pipeline battalion barracks and Burma Army facilities, and in maintaining roads, bridges and other pipeline-related transportation infrastructure. One local resident explained to ERI how a barrack for the local police in the Yadana pipeline village of Zinba was recently constructed with forced labor, at the behest of pipeline security battalion 410:

Since early 2009 I’ve [witnessed] Burmese soldiers from LIB 410 that are stationed near our village ask our village to build a new police camp. The soldiers ordered villagers to build a new camp in late March. The land where they set up the new camp belongs to [two local villagers]. I did not hear that they got any compensation for it. The soldiers ordered villagers to help build it. Villagers had to cut bamboo, wood, and leaves for the building and at the same time they had to build it too. I heard them use the word ‘help’ rather than ‘forced.’ They said “loh-ah-pay.” I don’t know why, but I think they don’t dare use the words ‘forced labor.’²⁹



A picture of Total and Chevron's public health clinic in Zinba, in the pipeline corridor, photo in 2008
© EarthRights International, 2009



The same public health clinic in Zinba village, photo in 2009, showing two police barracks in the background constructed by local villagers with forced labor
© EarthRights International, 2009

ERI also documented in 2009 forced labor in the construction of another police barrack, in Ya Pu village. On May 25, 2009, villagers from Ya Pu reported that the police station officer U Nyunt May ordered villagers to provide bamboo and leaves for the roofing of a new police barrack.³⁰ The villagers were not compensated, nor did they have the option to refuse the work.

Villagers in the pipeline corridor have also been forced to maintain the barracks of pipeline security battalions. In May 2009, officer Ba Lay Nyi Nyi Soe from pipeline security battalion 282 ordered villagers to cut bushes and grass at the LIB 282 barrack in the pipeline corridor.³¹ This was not an isolated incident: villagers are now required to maintain the landscape surrounding the LIB 282 compound once per week.³

Villagers have also been forced by the Burma Army to work on roads constructed by Total. According to a villager in Zinba Village:

In our village, we have one road that links to Kaleinaung Village, which is about a mile and a half away. Foreigners constructed it a few years ago and the road is level with pieces of rock. Now we have to maintain the condition of the road. [My] friends and I are in charge of looking after the road. The village head told us to do this. We do not get any payment; we have to do it free, but by doing this we don't have to go for other forced labor work.³³

Far from being unconnected to forced labor, at times Total appears to have abetted it:

[The forced maintenance] started...because the foreigners complained that they saw cow dung on the road and they want us to look after some small damage on the road. We have to check the road condition once a week and if there is small damage, we try to fix it and fill the holes in the road. We get pieces of rock along the road provided by the company.³⁴



“Before” and “after” pictures of the Zinba Road from Total’s website © Total

Another villager recently added, “[in] our village there is a car road built by the company and each year because of flooding we have to repair it.”³⁵ Compounding these human rights violations, villagers are forced to maintain the road but are not fully allowed to use it:

We had to repair the holes in the road. The road was used by villagers and the company as well. However, usually we were told not to ride [our] bullock carts [on the road] so much since the road can easily be destroyed by bullock carts. So, often people do not use the bullock cart to travel on the road. We often need to go to Kaleinaung to buy things. So we usually take motor bike taxis and if I do not have money then I usually walk...The village head advised us not to travel with bullock carts as the road can be easily destroyed.³⁶

Other villagers explained to ERI that they have been forced to work on another road constructed by Total, the Eindayaza-to-Kanbauk road:

Total constructed the Kanbauk-Eindayaza road....The road was just destroyed by the [non-Total] company cars and buses carrying heavy equipment. Villagers do not even own cars. The road was constructed five years ago. It’s just a soil road. Cars, motorcycles and bullock carts can pass on it. The villagers have to fix it when it gets damaged.³⁷

Likewise, villagers have been forced to dig trenches, or canals, along both sides of the Ye-Tavoy road from Ya Pu to Law Ther.³⁸



Local villagers forced to dig roadside trenches along the Ye-Tavoy road in the pipeline corridor
© EarthRights International, 2009

Other villagers told ERI how the Burma Army providing security for the pipeline and the companies forced them to provide transport without compensation:

I used to own a motorbike for a couple years and often I had to drive the authorities around, soldiers and village headmen. I usually did not get paid, not even for fuel. Often the Burmese soldier would come and ask me to drive them to any place where they want to go...We have to keep these Burman soldiers happy.³⁹

Forced Farming

Forced labor has been used widely by pipeline security battalions on agricultural projects, particularly in planting *jatropha* – also referred to in Burma as the castor plant or physic nut – or *kyet su* in Burmese.⁴⁰ This is part of a nationwide bio-fuel program aimed at building an alternative source of energy for the country, as well as a new export. It has had widespread human rights impacts and the phenomenon, which we term “forced farming,” has been referred to as a fiasco by civil society groups from Burma.⁴

The forced farming in the pipeline corridor began in 2006 and is widespread. ERI documented forced farming of *jatropha* in nearly every village surveyed in the pipeline area since 2006. It is reportedly occurring in every village in the vicinity of the Yadana Project. According to a current resident of a pipeline village:

Villagers are forced to purchase seeds from the Burma Army, plant and cultivate them. Currently the villagers have to plant [jatropha] for the SPDC. The order came from the SPDC in Ya Pu to the village head and the village head told the villagers to plant [jatropha] plants. The seed of two tins is between 50000 – 60000 Kt [US\$50-60 dollars] and the villagers have to buy the seeds, clear the area for plantation, and plant it for SPDC too.⁴²

Another villager added, “[We] have to buy the seeds and plant this for the SPDC. The SPDC did not pay any wages.”⁴³ Another villager in Michauglaung Village explained to ERI:

[Jatropha] plantations are happening everywhere and we have to go all the time to work on them. We have to plant [it] for the military. We have to buy the seeds and plant them for the military.⁴⁴



Roadside jatropha plants, planted with forced labor in the pipeline corridor behind a fence constructed with forced labor
© EarthRights International, 2009

The Burma Army in the pipeline area has also confiscated local peoples' land and then forced villagers to prepare the land for rice cultivation for the pipeline security battalions. Villagers in Zinba explained to ERI how in 2005 the pipeline security battalion 410 confiscated 10 acres of villagers' land, failed to give villagers any compensation, and has since forced villagers to plow the land with their oxen. “Each day, two set of oxen with their owner had to plow for the soldiers. Each time it took three days. To finish over 10 acres of land it took about a month and the villagers arranged to do it on a rotational basis.”⁴⁵ They were not paid for their work, nor could they refuse the work.⁴⁶ Another villager added:

It was in 2005 and [the soldiers] demanded it from the villagers. The villagers did not want to give it but the soldiers forced them so they had to give their land to them. I own oxen and a cart – last year [2007] at the beginning of the rainy season my husband had to go plow for the soldiers at their farm. They told us that we would get money from the village head. We had to go twice...But we did not get any money.⁴⁷

Villagers have also been forced to plow land for the Navy battalions that provide offshore security for the pipeline and the companies. In 2008, villagers were forced to plow 10 acres of land for the Navy using their own buffalo. “When we finished [plowing 10 acres of land] we asked the [pipeline security] officer about [payment],” said one villager, “and he said our village head would arrange it for us, but we did not get any money from the village head either.”⁴⁸

Pipeline security battalions have also threatened food security of local villagers by demanding rice without payment. In Zinba, pipeline security soldiers have ordered the villagers to provide them with rice through the village head. “The village head had to go around the village and ask villagers for one basket of rice from each house and give it to the LIB 410.”⁴⁹ These instances, which appear to reflect an official policy, were particularly difficult on villagers in 2007, when there was major flooding in the area around the Yadana Project that limited the yield of rice.⁵⁰

Forced Security

Local villagers, both inside and outside Total and Chevron’s designated pipeline corridor, have been forced by pipeline security battalions to provide security in their villages or over areas of the Yadana pipeline. This forced security has taken four identifiable forms: forced labor to build security facilities such as sentry huts; required attendance at abusive security training programs; forced sentry duty in the village; and forced sentry duty along the pipeline.

In late 2008, one villager from Michauglaung told ERI how he was forced by the Burma Army to provide nighttime security in his village along the Yadana pipeline:

We also have to do nighttime security– one night for three hours, once every two weeks. There are two groups– one in the beginning of the village, the other at the end of the village. If you fall asleep you have to provide [approximately 3 kilograms] of chicken [to the Burma Army]. Sometimes they beat you up, and you have to do one day of forced labor.⁵¹

Other villagers explained to ERI how they had to construct sentry huts for pipeline security soldiers

What we had to do was clean the area, build the huts, build the fence and dig the ground for a communication line. We had to build near the roadside; each one is built on both sides of the entrance to the village. Because we went in a big group to build the sentry post, we finished in about two days. We did not get payment. We cannot refuse to do it.⁵²



A sentry hut constructed with forced labor in the pipeline area © EarthRights International, 2009

Villagers from the pipeline area explained to ERI how they were forced to attend abusive militia training programs at which villagers were severely beaten by Burma Army commanders in front of local villagers.⁵³ In the village of Law Ther, for example, a villager described being beaten by a soldier from the pipeline security battalion 409 after he was late in arriving to a forced-militia-training. He and another villager were beaten in front of the other forced participants in the training: “Because we had to travel so far, we were late by about less than an hour, and he was angry at me and he beat me several times. He also beat my friend who was there for the training too.”⁵⁴

The trainings have become notorious amongst local villagers. Some residents, upon hearing that villagers from their village will be forced to attend these trainings have opted to flee to the Thailand-Burma border rather than participate.⁵⁵ As an additional abuse, other villagers are required to financially support the villagers who attend the militia trainings, causing financial strain.⁵⁶

Villagers explained to ERI how they provided security over the Yadana pipeline itself:

We also had to work on the Yadana pipeline...We were forced to stay at the sentry hut and keep watching for any suspicious things or actions. We had to work on this kind of forced labor by rotation and one person from a household had to go for it. Usually, there were three persons that had to take responsibility at one sentry hut...We had to prepare everything for possible use in this sentry hut. We all have to bring tools and food from our house. I usually brought candles, fire, and food with me to have

in the sentry hut. We had to take responsibility about 24 hours in this sentry hut and always had to be alert and keep watching the surroundings all the time...If we were caught sleeping by the patrol soldier, we would surely be beaten or scolded. If we would like to sleep, one or two people have to keep watching...We could not refuse to go for this. If we are not free in the time of our duty, we have to find a replacement by hiring someone. There are many elders around 60 years old and children under 18 years old being forced to work this kind of forced labor. As for me, I had to work for this kind of forced labor many times.⁵⁷

Likewise, a villager from Zinba recounted:

Following the completion of building the sentry post, every day the villagers have to provide security guards. Each time five villagers have to go as a group and fulfill their duty. The orders come from the soldiers through the village headman. He calls a village meeting and tells us about it. We have to stay at the sentry post day and night...Each time it takes two days and two nights. It is arranged in a rotation and I myself have been there two to three times already. It takes only about two weeks between rotations to get back to my turn.⁵⁸

Arbitrary Taxation in the Form of Forced Labor

The ILO recognizes that forced labor is sometimes used as a tax, and requires the progressive abolition of the practice. In the interim, it sets out very specific conditions to be met to maintain the legality of this practice.⁵⁹ ERI has documented systematic, arbitrary taxation of local people by pipeline security from at least 2003 to 2009, typically in the form of a “tax” paid in-kind to the military by local villagers.⁶⁰ When the Burma Army enters a village, they often require local people to pay them money, as well as to provide them with in-kind materials, such as food, drink, and accommodation. One current villager told ERI:

We can not say ‘no’ to them because we would suffer in saying this word. They don’t care whether we are rich or poor, women or children, widow or elders. We all have to pay them, as they demand.⁶¹

If villagers cannot afford to pay the military, they have been required to perform forced labor as a substitute, and vice versa, and when villagers cannot afford to conduct forced labor due to the financial strain it causes, villagers have simply left their village or been kicked out. According to one villager:

I had witnessed one family that was kicked out of their village because they could not provide forced labor. Their only warning was given three times by the village head...Now there are many poor people in their village and most people want to leave the village but just don’t know where to go.⁶²

Total's Attempts to Combat Forced Labor: "Complaint Boxes"

Total claims that they have undertaken serious efforts to combat forced labor in the pipeline corridor, yet the way in which these efforts have been carried out are highly questionable. Total does not facilitate local villagers' use of an official complaints mechanism about forced labor to the ILO, pursuant to Order 1/99 and the renewed "Supplemental Understanding" between the SPDC and the ILO.⁶³ Instead, Total has initiated an unofficial mechanism using so-called "complaint boxes" in the pipeline villages. These boxes were aimed to provide an avenue through which villagers could make anonymous complaints about forced labor to Total in their village, and they were intended to be administered by the staff of Total's socio-economic program

Total claims it has categorically resolved the matter of forced labor in the pipeline corridor ("[T]here is no forced labor in the pipeline region"⁶⁴), relying on the unauthenticated, self-proclaimed results of the "complaint box" program and CDA's findings on the issue, which is a subject discussed in detail in the ERI report *Getting it Wrong* (2009). As of August 2009, on its website Total claimed: "[A]ccording to the ILO, the only region in the country in which forced labor has ceased is the area in which the Yadana gas pipeline was built."⁶⁵ This statement was exposed as untrue in an August 12, 2009 article in *Islam Online* by freelance journalist Rajeshree Sisodia, in which the ILO publicly refuted the claim, saying "as we understand it, forced labor is still being used [in the pipeline corridor]" by the Burma Army.⁶⁶ Total then quietly removed the statement from its website.⁶⁷

An ILO representative quoted in another article further refuted Total's claims to have eradicated forced labor in the pipeline corridor, insisting, "It would be unfair and inaccurate to say that the pipeline area is forced-labour free."⁶⁸ Moreover, ILO representatives have repeatedly told ERI that Total's claims to have eradicated forced labor are inaccurate and untrue, as documented in the aforementioned ERI report.⁶⁹ A former representative of the ILO told ERI that the ILO has "never had information that suggested [forced labor is] eradicated in the pipeline corridor."⁷⁰

Local people also refute Total's claims of success and tell ERI that the complaint boxes did not have any meaningful effect, and that they still have to do forced labor for pipeline security battalions. Indeed, the complaint mechanism is perceived by people on the ground as an ineffective tool which either fails to bring complaints to the attention of the company, or simply puts complainants in jeopardy with the local authorities, who routinely punish villagers who express dissent from the Army's demands on them. As one villager from the pipeline village of Eindayaza told ERI:

People put complaints in the complaint box but nothing changed so people grew tired of it. The people who check it are from the socio-economic program. The complaints are about forced labor...The Burmese authorities are supposed to report it to the top management level, so it seems the information does not get to where it should [because forced labor continues]. There is one box in each village. There is no answer from the company. They've been there for six or seven years. They check them only when they come to the village, so about once a month. Once, the complaint somehow did reach the top – it was in the news – so the military came and [told the villagers not to] do it anymore. I'm

not sure what the subject was but I think it was about forced labor. They called a meeting with the villagers and also went through the village head. It was Battalion 273. The village head was afraid. The village head said that if complaints are filed, we will suffer, so you decide.⁷¹

Another villager noted how the complaint boxes are no longer in his village:

“In the past, there was a complaint box, but now I do not see it anymore.”⁷²

Apart from being ineffective, Total’s established mechanism effectively restricts information on complaints from reaching the ILO, other organizations, and the wider public, thus limiting negative publicity and minimizing the companies’ reputation and liability risks, at the expense of the Burmese people.

ii. Violations of the Rights to Freedom of Movement

“We cannot freely move around.”⁷³

–Local villager, 2008, Kaleinaung Village

The right to freedom of movement is a basic human right established in numerous international treaties and conventions.⁷⁴ It includes the right to move freely within one’s country, the right to leave one’s country, temporarily or permanently, and the right to enter one’s country, regardless of legal status. These rights may be also considered protected under customary international law, meaning that Burma is bound to respect and protect them, regardless of whether it is signatory to the major international treaties or has ratified the right in domestic or international treaty law.⁷⁵ This right is essential for people fleeing repressive political systems and abusive governments; in this case, for those fleeing the abusive pipeline security battalions.

From 1996-2009, ERI has documented violations of the rights to freedom of movement against local villagers in 40 villages in the Yadana pipeline area at the behest of Burmese pipeline security forces. Local villagers routinely risk imprisonment, beatings, and other repercussions from pipeline security forces for leaving their village, effectively restricting their freedom of movement. To date, at least 14 different infantry battalions have performed pipeline security duties,⁷⁶ two of which have been known locally as “Total Battalions.”⁷⁷

Reports from pipeline villagers indicate that there are significant periods during which villagers are not allowed to move freely, and other times when their movements are less restricted by local pipeline security forces.⁷⁸ There are times when movement is restricted by pipeline security battalions who suspect villagers are in communication with the Karen National Union (KNU), an armed opposition group that has fought the central government for autonomy and self-government since 1949.⁷⁹ At times this restriction is in the form of overt orders and threats from the Army to villagers; at other times the threats are implied.

For example, in July 2009, the entire village of Yebone was prevented from leaving their village for several days by pipeline security battalion 410 who suspected that the villagers provided material support to the KNU in the form of voluntary taxes and food.⁸⁰

In 2008, a man from Eindayaza told ERI that a family member was jailed for almost one year and subjected to hard labor for traveling to the Thailand-Burma border. “He was accused of having connections with the [KNU] and foreigners.”⁸¹ Upon his return to his village along the Yadana pipeline, this man’s brother was jailed, held without charge for eight months, subjected to hard labor, and denied any adjudicative proceeding. His family later lost their house to a pipeline security battalion for reasons that ERI was not able to confirm.⁸²

According to local villagers, the Burma Army securing the pipeline are adamantly opposed to villagers traveling outside the villages in order to prevent them from having contact with the outside world or, as mentioned above, with non-state opposition groups; the military regime generally deems both foreigners and most non-state armed groups as a threat to military-political rule and in the case of the Yadana Project, a potential threat to pipeline security.⁸³ One villager said simply, “The military tells us not to talk to outside groups, and they are very strict to the village heads.”⁸⁴

Pipeline village heads are in a particularly difficult situation. There are several documented cases of village heads suffering persecution from the Burmese authorities regarding the unknown whereabouts of the residents of their village.⁸⁵ According to a current resident in the pipeline village Eindayaza:

If we leave the village we have to be very careful. The village head fears that people will stay on the border and he will be punished [by the Burmese authorities] for that. Sometimes the authorities will call a meeting. The military will ask [the village heads] ‘why don’t you know where your villagers are?’⁸⁶

Rather than tell the truth about leaving their village, residents have simply lied to authorities to avoid persecution, or have left clandestinely. “We don’t dare tell the truth about leaving the village. The village heads dare not say people are coming to the border.”⁸⁷

iii. Violations of Property Rights

“Often when we got into [pipeline] villages our officers would just have villagers or village leaders provide them with food and drink.”

– Defected pipeline security child soldier, 2009⁸⁸

“We can no longer do farming around our village because we don’t have existing land [anymore].”

– Local Villager explaining land confiscation by the Burma Army curing the Yadana pipeline, 2009, Eindayaza Village⁸⁹

The right to property is recognized explicitly in international human rights law and includes the right to have one’s property free from arbitrary interference by the state.⁹⁰ Violations of property rights by pipeline security forces against local people in the Yadana pipeline corridor have been widespread and systematic and have been well-documented by ERI in nearly every village affected by the Yadana Project. In 1996, 2001, 2003, and 2008, ERI documented widespread and systematic instances of arbitrary taxation and

confiscation of property by the Burma Army providing security for the Yadana Project.⁹¹

This report confirms that such violations continue to occur unabated today in the pipeline region. Multiple villagers and defected soldiers recently confirmed to ERI that pipeline security soldiers simply “take whatever they want from the village shops,”⁹² and then tell the shop owners to seek reimbursement from the village head – who in turn taxes the whole village to cover the expenses: a “tax” poor local people can ill afford.⁹³

Other villagers reported that pipeline security soldiers requisitioned their bullock carts or motorbikes for transport purposes. Villagers were not compensated in these instances.⁹⁴

Still others reported pipeline soldiers routinely took food, drink, and money from local people. This is particularly difficult on the villagers, many of whom struggle to support their own families let alone those of local LIBs. As one villager from Kanbawk told ERI, “We all had to pay them, as they demanded.”⁹⁵ Another villager told ERI, “We have to pay money every time the soldiers come into the village.”⁹⁶ And another said, “It becomes a habit of welcoming the Burmese soldiers.”⁹⁷

Land confiscation by pipeline security battalions is also reported in the pipeline area. Villagers told ERI about the prevalence of military-run plantations, most of which exist on confiscated land. According to a resident of Michauglaung Village, “The military are taking the land from villagers instead of helping the villagers.”⁹⁸ Another villager from Eindayaza Village explained:

There are about 18 households in this village. Most people in this village now are daily workers. In the past they had their own plantation land but they had to give it away for the government’s palm plantation project and for the gas pipeline route. Now only a few people are left with some plantation land.⁹⁹

Villagers explained how land confiscation has threatened their food and economic security. According to one villager, “Due to the military’s palm plantation project our villagers face hardships in that we can not find a place to grow rice and fruit for ourselves.”¹⁰⁰ Another villager added, “Before, villagers could raise cows and buffalos but now we can not because the military took many of the villagers’ lands. If your cow or buffalo get into the military’s palm oil plantation, they kill it.”¹⁰¹

Villagers also report being coerced and threatened into signing their land over to the authorities. One villager recounted how the authorities were preparing to construct a road from the Navy base to a shipyard that would traverse through the lands of villagers in the pipeline area. Villagers were told they would receive compensation provided by the authorities and Total, and signed a document stating as such. However, approximately three months later villagers were summoned by the Army. A villager from the pipeline village Ohbingwin told ERI:

Army officer Saw Khun Chow from the headquarter base came to us with a file and he asked us to sign a paper related to the compensation [we were supposed to receive]. But before we signed it we looked at the paper and it said, “without forcing from anybody, this land is donated to the country,” so nobody wanted to sign it. We talked to the office about it and when we refused to sign it the officer took out his gun and pointed it at us, saying “if you don’t sign it I will shoot you now.” So we all had to sign it.¹⁰²

These instances of illegal confiscation of lands and property are not only in breach of international law and human rights standards, but the impacts of these activities are particularly dire for populations in the pipeline area who live in extreme poverty and suffer from food insecurity.

iv. Violations of the Right to Life and Security of Person: Killings, Torture, and other Ill Treatment

“On Friday they took him back to Ya Pu and they killed him.”

–A local person recounting a killing by pipeline security battalion 73, interviewed in 2008, Ya Pu Village¹⁰³

The right to life is fundamental to the enjoyment of all other human rights. It is well-defined in international human rights law and includes the right to be free from extrajudicial, summary, or arbitrary execution. The prohibition on extrajudicial execution is codified in numerous treaties and conventions,¹⁰⁴ and it has been identified in the United States as a crystallized principle of customary international that is binding on all nations, as well as on private parties acting in complicity with or under color of law of public officials.¹⁰⁵

Since 2005, ERI has documented several killings by Burma Army pipeline security soldiers in the Yadana pipeline corridor. Most recently, an ethnic Mon villager was killed by a pipeline security soldier in LIB 406. In late March 2009, soldiers from the pipeline security battalion 406 entered and stationed themselves in Kyaung Sha Gwin, a village which Total does not recognize as within its sphere of responsibility but which suffers some of the Yadana Project’s worst impacts as security battalions conduct pipeline-related security. While looking for food and vegetables, one soldier reportedly encountered a villager whom he shot and killed for reasons unclear to ERI.¹⁰⁶ The villager was from Alhersekan village. The soldier apparently reported the killing to the village head of Ahlersekan village, who later found the dead body of the villager. The victim was a male ethnic Mon.¹⁰⁷ According to information obtained by ERI, the Burma Army soldier was apparently not questioned, tried, or punished.

In 2008, several villagers from the village of Law Ther in the pipeline region told ERI that pipeline security battalion 273 killed at least one villager in 2005. A local villager described what happened:

[He] was arrested on Monday, August 15, 2005, at noon. LIB 273 ordered him to come...After he arrived at the car road, the soldier tied him and they took him to [another villager’s] house. On Tuesday they took him to [a factory] and the soldiers tied him and beat him and questioned him there...I saw that they had tied his legs and feet and were using a log to torture him. I asked him, “What did they do to you?” But he did not tell me; I think he was worried that I would be afraid. But I could see his knees and legs were covered in injuries. When I asked him “Why did they arrest you?” he was about to answer but the soldier came back and ordered me to leave.

On Wednesday they took him to Ya Pu village. Then on Thursday they took him to Kanbauk village. On Friday they took him back to Ya Pu and they killed him. Two soldiers from LIB 273 came to [his] house and they said they need[ed] to search [the] house...They were looking for something in the house, and they looked everywhere, but they could not find anything. After an hour of searching they left without finding anything. I learned that they suspected [him] of having connections with an opposition group because the Burmese soldiers heard it from some other villager. So they came to [the] house and looked for something but they could not find anything to support that.¹⁰⁸

After taking this man to Kanbauk, where the companies' pipeline headquarters are located, the pipeline security soldiers killed him in Ya Pu, only miles from the pipeline.¹⁰⁹ During this time, at least one other villager was captured by the soldiers but managed to escape; he now fears for his life if he returns to his village.¹¹⁰ He told villagers he would have been killed if he had not escaped.¹¹¹

In 2008, ERI documented the killing of a boy from Shin Ta Pi village in 2007 by soldiers from pipeline security battalion 408. After soldiers clashed with elements of an armed opposition group, they encountered the boy on his farm as they searched for opposition forces. They captured and killed him.¹¹² These soldiers apparently have not been prosecuted or punished in any way.

In another case, villagers explained to ERI that in 2007 seven villagers – four from Ya Pu and three from Law Ther – were captured by pipeline security battalion 273 after being suspected of links with an armed opposition group. According to one villager, "Four escaped on the way and three were taken to the military camp and questioned. They killed one of them."¹¹³

These recent reports of extrajudicial killings are consistent with previous instances reported by ERI.¹¹⁴

Violent beatings and torture are also common violations committed by pipeline security battalions. Several villagers explained to ERI how they faced beatings from pipeline security battalions for a variety of reasons: for sleeping while conducting forced nighttime security over their village or the pipeline;¹¹⁵ for speaking to foreigners who inquired about sensitive issues, such as forced labor;¹¹⁶ for leaving their village;¹¹⁷ and for unapparent or arbitrary reasons.

In one case on March 10, 2009, pipeline security battalion 406 arrived at the Nat Ei area after patrolling the Yadana pipeline area. At approximately 8:00am a local man walked through the village holding a simple one-shot musket on his way to go hunting, which is a common possession and practice. He had no knowledge that the soldiers were in the village. Several soldiers saw the man, took him to their officer and proceeded to question and beat him abusively. An eyewitness noted:

An officer from LIB 40 beat him with his stick that he carries when he travels. It was about five times that he hit him. [A neighbor's] wife and kids saw this happening as they were in a nearby hut cooking and preparing breakfast.¹¹⁸

Part II: TOTAL CONNECTION: The Direct Connection between Total, Chevron, and the Burma Army

“With the knowledge I have now I would never have gone to Burma...[I] condemn Total, as they were very well aware what was going on.”

– Former Expatriate Yadana Project Worker,
February 14, 2009¹¹⁹

Total’s contract with the Burmese regime places responsibility for security in the Army’s hands.¹²⁰ This chapter documents and explains the historical and ongoing connection between the Army and Total in relation to the Yadana Project, and also reveals new evidence obtained by ERI documenting the link between Total and the Army during the construction phase of the project.

Prior to the pipeline project, Burma Army soldiers were not generally present in the region and there were no permanent bases in the area, with the exception of occasional visits to the area by soldiers from Infantry Battalions 25 and 104.¹²¹ As planning of the project began in the early 1990s, thousands of state security forces entered the pipeline area. Human rights abuses began immediately.¹²² As the US Department of Labor noted, “the chosen pipeline route required the [SPDC] to assert effective military control over the region before construction across the inhospitable terrain could begin.”¹²³ This resulted in “a significant increase in the number of Burmese army battalions stationed in the pipeline area since 1993.”¹²⁴

As of 2003, the militarization in the Yadana pipeline area alone included at least 39 military outposts, camps, barracks, or bases and thousands of soldiers on duty at any given time.¹²⁵ Interviews conducted by ERI from 2003-2009 confirm that at least 14 military battalions still operate in the pipeline region and that the Burma Army is still providing pipeline security.¹²⁶ Moreover, Total has confessed to certain parties associated with the United Nations that the company must rely on the Burma Army for security and that it is impossible to work in Burma’s extractive industries without partnering with the Burma Army, which is a fact ERI has long-documented.¹²⁷

The relationship between the companies, the project and state security forces was acknowledged by Unocal in a May 10, 1995 Unocal “briefing document” which stated that “according to our contract, the government of Myanmar is responsible for protecting the pipeline. There is military protection for the pipeline and, when we have work to do along the pipeline that requires security, then military people will, as a matter of course, be nearby.”¹²⁸ Former Unocal CEO Roger Beach was asked about this briefing document and in a deposition for the *Doe v. Unocal* litigation he testified that:

It is my understanding that the Union of Myanmar was going to provide general security in the area of the pipeline, in its capacity as the sovereign government of Myanmar. I have no understanding with regard to whether or not Myanmar had a contractual obligation to provide such security, or whether the security provided by Myanmar was provided pursuant to any contract.¹²⁹



A Burma Army soldier walking with a foreigner in the Yadana pipeline corridor, circa 1995
© EarthRights International

Total has never publicly acknowledged the reality of the company's true relationship with the Burma Army. Rather, ERI has confirmed that Total and Chevron commonly tell investors the Burma Army is not connected to the Yadana Project in any way, which is simply untrue.¹³⁰

a. The Burma Army's Connection to Total During the Construction Phase of the Yadana Project: New Evidence

A previously unreleased Environmental Impact Assessment (EIA) commissioned by Total in 1995, which was obtained by ERI through the *Doe v. Unocal* litigation, demonstrates significant militarization during the construction phase of the Yadana Project, with soldiers stationed along the entire pipeline route:

There were military camps every 500-800 m along the route with perhaps two or three soldiers stationed at each one. There was evidence of fires, bamboo shelters and plastic bags, etc...indicating that they had probably spent at least a couple nights there. As the team progressed along the Titkha [sic] pass, these camps were abandoned thus the military presence with the [assessment] team numbered some 12-20 personnel by the time helipad No 2 was reached.¹³¹

However, to this day, on its website Total claims that during the project's construction phase:

The Army was not present on the worksite, where security was managed by Total and its subcontractors, but troops were operating in the general area to keep guerillas from getting close to the site. Via MOGE, the state-owned oil and gas company, Total was required to keep the Army regularly informed of how work was progressing and where teams were operating.¹³²

Photographs recently obtained by ERI from a former expatriate worker on the Yadana Project provide further evidence that well-armed Burma Army soldiers were present on the work site during the construction phase. This confirms facts that ERI has long-documented through the testimony of local villagers, previously obtained photographs, and through internal company memos.¹³³

The three following photographs were taken in 1996 by a former expatriate employee on the project, east of Kanbauk during the pipeline construction phase. These pictures violated Total's explicit prohibition against photographing the area by any and all Yadana Project staff.¹³⁴



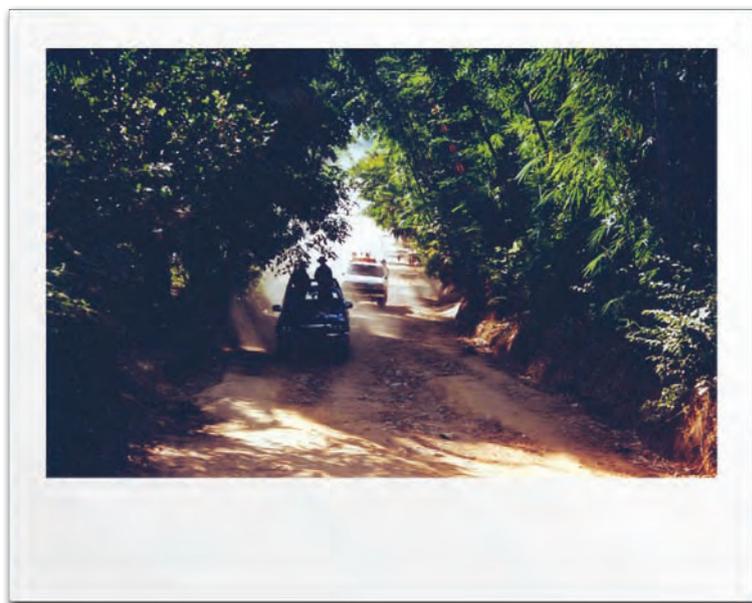
Pictured left is an expatriate surveyor on the right, one expatriate and several Burmese workers in the middle and left, a bulldozer making its way through the bush to clear the pipeline path, and a camouflaged Burma Army soldier marking his position in the woods.

The on-site Burma Army presence during the Yadana Pipeline construction
© EarthRights International/Yadana Worker, 1996



Pictured left is the same group of surveyors and on the left are two well-armed Burma Army soldiers. The picture on the next page shows a pickup truck manned by armed Burmese soldiers leading a team of Yadana Project surveyors following in a truck.

Well-armed Burma Army troops on-site at the Yadana Project
© EarthRights International/Yadana Worker, 1996



Burmese soldiers leading a team of Yadana Project surveyors following in a truck
© EarthRights International/Yadana Worker, 1996

According to the expatriate engineer who in 2009 provided these photos to ERI:

These soldiers were no passers by as this clearance is still leading to nowhere. To get out of here was quite a walk back, so if they were on the road to somewhere they certainly would not be here. The only reason that they were here is that they had to be.¹³⁵

This former Yadana Project worker claims further that, “The Burmese soldiers were never far away. We were always escorted by them and in the field they would never be further away than approximately 100 metres,”¹³⁶ adding that, “at all times we were escorted by security forces and army personnel.”¹³⁷

Numerous other direct links between Total, the Yadana consortium, and pipeline security battalions during construction have been documented by ERI. This includes forced labor used to build helipads, which were expressly for the pipeline project,¹³⁸ forced labor to clear the pipeline route and roadsides, and to maintain roads.¹³⁹

One villager who was forced to build a project helipad during the construction phase told ERI:

I saw the foreigners with my own eyes when I was working there [on the helipad] While they were looking at the work site and going in there and moved around I saw them...I saw they were talking to the soldiers while we were working at the work site...The soldiers were guarding us...There were about 400 to 500 people at the work site. They [were] Mon, Burman, Karen...¹⁴⁰

The company implicitly acknowledged their link to the Burma Army by making payments to local people who were forced to work on infrastructure related to the project.¹⁴¹ Total also provided material support to security battalions, including medical assistance,¹⁴² boots,¹⁴³ equipment,¹⁴⁴ food,¹⁴⁵ and money.¹⁴⁶

b. Ongoing Direct Connection between Total, the Burma Army, and the Yadana Project: New Evidence

Total's denial of its direct link to the Burma Army not only contradicts well-documented project history, but also current evidence collected by ERI. Defected soldiers recently explained to ERI that their express mandate continues to be to protect the companies and the Yadana Project. In 2008, a defector from pipeline security battalion 273, who began his "career" in the Burma Army at age 13, described his mandate:

When I first arrived to the camp the commander told us that we are here to protect the foreigners who are working on this project. [We were told] it was a 30 year-long project and the country got half and the foreigners got half of the benefit. And after 30 years the foreigners will leave and we will have all these supplies and we will continue to have all of this. So it was important for us that we are working for our country by providing security for these foreigners who work on this project.¹⁴⁷

In 2009, another defected soldier explained to ERI how he was forced into the Burma Army and then forced as a soldier to provide security for the Yadana Project. His experience is particularly illustrative of the wide ranging human rights abuses and negative impacts the Army carried out in connection with providing security for the Yadana Project. This soldier, while selling food to support his family in Burma's former capital city of Rangoon, was apprehended by the authorities for no apparent reason, locked in a cell at the Rangoon police station, and given one option: join the Army. He was 15 years old. He told ERI:

[I was] afraid and agreed to join the soldiers. The next day they sent [me] to [the] training camp. We were not allowed to communicate with our relatives. At that time, I don't think my [family] knew that I was arrested and put in the Army. We were in the training for about four and a half months. During that time I got no visits from my family members.¹⁴⁸

This child soldier routinely faced severe treatment from senior soldiers during his training: "recruits" like him who attempted to flee the four-month training program were often tortured. "The punishment included burning their feet with fire so they couldn't run again," he recalled.¹⁴⁹ Upon graduating Army training, he was sent to the Yadana pipeline corridor, where he patrolled the areas surrounding the Yadana pipeline for the companies and the project. "Relating to pipeline security," he told ERI, "we often had to patrol [the pipeline] and sometimes take the sentry guard [over the pipeline]."¹⁵⁰

As a member of pipeline-security battalion 282, he routinely conscripted villagers during his pipeline security detail and used them for a variety of forced labor, including forced portering. He recalled, "There were many occasions when we [patrolled] around in the jungle and if we saw villagers working in the field, if needed, we'd always order them to carry things for us. When we'd get to the place where we wanted to be, then we'd let them go."¹⁵¹



A villager who was forced to porter for pipeline security soldiers © EarthRights International, 2009

He told ERI that battalions often conscript porters to carry loads through the jungle and between villages:

When we patrolled [the pipeline] area we sometimes stayed in the village and sometimes stayed in the jungle. We often asked villagers to carry things for us when we traveled; we used to ask people to carry things for us from place to place. When we got to the next village we'd ask for porters and when we'd get to another village we'd let the group go and then ask for another group in that village. The [number of porters] we'd take depended on how far and where we were going. If we went around in the jungle it could take 2-3 days but if we traveled from one village to another village, depending on distance between the villages, sometimes it could take half-day or less or even one day. Usually porters that we got in the western area were [ethnic] Mon and Tavoyan villagers.¹⁵²

This former child soldier also told ERI how soldiers commonly take food and drink from local villagers, corroborating one of the most common violations that ERI has documented in the Yadana pipeline area since 2003: "Often when we got into [pipeline] villages our officers would just have villagers or village leaders provide them with food and drink."¹⁵³

ERI also spoke to a recently-defected Burma Navy soldier regarding his mandate to protect the Yadana Project offshore: "I mainly did security [on the sea] for the... pipeline...I didn't know who we were securing the pipeline from – who the threat was."¹⁵⁴ He went on to explain the common Navy practice of confiscating fish, gas, or money from local fisherman, adding:

The officers in the Navy said we're officially licensed pirates of the sea, licensed by our country, so we can do whatever we want on the sea, so we can hunt down fishing boats and take what we want. So we did that, but it all went to the officers.¹⁵⁵

Local villagers are still dealing with the unwelcome addition of soldiers to their village, ushered into the area by the Yadana Project. According to one villager in 2008:

The soldiers keep coming to the village until today. About two to three soldiers come each time and they pick the vegetables, fruit and other things of the villagers' without permission. And they also come to ask villagers to plant [jatropha] to cut the forest and do other forced labor...the forced labor is still going on and on.¹⁵⁶

These testimonies and hundreds of others collected by ERI detail ongoing patterns of abuse around the Yadana pipeline that are widespread and systematic. The abuses are not random, isolated instances as Total has claimed, but a pattern indicative of a policy or practice of pipeline security battalions

c. Inconsistent Statements from Total Regarding its Connection to the Burma Army

While Total for the most part publicly denies the connection between the Yadana Project and the Burma Army, inconsistent statements highlight how even within the company there is recognition of its link to the Army.

Internal discussions from the companies that came to light through the *Doe v. Unocal* partial trial reflect the undeniable connection between Total and the Army dating back to the 1990s. A Unocal (now Chevron) Vice-President described discussions with Total about “the option of having the [Burmese] Military provide protection for the pipeline construction and operation. . . .”¹⁵⁷ A 1996 memo from a Total executive to Unocal acknowledged the, “[b]y stating that I could not guarantee that the army is not using forced labour, I certainly imply that they might, (and they might). . . .”¹⁵⁸ A panel of judges on the United States Court of Appeals for the Ninth Circuit assessed this and other evidence and likewise found support for the conclusion that Unocal aided and abetted forced labor.¹⁵⁹

However, on its current website Total both confirms and denies that the Burma Army presence in the area is connected to the Yadana Project. In one section of their website, the company effectively acknowledges the Army’s connections to the Yadana Project, claiming the company “was aware of the burden that the troops’ presence might put on the villages near the pipeline.”¹⁶⁰ Yet, elsewhere on the site, the company refers to a “temporarily heightened military presence”¹⁶¹ in the Yadana pipeline corridor. In some cases, the company contradicts this altogether and denies any links between the Army and their project, claiming “[t]he Army’s activity was entirely unrelated to the project.”¹⁶²

Part III: CONTRIBUTING TO CORRUPTION AND FINANCING AUTHORITARIANISM: The Yadana Project Revenues

Since commercial production on the Yadana Project began in 2000, natural gas production has been the largest single source of income for the SPDC and the linchpin supporting the regime's financial viability.¹⁶³ Based on new and original calculations, research, and analysis of the revenue generated by the Yadana Project, EarthRights International concludes that the Yadana Project has contributed significantly to high level corruption in Burma, and that it appears to have contributed to overall heightened authoritarianism by the SPDC.

Conventional wisdom suggests that the Burmese military regime is impervious to political change because it enjoys economic and political support from China, a country which refuses to apply economic sanctions on the country and which vetoed a UN Security Council draft resolution on Burma.¹⁶⁴ China's political support for the SPDC at the UN is problematic and can not be discounted, nor can its increasing investments in Burma's mining, oil and gas, and hydropower sectors.¹⁶⁵

However, this chapter challenges common assumptions that China is the lead external actor perpetuating authoritarian rule in Burma through economic and political support. Based on the enormous amount of revenue generated through Yadana natural gas production relative to Burma's economy, this chapter suggests that Total and the Yadana consortium have contributed to the intransigence of the SPDC more than any other external contributing factor. As a result of the multi-billion dollar revenues generated by the project, the Burmese regime can not only afford to ignore international calls for change, but also the democratic demands from the people of Burma, who in 2007 participated in nationwide demonstrations that were violently suppressed by the Burma Army.¹⁶⁶

The second party enabling the SPDC to ignore pressure to change would arguably be Singapore, which allows the military regime to store billions of dollars of natural gas revenue in two banks located within its territory, revealed below. The third most relevant party contributing to the intransigence of the regime is of course Thailand, which purchases Burma's natural gas through the Yadana and Yetagun pipelines and makes payments directly to the Burmese regime.

This chapter documents and explains in detail the magnitude of the Yadana Project revenues, and demonstrates its relationship to high level corruption and prolonged authoritarian rule in the country.

b. The Yadana Project Contributing to High Level Corruption: Gas Revenue in Two Offshore Banks in Singapore

The IMF and other sources have independently noted that the SPDC does not accurately include gas revenue in its national budgets.¹⁷⁹ Reportedly, the SPDC includes gas revenues in the budget at the 30-year-old official exchange rate of 6 kyat (Kt) to the dollar, while the current black market rate is over Kt 1,000 to the dollar. According to a confidential IMF report obtained by ERI, which confirms these assertions, 70 percent of Burma's foreign exchange revenues were from gas exports; but the report notes that natural gas revenue has had a "small fiscal impact" and "contributed less than 1 percent of total budget revenue in 2007/08, but would have contributed about 57 percent if valued at the market exchange rate."¹⁸⁰ If the gas revenue were managed properly it could largely eliminate the country's fiscal deficit.¹⁸¹

In simplistic terms, the military regime receives revenue for its natural gas exports in US Dollars. It then exchanges that revenue into its national budget at an exchange rate of Kt 6 to the dollar, rather than the more accurate market rate of Kt 1,000 to the dollar. Based on that model, of the US\$4.83 billion in earnings from the Yadana gas since 2000, the Burmese regime would have included Kt 28.98 billion (or US\$28.98 million) in its national budget instead of Kt 4.83 trillion (or US\$4.83 billion). That leaves approximately Kt 4.80 trillion (or US\$4.80 billion) mysteriously unaccounted for in the national budget. That is, **approximately US\$4.80 billion of the US\$4.83 billion of the SPDC's Yadana revenue is not included in the national budget.**

EarthRights International's sources indicate that the Burmese military regime's portion of the Yadana Project revenue, generated from the peoples' natural resources, is located in two leading offshore banks in Singapore, well known as the repositories of funds of regional governments and diaspora communities: the Overseas Chinese Banking Corporation (OCBC), which holds the majority of the revenue, and DBS Group.¹⁸² The OCBC is Singapore's longest established local bank and one of the largest financial institutions in the Singapore-Malaysian market with total assets of \$183 billion, according to the bank. DBS Group is one of the largest financial services groups in Asia and the largest bank in Singapore as measured by assets. These transactions are facilitated by Burma's state-owned Foreign Trade Bank.

c. The Yadana Project Revenue Contributing to Heightened Authoritarianism

Commercial production of the Yadana Project began in 2000, but official construction of the project began in 1995.¹⁸³ Since that time there are apparent correlations in the country between increasing Yadana Project revenue – or in the case of the years preceding 2000, the *prospect* of enormous revenue – and overall trends in the SPDC’s authoritarianism. This section is intended to raise important questions about the relationship between the military regime’s increasing financial viability and its authoritarian behavior, and the possible causal role of the Yadana Project.¹⁸⁴

Overall, the human rights situation in the whole of the country has deteriorated since the Yadana Project began. The ILO has confirmed that forced labor has increased in the country and is worsening;¹⁸⁵ the SPDC’s immediate neglect and obstruction of aid to the victims of the devastating Cyclone Nargis was well-publicized;¹⁸⁶ while instances of rape, torture, and extrajudicial killings, particularly in ethnic areas, continue to be documented by the United Nations, governments, and NGOs.¹⁸⁷

Since the Yadana Project went into commercial production in 2000, the country has also tightened politically. The SPDC has continued to suppress political dissent, most notably through the ongoing house arrest, trial, and conviction of Nobel Laureate Aung San Suu Kyi, while over 2,000 political prisoners languish in the country’s prisons.¹⁸⁸ In 2007, Burma experienced its largest national uprising since 1988 when nationwide pro-democracy protests began in part because the regime had increased the domestic price of natural gas by 500 percent, the very commodity exported by Total and Chevron.¹⁸⁹ Civilians and Buddhist monks flocked the streets en masse, and the Army waged a brutal and well-documented campaign of suppression.¹⁹⁰ In 2008, in the immediate wake of devastation by Cyclone Nargis, the SPDC held a referendum on a constitution crafted by the military, what Human Rights Watch referred to as “a sham process aimed at entrenching the military.”¹⁹¹

Since 1996, the SPDC has doubled the deployment of battalions in eastern Burma, in the somewhat general vicinity of the Yadana Project, with about 249 permanently based LIBs.¹⁹² This has resulted in widespread and systematic attacks on civilian populations.¹⁹³ There are at least one million internally displaced persons (IDPs) country-wide,¹⁹⁴ and as of November 2006, the total number of IDPs who have not been able to return, resettle, or reintegrate are at least 500,000.¹⁹⁴ There have been refugee outflows, and an estimated 3,000 ethnic villages have been destroyed by the Burma Army in eastern Burma alone.¹⁹⁶ In June 2009, an estimated 3,000–6,400 ethnic villagers fled eastern Burma into Thailand from violent Burma Army attacks intended to gain a foothold over the country’s eastern ethnic territories.¹⁹⁷ In August 2009, the UN High Commissioner for Refugees confirmed another 30,000 ethnic Kokang refugees fled Shan State in northern Burma into China after the Burma Army advanced on and surrounded their territory, which for two decades has been controlled by the Kokang armed group.¹⁹⁸ In Shan State, the Kokang and surrounding areas are in the vicinity of the planned transnational oil transport and *Shwe* gas pipeline project by led South Korea-based Daewoo International and the state-owned China National Petroleum Corporation (CNPC).

Moreover, billions of dollars of natural gas revenue in offshore bank accounts in Singapore raises deeper questions about the authoritarian nature of the Burmese military regime with regard to its social neglect of the people. Despite the increasing mineral wealth enjoyed by the military junta from the Yadana Project, social spending in the country remains at the lowest levels in Asia. According to a 2009 confidential IMF report obtained by ERI, “Per capita GDP [in Burma] has stagnated for most of the past five decades, social development indicators are below regional standards, and poverty remains widespread. Very low levels of public expenditure on health and education limit progress on human capital development” (see Table 2).¹⁹⁹

Table 2: Selected Social Indicators: Burma and Neighboring Countries

	Burma	Bangladesh	Cambodia	Lao P.D.R.	Viet Nam
Public health expenditure (percent of GDP, 2005)	0.3	0.8	1.5	0.7	1.5
Infant mortality per 1000 live births (2006)	74.4	51.6	64.8	59.0	14.6
HIV Prevalence (percent of ages 15-49, 2007)	0.7	0.1	0.8	0.2	0.5
Public expenditure on education (percent of GDP, 2004-2006)	1.3	2.7	1.7	3.0	4.7
School enrollment ration, Primary (net, 2006-2007)	84.7	88.9	89.9	83.7	94.5
Population below poverty line (percent of population 2004-2007)	32	45	35	31	15

Source: International Monetary Fund²⁰⁰

In particular, the people of the Irawaddy Delta remain in dire need of direct services and humanitarian relief following the devastation of Cyclone Nargis in 2008.²⁰¹ Rather than facilitate and contribute to humanitarian relief and recovery, the military regime has reportedly hindered and obstructed the process at various stages. According to the Johns Hopkins Bloomberg School of Public Health and the Emergency Assistance Team, the regime’s documented “contributions” to the relief effort included “systematic obstruction of relief aid, willful acts of theft and sale of relief supplies, forced relocation, and the use of forced labor for reconstruction projects, including forced child labor.”²⁰² The military regime has stopped expediting visas for relief workers, which was met with concern from UN officials;²⁰³ it has convicted and sentenced to prison former student activists for activities related to their voluntary relief work in the Delta region;²⁰⁴ and authorities have reportedly capitalized off items donated for victims of Cyclone Nargis by forcing villagers to purchase the items.²⁰⁵

In what is perhaps an attempt to maintain access to affected communities and increase donor support, several international relief organizations working in the country insist that great strides have been made in gaining access to populations directly-affected

by Cyclone Nargis, stressing advances rather than obstacles. For example, Refugees International, which does not provide humanitarian relief, claimed in March 2009 that “[r]elief work in the Delta is progressing smoothly.”²⁰⁶

The Tripartite Core Group (TCG), an Association of Southeast Asian Nations (ASEAN)-led group formed to facilitate the “urgent humanitarian relief and recovery work after Cyclone Nargis”²⁰⁷ released a report on February 9, 2009 (“Post-Nargis Recovery and Preparedness Plan” (PONREPP)), which estimated the needs for Cyclone Nargis recovery funding at US\$690.5 million through December 2011.²⁰⁸ The group appealed to the “international community” for support, but did not encourage the SPDC to commit some of its billions in unspent natural gas revenues for the effort.²⁰⁹

In fact, the military regime has reportedly not contributed any meaningful revenue to the under-funded relief and reconstruction effort,²¹⁰ let alone to other humanitarian crises or social ills throughout the country. There is currently a reported US\$46 million shortfall for health services in the Delta,²¹¹ which is an amount that would be easily afforded by the regime’s estimated US\$4.83 billion profits from the Yadana Project.

Dr. William Sabandar, Special Envoy of the ASEAN Secretary General for Post Nargis Recovery in Myanmar, was asked in August 2009 at an academic conference at the Australian National University (ANU) if the SPDC has contributed any of its billions of dollars in natural gas revenue to the Nargis relief efforts. Dr. Sabandar responded cautiously that “only one person makes those decisions [for the SPDC],” adding that “sometimes political leaders don’t always do the right thing.”²¹²

Part IV: TOTAL DISTRACTION?

The Socio-Economic Programs by Total and Chevron along the Yadana Pipeline

“We want the socio-economic program to work and support more villages. Now, the socio-economic program doesn’t benefit the villagers at all. It’s mostly for [the company’s] own benefit.”

– Local villager in the Yadana pipeline corridor, 2008²¹³

“I heard of [the socio-economic program] and think it is a farce. I have seen it in so many other countries and it is simply a way to show how good and concerned they are. It is just a few pennies of their huge profits to keep the local (and international) community happy.”

Former Expatriate Engineer on the Yadana Project, 2009²¹⁴

a. Introduction

Total and Chevron operate a socio-economic program along the Yadana pipeline in Burma. Today, the companies claim numerous areas of success in the program and commonly invoke it in their international public relations. They claim it has been fully and independently verified by several third parties, including CDA Collaborative Learning Projects (CDA), a US-based organization contracted by Total in 2002 to assess its impacts in the country.²¹⁵ On the contrary, the project has never been independently and fully verified.²¹⁶

This chapter documents the voices of local people who testified to ERI about the areas of health, education, and economic development in their villages. These testimonies suggest that particular elements of the socio-economic program do not appear to operate the way that the companies claim, and in some cases villagers remark how the program has actually had adverse impacts on their livelihoods.

This chapter is not intended to discourage oil companies from implementing socio-economic or other corporate social responsibility (CSR) programs. Rather, it is intended to expose the truth and validity of Total and Chevron’s CSR claims in Burma. Underlying this chapter is a general warning to investors, policymakers, and others to not let the existence, misrepresentations, or even successes of socio-economic programs distract from otherwise critical inquiries into oil companies’ less positive impacts in host countries. In Burma, socio-economic development is much needed and warmly welcomed, but regardless of their effectiveness, Total and Chevron’s programs do not exonerate the companies from accountability and complicity in human rights violations connected to their project or from responsibility for generating crucial revenue for the Burmese regime.

An exhaustive inquiry into the companies' quantitative claims of success are beyond the scope of this chapter and beyond the capacity of EarthRights International, which focuses on human rights and environmental training of grassroots leaders, legal action and advocacy, and corporate accountability. Indeed, a much-needed quantitative inquiry into the effectiveness of the companies' socio-economic program has never been independently or fully conducted or verified.

“Everyone benefits”

Total claims that the socio-economic program is an integral part of its work in Burma and that it reflects the long term commitment to the region by all investors in the Yadana Project.²¹⁷ The companies state that they initiated the program in the Yadana pipeline corridor in 1995, prior to the official beginning of pipeline construction.²¹⁸ Total claims that the program's priorities were defined with “the villagers,” covering four target areas: education, health, economic development, and infrastructure.²¹⁹ The socio-economic program originally included 13 villages and in 2001 was expanded to include a total of 25 villages. The companies estimate the population of the pipeline corridor at 50,000 people.²²⁰

On Total's website, the company claims, “It is estimated that the overall population of the pipeline area now benefiting from the [socio-economic] program is 50,000 people.”²²¹ In other words, Total makes the dubious claim that every single person in the pipeline corridor directly benefits from their socio-economic program.²²² This chapter documents that not only do numerous villagers not benefit from the project, but that certain elements of the project have actually been detrimental to local livelihoods.

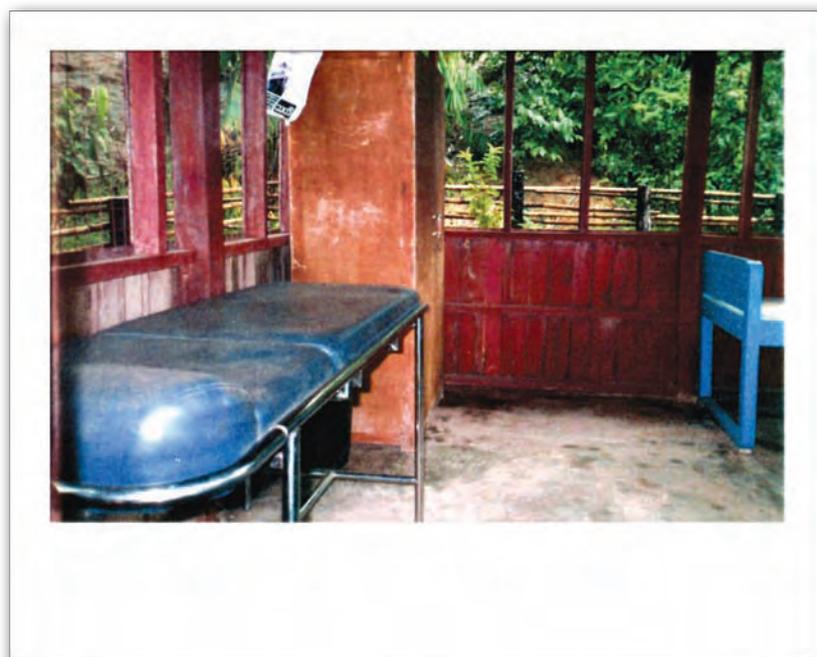
Perhaps the clearest indication that the socio-economic program is not as effective as the companies' suggest is the fact that local villagers are fleeing their villages for social and economic reasons, including human rights abuses committed by pipeline security battalions. A struggling husband and father who recently left his village told ERI:

Over all, when I look at the socio-economic program, in the past [before Total was here] even poor people in our village could have enough food, but when the company came in to build up their [pipeline] project many people lost their land and now these people don't have food to eat. Like us now, we have to leave our only child in the village and we [have to go to Thailand] to look for a job to support our family in the village. Now many people are leaving the village to search for jobs because there are no jobs available in our village.²²³

b. Public Health in the Pipeline Corridor

In the area of public health in the socio-economic program, the companies claim major successes. According to Total and Chevron, all of the estimated 50,000 villagers in the pipeline area have access to “free and improved health care;”²²⁴ ten doctors work where there were previously none;²²⁵ local infant mortality is now 1/6th the national rate;²²⁶ malaria mortality rates are reduced by a factor of ten;²²⁷ the TB mortality rate has been halved since 2002,²²⁸ and there have been notable decreases in food-borne and respiratory-related mortality rates.²²⁹

Contrary to company propaganda, health care in the pipeline corridor is not universal, free, or adequate. Numerous villagers told ERI that the Total-supported hospital in Kanbauk charges so much money that the best way to secure health care is to leave and seek treatment in refugee camps on the border. “We do not have enough money to go to the hospital so we decided to come to the border,” says one villager.²³⁰



A Total health clinic in the pipeline corridor in disrepair, photo in 2009
© EarthRights International, 2009

Other villagers told ERI that the Kanbauk hospital does not have sufficient medicine for the patients, let alone the Total “health clinics.”²³¹ Villagers tell ERI that they are required to purchase medicine outside the clinics and hospital if they need it.²³² According to one current villager, “If people get really sick they usually go to the border camp. It is free and better. For malaria and dengue people will go to the hospital, [but] they don’t have the medicine.”²³³ Another villager claimed, “If the doctors can cure you in [the Total-supported hospital in] Kaleinaung, we stay there, but if it is more serious or too expensive we go to the border. The charges are so high in Kaleinaung so people go instead to the refugee camp.”²³⁴



A Total public health clinic in the pipeline corridor, photo in 2008 © EarthRights International, 2009



The same public health clinic in Zinba, photo in 2009, showing two police barracks in the background constructed with forced labor © EarthRights International, 2009

According to all villagers interviewed by ERI in recent years on the issue of health, the only medication made available in Total's highly-touted "health clinics" along the Yadana pipeline is paracetamol, regardless of the patient's ailment. Regarding the health clinic in Michauglaung, a current villager told ERI:

When the Burmese doctor came he...would only give us paracetamol no matter what was wrong with you. We call him Dr. Paracetamol...In the past, the system in old Michauglaung was that there was no hospital but the medic would come to the village and give vaccines and do blood tests. Later, they would come and do blood tests but they would only give paracetamol. The health situation now is getting much worse. Now if anyone gets sick they have to go to Kaleineung hospital. We have to pay for the doctor and we have to pay for medicine, but this is better than the clinic provided by Total because at least you can see a doctor and get the medicine.²³⁵

Total and Chevron also proudly cite their support for local doctors and nurses.²³⁶ Yet, local people tell ERI that the socio-economic medical program staff does not receive enough money to survive. A villager from Eindayaza told ERI:

I know the nurse and they are paid 10,000 kyat, the equivalent of ten US dollars, per month. The money comes from the company but through the doctor. This amount is nothing. The nurse doesn't want to do [this work]...the money is not enough for her...she does it because she wants to help the villagers...She also works at her house. She spends the morning at the clinic but the afternoon she spends at her house. ²³⁷

“Free medical consultations”

Apart from the testimonies of local people, the companies' supposed contributions to public health in the pipeline corridor raise other questions. For example, the companies claim there are ten doctors in the pipeline corridor where there were previously none, and in 2007²³⁸ Total and Chevron take credit for “80,898 free medical consultations” conducted at village clinics and at the Kanbauk hospital.²³⁹ These figures raise a number of questions. First, the companies neglect to explain or define what constitutes a “free medical consultation.” Second, based on population figures provided by the company itself (50,000 people in the pipeline area²⁴⁰), if 80,898 free medical consultations were provided in 2007, then that would mean that ten doctors collectively would have had to conduct on average 221 “free medical consultations” per day for 365 consecutive days.²⁴¹ Even if these consultations were done by all ten doctors every day for 365 consecutive days, then each doctor would have had to perform 22 free medical consultations per day, everyday, for 365 days.²⁴²

If these doctors worked a standard 5-day work week instead of 365 consecutive days of work, that would mean they would have had to collectively perform approximately 310 free consultations per day, 5-days a week, for 12 months.²⁴³

If 310 daily consultations were divided evenly between the supposed ten doctors on duty, then that would mean each doctor would have had to perform 31 consultations per day. If each doctor performed 31 consultations per day,²⁴⁴ 5 days per week, during 12 hour work days and with no breaks, that would mean they would have had to conduct 2.5 consultations per hour, per day, for 12 months with no daytime breaks.

This scenario would leave the doctors little to no time to provide other medical care that may fall outside the realm of “free medical consultations,” not to mention leaving no time for the doctors' basic day-to-day living.²⁴⁵ If a cadre of non-doctors shouldered some of this questionably huge workload, then that raises other questions with respect to efficacy.

ERI is not alone in noting the various skepticisms of Total and Chevron's health program.²⁴⁶ CDA Collaborative Learning Projects (CDA), an independent US-based consultant contracted by Total to assess the company's impacts in Burma, itself has noted that local people “question” the real benefit of Total's health projects

Nevertheless, organizations such as CDA Collaborative Learning Projects (CDA) consistently and irresponsibly provided very favorable public reviews of Total and

Chevron's health program in Burma, despite neglecting to objectively test and probe the companies' claims. Indeed, CDA does not appear to be qualified to conduct such assessments in the area of public health outcomes. The organization's five assessments of Total's impacts in Burma are the subject of the 2009 ERI report *Getting it Wrong: Flawed "Corporate Social Responsibility" and Misrepresentations Surrounding Total and Chevron's Yadana Gas Pipeline in Military-Ruled Burma (Myanmar)*

c. Education in the Pipeline Corridor

On its website, Total explains that its priorities for the educational component of the socio-economic project are to "provide schooling in good material conditions for all children...[and to]...support middle school students with a tuition program leading to a high school diploma."²⁴⁷ The companies claim to have doubled student enrollment.²⁴⁸ According to Total: "Each village now has at least one school. Teaching materials have been supplied and a school library program has been established at 16 schools".²⁴⁹

According to ERI's field research, the reality is far less impressive on a number of levels. First, local villagers told ERI that the Burmese regime provides the salaries of local teachers, and that the salary is inadequate. One villager said:

The government supports primary school teachers. They get Kt 8000 per month. This is not enough for the teachers, so the villagers organized and we try to support the teachers in many ways. We buy pots, food, rice and other things. We do what we can to support the teachers. The government support is not enough for the teachers and their families.²⁵⁰

Furthermore, this villager noted that in the "new" schools in ethnic Karen pipeline villages, the students are not allowed to learn in the Karen language or about Karen culture, which is consistent with broader claims about the Burmese regime's systematic discrimination against Burma's ethnic nationalities, what has been referred to as "Burmanization":

There were three teachers – two Burman and one Karen. The Karen teacher was hired in our village. We are not allowed to learn Karen at all, there's a standardized curriculum. There are about 250 students in the area.²⁵¹

In this way, the schools have provided a context for the Burmese regime's violation of local peoples' right to maintain their culture and language.²⁵²

Despite this, some Karen villagers are attempting to exercise their cultural human rights. On their own initiative and without the financial support of Total or the SPDC, Karen language and culture classes have been organized in certain parts of the pipeline corridor. "In school, the children are taught in Burmese. Once a week, we arranged for the teacher to teach Karen for a half day. The government knows but they haven't said anything yet."²⁵³

Other villagers discuss as a problem that their children have to walk three to four hours to and from school each day.²⁵⁴ Others cite economic difficulties in sending their children to school, and many families send their children to refugee camps on the border where they expect a better education. One villager claimed that education past primary school is too expensive:

Even for education, villagers can't send kids to Kaleinaung because it's too expensive. Many kids in the [refugee] camps [on the Thailand-Burma border] are from Michaunglaung.²⁵⁵



Children in a refugee camp school on the Thai-Burma border, regarded by villagers as superior to schools in the pipeline corridor
© EarthRights International

In its assessment of the socio-economic program, CDA concluded that the program had positive educational outcomes.²⁵⁶ However, CDA did not demonstrate any quantitative or objective assessments of the outcomes of Total's education program.²⁵⁷ In its five published reports about its visits to the pipeline area, CDA appears to have spoken to local villagers about the program but offers no direct testimony. Rather, CDA offers affirmative and conclusive statements about the program without demonstrating the evidence or foundation. For example, CDA claims, "The social program (the health and the education components) appears to benefit nearly everyone";²⁵⁸ "They [villagers] appreciate the free . . . educational support."²⁵⁹

Likewise, CDA repeats Total's claims about the program without appearing to have objectively assessed the claims or outcomes:

The educational support program to prepare students for their exam...[is] also fully paid for by Total.²⁶⁰

Another key activity of the program consists of educational support including constructing schools, providing financial support to teachers, providing teaching materials, and initiating computer classes and a library program. The education program also operates a tutoring program to prepare children for their high school exams (nationally, fewer than 20% pass their exams).²⁶¹

The education program also operates a program to prepare children for their high school exams (nationally, fewer than 20% pass their exams).²⁶²

d. Economic Development in the Pipeline Corridor

i. *Micro-Credit Program*

A core aspect of Total's socio-economic program is what the company calls "support for economic development."²⁶³ This includes a micro-credit lending program initiated by Total in the pipeline corridor. Villagers told ERI that residents of 21 villages are eligible for small loans once every three years. They are required to repay the loans with two percent interest after a period of six months. On its website, Total claims the loans, or "micro-credits," "are used [by villagers] to purchase animals, plants or equipment required to start a project. The system also benefits commercial projects and fishing enterprises, which can purchase boats, motors and nets...Since the system was introduced in 1997, around 7,800 people have taken advantage of it."²⁶⁴

An independent expert on micro-credit programs and Burma, and a former Senior Analyst at the Reserve Bank of Australia, University of Macquarie Economist Sean Turnell provided his own assessment of Total's micro-credit project, based on field information provided by ERI.²⁶⁵ Turnell noted that he was not surprised that villagers expressed disappointment to ERI about Total's micro-credit program, adding that micro-credit "only works if the successful methodologies it has introduced are paid attention to. Often they are not, as is certainly the case here."²⁶⁶ According to Turnell, Total's scheme appears to be an abuse of micro-credit plagued by six main flaws, outlined below:²⁶⁷

1. THE LOAN TERM

Total's scheme provides for a six month loan term, which is particularly problematic when it is not accompanied by an ability to get a new loan at its conclusion. According to Turnell, this has two very significant negative effects:

First...in such a short term it is clearly impossible for anyone receiving such a loan to generate a return (and therefore be able to repay without destructive-asset selling) in the income-generating activities micro-credit is meant to finance. Second, it robs the scheme of one of the founding principles of micro-credit with respect to ensuring repayment, i.e. by promising a succession of loans (so-called progressive lending) based on the repayment of the previous one, a system of incentives to repay are put in place. This would greatly aid the financial sustainability of the micro-credit institution itself. Of course, this is not in the Total model.²⁶⁸

2. GENERAL ABUSES OF MICRO-CREDIT

Total's micro-credit scheme appears to create a situation where borrowers often need to sell their own assets to repay loans that the borrowers may not have even wanted in the first place. According to Professor Turnell, this is a classic abuse of the micro-credit story, and he warns that such schemes often bring with them pervasive forced borrowing.²⁶⁹ Moreover, the use of funds by local moneylenders to lend in turn at higher interest rates undermines the general philosophy of micro-credit, and can actually increase corruption and favor-buying possibilities.²⁷⁰

3. THE MAXIMUM LOAN AMOUNT

The maximum loan amount of Total's micro-credit scheme is rather low and not conducive to the development of genuine productive enterprise. Professor Turnell noted that this negative effect is compounded by the lack of follow-up loans.²⁷¹

4. BORROWING CYCLE

The fact that a local borrower in the Yadana pipeline corridor can only borrow from Total's micro-credit scheme once every three years results in the scheme being "little more than a money saving device" and could be "proof of the cynical motivation and lack of commitment [to the] scheme," according to Turnell.²⁷²

5. BASIC NATURE OF THE SCHEME

Total's micro-credit scheme is very basic and according to Professor Turnell, "contains none of the insights that have lately been revealed as critical in making micro-credit truly effective." Total's scheme appears to lack facilities other than credit, such as safe savings products, micro-insurance, and others that are "critically important to the poor," yet "completely absent in Total's scheme."

Professor Turnell's overall assessment, based on field information provided by ERI, concluded that "the whole apparatus looks like something created for public relations, and little else."²⁷³ Such a conclusion is consistent with reports received by ERI from

villagers and local communities that Total's micro-credit scheme does not achieve the broad sweeping goals that the companies claim. To the contrary, the lack of attention to detail and the questionable commitment to ensuring that the scheme is socially, culturally, and economically sound has actually resulted in detriments to those villagers who were given the opportunity to participate

Nearly every villager interviewed by ERI explained that the lending program is ineffective. In fact, ERI has found that some villagers stated the program has actually caused problems and made their situation less economically sustainable. Some villagers have had to relinquish valuable assets to repay the loans, while others take the money from the company and re-lend it to other villagers at higher interest rates. This evidence would suggest the program is in need of critical attention.

One villager told ERI:

In 2007, I got money from the loan giving program for Kt 100,000 (US\$100). Som peopl ca eve borro K 200,00 (US\$200) About 20 people cant take the loa foreac term. We hav t giveth loan bac i six months including the interest. Some people, they don't have the money to pay the loan back and they have to borrow money from other people or sell their property.²⁷⁴

Another villager added, "I had to try really hard and borrow from another villager to give the money back."²⁷⁵ Another villager explained that the micro-credit program did not provide much economic benefit to his family's livelihood:

My wife borrowed money once, it was Kt 100,000 (US\$100) for the chicken farm. We used the money to buy chicken food and medicine when we first bought the small chickens [from the socio-economic program]. We had to raise them for about 6 months before they laid eggs. We didn't see any benefit as soon as we started raising the chickens....And in 2005, I lost 150 chickens when there was flooding, and the flooded water stayed for 4 days until it dried up...The loan program didn't make any change or improvement for my livelihood. It doesn't help me much. The amount they give is very small and we have only a very limited time [before we have to repay it]. So villagers can't do much with the money.²⁷⁶

Another villager explained that the requirement to repay the loan in six months has forced villagers to sell valuable assets, noting that six months is not enough time to use the money to their advantage. He stated:

We have to pay the interest once a month, and after six months we had to return all the money back. Since we didn't have enough money to pay back, we had to sell other things to pay them back. There are many people like us who don't have enough money to return the money after six months. [A villager] had to sell her cow to pay the money back. And another man...had to sell his farm to return [the] money that he took from the loan. There are still fe peopl takin loan today, bu onl on o tw people [Eligibl people] can take the loan one time in three years. They give only up to Kt 50,000

(US\$50). In reality, the socio-economic loan program doesn't help anyone to get a better life. You can't do anything with Kt 50,000 in six months.²⁷⁷

Other villagers explained that the micro-lending program led to a type of predatory lending. Thus, the very concept of micro-lending – to initiate healthy and fair local enterprise – was lost. One villager told ERI:

The micro-credit program is still running but the most villagers can borrow is up to Kt 50,000-100,000 (US\$50-100). Not many people can borrow it. Only those who look like they can pay back the money are able to borrow money. So sometimes these people will use their name to borrow money and in turn lend the money to other people at a 5 percent interest rate, whereas it's only a two percent rate if you borrow directly. It's not easy to get the money and you have to have two people to guarantee you, so if people want to borrow money they have to re-borrow from [someone who borrowed from the company].²⁷⁸

ii. *Agricultural Program*

Another core aspect of Total's supposed "support for economic development" is an agricultural program. According to the company, the agricultural program includes two initiatives: "Pig, sheep and cattle farming through breeding, education and an intensive vaccination program"²⁷⁹ and "[f]ood, perennial and horticultural crops through breeding, supply of plants, plant protection products and fertilizers, and advice."²⁸⁰

Total cites two model pig farms in the pipeline corridor, one in Kanbauk and one in Michaunglaung.²⁸¹ Local villagers have never mentioned to ERI nor has ERI even seen the existence or operation of a sheep or cattle farming program, but villagers tell ERI that when the pig and chicken programs were in effect they failed to bring benefits. Recent photos obtained by ERI from Michaunglaung show that the pig farm is now abandoned and empty, contrary to information provided by Total to investors, policymakers, and the general public on the company's website.



Abandoned Total pig farm in
Michaunglaung, photo in 2008
© EarthRights International, 2009

However, while the pig farm was functioning, local people told ERI that they actually incurred more debt from participating in the pig farming program due to the high price of the food required to feed the pigs, which is also contrary to Total's claims. The pig food was reportedly sold only by the local staff of the "socio-economic program." One villager told ERI, "The place where they make and sell the animal food is near the LIB 273 base."²⁸² Another villager added: "I had to buy pig food from [the socio-economic program] and take care of them myself. At the end, the fee of taking care of it and buying its food cost more [than I could earn], and I didn't make any money from it."²⁸³

One local villager explained to ERI how the agricultural program is no longer in operation in his area. It not only failed to benefit him, but his participation led to an economic loss:

In the past the company worker came and gave us pigs and chickens to raise. In the past, many villagers raised them but then we had to buy the pigs and chickens food and medicine. At first the pig food was cheap so I [earned] some money [from the program], but then the next time I lost money.²⁸⁴

Yet another villager explained how the pigs did not gain weight, despite purchasing pig food from the socio-economic program staff:

The pigs didn't gain weight. We didn't get much benefit from it. The [socio-economic people] came to sell the pig food, one bag for Kt 2,000 (US\$2)...They also sometimes came to talk about how to take care of the pigs and how to raise them properly. At first, many people raised the pigs...Each pig weighed about 20 kg after raising it for about 8 months. They only came to provide free pigs and food for the first year.²⁸⁵

Another villager explained how his participation in the pig project became economically impossible:

Now, we still have a pig farm building in our village but there are no pigs in the farm. In the past, I tried to raise 12 pigs from the company but it wasn't a success. The pigs that I raised never grew, so in the end I sold them all. These pigs got sick and I give them medicine, injections, but they didn't get better...The animal doctor provided by the company came and gave injections to my pigs. The other reason that I couldn't continue to raise them was because in the past we paid Kt 2,000 (US\$2) per bag for the pig food and I had 12 pigs. One pack of food they finished in 4 days, so when I tried to raise them for 8 months, that's a lot of money that we had to pay...even worse was that the pig food was getting more expensive, so I couldn't continue. In the past, I raised the pigs because the company provided us with a free pig and we didn't have to buy the pig but only the food. But now since they no longer give us pigs and the food price is very high, we don't have any benefit at all... So now, most of the people who live in old Michauinglaung village abandoned the project. To my knowledge nobody raises them anymore.²⁸⁶

Another villager expressed resentment that the pig farm appeared to only benefit the operators of the socio-economic program:

There are two pig farms, about 100 pigs in each. There are four workers in both pig farms, two of them are from our village. They get Kt 45,000 (US\$45) per month. The pig farm is totally for the benefit of the socio-economic program workers, not for the villagers. They just come to run their own business to make money here.²⁸⁷

Another villager summarized what he regards as the net effect of the program, saying, “there was only very little benefit or no benefit at all, so people just don’t do it anymore.”²⁸⁸ The companies’ chicken programs were equally unsuccessful. One villager described the program to ERI:

They eat over one bag of food daily, each bag costs Kt 12,000 (US\$ 12), and we have to buy it from them. They sometimes come to give the medicine to the chicken, but we have to buy it. Sometimes it costs about Kt 6,000 (US\$ 6), sometimes over Kt 10,000 (US\$ 10). I am the only one raising the chickens now.²⁸⁹

Villagers explained to ERI that there were large economic risks that came with participating in the chicken program. Upon receipt, the chickens did not lay eggs for five to six months so there was a considerable amount of time before a villager could expect any returns on their investment through the sale of eggs.

If the chickens are doing fine you’ll get back your money one day, if not, then you’re in trouble. And they only lay eggs every four and a half months per year. This business is not usual, you have to risk a lot. And if you can’t make a big investment, people can’t do it. It’s also very tiring to look after these chickens. I’ve already raised them about three times, including this year. The first year I raised them, in 2005, I lost about 120 chickens when the water flooded our village. That time we couldn’t move them anywhere and we asked the company staff to come and help us but after waiting for four days they said they couldn’t come so I sold all the left over chickens.²⁹⁰

Other villagers complained to ERI about the management of the socio-economic chicken program:

The [socio-economic program staff] bring very small chickens to the farm. Someone who wants to raise them can buy them for Kt 200 (US\$.20) for each chicken. All the chickens are just big enough to leave their mother, but they’re still very small. They just sell them without dividing them by male or female chickens. The buyer doesn’t know which one is male or female. When they grow up, if they’re female they’ll lay eggs, and if they’re male they’ll be sold for food.²⁹¹

Overall, both agricultural projects appear to have been net failures. Total, while purporting to provide an economic opportunity to local villagers, did not provide

adequate ongoing support to ensure the viability of the programs. The result was that the villagers who had committed to the projects found themselves in unsustainable situations that left them further indebted and impoverished, while the companies and the SPDC continue to reap billion dollar profits.

iii. Job Creation in Burma and in the Pipeline Corridor

Companies in the oil and gas industry often cite job creation as a key economic contribution to host countries and communities. This claim appears particularly common when companies are operating or seeking to operate in poor developing countries or in controversial areas with high unemployment, or where the company is pressured to demonstrate their positive impacts on the host country.²⁹²

In Burma, Total cites job creation as one of their key economic contributions.²⁹³ Yet, the reality is that the Yadana Project has not contributed meaningfully to job creation in Burma, let alone in the impoverished ethnic villages closest to the pipeline. As with many cases of oil and gas exploration in developing countries, the claim that the Yadana Project has created new jobs and economic security is false or largely misleading.

Generally speaking, oil and gas projects and pipelines are capital intensive.²⁹⁴ This means they cost millions and even billions of dollars during exploration and construction and in turn generate billions of dollars in revenue and profit. The Yadana pipeline, for example, cost approximately US\$1.1 billion to construct in Burma²⁹⁵ and now generates approximately US\$1 billion per year in revenue for the military regime.²⁹⁶ Conservative estimates suggest that the new proposed Shwe gas pipeline in Burma, likewise, will cost approximately US\$1 billion to construct,²⁹⁷ and the Shwe Gas Movement (SGM) projects that the project will generate approximately US\$24 billion for the Burmese regime.²⁹⁸

However, as a rule these projects are not labor intensive. This means they do not require significant human labor at the stage of construction and even less during the stage of operation. The few jobs that did become available along the Yadana pipeline typically required advanced training or education, which local people were unable to fill. A villager told ERI, “Even though Total came in, we don’t get any jobs from them so the situation for our livelihood is still [difficult] and we still have to work [forced labor] like before.”²⁹⁹ Another villager added, “Only educated people from the city can get jobs with Total.”³⁰⁰

A villager recently recounted Total’s false promises about jobs, and the human rights violation he received instead:

When the company came in to start their pipeline project they promised us that local people would get jobs, but only a small number of people got jobs here. Most of the company’s permanent workers are from other parts of Burma or are people from Rangoon. And when the company built their camp station...one whole section of our village had to relocate. It included their company building, air field, and runway.³⁰¹

His village received no compensation

The lack of employment of local villagers is symptomatic of the reality of the oil and gas sector when it comes to job creation. It is also a result of longstanding discrimination by the largely Burman military regime against Burma's ethnic nationalities. The military regime has the right to approve all staff on the Yadana Project.³⁰² According to one ethnic Karen man currently residing in the pipeline corridor:

Many villagers would like to get jobs for the pipeline but very few people get it. The military controls it and the workers are Burman. The military employs them. They are corrupted and don't offer jobs to local people.³⁰³

Moreover, empirical research suggests that large scale oil and gas projects in resource-rich developing countries can have adverse impacts on national employment rates. A well-established phenomenon known as the "Dutch Disease" is in reference to an economic concept which holds that a boom in the natural resource sector creates an adverse decline in other sectors of the economy, namely agriculture and manufacturing, ultimately leading to a negative impact on national employment rates.

Reliable economic data from Burma is sparse. Indeed, in a confidential IMF report obtained by ERI, the IMF claims that the SPDC's "[p]ublished data are not timely, reliable, or consistent"³⁰⁴ and the report referred to "the nontransparent governing environment" as a limitation to assessing developments.³⁰⁵ Despite that, some onlookers in the country are already noting that Burma's agricultural sector is "losing out" due to a national emphasis on exploring and exploiting natural gas.³⁰⁶

e. National Philanthropic Programs and National Impacts

"Does Total's presence support the current regime, as claimed by activist groups...and does that make Total a passive accomplice to the regime's abuses? These allegations must be seen in the light of a number of considerations."

Total, company website³⁰⁷

Major multinational corporations like Total and Chevron often make financial contributions to recognized charities and NGOs as part of their responsibility toward the societies in which they work. These contributions are particularly easy ways in which oil companies, given their multi-billion dollar annual profits, attempt to improve their overall public image. Total and Chevron's combined net income for 2008, for example, was approximately US \$41.9 billion.³⁰⁸ For companies working in military-ruled Burma, philanthropic contributions appear to be used to shape negative international public opinion about their operations in the country.

Regardless of motivations, these contributions are encouraged, much needed and welcomed so long as they actually reach the intended beneficiaries, but they do not obviate the companies' much deeper adverse impacts, and do not offset complicity in

human rights abuses.

Total and Chevron regard their national impact in Burma as beneficial based primarily on philanthropic support provided for “a national program to combat blindness led by US-based Helen Keller International Foundation and orphanages that are home to 1,000 children in the Yangon region.”³⁰⁹ The companies also cite commendable financial contributions to the relief effort after Cyclone Nargis devastated the Irrawaddy Delta in Burma.³¹⁰

Yet, despite these contributions, undoubtedly the largest national footprint of the Yadana Project is the billions of dollars in revenue it has generated for the Burmese military regime, as explained in Part III of this report. ERI has demonstrated that natural gas revenue has contributed to the regime’s long-term financial viability and that the revenue from the Yadana Project has contributed to high level corruption and prolonged authoritarianism.³¹¹ By virtue of generating multi-billion dollar revenues for the regime, revenue which is not included in the national budget and is instead stored in two willing offshore banks in Singapore, *Total and the Yadana consortium have arguably contributed to the intransigence of the military regime more than any other single, external contributing factor.*

Total also claims it is having an impact on the national struggle to combat forced labor. As Total has stated:

Although forced labor is still a widespread practice in Myanmar, our commitment is having a national impact, because it challenges the government while emphasizing the need for strict respect of human rights.³¹²

Yet, forced labor at the national level is still a significant problem, and Total’s national impact in combating forced labor remains to be seen. The ILO remarked in 2009 that “the use of forced labor by the military is getting worse” across the country.³¹³ In a June 2009 special session, ILO Liaison Officer in Burma Steve Marshall explicitly noted the dire situation in Burma with regard to forced labor, commenting that since 2007 only 152 cases had been received through the ILO’s complaint mechanism, and that the number “cannot be seen as a reflection of the extent of forced labour practices” in the country.³¹⁴ As Marshall rightly commented, the key impediments to understanding forced labor in Burma are the “practical problems in the physical ability of victims of forced labour or their families to complain.”³¹⁵ Those who have lodged complaints have been harassed, detained, or brought up on false charges by the SPDC.³¹⁶

These facts indicate that even the ILO, the world’s specialist agency on labor issues, acknowledges the ongoing problem of forced labor in Burma and the difficulty of properly documenting and combating the problem. Despite the ILO’s significant challenges in combating forced labor in Burma, Total would have the world believe it has eradicated the practice in its project area and significantly impacted the issue at the national level.

Part V: Green by Gunpoint: Total and Chevron's Environmental Impacts in Burma

"[The most concerning thing I witnessed] was the devastation we made to nature along the pipeline route as we were making our way through the bush using a bulldozer."

Former foreign engineer on the Yadana Project³¹⁷

"The large number of soldiers [in the proposed pipeline area] undoubtedly account for much wildlife loss."

Environmental Resource Management (ERM),
commissioned by Total to conduct an environmental impact
assessment (EIA), January 1995³¹⁸

The severity and seriousness of the human rights and financial impacts of the Yadana Project are often the focal points with regard to its failings. Nevertheless, the project's environmental impacts cannot be discounted.

This chapter highlights the often overlooked environmental impacts of Total and Chevron in Burma. It presents new information that details serious problems with Total's Environmental Impact Assessment (EIA), a document which ERI legally obtained during the discovery process in the *Doe v. Unocal* litigation and which is now part of the public record.³¹⁹ The EIA was commissioned by Total and conducted in 1995 by a group called Environmental Resource Management (ERM), which defines itself as "a leading global provider of environmental, health and safety, risk, and social consulting services."³²⁰ This report marks the first time that information from this document has appeared publicly or faced the public scrutiny of a third party. This chapter also documents new information about forced labor related to environmental issues in the pipeline corridor, and ongoing adverse impacts associated with an environmental protection group established by Total in the pipeline corridor.

a. Total's Environmental Impact Assessment (EIA) of the Yadana Project

The objective of an EIA is to provide decision-makers and communities with information about possible environmental impacts prior to the commencement of a project. Decision-makers should then use that information in deciding whether to authorize a particular activity, and for determining the way in which it should proceed. In general terms, an EIA involves examining, analyzing, and assessing proposed activities in order to ensure the potential for environmentally sound and sustainable development by effectively integrating environmental issues into development planning.³²¹ EIAs are required when a proposed activity is likely to have a significant impact on the environment. In

the international arena, EIAs have been described as “general custom,” a “customary principle,” a “basic principle,” or a “fundamental principle of international law.”³²² In the oil and gas industry, EIAs have become standard practice.³²³

The EIA commissioned by Total on the Yadana Pipeline was carried out in 1995 during the project’s construction phase but before actual construction had commenced. It was conducted by a team that included several foreign environmental specialists. These specialists focused on three potential routes for the Yadana pipeline construction and outlined some of the environmental consequences of proceeding with the Yadana Project. According to the assessment, each of the three potential pipeline routes in Burma selected by Total presented significant environmental consequences in the areas of forestry, ecology and biodiversity, and hydrology.³²⁴

Nevertheless, despite meeting some procedural requirements, the EIA suffered from significant shortcomings that undermine its *ex post facto* legitimacy. Most significantly, the EIA did not involve the participation of local people. The complete absence of the local voice was particularly troubling in this case: for generations, local ethnic people in the area have depended on the environment for their survival. Villagers use the natural environment, of which they are a part, to hunt, fish, and farm, and for medicinal purposes, daily living materials, and to construct their homes. They were summarily silenced.

Not only does such an approach undermine Total’s assessment and the methodology of ERM, but the failure to include the local voice is also problematic from a practical perspective. By excluding valuable local knowledge the companies were precluded from considering information that western “experts” would simply not have. Who would know the potential environmental impacts of the companies’ plans better than the local indigenous populations who have lived as a part of these ecosystems for generations?

The significance of the participation of affected communities was an aspect of EIA that should have been well-known to Total from past experiences. In the 1990s, prior to the construction of the Yadana Project, the Yadana consortium commissioned a number of EIAs in order to assess the environmental risks associated with the project. Prior to this report, the only publicly available EIA was released by the Petroleum Authority of Thailand (PTT), whose assessment focused on the pipeline on the Thai side of the border. It was widely derided for its omissions and shortcomings.³²⁵ Among some of the more serious omissions was the complete lack of public participation in the process. Total ignored the past experience of PTT and carried out yet another EIA that excluded local participation.

The exclusion of local participation and indigenous knowledge from development planning is telling, especially when considered in the context of ERI’s other documentation of human rights abuses connected to the Yadana Project: it appears that local ethnic residents were regarded by the companies and the Burmese authorities as obstacles to the project rather than key stakeholders.

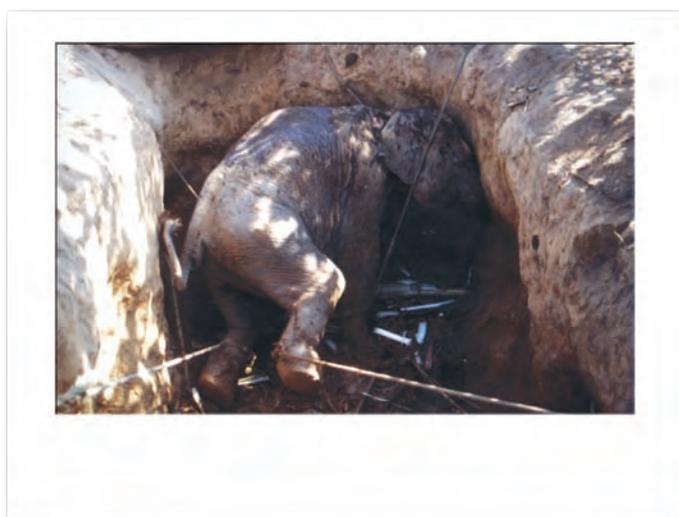
The failure to include the voices and perspectives of the local populations was compounded by Total’s failure to include a social impact assessment (SIA) or Human Rights Impact Assessment (HRIA) as part of or in tandem with the EIA. While the use of HRIA’s is still a developing norm,³²⁶ the SIA is widely accepted as an international best practice.³²⁷ Such an omission from Total’s EIA is incredibly significant for this particular project, given that the project brought large populations to the area, including

construction workers, residents from the majority ethnic Burman population, and most significantly, the Burma Army. The social and environmental impacts of the influx of these populations to the region was not assessed, despite the Burma Army's integrated role in the Yadana Project and Total's well-documented awareness of the significance of this role.³²⁸

Land confiscation was another issue that was largely ignored in the EIA. Beginning with the Burma Army's first entrance into the pipeline area, it became common practice that land was routinely confiscated from local villagers to make room for the pipeline and to provide security for the project and the companies.³²⁹ The impacts and effects of land confiscation connected to the project were categorically ignored by the EIA.

Apart from the significant failings of the EIA itself, the EIA did make a number of significant findings about the environmental impacts of the Yadana Project, and offered recommendations as to how to minimize those impacts. Unfortunately, it seems that Total did not heed even the minimally useful advice in the document, and its recommendations fell on deaf ears.

For example, Total was warned by the EIA that the project would have environmental consequences for wildlife in the area.³³⁰ It is unclear if or how Total responded to this warning. At present, the pipeline and its permanent service roads traverse and bisect a globally significant, bio-diverse eco-region.³³¹ The pipeline route selected by Total fragments Burma's Tenasserim forests, which are home to numerous species that are vulnerable, endangered, or critically endangered. The area has traditionally been the habitat of Asiatic elephants, white-handed gibbons, Bear macaque, Malayan tapirs, sun bears, Asiatic black bears, Fea's barking deer, guars, southern serows, great hornbills, and other species. The way in which the pipeline permanently fragments this area may have permanently altered the habitats of these species, influencing migration routes and other habitat behavior. Warnings of these impacts were included in the EIA and subsequently received by Total prior to the project's construction. Nevertheless, ERI's research indicates that rather than minimizing the width of the pipeline path as recommended in Total's EIA, the company carved through the natural environment with abandon.³³² Indeed, a former Yadana Project engineer told ERI that the company carved through the natural environment with abandon. What does remain clear is that the long-term and current environmental impacts of the project have not been independently assessed in full.



A baby elephant caught in a trench in the Yadana pipeline project area, © EarthRights International

Likewise, Total was specifically warned in the EIA about the impacts of increased human access on ecology and biodiversity, and its impact on the integrity of local forests. The EIA referred specifically to human access as a “major threat,”³³³ noting that a pipeline increases human access and presents “the increased likelihood that an area will be subject to illegal logging (either extensive and systematic or small-scale) and the removal of other forest products.”³³⁴ The assessment also noted human access as a threat to the increased “hunting of animal species” by local people or authorities.³³⁵

Notwithstanding such counsel, the service roads of the project were constructed in such a way that they opened up otherwise pristine areas to the incoming Burma Army, which subsequently used the access for logging and hunting of various species, including endangered species.³³⁶ This was precisely the type of human access to which Total was alerted in the EIA. In fact, in as early as 1995 the EIA documented how increased militarization had already affected wildlife, stating that, “The large number of soldiers [in the proposed pipeline area] undoubtedly account for much wildlife loss” through unregulated hunting.³³⁷

b. Forced Labor and the Environment

Defected soldiers and villagers have explained to ERI how logging has been a key business of the Burma Army providing security for the pipeline, and how the practice is linked to forced labor. According to one defector:

The main business of our commander was logging. There were around ten sawmills in the area. The commander just ordered the local sawmill owner to work for him. He literally gave the permit to the local people, and he got money from logging. Sometimes, we troops had to carry wood for the commander.³³⁸

Recent reports from the pipeline area indicate that pipeline security battalions continue to participate in logging, and that the battalions have demanded forced labor from local people for the logging operations. As one villager noted:

Last year, we had to do logging for the Navy base [in the pipeline corridor] which they were repairing with wood. Our villagers have to travel far to get the logs, to get good ones we have to travel like a [full] days walk. Last time my husband spent two days to go and cut the logs. Not only getting logs but we also have to saw them into pieces of wood. Usually my husband and my oldest son...end up doing forced labor whenever it is our turn.³³⁹



Logging the Yadana pipeline area, photo in 2007
© EarthRights International, 2009

Other villagers have reported that they have been forced every month to conduct logging for pipeline security battalion 273, namely for Army Officer Tay Win and his associates.³⁴⁰ This forced labor was specifically directed at villagers who owned chain saws and/or buffalo. In certain pipeline villages, each owner of a chain saw is reportedly required to provide the Army with at least four tons of logs every month, and owners of buffalo are required to pull the logs out of the forest and to the nearby village. This type of labor, if voluntary and legal, would command approximately 40,000 kyat per ton of logs. Villagers are not compensated when they do this work for the pipeline security battalions, nor can they refuse the work.³⁴¹



Local villager in the Yadana pipeline area
logging with a chainsaw, photo in 2007
© EarthRights International, 2009

Likewise, Army Officer Balay Nyi Nyi Soe from pipeline security battalion 282 has procured forced labor to collect logs at the LIB 282 compound along the pipeline corridor. Villagers are required to do this labor three days per month.³⁴²

Other villagers have explained to ERI that local people started to rely on logging for income because they had no other means for survival. It has been reported that the pipeline soldiers and Total attempted to stop all logging by local people, presumably because it was enterprise out of the control of the authorities:

It was hard for villagers to find a job to survive for their family; the soldiers ordered villagers not to do any farming or hunting near the pipeline area. In the past, some people did logging to survive but now they were stopped by the soldiers and Total. So, now it's harder for some villagers in that they don't know how to survive.³⁴³



Logging in the Yadana pipeline area, photo in 2007
© EarthRights International, 2009

Another villager reported how a foreign Total employee took all of the logs the villager had worked without pay to collect in hopes of earning some income for his family:

We logged for two months and got about 100 logs. After we logged a foreigner from Total came and took our logs and did not give us any money. We were supposed to sell those logs to [name withheld]. It was about 60 tons. We had sawed them by hand. We had collected them near the automobile road...The area where we do logging is Ya Pu, which is nearby. We had carried the logs by buffalo to take them to the roadside...We got no money. The owner of the buffalo got no money. [Name withheld] gave us a little food while we were doing it. It was taken by workers from the company. Before they took it they asked, 'was this

logged by soldiers or villagers?’ We replied, ‘we did it because we have nothing to eat.’ That night they came with a truck and took the logs. We did not report it to anyone because the government took it and we could not do anything.³⁴⁴

Adding insult to injury, some villagers were not only forced to log trees for the authorities and restricted by Total and the Army from logging for their own financial gain, but they were forced by pipeline security battalions to plant trees in the pipeline corridor:

We had to plant teak trees along the road to Ye between mile markers 74 and 52. Each house had to plant 10 trees. The order came from LIB 409. The village head marked how far between the trees needed to be planted from each other and then the soldiers came to check if the people finished planting the trees. I myself had to do this near my house. It did not take that long, but we could not refuse to do it.³⁴⁵

c. Total-Supported Environmental Conservation Projects in the Yadana Pipeline Corridor

In recent years, Total has reportedly funded an environmental conservation group in the pipeline corridor that designated certain areas as environmentally protected. While such initiatives have the potential to make positive contributions and mitigate environmental issues, the way in which Total has established this conservation group has not achieved positive outcomes. Most significantly, the group was established without consulting local people, and as a consequence has had serious negative impacts. According to villagers, the group was founded by the local authorities, funded by Total, and employs ten people who are ethnic Burman and Mon.³⁴⁶ The disconnection between the group and the local populations is compounded by the fact that villagers report that the group is perceived as being connected to the Burmese authorities. As one villager commented:

There’s an environmental conservation group with an office based in Michaunglaung village. The group was founded by the government, and they wear clothes that look like police...They came here in 2006. This group doesn’t work with the socio-economic program, but they’re sometimes accompanied by soldiers.³⁴⁷

Moreover, the group has designated lands traditionally farmed by local people as protected areas. There was no community consultation, and villagers have been restricted from farming in these areas, causing problems to their livelihood and subsistence lifestyles. According to one farmer:

They did not give any support to the villagers when they made the area a protected forest. Since the villagers are not allowed to farm in the protected area, they face a lot of problems with livelihood. The SPDC made some plans to give some farmland to villagers but the villagers do not know when this will happen.³⁴⁸

Another villager added:

The SPDC formed an environmental protection group in Michaunglaung and [now] does not allow [us] to do rotation plantation like before, and they did not give [alternative] land to people [in order] to do farming in the area. That is why we are living in a difficult situation.³⁴⁹

In 2009, a villager told ERI:

We usually do highland farming but since the forest conservation group banned us from doing the farming we've faced hardships to survive. The hardships for us are that we can no longer clean land to grow rice except if we plant trees, such as hardwoods, and look after them. But we're worried that if we have to do it over and over it'll be hard for us. To look after rice is already time consuming for us but now that we have to look after the trees year round it will be a problem for us. And we also think that when these trees are grown the land will become the government's property automatically and we'll no longer have the land. Among the forest conservation group I think the Total company is also involved because we've seen the Total group participate in their meetings often. When we plant the trees among the rice we have to look after the bush, watering them always. So it becomes an issue that people don't want to do it but we do not have a choice. For me, I have to do it because I don't have a choice, unless I don't want to survive.³⁵⁰

Based on local testimonies, the conservation project appears to represent top-down environmental management, lacking inclusive local participation and negatively impacting local communities.

Conclusion

Total and Chevron have an exceedingly close relationship with the Burma Army, despite what they may claim to the general public, shareholders, investors, and policymakers. Not only have the companies enjoyed a historical connection with the Army since their project began in the early 1990s, but new evidence affirms the sordid partnership is ongoing and long term, and that it continues to result in severe and ongoing human rights abuses. These abuses, documented in detail by ERI and committed by the Burma Army and Navy providing security for the companies and the project, include widespread and systematic forced labor, violations of the rights to freedom of movement and property; extrajudicial killings, torture, and other forms of ill treatment.

The Yadana Project also continues to have adverse environmental impacts, which began with Total's flawed environmental planning in the 1990s, as documented in this report. The environmental impact assessment (EIA) commissioned by Total in 1995, and publicly analyzed for the first time in this report, failed to include local peoples' participation and failed to include a social impact assessment, despite the large influx of the Burma Army, construction workers, and ethnic Burmans.

Beyond the direct human rights and environmental impacts of the project, its financial impacts in the country have been staggering. Generating US\$4.83 billion for the Burmese regime since commercial production on the Yadana Project began in 2000, Total and the Yadana consortium have proved to be a leading external factor contributing to the regime's intransigence to political change. The Yadana Project has contributed to high-level corruption in as much as the military regime does not account for its gas revenue in the national budget, but instead stores it in two willing offshore banks in Singapore, according to confidential and reliable sources. As a result of the revenue, the Burmese regime can afford to ignore not only international calls for change, but also democratic demands from the people of Burma.

When confronted with these and other challenges in the past, Total consistently invoked its socio-economic program, whose efficacy has never been externally, independently, or quantitatively assessed by competent third-parties, or by the community themselves. Rather, ERI's research and investigations suggests key elements of the program have had adverse consequences for people in the area.

In light of these facts and the profound impacts of the Yadana Project, EarthRights International emphasizes the following recommendations in this report.

Recommendations

To Total, Chevron, and PTTEP:

- Publish all payments made to the Burmese authorities throughout the life of the Yadana Project.
- Acknowledge a wider sphere-of-responsibility in the Yadana “pipeline corridor,” delineated by the impacts of the Burma Army pipeline security battalions.
- Work towards cessation of Burma Army security presence in the Yadana Project area. Publicly retract and explain Total’s untrue claims to have eradicated forced labor in the Yadana pipeline corridor, especially the statement on the Total website that falsely attributes this claim to the International Labour Organization.
- Direct local complaints of forced labor immediately to the International Labour Organization and not to Total’s “complaint boxes.”

To the International Community:

- Apply targeted multilateral pressure on Burma’s petroleum sector (oil and gas), including actions designed to restrict the State Peace and Development Council’s access to capital markets with regard to the natural gas revenue generated from the Yadana and Yetagun Gas Projects, and future revenue generated from the Shwe Gas Project. This should include targeted multilateral actions designed to restrict international transactions by individuals and institutions associated with the petroleum sector in Burma.
- Maintain and strengthen targeted restrictions on new investment in Burma’s petroleum (oil and gas), mining, timber, and hydropower sectors until a range of preconditions are firmly in place, including:
 - Full disclosure of all payments made to the State Peace and Development Council.
 - Reliable guarantees that large-scale development projects can proceed in Burma without an unreasonably high risk of adverse human rights impacts by the Burma Army providing security for the projects.
 - Reliable guarantees that local communities can participate freely in development decisions, including Free Prior and Informed Consent before projects commence.
 - Home-state access to justice for foreign victims of corporate-related human rights abuses.
- Enact and strengthen legal and other regulatory mechanisms that promote transparency, normative frameworks and harmonization across systems. The goals of such mechanisms must be to promote stability for corporations operating internationally, allow for corporate liability and accountability for complicity in abuses abroad, and enable access to justice for survivors of abuses abroad. Civil society organizations and citizens of these countries should advocate for legislation to create such mechanisms.

To Investors and Shareholders in Extractive Industry Companies in Burma:

- Actively engage companies about their investments, effects, and activities in Burma with clear and time oriented benchmark goals for improving corporate behavior.
- Support shareholder resolutions that promote policies and practices designed to improve: the promotion and protection of human rights, the environment, and the rule of law; revenue transparency and other forms of transparency; and the rights of indigenous peoples and affected communities, including the right of Free Prior and Informed Consent.
- Promote the goals and objectives of the Publish What You Pay campaign and the Extractive Industries Transparency Initiative.

To Extractive Industry Companies Invested in or Considering Investment in Burma:

- Cease new investments or project construction until negative human rights and environmental impacts can be adequately mitigated or prevented, and until local communities provide Free Prior and Informed Consent to the projects. In particular, companies involved in the development of the Shwe Gas Project, including Daewoo International, Korea Gas Company, Gas Authority of India Ltd. , ONGC Videsh, Chinese National Petroleum Company, PetroChina, and others should immediately cease all project-related work until all of the elements of these recommendations are implemented.
- Conduct independent, objective, and verifiable third-party environmental and human rights impact assessments before the initiation of any oil and gas projects in Burma; include the full and free participation of local people and make the entire assessments publicly available in local languages.
- Facilitate independent, verifiable, third-party human rights monitoring of existing projects.
- Recognize Free Prior and Informed Consent as an indigenous human right and consult objective and independent third parties to ensure the right is being respected in relation to the company's proposed operations.
- Publish all payments made to the Burmese authorities.

To the State Peace and Development Council (SPDC)²:

- Abide by obligations under international law to respect fundamental human rights and environmental protection. Cease committing human rights abuses against the people in the Yadana pipeline region and throughout Burma, including an end to extrajudicial killings, sexual violence, torture, excessive force, arbitrary detentions and imprisonment, forced labor, and forced relocation.

²EarthRights International recognizes the Burmese military junta has failed to uphold even the most basic rights of the people of Burma, and thus have no expectation that the SPDC will implement any of these recommendations. Nonetheless, ERI believes it is important to note steps a minimally responsible government would take to begin to respect the fundamental rights of the people of Burma.

- Respect and protect the Burmese peoples' human right to participate in development decisions and the right, especially of Burma's indigenous ethnic populations, to Free Prior and Informed Consent.
- Grant unfettered access to independent third-parties to conduct secure, anonymous assessments, fact-finding, and monitoring of existing or planned development projects in Burma.
- Adopt and implement the Extractive Industries Transparency Initiative.

Addendum to Recommendations

EarthRights International (ERI) is not advocating for Total or Chevron to withdrawal from Burma. This position does not in any way imply an ethical endorsement of the companies' presence in the country, nor does it imply a preferential option for the presence of western firms over Asian firms.³⁵¹

ERI opposes new investment or new projects in Burma's extractive sectors at this time.³⁵² Overwhelming evidence demonstrates that oil and gas projects in military-ruled Burma lead directly and indirectly to serious human rights and environmental impacts, both at the time of construction and for years proceeding. Participating in these projects requires a partnership with the SPDC, which is accused of committing crimes against humanity and war crimes against the people of Burma,³⁵³ and project security requires a partnership with the Burma Army, which routinely commits human rights abuses.

ERI continues to work to promote and protect human rights and the environment in Burma. Total and Chevron continue to be linked to serious human rights abuses in Burma committed by pipeline security battalions and continue to refuse key elements of corporate responsibility related to their operations in Burma, such as revenue transparency. ERI therefore reiterates the preceding recommendations.

APPENDIX A:

Yadana Gas Revenue Calculations, 2000-2008

EarthRights International (ERI) estimates that the Yadana Project has generated approximately US\$7.58 billion in revenue since the Yadana Project began commercial production in 2000. After a 30% tax imposed by the SPDC and production costs (estimated at 10% by ERI, based on media reports), Total has earned approximately US\$483 million from the Yadana Project, Chevron approximately US \$437 million, and PTTEP approximately US\$394 million. The State Peace and Development Council (SPDC) has earned approximately US\$4.83 billion from the Yadana Gas Project since commercial production began in 2000. This appendix is intended for the technical reader and explains in detail how ERI calculated the aggregate Yadana gas revenue and the approximate amount of profits for each of the consortium members and the SPDC, by year from 2000 to 2008.

It is noteworthy that the annual and total project revenues do not add up to annual and total project income because a cost of production is deducted from total project income before any revenues are taken. Based on media reports, ERI estimated this cost of production to be 10% of total project income.

The following sections include the basic formula for calculating the Yadana Project revenue, the way in which the revenue is divided between the consortium and the SPDC, and a summary sheet of the overall calculations from 2000 to 2008. More detailed calculations on a yearly basis are available from EarthRights International.

Calculating Yadana Project Revenue

Formula: normal price x daily energy output x days = project income

$$[\$/\text{mmBTU} \times \text{mmBTU}/\text{day} \times \text{days}/\text{yr} = \$/\text{yr}]$$

$$\text{normal price} = 3[0.2(\text{Iy}/170.036) + 0.2(\text{OMy}/117.711) + 0.5(\text{Fy}/15.50)]$$

Iy is US Consumer Price Index (CPI-U) averaged over preceding 6 months. OMy is US Producer Price Index for Oil Field and Gas Field Machinery averaged over preceding 6 months. Fy is price of Singapore Fuel Oil 180 CST 2.0% averaged over preceding 6 months.

- Calculate two normal prices for each year, one for first six months (using Iy, OMy, Fy of last six months of preceding year) and one for second six months (using data from first six months of current year).
- Find average daily gas output of Yadana in millions of cubic feet per day (mmscfd, mmcfd, mmcf/day).
- Average daily gas output x 712 BTU/cf* = average daily energy output (mmBTU/day) (*712 BTU/cf is the heating value of Yadana gas).

- Average daily energy output x normal price = daily sales
you should calculate two daily sales values, one for first half of year and one for second half, because you have two normal prices.
- Daily sales first 6 mo. x 181 days + daily sales second 6 mo. x 184 days = project income.

How to divide the revenues between the consortium members and the SPDC:

1. Subtract 10% production costs from the amount of the revenue (by year or aggregate).
2. The SPDC takes a 10% royalty.
3. MOGE takes a 66% PSC share (this varies slightly).
4. Contractors divide what is left: MOGE - 15%, Chevron - 28.25%, Total - 31.25%, PTTEP - 25.5%.
5. The SPDC taxes all contractors 30% (except MOGE).
6. The SPDC share = royalty + PSC Share + 15% MOGE share + taxes.
7. The SPDC takes its domestic gas consumption in kind from its share (i.e. subtract the price of domestic consumption).

(US MILLIONS)

Summary Sheet: A

EarthRights International

Years	Project Income	SPDC Revenue	Chevron Revenue	Total Revenue	PTTEP Revenue	Sum of Revenues
2000	127.39	79.57	11.67	12.89	10.52	114.65
2001	407.65	257.20	36.47	40.31	32.90	366.89
2002	567.90	345.57	47.63	52.64	42.97	488.80
2003	666.35	448.33	37.18	41.09	33.54	560.14
2004	766.13	513.47	40.34	44.59	36.40	634.80
2005	860.01	572.67	45.86	50.68	41.38	710.59
2006	1189.33	797.11	62.62	69.21	56.50	985.44
2007	1294.63	795.50	66.13	73.09	59.66	994.37
2008	1696.92	1017.09	89.25	98.64	80.52	1285.50
Sum:	7576.31	4826.50	437.13	483.14	394.40	

(US MILLIONS)

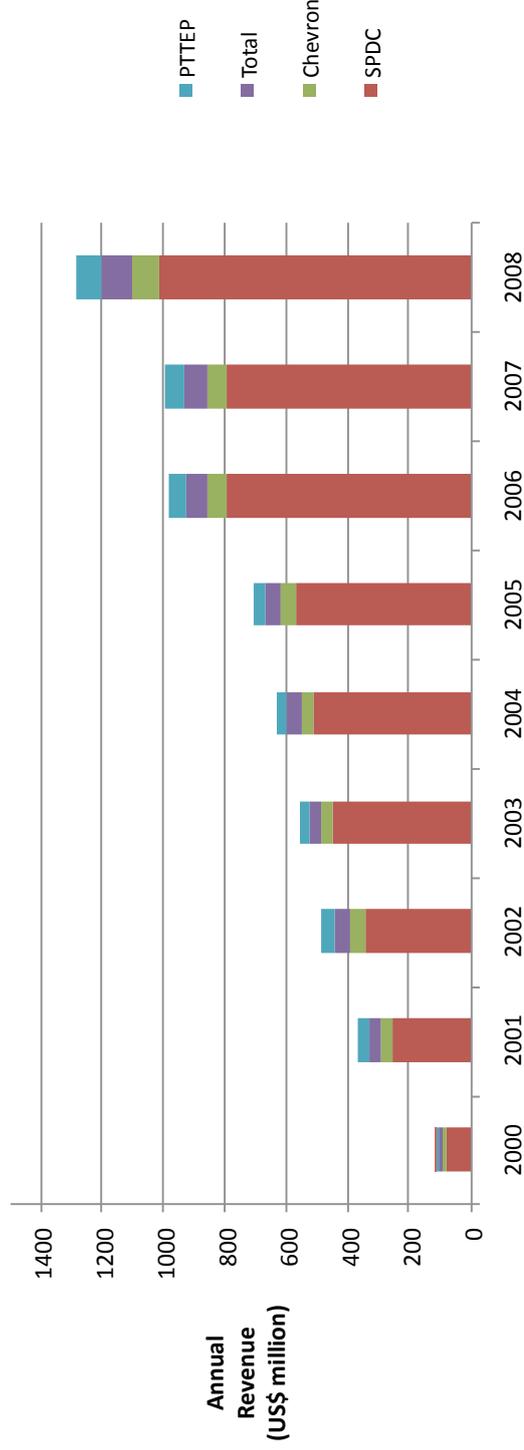
Cost of Production	Burma's domestic gas consumption	Revenues + production costs + domestic consumption
129.46	170.80	1294.63
169.69	241.73	1696.92

USEFUL INFORMATION (US MILLIONS)

Years	Project Income	Gas Output (mmscfd)	Normal Price (\$/bbl)
2000	127.39	134	\$3.89
2001	407.65	510	\$3.66
2002	567.90	611	\$3.63
2003	666.35	623	\$4.24
2004	766.13	700	\$4.30
2005	860.01	678	\$5.20
2006	1189.33	700	\$6.84
2007	1294.63	758	\$6.75
2008	1696.92	702*	\$10.16

*from PTTEP, all others from Total

Yadana Project Revenues 2000-2008



Source: EarthRights International

Summary Sheet: B

EarthRights International

NOTES ON GRAPH:

(Opposite Page - Yadana Project Revenues)

- Annual profits of PTTEP, Total, and Chevron were calculated after the SPDC took 30% in taxes
- There is also a 10% production cost deducted before any revenues are calculated, adding this 10% cost to the four revenues gives the total project income
- Under the PSC, the SPDC gets a variable share of the revenue

SPDC revenue (in order that they are applied):

- 10% royalty (after 10% costs of production has been deducted)
- MOGE share under PSC (usually 66%)
- 15% MOGE contractor share
- 30% tax on other consortium members

Production Sharing Contract:

$$EC = E \times IO/I$$

EC is inflation-adjusted price

If EC > 2.9, then the highest allocation scale applies (MOGE share 66%)*

E is Normal Price

IO is U.S. Consumer Price Index averaged over last 3 months of 1991

I is U.S. Consumer Price Index averaged over 3 months of most recent quarter

Export Gas Sales Agreement:

$$\text{Normal Price} = P1 [0.2(Iy/I) + 0.2 (OMy/OM) + 0.5(Fy/F) + 0.1]$$

normal price is used to calculate total project income

P1 is \$3/mmBTU

Iy is U.S. Consumer Price Index averaged over preceding six months*

I is 170.036

Omy is U.S. Producer Price Index averaged over preceding six months*

OM is 117.711

Fy is price of Singapore Fuel Oil averaged over preceding six months and converted to \$US/barrel*

F is \$15.50/barrel

Allocation Scales	EC < 2.9	2.6 < EC < 2.9	EC > 2.6
	MOGE Share:	MOGE Share:	MOGE Share:
First 300 mmscfd	60%	40% + 20% (EC-2.6)/0.3	40%
Next 300 mmscfd	70%	55% + 15% (EC-2.6)/0.3	55%
Next 300 mmscfd	80%	75% + 5% (EC-2.6)/0.3	75%
Above 900 mmscfd	90%	90%	90%

APPENDIX B:

EarthRights International's Communications with Total

[Total] Open Letter to EarthRights International in Response to its April 29, 2008 Report

May 5, 2008

Total has read the report* published by EarthRights International (ERI) on April 29, 2008 on the Yadana Project in Myanmar. While we share ERI's desire to see living conditions improve for the people of Myanmar, we strongly repudiate the allegations made against the gas consortium as a result of ERI's wrongly linking the Yadana Project and human rights abuses.

It is unfortunate that ERI did not feel it necessary to contact us to discuss the situation relating to human rights in the pipeline corridor. If it had done so, serious errors of fact, mix-ups and guilt-by-association allusions would have been avoided.

The report merely contents itself with reiterating criticisms concerning the supposed ineffectiveness of the socio-economic programs introduced by the gas project partners more than ten years ago. Moreover, the report includes testimony related to human rights abuses, most of which occurred outside the consortium's host region. A number of the allegations made would be difficult to verify, because ERI does not specify places, dates and names in combination.

Because we are in daily contact with the villagers in the pipeline corridor, we hear of any human rights abuses immediately and ensure that they are corrected. Unacceptable practices are systematically reported and the perpetrators are prosecuted. This was the case of the soldiers found guilty of the rape committed near the village of Zinba in 2005, as mentioned in the report.

Similarly, Total is attentive to the local population and regularly expresses its deep concerns about forced labor. The pipeline corridor is by and large free of this intolerable practice, as confirmed by independent reports.

Lastly, we would like to point out that the people living in the pipeline corridor - whose numbers have increased significantly over the last ten years - want us to stay on and continue our socio-economic initiatives. There is also a contradiction in the ERI report, which calls for the joint venture to suspend operations, but also to step up its social and economic activities. This would seem to tacitly acknowledge that they benefit the villagers.

We suggest that you consult the report published on April 30, 2008 by the CDA Collaborative Learning Projects, Inc. (see <http://www.cdainc.com>), an independent organization whose main concern is improving the living conditions of the people of Myanmar. Such an improvement requires that responsible companies remain nearby, enabling villagers to benefit from the education, health and economic programs that they would be deprived of if EarthRights International's recommendations were acted on.

The ERI report claims to be a reasoned argument in favor of Myanmar's economic isolation, which has already had serious repercussions on ordinary citizens without altering the political situation one iota. The report is designed to force responsible companies to withdraw from the country, without taking into account the negative impact that withdrawal would have on the people of Myanmar. Total will continue its operations in Myanmar which help to improve living standards there.

* Earth Rights International, The Human Cost of Energy, April 2008 http://www.earthrights.org/files/Burma%20Project/Yadana/HCoE_pages.pdf

Email Correspondence between ERI Legal Director Marco Simons and Total Management, May 9, 2008

From: Marco Simons
Date: Fri, May 9, 2008 at 12:19 PM
Subject: Total's open letter to EarthRights International
To: Total

We would certainly be happy to engage in dialogue with Total over the substance of the situation in the pipeline region. In particular, although your letter references multiple factual errors in our report, it specifically identifies only one: that the soldiers guilty of the rape in Zinba in 2005 were prosecuted. If you have documentation of this, please send it to us as soon as possible and we will include it in future editions of our report. If you have documentation of any other errors, please send it along as well.

With respect to your observation that we do not include identifying information for many of the incidents, obviously we do not do so due to the genuine fear of reprisals against those who speak with human rights investigators.

We may prepare a more formal response at some point, but we wanted get[sic] any information you may have in contradiction to our report as soon as possible so that we may incorporate it in future printings.

Sincerely,

Marco Simons
Legal Director
EarthRights International (ERI)

Email Correspondence between ERI Legal Director Marco Simons and Total Vice President of Public Affairs Jean-Francois Lassalle, May 28, 2008

From: Marco Simons

Date: Wed, May 28, 2008 at 11:42 AM

Subject: Re: Meeting w. Total in NY

To: Jean-Francois Lassalle

Mr. Lassalle--

Thank you for letting me know. Please do send along any documentation that you may have, as we requested.

Sincerely,

Marco Simons

Legal Director

EarthRights International (ERI)

At 10:01 AM 5/28/2008, Jean-Francois Lassalle wrote:

Dear Mr. Simons,

This mail to [sic] inform you that, due to other obligations linked to the relief operations after Nargis, I have to cancel my stay in NY on June 3rd and so, won't be able to meet you then.

Regrets and best regards,

Jean-François Lassalle

Total - E&P Vice President Public Affairs



Mr. Jean-Francois Lassalle
Vice President, Public Affairs
Total E&P
2, place Jean Millier
La Défense 6
92078 Paris La Défense Cedex
France
Fax: +33(0)1 4744 7399

June 12, 2009

Dear Mr. Lassalle,

As you may be aware, EarthRights International (ERI) is a nonprofit, nongovernmental organization focusing on the intersection between the environment and human rights. Part of our work involves documenting human rights violations and environmental abuses associated with oil and gas projects in Burma and we have released numerous reports on conditions around your company's Yadana Project. These reports are based on our continuous presence and fact-finding in the pipeline region and refugee camps along the Thai- Burma border.

ERI is preparing a new report on the Yadana Gas Project in Burma. The report explores human rights abuses in the area of the Yadana Project, the third party assessments of the Yadana Project commissioned by Total, and the effectiveness of the socio-economic programs in the pipeline corridor.

We are writing to ensure that our report reflects the most current activities and impacts of your company in Burma. In April 2008, ERI released the report *The Human Cost of Energy: Chevron's Continuing Role in Financing Oppression and Profiting from Human Rights Abuses in Military-Ruled Burma*. On May 5, 2008 Total issued an Open Letter to ERI repudiating ERI's findings and suggesting that if ERI had contacted Total prior to the report's release, errors that Total claims to have found in the report could have been avoided. ERI Legal Director Marco Simons contacted you personally via email on May 9, 2008 and again on May 28, 2008 requesting from Total a clarification on any substantive errors in the report. ERI did not receive a response to either request. Further, Mr. Simons was scheduled to meet with you in person in New York in June 2008, but you cancelled that meeting in an email to Mr. Simons.

We hope that your company will respond to the below questions. In order to ensure that your responses to these questions are included in our forthcoming report, we ask that you please respond before June 24, 2009.

Could you please provide responses and clarify:

- Have any third parties objectively and independently tested the *quantitative* claims of success made by your company with respect to the socio-economic program? If so, could you please identify the assessing party and share with ERI the results of these independent quantitative studies?
- Total claims to have eradicated forced labor in the Yadana pipeline corridor. Could please provide details of instances of forced labor you have responded to? When and where did the instance of abuse occur? To whom did you seek recourse or preventative action, and how? What was the result of your response to reports of forced labor?
- Has Total investigated the possibility that the company's presence has created an increased demand for forced labor in villages surrounding the as-defined pipeline corridor? If so, will you please provide details or the conclusion of this investigation?
- On your website your company claims that, "according to the ILO, the only region in the country in which forced labor has ceased is the area in which the Yadana gas pipeline was built" (http://burma.total.com/en/contexte/p_1_1.htm). Will you please verify which representative from the International Labour Organization (ILO) made this statement and when? Please provide a direct quote from the ILO, if possible.
- Please provide information about how many complaints of forced labor you have received in the village "complaint boxes"? Our research indicates that the complaint boxes may no longer exist. Can you please corroborate whether that is true? If they no longer exist, can you please inform us as to why?
- Can you please explain what specific criteria you use to determine which villages fall within your sphere-of-responsibility in the pipeline region?
- If any elements of the socio-economic program have been cancelled, please specify which elements have been cancelled, where, and why? Is this information reflected on your website and in your communications with the general public and shareholders?
- Can you please clarify the status of the chicken and pig programs initiated as part of the socio-economic program?

Thank you very much in advance for your reply and attention to these questions. In your reply, please also feel free to include any other information that you feel may be relevant.

Sincerely,



Ka Hsaw Wa
Executive Director
EarthRights International (ERI)
www.earthrights.org



TOTAL

Exploration & Production

Mr Ka Hsaw Wa
Executive Director
EarthRights International (ERI)

Paris, June 26th , 2009

Dear Mr. Ka Hsaw Wa,

We acknowledge receipt of your letter dated June 12th whereby you ask Total to provide particulars about various issues relating to our activities in the Yadana pipeline area.

We appreciate your interest for our operations and our socio economic programs in Myanmar. As you well know, the situation in Myanmar is very complex and we think it is of major importance to deal with organisations or experts who share our desire to improve the lives of these populations.

We think it is important to assess our activities based on a rigorous and adequate process, establishing facts to be further used with the purpose of measuring the impacts of our socio economic and environmental programs in Myanmar and making them as positive as possible for the neighbouring populations. On our part, we definitely continue to listen closely to the voices of the local communities and to integrate this feedback into our activities.

Unfortunately, our past experience with ERI compels us to note that your reports, as those mentioned in your correspondence, tend to present allegations as facts. In a recent past, we have expressed our regrets that ERI didn't crosscheck their information with ours, prior to its publication.

We also found it disconcerting that facts reported by ERI as having occurred in villages located outside the Yadana pipeline area (such as Law Ther's or Shin La Pi's) were included in your critical study against our partner Chevron ("The Human Cost of Energy) and presented as related to Yadana's activities. From this, it appears that your interest is in showing the situation at its worst, rather than welcoming changes that actually make people's lives better in the area of your concern.

Adresse postale : 2 place de La Coupole - La Défense 6 - 92078 Paris La Défense Cedex
Tél. + 33 (0)1 47 44 45 46

TOTAL S.A.
Société Anonyme au capital de 5 981 907 382,50 euros
Siège social : 2 place de La Coupole - La Défense 6 - 92400 Courbevoie - France
542 051 180 RCS Nanterre

Finally, we do feel concerned by the lack of balanced information which emanates from your reports. Although you say you are well informed about the situation in the pipeline area, you do not mention the work performed by our socio economic teams on the ground nor the overall improvement of living conditions for the 50,000 villagers around our operations, which is acknowledged by people who live in and visit the area.

In the light of the above, we have to consider that you are more interested in harassing our companies, in line with a divestment agenda, than in a real dialogue on how to improve people's lives. You will understand that such agenda is thus incompatible with our desire to contribute to the improvement of our neighbours' daily lives through our effective presence and to prepare the future of this country.

For these reasons, we will not answer your questions in this letter. However, we take them seriously and, as far as we can answer them, will adjust our website in the coming weeks so that it can publicly address these issues.

Besides, we remain open to discuss with you, case by case, and prior to any publication, allegations on Human Rights abuses you may have heard of, so that we can do our part to solve them in the very interest of the populations concerned, as we are already doing in line with our commitment to uphold internationally proclaimed human rights in the scope of our activities in our areas of operations.

I remain at your disposal to examine possible cases with you.

Yours faithfully,

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a series of loops and a long horizontal stroke extending to the right.

Jean-François Lassalle

Total - Vice President Public Affairs E&P

APPENDIX C:

Risks to Companies and Shareholders through Extractive Projects in Burma

No evidence exists that suggests significant oil and gas projects can proceed in Burma without serious human rights and environmental violations. Companies involved in Burma's extractive industries are required to rely on the notorious Burma Army for project security, and various locations in Burma are subject to full-fledged armed conflict between the Burma Army and ethnic armed groups, or ongoing tension between these groups. Local participation in development decisions is virtually non-existent. Beyond the human rights and environmental risks that new projects thus pose to communities in Burma, also unassailable are the unreasonably high material and reputation risks to oil companies and shareholders.

These risks include potential litigation,³⁵⁴ the possibility of expropriation of assets by the Burmese authorities,³⁵⁵ a difficulty in future asset sales,³⁵⁶ the potential for physical sabotage by one of the several and formidable non-state armies in Burma,³⁵⁷ and serious reputation risks that come with partnering with the Burmese military regime.³⁵⁸

Other risks include abusive tax measures by the Burmese regime, abusive trade restrictions inhibiting the investment, abusive regulatory restrictions, and volatile exchange rate fluctuations. Companies can expect to face investor concerns, which could result in a removal of company stock from funds or a large scale sell-off of holdings in the company as well as targeted campaign by activist and local community groups. Companies may also face anti-money laundering sanctions, foreign corrupt practices sanctions, as well as violations of accounting standards.

These risks may damage a company's long-term returns in a number of ways and threaten shareholder value. They would presumably be a significant factor in any responsible company's risk assessment and investment decisions.

ENDNOTES

1. EarthRights International (ERI) & Southeast Asia Information Network, *Total Denial: A Report on the Yadana Pipeline Project in Burma* (June 1996), available at <http://www.earthrights.org/files/Reports/TotalDenial96.pdf> (last visited August 26, 2009); ERI, *Total Denial Continues: Earth Rights Abuses Along the Yadana and Yetagun Pipelines in Burma* (first edition 2001; second edition 2003) available at <http://www.earthrights.org/files/Reports/TotalDenialContinues.pdf> (last visited August 26, 2009).; ERI, *Supplemental Report: Forced Labor Along the Yadana and Yetagun Pipelines* (supplement to *More of the Same: Forced Labor Continues in Burma*) (2001), available at <http://www.earthrights.org/files/Reports/supp.pdf> (last visited August 26, 2009); ERI, *Fueling Abuse: Unocal, Premier & TotalFinaElf's Gas Pipelines in Burma* (2002), available at <http://www.earthrights.org/files/Reports/fuelingabusenglish.pdf> (last visited August 26, 2009).; ERI, *The Human Cost of Energy* (April 2008), available at http://www.earthrights.org/mwt_journal_admin/HCoE_pages.pdf (last visited August 26, 2009)
2. The EIA was obtained through the discovery process in the *Doe v. Unocal Corp.* litigation. This report marks the first time information from the document is analyzed publicly.
3. *"Total Chief: Critics Can 'Go to Hell'"*, THE IRRAWADDY, August 4, 2009, available at http://irrawaddyonline.com/article.php?art_id=16479 (last visited August 26, 2009)
4. Interview #022-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
5. The Yadana consortium partners now include Total (31.24%), Chevron (28.26%), PTTEP (25.5%), and MOGE (15%).
6. See generally "Production Sharing Contract for Appraisal, Development and Production of Petroleum in the Moattama Area Between Myanma Oil & Gas Enterprise and Total Myanmar Exploration & Production" (July 9, 1992), admitted as Ex. 1 in *Doe v. Unocal Corp.*, BC 237980 (Cal. Sup. Ct.) (admitted into evidence Dec. 11, 2003), at 2462-2553.
7. See "Deed of Assignment By and Between Total Myanmar Exploration & Production, Unocal Myanmar Offshore Co. Ltd., PTTEP Int'l Ltd., and the Myanma Oil & Gas Enterprise" (Oct 31, 1995), admitted as Ex. 4F in *Doe v. Unocal Corp.*, BC 237980 (Cal. Sup. Ct.).
8. On the pipeline length, See generally "Export Gas Sales Agreement between Myanma Oil and Gas Enterprise and Total Myanmar Exploration and Production and Unocal Myanmar Offshore Co. Ltd and PTTEP Int'l Ltd. and Petroleum Authority of Thailand" (Feb. 2, 1995), admitted as Ex. 5B in *Doe v. Unocal Corp.*, BC 237980 (Cal. Sup. Ct.) (admitted into evidence Dec. 16, 2003).
9. See *supra* note 1.
10. The first set of cases was brought in the United States against Unocal Corporation in September and October 1996, alleging that Unocal was complicit in the abuse of villagers by the government of Burma. See *John Doe I v. Unocal Corp.*, 395 F.3d 932, 943 (9th Cir. Cal. 2002) (chronicling case history). The second case was filed by Burmese refugees against Total in Belgium on April 25, 2002, alleging company "complicity in crimes against humanity." Business & Human Rights, *Case profile: Total lawsuit in Belgium (re Burma)*, at <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/TotallawsuitinBelgiumreBurma> (last visited August 7, 2009). The third case was brought in France, also against Total, on August 26, 2002 alleging that the company was complicit in forced labor. See *Total to pay Burmese compensation*, BBC, Nov. 29, 2005, available at <http://news.bbc.co.uk/2/hi/business/4482536.stm> (last visited August 27, 2009). The United States and French cases resulted in settlements to be paid to the victims, while

the case in Belgium was dismissed after a Belgian law providing for universal jurisdiction in cases involving serious violations of human rights law was repealed subsequent to the filing of the case. Before the *Doe v. Unocal* settlement, an appeals court held a reasonable jury might find that Unocal and its partners in the Yadana Pipeline joint venture were responsible for aiding and abetting the Burmese junta in the practice of forced labor, murder, and rape. See *Doe v. Unocal*, 395 F.3d 932, 956 (9th Cir. 2002). Total was originally a defendant in the US litigation, but claims against the company were dismissed for lack of personal jurisdiction. *Doe v. Unocal Corp.*, 27 F. Supp. 2d 1174 (C.D. Cal. 1998).

11. *Unocal* Corporation compensated these villagers in 2005 before being acquired by Chevron, which inherited not only Unocal's assets, but also its legal liabilities. Chevron could still face legal liabilities for complicity in ongoing human rights abuses in connection to the Yadana Project. See ERI, *The Human Cost of Energy*, *supra* note 1.
12. See *Why Total Agrees to Compensation in Forced Labor Suit*, THE IRRAWADDY, December 1, 2005, available at http://www.irrawaddy.org/interview_show.php?art_id=5235&page=1 (last visited August 27, 2009).
13. For example, in 2007 Burma Campaign UK launched its "Total Out of Burma" campaign, at <http://www.totaloutofburma.blogspot.com/> (last visited August 7, 2009). See also Letter from Chevron shareholders to David J. O'Reilly, CEO, Chevron Corp., October 25, 2007, available at <http://www.socialfunds.com/pdf/1007/JJS2.pdf> (requesting a meeting to discuss the company's investment in the Yadana Project); The United Steelworkers, *USW Oil Workers Call on Chevron, Total to Withdraw their Investment in Burma*, November 9, 2007, available at <http://legacy.usw.org/usw/program/content/4416.php> (last visited August 27, 2009); Letter from John J. Sweeney, President, AFL-CIO, to David J. O'Reilly, CEO, Chevron Corp., September 28, 2007, available at <http://www.aflcio.org/corporatewatch/capital/upload/JJS%20Letter%20to%20OReilly-Chevron-Burma%209-28-07.pdf> (expressing concern at Chevron's continued investment in Burma) (last visited August 26, 2009); International Federation for Human Rights, *Total pollutes democracy – Stop TOTALitarianism in Burma* (July 2005), available at <http://www.fidh.org/IMG/pdf/mm04062005a.pdf> (last visited August 7, 2009).
14. Interview #043-2009 with community member, in Michaunglaung, Burma (2009). On file with ERI.
15. Interview #044-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
16. International Labour Organization (ILO) Convention (No. 29) Concerning Forced or Compulsory Labour, June 28, 1930, art. 2(1), 39 U.N.T.S. 55 (hereinafter "Forced Labour Convention").
17. See *International Covenant on Civil and Political Rights*, Mar. 23, 1976, , art. 8, 999 U.N.T.S. 171. 164 countries are currently parties to the Covenant (hereinafter "ICCPR"). United Nations Treaty Collection, *International Covenant on Civil and Political Rights*, at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (last visited August 27, 2009). See also *Doe v. Unocal Corp.*, 395 F.3d at 945 (9th Cir. 2002).
18. See e.g. Symeonides, Symeon, *Choice of Law in the American Courts in 2002*, 51 AM. J. COMP. L. 1, 49 (2003) (discussing the *Unocal* litigation).
19. Universal Declaration of Human Rights, art. 4, G.A. Res. 217(A)III, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) (hereinafter "UDHR").

20. Rome Statute of the International Criminal Court, July 17, 1998, , art. 7.1(c), U.N. Doc. A/CONF. 183/9, 37 I.L.M. 1002 (1998).
21. The Union of Myanmar, The State Peace and Development Council, Letter No. 04/Na Ya Ka (U)/Ma Nya, *Subject: Prohibiting Requisition of Forced Labour*, Nov. 1, 2000, available at [http://www.mol.gov.mm/8.Home/##me_link/spdc\(Eng\).pdf](http://www.mol.gov.mm/8.Home/##me_link/spdc(Eng).pdf) (last visited August 27, 2009); *Order Supplementing Order No. 1/99* (Human Rights Foundation of Monland, trans.), Aug. 30, 2001, available at http://www.burmalibrary.org/docs/HUR###s_Forced_Labour_Report.htm (last visited August 27, 2009).
22. *International Labour Organization Declaration on Fundamental Principles and Rights at Work*, para. 2, 86th Session, Geneva (June 1998), available at <http://www.ilo.org/public/english/standards/reim/ilc/ilc86/com-dtxt.htm> (“[a]ll Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely . . . the elimination of all forms of forced or compulsory labour.”) (last visited August 7, 2009).
23. See sources cited *supra* note 1.
24. Interviews (2003-2009). On file with ERI. See also ERI, *The Human Cost of Energy*, *supra* note 1, at 36.
25. Interview #009-2003 with community member, in Zinba, Burma (2003). On file with ERI.
26. Interview #024-2008 with community member, in Michaunglaung, Burma (2008).
27. Interview #013-2008 with community member, in Mile 60 village, Burma (2008).
28. Interview #023-2008 with community member, in Karen Shin Ta Pee (2008).
29. Interview #006-2009 with community member, in Zinba, Burma (2009). On file with ERI. See also ERI, *Yadana Field Report* (July-August 2009). On file with ERI.
30. ERI, *Yadana Field Report*, *supra* note 29.
31. *Id.*
32. *Id.*
33. Interview #009-2003 with community member, in Zinba, Burma (2003), On file with ERI.
34. *Id.*
35. Interview #012-2008 with community member, in Zinba, Burma (2008). On file with ERI.
36. Interview #002-2008 with community member, in Zinba, Burma (2008). On file with ERI.
37. Interview #026-2008 with community member, in Eindayaza, Burma (2008). On file with ERI.
38. ERI, *Yadana Field Report*, *supra* note 29.
39. Interview #04-2008 with community member, in Michaunglaung (old), Burma (2008). On file with ERI.
40. In Burma, *jatropha*, the castor plant, and “physic nuts” are commonly referred to interchangeably. Castor is a distinct species and should not be confused with *jatropha*. See Ethnic Community Development Forum (ECDF), *Biofuel by Decree: Unmasking Burma’s Bio-Energy Fiasco* (2008), at 3.
41. ECDF, *Biofuel by Decree*, *supra* note 40.
42. Interview #022-2007 with community member, in Eindayaza, Burma (2007). On file with ERI.
43. Interview #021-2007 with community member, in Eindayaza, Burma (2007). On file with ERI.
44. Interview #044-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.

45. Interview #007-2008 with community member, in Zinba, Burma (2008). On file with ERI.
46. *Id.*
47. Interview #012-2008 with community member, in Zinba, Burma (2008). On file with ERI.
48. ERI, *Yadana Field Report*, *supra* note 29.
49. Interview #007-2008 with community member, in Zinba, Burma (2008). On file with ERI.
50. *Id.*
51. Interview #044-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
52. Interview #037-2003 with community member, in Zinba, Burma (2003). On file with ERI.
53. *See* Interviews (2007-2009). On file with ERI.
54. Interview #016-2007 with community member, in Law Ther, Burma (2007). On file with ERI.
55. Interview #054-2005 with community member, in Ahlersekan, Burma (2005). On file with ERI.
56. Interview #043-2008 with community member, in Eindayaza, Burma (2008). On file with ERI.
57. Interview #043-2005 with community member, in Kanbauk, Burma (2005). On file with ERI.
58. Interview #037-2003 with community member, in Zinba, Burma (2003). On file with ERI.
59. “[W]here forced or compulsory labour is exacted as a tax, and where recourse is had to forced or compulsory labour for the execution of public works by chiefs who exercise administrative functions, the authority concerned shall first satisfy itself:
 - (a) that the work to be done or the service to be rendered is of important direct interest for the community called upon to do the work or render the service;
 - (b) that the work or the service is of present or imminent necessity;
 - (c) that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work;
 - (d) that the work or service will not entail the removal of the workers from their place of habitual residence;
 - (e) that the execution of the work or the rendering of the service will be directed in accordance with the exigencies of religion, social life and agriculture.” *Forced Labour Convention*, *supra* note 16, art. 10(2).
60. Interviews (2003-2009). On file with ERI.
61. Interview #045-2005 with community member, in Kanbauk, Burma (2005). On file with ERI.
62. Interview #040-2008 with community member, in Singu, Burma (2008). On file with ERI.
63. For more on the Supplemental Understanding, *See* ILO, *Developments Concerning the Question of the Observance by the Government of Myanmar of the Forced Labour Convention*, 1930 (No. 29), No. G.B. 304/5/1/Rev., 304th Sess. (March 2009).
64. Total, http://burma.total.com/en/news/p_5_3.htm (last visited September 2, 2009)
65. *See* archived copy of Total, *Human Rights in Myanmar*, at http://web.archive.org/web/20080113131822/http://burma.total.com/en/contexte/p_1_1.htm (preserving a copy of Total’s website as archived on Jan. 13, 2008).
66. Rajeshree Sisodia, *Burma: Forced Labor by Oil Giant Total*, ISLAM ONLINE, Aug. 12, 2009, available at http://www.islamonline.net/servlet/Satellite?c=Article_C&cid=1248078575959&pagename=Zone-English-Muslim_Affairs%2FMAELayout (last visited Sept. 1, 2009).
67. Total, *Human Rights in Myanmar*, http://burma.total.com/en/contexte/p_1_1.htm (last visited August 30, 2009). The statement was replaced by the following: “Long before the government’s dialog [sic] with the ILO started, Total helped bring about a change in those practices by

clearly and repeatedly demonstrating its opposition to forced labor in response to allegations regarding local incidents that came to Total's attention. This unique position was singled out in 2003, by Ms. Perret-Nguyen, ILO Representative in Yangon, during her mission to the area, when she stated 'I have no evidence of forced labour which would benefit TotalFinaElf.'

68. Rajeshree Sisodia and Andrew Buncombe, *Burmese villagers 'forced to work on Total pipeline,'* THE INDEPENDENT (London), Aug. 14, 2009, available at <http://www.independent.co.uk/news/world/asia/burmese-villagers-forced-to-work-on-total-pipeline-1771876.html> (last visited Sept. 2, 2009).
69. ERI, *Getting it Wrong: Flawed "Corporate Social Responsibility" and Misrepresentations Surrounding Total and Chevron's Yadana Gas Pipeline in Military-Ruled Burma (Myanmar)* (Sept. 2009), at 39-42.
70. Communication with former ILO Officer (March 16, 2009). On file with ERI.
71. Interview #042-2008 with community member, in Yebone, Burma (2008). On file with ERI.
72. Interview #038-2008 with community member, in Michaunglaung (old), Burma (2008). On file with ERI.
73. Interview #005-2008 with community member, in Kaleinaung, Burma (2008). On file with ERI.
74. UDHR, *supra* note 19, art. 13; ICCPR, *supra* note 17, art. 12; International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, art. 5d(i) & (ii), G.A. Res. 2106(XX), Annex, U.N. GAOR, 20th Sess., Supp. No. 14, U.N. Doc. A/6014, 660 U.N.T.S. 195 (hereinafter "CERD"); Convention Relating to the Status of Refugees, July 28, 1951, art. 26, 189 UNTS 150; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *opened for signature* Dec. 18, 1990, arts. 8 & 39, G.A. Res. 45/158, 45, U.N. GAOR Supp. No. 49A at 262, U.N. Doc. A/45/49 (hereinafter "Migrant Workers Convention").
75. Many of the rights enumerated in the UDHR are considered to have crystallized into binding principles of customary international law (CIL). While there is no official list codifying the rights that have been incorporated into CIL, the right to freedom of movement is the subject of numerous widely-ratified international treaties and is guaranteed by the law and practice of many states – strong evidence that it has become a binding norm for all nations to at least some extent. *See, e.g.,* Marco Simons, *The Emergence of a Norm Against Arbitrary Forced Relocation*, COLUM. HUM. RTS. L. REV. 95, 124-129 (noting that, as the subject of a "pattern of human rights treaties," there is "little doubt that some measure of protection for freedom of movement and residence has attained the status of customary international law.>").
76. *See The Human Cost of Energy, supra* note 1, at 29-30 (identifying battalion nos. 25, 104, 273, 282, 401, 402, 403, 404, 405, 406, 407, 408, 409 and 410 as battalions that have operated in the pipeline area and noting that battalion nos. 273 and 282 have been known widely as "Total Battalions"); *See also* Matthew Smith & Naing Htoo, "Energy Security: Security for Whom?" 11 YALE HUM. RTS. & DEV. L.J. 217, 228-230 (2008). #
77. ERI, *Total Denial Continues, supra* note 1, at 72.
78. *See* Interviews (1996-2009). On file with ERI.
79. ERI, *Yadana Field Report, supra* note 29; Interview #043-2008 with community member, in Eindayaza, Burma (2008). On file with ERI.

80. See Christina Fink, *Militarization in Burma's Ethnic States*, 14 CONTEMPORARY POLITICS, 447-462 (2008); See generally ASHLEY SOUTH, ETHNIC POLITICS IN BURMA: STATES OF CONFLICT (Routledge 2008).
81. Interview #043-2008 with community member, in Eidayaza, Burma (2008). On file with ERI.
82. *Id.*
83. See Interviews (2005-2009). On file with ERI.
84. *Id.*
85. See Interviews (1994-2009). On file with ERI. See also Interview #016-2007 with community member, in Law Ther, Burma (2007). On file with ERI
86. Interview #043-2008 with community member, in Eidayaza, Burma (2008). On file with ERI.
87. *Id.*
88. Interview #005-2009 with defective soldier, in Naw Pae Eh, Burma (2009). On file with ERI.
89. Interview #002-2009 with community member, in Eidayaza, Burma (2009). On file with ERI.
90. See UDHR *supra* note 19, art. 17; ICCPR, *supra* note 17, arts. 26 & 27; CERD, *supra* note 74, art. 5(d)(v); Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, art. 16.1(h), 1249 U.N.T.S. 13 (hereinafter "CEDAW"); Convention Relating to the Status of Refugees, *supra* note 74, arts. 13 & 14; Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, arts. 13 & 14, 360 U.N.T.S. 117; Migrant Workers Convention, *supra* note 74, art. 15.
91. ERI, *Total Denial*, *supra* note 1, at 26-28; ERI, *Total Denial Continues*, *supra* note 1, at 100-111; ERI, *The Human Cost of Energy*, *supra* note 1, at 47-48; See also Smith & Htoo, *Energy Security for Whom?*, *supra* note 76, at 237-239.
92. Interview #053-2005 with community member, in Kywetalin, Burma (2005). On file with ERI. See also Interview #055 with community member, in Ya Pu, Burma (2005). On file with ERI.
93. *Id.*
94. Interview #004-2008 with community member, in Michaunglaung (old), Burma (2008). On file with ERI.
95. Interview #045-2005 with community member, in Kanbauk, Burma (2005). On file with ERI.
96. Interview #044-2005 with community member, in Kanbauk, Burma (2005). On file with ERI.
97. Interview #043-2005 with community member, in Kanbauk, Burma (2005). On file with ERI.
98. Interview #024-2007 with community member, in Michaunglaung, Burma (2007). On file with ERI.
99. Interview #018-2007 with community member, in Eidayaza, Burma (2007). On file with ERI.
100. *Id.*
101. Interview #022-2007 with community member, in Eidayaza, Burma (2007). On file with ERI.
102. Interview #036-2008 with community member, in Ohnbinkwin, Burma (2008). On file with ERI.
103. Interview #011-2008 with community member, in Law Ther, Burma (2008). On file with ERI.
104. See UDHR, *supra* note 19, art. 3; ICCPR, *supra* note 17, art. 6; The Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 3(1)(a), 6 U.S.T. 3516, 75 U.N.S.T. 287; Convention on the Rights of the Child, Nov. 20, 1989, art. 37(b), G.A. Res. 25, U.N. GAOR, 44th Sess., Annex, Agenda Item 108, at 12-13, U.N. Doc. A/Res/44/25; See also United Nations Office of the High Commissioner of Human Rights, *Fact Sheet No 11 (Rev. 1), Extrajudicial, Summary or Arbitrary Executions*, available at <http://www.ohchr.org/Documents/Publications/FactSheet11rev.1en.pdf> (last visited Sept. 1, 2009)

105. See, e.g., Restatement (Third) of Foreign Relations Law of the U.S., §702 (“A state violates international law if, as a matter of state policy, it practices, encourages, or condones...the murder or causing the disappearance of individuals”); *Khulumani v. Barclay Nat’l Bank Ltd.*, 504 F.3d 254 (2d Cir. 2007) (recognizing liability of private companies for aiding and abetting state actors to commit violations of customary international law, including extrajudicial killing)
106. ERI, *Yadana Field Report*, *supra* note 29.
107. *Id.*
108. Interview #011-2008 with community member, in Law Ther, Burma (2008). On file with ERI; Interview #020-2007 with community member, in Law Ther, Burma (2007). On file with ERI.
109. Interview #011-2008 with community member, in Law Ther, Burma (2008). On file with ERI.
110. *Id.*
111. *Id.*
112. Interview #007-2008 with community member, in Zinba, Burma (2008). On file with ERI.
113. Interview #011-2007 with community member, in Law Ther, Burma (2007). On file with ERI.
114. See *supra* note 1.
115. Interview #044-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
116. Interview #007-2004 with community member, in Eindayaza, Burma (2004). On file with ERI; Interview #044-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
117. Interview #043-2008 with community member, in Eindayaza, Burma (2008). On file with ERI.
118. ERI, *Yadana Field Report*, *supra* note 29.
119. ERI correspondence with “Yadana Worker” (February 14, 2009). On file with ERI.
120. *Myanmar Trouble in the Pipeline*, THE ECONOMIST, Jan. 18, 1997, at 39 (“The government of Myanmar is contractually obliged to provide access to Total’s corridor and to protect it.”); See also ERI meeting notes with Premier Oil Executives, in London, England (May 1999) (Executives confirmed that security was the responsibility of the Burmese authorities in the production sharing contract). On file with ERI; *A Landmark Case*, THE HINDU, Feb. 2, 2003, available at <http://www.thehindu.com/thehindu/mag/2003/02/02/stories/2003020200100400.htm> (referring to the “Robinson Cable,” a declassified cable sent from the U.S. Embassy in Rangoon to the U.S. Department of State detailing the closeness of security ties between Unocal and the Burmese military on the Yadana pipeline),
121. Interview #100-2008 with community member, in Kaleinaung, Burma (2008). On file with ERI.
122. See generally ERI, *Total Denial*, *supra* note 1.
123. U.S. Department of Labor, *Report on Labor Practices in Burma* (Sept. 1998), available at <http://www.dol.gov/ILAB/media/reports/ofr/burma1998/main.htm> (last visited Sept. 1, 2009).
124. *Id.*
125. ERI, *Total Denial Continues*, *supra* note 1, at 20-21; Smith & Htoo at 228-229.
126. E.g., Interview #037-2003 with community member, in Zinba, Burma (2003); Interview #043-2005 with community member, in Kanbawk, Burma (2005); Interview #010-2007 with community member, in Ya Pu, Burma (2007); Interview #050-2005 with community member, in Kanbawk, Burma (2005). On file with ERI.

127. ERI correspondence with senior-level United Nations official (August 20, 2009). On file with ERI. (“I’ve been told by the companies that they have no choice in this matter [of the Burma Army providing security for the project].”)
128. *Doe v. Unocal Corp.*, 110 F. Supp. 2d 1294, 1301 (C.D. Cal. 2000) (Richardson Decl., Ex. 73 at 13940.).
129. *Id.* (Beach Dep. 129:21).
130. *See, e.g.* ERI communication with Total Investor (June 2, 2009). On file with ERI.
131. Total, *Yadana Project Myanmar: Preliminary Ground Study* (January 1995), at 7. Ironically, the helipad referenced in the EIA and used by the assessment team was very likely one of many constructed for the Yadana Project with forced labor. ERI, *Total Denial Continues*, *supra* note 1, at 70-71.
132. Total, *Frequently Asked Questions*, at <http://burma.total.com/en/ow/faq.htm> (last visited Sept. 1, 2009).
133. For previous documentation, *See supra* notes 1, 128.
134. Interview with “Yadana Worker” (February 16, 2009). On file with ERI.
135. ERI correspondence with “Yadana Worker” (February 2, 2009). On file with ERI.
136. Interview with “Yadana Worker” (February 16, 2009). On file with ERI.
137. *Id.*
138. *See* ERI, *Total Denial Continues*, *supra* note 1, at 84-87.
139. *See, e.g.*, Interview #009-2003 with community member, in Zinba, Burma (2003); Interview #012-2008 with community member, in Zinba, Burma (2008); Interview #002-2008 with community member, in Zinba, Burma (2008). On file with ERI.
140. ERI, *Total Denial Continues*, *supra* note 1, at 88.
141. *Id.* at 88-99.
142. *Id.* at 77-78.
143. *Id.*
144. *Id.* at 75-77.
145. *Id.* at 74-75.
146. *Id.* at 73-74.
147. Interview #006-2008 with defector from battalion #273, in Burma (2008). On file with ERI. (quoted in ERI, *The Human Cost of Energy*, *supra* note 1, at 30).
148. Interview #005-2009 with defector from battalion #282, in Burma (2009). On file with ERI.
149. *Id.*
150. *Id.*
151. *Id.*
152. *Id.*
153. *Id.*
154. Interview #045-2008 with defector from the Burma Navy, in Burma (2008). On file with ERI.
155. *Id.*
156. Interview #022, with community member, Michaunglaung, Burma (2008).
157. *See supra* Note 128 at 1298 (Lipman Dep. at 297:11-24.).
158. *Id.* at 1302 ((Richardson Decl., Ex. 91 at 31738.
159. *Doe v. Unocal Corp.*, 395 F.3d 932, 952-53 (9th Cir. 2002).
160. Total, *Total’s Careful Monitoring*, at http://burma.total.com/en/gazier/p_2_4_2.htm (last visited Sept. 1, 2009).

161. *Id.*
162. Total, *Frequently Asked Questions*, *supra* note 132.
163. See ERI, *The Human Cost of Energy*, *supra* note 1, at 19-23.
164. See *China and Russia Veto US/UK backed Security Council draft resolution on Myanmar*, UN NEWS SERVICE, Jan. 12, 2007, available at <http://www.un.org/apps/news/story.asp?NewsID=21228&Cr=myanmar&Cr1> (last visited Sept. 1, 2009).
165. In 2008, ERI identified at least 69 Chinese multinational corporations involved in at least 90 hydropower, oil and natural gas, and mining projects in Burma. ERI, *China in Burma: The Increasing Investment of Chinese Multinational Corporations in Burma's Hydropower, Oil and Natural Gas, and Mining Sectors* (September 2008), available at http://www.earthrights.org/mwt_journal_admin/China_in_Burma_update_2008.pdf. However, most of these projects have not yet started to generate meaningful amounts of revenue for the SPDC.
166. See e.g. National Coalition Government of the Union of Burma (NCGUB), Human Rights Documentation Unit, *Bullets in the Alms Bowl: An Analysis of the Brutal SPDC Suppression of the September 2007 Saffron Revolution* (Mar. 2008), available at <http://www.burmalibrary.org/docs4/BulletsInTheAlmsBowl.pdf> (last visited Sept. 1, 2009); Human Rights Watch, *Crackdown: Repression of the 2007 Popular Protests in Burma* at 81-89 (Dec. 2007), available at <http://hrw.org/reports/2007/burma1207/burma1207web.pdf> (last visited Sept. 1, 2009).
167. ERI, *The Human Cost of Energy*, *supra* note 1, at 19.
168. Asian Development Bank, 38 KEY INDICATORS 306 (2007), available at http://www.adb.org/Documents/Books/Key_Indicators/2007/pdf/Key-Indicators-2007.pdf (last visited Sept. 1, 2009).
169. William Boot, *Junta's Piggy Bank Full as Economy Sinks*, THE IRRAWADDY, Mar. 1, 2008, available at http://www.irrawaddy.org/print_article.php?art_id=10643 (last visited Sept. 1, 2009).
170. International Monetary Fund (IMF), *Staff Report for the 2008 Article IV Consultation*, Jan. 7, 2009, at 10. This is a confidential report obtained by ERI.
171. ERI, *The Human Cost of Energy*, *supra* note 1, at 20-21..
172. See *infra* Appendix A.
173. In 2008, ERI calculated a Yadana Project daily income of US\$3.5 million and an annual income of US\$1.3 billion (20-21). *The Human Cost of Energy*, *supra* note 1. ERI's new estimates of US\$3 million daily and US\$1.1 billion annually are based on more accurate monthly prices for Singapore Fuel Oil. See Energy Information Administration, *Spot Prices for Crude Oil and Petroleum Products*, available at http://tonto.eia.doe.gov/dnav/pet/pet_pri_spt_s1_d.htm (last visited Sept. 1, 2009), Singapore Fuel Oil spot prices are used under the Gas Sales Export Agreement to calculate the price of Yadana gas. ERI's new estimates also use 2007 Yadana gas output, whereas in *The Human Cost of Energy* ERI used 2006 gas output because 2007 data was not yet available.
174. In 2008, ERI calculated the Burmese regime's 2007 income from Yadana to be US\$969 million. *The Human Cost of Energy*, *supra* note 1 at 21. ERI's new estimate of US\$795 million uses more accurate Singapore Fuel Oil prices and an updated gas output value. See *supra* note 176 and *infra* notes 179 & 180).
175. See *infra*, Appendix A..
176. All told, the SPDC receives nearly 75% of the project income. ERI, *The Human Cost of Energy*, *supra* note 1, at 20. After the cost of production has been deducted (estimated by ERI to be

- 10%), the regime takes a 10% royalty, followed by MOGE's variable 66% share under the Production Sharing Contract. The revenues are then divided among the consortium members according to their shares: Total – 31.25%, Chevron – 28.25%, PTTEP – 25.5%, MOGE – 15%. The regime then extracts a 30% tax on each of these shares. Income figures for 2000-2008 for the SPDC, Total, and Chevron are calculated using the formula outlined above and project income figures cited for Figure 1. *See infra* Appendix A.
177. Annual revenues do not add up to total project income because the cost of production is deducted from total project income before any revenues are taken. Based on media reports, ERI estimated this cost of production to be 10% of total project income. Annual revenues were calculated using the formula outlined in ERI's 2008 report *The Human Cost of Energy*, *supra* note 1, at 55-56. For specifics on the variables and formulas, *See infra* Appendix A.
178. This does not account for revenue generated by the Yetagun Project, which exports gas to Thailand through a pipeline that shadows the Yadana pipeline and is operated by Petronas (Malaysia), Nippon (Japan), PTTEP (Thailand), and MOGE (Burma). *See* 'Destructive Engagement: Premier Oil's Social Report and Burma', John Jackson, The Burma Campaign UK at <http://www.burmacampaign.org.uk/reports/premieraudit.html> (last visited Sept. 1, 2009).
179. IMF Staff Report, *supra* note 173, at 6; Sean Turnell, *Burma Isn't Broke*, WALL STREET JOURNAL, Aug. 6, 2009, available at <http://online.wsj.com/article/SB30001424052970204313604574329181770155154.html> (last visited Sept. 1, 2009).
180. IMF Staff Report, *supra* note 173, at 6. *See also* Amy Kazmin, *Burma gas sales surge but little cash leaks out*, FINANCIAL TIMES (London), May 11, 2009, available at <http://www.ft.com/cms/s/0/795043a4-3dc2-11de-a85e-00144feabdc0.html> (last visited Sept. 1, 2009).
181. Turnell, *Burma Isn't Broke*, *supra* note 179.
182. Confidential ERI sources.
183. Thailand reportedly paid over \$50 million to the Yadana consortium in 1998 and \$260 million in 1999. *See* "Thailand," *Platt's Oilgram News*, Aug. 14, 2000.
184. In this context, ERI regards authoritarian behavior in terms of a government's violence against the population in whole or in part, political repression, human rights abuses, and social neglect.
185. Democratic Voice of Burma (DVB), *No Reduction in Forced Labor, Says ILO*, DVB NEWS, Feb. 27, 2009, available at <http://www.dvb.no/english/news.php?id=2266> (last visited Sept. 1, 2009); Stephanie Nebehay, *ILO: Burma May Use Forced Labor in Cyclone Recovery*, REUTERS, June 2, 2008, available at <http://uk.reuters.com/article/idUKL3057668120080531> (last visited Sept. 1, 2009).
186. *See e.g.* Brian McCartan, *Blowback on Myanmar's Cyclone Disaster*, ASIA TIMES, May 13, 2009, available at http://www.atimes.com/atimes/Southeast_Asia/KE13Ae02.html (last visited Sept. 1, 2009).
187. *See, e.g.,* "Myanmar Efforts to Halt Forced Labour Minimal," REUTERS, June 6, 2009, available at <http://uk.reuters.com/article/idUKTRE5550L520090606> (last visited Sept. 1, 2009); International Human Rights Clinic at Harvard Law School (IHRC), *Crimes in Burma (2009)*, available at www.law.harvard.edu/programs/hrp/documents/Crimes-in-Burma.pdf (last visited Sept. 1, 2009); U.S. Department of State, 2008 Human Rights Report: Burma, February 25, 2009, available at <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119035.htm> (last visited Sept. 1, 2009). Reports on the ongoing human rights abuses in Burma have been published by numerous other organizations, including but by no means limited to Human Rights Watch,

Amnesty International, Human Rights Foundation of Monland (HURFOM), Network for Human Rights Documentation – Burma (ND Burma), Chin Human Rights Organization, The Karen Human Rights Group, Assistance Association for Political Prisoners (Burma), The Shwe Gas Movement, Salween Watch, Shan Women’s Action Network, Free Burma Rangers, Kachin Women’s Association, Thailand, Pa-O Youth Organization, Burmese Women’s Union, Human Rights *Education* Institute of Burma, the Center for Public Health and Human Rights at Johns Hopkins Bloomberg School of Public Health, and the Mae Tao Clinic.

188. See generally, reports by Assistance Association for Political Prisoners (Burma), available at <http://www.aappb.org> (last visited Sept. 1, 2009).
189. See, Matthew Smith & Naing Htoo, *An Industry Blind to People’s Tears*, BANGKOK POST, Sept. 15, 2007, available at <http://www.earthrights.org/files/Burma%20Project/BKKPost%20op-ed%209.15.07.pdf> (last visited Sept. 1, 2009)
190. See sources cited *supra* note 166.
191. Human Rights Watch, *Burma: Referendum is a Sham* (April 2008), available at <http://www.hrw.org/en/news/2008/04/30/burma-referendum-sham> (last visited Sept. 1, 2009).
192. Thailand Burma Border Consortium (TBBC), *Internal Displacement in Eastern Burma* (Oct. 2008), at 14, available at <http://www.tbtc.org/idps/idps.htm> (last visited Sept. 1, 2009).
193. *Id.* at 14, 18-23, 36; See also reports by Free Burma Rangers (FBR), www.freeburmarangers.org/Reports/ (last visited Sept. 1, 2009).
194. UN Special Rapporteur on the Situation of *Human Rights in Myanmar*, *Interim report of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Myanmar*, delivered to the UN General Assembly, para. 83, UN Doc. A/60/221, (2005).
195. Paul SÈrgio Pinheiro, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council: Report of the Special Rapporteur on the situation of human rights in Myanmar*, U.N. GAOR, 4th Sess., Prov. Agenda Item 2, para. 54, U.N. Doc. A/HRC/4/14 (2007)..
196. IHRC, *Crimes in Burma*, *supra* note 190, at 40.
197. Michael Casey, *Aid Groups: 3,000 Villagers Flee Myanmar Shelling* ASSOCIATED PRESS, June 7, 2009, available at http://seattletimes.nwsourc.com/html/nationworld/2009310681_apasmyanmarthailandrefugees.html (last visited Sept. 1, 2009); United Nations Office for the Coordination of Humanitarian Affairs, *Myanmar: Displacement (as of 09 June 2009)*, available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/LPAA-7SUHYR?OpenDocument> (last visited Sept. 1, 2009).
198. Ng Han Guan, *Rebel clashes along China-Myanmar border subside*, ASSOCIATED PRESS, Aug. 30, 2009, available at http://seattletimes.nwsourc.com/html/nationworld/2009767952_apaschinamyanmar.html (last visited Sept. 1, 2009); Daniel Ten Kate, *Myanmar Seizes Rebel-Held Town Near China Oil and Gas Projects*, BLOOMBERG, Aug. 28, 2009, available at http://www.bloomberg.com/apps/news?pid=20601080&sid=aV9DMwJB_Lq0 (last visited Sept. 1, 2009).
199. IMF Staff Report, *supra* note 173, at 4.
200. *Id.* (drawing figures from CIA, *The World Factbook -- Burma*, at <https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html>; UNDP, Human Development Report, available at <http://hdr.undp.org/en/>; World Bank, World Development Indicators, at <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:21725423~pagePK:6>

- 4133150~piPK:64133175~theSitePK:239419,00.html; Myanmar authorities; and IMF staff estimates).
201. See McCartan, *Blowback on Myanmar's Cyclone Disaster*, *supra* note 189.
 202. Center for Public Health and Human Rights at Johns Hopkins Bloomberg School of Public Health & Emergency Assistance Team (Burma), *After the Storm: Voices from the Delta* (March 2009), at 2, available at [http://www.reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/ASAZ-7PRKLM-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/ASAZ-7PRKLM-full_report.pdf/$File/full_report.pdf) (last visited Sept. 2, 2009).
 203. Wai Moe, *Regime Stops Fast-Tracking Visas for Relief Workers*, THE IRRAWADDY BLOG, March 20, 2009, at <http://theirrawaddy.blogspot.com/2009/03/regime-stops-fast-tracking-visas-for.html> (last visited Sept. 2, 2009); *Slow Aid Workers' Visa Process*, ASSOCIATED PRESS, May 12, 2009, available at http://www.straitstimes.com/Breaking%2BNews/SE%2BAsia/Story/STISStory_375803.html (last visited Sept. 2, 2009).
 204. See, e.g., Wai Moe, *Insein Court Sentences 13 More Political Activists*, THE IRRAWADDY, March 24, 2009, available at http://www.irrawaddy.org/article.php?art_id=15360 (last visited Sept. 2, 2009).
 205. See, e.g., *Tarpaulins for Cyclone Nargis affected being sold by authorities*, KACHIN NEWS GROUP, April 30, 2009, at http://www.kachinnews.com/index.php?option=com_content&view=article&id=816:tarpaulins-for-cyclone-nargis-affected-being-sold-by-authorities&catid=1:news&Itemid=50 (last visited Sept. 2, 2009).
 206. Refugees International, *Burma: Capitalizing on the Gains* (March 2009), available at <http://www.refugeesinternational.org/policy/field-report/burma-capitalizing-gains> (last visited Sept. 2, 2009).
 207. ASEAN, *1st Press Release of Tripartite Core Group*, June 24, 2008, available at <http://www.aseansec.org/21691.htm> (last visited Sept. 2, 2009).
 208. Burma Economic Watch, *1st Press Release of Tripartite Core Group*, Feb. 27, 2009, at 2, available at http://www.econ.mq.edu.au/Econ_docs/bew/BEWStatementPONREPP.pdf (last visited Sept. 2, 2009).
 209. *Id.*
 210. See McCartan, *Blowback on Myanmar's Cyclone Disaster*, *supra* note 189.
 211. Medical Emergency Relief International (Merlin). *Cyclone Nargis: One year on - \$47 million funding shortfall for health*, RELIEFWEB, April 30, 2009, available at <http://ocha-gwapps1.unog.ch/rw/rwb.nsf/db900SID/MUMA-7SN8N5?OpenDocument> (last visited Sept. 2, 2009).
 212. Dr. William Sabandar, Remarks at the Burma Update Conference, The Australian National University (ANU), August 17-18, 2009.
 213. Interview #024-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
 214. Interview with "Yadana Worker" (Feb. 16, 2009). On file with ERI.
 215. See ERI, *Getting it Wrong*, *supra* note 69.
 216. *Id.*
 217. Total, *The Socio-Economic Program*, at http://burma.total.com/en/engagement/p_3_1.htm (last visited Sept. 2, 2009).
 218. *Id.*
 219. *Id.*

220. Total, *The Pipeline Region and its Inhabitants*, at http://burma.total.com/en/contexte/p_1_4.htm (last visited Sept. 2, 2009).
221. Total, *The Socio-Economic Program*, *supra* note 220.
222. CDA makes the same claim.
223. Interview #036-2008 with community member, in Ohnbinkwin, Burma (2008). On file with ERI.
224. Press Release, Chevron Corp., Chevron Statement on Myanmar (Oct. 2, 2007), *available at* <http://www.chevron.com/news/press/Release/?id=2007-10-02> (last visited Sept. 1, 2009).
225. *Id.*
226. *Id.*
227. *Id.*
228. *Id.*
229. Total, *Medical and Health Care*, *available at* http://birmanie.total.com/en/engagement/p_3_3_1.htm (last visited Sept. 1, 2009).
230. Interview #017-2007 with community member, in Law Ther, Burma (2007). On file with ERI. Traveling to the Thailand-Burma border is dangerous for villagers along the Yadana pipeline, as it is often prohibited by the Burma Army guarding the Yadana Project. Villagers face violent persecution if discovered to have traveled to the border.
231. Interview #021-2007 with community member, in Eindayaza, Burma (2007). On file with ERI.
232. Interview #012-2008 with community member, in Zinba, Burma (2008). On file with ERI.
233. Interview #043-2008 with community member, in Eindayaza, Burma (2008). On file with ERI.
234. Interview #044-2008 with community member, in Michaunglaung (old), Burma (2008). On file with ERI.
235. Interview #044-2008 with community member, in Michaunglaung (old), Burma (2008). On file with ERI.
236. Total, *Total in Myanmar: a sustained commitment* (2008), *available at* http://burma.total.com/en/publications/sustained_commitment.pdf (last visited Sept. 2, 2009), at 27, 30.
237. Interview #043-2008 with community member, in Eindayaza, Burma (2008). On file with ERI.
238. *See e.g.* Chevron Press Release, *supra* note 227.
239. Total, *Medical and Health Care*, *supra* note 232.
240. Total, *The Pipeline Region and its Inhabitants*, *supra* note 223.
241. $80,898 \text{ consultations} / 365 \text{ days} = 221 \text{ consultations per day}$.
242. $221 \text{ consultations per day} / 10 \text{ doctors} = 22 \text{ consultations per doctor}$.
243. $365 \text{ days per year} / 7 \text{ days per week} = 52 \text{ weeks} \times 5 \text{ days per week} = 260 \text{ work days per year} / 80,898 \text{ medical consultations} = 310 \text{ consultations per day for 5 days per week over the course of 12 months}$.
244. $310 \text{ consultations per day} / 10 \text{ doctors} = 31 \text{ consultations per doctor per day}$.
245. $31 \text{ consultations} / 12 \text{ hours} = 2.58 \text{ consultations per hour}$.
246. *See generally*, ERI, *Getting it Wrong*, *supra* note 69.
247. Total, *Education*, at http://burma.total.com/en/engagement/p_3_3_2.htm (last visited Sept. 2, 2009).
248. *Id.*
249. *Id.*
250. Interview #044-2008 with community member, in Michaunglaung (old), Burma (2008). On file with ERI.

251. *Id.*
252. This right has been recognized in a number of international instruments. *See, e.g.*, ICCPR *supra* note 17, art. 27 (“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture. . . or to use their own language); Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, art. 13(1), Annex to GA Res. 47/135, UN GAOR, 47th Sess., Supp. No. 49, at 210, UN Doc. A/47/49 (Vol. I) (1992) (“Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures . . .”).
253. Interview #038-2008 with community member, in Michaunglaung (old), Burma (2008). On file with ERI.
254. Interview #002-2009 with community member, in Michaunglaung (old), Burma (2009). On file with ERI.
255. Interview #044-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
256. LUC ZANDVLIET & DOUG FRASER, *FIELD VISIT REPORT (SECOND VISIT)* 5 (2003), available at http://www.cdainc.com/cdawww/pdf/casestudy/cep_myanmar_second_visit_field_visit_report_Pdf.pdf (hereinafter “CDA REPORT: SECOND VISIT”).
257. *Id.* at 4 (“Another key activity of the program consists of *Educational* support including constructing schools, providing financial support to teachers, providing teaching materials, and initiating computer classes and a library program. The *Education* program also operates a tutoring program to prepare children for their high school exams (nationally, fewer than 20% pass their exams).”).
258. *Id.* at 5.
259. LUC ZANDVLIET & ANA PAULA DO NASCIMENTO, CDA COLLABORATIVE LEARNING PROJECTS, *FIELD VISIT REPORT (FOURTH VISIT)* 6 (2005), at http://www.cdainc.com/cdawww/pdf/casestudy/cep_myanmar_fourth_visit_field_visit_report_Pdf.pdf (hereinafter CDA REPORT: FOURTH VISIT).
260. *Id.* at 8.
261. CDA REPORT: SECOND VISIT, *supra* note 259, at 4.
262. CDA COLLABORATIVE LEARNING PROJECTS, *FIELD VISIT REPORT (FIRST VISIT)* 7 (2002), at http://www.cdainc.com/cdawww/pdf/casestudy/cep_myanmar_first_visit_field_visit_report_Pdf.pdf (hereinafter CDA REPORT: FIRST VISIT).
263. Total, *Support for Economic Development*, at http://burma.total.com/en/engagement/p_3_3_3.htm (last visited Sept. 2, 2009).
264. *Id.*
265. Prof. Turnell has written extensively on the subject. *See, e.g.*, FIERY DRAGONS: BANKS, MONEYLENDERS AND MICROFINANCE IN BURMA, (2009); *Burma’s economy 2008: Current situation and prospects for reform*, in MYANMAR’S ECONOMY (A. Ahmed ed., 2009) (forthcoming); *Economic Development in Burma: Where to Now?*, Presented at conference entitled “Burma Review: Nation Building, Human Security, Sustainable Development, Civil Society and Peaceful Co-existence,” Aichi Gakuin University, Nagoya, Japan, (March 13-15, 2009).
266. Correspondence with Sean Turnell (July 19, 2009). On file with ERI.

267. *Id.*
268. *Id.*
269. *Id.*
270. *Id.*
271. *Id.*
272. *Id.*
273. *Id.*
274. Interview #022-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
275. Interview #041-2008 with community member, in Eindayaza, Burma (2008). On file with ERI.
276. Interview #024-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
277. Interview #025-2008 with community member, in Thechaung, Burma (2008). On file with ERI.
278. Interview #036-2008 with community member, in Ohbingwin, Burma (2008). On file with ERI.
279. *Id.*
280. *Id.*
281. *Id.*
282. Interview #036-2008 with community member, in Ohbingwin, Burma (2008). On file with ERI.
283. Interview #022-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
284. Interview #001-2008 with community member, in Eindayaza, Burma (2008). On file with ERI.
285. Interview #024-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
286. Interview #024-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
287. Interview #027-2008 with community member, in Kanbawk, Burma (2008). On file with ERI.
288. Interview #041-2008 with community member, in Eindayaza, Burma (2008). On file with ERI.
289. Interview #024-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
290. Interview #024-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
291. Interview #025-2008 with community member, in Ghechaung, Burma (2008). On file with ERI.
292. Daewoo International, for example, has privately told ERI and the Shwe Gas Movement (SGM) that job creation is one of their key contributions to the society and economy in Burma. ERI and SGM meeting with Daewoo International, in Seoul, South Korea (Oct. 28, 2008). Notes on file with ERI.
293. See Total, *Job Creation and Technology Transfer*, at http://burma.total.com/en/engagement/p_3_5_1.htm (last visited Sept. 2, 2009).
294. Asian Development Bank, *Greater Mekong Subregion: B1: Implementation of the Yadana-Ratchaburi (Myanmar-Thailand) Gas Pipeline Project*, available at http://www.adb.org/gms/pp_b1.asp (last visited Sept. 2, 2009).
295. ERI, *The Human Cost of Energy*, *supra* note 1, at 20.

296. See Eric Watkins, *China, Myanmar Sign Oil Pipeline Agreement*, OIL & GAS JOURNAL, June 19, 2009. Daewoo International reports that it will invest US\$1.68 billion in the Shwe Project. See Daniel Ten Kate, *Myanmar Seizes Rebel-Held Town Near China Oil and Gas Projects*, BLOOMBERG, Aug. 28, 2009.
297. See Arakan Oil Watch (AOW), *Blocking Freedom: A Case Study of China's Oil and Gas Investment in Burma* (2008), at 35, available at <http://www.oilwatch.org/doc/paises/birmania/BlockingFreedom.pdf> (last visited Sept. 2, 2009); See generally, SGM, *Supply and Command* (July 2006), available at <http://www.shwe.org/media-releases/publications/file/SUPPLYANDCOMMAND.pdf> (last visited Sept. 2, 2009).
298. According to noted industry analysts, "exploration and production is a technically intensive process that generally does not generate many jobs for unskilled workers." David Waskow & Carol Welch, *The Environmental, Social, and Human Rights Impacts of Oil Development*, in COVERING OIL: A REPORTER'S GUIDE TO ENERGY AND DEVELOPMENT 101, 102 (Svetlana Tsalik & Anya Schiffrin eds. 2005).
299. Interview #004-2008 with community member, in Michaunglaung (old), Burma (2008). On file with ERI.
300. Interview #027-2008 with community member, in Kanbauk, Burma (2008). On file with ERI.
301. Interview #036-2008 with community member, in Ohbingwin, Burma (2008). On file with ERI.
302. According to CDA, "MOGE has the right to approve all new staff." CDA REPORT: FIRST VISIT, *supra* note 265, at 5.
303. Interview #002-2008 with community member, in Michaunglaung (old), Burma (2008). On file with ERI.
304. IMF Staff Report, *supra* note 173, at 1.
305. *Id.* at 7.
306. Han Tin, *Myanmar Education: Challenges, Prospects and Options*, in DICTATORSHIP, DISORDER AND DECLINE IN MYANMAR 113, 120 (Monique Skidmore & Trevor Wilson eds., 2008).
307. Total, *The Allegations and Total's Response*, at http://burma.total.com/en/controversie/p_4_1.htm (last visited Sept. 2, 2009).
308. Total's net profit in 2008 was approximately US\$18 billion. See *Total Oil Group Reports Record Profits*, AGENCE FRANCE-PRESSE, Feb. 12, 2009, available at <http://www.france24.com/en/20090212-total-oil-group-reports-record-oil-profits-> (last visited Sept. 2, 2009). Chevron's net profit in 2008 was US\$ 23.9 billion. See Chevron Corporation, Form 10-K for the fiscal year ended Dec. 31, 2008, submitted to United States Security and Exchange Commission, at FS-2, available at <http://www.sec.gov/Archives/edgar/data/93410/000089161809000054/f50714e10vk.htm> (last visited Sept. 2, 2009).
309. Total, *Frequently Asked Questions*, at <http://burma.total.com/en/ow/faq.htm> (last visited Sept. 2, 2009).
310. Press Release, Total, *As International Aid Arrives, Total E&P Myanmar Delivers Tangible Results* (June 11, 2008), at http://birmanie.total.com/en/news/p_5_9.htm (last visited Sept. 2, 2009); Press Release, Chevron Corp., *Chevron Contributes \$2 Million to Myanmar Cyclone Relief* (May 9, 2008), available at <http://www.chevron.com/news/press/release/?id=2008-05-09> (last visited Sept. 2, 2009).
311. See ERI, *The Human Cost of Energy*, *supra* note 1, at 19-23; See also *supra* Part III.

312. Total, *Corporate Social Responsibility Report 2003: Sharing Our Energies*, at 115, available at http://www.total.com/static/en/medias/topic1606/CSR_GB_20031.pdf (last visited Sept. 2, 2009).
313. DVB, *No Reduction in Forced Labor, Says ILO*, *supra* note 1##.
314. *Myanmar Efforts to Halt Forced Labour Minimal*, *supra* note 190.
315. *Id.*
316. *Id.*; DVB, *No Reduction in Forced Labor, Says ILO*, *supra* note 188; Nebehay, *ILO: Burma May Use Forced Labor in Cyclone Recovery*, *supra* note 188.
317. ERI correspondence with “Yadana Worker” (Feb. 16, 2009). On file with ERI.
318. ERM, *Environmental Preliminary Ground Study, Yadana Project, Myanmar* (January 1995), “The Final Part of the Routes Near Ban-I-Tong.” On file with ERI (hereinafter “*Yadana EIA*”).
319. *Id.*
320. ERM, *About Us: Delivering sustainable solutions globally*, at <http://www.erm.com/About-Us/> (last visited Sept. 2, 2009).
321. See DAVID HUNTER ET AL. INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 366 (1998); R.K. JAIN ET AL., ENVIRONMENTAL ASSESSMENT 6, 8 (1993).
322. See, e.g., Maki Tanaka, *Lessons from the Protracted MOX Plant Dispute: A Proposed Protocol of Marine Environmental Impact Assessment to the United Nations Convention on the Law of the Sea*, 25 MICH. J. INT’L L. 337, 353 (2004); Kevin R. Gray, “International Environmental Impact Assessment: Potential for a Multilateral Environmental Agreement,” 11 COLO. J. INT’L L. & POL’Y 83, 89 (2000); Erika L. Preiss, *The International Obligation to Conduct an Environmental Impact Assessment: The ICJ Case Concerning the Gabčíkovo-Nagymaros Project*, 7 N.Y.U. ENVTL. L.J. 307, 308 & n.6 (1999). See also HUNTER ET AL., INTERNATIONAL ENVIRONMENTAL LAW AND POLICY *supra* note 325, at 367; David A. Wirth, *The Rio Declaration on Environment and Development: Two Steps Forward and One Back, or Vice Versa?*, 29 GA. L. REV. 599, 629 (1995); Alexandre S. Timoshenko, *The Problem of Preventing Damage to the Environment in National and International Law: Impact Assessment and International Consultations*, 5 PACE ENVTL. L. REV. 475, 480 (1988).
323. See generally PETER MORRIS & RIKI THERIVEL, METHODS OF ENVIRONMENTAL IMPACT ASSESSMENT, (3d ed. 2009).
324. *Yadana EIA*, *supra* note 321, Table 1 in “Yadana Project: Summary Evaluation of Pipeline Route Options.”
325. See ERI, *Total Denial Continues*, *supra* note 1, at 139-148..
326. According to John Ruggie, “It is important to understand how business activity impacts human rights, so that those who are most directly involved and affected...can intervene to enhance positive effects, avoid or mitigate negative impacts and risks, and contribute to the fulfillment of human rights.” *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises – Human rights impact assessments – resolving key methodological questions*, U.N. GAOR, Hum. Rts. Council, 4th Sess., Prov. Agenda Item 2, at 3, U.N. Doc. A/HRC/4/74 (2007). See also Rights & Democracy, *Human Rights Impact Assessments for Foreign Investment Projects: Learning from Community Experiences in the Philippines, Tibet, the Democratic Republic of Congo, Argentina, and Peru* (2007).

327. Some consider the SIA as integral to the EIA process, while others consider it a separate process altogether. See MORRIS & THERIVEL, *supra* note 327, at 23. The SIA is a well-defined and widespread tool for determining the social impact of development projects. See Tarek Maassaraani et al., *Extracting Corporate Responsibility: Towards a Human Rights Impact Assessment*, 40 CORNELL INT'L L.J. 135, 147 (2007); NOAA Technical Memorandum, Interorganizational Committee on Guidelines and Principles for Social Impact Assessment, Guidelines and Principles for Social Impact Assessment (May 1994), available at <http://www.st.nmfs.noaa.gov/tm/spo/spo16.pdf> (last visited Sept. 2, 2009).
328. The companies also failed to conduct human rights monitoring or a human rights impact assessment. In 1994, Unocal purported to have investigated the human rights situation in the pipeline corridor, claiming it found no abuses and that allegations of human rights abuses were “definitely not true.” Specifically, the company claimed that through “aerial surveys, including videotape” they were able to confirm that there were no adverse human rights impacts from the Yadana Project. In tragic irony, as ERI documented, the visit of the assessment team itself resulted in forced labor: a helicopter landing pad used by the Unocal assessment team was constructed with forced labor. See ERI, *Total Denial Continues*, *supra* note 1, at 70-71.
329. ERI, *Total Denial*, *supra* note 1, at 14-15, 28; ERI, *Total Denial Continues* (2nd Ed. 2003): 103-107, 111-114; ERI, *The Human Cost of Energy*, *supra* note 1, at 47-48. See also Smith & Htoo, *supra* note 76, at 238, 242, 243.
330. *Yadana EIA*, *supra* note 321, “Yadana Project: Summary Evaluation of Pipeline Route Options.”
331. See ERI, *Total Denial Continues*, *supra* note 1, at 143-48 and 152-59.
332. ERI correspondence with “Yadana Worker” (2009). On file with ERI.
333. *Yadana EIA*, *supra* note 321, “Human Access.”
334. *Id.*
335. *Id.*
336. Interviews and *Yadana Field Reports* (1996-2009). On file with ERI.
337. *Yadana EIA*, *supra* note 321, “The Final Part of the Routes Near Ban-I-Tong.”
338. ERI, *Total Denial Continues*, *supra* note 1, at 154 (quoting interview with a Burmese soldier).
339. Interview #040-2008 with community member, in Singu, Burma (2008). On file with ERI.
340. ERI, *Yadana Field Report*, *supra* note 29.
341. *Id.*
342. *Id.*
343. Interview #042-2005 with community member, in Ya Pu, Burma (2005). On file with ERI.
344. Interview #012-2003 with community member, in Michaunglaung (new), Burma (2003). On file with ERI.
345. *Id.*
346. Interview #020-2007 with community member, in Law Ther, Burma (2007). On file with ERI.
347. *Id.*
348. *Id.*
349. Interview #024-2007 with community member, in Michaunglaung (old), Burma, (2007). On file with ERI.
350. Interview #003-2009 with community member, in Michaunglaung (old), Burma (2009). On file with ERI.

351. Both western and Asian corporations operating in Burma's oil and gas sector have had negative human rights and environmental impacts. See ERI and SGM et al., *Complaint to the South Korean National Contact Point Under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises: Regarding Natural Gas Development by Daewoo International and KOGAS in Burma (Myanmar)* (October 29, 2008), available at <http://www.earthrights.org/files/Burma%20Project/Shwe/OECDComplaint10.29-ENGLISH.pdf>;] AOW, *Blocking Freedom*, *supra* note 303; SGM, *Supply and Command*, *supra* note 303; Pa-O Youth Organization, *Robbing the Future: Russian-Backed Mining Project Threatens Pa-O Communities in Shan State, Burma* (June 2009), available at [http://www.burmalibrary.org/docs07/Robbing_the_Future\(en\).pdf](http://www.burmalibrary.org/docs07/Robbing_the_Future(en).pdf) (last visited Sept. 2, 2009).
352. This recommendation is apolitical. It is evidence-based and rights-based, drawing on a formidable body of firsthand research and documentation collected by ERI and others since 1994, much – but not all – of which has been cited extensively in this report. This research is available at http://www.earthrights.org/campaignfeature/yadana_pipeline.html and <http://www.earthrights.org/publications>. For other recent reports on the harmful impacts of oil and gas development in Burma, See Human Rights Foundation of Monland (HURFOM), *Laid Waste: Human Rights Along the Kanbauk to Myaing Kalay Gas Pipeline* (May 2009), available at <http://rehmonnya.org/data/Laid-Waste.pdf> (last visited Sept. 2, 2009); AOW, *Blocking Freedom*, *supra* note 303; SGM, *Supply and Command*, *supra* note 303.
353. See IHRC, *Crimes in Burma*, *supra* note 190, at 74 (calling for a U.N. Security Council commission of inquiry into crimes against humanity and war crimes and documenting “a *prima facie* case for the existence of violations amounting to possible crimes against humanity and war crimes.”)
354. See ERI, *Legal Programs*, at <http://www.earthrights.org/legal/>
355. The Burmese regime is widely known to be an unreliable and authoritarian business partner. According to an anonymous source working at a high-level in the energy sector for a Southeast Asian nation-state, “The Myanmar junta are unreliable liars and totally irresponsible.” ERI correspondence (May 18, 2009). On file with ERI.
356. The Canadian firm Ivanhoe transferred its assets in Burma to an independent trust on February 7, 2007, tasked with selling the assets. At the time of writing, the assets have not been sold; and in 2005, Unocal's sale of its share in the Yadana Project to Chevron was marred in controversy. See *Myanmar: Caveat emptor*, Energy Compass, April 15, 2005.
357. The Yadana Project, for example, was attacked several times by local resistance using 62mm single-use rocket launchers, 107mm rockets, 79mm mortars, and small arms fire from M16 and AK-47 assault rifles. The Burma Army providing security for the companies and the project responded with characteristic brutality, burning nearby villages to the ground. Numerous villagers unconnected to the attacks were arrested, tortured, and executed with impunity by pipeline security battalions for their suspected involvement. See ERI, *Total Denial*, *supra* note 1, at 15-18; ERI, *Total Denial Continues*, *supra* note 1, at 40-41, 116-117.
358. See, e.g., sources cited *supra* note 13 about public campaigns launched over concerns about Chevron and Total's links to human rights abuses in Burma.