

TOTAL DENIAL

A Report on the Yadana Pipeline Project in Burma

by

EarthRights International (ERI)

and

Southeast Asian Information Network (SAIN)

July 10, 1996

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Preface

The following report, *Total Denial*, examines and assesses the impact of a major transnational investment scheme in Burma--the Yadana natural gas pipeline project--in terms of its effect on human rights, the environment and internal Burmese political processes. Produced by EarthRights International (ERI) and the Southeast Asian Information Network (SAIN), the report is based largely on extensive new eyewitness and victim testimony. An advance draft was issued in Burma's capital, Rangoon, on May 30, 1996, in response to government crackdowns on dissident political leaders and the escalating debate over foreign investment in the country. It is the first report of its kind to have been released from within Burma.

July 10, 1996, marks the one-year anniversary of the release of political prisoner and Nobel Peace Prize winner Daw Aung San Suu Kyi. She is a leader of the democracy movement in Burma and spent six years under house arrest for questioning the ruling military regime's legitimacy and criticizing its human rights record. This report is being issued now to commemorate the release of Daw Aung San Suu Kyi and to support all those who decry Burma's military junta, the State Law and Order Restoration Council (SLORC).

Total Denial catalogues the systematic human rights abuses and environmental degradation perpetrated by SLORC as the regime seeks to consolidate its power base in the gas pipeline region. Further, the report shows that investment in projects such as the Yadana pipeline not only gives tacit approval and support to the repressive SLORC junta but also exacerbates the grave human rights and environmental problems in Burma.

The report's primary source information--testimony of victims and witnesses of human rights violations--is original. All secondary sources have also been independently confirmed by ERI and SAIN. The research indicates that gross human rights violations, including summary executions, torture, forced labor and forced relocations, have occurred as a result of natural gas development projects funded by European and North American corporations. In addition to condemning transnational corporate complicity with the SLORC regime, the report also presents the perspectives of those most directly impacted by the foreign investment who for too long have silently endured the abuses meted out by SLORC for the benefit of its foreign corporate partners.

Total Denial breaks the silence, and its message is clear. As Daw Aung San Suu Kyi and her pro-democracy colleagues in Rangoon risk arrest, detention, torture and death to speak out against SLORC's repressive policies, voices from the Yadana gas pipeline region echo the calls for justice, human rights and freedom. To every advocate of the most basic of human rights, and especially to the peoples of Burma, total denial is no longer acceptable.

EarthRights International
Southeast Asian Information Network
July 10, 1996

Acknowledgements

Many people deserve recognition for making this report a reality. In particular, we would like to thank all of the individuals from the pipeline region and elsewhere in Burma who willingly placed themselves in danger in order to have their testimony and perspectives heard. Similarly, this report would not have been possible without those who took enormous risks to document and record these testimonials and other information. Unfortunately, the situation in Burma today still dictates that we refrain from mentioning these individuals by name. In addition, we would like to thank Ed Lester for editing and Shan Lay for helping with our computer problems, cooking us meals at all hours of the day and tolerating our endless requests. Our interns also deserve a special thanks for re-typing the report when our computers crashed as well as for their editing and substantive feedback. Finally, we would like to recognize the echoing green Foundation, the Soros Foundation, EarthTrust and the Threshold Foundation as well as all of our friends and supporters who have made this report possible.

EarthRights International
Southeast Asian Information Network
July 10, 1996

The National Council of the Union of Burma, which is composed of elected MP's from the 1990 election, representatives from the Democratic Alliance of Burma (DAB), National Democratic Front (NDF), National League for Democracy--Liberated Area (NLD-LA), would like to express its appreciation of this report which has been prepared by EarthRights International (ERI) and the Southeast Asian Information Network (SAIN).

The Burmese opposition has been documenting and reporting the abuses of the Burmese people in the pipeline region and in the whole country that have been caused by the projects of Total, Unocal, Texaco and other oil companies. We are also exposing the State Law and Order Restoration Council's (SLORC's) self-interested business contacts.

This joint effort by SAIN and ERI well documents the clear situation of the Burmese people in the country. We believe that this report paints a clear picture of people struggling for democracy and human rights in Burma and the complicity between transnational business and companies and the SLORC.

The NCUB has adopted its basic principles regarding the exploration, production and selling of natural resources as follows:

- 1 Natural resources in Burma are owned by the Burmese people and it shall be the benefit of the whole people;
- 2 Only the democratically-elected government can explore, produce and sell the state's natural resources;
- 3 Environmental concerns and protections shall be taken into account in the process of exploration, production and selling of natural resources;
- 4 No human rights abuses shall be practised;
- 5 The consent of local people shall be acquired and the compensation and other rights shall be guaranteed;
- 6 During the process of exploration, production and selling of natural resources, labor rights shall be guaranteed according to the international norms and standards.

The NCUB has on previous occasions stated its request to the foreign companies not to invest in Burma until and unless the democratic government is allowed to fulfil its obligations endorsed by the Burmese people.

Burma is an impoverished country and it, of course, needs international assistance in order to develop its people. However, the assistance should be at the right time and considered only if it sincerely assists development for the people.

We wish to clarify that our motive for this critical approach towards the international oil industry is not through jealousy but because it is not the right time to be investing in Burma. Foreign investments will be welcomed by the Burmese people when the

democratic government is formed, and when people have freedom of expression and an independent, just legislature.

The benefits of development should be for the people but during this period of time under military rule of the SLORC, not only have we lost our rights to enjoy the privilege of development, but also the right to express our opinions about it. The past times of the Burmese people have been lost, their present time ruined, and the future is missing. The cause of all these tragedies is the abuses against the Burmese people all in the name of power for the SLORC.

We hereinafter would like to reiterate our call for the international communities and multinational foreign companies to wait and hold their investments in Burma until the democratic government is formed and is allowed to give protection, rights and benefits to all Burmese people.

Once again we express our heartfelt thanks to ERI and SAIN for exposing the oppression of the Burmese people within their country.

Let us forge ahead to expose the truth which has been lost in obscurity.

Tin Aung
Secretary General
NCUB
May 14, 1996

ENVIRONMENTAL RIGHTS ACTION (ERA)

**236, Urelu-Lagos Road
Benin City, Nigeria**

Solidarity Message to the Oppressed Peoples of Burma

As members of the legal defense team for Ken Saro-Wiwa -- the man who died for his non-violent struggle against dictatorship and its corporate sponsors in Nigeria -- we send this message of support and solidarity to the people of Burma who persevere in their own struggle against these forces.

Today we in Nigeria remember you even in the face of mounting dictatorship in our country. We remember you because we are people equally brutalised by a barbaric dictatorship. We remember you because we know that this dictatorship is supported by a multi-national oil corporation. We remember you because the greed to exploit this oil resource has devastated our environment, as well as yours, impoverished local and indigenous peoples, encouraged violence and military dictatorship as well as undermined democracy.

In our common agony we remind you that you are not alone in this struggle. We remind you to remain steadfast in the struggle against evil in your country. Many people have died and many more may lose their lives, but you must note that none of this evil will go unpunished and that no dictatorship, no matter how brutal, has ever triumphed over oppressed people in history.

We look forward to the new dawn when all multi-national oil corporations such as SHELL, in Nigeria, and TEXACO, UNOCAL and TOTAL in Burma, which have allied with evil regimes, shall repent from their evil ways or crumble.

Solidarity forever.

Oronto Douglas
Ongeagucha Uche
Chief Field Officer
Chief Campaign Officer

Quito, 29th April 1996

OPEN LETTER TO THE PEOPLE OF BURMA

We, the members of the OILWATCH, an international network of environmental, human rights and religious organizations formed this coalition to resist the activities of the oil companies in tropical areas. We would like to express our support to the Burmese people who are resisting the activities of oil companies in their motherland.

We wish to point out in particular the activities of the American companies UNOCAL and TEXACO who are building a pipeline in the Martaban Gulf, and operating both the Yadana and Yetagon offshore gas fields. The impact of these projects are adding more human rights abuses and environmental damage to a people already living under great oppression.

The oil activities of UNOCAL and TEXACO in Burma do not benefit the local people in the country, but support the anti-democratic regime of the State Law and Order Restoration Council (SLORC), that was born in a bloody massacre of pro-democratic demonstrators in 1988.

We want to tell the people of Burma that you are not on your own in your struggle. Millions of people around the world are facing the impacts of oil exploitation and through our co-ordinated efforts we will be able to address this long term of exploitation together.

We are together in this struggle,

Esperanza Martinez.
OILWATCH CO-ORDINATOR.

Acronyms and Terms

ABSDF	All Burma Students' Democratic Front
BSPP	Burma Socialist Programme Party
EGAT	Electricity Generating Authority of Thailand
EIA	Environmental Impact Assessments
ERI	EarthRights International
GSP	Generalised System of Preferences
ILO	International Labour Organization
KNLA	Karen National Liberation Army
KNU	Karen National Union
LIB	Light Infantry Battalion
MOGE	Myanma Oil & Gas Enterprise
MNLA	Mon National Liberation Army
NCUB	National Council of the Union of Burma
NCGUB	National Coalition Government of the Union of Burma
NGO	Nongovernmental Organization
NLD	National League for Democracy
NMSP	New Mon State Party
PTT	Petroleum Authority of Thailand
SAIN	Southeast Asian Information Network
SLORC	State Law and Order Restoration Council
TNC	Transnational Corporation
UMEH	Union of Myanmar Economic Holdings
UN	United Nations

District/Township	Administrative unit larger than a town or village ¹
Division	Administrative unit larger than a district, e.g. Tenasserim ¹
Kyat	Burmese currency ²
Village/Town	The centerpiece of rural society in Burma ¹
Villageship	The center of a village cluster ¹

1. The administrative structure in Burma is often quite confusing. For purposes of this report, the following designations have been made. The village is the center of rural society. Small villages normally make up a village cluster which is known by the name of the largest nearby village, villageship or town, e.g. Kanbauk or Ye Byu. The next largest administrative unit is the district or the township level, e.g. Ye, Tavoy or Ye Byu. Note that a district can have the same name as a town or village in the district, e.g. Ye Byu. Several districts then make up a division, e.g. Tenasserim division.

2. The official SLORC exchange rate is six kyat to one U.S. dollar. In the shadow economy on the black market, however, one U.S. dollar is worth between 120 and 130 kyat. In the Tenasserim region through which the pipeline will pass, a standard daily wage for an unskilled worker is between 150 and 200 kyat a day.

Introduction

When Burma achieved independence from Great Britain in 1948 after some sixty years of colonial rule, the country had vast potential for growth and development. The largest nation in mainland Southeast Asia, Burma was and is one of the most fertile and resource-rich countries in the region. Although internal disputes and rebellions in ethnic areas plagued the newly independent country, the post-colonial civilian government gained some measure of multi-party parliamentary democracy for Burma.

In 1962, however, the Burmese armed forces seized power in a coup d'etat led by General Ne Win. Ne Win deposed the elected Prime Minister U Nu and replaced democratic institutions with a military-dominated bureaucracy. Ne Win also outlawed all political parties save his own, the Burma Socialist Programme Party (BSPP). In addition, he nationalized nearly every aspect of public and economic life and isolated the country from the outside world, banning the free press and even turning away from the international Non-Aligned Movement, of which Burma had been a founding member. The ill-conceived BSPP economic program, the "Burmese Way to Socialism," led to stagnation of production, and the resulting shortages gradually forced the country into economic ruin.

Although there had been occasional, localized protests throughout the period of military rule, they invariably met with arrests and killings. But in 1988, after their once-prosperous nation had sunk to "Least Developed Country"¹ status, the people of Burma staged massive non-violent demonstrations all over the country. They demanded democracy, human rights, economic freedom and an end to 26 years of single-party rule under the BSPP. The response from the dictatorship was decisive and brutal as thousands of unarmed demonstrators were massacred; pro-democracy leaders were executed or incarcerated without trial, and political oppression deepened throughout the country. Dissent was forbidden and punishments were severe. Many who were arrested during this period were tortured, and an unknown number died in detention.

On September 18, 1988, the ruling military elite reorganized themselves and declared a new regime, the State Law and Order Restoration Council (SLORC). Martial law was imposed and Burma's name was changed to Myanmar. The new junta was condemned both domestically and abroad for its brutal crackdown, thus reinforcing Burma's status as an international pariah. The regime did, however, announce that multi-party elections would be held under its own mandate on May 27, 1990. Nonetheless, martial law remained in force, and the world community responded by freezing or cutting aid money, and most invitations to invest in the dictatorship were met with scorn.

With the announcement of multi-party elections, 93 active political parties sprang up in Burma to challenge the military. The main opposition party, the National League for Democracy (NLD), was founded by U Tin Oo, a former BSPP general, and Daw Aung San Suu Kyi, the daughter of Burma's foremost independence hero, General Aung San. But SLORC belied its willingness to facilitate fair elections by intimidating, arresting or torturing these and other political activists. Daw Aung San Suu Kyi, the most popular candidate, was harassed by army units throughout many months of campaigning. On July

20, 1989, she was placed under house arrest and her candidacy was subsequently barred. The 1990 elections still occurred, however, and took place under conditions that are acknowledged to have been free and fair. The people of Burma voted overwhelmingly for the NLD: of the 474 parliamentary seats, 392 were captured by the NLD with only eleven going to the military's National Unity Party. SLORC, believing that they would win many more seats, had planned to create a coalition with elected members of the NLD in which they would assert control. The NLD's resounding victory made this impossible. Desperate to stay in power, SLORC refused to honor the elections or to transfer power to the winning party, instead placing NLD joint vice-chairs U Tin Oo and U Kyi Maung under arrest and intensifying its campaign of repression against the pro-democracy movement throughout the country. In the face of mounting arrests and executions, many elected officials and NLD supporters fled to the rebel-held Thai/Burmese border.

On March 15, 1995, U Tin Oo and U Kyi Maung were released from jail, and on July 10, 1995, Daw Aung San Suu Kyi was released from house arrest as well. This raised hopes that SLORC would finally allow the 1990 elected officials to assume power, or that the regime would at least begin a dialogue--long called for by the NLD--which could lead to a transitional phase of power-sharing. But the political situation did not change after the releases, and Burma today is still a country of terror and totalitarian control. It is in this context that several international oil companies have chosen to invest with the generals. Their flagship project is a natural gas pipeline through the Tenasserim region of Burma to Thailand.

1. "Least Developed Country" (LDC) status is normally conferred by the United Nations on countries which suffer severe overpopulation, war, drought and pestilence. Most experts agree, however, that in the case of Burma, economic ruin has resulted from gross misgovernance and rampant corruption. LDC status generally qualifies nations for increased direct aid and more generous loans from developed nations and international financial institutions such as the World Bank and the International Monetary Fund (IMF). In Burma's case, however, the World Bank and IMF have refused to issue such loans because of the political crisis in the country.

Executive Summary

The Yadana Natural Gas Pipeline Investment Project

The Yadana natural gas pipeline project now underway in Burma has become the focal point of domestic and international debate over the acceptability of foreign investment in the country. Because the country's ruling military regime, the State Law and Order Restoration Council (SLORC), has been internationally condemned both for egregious human rights abuses and its refusal to cede power to Burma's democratically elected government, the ethics of any investment with such a regime have sparked considerable controversy. Thus, the Yadana pipeline project, backed by French, Thai and United States companies, has raised serious concerns about human rights, international environmental standards, corporate responsibility and the rights of indigenous peoples to control and exploit the resources in their traditional lands. *Total Denial* explores these issues through extensive documentation and testimonies and comes to several startling conclusions.

The Consortium: SLORC is a junta of generals which wields absolute power in Burma. Unocal (United States) and Total (France) are transnational petroleum companies which have entered into a joint venture with SLORC to construct a gas pipeline from the Yadana field in Burma's Gulf of Martaban to the Thai border. Thailand, the principal buyer of the gas, has signed a thirty-year contract through its state petroleum company, the Petroleum Authority of Thailand (PTT), agreeing to purchase Yadana gas from the Burmese state petroleum company, the Myanmar Oil & Gas Enterprise (MOGE).

The Pipeline: The Yadana field is a natural gas resource located forty-five meters beneath the Andaman Sea, about forty-three miles off the coast of Burma. Approximately 220 miles of the pipeline will be underwater while the last thirty miles will traverse the Tenasserim region which is inhabited by ethnic and indigenous groups in Burma.

The Money: Once the pipeline has begun production, SLORC will receive an estimated US\$400 million per year. This will likely be the regime's largest source of foreign capital.

Findings

Total Denial documents a number of disturbing facts about the Yadana project. The report first finds that the oil companies are ignoring the democratically elected officials' and local peoples' repeated calls for a moratorium on international investment in Burma. It further exposes the ways in which currency from the Yadana project is financing SLORC's efforts to tighten its grip on the country and precipitating the complete militarization of the Tenasserim region. *Total Denial* also more directly links the consortium to SLORC's egregious human rights abuses occurring in the pipeline region. These abuses fall into two categories. The first category includes abuses committed by troops stationed in the pipeline region in order for SLORC to honor the security guarantees it provided to the companies as an integral part of their investment deal. Abuses such as extrajudicial killings, torture, rape and extortion in the area have

dramatically increased since the Yadana project was initiated. The second category encompasses those violations which are committed by SLORC in furtherance of the pipeline project itself. These violations include portering and forced labour both on pipeline related infrastructure as well as on the actual route of the pipeline.

Exacerbating these human rights problems is the fact that the project is being implemented in a system which lacks any semblance of the rule of law; local people who suffer physical and environmental damage as a result of the Yadana project have no legal avenue for relief. This combination of abuses linked to the pipeline and a lack of remedies for those who have been wronged has created a project which is harming and not helping the people of Burma. The added fact that the investment is supporting SLORC as well as funding its military buildup indicates that the consortium's project is a misguided development scheme at best, and an opportunistic exploitation at worst.

Total Denial finds the companies responsible for the following:

1. Ignoring Legitimate Calls to Divest: Burma's democratically elected national government as well as local people and their leaders in the pipeline region have called on the oil companies to refrain from investing in Burma at the present time. Despite these calls for restraint, the companies continue to do business with SLORC, thereby ignoring the principles of democratic rule and local participation in decisionmaking.
2. Funding the SLORC Regime: The annual income for SLORC from the Yadana project, potentially as much as US\$400 million a year, will be the regime's single largest source of foreign currency. The Yadana consortium is investing in Burma at a time when such funds are directly benefiting SLORC military and not the Burmese people. Money from such joint ventures flows into the military budget, financing arms purchases and the army, and thus assisting SLORC to stay in power and perpetuate its oppression of Burma's peoples.
3. Abuses Associated with Security for the Pipeline Project: SLORC is providing security for the Yadana pipeline project, most likely as part of its contractual obligations. The pipeline passes through an area inhabited by groups historically opposed to SLORC. As part of its security efforts, SLORC has mobilized its military presence in the region in an attempt to stifle all opposition, armed or otherwise. With this increased presence, there has been a corresponding increase in gross human rights violations, including rape, forced labor, the displacement of thousands of indigenous peoples from their homes and summary executions.
4. Forced Labor: In spite of SLORC and oil company claims to the contrary, forced labor and portering on the pipeline project is occurring. Civilians are seized by the military and are forced to work, often without pay or food, on roads and other infrastructure related to the pipeline project. Soldiers patrolling the pipeline area also force villagers to walk with them and carry their heavy loads. The only way for villagers to avoid such forced labor and portering is to pay a large "tax" or "porter's fee" to local SLORC soldiers.
5. Forced Relocations and Population Displacement: The pipeline route passes through several villages in the Tenasserim region. In order to eliminate potential threats to the

pipeline as well as clear the way for its construction, SLORC has been ordering these villages to relocate away from the pipeline route since 1991. Although most of the documented forced relocations took place in 1991 and 1992, before the Total/Unocal contract had been signed, they occurred most likely during the contract negotiation stages. Population displacement also occurs when villagers flee in anticipation of SLORC incursions or when abandoning their homes to become refugees because they can no longer endure the hardships related to SLORC's presence such as portering or having to pay extortion fees.

Total Denial draws the following conclusions about the state of Burma under SLORC:

1. Legal Vacuum: Burma is technically without a constitution, as the military regime has revoked it and begun drafting a new one. Despite having laws on the books, Burma's rule of law essentially consists of whatever the ruling junta of generals or local military decrees. Human rights protections and environmental regulations are nonexistent or not enforced. Exacerbating this situation is the lack of an independent judiciary. Thus, the people in the pipeline region have no legal protection against, nor any legal remedies for, abuses perpetrated by the repressive SLORC regime.

2. A Lack of Environmental Accountability and Regulations: SLORC's monolithic control of Burma has ensured that local peoples have no say on projects such as the gas pipeline that affect them and their environment. In addition, the legal vacuum allows the Yadana consortium parties to act without accountability for environmental degradation. The oil companies have not made public the environmental impact assessments they have conducted. This is particularly alarming given the consortium's lamentable environmental record.

Recommendations

ERI and SAIN therefore make the following recommendations:

1. Since the companies cannot credibly guarantee that they can stop the documented abuses, nor that their money will not be used to finance SLORC policies, Total and Unocal should refrain from investing until a democratic government, led by the National League for Democracy, has been formed, and local ethnic and indigenous peoples have been consulted;
2. All other foreign companies, including Texaco, Nippon Oil, Premier Oil and Arco, should refrain from investing in Burma as well;
3. Thailand and other governments should condition their investments on an improved human rights record in Burma;
4. Total and Unocal should immediately release all environmental impact assessments (EIAs) to the public, so as to allow examination of existing problems as well as potential future ones;
5. SLORC and the oil companies should allow immediate access to the pipeline areas for

independent monitors to allow objective and comprehensive EIAs and human rights investigations to take place; and

6. SLORC should abide by its treaty obligations, including those contained in the Geneva Conventions and the Convention Against Forced Labour.

Views on the Yadana Natural Gas Project

Daw Aung San Suu Kyi

Q: Currently, the government is promoting foreign investment, and many companies, including Unocal, have investments here. What's your message to those companies?

A: We always said--very, very clearly--that Burma is not ripe for investment

The Karen National Union (KNU)

The KNU and the KNU's Mergui-Tavoy District wish to state clearly that they are not opposed to the pipeline per se but oppose any business venture that strengthens the illegal SLORC's hold on power and hence fuels the civil war. With the establishment of conditions for peaceful resolution of the country's problems the KNU will welcome and cooperate fully with any business activity that serves to improve the living conditions of the Karen people and that does not abuse internationally accepted standards of human rights nor have detrimental effects on the environment.

The National Council of the Union of Burma

We hereafter would like to reiterate our call for the international communities and transnational foreign companies to wait and hold their investments in Burma until the democratic government is formed and allowed to give protection, rights and benefits to all Burmese people.

The New Mon State Party

Dear Mr. Denis Codon,

This letter is to inform you that the New Mon State Party and related organizations have decided to take legal action against Unocal you represent due to the environmental damage done in the State Law and Order Restoration Council's security activities done to the Mon, Karen and Tavoyan areas for the construction of the pipeline from off-shore gas fields.

Nai Shwe Kyin, President

Unocal

Special interest groups -- based outside of Myanmar -- seek to force Unocal to abandon the project, thereby helping isolate Myanmar from the world community.

Chapter 1

BUSINESS AS USUAL?

INVESTING IN THE GENERALS

Foreign investment in Burma lends international legitimacy to an illegal¹ regime with one of the most dismal human rights records in the world. In addition, it provides the ruling Burmese junta with the hard currency it needs to strengthen its military and further entrench its rule. Repeated calls by Burma's elected officials and ethnic and indigenous groups to refrain from investing have been ignored by the transnational corporations that continue to operate in a system in which they and their military partners make all the rules.

Supporting the Generals and Ignoring the People

It is estimated that the Unocal/Total project will provide Burma's military dictatorship, the State Law and Order Restoration Council (SLORC), with up to US\$400 million per year, making it the junta's single largest source of liquid funds. Daw Aung San Suu Kyi, the General Secretary of the National League for Democracy (NLD), has clearly and consistently stated that there should be no foreign investment in Burma until democracy has been realized and power has been assumed by the popularly elected government. The National Council of the Union of Burma (NCUB), an umbrella group representing the 1990 election winners and ethnic and indigenous groups throughout much of the country including those in the region of the Yadana pipeline project, has echoed these statements. The legitimate leaders thus argue that investment in SLORC enables the generals to increase military and police powers and thus perpetuates the illegitimate and repressive regime (see preceding page).

Some transnational corporations (TNCs) like Unocal and Total have chosen to ignore the publicly stated policies of both Burma's nationally elected leaders and the Burmese peoples. Instead, they justify investments such as the Yadana project by arguing that their development schemes are a positive force providing jobs and stimulating economic growth. A closer examination of the economic and political reality in Burma, however, shows that these claims have little or no validity.

SLORC governs virtually all aspects of Burmese life and exerts exclusive command over the country's international business activities. The army's own holding company, Union of Myanmar Economic Holdings (UMEH), is the country's largest firm with registered capital of ten billion kyat (US\$1.4 billion at the official exchange rate) and dominates foreign investment. Significantly, the Defense Ministry's Directorate of Procurement, which handles arms purchases, is a 40% shareholder in UMEH.²

The links between foreign investment and military spending are concrete. Since SLORC spends an estimated 40% of its national budget on the military, forty cents of each dollar accruing to SLORC from foreign investment is spent on the army.³ Much of this money goes to military buildup and arms procurement: between 1988 and 1992 the size of the

army increased by over 50%,⁴ and in 1992, the year in which Total and the Myanmar Oil and Gas Enterprise (MOGE) signed a production-sharing contract for the Yadana natural gas field, SLORC set an all-time record for military spending, importing US\$390 million in military hardware.⁵ Burma faces no outside aggression, so SLORC's weapons and armies are used solely against Burma's own people. Energy company contentions that their investments are helping to develop Burma ring hollow in the face of such evidence.

In addition to funding SLORC's military purchases, investment by the petroleum industry also serves to undermine the democratic movement in Burma. When the nation's peoples went to the polls in 1990, they unequivocally rejected the military dictatorship's right to govern. With their vote, they gave a clear mandate to the NLD to take responsibility for the future of Burma. Investment in SLORC-run Burma serves as tacit recognition and legitimization of SLORC's control, including its right to possess and dispose of the country's resources as it sees fit.

Several opposition groups and trade unions within Burma have either called for corporate withdrawal or have adopted official policies rejecting SLORC's right to enter into international business contracts, particularly those involving the exploitation of natural resources. For example, the National Coalition Government of the Union of Burma (NCGUB), which is composed of elected officials, has stated as a matter of policy that the Burmese people do not recognize contracts signed under the SLORC regime:

It is the responsibility of the National Coalition Government of the Union of Burma to remind these companies that they are dealing with an illegal regime that represents no one but a small group of military personnel in Burma. The military regime has no mandate from the people to exploit or sell off the country's natural resources. Hence, any agreement undertaken with an illegal regime will not be honoured by the Burmese People.⁶

Although they claim political neutrality, the oil companies made a political decision when they chose to invest with SLORC and disregard the calls of the NCGUB, Aung San Suu Kyi, indigenous groups, the NCUB and the trade unions of Burma. By proceeding with investment prior to democratic reform, energy companies now have a vested interest in preserving the status quo. If the democratic government in Burma were to take power, the oil companies' contracts with SLORC could be jeopardized.

The companies' political interests were at least partly revealed when Unocal failed to join the world community in welcoming the release of Aung San Suu Kyi from six years of house arrest on July 10, 1995. While the Burmese people rejoiced, and the international community expressed new hope for democracy in Burma, Unocal remained silent. Two days after Aung San Suu Kyi's release, Unocal refused to comment on how the release would affect the company's investments.⁷ The people of Burma and their supporters expected something more from a company purportedly committed to the development of their country.

In spite of clear statements and correspondence to the contrary from Aung San Suu Kyi and the ethnic and indigenous groups within Burma, the companies continue to insist that they are a welcome presence. When the companies do concede opposition to their

investment, they acknowledge only the objections of "*special interest groups*" in the west.⁸ In their first report to shareholders, Unocal stated that "[s]ome activists in the United States and elsewhere hold the sincere belief that ethical companies should exit Myanmar and shut the door on the people there . . . we don't think isolation is the answer."⁹

Such statements are particularly hypocritical in light of the industry's refusal to meet with the groups within Burma that have expressed opposition to its investments. The Karen and Mon ethnic groups, for example, have on numerous occasions requested meetings with oil company representatives but have been flatly refused each time. Further, company representatives have been invited to visit refugee camps to hear firsthand accounts from people forced to flee the pipeline area because of SLORC abuse and persecution associated with the project. The companies have declined these invitations as well.¹⁰ The unsettling conclusion is that Unocal and Total are ignoring all attempts to make them understand the real cost of their investments in Burma.

In fact, it is SLORC policy to enforce communication barriers between TNC representatives and local peoples, typically by the inclusion of a "gag clause" in their foreign investment contracts. This clause essentially prohibits communication between the investor companies and groups not aligned with SLORC. For example, clause 25.2 of a SLORC production-sharing contract with Yukong Limited contains typical contract termination provisions:

*The Contract shall be terminated in its entirety by MOGE if it is proved that the CONTRACTOR is involved in any manner whatsoever with political activities detrimental to the Government of the Union of Myanmar. On such termination the unexpended portion of the minimum expenditure in Section 5 and all equipment purchased by the CONTRACTOR and brought into Myanmar under Section 16.1 shall pass to MOGE.*¹¹

A US congressman with close ties to Unocal confirmed that the Yadana consortium partners, probably under similar contracts, do not have the right to communicate with people living in the pipeline region who oppose the project. He stated on April 21, 1995, that foreign oil firms were not allowed to establish any contact with anti-Rangoon armed ethnic groups or political dissidents under penalty of contract nullification and capital seizure by SLORC.¹²

These contractual limitations also extend to individuals employed on the pipeline project. Indeed, the Burmese nationals with whom the companies have contact are of a very specific political stripe. In March 1995, job application forms for the project were distributed among villages in the region where the pipeline is to be laid. ERI has confirmed that only registered members of the Union Solidarity and Development Association (USDA), SLORC's political association, were eligible for employment.¹³ Since employees for the project are only chosen from a pool of registered SLORC supporters, the companies are able to hire local people without violating the "gag clause." The companies can therefore claim that when "*nationals who've worked with us in Myanmar are asked this question, their answer is clear: Please Stay.*"¹⁴

It is particularly disingenuous of Unocal and Total to claim that the only critics of their project are outside Burma when the companies are expressly forbidden from speaking to those groups within the country which oppose SLORC and its resource exploitation projects. Despite attempts to prevent local input from reaching the oil companies, the people have spoken and soundly rejected investment at the present time. Any claims by SLORC and the oil companies which say otherwise are baseless.

"Constructive Engagement": Thailand's Investment with the Generals

Thailand's role in the politics of investment in Burma is no different from that of western oil companies. On February 2, 1995, the Petroleum Authority of Thailand (PTT) signed an agreement to buy natural gas from the Yadana field for thirty years. With a regional market for petroleum products secured in Thailand, foreign oil companies rapidly expanded their exploration activities in Burma. For instance, shortly after the signing of the PTT contract, US-based Texaco and ARCO were awarded exploration concessions to blocks 10, 12, 13 and 14 in the Gulf of Martaban. U Pe Kyi, then managing director of MOGE, told The Nation that the Thai/Burmese gas deal had given momentum to Burma's petroleum development activities, a fact evidenced by the two additional deals with US companies.¹⁵

Thailand has vigorously asserted that its decision to purchase the natural gas does not constitute support for SLORC but instead encourages the military elite to open Burma's doors to the world community. Akapol Sorasuchart, a Thai government spokesman, stated:

The Thai government has already made it clear that it wants to engage Burma in dialogue [since this approach] will be more beneficial than any attempt to isolate that country All we want is more access to natural resources. If Burma has the potential [to supply these resources], then dialogue will take place.

This matter has got nothing to do with internal Burmese politics Purchasing natural gas doesn't mean Thailand supports the Burmese junta. The two issues are not related. Thailand has never closed the door on its neighbors. Thailand doesn't agree with the way the Rangoon government administers Burma but it can still be one of Burma's best neighbors.

Given its emphasis on the importance of being a "good neighbor," Thailand's priorities--like those of the TNCs--are clear. When it comes to a choice between economics and human rights, money always prevails.

Business and Human Rights: The Ethics of Engagement

It is now time to admit that the policy of constructive engagement with the SLORC is a failure International pressure can change the situation in Burma. Tough sanctions, not constructive engagement, finally brought about . . . the dawn of a new era in my country. This is the language that must be spoken with tyrants--for, sadly, it is the only

language they understand.

The Archbishop Desmond Tutu
on constructive engagement, 1995¹⁶

SLORC is an internationally condemned regime, and there is little disagreement that Burma's human rights record merits special scrutiny. The United Nations Commission on Human Rights recognized this fact and designated a Special Rapporteur on Burma to study and report on the ongoing human rights violations there, making Burma one of the few countries in the world which can boast this dubious honor.

While insisting on their political neutrality in Burma, the oil companies and Thailand justify their investment by asserting that business endeavors and human rights remain separate and unrelated issues. This premise has been frequently invoked by governments and TNCs in recent years and was successfully advanced in the debate in the United States over China's Most Favored Nation trade status. Even professional business analysts, however, agree that the issues can only be separated up to a point. Indeed, the human rights situation in Burma is so uniquely severe and systemic that there is growing consensus even within the business world that Burma has gone well beyond the point of separation. Professor Tom Donaldson of Georgetown University, author of *The Ethics of International Business*, outlined the ethical implications of international business engagement in Burma:

*Basically, we will tolerate a fair amount of unethical behavior from a person, firm, or nation with whom we just have business dealings, but when matters reach a point of a dramatic threshold, most people say you just don't do business with that type of person. I don't think China reaches that point, but if any country might qualify as passing that threshold, it would be Burma.*¹⁷

Growing movements in North America, Europe and Australasia to restrict trade and investment with Burma reflect the increasing prevalence of this view and further attest to the country's dismal human rights record. For example, the European Union (EU) is currently under pressure to cancel its preferential trading status for Burma under the Generalised System of Preferences (GSP); the EU's final decision will depend partly on the findings of the European Commission's ongoing investigation into forced labor in the country.

Likewise, a number of US cities expressing solidarity with Burma's democracy movement have already passed various forms of selective purchasing legislation which bar a city from purchasing goods or services from companies investing in the SLORC regime. At the time this report goes to press, such laws exist in the California cities of Berkeley, Santa Monica, San Francisco, and Oakland, as well as Ann Arbor, Michigan, and Madison, Wisconsin. Similar legislation addressing SLORC's human rights record has been signed into law at the state level in Massachusetts, and is currently being considered by both the Senate and House of Representatives of the United States Congress, where it has received bipartisan support. Many TNCs such as Federated Department Stores (which owns Macy's), Eddie Bauer, Starbucks, Liz Claiborne, Levi Strauss and Reebok International have already rejected or severed business ties with Burma. Those who have

divested cite human rights violations and political oppression among the major reasons for leaving Burma.

In spite of the growing consensus that any affiliation with the SLORC regime is ethically untenable, the oil companies remain staunchly committed to the defense of the idea that human rights and business are separate issues with regard to Burma. Despite their claims that human rights and trade are not linked and their official stance of political neutrality, the political situation in Burma is of great interest to TNCs. Particularly, the lack of local input and more generally the stifling of free expression and democratic processes may be attractive to cost-externalizing, exploitative investors. Companies in partnerships with SLORC want to ensure that investment ventures proceed with little or no company accountability with regard to human rights and environmental standards. It is thus very much in such investors' interests to ensure that SLORC, not the democratically elected government, maintains its firm grip on the country. As one oil company securities analyst frankly stated:

There are a lot of folks in the industry who would rather deal with an authoritarian regime than with the chaos often associated with an emerging democracy . . . Human rights remain off the table until such issues begin to jeopardize the likely conclusion or the bringing to fruition of projects. When those issues begin to have intermediate to long-term economic implications, then they become relevant, but exclusive of that, they're not.¹⁸

Investment by oil and gas companies is inextricably linked to human rights abuses and environmental damage in Burma. Up to this point, however, SLORC's treatment of its own citizens has not affected the "intermediate to long-term economic implications" for Unocal or Total. Indeed, oil and gas companies operating in Burma have either ignored or misunderstood the full costs of their investments. This report makes those costs clear and forecloses the option of claiming ignorance of the human rights and environmental situation as a defense of doing business there. Investment by Unocal and Total in the Yadana project is indeed investment in the authoritarian, repressive regime of the SLORC generals and a strike against freedom and democracy in Burma.

1. For the purpose of this report terms such as "illegal" and "illegitimate" refer to the fact that SLORC does not have a mandate from the people of Burma to rule the country or make any decisions regarding the country's future. The regime announced and held elections in 1990 and was voted out of power by 82% of the people. SLORC refused to seat the elected government, however, and maintains power only by force. The term "legitimate" refers to representatives who were democratically elected and therefore reflect the will of the majority of Burma's peoples.
2. Lintner, Bertil, *Absolute Power: Burma's Economy and Government*, Far Eastern Economic Review, January 18, 1996, at 25 [*hereinafter "Absolute Power"*].
3. *Burma: The Facts*, The New Internationalist, June 1996, at 18.
4. Dara O'Rourke, *Oil in Burma: Fueling Oppression*, Multinational Monitor, October 1992, at 8.
5. *Id.*
6. Statement of the National Coalition of the Union of Burma, Office of the Prime Minister, May 17, 1994 (on file with authors).
7. *Bankers Call For More From Burma: Suu Kyi's Release Leaves Investors Divided Over Next Step*, The Nation, July 12, 1995, at B1-B2.
8. Unocal Corporate Communications Department, *The Yadana Project*, November 1995, at 19.
9. Unocal Corporate Communications Department, *Unocal in Myanmar: Report to Stockholders*, July 1994, at 8.
10. KNU Letter to Unocal #1 and #2 (on file with authors); Letter of Nai Shwe Kyin, President of NMSP (on file with authors).
11. *Production Sharing Contract for the Exploration and Production of Petroleum Between Myanma Oil and Gas Enterprise and Yukong Limited in Block "C" Union of Myanmar*, p.53, Section 25: Termination, Clause 25.2 (on file with authors).
12. Lertcharoenchok Yindee, *Exploitation Through Forced Labor*, The Nation, October 14, 1995, at A5.
13. ERI interviews with local sources; the Karen Human Rights Group and Burma Issues have reported similar accounts in the past.
14. Unocal Corporate Communications Department, *Unocal in Myanmar: Report to Stockholders*, July 1994, at 8.
15. Changsorn Pichaya, *US Firms Given Burma Oil Concessions*, The Nation, February 6,

1995.

16. Archbishop Desmond Tutu, *Thai-Slorc Outrage*, The Nation, February 4, 1995.

17. Millman, Gregory, *Troubling Projects*, Infrastructure Finance, Feb/Mar, 1996, at 18.

18. *Id.* at 19.

Chapter 2

SECURITY

Burma has been at civil war for more than four decades and many of the areas where the ethnic nationalities live are under military administration. During the Burma Socialist Programme Party (BSPP) era, the military classified different areas of the country into either black, brown or white zones, depending on the level of control that the army exerted there. The SLORC army has continued this system of classification. Black, or free fire zones, indicate areas of Burma that SLORC does not control. Brown areas are under neither opposition nor SLORC rule. Lastly, there are white zones, which exist completely under the authority of SLORC.

The region through which the pipeline will pass is still in the midst of civil war and falls under a mixture of all three classifications. SLORC and the oil companies recognize that natural gas development in Burma cannot progress until areas like the pipeline region are wholly under SLORC control. The pipeline project has been threatened not only by collateral damage from ongoing ethnic insurgency, but also by specific attacks on the project itself. The Yadana consortium is therefore particularly concerned with ensuring that the pipeline route is made secure.

Militarization of the Pipeline Region

Statements made by representatives of the project consortium indicate that the Yadana contract allocates responsibility for securing the pipeline to SLORC. In an interview with Energy News, Mr. Herve Madeo of Total conceded, "*we know there might be a problem . . . [o]bviously the government has told us that they will make the area safe.*"¹ Another Total executive stated that "*unless the area is pacified, the pipeline won't last for its thirty-year duration.*"² Unocal president John Imle has acknowledged, "*If you threaten the pipeline there's gonna be more military . . . for every threat to the pipeline there will be a reaction.*"³ Thus, it is clearly understood by these foreign businesses that governmental security guarantees means the use of the SLORC military on the pipeline.

Military activity in the area since the contract was signed reinforces this conclusion. SLORC has mobilized troops in an area far wider than the actual route of the pipeline to transform the area into a white zone and bring the ethnic populations under SLORC control. In this way, the pipeline has effectively furthered SLORC's economic as well as military agendas in southern Burma, as the contract is being used to legitimize SLORC military activities throughout the entire Tenasserim region.

Indeed, the military has been steadily building up its presence to protect the natural gas development activities in the region. In 1990, there were approximately five battalions in the pipeline area.⁴ By May 1996, fourteen battalions were stationed in the Mergui/Tavoy region alone. SLORC Light Infantry Battalion (LIB) #273 is positioned between Kanbawk and Ohn Bin Gwin, the two Total base camps. As such it is responsible for security of company personnel, equipment and operations. LIBs #408, #409 and #410 arrived in the

area in April 1991 and began constructing their military camps in the immediate vicinity of the designated pipeline route. While these four battalions are permanently stationed on the thirty-nine mile- long pipeline route, they are reinforced by LIBs #401, # 406 and #407 and additional SLORC forces charged with security for the entire project area.⁵

A full-strength battalion has approximately 800 troops. While SLORC battalions typically number only 400 soldiers, the battalions in the pipeline region are reportedly closer to full strength. Thus, with LIBs #273, #408, #409 and #410 permanently based on the pipeline route itself, there are at least 3,000 SLORC troops designated exclusively to protect the pipeline route. As they are reinforced by at least ten other battalions patrolling the area, it is likely that the total number of troops charged with pipeline security is over 10,000. Such figures do not include SLORC intelligence units, police units or special forces which are also scattered throughout the region.⁶

For the civilian population living in these areas, life has become intolerable due to this increased military presence. Villagers who inhabited the remote region were unaware that the investment would have such a profound impact on their lives. When asked about the project, one man from a village close to Ohn Bin Gwin remarked about the dramatic increase in SLORC military units:

Before 1991, we saw Burmese soldiers very seldomly, only Karen soldiers. But after 1991, LIB #408, #409 and #410 led by Major Han Htin started to base their outpost in our area I never saw any foreigners when I was in my village. In 1988, we seldom saw soldiers so that soldiers did not cause us problems as they did in 1992. In 1992, we saw soldiers almost every day.⁷

In addition to the expansion of security forces in the area, SLORC's overall natural gas development program includes the building of infrastructure, some of which has already begun. By 1993, it was clear that in order to augment plans to build the gas pipeline from the Andaman Sea through the ethnic lands in the Ye-Tavoy area, construction of a new railway line was also underway. As of October 1993, up to 2,000 people a day were reportedly being forced to labor on the construction of this railway. The railway crosses three townships or districts, including Ye Byu; Ye Byu is also one of the townships through which the pipeline itself will pass.⁸

There has been considerable disagreement between the human rights community and the oil companies as to whether the Ye-Tavoy railroad is actually connected to the pipeline project. Whatever the connections may be, it is clear that the railway is part of SLORC's overall development scheme in the pipeline region. Ultimately the railroad will allow SLORC troops charged with securing the pipeline access to the ethnic areas. The fact that there are a number of new military camps along the railway route further suggests its military importance. Indeed, SLORC is already using the completed parts of the railway to transport fuel, food and supplies which are reportedly supporting both the military in the pipeline area and the pipeline project itself.⁹

Because of the commercial importance of the Yadana project for both the companies and SLORC, securing land for future development was critical for the regime. To this end, forcible relocation of some villages on the pipeline route began as early as 1991 (see

Chapter 5: Clearing the Way). By December 1994, SLORC had initiated a more organized plan to secure the area for the project in a military initiative called Operation Natmin (Spirit King). Operation Natmin had two main objectives: securing the pipeline route and removing resistance forces. By the time Operation Natmin ended in July 1995, thousands of civilians had been forcibly relocated and military offensives had been conducted against several ethnic armed groups. Not surprisingly, thousands of people had also fled from the Tenasserim area to the Thai/Burmese border seeking sanctuary.¹⁰ However, the brutal tactics by which SLORC troops carried out Operation Natmin's failed to quell active indigenous opposition to the project.

The People Resist

ERI and SAIN have confirmed that three attacks have taken place against the Yadana project. The first attack was connected to the ongoing civil war, while the other two were specifically aimed at the pipeline itself. The oil companies, however, have categorically denied that the second and third attacks took place. Refusing to acknowledge the local resistance to the pipeline project has helped the consortium partners maintain their claims that opposition comes only from western special interest groups. Yet the attacks described below prove that opposition to the Yadana project from within Burma can no longer be ignored or denied.

March 7, 1995

After receiving information from the front line that SLORC troops were moving towards Karen National Union (KNU)-controlled territory, troops from the Karen 4th Brigade responded by securing their positions and sending more soldiers to the front line.¹¹ As a result of this activity, all Karen National Liberation Army (KNLA) soldiers and civilians living in the area were placed on military alert. (The KNLA is the army of the KNU.) On March 7, three trucks departed from Total's base camp at Kanbauk to Ohn Bin Gwin. Two KNLA soldiers and two villagers heard the sound of the vehicles as they made their way along the newly renovated road.

The first truck passed the soldiers and was left alone, since it was full of civilians. The second and third trucks, however, were carrying armed SLORC soldiers along with civilian passengers. The Karen fired a 62mm single-use rocket launcher on the second truck, and a 79mm mortar on the third. This was followed by small arms fire from M16 and AK-47 assault rifles.¹² Five people were killed and eleven injured in the attack. The KNU has since stated that the March 7 incident was not a planned offensive but rather standard military procedure in a civil war zone. It is KNLA protocol to defend their areas when SLORC troops encroach upon KNU territory. The Total trucks carrying SLORC troops for security were thus considered a legitimate military target, not a civilian convoy.

The attack created international repercussions. In Paris, the Ministry of Defense, concerned about the risk to French citizens, requested information about the attack from Total. Total took three weeks to respond. When it did, it merely stated that the company was unable to release any information regarding the attack. In June 1995, the Director of the Ministry of Defense requested a meeting with the company. Total refused to meet. The French Embassy in Rangoon had no better luck getting information from Total.¹³

Due to this secrecy, rumors began to spread, including the suggestion that foreigners had been killed. A SAIN investigation in Burma and Paris failed to substantiate that any French persons had died.¹⁴ Total still refuses to answer any questions, and consequently the details surrounding the attack remain murky.

December 1995

The second attack took place at Ohn Bin Gwin in mid-December 1995. Armed villagers attempted to hit Total's base camp with a 107mm rocket. The rocket missed the camp and landed close to the Ohn Bin Gwin river; ERI has received conflicting reports as to whether the rocket actually exploded.¹⁵

Following the attack, SLORC gave orders to village headmen in the surrounding villages that if they heard any gunfire close to or around their villages, there would be repercussions: "[Y]our village will be ash."¹⁶ Indeed, SLORC troops have burned many villages in this area as a part of their counterinsurgency and pipeline security program. In addition, SLORC Brigadier General Zaw Htun responded to this attack with a promise to Total: "You will never hear gunfire again."¹⁷

Total, however, completely denied this attack. In a telephone interview with The Nation on December 25, 1995, Total's public affairs vice president Joseph Daniel insisted that he was "absolutely sure that no attack had taken place in the area since March 8th. I visited the pipeline's area last week [the second week in December], and I am absolutely sure of my information." He continued to downplay security risks and the dangers to Total employees, reiterating a general rule within the company that:

*Total never comments on security matters on our plants or sites . . . both foreigners and Burmese workers live locally on the site, in our accommodation camp. Helicopters are mainly used for shuttle and local transport between accommodation camp and work sites.*¹⁸

Mr. Daniel failed to mention in his reassurances that Total employees are currently sleeping in bunkers at the camp.¹⁹ He also neglected to disclose that the compound is surrounded by a high fence.²⁰ Unconfirmed information from both a Rangoon-based diplomat²¹ and local sources²² indicate that land mines have been placed around the security perimeter as well.²³

February 2, 1996

Despite SLORC's threats and increased military buildup in the pipeline area, a third attack occurred. At 8:15 am on February 2, armed villagers launched an attack on Total's base camp at Ohn Bin Gwin. Three 107mm rockets were launched from Kyauk Than Ma Ni Pagoda Hill, which is located between Kanbawk and Pyin Gyi. One of the rockets landed at Total's heliport but did not explode; another rocket landed and exploded at the building that houses Total's employees; the third rocket landed and exploded at Lan Bar River near Mi Chaung Ei Village. Initial reports counted six employees wounded and no deaths.²⁴ According to ERI reports, SLORC's Brigadier General Zaw Htun threatened to forcibly relocate Ein Da Ya Za village in retaliation for the February 2 attack. After the attack

took place, the Brigadier General had an argument with a Total employee who, according to eyewitnesses, slapped the SLORC commander twice across the face and punched him once. The reason for this reaction by the gas worker is not known. Following this altercation, the Total employee returned to Paris.²⁵

The retaliation from SLORC for these attacks was swift. On February 5, 1996, LIBs #273 and #403 marched into Shin Byn village, which is located close to Kyauk Than Mi Ni Pagoda Hill. The troops seized Saw Kyi Lwin, the village headman. He was accused of collaborating with the KNLA, interrogated and tortured. He was later executed by SLORC soldiers. Following Saw Kyi Lwin's death, SLORC troops made their way to Ein Da Ya Za village and arrested twelve villagers. They were taken to Mi Chaung Laung village, where four of them were marched into the forest at Pyin Gyi and executed. The man responsible for these executions was Major Ko from LIB #403. Another six were taken to the LIB #403 military outpost and killed there. The remaining two villagers were arrested and jailed.²⁶ At the time this report goes to press they have not been released.²⁷

In order to reassure stockholders in Paris and the United States of the ethical acceptability of their involvement with SLORC, Total and Unocal have published shareholder reports detailing the investment in the Yadana venture. These company reports have sought to minimize the security issues associated with the project, stating that its only opposition is based outside of Burma. Both company reports fail to mention the armed attacks. Just two weeks after the first attack, Total sent a letter to the Investor Responsibility Research Center describing the project area, stating that "*there are few villages and the region is perfectly calm.*"

The oil companies can no longer convince the international community that their project faces opposition only from special interest groups in the west. Local resistance within Burma indicates that the pipeline development is not wanted by Burma's indigenous people. Total and Unocal must acknowledge both of the attacks and the motivations behind them and cease to claim that their project is welcome.

1. Brunnstrom, David, *Total's Burma Gas Venture May Cost US\$1billion*, Reuters Financial Report, Energy News, October 16, 1992.
2. Bardake, Ted, *Burma's Pipeline Rouses Opposition*, Financial Times, January 24, 1996.
3. Transcript, *Meeting on January 4, 1995, with Unocal's President and a Group Interested in the Pipeline* (on file with authors).
4. *Cease-fire Agreement to Ease Repatriation of Mon Refugees*, Bangkok Post, July 1, 1995.
5. ERI Interviews with local sources, May 1996 (on file with authors).
6. *Id.*
7. ERI Interview #8 (on file with authors).
8. Committee for Publicity of Peoples Struggle in Monland, *Ye-Tavoy Railway Construction. Report on Forced Labour in the Mon State and Tenasserim Division in Burma*, April 1994.
9. SAIN interview with source in Rangoon. *See also* Committee for Publicity of People's Struggle in Monland, *Forced Labour and Forced Relocations In the Name of Foreign Investment (Burma)*, Vol. 2, No. 3, October 1994.
10. *Rangoon Abuses Rights in Pipelines Area, Says KNU*, Bangkok Post, February 25, 1995, at 6.
11. SAIN interview with senior KNU official.
12. ERI interviews with sources in the vicinity of the attack (on file with authors).
13. SAIN discussion with military sources in Paris.
14. *Id.*
15. ERI interviews with sources in the area, March 1996 (on file with authors).
16. *Id.*
17. *Id.*
18. Lertcharoenchok, Yindee, *No Attack on Burma Village, Says Total*, The Nation, December 25, 1995.
19. ERI interviews with sources in the area, April 1996 (on file with authors).

20. *Id.*
21. SAIN interview with diplomat, April 1996.
22. ERI interviews with sources in the area, April 1996 (on file with authors).
23. *Id.*
24. ERI interviews with local sources, February 1996 (on file with authors).
25. *Id.*
26. *Id.* When SLORC enters a village it does not typically give grounds for its incursions. These extrajudicial executions are retaliations for the attack, although ERI has confirmed the fact that none of these Karen villagers were involved with the attack. Among those killed by SLORC are: Par Ti Kplar (age 52) (His daughter, Ser Ser, is one of those arrested and placed in jail by SLORC); Taw Ner Dee (age 28); Saw Ler Goo (age 17), Saw Serh (age 22), Saw Paw Po (age 35), Saw August (age 33), Ko Sa See Poo (age 28), Saw Lae (age 35).
27. ERI interviews with local sources, May 1996 (on file with authors).

Chapter 3

HUMAN RIGHTS ABUSES IN THE GAS PIPELINE REGION

In the thirty-four years that SLORC and its predecessor, the BSPP, have ruled Burma, government policy and military strategy have created a climate in which gross human rights violations are tolerated and often officially sanctioned. While most of the human rights violations committed by SLORC were also common under the BSPP, SLORC's recent drives to bring the entire population under its authority have led to a noticeable increase in the severity and geographic extent of the abuses. Systematic violations of human rights by SLORC continue to grow as the army consolidates its power base in new regions. It is thus inevitable that new forms of repression have also arisen as SLORC has sought to gain control and quell opposition in areas where foreign investment is concentrated.

The UN Special Rapporteur for Burma, Yozo Yokota, reporting on human rights conditions in February 1995, emphasized the link between human rights abuses and foreign investment. He stated that "*forced labor, forced relocation, arbitrary killings, beatings, rapes and confiscation of property by the SLORC are most commonly occurring in the border areas where the Army is engaged in military operations or regional development projects.*"¹

Since SLORC began to mobilize military forces in the pipeline region, human rights abuses have increased. Virtually all victims of human rights violations in Burma have no recourse under SLORC law, as dissent in Burma is systematically and brutally stifled. Human rights abuses that occur in the country often remain unreported, since independent observers are not allowed official access to any part of Burma. Moreover, the pervasive climate of fear keeps most people silent even in the face of the most appalling violations. Both ERI and SAIN, however, have extensive contacts living and working inside the country, including in the pipeline region itself, and are thus able to document the continuing abuses associated with the project.

Unocal has argued that its presence in Burma gives the company unique insight into the human rights situation within the country, claiming that: "*[a]s a rule, human rights groups do not have direct access to on-scene information in Myanmar. We do.*"² Despite its access as well as its proximity to the area in question, Unocal has categorically denied that human rights abuses are occurring in the project area.³ In a meeting with human rights activists, Unocal president John Imle stated, "*We will not allow those [human rights] violations to take place to our benefit, meaning on our project.*"⁴ Unocal's partner, Total, has also claimed that their company:

is pledged to ensuring that the construction and operation of the Yadana pipeline is approached and managed in a manner which is consistent with the local communities' expectations, traditions and requirements . . . [and] in line

*with the policy of established international guidelines . . .*⁵

In spite of these and other claims, Total representatives are unsure of their ability to control the security forces which the company has hired to protect the project. Company officials have openly admitted that they "*do not share Unocal's confidence in the good conduct of Burmese troops.*"⁶ Such misgivings, however, have not led either company to reconsider its business relationship with these troops or the regime which commands them.

In contrast to company claims, reports by international organizations and human rights groups have linked escalating human rights abuses, poverty and refugee flow to oil and gas activities in Burma.⁷ ERI and SAIN sources within the country have verified that the scale of human rights violations against civilians in the pipeline region has dramatically increased since natural gas investment activities began. Likewise, a growing number of recent arrivals in refugee camps have left their homes in the pipeline region because of the high level of army activity and associated human rights abuses in the area. ERI and SAIN have received this information from reliable sources who independently confirmed these serious allegations in their entirety. Most of the names of people and places, however, have been withheld in order to protect the individuals and their families.

The abuses described below result from the increased security presence in the pipeline area. ERI and SAIN allege that because these security personnel are in the region specifically to protect the pipeline, the oil companies must bear their share of responsibility for the human rights violations committed by them. The elevated level of persecution is directly linked to their investments, even if the companies, or the investments, do not directly benefit from these abuses.

The ensuing chapters on forced labor (Chapter 4) and forced relocation of villages (Chapter 5) provide evidence of a further category of violations, in which investment activities do benefit directly from human rights violations. What follows is only a representative sample of incidents that illustrate the relationship of energy company involvement to virtually every aspect of civilian life in the pipeline region. This primary source information is presented in the form of direct testimony from the victims and witnesses, excerpted from interviews conducted in recent months. ERI and SAIN feel that it is crucial to allow these persons, denied free speech in Burma, a forum in which their stories can be truthfully presented.

Violations of the Right to Life

Article 3 of The Universal Declaration of Human Rights provides that, "Everyone has the right to life, liberty and security of the person."⁸ The right to life is perhaps the most fundamental of all human rights, protected by international law as well as the domestic laws of virtually all nations. Under international law, the right to life is one of the few nonderogable rights: even in a declared state of emergency, a government may never violate its citizens' right to life. In spite of this universal prohibition, SLORC consistently and blatantly violates this right throughout Burma, including in the pipeline region.

Violations of the right to life and of the integrity of the person have taken the form of summary executions by the army, such as those conducted in retaliation for the February 1996 attack on Total's headquarters in Ohn Bin Gwin. As part of this retaliation, SLORC

arbitrarily executed at least ten Karen villagers from Ein Da Ya Za Village which is located on the pipeline route. None of these people were ever charged with any crime or offense. Likewise, not one received a trial, a hearing or even an informal opportunity to defend him or herself before being executed (see Chapter 2: Security).

Arbitrary killings are carried out by military leaders as well as soldiers from the rank and file. Villagers are routinely killed or physically abused if they are suspected to be linked to armed rebel groups such as the Karen National Liberation Army (KNLA) or the Mon National Liberation Army (MNLA). A sixty-six-year-old Karen man from Mi Chuang Laung, a village located on the pipeline route, related a typical occurrence. He described how SLORC soldiers killed two men, Saw Nlaw Mae and Ta Lay Lay, in November 1992, after accusing them of supporting the KNLA in the pipeline region. *"It's so scary, I know these two men very well. I know there was nothing to that [the accusations]," he told ERI. "They did not do anything, they are just farmers. SLORC arrested and killed them on their farms."*⁹

SLORC has also killed numerous civilian laborers and porters in the pipeline region when they have either failed to carry their loads or attempted to escape (see Chapter 5: Forced Labor). Such deaths rise to the level of extrajudicial execution, and they are often preceded by torture, rape or severe mistreatment at the hands of SLORC security forces. In addition, numerous deaths have resulted from the denial of adequate food and medical care to those conscripted to work as forced laborers and porters for the military.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has expressed concern about such killings in Burma, pointing specifically to cases of Mon and Karen people who were reportedly killed by the army. The Special Rapporteur noted the *"persistent reports of arbitrary and excessive use of force by members of the security forces, who seem to enjoy virtual impunity."*¹⁰ A young woman from Ye Byu Township voiced these concerns as she related her personal experience on the Ye-Tavoy railway:

They just walked around and beat the people who rested . . . They never let anyone rest when they were working. Especially prisoners, they are treated the worst. They beat them to death. They said one prisoner died of diarrhea. But it was obviously a beating. I saw two dead bodies with blood all over the bodies.

*When I saw the two dead bodies, one of them hadn't died. We saw the blood from his head and the vomit. The battalion commander named Aung Min beat one prisoner to death. Some prisoners were killed by diarrhea, and some were beaten to death. The total is around 30 because they did not bury them so deeply, and so when the tide came, the water washed the bodies ashore. We saw so many skulls and some children were playing with the skulls and bones.*¹¹

SAIN has verified that political prisoners are forced to do hard labor on development projects throughout the country, often as part of chain gangs. For example, SAIN has recently received confirmation from reliable sources within Kachin State that SLORC is using political prisoners to work on infrastructure projects such as new roads and airports there.¹² SLORC may also be using such political prisoners to work on infrastructure projects for the

gas pipeline venture. It is therefore possible that some deaths from forced labor in the pipeline region are political killings.

Torture and Other Cruel, Inhuman or Degrading Treatment

Article 5 of the Universal Declaration of Human Rights provides that "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment."¹⁴ SLORC troops in the pipeline region routinely violate this fundamental and nonderogable right. The abuse usually takes the form of severe civilian beatings during the course of forced labor--labor which is often exacted for foreign investment projects or for the infrastructure to support them. These abuses are detailed in Chapter 5.

In August 1992, SLORC acceded to the four Geneva Conventions of 1949 which establish internationally recognized minimum standards of conduct during international and civil armed conflict. Common Article 3 of the Geneva Conventions applies to all parties to an internal armed conflict. SLORC is thus required to ensure that its security forces adhere to the provisions of the Article, which provides that: "(1) Persons taking no active part in the hostilities . . . shall in all circumstances be treated humanely." Common Article 3 also prohibits the following with respect to civilians and other noncombatants:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment.¹⁵

Information gathered through interviews with villagers from the pipeline region indicates that torture and brutality are an integral part of SLORC's *modus operandi*. For instance, when villages are unable to provide the demanded number of porters or to raise the required porter fees, soldiers punish the village heads. One villager explained: "*Sometimes the village head cannot provide them with labor. In those times the village head got beaten. And one of my friends got beaten because he went to work late and he was beaten badly by SLORC on his back, eight times.*"¹⁶ Likewise, prison laborers must often endure appalling treatment at the hands of the SLORC soldiers who guard them:

*If the village perpetrated any crime or villagers met with any armed group they arrest these people, and they become prisoners and work on railway construction. The other prisoners come from other places like Tavoy or Moulmein. They treat the prisoners so badly. SLORC just tortured them. Because the prisoners had to work with the chain on their feet so they are not allowed to eat the edible leaves in the jungle. They had to hide and eat the cheroot [Burmese cigar]. They just try and pick up other people's leftovers. And they can't smoke, they just eat tobacco. As one of the prisoners told me, they never get enough food. I saw two or four times SLORC kicked the prisoners. I felt sorry for the prisoners because they looked so thin. I think during the whole time I was there more than 15 prisoners died. I saw the dead bodies.*¹⁷

Stories like this are not unusual, despite the fact that under international laws and SLORC's treaty obligations under Common Article 3, such acts are illegal. Porters and laborers are beaten, slapped and kicked when they collapse from exhaustion or take a rest from their work. Villagers receive similar treatment if soldiers even suspect that they are connected to rebel groups, no matter how tenuous the connection. It is part of the disease that affects the entire country. It has now come to the pipeline region as well.

Rape and Violence Against Women

Rape is one common form of torture perpetrated by SLORC against women. Ethnic women, including the very young and the very old, have been particular targets of this form of SLORC abuse, facing continual sexual and physical harassment. In many instances, women are murdered following the rape or intimidated into silence by the raping soldiers. Aside from the physical and psychological trauma of these rapes, ethnic women further suffer the loss of their suitability for marriage within traditional cultures. Rape by SLORC troops presents a significant risk of exposure to HIV and AIDS as well because at least 2.7% of SLORC soldiers are infected with the virus.¹⁸

A fifty-four-year-old Karen woman told ERI that she and her granddaughter were raped by a company commander of LIB #407, Thein Soe. LIB #407 is responsible for security in the area immediately south of the pipeline route. She explained that her granddaughter, her nephew and she had left their village of Laut Theit in Ye Byu Township and fled to Thailand to escape the forced labor and porter fees which had noticeably increased since 1992. Explaining that "*no one likes to live in the refugee camps, people like to live in their own places,*" she and her family eventually attempted to return home. On December 3, 1993, as they were travelling back to their village, they were stopped by thirty soldiers from LIB #407. The woman recounted:

Thein Soe said 'Old woman, tell me the truth. How old is your granddaughter?' I responded '17 years old' . . . Then he said 'go and tell your granddaughter to come here.' I took my granddaughter to him. As soon as he saw me, he yelled at me: 'Why did you come with her? I'll kill you with a hoe.' Then I left my granddaughter with them. He also took out his knife and threatened me with his knife. So I went back to my place and tried to listen to what would happen. Thein Soe and my granddaughter were talking. After around ten minutes I heard my granddaughter screaming 'Grandma, grandma!' But I dared not go. I was so scared.

After fifteen minutes they freed my granddaughter. My granddaughter said he told her to sleep with him. She refused. Finally, he raped her. It was about 11 pm.

The next morning one of the soldiers came and told me that the officer called for me. I was so scared that they were going to do the same to me as to my grand-daughter. But I had to go. Then, as the lieutenant asked me some questions, he started to rape me. But he could not rape me well. But my granddaughter was raped by the company commander Thein Soe. Then they

*released us. But before they released us, they told us not to tell anyone about what happened. And the commander said 'Old woman, if you tell anyone about that [the rapes], I'll kill you and your relatives.' All of the soldiers shouted at us a lot and all of the soldiers and the security guards knew about the rapes.*¹⁹

Such incidents are not isolated. The widespread practice of rape, particularly of ethnic women, indicates that SLORC soldiers may be using rape as yet another form of intimidation and control over Burma's ethnic peoples. The pipeline region is simply a new landscape in which this control is now exerted.

Violation of Economic, Social and Cultural Rights

Beyond the physical abuse and intimidation that rural villagers suffer at the hands of SLORC, the military security forces for the gas pipeline routinely confiscate property and food, making it difficult for villagers to support themselves. SLORC troops routinely intimidate and threaten villagers until they turn over their livestock, crops and other personal property. For example, LIB #407, a SLORC unit charged with pipeline security, was responsible for the following economic rights violation:

*They said 'what are you doing with these two pigs?' They said, 'we will send you and your pigs to jail tomorrow.' Another soldier said, 'send them to their graves.' I thought the troops were going to kill us. Then I told them, 'wait a minute, let me pray to God.' When I said that, one of the soldiers pushed me very hard making me fall down. The next morning, one of the troops came and told me 'we are not going to kill you or send you to jail if you give us one of your pigs.' I said 'Please, I want to celebrate Christmas.' But finally they took one of my pigs. I paid 4,000 kyat per pig. That was quite a lot.*²⁰

This is a violation of Article 17(2) of the Universal Declaration of Human Rights which stipulates that "No one shall be arbitrarily deprived of his property."²¹ Since the Yadana contract was signed, there has been a substantial increase in the number of refugees from the pipeline region arriving in camps along the Thai border. ERI and SAIN have conducted dozens of interviews with new arrivals which indicate that most of these people fled their homes to escape forced labor or SLORC's seizure of property, including extortion of portering and labor fees.

Payoffs to the military are common throughout the country. However, there is a new form of extortion associated with natural gas development which is unique to the Yadana project area. It is known to the villagers as the "pipeline tax"; money is demanded from the majority of villagers who inhabit the pipeline region. While nominally a tax, the regime has passed no law to mandate its collection; in reality it is little more than extortion. But it is only one of the many burdens associated with the project. Villagers and newly arrived refugees explain that the civilians in the region are left with little time to farm their land or earn their living after they finish their labor duties for SLORC. This, in conjunction with the extraction of porter fees, forced labor fees and "pipeline taxes", renders it virtually impossible for families to provide for themselves. A villager from Nat Gyi Sin village, in Ye Byu Township, explained the various fees exacted by SLORC and their effects:

Sometimes we had to pay 500, 1000, 1500, or 2000 kyat, depending on what kind of portering. Sometimes they ask two or three times a month. Whenever they want people, they just ask for money from the village head.

About the pipeline construction -- None of us know exactly about that, except that we have to pay money for building it. The soldiers came to our village and informed the village and asked for the donation. For our house, we have to pay 500 kyat.

The villagers are getting poorer and poorer. Some are selling their own things like cattle to pay the forced labor fees, porter fees and other forced donations, like donations for all of the buildings and so many things. The villagers are saving all they own to give to SLORC. So they became poor. So many villagers are easily getting sick, like diarrhoea and oh, I can't think of it all. A lot of them are suffering. So many villagers are trying to leave and come to the border. The only people who stay in the village for now are kind of wealthy people. So they are surviving. But so many are leaving. Oh, I think it should stop. If I mention all of the atrocities of SLORC, I'll not be finished in two days.²²

Another villager confirmed the prevalence of this phenomenon. He described a similar situation in his village:

LIB #409 called for two big porters from the village. [Big porters indicates heavy carrying, often near fighting.] So we, the village, had to give them porter fees of 6,000 kyat--3,000 for each porter. Then LIB #410 showed up and did the same thing. So we become poorer and poorer and have nothing left. At that time in Pwa Shin Ma village there were only thirty houses left. The other sixty families went their separate ways when we were moved to Pwa Shin Ma. We had to give 6000 kyat to three different LIBs. We had to give every month. The whole village had to give. The village head collected the money.

We faced many difficulties. They also asked us for 1,000 sections of roofing and 1,000 trunks of bamboo. They asked for the bamboo that we couldn't get from Pwa Shin Ma village, so we had to go back to Mi Chaung Laung to get it. That took us about ten days. They asked for this six times in 1992. We had to give so many kinds of wood . . . Pay, what pay? If they gave us the wage for only one day we might be in heaven. We had to give or find what they want and get it to the right place where they want it. Some wood for their bunker, some for their building. I had a plan to leave the village at that time, so I was noticing this kind of thing.²³

The physical presence of Total personnel and facilities in certain parts of the region has contributed to or directly caused violations of economic, social and cultural rights. Many villagers have been forced to permanently abandon their traditional livelihoods and seek new forms of work in their villages or to flee to refugee camps in Thailand. The villagers are thus

being deprived of their choice of livelihood in violation of Article 23(1) of the Universal Declaration of Human Rights of which provides that "Everyone has the right to work, to free choice of employment" ²⁴ For example, fishermen and river traders in the pipeline region have been unable to make a living because of SLORC security decrees. Since the beginning of the Yadana project, SLORC has prohibited local use of certain bodies of water so that exploration, transportation and construction are able to proceed without interference from the local commercial shipping and fishing industries.

Heinze Island is located in the middle of a shipping lane that is crucial for both the TNCs and SLORC. The companies are using the island for the transportation and storage of equipment to build the marine-based part of the pipeline, and SLORC has built new barracks and stationed new battalions on the island for project security. Before the venture started, Heinze Island was uninhabited, and waters surrounding it were used by the local fishing community. A villager who did forced labor on Heinze Island reported that SLORC announced that anyone found in the waters surrounding the island will be shot (see Chapter 5: Forced Labor). ²⁵

Similarly, the oil companies are now using docking facilities at Pyin Gyi and Ka Htait port for transportation of fuel and equipment in an apparent attempt to avoid using the infamous Ye-Tavoy railway. These ports were previously used to dock local fishing and passenger boats. SLORC orders now state that under no circumstances are passenger or fishing boats to travel anywhere when a company ship is in the area. It is not uncommon for company ships to dock at the Pyin Gyi port for up to a week, during which time passenger and fishing boats are forbidden to leave port. ²⁶ Likewise, local boats which travel along the Maung Ngan-Ka Htait-Pyin Gyi route must now register at new SLORC checkpoints which were installed shortly after the companies arrived. These security measures have placed the fishermen in very difficult circumstances; likewise, river-dependent traders have suffered as well. ²⁷

Cashew nut farmers have also been adversely affected by the pipeline in the villages of Ein Da Ya Za, Mi Chaung Laung, Ya Buand and Laut Thane. As part of SLORC's security measures in this area, the villagers are forbidden to leave their villages to harvest their crops. Instead, SLORC soldiers offer to harvest the crop for them. The farmers must then pay SLORC for this service, in effect buying their own harvest back from the soldiers which leaves them with little or no profits from the nuts. ²⁸

Forced relocation and village destruction, human rights abuses in themselves, are also violations of the Universal Declaration of Human Rights provisions on economic, social and cultural rights (see Chapter 6: Forced Relocation). Article 17 establishes a right to property and prohibits its arbitrary seizure, and Article 23 establishes the right to work and to free choice of employment. ²⁹ More generally, Article 22 provides that all persons have a right to the realization of "the economic, social and cultural rights indispensable for his dignity." ³⁰ When SLORC forcibly relocates villages, civilians are compelled to abandon their farms without compensation, surrendering their established trades. Further, villagers are dislocated from their communities, suffering social and cultural alienation in their surrogate homes. This is exacerbated in the case of refugees who have fled to neighboring countries such as Thailand, where they face a foreign language and culture and are prohibited from working and planting crops. Thus, forced relocations and depriving villagers of their property, traditional livelihoods and dignity, violate the relevant international law provisions of the

Universal Declarations of the Universal Declaration of Human Rights.

Despite the losses they suffer by leaving, tens of thousands of villagers have chosen refugee status as a lesser evil than the disempowerment and loss of identity that they face by remaining in their homes. One recent arrival in a refugee camp in Thailand poignantly explained: *"I came here to find a better place. I'm not happy with staying in our village because I felt that I did not belong to myself. I just want to stay in the peaceful place where there is quiet."*³¹

These accounts demonstrate a widespread, persistent pattern of human rights violations against the people of Burma by SLORC. Merely entering into a partnership arrangement with such a regime constitutes complicity in these abuses. The level of corporate culpability is much higher in the case of the Total/Unocal/SLORC consortium, however, for these abuses are actually carried out by pipeline security personnel for the benefit of the project. Total and Unocal must bear responsibility for the violations outlined above.

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1. Yokota, Professor Yozo, *Human Rights Questions: Human Rights Situations and Reports of Special Rapporteurs and Representatives. Situation of Human Rights in Myanmar*, February 1995 (emphasis added).
 2. Unocal Corporate Communications Department, *Unocal in Myanmar: Report to Stockholders*, July 1994, at 6 [hereinafter *Unocal in Myanmar*].
 3. See, e.g., Unocal Corporate Communications Department, *The Yadana Project: November 1995* [hereinafter *The Yadana Project*]; *Unocal in Myanmar*, *supra* note 2.
 4. Transcript, *Meeting on January 4, 1995 with Unocal's President and a Group Interested in the Pipeline* (on file with authors).
 5. Total, *The Yadana Gas Development*, November, 1995, at 13 [hereinafter *Total Report*].
 6. Millman, Gregory, *Troubling Projects, Infrastructure Finance*, Feb/March 1996, at 18.
 7. See, e.g., Article 19, *Paradise Lost? The Suppression of Environmental Rights and Freedom of Expression in Burma*, September 1994; UN Commission on Human Rights, *Discrimination Against Indigenous Peoples: Transnational Investments and Operations on the Lands of Indigenous Peoples*, E/CN.4/Sub.2/1994/40; Human Rights Watch/Asia, *The Mon: Persecuted in Burma, Forced Back From Thailand*, December 1994.
 8. Article 3, Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948) [hereinafter *Universal Declaration*].
 9. ERI interview #8 (on file with authors).
 10. UN Document I/CN.4/1995/6,1 paragraph 230.
 11. ERI interview #3 (on file with authors).
 12. SAIN ongoing investigation into the use of political prisoners for forced labor.
 13. ERI interviews with sources in the area, April 25, 1996.
 14. Universal Declaration of Human Rights, *supra* note 7.
 15. *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Common Article 3) opened for signature August 12, 1949, entered into force October 21, 1950, 75 U.N.T.S. 287.
 16. ERI interview #10 (on file with authors).
 17. ERI interview #5 (on file with authors).
 18. Third Asia and Pacific Conference on AIDS, Chiang Mai, Thailand, September 1995.

19. ERI interview #7 (on file with authors).
20. ERI interview #7 (on file with authors).
21. Universal Declaration of Human Rights, *supra* note 7, art. 17.
22. ERI interview #10 (on file with authors).
23. ERI interview #8 (on file with authors).
24. Universal Declaration, *supra* note 7, art. 23(1).
25. SAIN interview with forced laborer from Heinze Island (on file with authors).
26. ERI interviews with local sources, February 21, 1996 (on file with authors).
27. ERI interviews with local sources, February 21, 1996 (on file with authors).
28. ERI interviews with local sources, April 25, 1996 (on file with authors).
29. Universal Declaration of Human Rights, *supra* note 7.
30. *Id.*
31. ERI interview #1 (on file with authors).

Chapter 4:

FORCED LABOR

Article 1(1): Each member of the International Labour Organization which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

Article 2(1): For the purposes of this Convention, the term "forced or compulsory labour" shall mean 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.

Article 4(1): The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.

Convention Against Forced Labour,
ILO (No. 29)¹

Forced Labor in Burma: A Brief Overview

Burma is a signatory to the Convention Against Forced Labour and as such is obligated under international law to abide by its provisions. Although there have been many well-documented reports of forced labor in Burma, SLORC officials continue to deny that the practice exists. They either categorically disavow the validity of the reports or alternately defend the practice by misdescribing forced labor as an important part of Burma's cultural heritage. The following statement is typical of such repudiations:

I would like to state there is no element of coercion or force involved concerning the use of civilian laborers. In fact, the development projects are for the benefit of the local populace The daily wages for the laborers are found to be commensurate to those prevailing in the areas concerned A point worthy of mention is that donating labor is a tradition deeply rooted in Myanmar's culture It is widely accepted in my country that voluntary work for the good of the community is not tantamount to forced labor or a violation of human rights.²

Unocal and Total statements regarding their use of forced labor on their project are as disingenuous as SLORC's. While SLORC representatives point to tradition to justify the use of forced labor, Unocal president John Imle has blamed the opponents of the pipeline for the military's transgressions in the region. "Let's be reasonable about this," he told a group of human rights activists in January 1995, "what I'm saying is that if you threaten the pipeline, there's going to be more military. If forced labor goes hand-in-glove with the military, yes, there will be more forced labor."³ In a later interview with Infrastructure Finance magazine, Imle backtracked: "The troops assigned to provide security on our pipeline are not using forced labor."⁴ Herve Chagneaux, a Total spokesman, was not able to share the confidence

of Total's investment partner: *"I could not guarantee that the military is not using forced labor All we can really guarantee is what we [ourselves] are doing, the contracts we make, the people we employ. What is being done nearby we do not know."*⁵

Forced labor in the pipeline region may be reasonable to Unocal's president, but the villagers who are subjected to it disagree. Further, they are insulted by SLORC's equation of forced labor with Burma's cultural tradition of voluntary labor. There is, in fact, a Burmese tradition whereby villagers volunteer to help with projects such as bridges and roads which will benefit the entire community, but these traditional endeavors are initiated by the villagers themselves, not by military figures carrying guns.

Forced Labor on the Pipeline Route

ERI and SAIN have confirmed that forced labor is being used on the pipeline route and related projects, notwithstanding SLORC and company denials of these charges. In August 1995, SAIN spoke with an escaped laborer who had been forced to work on infrastructure projects for the oil companies and build military barracks for SLORC on Heinze Island. In February 1996, ERI interviewed a porter who was seized by LIB #273 and brought to work on the pipeline route clearing trees and leveling the earth. He is one of over seventy people who were taken from their villages and forced to clear the way for the pipeline. ERI also took the testimony of both a fifteen-year-old girl who was conscripted to clear vegetation and level the ground for the pipeline and a porter who was forced to carry supplies for soldiers along the route. The substance of these interviews and the connection of forced labor to the pipeline are detailed below.

Heinze Island is located on the route that Total uses to transport materials and equipment for the construction of the gas pipeline. In order to prepare for the work on the pipeline, SLORC captured villagers from Kanbauk and brought them to Heinze Island. One escaped laborer told SAIN the following story:

I worked forced labor in Heinze Island last May 1995. I was summoned by local authorities from my village along with 60 men My group was not the first one, there were many villagers who have been conscripted into the island before my group. They told me that the working and living conditions on the island were unbearable but I had no choice to disobey the order. Also I did not have any money to hire another person. It would cost 2500 kyat per person.

The villagers had to bring their own tools and food and pay 300 kyat per person for boat fuel. When they arrived on the island, they were taken by LIB #104 to makeshift barracks with *"barely enough roof and nothing for the floor."* SLORC soldiers confiscated and reallocated their rice supplies, allowing each villager only two small tins per day. The workers had to get up at 4 a.m. and be at the worksite by 6 a.m. They had to work from 6 to 11 a.m., and then from 1 to 5 p.m. The laborer went on to describe the working conditions:

The main work was cutting the trees and the bamboo, making the ground level, carrying the metal pipes from the coast to places they ordered, building up the barracks made from bamboo and wooden buildings. They told us the

wooden buildings were for the guest house. I do not know what the reason was for the metal pipe. They were about 20 feet long and 10-12 inches wide. There were about 500 pipes as far as I saw. We also needed to build three mini-airfields. First we had to make the ground level and put the bamboo mats painted with white colour and a red cross on it.⁶ There were about 300 inmates in uniforms and in chains working on the island. Their place was separate from us. We saw them every morning and when they were coming back in the evening. I do not know what kind of work they had to do on the island. They looked malnourished and worse than us. They were not allowed to speak with us.

I saw some foreigners from Tavoy joint venture office [Kanbauk] on the island. They came with army officials and walked around the island. I have seen them before when I was in Tavoy. They had an office there with some other Burmese interpreters for about two years. I saw them come by boat. I saw helicopters flying over the island, but I did not know whether they landed on the island because I was working in my worksite. The foreigners stayed sometimes overnight, and they took measure with their instruments on the islands.⁷

Nine months later, in another part of the pipeline route, villagers from Mi Chaung Laung area and Taung Chey Yin area were forced to perform a different type of labor for the pipeline. From February 14 to the end of the month, representatives of Total charged MOGE and LIB #273 with the responsibility of procuring a group of laborers to clear and level the pipeline route. Total did so because it had learned that the particular work area was not completely controlled by SLORC. Company officials therefore ordered MOGE to perform this duty, apparently including instructions for the laborers to be paid. MOGE and LIB #273 instead used 70 porters who were seized from villages in the area, including Thet Yet Chaung and Laung Lone, and forced them to do the work without compensation.⁸

Under international law, even if these porters had been compensated, such payments would be legally irrelevant to their status as forced laborers. The Convention Concerning Forced or Compulsory Labour defines forced labor as "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."⁹ Both the individuals quoted above were literally seized by SLORC troops and compelled to work. As a signatory to the Convention, SLORC's actions violate international law regardless of whether they subsequently compensate workers.

SLORC continues to flout its legal obligations. A forty-three-year-old man whose village was relocated in 1992 told ERI of his experience. His testimony confirms the connection between forced labor in the Tenasserim region of Burma and the Unocal/Total pipeline:

I have nothing to provide for my family, so I try to get any job to support my family. So I went to Ye Bone to get a job. Unluckily I have been taken by SLORC Infantry #408, and I have to carry for them. They saw me and took me to their military outpost. One of the soldiers told me 'Don't worry. We are taking security for English. You carry our things and English men will give you 200 kyat for a day.' We had to carry rice or food and patrol in the jungle

around Klaing Aung and Kanbauk for two weeks. Sometimes we had to give them a massage.

Sometimes we were on the road that people say is the gas pipeline road. I've never seen that road before. I just heard it. In that time, the soldiers would get the load from us, and they would carry it themselves. One of the soldiers would lead us to walk around the road in the jungle. Then five minutes later we would have to carry it again. The soldiers were talking to each other about the pipeline and how the pipeline is going to provide money for the government. The soldiers were quite young, and as they said, they are patrolling around for the security of the pipeline. The soldiers seemed not so happy about being soldiers. They complained about being soldiers all the time. But we had to carry about twenty viss [about 35 kilos], and they only had their small backpack.

I never got any money, not even a coin, so after two weeks I escaped.¹⁰

The story of this man and the eight others who had to work alongside him is typical of those who are compelled to work on the pipeline route. Even children are forced to clear trees and brush and level the ground for pipeline-related construction. The use of children for forced labor violates both the international labor standards and international child labor laws to which SLORC has acceded, specifically the Convention Against Forced Labour and the International Convention on the Rights of the Child.¹¹

Moreover, it appears that Total representatives know that young children are performing hard physical labor for the benefit of their project. ERI interviewed a fifteen-year-old girl forced to work on the pipeline while foreigners watched and paid her; she has since escaped from the pipeline region and is now living in a refugee camp in Thailand. Prior to her work on the pipeline, she was required to perform difficult labor on the Ye-Tavoy railway line on four separate occasions. Twice she had to work for ten days and twice for fifteen. Her testimony concerns a separate incident in which she was forced to work on the pipeline route itself:

Two days after I had finished my fourth time for working on the railway, the soldier came to my house and told all the people that 'you have to get ready before five o'clock in the morning. You have to go and work with the English.' We were so scared because we have not seen English before. So, we were kind of afraid of what kind of work we would have to do. We were scared. The next morning, the soldier came and collected us and took us there to work. He said we were going to the pipeline route.

I had to clear the bushes and other things. Some men were using hoes and they were leveling the ground for the girls and women. We had to cut small trees and clear everything, then the men would come and level the ground with the hoe. Everytime I had to work like that. There were about forty of us. While we were working there were two English guys watching us. They never wore a shirt.

I went to do this for three days, and I got paid two times. On the first two days, the English came and gave us 200 kyat for a day. A Karen man gave us

*the money but the two English were watching. On the third day, the soldiers came back and said, 'Your work yesterday was not good enough. You have to come back and work again.' I don't dare refuse. So we went and worked there again. But we didn't see any English and we didn't get any money.*¹²

These two testimonies establish a clear picture of forced labor on the pipeline route. This fifteen-year-old girl did not go to Total's headquarters and apply for a job as a day laborer on the pipeline. Nor did the forty-three-year-old man want to work as a porter for LIB #408. Both were victims of compulsory labor, their services exacted against their will by SLORC force. The soldiers that conscripted these two individuals explicitly stated that they were going to the pipeline route. They were told that they would be working for the "English," a term used in rural Burma to describe Caucasians: these "English" in fact watched the girl work and supplied her with a 200-kyat wage.

This evidence discredits SLORC and oil company assertions that forced labor is not being used on the pipeline route. Moreover, the fact that Caucasian men were present at forced labor sites and overseeing children's work, casts serious doubt on company claims of ignorance of illegal labor practices.

Forced Labor on Pipeline-Related Projects

When an oil company undertakes a project, infrastructure development in the area is usually necessary. Roads, bridges, and railways are often built to construct and maintain the projects. While such development may collaterally benefit local communities in some parts of the world, this is not the case in Burma. To the majority of the Burmese people, energy development in Burma under SLORC entails only forced labor, increased taxes and suffering. In the words of one local villager who worked on a pipeline-related road: "*If they let us work like human beings, we might not have come to the refugee camp. But they force us to work like slaves or animals.*"¹³

In addition to forced labor use on company buildings and infrastructure, civilian populations in the pipeline region have been conscripted to build barracks for the SLORC troops assigned to provide project security. This began with the pipeline-related influx of SLORC troops in 1992. Dozens of accounts confirm that villagers have built new military camps and housing at gunpoint. One villager recounted:

*We had had to rotate. If we go for ten days, the other group got to rest. When they worked, we rested. We built the houses for the soldiers to live some are building a kitchen, some are building a store, some a hall, some an office. They guarded us with their guns. If one of us rested, a soldier would slap your face.*¹⁴

Another villager told a similar story:

LIB #408 used to tell us 'if you don't want to go as porters and forced labor, come and work at our outpost building the houses.' So we said yes, and we do this for LIB #408 on their building. Then LIB #409 and #410 showed up and asked for porters and forced labor. We said that we were working very hard

*for LIB #408. Then LIB #409 said, 'we have nothing to do with #408, so just do what we say.' That is so terrible. We just don't know what to do.'*¹⁵

Further, villagers in the pipeline area have been forced since 1992 to build roads that will likely be used to construct and service the pipeline. While it is difficult for ERI and SAIN to confirm exactly which roads will service the project, the villagers tellingly refer to the roads they have been forced to build as "the pipeline roads."

John Imle of Unocal nonetheless confidently maintains that pipeline construction and infrastructure work does not involve forced labor: "*We will build our own roads, with our own labor, with no impressed labor and with no labor that is not paid . . . There is no way that any government can impose on us the use of slave labor. We will not do it.*"¹⁶ In the face of the evidence, such an assertion is baseless.

Forced Portering for Security Forces in the Pipeline Region

Since SLORC seized power, international human rights groups, the United Nations, the United States State Department and others have documented SLORC's widespread practice of forcing civilians to work as military porters.¹⁷ It is well established that the SLORC army does not move without porters; each soldier typically requires two civilians to carry his assigned load of equipment. Hundreds of thousands of villagers in the ethnic minority areas of Burma have been forcibly conscripted to carry arms, ammunition and other supplies into civil war zones, including the pipeline area.

Civilians are typically seized by the army, either at random or on a rotational basis, regardless of their political affiliation or any association with an armed opposition group. The length of forced service varies from a few days to weeks or even months at a time. In addition, SLORC employs abusive recruitment and detention methods, involving severe and sometimes fatal maltreatment of the porters. Porters have died from exhaustion and neglect, and others have been beaten to death or extrajudicially executed for disobeying orders or for trying to escape.

The only way rural villagers can avoid brutal portering duties is to pay large "porter fees" to local military commanders. Fees in the pipeline area range from 500 to 3000 kyat, depending on the type of portering that the soldiers demand.¹⁸ These fees are currently being exacted from villagers in the pipeline region between one and three times each month. If a village is unable to provide the porters or adequate fees, the village head is subject to severe physical abuse and other forms of punishment. The village head in Nat Gyi Sin, Ye Byu Township, for example, was beaten on numerous occasions for this reason.¹⁹

More affluent villagers sell or barter their property in order to pay the fees. Most, however, cannot raise the money and have no choice but to comply with demands for porters. In May 1996, for example, in the Nat Ein Daung area, where the pipeline will cross the border into Thailand, LIB #408 was using more than 600 conscripted porters. These porters were transferring large amounts of battalion supplies to storage facilities for the impending rainy season. Each porter must carry between twenty-five and thirty viss (about forty kg) of food and ammunition for the soldiers. The porters were guarded by 120 soldiers while they performed their duties.²⁰

Forced portering has increased markedly in the pipeline region with the buildup of SLORC military presence. Since the pipeline project is the direct cause of troops moving through the area, it is also the indirect cause of the corresponding increase in portering and associated abuses.

ERI and SAIN allege that forced portering and forced labor in Burma, while human rights abuses in themselves, also amount to arbitrary detention of civilians by the SLORC military. The ill treatment the porters often suffer can be accurately characterized as cruel, inhuman and degrading treatment. Many are also so severely brutalized by the military that they die during their service, or shortly thereafter; such killings constitute nothing less than extrajudicial execution. These human rights abuses are in direct violation of the Universal Declaration of Human Rights and other human rights provisions of international law. The investing oil and gas companies must bear their share of responsibility for these gross human rights violations caused by forces providing security for their pipeline project.

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1. Convention Concerning Forced or Compulsory Labor (ILO No. 29), *adopted* June 28, 1930, 39 U.N.T.S. 55 (*entered into force* May 1, 1932).
 2. U Win Mra, Permanent Representative of the Delegation of the Union of Myanmar, to the forty-ninth session of the United Nations General Assembly, December 1994.
 3. Transcript, *Meeting on January 4, 1995, with Unocal's President and a Group Interested in the Pipeline* (on file with authors) [hereinafter "*Transcript*"].
 4. Millman, Gregory, *Troubling Projects*, Infrastructure Finance, Feb/March 1996, at 18.
 5. *Id.*
 6. The red cross on a white ground is an internationally recognized symbol to identify medical facilities and personnel which are to be respected by both sides in a combat situation under established principles of international law. The fact that SLORC is constructing red crosses may indicate that the regime is intending to disguise pipeline facilities as medical ones, perhaps to stave off attacks from armed opposition groups. Such a misuse of the red cross symbol is a violation of international law. *See, e.g.*, Protocol II Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, *opened for signature* December 12, 1977 (*entered into force* December 7, 1978), U.N. Doc. No. A/32/144 (1977), art. 12 ("[T]he distinctive emblem of the red cross . . . on a white ground shall be displayed by medical and religious personnel and medical units, and on medical transports. It shall be respected in all circumstances. **It shall not be used improperly.**") (emphasis added).
 7. SAIN Interview with forced laborer from Heinze Island (on file with authors).
 8. ERI interviews with sources in the area, February 21, 1996 (on file with authors).
 9. Convention Concerning Forced or Compulsory Labor, *supra* note 1.
 10. ERI Interview #14 (on file with authors).
 11. Convention on the Rights of the Child, adopted November 20, 1989, 28 I.L.M. 1448(1991)(*entered into force* Sept 2, 1990) (accepted by Burma on July 15, 1991).
 12. ERI Interview #1 (on file with authors).
 13. ERI Interview #14 (on file with authors).
 14. ERI Interview #4 (on file with authors).
 15. ERI Interview #8 (on file with authors).
 16. See Transcript, *supra* note 3.
 17. *See, e.g.*, *Burma Human Rights Practices, 1990-1996*, Department of State Dispatch,

Human Rights Reports; ECOSOC Commission on Human Rights, *Report on the Situation of Human Rights in Myanmar*, Prepared by Mr. Yozo Yokata, Special Rapporteur of the Commission of Human Rights, 1992-1996.

18. 3000 kyat is large amount of money for an average Burmese citizen, especially in the rural areas. The per capita Burmese income is less than US\$250 a year (30,000 kyat), and this amount is even less in rural regions. Smith, Martin, *Paradise Lost? The Suppression of Environmental Rights and Freedom of Expression in Burma*, September 1994, at 6.

19. ERI interview #10 (on file with authors).

20. ERI interviews with sources in the area, April 25, 1996 (on file with authors).

Chapter 5

CLEARING THE WAY: POPULATION DISPLACEMENT AND FORCED RELOCATION

Securing the route for the pipeline and its related infrastructure has resulted in widespread population displacement throughout the Tenasserim region of Burma. Since the Yadana project began, thousands of villagers have fled to refugee camps, driven from their homes by fear of the increasing number of SLORC troops charged with maintaining project security. Their fear is well-founded: these villagers know that to remain home may entail being forced to pay exorbitant fees to SLORC or to work as porters or laborers for the army under harsh conditions (see Chapter 4: Forced Labor). Faced with these options, many people have become refugees rather than submit to SLORC's brutal practices.

Population displacement also occurs in a more direct form. SLORC troops have marched into numerous villages in the pipeline area and ordered all the residents to move out or face forcible eviction. Such compulsory relocations physically clear the pipeline route and reduce the potential threats to the pipeline project from armed groups and dissatisfied villagers.

Total and Unocal deny that villages have been relocated as a result of their investment. In an interview in Bangkok's The Nation, Total's Joseph Daniels stated:

Since the signature of the Production Sharing Contract in 1992, no population has been moved to the best of our knowledge. Furthermore, we have no plan to move anyone in connection with this project, as the route of the pipeline has been carefully selected to ensure that it does not pass through any villages.¹

Such repudiations are contradicted by mounting evidence from human rights organizations, indigenous groups in the area and recent arrivals from the region to refugee camps.

The denials also fail to point out that SLORC relocated many villages during the negotiation stage of the deal. The final production-sharing contract was not signed by Total until July 1992, but according to the KNU Foreign Affairs Department, forced relocation of villages began in early 1991. At that time, Karen village leaders were reportedly ordered by SLORC troops to relocate their villages to non-Karen areas when SLORC stepped up military activities along the pipeline route.²

Some particular examples strongly connect forced relocations to the Yadana pipeline project. In late 1991, troops occupied one of the KNU Mergui-Tavoy District Township offices at Nat Ein Daung--the point at which the pipeline will enter Thailand--causing an exodus of the Karen township to Thai refugee camps.³ Shin Ta Pi village in Ye Byu township, through which the pipeline will pass, was also forcibly relocated in 1992. Interviews with the victims

of this relocation reveal that fifty-six households in the village had to abandon their homes in the rainy season of 1992, only two months before Total signed the production-sharing agreement for the Yadana field. At that time, the LIB #408 commander came to the village head and told him that his townspeople would have to move to Nam Gaeh village. The approximately 250-300 villagers were given one month to move to Nam Gaeh, five miles away.

Over 1000 soldiers from #408, #409 and #410 came to move the village. SLORC told the village head, 'Your village has to move in one month starting from today. After one month, your village will be a free-fire zone.' Then no villager dared to stay, so they all moved.³

Further supporting this eyewitness testimony, the Electricity Generating Authority of Thailand (EGAT), the major purchaser of Yadana gas, has publicly acknowledged that people are being relocated in order to facilitate pipeline construction. A half-page advertisement in the Bangkok Post on April 17, 1995, paid for by EGAT, unequivocally confirmed that villages were relocated to facilitate the pipeline project.

The Myanmar government aims to complete its part of the gas pipeline system by 1996. The pipeline will pass through Karen villages in Laydoozoo District, Mergui-Tavoy province and in Mon villages, Ye-Tawai province. Myanmar has recently cleared the way by relocating a total of 11 Karen villages that would otherwise obstruct the passage of the gas resource development project.⁴

The EGAT advertisement thus not only confirmed that relocations took place but concretely establishes that these were undertaken to "clear the way" for the pipeline. In addition, the advertisement tellingly referred to the "plan" of relocations and emphasized the importance of adherence to this plan:

If there are any deviations from the plan, we must ask ourselves what would happen to the investment in this 60 kilometer pipeline worth hundreds of thousands of million baht, not to mention the investment required for the power plant in Ratchaburi, which because it is being specially designed to use different types of fuels so as to reduce the supply risks associated with relying solely on natural gas, will cost an additional 70,000 million baht.⁵

This statement implies that the relocations were carried out as part of an organized strategy and reflects the shared attitude among the partners in the project that the pipeline is too important an investment to consider any deviation from that plan.

ERI and SAIN have confirmed EGAT's statement that forced relocation did in fact take place directly along the proposed pipeline route. Refugees from Mi Chaung Laung, a village formerly on the route itself, have related consistent accounts of SLORC's arrival in their village in March 1992 and subsequent orders to leave. According to confirmed testimony, SLORC convened a meeting of the village leaders and informed them that the entire village had to move to Pwa Shin Ma village within six days or else SLORC would return and force the village to move. Fearing penalties for noncompliance, each family in the village packed

up its belongings and left its home. Thirty-three of approximately ninety households in the village moved to Pwa Shin Ma village, located about three miles away. The remaining families evacuated to different villages or migrated to the Thai border to begin life as refugees.

Although this relocation occurred while negotiations were still underway with the oil companies, seven months later, after the contract had been signed, SLORC returned to Mi Chaung Laung and burned many of the empty houses to the ground. This effectively completed the relocation three months after the Yadana deal had been finalized by eliminating the possibility of the displaced people's return to their homes. A sixty-six-year-old Karen villager who came to the border in October 1992, told ERI:

Just before we came here, SLORC burned so many houses in Mi Chaung Laung. Pan Polo's house and Kyaw Shin's. I saw the ashes of Tharamu Ye Yta and Saw Htee Day's houses. They burned the houses because no villagers were living there. They said the KNLA was there. These houses were bigger than others, and on the edge of the village. Then SLORC dismantled some houses. They took planks and wood

In the new village, you know, we have nothing. We have no farm, no crops, no house. In the new place we were not allowed to plant or grow. We lived in our old village since we were born. Our old village was perfect for us if there are no soldiers.⁶

These testimonies and EGAT's public statements indicate that "clearing the way" has been a mechanism used by SLORC to fulfill its contractual responsibility in terms of pipeline security.

If the oil companies were in fact unaware of SLORC's relocations when they signed their contracts, they can no longer claim a defense of ignorance to the consequences of their investment in Burma. Unocal and Total must accept the public admissions, substantiated testimonies, and field reports which verify that the Yadana pipeline project remains a direct cause of forced relocation in Burma.

1. Lertchoenchok, Yindee, *Burma is in Need of Energy and Hope*, The Nation, December 25, 1995.

2. *Statement by KNU Foreign Affairs Department on Burma-Thailand Natural Gas Pipeline*, Office of the Supreme Headquarters, Karen National Union, Kawthoolei, February 24, 1995 (on file with authors). *See also Rangoon Abuses in Pipeline Area, Says KNU*, Bangkok Post, Feb. 25, 1995, at 6.

3. ERI Interview #5 (on file with authors).

4. Kardlar, Somsak, *Myanmar Gas for Ratchburi Power Plant: The Good Impact on Salween Dam*, Bangkok Post, April 17, 1995 (emphasis added).

5. *Id.*

6. ERI Interview #8 (on file with authors).

Chapter 6

THE WILL OF THE GENERAL: THE LEGAL VACUUM IN BURMA

Communities in Burma under the greatest environmental and cultural threats today are those inhabited by vulnerable members of society. The Yadana project is located in one of the most disempowered areas of Burma occupied by ethnic nationalities, indigenous peoples and the poor. Such projects raise vital questions about human rights, international environmental standards, corporate responsibility and the legal rights of indigenous peoples to control and exploit the resources in their traditional lands.

There is no effective legal structure in Burma to address harms caused by transnational corporation (TNC) gas activities. Instead, the rule of law is enforced only when it benefits the Burmese military regime. It is therefore no surprise that corporations working in partnership with SLORC currently operate with little or no accountability. This report has detailed the ways in which oil and gas activities by TNC's have directly precipitated or exacerbated human rights violations, destroyed the traditional means of livelihood for thousands of families, increased poverty and contributed to the growing exodus of refugees to neighboring countries. The current Burmese legal system further fails to address human rights abuses committed by SLORC soldiers providing security for TNC projects. Indeed, this particular investment project showcases the host of unredressed legal grievances which arise in connection with TNC activity throughout Burma.

Burmese law under SLORC provides no legal cause of action nor any remedy for people who are harmed directly or indirectly by TNC projects. Despite this, companies involved in such ventures in Burma insist that their transnational investments are legally acceptable because of their policy of following the laws of the country in which they operate. Unocal's *Code of Conduct for Doing Business Internationally*, for example, explicitly states that the company abides by "*all environmental laws of our host country.*"¹ Regardless of these and other claims, neither Total nor Unocal have made public the content of the Burmese laws that they purport to be following. Nor do they acknowledge the fact that even if adequate laws do exist on the books in Burma, the military junta has rendered judicial authority powerless for all practical purposes. The following examination of Burma's legal situation under SLORC exposes the true nature of the oil company's commitments when they claim to abide by the law.

Burmese Law Under SLORC: A Brief Overview

After SLORC crushed the democracy movement and asserted direct control over the nation in September 1988, it immediately suspended the 1974 constitution. Martial law was declared instead, ostensibly to maintain public order and preserve national security. In July 1992, Total signed the production-sharing agreement for Yadana Field, thereby binding the company to the martial law of Burma.

Just two months earlier, on May 15, 1992, Major General Khin Nyunt, First Secretary of SLORC and head of military intelligence, publicly explained the nature of that law: *"I would like to explain about this martial law according to the records that I have studied . . . martial law is neither more or less than the will of the general who commands the army; in fact martial law means no law at all."*²

Ten days later, Senior General Saw Maung, then SLORC Chairman, reaffirmed this view of what the law means in Burma, asserting that *"martial law means the will of the ruler. He can do anything he wishes to do."*³

SLORC's actual practice has been true to this interpretation of the law. In 1992, when Total signed the Yadana contract, the regime was ruling Burma by military decree, issuing repressive new orders aimed particularly at restricting all avenues of speech and assembly throughout the country that challenged the "will of the general." In essence, the "will of the general" was to officially outlaw all perceived threats to the regime's power. For example, Aung San Suu Kyi was detained under the 1975 Law Safeguarding the State from Destructive Elements. SLORC amended this law in August 1991 to allow administrative detention without trial for up to five years for persons considered to endanger "the peace of most citizens or the security of the state and the sovereignty of the state." This vague law empowered SLORC to hold Aung Suu Kyi without charge or trial until she was released in July 1995.

To further entrench the junta's monolithic power, military tribunals were established in July 1989 under Martial Law Order Nos. 1/89 and 2/89, giving SLORC legal authority to conduct summary trials using procedures in violation of international fair trial standards.⁴ Although these tribunals were abolished in 1992, sentenced individuals were not pardoned nor given amnesty, nor were their cases reviewed. Many of SLORC's original decrees remain in force today, including Order No. 2/88 which prohibits public gatherings of more than five people and Notification 8/88 which forbids public criticism of the military. These decrees continue to be utilized by military intelligence personnel to intimidate real or impugned SLORC critics.

Indeed, "the will of the general" is still the prevailing authority in Burma. Reinforcing this is the fact that there are no codified laws in place that are either accepted or officially endorsed by the people or even by SLORC itself. High-level SLORC officials, members of the judiciary and the Attorney General in Burma have informed the UN Special Rapporteur on Burma that both the 1947 and 1974 constitutions have been revoked *in toto*, and for that very reason, there is no legal authority upon which to effectuate the transfer of power to the civilian government elected in 1990.⁵ The UN has characterized Burmese law as *"martial law in the form of SLORC orders which is applied arbitrarily and with prejudice, especially against the ethnic minorities."*⁶

Such strict government control, however, is not exerted over the oil companies operating within Burma. SLORC understands that the lack of regulation and accountability is one of the factors that makes Burma an attractive country for oil companies' investment. Since the hard currency from these companies is helping the regime to build up its army and thereby strengthen its rule, SLORC's long-term interests are well served by allowing the companies to operate freely in Burma, regardless of the cost to the country's people and environment.

While intimidation and repression continue throughout the country, the only control exerted in the pipeline region--where the companies have pledged to follow the law of Burma--is that which furthers "the will of the general." Aung San Suu Kyi has addressed the ethical implications of doing business in Burma under such circumstances:

If businessmen do not care about the numbers of political prisoners in our country they should at least be concerned that the lack of an effective legal framework means there is no guarantee of fair business practice or, in cases of injustice, of reparation.⁷

While the rule of law in Burma has deteriorated substantially since SLORC began its rule in 1988, the erosion of legal authority has actually been an ongoing process since the military-run Burmese Socialist Programme Party (BSPP) seized power in a coup d'etat in 1962. Until then, Burma had been a parliamentary democracy based on the constitution of September 2, 1947. The first real challenge to this constitution came in 1961, when certain ethnic groups in Burma unsuccessfully attempted to amend it in order to guarantee equal rights for all nationalities.⁸ When General Ne Win came to power in the 1962 coup, he established single-party state rule for his BSPP, which was the first step to ensuring that the "will of the general" would always prevail. As part of that overall strategy, Burma's courts became increasingly dominated by political appointees with little judicial training. The legal system was further subverted on March 28, 1964, when the BSPP enacted the "Law to Protect National Unity" which codified the effective ban on all political parties except itself.⁹

This single-party rule was formalized in 1974 with the drafting of a new constitution by Ne Win's so-called Revolutionary Council. This constitution was unsatisfactory to many ethnic groups as it contained no provisions for ethnic nationality rights.¹⁰ Pro-democracy groups also reject the validity of this constitution today. More generally, they question whether any constitution drafted under a regime that seized power by force can represent the true will of the Burmese peoples.

The regime is currently in the midst of drafting a new constitution. As part of its dismissal of the result of the 1990 elections, SLORC issued Declaration No. 1/90, Article 20 of which confined the responsibility of elected representatives solely to the drafting of a new constitution for a democratic Burma.¹¹ Finding this insufficient to curb opposition forces, SLORC then refused to follow its own mandate, allowing only ninety-nine of the 485 elected representatives to participate in this constitution-making process. The rest of the over 700 delegates were handpicked by SLORC committees.¹² Furthermore, of those ninety-nine electees, eighty-six NLD members have withdrawn from the convention, as their party has boycotted the proceedings. Upon her release from house arrest, Aung San Suu Kyi denounced the convention as a sham.¹³ She went on to enumerate its shortcomings on November 22, 1995, pointing out that:

The elected representatives of the people constitute only 15.24 percent of the delegates and thus are permanently in the minority.

Neither the objective of the convention nor its working procedures were drawn up in consultation with delegates.

Papers to be represented at the convention are censored and have to be corrected in accordance with the wishes of the authorities.

*Decisions are laid down before an issue has been fully discussed.*¹⁴

Thus, the constitutional convention, ostensibly undertaken by representatives of the people of Burma and in theory the first step towards a transition to democratic rule, is in fact just the latest method used by the military to ensure that "the will of the general" is the only law that exists.

Burma's Obligations Under International Law

The content of modern international human rights law is largely derived from the UN Charter.¹⁵ As a multilateral treaty, the Charter laid the conceptual foundation for the development of substantive human rights law, thereby transferring human rights from the domestic to the international arena. By becoming a member of the United Nations, parties like the United States, Burma and France assumed certain treaty-based obligations under the human rights provisions in Articles 55 and 56 of the Charter.¹⁶ These articles stand for the proposition that human rights are no longer exclusively within states parties' domestic jurisdiction. It is thus now virtually undisputed that a state may not defend its human rights violations by claiming that they are a matter within state sovereignty.

International human rights law holds that governments must respect certain rights of its citizens regardless of the political, economic or other interests involved. Among the specific acts which have been universally proscribed are slavery and forced labor, genocide, torture, official murder and summary execution.¹⁷ SLORC, as the de facto government of Burma, is obliged under international human rights law to ensure that it does not engage in or officially sanction abuses of these fundamental human rights. Likewise, these rights must be respected by its military and security forces under all circumstances. Even attacks or threats by armed opposition groups can never justify human rights violations against civilians or defenseless people by SLORC forces.

In fact, in situations of armed conflict, fundamental human rights must be protected with extra caution. Deliberate killings of innocent people, such as those carried out by Major Ko in retaliation for the February 2, 1996 attack on the pipeline, constitute excessive use of force under international law (see Chapter 2: Security). While a government may legally use force as long as it is regulated and proportionate to the demands of the situation, SLORC cannot justify such executions by assuming that an entire village is in contact with armed opposition groups and responsible for such groups' supposed attacks.

Both international humanitarian law dealing with armed conflict and international human rights law absolutely prohibit all forms of torture and the killing of defenseless people. Common Article 3 of the Geneva Conventions of 1949, to which SLORC has acceded, applies to all participants in an internal armed conflict. It provides the following minimum standards:

Article 3: In the case of armed conflict not of an international character in the territory of one of the High Contracting Parties, each Party to the conflict shall

be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely without any adverse distinction founded on race, colour, religion or faith, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) . . . the carrying out of execution without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilised peoples.

(2) The wounded and sick shall be collected and cared for.¹⁸

SLORC ignores such obligations under international law and continues to violate the rights of its people. While limited derogation from certain provisions protecting civil and political rights is permitted by international human rights law in times of public emergency, there are certain rights that are so fundamental that they may never be derogated from under any circumstances. These include the right to life, the right to be free from torture and the right not to be subjected to cruel, inhuman or degrading treatment or punishment.¹⁹

In addition to customary international human rights law, Burma is bound by certain specific treaty obligations pertinent to abuses in the pipeline region as well. For example, in 1955, Burma ratified the International Labor Organization (ILO) Convention Against Forced Labor (No. 29)²⁰ which directly pertains to violations occurring in connection with petroleum activities in Burma. Article 1(1), for example, requires the elimination of forced or compulsory labor in all forms; Article 10(1) further stipulates that "forced or compulsory labour exacted as a tax by chiefs who exercise administrative functions shall be progressively abolished." This report has documented the ways in which SLORC authorities have forced civilians in the area to work as porters for pipeline security and as laborers on pipeline infrastructure and even the pipeline itself (see Chapter 4: Forced Labor). It is clear from the evidence and testimony presented that SLORC is violating both customary international law prohibiting slavery and forced labor as well as its treaty obligations with regard to the widespread practice of forced labor on the pipeline and related projects.

In response to similar allegations, the ILO has taken action based on SLORC's perceived violations of its treaty obligations under the Convention. The ILO is an intergovernmental

organization charged with the responsibility of monitoring a state party's compliance with treaties signed within its jurisdiction. To this end, it annually convenes the International Labor Conference, which includes representatives from workers' and employers' groups as well as governments. In June 1995, at the 82nd International Labour Conference, the Committee on the Application of ILO Standards considered numerous reports concerning forced labor in Burma in violation of the Convention. The case was cited in a special paragraph of the Conference report in order to indicate the Committee's serious concern on this issue. Indeed, citing a country in a special paragraph is the strongest criticism that the Committee can make on that country's forced labor practices.

Accordingly, on June 22, 1995, the ILO urged SLORC to "*urgently repeal the offensive legal provisions under the Village Act and the Town Act,*" which SLORC often cites as legal authority for compulsory labor in Burma. While these acts have been incorporated into both the 1947 and the 1974 Constitutions, SLORC reported to the UN Special Rapporteur on Burma that "*these two constitutions are no longer in force.*"²¹ Likewise, SLORC responded to the ILO criticism by stating that "*these two laws were no longer in conformity with the prevailing conditions in the country, besides not being in line with the provisions of Convention No. 29 . . . Consequently the Government of Myanmar . . . has started the process of amending these laws.*" Thus, even if SLORC did at one time have legal authority to force its citizens to engage in hard labor for infrastructure for the nation, this legal authority has been suspended by SLORC itself.

The ILO Committee has been only one of many staunch critics of SLORC's dismal record on forced labor practices. Indeed, human rights reports condemning SLORC practices have been abundant. Because of this widespread reporting, companies cannot honestly claim that they were unaware of the human rights situation in Burma under SLORC. On the contrary, the regime with which Unocal, Total and Texaco became business partners has for years been a well-known and severe violator of its own peoples' most basic rights.

Certain principles of US tort law apply directly to the abuses taking place in the pipeline region as well. Under these standards, corporations are legally responsible for the "reasonably foreseeable" consequences of their actions: harms that are caused by their investment. This is true even if the harmful behavior is carried out by a third party in relationship with the company, rather than the company itself. MOGE, the state oil company controlled by SLORC, is in a contractual relationship with Unocal and Total for the development of the gas in the Yadana Field. As part of the contract, SLORC troops have been hired by the oil companies to "*provide security*" and to "*pacify*" the area for this purpose (see Chapter 2: Security). Since SLORC took power, the brutality with which the regime accomplishes such objectives has been amply documented. In effect, it was reasonably foreseeable that SLORC would use its trademark abusive tactics to fulfill its contractual responsibility to prepare the area for investment.

Richard DeGeorge, director of the International Center for Ethics in Business at the University of Kansas explains this theory of responsibility in ethical terms. When asked about Unocal and Total's business activities in Burma, he stated:

One of the guidelines I would put out is that a company should not knowingly cooperate with any supplier, government, or other enterprise that engages in

*slavery, slave labor, or even child labor. Saying 'We know they're doing it, but we're not doing it,' doesn't let you off the hook. If you know it's being done, you're ethically responsible for it. It's your responsibility to mitigate the harm they're doing to those people. They can't simply be ignored.*²²

These companies are thus ethically responsible for the human rights violations they have directly and indirectly caused in Burma. Moreover, they are legally responsible. Given SLORC's well-known practice of using forced labor on infrastructure projects and forced portering for military purposes, it was reasonably foreseeable that these services would be exacted from civilians in furtherance of the pipeline project itself. Furthermore, since the pipeline project began, the companies have been contacted by human rights groups, lawyers and even ethnic, indigenous and Burmese peoples, all of whom have catalogued the harms occurring in the course of their projects. The criticism has been public and consistent.

The companies have responded to allegations of forced labor and forced portering linked to their project with total denial. ERI and SAIN have confirmed that these denials can no longer be sustained. Forced labor is occurring on the pipeline itself; forced portering for the military responsible for the pipeline security is widespread and the "English" have at times been present when these abuses are taking place (see Chapter 4: Forced Labor). The testimonies presented in this report clearly speak to the responsibility that these companies must bear. Total denial is no longer ethically or legally acceptable with regard to the human rights implications of oil and gas investment in Burma.

1. Unocal Corporate Communications Department, *The Yadana Project*, November 1995, at 18.
2. Amnesty International, *No Law at All: Human Rights Violations Under Military Rule* (AI Index 16/11/92), October 1992, at 1.
3. *Id.* at 4.
4. *See generally* Lawyers Committee for Human Rights, *Summary Injustice: Military Tribunals in Burma*, 1992.
5. United States Department of State Dispatch, *1993 Human Rights Reports: Burma Human Rights Practices 1993*, February 1994, at 35.
6. *Id.* at 49.
7. Aung San Suu Kyi, *Businessmen Can Only Reap What They Sow: Letter From Burma #22*, Mainichi Daily News, April 22, 1996.
8. Burma Lawyers' Council, *Constitution and Political Issues in Burma*, Journal of Constitutional Affairs, No. 4, March 1996, at 75 [hereinafter *Constitution and Political Issues in Burma*].
9. ECOSOC Commission on Human Rights, *Report on the Situation of Human Rights in Myanmar, Prepared by Mr. Yozo Yokota, Special Rapporteur of the Commission on Human Rights, in Accordance with Commission Resloution 1992/58*, UN Doc. E/CN.4/1993/37, 17 February 1993.
10. *Constitution and Political Issues in Burma*, *supra* note 8 at 75.
11. *Id.* at 79.
12. *See, e.g.*, UN Doc. E/CN/4/1996/139 (Annex), at 5-6.
13. Burton, Sandra, *I Said, 'Well, I'm Free': Interview with Aung San Suu Kyi*, Time (US edition), July 24, 1995, at 22-23.
14. *Constitution and Political Issues*, *supra* note 8, at 79.
15. United Nations Charter, *signed* June 26, 1945, *entered into force*, October 24, 1945, 59 Stat. 1031, T.S. No. 993.
16. "[the United Nations shall promote] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." UN Charter, art. 55(c); "All [UN] members pledge themselves to take joint and separate action in cooperation with the [United Nations] Organization for the achievement of the purposes set forth in Article 55." UN Charter, art. 56.

17. *See, e.g.*, Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, (1948), arts 3, 4, 5, 23.
18. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *done* August 12, 1949, T.I.A.S. No. 3365, 6 U.S.T. 3516 (*entered into force* October 21, 1950) (deposited by Burma on August 25, 1992), art. 3.
19. *See, e.g.*, International Covenant for Civil and Political Rights, G.A. Res 2200 (XXI), 21 U.N. GAOR Supp. (No. 16) 49, U.N. Doc. A/6316, *signed* December 19, 1966 (*entered into force* 3 January 1976). Article 4 contains the following derogation clause: "(1) In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. (2) No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision." (Article 6 proclaims the inherent right to life; art. 7 prohibits torture, cruel, inhuman or degrading treatment or punishment; art. 8 paras. 1 & 2 prohibits slavery or holding citizens in servitude; art. 11 prohibits imprisonment for debt; art. 15 prohibits arbitrary detention.)
20. Convention Concerning Forced or Compulsory Labor. (ILO No.29), *adopted* June 28, 1930, 39 U.N.T.S. 55 (*entered into force* May 1, 1932).
21. United States Department of State Dispatch, *1993 Human Rights Reports: Burma Human Rights Practices 1993*, February 1994, at 35.
22. Millman, Gregory, *Troubling Projects*, Infrastructure Finance, Feb/March 1996, at 18.

Chapter 7

THE ENVIRONMENT AT RISK

The Yadana project presents a significant threat to Burma's environment. Burma's current system under SLORC allows foreign investors to operate free of environmental regulations so that the consortium partners exert absolute decision-making control. In addition, lack of transparency ensures that the TNCs will not be held accountable for any environmental damage that they cause. In contrast, people at the grassroots level, who arguably have the most immediate stake in protecting the environment, are systematically excluded from decision-making and policy processes. Their absence not only denies policymakers the feedback they need to undertake accurate cost/benefit analyses but assures that the environmental costs of the resulting policy will be borne by those least able to afford it.

Prospects for environmentally responsible policy on the Yadana project are further diminished by the fact that those with decision-making power--SLORC and the companies--have shown scant regard for the environment on past projects. This in combination with a system lacking regulations, transparency and accountability compounded by the exclusion of local participation in the Yadana gas pipeline project raises the specter of an environment at risk.

Potential Environmental Problems

The possible environmental impacts of the Yadana pipeline project are numerous and potentially severe. The project raises both offshore and onshore concerns which may affect local habitat, marine life and wildlife as well as human populations along the pipeline route.

The Yadana natural gas field has been carved out of the Andaman Sea. The exploration, development and production of natural gas can create the same environmental problems as oil exploration. Of the wastes produced during exploration, the most damaging are the drilling muds which can be made up of many toxic substances, including arsenic, barium, lead, corrosive irons and naturally occurring radioactive materials such as radium 226. In most cases, these toxic muds are disposed of by simply dumping them into the water column. When these wastes are dumped into the water, toxic substances reach the sea bed and rob the water and bottom sediment of oxygen. Bottom dwelling life stops breathing. As oxygen is depleted, marine life, such as shellfish, is unable to survive.¹

Another form of waste generated in large quantities by natural gas exploration is toxic brine. This toxic substance, made up of hydrocarbons, is left behind when oil, natural gas and water have been extracted from underground reservoirs. Historically, the oil industry has disposed of this toxic water or "produced water" either by dumping it offshore or bringing it onshore to be discharged. The effect of dumping such toxic matter on wetlands, fish and wildlife has proven to be ecologically disastrous; it is a legacy left behind by the oil industry in many countries.

Gas emissions from offshore drilling rigs are another environmental hazard of the Yadana project. One offshore rig produces daily emissions equal to 7,000 cars each driving fifty

miles a day.² As a result of the vast toxic by-products polluting the atmosphere, oil companies operating in the United States have been forced through the mandate of the Clean Air Act Amendments of 1990 to formulate new practices to protect the environment. Burma has no such policy.

Once the pipeline reaches land, new environmental concerns arise. Though the companies assert that the route will not impact pristine forests or threaten biodiversity, no independent environmental impact assessments (EIAs) have been done in the area.³ On the Thai side of the border, along the pipeline route, preliminary EIAs show important wildlife species such as Asiatic elephants, white-handed gibbons, sun bears, Asiatic black bears, Fea's barking deer, guars, southern serows and the great hornbills inhabit the area.⁴ In addition, problems of erosion and landslides need to be considered as does the possibility of earthquakes in the area. Likewise, the impact of the pipeline on the streams and rivers it crosses needs to be assessed. As the pipeline route has also come under attack (see Chapter 2: Security), the potential harms of a pipeline explosion and leak must be factored in to any comprehensive EIA. Included in this analysis needs to be an examination of the toxicity of the natural gas flowing through the pipeline; this assessment should consider the toxicity of a possible leak as well as the burning gas with regard to both the habitat and the surrounding human population.

In sum, the environmental costs of Yadana natural gas development scheme may be enormous. Without adequate mechanisms for protection, marine life and wildlife as well as human populations are at risk. As the following sections show, the necessary controls for adequate environmental protection do not exist in Burma.

Lack of Transparency and Local Participation

There is growing consensus at the international level that sound environmental policy can only be created in a system which responds to feedback from all those who have a stake in the environment. In many countries, there are even mechanisms by which individuals and groups can advocate for change and participate in the education of communities surrounding environmental issues. In Burma, however, such activism is impossible. This idea of participation is further articulated in Principle 10 of the 1992 Rio Declaration on Environment and Development:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.⁵

Principle 10 captures a fundamental concept which is often overlooked--successful environmental protection and policy is an integrated process requiring the free flow of information and local participation. Farmers and villagers at the grassroots level need to

understand the environmental issues, so they can formulate and voice their concerns about the effects of development decisions on food production, the preservation of adequate forest cover and the sufficiency of pasture land. Likewise, policymakers must have full information from industry about environmental impacts, so they can conduct accurate, informed cost/benefit analyses to create sound policy. The open discussions between these groups of players ideally then creates an atmosphere in which all costs and benefits are considered in the decisionmaking. Studies by the UN and by governmental and NGO agencies have unfortunately shown, however, that time and again this ideal is rarely achieved and those communities under the gravest environmental threat are those with little or no political voice, typically the rural poor. In Burma, this is certainly the case.

The only individuals with information on the Yadana project are SLORC and the oil companies. In 1995, a Unocal report claimed, “*multi-disciplinary teams of environmental specialists . . . conducted preliminary field surveys for each of the three pipeline route options originally considered.*”⁶ None of the environmental information gathered during these surveys, however, has ever been made public.⁷ This has made assessing the environmental harms of the project, both onshore and offshore very difficult. Onshore, the project is heavily guarded by SLORC troops (see Chapter 2: Security), and getting access to the area to conduct independent EIAs is impossible. Offshore, the Yadana gas field is not easily accessible or even visible from the coast. Entry into the area is impossible without clearance from the SLORC navy or one of the companies involved. This is an added asset for an industry with a history of cover-ups and unaccountable conduct. Given the inaccessibility of the project area, any immediate environmental damage sustained through the venture will be difficult to verify. As long as operations are conducted out of sight, many problems associated with the project will remain out of mind.

The oil industry, including Unocal, has also attempted to block its shareholders in the United States from obtaining comprehensive information on their projects in Burma. The oil companies working in Burma have attempted to persuade the US Securities and Exchange Commission to remove resolutions on human rights and environmental issues aimed at their projects in Burma from their proxy statements; Unocal officials also strongly rejected a call by a group of shareholders (14.1 percent of the company) for a comprehensive report on the company’s activities in Burma.⁸ This, along with the refusal to release information on the environmental assessments, contradicts Principle 10, and certainly does not “encourage public awareness and participation by making information publically available.”⁹ The result is a top-down environmental policy created by SLORC and the oil industry--neither of which is known for its environmentalism. Such a system of policymaking does not produce sound environmental decisions.

Without the necessary communication with the local people, SLORC and the oil companies cannot effectively weigh all of the costs and benefits of the project; moreover, SLORC is by nature a cost-externalizing regime. The effect of this is not only to shift the consequences of poor policy onto the unrepresented people of Burma but also to shield the decisionmakers from a true understanding of the costs of their decisions, potentially allowing destructive consequences of bad policy to fester for years uncorrected. In fact, SLORC’s environmental policy may be even worse than just misguided. In the worst-case scenario, SLORC may actually consider such environmental harms as watershed destruction and deforestation as strategic tools by which to further disempower opponents of the regime.¹⁰ Whatever their

motivations, SLORC and the oil companies are in poor positions, due largely to systemic communication and feedback gaps, to formulate and implement sound environmental decisions.

Ineffective Regulations and Remedies

Just as the Burmese legal system under SLORC is devoid of effective protections and remedies for human rights abuses (see Chapter Six: The Legal Vacuum), so too does the country lack useful environmental regulations. In fact, given that SLORC has suspended the constitution, rules the country by decree and undermines the independence of the judiciary by military intimidation,¹¹ the rule of law is nonexistent in Burma today. This system again contradicts Principle 10 which calls for "effective access to judicial and administrative proceedings, including redress and remedy."¹²

Although SLORC has acceded to the Vienna Convention for the Protection of the Ozone Layer, the UN Framework Convention on Climate Change and the UN Convention on Biological Diversity, it is evident that "*there is a vast gap between the reality and the rhetoric.*"¹³ Despite such international instruments, Burma's people still have no effective preventative regulations to protect them from potential environmental degradation; they also lack avenues of legal redress for environmental damage suffered. The National Convention now being drafted by SLORC stipulates only that "*the State shall protect the environment.*"¹⁴ Such a general provision is no substitute, however, for concrete legal regulations and remedies which SLORC has promised but failed to implement.

The effect of this system is to allow the oil companies to operate unmonitored. With no mechanism for enforcement of environmental investigations, the companies are able to conduct operations quickly and with few restrictions. For example, in April 1993, two Frenchmen named Mr. Thalagie and Mr. Challa did a survey along the proposed pipeline routes accompanied by military guards.¹⁵ Sergeant Soe, a defector from SLORC's LIB #409, stated that in April 1993, he accompanied two Frenchmen to Paungtaw and then proceeded with them to Kanbauk. He told SAIN:

*During the journey I saw them reading a map for studying the area. They stayed for only two days with the battalion and then left. My battalion commander told us that they have come to study the gas pipeline. Only one could speak English and the other spoke only French. The one who spoke English said that he was an ex-lieutenant colonel in the French Army.*¹⁶

Such cursory assessments, and the fact that they have not been made public, do little to quell suspicions of inadequate adherence to sound environmental principles. Beyond this, the objectivity of EIAs conducted by the oil companies themselves should be questioned. Still, the oil companies claim that the Yadana pipeline will have minimal impact on the environment.¹⁷ Such assertions, however, appear to be inconsistent with Thai government officials reviewing EIAs of the pipeline route in Thailand.¹⁸

A Comparison to Thailand

Although an agreement has been signed between PTT and MOGE for the delivery of gas

from the Yadana field, numerous unresolved questions remain regarding the environmental impact of the gas pipeline. For Thailand the environmental problems begin right at the pipeline's entry into the country at Ban-I-Taung. In order to get to Ratchaburi, where the gas will be refined, the pipeline is scheduled to pass through a series of national parks, wildlife sanctuaries and forest reserves which form the largest conservation area in mainland Asia. In addition, the route will pass through both a class 1A watershed, the highest classification in Thailand, and what is soon to be a forest reserve named Tanaosri national park.¹⁹

Troubling questions have arisen surrounding the adequacy of the EIAs, especially those conducted by PTT, one member of the Yadana project consortium. Officials from the Thai Forestry Department are concerned as to the impact of the project on the proposed Tanaosri national park. The Thai National Environmental Board and the Office of Environmental Policy and Planning (OEPP) have also questioned the EIAs conducted by PTT. On three separate occasions, PTT's assessments have been returned with a request for further information. The OEPP maintains there is still a problem with the EIA:

*The report only gives a broad outline as to how to deal with the problems of erosion, landslides and what happens if there is an earthquake. It is still not clear how the pipeline will cross rivers and streams, where sediment can wash down into villages below.*²⁰

As a result of the inadequate EIAs, PTT arranged for OEPP and other environmental officials to visit the pipeline route and conduct their own survey. As of May 1996, this EIA was under review by a subcommittee of the National Environmental Board; the Board should pass the EIA before any further major steps are taken. Because of the questions surrounding the EIAs, the construction of the pipeline route on the Thai side of the border is progressing at a much slower pace than the project in Burma, and the protection of the country's resources is being at least nominally addressed. What will happen when the bulldozers arrive, and the deadlines approach, however, remains to be seen. One fact, however, is certain: Due to the demand for more energy to support a growing industrial base within Thailand, the pipeline is likely to go ahead regardless of the unresolved environmental questions. Sunthad Somchevita of the OEPP made this much clear:

*It is an important project, and we have to do it. The question is how to mitigate the environmental impact to an acceptable level. Will it cause problems? What happens if there is a leak?*²¹

Despite the concerns of the OEPP and others, on May 7, 1996, the Thai government fully endorsed the gas pipeline project in a cabinet meeting. At the time of the endorsement, an EIA was still under review by a National Environment Board subcommittee. If this version of environmental analysis is passed, the final stage requires an agreement from members of the full National Environment Board, of which the Thai Prime Minister Banharn Silapa-archa is the chair.²² Given the previous endorsement of the government, the National Environment Board is unlikely to completely reject the project.

The situation in Thailand provides an illuminating comparison with Burma. Thailand, with some accountability and environmental regulations, is conducting EIAs and appears to be considering the impact of the project on the environment. In contrast, in Burma, where the

system is completely closed and environmental regulations are nonexistent, the company EIAs remain secret, and there is no evidence that SLORC is undertaking any consideration of the environmental impact of the Yadana project whatsoever. The fact is that without the rule of law to constrain SLORC and the oil companies, the system of ineffectual regulations and remedies will remain, and the threats to Burma's environment will continue to grow.

Unclean Environmental Track Records: A Consortium of Bad Actors

The Yadana consortium is not comprised of environmentalists. Both SLORC's and Unocal's previous projects have left toxins and environmental degradation in their wake. The companies and SLORC must convincingly explain why the Yadana pipeline project will be different than their unclean past behavior.

SLORC's participation brings an authoritarian regime to the project. As Burma scholar Martin Smith writes, "*From Ceausescu's Romania to Saddam Hussein's Iraq, modern experience has repeatedly show that governments which are amongst the worst abusers of human rights are also, very often, the worst abusers of the environment.*"²³ Furthermore, despite the secrecy surrounding the country, evidence of the threat SLORC presents to Burma's environment already exists. Indiscriminate logging, fishing and mining are rampant in Burma. Plans for mega-dams along the Salween River which will greatly impact the surrounding watershed and ecosystems are also underway. Local exploitation near the pipeline route is occurring as well. For example, in the Tenasserim region, residents have complained that "*modern trawler fleets from Thailand have already fished out large areas of the Andaman Sea since first buying concessions in these areas from SLORC in 1989. Despite private complaints from local fisherman, over 280 boats from another eight Thai companies were allowed to buy a new round of contracts in November 1993.*"²⁴

In addition international oil companies around the world are notorious polluters.²⁵ Worldwide, indigenous peoples have had to bear the costs of clean up, environmental pollution, ethnic and cultural destruction, and some have lost their lives in pipeline explosions or had their resources destroyed for future generations. Unocal is no exception in the oil industry. In fact, it may be one of the worst actors in the oil industry.²⁶ Even in a system with transparency and enforceable environmental controls, Unocal has displayed an alarming disregard for the impacts of its projects. For example, Unocal was responsible for a massive oil leak from a pipeline at their Guadalupe field in California, which has been estimated to be the largest in the state's history and the fourth largest every in the United States.²⁷

Another example is equally troubling. Two years after its San Francisco refinery leaked harmful chemical selenium and nearly destroyed bird reproduction at a nearby wildlife refuge, Unocal converted the refinery to run on an even cheaper, higher selenium-producing process. After the US Environmental Protection Agency imposed selenium restrictions and cleanup requirements on the refinery, Unocal, through a combination of stalling moves and political pressure, was able to buy itself a four and a half year enforcement reprieve.²⁸ Unocal paid almost US\$800,000 to avoid this clean up; in doing so, it is saving an estimated US\$57 million a year, thereby increasing their profitability.²⁹ Unocal's preoccupation with increased profits drives its activities--to the detriment of the environment.³⁰

Unocal's actions in Southeast Asia raise questions as well. For example, their environmental record in Thailand is hardly admirable. For instance, a Chulalongkorn University study conducted between 1992 and 1994 pointed to an unusually high level of mercury contamination in the marine life surrounding Unocal's Gulf of Thailand drilling rigs. After initially ignoring all inquiries on the matter, Unocal Thailand president Brian W.G. Marcotte announced a plan to study the problem, admitting that Unocal had been concerned about the mercury issue for some time. Despite the fact that mercury contamination readily passes from the marine life to human consumers and can result in mercury poisoning and even death, Unocal Thailand reportedly only agreed to study the problem to allay media criticism of the company.³¹

If Unocal can operate in such an unclean and closed manner in countries with advanced environmental regulations and relative transparency like the United States and Thailand, the prospect of their operations in a country as closed as Burma should raise major warning signals. The fact that they are a partner with SLORC, another actor notorious for environmental mismanagement, should make the signals even stronger.

Over the past decade the worldwide environmental movement has learned the hard way how oil companies conduct their operations, and how such operations can create enormous environmental damage. From seismic surveys to drilling, production, processing and transportation, oil and natural gas activities are far from clean. TNCs which operate in the North are heavily restricted in their operations, through both legislation and citizens' rights to speak out against bad practices, negative health effects and environmental damage. Pressure groups have been largely successful in forcing the industry to be more accountable for its actions and effects. In Burma, however, no such environmental regulations are currently implemented. The infrastructure of government agencies, environmental NGOs or procedures for accountability are likewise minimal or nonexistent. The lack of safeguards makes countries like Burma vulnerable to exploitation. This vulnerability is also what makes such places attractive to the energy industry; environmental restrictions add considerable cost to energy exploitation and development as does litigation which citizens' groups can bring to bear in some places in the North. Overall, the oil energy is abandoning much of the developed world for countries where profits are made quickly and without challenges from environmental and human rights lobbies.

Unocal's overall investment strategy parallels the industry trend and indicates a move toward less-regulated societies, where profits are higher and environmental protections are not coincidentally fewer. According to its own 1994 annual report, Unocal "*no longer think[s] of [itself] as a U.S. energy company with foreign operations,*" but instead is "*fast becoming a global energy company with strong U.S. operations.*"³² Their 1995 annual report stated that they will concentrate on the far east.³³ Unocal is investing or pursuing projects in Myanmar, Thailand, Azerbaijan, Cambodia, Indonesia, Turkmenistan, Pakistan, China, Vietnam and Zaire as well as the Netherlands, Canada, the United Kingdom and the United States.³⁴ At first, this may appear to be a diversified global operation. Upon closer examination, however, the trends of Unocal's investment become quite troubling.

Unocal is divesting from its operations in the United States and also planning to sell its interests in the Netherlands' sector of the North Sea.³⁵ These sell-offs are part of the company's announced efforts to focus on its new projects in Southeast Asia. The sell-offs,

however, also coincide with a clear trend away from societies with developed legal systems and environmental regulatory protections towards those without such safeguards. The list of countries where Unocal is investing or pursuing projects is dominated by country's lacking developed legal systems, environmental regulations, free press and local participation in decisionmaking. In addition, several of the countries have deplorable human rights records, including Burma, Indonesia and Zaire.

Again, Unocal's focus on profits is driving its actions. Unocal has said that its "*upstream California operations earn about US\$0.60 per barrel of oil equivalent in 1995, while operations in the far east earn more than US\$3.00 per barrel of oil equivalent.*"³⁶ While part of this increased profit can be attributed to ease of extraction from new sources, the increased profit margin can also be attributed to a lack of regulatory requirements being placed on the company, especially in places such as Burma. In short, Unocal, with its already unclean environmental record, is looking for new places to invest where even fewer environmental regulations exist. In Burma, Unocal and the oil industry have found a willing partner in SLORC to exploit the environment and suppress any opposition and regulation of their project.

All indicators surrounding the Yadana gas pipeline project suggest that it should raise major environmental concerns for both the local populations and existing ecosystems, both onshore and off. This is especially true given:

1. the lack of public information provided by the oil companies and SLORC on the environmental impacts of the project;
2. the lack of access to the pipeline areas, thereby preventing independent EIAs from being conducted on such issues as toxicity of the gas and the impact of drilling;
3. the lack of effective laws and environmental regulations in Burma, including adequate mechanisms to seek remedies for wrongs and enforcement of environmental regulations which may exist;
4. the inability of local people and national leaders to participate in decisionmaking surrounding the pipeline project; and
5. the unclean and secretive practices of SLORC and the oil companies.

The upshot of these threats cannot be dismissed. The environment is at risk. At present, however, the ultimate environmental consequences of this project are unknown. In a country in the midst of civil war with widespread state control and oppression, accurate assessments as to the extent of such damage are in the distant future. The damage caused by the building of infrastructure such as buildings, roads and helicopter landing sites will be manifested sooner than the damage caused by drilling operations in the Yadana field, but neither is likely to be insignificant. Even more disturbing is the fact that it may be impossible to know until it is too late whether the sale of Burma's natural gas under SLORC has helped the country develop or simply enriched the generals. Unfortunately, the most likely scenario for the relationship between the generals and the oil industry is a marriage of exploitation, with Burma's people and environment badly losing out.

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1. SAIN and ABSDF, *Burma: Human Lives for Natural Resources* (June 1994).
 2. *Id.*
 3. The oil companies have conducted environmental surveys, but no independent environmental impact assessment by a group without affiliation to the oil companies or SLORC has been completed.
 4. Team Consulting Engineers Co. Ltd. Petroleum Authority of Thailand, *Environmental Impact Assessment of Natural Gas Pipeline Project from Yadana Field to Ratchaburi* (Interim Report)(1996).
 5. Principle 10, The Rio Declaration on the Environment and Development (1992)(*hereinafter* Principle 10).
 6. Unocal Corporation Department of Corporate Communications, *The Yadana Project*, Nov. 1995, at 10.
 7. In 1993, SAIN met with Ms. Carol Scott at Unocal's headquarters in Los Angeles, California and requested information as to the company's environmental practice and requirements in Burma. Unocal was supposed to respond in writing. SAIN has never received a response.
 8. Smith, Martin. *Paradise Lost? The Suppression of Environmental Rights and Freedom of Expression in Burma* (September 1994) at 18 (*hereinafter* Paradise Lost).
 9. Principle 10, *supra* note 5.
 10. SLORC has been known to undertake "strategic defoliation" campaigns against armed opposition groups in order to destroy their ability to move freely about the countryside.
 11. Amnesty International USA, *Myanmar: 'No Law At All'*, October 1992, at 2, 12. *See generally*, Lawyers Committee for Human Rights, *Summary Injustice: Military Tribunals in Burma*, 1992.
 12. Principle 10, *supra* note 5.
 13. *Paradise Lost?*, *supra* note 8, at 11.
 14. *Id.*
 15. Information obtained through a US human rights activist who visited Ban-I-Thaung and interviewed SLORC's Lt. Col. Han Tint from LIB #408 (on file with authors).
 16. SAIN information obtained through an interview with a SLORC defector (on file with authors).

17. *Paradise Lost?*, *supra* note 8, at 18-19.
18. Unlike Burma, Thailand is conducting EIAs for the pipeline area. The gas is due to be delivered through Burma to a pipeline entry point on the Thai side of the border named Ban-I-Thaung and then southeast to a refinery and power plant in Ratchaburi.
19. Fahn, James, *Fears of Environmental Damage on Natural Gas Pipeline Project: Villagers may be at risk from landslides and erosion*, The Nation, Feb. 23, 1996.
20. *Id.*
21. *Id.*
22. SAIN discussion with journalist close to Thai Office of Environmental Policy and Planning source (on file with authors).
23. *Paradise Lost?*, *supra* note 8, at 8.
24. *Id.* at 11.
25. See, e.g., Accion Ecologica, OilWatch (1996); The Center for Economic and Social Rights, *Rights Violations in the Ecuadorian Amazon: The Human Consequences of Oil Development* (March 1994); Greenpeace, *Shell-Shocked: The environmental and social costs of living with Shell in Nigeria* (June 1994); Aaron, *Eco-Justice: Linking Human Rights and the Environment* (1995).
26. Citizens for a Better Environment, *Poison for Profit: Unocal 76's Toxic Dumping Threatens People and San Francisco Bay* (May 1995)(*hereinafter* Poison for Profit).
27. *Paradise Lost?*, *supra* note 8, at 19. A clear, deisel fluid covered the California coast with a film of at least 8.5 million gallons of petroleum thinner. San Francisco Chronicle, Feb. 3, 1994.
28. *Poison for Profit*, *supra* note 26, at 4-5.
29. *Id.* at 12. Unocal could afford to clean up the selenium, but it has chosen not to. The US\$57 million for the clean up represents less than one percent of the companies 1994 revenues. *Id.*
30. *Id.* Unocal's Roger Beach presented his company's strategy, "we're now capable of refining some of the lowest-cost crudes [which are cheaper because they contain more pollutants] into high-value products [by using increased selenium]. This has substantially improved our cash margins on product sales." *Id.*
31. *Unocal to study contamination around its rigs*, The Bangkok Post, June 20, 1996, at 3.
32. Investor Responsibility Research Center (IRRC), *1996 Company Report B--Unocal Corporation: Human Rights and Burma* (May 13, 1996) at 2.

33. *Id.*

34. *Id.*

35. “In April 1996, Unocal completed the sale of nearly all of its crude oil and natural gas producing properties in California to Nuevo Energy Co.” *Id.*

36. *Id.*; see also, *Poison for Profit*, *supra* note 8, at 12 (“The same cheap dirty refining [done by Unocal] that helps support foreign investment [in places like Burma] pollutes the [San Francisco] Bay. Tragically, Unocal’s divestment from America also supports the repressive Burmese junta.”).

Chapter 8

Conclusions and Recommendations

In embarking upon the Yadana pipeline project, Total and Unocal, along with their co-investor SLORC, have become partners in a larger and more sinister endeavor--the systematic abuse and oppression of the peoples of Burma and their environment. Total and Unocal have chosen to ignore the pleas of the people of Burma and have instead invested in a regime that has been singled out as one of the world's most brutal military dictatorships. This investment not only funds the SLORC's oppression of the peoples of Burma but also lends the regime international legitimacy and allows the generals to further entrench their rule. In return, Total and Unocal have bought themselves a project by which they can exploit Burma's natural bounty without fear of accountability for environmental harms, or opposition from traditional grassroots political critics.

Unocal and Total are ignoring the true costs of their project; the veil of secrecy in which they have shrouded their project and their crude attempts at denial prove as much. In the face of confirmed attacks on their project, they deny local opposition; even company shareholders and their governments' requests for information and explanations remain unanswered. Environmental impact studies are kept confidential, conveniently allowing Unocal and Total to make sweeping, unsupported statements about the pipeline's impact. More importantly, however, Unocal and Total continue to deny the price being paid for their investment in human lives. They share responsibility with SLORC for some of the most egregious human rights violations in Burma today. Total denial is no longer acceptable; it is rapidly leading to total disaster.

ERI and SAIN therefore reiterate the following recommendations:

1. Since the companies cannot credibly guarantee that they can stop the documented abuses, nor that their money will not be used to finance SLORC policies, Total and Unocal should refrain from investing until a democratic government, led by the National League for Democracy, has been formed, and local ethnic and indigenous peoples have been consulted;
2. All other foreign companies, including Texaco, Nippon Oil, Premier Oil and Arco, should refrain from investing in Burma as well;
3. Thailand and other governments should condition their investments on an improved human rights record in Burma;
4. Total and Unocal should immediately release all environmental impact assessments (EIAs) to the public, so as to allow examination of existing problems as well as potential future ones;
5. SLORC and the oil companies should allow immediate access to the pipeline areas for independent monitors to allow objective and comprehensive EIAs and human rights investigations to take place; and

6. SLORC should abide by its treaty obligations, including those contained in the Geneva Conventions and the Convention Against Forced Labour.

Appendices

Appendix A Chronology

1982

Japan establishes an investment company to explore and develop offshore gas in the Gulf of Martaban; the exploration will be done jointly with the Myanmar Oil Corporation.

1985

Petro-Canada International Assistance Corporation (PCIAC) signs an agreement with the Myanmar Oil Corporation for US\$3 million to do an investment feasibility study in the Gulf of Martaban for offshore gas development.

March 1988

Asian Development Bank (ADB) grants a \$68 million loan to Burma for the purchase of oil and gas from Broken Hill Propriety (BHP) of Australia.

March 18th, 1988

Workers at Myanmar Power Oil Corporation and the Petroleum Industries Corporation join protestors in the 1988 pro-democracy demonstrations, leaving their jobs with the state-run energy sector permanently.

September 1988

The pro-democracy movement is crushed; electricity is cut throughout the entire nation and all energy projects are discontinued immediately. The energy minister, Brig. Gen. Sein Tun, goes underground.

November 1988

SLORC announces a new foreign investment law to attract international funds.

Early February 1989

Japan recognises SLORC as the legitimate government of Burma and continues with gas, hydro and power projects that were initiated before the coup.

July 20th, 1989

Daw Aung San Suu Kyi and NLD leaders are detained. Military tribunals are established and thousands are arrested.

October 1989

The first transnational oil companies return to Burma.

October 10th, 1989

Japan and Burma sign a US\$15 million loan agreement to explore and develop the Gulf of Martaban natural gas resources.

December 1989- July 1990

Nine foreign oil companies negotiate onshore production-sharing contracts with SLORC.

Late 1989

Unocal gives SLORC US\$5-8 million to secure rights on large exploration blocks. Investments over three years total over US\$400 million.

1990

The NLD wins the general election.

The Petroleum Authority of Thailand (PTT) begins discussing the possibility of pumping gas from Burma to Thailand.

1990-1992

Unocal conducts an unsuccessful onshore exploration program in central Burma.

February 1991

After arriving in Kaleinaung village, Lt. Gen. Khin Nyunt of SLORC orders new army battalions into the area. Many civilians flee to the Thai border.

April 1991

Five new battalions arrive in Ye-Byu township and secure the area by forcibly relocating Karen villagers.

Local people tell of a French national surveying the route for the proposed pipeline from the coastal village of Paungdaw Taw to the Thai border at Nat Ein Daung.

December 1991

Daw Aung San Suu Kyi is awarded the Nobel Peace Prize.

1992

BHP of Australia and Clyde Petroleum of the UK cancel onshore exploration after three years of unsuccessful drilling.

June 1992

The government of France cuts its stake in Total from 35% to 5%.

July 1992

Total of France and Myanma Oil and Gas Enterprise (MOGE) sign a production-sharing contract for the Yadana field.

1992

Kirkland Resources halts its operation near the route of the proposed gas pipeline after failing to get adequate security guarantees from SLORC.

October 1992

Total's Rangoon manager, Herve Madeo, states that Total has already paid US\$15 million for their production agreement with SLORC. Discussing the security of the project, he added that: "*We know there might be a problem, but we are fully busy on the drilling programme so we don't focus on this yet . . . obviously the government has told us that they will make the area safe.*"

November 16, 1992

Texaco, along with its partners Premier Petroleum Myanmar Ltd. and Nippon Oil Exploration, announces the discovery of gas in the Yetagun field in blocks M-12, M-13, and M-14 in the Gulf of Martaban.

February 1993

Unocal joins the Total project.

Early 1993

Total begins drilling the four test wells that eventually establish the commercial viability of the Yadana field.

April 1993

Unocal enters into an agreement with Total and MOGE for a joint venture gas drilling project in Yadana.

September 1993

Thailand offers to mediate peace between SLORC and the Mon in order to clear the way for the pipeline. Nai Shwe Kin, President of the New Mon State Party, explained that "*They told us that if we made a peace agreement with SLORC, the refugees would be repatriated and could have good jobs working on the ongoing gas field project.*"

1994

In the first quarter of 1994, Unocal's net share of payments to the government of Myanmar and government companies is US\$8.2 million in contractual payments plus another US\$700,000 in equipment, services, license fees and taxes.

March 3, 1994

The US oil and gas corporation Amoco announces its exploration activities in Burma are over and that it will leave the country by mid-1994. Yukong and Santa Fe Energy are the only international companies remaining that entered Burma in the late 1980s.

March 5, 1994

SLORC troops prepare to attack the Mon National Liberation Army (MNLA) as part of their campaign against ethnic groups. Controlling the Mon is important to securing the pipeline route.

April 1994

A report is released detailing the use of forced labor to build a railroad from Ye-Tavoy and

alleging that the railroad will be used for the transport of army troops to protect the pipeline. The report also states that SLORC is responsible for the safety of pipeline operations.

April 26, 1994

A demonstration is held outside Unocal's headquarters in Los Angeles by Greenpeace and the Rainforest Action Network, protesting the company's investment in Burma. Concern over the building of the pipeline through rainforest is emphasized by the groups.

May 2, 1994

A Electrical Generating Authority of Thailand (EGAT) press report states: "*The Burmese government is, however, reported building a railway from Ye in Mon State to Tavoy, which will be used to transport troops to guard the pipeline. Burmese officials have also vowed to quell the dissident ethnic groups.*"

May 1994

Unocal evaluates the environmental consequences of the pipeline project but refuses to make public the conclusions of their study.

May 30, 1994

Burma activists approach shareholders of Total as they arrive for the company's annual general meeting in Paris to inform them of the consequences of investing in Burma.

June , 1994

At an International Labour Organization (ILO) conference in Geneva, the Federation of Trade Unions of Burma (FTUB) calls for SLORC's expulsion from the organization due to its gross violations of the ILO Conventions.

July and December, 1994

Unocal states that "*multi-disciplinary teams of environmental specialists . . . conducted preliminary environmental field surveys for each of the three pipeline route options originally considered.*"

After the May and December environmental and socio-economic surveys, Total's experts conclude that the so-called "Northern Route" for the pipeline would be the best, since it detours so as not to cross any primary tropical rainforest.

July 7, 1994

SLORC troops seize civilians from Thabyezun village and force them to help them build a new military camp along the pipeline route.

July 21, 1994

SLORC troops attack Mon refugee villages in the Halockhani area along the Thai/Burmese border. 6000 refugees flee back across the border to Thailand, from which they had been repatriated in February.

July 22, 1994

At the ASEAN meeting held in Bangkok, Burma's foreign minister U Ohn Gyaw tells his Asian colleagues that "*he did not think Burma has any human rights problems.*"

August 4, 1994

Renewed fighting between SLORC troops and the MNLA in Halockhani causes 500 Mon refugees to flee into Thailand. Thai authorities demand that all refugees return to their camps in Burma by August 10.

September 1994

Texaco confirms that MOGE, Thailand's PTT, and Texaco are having preliminary talks.

September 5th, 1994

Gas from the Yadana field to be bought by Thailand is confirmed to be 45% higher in cost than what PTT is paying for gas produced from Unocal's gas fields in Thailand.

September 9th, 1994

The last of Halockhani refugees are forcibly repatriated back to Burma after all NGO aid is stopped and food stores were seized by the Thai Border Patrol Police.

Thailand and Burma sign a Memorandum of Understanding (MOU) for the sale of natural gas from Burma to Thailand with a delivery date of July 1998. The rate is set at 130 million cubic feet per day (cfm), increasing to 525 cfm after 15 months.

October 1994

Civil engineers employed by an international contractor under the supervision of Total start work on the gas pipeline.

October 6, 1994

The New Mon State Party sends Unocal's Chief Counsel a letter expressing its opposition to the Yadana project and further informing the company that it and related organizations have "*decided to take legal actions against Unocal.*"

November 1994

The offshore environmental baseline study for the Yadana project is completed, as well as separate onshore/offshore environmental impact assessments.

Forced labor is used to build a new military camp and a heliport in the Heinze village. The laborers are from Ye-Byu township.

Texaco states "*Myanmar offers the kind of potential that could develop into a core producing area for Texaco.*"

December 1994

SLORC launches Operation Natmin (Spirit King). It has two objectives: the destruction of rebel forces in the pipeline area, and the securing of the pipeline against attack.

December 1994-April 1995

Total completes comprehensive on-site socio-economic analyses.

January 1995

John Imle, Unocal President, sends a warning that there will be violent retaliation against anyone who tries to hinder the Yadana project.

January 31, 1995

A signing ceremony, attended by Minister for Energy U Khin Maung Thein, Minister for National Planning and Economic Development Brig. Gen. Abel, Gen. Lun Maung, Gen. Than Shwe, Gen. Than Tun, Gen. Tin Tun, officials from the Thai embassy and the Counsellor of the French embassy is held at the Ministry of Energy in Rangoon.

February 1995

Ground survey work begins in the Kanbauk-Paungtaw area. Total had previously notified local authorities that jobs would be available for the preparation of ground survey work, but of the hundreds of local civilians who apply for jobs only 200 are accepted.

February 1, 1995

SLORC attacks KNU bases opposite Bongti in the Saiyok district and opposite the Thong Phapum district in Thai which is near where the pipeline will cross into Thailand.

February 2, 1995

MOGE and PTT, on behalf of the Burmese and Thai governments respectively, sign an official thirty-year contract for the purchase of Yadana gas. Thailand agrees to pay Bt10 billion annually for the purchase of gas from the Yadana field.

A ceremony is held to celebrate the final signing of the Yadana production sharing contract. Total refuses to comment on allegations that the pipeline will lead to human rights abuses.

February 3, 1995

At 6 a.m., villagers are forced to start work clearing a 300-ft-wide path for the pipeline and accompanying roadway.

In response to the final signing of the Yadana contract, ethnic Karen and Mon guerillas issue a threat to obstruct and destroy the gas pipeline.

February 5, 1995

Arguing that the natural gas from the Andaman Sea belongs to the people of Burma, ethnic Karen and Mon guerrillas renew their threat to destroy the gas pipeline. According to the rebels, approximately 10,000 people have been forcibly relocated or will eventually be adversely affected by the project.

February 6, 1995

MOGE awards a new concession is awarded to Texaco granting the rights to survey petroleum block number 10, located near the Yadana field.

February 1995

SLORC prepares a dry season offensive against Karen rebels to secure the area for the building of the gas pipeline.

February 10, 1995

It is revealed that the energy deal between MOGE and Total/Unocal will earn SLORC US\$400 million a year.

February 11, 1995

The Mon announce that "*violence would be our last option, but in the end we would have no choice.*" A US official responds "*any group targeting Americans in Burma would receive the Khmer Rouge treatment.*"

February 25, 1995

The KNU issues a statement claiming that forced relocation of the civilian population has occurred since 1991 in order to clear the route for the pipeline.

March-May 1995

An onshore preliminary topographical survey is conducted to help demarcate placement of the pipeline.

March 1995

Thailand's Office of Commercial Affairs in Rangoon releases figures stating that the gas investment in Burma to date totals US\$1360.22 million.

March 6, 1995

SLORC allows Unocal use of the regime's English-language newspaper to publish an article detailing the history of Unocal's business practices. Unocal defends its role in the Yadana project.

March 7, 1995

A Karen militia force ambushes a SLORC military column travelling with a gas pipeline survey team. The attack was aimed at SLORC helicopters near Zinba and not the survey team. Five people are killed and eleven are wounded. All are of Burmese origin.

March 9, 1995

A KNU official states that the KNU is ready to talk with Unocal to settle the conflict regarding the gas project.

March 10, 1995

Total acknowledges in Paris that five members of its survey team were killed and eleven wounded by a heavily armed group near Kanbauk in the Tenneserim Division of Burma.

March 11, 1995

The attack on Total workers is reported in the Thai press. The KNU acknowledges that it attacked two armed SLORC battalions in the area on March 7.

March 12, 1995

Toward Ecological Recovery and Regional Alliance (TERRA) urges the oil consortium in Burma to make public the gas pipeline's environmental and social impact. TERRA states that the project will have a direct impact on Thailand's western forests.

The New Mon State Party (NMSP) president Nai Shwe states that Rangoon has never effectively enforced environmental laws that exist to protect wildlife and natural forest reserves.

March 13, 1995

The KNU Central Committee announces that two days after the March 7 attack, 1000 SLORC soldiers supported by one hundred trucks carrying weapons and ammunitions were on their way to an offensive aimed at KNU troops.

The US based Investor Responsibility Centre receives a letter from Total stating that "*the area is sparsely populated. There are few villages and the region is perfectly calm. No population displacement should occur along the pipeline route.*"

March 26, 1995

SLORC officials and the general manager for Total visit Kanbauk for a briefing on the pipeline.

SLORC Light Infantry Battalion (LIB) #408 conscripts forced labor from Pyu Gyi village near the pipeline route to construct a helicopter pad.

March 28, 1995

Burmese officials and a group of foreigners arrive in two helicopters at the newly constructed helipad. After the group departs, SLORC troops force villagers to build a fence around a plot of land near the village. This enclosure is heavily guarded.

March 29, 1995

During Unocal's directors' meeting in Los Angeles, the company issues a statement condemning violent behaviour against innocent villagers by the Burmese Army.

US State Department Burma Desk Officer John Lyle reports that "*repeated, unquestionably accurate reports of human rights violations*" are coming out the pipeline region.

April 3, 1995

A meeting occurs between high ranking SLORC officials and Texaco. Strategy is discussed by the oil company and SLORC's political and economic objectives are laid out.

April 6, 1995

Empire Oil Co. (Pacific) and MOGE sign an agreement for oil exploration in Arakan State.

April 17, 1995

Unocal and Total reveal that they are planning to acquire additional areas adjoining the Yadana field.

The Electricity Generating Authority of Thailand (EGAT) states in an advertisement in the Bangkok Post that eleven Karen villages on the pipeline route and its immediate vicinity have been relocated.

April 20, 1995

PTT confirms that it is negotiating for additional gas supplies from the Yetagun field with the US oil firm Texaco.

April 21, 1995

A confidential meeting between a US congressman and two officials from the KNU (Karen National Union) reveals that Unocal had given SLORC US\$1 million to compensate the villagers affected by the pipeline. According to the congressman, the company subsequently discovered that the compensation never reached those in need. The funds were instead used by SLORC to fund their own military activities.

April 23, 1995

Executives from Total and high ranking SLORC officials travel to Kanbauk to inspect the site of the pipeline and construction for a jetty. They then travel to Nat Ein Daung to meet Thai officials at the border.

A report released by Human Rights Watch/Asia states that Thai mistreatment of refugees from Burma is "almost certainly linked to economic and security concerns."

April 27, 1995

Due to the overvalued Burmese kyat, the Asian Development Bank notes it would be difficult for the bank to finance loans to Burma. However, according to Brig. Gen David Abel, Burma has now secured funding totaling US\$500 million to help implement the Yadana gas project.

April 29, 1995

Thai Deputy Prime Minister Supachai Pantchapakdi states that there is no evidence of forced labor being used on the pipeline project.

May 1995

Foreigners arrive at Heinze Island with SLORC military personnel to conduct a survey of the island.

May 9, 1995

Survey work stops in the pipeline area and employees are told they will not be needed again until the end of the rainy season.

May 10, 1995

The director of Asian Development Bank states, "*If we are requested to put in our money [into the pipeline project], I think we should.*"

May 14, 1995

Total categorically denies allegations that forced labor is being used on the pipeline in a letter to the editor in The Nation.

July 1995

Operation Natmin (Spirit King) ends.

July 1, 1995

PTT announces that in the event of political change in Burma, the operating consortium will

have to take responsibility if it fails to supply gas to Thailand. SLORC had, as part of its business contract, guaranteed to provide security for the project.

July 2, 1995

Due to seismic oil exploration operations, the Burmese authorities declare that the southern territorial waters are off-limits to all ships. The seismic exercises were to take 6 weeks.

July 10, 1995

Aung San Suu Kyi is released after almost six years of house arrest.

July 12, 1995

Carol Scott, Unocal's Public Relations officer, declines to comment as to whether Aung San Suu Kyi's release will benefit Unocal's investment in Burma.

July 26, 1995

Atlantic Richfield Co. (ARCO) signs an exploration contract with MOGE which includes a US\$6million payment on which the company will not comment.

September 13, 1995

The Burmese state-controlled newspaper announces that Premier Oil (UK), Texaco(US), and Nippo Oil (Japan) have agreed to a joint venture with MOGE in developing the Yetagon natural gas project in Block M-12, M-13 and M-14 off the Tenasserim coast in Burma.

September 14, 1995

Negotiations begin for the sale of natural gas from the Yetagon field through the Yadana pipeline.

September 1995

Lt. Gen Khin Nyunt tells Texaco executives that he will make a commitment to no more forced or voluntary labor, but also denies a request by the executives to meet with Aung San Suu Kyi.

September 18, 1995

A meeting between Texaco executives and shareholders reveals that SLORC insisted that Texaco use SLORC's military for pipeline security.

September 20-22, 1995

Brig. Gen. David Abel announces at the Europe/East Asia Economic Summit in Singapore that six transnational companies have received permission to conduct exploratory drills in seven onshore and five offshore areas.

October 1995

Infrastructure and onshore pipeline construction starts with a target completion date of March 1998.

November 1995

An onshore environmental baseline survey is conducted on the Yadana pipeline project.

Temporary work base camp near Kanbauk is completed.

Sources in Rangoon claim that Total is using a Rangoon employment broker to employ personnel for pipeline work. Priority is given to people from Rangoon, not individuals from the pipeline area.

As part of their security system, Total hires ten French mercenaries, indicating the company has concerns about security in the area despite public statements to the contrary.

December 2, 1995

Armed Karen villagers launch a rocket attack on Total's Kanbauk headquarters. The rocket misses its target, landing near the buildings.

December 3, 1995

The first reports of a "pipeline tax" are revealed. One villager reports that his village had to pay a pipeline tax of 150 kyat per family per month. He adds that the tax was implemented the year before and that the village head collects the money and gives it to the soldiers himself.

December 25, 1995

Total announces their timetable: onshore pipeline to be laid in October 1996-April 1997 dry seasons. Offshore platforms will be installed from mid-1997 to early 1998. The offshore pipeline will be laid from mid-1997 to late 1997. Gas deliveries to Thailand are to begin on July 1, 1998.

Total denies that an attack took place against Kanbauk village. Joseph Daniel states that he had just visited the pipeline area the week before and that he "*was absolutely sure that no attack had taken place in the area since March 8, 1995.*"

A senior KNU official tells The Nation that at least one foreigner was killed or injured in the Dec. 2 attack.

January 23, 1996

PTT submits its' Environmental Impact Study for the natural gas pipeline project to the National Environmental Board of Thailand. It is rejected and returned with a request for more information.

February 2, 1996

Attack is launched on Total's Kanbauk headquarters. The attacks provokes a rapid and severe retaliation on innocent civilians in the area; several villagers are tortured and then executed.⁹⁸

February 22, 1996

PTT hires Team Consulting Engineers Co. Ltd to conduct an environmental assessment but admits that the final report did not contain enough information. PTT instead enlists the Thai Office of Environmental Policy and Planning (OEPP) and environmental officials to survey the area themselves..

February 23, 1996

According to an OEPP representative, the pipeline poses a threat which could affect the livelihood of villagers in the area.

March 1996

The French government sells most of its remaining 5% interest (9.5 million shares) in Total through Credit Lyonnais SA and the US investment bank Lehman Brothers.

March 6, 1996

Asia Pacific Ventures announces that a new gas field called Sein (Diamond) has been discovered 10 kilometers south of the Yadana field.

March 19, 1996

According to Burmese government statistics, French investment in Burma as of September 1995 totaled US\$45 million. The largest portion of the investment comes from the Yadana project.

Total stated in 1992 "*US\$15 million was paid to MOGE in exchange for data in the oil field.*"

In response to allegations that money given to SLORC for oil exploration by Total was used to buy twenty-four used helicopters from Poland, Warsaw's response was, "*Poland was paid with income from Total.*"

April 16, 1996

Khun Mya, mediating between SLORC and the KNU, calls a senior KNU official on behalf of General Khin Nyunt to complain and inquire about the second attack on the Kanbauk conducted by the Karen National Liberation Army.

May 7, 1996

The cabinet of the Thai government calls on PTT to operate the gas pipeline project from Burma as proposed by the Industry Ministry. Exemptions are granted so that the pipeline can be laid through as class 1A watershed area. Compensation for villagers living along the pipeline is also agreed to by the cabinet.

Appendix B

List of International Documents Burma Has Signed or Ratified as of January 1, 1996

Biodiversity Convention. Convention on Biological Diversity, *done* June 5, 1992, 31 I.L.M. 818 (1992) (signed by Burma on June 11, 1992).

Children's Convention. Convention on the Rights of the Child, *adopted* Nov. 20, 1989, 28 I.L.M. 1448 (1991) (*entered into force* Sept. 2, 1990) (accepted by Burma on July 15, 1991).

Diplomatic Relations Convention. Vienna Conv. on the Diplomatic Relations, *done* Apr. 18, 1961, T.I.A.S. No. 7502 (*entered into force* Apr. 24, 1964) (accepted by Burma on Mar. 7, 1980).

Drug Trafficking Convention. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *done* Dec. 20, 1988, 28 I.L.M. 493 (1989) (*entered into force* Nov. 11, 1990) (accepted by Burma on June 11, 1991).

Forced Labour Convention. Convention Concerning Forced or Compulsory Labour (ILO No. 29), *adopted* June 28, 1930, 39 U.N.T.S. 55 (*entered into force* May 1, 1932).

Freedom of Association Convention. Convention Concerning Freedom of Association and Protection of the Right to Organize (ILO No. 87), *adopted* July 9, 1948, 68 U.N.T.S. 17 (*entered into force* July 4, 1950).

Geneva Convention: Civilian Protection During War. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *done* Aug. 12, 1949, T.I.A.S. No. 3365, 6 U.S.T. 3516 (*entered into force* Oct. 21, 1950) (deposited by Burma on Aug. 25, 1992).

Genocide Convention. Convention on the Prevention and Punishment of the Crime of Genocide, Dec 9, 1948, 78 U.N.T.S. 277 (*entered into force* Jan. 12, 1951).

Non-Proliferation Treaty. Treaty on the Non-Prolif. of Nuc. Weap., *done* July 1, 1968, T.I.A.S. No. 6839, 21 U.S.T. 483 (*entered into force* Mar. 5, 1970) (deposited by Burma on Dec. 2, 1992).

Slavery Convention. Slavery Convention, *concluded* Sept. 1926, 46 Stat. 2183, T.S. No. 788, 60 L.N.T.S. 253 (*entered into force* Mar. 9, 1927).

Slavery Convention Protocol. Protocol Amending the Slavery Convention, *done* Dec. 7, 1953, 7 U.S.T. 479, T.I.A.S. No. 3532, 182 U.N.T.S. 51 (*entered into force* Dec. 7, 1953).

World Heritage Convention. Convention Concerning the Protection of the World Cultural and Natural Heritage, *done* Nov. 23, 1972, T.I.A.S. No. 8226, 27 U.S.T. 37 (*entered into force* Dec. 17, 1975) (accepted by Burma on Apr. 29, 1994).

Appendix C: Letter to Unocal from Karen Students

