

Burma,  
Total and  
Human Rights :  
dissection of a project

SITUATION REPORT

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**BURMA**

INTERNATIONAL  
FEDERATION OF  
**HUMAN  
RIGHTS  
LEAGUES**

AN INTERNATIONAL NON GOVERNMENTAL ORGANISATION IN CONSULTATIVE  
STATUS WITH THE UNITED-NATIONS, UNESCO AND THE COUNCIL OF EUROPE,  
AND OBSERVER STATUS WITH THE AFRICAN COMMISSION FOR HUMAN RIGHTS

**REPORT**

**La Lettre**  
**HEBDOMADAIRE**  
**de la FIDH**

FUNDED BY PIERRE DUPUY

NOVEMBER 1996

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## BURMA, TOTAL AND HUMAN RIGHTS: DISSECTION OF A PROJECT

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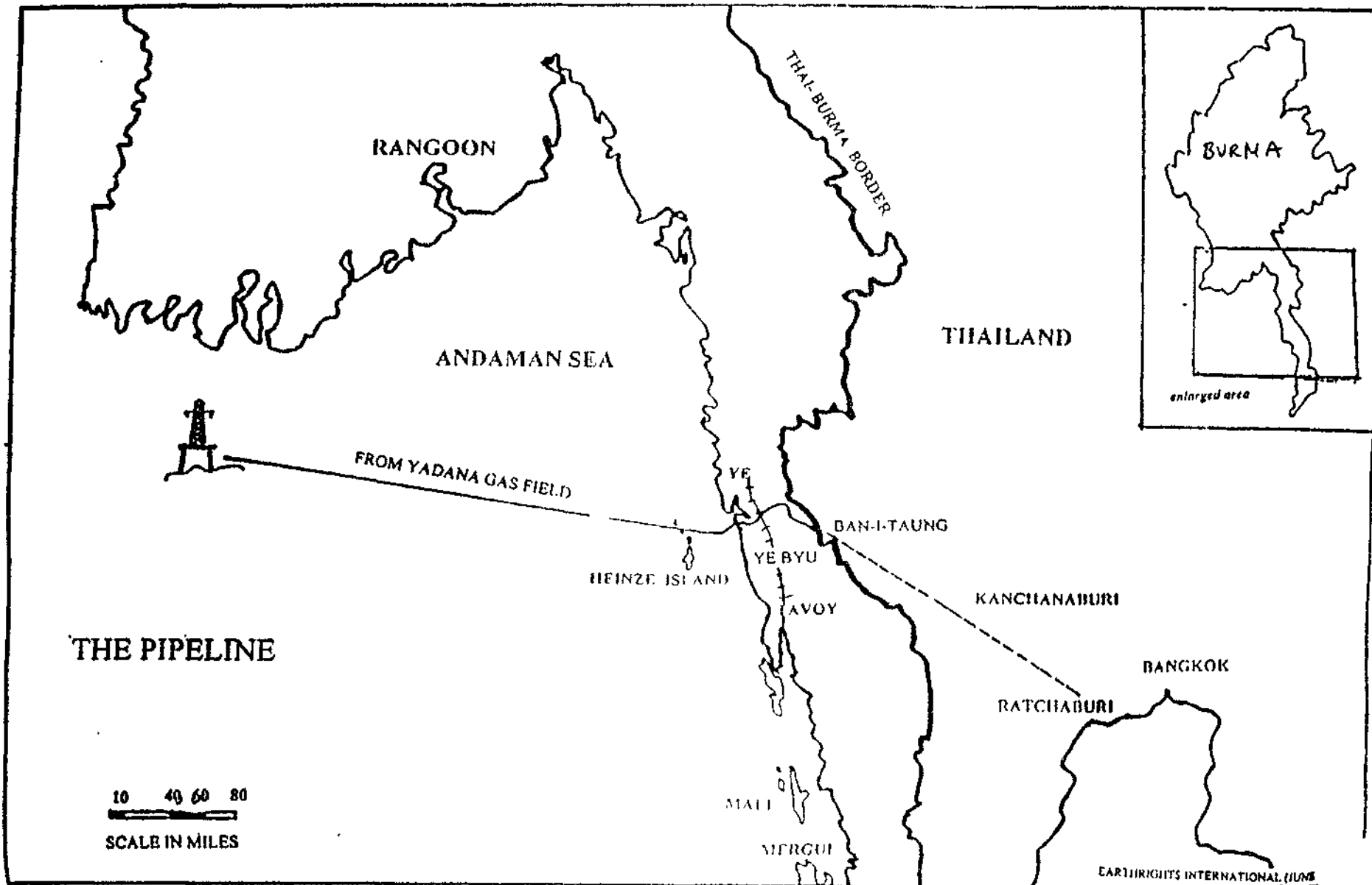
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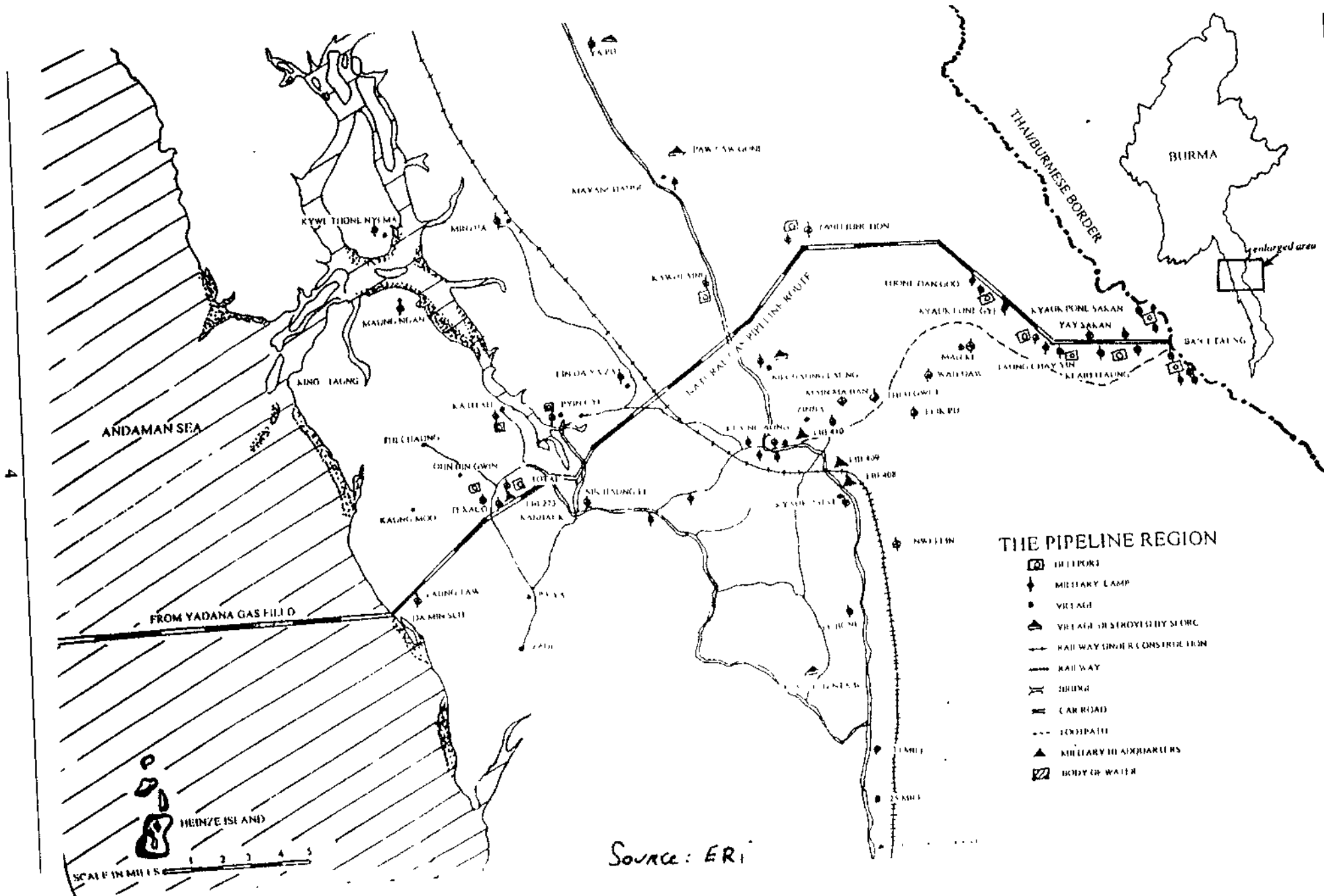
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Source: EAI



Source: ERI

BURMA

enlarged area

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HOPE DANGERS

KYAUK PONE SAKAN

YAY SAKAN

BAN LAUNG

MAUKET

WAI MAW

THAI LAUNG

LEUNG CHAY VIN

KE ABH LAUNG

LEUNG

NIU CHUNG LUNG

KYAUK HAN

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## ACRONYMS

<b>ABSDF</b>	<b>All Burma Students Democratic Front</b> - Student group opposed to the SLORC
<b>BSPP</b>	<b>Burma Socialist Programme Party</b> - Party in power since the 1962 military coup d'etat until the SLORC's taking of power in 1988
<b>DKBA</b>	<b>Democratic Karen Buddhist Army</b> - KNU's dissident faction since 1994, supported by the SLORC
<b>EGAT</b>	<b>Electricity Generating Authority of Thailand</b> - Thailand's state-owned company operating the power plant in Ratchaburi (Thailand), where the natural gas from Yadana will be transformed into electrical power (2800 MW)
<b>ERI</b>	<b>Earth Rights International</b>
<b>FTUB</b>	<b>Federation of Trade Unions of Burma</b> - Coalition of trade unions opposed to the SLORC
<b>IMF</b>	<b>International Monetary Fund</b>
<b>KHRG</b>	<b>Karen Human Rights Group</b>
<b>KNLA</b>	<b>Karen National Liberation Army</b> - Armed branch of KNU
<b>KNU</b>	<b>Karen National Union</b> - Political movement of the rebel Karen group
<b>LIB</b>	<b>Light Infantry Battalion</b>
<b>MOGE</b>	<b>Myanma Oil &amp; Gas Enterprise</b> - Oil company of the Burmese state, a 15% partner of TOTAL and UNOCAL in the Yadana project
<b>MNLA</b>	<b>Mon National Liberation Army</b> - Armed branch of the Mons
<b>NCGUB</b>	<b>National Coalition Government of the Union of Burma</b> - Burmese government in exile
<b>NCUB</b>	<b>National Council of the Union of Burma</b> - Coalition of deputies and representatives of various opposition groups
<b>NLD</b>	<b>National League for Democracy</b> - Principal political opposition movement, directed by Aung San Suu Kyi
<b>NMSP</b>	<b>New Mon State Party</b> - Political movement of the rebel Mon group
<b>PTT-EP</b>	<b>Petroleum Authority of Thailand Exploration and Production Public Co Ltd.</b> - Semi-public Thai oil company and a 25.5% partner in the Yadana project
<b>SLORC</b>	<b>State Law and Order Restoration Council</b> - Military junta currently in power in Burma
<b>UNOCAL</b>	American oil company, a 28.26% partner in the Yadana project
<b>USDA</b>	<b>Union Solidarity and Development Association</b> - A union affiliated with the SLORC

Burma's currency is the **Kyat**, at the official exchange rate of 6 kyats per one US Dollar; exchanged on the black market at 110 to 120 kyats per Dollar.

## INTRODUCTION<sup>1</sup>

A journalist who recently spoke about the TOTAL'S gas-pipeline project in Burma referred to its "loathsome banality." The problem posed by the construction site is indeed not new. Since the conclusion of the first contract in July 1992, numerous reports have been published which question not only the opportunity, *per se*, of such a project, but also the conditions under which the works have unfolded at the construction site.

FIDH, therefore, undertook the task of investigating the allegations, inquiring about human rights violations at the construction sites, as well as providing the French public (since heretofore, the majority of published reports has come from English-speaking groups) and the international public opinion with a precise report on the situation at the construction sites of the French group TOTAL: TOTAL is the operator of the project and the financial partner with the highest stakes in it. It is therefore the most responsible of all parties for its realisation.

As was inevitable, this report presented a methodological problem, since independent observers are not allowed on the construction site. In a recent interview with FIDH. though, Mr. Daniel Valot, the General Director of TOTAL's Exploration/Production department, nonetheless responded positively to the idea of a truly independent mission, and FIDH ardently hopes that its request to this end may soon become a reality. The present report is thus founded on information collected from other reports and sources - information which has been confirmed and verified, in keeping with the methods traditionally embraced by FIDH. The recent report of the Southeast Asian Information Network and Earth Rights International, *Total Denial*, published in July 1996 (and particularly its interviews with the refugees at the Thai border), was a vast and precious source of information, on which a number of passages in this text are based. Our great appreciation goes to its authors. A number of other sources may not be cited here for obvious security reasons, but the authors of the present report nonetheless wish to express their gratitude for their cooperation which has proven to be extremely valuable, and, indeed, indispensable. We express our warm gratitude to Milos Naumovic who graciously translated this report into English.

The conclusions of FIDH inquiry are overwhelming, and one cannot but note the manifest insufficiency of TOTAL'S and UNOCAL's responses to the questions raised by the project. It appears indeed that the Yadana project is reprehensible on more than one count:

\* Although the directors of TOTAL and UNOCAL claim not to play a political role, but wish to limit themselves to the economic realm, it appears that this is an illusory desire :

-since such a project conducted with a particularly brutal and internationally condemned military regime provides this regime with inherent moral support.

-since the project lends a short, medium and long-term economic support to a junta which was financially drained, and which uses most of its funds for the purchase of weapons.

-since there are apparent military agreements between TOTAL (and in particular, its security consultants) and the Burmese army to combat the ethnic rebel groups.

\* Human rights violations at the construction site are massive and verified: forced relocation of the population, forced labour, summary executions, torture, rape, financial extortions... The majority of these violations is committed by the Burmese army, the *Tatmadaw*, in charge of guaranteeing the security of the construction site. Although it is unlikely that TOTAL resorts directly to the use of forced labour, it is nonetheless clear that it tolerates its existence and reaps profits therefrom. The construction site is the cause, at least indirectly, of massive human rights violations.

<sup>1</sup> Original version in French released on 23 October 1996.

## HISTORICAL BACKGROUND

Once a British colony, Burma won its independence in 1948. In 1962, the military coup d'etat directed by General Ne Win took control of the young democracy and installed a military dictatorship under the rule of the only permitted political party, the BSPP, which lasted almost three decades. In 1988, the pro-democracy demonstrations destabilised the previously well-oiled BSPP machine, culminating, on August 8th 1988 in a massive strike. The military government's ferocious response resulted in over 5000 deaths throughout the country, the declaration of a new regime, the SLORC, the imposition of martial law and the change of the country's name to Myanmar. After the massacre, the leaders of the democratic movement, among them Aung San Suu Kyi, the daughter of the independence struggle's hero Aung San, established the National League for Democracy (NLD). Aung San Suu Kyi has been the secretary-general of the NLD since its foundation. At the legislative elections organised by the SLORC in 1990, and in spite of severe restrictions imposed on political liberties, as well as on the freedoms of association and expression, the NLD won more than 80% of the seats - a result recognised by the international community. The SLORC reaction was immediate and numerous elected representatives were arrested. The victorious party found it impossible to form a government though the NLD leaders handed this task to some of its representatives who rejoined the areas controlled by the ethnic opposition groups along the Thai border. These representatives established the NCGUB (National Coalition Government of the Union of Burma) with Dr. Sein Win as its prime minister, currently a refugee in the United States. From July 1989 to July 1995, Aung San Suu Kyi remained under house arrest - she received the Nobel Peace Prize in 1991. Ruined, financially and economically drained, the government decided, in 1989, to open its borders to foreign investment, while refusing steadfastly to engage in discussions with the NLD. Today, Aung San Suu Kyi still suffers from restrictions on her freedom of movement numerous NLD members have been arrested and some have died under suspicious circumstances. Far from progressing to a transitional phase Burma is today in the throes of terror and totalitarianism.

It is within this context that a number of oil companies, including TOTAL, have begun investing in Burma.

## I - PROJECT DESCRIPTION

### A. Figures and Facts

The oil corporations TOTAL (France) and UNOCAL (USA) are the partners of the Burmese oil company MOGE (Myanma Oil and Gas Enterprise) in a joint-venture having as its goal the exploitation of the Yadana gasfield (blocks M5 and M6), considered to be a gigantic field due to its reserves estimated at around 5 trillion cubic feet (140 billion cubic meters). The MOGE is under complete control of the SLORC, which is therefore a full partner of TOTAL and UNOCAL.

Through its intermediary, the PTT-EP, Thailand got also involved in the project, through a contract signed in February 1995 providing for the import of natural gas from Yadana to supply its power plants over a period of thirty years.

The project, evaluated at 1,2 billion USD, represents the principal foreign investment in Burma and constitutes more than a third of all such investments. Once the construction is completed (platforms, pipeline, drill holes...), towards mid-1998 according to the plans, gas sales to Thailand (525 million cubic feet per day, or 5,4 billion cubic meters per year<sup>2</sup>) should provide the Burmese regime with an annual income estimated between 200 and 500 million USD (400 million USD is the figure most often cited), or the equivalent of half of all export revenue from the year 1994-1995<sup>3</sup>.

The venture began in July 1992 when the TOTAL corporation bound itself by contract to the MOGE for the purpose of the "evaluation, development and production"<sup>4</sup> of gas in the field of Yadana located in the Andaman Sea, Martaban Gulf, 45 miles (70 km) from the southern coast of Burma. In early 1993, UNOCAL joined TOTAL as a co-venturer, acquiring 47.5% interest in the project, a figure ultimately reduced to 28.26% following the entry of PTT-EP and the MOGE (15% interest) - therefore the SLORC - in the consortium. The sales contract signed with the MOGE in February 1995 provides that the natural gas produced in Yadana will supply Burma with 125 million cubic feet per day. The PTT-EP's investment rose to 210 million USD, equalling 25.5% of the total. TOTAL corporation, having already invested 700 million USD, or 31.24% of all investments, is therefore made the principal partner of the venture.

### Summary

TOTAL	31.24%
UNOCAL	28.26%
PTT-EP	25.5%
MOGE	15.5%

Production total:	650 million cubic feet per day
PTT-EP imports:	525 million cubic feet per day
Burmese market:	125 million cubic feet per day

The existence of gas-fields at Yadana has been known since the early 1980s and the PTT-EP has been showing continuous interest therein ever since. In 1991, it submitted a loan request to the World Bank in order to proceed with feasibility studies of the fields, a request which was rejected on the grounds that the World Bank "like most other international organisations, does not recognise the present regime in Rangoon. We also don't look favourably on applications for extended and soft loans submitted by others on its behalf"<sup>5</sup>.

<sup>1</sup> TOTAL brochure, *Le Projet Yadana*, July, 1996.

<sup>2</sup> TOTAL Annual Report, 1995, p.16.

<sup>3</sup> *Courrier économique et financier - Asie Pacifique*, n°12, January 9, 1995, *Liberation*, May 26, 1995, *The Economist*, July 13, 1996, *Far Eastern Economic Review*, August 15, 1996.

<sup>4</sup> TOTAL, presentation of the Yadana project, July 22, 1996.

<sup>5</sup> See Investor Responsibility Research Center, *Unocal Corporate Activity in Burma*, April 1994, p.7.



## **B. Progress of the construction**

The progress is divided into various stages<sup>6</sup>

- 1 Study and identification of the terrain in order to establish the route of the future pipeline March to May 1995, October 1995 to May 1996 (dry season). The route was defined by satellite images.
- 2 Clearing of the sites traversed by the pipeline route
- 3 Civil engineering works airstrip, helipads (Ka Daik, Ohnbinkwin, Migyaunglaung), wharves (Ka Daik and Pyin Gyi in the Heinze basin), access roadways, TOTAL'S headquarters (Ohnbinkwin) bridges over the Heinze and Tavoy rivers (dry season 1995-1996).
- 4 Construction of a service road parallel to the pipeline, which will serve the laying and the maintenance of the future pipeline The construction began in the west between Hpaungdaw and Migyaunglaung in the direction of Migyaunglaung, according to the Karen Human Rights Group<sup>7</sup>.
- 5 Installation of the on-shore pipeline scheduled for 1996-1997 during the dry season (October to May).
- 6 Installation of off-shore platforms from mid-1997 to early 1998.
- 7 Placement of the pipeline into the sea from mid-1997 to late 1997.

The complete pipeline will be 416 miles (approx. 700 km) long, 254 miles (409 km) of which are to be within Burmese territory - 215 miles (346 km) off-shore and 39 miles (63 km) on-shore, with an additional 161 miles (260 km) in Thai territory (this last portion being under the responsibility of the PTT-EP).

The project will be operational towards the middle of 1998.

## **C. The pipeline route and the protection of the construction sites**

The last section of the pipeline in Burmese territory will be built on land running through the Tenasserim region towards the Thai border. In this rural and ethnically varied region the villages are scattered within a rainforest, and the Karens, the Mons and other opposition groups maintain an active presence. Although the Mons signed a cease-fire with the SLORC in June 1995, the SLORC does not control the entire area which is still susceptible to armed conflict. The SLORC and foreign investors generally agree that the pacification of Burma is a precondition to the contracts of investment. Therefore, according to the production sharing contract, the SLORC is entrusted with, and liable for, guaranteeing security of the construction sites and the TOTAL employees (see *infra* p 20). The SLORC has thus dispatched several light infantry battalions to the region (between 12 and 15 according to the sources), totaling around 10 000 troops. Four of these battalions are assigned to the protection of TOTAL'S headquarters and the surveillance of the route of the future pipeline, which will be 39 miles long and approximately 300m wide. The immediate access to the route's surroundings is forbidden to the local population<sup>8</sup>. The city of Ye is frequently under an imposed curfew and a part of the Ye Byu municipality is under martial law<sup>9</sup>. TOTAL has established its headquarters in a veritable entrenched camp in Ohnbinkwin. The camp, placed under protection of Burmese soldiers is surrounded by three layers of barbed wire and is equipped with trenches and bunkers<sup>10</sup>. TOTAL has appealed to "security consultants" in order to reinforce the protection of the camp and of the pipeline (see *infra*, p 17). The TOTAL employees travel daily under military escort.

<sup>6</sup> TOTAL, presentation of the Yadana project, July 22, 1996

<sup>7</sup> KHRG, n° 96-21, May 1996

<sup>8</sup> Id

<sup>9</sup> KHRG, n° 96-20, May 1996

<sup>10</sup> KHRG n° 96-21, May 1996 - confirmed by J-C Ragot of TOTAL in an interview published by the *Far Eastern Economic Review*, August 15, 1996

Traversed villages

The pipeline will follow the Tavoy and Zin Ba valleys, before crossing the Burmese-Thai border at Ban-I-Taung. The villages in the immediate vicinity of the pipeline where TOTAL has established committees of communication are

Daminseik  
Hpaungdaw  
Zadi  
Kaunghmu  
Tchechaung  
Ohnbinkwin  
Kanbauk  
Migyaungaing  
Pyin Gyi  
Ein Da Ya Za  
Migyaunglaung  
Kaleinaung  
Zin Ba

**D. Methods of employment**

By the end of 1996, TOTAL plans on hiring "20 expatriates and 150 local employees, among whom are 80 trainees. Added to this number will be the personnel hired by the sub-contractors for building the installations (around 600 persons during the dry season, 1995-1996)"<sup>11</sup> (airstrips wharves, bridges, etc). TOTAL therefore directly employs Burmese workers, paid 200 to 300 Kyats approximately per day, and thus at a higher rate than the usual local levels as the national average rests at approximately 60 Kyats per day (around 0.54 USD). According to TOTAL, the construction of the pipeline will necessitate in October 1996 the employment of at least 1500 workers and 800 have already applied<sup>12</sup>. TOTAL has set up a recruitment process by quota in villages where the "hiring committees" have been established. These committees are in charge of candidate selection, a system which, according to TOTAL is intended to neutralise the various effects of "chumminess of the SLORC and the pressure from ethnic groups"<sup>13</sup>. However, according to the KHRG and other sources, TOTAL has allegedly entrusted the greatest part of hiring responsibilities to a subsidiary of the MOGE, the *Myint Association* with preference hence given to the members of the USDA (a "union" affiliated with the SLORC), and their families - one cannot but remain perplexed at the effective degree of neutralisation of "chumminess of the SLORC"<sup>14</sup>. There also appears to be numerous instances of corruption among the committee members<sup>15</sup> multiple bribes being paid to the local SLORC representatives at every stage of the employment selection process ("purchase" of application of the medical examinations (...))<sup>16</sup>. In addition, although TOTAL claims only to employ volunteers of 18 years of age or older<sup>17</sup> several reliable testimonies indicate that several minors have been employed.

These pieces of information cast serious doubt on TOTAL'S strictness in following its own guidelines for employment. In spite of the measures the hiring method does not respect the principles of independence and neutrality which TOTAL declared it would apply.

Hence, one cannot but question the confidence of J.-M. Beuque, the official in charge of the TOTAL'S Far East operations when he stated that "we are going to control [the supervision of pipe laying and related work] *very strictly*".<sup>18</sup>

<sup>11</sup> TOTAL brochure, *Le Projet Yadana* July 1996.

<sup>12</sup> FIDH interview, September 24 1996.

<sup>13</sup> Id.

<sup>14</sup> TOTAL denies that only the USDA members are employed, see e.g. the letter from J. Daniel to A. Johannssen of the *Danish Burma Committee*, July 19, 1996. Nevertheless, a document handed by TOTAL to the members of the American Congress during the visit of the site reportedly mentioned villagers "hired by the army". See G. Fairclough, "Troubled Waters", *Far Eastern Economic Review*, August 8, 1996.

<sup>15</sup> KHRG, n° 95-27, August 1995, n° 96-21, May 1996 and interviews of refugees on the Thai border. See also KNU, *Report the Facts...*, 1996

<sup>16</sup> See also Mon Information Service, Bangkok, *French TOTAL CO'S and American UNOCAL Corp's disastrous gas Pipeline Project in Burma's Gulf of Martaban*, May 1996.

<sup>17</sup> FIDH interview, September 24, 1996.

<sup>18</sup> Interview from the *Sunday Post*, Sunday Perspective, April 1995. Italics added.

## II - SUPPORT FOR THE JUNTA

The gas project of Yadana may be criticised for the support it lends to the Burmese junta in several regards:

- morally and politically, by the implicit backing given to an illegal and illegitimate military dictatorship considered among the most brutal regimes in the world.
- economically, by the support afforded through the contribution of foreign currency and a guarantee of future revenue allowing it to acquire medium and long-term loans - financial means which, far from benefiting the population, essentially serve to reinforce the military power, particularly through the purchase of weapons.
- militarily and logistically, by the direct support of the army in the regions of struggle against the armed ethnic groups.
- in the field of human rights, by the massive violations of these rights due to this project.

### A. De facto, an act of moral and political support

The military junta in power in Burma, the SLORC, is among the most dictatorial regimes of the world, and its human rights performance is recognised as particularly terrifying - by all accounts, sufficiently horrific to have led to

- The nomination of a Special Rapporteur by the UN's Commission on Human Rights since 1992 (who had himself, in 1991, replaced an Independent Expert assigned to monitor the Burmese situation).
- A resolution against it by the UN General Assembly *every year* since 1991, 8 condemnations by the Commission of Human Rights and several by the Sub-Commission.
- Its condemnation *every year since 1964* by the International Labour Organisation for the systematic use of forced labour, a condemnation which was renewed at its 83rd conference in June 1996. A complaint has been initiated against Burma on the grounds that forced labour is used "systematically on an even larger scale in an increasing number of areas"<sup>19</sup>.
- The prohibition of entry on American soil for all who "formulate, apply or support the policies hindering Burma's transition to democracy, as well as for their immediate family" announced by President Bill Clinton in October 1996. The confirmation by the Council of the European Union of existing sanctions against Burma (expulsion of military personnel, arms embargo suspension of aid other than humanitarian) and the adoption of new sanctions (prohibition of entry on EU soil for SLORC officials and their families suspension of high-level bilateral visits), pronounced on October 28, 1996.
- Its firm condemnation by all prominent international human rights organisations.<sup>20</sup>

In this context, investing in Burma (and particularly in the form of a joint-venture with a corporation under full control of the SLORC) amounts to an act of moral and political solidarity with the SLORC, an act of *complicity* in signing a contract with the junta. TOTAL agrees to turn a blind eye to the massive, systematic and documented human rights violations, rendering it a *de facto* accomplice. The fact that the notion of complicity is retained by criminal courts is not incidental: being an accomplice to a crime, even in a passive form, is (in the best of cases) not having hindered it, thus indirectly allowing it to occur. This is why, on a larger scale, there is an obvious fallacy in the argument which attempts to disassociate the economics and the politics, and which contends that entering into a business venture with a dictatorship is not a political matter. When, under a dictatorship, people are deprived of liberty, forced to work, tortured, the mere act of settling there with one's own interest as the sole object constitutes an act of moral and political solidarity with the reigning dictatorship, and a tacit acceptance of the inhumanity at play. There are the seemingly innocuous acts of heavy moral significance and, likewise, economic acts of heavy political significance: possession of economic power today equals a political power, whether one desires so or not. Mr Daniel Valot's argument that "our role is not to be

<sup>19</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations International Labour Conference, 83rd session, Geneva, June 1996.

<sup>20</sup> See, e.g. Article XIX, *Beyond the Law*, August 1996; Amnesty International, *Myanmar - Human Rights Violations against ethnic Minorities*, August 1996 and *No Law at all - Human Rights under military rule*, October 1992 and *Myanmar: Human Rights still denied*, November 1994; Human Rights Watch, *Entrenchment or Reform?* July 1995; International League for Human Rights, *In Brief - The Human Rights Situation in Burma*, February 1994; International Commission of Jurists, *"The Burmese Way: To Where?"*, December 1991.

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involved with either the politics or morals<sup>21</sup> is consequently unacceptable since TOTAL'S economic investment is *already*, in view of the regime in place in Burma, an act of politics and morals, regardless of how ardently its orchestrators are arguing against it.

Adding, as Mr Joseph Daniel, the director of the group's institutional relations, does, that "TOTAL is present in 80 countries, and inevitably, not all are models of democracy "<sup>22</sup>, is not enough: investing in several dictatorships does not justify investing in any one of them and, in addition, in the opinion of all foreign observers, Burma is considered an exception, insofar as the human rights violations and the ferocity of the repression are of such extent that the threshold of what can be tolerated clearly has been passed. Professor Tom Donaldson, author of *Ethics of International Business*, writes the following on the subject of investing in dictatorships:

"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 the 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 the threshold, it would be Burma*".<sup>23</sup>

Most of the researchers agree on drawing the line on investments at any collaboration (even in the most passive form) with regimes guilty of massive human rights violations such as is the case in Burma. Richard DeGeorge, director of the International Center for Business Ethics at the University of Kansas writes:

"One of the guidelines I would put out is that a company should not knowingly cooperate with any supplier, government or enterprise that engages in slavery, slave labour, or even child labour (...). If you know it's being done, you're ethically responsible for it"<sup>24</sup>.

The Archbishop Desmond Tutu, the recipient of the Nobel Peace Prize in 1984, has repeatedly condemned the policy of "constructive engagement" in Burma which reinforces the junta's legitimacy rather than encouraging it to respect its international obligations:

"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 (...) 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"<sup>25</sup>.

The particularity of the Burmese situation is such - and so indefensible - that a consensus is beginning to emerge in the international economic community to restrain commerce with and investments into Burma:

- Burma is under imposition of economic sanctions since 1989, by both the IMF and the World Bank.
- The European Commission has opened an enquiry into the issue of forced labour in Burma, in view of a temporary restraint on the benefits of the Generalised System of Preferences which gives a favourable status to developing countries. However, the European Parliament delegation which intended to investigate the issue on site has just been denied access to Burma.
- Denmark has put forward a proposal that the European Union apply economic sanctions against Burma.<sup>26</sup> In its resolution of June 20 1996, the European Parliament called upon European and Asian nations to employ all measures in order to isolate the SLORC politically and economically and to support the democratic forces.
- The Committee on External Economic Relations of the European Parliament suggested the idea of elaborating a "code of conduct" for the use of European multinational companies, a code which

<sup>21</sup> FIDH interview, September 24, 1996

<sup>22</sup> "A high risk construction for TOTAL in Burma *Liberation* September 3, 1996

<sup>23</sup> Cited by G. Millman, "Troubling Projects", *Infrastructure Finance*, February/March 1996, Italics added

<sup>24</sup> Id

<sup>25</sup> Burma as South Africa, in *Far Eastern Economic Review*, September 16, 1993

<sup>26</sup> *The Economist*, July 13, 1996

would carry an "anti-forced labour label" The European Commission does not seem opposed to the idea.<sup>27</sup>

- Following the proposal of American senators William Cohen (R-ME) and Diane Feinstein (D-CA), a law, adopted by the Congress in July, was signed by Bill Clinton on September 30, 1996 which will prohibit all new investments in Burma if the government "has physically harmed, rearrested for political acts or exiled Daw Aung San Suu Kyi, or has committed large-scale repression of or violence against the democratic opposition"<sup>28</sup>.
- The American Secretary of Commerce, Mickey Kantor, spoke, in June 1996, in favour of economic sanctions against the SLORC: "There are cases where economic sanctions, applied in an appropriate way (...) can be very useful (...). I am in favour of effective sanctions [against the SLORC]"<sup>29</sup>.
- Several American cities have adopted rules prohibiting all purchases by the city of goods and services offered by the companies which invest in Burma. Among those cities are San Francisco, Berkeley, Santa Monica, Oakland, Ann Arbor and Madison. Similar legislation has been enacted in the state of Massachusetts.

Several multinational companies have already decided not to invest in Burma: Levi-Strauss who indicated that it would be impossible to trade with Burma "without directly supporting the military government and its systematic policy of human rights violations"<sup>30</sup>, Liz Claiborne, Eddie Bauer, Macy & Co., more recently Heineken and Carlsberg in June and July 1996 and Apple in October 1996. In 1994, G. Soros pulled out of his Peregrine investments due to Peregrine's own investments in Burma.

In July 1996, the Danish life-insurance company *Kommunernes Pensionforsikning*, KP, sold its portfolio of stocks of the TOTAL group, valued at about 10.5 million USD "in anticipation of a possible international boycott of TOTAL due to its involvement in Burma"<sup>31</sup>.

Two lawsuits have been filed in the US against UNOCAL, the second of which is against TOTAL as well, on September 3rd and October 3rd 1996, respectively. The first complaint was filed by the NCGUB and the FTUB and the second by Burmese plaintiffs.<sup>32</sup>

## **B. Disregard for civil society and its legitimate representatives - TOTAL'S interest in upholding the junta**

TOTAL thus pretends to separate economics and politics, which appears obviously illusory in the case of Burma, as is demonstrated by the complaint filed on October 3, 1996 against TOTAL by Burmese plaintiffs. Such an apparent indifference is all the more difficult to justify since the democratic opposition and the ethnic groups<sup>33</sup> concerned by the project have repeatedly and publicly denounced it.

**Aung San Suu Kyi**, leader of the NLD

"The investors should not set up here since all the money goes to an elite. I want to mention the French company TOTAL *which has become the strongest supporter of the Burmese military system*. This is not the time to invest here"<sup>34</sup>.

**National Coalition Government of the Union of Burma (NCGUB)**, the government in exile:

"The NCGUB has on numerous occasions expressed its concern about the UNOCAL-TOTAL partnership with the Burmese military junta, known under the name SLORC (...). In the current circumstances, the NCGUB affirms that the economic sanctions are a vital instrument in forcing the SLORC to take a seat at the negotiating table"<sup>35</sup>.

<sup>27</sup> Report on the Communication from the Commission on the Inclusion of Respect for democratic Principles and human Rights in Agreements between the Community and third Countries A4-0212/96

<sup>28</sup> *International Herald Tribune*, October 7, 1996

<sup>29</sup> Reuters, June 28, 1996

<sup>30</sup> G. Millman, "Troubling Projects", *Infrastructure Finance*, February/March 1996

<sup>31</sup> Declaration by N Hougaard, director of KP's investments, July 18, 1996

<sup>32</sup> For the first complaint, see NCGUB and FTUB v UNOCAL Inc. *Complaint for Equitable Relief and Damages*, September 3, 1996; for the second see the Press Release of the Center for Constitutional Rights, Law Offices of Hadsell & Stormer, Paul Hoffmann, ERI (plaintiffs' attorneys), October 3, 1996

<sup>33</sup> The pipeline traverses the regions inhabited by the Karens and the Mons

<sup>34</sup> Interview given to *Le Monde*, July 21-22, 1996 Italics added

<sup>35</sup> **Open letter, May 22, 1995**

**National Council of the Union of Burma (NCUB)**, coalition of deputies and representatives of various opposition groups:

"We hereafter would like to reiterate our call for the international community 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"<sup>36</sup>.

**Karen National Union (KNU)**, political wing of the Karen rebel group:

"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 conditions of the Karen people and that does not abuse the internationally accepted standards of human rights nor have detrimental effects on the environment"<sup>37</sup>.

**The New Mon State Party**, political wing of the Mon rebels:

"The New Mon State Party (...) has decided to take legal action against UNOCAL (...) due to the environmental damage done in the SLORC's security activities done to the Mon, Karen and Tavoyan areas for the construction of the pipeline from off-shore gas fields"<sup>38</sup>.

The pipeline project is therefore under way *against* the views of the democratically elected representatives and the concerned indigenous populations. It ought to be added here that the contract with TOTAL in all probability includes a clause prohibiting any contact between the corporation and opposition groups. An American congressman has indeed confirmed that the project's partners are forbidden to communicate with the inhabitants of the pipeline region who are opposed to the project: he declared on April 21, 1995 that the foreign oil companies are not authorised to establish contacts with armed ethnic groups or political dissidents, as such contact would result in the annulment of the contract and the seizure of the funds by the SLORC<sup>39</sup>. This so-called gag clause is actually common in the SLORC's contracts with foreign firms<sup>40</sup>. And indeed, TOTAL has declined to meet with any of the representatives of ethnic groups who have approached them, while also systematically refusing to visit the refugee camps sheltering persons forced to leave the pipeline region<sup>41</sup>.

Consequently, it becomes somewhat difficult for TOTAL to claim to support civil society by this project<sup>42</sup>, and to pretend that it is not taking sides between "the two political factions"<sup>43</sup>. *De facto*, TOTAL has taken a side. TOTAL'S argument essentially consists in maintaining that the pipeline will not generate net revenue for the Burmese government before the year 2001, and one may not know "which will be the colours of the government then. When one is engaged in this sort of investment, it is not necessarily the party thought to benefit from the project that actually becomes the beneficiary"<sup>44</sup>. TOTAL thus insists that it has no interest in keeping the junta in power - but the NCGUB, which consists of elected parliamentary representatives, has clearly indicated on several occasions that, in the name of the Burmese people, it does not recognise the contracts signed by the SLORC as valid, and will not recognise the junta's contracts should the civil government come to power: "These corporations are in business with an illegal regime which does not represent anyone in Burma outside a small number of military personnel. The regime has no popular mandate to exploit or export the country's natural resources. That is why all the contracts signed with this illegal regime will not be honored by the Burmese people"<sup>45</sup>; "the legality of the contract (...) is controversial. An elected civilian government will

<sup>36</sup> Open letter, May 14, 1996

<sup>37</sup> Cited in *Total Denial*, p 4

<sup>38</sup> Letter to M Codon, UNOCAL's attorney

<sup>39</sup> See also Y. Lertcharoenchok "Exploitation through forced labour", in *The Nation*, October 14, 1995.

<sup>40</sup> See, for example, the contract with Yukong Ltd for the exploitation of another oil field in Burma and the clause 25 2 (Section 25) of the contract: "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* " (Italics added). Cited in *Total Denial* p.7.

<sup>41</sup> Letters of KNU and the president of NMSP

<sup>42</sup> Particularly as 80% of the produced gas will be sold to Thailand and will only marginally benefit the Burmese population

<sup>43</sup> FIDH Interview, September 24, 1996

<sup>44</sup> Interview given to *Le Monde*, July 21-22, 1996

<sup>45</sup> The NCGUB declaration, May 17, 1994

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review the contract when it assumes state power"<sup>46</sup>. *What is clearly being stated is that TOTAL risks the annulment of the contract should another government assume power.*

Another risk tied to the possibility of the change in regime is: since 1991, the SLORC has established an economy founded on forced labour, which represented 3 1% of the GNP in 1995, and 27% of the government expenditures<sup>47</sup>, an equivalent of 800,000 forced labourers per day. Since 1991, at least 4 million persons have been submitted to forced labour. It can be shown that the massive and systematic institution of forced labour was put in place for reasons which are political rather than economic:

- more than half of government expenditure is committed to the military, although Burma is not involved in a war, while the social expenditure has been reduced to almost nothing,
- the international economic sanctions affecting Burma are attached to the political decision not to transfer power to the democratically elected civil government,
- forced labour is used as a means of repression and terror, most notably in cities, and all population groups (including children, the elderly and pregnant women) are subjected to it, particularly since 1991.

One can therefore legitimately contend, and this is the opinion of FIDH, that the Burmese authorities' institution of forced labour falls within the category of crimes against humanity such as defined by contemporary international law, particularly based on the statute of the Nuremberg Tribunal. It is likely that a post-SLORC Burma will witness a form of justice against the crimes committed by the junta (Aung San Suu Kyi and some other elected representatives have often suggested so themselves). If this exercise of justice takes the form of an international tribunal, it is to be expected that the victims will question the presence of foreign investors, TOTAL among them, or even file suits against them on the grounds that the Yadana project investors have reaped *de facto* benefits from the practice of forced labour which partakes in a more global system applied throughout Burma.

It thus clearly appears that TOTAL cannot claim to support civil society to any degree, and that, on the contrary, TOTAL and its partner UNOCAL have every interest in *maintaining* the junta in power, as any change in the government might jeopardise the validity of the contract and possibly entail lawsuits. (And UNOCAL's very silence at the liberation of Aung San Suu Kyi in July 1995 is in itself significant). TOTAL'S argument, meanwhile, according to which "TOTAL, an industrial corporation, prohibits itself from any political objectives and considers it unnecessary to immerse itself in the political life of a country by taking up the cause of one side or the other"<sup>48</sup> is unsatisfactory in consideration of the fact that one of these "political factions" is made up of *elected* representatives who unanimously condemn the project, and the other by an *illegal* regime - which approves of it. It is therefore possible to refute on one hand the assurances by TOTAL that its investment does not constitute a political act, and on the other hand, the statement according to which the only critics of the project are to be found among western pressure groups<sup>49</sup>.

It is worth noting that the French state, *via* the COFACE<sup>50</sup>, has guaranteed TOTAL'S contract. Furthermore, at the time this report goes to print, it appears that France is the only country blocking the withdrawal of the scheme of generalised preferences for Burma at the European Commission. Moreover, according to the SLORC's data, France was the leading investor in Burma with over 1 billion USD between 1989 and 1995, equalling the total investments from the United States, Japan and Singapore combined<sup>51</sup>. It remains the leading investor in 1996<sup>52</sup>.

<sup>46</sup> Declaration, May 22, 1996

<sup>47</sup> *Foreign Economic Trends Report - Burma*, US State Dept., US Embassy, Rangoon, July 1996

<sup>48</sup> Letter to the participants of the citizen campaign of Agir Ici, October 10, 1996

<sup>49</sup> UNOCAL, *The Yadana Protect*, November, 1995, p 19

<sup>50</sup> Compagnie Francaise d'Assurance du Commerce Exterieur, French export credit agency

<sup>51</sup> Cited by J Pilger, 'A Cry for freedom', *The New Internationalist*, June 1996

<sup>52</sup> Cf. *International Herald Tribune*, October 7, 1996

### C. Economic Support

The act of moral and political support is only the first step in the support lent to the SLORC by TOTAL. Indeed, the Yadana project, far from benefiting civil society, directly replenishes the junta's wallets, thereby providing an assistance which is not only *political*, but also *economic*:

- According to the spokesperson of the French group, TOTAL paid 15 million USD in 1992 for exclusive access to the technical data of the potential field.

- TOTAL is reported to have paid around 50 million USD in bribes ("signing bonus") to the Burmese authorities to win the contract against competition from other oil companies, such as Esso, Shell, Nissho Iwai, PTT and UNOCAL<sup>53</sup>.

- According to the 1994 report to stockholders, UNOCAL has poured close to 9 million USD into the SLORC's coffers.

- The contract carries more than 1 billion USD, and it is estimated than once it is put in place, the pipeline will provide the regime between 200 and 500 million USD annually and would represent the leading source of foreign currency. Although the SLORC, via the MOGE, has assumed a 15% interest in the pipeline, it does not participate directly in the venture with hard currency due to its limited means.

- In addition, even if the pipeline does not generate net revenue for the Burmese government before 2001 or 2002, it appears that the SLORC already reaps financial benefits from the pipeline in the form of loans on the basis of the future revenues. For instance, the majority of recent arms purchases (mainly from China) are believed to have been financed by medium- and long-term loans<sup>54</sup>: now, the source of medium- and long-term revenues for the regime is none other than the pipeline.

More generally, more than half of the national budget is committed to military expenditures<sup>55</sup>, to which the economists attribute the cause of the chronic budget deficit (11.5% of the GNP) and the high level of inflation (37%). The imports of military equipment, which are on constant rise<sup>56</sup> further aggravate the country's foreign debt (70% of the GNP<sup>57</sup>) and are partly the cause of arrears estimated at 1.5 billion USD by the World Bank which represents an 83% rise in the last three years.<sup>58</sup> The strength of the Burmese army has doubled between 1988 and 1992, now reaching 300,000 troops and the foreign arms purchases abroad have passed the 2 billion USD mark, in 1992, a new record was set on military spending with imports worth over 390 million USD.<sup>59</sup> These weapons arrive mostly from China (with whom Burma has signed a new purchase contract worth 400 million USD in December 1994), from Portugal (mortars and ammunition), from Yugoslavia (mounted sentry vessels), and from Poland (24 second-hand helicopters<sup>60</sup>, with pilot training). In this regard, it is quite noteworthy that Lech Walesa, when asked about these arms sales and the SLORC's resources, is reported to have responded that "Poland was paid by TOTAL"<sup>61</sup> which has allegedly been confirmed by SLORC officials. Asked about this at an interview, the TOTAL representatives responded evasively.<sup>62</sup> The Portuguese weapons are also said to have been paid at least indirectly, by TOTAL.<sup>63</sup>

Considering that Burma is not involved in a war against another country, these arms can only serve an internal oppression. The economic assistance lent by TOTAL to the junta thus goes directly *against* the interests of civil society, far from working for its benefit. Simon Billenness, a researcher at Franklin Research and Development, an American ethical investment company, states, in this regard that:

<sup>53</sup>According to diplomatic sources in Rangoon, See Y. Lertcharoenchok, "exploitation through forced labour", *The Nation*, October 14, 1995. The *Oil and Gas Journal*, cited by Investor Responsibility Research Center, *op cit.*, p 6, mentions an amount of 46 million USD.

<sup>54</sup>*Foreign Economic Trends Report - Burma*, US State Dept., US Embassy, Rangoon July 1996, p. 22

<sup>55</sup>*Asian Wall Street Journal*, August 12, 1996. According to figures from the World Bank, military spending represented 50% of the state expenditures in 1993-1994 and 45 % in 1994-1995, figures denied by the Burmese government which puts them at 8-10%

<sup>56</sup>The junta in power ceased publishing figures three years ago

<sup>57</sup>*Dictionary of Geopolitics*, Flammarion, 1993, p. 5

<sup>58</sup>*Financial Times*, August 6, 1996

<sup>59</sup>Dara O'Rourke, "Oil is Burma Fueling Oppression", *Multinational Monitor*, June 1994, p 18, cited by *Total Denial*, p. 6

<sup>60</sup>These helicopters are reported to have successively passed through the USSR and Vietnam, before being restored in Poland

<sup>61</sup>Interview cited among others by *L'Evenement du Jeudi*, June 2-8, 1994, *Humanite Dimanche*, March 3-9, 1994, and *Paris 24 00*, May 31, 1994. According to the Paris-based *Geopolitical Drug Observatory* (OGD), these words are attributable to a Polish diplomat in Bangkok, and not to Lech Walesa himself. However, in an interview with FIDH on September 24, 1996, Mr Daniel recognised the existence of Mr Walesa's interview and specified its context himself.

<sup>62</sup>FIDH Interview, September 24, 1996

<sup>63</sup>OGD, *The state of Drugs, The Drugs of States*, Hachette, coll. Pluriel Intervention, 1994, p. 144.



"UNOCAL and TOTAL are partners [of this oppressive regime], and can't escape culpability"<sup>65</sup>. The *Wall Street Journal* has also condemned the "petrodollars for SLORC" : "We have argued for commerce and investments where it strengthens civil societies vis-a-vis dictators. But these deals, by putting money directly into SLORC's pocket, only make a richer prize out of political power"<sup>66</sup>.

It is true that TOTAL is involved in projects of local development in the 13 villages located in the immediate vicinity of the pipeline: anti-malaria programmes, development of pig and shrimp farms, recruitment of one doctor per village, all for a total of 2 million USD per year. Still, considering the global impact of the project on the population on a larger scale, the militarisation which it entails and the human rights violations linked to it, it can be said that these local reimbursements of sorts clearly do not compensate for the negative effects of the pipeline on the civil population<sup>68</sup>.

#### **D. Logistical and military support**

Furthermore, it appears that the economic support by TOTAL is coupled with an additional direct *logistical and military* collaboration with the Burmese army, the *Tatmadaw*, particularly in the form of intelligence-sharing. Information from several reliable, independent and concurring sources indeed shows a pattern of assistance by TOTAL to the Burmese army in the zones of rebellion:

- In March 1995, Col Zaw Tun (chairman of the Tenasserim Division LORC's Tactical Operations Command) is reported to have surveyed the zone of Ban-I-Taung<sup>69</sup> in a helicopter provided by TOTAL (and flown by a pilot hired by TOTAL) during an offensive launched earlier against the Karens. This is not an isolated case and TOTAL is reported to provide army commanders regularly with flights and/or other means of transportation during offensives against rebel groups near the site of the pipeline<sup>70</sup>.

- TOTAL is also reported to provide aerial or satellite images of the combat zones to the commanders of the *Tatmadaw*.

- Following the attack of March 8, 1995 (see *infra*, p.22), TOTAL has recruited "security consultants" (at least ten) in charge of protecting all or parts of the site<sup>71</sup>. According to information from reliable sources, the company hired for security is PHL Consultants, directed by Philippe Legorgus<sup>72</sup>. PHL Consultants is one of the most important firms on the French security market. The TOTAL sub-contractor in charge of laying the pipeline, a branch of Spie-Batignolles, has itself allegedly hired another security company, ABAC, created in the middle of August 1996, for this very occasion (as the laying of the pipeline should begin around the middle of October 1996). ABAC is reportedly directed by two ex-officials of the DGSE<sup>73</sup>, an officer and a sub-officer. The recruitment conditions of ABAC employees link them to PHL Consultants, thus ensuring that the ABAC employees are approved by PHL. Before hiring ABAC, the Spie group is reported to have requested the help of another, older security company, OGS, run by G. Cheyron du Pavillon and an ex-legionnaire, Jean-Claude Francois. For the needs of the site, OGS allegedly called, at least in part, upon the services of ex-legionnaires<sup>74</sup>. According to our information, this group did not prove satisfactory, which explains the change of company.

According to the same information, the security consultants participate in the security maintenance of a large portion of the site, if not its entirety, and not only of the Ohnbinkwin camp. Some security consultants have reportedly also been hired to provide security for the off-shore segment of the pipeline. The consultants appear to collaborate closely with the commanders of the SLORC troops in charge of security, most notably through intelligence sharing.

<sup>65</sup> Cited by G. Millman, "Troubling Projects", *Infrastructure Finance*, February/March 1996

<sup>66</sup> Editorial, February 10, 1995 See also the Editorial from the *Times*, February 14, 1995

<sup>67</sup> TOTAL brochure, *Le Projet Yadana*, July, 1996, and FIDH interview, September 24, 1996

<sup>68</sup> This is also the opinion of the NCGUB and KHRG

<sup>69</sup> A border town, a junction point of the pipeline with Thailand, and close to several Karen bases

<sup>70</sup> See D. Steele, "Charges against the pipeline 'too damn many to list'", in *The Sunday Post*, May 7, 1996, confirmed by other sources

<sup>71</sup> FIDH Interview, September 24, 1996 and "A high risk construction for TOTAL in Burma", *Liberation*, September 3, 1996

<sup>72</sup> P. Legorgus is the former head of the GIGN (Groupe d'Intervention de la Gendarmerie Nationale), special police forces.

<sup>73</sup> Direction Generale de la Securite Exteneure, French intelligence service

<sup>74</sup> The presence of "mercenaries" on the site would therefore be more than a simple rumor See also *Intelligence Newsletter*, July 7, 1995 and December 22, 1995

### III-A JUDICIAL VOID

TOTAL and UNOCAL have on several occasions vowed to conform to the legislation in force in Burma, particularly in the fields of human rights, of labour rights, of environmental rights. Now, the current Burmese institutions are such that either the legislation is non-existent or contradictory, or it is not enforced due to the absence of or defects in the independence of all judicial authority. It is therefore hardly a risky commitment for the multinational companies to pledge to respect a nonexistent or inoperative legislation.

#### A. The coup d'etat and the absence of rule of law

On September 18, 1988, following a wave of popular protests, the army resumed the direct control of the country<sup>75</sup>, installing the State Law and Order Restoration Council, the SLORC<sup>76</sup> composed of 19 members, suspending the constitution of 1974 and dissolving all state institutions<sup>77</sup>. Martial law was declared with the goal of "maintaining the public order and preserving the national security".

On May 15, 1992, General Khin Nyunt, the First Secretary of the SLORC and the chief of military intelligence, publicly explained: "martial law is neither more nor less the will of the general who commands the army; in fact, martial law signifies the total absence of law"<sup>78</sup>. Ten days later, General Saw Maung, then leader of the SLORC, confirmed: "Martial law means the will of the ruler. He can do anything he wishes to do"<sup>79</sup>. As it proclaims itself in the order 1/90, section 19, the SLORC is a military government and exercises executive, legislative and judicial powers. During the two years following the coup d'etat, the SLORC passed a series of decrees further restraining the liberties which had already been curtailed by the BSPP: banning of all public gatherings of 5 or more people, imposition of a curfew, prohibition of all public criticism of the military, submission of local administration under military control... The practice of the SLORC has remained loyal to this interpretation of law and to the arbitrariness it entails<sup>80</sup>:

- The SLORC has refused to transfer power to the democratically elected representatives after the 1990 elections.
- Since the two constitutions of 1947 and 1974 have been completely repealed, there exists no legal authority to reestablish the power of the civil government elected in 1990. The UN has characterised the Burmese law as "martial law in the form of SLORC orders, which is applied arbitrarily and with prejudice, especially against the ethnic minorities"<sup>81</sup>.
- The regime is in the process of developing a new constitution, while trampling on its own commitments, as this was the task of the representatives elected in 1990 - now, only 99 of the 485 elected representatives have finally been authorised to participate in the elaboration of the constitution. The rest of the 700 delegates were hand-picked by the SLORC<sup>82</sup>.
- Although the two constitutions have been repealed, a number of older provisions continue to be used by the SLORC as the judicial foundation for measures of repression, notably the 1908 *Village Act*, authorising the use of forced labour, the 1908 *Unlawful Association Act*, the 1947 *Public Order Preservation Act*, the 1950 *Emergency Measures Act*, the 1962 *Printers and Publishers Registration Law*, the 1975 *State Protection Law* and the 1975 *Law Safeguarding the State from Destructive Elements*.
- Aung San Suu Kyi was detained under the 1975 *Law Safeguarding the State from Destructive Elements*, amended in 1991 with the goal of raising the length of administrative detention to five years for persons "endangering the peace of the majority of citizens, or the security or the

<sup>75</sup> Announcement 1/88.

<sup>76</sup> Order 1/88.

<sup>77</sup> Announcement 2/88.

<sup>78</sup> Cited by Amnesty International, *No Law at All: Human Rights under military Rule*, October 1992, p. 1.

<sup>79</sup> Ibid, p 4

<sup>80</sup> On these questions, see, among others, NCGUB, *Human Rights Yearbook - 1995*, May 1996; Article XIX, *Burma: Beyond the Law*, August 1996; Amnesty International, *No Law at All: Human Rights under military Rule*, October 1992, and *Myanmar: Human Rights still denied*, November 1994; International Commission of Jurists, *The Burmese Way: To Where?*, December 1991; ICFTU, *Burma: SLORC's private Slave Camp*, June 1995; Human Rights Watch, *Entrenchment or Reform?*, July 1995; International League for Human Rights, *In Brief - The human rights situation in Burma*, February 1994; Anti-Slavery International, *Ethnic Groups in Burma - Development, Democracy and Human Rights*, November 1994, as well as the UN Special Rapporteur's reports on Burma.

<sup>81</sup> Cited in US State Dept., *Country Reports on Human Rights Practices*, 1993.

<sup>82</sup> See UN doc E/CN.4/1996/139 (annex), p.5-6

sovereignty of the state". This law allowed the state to place Aung San Suu Kyi under house arrest without trial nor charge until her release in July 1995.

The human rights violations in Burma are massive and of a rarely encountered extent: summary executions, disappearances, torture, arbitrary detentions, forced labour, forced relocation, absence of freedom of expression, absence of judicial independence, absence of public and fair trials, invasion of privacy, racial and religious discrimination, human rights violations in internal conflicts.

## **B. Burma's obligations under international law**

Burma has ratified:

- The Slavery Convention and the Protocol amending the Slavery Convention
- The ILO Convention n°29 Concerning Forced or Compulsory Labour
- The ILO Convention n°87 on Freedom of Association and Protection of the Right to Organise
- The Convention on the Prevention and Punishment of the Crime of Genocide
- The Convention on the Rights of the Child
- The Geneva Convention relative to the Protection of Civilian Persons in Time of War (though without accessing to the additional protocols of 1977, which are applicable to internal armed conflicts).

It has signed, but not ratified:

- The Convention on the Political Rights of Women
- The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others.

Burma is also subjected to the principles of international customary law regarding human rights, as enshrined in:

- The Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights
- The Forced Labour Convention n° 105 notably prohibiting the forced labour for the purposes of development.

Burma has been condemned every year since 1964 by the International Labour Organisation for the systematic violations of the Forced Labour Convention n°29.

## **IV - HUMAN RIGHTS VIOLATIONS IN CONJUNCTION WITH THE PIPELINE**

Contrary to the declarations of TOTAL'S and UNOCAL's representatives, human rights violations have increased dramatically in the pipeline region since the launching of the project and the clearing of the pipe-laying zone. Numerous enquiries by national and international human rights organisations establish a link between the deterioration of the human rights situation in the region and the activities connected to the Yadana gasfield. In 1994, the HCR representative in Thailand, Mr Von Arnim, indicated that "it is likely that forced labour will be used on the pipeline."<sup>83</sup> In his 1995 report, the UN Special Rapporteur on Burma, Yozo Yokota, emphasised the link between the human rights violations and foreign investments: "Forced labour, 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*."<sup>84</sup> In March 1995, the US State Department Burma Desk Officer, John Lyle, recognised that "repeated unquestionable accurate reports of human rights violations" are coming from the pipeline region.<sup>85</sup> It is therefore difficult to argue, as TOTAL does, that the allegations of human rights violations caused by the project come solely from various opposition groups (students, ethnic rebel group, etc) who have a political interest in attacking TOTAL and the junta, and who use propaganda in order to "continue the fight against the

<sup>83</sup> Cited in International Confederation of Free Trade Unions, *Burma SLORC's Private Slave Camp*, June 1995, p 15

<sup>84</sup> Y. Yokota *The Human Rights Situation in Myanmar*, E/CN 4/1995/6 Italics, added (Mr Yokota was replaced in June 1996 by Mr Lallah)

<sup>85</sup> Cited in "UNOCAL condemns Burma army violence to defend gas pipeline", *Bangkok Post*, March 3, 1995

SLORC by other means"<sup>86</sup>. More precisely, outside the local sources of information, the representatives of several human rights organisations, as well as journalists, have been able to interview the refugees arriving into the camps in Thailand since the beginning of operations linked to the Yadana project. These interviews confirm that the violence and exactions against the civil population have reached unprecedented levels since the start of the operations and that those exactions are most often the very reason why the people left their villages<sup>87</sup>.

At this point, it must be reiterated that, given the imposition of martial law in Burma, there is no legal recourse for the victims of the violations; and that independent observers are not allowed entry in Burma, or on the construction sites.

The massive human rights violations linked to the TOTAL worksite, and which it has been possible to verify in the scope of this report, may be classified into two categories:

- According to the agreement, the SLORC has to guarantee the security of the zones crossed by the pipeline, zones which are ethnically diverse and prey to the movements of rebellion. The security of the region therefore results in a massive militarisation which means:
  - forced relocation of the population
  - forced labour (construction of military camps, access roads, etc.)
  - other human rights violations (violations of the right to life, tortures, etc..)
  - ethnic pacification (including offensives against the rebels, retaliation against civilians, etc..)

This security clause is the major cause for human rights violations in the area.

- The pipeline project has itself necessitated a clearing of the construction zone. If it is true that the construction of the infrastructure (wharves, helipads, etc..) falls under the responsibility of TOTAL, a preliminary clearing of the construction zone was undertaken by SLORC troops, which also proceeded to construct military infrastructure, all of which entailed, here too:
  - forced relocation of the population
  - forced labour
  - diverse forms of violence (tortures, rapes, extortion of funds...)

The violations are massive and systematic. The absolute impunity enjoyed by the exactors, noted by Y. Yokota<sup>88</sup>, further worsens the climate of systematic violence. The fact that the SLORC troops are the principal party implicated in these violations does not exonerate the officials of TOTAL and UNOCAL. *The pipeline construction is at the very least the occasion of massive human rights violations*, perpetrated by the SLORC, known and documented. These violations are due to the site's very existence.

## **A. Militarisation**

During the reign of the BSPP, the Burmese territory was divided into three categories, according to the degree of control exercised by the army. This classification was kept by the SLORC:

- black zones, or free fire zones: zones under control of the opposition;
- brown zones: zones which are neither under the control of the SLORC nor of the opposition;
- white zones: zones under the control of the SLORC;

<sup>86</sup>FIDH Interview, September 24, 1996 and interview with Amnesty International, May 13, 1996.

<sup>87</sup>Interviews taken by Earth Rights International and Southeast Asian Information Network, cited in *Total Denial*, p.22 sq. by KHRG, and by other sources.

<sup>88</sup>E/CN.4/1995/6, 1, § 230.

The pipeline will run through zones of all three categories, and it has become rapidly apparent to the partners of the project that its progress could not be sustained at a satisfactory pace unless the region around the route of the pipeline was perfectly controlled by the SLORC, thus becoming a white zone. Were this condition not fulfilled, the pipeline was under threat to suffer not only collateral damage due to fights between the SLORC and the armed groups, but also direct attacks - which have indeed taken place. In entrusting the SLORC with the responsibility of guaranteeing the security of the project, the contract authorises, and thereby *legitimises* the consolidation of the military presence in the region. The army has indeed progressively increased its presence in the region. In 1990, there were around 5 battalions in the pipeline region<sup>89</sup>; in May 1996, at least 12, and perhaps as many as 15 battalions were deployed there. Four light infantry battalions (LIB 273, 408, 409, 410), totaling close to 3,000 men, are exclusively assigned to the protection of the pipeline. In all, according to estimates, around 10,000 soldiers are in charge of pipeline security. This number does not include the reconnaissance units, the police forces or special forces, which the SLORC has dispersed through the region.

In December 1994, the SLORC launched a vast military action, Operation Natmin, which had two principal objectives:

- guaranteeing the security of the pipeline
- eliminating the resistance

As Operation Natmin came to a close in July 1995, thousands of civilians had been forcibly removed from their homes, and multiple armed offensives had been undertaken against the armed ethnic groups. Thousands of persons had also fled the Tenasserim region in direction of the Thai border.

Another military offensive was launched by the *Tatmadaw* in the region of Nat Ein Taung, the pipeline junction point with Thailand, in February 1995. On the occasion of this offensive, TOTAL lent a helicopter to colonel Zaw Tun (see *supra*, p 17).

Although the NMSP has signed a cease-fire accord with the *Tatmadaw*, the KNU still pursues its offensives against the Burmese army in the Tenasserim region. Until now, the peace negotiations between the SLORC and the KNU have failed. More insidiously, the SLORC provides military support to a dissident faction of the KNU, the DKBA, which, as of a few months ago, intensified its campaign against the Karen refugees at the Thai border along the Moei river, in order to force them to return to SLORC-held zones<sup>90</sup>.

The pipeline therefore directly serves:

i) *the perpetuation and the increase in the fighting between the army and the armed rebel groups.* The oft-repeated argument by TOTAL and UNOCAL claims a) that the confrontations had begun prior to the pipeline project, anyway, and b) that there would be no need for the military presence if the rebel groups were not attacking the pipeline construction. Mr John Imle, president of UNOCAL directly explained that "if you threaten the pipeline, there's gonna be more military (...). For every threat to the pipeline there will be a reaction."<sup>91</sup> Mr Valot of TOTAL specifies: "Let the Karen gentlemen begin!", if they do not want any more soldiers in the region.<sup>92</sup> That is an insufficient explanation, insofar as the pipeline runs through regions until recently controlled by the rebel factions and which have always been populated by indigenous groups. The indigenous people have never been consulted about the pipeline, and TOTAL and UNOCAL have always refused any contact with them. In the terms of the *Australian Council for Overseas Aid*, "the issue of indigenous rights is clearly relevant in the gas pipeline allegations. Companies operating in the vicinity of a large forced labour project like the Ye-Tavoy railway, constructing a large project without the permission of the indigenous ethnic communities, are leaving themselves open to serious problems and criticism".<sup>93</sup>

ii) *the perpetuation and the increase of the army's violations against the population.* This intensive militarisation of the pipeline region carries a negative impact on the population of the region as, besides the imbalance it creates, it gives rise to all sorts of abuse against the population, particularly through the forced relocation of villages and the systematic use of forced labour for the construction of military barracks and of projects connected with the pipeline (see *infra*, p28). John Imle, president of UNOCAL, has acknowledged that the military presence entails an increase in human rights violations particularly through forced labour: "If forced labour goes hand and glove with

<sup>89</sup> "Cease-fire agreement to ease repatriation of Mon refugees" in *Bangkok Post*, July 1, 1995

<sup>90</sup> *Bangkok Post* August 25, 1996 and *Thailand Times* August 26, 1996

<sup>91</sup> Interview with opponents of the pipeline, January 4, 1995

<sup>92</sup> FIDH interview September 24, 1996, see also Herve Madeo, representative of TOTAL, in an interview with D Brunnstrom, "TOTAL'S Burma gas venture may cost US\$ 1 billion" in *Reuter's Financial Report, Energy News*, October 16, 1992

<sup>93</sup> ACFOA, *Slave Labour in Burma*, May 1996

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the military, yes, there will be more forced labour".<sup>94</sup> A representative of UNOCAL has also condemned the use of violence against civilians by the troops charged with pipeline security - implicitly acknowledging the existence of such violence<sup>95</sup>

As the directors of the involved corporations acknowledge not only that the construction requires an increase in the regional military presence, but also that such an increase has direct implications on the human rights violations committed by the *Tatmadaw* and on the fighting with the rebel groups, it follows:

- firstly, that the corporate heads acknowledge that the accrued military presence has a clearly negative impact on the population,
- and, secondly, that the construction has *political* implications to the extent that it intensifies and legitimises the combat against the rebels. Once again, the statements by the directors of TOTAL - "we are not a political actor", and of UNOCAL - "we are apolitical"<sup>97</sup> - are indefensible.

### 1 Attacks against the project

The project is also perceived to have a highly political dimension from the point of view of the opposing rebels at least three attacks on the pipeline have taken place.

FIDH wishes to state here that it unequivocally condemns the use of military force regardless of its origin.

#### March 1995

On March 8, 1995 three trucks left the TOTAL quarters at Kanbaw in the direction of Ohnbinkwin. The first of these was a truck transporting civilians, and was not a target. The two trucks behind it carried armed soldiers of the SLORC, as well as civilians. A KNLA soldier fired a 62mm rocket-launcher on the second truck, and a 79mm mortar on the third truck, then followed by arms fire from M16 and AK-47 assault rifles. Five people were killed and at least 11 others injured in this attack.<sup>98</sup> Afterwards, the KNU declared that the attack on March 8, 1995 was not a planned offensive, but rather a standard military procedure, as the SLORC troops had stepped onto the KNU-controlled territory - the TOTAL trucks being considered legitimate military targets and not a civilian convoy. In the attack's aftermath, the troops of the LIB 408 are reported to have exacted some 100,000 kyats from the surrounding villages, claiming it as the compensation for the losses suffered in the attack<sup>99</sup>. TOTAL has acknowledged the existence of this attack, but has nonetheless remained silent about the event, after which it proceeded to hire the security consultants.

#### December 1995

The second attack took place in Ohnbinkwin in the middle of December 1995. Armed villagers tried to reach the TOTAL headquarters with a 107mm rocket, which missed the camp; the explosion was not confirmed. Following the attack, the SLORC informed the leaders of villages around that there would be retaliation should ammunition be discovered in the village or its vicinity: "Your village will be ash"<sup>100</sup>, a threat which, considering the common practices of the SLORC, is certainly not to be taken lightly.

<sup>94</sup> Interview with opponents of the pipeline, January 4, 1995

<sup>95</sup> "UNOCAL condemns Burma army violence to defend gas pipeline", *Bangkok Post*, March 3, 1995

<sup>96</sup> FIDH interview September 24, 1996

<sup>97</sup> Interview with Mr Stegemeier representative of UNOCAL, cited in "Protesters crash UNOCAL meeting", *Houston Chronicle*, May 23, 1995.

<sup>98</sup> Source, ERI interview with an officer of the KNU and with sources close to the attack, cited in *Total Denial*, p 15

<sup>99</sup> KHRG *Conditions in the Gas Pipeline Area* n° 95-27, August 1, 1995 and Mon Information Service Bangkok, May 1996.

<sup>100</sup> ERI interview, cited in *Total Denial*, p 16

February 1996

On February 2, 1996, an unidentified armed group launched an attack against the TOTAL quarters at Ohnbinkwin. Three 107mm rockets were launched from the Kyauk Than Ma Ni Pagoda Hill, between Kanbauk and Pyin Gyi. One of the shots hit the TOTAL helipad, but failed to explode, the second struck the quarters of the TOTAL employees and exploded, the third, which also exploded, fell into the Lan Bar river. There were six persons injured among the employees, and unconfirmed reports also cite four deaths.

TOTAL has always denied that the last two of the attacks had ever taken place. Mr Joseph Daniel of TOTAL insists on the fact that he is "absolutely sure that no attacks have taken place since March 8 [1995]".<sup>101</sup> It should nonetheless be noted that in a July 19, 1996 letter to Mr Johannsen, the director of the *Danish Burma Committee*, Mr Daniel does not dispute the existence *itself* of the attacks, but only denies that there were any victims therefrom.

Another attack by an unidentified armed group against SLORC troops in charge of securing the pipeline is reported to have occurred in early November 1996, and to have caused several casualties among the soldiers

2 Reprisals

Three days after the February 1996 attack, the LIBs 273 and 403 entered the village of Shin Bin in the vicinity of Kyauk Than Ma Ni Pagoda Hill. The soldiers seized Saw Kyi Lwin, the head of the village and, accusing him of collaboration with the KNLA, proceeded to interrogate and torture him. He was then executed by the SLORC troops. Following the death of Saw Kyi Lwin, the SLORC troops went towards Ein Da Ya Za, where they arrested 12 local residents, took them to Migyaunglaung and killed four of them. Major Ko of LIB 403 is being held responsible for these executions. Six other men were killed in LIB 403's camp. The remaining two men were arrested and imprisoned, with their current situation unknown.

It has been confirmed by independent sources that these 12 persons were not linked to KNLA, nor to the attack of February 7, which means this was a retaliation arbitrarily targeting the civil population.

**B. Forced relocation of the population**

Whether it is to ensure the security of the region or to clear away the area assigned for the pipeline's necessary infrastructure, the SLORC troops have proceeded to massive relocations of the population in the entire Tenasserim region. These relocations have occurred in two different ways:

- *directly*, by the forced expulsion from the villages, in order to clear the pipeline route and to reduce the threat of the armed groups and their support in the unsubdued areas. These forced evictions are generally accompanied by general violence against the civil population (tortures, rapes, etc), as well as by the pillaging and burning of empty houses.

- *indirectly*, by the exodus of villagers fearing for their security or facing the threat of forced labour, besides the heavy "taxes" imposed illegally by the SLORC troops. This was notably the case in March 1995 in Me Daw and Wah Gyun, two Mon villages harassed by the LIB 408.<sup>102</sup> Thousands of refugees have arrived in Thailand from the region. In at least one case, a village has been repopulated by "inhabitants" with a friendlier posture to SLORC policies.

1 Relocation of villages

- In all, some 30,000 persons (Mons, Karens and Tavoyans) from over 50 villages in the districts of Ye Byu, Thayet Chaung and Tavoy (Tenasserim division) have been forcibly displaced since the beginning of 1991.<sup>103</sup>
- Several dependable sources indicate that the inhabitants of Migyaunglaung, situated in the immediate vicinity of the pipeline, were deported in 1992.<sup>104</sup> The expulsion, therefore, took place in one of the thirteen villages where TOTAL has set up a communication committee, and which,

<sup>101</sup> Interview with *The Nation*, December 25, 1995

<sup>102</sup> KHRG, n° 95-27, August 1995

<sup>103</sup> Mon Information Service Bangkok May 1996, and NCGUB, May 1995

<sup>104</sup> See among others *Total Denial*, p 42, interviews with the refugees of Migyaunglaung at the border, KHRG n° 95-27 August 1995; KNU, *Report the Facts...*, 1996

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according to its statements, is supposed to have remained unchanged since the signature of the contract<sup>105</sup>.

- In 1991, the LIB 407 forcibly expelled the population of Karen villages in the Ye Byu region, notably the Laukthaing, Ateh Ya Pu and Pawlaw Gone villages. The inhabitants have since fled the area or are seeking refuge in Thailand.
- In 1992, the village of Shin Ta Pi (Ye Byu district) was forcibly relocated. About two months before the signature of the contract, the LIB 408 commander ordered the village headman to remove all the inhabitants and go to the village of Nam Gaeh, some 5 miles (8km) away. Being allowed one month to do so, at least 56 families, totaling 250 to 300 persons, have had to abandon their homes<sup>106</sup>.
- During the dry season of 1992/93, the LIB 403 and other local units relocated 10 villages in the Tavoy district, totaling 732 homes and around 4000 people. In April 1992, amidst a military operation, the army's local battalions expelled the inhabitants of 19 villages in the Thayet Chaung district, comprising over 2400 homes and more than 13,000 persons<sup>107</sup>.
- In 1993/94, after the start of Ye-Tavoy railway construction, the Karen village of Nwelein was forcibly relocated by the LIB 408, officially because the village stood in the way of the railway line.
- The relocations are being pursued in the Mon state, and the Tenasserim division<sup>108</sup>. The workers in refugee camps at the Thai border report that the relocations continued in 1995, as two to three families arrived on a weekly basis from the region<sup>109</sup>. Since February 1996, hundreds of people have fled the exactions committed continuously by the army and have found refuge in the Mon state areas under NMSP control<sup>110</sup>.

Furthermore, the public contradictions by the Yadana project partners on the subject of forced relocation does little to dispel the doubt about the TOTAL statements. The Electricity Generating Authority of Thailand (EGAT), the operator of the power plant in charge of converting the Yadana gas into electricity, has thus publicly acknowledged that the pipeline construction requires forced relocation of villages. A publicity page published in the *Bangkok Post* of April 17, 1995, paid for by EGAT, confirms

"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-Tavoy 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*"<sup>111</sup>.

This statement is accounted for by TOTAL as a "journalist's blunder"<sup>112</sup> - a somewhat mystifying explanation, as it is relatively difficult to believe that the chain of "blunders" or negligence was such that the journalist himself would have proceeded without any checking of the sources, and especially, that EGAT officials would allow such a "blunder" to pass through the filter of the proof-reading of the article, particularly in view of the extreme sensitivity of the topic.

<sup>105</sup> See letter to the Danish Burma Committee, July 19, 1996 and interview with *Liberation*, September 3, 1996

<sup>106</sup> *Total Denial*, p 42

<sup>107</sup> Committee for the Publicity of People's Struggle in Monland, *Newsletter*, n°3, October 1994, p. 10

<sup>108</sup> See interview of U Maung Maung, secretary of FTUB, in IRRIC, *UNOCAL Corporate Activity in Burma*, p 9

<sup>109</sup> Human Rights Watch, *Entrenchment or Reform?*, July 1995, p 15 and ACFOA, *Slave Labour in Burma*, May 1996, p24

<sup>110</sup> Amnesty International, *Myanmar - Human Rights Violations Against Ethnic Minorities*, August 8, 1996

<sup>111</sup> Somsak Kardlap, "Myanmar gas for Ratchbun power plant the good impact on Salween dam", in *Bangkok Post*, April 17, 1995 Italics added.

<sup>112</sup> FIDH interview, September 24, 1996



TOTAL denies persistently that relocation of the population took place, though, and states that "the area is very sparsely populated (...). No relocation of population should be necessary on the route of the pipeline"<sup>113</sup>. TOTAL acknowledges the relocations that took place prior to the contract, while adding that these have nothing to do with TOTAL'S construction, for "in 1992 nobody knew where the pipeline would finally be laid, and until March 1993 the most probable route was through the *Three Pagoda Pass*, far in the north compared to the current route. If forced relocation had occurred in the area before 1992, it cannot be in relation to our project"<sup>114</sup>. Here again, this is also a rather unsatisfactory explanation, since:

- The route chosen follows the valleys of Tavoy and Zin Ba rivers and was the most likely to be chosen, considering the geography and the topography of the region. Several observers had predicted the route more than a year-and-a-half prior to the signing of the contract<sup>115</sup>, and TOTAL later acknowledged that "among several possible routes, the experts agreed unanimously"<sup>116</sup>.

- It is a verified fact that the Thai authorities have, on several occasions, relocated the Burmese refugee camps at the Thai border according to the planned junction point of the pipeline with Thailand<sup>117</sup>. It appears that the Burmese authorities have proceeded in the same manner inside the country, relocating villages in anticipation of the pipeline route: several sources indicate that the villages in the Western zone of the pipeline area were relocated as early as the end of 1991 (see supra, p 23). The relocations of the population are therefore clearly linked to the pipeline project, contrary to the statements by TOTAL.

- According to Burmese law, all land belongs to the state, TOTAL does not have the authority to proceed with the expropriation of land and must hence go through the SLORC, over which it has no control, to get hold of the territory in question.

- Finally, if the concern of TOTAL to inflict the least possible damage on the population was genuine, the question is raised as to why the chosen route is not the one passing further south, through Victoria Point, before turning back up north to Thailand, thus avoiding the on-shore passage through Burma. Incidentally, the World Bank had in 1991 advised the PTT-EP, which was then interested in the Yadana gasfield, to reroute the pipeline away from the areas of conflict between the SLORC and the rebel groups.<sup>118</sup> The greater cost that this alternative route would have entailed must have influenced and, indeed, played a decisive role in TOTAL'S choice<sup>119</sup>.

- With TOTAL claiming that the satellite images from 1991, 1992 and 1996 show that the villages have not been relocated<sup>120</sup> one cannot but regret that the corporation has not made those documents public, if it is true that they clearly refute allegations which have been known for several years.

All things considered, it should be noted that a) forced relocation began during the period of negotiation of the contract (though *in anticipation that the contract would be signed*), which allows TOTAL officials to relieve themselves of all responsibilities by pretending that there were no relocations since July 1992 (date of contract signature); b) that this statement itself is false, since all reliable sources mention relocations taking place *after* that date and c) that even though TOTAL can claim that the 13 villages situated in the immediate vicinity of the pipeline have not been relocated, it is actually the villages in the less immediate vicinity (within 50km) which have been most affected, as they are perceived by the SLORC as possible shelters for the opposition groups, and thus as a threat to the pipeline.

<sup>113</sup> Mr Joseph Daniel, letter to president of IRRC, March 3, 1994. On the same topic, UNOCAL declares that "since the signature of the contract (...) in 1992, no village was relocated in the pipeline region (...) and moreover, we are opposed to all relocations undertaken for the benefit of the project" *The Yadana Project*, November 1995

<sup>114</sup> Mr Joseph Daniel, letter to the Danish Burma Committee, July 19, 1996

<sup>115</sup> For example, the association Green November 32, based in Bangkok

<sup>116</sup> TOTAL brochure *Le Projet Yadana*, July 1996

<sup>117</sup> See, for example, *Bangkok Post* September 11, 1993, and September 29, 1993

<sup>118</sup> IRRC, *Unocal Corporate Activity in Burma* p 7

<sup>119</sup> As is also indicated indirectly by the aforementioned EGAT article from April, 17, 1995

<sup>120</sup> FIDH interview, September 24 1996

## 2 Expropriations

Added to the aforementioned practices are those of expropriations and confiscation of fertile land, which lead to the exodus of the villagers.

Among the villages where innumerable expropriations have taken place are: Hpaungdaw, Kaugma, Ohnbinkwin (site of TOTAL'S local headquarters), Heinze, Kanbauk, Thingan, Nyinaung, Kaunghmu, Tchechaung, Tchebutchaung, Thingandaw, Kyonkani.

These expropriations have taken place:

- either because the land was located on the route of the pipeline,
- or because the land impeded the construction of military camps (case of Ohnbinkwin, where the confiscations were necessitated by the construction of the headquarters of LIB 2 7 3 , in charge of the security of TOTAL'S camp).

It appears that the promised financial compensation is often confiscated by the local troops of the SLORC. TOTAL explains that "as for expropriations, the affected farmers have all been well compensated, receiving amounts which they have never had before. Many will then give it to a pagoda, but what can one do, everyone does as they please with their money"<sup>121</sup> - an explanation which is still not completely satisfactory in view of the verified practices by the SLORC as far as financial extortions are concerned. TOTAL cannot but be aware of these practices.

## C. Forced Labour

"Donating labour 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 labour or violations of human rights"<sup>122</sup>.

Under the reign of the SLORC, two forms of forced labour coexist in Burma:<sup>123</sup>

- *Construction of Infrastructure*: the SLORC claims that infrastructural projects such as roads and railways will have a positive impact on the quality of life of the general population. The SLORC goes so far as to publish, in the official press, the number of workers who "voluntarily contribute" to the building of infrastructure. The cumulative figures published since 1992 by the (officially controlled) newspaper *The New Light of Myanmar* establish the number of "voluntary workers" at over 4 million. Let us merely cite the example of the Aungban-Loikaw railway line construction, which is reported to have relied on the work of 799,447 people.<sup>124</sup> Forced labour is also used by the military junta to prepare the country for the tourist season, particularly through the building of hotels and other infrastructure, reparation of monuments, or the infamous moats of Mandalay. The slogan "Visit Myanmar 1996" in reality hides forced labour, destroyed villages and forced relocation. According to the statements of the Minister of Railway Transport, Win Sein, civil workers will no longer be used for railway construction as of May 31, 1996, the task falling into the hands of the military after that date; similarly, the SLORC produced two "secret" directives in June 1995, handed to the UN Special Rapporteur, prohibiting further use of forced labour for development purposes<sup>125</sup>. At the time this report goes to print, it seems obvious that neither the statement nor the directives have been followed by fact.

- *Forced recruitment of army porters*. Systematic use of porters (recruited to carry arms, ammunition or supplies for soldiers) by the Burmese army is factually verified and even acknowledged by the Burmese authorities themselves<sup>126</sup>. This is a common practice in the border areas, along which the *Tatmadaw* often launches attacks against ethnic groups. Hundreds of civilians from the neighbouring villages have been recruited for portage, for periods ranging from a few weeks to a few months<sup>127</sup>.

<sup>121</sup> Id

<sup>122</sup> Declaration of U Win Mra Permanent Representative of the Union of Myanmar to the UN at the 49th session of the General Assembly of the United Nations, December 1994

<sup>123</sup> Cf among others, ICFTU, *Burma SLORC's Private Slave Camp*, June 1995 and ACFOA, *Slave labour in Burma*, May 1996

<sup>124</sup> ILO report, 82nd session August 1995

<sup>125</sup> *Secret Directives* n°82 and 125, June 1995

<sup>126</sup> Declaration of representative of Myanmar at the 49th session of the UN General Assembly November 1994

<sup>127</sup> See, e.g., Australian Council for Overseas Aid, *Slave Labour in Burma* May 1996, p 17 and Bertil Lintner, *Burma in Revolt*, Westview Press 1994, p 120

FIDH would like to reiterate that forced labour as practiced in Burma can be qualified as a crime against humanity.

These two practices are found in the TOTAL-UNOCAL construction site region. Mr Thein Tun, a SLORC official, indicated in 1992 that "we are perfectly aware that the infrastructure in certain regions is not adequate and that they [the oil companies] are having logistical problems"<sup>128</sup>. It appears that the SLORC was soon hard at work to cover up these inadequacies and logistical problems.

TOTAL seems most certainly concerned with ensuring the collaboration of paid and voluntary workers, as witnessed in its brochure: TOTAL and its sub-contractors "will appeal to the greatest possible extent to the local workers, obviously voluntary and compensated, thus contributing resources to the population of the areas in question. They will obviously operate within the norms of respect of human rights and of labour rights, completely in accord with the equivalent standards this company applies in the rest of the world". In 1995, TOTAL designed a code of conduct in the Yadana project, which outlines the ethical principles which the corporation is bound to respect<sup>129</sup>. TOTAL has always denied the existence of forced labour on the worksite<sup>130</sup>.

In spite of this proclaimed will, several trustworthy and corroborating sources indicate that the villagers from surrounding areas have been or are being forcibly recruited by the *Tatmadaw* in order to execute tasks which *directly* concern the pipeline worksite, and which are linked either to the (past or present) clearing of the area, in the form of general infrastructural projects, or to the constructions made necessary by the massive military presence.

### 1 Forced labour and general infrastructure

This aspect concerns mainly the clearing of the strip of land where the pipeline will be laid, as well as works preliminary to the construction of the service track, the "pipeline road" which will run along the future pipeline<sup>131</sup>, and the adjoining roads.

- Forced labour for the pipeline started being used before the larger works undertaken by TOTAL: in April 1994 part of the pipeline road was already cleared (at least in a rudimentary form) by forced labour, whereas TOTAL claimed that the project was only in its research stage.<sup>132</sup> The SLORC did not wait for the arrival of TOTAL and UNOCAL to get to work.
- Similarly, the refugees' testimonies indicate that the inhabitants of the Hpaungdaw village (a coastal village, near the meeting point of the on-shore and off-shore parts of the pipeline) were requisitioned for clearing the route of the pipeline and the service road as early as February 3, 1995, i.e. *the day after* the signature of the final contract between TOTAL, UNOCAL, the MOGE and the PTT-EP.<sup>133</sup>
- According to a reliable source, 50,000 people are currently being forced to grind stones in order to level the service track.
- In addition, corroborating and trustworthy sources indicate that the villagers of Kywe Thone Nyi Ma had been forcefully recruited in March or April 1996 to construct the pipeline road from Hpaungdaw to Kanbawk and from Ka Daik to Hpaungdaw. They were further burdened by a monthly tax of 150 Kyats per family. The SLORC members had promised them a 200 Kyat per day salary for their labour, but none of the workers was ever actually paid. According to certain labourers, currently seeking refuge at the border, "foreigners", accompanied by their SLORC escorts, regularly visited the site.

<sup>128</sup> Interview with the *Financial Times*, 1992, cited by Investor Responsibility Research Center, *Unocal Corporate Activity in Burma*, April 1994, p. 7

<sup>129</sup> UNOCAL has produced a similar document

<sup>130</sup> See. e.g., J. Daniel, "nothing can deny that forced labour is probably a reality in Burma, but we can categorically state that there is no forced labour on the construction site of this pipeline", cited by Reuters, July 1996.

<sup>131</sup> *Complaint for equitable relief and Damages*, NCGUB v UNOCAL Inc. September 3, 1996 and KHRG, n° 96-21, May 1996.

<sup>132</sup> IRRC, *op cit.*, p.9

<sup>134</sup> D. Steele "Refugees allege slave labour on gas pipeline" *Sunday Post* May 7, 1995

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- ERI and the Southeast Asian Information Network (SAIN) have assembled several pieces of testimony from witnesses who had been recruited by army battalions in order to clear and level the terrain and the site of the service road. Cited among them is a young woman, today a refugee in a camp in Thailand. According to her statements, she had been recruited by the *Tatmadaw* and had worked three days on the service road. The first two days, the workers were supervised by the soldiers and by two TOTAL employers and had received a daily salary of 200 Kyats. However, on the third day, when the TOTAL representatives were no longer present, the workers didn't receive anything, which raises serious doubts as to the compensation guarantees established by TOTAL.<sup>134</sup>
- The SAIN adds that, contrary to the TOTAL statements which claim a perfect control of the service road construction, the MOGE was entrusted with the work of clearing and leveling the section of the service road situated in a sector outside of the SLORC's control. The MOGE had also used the services of LIB 273 in recruiting 70 labourers in the Migyaunglaung and Taungcheyin regions. Despite the instructions given by TOTAL to the MOGE regarding monetary compensation of employed persons, not one of them received a salary. Notwithstanding the question of compensation, the fact remains nonetheless that civilians were recruited by force by the *Tatmadaw*.

### 2 Forced labour and security

Military and economic interests sometimes converge, as the pipeline helps the army to maintain and spread its control over certain regions. The construction of roads and railways allows the *Tatmadaw* to penetrate even further into the combat areas and the territories previously held by rebels. Forced labour is also used in the construction of military posts and barracks.

- Following the attack in February 1996, the army deployed up to 8 battalions around Kanbawk in order to ensure the protection of "foreigners" and called upon forced labour to construct military barracks, explaining to the villagers that it was necessary to "protect the pipeline".
- Similarly, the strong military presence along the Ye-Tavoy railway line required the building of new army installations. Two of the persons interviewed by Human Rights Watch/Asia reported having contributed to the construction of the barracks and of a helipad in the vicinity of the worksite.
- The employment of supplementary troops has also required the construction of camps and posts along the pipeline, as well as military quarters at Ka Daik and Pyin Gyi, Ohnbinkwin, and on Heinze Island. The construction and the maintenance of these military installations is done by the villagers from the surrounding areas, who are forcibly recruited by the *Tatmadaw*. The SAIN furthermore publishes in its report a testimony given by a man who had been forced to work on the construction of bamboo-made military barracks on Heinze Island. In his description of the work conditions, this man, who later managed to escape, reports that every person recruited had to pay a "fuel tax" for the boat which transported him to the island, and was required to bring his own food and work tools. After they arrived on the island, the soldiers would confiscate some of the rice brought by the recruits, who were housed in makeshift barracks. This man also claims to have seen "around 300 people, uniformed and shackled, who worked on the island. They were kept at a distance from us. We saw them in the mornings and in the evenings, when they returned. They appeared poorly fed, much worse than we were. They were forbidden to speak with us".

UNOCAL acknowledges explicitly by the words of its president, the link between the *Tatmadaw* and forced labour, as well as the growing extent of this practice in the pipeline region: "If you threaten the pipeline, there's gonna be more military. If forced labour goes hand and glove with the military, yes, there will be more forced labour"<sup>135</sup>. The TOTAL coordinator for Burma and Thailand, Mr Herve Chagnoux, expresses the link between the *Tatmadaw* and forced labour less directly, though without denying it: "I cannot guarantee that the military is not using forced labour. 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*"<sup>136</sup>. The same Herve Chagnoux declared at a meeting with FIDH: "There is no forced labour on the construction site. And generally speaking it must be understood that, if there is forced labour in Burma, it is not out of spite or malice that the leaders are obliged to call upon it"<sup>137</sup>.

<sup>134</sup> *Total Denial* p 35

<sup>135</sup> Interview with opponents of the pipeline, January 4, 1995. With no fear of contradiction, John Imle stated in an interview with *Infrastructure Finance* that "the troops charged with the security of the worksite do not resort to forced labour".

<sup>136</sup> Cited by G. Millman, "Troubling Protects", *Infrastructure Finance* Feb/Mar, 1996. Italics added

<sup>137</sup> FIDH interview September 24, 1996. Cf also, J. Daniel, in an interview with *Reseau Jeunes Solidaires*, February 2, 1996: "We know that there is a tradition of forced labour in Burma, and of less attachment to human rights".

Despite these apparent contradictions and the display of simulated blindness, the leaders of TOTAL acknowledge that the SLORC resorts to forced labour using the military as an intermediary. In reality, forced labour is used by the SLORC to honor its part of the contract guaranteeing the security of the pipeline region, a security which benefits TOTAL.

### 3 The case of the Ye-Tavoy railway

The case of the Ye-Tavoy railway line, dubbed by the population "The New Death Railway" - a site on which approximately 2000 forced labourers per day are used -, is highly significant.

The oil companies do not contest the massive use of forced labour in the construction of the railway line, which runs perpendicular to the route of the pipeline. They are eager to add that this track has no connection with the worksite (running North-South, inadequate size for the equipment), and have repeated on several occasions that they will not make any use of it. Nonetheless, if it is possible, as is claimed by TOTAL and UNOCAL, that it will not be *directly* useful to the pipeline, it does, however, appear that the already established parts of the railway track serve to transport the troops as well as fuel supplies and equipment necessary to the military bases set up because of the worksite. Though not serving the immediate needs of the construction site, the railway does serve the troops in charge of the security and contributes to the general development in the region. It is thus difficult to agree with TOTAL that "the railway has *nothing to do* with the gas project."<sup>138</sup> It is on the contrary evidently linked to it.

With a length of 100 miles (160 km) the line connects two garrison towns, Ye, situated in the Mon state and Tavoy in the Tenasserim division. All the reports examined by FIDH, including the report presented by the UN Special Rapporteur, the report of the US State Department as well as the work of the ILO indicate that the work on the railway track, which began about three years ago, progresses almost exclusively thanks to the forced labour of civilians (including pregnant women elderly people and children) and that of prisoners.<sup>139</sup> Fishermen and peasants of Mon Karen and Tavoyan ethnicity, including a minority of Burmese, make up the population of the region. According to the testimony of persons forcibly employed, there were between 20,000 and 30,000 "recruits" in the four townships traversed by the railway -10,000 of them just for the construction of one section of track at the end of 1993.<sup>140</sup> According to numerous testimonies, it seemed that the pace of work had accelerated in the last few months, which means presumably an increased resort to forced labour.<sup>141</sup> In May 1996, the labourers forcibly recruited by the army were put to work on the Kyaun Sone-Kaleinaung section, south of the pipeline route. According to the KHRG, in order to speed up the construction, the workers were recruited in areas as far as 50 miles (80 km) from Ye.<sup>142</sup> Several labour camps (surrounded by barbed wire and watch towers) have been established along the line, which the army has termed "conscription control centres": Thlaing Ya, Hein Zeh, Nan Kyeh, Ye Bone, Kyauk Shat, Zin Ba (at the intersection of the railway and the pipeline, it is allegedly the largest camp), Ya Pu and Kyauk Ka Din, named after the nearby villages. Forced labour and forced relocation here go hand in hand.<sup>140</sup> The number of labourers used in these camps in October 1995 was 23,300, including 500 prisoners.<sup>144</sup> The exacted work consists of cutting down trees, crushing stones, digging ditches, building embankments, leveling and clearing the terrain for about 15 meters on each side of the track. The lands situated on the route of the track were confiscated without compensation by the SLORC.<sup>145</sup> It should also be pointed out that thanks to forced labour, the SLORC is able to construct additional roads in the vicinity of the pipeline and the railway which, despite the fact they do not depend directly on TOTAL would *not have been* built without the TOTAL-UNOCAL project.<sup>146</sup>

<sup>138</sup> TOTAL *Presentation of the gas project in Yadana* July 22 1996, Italics added

<sup>139</sup> The translations of orders given by the SLORC (requiring the employment of forced labourers) have been made public by the KHRG. See also KNU *The Rape of the Rural Poor*, July 1995

<sup>140</sup> Human Rights Watch/Asia *The Mon, Persecuted in Burma Forced Back from Thailand*, December 1994

<sup>141</sup> KHRG n° 96-01, January 1996

<sup>142</sup> KHRG, n° 96-21, May 1996

<sup>141</sup> Interviews with Mon refugees at the border cited by D. Steele, "Charges Against the Pipeline 'too damn many to list'", *The Sunday Post* May 7 1995.

<sup>144</sup> KHRG n° 96-01 January 1996

<sup>145</sup> HRW/Asia *idem*, and NCGUB *Human Rights Yearbook*, 1994.

<sup>140</sup> KHRG, n° 96-21 May 1996.

It is the army which is in charge of providing the workers for the assigned chores, thanks to the "employment" of the men and women from the villages. The village heads, threatened and submitted to pressure by the local military chiefs, cannot but comply. Each family is expected to "provide" one person for a certain period, which is two weeks per month in the case of Ye-Tavoy railway line. However, according to testimonies, there are times when entire villages are hired<sup>147</sup>. The security regulations and the state of work hygiene are absolutely deplorable on these worksites. Contrary to the SLORC's position, not only are the workers not compensated for the labour, but they are supposed to provide their own food, kitchen utensils and work tools<sup>148</sup>. The villagers forced into labour on the Ye-Tavoy worksite who are now refugees in Thailand report that the workers are placed under constant surveillance by the SLORC's civilian representatives. Moreover, according to the KNU, *Tatmadaw* soldiers permanently patrol the entire length of the railway.

There is simply no way out of the imposed work other than flight<sup>149</sup> or the payment to the SLORC of an arbitrary tax of a varying amount (between a few hundred and a few thousand kyats), levied through the intermediary of the village head. Replacement by another person costs a few hundred Kyats, paid directly to the substitute or to the village head. The substitutes are often day labourers who wander from village to village in search of employment. These day labourers are thus compensated, not by the SLORC, but by the villagers themselves<sup>150</sup>. Despite the high price of such a "service", the villagers who can afford it are willing to pay the tax, often not only to escape forced labour, but also to enable them to work in the fields and provide for their families.

The following testimony was given by a 28-year old man, coming from the village of Paukbinkwin, in Ye

Byu district. The only

more than two months:

"At the beginning of the railroad project, each quarter from our village [about thirty household] had to send five workers to the work site. But later, the local military ordered the people to assign one person from each family to always be at the work site until the task is finally completed. We do not know what the target date for completion of the railroad is. It was very difficult for families like mine, which have only one man. While I was at the work site, the rest of my family found it difficult to work the farm and grow food. When a man returns, women are expected to replace him at the work site (...). I saw some elderly people working there, and some children aged about 12 years. I also saw pregnant women working there. Three people were killed near me when the earth collapsed as we were cutting through a hill for the railroad construction on March 3, 1994. They were all from Nat Karen village in Mon State. One girl from Moe Gyi village who was four and a half months pregnant died from malnutrition and diarrhea in the mid-March 1994. She did not get any medical help. People were beaten by soldiers for trying to escape or for people not working hard enough. Some people attempted to flee from the work site, but were caught. They were beaten and tortured in front of everyone."<sup>151</sup>

#### 4. The porters of the Burmese army

The army practice of forcibly recruiting porters is also found in the pipeline region. During 1995, several offensives were undertaken in order to "pacify" the eastern region of the route, particularly around Nat Ein Taung, close to the Thai border. Each of these instances saw hundreds of porters recruited<sup>152</sup>. The massive arrival of new infantry battalions in the Tenasserim region certainly did not put an end to this practice. The patrols in charge of security around the pipeline route recruit the porters for the transportation of their food supplies, as is shown in the testimony of a man whose village was relocated in 1992 :

<sup>147</sup> Amnesty International, *op. cit.* and KHRG, n° 96-21, May 1996

<sup>148</sup> NCGUB, *Human Rights Yearbook* 1994 and 1995

<sup>149</sup> Thousands of villagers in the region have also fled in order to avoid forced labour on the Ye-Tavoy railway, a fact which is reported by all the major human rights organisations and numerous media organisations

<sup>150</sup> Amnesty International, *op. cit.*, HRW/Asia, *op. cit.*, KHRG, n° 96-21, May 1996

<sup>151</sup> HRW/Asia *op. cit.*

<sup>152</sup> KHRG, n° 96-21, May 1996.

"One of the soldiers told me: 'Don't worry. We are here looking after security for the English. You carry our things and Englishmen will give you 200 Kyats a day'. We had to carry rice or food and patrol in the jungle between Kaleinaung and Kanbauk for two weeks (...). Sometimes, we walked on the road that people say is the gas pipeline road. I'd never seen that road before. I just heard about it. At that time, the soldiers would take back their load from us, and they would carry it themselves. One of the soldiers would lead us round the road into the jungle. Then five minutes later, we would have to carry it again (...). The soldiers were quite young and, according to what they said, they are patrolling 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 20 viss [around 75lbs], and they only had their small backpacks. I never got any money, not even a coin, so after two weeks, I escaped".<sup>153</sup>

The porters are forcibly hired for periods ranging from a few days to a month, sometimes more, and do not know in advance how long they will be kept by the army. According to corroborating sources, it appears that even children are submitted to forced portage. According to interviews with victims of this practice, compiled by Amnesty International, whoever proves to be incapable of carrying his load of goods and ammunition is submitted to torture and maltreatment<sup>154</sup>. The dangers to which the porters are exposed include malnutrition, various forms of illness, landmines and crossfire. The villagers may be excused from the chores of carrying supplies by the payment of a "tax" to the *Tatmadaw*. This practice has become systematic; even when they do not recruit porters, the soldiers continue to collect the "porter fee" in the villages. Although the cease-fire accord signed in 1995 with the Mons provided that an end would be put to the practice of forced portage, more than a year has passed and, according to testimony coming from various villages, the army still maintains the porter fee.

In conclusion, it is rather difficult to agree to the request of Mr Tchuruk<sup>155</sup> who, in May 1995 "beg[ged] [us] to believe that TOTAL would refuse to get involved in a project with a bad conscience in the field of the exploitation of individuals"<sup>156</sup>.

To the extent that forced labour is used by those who are in charge of ensuring the protection of the construction site, and who therefore work in the interest of the French oil company, the denials by TOTAL regarding forced labour are *incomplete, unsatisfactory and not credible*.

In these conditions, FIDH believes that an independent mission of enquiry is indispensable and it would be in the interest of TOTAL not only to authorise such a mission, but also to convince the Burmese government to authorise it, if it wishes to prove the validity of its statements claiming the absence of forced labour around the worksite.

## **D. Other violations**

### **1. Summary Executions**

The violations of the right to life and of the integrity of the person are found in the form of summary executions by the army (whether by the local commanders or by soldiers - all executive levels are implicated), as in the case of the reprisals after the attack on the headquarters of TOTAL in February 1996, during which the SLORC troops executed several Karens in the village of Ein Da Ya Za located on the pipeline route. No one was charged or tried, people were denied the right to defence, before being executed.

It is routine business for the SLORC to torture and kill villagers suspected of taking part in rebel movements such as the KNLA or the MNLA. One Karen man, 66 years of age, an inhabitant of Migyaunglaung which lies in the vicinity of the pipeline, explained how the SLORC soldiers had beaten two men from the village in November 1992, after having accused them of supporting the KNLA: "It's so scary, I know these two men very well I know there was nothing to that [the accusations]. They did not do anything, they are just farmers. The SLORC arrested and killed them on their farms"<sup>157</sup>.

The SLORC also executes numerous forced labourers and porters in the pipeline region if they are unable to carry their loads or if they attempt to escape. These executions are most often preceded by torture, rape and other forms of violence. Numerous deaths of forced labourers and porters are caused by disastrous working conditions, and the lack of food and medicine.

<sup>153</sup>Total Denial, p 34-5

<sup>154</sup>Amnesty International, *op. cit.*

<sup>155</sup>President of TOTAL, at the time

<sup>156</sup>General Meeting of TOTAL stockholders. May 31, 1995

<sup>157</sup>ERI interview, cited in *Total Denial*, p 23

One young woman from the Ye Byu region reported the following in connection with the Ye-Tavoy railway construction:

"They [the SLORC soldiers] just walked around and beat the people who were resting (...) They never let anyone rest when the prisoner to death. Some prisoners (...) 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."<sup>158</sup>

## 2. Torture and other cruel, inhumane and degrading practices

The SLORC's practice of beating civilians, especially during forced labour, is widespread. Torture and brutality make up an integral part of the SLORC's *modus operandi*. The porters and other labourers are beaten, lashed and hit should they fall to the ground due to fatigue or, simply trying to rest. The villagers are treated in the same manner if they are suspected of links with the rebel groups. Whenever the villages are unable to supply the required number of porters or the amount to be paid as porter fee, soldiers often punish the village head. One villager explained. "Sometimes the village head cannot provide them with labour. In those times the village head got beaten. And one of my friends got beaten because he went to work late and he was badly beaten by the SLORC, on his back, eight times"<sup>159</sup>. Similarly, prisoners who are forced to work are routinely victims of the violence and brutality of their SLORC guards.

"If the village perpetrated any crime or if villagers met with any armed group, they [the SLORC] 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. The 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 the SLORC kick 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."<sup>160</sup>

## 3. Rape and other violence against women

Rape is a common form of torture perpetuated by the SLORC against women. Women of all ages belonging to ethnic groups are particular targets of SLORC troops. They are often beaten after being raped, and forced into silence by intimidation. Besides the physical and psychological trauma, rapes make marriage virtually impossible for these mostly traditional women. In addition, the risk of being affected by the HIV virus is not negligible, as the rate of HIV infection among SLORC soldiers is around 3%<sup>151</sup>.

One 54-year-old woman told how she was raped with her granddaughter by the officers of the LIB 407<sup>162</sup>. After having fled the village of Laut Theit (Ye Byu province) in 1992, her family had decided to return in 1993. On December 3, 1993, she, her granddaughter and her nephew were arrested by 30 soldiers of the LIB 407:

<sup>158</sup> *Ibid*, p 24

<sup>159</sup> *Id*

<sup>160</sup> Source, 3rd Asia-Pacific Conference on AIDS, Chiang Mai, Thailand, September 1995

<sup>162</sup> The LIB 407 is in charge of security of the area south of the pipeline.



"Thein Soe said 'Old woman (...), 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 (...)' Then I left my granddaughter with them (...). After around ten minutes, I heard my granddaughter screaming 'Grandma, grandma!' But I dared not go. I was so scared. After fifteen minutes they free 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 had to go. Then, as the lieutenant asked me some questions, he started to rape me (...). 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"<sup>163</sup>.

#### 4. Violations of economic, social and cultural rights

Besides the physical violence endured by the civil population, and the resort to forced labour, the SLORC troops have the habit of confiscating the property, money and food of numerous villagers. The practice of extortion of funds by the SLORC troops is common, in the form of illegal imposition of multiple taxes: porter fee, railway tax, pagoda tax... The bribes are commonplace in Burma, but a new form of extortion surfaced with the Yadana project, which is particular to the region, and which the villagers call "the pipeline tax". Amounting to 1000 to 1500 Kyats/month for each family, it is collected completely illegally since it is prescribed by no existing law. The vast majority of villagers in the pipeline region are subject to it. The newly-arrived battalions in the region generally impose taxes on surrounding villages in order to provide for their needs, averaging 20,000 to 30,000 Kyats/month for a village of 100 houses<sup>164</sup>. This tax, combined with the fact that forced labour leaves them little time to care for their fields, makes life impossible for the villagers of the region, and has destroyed the local economy by massive impoverishment. The interviewed farmers confirm the tax increases since the beginning of TOTAL'S operations from 100 Kyats/month per family prior to TOTAL's arrival to an average of 400 to 500 Kyats/month since<sup>165</sup>.

Following the attack of March 8, 1995, the SLORC troops had exacted 100,000 Kyats from the 6 villages in the Ye Byu district, in order to compensate for the losses suffered by LIB 408 in the attack<sup>166</sup>. According to the Human Rights Foundation of Monland, the *Tatmadaw* regularly extorts funds and requisitions food, particularly chicken, eggs, rice and fishpaste. It has become common for the security forces to intimidate and threaten the villagers into handing over their livestock, harvest and personal goods.

Interviews with numerous refugees in Thailand indicate that most of them have fled to escape forced labour, property confiscation and extortion of money. One villager from Nat Gyi Sin (Ye Byu province) explains:

"From time to time, we had to pay 500, 1000, 1500 or 2000 Kyats, depending on what goods we were supposed to carry. From time to time, they would come to collect the money two or three times per month. As soon as they need people they come and exact the money from the village chief. Regarding the pipeline construction, *we know nothing specific, except that they demand that we pay for its construction*. The soldiers have come to the village and demanded the money in our house, we had to pay 500 Kyats.

The villages become increasingly poor. There are some people who sell their own goods, like their livestock, in order to pay the porter fee, the forced labour tax, and other forced taxes (...). The villagers save everything they own in order to pay the SLORC. So they have become poor. There really are villagers who have gotten ill (...), and many who suffer (...). I should stop here. If I had to talk about all the atrocities committed by the SLORC, two days wouldn't be enough"<sup>167</sup>.

<sup>163</sup>ERI interview, cited in *Total Denial*, p 25

<sup>164</sup>KHRG. *Conditions in the Gas Pipeline Area*, n° 95-27, August 1, 1995, p 4

<sup>165</sup>*Idem*

<sup>166</sup>Mon Information Service Bangkok, May 1996

<sup>167</sup>*Idem*. Italics added

TOTAL's presence has directly contributed to the violations of economic, social and cultural rights, forcing the villagers to abandon their traditional activities or flee to Thailand. For example, fishermen and sailors in the pipeline region have had to cease their work due to the SLORC's security decrees. Since the beginning of the Yadana project, the SLORC has prohibited the use of certain sea and river waters, so that the exploration, transport and construction are not hindered by the local fishing industry.

- Heinze Island is a strategic point for the SLORC in order to ensure the military control of the sea around the off-shore section of the pipeline. The SLORC built a military camp, a helipad, new barracks as well as installation for new battalions, all with the goal of ensuring the security of the project. Beforehand, Heinze Island was uninhabited, and the surrounding waters were used by the local fishing community. According to the villagers forcibly employed on the island, the SLORC has declared that all persons sailing in the vicinity of the island would be killed.
- Similarly, the troops use the harbour installations at Pyin Gyi and Ka Daik for the transportation of equipment: the ports which were previously used by fishing and passenger boats. In accordance with the SLORC orders; local boats are prohibited to travel while the company ships traverse the Heinze basin, which means that the local boats are forbidden to leave port, sometimes for days at a time.

Finally and on a more general scale, the practice of forced relocation, the extortions in the villages, the forced neglect of traditional activities, the flight of the villagers towards the refugee camps, all combine to slowly destroy the cultural and social tissues of the communities inhabiting the region.

## 5 Environmental rights

There is sufficient cause for concern regarding the environmental risks presented by the pipeline, for several reasons:

- The type of construction required by the pipeline and its platforms is traditionally recognised as producing grave risks for the environment (toxic substances and fumes, etc.) Similarly, the on-shore section of the pipeline threatens the forests and rivers crossed by the pipeline, as well as biological diversity. Not a single EIA (*Environmental Impact Assessment*) was undertaken by an independent body. UNOCAL claims to have conducted its own investigation on the environmental impact, but has not made the results of its inquiry public as of today.

- Foreign investors are not operating under constraints of any specific environmental legislation, and are therefore free to operate without any external control on the ecological impact produced by the exploration of the gas fields and the construction of off-shore platforms.

- The project partners - TOTAL, UNOCAL, and the SLORC - all have an alarming performance in the field of respect for the environment, an ominous sign as to their behaviour in Burma.

- The SLORC has shown, on several occasions, its indifference towards the environment, demonstrated by its attitude in the dam construction project on the Salween River, and in its well-known practices of "strategic deforestation" against rebel groups.
- UNOCAL is responsible for the worst environmental catastrophe in California, having spilled over 10,5 million gallons (40 million liters) of gasoline into the sea over a period of 15 years. A study conducted by the University of Chulalongkorn in Thailand has shown an unusual level of mercury in the waters surrounding the UNOCAL platforms in Thailand.<sup>169</sup>
- Finally, TOTAL has acknowledged having disposed of 75 lbs (35 kg) of mercury into the Gulf of Thailand since the beginning of the production of natural gas in the region.<sup>170</sup> The person in charge of TOTAL'S Exploration-Production for Thailand, Mr Azalbert, has admitted that the Yadana project in Burma potentially presents the same environmental problems

<sup>168</sup>See "France and TOTAL accomplices to the Burmese tragedy" *Maintenant*, May 17, 1995

<sup>169</sup>UNOCAL to study contamination around its rigs", *Bangkok Post*, June 20, 1996

<sup>170</sup>TOTAL admits dumping mercury" *The Nation* September 10, 1996

## CONCLUSIONS AND RECOMMENDATIONS

It appears that the pipeline project in Burma is harmful and particularly unwelcome in many regards, particularly morally and politically, and furthermore gives occasion to large-scale, repeated and documented violations of human rights against the population, including the most vulnerable groups who lack any sort of legal or financial means to oppose such treatment. That the majority of these violations is committed by TOTAL's Burmese partner, the SLORC, is in no way an acceptable and sufficient response by the French corporation, and should in no way excuse it from all responsibility in the violations which have occurred. The facts show that *without the pipeline, all, or at least some, of these violations would not have occurred*. The denial of responsibility by TOTAL and UNOCAL is therefore unsatisfactory.

The support provided to the junta is not only of the moral and political kind; the Yadana construction site also constitutes a powerful source of financial and economic support for the SLORC, and therefore has an effect of perpetuating an illegal, illegitimate and internationally condemned regime. Finally TOTAL's attempts to avoid responsibility are further weakened by its support for the SLORC in the military realm, which directly contradicts the statements of its executives: "TOTAL is not a political actor"<sup>171</sup>.

In conclusion, FIDH

1 *Vigorously condemns* the repressive practices of the Burmese military regime and the flagrant and systematic violations it is guilty of, particularly denounces the Burmese authorities' institution of forced labour in conditions which allow such practice to be considered as a crime against humanity.

2 *Calls upon* TOTAL and its partners to suspend their investments in Burma until the formation of a civil government, since massive human rights violations have taken place in conjunction with the existence of the project; the Yadana project constitutes a manifest and multiform support for an illegal and illegitimate regime and neither the democratically elected representatives, nor the representatives of the indigenous population affected by the project have been consulted about the project's legitimacy.

3 *Asks* that all concerned governments, especially that of Thailand, condition their economic relations with Burma to serious improvements in the human rights situation in the country.

4 *Reminds* TOTAL of the positive oral response regarding an independent observatory mission on site and calls upon TOTAL to use all of its powers to satisfy this request with the least possible delay, particularly in convincing the SLORC to give its approval.

5 *Requests* that all documents that would allow a full evaluation of the complete situation at the worksite be made public, particularly the satellite images of the area currently in the possession of TOTAL and its partners.

Paris, November 15, 1996

<sup>171</sup> FIDH interview, September 24 1996