



**Total pollutes democracy - Stop  
TOTALitarianism in Burma**

**July 2005 report**

The 'Total pollutes democracy – Stop TOTALitarianism in Burma' coalition is a group of French and international non-governmental organisations and trade unions, formed in December 2004.

We are committed to seeking the withdrawal of Total from Burma.

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**We acknowledge the many Burmese democrats, both within Burma and in exile, without whom the information in this report would not have appeared.**

**« [...] la firme française Total [...] est devenue le plus fort soutien du système militaire birman. Ce n'est pas le moment d'investir ici [...] »**

**“ [...] the French company Total has become the strongest supporter of the Burmese military regime. It is not the time to invest here [...] ”**

*Daw Aung San Suu Kyi in « La Firme Française Total est devenue le principal soutien du système militaire birman » interview with Frédéric Bobin, Le Monde, 20 July 1996*

## ABBREVIATIONS AND ACRONYMS

<b>ASEAN</b>	Association of South East Asian Nations
<b>ASEM</b>	Asia Europe Meeting
<b>CFP</b>	Compagnie Française des Pétroles
<b>EGAT</b>	Electricity Generating Authority of Thailand
<b>EIU</b>	Economist Intelligence Unit
<b>FIDH</b>	Fédération Internationale des Ligues des Droits de l'Homme/International Federation for Human Rights
<b>GDP</b>	Gross Domestic Product
<b>ICFTU</b>	International Confederation of Free Trade Unions
<b>ILO</b>	International Labour Organisation
<b>LDH</b>	Ligue des droits de l'Homme (France)
<b>MGTC</b>	Moattama Gas Transportation Company
<b>MOGE</b>	Myanmar Oil and Gas Enterprise
<b>NLD</b>	National League for Democracy
<b>PTT</b>	Petroleum Authority of Thailand
<b>PTT-EP</b>	Petroleum Authority of Thailand Exploration and Production Public Co. Ltd
<b>SLORC</b>	State Law and Order Restoration Council (became the State Peace and Development Council after 1997)
<b>SPDC</b>	State Peace and Development Council
<b>TMEP</b>	Total Myanmar Exploration Production
<b>UNDP</b>	United Nations Development Program
<b>UNICEF</b>	United Nations Children's Fund
<b>USDA</b>	Union Solidarity Development Association
<b>VCC</b>	Village Communication Committees
<b>WHO</b>	World Health Organisation

# CHRONOLOGY

1947

- Pang Long Agreement signed on 12 February, between Burmese groups and ethnic minorities, providing for the peaceful coexistence of these groups, principles of mutual respect and their organisation into a number of separate states.

1948

- The Union of Burma is proclaimed on 4 January and Burma gains its independence from British rule.
- Between 1948 and 1962, the fledgling democracy is weakened by internal political party disputes and ongoing ethnic conflicts.

1962

- A coup results in a military government led by General Ne Win and his political party, the Burmese Socialist Program Party.

1988

- The military forces violently repress pro-democratic movement demonstrations that took place after the resignation of General Ne Win as Chairman of the Burma Socialist Programme Party, resulting in the deaths of an estimated 5,000 people, the imposition of martial law and the seizure of power by the State Law and Order Restoration Council (SLORC).
- The National League for Democracy (NLD) is formed.

1989

- Burma is renamed 'Myanmar' by SLORC, apparently to reflect the ethnic diversity of the country's population. A number of people in Burma continue to call the country Burma as they maintain that the name change has been a part of the strategy used by SLORC to validate its illegitimate rule. The term 'Burma' is used in this report.
- Daw Aung San Suu Kyi, the leader of the democratic opposition, the National League for Democracy (NLD) is placed under house arrest.
- Total enters into discussions with the junta to obtain exploitation rights over the Yadana gas fields.

1990

- Multi-party democratic elections held in Burma, resulting in a victory to the NLD, who won 82% of the seats. This result is recognised by the international community, but the military junta refuses to cede power and continues to violently repress the population.
- Total concludes a contract with the junta two months after the elections, obtaining rights to undertake tests and studies in Burma.
- Daw Aung San Suu Kyi receives the Sakharov Prize for Freedom of Thought from the European Parliament.

1991

- Daw Aung San Suu Kyi receives the Nobel Peace Prize.

1992

- Total enters into an exploration contract with Unocal and the Myanmar State Oil and Gas Enterprise (MOGE).

1993

- General Than Shwe establishes the National Convention process as a means to draft a new constitution and seek to progress towards democracy.

1994

- Construction of Yadana gas pipeline and related installations begins and is completed in 1998, with a first delivery of gas to Thailand in 2001.

1995

- Daw Aung San Suu Kyi is released from house arrest, however, her movements are restricted.

1997

- Burma becomes a Member Country of the Association of South East Asian Nations (ASEAN).
- SLORC becomes the State Peace and Development Council (SPDC).

2000

- Daw Aung San Suu Kyi is put once again under arrest.

2002

- On 6 May, Daw Aung San Suu Kyi is released from house arrest.

2003

- On 30 May, Daw Aung San Suu Kyi is redetained, after the massacre at Depayin, which resulted in the killing of an estimated 70 people and the arrest of 100 people, including Daw Aung San Suu Kyi.

2004

- Prime Minister General Khin Nyunt is dismissed from his post, placed under house arrest and charged of corruption.

2005

- National Convention process is reconvened on 17 February 2005 and suspended on 31 March 2005.

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## EXECUTIVE SUMMARY

### *WHAT WE KNOW*

The history of Total in Burma is complex and problematic. It began commercial negotiations with the military regime after the junta refused to cede power to the democratically elected National League for Democracy (NLD) following the 1990 elections.

This report shows that Total activities in Burma, particularly the Yadana Gas Project, have provided direct and substantial political and financial support to the military junta. The military junta in Burma perpetrates widespread and systematic abuses of human rights on a daily basis. The regime routinely uses forced labour and severely oppresses ethnic minorities and opposition groups.

In spite of theoretical arguments regarding the relationship between investment and development<sup>1</sup>, Total has no control over the way the Yadana project revenue is used by the military government and there is nothing to suggest that this money will be used, in any way, to improve conditions in Burma. In fact, approximately 40% of the national budget is spent on the military, with infinitesimal amounts being spent on health and education. The military regime is also becoming increasingly closed to external observation and scrutiny. Up to now, Total's investment in Burma has not resulted in an opening of the regime to international dialogue.

The human rights violations perpetrated by the Burmese Army in the Yadana pipeline area also demonstrate the nature of the regime Total is dealing with, as well as Total's own legal responsibility for acts carried out by those state actors. Embroiled in the actions occurring in and around the pipeline area, Total was complicit in these human rights violations. It knew the Burmese military would be engaged to secure the pipeline, it was aware of the abuses carried out by the military and it failed to take adequate steps to prevent these abuses. The social projects and compensation offered by Total does not absolve from acknowledging its responsibility and from providing appropriate compensation to all victims.

Indeed, these issues are currently being examined in legal proceedings against Total in France and Belgium. Moreover, the indicative experience in the United States of Unocal, Total's partner in the Yadana project, would suggest that there is cogent evidence against the consortium partners, including Total, the main operator of the Yadana pipeline.



Furthermore, it is argued that Total's presence in Burma has hindered any development of more cogent French and European policy on Burma. The French Government protects, or at least privileges, the interests of French companies in its foreign policy making, both on national and European levels. It has been argued that the presence of Total in Burma has heavily influenced the French Government's position in the wider EU Common Position, which still excludes the oil, gas and timber industries from the scope of its sanctions, in spite of the fact that these industries are of key strategic importance for Burma.

At the same time, international law and policy is developing that exerts increasing pressure on Total to leave Burma. The measures of the International Labour Organisation (ILO) regarding forced labour and the United Nations (UN) 'Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights' highlight the significant responsibilities of corporations to protect human rights.

#### WHAT WE WANT

- This report demonstrates that the evidence, the business interests of Total and community expectations point to only one possible solution : Total must withdraw from Burma. It must stop providing direct political and financial support to the military regime. To remain in Burma is to be complicit in the ongoing human rights violations that are taking place in the country, to ignore the express wishes of the democratically elected opposition parties and to place profit above all forms of corporate social responsibility. The Total investment in Burma represents significant risks for its business and its corporate reputation.
- Furthermore, Total must fully and in good faith compensate all the victims of human rights violations perpetrated by Army personnel who were engaged to secure the pipeline area.
- Total must also consider the adequacy of both its *Ethical Guidelines*, which are applied in Burma and its other countries of operation and its *Total E&P Myanmar Code of Conduct*<sup>2</sup>. These guidelines should be expanded to comply with the UN Norms and should have cogent and independent monitoring mechanisms to ensure that an objective assessment is made of Total's compliance, at regular intervals.

# PART ONE

## CHAPTER 1 : THE SITUATION IN BURMA

### HUMAN RIGHTS AND DICTATORSHIP IN BURMA

**This section briefly considers the current situation with regard to human rights and democracy in Burma that is the context of Total's commercial operations.**

Burma is ruled by a military junta (headed by General Than Shwe since 1992, chairman of the SPDC) that refused to cede power following democratic elections in 1990. In these elections, the NLD, led by Daw Aung San Suu Kyi, won 82% of the seats. With short periods of freedom, Daw Aung San Suu Kyi has been under house arrest for more than nine years.

Violations of human rights in Burma are widespread and systematic. The Resolution of the United Nations Commission on Human Rights of 11 April 2005 on the 'situation of human rights in Myanmar' expressed :

**'grave concern at the ongoing and systematic violation of human rights, including civil, political, economic, social and cultural rights, of the people of Myanmar, in particular discrimination and violations suffered by persons belonging to ethnic minorities, women and children' ;**

[...]

**'harassment of members of the National League for Democracy ;'**

[...]

- **'Extrajudicial killings ;**
- **rape and other forms of sexual violence persistently carried out by members of the armed forces ;**
- **continued use of torture ;**

- renewed instances of political arrests and continuing imprisonment and other detentions, including of prisoners whose sentences have expired ;
- prisoners held incommunicado while awaiting trial ;
- forced relocation ;
- destruction of livelihoods and confiscations of land by the armed forces ;
- forced labour, including child labour ;
- trafficking in persons ;
- denial of freedom of assembly, association, expression and movement ;
- discrimination and persecution on the basis of religious or ethnic background ;
- wide disrespect for the rule of law and lack of independence of the judiciary ;
- unsatisfactory conditions of detention ;
- systematic use of child soldiers ;
- violations of the rights to education and to an adequate standard of living, including food and medical care<sup>3</sup>.’

The widespread use of forced labour in Burma has been described by the International Labour Organisation (ILO) as a ‘crime against humanity’<sup>4</sup>.

Over 1,300 political prisoners are detained in Burma, their conditions of detention violating international standards, as they are subjected to torture during the pre-trial period and do not have access to adequate health care and food<sup>5</sup>. Also, as of October 2004, at least 526,000 people were internally displaced<sup>6</sup>.

In terms of development, Burma is ranked as 132<sup>nd</sup> in 177 states in terms of its level of human development (based on indicators such as life expectancy, education and literacy)<sup>7</sup>. The World Health Organisation (WHO) World Health Report 2005 states that Burma spends only 2.2% of its Gross Domestic Product (GDP) on health<sup>8</sup>. One in ten infants die before reaching the age of 5<sup>9</sup>.

Military-run enterprises operate the key Burmese industries (including oil and gas)<sup>10</sup>. Production and widespread trafficking of heroin and metham-

phetamines and a significant black market have also hampered economic development in Burma and its neighbouring countries. The impact of military rule on the people of Burma has been devastating. In essence, wealth is stripped from the country that is often then employed to purchase arms that are used to quell opposition groups and repress ethnic minorities<sup>11</sup>.

In 1993, a National Convention process was initiated, apparently intended to lead to the drafting of a constitution enshrining the principles of democratic governance. After years of inaction, the Convention process was reinitiated and placed within the broader framework of 'a road map to democracy' by General Khin Nyunt, shortly after he became Prime Minister in August 2003. The Convention was reconvened in May 2004, after almost seven years in recess. However, the process has been severely criticised for its failure to comply with basic democratic standards, in particular, because ethnic and opposition groups are underrepresented, the framework and principles of the Convention were imposed by the SPDC and media coverage has been severely curtailed<sup>12</sup>. The lack of progress on the National Convention process can also be seen as indicative of a wider political stalemate and a lack of genuine political will.

This is the environment in which Total carries out its operations. This report argues that Total is more than a passive witness to these events. Rather, that, in reality, Total's engagement in Burma funds the junta, prevents the adoption of stronger EU sanctions and French foreign policy towards Burma and, in the past, has itself resulted in serious abuses of human rights that have not yet been adequately addressed.

## CHAPTER 2 : TOTAL AND BUSINESS IN BURMA

This section argues that the contracts between Total and government entities in Burma provide a significant source of financial and political support to the military junta. The Burmese economy and polity are such that the revenue from Total's joint venture projects do not reach the people. For this reason, the arguments linking investment in Burma with improvements in development and human rights are fallacious. Rather, the provision of funds allows the junta to further repress the people of Burma and hold off external political pressure.

Furthermore, in the past, Total has indirectly benefited from abuses of human rights perpetuated by military forces (notably, forced labour and forced relocation) during the construction of the Yadana pipeline.

### FINANCIAL AND POLITICAL SUPPORT FOR THE JUNTA

In 1988, Burma's regime launched a bid for tenders for the development of the Burmese gas fields. On 9 July 1992, Total signed a contract for shared production with the state company, Myanmar Oil and Gas Enterprise (MOGE) to exploit and develop the Yadana field in the Gulf of Martaban. At first the owner of all the shares in the project, Total later sold some of its shares to various partners – in 1993 to American company, Unocal (28.26 % of the shares), in 1995 to the Thai company Petroleum Authority of Thailand Exploration and Production Public Co. Ltd (PTT-EP) (25.5%), and then in 1997 to MOGE (15%), maintaining 31.24% of the shares as operator of the project.

After tests revealed the presence of significant gas reserves, the consortium signed a thirty-year take-or-pay sales contract with the Petroleum Authority of Thailand (PTT) in 1995. As a result, PTT were contractually bound to pay for Yadana gas even if they were unable to take it. The gas was then contracted to be sold on to the Electricity Generating Authority of Thailand (EGAT). A pipeline crossing the Tenasserim region of Burma for a distance of 63 kilometres was built in order to carry the gas to

Thailand. A separate company, the Moattama Gas Transportation Company (MGTC), owned in the same proportionate amounts by Total, Unocal, PTT-EP and MOGE, built both this pipeline and the 346-kilometre sub-sea pipeline bringing the gas from the offshore platform to land.

Precise figures have been impossible to obtain regarding the Total's investment in, and returns from the Yadana project, due to a lack of transparency. As is often the case in joint venture projects, Total and project partners are subject to a confidentiality clause in their contract that prevents the release of relevant data and information<sup>13</sup>. Even in spite of this, in a recent report, a comparison of major oil and gas companies has ranked Total extremely low on its standards of revenue transparency<sup>14</sup>.

However, according to various press reports, the consortium has invested around \$1.2 billion in the project since 1992 (shared pro-rata by all four partners). MOGE took up its 15% stake in the project in 1997, having obtained a loan to do so. This loan was apparently provided by its project partners, although the Chief Executive Officer of Total, Mr Thierry Desmarest, has said that a Japanese company also provided financial assistance to the junta<sup>15</sup>.

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

- Total was required to spend a minimum of \$10 million during the Appraisal period of the project (during which it was determined that the discoveries were commercially viable). Any deficiency in this commitment was to be paid to MOGE in cash<sup>16</sup>.
- A \$15 million signatory bonus was paid by Total to the military authorities in 1992. Partners later reimbursed a percentage - equal to their interest share<sup>17</sup>.

- An Income tax is now being paid at 30% after a three-year no-payment period<sup>18</sup>.
- Undisclosed Royalties have been paid regularly for the natural gas produced<sup>19</sup>.
- Production bonuses have been paid when average daily production of gas has reached certain levels. \$5 million was paid by Total to MOGE on approval of its Development Plan for the Yadana field. A further \$2 million was paid to MOGE when average daily Natural Gas Production reached 150 million cubic feet per day (4.5 million cubic metres) (for 90 consecutive days). \$3 million was paid when it reached 300 million cubic feet (9 million cubic metres). \$4 million when it reached 600 million cubic feet (18 million cubic metres). Further escalating bonuses are due once daily averages of 900 and 1200 million cubic feet (27 million and 36 million cubic metres) are reached<sup>20</sup>.
- Total contracted to make payments of \$50,000 per year during the Appraisal period for training and education of MOGE personnel. This has increased to \$100,000 per year during the Development and Production stages of the project<sup>21</sup>.
- The PSC refers to a sum of \$40 million to be reimbursed by Total to MOGE once MOGE took up its 15% stake (which it did in 1997). This sum represents 'costs incurred' by MOGE in relation to the Contract Area and has been paid by way of 'payment out of production' to MOGE since commercial production commenced. What these costs consist of is not specified<sup>22</sup>.

## **THE PROFITS FROM THE PROJECT**

The Yadana pipeline commenced operation in 1998. The export production threshold of 525 million cubic feet per day (15.75 million cubic metres) was reached in early 2001 and output averaged at 611 million cubic feet of gas per day (18.3 million cubic metres) in 2002 (with PTT taking 587 million cubic feet per day (17.61 million cubic metres) and Burma taking the balance for domestic consumption). Contractually, Burma is entitled to up to 20% of Yadana's production for domestic consumption<sup>23</sup>.

Although the financial arrangements have not been made public, cumulative cash flow has been positive for all project partners since 2001-2002. As MOGE took up its 15% stakeholding in 1997, investing \$150 million to join the consortium, and then needed to fully repay the loan contracted for this purpose, this delayed profit taking for the military authorities for a number of years. In addition, revenues in cash to the regime - in the form of bonuses, tax revenues and royalties - were reduced by the value of domestic gas deliveries from the Yadana field so for this reason cash flow for the regime did not become positive until 2002.

Since then, however, the Yadana project has provided substantial revenues to the Burmese authorities and project partners. Conservative estimates have placed annual government revenues from the project at \$200 million<sup>24</sup>. However, others have put it closer to \$450 million<sup>25</sup> once taxes and reduced import costs are taken into account. The Economist Intelligence Unit (EIU) reports that total revenue from gas exports since the Yetagun and Yadana gas fields commenced operations in 1998 has risen dramatically from zero in 1997/8 to \$921 million in 2002/03<sup>26</sup>. In 2003, it was reported that the Yadana consortium's recent installation of a medium compression platform which can be expected to increase maximum gas delivery to 25.5 million cubic metres per day, further increasing revenue from the project<sup>27</sup>.

The income obtained by the military junta from this Total led project represents a significant proportion of the regime's annual revenues. With revenues from the project estimated at \$450 million, the Total investment is significant when compared to the central government tax revenue, estimated to be 166 billion Burmese kyat in 2003-2004<sup>28</sup>. According to the official exchange rate of 6.5 kyat to the USD at this time<sup>29</sup>, tax revenue was equivalent to \$25.5 billion. However, at the 'market rate' that, at the time, was at least 1500 kyat to the USD<sup>30</sup>, tax revenue equated only \$110 million – about a quarter of the estimated annual revenue the junta obtains from the Total project.

Due to lack of transparency, it is extremely difficult to know when each of these rates is applied and the impact they have on the Burmese economy. It is clear that any official figures are incomplete, as there is a large 'informal economy' in operation in Burma<sup>31</sup>. It should also be noted that, more generally, there are virtually no statistics available on the Burmese economy from official sources.



What is also clear is that Burmese kyat is not exchangeable on the international money market, and foreign currency is needed to purchase imports, particularly military equipment. Therefore, the military regime needs to rely on its foreign exchange reserves, estimated to be \$672.1 million in 2004<sup>32</sup>. By contributing approximately \$450 million each year, Total ensures that the military regime remains financially viable and provides an essential and significant flow of foreign currency.

It appears that the Yadana field - with a proven recoverable reserve<sup>33</sup> of 6.5 trillion cubic feet (195 billion cubic metres) promises to be a key ongoing source of hard currency for the regime over the next three decades. Natural gas is now Burma's largest single source of export revenue since Yadana and Yetagun commenced operations, accounting for around 30% of export earnings in 2002/03<sup>34</sup>.

Even if the Total contract is argued to be insignificant, it is very clear that such a large single contribution to the national economy, across the life of the project, represents a validation of the regime and its legitimacy as a business partner. By contributing to the reserve of funds that is directly used to fund the military that undertakes operations against the Burmese people, Total is effectively saying it does not care about the nature of its business partners and the risks they present for its own operations and the communities in its countries of operation. The fact that these transactions are carried out in an excessively non-transparent manner only strengthens this conclusion.

To argue that 'business is business' is unacceptable. As the following sections will demonstrate, it is impossible for a company that engages in 'dirty deals' to keep its own hands clean.

### **BUSINESS AND DICTATORSHIP - INVESTMENT, DEVELOPMENT AND 'CONSTRUCTIVE ENGAGEMENT'**

Although foreign trade and investment can often be of crucial importance to the people and economies of developing countries<sup>35</sup>, in Burma the reverse is true<sup>36</sup>. A regime responsible for the impoverishment and oppression of its population appears to be surviving primarily through foreign investment, and profits from its export-based narcotic and opiate industries<sup>37</sup>.

Hence, the regime depends on income from foreign sources for a substantial part of its finances. It is essential to cut those lifelines in order to force the regime to the negotiating table. As long as the regime and its associates are financially secure, they have no incentive to reform.

It is clear that fifteen years of ‘constructive engagement’<sup>38</sup>, whereby businesses and governments cooperated with the regime in the hope that reform would result, have been a failure. The pro-investment advocates have ignored :

- the uncompromising nature of the regime,
- the overall control of the Burmese economy by the military,
- the leverage that economic pressure provides the NLD in its negotiations with the military<sup>39</sup>.

The political and economic system in Burma is controlled by a small group of military personnel and their supporters. According to a report by the International Confederation of Free Trade Unions, this group controls the key sources of wealth in Burma, in particular, twelve key industries including oil and gas<sup>40</sup>. In these industries that are solely operated by the state, foreign companies can be permitted to undertake activities on a case by case basis, and, if accepted, they are required to enter into a joint venture with a state company<sup>41</sup>. Therefore, companies that invest in Burma, particularly in these ‘state industries’ put their money directly into the junta.

Total argues that it is adopting a process of ‘constructive engagement’ in Burma<sup>42</sup>. There is a general confusion in Total’s statements regarding the ‘apolitical’ nature of the company, the positive political role it can play and its policy of ‘constructive engagement’. Total simply cannot carry out the ‘constructive engagement’ it claims to be involved in with the regime. Total is actually contractually bound not to engage in any ‘political activities’ judged unsuitable by the military authorities : ‘The Contract shall be terminated in its entirety by MOGE if irrefutable evidence is brought that (Total) is involved willingly with political activities detrimental to the Government of the Union of Myanmar’<sup>43</sup>. It is clear that after more than a decade in the country, ‘constructive engagement’ has resulted in no appreciable changes.

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

What the junta does with this money it obtains from foreign investment is of serious concern, rendering 'development through investment' arguments fallacious. One of the most concerning consequences of investment and trade with Burma is the way it has enabled the regime to expand the armed forces. In 1988 there were 200,000 personnel, there are now an estimated 400,000. The regime's ultimate target is half a million military personnel<sup>44</sup>.

Military spending fluctuated between a third and a half of the regime's budget during the 1990s<sup>45</sup>. It has also been suggested that revenue, particularly from the Yadana gas fields, have been used to purchase Russian MIG fighter planes<sup>46</sup>. In 1992, in the year that Total paid its \$15 million signatory bonus to MOGE, Burma was able to purchase 24 Soviet-era helicopters from the Polish company PZL. A Bangkok based Polish diplomat at that time said, 'the Burmese paid us with Total money'<sup>47</sup>. It has been alleged that Setraco, headed by Jean Pichon, a former military attaché to the French Embassy in Bangkok, was involved in brokering this deal (although this allegation has been denied by PZL)<sup>48</sup>. MOGE, Total's project partner, has also been associated with money laundering and the production and trade of heroin, with the junta allegedly using the state-owned company to launder heroin money<sup>49</sup>.

The high proportion of the state budget spent on the military has resulted in budget allocations to education and health that are entirely inadequate to meet needs of Burma's people. The people of this resource-rich country are slipping further into poverty. The United Nations Children's Fund (UNICEF) reports that 36 percent of children under five years old in Burma are moderately to severely underweight<sup>50</sup>, while the United Nations Development Programme (UNDP) reports that one in ten infants die before their fifth birthday<sup>51</sup>.

► In May 2004, the UN Committee on the Rights of the Child stated in relation to Burma that :

‘the Committee is deeply concerned at the dramatic decrease of resources allocated to social sectors, notably health and education, over the past decade while the budget allocated to defence has increased dramatically over the same period’<sup>52</sup>.

► The Committee had already expressed exactly the same concern in 1997 :

‘the Committee notes with concern the inadequacy of measures taken to ensure the implementation of children’s economic, social and cultural rights to the maximum extent of available resources. The Committee expresses particular concern at the insufficient budget allocation for social expenditures, in particular in favour of children belonging to the most disadvantaged groups of the population’<sup>53</sup>.

The recommendations of the UN Committee have been totally ignored by the Burmese regime.

There can be no doubt that the greatest obstacle to peace and prosperity in Burma is the military dictatorship itself. Investors that believe that their projects will contribute to economic and human development necessarily ignore this simple fact. To argue that economic development in Burma will contribute to the improvement in the housing, health care facilities and prospects of employment of local people is naive and shortsighted. The only real human development can come from democracy and from a situation wherein the Burmese people themselves control the democratic process. Total simply ignores reality when it suggests that, in collusion with an oppressive military regime, it is capable of delivering real change.

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

### *CHAPTER 3 : HUMAN RIGHTS VIOLATIONS DURING THE CONSTRUCTION OF THE YADANA PIPELINE AND THE RESPONSE OF TOTAL*

Total's problematic history in Burma goes further than its political and financial support of the junta. As has been alleged in a number of reports<sup>54</sup>, published during and after the construction of the Yadana gas pipeline in 1996, Total has itself been complicit in human rights abuses in Burma. In effect, it engaged the Burmese Army through MOGE to provide security in the pipeline area. It was aware of serious abuses of human rights being perpetrated by the Army in the implementation of the project. In the face of this, Total failed to take adequate steps to stop or prevent the abuses. For these reasons, it has been argued that Total was complicit in the violations, for which it must take responsibility.

The legal proceedings that have been commenced by victims of these violations place further pressure on Total to withdraw from its engagements with the military dictatorship. They also demonstrate the profound risks for Total, both commercially and in terms of its corporate reputation, in partnering with such a regime. These events demonstrate that the argument that natural resources can be exploited without regard to the political system in which they are found<sup>55</sup> is unsustainable. A recounting of these events demonstrates that Total should simply not be in Burma.

#### **RECOUNTING THE EVENTS**

After the oil companies signed contracts with Burma's military in the early 1990s, conditions changed dramatically for the people inhabiting the area that became known as the pipeline region. In 1991, in order to 'secure' the area for Total and other foreign oil companies, the entire pipeline region was militarised : thousands of troops were drafted into an area where the civilian families of farmers, plantation workers and fishing communities were living. In all, at least 16 battalions have either been stationed in the area or have patrolled the pipeline corridor at one time or another since 1991<sup>56</sup>.

Total and other oil companies active in the pipeline region have long denied any contractual arrangements with the Burmese military to provide security

for their projects. A Total document relating to Burma makes this clear: ‘Total has always clearly stated that it has never had a contractual relationship, either direct or indirect, with the Army, and has not provided it with financial or logistical support to its operations. Neither MGTC nor its operator, Total, has ever had any authority over the Army or given it instructions’<sup>57</sup>.

The reality was somewhat different. Security was identified as a key concern by the Yadana consortium, and it made requests and payment for security services to partner MOGE<sup>58</sup>, who then deployed the Burmese Army. Hence, Total was fully aware that military forces would be deployed and that, through MOGE, in fulfilment of its contractual obligations, those forces would provide the security for the project.

Indeed, a US Department of State unclassified cable, obtained by the Thailand-based organization EarthRights International (ERI), suggests that Unocal and Total did hire and pay the Army for pipeline security through MOGE. In some cases, the military were given specific responsibility to build installations needed for the project, for example, helipads<sup>59</sup>. Various other statements made by Total executives make it clear that Total and its partners considered that they were, in result, engaging the military to secure the area<sup>60</sup>.

Total was also, by its own admission, fully aware of the implications for local people of importing a heavy military presence into the area. Again, a document relating to Burma confirms this: ‘TOTAL was well aware that the Army’s presence in the region could have negative consequences for villages in the area’<sup>61</sup>.

Numerous human rights violations were perpetrated by the Burmese Army in the pipeline area, particularly during the construction of the pipeline in 1995-1996. The use of forced labour was particularly prevalent, as the military used thousands of civilians, including children, the elderly and the infirm, to perform forced labour for the benefit of the pipeline, including the construction of service roads and helipads, military camps, portering of military equipment and even the use of civilians as ‘human minesweepers’<sup>62</sup>. Village heads were called on to send forced labourers on a rotational basis.

That Total was aware of forced labour in the vicinity of the pipeline is absolutely clear. However, the company has consistently played down both the frequency of its occurrence and the relationship with its project :

‘Certain incidents’, they admit, ‘may have escaped Total’s attention in the very early phases of the project’<sup>63</sup>. Michel Viillard, Head of Total Myanmar said, ‘What I know is that in the very early stages of the project, in the very first months, we learnt about the use of forced labor by the army... and we decided voluntarily to pay the people who had been conscripted’<sup>64</sup>.

In 1999, the French parliamentary mission investigating evidence of abuse in the pipeline region points to Total’s constructive knowledge of the use of forced labour and other abuses : ‘the link between the military presence, the acts of violence against the populations and the forced labour is established as a fact. Total had to be aware of that’<sup>65</sup>.

Federal and State Courts in the United States have also registered sufficient evidence to show that forced labour and other abuses occurred in the construction of the Yadana pipeline, in full knowledge of the partners of the consortium. According to the 2000 District Court opinion in *Doe v. Unocal Corp* :

‘Unocal knew that the military had a record of committing human rights abuses ; that the project hired the military to provide security for the Project; that the military, while forcing villagers to work and relocate, committed numerous acts of violence ; and that Unocal knew or should have known that the military did commit, was committing, and would continue to commit these tortuous acts’<sup>66</sup>.

Widespread acts of forced relocation also took place in the pipeline area. In early 1993, Karen communities that lay east of the Ye-Tavoy road were particularly targeted for relocation to create a secure corridor for the pipelines. Karen villages 24 kilometres to 32 kilometres both north and south of the pipeline routes were forced to move to the Ye-Tavoy road – closer to military outposts – to create a labour pool and eliminate threats from armed ethnic groups<sup>67</sup>. These relocations coincided with the negotiation of the pipeline contracts and provided the regime further opportunity to control the population in this particular area<sup>68</sup>. No compensation was provided by Total for these relocations.



The Electricity Generating Authority of Thailand (EGAT), the major purchaser of Yadana gas, has also publicly acknowledged that people were relocated to facilitate the construction of the pipeline. A half-page advertisement in the Bangkok post on 17 April 1995, paid for by EGAT, is unequivocal :

‘The Myanmar government aims to complete its part of the gas pipeline system by 1996. The pipeline will pass through Karen villages in Laydoozoo district, Mergui-Tavoy province and in Mon villages, Ye-Tawai province. Myanmar has recently cleared the way by relocating a total of 11 Karen villages that would otherwise obstruct the passage of the gas resource development project<sup>69</sup>’.

Non-governmental organisations have also gathered testimony that alleges that the military forces deployed in the pipeline area perpetuated further serious human rights violations including extrajudicial killings, torture, rape and extortion<sup>70</sup>.

Despite openly recognising the likely consequences of militarisation and acknowledging the practical role of the military in securing its project, Total continues to deny responsibility for any of the abuses that have occurred as a consequence of the Yadana project.

The company claims instead that it took possible steps to prevent abuses occurring. First, it established Village Communication Committees and employed Socio-Economic Program staff, according to the company’s document entitled ‘Total in Myanmar : A Sustained Commitment’, so Total could ‘stay constantly and directly informed of the situation in the field so that it could respond very quickly if an incident occurred<sup>71</sup>’. Second, Total states that it lobbied the Army, directly and through MOGE, to attempt to prevent the use of forced labour in the pipeline area<sup>72</sup>. Third, Total states that ‘When cases of forced labor were brought to light, it provided assistance to the victims or their families, in the form of cash or other contributions<sup>73</sup>...’

However, it is argued that these responses to the serious violations of human rights occurring in relation to the project were highly ineffective, both to exculpate Total from responsibility for these abuses and to compensate the victims for the loss they have suffered.

The report of Bernard Kouchner<sup>74</sup>, commissioned by Total through Kouchner's consulting company, BK Conseil, cites the health and education projects initiated by Total as somehow providing an answer to the violations perpetuated in securing the pipeline area. However, community projects of general application cannot be used to show that 'compensation' has been paid to affected communities or that it is unfair to criticise it of benefiting from abuses of human rights. Whether or not the company elects to undertake community projects is entirely aside from the question of human rights violations and reparations. Furthermore, it must be noted that these community projects only benefit those people living direct vicinity of the pipeline and Total employees.

Serious questions also exist as to whether the Village Communication Committees (VCC) were in any way an effective means to monitor and discourage the use of forced labour. Concerningly, a photograph on page 17 of a Total publication of November 1995, entitled 'The Yadana Gas Development'<sup>75</sup> shows members of a VCC standing outside an office, which is in fact an office of the Union Solidarity Development Association (USDA), a pro-government militia and political group that provides a civilian front for the junta.

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

Either way, the photograph is extremely concerning. If the VCC was based anywhere in the vicinity of this USDA office or its staff, doubt must be cast on this Committee's ability to provide a safe channel of communication for villagers. That the photograph was published and distributed widely by Total (and Unocal) in various publications is more concerning still; indicating as it does either complete ignorance of who and what USDA really were or simply conscious disregard.

Total has provided no convincing evidence of the steps it says it has taken to stop the practice of forced labour. In light of this and the clear evidence of abuses in the pipeline area, it can be strongly argued that the steps taken by Total were entirely inadequate. It may have been that there were no steps that could have been taken to stop this conduct and continue the project. In this case, Total should have ceased its operations or paid for its own security forces. It is facile and legally incorrect to argue that after rudimentary steps were taken to address the abuses, Total is to be absolved of all responsibility. By failing to take action, Total became both the indirect cause and beneficiary of these abuses<sup>76</sup>.

Allegations of human rights violations associated with Total's Yadana pipeline are currently being examined in legal proceedings. There were four proceedings underway against Yadana pipeline consortium members until March 2005 : two against Total (in France and Belgium) and two against Unocal (in the United States at both State and Federal Court levels). In March 2005, Unocal reached a settlement with plaintiffs that brought both US proceedings to an end<sup>77</sup>. Unocal had evidently made an assessment that the risks of continuing to defend the proceedings were too high and that there was a reasonable likelihood that the court would have ruled against them.

### LEGAL PROCEEDINGS AGAINST TOTAL IN FRANCE

In August 2002, Burmese citizens brought an action before French courts for acts constituting the crime of 'illegal restraint' (*séquestration illégale*). The defendants are Thierry Desmarest, President Director General of Total, and Hervé Madéo. Mr Desmarest was in charge of the Yadana project when the acts of forced labour occurred and Mr Madéo was Director of the On-Site Operations, Total Myanmar Exploration Production (TMEP), from 1992 to 1999.

The complaint has been brought by Sherpa, a French non-governmental organisation, on behalf of two Burmese people who were forced to work on the pipeline construction site established by Total in 1994. One of the plaintiffs was 13 years old at the time these events occurred, during 1995-96<sup>78</sup>.

The plaintiffs testify that they were forced to evacuate their villages and live in the jungle at the pipeline construction site, and then to work there. They describe the conduct of the Burmese Army battalions in the field, nicknamed by these workers the 'Total battalions'. They describe how death threats and physical and verbal violence by the military created a climate of fear. And also how they were deprived of food and medical care, which constitutes aggravating circumstances in relation to the crime of false imprisonment. The plaintiffs maintain that 'foreigners', that is, Total executives, were present at the site, and therefore could not have been unaware of what was taking place<sup>79</sup>.

There are several allegations that have been made against the executives of Total and its local subsidiary : recruiting and paying battalions of the Burmese Army, promoting a situation of forced labour on the construction site with full

knowledge of the facts and continuing to do so despite the repeated criticism of widespread forced labour in Burma by bodies such as the International Labour Organisation.

In October 2002, a juge d'instruction (Inquiring judge) began investigating the case. The complaint specifically referred to Total's chief executive, Thierry Desmarest, and the former head of Total's operations in Burma, Hervé Madéo. The Prosecutor, however, has not yet decided who should be answerable to these allegations. The first witnesses have been heard and eight new Burmese plaintiffs have subsequently joined the proceedings.

In May 2004, an important step was taken when Sherpa organised for a witness and a plaintiff involved in the case to visit France. These two Burmese refugees in Thailand then had, for the first time, the opportunity to confirm their previous statements before the juge d'instruction.

On 11 January 2005, the instruction chamber of the Court of Appeal of Versailles, presided over by a panel of three judges, upheld the decision of the juge d'instruction to reject a plea of 'non lieu' (in effect, 'no case to answer for') in relation to this case. As a result, the investigations are continuing.

## **LEGAL PROCEEDINGS AGAINST TOTAL IN BELGIUM**

Total is also facing proceedings in Belgium. Criminal proceedings alleging crimes against humanity and complicity in crimes against humanity were commenced by four Burmese plaintiffs in April 2002. Torture suffered by the plaintiffs includes cigarette burns, 'the iron road' (having a steel bar rolled up and down the shins until the skin and flesh is torn off), and blows to the head resulting in damage to the optical nerve.

The plaintiffs accuse Total, Thierry Desmarest and Hervé Madéo of complicity in crimes against humanity. They are seeking to demonstrate that Total provided political and financial support to Burma's ruling military, in full knowledge of the consequences of this support in terms of massive human rights violations by the regime. They specifically claim that Total and its managers provided logistical and financial support to Burmese battalions in the area of Total's gas project and that these battalions were known as 'Total Battalions'. They also accuse Total of knowing about the systematic and gene-

ralised use of forced labour by its Burmese partners related to the pipeline, and allege that Total's internal mail and documents prove this knowledge. The plaintiffs also argue that Total's provision of 'compensation' to 463 victims of forced labour in 1996 is evidence of its knowledge of the practice at the time<sup>80</sup>.

This case is particularly significant as it has been brought under the so-called Belgian Law of Universal Jurisdiction (*compétence universelle*) of 1993, and expanded in 1999. This Law holds that states have the power and the obligation to prosecute international crimes such as war crimes, crimes against humanity and genocide on behalf on the international community, even where there is no link (in terms of the entities involved and place where the relevant acts took place) with the prosecuting jurisdiction. The only precedent with regard to crimes against humanity, judged by the Belgian courts under the Law is the case of the four Rwandan citizens from Butare. They were found guilty of crimes against humanity and sentenced in 2001 to between 12–20 years imprisonment.

However, under international pressure, the Belgian Parliament amended the Law in on 5 August 2003 to tighten the nationality requirements for the bringing of proceedings. As a result of these changes, as the complainants in the case against Total, Thierry Desmarest and Hervé Madéo are not Belgian citizens (rather they are recognised refugees resident in Belgium), they would no longer be able to maintain their action under the Law. Yet, on 13 April 2005, the Cour d'arbitrage held that it is discriminatory and therefore contrary to the Belgian Constitution to deny refugees access to the courts in this manner. As a result, the case is proceeding<sup>81</sup>, and the Belgian Cour de cassation is scheduled to hand down a decision in June 2005 on the continuation of the investigations.

### **LEGAL PROCEEDINGS AGAINST UNOCAL IN THE UNITED STATES**

Unocal, one of Total's consortium partners, has also been subject to similar claims that it is responsible for human rights abuses that took place in relation to Yadana pipeline project. An original suit was filed in the Los Angeles Superior Court in 1996, on behalf of fifteen Burmese villagers who were victims of human rights abuses in the pipeline area. This case was brought under the *Alien Tort Claims Act* of 1789 and alleges that the company knew or should have known that the Army committed human rights abuses as the pipeline was being built.

In *Doe v. Unocal*, the tragic consequences of Burmese ‘security’ in the pipeline area was demonstrated in court with the testimony of a young Burmese mother, named Jane Doe 1, who was kicked so hard by soldiers deployed in the pipeline area that she fell into a fire while holding her baby, who later died as a result of its injuries<sup>82</sup>.

In December 2004, the parties began to negotiate a settlement (intended to also settle separate proceedings brought in relation to the issue in the Federal Courts), and reached an agreement in March 2005, the details of which have not been disclosed. In general terms, it has been stated that the settlement agreement provides for compensation to victims and funds to develop programs to improve living conditions, health and education<sup>83</sup>. This outcome does not bode well for Total. Total and Unocal are inextricably linked on this issue, and therefore if Unocal lacked confidence in its defense, one can expect that Total is also in an extremely difficult position. In fact, Total, as operator of the pipeline project, has had a greater degree of control than Unocal over what took place in the pipeline region. The risk to Total following the settlement must now seem even greater.

## CHAPTER 4 : TOTAL, FRENCH FOREIGN POLICY AND THE IMPACT ON INTERNATIONAL ACTION

This section considers the broader impact of Total's continuing presence in Burma. It argues that the debate on whether Total should remain in Burma cannot only be considered on the basis of its own corporate interests and its commitment, or otherwise, to 'constructive engagement' or development projects. Rather, the continuing presence of Total is a potent political symbol and one that blocks any meaningful attempts to pressure the military junta to respect human rights and to engage, in good faith, in the process of democratisation. The presence of Total, and other companies like it, has a significant impact on foreign and multilateral policy. This broader impact makes Total's presence even more problematic.

In addition, the close relationship of Total to the French Government has an influence on the French foreign policy in relation to Burma. In order to protect Total's interests, equated with those of France, and due to its general reluctance to adopt economic sanctions, the French government has become an obstacle to any significant strengthening of the EU Common Position<sup>84</sup> and Asia Europe Meeting (ASEM) and Association of South East Asian Nations (ASEAN) policy on Burma. Furthermore, European reluctance on this issue also blocks any possibility of United Nations sanctions.

### TOTAL AND FRENCH FOREIGN POLICY

Total and French foreign policy have always been closely intertwined. Total was created in the aftermath of World War I, the first war in history fought with a large-scale use of oil. Speaking days after the end of WWI, Senator Berenger, who was then in charge of France's oil policy, described oil as 'the blood of victory'<sup>85</sup>. La Compagnie Française des Pétroles (CFP) – now Total – was established in 1924 as France's vehicle for securing the oil it needed to maintain its international prerogatives – above all its colonial empire. The Second World War then led to the creation of Bureau de Recherche des Pétroles (BRP), and Régie Autonome des Pétroles (RAP), which then merged in 1965 to form Elf, a future constituent of Total.

The Total brand name was launched in 1954 as a marketing name used by petrol stations. In 1985, CFP changed its name to Total CFP, and in 1991 the company

dropped CFP from its current name. In 1999, Total merged with Petrofina to become Totalfina, and a year later Totalfina and Elf merged to become TotalFinaElf. In 2003, the company switched back to Total.

The French president Jacques Chirac and Total's CEO Thierry Desmarest have been travel companions on numerous official foreign trips since the mid-1990s. Recently, they traveled together to Algeria (2003) and Libya (2004)<sup>86</sup>. In June 2004, President Jacques Chirac awarded Thierry Desmarest one of France's highest accolades, the *Légion d'honneur*, (Legion of Honour), for his many distinguished services to France. The closeness between the two men, and therefore between the French state and Total, is widely reported.

The Economist has raised concerns over the Chirac-Desmarest relationship. In April 2003 the British weekly asked :

‘what of the fairness of mentioning President Chirac and Mr Desmarest in the same breath? The French government has no stake in Total, but the company is still a “national champion” in the classic French manner. It is deeply cosy with the government<sup>87</sup>...’

French President Jacques Chirac has twice publicly expressed support for the Burmese regime : once at the Asia-Pacific summit in Bangkok in 1996 (where he was accompanied by Desmarest), and again during an interview to the Far Eastern Economic Review in April 1997<sup>88</sup>. In full contradiction with European decisions, and opposing the views of most other democratic states, Mr Chirac declared that he favoured the immediate and unconditional admission of the Burmese military dictatorship into ASEAN.

Here again support for economic interests took precedence over full consideration for the human rights situation. It seems that some dictatorships are more acceptable than others - providing of course that their presence facilitates international investment<sup>89</sup>.

When Total was threatened with a lawsuit in the United States for human rights abuses connected to its Burma pipeline, the French government's intervention made it clear that Total is inextricably linked to French foreign policy.



In an amicus curiae brief filed at the US court, the French Republic said that it

‘respectfully objects to the exercise of personal jurisdiction by this court over Total, a corporate citizen of France, on the ground that it would conflict with the sovereignty and laws of France...’ It continues, “Maintenance of this action against Total in the United States courts will conflict with France’s foreign policy interests<sup>90</sup>.’

It would appear that Total’s interests in maintaining its corporate engagements in Burma may have an influence over the manner in which France conducts its foreign relations.

### **ASIA - EUROPE MEETING (ASEM)**

ASEM is a regular forum of summits between Asia and Europe. Prior to October 2004, the grouping comprised 15 European Union states, seven countries from the ASEAN, and the Republic of Korea, Japan and China. In 2004, ASEM expanded : the ten new EU states, Cambodia, Laos and, more controversially, Burma, were all candidate countries for ASEM membership.

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

The French position, however, appeared to amount to a willingness to break from the collective decision-making norms on policy toward Burma, in order to support Burma’s entry to ASEM. It is reported that Mr Chirac stated that even if all the other 24 member states of the EU decided to boycott the

ASEM summit in Vietnam, he still intended to go<sup>91</sup>. There were other countries that were also willing to support Burma's dictators in their application to join ASEM, but it is widely thought that France led the block of sympathisers, and that France's agenda was clear from the beginning. The EU eventually capitulated to the Asian group's demand that Burma be allowed into ASEM.

## THE EU COMMON POSITION

In October 2004, for the first time, the EU considered a targeted investment ban against the dictatorship in Burma<sup>92</sup>. A key reason for considering a strengthened Common Position was to send a clear message to the regime that, despite its acceptance into ASEM, the EU was not 'going soft'. By the end of the negotiations on the extent of the new measures, particularly France but also other countries such as Germany and Austria had successfully ensured that the sanctions would have no impact on key strategic industries in Burma. The measures, as they currently stand, have no real impact and can legitimately be described as meaningless. The most profitable sector for Burma's dictators, oil, timber and gas, are entirely omitted from the sanctions imposed<sup>93</sup>.

Press reports and the views of diplomats at the time point to the determination of the French government to protect Total's interests in Burma by weakening the terms of the EU Common Position. The following provide some examples :

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

Dombey, Daniel et Kazmin, Amy,  
'EU dilutes sanctions plan on Burma',  
*Financial Times*, 9 October 2004

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

*Le Monde*, 13 October 2004

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

Tisdall, Simon, ‘Asia’s inertia buoys Burma’s military junta’, *The Guardian*, 12 October 2004

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

Horsley, William, ‘Dilemma of Dealing With Burma’,  
BBC Online :

<http://news.bbc.co.uk/1/hi/world/asia-pacific/3761022.stm>.

- On 21 February 2005, the Council of the European Union adopted the ‘*Council Common Position 2005/149/CFSP of 21 February 2005 amending Common Position 2004/423/CFSP renewing restrictive measures against Burma/Myanmar*<sup>94</sup>’.
- On 25 April 2005, it adopted the ‘*Council Common Position 2005/340/CFSP of 25 April 2005 extending restrictive measures against Burma/Myanmar and amending Common Position 2004/423/CFSP*<sup>95</sup>’, renewing the restrictive measures in the same terms as the October 2004 measures.

EU policy in relation to Burma therefore remains extremely limited, even tokenistic, and hence permits the continuing investment in Burma by European companies, such as Total, in industries that are of key economic significance for the junta.

#### **CHAIR OF THE ASSOCIATION OF SOUTH EAST ASIAN NATIONS (ASEAN) IN 2006**

Shortly, there will be another test of the seriousness of French and EU policy towards Burma. In 2005, a vote will be taken to confirm the Chair of ASEAN for 2006. Due to its human rights record, Burma has been under intense pressure, particularly from the United States, Malaysia and the Philippines, to cede the Chair. There have been suggestions that this may occur<sup>96</sup>. If Burma does take the Chair, it is essential that the EU adopt a strong policy and refuses to attend any meetings while Burma is Chair.

## **RENEWAL OF THE MEASURES OF THE INTERNATIONAL LABOUR ORGANISATION (ILO)**

In spite of weak EU policy, since 2000, pressure has also been building on Total and other companies to review their relations with Burma so as not to exacerbate the endemic use of forced labour.

On 24 March 2005, the Governing Body of the International Labour Organisation (ILO) reactivated the unprecedented measures against Burma contained in the International Labour Conference resolution of June 2000<sup>97</sup>. In the June 2000 resolution, in effect from 30 November 2000, the ILO called upon the tripartite members of the organisation (governments, employers and workers) to ‘review...their relations with the member State concerned and take appropriate measures to ensure that the said Member cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour... and report back in due course and at appropriate intervals to the Governing Body<sup>98</sup>.’

‘Reactivation’ did not suggest that the measures had ceased to be in force, rather that a ‘wait and see’ attitude had been adopted that could no longer stand due to the lack of progress in Burma<sup>99</sup>. As an employer, Total has a strong obligation to comply with these measures and not engage in any activity that will perpetuate forced labour. Due to endemic nature of forced labour in the country and the record of the Burmese Army in this regard, it seems inconceivable that economic activities in Burma may continue following such review, especially where they require the protection of the Army, as is the case in the extractive industries. Furthermore, these measures require the French Government to take action to discourage French companies to engage in or continue business in Burma, where there is any risk that forced labour will be used<sup>100</sup>.

## **UN NORMS ON THE RESPONSIBILITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH REGARD TO HUMAN RIGHTS**

Even though bilateral and multilateral policy is currently doing little to prevent or discourage investment in Burma, there is another stream of international law and policy that is increasing the pressure on Total to withdraw from Burma :

the ‘UN Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights’<sup>101</sup>(UN Norms).

Although not legally binding as such, the UN Norms provide a strong normative framework for corporate activities and are a set of commonly agreed benchmarks that accord with current community expectations<sup>102</sup>. The UN Norms provide that ‘transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure the respect of and protect human rights recognised in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups<sup>103</sup>’. The UN Norms also provide that companies ‘shall refrain from any activity which supports, solicits, or encourages States or any other entities to abuse human rights<sup>104</sup>’.

The development of the broader corporate social responsibility discourse also calls upon companies to cease operations in places where their actions may possibly result in human rights violations. The concept of ‘triple bottom line’ corporate responsibility (which is a concept of corporate responsibility that includes three main areas of concern: social responsibility, environmental responsibility and financial responsibility) includes the concept of protection and respect for the rights set out in the Universal Declaration of Human Rights and in the Conventions of the ILO<sup>105</sup>. It must be recalled that calling upon companies to respect human rights as a part of their corporate responsibility does not in any way weaken those rights, or lessen the obligations placed on the company.

The UN Norms and broader concepts of corporate social responsibility place pressure on Total to withdraw from Burma. They highlight the significant responsibilities the company has in relation to the people and communities in its fields of operation. They also demonstrate the weaknesses in the current corporate responsibility policies of Total and the need to supplement them with references to specific rights and cogent, independent and transparent scrutiny mechanisms<sup>106</sup>.

### INFORMATION ON THE ‘TOTAL POLLUTES DEMOCRACY - STOP TOTALITARIANISM IN BURMA’ CAMPAIGN

The coalition and its campaign ‘Total pollutes democracy : Stop TOTALitarianism in Burma’ was established in December 2004. A launch and press conference were held in Paris on 21 February 2005, to coincide with the launch of an international campaign<sup>107</sup> that aims to force Total to withdraw from Burma, deter future foreign investment and clear the way for a more robust French foreign policy and EU Common Position on Burma.

The goals of the French campaign are broadly aligned with those of the international campaign – to seek a withdrawal of Total from Burma and open the way to stronger French and European policy. The campaign also demands that Total take stock of its situation and implement more meaningful corporate responsibility programs to guide its activities. The French coalition intends to meet the arguments of the company in relation to Burma and continue to campaign for the withdrawal of Total, until this occurs.

The French coalition consists of national and international non-governmental organisations and trade unions : *Ligue des droits de l’Homme* (French Human Rights League - LDH), *Info Birmanie*, *Fédération Internationale des Ligues des droits de l’Homme* (International Federation for Human Rights-FIDH), *France Libertés*, *Actions Birmanie* (Belgium), *Sud Chimie*, *Agir Ici* and *Justice et Solidarités Mondiales*. As is mentioned below, the membership of the coalition is not closed and new organisations are welcome to join.

In general, the organisations in the French coalition have engaged in previous campaigns on Total’s activities in Burma. In some cases, member organisations have previously been in contact with the company to discuss their concerns. From 1996, ‘Le collectif Total (Ex-Elf) ne doit pas faire la loi’ (‘Total must not make the law’ Collective) undertook a range of actions highlighting the activities of Total in Burma and in other countries. In 1996, FIDH published a report on human rights violations in the Yadana pipeline area<sup>108</sup>.

The French campaign seeks to inform the public about the activities of Total in Burma, particularly, the extent to which Total money and the revenue from its Burmese investments necessarily form part of the regime's wealth, which it then uses to oppress its own people. In this way, the campaign seeks to question the 'good corporate citizenship' of Total and raise questions as to the coherence and sustainability of its arguments for remaining in Burma.

The campaign then seeks to give individuals the tools they need to take further action. Activities of the campaign include letter campaigns, participation in the General Assembly of shareholders in Paris on 17 May 2005 and a range of regional events in France to provide a forum for discussion of the issues relating to Total in Burma. Further information about the campaign is available on the campaign website located at :

[http://www.fidh.org/\\_template/2005/Total%20Burma/.](http://www.fidh.org/_template/2005/Total%20Burma/)



## WHAT SHOULD TOTAL DO ABOUT BURMA :

- Withdraw from Burma immediately
- Compensate the victims of human rights abuses
- Establish cogent and independent assessment mechanisms

### *WITHDRAW FROM BURMA IMMEDIATELY*

In light of the information presented in Part 1 of this report, the coalition considers that the only option for Total is to unconditionally withdraw from Burma. It should immediately discontinue operations. The situation in Burma is so serious and the involvement of Total is so deeply problematic, that commercial or practical concerns relating to withdrawal cannot be maintained. A large number of other companies have made such a decision, primarily due to the nature of the military regime in Burma, for example, British American Tobacco, Heineken, Triumph International, Levis Strauss Inc, Aon Corporation, Premier Oil, WPP, PricewaterhouseCoopers and Carnival Corporation<sup>109</sup>.

It is true that there is no domestic or international law that unequivocally compels Total not to invest in Burma. However, as discussed above, the broader legal framework (UN Norms and developing concepts of corporate responsibility which impose international human rights obligations on private companies), the Special Measures of the ILO, moral arguments and commercial concerns make a compelling case for the withdrawal of Total. In such serious circumstances, a company should not have to wait until legal sanctions are threatened before it considers the ethical aspects of its business. Corporate responsibility and ethics committees are entirely without value if they are only used to affirm current practices and simply legitimise them through a different lens. As a result, the failure to honestly confront the issues in Burma has done, and continues to do, serious damage to the corporate and social standing of Total.

Furthermore, withdrawal accords with the demands of the leaders of the democratic movement in Burma. Total asserts that the people of Burma ask them to stay and believe that they will have a better life if Western companies stay<sup>110</sup>. This is directly contrary to the views expressed by representatives of Burmese democratic parties in a range of international fora.

### *COMPENSATE THE VICTIMS OF HUMAN RIGHTS ABUSES*

In relation to the violations of human rights that took place in the Yadana pipeline area, perpetuated by security forces engaged by Total, Total should immediately move to compensate victims for the damage they have suffered. This process has been initiated by complainants themselves in the launching of legal proceedings in the United States (against project partner, Unocal), Belgium and France, however Total should take proactive steps to compensate the direct and indirect victims of these abuses. The compensation provided to date and the social programs instituted by Total have been inadequate.

### *ESTABLISH COGENT AND INDEPENDENT ASSESSMENT MECHANISMS*

Entirely aside from the question of compensation, which must make individual reparation for violations that have taken place, Total must question the adequacy of its *Ethical Guidelines*, which are applied in Burma and its other countries of operation and its *Total E&P Myanmar Code of Conduct*<sup>111</sup>. These guidelines should be expanded to comply with the UN Norms and should have cogent and independent assessment mechanisms to ensure that an objective assessment is made of Total's compliance, at regular intervals.

It is only through these three acts that Total will be able to maintain its corporate standing (which has already been severely damaged by its activities in Burma), report fully and frankly to its shareholders, meet community expectations and make its profit in a manner that is commercially sustainable and morally defensible. Put simply, Total has a choice to be part of the problem, or part of the solution.

# THE CONSEQUENCES OF TOTAL'S WITHDRAWAL

## *IMPACT ON THE JUNTA*

It has been argued that a withdrawal of Total would have no negative impact on the junta. Most likely, the argument runs, the junta will buy Total's share and reap even further benefits from the Yadana gas fields. This could be the case, although it is disputed whether the junta would expend funds for this purpose.

The impact on the junta will be apparent in the medium to long term. As Western companies refuse to invest in Burma or divest themselves of current investments, the junta will be more exposed to external pressure, from private entities, governmental bodies and international institutions. As it will become more and more deprived of income over time, the junta will become more susceptible to demands that human rights be respected and that progress should be made towards democracy. Withdrawals by Western companies serve to delegitimise regimes such as that in Burma (and, this case, also legitimise Daw Aung San Suu Kyi and her democratically elected party, the NLD) and can, over time, contribute to change.

Total has also argued that if it leaves Burma, an Asian company will take its place, which may have lower standards than Total. Apart from its hypothetical nature, this argument is fallacious. It amounts to arguing that if one company tolerates child labour, then this justifies any other company to do virtually the same. This lowest common denominator reasoning is simplistic and does not address the core issue, which is the previous and present conduct of Total in Burma.

## *IMPACT ON INTERNATIONAL ACTION AGAINST BURMA*

Furthermore, a withdrawal by Total can lead to the raising of corporate standards, indeed its continued presence in Burma is a brake on such developments : As has been contended, a withdrawal by Total will be very likely to result in a strengthening of the EU position. This may be very likely to lead to greater pressure on Burma from ASEAN. Once momentum has gathered, it may indeed be possible that the UN Security Council issues economic sanctions against Burma.

As was discussed in Part 1, there is a close relationship between Total and the French Government. More broadly, the continuing operations of large Western companies in a pariah regime often prevents the use of broad economic sanctions against that country. As has been discussed, 'constructive engagement' and investment-driven development have proved entirely ineffective in Burma due to the nature of the military regime and the seriousness of human rights violations perpetuated by them and their agents.

The time has come for more cogent multilateral action in relation to Burma, to ensure progress is made towards democracy (including the release of Daw Aung San Suu Kyi, the adoption of a democratic Constitution). Both at the level of private enterprise and international politics, decisive action must be taken. Total should choose to leave Burma, thus salvaging its corporate standing and encouraging the implementation of a more robust policy towards Burma. To hold to the indefensible position in Burma will only prolong the process and cause further damage to the Burmese people.

## WHAT CAN YOU DO ?

### *TELL TOTAL ABOUT YOUR CONCERNS : LETTER CAMPAIGN*

- As an individual, you can take an important role in this campaign by writing to Total, asking them to withdraw from Burma. Appendices 1 and 2 provide sample letters that can be sent to the CEO of Total, Mr Thierry Desmarest. If you send this letter we would be grateful if you could send us a copy of the correspondence you receive in response.
- You can also write to your political representatives to ensure that Burma is discussed in political and international fora and to pressure your representatives to take more robust action against Burma.
- You can also freely distribute this report and other information from the campaign website, to ensure as many people as possible are aware of the campaign. Stickers, posters and other campaign materials will be available shortly.
- You can also organise your own event to raise awareness about Total in Burma. You can also attend public events to be held in France by the coalition in the second half of 2005. If you would like to receive further information on these events or how you might be able to personally assist the coalition, please contact a coalition member organisation (details are listed below).

### **SHAREHOLDERS**

- Shareholders evidently have a special status in relation to the company and can use this status to raise questions about Total's activities in Burma, particularly in relation to the financial transparency of Total's activities, the litigation brought against Total and the plans for community regeneration and compensation. Shareholders can raise these questions privately, through directly corresponding with the company. Shareholders can also submit written questions to the General Assembly, which is held every year. During these meetings, shareholders can also ask questions directly to the company executives.

- Your ownership in the company is your stake in influencing the manner in which Total operates. Companies, when placed under sufficient pressure, will often answer and address the concerns expressed by their shareholders. Without shareholder support, a company has indeed no capital.

### **ETHICAL INVESTMENT FUNDS**

- Ethical investment funds should not include Total investments in their ethical investment products. These funds should tell investors about the reasons why Total is not included and encourage other ethical investment funds to remove Total from their portfolios or divest themselves of Total shares.
- Representatives of ethical investment funds should meet with Total to explain how Total fails to meet adequate ethical standards and to outline what the company could do to be re-included in the funds' investment products.

### **NON-GOVERNMENTAL ORGANISATIONS AND TRADE UNIONS**

Non-government organisations and trade unions can inform themselves and their members about the situation in Burma. These organisations are also very welcome to join the coalition and participate in the planned campaign activities. If you are interested in joining, please contact a coalition member on the details provided below.

## MEMBER CONTACT DETAILS

### ACTIONS BIRMANIE (BELGIUM)

50, Avenue de Fléron                      Tel : + 32 2 332 42 94  
B-1190 Brussels – Belgium

website : <http://www.birmanie.net/>

### AGIR ICI

104, rue Oberkampf                      Tel : + 33 1 56 98 24 40  
75011 Paris – France                      Fax : + 33 1 56 98 24 09

website : <http://www.agirici.org/index.php>

### FÉDÉRATION INTERNATIONALE DES LIGUES DES DROITS DE L'HOMME (FIDH) *INTERNATIONAL FEDERATION FOR HUMAN RIGHTS*

17, passage de la Main d'Or              Tel : + 33 1 43 55 25 18  
75011 Paris – France                      Fax : + 33 1 43 55 18 80

website: <http://www.fidh.org>

### FRANCE LIBERTÉS

22, rue de Milan                              Tel : + 33 1 53 25 10 40  
75009 Paris – France

website: <http://www.france-libertes.fr/>

INFO BIRMANIE

9, passage Dagorno  
75020 Paris – France

Tel/ fax : + 33 1 44 93 93 57

website : <http://www.info-birmanie.org>

JUSTICE ET SOLIDARITÉS MONDIALES

119, Bd de Montparnasse  
75006 Paris – France

website : <http://www.jsmdh.org/>

LIGUE DES DROITS DE L'HOMME

138, rue Marcadet  
75018 Paris – France

Tel : + 33 1 56 55 51 00

Fax : + 33 1 42 55 51 21

website : <http://www.ldh-france.org/>

SUD CHIMIE

6, rue Louis Blanc  
76100 Rouen - France

Tel : + 33 6 83 16 58 26

Fax : + 33 2 35 76 07 92

website : <http://pageperso.aol.fr/Lecteys/pages/0.html>



# NOTES

## EXECUTIVE SUMMARY

<sup>1</sup> **Total**, *Total in Myanmar : A Sustained Commitment*, Paris, 2003, p 31. See Part One : ‘*Business and dictatorship – investment, development and ‘constructive engagement’*’.

<sup>2</sup> The *Total E&P Myanmar Code of Conduct* has been applied for Total’s operations in Burma since 1995, however, the text was revised in 2004, to state more explicitly the obligations relating to Human rights, particularly forced labour.

## PART ONE

### CHAPTER 1 : THE SITUATION IN BURMA

<sup>3</sup> **United Nations Commission on Human Rights, 2005** : *Situation of human rights in Myanmar*, UN Doc. E/CN.4/2005-10, 11 April 2005.

<sup>4</sup> **ILO Commission of Inquiry** : *Forced Labour in Myanmar (Burma)*, July 1998. Report by the Commission of Inquiry appointed under article 26 of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29),

<http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar.htm>

For updated information on the practice of forced labour in Burma, please see CEACR 2004, ‘Observations Concerning ILO Convention No. 29, Forced Labour (1930) – Myanmar’

<http://webfusion.ilo.org/public/db/standards/normes/appl/>

See also ILO Press Release, 24 March 2005 (ILO/05/18).

See also Part One : ‘Renewal of the Measures of the International Labour Organisation (ILO)’.

<sup>5</sup> **Amnesty International**, Public Statement : Amnesty International’s Second Visit to Myanmar, 22 Dec. 2003, <http://web.amnesty.org/library/Index/ENGASA160372003?open&of=ENG-MMR>, ASA 16/037/2003

See also **International Federation for Human Rights, IFHR** *written intervention on Burma (Item 9 of the Agenda) – situation of Human rights in Myanmar*, 21 January 2005,

[http://www.fidh.org/article.php3?id\\_article=492](http://www.fidh.org/article.php3?id_article=492)

<sup>6</sup> **Global IDP Database**, *Burma : military regime continues to forcibly displace ethnic minorities in border areas*, 25 November 2004, [http://www.db.idpproject.org/Sites/idpSurvey.nsf/wCountries/Myanmar+\(Burma\)](http://www.db.idpproject.org/Sites/idpSurvey.nsf/wCountries/Myanmar+(Burma)) ‘Internal displacement’ has been defined in the *Introduction to the Guiding Principles on Internal Displacement*, UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998, as :

‘persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border’.

<sup>7</sup> **United Nations Development Programme**, *Human Development Report 2004 – Cultural Liberty in Today’s Diverse World*, <http://hdr.undp.org/reports/global/2004/>

<sup>8</sup> **World Health Organisation**, *The World Health Report 2005, make every woman and child count*,

<http://www.who.int/whr/2005/en/>

<sup>9</sup> Ibid.

<sup>10</sup> **International Federation of Free Trade Unions**, *Doing Business in or with Burma*, Brussels : CISL, January 2005, pp. 5-7.

<sup>11</sup> See Part One, Chapter 3.

<sup>12</sup> **International Federation for Human Rights**, ‘*IFHR written intervention on Burma (Item 9 of the Agenda) – situation of human rights in Myanmar*’, 21 January 2005,

[http://www.fidh.org/article.php3?id\\_article=492](http://www.fidh.org/article.php3?id_article=492)

See also **United Nations Commission on Human Rights, 2005**, *Situation of human rights in Myanmar*, UN Doc. E/CN.4/2005/L.29, 11 April 2005.

## CHAPTER 2 : TOTAL AND BUSINESS IN BURMA

<sup>13</sup> **Total Contract**, PSC, TOTAL-MOGE. 9 July 1992, p. 88 ; Memorandum of Understanding p. 403, copies held by Burma Campaign UK.

<sup>14</sup> **Save the Children UK**, *Beyond the Rhetoric – Measuring revenue transparency : company performance in the oil and gas industries*, 2005, Tableau 3, p. 17.

<sup>15</sup> **Assemblée nationale, Commission des affaires étrangères**, *Rapport de la Mission d'information parlementaire sur le rôle des compagnies pétrolières dans la politique internationale*, Rapport d'information n°1859, Tome I, <http://www.assemblee-nationale.fr/rap-info/i1859-01.asp>  
See also **Hawke, Bruce**, *How Much Does Rangoon Get From the Gas ?* 2004, 12 (10) The Irrawaddy 11.

<sup>16</sup> **Total Contract**, PSC, TOTAL-MOGE. 9 July 1992, p. 39.

<sup>17</sup> Ibid, p. 57.

<sup>18</sup> Side Letter, MOGE, 9 July 1992, copy held by Burma Campaign UK.

<sup>19</sup> **Total Contract**, PSC, TOTAL-MOGE. 9 July 1992, p. 56.

<sup>20</sup> Ibid, p. 58.

<sup>21</sup> Ibid, p. 66.

<sup>22</sup> Ibid, p. 77. Also referred to in the *Memorandum of Understanding*, p. 133.

<sup>23</sup> **Total**, *Total in Myanmar : A Sustained Commitment*, Paris, 2003, <http://birmanie.total.com/>

<sup>24</sup> **Bray, John**, *Myanmar : Companies, NGOs and the New Diplomacy*, 2001, Royal Institute for International Affairs, Energy and Environment Program, briefing paper, New Series No. 24, October 2001  
See also **Economist Intelligence Unit**, *Burma Country Report 1996*.

<sup>25</sup> **Impe, Anne-Marie**, *Silence TOTAL*, Vivant Univers, n°452 (2001). **Economist Intelligence Unit and Burma Country Report 1996** also give an upper estimate of \$400 million.  
See also **Hawke, Bruce**, *How Much Does Rangoon Get From the Gas ?* 2004, 12(10) The Irrawaddy p. 11.

<sup>26</sup> **Economist Intelligence Unit**, *Communication to Burma Campaign UK*, December 2004.

<sup>27</sup> **Oil and Gas Journal**, 4 September 2003

<sup>28</sup> **Economist Intelligence Unit**, *Burma Country Report*, May 2005, p. 17.

<sup>29</sup> *Business Times*, Singapore, 21 February 2003.

<sup>30</sup> Ibid.

<sup>31</sup> **European Commission Report**, *The EU's relations with Burma/Myanmar*, [http://europa.eu.int/comm/external\\_relations/myanmar/intro/](http://europa.eu.int/comm/external_relations/myanmar/intro/)

See also the Burmese government's website, <http://www.myanmar.gov.mm/Perspective/persp1998/1-98/dis1-98.htm>

<sup>32</sup> **Economist Intelligence Unit**, *Burma Country Report*, May 2005, p. 5.

<sup>33</sup> Broadly, this can be defined as a deposit of natural resources that it is determined, both geologically and economically viable to exploit. Definitions of 'proven' and 'recoverable' will depend on a wide range of indexes, based on, for example, the purity of the deposit and its physical location, taking into account the estimated cost of exploitation.

<sup>34</sup> **Economist Intelligence Unit**, *Burma Country Report*, August 2003

<sup>35</sup> See **Tonkin, Derek**, *Les sociétés occidentales doivent rester en Birmanie*, Le Monde, 9 April 2005

<sup>36</sup> **McCarty, Adam**, *Birmanie/Myanmar : Reconciliation without Capitulation (a critique of the NBR report)*, Mekong Economists, Hanoi, 2004.

<sup>37</sup> The Ministry of Defence is likely to account for a significant proportion of the central government's consumption of imported goods and services, without this being specifically recorded in the national accounts. See **Selth, Andrew**, *Burma's Armed Forces: Power without Glory*, EastBridge, 2001, pp. 136-137.

<sup>38</sup> Understood as the development of relations with a government, despite reservations regarding its record of human rights violations, with the aim of promoting, through dialogue and cooperation, progress in the area of human rights protection.

<sup>39</sup> **Robertson, Philip**, *Sanctions are Working in Burma - Online Commentary*, 26 August 2003, Irrawaddy, <http://www.irrawaddy.org/com/2003/com31.html>

<sup>40</sup> **International Federation of Free Trade Unions**, *Doing Business in or with Burma*, Brussels, CISL, January 2005, pp. 3-7.

<sup>41</sup> *Ibid*, p. 5.

<sup>42</sup> See [http://burma.total.com/en/engagement/p\\_3\\_2.htm](http://burma.total.com/en/engagement/p_3_2.htm)

<sup>43</sup> **Total Contract**, PSC, TOTAL-MOGE. 9 July 1992, p. 85.

<sup>44</sup> **Sealth, Andrew**, *Burma's Armed Forces : Power without Glory*, Eastbridge, 2001, pp. 77-79.

<sup>45</sup> **International Federation of Free Trade Unions**, *Doing Business in or with Burma*, Brussels, CISL, January 2005, pp 18-20.  
Figures from **UNICEF** cited in **Oehlers, Alfred and Alice Khin Saw Win**, 'The Crisis in Burma's Public Health System' November 2003, Unpublished document, copy held by **Burma Campaign UK**.

<sup>46</sup> **Burma Campaign UK**, *TOTAL Oil : Fuelling the Oppression in Burma*, London, 2005, pp. 25-26.

<sup>47</sup> Communication between **Burma Campaign UK** and **Francis Christophe**

<sup>48</sup> **Burma Campaign UK**, *TOTAL Oil: Fuelling the Oppression in Burma*, London, 2005, p. 26  
See references cited in that report, **Francois Casanier**, Digipresse, Paris, November 5, 1996 ; AFP Warsaw January 4, 2001 and 'Setraco and the Burmagate', January 2001, [http://www.burmanet.org/bnn\\_archives/1996/bnn1196n563.txt](http://www.burmanet.org/bnn_archives/1996/bnn1196n563.txt)

<sup>49</sup> **Bray, John**, 'Myanmar : companies, NGOs and the New Diplomacy', Royal Institute for International Affairs, Energy and Environment Program, briefing paper, New Series No. 24, October 2001

<sup>50</sup> **UNICEF**, *At a Glance: Myanmar*, <http://www.unicef.org/infobycountry/myanmar.html>

<sup>51</sup> **World Health Organisation**, *The World Health Report 2005, make every woman and child count*, <http://www.who.int/whr/2005/en/>

<sup>52</sup> **United Nations Committee on the Rights of the Child**, CRC/C/15/Add.237, 4 June 2004, para. 19.

<sup>53</sup> **United Nations Committee on the Rights of the Child**, CRC/C/15/Add.69, 24 January 1997, para. 12.

### CHAPTER 3: HUMAN RIGHTS VIOLATIONS DURING THE CONSTRUCTION OF THE YADANA PIPELINE AND THE RESPONSE OF TOTAL

<sup>54</sup> **Assemblée nationale, Commission des affaires étrangères**, *Rapport de la Mission d'information parlementaire sur le rôle des compagnies pétrolières dans la politique internationale*, Rapport d'information n°1859 du 13 octobre 1999, Tome I, <http://www.reseauvoltaire.net/imprimer8490.html>

**International Federation for Human Rights**, *La Birmanie, TOTAL et les droits de l'Homme : dissection d'un chantier*, Paris, 1996

**EarthRights International and South Asia Information Network**, *Total Denial*, Bangkok, 1996

**EarthRights International**, *Total Denial Continues*, Bangkok, 2000

<sup>55</sup> Frequently used argument on the Total official website and in Total public relations documents : ‘Unfortunately, the world’s oil and gas reserves are not necessarily located in democracies, as a glance at a map shows’, <http://birmanie.total.com/>

<sup>56</sup> **EarthRights International**, data filed by **Burma Campaign UK**.  
See also **EarthRights International** and **South Asia Information Network**, *Total Denial*, Bangkok, 1996.

<sup>57</sup> **Total**, *Total in Myanmar: A Sustained Commitment*, Paris, 2003, p. 37.

<sup>58</sup> Security personnel were to be ‘made available from resources under MOGE’s control’, **Total Contract**, PSC – TOTAL-MOGE, 9 July 1992, p. 70.

<sup>59</sup> US Department of State Unclassified cable, US Embassy, Rangoon, Cable 002067.

<sup>60</sup> ‘Military presence in the region was reinforced to ensure protection of the area’, Mr. Thierry Desmarest, CEO of Total, in **Assemblée Nationale, Commission des affaires étrangères, Rapport de la Mission d’information parlementaire sur le rôle des compagnies pétrolières dans la politique internationale**, Rapport d’information n°1859, Tome I, <http://www.reseauvoltaire.net/imprimer8490.html>  
See also **Provost Dames & Moore**, *Yetagun Development Project Environmental and Cultural Impact Assessment and Socio-Cultural Report*, August 1996.

<sup>61</sup> **Total**, *Total in Myanmar: A Sustained Commitment*, Paris, 2003, p. 36.

<sup>62</sup> **EarthRights International**, *Fueling Abuse*, Bangkok, 2002 and **EarthRights International**, *Total Denial Continues*, Bangkok, 2000.

<sup>63</sup> **Total**, *Total in Myanmar: A Sustained Commitment*, Paris, 2003, p. 36.

<sup>64</sup> **Canal Plus**, *90 Minutes*, 2000 ; **EarthRights International**, *Total Denial Continues*, Bangkok, 2000, p. 82.

<sup>65</sup> **Assemblée Nationale, Commission des affaires étrangères, Rapport de la Mission d’information parlementaire sur le rôle des compagnies pétrolières dans la politique internationale**, Rapport d’information n°1859, Tome I, <http://www.reseauvoltaire.net/imprimer8490.html>, English version available at Info Birmanie.

<sup>66</sup> **Doe v. Unocal Corp.**, 110 F. Supp. 2d 1294 (C.D. Cal 2000).

<sup>67</sup> **Burma Campaign UK**, *TOTAL Oil : Fuelling the Oppression in Burma*, London, 2005, p 17

<sup>68</sup> **EarthRights International**, *Total Denial Continues*, Bangkok, 2000, p. 39.

<sup>69</sup> « Myanmar Gas for Ratchburi Power Plant », *Bangkok Post*, 17 April 1995.

<sup>70</sup> **EarthRights International**, *Fueling Abuse*, Bangkok, 2002 ; **Amnesty International**, *Myanmar – Ethnic Minorities : Targets of Oppression*, ASA 16/014/2001, 13 June 2001.

<sup>71</sup> **Total**, *Total in Myanmar : A Sustained Commitment*, Paris, 2003, p 36.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid. See also **Total**, *Corporate Social Responsibility Report*, Paris 2003 : ‘When a case of forced labour is brought to our attention, we make every effort to offer compensation’, Jean-Pierre Cordier, President of Total’s ethics Committee.

<sup>74</sup> **Kouchner, Bernard**, *Report on a trip to Myanmar and the discovery of a silent industry*, BK Conseil, 29 September 2003, <http://burma.total.com/en/controversie/p.44.htm>  
This report entirely sidelines the question of human rights, denies the use of forced labour, conflates the protection of individual rights and the need for economic development and public health projects.  
See also the reports of **The Collaborative for Development Action (CDA)**, cited in **Total**, *Total in Myanmar : A Sustained Commitment*, Paris, 2003, p 31.

<sup>75</sup> **Total**, *The Yadana Gas Development project*, November 1995 edition,  
[http://www.burmacampaign.org.uk/total\\_report.html](http://www.burmacampaign.org.uk/total_report.html)  
See also the July 1996 version of this document, in which one of the few changes was the removal of this photograph.

<sup>76</sup> **Assemblée nationale, Commission des affaires étrangères, Rapport de la Mission d’information parlementaire sur le rôle des compagnies pétrolières dans le politique internationale**, Rapport d’information n°1859, Tome I, <http://www.assemblee-nationale.fr/rap-info/i1859-01.asp>

<sup>77</sup> **Lifsher, Marc**, 'Unocal Settles Human Rights Lawsuit Over Alleged Abuses at Myanmar Pipeline', *Los Angeles Times*, 22 March 2005.

<sup>78</sup> **Association Sherpa**, *Report*, June 2004.

<sup>79</sup> Ibid.

<sup>80</sup> **Actions Birmanie**, 'Civil action for Crimes against humanity and complicity in Crimes against humanity committed in Burma (Myanmar)', lodged on Thursday, April 25, 2002 at the Brussels magistrates court, against X, the company TOTALFINAELF S.A., Thierry Desmarest and Herve Madéo, 26 April 2002, [http://www.birmanie.net/birma/redir.html?menu11.html&ab112\\_ab290502.html](http://www.birmanie.net/birma/redir.html?menu11.html&ab112_ab290502.html)

<sup>81</sup> **Actions Birmanie**, 'La Cour d'arbitrage donne raison aux plaignants birmans - Feu vert au juge belge pour une reprise de l'instruction ouverte il y a trois ans contre l'entreprise Total du chef de complicité de crimes contre l'humanité commis en Birmanie', Press release, 13 April 2005.

<sup>82</sup> **EarthRights International**, *Doe v. UNOCAL*, <http://earthrights.org/unocal/index.shtml>

<sup>83</sup> **Lifsher, Marc**, 'Unocal Settles Human Rights Lawsuit Over Alleged Abuses at Myanmar Pipeline', *Los Angeles Times*, 22 March 2005.

#### CHAPTER 4 : TOTAL, FRENCH FOREIGN POLICY AND THE IMPACT ON INTERNATIONAL ACTION

<sup>84</sup> The adoption of a EU Common Position requires a consensus ; hence, member States have a de facto veto on measures which they can use in case they disagree with the Position.

<sup>85</sup> **Yergin, Daniel**, *The Prize*, Pocket Books, London, 1991, p. 183.

<sup>86</sup> **Burma Campaign UK**, *TOTAL Oil : Fuelling the Oppression in Burma*, London, 2005, p. 27.

<sup>87</sup> **The Economist**, 'It's not easy being French', 3 April 2003, [http://www.economist.com/people/displayStory.cfm?story\\_id=1682663](http://www.economist.com/people/displayStory.cfm?story_id=1682663)

<sup>88</sup> **Christophe, Francis**, *Birmanie : Mode d'emploi*, Éditions Balland, Paris, 2001.

<sup>89</sup> **Boucaud, André and Boucaud, Louis**, 'A paradoxical alliance : Thailand taps Burma's rivers', *Le Monde Diplomatique*, February 2000.

<sup>90</sup> **Burma Campaign UK**, *TOTAL Oil : Fuelling the Oppression in Burma*, London, 2005, p. 37.

<sup>91</sup> Conversations between **Burma Campaign UK** and EU diplomats.

<sup>92</sup> This can be compared with the EU Council Position in 2003, which had imposed travel bans on members of the military junta and other associated groups, freezing of personal assets and a ban on the provision of training or technical assistance relating to the manufacture and use of arms. See **Council of the European Union**, *Council Common Position 2003/297/CSFP* of 29 April 2003, *Official Journal of the European Union*, L 106, 29.04.2003.

See also the position of the European Parliament, which has called for the substantial strengthening of the EU Common Position, such as including all Burmese state owned enterprises (particularly MOGE) in the list of prohibited companies and an extension of the ban to any business dealings with these entities, a strong position on the need for improvements in the National Convention process and the potential Burmese chairmanship of ASEAN. The European Parliament resolution of 1998 also called for foreign companies that have invested in Burma to freeze their investments until democracy is secured. See **European Parliament**, *Resolution on human rights violations in Burma*, 16 July 1998 and **European Parliament**, *Human Rights in Burma/Myanmar*, P6\_TA-PROV(2005)0816, 12 May 2005.

<sup>93</sup> **Council of the European Union**, *Council Common Position, 2004/730/PESC, 25 October 2004*, *Official Journal of the European Union*, L 323/17, 26.10.2004.

<sup>94</sup> **Council of the European Union**, *Council Common Position 2005/149/CFSP* of 21 February 2005 amending Common Position 2004/423/CFSP renewing restrictive measures against Burma/Myanmar, *Official Journal of the European Union*, L 49/37, 22.02.2005.

<sup>95</sup> **Council of the European Union**, *Council Common Position 2005/340/CFSP* of 25 April 2005 extending restrictive measures against Burma/Myanmar and amending Common Position 2004/423/CFSP, *Official Journal of the European Union*, L 108/88, 25.04.2005.

See also : [http://europa.eu.int/comm/external\\_relations/cfsp/sanctions/measures.htm](http://europa.eu.int/comm/external_relations/cfsp/sanctions/measures.htm)

<sup>96</sup> **Reuters**, 'Myanmar may give up ASEAN chair say diplomats', 11 April 2005.

<sup>97</sup> This was the first time that Article 33 of the ILO Constitution has been used. The resolution was intended as an action to secure compliance with the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of its obligations in respect of the Forced Labour Convention, 1930 (No. 29).

<sup>98</sup> **ILO**, Press Release, 'Burma/Myanmar at the ILO Governing Body, 24 March 2005, BIT/05/18, <http://www.ilo.org/public/french/bureau/inf/pr/2005/18.htm>

<sup>99</sup> **ILO**, Press Release, 'International Labour Conference adopts Resolution targeting forced labour in Myanmar (Burma)', 14 June 2000, BIT/00/27, <http://www.ilo.org/public/french/bureau/inf/pr/2000/27.htm>

<sup>100</sup> Similar action has been taken by the Dutch Government, which has asked Dutch companies and individuals not to invest in Burma, and in the case of active economic interests, that Dutch companies and individuals review these activities : <http://www.minbuza.nl>.

<sup>101</sup> **United Nations Sub-Commission for the promotion and protection of human rights**, *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003.

<sup>102</sup> **Amnesty International**, *The UN Human Rights Norms for Business : Towards Legal Accountability*, IOR 42/002/2004, London, 2004, p. 6.

<sup>103</sup> **United Nations Sub-Commission for the promotion and protection of human rights**, *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, Section A. Note also the specific reference to forced labour in Section D.

<sup>104</sup> **United Nations Sub-Commission for the promotion and protection of human rights**, *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, Section E, paragraph 11.

<sup>105</sup> **Thorsen, Sune Skadegard**, 'Critical Perspectives on Oil and Human Rights', 2004, 2(4) Oil, Gas & Energy Law Intelligence 1.

<sup>106</sup> **Amnesty International**, *The UN Human Rights Norms for Business: Towards Legal Accountability*, AI Index: IOR 42/002/2004, London, 2004, p 11.

See also **United Nations Sub-Commission for the promotion and protection of human rights**, *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003, Section H.

## PART TWO

<sup>107</sup> For the current list of organisations involved in the international campaign, see <http://www.burmacampaign.co.uk>

<sup>108</sup> **International Federation for Human Rights**, *La Birmanie, TOTAL et les droits de l'Homme : dissection d'un chantier*, Paris, 1996.

<sup>109</sup> Available list of all transnational corporations who withdrew their operations from Burma : [http://www.burmacampaign.org.uk/dirty\\_list/clean\\_list.html](http://www.burmacampaign.org.uk/dirty_list/clean_list.html)

<sup>110</sup> **Total**, 'Total's response to the correspondence from Burma Campaign UK and various other interested organisations' : [http://burma.total.com/fr/news/p\\_5\\_1.htm](http://burma.total.com/fr/news/p_5_1.htm)

<sup>111</sup> See [http://burma.total.com/en/publications/ethical\\_guidelines.pdf](http://burma.total.com/en/publications/ethical_guidelines.pdf) and [http://burma.total.com/en/gazier/p\\_2\\_1.htm](http://burma.total.com/en/gazier/p_2_1.htm).

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**Christophe, Francis, *La dictature du pavot*, Paris, 1998**

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## CAMPAIGN LETTERS

## Appendix 1 : French version

[Date]

**Objet : lettre de protestation contre la présence de Total en Birmanie**

À Monsieur Thierry DESMAREST, Président directeur général,  
Total SA  
2, place de la Coupole - La Défense 6  
92400 Courbevoie

Monsieur le Président,

C'est en tant qu'adhérent de la Ligue des droits de l'Homme [*ou insérer autre appartenance*], organisation membre du collectif « Total pollue la démocratie Stoppons le TOTALitarisme en Birmanie », que je me permets de vous adresser ce courrier et de vous demander de cesser tout soutien à la junte birmane.

En juin 2000, fait sans précédent dans son histoire, la conférence annuelle de l'Organisation internationale du travail (OIT) adoptait une résolution demandant aux mandants de l'organisation, y compris les entreprises, de réexaminer leurs relations avec la Birmanie afin de ne pas contribuer à la perpétuation du recours généralisé et systématique au travail forcé.

En 1996, Madame Aung San Suu Kyi déclarait que l'entreprise que vous dirigez : « est le premier soutien du régime militaire birman ». Cette situation n'en finit pas de perdurer et, selon l'hebdomadaire anglais The Economist, c'est une rente annuelle de 450 millions de dollars que Total verse aux généraux birmans en contre partie de l'exploitation du gaz que recèle le sous-sol de ce pays. Cet argent, le peuple birman n'en voit pas les bienfaits sauf à devenir chaque jour un peu plus la cible de militaires de plus en plus et de mieux en mieux armés, de plus en plus corrompus. L'entreprise que vous dirigez bénéficie, en revanche, de sa collaboration avec un régime que chacun s'accorde à considérer comme insupportable.

C'est pourquoi je vous demande instamment de réviser votre point de vue concernant la présence de Total en Birmanie et d'engager un retrait de ce pays.

Veillez agréer, Monsieur le Président directeur général, l'expression de ma considération distinguée.

.....

**Copie au député de ma circonscription.  
Copie à la Présidence de la République**

Notez : L'adresse de Total est indiquée ci-dessus. Les adresses de l'Assemblée nationale et de l'Élysée sont :

ASSEMBLÉE NATIONALE  
M. ou Mme [nom]  
Assemblée nationale Palais Bourbon  
126 rue de l'Université, 75700 Paris

PRÉSIDENTE DE LA RÉPUBLIQUE  
Monsieur le Président de la République  
Palais de l'Élysée  
55 rue du Faubourg-Saint-Honoré, 75800 Paris



## CAMPAIGN LETTERS

## Appendix 2 : English version

[Date]

À Monsieur Thierry DESMAREST, Président directeur général,  
Total SA  
2, place de la Coupole - La Défense 6  
92400 Courbevoie

**Letter objecting to the presence of Total in Burma**

Dear Mr Desmarest,

As an individual who is concerned about human rights and who shares the views of the Total pollue la démocratie – Stoppons le TOTALitarisme en Birmanie coalition, I write to you to ask that Total cease all support of the Burmese military junta.

In June 2000, for the first time in its history, the Annual Conference of the International Labour Organisation (ILO) adopted a resolution asking that members of the Organisation, including companies, reexamine their relations with Burma to ensure that they do not contribute to the perpetuation of the widespread and systematic use of forced labour.

In 1996, Daw Aung San Suu Kyi stated that the company that you manage : ‘is the main supporter of the Burmese military regime’. This support continues and shows no sign of abatement, according to The Economist, an annual revenues of US\$450 millions is received by the junta in exchange for the exploitation of the gas reserves which form a large part of the wealth of the country. The Burmese people do not see the benefits of this income, except that each day they become more oppressed and targeted by military that are increasingly well armed, and increasingly corrupt. All the while, the company you manage benefits from its collaboration with a regime that the vast majority of people consider to be completely unacceptable.

For these reasons, I ask that Total immediately reconsiders its position regarding its presence in Burma and commits to a withdrawal from this country.

Yours faithfully,

.....  
**Copy to my political representative.  
Copy to the President of the French Republic**

Please note : Total’s adress is mentioned above. Both the adresses for the *Assemblée nationale* and the *Élysée* respectively are :

ASSEMBLÉE NATIONALE  
M. ou Mme [nom]  
Assemblée nationale Palais Bourbon  
126 rue de l’Université, 75700 Paris

PRÉSIDENTE DE LA RÉPUBLIQUE  
Monsieur le Président de la République  
Palais de l’Élysée  
55 rue du Faubourg-Saint-Honoré, 75800 Paris

## MAPS AND STATISTICS

### BURMA :

Land area : 676 552 square kilometres  
Population : 50 million

There are approximately 135 ethnic groups in Burma.

### THE SOUTHERN PART OF BURMA :

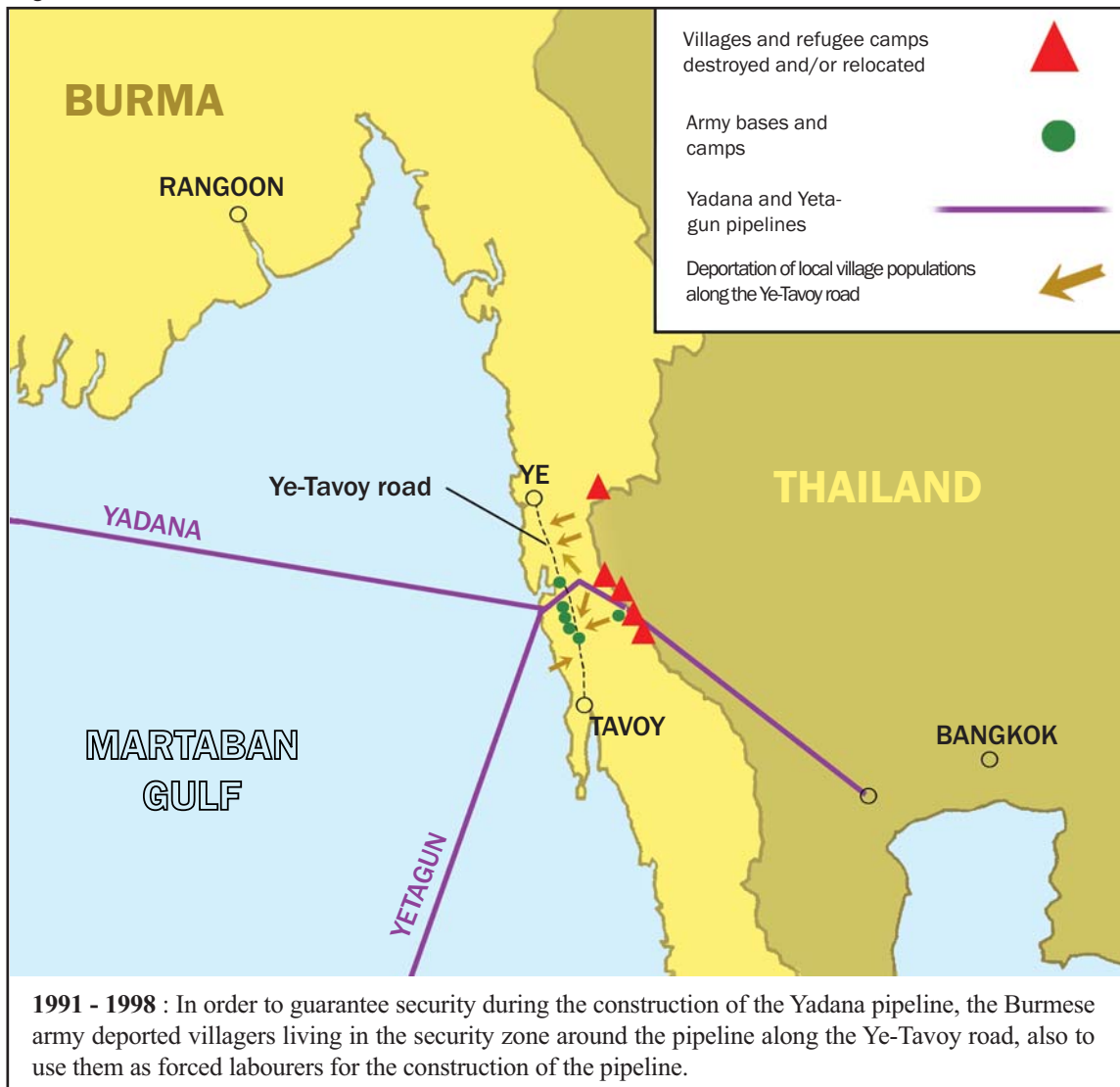
► *This region is rich in natural resources but is extremely instable politically : persecuted ethnic and religious groups in the Karen and Mon states and the military junta have been engaged in armed conflict.*

**Offshore gas extraction platforms (See map) :**

**Yadana** ; main operator : Total

**Yetagun** ; main operator : Petronas (Malaysia)

Information drawn from **EarthRights International**, *Total denial continues*, Bangkok, 2000



## **Ligue des Droits de l'Homme (LDH)**

LDH is the main French human rights non-governmental organisation, established in 1898. LDH is generalist, non-partisan, secular and independent of all political parties and has 350 local member groups throughout French territory that undertake a broad range of activities on national and international human rights issues.

### **Info Birmanie**

Info Birmanie is a French non-governmental organisation, established in 1996, that collects, analyses and disseminates information about the current situation in Burma and supports efforts towards the restoration of democratic rule.

## **Fédération Internationale des Ligues des droits de l'Homme International Federation for Human Rights (FIDH)**

Established in 1922, FIDH is one of the oldest broad-mandate international human rights organisations in the world. FIDH is federation of 141 human rights organisations, located in all regions of the world.

### **France Libertés**

Established in 1986, France Libertés is a advocacy and lobbying non-governmental organisation, committed to denouncing human rights violations, assisting the oppressed and impoverished people and also addressing the broader causes of and solutions to human and ecological problems through coordinated local, national and international action.

### **Actions Birmanie (Belgium)**

Actions Birmanie (Belgique) is a Belgian voluntary organisation, that is committed to the restoration of the democratic rights of the Burmese population oppressed by the military dictatorship.

### **SUD Chimie**

SUD Chimie is a trade union that protects the interests of workers in the chemical, petroleum and pharmaceutical industries.

### **Agir Ici**

Agir Ici is a French non-governmental organisation that is an Observer Member of Oxfam International that seeks to address poverty and injustice throughout the world by informing and mobilising citizens, pressuring decision makers and proposing concrete solutions.

### **Justice et Solidarités Mondiales (JSM)**

JSM is a Christian non-governmental organisation that takes action to protect liberty of conscience and provides assistance to victims of repression, children in need and victims of catastrophes worldwide.