

# ENERGY INSECURITY

How Total, Chevron, and PTTEP Contribute to Human Rights Violations,  
Financial Secrecy, and Nuclear Proliferation in Burma (Myanmar)

A Report by EarthRights International, July 2010



EARTHRIGHTS INTERNATIONAL



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## ABOUT EARTHRIGHTS INTERNATIONAL

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

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

Most importantly, EarthRights International acknowledges the people of Burma. Many individuals from Burma took great risks to offer their testimony or provide insight and information, for no reward other than participating in the truth-telling process. Their names and other identifying information have been kept confidential for their own safety, but in time the restoration of respect for human rights and the environment in Burma will be theirs.

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# Methodology

EarthRights International began documenting human rights abuses connected to natural gas projects in Burma in 1994, collecting witness and victim testimony in the country and on the Thailand-Burma border. This report draws primarily on original research and investigations by the organization from 2009-2010 in Burma and along the Thailand-Burma border. Numerous field reports and interviews were conducted with current residents and recent refugees from the Yadana pipeline area, representatives of the International Labour Organization (ILO), and with shareholders and investors in oil companies operating in Burma. This report also draws on several hundred other pertinent interviews and field reports conducted in Burma and on its borders from 1994-2010.

Due to the lack of freedom of information in Burma and the lack of voluntary revenue transparency by Total, Chevron, and PTTEP, gas-related revenue calculations in this report are estimates based on publically available sources, including the companies' contracts and other supporting information, pieced together by EarthRights International.

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

EarthRights International has over 15 years of experience documenting human rights abuses in Burma, reflected in previous reports and publications including *Total Impact 2.0* (2009), *Total Impact* (2009), *Getting It Wrong* (2009), *Complaint to the South Korean National Contact Point* (2008), *The Human Cost of Energy* (2008), *Total Denial Continues* (first edition 2000; updated second edition 2003), *More of the Same (Supplemental Report)* (2001), and *Total Denial* (1996). These and other publications that informed this report are available at [www.earthrights.org/publications](http://www.earthrights.org/publications).

# Executive Summary

*The oil companies Total (France), Chevron (US), and PTT Exploration & Production (PTTEP) (Thailand) have failed to stop human rights abuses occurring in relation to their natural gas project in Burma (Myanmar), abuses for which the companies bear responsibility and remain vulnerable to liability.<sup>1</sup> The companies are financing the world's newest nuclear threat with multi-billion dollar payments, and have refused to practice financial transparency, despite calls by the Burmese and international community. As Burma braces itself for its first elections in 20 years, elections widely discredited as unfair, it is not too late for the companies to change course.*

In a remote, ethnically diverse area of southern Burma, Total, Chevron, and PTT Exploration & Production (PTTEP) partner with the Burmese military regime's state oil company (the Myanma Oil and Gas Enterprise, or MOGE) on one of the world's most controversial development projects: The Yadana Gas Project. Yadana, named for the Burmese word for "treasure," brings gas from a deepwater offshore field to a 60 kilometer (40 mile) onshore natural gas pipeline across Burmese territory to Thailand, passing through an environmentally sensitive region traditionally controlled and administered by ethnic Karen, Mon, and Tavoyan communities. Most of the Yadana gas is bought by the Petroleum Authority of Thailand (PTT); relatively little of the gas or the revenue it generates is used to benefit the people of Burma or the country's own energy security.<sup>2</sup>

The construction, maintenance, and operation of the Yadana pipeline ushered the Burmese Army into the pipeline area, leading to severe human rights abuses against local people and causing unnecessary, adverse environmental impacts in the area. Income from the Yadana Project has been a financial lifeline for the country's oppressive ruling junta, thus fostering harmful political outcomes that affect the entire country. Despite Total's efforts to improve local livelihoods through an ambitious socio-economic program, the companies' pipeline project has come to exemplify a development model that fails to benefit the least advantaged citizens, leads directly to abuses they suffer, and contributes to authoritarian rule that now threatens to re-order the regional strategic balance.

Locally, EarthRights International has repeatedly documented violations of villagers' human and environmental rights caused by the Yadana pipeline project, most recently in two 2009 reports, *Total Impact* and *Getting it Wrong*.<sup>3</sup> In addition to the companies' complicity in the abuses covered in the reports,

EarthRights International has since documented even more recent examples of appalling human rights abuses against local villagers committed by pipeline security forces, including extrajudicial killings, forced labor, and uncompensated land confiscations. These abuses, dating from late 2009, are detailed in this report.

Along with the localized human rights abuses within the pipeline corridor and its surrounding areas, the Yadana Project has played an enormously significant role in financially supporting the Burmese military regime<sup>4</sup> – the same regime that is suspected by the UN and others of committing crimes against humanity,<sup>5</sup> and that is now under international scrutiny for implementing an illegal, expensive, and clandestine nuclear weapons program while participating in illicit military trade with North Korea.<sup>6</sup>

In 2009, EarthRights International calculated that from 2000-2008 the Yadana Project had generated US \$7.58 billion in revenue, and that a significant portion of that money went directly to the Burmese junta, a claim the companies have never denied.<sup>7</sup> In the same report, EarthRights International exposed that portions of this revenue found their way into private bank accounts in two of Singapore's largest offshore banks, the Overseas Chinese Banking Corporation (OCBC) and DBS Group; these accounts could be used for many purposes, including the illicit acquisition of nuclear technology and ballistic weaponry.<sup>8</sup> Unsurprisingly, both banks denied the allegation.<sup>9</sup>

This report presents new gas revenue calculations which suggest that from 1998-2009, the Yadana Project generated a total of over US \$9 billion—over half of which, about US \$4.6 billion, went directly to the Burmese military regime. The project is widely regarded as the single largest official source of income for the regime. The new calculations in this report are based on newly considered documents admitted into evidence at the trial of the *Doe v. Unocal* lawsuit; the case was brought against Unocal Corp., one of the original Yadana partners that is now part of Chevron, by victims of pipeline abuses. The case was settled confidentially in 2005.

While EarthRights International strives to continually improve the accuracy of the Yadana Project revenue figures, the best figures would be those provided by the corporate partners themselves. On April 27, 2010, EarthRights International, together with an international group of over 160 nongovernmental organizations (NGOs), scholars, investment firms, political figures, and labor unions, urged Total,

Chevron, and PTTEP to practice complete revenue transparency in Burma and to publish details of their last two decades of payments to the corrupt military rulers of the impoverished country.<sup>10</sup>

PTTEP failed even to acknowledge the transparency initiative. On May 21 and May 24, 2010, respectively, Total and Chevron responded with similar obstinacy and misrepresentations that have come to characterize their partnership with Burma's ruling State Peace and Development Council (SPDC). In written statements submitted to the Business and Human Rights Resource Centre, Total and Chevron explicitly refused to practice financial transparency in Burma.<sup>11</sup>

However, the companies curiously cited inconsistent reasons for maintaining their fiscal secrecy in Burma. Chevron claimed it is contractually bound to secrecy, while Total simply implied the Burmese regime might be opposed to its transparency. This report parses and clarifies the companies' inconsistent public and private claims with respect to their legal ability to practice transparency in Burma and their overall regard for corporate responsibility. It also explains the inconsistency in the companies' claim that publishing their payments to the junta would forfeit a rightful competitive advantage – the same companies have elsewhere claimed publicly that revenue transparency improves their competitive advantage and is in their fundamental interest, not against it.<sup>12</sup>

With regard to the human rights impacts of the pipeline, EarthRights International would like to report that progress is being made on the abuses associated with the Yadana Project. Since releasing our latest reports in 2009, third parties have confirmed to EarthRights International that Total has in principle agreed to cooperate with the International Labour Organization (ILO) to facilitate local complaints of forced labor to the ILO complaints mechanism, per EarthRights International's 2009 recommendation. This is very reassuring, and represents a positive step for Total.

However, research presented in this report indicates that, since agreeing to cooperate with the ILO in late 2009, Total has failed to facilitate even one local complaint of forced labor to the ILO.<sup>13</sup> This fact was confirmed by the ILO in Burma, which has never received a complaint of forced labor from the pipeline area, let alone in the last year.<sup>14</sup> Instead, EarthRights International has documented that Total has recently provided direct financial compensation to villagers who have been subjected to forced labor in connection to their pipeline, with no direct involvement of the

ILO or its complaints mechanism. While villagers should indeed be compensated for their labor, this act of payment is an acknowledgement of the company's responsibility for the violation. It also demonstrates an inadequate access to justice for the people of the pipeline region, who are dependent in part on the goodwill of a foreign corporation to receive any remedy, however insufficient. Ideally, pipeline-area residents would be able to determine for themselves what type of justice they would prefer to seek, without threats of persecution or intimidation and without the biased handling of a multinational oil company.

EarthRights International is not advocating for Total, Chevron, or PTTEP to leave Burma, but rather is advocating for access to justice for local victims of human rights violations. EarthRights International is principally concerned with preventing any more human rights violations against local people affected by the project, with the genuine improvement of the livelihoods of the people of Burma, and with ensuring that Burma's natural resource revenues are managed responsibly and benefit the people, particularly the country's least advantaged citizens. EarthRights International also prioritizes holding companies legally accountable for instances of abuses in which the companies are complicit. Total and Chevron are both vulnerable to legal liability for any number of abuses by pipeline security forces against local people. The companies could at present be sued by Burmese villagers in their home states, just as Chevron's predecessor Unocal was sued.

Total, Chevron, and PTTEP have thus far refused to implement many of the recommendations of EarthRights International and other stakeholders, but it is not too late for the companies to change course. We urge Total, Chevron, and PTTEP to heed the realistic and reasonable recommendations in this report.



# Chapter I: Continuing Abuses: Human Rights Violations and the Yadana and Pipeline, 2009-2010

“[T]here is a pattern of gross and systematic violation of human rights [in Burma] which has been in place for many years and still continues. Given the extent and persistence of the problem, and the lack of accountability, there is an indication that those human rights violations are the result of a State policy, originating from decisions by authorities in the executive, military and judiciary at all levels.”<sup>15</sup>

- Tomás Ojea Quintana, UN Special Rapporteur on the situation of human rights in Myanmar, March 2010

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

- Local resident, Michauglaung Village, 2009<sup>16</sup>

EarthRights International has collected information from inside Burma since the early 1990s that clearly shows a pattern of serious and widespread abuses associated with large-scale, extractive development projects, particularly in the country’s ethnic areas. Forced labor, killings, and other abuses are committed by the Burma Army providing protection for these projects, related personnel, and infrastructure. EarthRights International has also presented evidence that large-scale extraction projects cannot proceed in Burma without the direct involvement of Burma’s state security forces and that this involvement *per se* leads to widespread and systematic human rights abuses.<sup>17</sup>

EarthRights International is not alone in its witness to corporate complicity in these crimes in Burma, committed under the misnomer of development. In March 2010, the UN Special Rapporteur (UNSR) on Human Rights in Myanmar Tomás Ojea Quintana acknowledged in his progress report to the UN Human Rights Council that the Special Rapporteur had received multiple reports of human rights abuses associated with natural gas projects in Burma, including abuses committed against people living in the area of the Yadana project.<sup>18</sup> The Special Rapporteur went on to note that the oil companies operating the Yadana pipeline have a close relationship with the armed forces in Burma, and that companies still have a responsibility to protect human rights under these conditions.<sup>19</sup> Quintana found that the Yadana pipeline companies and other companies “rely on the Myanmar military to provide security for their projects,”<sup>20</sup> and he wrote of reports of “rampant use of forced labour” connected to the country’s four main natural gas projects, including Total, Chevron, and PTTEP’s Yadana pipeline.<sup>21</sup> The senior UN official also stressed that “extraction activities have directly resulted in an increase in human

rights and environmental abuses.”<sup>22</sup>

EarthRights International’s most recent report on the adverse human rights, environmental, and financial impacts of the Yadana project, *Total Impact* (2009), draws on hundreds of interviews with current residents and recent refugees from the pipeline region, defected soldiers from the Burma Army and Navy, former expatriate staff on the Yadana Project, shareholders and investors in Total and Chevron, and current and former staff of the International Labour Organization (ILO). These testimonies revealed instances and patterns of forced labor and violations of property rights, along with killings and other serious abuses committed by the Burma Army that provides security for Total, Chevron, and PTTEP’s Yadana gas project. The report and its companion report *Getting It Wrong* (2009) revealed Total’s lies and distortions surrounding the human rights situation in the pipeline area, including the untrue claim that the ILO had certified that Total had “eradicated” forced labor in the Yadana project area, a claim the company repeated to investors, the media, and others for seven years, until effectively retracting the statement under pressure in 2009. The ILO explicitly disavowed the claim as false and categorically untrue when EarthRights International brought it to its attention in 2009.<sup>23</sup>

*Total Impact* and *Getting It Wrong* were only the latest in a long line of reports linking human rights abuses committed by state security forces and the companies since EarthRights International released its first report on the pipeline, *Total Denial*, in 1996.<sup>24</sup> Since then, Total and Chevron have been subject to numerous advocacy and divestment campaigns, consumer boycotts, shareholder resolutions, and even lawsuits brought against the companies for their complicity

in murder, rape, forced labor, and crimes against humanity committed in the pipeline corridor.<sup>25</sup>

Yet, since EarthRights International released the reports in 2009, instances of human rights abuses connected to the companies' presence in Burma continue. The following specific instances documented by EarthRights International in Burma in 2009-2010 reflect trends of abuses ongoing in the Yadana pipeline area.

## i. Targeted Killings

*"[The soldiers] arrested them for one night and the next day the soldier came in to the village to get a digging tool and later people found out that both of the villagers were killed by the soldier."<sup>26</sup>*

– Local villager in the  
Yadana pipeline corridor,  
Lawther, Burma, 2010

The right to life is fundamental to the enjoyment of any other human right, and the prohibition of extrajudicial killings is codified in numerous international treaties and conventions that are binding on Burma.<sup>27</sup> EarthRights International has previously documented numerous instances of the Burmese Army breaching these obligations through extrajudicial killings committed for the protection of the commercial interests of the Yadana pipeline companies from the early 1990s to 2010.<sup>28</sup> In direct response to EarthRights International's allegations of killings documented in the 2009 report *Total Impact*, Total acknowledged that the claims were "particularly grave," but the company did not refute that killings occurred or that they were committed by soldiers tasked with providing security for the company and their pipeline.<sup>29</sup> Instead, Total claimed that they did not have knowledge of these cases.<sup>30</sup>

After being put on notice by EarthRights International through *Total Impact* and the follow-up report, *Total Impact 2.0*, Total and Chevron can no longer deny that they have knowledge of these abuses. Yet, far from demonstrating that they take the instances seriously (beyond their serious desire to avoid the appearance of complicity),<sup>31</sup> the Yadana Project companies have failed to demonstrate to EarthRights International or local villagers that they respond in action to these allegations, while uniformly failing to publicly accept responsibility for these serious abuses.

Meanwhile, in the pipeline area, killings continue.

In February 2010, EarthRights International

documented the killing of two ethnic Mon villagers from Ahlersakan village in the pipeline area, perpetrated by soldiers from Infantry Battalion (IB) 282. IB 282's sole mandate is to provide security for the companies' personnel and pipeline. As told to EarthRights International from villagers in the pipeline area, the brutal orders were given by the battalion's officer, Balay (aka) Nyi Nyi Soe.<sup>32</sup>

According to a local villager from Lawther village:

Two villagers... were killed by IB 282 soldiers, their officer Balay (aka) Nyi Nyi Soe is the one who gave the order. They suspected these two villagers had connections to the Mon armed group so they questioned them. They arrested them for one night and the next day the soldier came in to the village to get a digging tool and later people found out that both of the villagers were killed by the soldiers.<sup>33</sup>

## ii. Mandatory Military Trainings: Protecting the Pipeline Corridor

Villagers from the pipeline area are forced by local battalions to attend abusive militia trainings, in which villagers are required to train as an armed militia in partnership with the Army. The villages themselves are forced by the Army to finance these trainings and to provide a varying quota of otherwise unwilling local participants. Upon graduation, villagers are tasked with providing security in the pipeline area and patrolling villages in the pipeline corridor.

The two pipeline corridor villagers who were shot and killed by pipeline security battalion 282 had just finished mandatory militia trainings by pipeline Army battalions.<sup>34</sup> These trainings were ordered by the military in the pipeline corridor, lasted the whole month of February 2010, and villagers could not refuse to go to the training.<sup>35</sup>

The series of forced militia trainings are another example of how the pipeline and the Army's related presence in the Yadana corridor have forced local people to change their way of life for the sake of the pipeline and the commercial interests of Total, Chevron, and PTTEP.

Since 2009, when EarthRights International exposed the forced militia trainings and related abuses – such as violent beatings endured by villagers in attendance at the trainings – the trainings have been re-named "fire fighting trainings" in the 25 villages recognized by the

companies as within the “pipeline corridor.” The actual trainings have not changed. Outside the corridor, the trainings are referred to for what they are – forced militia trainings. This re-branding in the pipeline corridor appears to be a crude attempt to suggest there is some civic merit to the trainings, when in effect the trainings are unwelcomed by villagers and designed to build the local security apparatus.

One villager told EarthRights International: “Each village in the area had to send representatives depending on the number of households in the village. Our village had to send two people. Our villagers had to pay their expenses during the training. Now that they are done with the training each night they have to patrol the village and check for guests.”<sup>36</sup> This increased security apparatus designed to have villagers locate “guests” in the pipeline area and report them back to the pipeline security battalions underscores the military regime’s repression. It is related to the junta’s desire to control the population from being influenced by armed ethnic opposition forces, but it also represents its desire to keep the reality of the pipeline corridor a secret from the international community.

This type of security is in some ways a direct response to the documentation work of EarthRights International and other organizations collecting sensitive human rights information in the area, such as the Human Rights Foundation of Monland (HURFOM).<sup>37</sup> The military regime is actively involved in attempts to prevent the documentation of the reality in the pipeline corridor. Villagers and others found to be documenting the human rights impacts of the pipeline face threats and violent persecution.

Moreover, since 2009, EarthRights International has also documented instances of villagers who, because of their ethnicity, were excluded from the militia trainings, but could not refuse to fund the training for others — an expense poor villagers can ill afford.<sup>38</sup> This reflects the reality of the ethnic divisions between the Karen and Mon villagers and the predominantly Burman authorities at the local level, as well as simple and common discrimination by the Burman Army against the many ethnic groups in the region.

### iii. Forced Labor

Earlier publications from EarthRights International have documented numerous incidents of villagers within the pipeline corridor forced to porter goods for soldiers providing security for the pipeline, forced to construct military buildings, or forced to participate in

security watches against their will, sometimes directly over the Yadana pipeline or related infrastructure.<sup>39</sup> The use of forced labor is prohibited by customary international law,<sup>40</sup> the Universal Declaration of Human Rights,<sup>41</sup> the International Labour Organization (ILO),<sup>42</sup> and even domestic Burmese law,<sup>43</sup> all of which bind the Burmese regime to refrain from this manifestly unacceptable practice. The Rome Statute of the International Criminal Court even allows the prosecution of systematic forced labor as a crime against humanity.<sup>44</sup>

Despite the international community’s categorical intolerance for such abuse, it remains commonplace in Burma and for villagers in the Yadana pipeline area.

After the release of *Total Impact* and *Getting it Wrong* in 2009, EarthRights International was informed through third parties that Total agreed in principle to facilitate local complaints of forced labor to the ILO rather than keep incidents of forced labor hidden and subject to the company’s decided remedy. This cooperation with the ILO involved a special training by the ILO in Rangoon (Yangon) attended by two staff from Total — one Burmese, one international staff. In principle, this is a positive development.

However, despite its tacit agreement to cooperate with the ILO, instances of forced labor connected to the pipeline project have continued and have not been facilitated by Total to the ILO, even since the Total staff attended the training in December.<sup>45</sup> This fact was confirmed by the senior ILO representative in Rangoon.<sup>46</sup>

Between late 2009 and early 2010, EarthRights International documented numerous occurrences of villagers being forced to porter goods over several days for pipeline security soldiers.<sup>47</sup> According to a villager in Zinba, a village Total recognizes as within its sphere-of-responsibility:

In late 2009...about 20 soldiers came into our village...They stayed there for about two nights. I don’t know what they are doing there but I knew that [name withheld] had to give them one of his goats to feed the soldiers. And the next day when they left they had the son of a house owner go to Michaunglaung through the jungle route. It took one night and the next day they let him come back.<sup>48</sup>

Another villager explained to EarthRights International

another recent instance of forced portering:

In late 2009, during the harvest season, around 25 soldiers from LIB 410 came to our village and they ordered [three villagers] through the village headman to porter for them. They had to carry food for the soldiers as well as be the guide for the soldier. They went into the jungle to check on the armed opposition group. It was happening not so far away from the Total pipeline route. This time, it took about five days for them to come back. This kind of portering happens as needed by soldiers.<sup>49</sup>

Villagers have also recently been forced to construct huts for military commanders,<sup>50</sup> dig ditches next to pipeline roads,<sup>51</sup> and provide the materials for other forced constructions.<sup>52</sup> All of these abuses have occurred in 2009-2010.

According to one villager from Michaunglaung (old) village:

In early 2010, the Kaleingaung authorities ordered our village head to collect 200 bamboos...They called our village head to attend a meeting in Kaleinaung and they told him there. We cut bamboo around the village. Since [the demand] was for 200 bamboos the villagers had to come together and cut it. It took several hours to cut it. We also had to bring the bamboo to Kaleinaung. We carried them by bullock cart. Those who own the bullock carts didn't have to cut the bamboo but they had to bring them to Kaleinaung. In our village some villagers own bullock carts. There are about five or six bullock carts in our village. These people had to bring the bamboo to Kaleinaung.<sup>53</sup>

EarthRights International's research indicates that Total has not attempted to work with local villagers to facilitate the filing of forced labor complaints with the ILO. Instead, Total compensated villagers who were forced to cut grass in the pipeline area. A villager from Zinba told EarthRights International:

In late 2009, I myself I had to go and clean the LIB 410 battalion

compound...our village head told us that we will have to go and cut the grass for the soldiers. Later, Total came and gave us 3,000 kyat [approx. US \$3] to each for us who had to go and cut grass with our machines.<sup>54</sup>

This villager's testimony and others reveal how Total recognizes its complicity and responsibility in these orders given by the Army for villagers to do labor against their will and without compensation. Haphazard payments to only a handful of those forced to do work associated with the pipeline do not absolve Total, Chevron, or PTTEP of responsibility for the forced labor being demanded of the ethnic nationalities living in the pipeline corridor. Moreover, ex post facto financial compensation is an unacceptable remedy for local people. Local people should be able to determine for themselves what sort of justice they would prefer to seek, in an environment free from intimidation, bias, and threat. Given the ongoing threats of persecution from the Burmese authorities for complaining about forced labor, Total would appear to be well-positioned to facilitate complaints to the ILO.

#### iv. What's Green is not Always Good: Land Confiscation for Forest Conservation Areas

The right to property, and the right to be free from having one's property free from arbitrary interference by the state, is recognized explicitly in numerous international treaties and conventions, among which is the Universal Declaration on Human Rights.<sup>55</sup> In addition to binding international agreements, Burma's domestic laws prevent the state from confiscating land for public purposes without abiding by certain procedures, including those found in Burma's Land Acquisition Act, which protects the privacy and security of the home and property.<sup>56</sup> The Act lays out a procedure for the acquisition of land by the authorities that includes giving generous notice of any intended survey of the land, providing for just compensation for the land owner for both the surveying and acquisition of the land, and providing an opportunity for interested persons to have their objections to any such proceedings heard. The Act even sets out proceedings for a complaint process to be followed if the amount of compensation for the land is in dispute.<sup>57</sup> According to EarthRights International's research, this law goes unenforced in Burma, particularly for residents who live in the vicinity of large-scale development projects like the Yadana pipeline.

In *Total Impact* (2009), EarthRights International documents numerous testimonies of local people and former Total and Chevron company staff, and cites documents obtained from the Yadana consortium companies that demonstrate the companies' neglect of earth rights<sup>58</sup> through inadequate environmental planning.<sup>59</sup> The report also notes the adverse impacts of a Total-sponsored "environmental protection group" which designated areas as protected that were traditionally relied upon by villagers for farming or gathering. There are no effective or apparent strategies to compensate lost livelihoods in connection to this program.<sup>60</sup> Land for this conservation program has been confiscated from local people.

According to a villager from Zinba interviewed by EarthRights International in 2010:

They only marked a few areas of land around the village in which the villagers can farm. Some of the areas which they marked for forest conservation go through some people's plantation land, as well. I know one villager, about six acres of his cashew nut plantation was marked for the conservation area.<sup>61</sup>

According to EarthRights International's research, these land confiscations were done without adequate community input or compensation, and were part of a program founded by local authorities and funded by Total.<sup>62</sup> According to villagers' testimonies, the environmental protection program is limited and misguided, failing to address the real environmental issues facing the region. The impoverished villagers in the region rely on their ability to practice shifting cultivation, an impossible practice if their land is confiscated or if access to their land is restricted.<sup>63</sup>

Highland farming and gathering forest products are basic sources of income for numerous villagers in the pipeline area. Limiting the forest area in which villagers can farm and gather poses a significant problem for many, leaving some to feel as though they have no option for survival.

While EarthRights International recognizes the importance of forest conservation for the people of Burma, Total should not be complicit in practices that deprive villagers of their land without input or adequate compensation. The company should instead embark on an ongoing process of accurate and impartial environmental impact assessments, mitigation of environmental impacts of their projects,

and conservation programs that take into account the rights and needs of the local population.

## v. The Companies' Legal Liabilities for Complicity in Human Rights Abuses

The risk to both Chevron and Total over the abuses committed in their service by the Burmese military is not just reputational – they also face the real potential for legal liability. For nearly nine years, between 1996 and 2005, Unocal Corp. faced litigation for its complicity in the murders, torture, rape, and forced labor perpetrated against villagers by the Burmese military providing security along the Yadana pipeline. Although that case eventually settled before a verdict could be rendered, the courts confirmed that the company could be held liable for complicity in the human rights abuses committed abroad – many of which were disturbingly similar to those catalogued in this report and previous reports by EarthRights International and others.<sup>64</sup> This liability arises under the Alien Tort Statute, which allows foreigners to bring suit in US federal courts for certain violations of universally recognized human rights principles, as well as the long-standing and basic maxim that a defendant may be sued for his torts (assault and battery, for example) wherever he is found, even if the torts were committed abroad.

By virtue of its acquisition by Chevron, all of Unocal's liabilities now belong to Chevron. Chevron could consequently be held liable for its own conduct along pipeline, as well as for any of Unocal's conduct before, during, or after the *Doe v. Unocal* lawsuit that was not explicitly addressed in the settlement. Total, too, was a party to the Unocal litigation, until the courts found that the French company did not have a strong enough connection to the United States to be subject to jurisdiction.<sup>65</sup> However, future potential plaintiffs would have their own chance to prove that Total can be sued in the United States. Moreover, regardless of whether the company may be sued in the US, there is no question that Total does face potential liability in France – in fact, in 2005, Total was compelled to settle the claims of a group of Burmese villagers who sued Total in French courts for complicity in forced labor.<sup>66</sup> Moreover, as more countries ratify and pass domestic legislation pursuant to their obligations under the Rome Statute, the possibility of both criminal and civil penalties for companies which are complicit in acts constituting war crimes, crimes against humanity, and genocide rises.<sup>67</sup>

In other words, there is no doubt that the abuses in the pipeline corridor are taking place, and that forums exist in which companies could be held legally accountable for facilitating them. The potential for liability, therefore, is limited only by the willingness and ability of plaintiffs to take the risks necessary to bring suit, the expense and difficulty of litigation, and statutes of limitation, which require that claims be brought within a limited time after the occurrence of an abuse.

# Chapter II: Revenue Secrecy: Total, Chevron, and PTTEP's Payments to the Junta and Refusals to Practice Revenue Transparency

*“The least we should expect from the companies operating inside Burma is full revenue transparency. We’ve seen decades of military dictatorship and years of irresponsible management of Burma’s natural resource wealth – hence this initiative is a positive step towards changing that.”*<sup>68</sup>

–Mr. Kjell Magne Bondevik, former Prime Minister of Norway speaking for the initiative urging Total, Chevron, and PTTEP to publish their last 18 years of payments to the Burmese authorities, April 27, 2010

*“[R]evenue transparency must be practiced for the citizens of Burma, who can use the information to monitor the government’s use of natural resource wealth and demand accountability where none presently exists.”*<sup>69</sup>

–Wong Aung, Coordinator, The Shwe Gas Movement

*“The people of Burma have a right to know the financial details surrounding the country’s natural resources, including payments made by foreign oil companies.”*<sup>70</sup>

– Naing Htoo, EarthRights International

## i. A Global Call for Revenue Transparency in Burma

On April 27, 2010 at a press conference in Bangkok, EarthRights International and the Shwe Gas Movement launched a new global initiative that called for Total, Chevron, and PTTEP to practice revenue transparency in Burma.<sup>71</sup> The groups released a two-page letter signed by over 160 NGOs, policy leaders, scholars, academics, labor unions, and investment firms calling on the three Yadana Project partner companies to publish detailed information about their revenue payments to the Burmese authorities since the project began in 1992, including taxes, fees, royalties, bonuses, and social benefits. Among the signatories of the initiative is a former president of Ireland, a former prime minister of Norway, investment firms managing US \$15 billion in capital, labor unions representing over 24 million workers, and over 60 Burmese NGOs representing every major ethnicity in the country and advocating on a broad range of issues from democratic freedom to women’s rights to environmental justice.<sup>72</sup>

As explained in Chapter III of this report, EarthRights International estimates that the Yadana Pipeline has generated over US \$9 billion in revenues, over half of which went directly to the military regime in Burma. This revenue has financed a military administration that continues decades of systematic human rights violations and has been accused of crimes against humanity and war crimes. The revenue has also financed a military

command exposed for developing a clandestine and illegal nuclear weapons program, while also participating in illicit weapons trade with North Korea in violation of UN sanctions against Pyongyang.

Needless to say, the multi-billion dollar benefits of Burma’s gas riches have yet to accrue to the rightful recipients: the people of Burma. Revenue transparency can help change that.

As a resource-rich country ruled by a military junta, and as the third most corrupt nation in the world according to Transparency International’s *Corruption Perceptions Index*, Burma desperately needs revenue transparency.<sup>73</sup> Empirical studies show a causal relationship between natural resource wealth in developing countries and slow economic growth,<sup>74</sup> civil war,<sup>75</sup> increased corruption,<sup>76</sup> and gender inequality.<sup>77</sup> Natural resource wealth has also been shown to make states less democratic.<sup>78</sup> According to UCLA Political Scientist Michael Ross, “in too many countries, dictators use natural resource wealth to keep themselves in power. Revenue secrecy makes this possible. Revenue transparency can help change it.”<sup>79</sup>

The global transparency initiative to get Total, Chevron, and PTTEP to publish their payments to the Burmese authorities is an effort to break the cycle of corruption, poverty, and human rights and environmental abuses in the beleaguered country. At its core it is an effort to encourage the responsible management of the country’s natural resource wealth; a long-term issue

that will be critically important for Burma's future development.

According to Publish What You Pay, an international movement working for revenue transparency in oil, gas, and mining firms:

Regular reporting by corporations of payments made to foreign governments for oil, gas and mineral extraction would aid efforts to end corruption, make producing countries and their energy supplies more stable, and enable citizens of these countries to hold their leaders to account for the misuse of their abundant natural resource wealth.<sup>80</sup>

Both Total and Chevron have publicly recognized the importance of revenue transparency and are active members of the Extractive Industries Transparency Initiative (EITI). Total itself has identified transparency as an important part of socially responsible business and believes that it "is in the interest of all stakeholders."<sup>81</sup> Likewise, Chevron has asserted, as detailed below, that revenue transparency is good for business. Both companies publish payments to other countries, some of which (like Burma) are not members of EITI, and Chevron is transparent about its financial agreements with Burma's neighbor Thailand, where the company has significant interests.

## ii. Total's Response

Total has a history of negative responses to its critics' allegations that the company's Yadana Project has contributed directly to human rights violations and contributed to authoritarianism through multi-billion dollar support to the Burmese junta. The company has summarily rejected requests to meet with EarthRights International, i.e. requests made by EarthRights International itself were rejected as well as requests on behalf of EarthRights International by investors, NGOs, and high-level UN officials. Some of these groups and individuals suggested directly to Total that the company give EarthRights International the same guided tour of their company's operations as that offered to others, but the suggestion was categorically rejected by Total's leadership.<sup>82</sup> In 2009, former CEO Christophe de Margerie told Newsweek magazine that critics of his company's activities can "go to hell."<sup>83</sup>

Against this background, Total's response to the transparency initiative is unsurprising: In a written statement, the company rejected the transparency

initiative, citing two primary reasons: 1) a (vaguely articulated) failure to have the permission of the Burmese authorities; and 2) maintaining competitive advantage (through secrecy). The company implied that it is refusing to disclose its payments to the military regime because the military regime may be averse to it: "Total cannot disclose any financial or contractual information if the host country is opposed to such disclosure."<sup>84</sup> The company states its argument as such: "Total would accept to disclose individually, and not only collectively, amounts paid to a given government, provided that such disclosure: 1) is permitted by the relevant government; and 2) would not compromise the Group's commercial position."<sup>85</sup>

The first reason appears to be carefully crafted to avoid making the claim that Total is contractually forbidden from making disclosures. Prior to issuing this statement, Total repeatedly told investors, shareholders, labor unions, and other interested parties that its contracts with the Burmese authorities restrict it from practicing revenue transparency. As discussed more fully below, these contracts are now publicly available from US court files; EarthRights International recently published and analyzed the contracts, and found nothing in them that would prohibit Total from disclosing its payments to the authorities in Burma.<sup>86</sup> This fact was exposed publicly in the Global Call for transparency,<sup>87</sup> and the company's unsupported arguments to investors and shareholders about its contractual obligations in Burma have also been documented and refuted.<sup>88</sup>

Total's public statement also states that it "*fully concurs*" with a statement claiming that if a company "wants to disclose but the government does not want to, disclosure may be possible but is unlikely," primarily because the company does not want to "jeopardize their relationship with the government."<sup>89</sup> This further indicates that Total is not contractually restricted from disclosing payments to the junta if it so desired. Indeed, in October 2009, in direct response to EarthRights International, Total disclosed that its portion of the Yadana natural gas project in Burma generated US \$254 million for the Burmese authorities in 2008.<sup>90</sup> This admission further confirms that any claims by Total that it cannot legally disclose its payments to the junta are not truthful. (It should also be pointed out that this disclosure in 2009 was not a disclosure of the payments the company made to the authorities, but an aggregate sum of the amount of money Total's interest in the project earned for the state.)

Although Total has now omitted the contractual argument from its public statement, EarthRights



International has confirmed that the company continues to privately claim to inquiring parties that its contracts prohibit transparency. The company has never provided any evidence supporting this claim. The company has privately claimed it is legally forbidden from sharing its contracts with third parties, but again EarthRights International's analysis has found nothing that would restrict the company from doing so;<sup>91</sup> moreover, most of the relevant contracts are already in public court files.

The second part of Total's argument for continued revenue secrecy – that releasing these figures would compromise their commercial position – is refuted by evidence, common practice, and the company's own stated position regarding its interests in Burma. The company itself has said generally that transparency is in its own interest,<sup>92</sup> and in its response the company notes it currently practices revenue transparency with the "government[s] of Angola (which is not an EITI member), Cameroon, Gabon, Nigeria, and Norway"<sup>93</sup> without any indication that the company suffered from compromised commercial positions in these countries.

Total's revenue transparency in these other countries demonstrates that it has no general concern that practicing transparency in one country will hurt its competitiveness globally. As for its competitiveness in Burma itself, French President Nicolas Sarkozy has called on all French companies including Total to make no new investments in Burma, and Total itself said explicitly that it planned no new investments in the country beyond the Yadana project.<sup>94</sup> Any competitive disadvantage in Burma would be decidedly irrelevant.<sup>95</sup>

### iii. Chevron's Response

Chevron also issued a cursory response to EarthRights International's release of the Revenue Transparency initiative and, like Total, it did so with little effort to truly engage the request. In its one-page response, Chevron simply cites its efforts at socioeconomic assistance in the pipeline corridor (which was the subject of the 2009 report by EarthRights International<sup>96</sup>) and a 2009 Human Rights policy (without engaging in any meaningful effort to refute the allegations of ongoing abuses against the people in the pipeline corridor). In direct response to the call for revenue transparency, Chevron states:

Chevron believes that the disclosure of revenues received by governments

and payments made by extractive industries to governments could lead to improved governance in resource-rich countries. The transparent and accurate accounting of these funds contributes to stable, long-term investment climates, economic growth and the wellbeing of communities.<sup>97</sup>

Thus, the company claims to understand that revenue opacity can be harmful in relation to Burma. Chevron then goes on to excuse its own role in the wrongful practice of revenue secrecy in Burma by claiming that the contracts it holds with the Burmese government do not allow these figures to be released, claiming "contractual obligations related to the Yadana Project do not permit disclosure of payments or other confidential information relative to the Project."<sup>98</sup> This claim falls under the weight of the same criticisms already discussed in relation to Total's similar assertion, i.e. that the company's contracts do not in fact restrict revenue transparency.

Indeed, the contracts themselves do not support Chevron's claim. Chevron's predecessor in the Yadana Project, Unocal Corporation (which Chevron acquired in 2005), introduced the governing contracts at the partial trial in the human rights suit *Doe v. Unocal Corp.* in 2004. In those contracts, there is nothing that would prevent the companies' revenue transparency in Burma. Moreover, as part of its defense at trial, Unocal introduced dozens of actual payment records to the junta as exhibits without suggesting that their defense was hampered by contracts that required confidentiality.<sup>99</sup> If the companies' contracts did in fact restrict transparency, Unocal presumably would have noted this in the litigation, and sought to keep these records under seal rather than in the public court file. Therefore, unless the companies' contracts with the Burmese authorities have changed significantly, Chevron (and privately, Total) appears to be misleading the public and their shareholders about their contractual obligations in Burma.

Moreover, EarthRights International has documented that, like Total, Chevron has systematically misled its shareholders and the public regarding its contractual obligations in Burma. EarthRights International received communications from a longtime Chevron shareholder – the manager of an investment firm – indicating that Chevron has made its dubious argument that its contracts require revenue opacity in Burma, both to him personally and also to several investment firms, including the one he represents, and to two of

America's largest labor unions. This shareholder cited phone calls with Chevron executives and his notes following the phone calls. In these communications, Chevron rejected requests to be transparent in Burma, claiming their contracts with the junta prevented disclosure of any payment information to anyone, including the company's own investors. Like Total, the company also claimed their contracts could not be shared, which is belied both by the lack of any such restrictions in the contracts themselves and the fact that most of the contracts are in fact already in the public domain.

#### iv. Binding Mechanisms for Revenue Transparency

The global call for extractive companies and host governments to practice revenue transparency has increased dramatically in the last several years, with the promulgation of both voluntary schemes and binding standards. Recently, the Hong Kong stock exchange began requiring all companies currently listed and those applying for listing to make public payment information, including: payments made to host country governments in respect of taxes, royalties and other significant payments on a country by country basis. In the United States, the Energy Security Through Transparency Act (ESTT) (S.1700) was introduced in the Senate in 2009. This legislation would amend Section 13 of the Securities Exchange Act of 1934 (15 USC 78m) ("Periodical and Other Reports") by adding a new section (m) "Disclosure of Payment by Resource Extraction Issuers" and would require companies registered with the U.S. Securities and Exchange Commission (SEC) to disclose payments to foreign governments for the commercial development of oil, natural gas, and minerals. This disclosure would apply to all companies that file with the SEC, regardless of where they are based, meaning that most of the world's top extractive companies would be covered by this law; it would set a new international standard for transparency in the extractive industry.

If passed, the ESTT Act would require Total and Chevron to disclose their payment to the Burmese junta going forward. While far short of disclosing all historical payments, this legislation would compel these companies to disclose their payments while providing the people of Burma with critical information on the resource-revenue their country receives. Despite extolling the virtues of revenue transparency, Chevron, through their membership in the American Petroleum Institute, has lobbied strongly against this legislation.

# Chapter III: The Yadana Natural Gas Project Revenue

## i. Introduction: Financing the World's Newest Nuclear Threat

It has long been known that the Yadana Project is likely to be the single largest source of revenue for the Burmese military regime; the revenue, much of which may be kept outside the country, enables the regime to engage in international hard-currency transactions to buy arms and other acquisitions. Little if any of the money is used for the benefit of the people of Burma.

Burma became a party to the Treaty on the Non-Proliferation of Nuclear Weapons in 1992, the same year it signed a contract with Total for the Yadana Project.<sup>100</sup> This agreement obligates Burma “not to manufacture or otherwise acquire nuclear weapons” and not to in any way assist in the transfer of nuclear weapons technology.<sup>101</sup> Burma is also a party to the Treaty on the Southeast Asia Nuclear Weapon-Free Zone, which prohibits the development or placement of nuclear weapons in its territory.<sup>102</sup>

In 2009, evidence surfaced from several sources indicating the military regime had ambitions to develop a nuclear weapon of mass destruction, despite the country's lack of external enemies and despite its own international obligations to nuclear nonproliferation.<sup>103</sup> These fears and others were recently confirmed with a detailed five-year study released by the Democratic Voice of Burma (DVB), analyzed and written by the former president of the International Atomic Energy Agency (IAEA) Robert E. Kelley.<sup>104</sup> The information in DVB's 30-page report *Nuclear Related Activities in Burma* formed the basis of a documentary on Al Jazeera.<sup>105</sup> It is based on hundreds of pages of top secret documents and photographs, largely provided to DVB by a former Army Major, Sai Thein Win. The accumulated intelligence led Kelley and DVB to conclude that while a functioning nuclear warhead in Burma may be years off, the military dictatorship is without a doubt pursuing nuclear technology that can only be used for a bomb. “The information...suggests that Burma is mining uranium, converting it to uranium compounds for reactors and bombs, and is trying to build a reactor and or an enrichment plant that could only be useful for a bomb. There is no chance that these activities are directed at a reactor to produce electricity in Burma.”<sup>106</sup>

This news came just one month after a leaked UN report suggested that North Korea is exporting nuclear and ballistic missile technology to Burma using multiple intermediaries, shell companies, and overseas criminal networks to circumvent UN sanctions against Pyongyang.<sup>107</sup> Adding to these concerns are mountains of evidence that detail the military regime's construction of an intricate nationwide system of bunkers, caverns, and tunnels throughout the entire country, at exorbitant costs and in partnership with North Korea.<sup>108</sup>

In 2009, EarthRights International reported that rather than being used to benefit the people of Burma, portions of the country's natural gas revenue found their way into private bank accounts in two offshore banks in Singapore – the Overseas Chinese Banking Corporation and DBS Group.<sup>109</sup> This revenue and its convenient offshore location would enable the regime to engage in international hard-currency transactions to buy arms and technologies for nefarious purposes.

In a 2009 filmed interview with PLTV in France, Total Vice President of Public Affairs Jean-Francois Lassalle was asked about the prospect of revenue from Total's presence in Burma being used to fund an illicit nuclear weapons program. The executive dismissed the possibility on the grounds that Burma's nuclear ambitions were merely “rumors.”<sup>110</sup> These “rumors” are now far more substantiated.<sup>111</sup>

For years, EarthRights International has remained concerned that Total, Chevron, and PTTEP have financed authoritarianism in Burma and that Burma's natural resource wealth has been misappropriated and used irresponsibly. Now, it appears that the Burmese generals are intent on shifting the global political balance, following in the authoritarian footsteps of allies such as North Korea, while the country's least advantage citizens continue to languish beneath the weight of repression and grossly irresponsible spending priorities of the ruling junta.

EarthRights International's new and revised calculations below detail the estimated amount of revenues Total, Chevron, and PTTEP's Yadana gas pipeline has generated for the Burmese military regime from 1998-2009.

## ii. Yadana Project Revenue Totals

EarthRights International has revised its previous estimates of the revenue and revenue distributions from the Yadana project, taking into consideration a number of additional documents released as part of the *Doe v. Unocal* case—most of which were introduced at trial by Unocal itself, and which recently came into EarthRights International’s possession.<sup>112</sup> Although we strive for the most accurate figures possible, until Total and its partners release full payment data our analysis will continue to be an approximation of the actual numbers. Our present estimate is that, from 1998 through the end of 2009, the Yadana Project has generated about US \$9.031 billion, of which US \$1.679 billion has been used to pay development and operating costs. The Burmese regime’s share of the income, after costs, is estimated to be US \$4.599 billion, of which US \$915 million is taken “in kind” as gas for domestic use, and the remainder is taken in cash. The remaining revenue is split among the corporate partners Total, Chevron, and PTTEP.

The total sales value of the Yadana gas is based on the heating value (or “calorific value”) of the gas measured in British Thermal Units (BTU), not volume. The contracts specify an initial price of US \$3 per million BTU (mmBTU), with a subsequent pricing formula based on inflation and the spot price of Singapore fuel oil.<sup>113</sup> (The apparently strange pricing reference may have been used because fuel oil was Thailand’s alternative energy source.) Although the contracts specified that the partners would deliver gas with a heating value of at least 715 BTU per cubic foot (cf), the documents suggest that the actual heating value is about 711.8 BTU/cf.<sup>114</sup>

In the early years of the Yadana Project, PTT was not prepared to accept the full contract quantity of the gas, which started at 65 million cubic feet per day (mmscfd) in August 1998 and built up to 525mmscfd by September 1999.<sup>115</sup> Although the actual production of the Yadana pipeline from 1998-2000 was well below the contract quantity, the contract required PTT to pay for the gas anyway. We have added these “take-or-pay” payments (and, in some cases, interest on the payments) to the contract year, regardless of when the payment was made. For 1998, PTT negotiated a discount for the take-or-pay gas, arguing that the producers had failed to deliver gas with the agreed-upon heating value, reducing the price to about US \$2.44/mmBTU for this period.<sup>116</sup> After the initial period, the price presumably reverted to the usual formula.

Since PTT paid for this gas but did not take it, however, it was entitled to take the “pre-paid” gas in later years. Pursuant to the contracts, we have assumed that all production in later years over the contract quantity of 525mmscfd was not sold in that year, but was characterized as “make-up gas” and applied toward the gas that PTT had already purchased. (PTT later increased this contract quantity to 565mmscfd starting on September 1, 2006.<sup>117</sup>) PTT paid for so much un-used gas during the early years of the project that, according to our calculations, it still has yet to make up all of the prepaid gas.

This turned out to be a good deal for PTT. While the take-or-pay gas was purchased at US \$2.44/mmBTU for 1998, an average of US \$2.75/mmBTU for 1999, and an average of US \$3.52/mmBTU for 2000, PTT is taking the make-up gas in years when the price is far higher—an estimated US \$7.09/mmBTU for the last quarter of 2009, and as high as US \$10.51/mmBTU in the last quarter of 2008. It may have been a mistake for the partners to insist that PTT pay for the gas up front, rather than allowing PTT to simply pay the prevailing price when it took the gas. In 1998, however, the Burmese regime was struggling financially; in March of 1998 *The Economist* magazine estimated that the regime’s foreign exchange reserves had fallen below US \$100 million.<sup>118</sup> Perhaps the Burmese generals pushed for immediate payments from PTT, even if it meant foregoing greater value later on, because they desperately needed a financial lifeline, a lifeline the Yadana consortium was happy to provide.

From August 1998 until mid-2003, we have used the actual revenue figures for the project;<sup>119</sup> thereafter we have estimated the revenue based on published data and formulas. We have calculated the gas price in the same way as the Yadana consortium, based on weighted averages of fuel oil prices, adjusted for inflation, and using the best production quantity information we could find; when available, we have used quarterly production figures for greater accuracy.<sup>120</sup>

We have also used the project’s budgeting figures to get a better estimate of operating costs. We have actual cost figures for 1999 through mid 2003,<sup>121</sup> and have extrapolated from these to estimate that the ongoing costs are around US \$44 million annually—US \$32 million for the gas production, and US \$12 million for the pipeline transportation. Finally, we have also estimated the revenue that has been applied toward the project’s development cost—which has been reported as US \$1.2 billion.<sup>122</sup>

### Yadana Project gas sales to PTT, 1998-2009 (in millions of US\$)

Year	Revenue from actual sales	Take-or-pay (incl. interest)	Total revenue from PTT	Operating costs	Applied toward development costs	Total costs	Net gas sales
1998	\$1.693	\$50.469	\$52.162	\$15.507	\$20.694	\$36.200	\$15.962
1999	\$2.138	\$285.495	\$287.632	\$49.435	\$150.185	\$199.619	\$88.013
2000	\$171.650	\$323.705	\$495.355	\$33.215	\$192.434	\$225.648	\$269.707
2001	\$530.029	\$0	\$530.029	\$36.500	\$195.951	\$232.451	\$297.578
2002	\$493.654	\$0	\$493.654	\$36.995	\$190.632	\$227.627	\$266.026
2003	\$558.994	\$0	\$558.994	\$43.190	\$210.929	\$254.118	\$304.875
2004	\$583.519	\$0	\$583.519	\$44.000	\$180.976	\$224.975	\$358.544
2005	\$663.850	\$0	\$663.850	\$44.000	\$58.200	\$102.200	\$561.650
2006	\$889.506	\$0	\$889.506	\$44.000	\$0	\$44.000	\$845.506
2007	\$988.901	\$0	\$988.901	\$44.000	\$0	\$44.000	\$944.901
2008	\$1,325.976	\$0	\$1,325.976	\$44.000	\$0	\$44.000	\$1,281.976
2009	\$1,246.425	\$0	\$1,246.425	\$44.000	\$0	\$44.000	\$1,202.425

### iii. Yadana Project Revenue Distribution

EarthRights International has made additional revisions to our previous estimations of the distribution of the revenue, reflecting the actual distribution for 1998 through mid-2003 and using better estimates of the distribution going forward.

Distribution of revenue follows a somewhat complex scheme, because the partners and the regime have artificially divided the project into a production component, run by a joint venture, and a transportation component, run by a corporation, the Moattama Gas Transportation Company (MGTC). This division is essentially on paper only, since the partners have the same percentage interests in both the joint venture and MGTC, and Total operates both segments. But the contracts specify that the producers in the joint venture (who actually sell the gas) pay a “transportation tariff” to MGTC. Based on the relative development costs of the gas field production and the pipeline construction, this tariff is 38.8% of the sales price.<sup>123</sup> The remainder goes to the partners’ production joint venture.<sup>124</sup>

Since 2001, the regime has taken some of its profit “in kind,” as gas for domestic consumption. This is valued at the same price as the export gas, except that the transportation tariff is 86.8% of the export gas tariff,<sup>125</sup> because the domestic gas does not travel the whole length of the pipeline. In calculating the revenue distribution, the value of the domestic gas is added to the total revenue, such that the total revenue is more than what is paid by PTT. When the total revenue is distributed, the value of the domestic gas is included in the Burmese regime’s portion.

### Yadana Project initial revenue distribution, 1998-2009 (in millions of US\$)

Year	Project Revenue			To MGTC			To Joint Venture		
	Total export revenue (from PTT)	Total domestic gas value	Total revenue	Export tariff (38.8%)	Domestic tariff (86.8% of export tariff)	Total MGTC income	From export gas	From domestic gas	Total
1998	\$52.162	\$0	\$52.161	\$20.238	\$0	\$20.238	\$31.923	\$0	\$31.923
1999	\$287.632	\$0	\$287.632	\$111.606	\$0	\$111.606	\$176.026	\$0	\$176.026
2000	\$495.355	\$0	\$495.355	\$192.201	\$0	\$192.201	\$303.154	\$0	\$303.154
2001	\$530.029	\$4.130	\$534.159	\$205.656	\$0	\$205.656	\$324.372	\$4.130	\$328.502
2002	\$493.654	\$18.644	\$512.298	\$191.543	\$2.240	\$193.783	\$302.110	\$16.404	\$318.514
2003	\$558.994	\$35.220	\$594.214	\$216.889	\$7.867	\$224.757	\$342.104	\$27.353	\$369.457
2004	\$583.519	\$44.937	\$628.456	\$226.405	\$11.122	\$237.527	\$357.113	\$33.815	\$390.929
2005	\$663.850	\$111.454	\$775.304	\$257.573	\$34.068	\$291.642	\$406.276	\$77.385	\$483.662
2006	\$889.506	\$145.397	\$1,034.903	\$345.128	\$44.443	\$389.572	\$544.377	\$100.953	\$645.331
2007	\$988.901	\$154.273	\$1,143.174	\$383.693	\$47.156	\$430.850	\$605.207	\$107.116	\$712.324
2008	\$1,325.976	\$206.858	\$1,532.835	\$514.478	\$63.230	\$577.709	\$811.497	\$143.627	\$955.125
2009	\$1,246.425	\$194.448	\$1,440.873	\$483.612	\$59.437	\$543.050	\$762.812	\$135.010	\$897.822

MGTC’s income then goes to pay MGTC’s operating costs, its taxes, and its shareholders, which are the same four joint venture partners. In our calculations we have estimated that the income from MGTC is first used to pay back pipeline development costs; because the pipeline cost was approximately US \$465.6 million, and the contracts allow depreciation at 12.5% annually, we estimate that MGTC paid US \$58.2 million of the development costs each year (with shortfalls in the early years carried over to the next year), with the full initial costs paid off in the year 2005. We

have used actual operating costs figures from 1998-2003, and thereafter estimated costs of US \$11 million annually. MGTC is subject to a 30% income tax after a 3-year tax holiday that ended in August 2001, and pays taxes on its income after operating costs and amortized development costs.

### MGTC revenue distribution, 1998-2009 (in millions of US\$)

Year	Total MGTC income	Costs			Taxes (after costs)	Estimated shareholder distribution				
		Operating costs	Applied toward development costs	Total costs		TOTAL (31.2375%)	Chevron (26.2825%)	PTTEP (25.5%)	MOGE (15%)	Total after-tax income
1998	\$20.238	\$4.166	\$16.072	\$20.238	\$0	\$0	\$0	\$0	\$0	\$0
1999	\$111.606	\$17.360	\$94.246	\$111.606	\$0	\$0	\$0	\$0	\$0	\$0
2000	\$192.201	\$9.790	\$64.281	\$74.071	\$0	\$36.900	\$33.386	\$30.123	\$17.719	\$118.129
2001	\$205.656	\$10.000	\$58.200	\$68.200	\$17.182	\$37.570	\$33.992	\$30.670	\$18.041	\$120.274
2002	\$193.783	\$10.170	\$58.200	\$68.370	\$37.623	\$27.423	\$24.811	\$22.386	\$13.168	\$87.789
2003	\$224.757	\$11.190	\$58.200	\$69.390	\$46.595	\$33.977	\$30.741	\$27.736	\$16.315	\$108.771
2004	\$237.527	\$12.000	\$58.200	\$70.200	\$50.411	\$36.521	\$33.043	\$29.813	\$17.537	\$116.916
2005	\$291.642	\$12.000	\$58.200	\$70.200	\$66.638	\$48.356	\$43.751	\$39.474	\$23.220	\$154.803
2006	\$389.572	\$12.000	\$0	\$12.000	\$96.005	\$87.954	\$79.577	\$71.799	\$42.235	\$281.566
2007	\$430.850	\$12.000	\$0	\$12.000	\$108.383	\$96.982	\$87.745	\$79.169	\$46.570	\$310.466
2008	\$577.709	\$12.000	\$0	\$12.000	\$152.422	\$129.100	\$116.805	\$105.388	\$61.993	\$413.286
2009	\$543.050	\$12.000	\$0	\$12.000	\$142.029	\$121.520	\$109.946	\$99.200	\$58.353	\$389.020

The joint venture's income is split between production costs, the Burmese regime, and the joint venture partners (which also includes MOGE at 15%). Costs, including paying down accrued development costs, can take up to half this amount; we estimate that the initial development costs were paid off by the year 2004. A 10% royalty is also paid to the regime on the total amount. The remainder, the producers' profit, is then split between MOGE and the partners according to a formula that varies with the price of gas, but generally gives MOGE around 60%. What is left is then divided among the partners according to their percentage interest, again including MOGE at 15%. During the early years of the project, some funds were also allocated to pay back MOGE's estimated costs for exploring the field prior to signing the original contracts. Finally, although the corporations pay their own taxes, we have included the tax figures here to show that this money also flows back to the Burmese regime; the corporations are subject to the same tax treatment as MGTC, with their share of the producers' profit subject to 30% tax after the 3-year tax holiday.

### Production joint venture revenue distribution, 1998-2009 (in millions of US\$)

Year	Total joint venture income	Costs			Royalty (10%) (to MOGE)	Payment of MOGE's past costs	MOGE share of profit	Tax on partners' share of profit	Partners' total after-tax share
		Operating costs	Applied toward development costs	Total costs					
1998	\$31.923	\$11.340	\$4.621	\$15.961	\$3.192	\$7.485	\$5.108	\$0	\$ .176
1999	\$176.026	\$32.075	\$55.938	\$88.013	\$17.602	\$21.908	\$28.828	\$0	\$19.674
2000	\$303.154	\$23.425	\$128.152	\$151.577	\$30.315	\$.687	\$66.173	\$0	\$54.401
2001	\$328.502	\$26.500	\$137.751	\$164.251	\$32.850	\$0	\$83.112	\$5.002	\$43.286
2002	\$318.514	\$26.825	\$132.432	\$159.257	\$31.851	\$0	\$70.621	\$14.480	\$42.305
2003	\$369.457	\$32.000	\$152.728	\$184.728	\$36.945	\$0	\$90.333	\$14.649	\$42.800
2004	\$390.929	\$32.000	\$122.775	\$154.775	\$39.092	\$0	\$118.236	\$20.100	\$58.724
2005	\$483.662	\$32.000	\$0	\$32.000	\$48.366	\$0	\$241.978	\$41.136	\$120.182
2006	\$645.331	\$32.000	\$0	\$32.000	\$64.533	\$0	\$329.279	\$55.977	\$163.542
2007	\$712.324	\$32.000	\$0	\$32.000	\$71.232	\$0	\$365.455	\$62.127	\$181.509
2008	\$955.125	\$32.000	\$0	\$32.000	\$95.512	\$0	\$496.568	\$84.416	\$246.629
2009	\$897.822	\$32.000	\$0	\$32.000	\$89.782	\$0	\$465.624	\$79.156	\$231.260

## Distribution of partner's share of profit, after taxes, 1998-2009 (in millions of US\$)

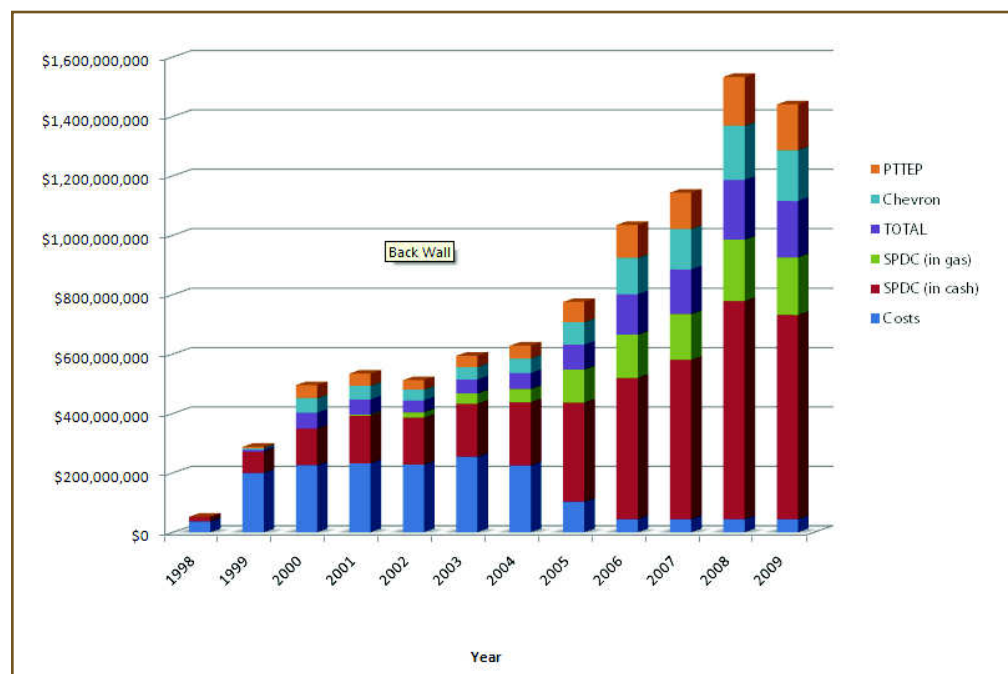
Year	TOTAL (31.2375%)	Chevron (26.2825%)	PTTEP (25.5%)	MOGE (15%) (pays no tax)	Total after-tax share
1998	\$0.054	\$0.049	\$0.044	\$0.026	\$0.176
1999	\$6.145	\$5.560	\$5.016	\$2.951	\$19.674
2000	\$16.993	\$15.375	\$13.872	\$8.160	\$54.401
2001	\$13.245	\$11.984	\$10.812	\$7.243	\$43.286
2002	\$12.416	\$11.234	\$10.136	\$8.517	\$42.305
2003	\$12.562	\$11.365	\$10.254	\$8.617	\$42.800
2004	\$17.235	\$15.594	\$14.070	\$11.823	\$58.724
2005	\$35.274	\$31.914	\$28.795	\$24.197	\$120.182
2006	\$48.000	\$43.429	\$39.184	\$32.927	\$163.542
2007	\$53.274	\$48.200	\$43.489	\$36.545	\$181.509
2008	\$72.387	\$65.493	\$59.091	\$49.656	\$246.629
2009	\$67.876	\$61.411	\$55.409	\$46.562	\$231.260

The total net income for the Burmese regime includes a number of different pieces: the tax income from MGTC, MOGE's 15% stake in MGTC, the 10% royalty, payments for past costs, MOGE's split of the profit with the producers, the tax on the corporate partners' shares of the profit, and MOGE's 15% share of the profit as a producer. The total net income for the corporate partners is simply the sum of their distributions from MGTC and their after-tax profit from the joint venture.

## Total project revenue distribution by partner, 1998-2009 (in millions of US\$)

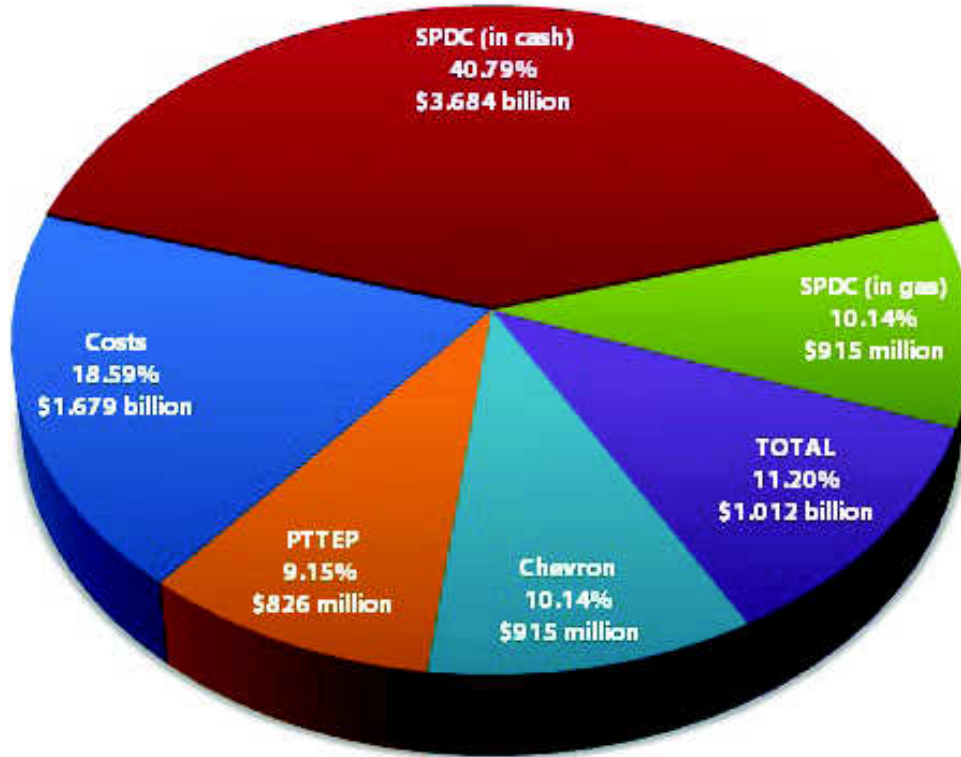
Year	Total costs	Corporate partners' share			MOGE/regime share			Total revenue (incl. domestic gas)
		TOTAL net after-tax income	Chevron net after-tax income	PTTEP net after-tax income	In cash	In kind (domestic gas)	Total	
1998	\$36.200	\$0.054	\$0.049	\$0.044	\$15.812	\$0	\$15.812	\$52.161
1999	\$199.619	\$6.145	\$5.560	\$5.016	\$71.291	\$0	\$71.291	\$287.632
2000	\$225.648	\$53.894	\$48.761	\$43.995	\$123.056	\$0	\$123.056	\$495.355
2001	\$232.451	\$50.816	\$45.976	\$41.482	\$159.302	\$4.130	\$163.432	\$534.159
2002	\$227.627	\$39.840	\$36.045	\$32.522	\$157.618	\$18.644	\$176.263	\$512.298
2003	\$254.118	\$46.539	\$42.107	\$37.991	\$178.237	\$35.220	\$213.457	\$594.214
2004	\$224.975	\$53.757	\$48.637	\$43.883	\$212.264	\$44.937	\$257.202	\$628.456
2005	\$102.200	\$83.631	\$75.666	\$68.270	\$334.083	\$111.454	\$445.537	\$775.304
2006	\$44.000	\$135.955	\$123.006	\$110.983	\$475.560	\$145.397	\$620.958	\$1,034.903
2007	\$44.000	\$150.256	\$135.946	\$122.658	\$536.041	\$154.273	\$690.314	\$1,143.174
2008	\$44.000	\$201.487	\$182.298	\$164.479	\$733.711	\$206.858	\$940.569	\$1,532.835
2009	\$44.000	\$189.396	\$171.358	\$154.609	\$687.060	\$194.448	\$881.508	\$1,440.873
<b>ALL</b>	<b>\$1,678.838</b>	<b>\$1,011.770</b>	<b>\$915.409</b>	<b>\$825.932</b>	<b>\$3,684.035</b>	<b>\$915.361</b>	<b>\$4,599.399</b>	<b>\$9,031.364</b>
<b>PCT</b>	<b>18.59%</b>	<b>11.20%</b>	<b>10.14%</b>	<b>9.15%</b>	<b>40.79%</b>	<b>10.14%</b>	<b>50.93%</b>	<b>100.00%</b>

## Annual total project revenue distribution by partner, 1998-2009 (in millions of US\$)



Thus, of the total revenue generated by the project, including the value of the domestic gas taken, the Burmese regime has taken over 50%—or more than 62% of the net revenue, once costs are deducted.

**Cummulative total project revenue distribution by partner, 1998-2009**





## Conclusion

Total, Chevron, and PTTEP have been complicit in forced labor, killings, and other abuses committed by the Burmese Army providing security in the area of their natural gas pipeline in Burma. The companies are vulnerable to liability in their home states for these abuses and can be sued by affected villagers.

Given the positive development outcomes associated with revenue transparency in the extractive industries, a diverse and powerful international coalition requested that the Total, Chevron and PTTEP practice revenue transparency in Burma and publish details of all of their payments to the Burmese authorities over the last 18 years. Total and Chevron explicitly rejected the request, citing curiously inconsistent reasons that are detailed in this report.

In the absence of the companies' revenue transparency, EarthRights International has conducted its own original and detailed calculations based on newly-considered documents obtained through the *Doe v. Unocal* lawsuit in the US. From 1998-2009, EarthRights International estimates in this report that the Yadana gas pipeline has generated over US \$9 billion, over half of which went directly to the Burmese military regime – or 62 percent of net revenue, after costs. The Yadana Project companies have thus financially upheld a violent and authoritarian regime accused of crimes against humanity and war crimes, and a regime exposed as the world's newest nuclear threat. Rather than use the country's gas revenues to benefit the people of Burma and secure a stable economic future for the entire country, the Burmese military regime is instead engaged in an expensive military program in partnership with North Korea, reportedly in violation of UN sanctions against Pyongyang, and the generals are developing a program to equip the country with nuclear weapons of mass destruction, violating their international and regional commitments to nuclear non-proliferation.<sup>126</sup>

Total, Chevron, and PTTEP already made the profound mistake of doing business with the Burmese military regime, long before the country was a nuclear threat, and against the better judgment of a number of their competitors and critics in the 1990s, when their project in Burma began.

However, it is not too late for the companies to change course and do the right thing.

EarthRights International hereby requests a series of meetings with the companies, dismissing Total's previous denials to engage with EarthRights

International. Reports have emerged that Total has been convening meetings in Rangoon (Yangon) with other multinational oil companies operating in Burma to discuss a variety of issues, including social and environmental impacts of their projects. To EarthRights International's knowledge, local people and objective civil society groups have not been present at these meetings. While there is nothing inherently wrong with meetings between oil companies excluding civil society, if the company is seriously intent on stemming the adverse social impacts of oil and gas projects in Burma, these meetings should be complemented by additional meetings that include genuine civil society groups who are relatively unhampered by the military regime's repression. For security purposes, the meetings could be held in Bangkok, Thailand; organizations that should be present would include but not be limited to EarthRights International, the Human Rights Foundation of Monland, the Shwe Gas Movement, and other relevant international organizations.

Regarding revenue transparency, Total, Chevron, and PTTEP should embrace their own assertions about the virtues and value of transparency and follow the unambiguous will of the international community: the companies should practice complete revenue transparency in Burma and publish their last two decades of payments to the Burmese military regime. Given that the companies are already in dialogue with numerous other oil companies operating in Burma, it would appear that they are well-positioned to advocate for revenue transparency in Burma. The companies should demonstrate their efforts at promoting revenue transparency in Burma. Positive results will benefit not only Burma, but also the companies' own bottom line.

While there are no easy answers when it comes to the complex social, political, and economic problems that beset Burma, these and other concerted steps detailed in the recommendations below can and should be taken by Total, Chevron, and PTTEP. EarthRights International also calls on the international community, investors and shareholders, and the ruling junta to heed the reasonable recommendations included in this report.

# Recommendations

## To Total, Chevron, and PTTEP:

- Publish disaggregated data about all payments made to the Burmese authorities since 1992, or earlier, per the Global Call for Revenue Transparency signed by over 160 nongovernmental organizations, labor unions, investment firms, scholars, and world policy leaders.
- Demonstrate benchmarked efforts to promote revenue transparency in Burma; demonstrate encouragement to other oil companies in Burma to follow suit and practice disaggregated revenue transparency in Burma.
- Chevron should stop lobbying against, and instead support, the Energy Security Through Transparency Act pending before the US Congress, a bill that promotes revenue transparency through the mandatory disclosure of resource-related payments to governments for all oil, gas, and mining firms registered with the US Securities and Exchange Commission.
- Conduct ongoing Environmental Impact Assessments in the pipeline area and make the assessments public, per international best practice. These assessments should be conducted by independent-third parties.
- Facilitate local complaints of forced labor to the International Labour Organization.
- Demonstrate a clear and measurable system for stemming adverse human rights impacts, including taking steps to enable accessible and objective assessments of the human rights situation in the pipeline corridor by EarthRights International and other select groups capable of such sensitive work.
- Acknowledge a wider and more accurate sphere-of-responsibility in the pipeline corridor, including all villages affected by the Yadana pipeline project.
- Invite relevant civil society organizations to the meetings that Total has been convening in Rangoon (Yangon) between representatives of oil companies operating in Burma. Appropriate invitees would include but not be limited to EarthRights International, the Human Rights Foundation of

Monland, the Shwe Gas Movement, and other relevant international organizations. For security purposes, it is requested that Total convene the meetings in Bangkok, Thailand.

- Meet with EarthRights International's management, as previously requested, to discuss the local and national impacts of the companies' operations in Burma.

## To the International Community:

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

to promote stability for corporations operating internationally, allow for corporate liability and accountability for complicity in abuses abroad, and enable access to justice for survivors of abuses abroad. Civil society organizations and citizens of these countries should advocate for legislation to create such mechanisms.

## To Investors and Shareholders in Extractive Industry Companies in Burma:

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

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

- Cease new investments or project construction until negative human rights and environmental impacts can be adequately mitigated or prevented, and local communities are provided Free Prior and Informed Consent to the projects. In particular, companies involved in the development of the Shwe Gas Project, including Daewoo International, Korea Gas Company (KOGAS), Gas Authority of India Ltd. (GAIL), ONGC Videsh, China National Petroleum Company (CNPC), PetroChina, and others should immediately cease all project-related work until all of the elements of these recommendations are implemented.

- Conduct independent, objective, and verifiable third-party environmental and human rights impact assessments before the initiation of any oil and gas projects in Burma; include the full and free participation of local people and make the entire assessments publicly available in local languages.
- Facilitate independent, verifiable, third-party human rights monitoring of existing projects.
- Recognize Free Prior and Informed Consent as an indigenous human right and consult objective and independent third parties to ensure the right is being respected in relation to the company's proposed operations.
- Publish disaggregated data about all payments made to the Burmese authorities.

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

- Cease committing human rights abuses against the people in the Yadana pipeline region and throughout Burma, including extrajudicial killings, sexual violence, torture, excessive force, arbitrary detentions and imprisonment, forced labor, and forced relocation.
- Require by law environmental, social, and human rights impact assessments in relation to any natural resource exploitation project that stands to have environmental, social, or human rights impacts.
- Require by law revenue transparency from oil, gas, mining, and hydropower companies conducting business within Burma's borders.
- Take steps toward membership in the Extractive Industries Transparency Initiative, including most importantly a demonstrated respect for basic human rights and the promotion of a free and genuine civil society.

# Appendix A: Yadana Gas Revenue Calculations

## NOTES TO ALL TABLES:

1. All currency figures are in US dollars.
2. The data in these tables were compiled on a quarterly basis but are presented here annually; thus the figures may not add up perfectly. For example, although we have listed the average annual price and the average annual daily gas volume, the value of the sales depends on whether the volume fluctuates during different quarters.
3. Generally, for 1998 through mid-2003, these tables use actual sales and payment figures; from mid-2003 forward they reflect EarthRights International's calculations. Because the payment figures generally only show the basic distributions between the royalty, the MOGE/government share of the joint venture revenue, past costs, the MGTC transportation tariffs, and the producers' shares of the joint venture revenue, other figures for 1998 through mid-2003 have also been calculated by EarthRights International.

## SOURCES:

- Sales price: Calculated from the monthly weighted averages of Singapore spot prices for "FO 180 CST 2%" published in *Platt's Oilgram Price Report*, where available; otherwise calculated from Singapore Residual Fuel Oil 180 spot prices from the U.S. Energy Information Administration, <http://tonto.eia.doe.gov/dnav/pet/hist/rfo180sin5M.htm>.
- Gas volume: Reverse calculated from the price and known sales figures in Defs.' Trial Exs. 2473-3537, *Doe v. Unocal* for 1998 through mid-2003; taken from published production figures by PTTEP and Total for subsequent periods, at [www.pttep.com](http://www.pttep.com) and [www.total.com](http://www.total.com).
- Gas heating value (711.8 BTU/cf): Taken from Defs.' Trial Ex. 2501.
- Distribution formulas: Derived from the Memorandum of Understanding, Defs.' Trial Ex. 1001, the Production Sharing Contract, Defs.' Trial Ex. 1002, the MGTC Agreement, Defs.' Trial Ex. 1012, and the Export Gas

Transportation Agreement, Defs.' Trial Ex. 1013.

**TOTAL SALES, TAKE-OR-PAY, AND MAKE-UP GAS 1998-2009**

Year	Average volume produced (mmscfd)	Average export sales volume (mmscfd)	Average domestic gas volume (mmscfd)	Average make-up gas volume (mmscfd)	Volume paid for but not taken (mmscf)	Prepaid gas balance (mmscf)	Average sales price (\$/mmBTU)	Sales of prepaid gas (incl. interest)	Sales of delivered gas (at 711.8 BTU/cf)	Total annual sales
1998	6	6	0	0	29046	29046	\$2.44	\$50,469,330.00	\$1,692,510.00	\$52,161,840.00
1999	3	3	0	0	141928	170974	\$2.75	\$285,495,252.77	\$2,137,630.54	\$287,632,883.31
2000	177	177	0	0	126915	297889	\$3.52	\$323,704,918.97	\$171,650,438.31	\$495,355,357.28
2001	538	525	7	6	0	295620	\$3.89	\$0.00	\$530,029,164.93	\$530,029,164.93
2002	611	522	21	68	0	270863	\$3.64	\$0.00	\$493,653,936.16	\$493,653,936.16
2003	623	524	33	66	0	246700	\$3.98	\$0.00	\$558,994,204.26	\$558,994,204.26
2004	700	525	50	125	0	200806	\$4.23	\$0.00	\$583,519,176.84	\$583,519,176.84
2005	650	525	100	25	0	191681	\$4.86	\$0.00	\$663,850,108.03	\$663,850,108.03
2006	680	538	100	42	0	176513	\$6.35	\$0.00	\$889,506,165.51	\$889,506,165.51
2007	758	565	100	93	0	142568	\$6.70	\$0.00	\$988,901,434.02	\$988,901,434.02
2008	702	565	100	37	0	128961	\$8.11	\$0.00	\$1,325,976,457.40	\$1,325,976,457.40
2009	680	565	100	15	0	123486	\$9.35	\$0.00	\$1,246,424,837.23	\$1,246,424,837.23

**NOTES:**

1. The data in this table was compiled on a quarterly basis but is presented here annually; thus the figures may not add up perfectly. For example, although we have listed the average annual price and the average annual daily gas volume, the value of the sales depends on whether the volume fluctuates during different quarters.
2. The data for 1998 reflects only part of a year, because gas started flowing on August 1, 1998; the data has been adjusted to reflect 153 days of production.
3. For 1998 through mid-2002, this table uses actual sales figures and calculates the volumes from those figures. From mid-2002 forward, this table uses published volumes to estimate the sales figures. For these years we have assumed that PTT has paid for its contractual daily quantity only and that the remainder produced (less domestic gas) is taken as make-up gas.

## TOTAL MGTC INCOME 1998-2009

Year	Average sales price (\$/mmBTU)	Average export tariff (38.8% of sales price, \$/mmBTU)	Average export sales volume (mmscfd)	Total annual export tariff (incl. take-or-pay)	Average domestic gas volume (mmscfd)	Average domestic tariff (86.8% of export tariff, \$/mmBTU)	Total annual domestic tariff (paid on deliveries above 20mmscfd)	Total annual MGTC income
1998	\$2.44	\$0.95	6	\$20,238,793.93	0	\$0.82	\$0.00	\$20,238,793.93
1999	\$2.75	\$1.07	3	\$111,606,362.46	0	\$0.93	\$0.00	\$111,606,362.46
2000	\$3.52	\$1.37	177	\$192,201,141.93	0	\$1.19	\$0.00	\$192,201,141.93
2001	\$3.89	\$1.51	525	\$205,656,692.02	7	\$1.31	\$0.00	\$205,656,692.02
2002	\$3.64	\$1.41	522	\$191,543,100.60	21	\$1.23	\$2,240,206.09	\$193,783,306.69
2003	\$3.98	\$1.59	524	\$216,889,885.34	33	\$1.38	\$7,867,199.71	\$224,757,085.05
2004	\$4.23	\$1.66	525	\$226,405,440.61	50	\$1.44	\$11,122,144.71	\$237,527,585.32
2005	\$4.86	\$1.89	525	\$257,573,841.92	100	\$1.64	\$34,068,433.49	\$291,642,275.41
2006	\$6.35	\$2.46	538	\$345,128,392.22	100	\$2.14	\$44,443,888.56	\$389,572,280.77
2007	\$6.70	\$2.61	565	\$383,693,756.40	100	\$2.27	\$47,156,981.32	\$430,850,737.72
2008	\$8.11	\$3.49	565	\$514,478,865.47	100	\$3.03	\$63,230,818.44	\$577,709,683.91
2009	\$9.35	\$3.30	565	\$483,612,836.85	100	\$2.86	\$59,437,301.58	\$543,050,138.42

### NOTES:

1. The data in this table was compiled on a quarterly basis but is presented here annually; thus the figures may not add up perfectly. For example, although we have listed the average annual price and the average annual daily gas volume, the value of the sales depends on whether the volume fluctuates during different quarters.
2. EarthRights International calculated both the export tariff and the domestic tariff from the payment figures. The domestic transportation tariff is actually paid to MGTC in cash.

## TOTAL PRODUCTION JOINT VENTURE INCOME 1998-2009

Year	Average sales price (\$/mmBTU)	Average net-back value (61.2% of sales price) (\$/mmBTU)	Average export sales volume (mmscfd)	Annual net-back value from export sales	Average domestic gas volume (mmscfd)	Annual net-back value from domestic gas	Total annual production joint venture income
1998	\$2.44	\$1.49	6	\$31,923,046.07	0	\$0.00	\$31,923,046.07
1999	\$2.75	\$1.68	3	\$176,026,520.85	0	\$0.00	\$176,026,520.85
2000	\$3.52	\$2.15	177	\$303,154,215.35	0	\$0.00	\$303,154,215.35
2001	\$3.89	\$2.38	525	\$324,372,472.91	7	\$4,130,000.59	\$328,502,473.50
2002	\$3.64	\$2.23	522	\$302,110,835.56	21	\$16,404,159.19	\$318,514,994.75
2003	\$3.98	\$2.38	524	\$342,104,318.92	33	\$27,353,316.73	\$369,457,635.66
2004	\$4.23	\$2.57	525	\$357,113,736.23	50	\$33,815,365.88	\$390,929,102.11
2005	\$4.86	\$2.98	525	\$406,276,266.12	100	\$77,385,955.45	\$483,662,221.57
2006	\$6.35	\$3.88	538	\$544,377,773.29	100	\$100,953,652.03	\$645,331,425.32
2007	\$6.70	\$4.08	565	\$605,207,677.62	100	\$107,116,403.12	\$712,324,080.74
2008	\$8.11	\$4.62	565	\$811,497,591.93	100	\$143,627,892.38	\$955,125,484.31
2009	\$9.35	\$6.06	565	\$762,812,000.39	100	\$135,010,973.52	\$897,822,973.91

### NOTES:

1. The “net-back” is the term used in the contracts to express the remainder of the revenue after the transportation tariff is paid. Calculating the net-back is necessary for the valuation of the domestic gas, because the domestic gas is valued at the net-back price plus the domestic transportation tariff. The value of the net-back for the domestic gas is added to the total revenue of the joint venture for income distribution purposes.

## TOTAL PROJECT REVENUE AND DOMESTIC GAS VALUE 1998-2009

Year	Annual net-back value from domestic gas	Total annual domestic tariff (paid on deliveries above 20mmscfd)	Total domestic gas value	Total annual sales	Total annual MGTC income	Total annual production joint venture income	Total project revenue (incl. domestic gas value)
1998	\$0.00	\$0.00	\$0.00	\$52,161,840.00	\$20,238,793.93	\$31,923,046.07	\$52,161,840.00
1999	\$0.00	\$0.00	\$0.00	\$287,632,883.31	\$111,606,362.46	\$176,026,520.85	\$287,632,883.31
2000	\$0.00	\$0.00	\$0.00	\$495,355,357.28	\$192,201,141.93	\$303,154,215.35	\$495,355,357.28
2001	\$4,130,000.59	\$0.00	\$4,130,000.59	\$530,029,164.93	\$205,656,692.02	\$328,502,473.50	\$534,159,165.52
2002	\$16,404,159.19	\$2,240,206.09	\$18,644,365.28	\$493,653,936.16	\$193,783,306.69	\$318,514,994.75	\$512,298,301.44
2003	\$27,353,316.73	\$7,867,199.71	\$35,220,516.44	\$558,994,204.26	\$224,757,085.05	\$369,457,635.66	\$594,214,720.70
2004	\$33,815,365.88	\$11,122,144.71	\$44,937,510.59	\$583,519,176.84	\$237,527,585.32	\$390,929,102.11	\$628,456,687.43
2005	\$77,385,955.45	\$34,068,433.49	\$111,454,388.94	\$663,850,108.03	\$291,642,275.41	\$483,662,221.57	\$775,304,496.97
2006	\$100,953,652.03	\$44,443,888.56	\$145,397,540.59	\$889,506,165.51	\$389,572,280.77	\$645,331,425.32	\$1,034,903,706.10
2007	\$107,116,403.12	\$47,156,981.32	\$154,273,384.44	\$988,901,434.02	\$430,850,737.72	\$712,324,080.74	\$1,143,174,818.46
2008	\$143,627,892.38	\$63,230,818.44	\$206,858,710.82	\$1,325,976,457.40	\$577,709,683.91	\$955,125,484.31	\$1,532,835,168.22
2009	\$135,010,973.52	\$59,437,301.58	\$194,448,275.10	\$1,246,424,837.23	\$543,050,138.42	\$897,822,973.91	\$1,440,873,112.33

### NOTES:

- Total project revenue may be calculated two ways: by adding the value of the domestic gas to the total sales, or by adding the total MGTC income to the total production joint venture income.
- Although the domestic tariff is paid to MGTC in cash and the domestic net-back value is added to the joint venture's revenues, there is no cash income from the domestic gas; instead the total value of the domestic gas is taken from MOGE's share of the joint venture profits. We have calculated MOGE's share here without deducting the domestic gas, but the actual cash payout to MOGE would deduct this portion.

## MGTC COSTS AND NET INCOME 1998-2009

Year	Total annual MGTC income	Annual MGTC operating costs	Income in excess of operating costs	Annual share of development costs (12.5% of \$465.6 million)	Development costs carried forward	Total annual costs paid	Net annual income
1998	\$20,238,793.93	\$4,166,666.67	\$16,072,127.26	\$58,200,000.00	\$42,127,872.74	\$20,238,793.93	\$0.00
1999	\$111,606,362.46	\$17,360,000.00	\$94,246,362.46	\$58,200,000.00	\$6,081,510.27	\$111,606,362.46	\$0.00
2000	\$192,201,141.93	\$9,790,000.00	\$182,411,141.93	\$58,200,000.00	\$0.00	\$74,071,510.27	\$118,129,631.66
2001	\$205,656,692.02	\$10,000,000.00	\$195,656,692.02	\$58,200,000.00	\$0.00	\$68,200,000.00	\$137,456,692.02
2002	\$193,783,306.69	\$10,170,000.00	\$183,613,306.69	\$58,200,000.00	\$0.00	\$68,370,000.00	\$125,413,306.69
2003	\$224,757,085.05	\$11,190,000.00	\$213,567,085.05	\$58,200,000.00	\$0.00	\$69,390,000.00	\$155,367,085.05
2004	\$237,527,585.32	\$12,000,000.00	\$225,527,585.32	\$58,200,000.00	\$0.00	\$70,200,000.00	\$167,327,585.32
2005	\$291,642,275.41	\$12,000,000.00	\$279,642,275.41	\$58,200,000.00	\$0.00	\$70,200,000.00	\$221,442,275.41
2006	\$389,572,280.77	\$12,000,000.00	\$377,572,280.77	\$0.00	\$0.00	\$12,000,000.00	\$377,572,280.77
2007	\$430,850,737.72	\$12,000,000.00	\$418,850,737.72	\$0.00	\$0.00	\$12,000,000.00	\$418,850,737.72
2008	\$577,709,683.91	\$12,000,000.00	\$565,709,683.91	\$0.00	\$0.00	\$12,000,000.00	\$565,709,683.91
2009	\$543,050,138.42	\$12,000,000.00	\$531,050,138.42	\$0.00	\$0.00	\$12,000,000.00	\$531,050,138.42

### NOTES:

- MGTC depreciates its assets at 12.5% per year; we assume that MGTC also amortizes its development costs in the same manner, such that the costs are repaid over the first eight years. We have assumed operating costs of US \$12 million from 2004 forward, when we do not have actual budget figures.

## MGTC TAXES AND SHAREHOLDERS' DISTRIBUTION 1998-2009

Year	Net annual income	Taxes (30% after Aug. 1, 2001)	After tax income	Distribution to TOTAL (31.2375%)	Distribution to Chevron (28.2625%)	Distribution to PTTEP (25.5%)	Distribution to MOGE (15%)
1998	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1999	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2000	\$118,129,631.66	\$0.00	\$118,129,631.66	\$36,900,743.69	\$33,386,387.15	\$30,123,056.07	\$17,719,444.75
2001	\$137,456,692.02	\$17,182,086.50	\$120,274,605.52	\$37,570,779.90	\$33,992,610.38	\$30,670,024.41	\$18,041,190.83
2002	\$125,413,306.69	\$37,623,992.01	\$87,789,314.68	\$27,423,187.17	\$24,811,455.06	\$22,386,275.24	\$13,168,397.20
2003	\$155,367,085.05	\$46,595,372.63	\$108,771,712.41	\$33,977,563.67	\$30,741,605.22	\$27,736,786.67	\$16,315,756.86
2004	\$167,327,585.32	\$50,411,242.61	\$116,916,342.72	\$36,521,742.56	\$33,043,481.36	\$29,813,667.39	\$17,537,451.41
2005	\$221,442,275.41	\$66,638,807.37	\$154,803,468.04	\$48,356,733.33	\$43,751,330.15	\$39,474,884.35	\$23,220,520.21
2006	\$377,572,280.77	\$96,005,426.71	\$281,566,854.07	\$87,954,446.04	\$79,577,832.13	\$71,799,547.79	\$42,235,028.11
2007	\$418,850,737.72	\$108,383,744.54	\$310,466,993.18	\$96,982,126.99	\$87,745,733.95	\$79,169,083.26	\$46,570,048.98
2008	\$565,709,683.91	\$152,422,859.55	\$413,286,824.36	\$129,100,471.76	\$116,805,188.73	\$105,388,140.21	\$61,993,023.65
2009	\$531,050,138.42	\$142,029,378.26	\$389,020,760.16	\$121,520,359.96	\$109,946,992.34	\$99,200,293.84	\$58,353,114.02

### NOTES:

1. The three-year tax holiday ended on August 1, 2001. We estimated taxes for five months of the year in 2001.

## PRODUCTION JOINT VENTURE COSTS, ROYALTY AND PROFIT 1998-2009

Year	Total annual production joint venture revenue	"Cost gas" (up to 50% of revenue)	Operating costs	Excess "cost gas" available for development costs	Balance of development costs (from \$734.4 million)	Royalty (10% of revenue)	Joint venture profit (remainder)
1998	\$31,923,046.07	\$15,961,523.04	\$11,340,000.00	\$4,621,523.04	\$729,778,476.97	\$3,192,304.61	\$12,769,218.43
1999	\$176,026,520.85	\$88,013,260.42	\$32,075,000.00	\$55,938,260.42	\$673,840,216.54	\$17,602,652.08	\$70,410,608.34
2000	\$303,154,215.35	\$151,577,107.68	\$23,425,000.00	\$128,152,107.68	\$545,688,108.87	\$30,315,421.54	\$121,261,686.14
2001	\$328,502,473.50	\$164,251,236.75	\$26,500,000.00	\$137,751,236.75	\$407,936,872.12	\$32,850,247.35	\$131,400,989.40
2002	\$318,514,994.75	\$159,257,497.38	\$26,825,000.00	\$132,432,497.38	\$275,504,374.74	\$31,851,499.48	\$127,405,997.90
2003	\$369,457,635.66	\$184,728,817.83	\$32,000,000.00	\$152,728,817.83	\$122,775,556.91	\$36,945,763.57	\$147,783,054.26
2004	\$390,929,102.11	\$154,775,556.91	\$32,000,000.00	\$122,775,556.91	\$0.00	\$39,092,910.21	\$197,060,634.99
2005	\$483,662,221.57	\$32,000,000.00	\$32,000,000.00	\$0.00	\$0.00	\$48,366,222.16	\$403,295,999.41
2006	\$645,331,425.32	\$32,000,000.00	\$32,000,000.00	\$0.00	\$0.00	\$64,533,142.53	\$548,798,282.79
2007	\$712,324,080.74	\$32,000,000.00	\$32,000,000.00	\$0.00	\$0.00	\$71,232,408.07	\$609,091,672.67
2008	\$955,125,484.31	\$32,000,000.00	\$32,000,000.00	\$0.00	\$0.00	\$95,512,548.43	\$827,612,935.88
2009	\$897,822,973.91	\$32,000,000.00	\$32,000,000.00	\$0.00	\$0.00	\$89,782,297.39	\$776,040,676.51

### NOTES:

1. The contracts allow up to 50% of the joint venture revenue (including the domestic gas value) to be used to pay costs, including development costs. We have assumed that the partners did use the full 50% to pay costs until the development costs were paid down, which we estimate would have occurred at the end of the third quarter of 2004. Subsequent to this we have assumed that only the annual operating costs are deducted.
2. We have used actual budget figures for the 1998-2003 operating costs and an estimate of US \$32 million thereafter.



## PRODUCTION JOINT VENTURE PROFIT DISTRIBUTION

Year	Joint venture profit	Past costs (paid to MOGE)	MOGE share of profit (as government)	Producers' share of profit	TOTAL share (31.2375% of producers' share)	Chevron share (28.2625% of producers' share)	PTTEP share (25.5% of producers' share)	MOGE share (15% of producers' share)
1998	\$12,769,218.43	\$7,485,790.70	\$5,107,826.90	\$175,600.83	\$54,853.31	\$49,629.18	\$44,778.21	\$26,340.12
1999	\$70,410,608.34	\$21,908,882.19	\$28,828,219.01	\$19,673,507.14	\$6,145,511.79	\$5,560,224.96	\$5,016,744.32	\$2,951,026.07
2000	\$121,261,686.14	\$687,018.39	\$66,173,473.21	\$54,401,194.55	\$16,993,573.15	\$15,375,137.61	\$13,872,304.61	\$8,160,179.18
2001	\$131,400,989.40	\$0.00	\$83,112,320.71	\$48,288,668.69	\$15,084,172.88	\$13,647,584.99	\$12,313,610.52	\$7,243,300.30
2002	\$127,405,997.90	\$0.00	\$70,620,612.15	\$56,785,385.75	\$17,738,334.87	\$16,048,969.65	\$14,480,273.37	\$8,517,807.86
2003	\$147,783,054.26	\$0.00	\$90,332,877.20	\$57,450,177.06	\$17,945,999.06	\$16,236,856.29	\$14,649,795.15	\$8,617,526.56
2004	\$197,060,634.99	\$0.00	\$118,236,380.99	\$78,824,253.99	\$24,622,726.34	\$22,277,704.79	\$20,100,184.77	\$11,823,638.10
2005	\$403,295,999.41	\$0.00	\$241,977,599.65	\$161,318,399.76	\$50,391,835.13	\$45,592,612.73	\$41,136,191.94	\$24,197,759.96
2006	\$548,798,282.79	\$0.00	\$329,278,969.67	\$219,519,313.12	\$68,572,345.43	\$62,041,645.87	\$55,977,424.84	\$32,927,896.97
2007	\$609,091,672.67	\$0.00	\$365,455,003.60	\$243,636,669.07	\$76,106,004.50	\$68,857,813.60	\$62,127,350.61	\$36,545,500.36
2008	\$827,612,935.88	\$0.00	\$496,567,761.53	\$331,045,174.35	\$103,410,236.34	\$93,561,642.40	\$84,416,519.46	\$49,656,776.15
2009	\$776,040,676.51	\$0.00	\$465,624,405.91	\$310,416,270.61	\$96,966,282.53	\$87,731,398.48	\$79,156,149.00	\$46,562,440.59

### NOTES:

1. The MOGE share of the profit is taken from actual figures from 1998 through mid-2003, and estimated at 60% of the profit thereafter.
2. Past costs are taken from actual payment figures.

## TAXES ON PRODUCTION JOINT VENTURE PROFITS

Year	TOTAL share (31.2375% of producers' share)	Taxes on TOTAL share (30% after Aug. 1, 2001)	TOTAL share after taxes	Chevron share (28.2625% of producers' share)	Taxes on Chevron share (30% after Aug. 1, 2001)	Chevron share after taxes	PTTEP share (25.5% of producers' share)	Taxes on PTTEP share (30% after Aug. 1, 2001)	PTTEP share after taxes
1998	\$54,853.31	\$0.00	\$54,853.31	\$49,629.18	\$0.00	\$49,629.18	\$44,778.21	\$0.00	\$44,778.21
1999	\$6,145,511.79	\$0.00	\$6,145,511.79	\$5,560,224.96	\$0.00	\$5,560,224.96	\$5,016,744.32	\$0.00	\$5,016,744.32
2000	\$16,993,573.15	\$0.00	\$16,993,573.15	\$15,375,137.61	\$0.00	\$15,375,137.61	\$13,872,304.61	\$0.00	\$13,872,304.61
2001	\$15,084,172.88	\$1,838,385.85	\$13,245,787.03	\$13,647,584.99	\$1,663,301.48	\$11,984,283.51	\$12,313,610.52	\$1,500,723.14	\$10,812,887.37
2002	\$17,738,334.87	\$5,321,500.46	\$12,416,834.41	\$16,048,969.65	\$4,814,690.89	\$11,234,278.75	\$14,480,273.37	\$4,344,082.01	\$10,136,191.36
2003	\$17,945,999.06	\$5,383,799.72	\$12,562,199.34	\$16,236,856.29	\$4,871,056.89	\$11,365,799.40	\$14,649,795.15	\$4,394,938.55	\$10,254,856.61
2004	\$24,622,726.34	\$7,386,817.90	\$17,235,908.44	\$22,277,704.79	\$6,683,311.44	\$15,594,393.35	\$20,100,184.77	\$6,030,055.43	\$14,070,129.34
2005	\$50,391,835.13	\$15,117,550.54	\$35,274,284.59	\$45,592,612.73	\$13,677,783.82	\$31,914,828.91	\$41,136,191.94	\$12,340,857.58	\$28,795,334.36
2006	\$68,572,345.43	\$20,571,703.63	\$48,000,641.80	\$62,041,645.87	\$18,612,493.76	\$43,429,152.11	\$55,977,424.84	\$16,793,227.45	\$39,184,197.39
2007	\$76,106,004.50	\$22,831,801.35	\$53,274,203.15	\$68,857,813.60	\$20,657,344.08	\$48,200,469.52	\$62,127,350.61	\$18,638,205.18	\$43,489,145.43
2008	\$103,410,236.34	\$31,023,070.90	\$72,387,165.44	\$93,561,642.40	\$28,068,492.72	\$65,493,149.68	\$84,416,519.46	\$25,324,955.84	\$59,091,563.62
2009	\$96,966,282.53	\$29,089,884.76	\$67,876,397.77	\$87,731,398.48	\$26,319,419.54	\$61,411,978.94	\$79,156,149.00	\$23,746,844.70	\$55,409,304.30

### NOTES:

1. The three-year tax holiday ended on August 1, 2001. We estimated taxes for five months of the year in 2001.

## TOTAL PRODUCTION JOINT VENTURE TAXES AND AFTER-TAX INCOME

Year	Taxes on TOTAL share (30% after Aug. 1, 2001)	Taxes on Chevron share (30% after Aug. 1, 2001)	Taxes on PTTEP share (30% after Aug. 1, 2001)	Total taxes	TOTAL share after taxes	Chevron share after taxes	PTTEP share after taxes	Total private company share after taxes
1998	\$0.00	\$0.00	\$0.00	\$0.00	\$54,853.31	\$49,629.18	\$44,778.21	\$149,260.70
1999	\$0.00	\$0.00	\$0.00	\$0.00	\$6,145,511.79	\$5,560,224.96	\$5,016,744.32	\$16,722,481.07
2000	\$0.00	\$0.00	\$0.00	\$0.00	\$16,993,573.15	\$15,375,137.61	\$13,872,304.61	\$46,241,015.36
2001	\$1,838,385.85	\$1,663,301.48	\$1,500,723.14	\$5,002,410.47	\$13,245,787.03	\$11,984,283.51	\$10,812,887.37	\$36,042,957.92
2002	\$5,321,500.46	\$4,814,690.89	\$4,344,082.01	\$14,480,273.37	\$12,416,834.41	\$11,234,278.75	\$10,136,191.36	\$33,787,304.52
2003	\$5,383,799.72	\$4,871,056.89	\$4,394,938.55	\$14,649,795.15	\$12,562,199.34	\$11,365,799.40	\$10,254,856.61	\$34,182,855.35
2004	\$7,386,817.90	\$6,683,311.44	\$6,030,055.43	\$20,100,184.77	\$17,235,908.44	\$15,594,393.35	\$14,070,129.34	\$46,900,431.13
2005	\$15,117,550.54	\$13,677,783.82	\$12,340,857.58	\$41,136,191.94	\$35,274,284.59	\$31,914,828.91	\$28,795,334.36	\$95,984,447.86
2006	\$20,571,703.63	\$18,612,493.76	\$16,793,227.45	\$55,977,424.84	\$48,000,641.80	\$43,429,152.11	\$39,184,197.39	\$130,613,991.30
2007	\$22,831,801.35	\$20,657,344.08	\$18,638,205.18	\$62,127,350.61	\$53,274,203.15	\$48,200,469.52	\$43,489,145.43	\$144,963,818.09
2008	\$31,023,070.90	\$28,068,492.72	\$25,324,955.84	\$84,416,519.46	\$72,387,165.44	\$65,493,149.68	\$59,091,563.62	\$196,971,878.74
2009	\$29,089,884.76	\$26,319,419.54	\$23,746,844.70	\$79,156,149.00	\$67,876,397.77	\$61,411,978.94	\$55,409,304.30	\$184,697,681.01

## GLOBAL MOGE/BURMESE REGIME REVENUE (AFTER COSTS, INCLUDING DOMESTIC GAS)

Year	Taxes (30% after Aug. 1, 2001)	MGTC distribution to MOGE (15%)	Royalty (10% of revenue)	Past costs (paid to MOGE)	MOGE share of joint venture profit (as government)	MOGE share of producers' share of joint venture profit (15%)	Total joint venture company taxes	Total Burmese regime revenue (incl. domestic gas value)
1998	\$0.00	\$0.00	\$3,192,304.61	\$7,485,790.70	\$5,107,826.90	\$26,340.12	\$0.00	\$15,812,262.33
1999	\$0.00	\$0.00	\$17,602,652.08	\$21,908,882.19	\$28,828,219.01	\$2,951,026.07	\$0.00	\$71,290,779.35
2000	\$0.00	\$17,719,444.75	\$30,315,421.54	\$687,018.39	\$66,173,473.21	\$8,160,179.18	\$0.00	\$123,055,537.06
2001	\$17,182,086.50	\$18,041,190.83	\$32,850,247.35	\$0.00	\$83,112,320.71	\$7,243,300.30	\$5,002,410.47	\$163,431,556.16
2002	\$37,623,992.01	\$13,168,397.20	\$31,851,499.48	\$0.00	\$70,620,612.15	\$8,517,807.86	\$14,480,273.37	\$176,262,582.06
2003	\$46,595,372.63	\$16,315,756.86	\$36,945,763.57	\$0.00	\$90,332,877.20	\$8,617,526.56	\$14,649,795.15	\$213,457,091.97
2004	\$50,411,242.61	\$17,537,451.41	\$39,092,910.21	\$0.00	\$118,236,380.99	\$11,823,638.10	\$20,100,184.77	\$257,201,808.09
2005	\$66,638,807.37	\$23,220,520.21	\$48,366,222.16	\$0.00	\$241,977,599.65	\$24,197,759.96	\$41,136,191.94	\$445,537,101.28
2006	\$96,005,426.71	\$42,235,028.11	\$64,533,142.53	\$0.00	\$329,278,969.67	\$32,927,896.97	\$55,977,424.84	\$620,957,888.84
2007	\$108,383,744.54	\$46,570,048.98	\$71,232,408.07	\$0.00	\$365,455,003.60	\$36,545,500.36	\$62,127,350.61	\$690,314,056.17
2008	\$152,422,859.55	\$61,993,023.65	\$95,512,548.43	\$0.00	\$496,567,761.53	\$49,656,776.15	\$84,416,519.46	\$940,569,488.78
2009	\$142,029,378.26	\$58,353,114.02	\$89,782,297.39	\$0.00	\$465,624,405.91	\$46,562,440.59	\$79,156,149.00	\$881,507,785.18

## GLOBAL PRIVATE COMPANY REVENUE (AFTER COSTS AND TAXES)

Year	MGTC distribution to TOTAL (31.2375%)	TOTAL share of joint venture profit after taxes	Net TOTAL revenue	Distribution to Chevron (28.2625%)	Chevron share of joint venture profit after taxes	Net Chevron revenue	Distribution to PTTEP (25.5%)	PTTEP share of joint venture profit after taxes	Net PTTEP revenue
1998	\$0.00	\$54,853.31	\$54,853.31	\$0.00	\$49,629.18	\$49,629.18	\$0.00	\$44,778.21	\$44,778.21
1999	\$0.00	\$6,145,511.79	\$6,145,511.79	\$0.00	\$5,560,224.96	\$5,560,224.96	\$0.00	\$5,016,744.32	\$5,016,744.32
2000	\$36,900,743.69	\$16,993,573.15	\$53,894,316.83	\$33,386,387.15	\$15,375,137.61	\$48,761,524.75	\$30,123,056.07	\$13,872,304.61	\$43,995,360.68
2001	\$37,570,779.90	\$13,245,787.03	\$50,816,566.93	\$33,992,610.38	\$11,984,283.51	\$45,976,893.89	\$30,670,024.41	\$10,812,887.37	\$41,482,911.78
2002	\$27,423,187.17	\$12,416,834.41	\$39,840,021.59	\$24,811,455.06	\$11,234,278.75	\$36,045,733.82	\$22,386,275.24	\$10,136,191.36	\$32,522,466.60
2003	\$33,977,563.67	\$12,562,199.34	\$46,539,763.01	\$30,741,605.22	\$11,365,799.40	\$42,107,404.62	\$27,736,786.67	\$10,254,856.61	\$37,991,643.27
2004	\$36,521,742.56	\$17,235,908.44	\$53,757,651.00	\$33,043,481.36	\$15,594,393.35	\$48,637,874.71	\$29,813,667.39	\$14,070,129.34	\$43,883,796.73
2005	\$48,356,733.33	\$35,274,284.59	\$83,631,017.92	\$43,751,330.15	\$31,914,828.91	\$75,666,159.07	\$39,474,884.35	\$28,795,334.36	\$68,270,218.71
2006	\$87,954,446.04	\$48,000,641.80	\$135,955,087.84	\$79,577,832.13	\$43,429,152.11	\$123,006,984.24	\$71,799,547.79	\$39,184,197.39	\$110,983,745.18
2007	\$96,982,126.99	\$53,274,203.15	\$150,256,330.14	\$87,745,733.95	\$48,200,469.52	\$135,946,203.46	\$79,169,083.26	\$43,489,145.43	\$122,658,228.69
2008	\$129,100,471.76	\$72,387,165.44	\$201,487,637.19	\$116,805,188.73	\$65,493,149.68	\$182,298,338.41	\$105,388,140.21	\$59,091,563.62	\$164,479,703.83
2009	\$121,520,359.96	\$67,876,397.77	\$189,396,757.73	\$109,946,992.34	\$61,411,978.94	\$171,358,971.28	\$99,200,293.84	\$55,409,304.30	\$154,609,598.14

## GLOBAL COSTS AND REVENUE

Year	MGTC costs	Joint venture costs ("cost gas")	Total costs	Net TOTAL revenue	Net Chevron revenue	Net PTTEP revenue	Total Burmese regime revenue (incl. domestic gas value)	Total project revenue (incl. domestic gas value)
1998	\$20,238,793.93	\$15,961,523.04	\$36,200,316.97	\$54,853.31	\$49,629.18	\$44,778.21	\$15,812,262.33	\$52,161,840.00
1999	\$111,606,362.46	\$88,013,260.42	\$199,619,622.89	\$6,145,511.79	\$5,560,224.96	\$5,016,744.32	\$71,290,779.35	\$287,632,883.31
2000	\$74,071,510.27	\$151,577,107.68	\$225,648,617.95	\$53,894,316.83	\$48,761,524.75	\$43,995,360.68	\$123,055,537.06	\$495,355,357.28
2001	\$68,200,000.00	\$164,251,236.75	\$232,451,236.75	\$50,816,566.93	\$45,976,893.89	\$41,482,911.78	\$163,431,556.16	\$534,159,165.52
2002	\$68,370,000.00	\$159,257,497.38	\$227,627,497.38	\$39,840,021.59	\$36,045,733.82	\$32,522,466.60	\$176,262,582.06	\$512,298,301.44
2003	\$69,390,000.00	\$184,728,817.83	\$254,118,817.83	\$46,539,763.01	\$42,107,404.62	\$37,991,643.27	\$213,457,091.97	\$594,214,720.70
2004	\$70,200,000.00	\$154,775,556.91	\$224,975,556.91	\$53,757,651.00	\$48,637,874.71	\$43,883,796.73	\$257,201,808.09	\$628,456,687.43
2005	\$70,200,000.00	\$32,000,000.00	\$102,200,000.00	\$83,631,017.92	\$75,666,159.07	\$68,270,218.71	\$445,537,101.28	\$775,304,496.97
2006	\$12,000,000.00	\$32,000,000.00	\$44,000,000.00	\$135,955,087.84	\$123,006,984.24	\$110,983,745.18	\$620,957,888.84	\$1,034,903,706.10
2007	\$12,000,000.00	\$32,000,000.00	\$44,000,000.00	\$150,256,330.14	\$135,946,203.46	\$122,658,228.69	\$690,314,056.17	\$1,143,174,818.46
2008	\$12,000,000.00	\$32,000,000.00	\$44,000,000.00	\$201,487,637.19	\$182,298,338.41	\$164,479,703.83	\$940,569,488.78	\$1,532,835,168.22
2009	\$12,000,000.00	\$32,000,000.00	\$44,000,000.00	\$189,396,757.73	\$171,358,971.28	\$154,609,598.14	\$881,507,785.18	\$1,440,873,112.33

## REVENUE IN CASH AND DOMESTIC GAS

Year	Total Burmese regime revenue (incl. domestic gas value)	Regime revenue taken "in kind" (domestic gas value)	Regime revenue taken in cash
1998	\$15,812,262.33	\$0.00	\$15,812,262.33
1999	\$71,290,779.35	\$0.00	\$71,290,779.35
2000	\$123,055,537.06	\$0.00	\$123,055,537.06
2001	\$163,431,556.16	\$4,130,000.59	\$159,301,555.58
2002	\$176,262,582.06	\$18,644,365.28	\$157,618,216.78
2003	\$213,457,091.97	\$35,220,516.44	\$178,236,575.53
2004	\$257,201,808.09	\$44,937,510.59	\$212,264,297.49
2005	\$445,537,101.28	\$111,454,388.94	\$334,082,712.34
2006	\$620,957,888.84	\$145,397,540.59	\$475,560,348.25
2007	\$690,314,056.17	\$154,273,384.44	\$536,040,671.73
2008	\$940,569,488.78	\$206,858,710.82	\$733,710,777.96
2009	\$881,507,785.18	\$194,448,275.10	\$687,059,510.08

## ANNUAL AND TOTAL PERCENTAGES OF REVENUE

Year	Total costs	Net TOTAL revenue	Net Chevron revenue	Net PTTEP revenue	Regime revenue taken "in kind" (domestic gas value)	Regime revenue taken in cash	Total Burmese regime revenue (incl. domestic gas value)	Total project revenue (incl. domestic gas value)
1998	69.40%	0.11%	0.10%	0.09%	0.00%	30.31%	30.31%	100.00%
1999	69.40%	2.14%	1.93%	1.74%	0.00%	24.79%	24.79%	100.00%
2000	45.55%	10.88%	9.84%	8.88%	0.00%	24.84%	24.84%	100.00%
2001	43.52%	9.51%	8.61%	7.77%	0.77%	29.82%	30.60%	100.00%
2002	44.43%	7.78%	7.04%	6.35%	3.64%	30.77%	34.41%	100.00%
2003	42.77%	7.83%	7.09%	6.39%	5.93%	30.00%	35.92%	100.00%
2004	35.80%	8.55%	7.74%	6.98%	7.15%	33.78%	40.93%	100.00%
2005	13.18%	10.79%	9.76%	8.81%	14.38%	43.09%	57.47%	100.00%
2006	4.25%	13.14%	11.89%	10.72%	14.05%	45.95%	60.00%	100.00%
2007	3.85%	13.14%	11.89%	10.73%	13.50%	46.89%	60.39%	100.00%
2008	2.87%	13.14%	11.89%	10.73%	13.50%	47.87%	61.36%	100.00%
2009	3.05%	13.14%	11.89%	10.73%	13.50%	47.68%	61.18%	100.00%
<b>TOTAL</b>	18.59%	11.20%	10.14%	9.15%	10.14%	40.79%	50.93%	100.00%

# Appendix B: A Call for Total, Chevron, and PTTEP to Practice Revenue Transparency in Burma (Myanmar), April 27, 2010

The oil companies Total, Chevron, and the Petroleum Authority of Thailand Exploration and Production (PTTEP) have an opportunity to promote transparency and accountability in the extractives sector in Burma by becoming the first oil companies to voluntarily publish their payments to the Burmese authorities. We the undersigned policy leaders, non-governmental organizations, unions, investment firms, and academics call on Total, Chevron, and PTTEP to seize this opportunity and publish detailed information about their revenue payments to the Burmese authorities since 1992, including but not limited to taxes, fees, royalties, bonuses, and social benefits.

In 1992, Total signed a production sharing contract with the Myanmar Oil and Gas Enterprise (MOGE) to explore, develop, and market natural gas deposits in Burma's Andaman Sea. The company is now the principal stakeholder in a consortium including Chevron, PTTEP, and MOGE operating the *Yadana* ("treasure") gas pipeline that transports natural gas from Burma to neighboring Thailand.

Preparations for the *Yadana* pipeline began in the early 1990s and it was officially constructed in Burma from 1996-1999; gas sales to the Petroleum Authority of Thailand (PTT) commenced in 2000 and continue to date. The pipeline project transports natural gas to the Thailand border, from where it feeds into two power plants in Thailand, which in turn provide electricity to the Bangkok metropolitan area. The project is currently one of the single largest sources of revenue for the Burmese authorities.

In October 2009, Total disclosed that its portion of the *Yadana* natural gas project in Burma generated US\$254 million for the Burmese authorities in 2008.<sup>1</sup>

We the undersigned commend the company on this step in the right direction and take this opportunity to urge Total, Chevron, and PTTEP to commit to practice full revenue transparency in Burma in the future, and to publish all payments made to the Burmese authorities since 1992. We also encourage Total to disclose payments made in support of its socio-economic projects in the local area of the *Yadana* project, including information about the flow and amount of payments, and the origins of the revenue financing the socio-economic projects.

We the undersigned believe that if Total, Chevron, and PTTEP publish comprehensive data and information about their payments to the Burmese authorities since 1992, the companies would send a positive message to the people of Burma and help contribute to a more constructive presence of their company in the country. Moreover, revenue transparency will help the companies and their home states avoid the appearance of complicity in mismanagement of the gas revenue generated for the Burmese authorities, which could also improve shareholder value. The companies' revenue transparency will also send an important and constructive message to other oil companies involved in new extractive projects in Burma.

Revenue transparency in Burma is within Total, Chevron, and PTTEP's ability. Total's contracts with MOGE, to which Chevron and PTTEP are parties, became public documents through human rights litigation in U.S. courts between Burmese citizens and Total's partner Unocal Corporation.<sup>2</sup> The governing contracts do not prohibit Total, Chevron, or PTTEP from practicing full revenue transparency in payments to the Burmese authorities. The aggregate figures published by Total in October 2009 likewise confirm the company's ability to disclose payment figures.

Moreover, Total has publicly expressed that generally it is "committed to strict [financial] transparency," recognizing that the benefits from natural resource wealth are often "distributed unequally among the populace" of resource-rich

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1 This figure was published by Total in a response to a 106-page report released on September 10, 2009 by the non-governmental organization EarthRights International. It follows previous recommendations from numerous investors as well as the International Federation for Human Rights, Info Birmanie, and the Burma Campaign UK calling on Total to disclose monies paid to the Burmese authorities.

2 In 2005, Unocal Corporation was acquired in full by Chevron.

states, and that a “lack of transparency reflects weak institutions and feeds conflict” in host states.<sup>3</sup> Former Total CEO and current chairman of the board Thierry Desmarest noted definitively and correctly that “[t]ransparency is in Total’s interest.”<sup>4</sup> While Total and Chevron each play a leading role in the Extractive Industries Transparency Initiative (EITI), neither at present publish payments to governments on a country-by-country basis.

Revenue transparency in the extractive industries has become an element of corporate responsibility, promoting stability and good governance in resource-rich developing countries and contributing to long-term energy security. Transparency in foreign companies’ payments to host states promotes responsible management of revenues by host states and increases the likelihood that host-country citizens will benefit from the wealth generated from their country’s natural resources.

Likewise, we the undersigned acknowledge that transparency from host states is equally important. The Burmese authorities should take immediate steps to disclose all revenues received from extractive projects, adopt the Extractive Industries Transparency Initiative (EITI), and require all oil, gas, mining, and hydropower companies operating in the country to practice disaggregated revenue transparency.

In Burma, a nexus of factors underscores the critical need for revenue transparency in the extractive industries, including the relatively large percentage of national income from natural gas sales; the lack of good governance and documented corruption by state authorities; and the consistent allegations of serious human rights abuses associated with oil and gas development projects in the country.

We the undersigned believe the initial investment in the Yadana gas project in Burma was not advisable for Total, Chevron (formerly Unocal), and PTTEP, given the subsequent, well-documented and widespread human rights violations committed by the Burmese military against the local population. Total, Chevron, and PTTEP should now practice revenue transparency as a core element of corporate responsibility in Burma.

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3 Total, “About Total: Group Presentation: Financial transparency,” available at <http://www.total.com/en/about-total/group-presentation/business-principles/financial-transparency-940523.html> (last visited January 11, 2010).

4 *Id.*

This statement will remain open to endorsements until Total, Chevron and PTTEP practice revenue transparency in Burma. To endorse this statement email [transparency@earthrights.org](mailto:transparency@earthrights.org).

# Signatories to “A Call for Total, Chevron, and PTTEP to Practice Revenue Transparency in Burma (Myanmar),” as of June 19, 2010.

## Policy Leaders

1. Kjell Magne Bondevik  
*former Prime Minister of Norway; President, The Oslo Center for Peace and Human Rights*
2. Mary Robinson  
*former President of Ireland; former United Nations High Commissioner for Human Rights; President, Realizing Rights*
3. Tony Baldry  
*former Foreign Minister of the United Kingdom*
4. The Baroness Cox  
*CEO Humanitarian Aid Relief Trust*
5. Kerry Kennedy  
*founder of the Robert F. Kennedy Center for Justice and Human Rights*
6. Dr. Robert Goodland  
*former Environmental Advisor, the World Bank Group*
7. Zac Goldsmith  
*former Editor, The Ecologist, and UK Parliamentary Candidate*

## Non-Governmental Organizations

8. Amnesty International
9. Academics Stand Against Poverty
10. African Centre for Sustainable Livelihoods
11. ASEAN Inter-Parliamentary Myanmar Caucus
12. Asociación Civil por la Igualdad y la Justicia
13. Burma Action Ireland
14. Burma Economic Watch, Macquarie University
15. Burmese American Democratic Alliance
16. Castan Centre for Human Rights Law, Monash University, Australia
17. Center for Energy Politics (Republic of Korea), 연구실장 이정필
18. Christian Solidarity Worldwide
19. Citizens Action for Responsibility Enterprise (CARE), Seoul, South Korea
20. Citizens for Justice-Malawi
21. CorpWatch
22. Crude Accountability
23. Debt and Development Coalition Ireland
24. Digital Democracy
25. EarthRights International (ERI)
26. Free Burma Rangers
27. Friends of the Earth US
28. Future in Our Hands
29. Global Competitiveness Empowerment Forum
30. Global Exchange
31. Global Financial Integrity
32. Global Witness
33. HELIO International
34. Human Orientation Movement for Environment (HOME), Nigeria
35. Humanitarian Aid Relief Trust
36. Inter Pares
37. Justice in Nigeria Now
38. Kairos Europe (Brussels Office)
39. Korea Federation for Environmental Movements
40. Korean House for International Solidarity
41. Korean Public Interest Lawyers Group (GOGGANGAM)
42. Lumière Synergie Développement, Sénégal
43. Luta Hamutuk Institute-Timor Leste
44. Missionary Oblates of Mary Immaculate: Justice Peace/Integrity of Creation Office
45. Norwegian Church Aid
46. Norwegian Burma Committee
47. Norwegian Mission to the East
48. Open Society Institute
49. Partners Relief & Development
50. People’s Solidarity for Participatory Democracy, South Korea
51. PLATFORM UK
52. Project Maje
53. Publish What You Pay – France

## Non-Governmental Organizations (cont.)

54. Remember Saro-Wiwa
55. Revenue Watch Institute
56. Rohingya Community in Norway
57. Save My Future (SAMFU) Foundation, Liberia
58. Secours Catholique / Caritas France
59. Sierra Club
60. Swedish Burma Committee
61. Swedish Burma Human Rights Association
62. The Oslo Center for Peace and Human Rights
63. The Other Media, India
64. Timor Leste Core Group on Transparency
65. Tiri
66. US Campaign for Burma
67. Worldwide Impact Now

## Burma Non-Governmental Organizations

68. All Arakan Students' and Youths' Congress \* †
69. All Burma Federation of Student Unions °
70. All Burma Students' Democratic Front \*
71. All Burma Students League \*
72. All Kachin Student and Youth Union \* †
73. ALTSEAN Burma
74. Arakan National Council ◇  
*(comprised of all Arakanese political parties and civil society organizations)*
75. Arakan League for Democracy – Liberated Area (Youth) \*
76. Arakan League for Democracy (Youth Wing Exile)
77. Arakan Rohingya National Organization
78. Arakan Youth Network Group †
79. Assistance Association for Political Prisoners (Burma)
80. Backpack Health Worker Team
81. Burma Centre Delhi
82. Burma Ethnic Nationalities Network - Canada
83. Burma Office (Australia)
84. Burmese Women's Union ‡ °
85. Canadian Friends of Burma
86. Canadian Campaign for Free Burma
87. Chin Human Rights Organization
88. Chin National Council ◇  
*(comprised of all Chin political parties and civil society organizations)*
89. Chin Student Union †
90. Chinland Guardian
91. Democratic Party for a New Society \* °
92. Free Burma Campaign Singapore
93. Human Rights Education Institute of Burma
94. Human Rights Foundation of Monland
95. Kachin National Organization ◇  
*(comprised of all Kachin political parties and civil society organizations)*
96. Kachin Women's Association - Thailand ‡
97. Karen Community Canada
98. Karen Human Rights Group
99. Karen State Coordinating Body ◇  
*(including Karen National Union and all Karen civil society organizations)*
100. Karen Teacher Working Group
101. Karen Women's Organization ‡
102. Karen Youth Organization † \*
103. Karenni National Women's Organization ‡
104. Karrenni National Youth Organization †
105. Karenni State Coordinating Body ◇  
*(including Karenni National Progressive Party and all Karenni civil society organizations)*
106. Karenni Students Union †
107. Kayan New Generation Youth †
108. Kuki Students Democratic Front \*
109. Kuki Women's Human Rights Organization ‡
110. Lahu National Development Organization
111. Lahu Women's Organization ‡
112. Mon Unity League †
113. Mon State Coordinating Body ◇  
*(comprised of all Mon political parties and civil society organizations)*
114. Mon Youth Progressive Organization \*
115. Naga National League for Democracy (Youth) \*
116. National League for Democracy- Liberated Area (Youth) \*



### Burma Non-Governmental Organizations (cont.)

117. Network for Democracy and Development °
118. Palaung Women's Organization ‡
119. Palaung Youth Network group † \*
120. Pa-O Women's Union ‡
121. Pa-O Youth Organization \* †
122. People's Defence Force °
123. Rakhaing Women's Union ‡
124. Rakhaing Environment and Human Rights Watch (REHRW)
125. Shan State Representative Council ◇  
(*comprised of all ethnic nationalities' organizations in Shan State*)
126. Shan Women's Action Network ‡
127. Shwe Gas Movement
128. Ta'ang Students and Youth Organization \*
129. Tavoy Women's Union ‡
130. Tavoyan Youth Organization \*
131. United Lahu Youth Organization †
132. Women's League of Chinland ‡
133. Women's Rights & Welfare Association of Burma ‡
134. Young Chi Oo Workers Association °
135. Zomi Student and Youth Organization \*

### Academics & Scholars (listed alphabetically, by surname)

136. Dr. Daniel Aguirre  
*Human Rights Law Lecturer, Centre for Human Rights Studies, Mahidol University*
137. Saleem H. Ali, PhD  
*Associate Professor of Environmental Planning and Asian Studies, Rubenstein School of Environment and Natural Resources, University of Vermont*
138. Desmond Ball, PhD  
*Professor, Strategic & Defence Studies Centre, School of International, Political & Strategic Studies, Australia National University*
139. Chris Beyrer, MD, MPH  
*Professor of Epidemiology, International Health, and Health, Behavior, and Society, Johns Hopkins Bloomberg School of Public Health*
140. Patrick Bond  
*University of KwaZulu-Natal Centre for Civil Society (Environmental Justice Project)*
141. Paul Collier  
*Professor of Economics, University of Oxford; Director, Centre for the Study of African Economies; Professorial Fellow of St. Anthony's College*
142. John G. Dale  
*Professor, Department of Sociology and Anthropology, George Mason University*
143. Christina Fink  
*Independent Scholar*
144. Nancy Hudson-Rodd, PhD  
*Honorary Research Fellow, Edith Cowan University*
145. Macartan Humphreys  
*Associate Professor of Political Science, Columbia University*
146. Kyung Soo Jung  
*Professor, College of Law, Sookmyung Women's University, Seoul, Republic of Korea*
147. Stuart Kirsch  
*Associate Professor of Anthropology, University of Michigan*
148. Michael Klare  
*Professor of Peace and World Security Studies, Hampshire College, Amherst, Mass.*
149. Ken MacLean  
*Assistant Professor of International and Social Change, Clark University*
150. Dr. Adam McBeth  
*Senior Lecturer, Faculty of Law, Monash University, Australia*
151. Tun Myint  
*Assistant Professor, Department of Political Science & Environmental Studies, Carleton College*
152. Christiana Ochoa  
*Professor of Law, Indiana University Maurer School of Law - Bloomington*
153. Scott Pegg  
*Associate Professor, Department of Political Science, IUPUI*
154. Thomas Pogge  
*Leitner Professor of Philosophy and International Affairs, Yale University; Oslo and Australia National Universities*

## Academics & Scholars (cont.)

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156. Martin Sandbu, PhD  
*Senior Research Fellow, Zicklin Center for Business Ethics, Wharton School, University of Pennsylvania; and Economics Leader Writer, Financial Times.*
157. Benjamin Smith  
*Associate Professor and Associate Chair, Department of Political Science, University of Florida*
158. Voravit Suwanvanichkij, MD, MPH  
*Research Associate, Center for Public Health and Human Rights, Johns Hopkins Bloomberg School of Public Health*
159. Sean Turnell  
*Associate Professor of Economics, Macquarie University*
160. Tony Venables  
*BP Professor of Economics, University of Oxford; Director of Oxford Centre for the Study of Resource Rich Economies*

## Trade Unions

161. The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
162. International Brotherhood of Teamsters
163. Korean Confederation of Trade Unions (KCTU)
164. Service Employees International Union (SEIU)
165. Trade Union Congress (TUC)
166. Unite

## Investment Firms

167. Boston Common Asset Management
168. Calvert Asset Management, Co., Inc.
169. Newground Social Investments
170. Northwest Coalition for Responsible Investment
171. Outcrop Research Consulting
172. Trillium Asset Management

## Individuals

A list of individual endorsements can be viewed at  
<http://www.earthrights.org/campaigns/transparency/endorsements>

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\* This organization is a member of the Student and Youth Congress of Burma (SYCB).

† This organization is a member of the Nationalities Youth Forum (NY Forum).

‡ This organization is a member of the Women's League of Burma (WLB).

° This organization is a member of the Forum for Democracy in Burma (FDB).

◇ This organization is a member of the Ethnic Nationalities Council (ENC).

# Appendix C: Total and Chevron's Responses to the Global Call for Revenue Transparency

In May 2010, the Business & Human Rights Resource Centre invited Total, Chevron, and the Petroleum Authority of Thailand Exploration & Production (PTTEP) to respond to an appeal for revenue transparency from their operations in Burma:

- “A Call for Total, Chevron, and PTTEP to Practice Revenue Transparency in Burma (Myanmar) [PDF]” – signed by 168 policy leaders, academics & scholars, Burmese & international NGOs, trade unions, 27 Apr 2010

- “Oil Companies in Burma Urged to Open Their Books” – EarthRights Intl. & Shwe Gas Movement, 27 Apr 2010
- “Pressure Mounts on Energy Giant Chevron to Disclose Revenue” – Marwaan Macan-Markar, Inter Press Service, 29 Apr 2010
- “ERI Releases Burma Pipeline Contracts” – EarthRights International, 5 May 2010

The companies responded as follows.

## Chevron's Response, 25 May 2010



Myanmar is a country faced with many challenges. Through its subsidiary, Chevron maintains its investment in Myanmar assets for compelling business reasons, fundamental of which is to better meet Southeast Asia's demand for energy. Importantly, Chevron also supports health and social programs that improve the quality of life for communities in Myanmar, both within and outside the Yadana Project area.

The Yadana Project aims to play a constructive role in addressing Myanmar's health and economic development challenges. The project helps build the capacity of the local workforce and provides employment to approximately 850 people, 95 percent of whom are Myanmar nationals. The Yadana Project's sustainable socioeconomic program contributes to positive change in the region and improves the lives of those living in the pipeline corridor.

The Yadana Project also funds programs to focus on health, education and training, economic development — loans to small businesses and agriculture and livestock programs — community development, and general infrastructure projects that benefit the area. Approximately 50,000 local residents from 25 villages in the Yadana pipeline area now have free, improved health care, as well as access to education and economic support through the community investment programs of the Yadana Project.

In addition, Chevron respects human rights in the communities and countries where we operate. In 2009, we adopted a Human Rights Policy. Although governments have the primary duty to protect and ensure human rights, Chevron recognizes that it has a responsibility to respect human rights, Chevron recognizes that it has a responsibility to respect human rights and can play a positive role in communities where we operate. Our policy addresses four human rights areas that are important to our business and communities in which we operate: employees, security providers, community engagement and suppliers.

Furthermore, Chevron believes that the disclosure of revenues received by governments and payments made by extractive industries to governments could lead to improved governance in resource-rich countries. The transparent and accurate accounting of these funds contributes to stable, long-term investment climates, economic growth and the wellbeing of communities. Our commitment to promoting revenue transparency is reflected in our participation in the multi-stakeholder Extractive Industries Transparency Initiative (EITI) and must be guided by applicable laws. As such, Chevron's subsidiary in Myanmar conducts its business consistent with US laws and regulations. Its contractual obligations related to the Yadana Project do not permit disclosure of payments or other confidential information relative to the Project.

For more information, please see Chevron's 2009 Corporate Responsibility Report: [http://www.chevron.com/globalissues/corporateresponsibility/2009/documents/Chevron\\_CR\\_Report\\_2009.pdf](http://www.chevron.com/globalissues/corporateresponsibility/2009/documents/Chevron_CR_Report_2009.pdf).

May 25, 2010

21 May 2010

This letter gives Total the opportunity to better explain its position concerning Transparency, Sovereignty and Professor John Ruggie's framework:

## Transparency:

In line with the international extractive industry accountability standards and applicable laws, Total is committed to strict transparency and believes that it is in the interest of all stakeholders.

- **EITI:** Total is an active member of the Extractive Industries Transparency Initiative (EITI) and is present at Board level. Within EITI, Total also participates in different committees (e.g., Validation Committee; Rapid Response Committee). Within Total, in-house committee has been set up to provide input and to raise awareness on these issues.
- **Lobbying:** Total is doing its best efforts to convince host countries to join the EITI, including the Burmese authorities. To further this cause, our CEO recently met with Peter Eigen, chairman of the EITI, to discuss different ways to attract non-participating countries.
- **Disclosure:** In order to preserve fair competition between EITI members operating in a given country, in most cases, aggregated global figures are disclosed. Total would accept to disclose individually, and not only collectively, amounts paid to a given government, provided that such disclosure:
  1. is permitted by the relevant government; and
  2. would not compromise the Group's commercial position (e.g., if only one or two companies operate in a given country, new market entrants would have access to competitively sensitive information and likely gain an unfair advantage).Note that Total has disclosed amounts individually paid by Total to the government of Angola (which is not an EITI member), Cameroon, Gabon, Nigeria, and Norway.

## Sovereignty

In compliance with its Code of Conduct and its Integrity Guide, Total respects State sovereignty and refrains from intervening in the political process.

As a result, Total cannot disclose any financial or contractual information if the host country is opposed to such disclosure.

Total fully concurs with the following statement by Peter Rosenblum and Susan Marple:

***"If the company wants to disclose but the government does not want to, disclosure may be possible but is unlikely.***

*If a company would like to disclose its contract but the government is opposed, there are fewer options. BP and its partner companies decided to disclose the BTC pipeline and upstream contracts at a time when they were not publicly available in Turkey, Azerbaijan, and Georgia, although by law they were supposed to be public. However, discussions with company representatives and lawyers indicate that companies are generally reluctant to take the initiative in disclosing contracts, even in such circumstances. Those interviewed felt strongly that it was not a corporation's duty to fulfill the sovereign obligations of states, particularly since it could jeopardize their relationship with the government. In the case of the BTC consortium's contract disclosure, some interviewees reported the strong belief that high level politicians were consulted before the contracts were released." See "Contract Confidential: Ending Secret Deals in the Extractive Industry", Revenue Watch Institute, 2009, p. 28.*

## Protect, Respect, Remedy

Total appreciates the efforts of, and will continue to work with, the Special Representative of the U.N. Secretary General (SRSG) on Business and Human Rights. Total is also contributing to different working groups lead by the SRSG related to Human Rights and Transparency issues, such as the "Corporate Law tool" project and the "Responsible contracting" working group.

The SRSG framework underlines that if *"the Corporate has the Responsibility to Respect Human Rights"*, the *"State has the Duty to Protect Human Rights"*.

As such, Total agrees that both national governments and corporations have important roles to play in protecting and respecting Human Rights.

# Endnotes

- 1 Unocal Corporation compensated villagers in 2005 before being acquired by Chevron, which inherited not only Unocal's assets, but also its legal liabilities. Chevron could still face legal liabilities for complicity in ongoing human rights abuses in connection to the Yadana Project. See Chapter I, section vi of this report. See also EARTHRIGHTS INTERNATIONAL, THE HUMAN COST OF ENERGY (April 2008), available at <http://www.earthrights.org/publication/human-cost-energy-chevron-s-continuing-role-financing-oppression-and-profiting-human-rig>. See also *Why Total Agrees to Compensation in Forced Labor Suit*, THE IRRAWADDY, Dec. 1, 2005, available at [http://www.irrawaddy.org/interview\\_show.php?art\\_id=5235&page=1](http://www.irrawaddy.org/interview_show.php?art_id=5235&page=1).
- 2 Some of the Yadana gas is diverted for domestic use in Burma through a separate pipeline – the Kanbauk-Mikalay pipeline – to a cement factory in Karen State. Like Yadana, the pipeline has been plagued with severe human rights abuses. See HUMAN RIGHTS FOUNDATION OF MONLAND (HURFOM), LAID WASTE: HUMAN RIGHTS ALONG THE KANBAUK TO MYAING KALAY GAS PIPELINE (May 2009), available at <http://rehmonnya.org/data/Laid-Waste.pdf>. Yet another new pipeline transports gas from the offshore Yadana deposits to Rangoon (Yangon), operated by Total. See *Total-operated Pipeline Begins Ops in Myanmar*, DEUTSCHE PRESSE-AGENTUR (DPA), June 14, 2010, available at [http://rigzone.com/news/article.asp?a\\_id=94684](http://rigzone.com/news/article.asp?a_id=94684).
- 3 EARTHRIGHTS INTERNATIONAL, TOTAL IMPACT: THE HUMAN RIGHTS, ENVIRONMENTAL, AND FINANCIAL IMPACTS OF TOTAL AND CHEVRON'S YADANA GAS PROJECT IN MILITARY-RULED BURMA (MYANMAR), (Sept. 10, 2009), available at <http://www.earthrights.org/publication/total-impact-human-rights-environmental-and-financial-impacts-total-and-chevron-s-yadana>.
- 4 Overall natural gas exports have in the last decade accounted for on average approximately 40 percent of export revenues. According to Burma's official statistics, export gas sales in 2007/08 amounted to US \$2.5 billion out of that year's total export revenue of US \$6.4 billion. See Sean Turnell, *Dissecting the Data: Burma's Macroeconomy at the Cusp of the 2010 'Elections'* (Economics Dept., Macquarie University: Sydney, Australia, June 2010), at 10 (citing statistics from the Myanmar Central Statistical Office).
- 5 The UN Special Rapporteur on Human Rights in Myanmar, Tomas Ojea Quintana, recently recommended that UN agencies consider an official commission of inquiry into possible crimes against humanity and war crimes in Burma ("United Nations institutions may consider the possibility to establish a commission of inquiry with a specific fact-finding mandate to address the question of international crimes."). See U.N. Human Rights Council, *Human Rights Situations that Require the Council's Attention*, at 21, U.N. Doc. A/HRC/13/48 (March 2010) (prepared by Tomas Ojea Quintana, Special Rapporteur), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-48.pdf> (hereinafter "Quintana's Report").
- 6 Robert Kelley, *Expert says Burma 'planning nuclear bomb,'* DEMOCRATIC VOICE OF BURMA, June 3, 2010, available at <http://www.dvb.no/news/expert-says-burma-%E2%80%98planning-nuclear-bomb%E2%80%99/9527>.
- 7 See ERI, *Total Impact*, supra note 3, at 41–46.
- 8 *Id.* at 43.
- 9 See *Report: Pipelines Pumps Billions in Myanmar Junta's – Summary*, DEUTSCHE PRESS-AGENTUR (DPA), Sept. 10, 2010, available at <http://www.business-humanrights.org/Documents/2009EarthRightsreportsreBurma>.
- 10 See Appendix A of this report; see also EarthRights International, *A Call for Total, Chevron, and PTTEP to Practice Revenue Transparency in Burma (Myanmar)* (Open letter published April 27, 2010), available at <http://www.earthrights.org/sites/default/files/documents/call-for-revenue-transparency.pdf> (hereinafter "Transparency Initiative"); Burma has been ranked the third most corrupt country in the world, behind Afghanistan and Somalia. Transparency International's *Corruption Perception Index 2009*, at [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009/cpi\\_2009\\_table](http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table) (hereinafter "CPI 2009").
- 11 Business and Human Rights Resource Centre, *Call for oil companies to practice revenue transparency in Burma & company responses*, at <http://www.business-humanrights.org/Documents/Burmatransparency> (last updated June 17, 2010).
- 12 *Id. infra* note 81; *Id. infra* note 97.
- 13 ERI interviews and field reports from the Yadana pipeline area, Burma (2010). On file with ERI.
- 14 Email communication with ILO Liaison Officer in Burma (June 9, 2010). On file with EarthRights International.
- 15 See Quintana's Report, supra note 5, at 2.
- 16 Interview #043-2009 with community member, in Michaunglaung, Burma (2009). On file with ERI.
- 17 See ERI, *TOTAL IMPACT*, supra note 3, at 34–40.
- 18 See Quintana's Report, supra note 5 at 27.
- 19 *Id.* at 2; See also Matthew Smith, *The UN Singles Out Big Oil in Burma, with Good Reason*, THE HUFFINGTON POST, Apr. 12, 2010, available at [http://www.huffingtonpost.com/matthew-smith/the-un-singles-out-big-oil\\_b\\_534426.html](http://www.huffingtonpost.com/matthew-smith/the-un-singles-out-big-oil_b_534426.html).
- 20 Quintana's Report, supra note 5, at 27.
- 21 *Id.*
- 22 *Id.*
- 23 For seven years, Total publicly claimed on its website and to shareholders that the company "eradicated" forced labor in its project area in Burma, and that the ILO had certified the claim. The ILO never made such a claim and publicly disavowed it, as ERI revealed in *TOTAL IMPACT*, supra note 3. After the company's dishonesty was exposed, the statement was quietly removed from its website. See EARTHRIGHTS INTERNATIONAL, *GETTING IT WRONG: FLAWED "CORPORATE SOCIAL RESPONSIBILITY" AND MISREPRESENTATION SURROUNDING TOTAL AND CHEVRON'S YADANA GAS PIPELINE IN MILITARY-RULED BURMA (MYANMAR)* (Sept. 2009), at 42–43, available at <http://www.earthrights.org/publication/getting-it-wrong-flawed-corporate-social-responsibility-and-misrepresentations-surroundi>.

- 24 EARTHRIGHTS INTERNATIONAL AND SOUTHEAST ASIA INFORMATION NETWORK, TOTAL DENIAL: A REPORT ON THE YADANA PIPELINE PROJECT IN BURMA (July 1996), available at <http://www.earthrights.org/files/Reports/TotalDenial96.pdf>.
- 25 Unocal Corporation compensated villagers in 2005 before being acquired by Chevron, which inherited not only Unocal's assets, but also its legal liabilities. Chevron could still face legal liabilities for complicity in ongoing human rights abuses in connection to the Yadana Project. See ERI, THE HUMAN COST OF ENERGY, *supra* note 1; *Why Total Agrees to Compensation in Forced Labor Suit*, THE IRRAWADDY, *supra* note 1.
- 26 Interview # yp-s-001 with community member, in Lawther, Burma (2010). On file with ERI.
- 27 See Universal Declaration of Human Rights, art. 3, G.A. Res. 217(A)III, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) (hereinafter "UDHR"); International Covenant on Civil and Political Rights, Mar. 23, 1976, art. 6, 999 U.N.T.S. 171 (hereinafter "ICCPR"); The Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 3(1)(a), 6 U.S.T. 3516, 75 U.N.S.T. 287; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; see also United Nations Office of the High Commissioner of Human Rights, *Fact Sheet No 11 (Rev. 1), Extrajudicial, Summary or Arbitrary Executions*, available at <http://www.ohchr.org/Documents/Publications/FactSheet11rev.1en.pdf> (last visited June 14, 2010).
- 28 See generally ERI & SAIN, TOTAL DENIAL, *supra* note 24; EarthRights International, TOTAL DENIAL CONTINUES: EARTH RIGHTS ABUSES ALONG THE YADANA AND YETAGUN PIPELINES IN BURMA (1st ed. 2000; 2nd ed. 2003) available at <http://www.earthrights.org/files/Reports/TotalDenialContinues.pdf>; EarthRights International, *Supplemental Report: Forced Labor Along the Yadana and Yetagun Pipelines* (supplement to MORE OF THE SAME: FORCED LABOR CONTINUES IN BURMA) (2001), available at <http://www.earthrights.org/files/Reports/supp.pdf>; EARTHRIGHTS INTERNATIONAL, FUELING ABUSE: UNOCAL, PREMIER & TOTALFINAELF'S GAS PIPELINES IN BURMA (2002), available at <http://www.earthrights.org/files/Reports/fuelingabusenglish.pdf>; ERI, THE HUMAN COST OF ENERGY, *supra* note 1; ERI, TOTAL IMPACT, *supra* note 3.
- 29 Total, *Our Response to the Allegations Contained in the ERI Report* (Sept. 2009) (hereinafter "Total's response to ERI"), at 6, available at [http://burma.total.com/en/publications/Total%20in\\_Myanmar\\_update.pdf](http://burma.total.com/en/publications/Total%20in_Myanmar_update.pdf) (hereinafter "Total's Response to ERI").
- 30 *Id.*
- 31 Third parties in dialogue with Total claim the company's responses to allegations of ongoing abuses are crafted not necessarily to reflect the truth but to avoid the weight of potential legal liabilities. "They're scared to death of being sued," one prominent UN official told EarthRights International.
- 32 Interview # yp-s-001 with community member, in Lawther, Burma (2010). On file with ERI.
- 33 *Id.*
- 34 Interview # yp-s-003 with community member, in Michaunglaung, Burma (2010). On file with ERI.
- 35 Interview # yp-s-002 with community member, in Zinba, Burma (2010). On file with ERI.
- 36 Interview # yp-s-003 with community member, in Michaunglaung, Burma (2010). On file with ERI.
- 37 See HURFOM, *supra* note 2.
- 38 Interview # yp-s-001 with community member, in Lawther, Burma (2010). On file with ERI.
- 39 See ERI, TOTAL IMPACT, *supra* note 3, at 20-29.
- 40 See ICCPR, *supra* note 27, art. 8. 165 countries are currently parties to the ICCPR. United Nations Treaty Collection, *International Covenant on Civil and Political Rights*, at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) (last visited June 17, 2010). See also *Doe v. Unocal Corp.*, 395 F.3d at 945 (9th Cir. 2002).
- 41 UDHR, *supra* note 27, art. 4.
- 42 International Labour Organization, *Declaration on Fundamental Principles and Rights at Work*, para. 2, 86th Session, Geneva (June 1998), available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc86/com-dtxt.htm> ("[a]ll Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely . . . the elimination of all forms of forced or compulsory labour.").
- 43 The Union of Myanmar, The State Peace and Development Council, Letter No. 04/Na Ya Ka (U)/Ma Nya, *Subject: Prohibiting Requisition of Forced Labour*, Nov. 1, 2000, available at [http://www.mol.gov.mm/8.Home/Home\\_link/spdc\(Eng\).pdf](http://www.mol.gov.mm/8.Home/Home_link/spdc(Eng).pdf); *Order Supplementing Order No. 1/99* (HURFOM, trans.), Aug. 30, 2001, available at [http://www.burmalibrary.org/docs/HURFOM's\\_Forced\\_Labour\\_Report.htm](http://www.burmalibrary.org/docs/HURFOM's_Forced_Labour_Report.htm).
- 44 Rome Statute of the International Criminal Court, *adopted* July 17, 1998, art. 7.1(c), 2187 U.N.T.S. 3.
- 45 Email communication with ILO Liaison Officer in Burma (June 9, 2010). On file with EarthRights International.
- 46 *Id.*
- 47 Interview # yp-s-002 with community member, in Zinba, Burma (2010). On file with ERI, also Interview # yp-s-003 with community member, in Zinba, name, Burma (2010). On file with ERI.
- 48 Interview # yp-s-002 with community member, in Zinba, Burma (2010). On file with ERI.
- 49 Interview # yp-s-003 with community member, in Michaunglaung, Burma (2010). On file with ERI.
- 50 Interview # yp-s-005 with community member, in Yapu, Burma (2010). On file with ERI.
- 51 Interview # yp-s-005 with community member, in Yapu, Burma (2010). On file with ERI.
- 52 Interview # yp-s-003 with community member, in

- Michauglaung, Burma (2010). On file with ERI.
- 53 *Id.*
- 54 Interview # yp-s-002 with community member, in Zinba, Burma (2010). On file with ERI.
- 55 See UDHR, *supra* note 27, art. 17; ICCPR, *supra* note 27, arts. 26 & 27; International Convention on the Elimination of All Forms of Racial Discrimination art. 5(d)(v), Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter CERD]; Convention on the Elimination of All Forms of Discrimination Against Women art. 16.1(h), Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]; Convention Relating to the Status of Refugees arts. 13 & 14, Apr. 22, 1954, 189 U.N.T.S. 150; Convention Relating to the Status of Stateless Persons arts. 13 & 14, Sept. 28, 1954, 360 U.N.T.S. 117; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families art. 15, G.A. Res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990) (hereinafter “Migrant Workers Convention”).
- 56 See The Land Acquisition Act (1894) arts. 16 & 17, *cited in* SCOTT LECKIE & EZEKIEL SIMPERINGHAM (2009), HOUSING, LAND AND PROPERTY RIGHTS IN BURMA: THE CURRENT LEGAL FRAMEWORK at 193–209 (Geneva: Displacement Solutions and the HLP institute, 2009).
- 57 *Id.* arts. 18–28.
- 58 *Earth rights* are those rights that demonstrate the connection between human well-being and a sound environment, and include the right to a healthy environment, the right to speak out and act to protect the environment, and the right to participate in development decisions. See JED GREER & TYLER GIANNINI, EARTH RIGHTS: LINKING THE QUEST FOR HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION 20 (1999).
- 59 ERI, TOTAL IMPACT, *supra* note 3, at 63–70.
- 60 *Id.* at 69-70.
- 61 Interview # yp-s-002 with community member, in Zinba, Burma (2010). On file with ERI.
- 62 ERI, TOTAL IMPACT, *supra* note 3, at 69.
- 63 Interview # yp-s-002 with community member, in Zinba, Burma (2010). On file with ERI.
- 64 See *John Doe I v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002). This was just the first of a number of decisions making clear that companies can be held liable for complicity in (or direct perpetration of) internationally recognized human rights abuses. See, e.g., *Romero v. Drummond Co.*, 552 F.3d 1303, 1315 (11th Cir. 2008).
- 65 See *Doe v. Unocal Corp.*, 248 F.3d 915 (9th Cir. 2001).
- 66 See *Total settles rights case*, INTERNATIONAL HERALD TRIBUNE, Nov. 29, 2005, available at <http://www.nytimes.com/2005/11/29/business/worldbusiness/29iht-total.html>.
- 67 See, e.g., Rachel Nicolson, *What Corporations Need to Know About the Charter* (Paper for the ‘Everyday People Everyday Rights’ Conference, Victorian Equal Opportunity and Human Rights Commission, 16 – 17 March 2009), available at <http://www.humanrightscommission.vic.gov.au/conference/RachaelNicolson.pdf>
- 68 Press Release, EarthRights International, Oil Companies in Burma Urged to Open Their Books: Total, Chevron, and PTTEP Would Become First Oil Companies to Practice Revenue Transparency in Burma (April 27, 2010), available at <http://www.earthrights.org/sites/default/files/documents/press-release-burma-revenue-transparency.pdf>.
- 69 *Id.*
- 70 *Id.*
- 71 See Appendix A of this report; ERI, *A Call for Total, Chevron, and PTTEP to Practice Revenue Transparency in Burma (Myanmar)* (April 27, 2010) (hereinafter “Transparency Initiative”), available at <http://www.earthrights.org/sites/default/files/documents/call-for-revenue-transparency.pdf>.
- 72 The former President of Ireland is Mary Robinson; the former Prime Minister of Norway is Kjell Magne Bondevik.
- 73 See CPI 2009, *supra* note 10.
- 74 Jeffrey D. Sachs & Andrew M. Warner, *Natural Resource Abundance and Economic Growth*, Development Discussion Paper No. 517a (Cambridge: Harvard Institute for International Development, 1995), available at <http://www.cid.harvard.edu/hiid/517.pdf>; Jeffrey D. Sachs & Andrew M. Warner, *The Big Push, Natural Resource Booms and Growth*, 59 J. DEV. ECON. 43(Feb. 1999); Carlos Leite & Jens Weidmann, *Does Mother Nature Corrupt? Natural Resources, Corruption, and Economic Growth* (IMF, Working Paper WP/99/85, 1999); Michael L. Ross, *The Political Economy of the Resource Curse*, 51 WORLD POL. 297 (Jan. 1999); RESOURCE ABUNDANCE AND ECONOMIC DEVELOPMENT (Richard M. Auty ed., Oxford: Oxford University Press, 2001).
- 75 Paul Collier & Anke Hoeffler, *On Economic Causes of Civil War*, OXFORD ECONOMIC PAPERS 50 (Oct. 1998); Indra de Soysa, *The Resource Curse: Are Civil Wars Driven by Rapacity or Paucity?*, in GREED AND GRIEVANCE: ECONOMIC AGENDAS IN CIVIL WARS (Mats Berdal & David M. Malone, eds., Boulder, Colo.: Lynne Rienner Publishers, 2000); Macartan Humphreys, *Natural Resources, Conflict, and Conflict Resolution*, 49(4) J. OF CONFLICT RESOL. 508 (2005).
- 76 Xavier Sala-i-Martin & Arvind Subramanian, *Addressing the Natural Resource Curse: An Illustration from Nigeria* (NBER, Working Paper No. 9804, June 2003).
- 77 Michael L. Ross, *Oil, Islam, and Women*, 102(1) AM. POL. SCI. REV. 107 (Feb. 2008), available at <http://www.sscnet.ucla.edu/polisci/faculty/ross/Oil%20Islam%20and%20Women%20-%20aprs%20final.pdf>.
- 78 Michael L. Ross, *Does Oil Hinder Democracy?* 53 WORLD POL. 325 (April 2001), available at <http://www.sscnet.ucla.edu/polisci/faculty/ross/doesoil.pdf>.
- 79 ERI, *Oil Companies in Burma Urged to Open Their Books*, *supra* note 68.
- 80 Publish What You Pay, *Energy Security Through Transparency Act of 2009*, available at <https://org2.democracyinaction.org/o/5399/images/ESTT%20backgrounder.pdf>.
- 81 Total, *Total response to “A Call for Total, Chevron, and PTTEP to Practice revenue Transparency in Burma (Myanmar)”*, at 1 (May 21, 2010), available at <http://www.business-humanrights.org/Links/Repository/1001019> (hereinafter “Total’s Transparency Response”).

- 82 EARTHRIGHTS INTERNATIONAL, TOTAL IMPACT 2.0: A RESPONSE TO THE FRENCH OIL COMPANY TOTAL REGARDING ITS YADANA NATURAL GAS PIPELINE IN MILITARY-RULED BURMA (MYANMAR), at 7 (Dec. 2009), available at <http://www.earthrights.org/publication/total-impact-20-response-french-oil-company-total-regarding-its-yadana-natural-gas-pipel>.
- 83 *Total Chief: Critics Can 'Go to Hell'*, THE IRRAWADDY, Aug. 4, 2009, available at [http://irrawaddyonline.com/article.php?art\\_id=16479](http://irrawaddyonline.com/article.php?art_id=16479).
- 84 Total's Transparency Response, *supra* note 81, at 1.
- 85 *Id.* at 1–2.
- 86 EarthRights International, *ERI Releases Burma Pipeline Contracts*, at <http://www.earthrights.org/campaigns/eri-releases-burma-pipeline-contracts> (May 5, 2010).
- 87 Transparency Initiative, *supra* note 10.
- 88 See Matthew Smith, *Newsflash: Oil Companies Sometimes Lie*, THE HUFFINGTON POST (May 14, 2010), at [http://www.huffingtonpost.com/matthew-smith/news-flash-oil-companies\\_b\\_571158.html](http://www.huffingtonpost.com/matthew-smith/news-flash-oil-companies_b_571158.html).
- 89 Total, Total's response, *supra* note 42, at 1.
- 90 Total, *Our Response to the Allegations Contained in the ERI Report* (Oct. 2009), at 11, available at [http://burma.total.com/en/publications/Total%20in\\_Myanmar\\_update.pdf](http://burma.total.com/en/publications/Total%20in_Myanmar_update.pdf) (last visited June 14, 2010).
- 91 The company has told inquiring third parties that it is contractually restricted from practicing transparency in Burma, and that it is restricted from sharing its contracts. ERI has demonstrated that neither of these claims is true. According to ERI Legal Director Marco Simons, "While these contracts do require the partners to keep confidential information that they have acquired from MOGE, nothing in them suggests that payments to the regime would qualify as confidential information, or even that the contracts themselves need to be kept confidential." EarthRights International, *ERI Releases Burma Pipeline Contracts*, *supra* note 86.
- 92 Total, *Financial transparency*, at <http://www.total.com/en/about-total/grouppresentation/business-principles/financial-transparency-940523.html>.
- 93 Total's Transparency Response, *supra* note 84, at 1.
- 94 James Kanter, "For Total, Pulling Out of Myanmar Not the Answer," *New York Times* (September 27, 2007). Available at [http://www.nytimes.com/2007/09/27/business/worldbusiness/27iht-total.html?\\_r=1](http://www.nytimes.com/2007/09/27/business/worldbusiness/27iht-total.html?_r=1) (last visited June 12, 2010).
- 95 James Kanter, *For Total, pulling out of Myanmar not the answer*, *NEW YORK TIMES*, Sept. 27, 2007, available at [http://www.nytimes.com/2007/09/27/business/worldbusiness/27iht-total.html?\\_r=1](http://www.nytimes.com/2007/09/27/business/worldbusiness/27iht-total.html?_r=1).
- 96 ERI, *GETTING IT WRONG*, *supra* note 23, at 33–36.
- 97 Chevron Corp., *Response to "A Call for Total, Chevron, and PTTEP to Practice revenue Transparency in Burma (Myanmar)"* (May 15, 2010), available at <http://www.reports-and-materials.org/Chevron-response-re-revenue-transparency-Burma-24-May-2010.pdf> (hereinafter "Chevron's Response").
- 98 *Id.*
- 99 Defs.' Trial Exs. 2473-2537.
- 100 Treaty on the Non-Proliferation of Nuclear Weapons ("Non-Proliferation Treaty"), March 5, 1970, at [http://www.un.org/disarmament/WMD/Nuclear/pdf/NPTEnglish\\_Text.pdf](http://www.un.org/disarmament/WMD/Nuclear/pdf/NPTEnglish_Text.pdf) (last visited June 18, 2010). See also United Nations Office for Disarmament Affairs (UNODA) at <http://www.un.org/disarmament/WMD/Nuclear/NPT.shtml> (last visited June 18, 2010). EarthRights International, *ERI Releases Burma Pipeline Contracts*, *supra* note 86.
- 101 Non-Proliferation Treaty, *supra* note 100, arts. 1 & 2
- 102 Treaty on the Southeast Asia Nuclear Weapon-Free Zone, art. 3, December 15, 1995, at <http://www.aseansec.org/2082.htm> (last visited June 18, 2010).
- 103 Daniel Flitton, *Burma's Nuclear Secrets*, SYDNEY MORNING HERALD, Aug. 1, 2009, available at <http://www.smh.com.au/world/burmax2019s-nuclear-secrets-20090731-e4fv.html> (based on investigative reporting by Phil Thornton and Desmond Ball). See also Phil Thornton and Desmond Ball, *Burma's nuclear bomb alive and ticking*, BANGKOK POST, Aug. 2, 2009, available at <http://www.bangkokpost.com/news/investigation/21362/burma-s-nuclear-bomb-alive-and-ticking>. The organization Dictator Watch has been tracking Burma's nuclear ambitions for several years. See [www.dictatorwatch.org](http://www.dictatorwatch.org).
- 104 Robert Kelley and Ali Fowle, *Nuclear Related Activities in Burma*, DEMOCRATIC VOICE OF BURMA, at <http://www.dvb.no/burmas-nuclear-ambitions/burmas-nuclear-ambitions-nuclear/expert-analysis/9297> (May 2010).
- 105 *Myanmar's Military Ambitions* (Al Jazeera documentary, June 5, 2010), available at [http://www.youtube.com/user/AlJazeeraEnglish#p/search/3/oUa\\_OODAjnNQ](http://www.youtube.com/user/AlJazeeraEnglish#p/search/3/oUa_OODAjnNQ).
- 106 Kelley, *Expert says Burma 'planning nuclear bomb,'* *supra* note 6.
- 107 Edith M. Lederer, *North Korea Exporting Nuke Technology to Burma: UN Experts* ASSOCIATED PRESS, May 28, 2010, available at [http://www.irrawaddy.org/highlight.php?art\\_id=18575](http://www.irrawaddy.org/highlight.php?art_id=18575).
- 108 Democratic Voice of Burma, *Burma's Nuclear Ambitions: About the Bunkers*, at <http://www.dvb.no/burmas-nuclear-ambitions-bunkers> (last visited June 17, 2010).
- 109 ERI, TOTAL IMPACT, *supra* note 3, at 43.
- 110 Paul Moreira Interview with Jean-François Lassalle, Vice President of Public Affairs, Total, in Paris, France (PLTV Broadcast 2009).
- 111 Burma is not the first nuclear threat financed by Total. In May 2010, a *Wall Street Journal* article exposed how Total was disguising its oil purchases from Iran. The company failed to comment. See Steve Stecklow et al., *Oil Trade with Iran Thrives, Discreetly*, WALL STREET JOURNAL, May 20, 2010, available at [http://online.wsj.com/article/SB10001424052748703691804575254554231664686.html?mod=WSJ\\_hps\\_LEFTTopStories](http://online.wsj.com/article/SB10001424052748703691804575254554231664686.html?mod=WSJ_hps_LEFTTopStories).
- 112 The current calculations differ from the previous calculations in several ways. First, we have used actual payment data for the first four years of the project, from 1998 through mid-2003. Second, we have used this payment data to correct the formulas we use to estimate the subsequent payments; the most significant correction is in dividing the



export transportation tariff from the total revenue. Third, we have used more accurate estimates of project budgeting and costs based on actual budget data, and have made an effort to account for revenue used to pay back initial development costs as well as operating costs. Fourth, we have incorporated both the take-or-pay payments for 1998-2000 and the make-up gas given free of charge to PTT in subsequent years, which PTT had already paid for. Last, we have more accurately accounted for the value of domestic gas taken by MOGE.

- 113 This pricing formula, set out in the Export Gas Sales Agreement, is generally  $US \$3(.2(I_y/I) + .2(OM_y/OM) + .5(F_y/F) + 0.10)$ , where  $I_y$  is derived from the US Consumer Price Index,  $OM_y$  is derived from the US Producer Price Index for Oil field & gas field machinery,  $F_y$  is derived from the average spot price for a particular grade of Singapore fuel oil, and  $I$ ,  $OM$ , and  $F$  are constants. The price adjusts at the beginning of each quarter; the one exception to this formula is for the last quarter of 1999, when a different formula was apparently used because the normal formula exceeded the price ceiling. The ceiling formula is simply  $US \$1.25(F_y/6.15)$ . See Defs.' Trial Ex. 1010, *Doe v. Unocal Corp.*, BC 237980 (Sup. Ct. Cal., L.A. County).
- 114 Defs.' Trial Ex. 2501, *Doe v. Unocal*.
- 115 Defs.' Trial Ex. 1010, *Doe v. Unocal*.
- 116 Published articles suggest that PTT would have owed US \$62 million under the contract for 1998, and a Unocal news release states that this was renegotiated to US \$50.47 million. This represents a discount of almost 20%, corresponding to a price cut from US \$3/mmBTU to US \$2.44/mmBTU.
- 117 See PTTEP, "Signing of Amendment Agreement to the Yadana Export Gas Sales Agreement" (Sep. 6, 2001), at [http://www.pttep.com/en/InvestorRelations\\_SETNotificationDetail.aspx?ContentID=122](http://www.pttep.com/en/InvestorRelations_SETNotificationDetail.aspx?ContentID=122).

pttep.com/en/InvestorRelations\_SETNotificationDetail.aspx?ContentID=122.

- 118 "Myanmar: Generals under siege," *The Economist* (Mar. 7, 1998).
- 119 These figures are found in Defs.' Trial Exs. 2473-2537, *Doe v. Unocal*.
- 120 The production figures generally come from PTTEP's annual reports and quarterly presentations to investors, available online at [www.pttep.com](http://www.pttep.com).
- 121 Budget figures are found in Pls.' Trial Exs. 28CC, 28II, 28MM, 28OO, & 28TT, *Doe v. Unocal*.
- 122 See Myanmar Oil & Gas Enterprise, "Yadana Project Summary," at [http://www.energy.gov.mm/moge\\_%20web\\_offshore.pdf](http://www.energy.gov.mm/moge_%20web_offshore.pdf).
- 123 EarthRights International calculated this figure from the actual payment data for 1999-2002.
- 124 The general distribution of revenue is governed by the Memorandum of Understanding, Defs.' Trial Ex. 1000.
- 125 EarthRights International calculated this figure from the actual payment data for 1999 through mid 2003.
- 126 See *supra* note 100.