

GETTING IT WRONG:

Flawed "Corporate Social Responsibility" and Misrepresentations Surrounding Total and Chevron's Yadana Gas Pipeline in Military-Ruled Burma (Myanmar)



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Cover Photos: Soldier Patrol in Yadana Pipeline Region © EarthRights International, 2009



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About EarthRights International (ERI)

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

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Thanks also to CDA Collaborative Learning Projects for their willingness to meet with ERI and engage in constructive dialogue.

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

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Methodology

EarthRights International (ERI) began documenting human rights abuses connected to the Yadana gas project in 1994, collecting witness and victim testimony in the pipeline region of Burma and along the Thailand-Burma border. This report draws primarily on ERI's more recent research and investigations conducted from 2002-2009, including hundreds of new 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, current and former International Labour Organization Burma staff, CDA Collaborative Learning Projects staff, and shareholders and investors in Total and Chevronⁱ. This report also references documents that became public through the 2004 partial trial of the lawsuit *Doe v. Unocal*, a landmark human rights case in which ERI, representing Burmese villagers, sued Unocal in U.S. court for the companies' complicity in human rights abuses along the Yadana pipeline.

There is little agreement as to the geographic bounds of the Yadana Pipeline region. Total and Chevron have demarcated a sphere-of-responsibility along the Yadana pipeline, acknowledging 25 villages, referred to collectively as the "pipeline corridor." These villages have been the subject of the third-party impact assessments commissioned by Total. ERI has documented a wider impact of the Yadana Project, delineated by the direct impacts of pipeline security battalions from the Burma Army. Any reference in this report to the "pipeline corridor" is in reference to Total and Chevron's as-defined corridor, and any reference to the "pipeline area" or "pipeline region" is in reference to ERI's wider definition of pipeline-affected communities. No natural boundaries define the pipeline corridor.

For the purposes of this report, ERI has focused its investigation on 40 villages in which human rights abuses have been perpetrated by the Burma Army providing security for the Yadana Project. These include 15 of the 25 villages that Total and Chevron formally recognize as "pipeline villages"ⁱⁱ and 25 additional villagesⁱⁱⁱ where human rights abuses have been perpetrated by pipeline security battalions from the Burma Army.^{iv}

ERI attempted on multiple occasions to meet with representatives of Total and/or receive written responses from Total regarding specific and general issues and questions around the Yadana Project, both after the release of the 2008 ERI report *The Human Cost of Energy*, and prior to the publication of this report and its companion *Total Impact (2009)*. To date, these efforts have been unsuccessful. Total has not met with ERI or responded to specific questions that were faxed and emailed by ERI to Total's management (see Appendix B). ERI did meet and communicate with CDA, the Massachusetts-based organization hired by Total to assess the project's impacts and a subject of this report. These discussions helped inform this report.

ⁱ Chevron inherited Unocal's assets and liabilities through its acquisition of Unocal in 1995, including Unocal's stake in the consortium operating the Yadana Project. In this report, references to the Yadana Project that pre-date 2005 refer to Chevron's involvement in the project and not Unocal's, despite the fact that Chevron did not acquire Unocal until 2005. Specific references to the case, *Doe v. Unocal*, however, refer to Unocal and not Chevron.

ⁱⁱ Zinba, Michaunglaung (old), Michaunglaung (new), Eindayaza, Khaw Hlaing, Kyat Shut, Kaleinaung, Kanbaw, Ohbingwin, Pyin Gyi, Mi Chaung Ei, The Chaung, Kaung Mu, Zardi, and Paung Daw.

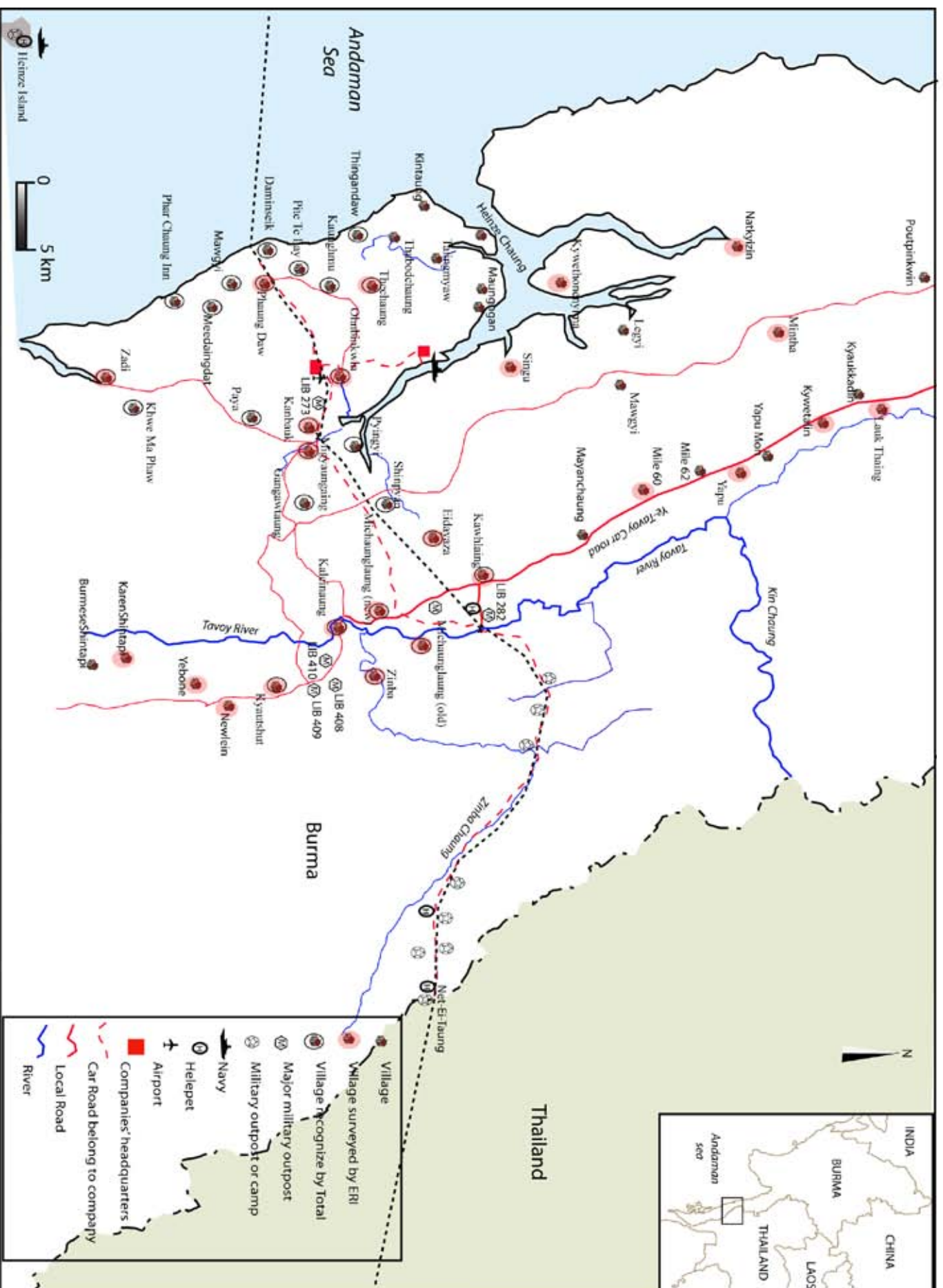
ⁱⁱⁱ Ya Pu, Law Ther, Alersakan, Kwethonenyima, Singu, Pyingyi, Ler Gyi, Karen Shin Ta Pee, Burmese Shin Ta Pee, Yebone, Pwa Shin Ma, Min Tha, Nat Gyin Sein (Plaw mu gal), Maw Gyi, Ma Ya Chaung, Chaung Sone, Ta Line Ya, Nan Gye, Sin Thay, Ta Hlaing Myaw, Nein Lein, Paut Pin Gwin, Ma Yan Chaung, Maung Nen, Kyat Ta Yan.

^{iv} Several Burma Army Light Infantry Battalions (LIBs) operate in the area of the Yadana natural gas pipeline with the express mandate to provide security for Yadana Project workers and the pipeline. Any reference to "pipeline security battalions" is in reference to these Burma Army battalions, which are a part of the Yadana Project

Acronyms

CDA	CDA Collaborative Learning Projects
CEP	Corporate Engagement Project
CSR	Corporate Social Responsibility
ERI	EarthRights International
FPIC	Free Prior and Informed Consent
IB	Infantry Battalion
ILO	International Labour Organization
LIB	Light Infantry Battalion
MOGE	Myanmar Oil and Gas Enterprise
NGO	Non-Governmental Organization
SEP	Socio-Economic Program
SGM	Shwe Gas Movement
SPDC	State Peace and Development Council
UN	United Nations
US	United States of America
VCC	Village Communications Committee

A map of Southeast Asia with labels for India, Burma, China, Laos, and Thailand. A small rectangle in western Thailand indicates the study area. The Andaman sea is labeled to the west.



At the time of writing, the French oil company Total claims to have eradicated forced labor around its Yadana gas pipeline project in Burma,^v and states that the International Labour Organization (ILO) has verified this claim.¹ The company's statement is not only false—Total has not eradicated forced labor in its project area, and the ILO has never certified as such and has disavowed the claim—it is also part of a concerted effort by Total (France) and Chevron (U.S.) to misrepresent the impacts of their operations in Burma. Third parties evaluating the ethics and impacts of the companies and the project unwittingly rely on these deliberate misrepresentations.

EarthRights International releases this report and its companion, *Total Impact: The Human Rights, Environmental, and Financial Impacts of Total and Chevron's Yadana Gas Project in Military-Ruled Burma (Myanmar)* (2009) ("Total Impact"), to provide clarity and direction for those stakeholders and policymakers committed to improving corporate behavior and the lives of the people of Burma.

Generally, multinational corporations such as Total have responded in various ways to the increased scrutiny from advocacy organizations, investors, and communities demanding accountability and social responsibility. Some have made sincere efforts to change their behavior, taking social and environmental impacts seriously and genuinely consulting with local communities. Others have unfortunately focused their energy and resources in changing public perception of their projects, rather than changing their behavior or actual impacts on the ground.

In keeping with the latter aspect of this trend, Total hired Massachusetts-based CDA Collaborative Learning Projects, Inc. (CDA) in 2002 to assess the impacts of their pipeline in Burma. The focus of *Getting it Wrong: Flawed "Corporate Social Responsibility" and Misrepresentations Surrounding Total and Chevron's Yadana Gas Pipeline in Military-Ruled Burma (Myanmar)* is the fundamental flaws of these CDA reports and their misuse by Total and Chevron.

EarthRights International focuses on CDA's work in Burma not only to highlight CDA's failure to provide an adequate and robust assessment of the impacts of the Yadana Project, but also because CDA and the Yadana companies continue to boldly tout their operations in Burma as wholly positive and a quintessential example of corporate responsibility. Significantly, Total is encouraging other multinational energy companies to replicate their development approach in Burma, and CDA is soliciting employment on future natural gas projects in Burma, including on the controversial Shwe gas pipeline to China.² Without fundamental changes, these efforts will unavoidably lead to an increase in negative outcomes for the people of Burma.

Since 2002, the five CDA reports assessed in the following pages have been relied upon by the general public, the investment community, policymakers, extractive companies, media, and corporate social responsibility (CSR) industries at-large as reliable indicators of actual conditions in the pipeline area. Total and Chevron have invoked these report to whitewash their complicity in human rights abuses in Burma, and they have touted the reports as evidence that their Yadana Project hurts no one and

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

benefits many. The reports have been consulted by, and presumably influenced, other oil companies seeking to implement large scale oil and gas projects in Burma, at great risk to the livelihoods and human rights of local communities. The reports have been widely cited within the investment community, particularly within the ethical investment community, as an indication to investors that Total is a responsible company.

While CDA is a well-intentioned organization, this is not merely a simple case of an organization that unfortunately “got it wrong” in Burma: CDA’s reports about the Yadana Project are effectively dangerous and have potentially harmed the lives of thousands of people, directly and indirectly. The net effect is that Total and Chevron escape critical pressure for changing the way they operate in Burma, while other oil companies proceed in the country under false pretenses that they too can “get it right,” like CDA claims of Total.

The ultimate losers in this corporate debacle are local communities in Burma who continue to face the negative impacts of the Yadana Project and other large-scale development projects, and shareholders who face the risks of this irresponsible investment during an economically precarious time.

ERI believes that independent and accurate human rights impact assessments have a critical role to play in investments in the extractive industries, even more so in areas of conflict as found currently in Burma. It is in this spirit that ERI releases this report.

Since the early 1990s, two western oil companies have partnered with the Burmese^{vi} military regime in a remote corner of southern Burma (Myanmar) on one of the world's most controversial development projects: The Yadana Gas Project by France-based Total and US-based Chevron. *Yadana*, which means "treasure" in Burmese, is a large-scale project that transports natural gas from Burma's Andaman Sea to Thailand through an overland pipeline that passes through a secluded and environmentally sensitive region in southeast Burma. From the project's beginning, the Burma Army^{vii} has been tasked with providing security for the companies and the pipeline and has committed widespread and systematic human rights abuses against local people.³ Well-documented allegations of violent and systematic abuses include extrajudicial killings, rape, torture, forced labor, land confiscation, and forced relocation. Many of these abuses and others are ongoing and are documented in the ERI report *Total Impact* (2009).

Total and Chevron have repeatedly denied complicity in abuses committed by the Burma Army against people living in the pipeline area. The truth has been laid bare, however, through multiple lawsuits brought by Burmese villagers in U.S. and European courts, in out-of-court settlements between the companies and victims of abuses, as well as in detailed and firsthand documentation by EarthRights International and others, published in numerous advocacy reports since 1996. Rather than accept responsibility to mitigate harms caused by their operation, to this day Total and Chevron continue to misrepresent their impacts in Burma, to the detriment of the people directly affected by the project and the people of Burma as a whole.

This report documents in detail how impact assessments commissioned by Total were flawed in methodology and factually inaccurate and incomplete, particularly those undertaken by the Corporate Engagement Project (CEP) of US-based CDA Collaborative Learning Projects (CDA).^{viii} It also documents and analyzes brazen misrepresentations of the project by the oil companies, who continue to claim that there are no abuses in the pipeline area and that their project in Burma is wholly positive.

CDA describes its Corporate Engagement Project, under the rubric of which it has conducted field assessments for Total in Burma, as an initiative that aims to help companies ensure that their operations' impacts on local communities are positive rather than negative.⁴ Branded as "independent experts" by Total,⁵ CDA has visited Burma five times since 2002 and published five reports based on a mere 20 days in the pipeline region.⁶ The reports promote an overall favorable view of Total and Chevron's impacts and presence in Burma. This is in stark contrast to the enormous body of evidence and testimony of villagers in the Yadana region collected by ERI and other organizations since the mid-1990s. This report and its companion, *Total Impact*, are intended to provide an accurate and current picture of the Yadana Project.

Part I of this report details CDA's myriad flaws in Burma in no less than 10 areas pertaining to its methodology for assessing Total's impacts in Burma, and ranging from

^{vi} The term "Burmese" is used in reference to anything about the country or its dominant language, or the people of Burma as a whole, including all the ethnic nationalities. The armed forces are commonly referred to as the Tatmadaw, the literal Burmese translation. The Army, Navy, and Air Force are distinct (Tatmadaw Kyi, Tatmadaw Ye, and Tatmadaw Lay, respectively). In this report ERI uses the terms "Burma Army" and "Burma Navy."

^{vii} The primary subject of this report is the work and methodology of the Corporate Engagement Project (CEP) of CDA Collaborative Learning Projects, a Massachusetts-based organization hired by Total in 2002 to assess its impacts in Burma. When CDA was first hired by Total the organization was a for-profit entity called Collaborative for Development Action (CDA), Inc. In 2003, CDA became a non-profit company and renamed itself CDA Collaborative Learning Projects (CDA).

its naïve and misguided attempts to conduct “open” interviews with villagers in Burma’s repressive and closed society, to their failure to adequately assess impacts in villages just outside the narrowly-defined pipeline corridor. Among other oversights, CDA interviewed villagers within earshot and eyesight of military intelligence, soldiers, Total staff, and through interpreters provided by Total. Information obtained in such compromised settings is questionable in any human rights investigation or impact assessment, but especially in Burma where retaliation against critics of the regime and its business partners is well-documented. The fact that CDA failed to take proper security precautions for those it interviewed, who in advance of CDA’s visits were warned by the Burma Army about criticizing the companies, further casts doubt on CDA’s findings.

Even if the conclusions of the CDA reports were not compromised by these and other methodological flaws described in Part I of this report, the reports have been repeatedly distorted and publicly misrepresented by Total and Chevron. **Part II** of this report catalogues the companies’ perversions of their presence in Burma as well as the companies’ public misuse of the CDA reports. For example, Total has repeatedly made false, bold and unsubstantiated claims to have eradicated forced labor in the pipeline corridor, and has claimed further that both CDA and the ILO have found there is no forced labor in the pipeline corridor, which is untrue: This report documents that neither CDA or the ILO have ever stated that forced labor has been eradicated in the pipeline corridor.

On the contrary, forced labor is prevalent and ongoing in the pipeline corridor; even more so in the entire pipeline area.⁷ EarthRights International’s documentation indicates that human rights abuses connected to the Yadana Project are ongoing and systematic, that the companies are responsible for these crimes, and that Total and Chevron have misrepresented their impacts in Burma.

There is a great deal the companies could do to improve their presence in Burma. *Getting it Wrong* concludes that the Yadana Project is far from a model of responsible investment under difficult conditions, and CDA’s assessments of the project should no longer be relied upon as accurate or credible.

PART I

FUNDAMENTALLY FLAWED: Third Party Assessments of Total and Chevron's Impacts in Burma by US-based CDA Collaborative Learning Projects (CDA)

*"[W]e did not hear anybody mention that the impact of Total's presence was negative."*⁸
- CDA Collaborative Learning Projects, Fourth Visit to the Yadana Pipeline corridor

"Prior to those visits the military comes to prepare us, telling us not to go close to the foreigners. If people talked to the foreigners they would then be questioned by the military who were wearing plain villager clothes."
- Eindayaza Villager, 2008, commenting on a visit by foreigners assessing Total's impact ⁹

"We always have to be very careful with our answers when asked by the foreigners because the SPDC^{ix} intelligence always comes together with them. The villager has to care about that."
- Eindayaza Villager, 2008¹⁰

a. Introduction

In 2002, Total hired US-based CDA Collaborative Learning Projects (CDA) to help it better understand the local and national impacts of its Yadana gas pipeline project in Burma. Initially envisioned as a series of three visits to the pipeline corridor,¹¹ two subsequent visits followed for a total of five visits, which resulted in CDA publishing five reports about Total's impacts in Burma. CDA's most recent visit occurred in February 2008.¹² These five reports present an overall favorable picture of Total and Chevron's impacts in the country. They include claims regarding human rights abuses, economic opportunities, health care, and education. The reports claim that there is a general support among the local population for continued corporate presence and programs in the area.

^{ix}The ruling military junta was called the State Law and Order Restoration Council (SLORC) from 1988 to 1997, when it renamed itself the State Peace and Development Council (SPDC). The terms SPDC and military regime are used interchangeably in this report.

In contrast, ERI's continuous investigations in the same region during the same time period yielded vastly different findings. From 1994 to 2009, ERI conducted thousands of interviews with villagers from the pipeline region, published myriad reports and articles on the project's impacts, and filed a series of groundbreaking lawsuits against members of the consortium for complicity in human rights violations. In addition to ERI's work, journalists, UN officials, NGOs, governments,¹³ and others have drawn conclusions about this project that vastly differ from CDA's findings.

According to original field research collected by EarthRights International since CDA's inaugural five-day visit to the pipeline corridor in 2002, villagers living along the pipeline have explained to ERI why and how foreigners' attempts to directly and openly examine the situation in the area have been futile and unreliable.¹⁴ ERI's documentation from 2002-2009 directly calls into question the credibility of CDA's methodology and findings. This chapter details the fundamental flaws of CDA's methodology in no less than 10 general areas.

Background: CDA Collaborative Learning Projects (CDA)

CDA Collaborative Learning Projects (CDA) is a non-profit company based in Cambridge, Massachusetts.¹⁵ CDA states that it is "committed to improving the effectiveness of international actors who provide humanitarian assistance, engage in peace practice, and are involved in supporting sustainable development."¹⁶ Funded primarily by governments and international financial institutions, CDA organizes collaborative "learning projects" to gather and analyze the experiences of international efforts.¹⁷ It states that its projects are "field-based and experience-driven (rather than theory or model-based)," aimed at "producing lessons, tools and approaches that are broadly applicable and transferable across contexts."¹⁸ To this end, CDA states that it works with "international and local agencies and individuals who are engaged in trying to make life better for people who live in economically poor and/or politically unstable societies."¹⁹

One of CDA's learning projects is the Corporate Engagement Project (CEP), which seeks to provide "practical management options for companies concerned with establishing, and maintaining, constructive relationships with stakeholder communities in the countries where they operate."²⁰ CDA says that its purpose is to "help corporate managers better understand the impacts of corporate activities on the contexts in which they work."²¹ The CEP is partly funded by donor governments and partly by companies that participate in the project; the funding sources and amounts for CDA's CEP work for the Yadana companies is unknown.²²

The CEP conducts on-site observations and interviews with stakeholders such as local communities, political opposition groups, nongovernmental organizations (NGOs), government officials, religious groups, and others to determine the positive and negative impacts of corporate practices on the lives and perceptions of local communities.²³ CDA states that it strives to develop practical strategies for managers to address tensions that arise between their companies and surrounding communities.²⁴ The CEP works

with multinational oil, gas, and mining corporations²⁵ that operate in areas of socio-political tension or conflict,²⁶ such as Nigeria, Colombia, Sudan, and Burma, and analyzes the impact of corporate practices on local communities.²⁷ CDA has worked with Total assessing the impacts of the Yadana Project in Burma since 2002.

On its five visits to Burma beginning in 2002, CDA conducted interviews with local people in villages along the Yadana Pipeline and in Burma's former capital Rangoon (Yangon). On each visit, CDA described the following process:²⁸

- Teams of two or three CDA staffers visited Burma for approximately 10 days to two weeks, spending time in Rangoon and in the *pipeline area*.
- CDA's time spent in the *pipeline area* was anywhere from two to five days.
- CDA hired interpreters from Rangoon or used interpreters provided by Total.²⁹
- CDA staffers traveled to the pipeline area by air in Total's corporate jet and were transported on the ground in Total vehicles.
- CDA staffers were accompanied in the pipeline area by Total staff at all times.
- CDA conducted random interviews in pipeline-area villages with both groups and with individuals.
- CDA staffers introduced themselves to villagers as independent from Total, but explained that they were invited by the company to observe the impacts of its operations on local communities.³⁰
- CDA visited 23 of the 25 "pipeline corridor villages" designated by Total, visiting some of these villages multiple times, as well as visits to two villages outside the corridor.³¹
- CDA's interview subjects included Total staff, staff of the socioeconomic program, Burmese authorities, religious groups, and local villagers.³²

b. Conducting "Open" Interviews in a Closed Society

CDA's reports are based primarily on information its researchers obtained in the Yadana corridor and in Rangoon. The reliability and credibility of CDA's assessments thus hinge in large part on their ability to conduct credible and reliable interviews with local community members, pipeline security soldiers, and Yadana Project staff. Through independent investigations and documentation in the region, ERI has documented a range of fundamental problems with CDA's interview environment and methodology.

ERI field research has found that prior to visits to the pipeline area by foreigners (including CDA), local villagers were prepped by the Burma Army and warned, often through village heads,^x not to complain about the Yadana Project or discuss human rights abuses. Burmese military intelligence and police in plain clothes, as well as individuals suspected by local people to be civil informants, were often present in villages during CDA's field visits, and sometimes even accompanied the CDA personnel. Individuals who could speak English were removed from their village by the Burma Army prior to visits by English-speaking foreigners, and a pervasive and reasonable fear of the military exists in the area. ERI has documented that even the suspicion of speaking to foreigners or outsiders is regarded by the Army as a grave or punishable form of dissent, resulting in beatings, killings, or other forms of punishment. CDA itself noted that even inside the "Total villages" in the pipeline corridor, people fear the SPDC and Army.³³

The local villagers themselves best describe how the Burmese authorities go to great lengths to obscure the truth from outsiders. One villager from Eindayaza – a Total-designated pipeline village – explained to ERI in 2008 how the Burma Army prepared villagers in advance of official visits by foreigners:

Sometimes the foreigners visit the area. Prior to those visits the military comes to prepare us, telling us not to go close to the foreigners. If people talked to the foreigners they would then be questioned by the military who were wearing plain villager clothes....I was told [by the authorities that the foreign visitors] were not from Total but that they came to find out bad things happening in Burma...The military tells villagers in advance, they say 'this has nothing to do with you and if we find out that you spoke to them you'll be in big trouble.' Usually if the foreigner comes they are briefed in the Total office. The interpreters...sometimes speak Karen, sometimes Burmese.³⁴

One week after two CDA researchers made their second visit to the pipeline corridor, a villager from Michaunglaung, also a company-recognized pipeline village, told ERI how he did not share all of his experiences or opinions with CDA because he had been warned by the Burma Army about doing so:

One week [ago] a group of foreigners came with five trucks to the village. Two foreigners and [an interpreter] came and told me that, 'we are not people from the government or from the Total company. We want to ask you questions about whether you have to do forced labor or portering and how your work is.' They told us to say whatever we wanted to say...They talked with me for about a half hour and wrote down what I said. Then they left. My cousin...told me they went to Kanbaw after and said the same things there.

^xThe "village head" is a difficult position of local distinction in Burma's villages. In the pipeline region and in other parts of the country, village heads are commonly selected by the villagers themselves through appointment or nomination. The village head has to manage the Burma Army's demands for food, money, and labor from the villagers, and must persuade villagers to comply with those demands, facing sometimes violent repercussions from the Army for non-compliance. See Interviews with community members, Yadana pipeline region, Burma, and Thai-Burma border (1996-2009). On file with ERI.

We did not say everything we knew clearly to these foreigners because we had been warned by the soldiers in advance. Before they came in late April the [Light Infantry battalion or LIB] 410's commander ordered each person from each household in the village to a meeting at the military compound. They said, 'if people come and ask you anything then say there is no forced labor because this is the country of Burma and not the country of foreigners.' When the soldiers told us this we were then afraid because what they meant was that the foreigners will eventually leave and then we will be in trouble.³⁵

Villagers in the pipeline region consistently described a climate of manipulation and repression surrounding interactions between locals and foreigners like those from CDA:

The foreigners would come and ask questions but the village head himself could not talk to the foreigners directly. We don't know what the interpreter said either. We dared not to talk about what is really happening in the village.³⁶

The foreigner spoke to the military and the military said that we were [working on military barracks] voluntarily. Then the military said to us that the next time the foreigner asks, we should say it was voluntary.³⁷

This repressive dynamic that challenges the collection of reliable information is not restricted to CDA. It is a phenomenon widely understood to occur throughout Burma and it affects visits by foreign organizations of all stripes. The same phenomenon has been described with regard to investigative visits to the pipeline area by other organizations, such as the International Labour Organization (ILO). According to a local villager in the pipeline area:

An ILO team visited the area to talk to the villagers and the Total security manager accompanied them. Even though no military soldiers were present in the trip, military intelligence and police in plain clothes accompanied them and followed the ILO team closely, so people dared not to say anything. The village headman also warned us in advance, before the ILO team visited, not to talk about forced labor or we will face problems.³⁸

Indeed, the ILO acknowledged such difficulties in gathering information in Burma. According to a 2001 report on an investigation in Burma by the ILO's High-Level Team (HLT):

As regards individual interviews, the HLT on occasions felt that despite the assurances it provided about the commitment given by the authorities and the confidentiality of the interviews, the persons being interviewed did not feel completely free to speak and sometimes even explicitly said so.³⁹

Given these circumstances and the methodology employed by CDA, it is not surprising that CDA documented mostly local appreciation for Total. CDA's claim that "we did not hear anybody mention that the impact of Total's presence was negative"⁴⁰ is unremarkable. More surprising, however, is CDA's uncritical acceptance of such testimony and findings. In its 2008 report, for example, CDA stated that "In previous visits to the Pipeline, CEP teams have found that virtually everyone expresses appreciation for Total's programs."⁴¹ Indeed, the concept of "local appreciation for Total" appeared in the twenty-one page 2008 CDA report no less than nine times.⁴²

CDA's trust in the villagers' homogeneous statements of appreciation for the Yadana Project could be dismissed as simple naiveté on CDA's part were it not for the organization's own acknowledgement that it was aware that the military commonly prepares and threatens local people prior to potential interactions with foreigners. CDA's own reports concede the potential that villagers were "prepped" by the Army. The organization included in its interviews a direct question as to whether the interviewee had been prepped, but concluded that no such prepping or retaliation occurs, primarily because local people said as much, and because local people did criticize some government policies.⁴³

On their third visit to the pipeline corridor, CDA "asked people in several villages if any retaliation or follow-up actions by the army had taken place after" their earlier visit.⁴⁴ Villagers "responded that they did not hear of any such activities."⁴⁵ CDA claimed, "[a]lthough villagers could have been instructed to deny that they had been briefed, this seems unlikely as villagers openly expressed their dissatisfaction or feelings about many government policies, and discussions seemed open and were entered into without hesitation."⁴⁶ While common sense and experience working in Burma would suggest otherwise, CDA were convinced that villagers were being forthright when they denied they had been briefed by the military.

CDA's conclusion that villagers were not prepped, which appears to form the basis for CDA's acceptance of statements from local people as true and complete, is additionally troubling because ERI met with key CEP staffer Luc Zandvliet, during the period of their work in Burma and warned him about just such prepping.⁴⁷ During this meeting, ERI Executive Director Ka Hsaw Wa and ERI Board of Directors Chair Dr. Charlie Clements informed CDA of the lengths the military goes to prevent public disclosure of information about the actual conditions in the area, including the Army's prepping and retaliation for speaking the truth to foreigners. ERI clearly recommended specific ways that CDA might improve their methodology to conduct credible and safe fact-finding in Burma, and ERI offered to bring CDA to the Thailand-Burma border to speak with refugees and residents from the pipeline area in a safe and secure environment. Unfortunately, these recommendations and warnings were never followed by CDA.



EarthRights International interviewing local people in pipeline region.
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When pressed on CDA's willingness to accept the testimony of villagers living in a deeply complex environment under one of the world's most notoriously brutal regimes, CDA's response was simple: In a private meeting in 2009, CDA Executive Director Mary B. Anderson told ERI: "[We] have a fairly high confidence level about the veracity of the information. I don't think people are lying. Most people don't mean to lie."⁴⁹ CDA's inability or unwillingness to critically evaluate the ability of villagers to give honest responses to such direct questions or to externally validate their statements further undermines their dubious findings.

The threats from the Burma Army in the pipeline area are such that local people have reported to ERI fact-finders that villagers have been punished simply for suspicions of having contact with people from outside Burma.⁵⁰

One current resident of a pipeline village visited several times by CDA explained to ERI the violent fate of his village head who was punished by the Army for speaking candidly to foreigners about the complaints of villagers in the area. The foreigners he referred to may or may not have been CDA staff – he was unaware of the foreigners' association or the specific time of the visit. He told ERI that after speaking to foreigners "[the village head] was jailed for 3 days and beaten up [by the military] a couple times. Villagers witnessed this and so now they don't dare complain."⁵¹

In a particularly troubling incident, CDA visited a village outside the pipeline corridor during their first visit in 2002 and spoke to a family that, like others in the village, reported forced labor.⁵² On CDA's next visit in 2003, the family had suspiciously disappeared and their whereabouts remain unknown.⁵³ CDA admitted that they did not verify if villagers had faced repercussions for speaking with them during the visit, and CDA rightly considered whether villagers "were in any way targeted because of their conversation with us."⁵⁴ CDA recommended that "Total staff visit the village periodically to ensure that our visits do not have any negative consequences....", but this is a grossly inadequate response to this serious situation that may have been triggered by CDA's own negligence.⁵⁵

CDA admits that they "were unable to verify if some people we spoke with during our last visit had experienced any repercussions from speaking with us during our first visit."⁵⁶ On their third visit, CDA "asked people in several villages if any retaliation or follow-up actions by the army had taken place after" their earlier visit.⁵⁷ Villagers "responded that they did not hear of any such activities."⁵⁸ The fact that CDA accepted these responses at face-value and appears to have done no further investigation lends insight into the lack of credibility of their findings and conclusions.

Removing English Speaking Villagers

Another indicator of the repression in the pipeline corridor and CDA's inability to obtain reliable information is the Burma Army's practice of removing English-speaking villagers from the pipeline area prior to arranged visits by English-speaking foreigners. That is, villagers who could communicate directly to CDA staff were removed from their village prior to CDA's visits. A villager from Eindayaza described to ERI:

The soldiers do not allow the villagers who can speak English to talk to the foreigners. Like [name deleted], he speaks English, and he is taken to another place by the soldiers right before the foreigners come. He never has a chance to talk to foreigners even though he can speak English. And he is always rejected from Total whenever he applies for a job there.⁵⁹

Another villager from Eindayaza added how he was pressured to not speak to foreigners, and verified the practice of removing English-speaking villagers prior to a visit by foreigners:

We were advised by the [Village Communication Committee] VCC^{xi} and village head not to talk to foreigners when they ask [questions], because they are afraid that when foreigners ask about anything we would say things that the government doesn't like. Often when the foreigner comes there will be people from [military] intelligence and sometimes we can notice them easily...In the past when foreigners came they...talked to [an

^{xi}A Village Communication Committee (VCC) was established by Total in 25 villages, ostensibly to establish effective dialogue with the community around the Yadana Project. Each VCC is comprised of 7 to 11 representatives who are to act as interfaces for social and economic issues. See Total, Dialogue with the Villages, at http://myanmar.total.com/en/engagement/p_3_1_1.htm (last visited August 6, 2009). One villager told ERI, "It is not useful to have a village committee. When the Total people come, they meet with the committee. But when [we] need something, the committee does not submit the request to Total for us." Interview #026-2008 with community member, in Eindayaza, Burma (2008). On file with ERI.

English-speaking villager who I know]. Later, when we knew that foreigners were coming, the Army Office would come and ask [the English-speaking villager] to go somewhere or do something for them and take him away from the village. That way, when foreigners come they have to go through the [interpreter] brought by the foreigners.⁶⁰

The Challenge of Interpreters

The selection of interpreters, when necessary, is a critical element in eliciting reliable information in any interview or investigation. The International Bar Association's *Guidelines for International Human Rights Fact-finding Visits and Reports* stipulates that "[e]very care must be taken in selection to ensure that interpreters are expert in the required languages and relevant technical concepts, as well as independent and professional."⁶¹ In Burma, selecting interpreters is extremely challenging because SPDC informants and spies are omnipresent and local people often do not trust their fellow villagers, and at times distrust their own family members. This is a widely known phenomenon, well documented by ERI and others. Last year, Human Rights Watch acknowledged as much, stating, "SPDC spies and informants are everywhere, severely limiting the ability of people to speak freely even when talking with friends in tea houses or private homes. Any gathering of more than five people is banned in Burma..."⁶²

Compounding the challenges of employing trustworthy interpreters was CDA's regular use of ethnic Burman^{xii} interpreters from Rangoon, unfamiliar to the local ethnic communities in the pipeline region. The interpreters spoke in Burmese, the dominant and official language of the military regime, which is not only a second language to many pipeline area residents, but also one which is linked to the regime and many of its discriminatory policies towards ethnic minorities. In some cases, Total provided their own staff to serve as interpreters for CDA, in part to address the language challenge, but in reality this only further compromised the independence of CDA, as well as contravened best practice in the area of assessments and investigations.⁶³

In its 2008 report, CDA acknowledged that its use of interpreters provided by Total "could have compromised the honesty of conversations about Total's impacts on villages."⁶⁴ However, CDA claimed that "this seemed not to be the case as people openly discussed their criticisms and doubts of company actions... [and] the content of this team's discussions did not differ in any noticeable way from the content of the conversations" carried out by the independent interpreter.⁶⁵ That the conversations with a Total staff member rather than an independent interpreter seemed to not differ is not a reliable basis upon which to find that the conversations were uncompromised. On the contrary, local people told ERI that they did not trust the interpreters.

A resident from Eindayaza told ERI about his concerns associated with foreigners visiting the area, accompanied by military intelligence and communicating through interpreters unfamiliar to local people:

Mostly, the interpreters who come with the foreigners are Burman. The villagers do not trust them. When they ask questions, we do not tell them all that is happening because we suspect that they are an SPDC spy. We always have to be very careful with our answers when asked by the foreigners because the SPDC intelligence always comes together with them. The villager has to care about that.⁶⁶

^{xii}"Burman" refers to the dominant ethnic group in Burma.

c. Geographic Limitations: CDA's Interviews Inside and Outside the Pipeline Corridor

A fundamental error of Total and Chevron is their narrow definition of the pipeline corridor, which defined CDA's principal area of focus in assessing the companies' impacts. The pipeline corridor as-defined by the companies and the SPDC includes only 25 villages and does not account for all the communities suffering negative impacts from the Yadana Project. ERI has documented abuses committed by the Burma Army providing security for the companies and the project in at least 40 villages in the area of the pipeline. CDA itself has acknowledged as much, finding that forced labor continues just outside the perimeter of the narrow pipeline corridor.⁶⁷ CDA notes that the "corridor is only visible as drawn on a map; there are no physical boundaries delineating its boundaries on the ground."⁶⁸

In the late 1990s, the SPDC enacted a policy of *self-reliance* with regard to the Burma Army. Under this policy, adopted to address the enormous cost associated with the dramatic expansion of the Armed forces, poorly supported local military units were largely responsible for their own economic survival.^{xiii} This led to an increase in the demand for forced labor. The policy was officially discontinued in 2004, but practices adopted during the self-reliance period continue unabated.⁶⁹ This increased demand for forced labor is present in the pipeline corridor, and has played out with respect to Total's arbitrary geographical distinction of which villages are in the "pipeline corridor."

That is, Total and Chevron, eager to avoid complicity in abuses and to avoid negative publicity, have pressured the Burma Army to stop the practice of forced labor *in the corridor*, but the Burma Army's demand for forced labor has not changed. The net effect is that now more forced labor is occurring just outside the narrowly-defined corridor in villages that the companies do not recognize as within their "sphere of responsibility," but where the worst impacts of the Yadana Project are nonetheless felt by local villagers.

CDA recognized this SPDC policy of self-reliance and its effects on local communities, stating that forced labor is "driven by the need of local battalions for survival."⁷⁰ In its first report, CDA quoted an anonymous "humanitarian actor" who found that even if forced labor were less prevalent in the pipeline area, that does not "reduce the overall demand for forced labor" in the area.⁷¹ Rather it "'squeezes the people outside the corridor'", meaning that the pressure for forced labor in other areas has probably increased.⁷² CDA raised the question "as to whether villages located just outside the pipeline corridor experience additional pressure for taxes or labor"⁷³ and recommended that Total "investigate further to ensure there is no forced labor indirectly associated with the pipeline in the areas just outside the corridor."⁷⁴ For its part, Total

^{xiii}In the late 1990s, the War Office of the SPDC declared a policy of self reliance for local units of the enormous Burma Army, largely out of necessity because of the SPDC's poor management of the rapid growth in size of the military. Military units dispersed throughout the country were tasked with generating their own operating revenue from the local economy. This has resulted in an increase in forced labor nationwide.

has failed to acknowledge the phenomenon, let alone address it publically, although they implicitly acknowledged the impacts of the project beyond their defined area by deciding in 2005 to expand the corridor from 13 to 25 villages.⁷⁵

Despite CDA's recognition that no geographic boundaries define the pipeline corridor and that negative impacts appear to have increased just outside the corridor, CDA still largely confined its research to precisely the corridor that exists only on a map. On their first and second visits, CDA did venture to one village outside the companies' pipeline corridor and found that "people demonstrated a visible fear of the armed forces" and some villagers simply refused to talk to CDA.⁷⁶ CDA noted routine forced labor and taxation in this *non-corridor* village, and a noticeable fear of the Army, as well as the suspicious disappearance of a family between CDA's first and second visits to the village.⁷⁷

CDA did not return to this village in subsequent visits to the region out of concerns about adverse impacts resulting from their visits. While such concerns are valid, they indicate the level of abuses occurring in the pipeline area, as well as a practical aversion local people have to reporting abuses. On their fourth visit, in 2005, CDA visited a village just north of the pipeline corridor, and this time found no evidence of forced labor or taxation and no evidence of threats or intimidation by the Army to local people. Such divergent findings over such a short period of time were accepted uncritically by CDA, who stated:

We spoke with the local chairman and a local priest. Both acknowledged that no forced labor takes place in the village...a significant difference in the context of the fourth trip to the village outside the pipeline area and the previous visit to another community also located outside the pipeline area. In our earlier visit, people admitted that forced labor did take place, and the atmosphere was very tense with a strong presence of the military, and the chairmen refusing to speak with us. By contrast, during this trip...[t]he village chairman spoke openly, appeared quite relaxed and did not avoid any 'difficult' questions.⁷⁸

The documented reality in the *non-corridor* pipeline villages is that serious and widespread abuses committed by the Burma Army securing the project have been on-going since the project began. Since 1995, ERI has documented significant abuses committed by the Burma Army assigned to provide security for the Yadana Project in at least 25 villages, beyond the 25 villages acknowledged by Total and Chevron.⁷⁹ The most current documentation of human rights abuses in these areas can be found in the ERI report *Total Impact* (2009).

CDA's primary focus on the official pipeline villages is a major flaw in their approach and precluded an assessment of the spillover effects of the corridor's increased militarization on outlying villages. This is a significant omission in itself, but especially so given CDA's own acknowledgment that the project's impacts extend "beyond the direct impact in the pipeline area."⁸⁰

Unannounced and Random Village Visits

With apparent indifference or naiveté to the repression in military-ruled Burma, CDA claims to have had unfettered access to the pipeline area, maintaining in all of its site-visit reports that it exercised autonomy and randomness in deciding which villages to visit and when. In its 2008 report, CDA asserts, “The CEP teams decided which villages to visit and often, en route, made new decisions about where to go next. None of the village visits were pre-arranged or predicted by Total staff.”⁸¹ While this may indeed be accurate, it ignores the Burmese military’s documented pattern of prepping and threatening villagers prior to CDA coming to the area. As documented in this report, local people were warned by the Burma Army and “prepped” either directly or via the village head about expressing negative opinions to foreigners, under threats of persecution.⁸² This calls into question the effectiveness and integrity and the geographic randomness of CDA’s visits.

d. Compromising the Security of Local People

As explained in *Appendix A* of this report, sensitive interviews in Burma should take place clandestinely and in a secure, private area. In public spaces, such as tea shops, grocery stores, markets, churches, pagodas, or even on the roadside there may be informants or plain-clothed security. Military intelligence, soldiers, or police officers are easily detected, but in Burma there is still an abundance of plain-clothed officials and civil informants who may be nearby and willing to report information to the authorities about the interview. Commonly, civil informants are simply trying to survive and they may be inclined to look for favors or rewards from the Burmese authorities by reporting “incriminating” information about other citizens.

The military regime’s repression and the Burma Army’s violence have successfully degraded the trust between villagers in communities and even within families.⁸³ Thus, in order to insure the integrity of the information and the security of the interviewee, conversations about sensitive issues should be conducted individually and in private, not amongst families or in groups. This is considered generally advisable in all human rights interview situations, but particularly in Burma where interviews conducted in groups potentially limit or distort what community members will say, and may pose a threat to the individuals’ security if they share sensitive information or express dissenting opinions amongst civil informants.

The risk to the integrity of information gathered during group interviews, or among witnesses, becomes even more pronounced when those present during the interview are the subject of the interview or have an interest in the outcome. By CDA’s own admission, they conducted group interviews⁸⁴ about extremely sensitive topics, including forced labor, at times in the presence of Total staff.⁸⁵ CDA acknowledged in the case of the disappeared family from the village outside of the corridor (discussed above), “we had discussed forced labor and *the family and neighbors who were present* confirmed that it occurs.”⁸⁶ While it is unclear if the subsequent disappearance of this particular family was related to the CDA interview, it is apparent that CDA breached security protocols and put people in danger during the course of its human rights assessments in Burma.

Most troubling is that CDA recognized the risks to villagers participating in their assessments, but failed to change its methodology to ensure that local people could contribute their experience to CDA’s assessment in a private and secure environment.

e. Failure to Include/Conduct Burma Army or Burma Navy Soldier Interviews

The Burma Army, through several Light Infantry Battalions,⁸⁷ is assigned to provide security for the Yadana pipeline and the companies, and the Burma Navy is tasked with securing the offshore areas of the Yadana Project.⁸⁸ During its visits to Burma, CDA neglected to conduct adequate assessments of the impacts of the soldiers providing security for the pipeline and the corporations. There seems to be no objective reason for this omission. Theoretically, CDA's "unfettered access" to the pipeline area should have enabled access to interviews with soldiers.⁸⁹

In its fourth report (2005), CDA did note that it "interviewed Total staff, Petronas, *the army*, religious groups and local communities both inside and outside the pipeline corridor."⁹⁰ It is unclear if that is a reference to interviewing senior-level Army official(s), ground-level Infantry Battalion soldier(s), or, as it seems to indicate, the *entire* Army in the area of the pipeline, which would have required hundreds or even thousands of interviews. Nowhere in CDA's reports, however, is there a single specific reference to an interview with a Burma Army or Navy soldier guarding or patrolling the Yadana Project.

The LIBs tasked with providing security for the pipeline and Total staff are integral to the project's impact on the ground. Their presence in the Yadana Project area is one of Total and Chevron's defining effects in Burma. As explained in numerous ERI reports since 1996, including the companion to this report, *Total Impact*, the direct connections between the Burma Army, Total and Chevron are well documented and unassailable, and the Burma Army personnel connected to the companies are the direct perpetrators of abuses against local people, including forced labor, rape, torture, and killings.⁹¹

Likewise, Burma Navy defectors who previously performed security on the Yadana Project told ERI that the Navy considers itself, "officially licensed pirates of the sea," and routinely confiscates property of local people.⁹² CDA appears to have failed to thoroughly investigate these negative impacts connected to the Yadana Project.

f. The Brief Length of CDA's Visits to Burma and its Failure to Gain the Trust of Local Villagers

CDA's methodology does not appear to require a sustained presence in or relationship with the communities affected by the Yadana Project. CDA spent five days in the pipeline corridor on its first (2002), second (2003), and fourth visits (2005),⁹³ three days on its third visit (2003),⁹⁴ and two days on its fifth visit (2008).⁹⁵ In seven years time, CDA has spent a grand total of 20 days in the Yadana pipeline corridor. Furthermore, CDA has zero local staff members or employees who can speak the relevant local languages in Burma.

According to CDA, its visits were conducted by five separate western individuals – two per visit, with the exception of one visit by three CDA staffers – on five occasions.⁹⁶ Such brief visits would make it extremely challenging for CDA to establish meaningful relationships and trust with local people, or develop an accurate understanding of the

impacts of the Yadana Project on local people.

CDA must be aware of how the paucity of time it spent in the region compromised their ability to build trust with villagers. On their first visit, CDA representatives themselves noted that the Burmese women who serve as Total's Village Communications Officers needed five or six months before they could gain the villagers' trust.⁹⁷ In addition, CDA claims that "all people" with whom they spoke in Burma "pointed out the value of personal connections that are cultivated over time."⁹⁸

This is consistent with ERI's research into the importance of respect and trust in Burma with regard to dealing locally with human rights abuses or conflict resolution. In December 2005, ERI released the study *Traditions of Conflict Resolution: Respected Insiders, Resource-Based Conflict and Authoritarian Rule*, based on five years of research in Burma and on its borders.⁹⁹ The study indicates that familiarity and respect are unique and integral to trustful social relations in Burma, particularly in the resource-rich territories of Burma's ethnic nationalities.¹⁰⁰ The study notes that:

[R]espected insiders who are normally elders or those in higher positions are the primary third parties for resolving serious conflict in Burma. By contrast, impartial outsiders—the traditional Western conflict 'resolver'—are much less likely to play central roles.¹⁰¹

ERI's research concludes that "the prospects for peace and earth rights protection hinge partly on understanding this respected insider model and how it manifests itself in militarily-ruled Burma."¹⁰² CDA's methodology, which neglects to provide a context to cultivate trusting relationships with local people, clearly does not reflect an understanding of this model.

In contrast, ERI employs local staff known and trusted by affected communities, conducts interviews in local languages, and since 1995 has been working in and with the affected communities on a consistent basis.

Furthermore, without established trust between interviewee and interviewer, there is sound reason to question the veracity of information collected in an interview. In Burma's ethnic areas, where there is a history of abuses by the Burma Army, trust is critical in gaining access to reliable information, especially around sensitive topics like forced labor.

As one villager stated to ERI, regarding official visits to the pipeline corridor by foreigners, "[w]e always have to be very careful with our answers when asked [questions] by the foreigners because the SPDC intelligence always comes together with them. The villager has to care about that."¹⁰³

As noted above, at times simply the suspicion of speaking to foreigners or outsiders beyond the purview of the authorities may be regarded as a grave or punishable form of dissent, resulting in beatings, killings, or other forms of punishment. One family in the Yadana corridor recently lost their house to the Burma Army, an act ostensibly rooted in such suspicions.¹⁰⁴ Other villagers explained experiences of retaliation by the Burma Army for traveling to the Thailand-Burma border.¹⁰⁵ These experiences would contribute to a general climate of distrust and intimidation in the Yadana pipeline area, which CDA's methodology failed to accommodate.

Furthermore, CDA reported that villagers stated they lacked the “courage” to report incidents of forced labor to Total because they did not know the company well enough to trust them, despite that Total had been operating in the area for a decade when the statement was made in 2005.¹⁰⁶

Through ERI’s 15 years of working in and around the Yadana gas pipeline project, ERI has noted and documented a general distrust among local people for Total staff, foreign visitors invited by Total, and the Burma Army. CDA explained to the villagers that they were “operating independently” from Total, and they “made it clear” that they had been invited by the company, although CDA traveled in Total vehicles, with Total staff, and were “sure all the villagers knew that this car belonged to the company.”¹⁰⁷

CDA apparently did not believe this level of distrust and unfamiliarity, along with their association with the companies, would affect their ability to collect information, yet curiously, CDA also appears to acknowledge that local people do in fact confuse them with Total. CDA acknowledged as much in a meeting with ERI in 2009, when ERI inquired about CDA’s attempt to visit and interview refugees in the camps along the Thailand-Burma border concerning allegations of human rights abuse. Apparently, a CDA staff member was unable to speak to these villagers and was told that he was “too corporate”¹⁰⁸; apparently the villagers were of the belief that CDA was Total.

Given the overwhelming power and presence of the Army, it is unrealistic to expect people who fear it to openly and trustfully discuss its abuses with recently arrived, unfamiliar foreigners who are closely associated with Total.

Moreover, CDA (and Total) demonstrate a failure to appreciate the importance of trust when they criticize NGOs (including ERI) for declining to provide them access to details of documented incidents of forced labor.¹⁰⁹ If ERI were to disclose to Total or CDA the details of the people we have spoken to, it would not only violate the trust between ERI and local villagers, who share their testimony with ERI under strict conditions of anonymity, but it would also put the people with whom we spoke in potentially grave danger.

g. CDA’s Lack of Independence from Total

In descriptions of their work and in interviews with local people in the pipeline corridor, CDA regards and presents itself as independent from Total.¹¹⁰ CDA understands that a lack of independence from Total in the pipeline region would threaten the integrity of their “collaborative learning effort.” In their most recent report, CDA acknowledges as much, saying:

It is always a challenge for the CEP both to engage with international corporations in the collaborative learning effort and to maintain full independence from them when doing site visits. This is especially the case when CEP teams have to rely on the transport and hospitality of the corporate partners in order to visit their field-based operations...CEP teams who visit the site must fly on the company plane to get there and, once in the region, use company vehicles with company drivers to get around to the villages.¹¹¹

Outside of the pipeline region, CDA's independence from Total, its acknowledged "partner," is equally questionable. In the past, CDA asserted that the Corporate Engagement Project (CEP) was funded "partly by companies that participate in the Project," along with donor governments.¹¹² However, at present, details of corporate funding for the CEP are no longer available on CDA's website. Listed donors for the CEP include several national agencies and an international financial institution.¹¹³ Thus, the current funding streams for the CEP's work in Burma are unclear.

A structural lack of fiscal independence from Total would raise important questions about CDA's objectivity. If CDA were to publish negative or challenging reports about Total, it is reasonable to imagine that it could potentially affect future business or contributions from Total to CDA, as well as CDA's chances of being similarly commissioned by other extractive companies investing in Burma or settings similar to Burma. In other words, CDA's own financial sustainability may depend on publishing reports that companies are willing to commission; reports that companies regard as within their interest. CDA has not fully disclosed the sources and amounts of funding for their work for Total on the Yadana pipeline in Burma.



Foreigners in the Yadana pipeline corridor in the presence of the Burmese Authorities and the Burma Army.
© EarthRights International/Yadana Worker, 1996



A Total company helicopter used to transport visiting foreigners
© EarthRights International, 2009

h. CDA's Methodology is Not Human Rights-Based and Does Not Constitute Monitoring

CDA intentionally does not adopt a rights-based approach to its work.¹¹⁴ The organization does not evaluate the conditions in the Yadana corridor against internationally-accepted human rights norms. In fact, CDA is not and does not claim to be a human rights monitoring group and does not claim to have any expertise in human rights fact-finding. Clearly, CDA's brief and intermittent visits in no way constitute a monitoring regime.

Nonetheless, CDA reports on human rights abuses, stating that, "our review inevitably also included a consideration of the corporation's effects on the human rights situation in the region of the pipeline and beyond in the country at large."¹¹⁵ Critically, the five reports by CDA are Chevron and Total's primary defense to allegations of human rights abuses associated with their controversial project in Burma, and claims of complicity in such abuses have formed the basis of numerous lawsuits against the companies.

CDA's failure to adopt a rights-based approach, or even measure the project in accordance with Burma's own laws and obligations, has led CDA to publish faulty information about the actual conditions in the Yadana corridor. While there are evolving best practices for human rights monitoring,¹¹⁶ there are minimal criteria for monitoring that are generally accepted, including that it be sustained, thorough, independent, well-sourced, objective, based on established legal frameworks, conducted in local languages,

and conducted in a secure way in which the security of interviewees and others is prioritized.¹¹⁷ CDA's CEP in Burma does not meet these standards.

While CDA's analysis may be useful for corporations seeking to better understand and manage certain perceptions of their local impact, their methodology is a completely inappropriate way to address or monitor the human rights impacts of a project over time. It is also an inappropriate way to monitor the practical and legal existence and ramifications of human rights violations connected to the project.

With human rights abuses featured so prominently in connection to the operations of CDA's clients, CDA's failure to adopt a human rights-based approach in its methodology represents at least a critical disservice to corporate managers hoping to learn about their local impacts. At worst, it is a disservice to communities whose human rights are being violated by these corporations.

CDA's failure to adopt a rights-based approach affects not only the information collected, but the interpretation of that information. For example, in 2008, CDA spoke to a local woman who told CDA she had "donated" her land for one of Total's health clinics. CDA noted that the clinic "was built essentially in her front yard," but CDA did not consider whether such a "donation" might have been involuntary.¹¹⁸ An objective rights-based approach would consider whether this instance contained the elements necessary to establish or refute a case of land confiscation.¹¹⁹ In another earlier incident, CDA documented women in the pipeline corridor "who had a 'duty' to clean the army compound and its surrounds" in the area around the Yadana pipeline.¹²⁰ The women did not have an option to not perform the labor and expressed how they disliked doing it.¹²¹ Rather than investigate this as a possible instance of forced labor, CDA simply noted that it was "a traditional division of labor."¹²²

i. CDA's Methodology Does Not Accurately Recognize or Measure Forced Labor

Definitional Deficiencies

A major problem with CDA's methodology is the way in which CDA defines "forced labor," which is consistent with a general lack of clarity on CDA's part with respect to definitions. The International Labour Organization (ILO) defines forced labor as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."¹²³ According to the ILO, "forced labor represents a severe violation of human rights and restriction of human freedom."¹²⁴ Burma has signed the ILO Convention at issue, and prohibitions on the use of forced labor in international law are so widespread as to constitute customary international law. Forced labor is so widely condemned that it has achieved the status of a *jus cogens* violation.¹²⁵

In attempting to further understand CDA's approach to human rights fact-finding in Burma, ERI met with CDA in April 2009 and inquired about their approach to forced labor, as CDA reports extensively on this issue in their reports.¹²⁶ In this meeting, Mary B.

Anderson informed ERI that CDA does not use the internationally-recognized definition of forced labor, because according to CDA, it represents a “western, top-down” approach to human rights.¹²⁷ That Burma has chosen to accept this definition of forced labor through its signature and accession to the ILO Conventions seems to have evaded CDA’s notice.

Rather than recognize well-established law, CDA frequently and uncritically uses villagers’ own definitions of forced labor. These definitions are, for obvious reasons, inconsistent with the prevailing legal definition due to local villagers’ general lack of formal education. Despite that, villagers should not be expected to use legal terminology or international standards to colloquially describe their everyday experiences. In its reports, CDA explains how the “local definition of forced labor” as determined by the villagers is narrower than Total’s definition, which “may consider activities as forced labor that villagers see as voluntary.”¹²⁸

CDA reported that villagers defined forced labor in terms of whether they were paid for their labor.¹²⁹ The internationally-accepted definition of forced labor hinges on whether laborers are able to refuse a request for labor, regardless of whether they were compensated.¹³⁰ CDA does acknowledge this definition¹³¹ but then refuses to apply it to the conditions along the Yadana pipeline. Moreover, CDA did not inform local villagers as to what constitutes forced labor.

Furthermore, CDA repeatedly refers uncritically to work done by villagers as “village duty” rather than forced labor, even though villagers have no choice and are not paid for their work. That is, CDA adopts the same euphemisms for forced labor traditionally used by the Burmese authorities – despite the country’s accession to the relevant ILO Conventions – rather than thinking critically about how these mischaracterizations serve to hide and perpetuate the hallmark abuse of the Burmese military regime. It has long been understood that using terms like “people’s contribution” or that villagers “helped” the military are ways to describe forced labor as a voluntary, traditional practice rather than a human rights violation.¹³²



Forced labor for the construction of a school in a village in the pipeline region.

© EarthRights International, 2009



Roadside ditches dug by villagers forced to work by the Burma Army pipeline security.
© EarthRights International, 2009

For example, a government representative in Burma explained to CDA that the country needs villagers to “help” the Army in order to develop infrastructure.¹³³ CDA failed to explicitly regard accounts of such help as problematic. Likewise, a battalion commander told CDA that the military and village “worked together to build a fence for a local school” (a school that was, significantly, also used as an army base), and CDA simply noted that the local commander wanted to “be seen as working with the community” and Total.¹³⁴



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

This definitional gap – where villagers and others do not use the same terminology as the international community – is not an excuse for CDA, Total, or Chevron to ignore such instances of abuse. Rather than simply cite instances of “help” or “village duty,” CDA should acknowledge that it is not the terms that are used that constitute an abuse or not, but the underlying activity and conditions surrounding it. If the work was procured under duress, threat, or intimidation, without an opportunity to say no, it is forced labor and illegal under both Burmese and international law, regardless of what it is called.

Forced Labor by Whom?

In keeping with their misunderstanding of forced labor practices in Burma, Total only considers – and CDA reports on – work ordered directly by the Burma Army in their analyses of forced labor.¹³⁵ Forced labor is required by the military but commonly ordered through a village head, rather than by the Army directly. The Army sends verbal or written orders requiring the village head to gather a certain number of workers: typically one worker from each household, or enough workers to complete a given task.¹³⁶ A villager from Zinba reported to ERI that “the orders [for forced labor] come from the soldiers through the village headman.”¹³⁷ On its second visit, CDA was told by a village head that “he had been asked by the Army to ‘provide’ 20 villagers for several hours” to cut trees so that the Army could build a helicopter landing pad.¹³⁸

CDA understands this dynamic of orders for forced labor directed through the village head but does not appear to investigate whether such labor is forced, stating that, “Villagers define, and Total responds to, forced labor only with the army...building a road under the instruction of the Head of Village (who is government appointed) is not perceived as forced labor but as voluntary community service.”¹³⁹

On its fourth visit, CDA was told by a villager that “the military knows they cannot force us to do work directly, so they ask us via the Head of Village.”¹⁴⁰

Forced Labor Through Taxation

CDA fails to regard taxation as forced labor, even when it is paid “in kind” in the form of labor. The ILO recognizes that forced labor is sometimes used as a tax, and requires very specific conditions be met to maintain the legality of this practice – conditions which are not met in Burma.¹⁴¹ CDA explains that those who are unable to pay the taxes to the village fund pay through work for the village and that “although they do not like this system they do not consider this ‘forced labor’ but merely part of the tax system.”¹⁴² Given CDA’s recognition that “provisions of labor and cash payments are interchangeable,”¹⁴³ it is difficult to understand CDA’s failure to regard arbitrary taxation, in the form of work, as forced labor.

j. CDA's Inadequate Methodology to Measure Total and Chevron's Socio-Economic Program



An abandoned pig farm claimed by Total and Chevron to be one of the companies' key socio-economic contributions to the pipeline corridor (Mi Chaung Laung village)
© EarthRights International, 2009

CDA's mandate in Burma was to assess Total and Chevron's impacts in the country. CDA thus paid considerable attention to assessing the companies' Corporate Social Responsibility (CSR) programs, which are referred to as the "socio-economic program" (SEP). Total and Chevron claim these programs, located in the pipeline corridor, have achieved remarkable quantitative successes in the areas of public health, education, and economic development.

CDA has repeatedly expressed generally positive reviews of the companies' socio-economic program,¹⁴⁴ with some critiques mainly about the sustainability of the projects and the danger of over-reliance by local communities on the projects. Likewise, Total refers to CDA as an "independent expert" and claims that CDA "considers that Total's programs have had a positive impact."¹⁴⁵ Chevron similarly boasts that "CDA noted that the Yadana Project's initiatives have had a positive impact on local communities along the pipeline corridor."¹⁴⁶



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

CDA's methodology to assess impacts of key aspects of the socio-economic program is problematic, specifically its attempts to measure the effectiveness and outputs of the company's public health and education programs. A marginally adequate assessment would require comparing the current levels (of education, mortality, tuberculosis rates, school enrollment, etc.) against those prior to the commencement of the companies' SEP, and in comparison across Burma. CDA simply does not use analytical research methods and tools that would enable it to quantifiably measure the companies' claims with regard to their socio-economic program.

In reality, CDA does not attempt to measure the outputs or outcomes of the SEP. Rather, CDA measures the inputs and perceptions of effectiveness, as deduced through interviews with local communities and Yadana Project staff. Ironically, in its first report in 2002, CDA noted that the overall effectiveness of the SEP can only be measured by assessing the program's outputs:

The reporting system of the SEP focus primarily on the inputs of the program such as the number of consultations in the clinics, the number of trees distributed or the percentage of loans recovered. The reporting system will gain strength by also including measurable outcomes as a result of inputs. . . Based on our interviews it is apparent that the SEP is beneficial to local communities. But only by systematically looking at outcome indicators can the success of the SEP be objectively measured.¹⁴⁷

Presumably in response to CDA's 2002 recommendations that Total measure the outputs of its SEP, the companies have published numerous outputs in the areas of public health, education, and economic development. For example, in the area of public health, Total and Chevron claim to have reduced infant mortality in the pipeline corridor to one-sixth of Burma's national rate.¹⁴⁸ The companies claim to have reduced malaria mortality by a factor of ten,¹⁴⁹ and to have reduced tuberculosis (TB) mortality by half since 2002.¹⁵⁰

Significantly, and despite information provided on Total's website, no data or methodology leading to the company's public health findings have been published by any party. In this way they are unsubstantiated. Total simply claims the programs "were carried out in close collaboration with the Myanmar health authorities."¹⁵¹

CDA appears to have accepted Total's claimed outputs at face value. There is no evidence that CDA or qualified, independent third-parties have attempted to measure the outcomes or actual effectiveness of the socio-economic programs. Without such independent measurements and evaluation, any conclusions about the overall effectiveness of the socio-economic programs or specific aspects of the program are incomplete.

EarthRights International does not claim, as we do in the areas of environmental and human rights monitoring and corporate accountability, to have expertise in development or in the area of CSR evaluation in general, or in the specific economic, education, and public health programs that are the prominent features of Total's program. Rather, acknowledging our lack of ability and capacity to measure such indicators, we do not and would not make conclusive claims about the overall effectiveness of specific aspects of the programs (we would, however, amplify local peoples' testimonies with regard to the programs). Only experts in specific fields of development, including public health, micro-credit, etc. would be qualified to objectively analyze the effectiveness of these programs in a quantitative way.

Like ERI, CDA rightly does not attempt to measure Total's outputs in these areas, an implicit recognition that they are either unqualified or incapable of doing so. However, unlike ERI, CDA does opine definitively on the overall effectiveness of the programs and specific aspects of the program, based on information provided by the companies and SEP staff members, and based on interviews with local villagers that were conducted through a faulty methodology.

In its most recent reports, CDA has shifted its focus to the sustainability of the SEP, implicitly accepting its supposed success and effectiveness. In 2008, CDA claimed "the focus in the pipeline area was to follow up on findings from previous CEP visits that raised concerns about village dependency on Total and the non-sustainability of the Socio-Eco projects when Total ultimately leaves the region."¹⁵² CDA claims that sustainability is essential because Total plans to "reduce its inputs to communities in order to ensure the sustainability of programs after the closure of the gas pipeline."¹⁵³ The move now to begin phasing out the companies' inputs into the SEP raises questions regardless of the project's effectiveness. In short, it appears premature: barring disruptions, Total and Chevron's project will be in operation well past 2025.

k. CDA's Inadequate Methodology to Measure Total and Chevron's Impacts on the Whole of Burma

CDA recommended that Total consider the consequences of its presence in a national and international context both to promote progress within Burma and to avoid controversy and criticism from the international community.¹⁵⁴ In all of its visits to Burma, CDA has prioritized attention to Total and Chevron's wider impacts in Burma at the national level, correctly recognizing that the companies do indeed have an impact at the national level and that the companies' role in Burma is by no means neutral.¹⁵⁵ This observation is welcome given the traditional propensity of oil companies and their associates to claim social and political neutrality in the developing countries in which they operate.¹⁵⁶

On its third visit to Burma, CDA visited the former capital Rangoon and noted that the people they interviewed there expressed concerns about the far-reaching effects of Total's presence in Burma, namely the "export of gas" and the "uses of the revenue flow generated by the company's activities accruing to the Government."¹⁵⁷ CDA stated that some people see no direct benefit from Total's presence and associate the company with the government.¹⁵⁸ One person interviewed by CDA stated that the presence of Total makes it appear, "that [the company is] complicit in the Government policies to take our resources and sell them," adding that "[b]ecause Total helps the Government take our resources, we, the local people, do not have any resources."¹⁵⁹ CDA added that a "businessman in [Rangoon] represented the mood of many interviewees [when he said that], 'If Total only focuses its efforts on the pipeline corridor, we consider its impact on the country as negative, but if we see that the revenues they help generate are used for the people, we are positive about their presence.'"¹⁶⁰

This is useful information on perceptions of the companies' impacts (although still of questionable reliability given the noted problems with CDA's methodology). The problem with CDA's research in this area, however, is similar to its assessment of the companies' socio-economic program: it is inadequate. For example, while CDA notes some people may have reservations about Total's national impacts in Burma, the most striking omission from CDA's research and analysis of Total's impacts at the national level is its failure to provide a robust assessment of the impact of the billion-dollar-revenues that the Yadana Project generates for the Burmese regime.¹⁶¹

As noted in the ERI report *Total Impact* (2009), at the end of 2007 the Yadana Project was generating over US \$3 million daily, or nearly US \$1.1 billion annually.¹⁶² Nearly 75% of the project income goes directly to the military regime, or approximately one billion dollars per year.¹⁶³ In 2008, ERI estimates that revenue from the Yadana Project directly to the military regime was US \$1.02 billion.¹⁶⁴ Since commercial production of began in 2000, ERI estimates that **the Yadana Project has generated US \$4.83 billion for the Burmese military regime.**¹⁶⁵

There are two main concerns with respect to this revenue, both given scant attention by CDA: domestic revenue allocation and the "external" impacts on Burmese society. On the issue of revenue allocation, CDA conducted a revealing interview with a "senior-level official" in the military regime who claimed "hardly any" of the Yadana Project revenue is used for "war purposes."¹⁶⁶ While this bit of information garnered from

unique high-level access is useful, CDA did not treat it as a point of departure into more probing research on this aspect of the companies' impacts in Burma.

Beyond using the revenue for "war purposes," there is also an increased risk of corruption posed by the injection of billions of dollars into the military regime's coffers. In 2008, of 180 countries surveyed, Transparency International's (TI's) Corruption Perception Index (CPI) ranked Burma the world's second most corrupt country, tied with Iraq.¹⁶⁷ The notion that a large scale natural gas project in Burma would lead to corruption and disappearing revenue is not unreasonable.

The second problem with respect to the revenue generated by the companies for the Burmese regime is in regard to "external" or indirect social, political, and economic impacts of the revenue on Burmese society. This was categorically ignored by CDA's assessments of Total's impacts in the country.

There is a canon of credible empirical research available on the paradoxical relationship between huge natural resource revenues and a host of negative outcomes in resource-rich developing countries. This phenomenon is referred to as the "resource curse," i.e. in various resource-rich developing countries there are documented correlations between huge resource revenues and slow economic growth,¹⁶⁸ weak democratic development,¹⁶⁹ prolonged civil war,¹⁷⁰ increased corruption,¹⁷¹ and gender inequality.¹⁷² Correlations between resource wealth and social and political outcomes in Burma have never been fully researched. CDA neglected the question entirely, failing to conduct inquiries that would more fully gauge the Yadana Project's impact in Burma at the national level.

CDA does suggest that Total take fiscal transparency more seriously¹⁷³ but fails to encourage the companies do what they have in their power to do: publish the payments they have made to the Burmese regime.¹⁷⁴ In conclusion, CDA's research into the companies' national impacts was in no way robust enough to make reliable findings on the companies' impact at the national level in Burma.

I. Conclusion

EarthRights International recognizes the critical importance of objective, third-party impact assessments in the extractive industries, particularly in areas of conflict and repression such as in military-ruled Burma. In that spirit, Part I of this report analyzed and documented the fundamental flaws in the methodology and findings of CDA Collaborative Learning Projects (CDA), a US-based organization commissioned by Total to assess the company's local and national impacts in Burma. ERI's firsthand documentation, conducted in Burma and on its borders since 1994, directly challenges the findings and methodology underpinning CDA's five assessment reports about the Yadana Project in Burma. The findings in this report clarify in detail why CDA's reports should no longer be relied upon by interested parties as credible and accurate representations of the actual conditions in the Yadana pipeline corridor.

PART II

TOTAL DECEPTION: Corporate Misrepresentations and the Use and Misuse of Third-Party Assessments by Total and Chevron

“[A]ccording to the ILO, the only region in the country in which forced labor has ceased is the area in which the Yadana gas pipeline was built.”

- Total, company website, 2009 ¹⁷⁵

“[W]e’ve never had information that suggested [forced labor is] eradicated in the pipeline corridor.”

- Former ILO representative, 2009 ¹⁷⁶

a. Introduction

As noted in Part I of this report, Total and Chevron defend the nature of their presence in Burma using inaccurate information obtained through the flawed methodology of the US-based CDA Collaborate Learning Projects (CDA), which was commissioned by the companies to assess the impacts of the Yadana Project in Burma. In an effort to further obscure harms caused by their venture, Total has also actively misrepresented and misused CDA and other third-party reports to paint an exaggerated and ideal picture of life around the pipeline.

The previous chapter explains in detail why CDA’s methodology and findings about Total and Chevron’s human rights impacts in Burma are fundamentally flawed. This chapter explains how the companies have in turn used and misused the CDA reports and other third party assessments. The companies misrepresent the reality on the ground, in some cases misrepresent CDA’s findings, and in doing so paint a false picture of the Yadana Project as well as unrealistic prospects for responsible investment in Burma’s oil and gas sector.

When Total hired CDA in 2002 to assess its impacts in Burma it was bound to be a problematic and mismatched partnership. CDA quite deliberately does not adopt a human rights-based framework or a human rights-based methodology in its assessments of corporations’ impacts in host countries.¹⁷⁷ Despite that, Total has used CDA’s reports to respond to criticisms about its human rights impacts.

b. The Context in Which Total Hired CDA

Total has operated the Yadana gas pipeline in southern Burma since July 1992.¹⁷⁸ Both within and beyond the designated pipeline corridor, the Burma Army has committed grave human rights abuses in carrying out their obligations to provide security to the project.¹⁷⁹ These include extrajudicial killings, torture, rape, forced relocation, and forced labor.¹⁸⁰ As local victims of abuses sought justice beyond Burma's borders, credible information about the complicity of Total and Unocal (now Chevron) came to light. The companies were implicated in aiding and abetting human rights violations connected to the project in a series of lawsuits in the U.S. and in European courts.¹⁸¹

In addition to the substantial legal liabilities engendered by their Yadana operations, both companies came under intense public pressure and scrutiny from numerous stakeholders and the media to account for continuing abuses against people living in the project area. Attention was also focused on the effects of the tremendous revenue the project was providing to the Burmese regime as well as the threshold issue of the ethics of investment in Burma in general. This public and private pressure came in the form of investor pressure and shareholder resolutions,¹⁸² negative media stories,¹⁸³ third-party investigations and reports,¹⁸⁴ national and international campaigns aimed at influencing the companies' operations in Burma,¹⁸⁵ and legislation aimed at influencing investment in Burma's extractive industries.¹⁸⁶

Seeking to address this growing public relations dilemma, to buttress their claims that they were not complicit in human rights violations, and to try and demonstrate their positive impacts in Burma, Total hired CDA in 2002. Total identified CDA as "qualified independent experts" whose explicit mission in Burma was to "examine the impact of the Yadana consortium's operations on surrounding communities and, more generally, the impact of corporate operations on the situation in Myanmar."¹⁸⁷

When Total hired CDA, it was a for-profit entity¹⁸⁸ that did not purport to be a human rights organization or to measure impacts according to internationally-recognized definitions of human rights.¹⁸⁹ Despite CDA's forthright acknowledgment of its own assessment limitations, Total stated that their intention was for CDA to "provide an objective view of the *human rights situation* in [Total's] area of activity . . . and assess the social and economic impact of our operations in Burma."¹⁹⁰ The Total-CDA partnership was part of Total's purported commitment to "all discussion based on an objective assessment of its actions," and its declaration that it listens closely to comments made by independent experts about its program.¹⁹¹

c. Misusing Reports and Misrepresenting the Reality on the Issue of Forced Labor in the Yadana Pipeline Corridor

“There is no forced labor in the pipeline region.”

- Total Website, April 16, 2009

“Local people told CDA that there is no pattern of forced labor in the area.”

- Total Website, August 4, 2009

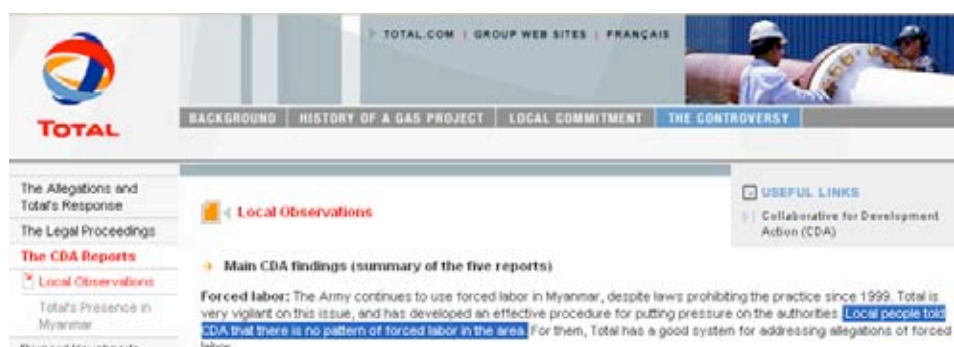
In their first report released in 2002, CDA quoted a local person in the Yadana pipeline corridor as saying that Total “has allowed us to sleep soundly” because the company’s presence prevents local people from having to do forced labor for the Burma Army.¹⁹² On this visit, CDA concluded that according to their field interviews, they found evidence of forced labor occurring in the pipeline area, but not in the *corridor* villages recognized as relevant by Total, stating: “From our field interviews, we concluded that forced labor takes place just outside the corridor.”¹⁹³ CDA claimed further that, “CEP *found no evidence* that forced labor, or any other human rights violations, took place in the area that [Total] regards as its working environment.”¹⁹⁴ CDA did not claim there was no forced labor; they said they found no evidence of forced labor. This is an important distinction and one that Total intentionally misrepresented in an attempt to overstate CDA’s (flawed) findings, presumably to rebut documented evidence by EarthRights International that forced labor was continuing in the pipeline corridor.

On its website, Total alluded to this very CDA report and categorically claimed that CDA had found, “There is no forced labor in the pipeline region.”¹⁹⁵ This is a clear misstatement of CDA’s own questionable findings.¹⁹⁶ ERI informed CDA of this misrepresentation of its work in Burma in April 2009, and recently Total quietly changed their website to correctly reflect CDA’s findings on this issue. Total’s website now summarizes CDA’s findings on forced labor, saying, “Local people told CDA that there is no pattern of forced labor in the area.”¹⁹⁷

TOTAL WEBSITE APRIL 2009



TOTAL WEBSITE AUGUST 2009



In another piece of company public relations, Total claims that “Surveys in the pipeline region have shown that the Yadana Project has brought about improvements in the quality of life of over 50,000 villagers that include...eradication of forced labor.”¹⁹⁸ Likewise, in a letter defending the nature of the company’s presence in Burma, posted on Total’s website and signed by Total Vice President of Public Affairs Jean-Francois Lassalle, the company claims that local “people say they are grateful for the fact that all forms of forced labour in the area where Total operates have been eradicated.”¹⁹⁹

Evidence collected by EarthRights International from 1994-2009 indicates that demand for and use of forced labor has been widespread and systematic by the Burma Army guarding the Yadana Project, and that it is continuing.²⁰⁰ Moreover, CDA’s work in the pipeline region is based on a relatively small number of interviews it conducted in a mere 20 days over the course of their five visits to the area since 2002; i.e. CDA’s methodology was clearly not a “survey,” as Total claims.²⁰¹

d. Total Falsely Attributes Untrue Statements about Forced Labor to the International Labour Organization (ILO) [case study]

While Total has misused CDA's reports to claim that their pipeline corridor is now a forced-labor-free zone, the company has also falsely attributed the claim to the International Labour Organization (ILO). Various Total public relations pieces, including information included on its website, stated: "According to the ILO, the only region in the country in which forced labor has ceased is the area in which the Yadana gas pipeline was built."²⁰² An examination of all of the ILO reports and findings on Burma yields no such claims. Moreover, ERI has confirmed from the ILO directly that it has never made such a statement and knows it to be untrue. A former ILO representative in Burma disavowed the claim and told ERI that the statement is "not right to say," adding that "we've never had information that suggested [forced labor is] eradicated in the pipeline corridor."²⁰³ The representative later reiterated to ERI that the ILO "never certified or declared the corridor to be free of forced labour - we don't do such certification, and even if we did, it would have taken a lot more research to draw such a definitive conclusion."²⁰⁴ Likewise, a current representative of the ILO in Burma, responding directly to the statement, told ERI that "no area of the country can claim to be completely forced labour-free."²⁰⁵

ERI's research indicates that the statement attributed to the ILO has been on Total's website since at least 2003. Publicly accessible website archives indicate that the webpage containing the statement was given notable text revisions at least once in 2004, in 2005, and again in 2006. Sometime between March and July 2006, the entire page received substantial revisions, including the addition and modification of several sentences mentioning the ILO, most notably the addition of a sentence immediately preceding the untrue statement that is falsely attributed to the ILO. Throughout all of these revisions, the statement in question remained untouched. The same statement is also included in a publicly available 59-page PDF document by Total about their project in Burma, reflecting the contents of its website and available on Total's website, dated "2008."²⁰⁶ The repeated claim to have eradicated forced labor in the Yadana pipeline corridor survived numerous editorial revisions of Total's online content, including its most up-to-date information at the time of writing this report. That Total has the audacity to misrepresent the most prominent intergovernmental institution (the ILO) mandated to monitor and eradicate forced labor underscores the lengths to which it will go to brazenly polish its image regarding its operations in Burma.

Attributing false statements to a UN agency such as the ILO is problematic, but Total and Chevron's misrepresentation of the facts goes beyond company websites and written materials. The statements have been applied in practice. That is, the companies have misled shareholders, investors, and other interested parties about their impacts on

the ground and have reiterated untrue statements about the eradication of forced labor. During Chevron's Annual Shareholder Meetings in 2008 and 2009, Chevron CEO David O'Reilly deflected criticism of the company's project in Burma based upon the CDA reports, claiming further that allegations of abuses in the pipeline area were inaccurate and intended to influence shareholders on specific shareholder resolutions.²⁰⁷

On condition of anonymity, ERI has spoken to concerned investors who have directly engaged Total on the issue of forced labor connected to their project. According to one investor, "[Total] definitely [tries] to make us believe that what they do is right and proved by the ILO."²⁰⁸ When this particular investor asked Total for the ILO's direct quote confirming that Total had eradicated forced labor in the pipeline corridor, asking specifically what the ILO said regarding the eradication of forced labor, the Total spokesperson would not say. "I wondered why he wouldn't quote the ILO directly," the investor told ERI, adding, "it would be a good direct quote to share with investors. I wondered why they wouldn't."²⁰⁹

e. Total and Chevron Misrepresent the Socio-Economic Program

Part I of this report reveals that the impacts of Total and Chevron's socio-economic program (SEP) have never been independently and fully tested or verified and explains in detail why CDA's "assessments" of Total's SEP are problematic. While CDA did recommend the companies' measure quantitative claims to success in the areas of education, public health, or economic development, CDA itself did not demonstrate the capacity to conduct such assessments in Burma, despite its definitive judgments about the supposed positive impacts and efficacy of Total's SEP.²¹⁰

Despite these facts, Total and Chevron routinely refer to the CDA reports as conclusive assessments by "independent experts" who confirm that their socio-economic project is a success and a benefit to all local people in the Yadana corridor. For example, on its website and in a 2008 publication of its website contents, Total claims that CDA "considers that Total's initiatives have had a positive impact,"²¹¹ failing to note that CDA did not test or verify the companies' quantitative claims of success. Chevron Media Advisor Gareth Johnstone claimed, "The benefits of the Yadana Project's community engagement programs along the pipeline have been confirmed by multiple third-party audits."²¹²

f. Conclusion

The distorted and sometimes false information proffered by Total and Chevron about third-party findings by CDA and others has collectively misinformed the general public, the investment community, and the oil and CSR industries at-large about the impacts of the Yadana Project in Burma. Ultimately, however, by concealing the impacts of the project, all of the companies, including CDA, do a great disservice to the local ethnic communities in the Yadana region who have felt the brunt of this project's negative impacts. As one forced laborer stated, "Before the company, the situation was normal. No military presence, no forced labor."²¹³

Yet the hazards of defective and misrepresented impact assessments such as CDA's go beyond their disservice to local people in the Yadana pipeline area. Other extractive companies rely on information from Total, Chevron, and CDA, whose propaganda generates false prospects for responsible investment in Burma.²¹⁴ In fact, Total considers itself an industry leader in the area of corporate social responsibility (CSR) and has convened meetings of foreign and domestic energy companies in Burma at CDA's recommendation.²¹⁵ Foreign investment in Burma's oil and gas sector has increased

significantly in recent years²¹⁶ alongside hollow claims from corporations that their ultimate concern is for the people of Burma.²¹⁷ South Korea's Daewoo International, which has already been linked to human rights abuses associated with its Shwe Gas Pipeline Project,²¹⁸ has privately claimed that Total and Chevron's example is their benchmark for gas development and CSR in Burma.²¹⁹ Apparently believing that they might assist the Shwe consortium in the same way they did the Yadana companies, CDA has already communicated with Daewoo International about providing its services on the Shwe Project.²²⁰

If Total, Chevron, and other oil companies investing in Burma believe that they can divert substantiated criticism and avoid potential legal and public relations consequences simply by commissioning favorable impact assessments like those done by CDA, they are greatly mistaken. Likewise, if organizations like CDA continue to serve this function, then the existential risks to communities in Burma will only increase. More unreliable assessments will serve to harm the investment community and the broader public as well, who need reliable information to make important economic and development decisions.

Unless fundamental changes are made to the longstanding and well-documented patterns of development in Burma, the potential for extractive companies to truly get it right in the country remain slim, while the costs of getting it wrong remain grave.

Recommendations

To Total and Chevron:

- Cease using CDA's findings to refute allegations of continuing human rights violations in the pipeline corridor and stop claiming CDA is an objective third-party human rights and environmental monitor of the Yadana Project.
- Publicly acknowledge past human rights abuses and use their influence with the SPDC, their business partner, to end on-going abuses in the pipeline area and press for respect for human rights in the future.
- Publicly retract claims to have eradicated forced labor in the Yadana pipeline corridor, especially the statement on the Total website that falsely attributes this claim to the International Labour Organization.
- Carefully investigate and take responsibility for possible negative repercussions by the Burma Army against local people in the area of the Yadana Project who spoke with CDA Collaborative Learning Projects.
- Publish all payments made to the Burmese authorities throughout the life of the Yadana Project.
- Work towards cessation of Burma Army security presence in the Yadana Project area.

To Extractive Industry Companies 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 provide Free Prior and Informed Consent (FPIC) 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, Chinese National Petroleum Company (CNPC), PetroChina, and others should immediately cease all project-related work until all of the elements of this recommendation 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 FPIC as an indigenous human right and consult objective and independent third parties to ensure the right is being respected in relation to the company's proposed operations.
- Publish all payments made to the Burmese authorities.

To CDA Collaborative Learning Projects (CDA), Corporate Engagement Project (CEP):

- Publicly clarify conflicting and erroneous statements made by Total and Chevron about CDA's reports, with particular attention to Total's claims that CDA found that forced labor has been eradicated in the pipeline area.
- Publically clarify that CDA's reports are not human rights assessments, CDA does not purport to be a human rights reporting organization, and that company claims regarding human rights abuses should not be based on CDA's reports.
Change the CEP methodology to include the adoption of internationally recognized human rights standards, particularly those that refer to forced or compulsory labor.
- If conducting future work in Burma, ensure: interviews with local residents are conducted in isolation, rather than open interviews or in groups, by parties with established relationships with local communities; the length of time spent in project areas is increased; qualified human rights groups conduct a thorough and clandestine investigation in the pipeline area with refugees from the area, into the impacts of Total and Chevron's presence via pipeline security battalions outside the demarcated pipeline corridor; and that research is conducted in relevant local languages.
- Carefully investigate possible negative repercussions by the Burma Army against local people in the area of the Yadana Project who spoke with CDA.
Acknowledge the complete scale of the impacts of the Yadana Project, including the full historical and geographical context, which was omitted from the previous five CDA publications about the Yadana Project.

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 the State Peace and Development Council (SPDC)^{xiv}:

- Abide by obligations under international law to respect fundamental human rights and environmental protection. Cease committing human rights abuses against the people in the Yadana pipeline region and throughout Burma, including an end to extrajudicial killings, sexual violence, torture, excessive force, arbitrary detentions and imprisonment, forced labor, and forced relocation.
- Respect and protect the Burmese peoples' human right to participate in development decisions and the right, especially of Burma's indigenous ethnic populations, to free, prior and informed consent.

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

Appendix A:

Considerations for Human Rights Fact-Finding in Military-Ruled Burma

There are no established best practices for human rights fact-finding in Burma, but certain factors inform the best practice, including: establishing relationships and trust of local communities, prioritizing security conditions, and a careful selection of interpreters, if needed. It is beyond the scope of this report to describe a comprehensive and definitive approach to human rights investigations in Burma, but there are common practices and understandings that should be followed to ensure credibility and reliability of the information collected, and the security of the local community and interviewer. Any and all fact-finding efforts in the country should be rooted in an attempt to discern the truth and efforts must be conducted in a fair and unbiased manner.

This appendix details some basic international standards for human rights fact-finding and research, followed by some points to consider for collecting information in the context of military-ruled Burma. This is not intended as an exhaustive or foolproof guide to collecting credible and reliable human rights information in Burma. Human rights fact-finding in Burma should only be conducted with great caution. ERI does not recommend fact-finding in Burma about sensitive issues without first consulting experienced practitioners and/or trusted community members.

Internationally-Accepted Standards

The circumstances in which interviews are conducted are instrumental to ensure the reliability and credibility of testimonies and any subsequent report:²²¹

Witnesses should be interviewed in a safe and secure environment with particular attention to anonymity of the interviewee. Interviews, especially concerning sensitive topics, should be conducted separately, without an audience.^{xv} This protects the interviewee's security, increases the likelihood of truthful or complete information, and allows for corroboration of testimony.²²²

Even when interviews are conducted in private, surrounding circumstances can potentially compromise the reliability of the interview.²²³ When government security forces (or company representatives) accompany fact-finders, for example, the community member may assume that the fact-finders are affiliated with the government (or company) and be less candid in the interview.²²⁴ Thus, fact-finders should avoid official escorts.

^{xv}There may be rare situations where a third-party is appropriate, notably around investigating sexual assault.



A Burma Army soldier walking with a foreigner along the Yadana pipeline.
© EarthRights International/Yadana Worker, 1996



A Burma Army soldier escorting foreigners along the Yadana pipeline.
© EarthRights International/Yadana Worker, 1996

Familiarity between the interviewer and local community is desirable. Interviews should begin by establishing trust in order to elicit candid and forthcoming responses, so the fact-finder should introduce him or herself as well as the nature of the mission. The interviewer should also discuss any risks associated with testifying and invite the subject to ask questions and whether they wish to remain anonymous.²²⁷

The interview should be conducted through a series of open, non-leading questions, allowing the person to provide a narrative of his or her experience, without the interviewer implicitly suggesting an answer through the framing of the question.²²⁸

Corroboration of information is essential to establishing its credibility. Thus the information obtained through direct testimony should be cross-checked with the testimony of other witnesses or community members, as well as with any other available documentary evidence, such as company or government records, medical records, photographs, etc.²²⁹ The interviewers own eyes and ears should also be used as tools to determine the consistency and coherence of the testimony by observing both the circumstances of the area as well as the demeanor and conduct of the interviewee.²³⁰

If the information being collected is in regard to human rights abuses, the evidence collected in fact-finding missions should be evaluated according to international and domestic laws, linking its conclusions to specific international provisions where possible.²³¹ Normative legal standards provide the fact-finders with an objective frame of reference to evaluate the findings of the mission.²³²

Fact-Finding in Burma:

Introduction: What You Should Know

Burma is a country where fundamental human rights are brutally suppressed by the authorities. At the local level, this has severely degraded the fabric of trust between people, within communities, and even within families. It complicates the fact-finding process.

In various parts of Burma, open contact between a local person and an opposition group, foreign organizations and/or foreign individuals inside or outside of the country can lead a person to be questioned, arrested, detained, tortured, imprisoned, or even killed by the authorities.

What Concerns the Burmese Military Regime?

There are certain aspects of Burmese society that the military regime is interested in suppressing. In general, any form of political dissent against the military regime is targeted. In most cases, dissent can include anything critical of the ruling military and its corporate partners, including:

- Information or opinions critical of the political situation or of how the military regime runs the country.
- Information or opinions exposing economic conditions in Burma.
- Information or opinions exposing public health or education conditions in the country.
- Information about human rights abuses or the lack of human rights protections.
- Information about environmental degradation.
- Information or opinions about the beneficiaries of large-scale investment.
- Information or opinions about corruption, particularly low-to-mid-level corruption.
- Information or opinions in any way sympathetic to the armed opposition or to the goals of the political opposition, especially those of the country's ethnic nationalities.

Interviews conducted about these or related topics must be done in a delicate and strategic way, with utmost consideration for security, especially when conducted within Burma's borders.

The Location of Interviews

The location of an interview is crucial; it can affect what a person is willing or not willing to say and the potential for repercussions by the authorities, who may be close by or listening. Ideally, the person being interviewed should be alone. Even the attendance of a family member can be problematic, as people often cannot trust their own family because of the effectiveness of the military regime's repression. In this context, what one's family does not hear cannot hurt them.

Interviews should take place in a secure, private area. In public spaces, such as tea shops, grocery stores, markets, churches, pagodas, or even on the roadside there can be potentially problematic eyes watching and ears listening. If plain-clothed intelligence, soldiers, or police officers are not in the visible vicinity, there are still an abundance of civil informants in Burma who may be nearby and willing to report information to the authorities about your interview. These informants are simply trying to survive and they may be inclined to look for favors or rewards from the authorities by reporting “incriminating” information to them.

The Interviewee

Having a sense of exactly with whom you are talking when collecting sensitive information in Burma is important for gauging the integrity of the information received, and to prevent any possible repercussions by the Burmese authorities. It is important to gather as much information as possible about the interviewee before, during, and after an interview.

Interviewees will naturally have a bias, which should be countered by a healthy suspicion from the interviewer, but interviewees may also intentionally feed an interviewer one side of the story, for any number of reasons. This could pertain to information you receive that is either supportive or critical of the military regime and its corporate partners. Information that confirms the fact-finder’s own basic assumptions and biases should be especially scrutinized.

Interview Introductions

It is critically important that the fact-finder be clear to the interviewee about their identity, especially if the fact-finder is a foreigner, and about how the information from the interview will be used.

If you are a foreigner, the information you receive is likely to be influenced by the identity that you present to the interviewee and the interviewee’s perception of that identity. For example, when CDA’s western staff members introduced themselves to villagers as being invited by Total, as they should have, the interviewee is more likely to be inclined to share information that would be favorable to the company, perhaps leaving out negative feedback, in part because the interviewee may associate CDA with Total or as the company itself. Thus, the interviewee may be inclined to not directly criticize the company. Likewise, when ERI fact-finders introduce themselves as an organization concerned with the protection of human rights, testimony may be skewed toward that identity. There are natural ways to compensate for this in the interview process; being aware of it is the first step.

In introducing yourself, the interviewer should adequately explain the intended use of the information collected. ERI regards community members not merely as sources of information but as an integral part of the truth-telling and accountability process. ERI is clear with community members about that point during introductions before working with them to objectively document their experiences and conditions in the area. Organizations such as CDA have interviewed numerous people in Burma who afterwards do not know why they were interviewed, by whom, or for what purpose.²³³ This is a problem.

Language and Interpreters

ERI believes the most reliable and safe method of fact-finding in Burma is to work with fact-finders who speak the local languages and who are familiar to the local communities. Most organizations collecting sensitive information in Burma are run and directed by activists from Burma. EarthRights International (ERI) is no different.

If you are a foreigner, the selection of an interpreter is important. If the interpreter is unfamiliar to the interviewee, does not share the native language or ethnicity of the interviewee, or is viewed as suspicious by the interviewee, the interview is compromised from the outset and any information obtained will be of questionable reliability and credibility.

Questions about your interpreter that you should ask yourself include: how did you come into contact with the interpreter? What is his/her ethnicity/nationality? What and how many languages does he/she speak? Burma is an ethnically diverse country where hundreds of languages are spoken. Ethnic national identity and language in Burma are surrounded by political controversy, which in turn has the potential to affect the flow and integrity of information between interviewees and interviewers. Not all people speak or understand the Burmese language at the same level, if at all. In some cases, interviewing a member of an ethnic nationality in the Burmese language may compromise the integrity and depth of the information collected.

The interpreter must also have a basic understanding of local definitional and language issues underlying the issues the fact-finder is investigating. For example, the Burmese word for forced labor is commonly “loh-ah-pay,” which in direct translation means “giving labor,” or “Au-ku-ah-nyi,” which means simply, “help.” Thus, an interpreter who is not knowledgeable about the elements of forced labor according to international law and the situation in Burma could interpret instances of forced labor inaccurately, failing to capture the reality of the situation for the interviewer.

Trust as a Factor

As discussed at length in this report, trust between the fact-finder and the community is particularly important throughout the fact-finding process in Burma. In order to obtain credible and reliable information, trust at the community level is essential, and building trust takes time. Due to the current security situation for people in Burma, explaining, granting, and to the extent possible, guaranteeing full confidentiality to interviewees is critically important and can be a foundation for developing trust.

The military regime has for years implemented a public relations campaign effectively warning the people of Burma against speaking to foreigners. Visitors to the country can see large billboards, full-page advertisements in newspapers, books and magazines, television ads, and now even messages in VCDs, all devoted to warning local people against “destructive foreign elements,” claiming that these elements will be “crushed” or “exterminated.”²³⁴ These Orwellian monikers are in reference to anyone harboring dissent against the military regime, especially “foreign elements.” This paradigm of fear and suspicion contributes to the culture of repression in Burma today and unquestionably affects the way the people interact with each other, and outsiders, with regard to sensitive issues. This should be duly noted by any fact-finder.

Awareness and Understanding of Context: Background and Culture

A fact-finder must have a working understanding of the background, people, and culture of the area and of the country. If a fact-finder is a foreigner, he/she should defer to colleagues from Burma on questions related to these areas. In the Burma context, this means developing a working understanding of the ethnic politics and conflict, the military regime, the delicate issues around the regime's repression, and other relevant areas.

Culturally, in speaking to a foreigner about sensitive issues, a local person in Burma may be naturally hesitant to provide a direct answer to a question, instead answering indirectly or in subtle ways. This phenomenon is due in part to differences in communication styles, and in part to the culture of repression and distrust cultivated by the military regime over the last 60 years. Foreigners may be more accustomed to receiving direct answers and thus be ill-prepared to interpret the indirect messages that are being said to them. Failing to recognize this type of communication when it is happening may influence the credibility or reliability of the information collected.

It is crucial also to have an understanding of how local people understand and interpret time and the passage of time. The local interpretation of time in most areas of Burma is less rigid than standard international conceptions, which can make it challenging to document detailed timelines, which of course are crucial in establishing the facts of a human rights abuse. For example, a villager's temporal reference to an instance of rape could be simply that it happened in "the rainy season." The interviewer will have to have an in-depth knowledge of the culture in order to know which follow-up questions to ask to elicit at what point during the rainy season the abuse took place. Pinpointing which rainy season – this year, last year, etc. – can also be difficult to draw out in an interview, and will require an adept interviewer to ask the appropriate questions to elicit an accurate timeline.

The weather is also an important factor. If it is the rainy season, there will be more forced labor as the roads and other infrastructure are more likely to be in disrepair, whereas if it is the dry season, there will be less forced labor. Failing to account for the weather's role in events can lead the fact finder to draw spurious conclusions.

Moreover, as documented in this report, some people will indeed regard forced labor as a service or as their duty, in part because of a lack of understanding of their basic human rights. This of course does not make their experience any less a human rights violation. Any effective fact finder will be aware of these cultural realities.

Other Basics of Interviewing in the Burma Context:

Questioning

Questions should be framed in a way that enables the interviewee to speak openly about their experiences and knowledge without requiring them to condemn or criticize any one particular actor. There are cultural reasons for this.

For example, when CDA asked local people, “What do you think about Total’s health program?” the interviewee’s answer would necessarily have to approve or disapprove of Total’s health program. This type of question would not elicit meaningful information about the health situation in the area, but rather an unreliable response by the villager, who may be loath to say anything negative about a particular actor. In other words, the question would not provide the interviewee with an opportunity to simply discuss the health situation in their community. Instead, a more appropriate and effective question, would be, “What is your health situation like in your community?” and “Can you please tell us about your access to medications?”

Credibility and Reliability

Only information that is corroborated by numerous sources should be regarded as credible and reliable. It is also important for the fact-finder to note the difference between credibility and reliability: A person can think they are telling the truth, and in that sense they are credible, i.e. they are honestly telling you what they perceive to be the truth. Whether or not that information is reliable is a different question altogether. It is thus always important to have a healthy suspicion of the information received. In many cases, it is clear in its publications that CDA, for example, fails to have a healthy suspicion of the information it collects and instead takes interviewees’ words at face value, particularly when that information is favorable to Total.

Likewise, the interviewer should maintain an active suspicion of his or her own bias. In Burma, the human rights abuses and injustice are so clear and so abhorrent²³⁵ that it can be easy to fall victim to one’s own assumptions. The fact-finder should always maintain objectivity. The best way to ensure the validity of your information is to corroborate it before publishing it.

Using Technology

Using technology for documentation such as a camera, tape recorder, or a video camera could jeopardize the interview process. The presence of technology could threaten security and, ironically, the quality of information collected from community members. Local villagers may be unfamiliar with the latest technologies and their use or presence may have an adverse influence on the candor with which villagers will speak. Moreover, at the village level, news about the presence of technological hardware, if not appropriately concealed, could travel through the village quickly and alert the authorities, threatening security.

APPENDIX B:

EarthRights International's Communications with Total

[Total] Open Letter to EarthRights International in Response to Its April 29, 2008 Report ²³⁶

May 5, 2008

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Marco Simons
Legal Director
EarthRights International (ERI)

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

From: Marco Simons

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

Subject: Re: Meeting w. Total in NY

To: Jean-Francois Lassalle

Mr. Lassalle--

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

Sincerely,

Marco Simons

Legal Director

EarthRights International (ERI)

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

Dear Mr. Simons,

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

Regrets and best regards,

Jean-François Lassalle

Total - E&P Vice President Public Affairs

APPENDIX C:

Risks To Companies and Shareholders through Extractive Projects in Burma

No evidence exists that suggests oil and gas projects can proceed in Burma without serious human rights and environmental violations. Beyond the human rights and environmental risks that new projects pose to communities in Burma, also unassailable are the unreasonably high material and reputation risks to oil companies and shareholders.

²³⁷

These risks include potential litigation,²³⁸ the possibility of expropriation of assets by the Burmese authorities,²³⁹ a difficulty in future asset sales,²⁴⁰ the potential for physical sabotage by one of the several and formidable non-state armies in Burma,²⁴¹ and serious reputation risks that come with partnering with the Burmese military.²⁴²

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

These risks may damage a company's long-term returns in a number of ways, threatening shareholder value and would presumably be a significant factor in any responsible company's risk assessment for investment in the oil and gas sector in Burma.

APPENDIX D:

Assessments Mislead the Norwegian Council on Ethics

Norway is an oil-rich nation that has taken steps to safeguard a portion of this wealth for the future via a scheme entitled the Government Pension Fund. The fund is designed to facilitate Norway's investment of its enormous wealth in multinational companies globally, with the dual aims of facilitating government savings, and supporting the long-term management of petroleum revenues.

The Norwegian Council on Ethics was founded in November 2004, and adopted a set of Ethical Guidelines to regulate the investments of the Fund. Norway adopted these *Guidelines* based on two premises: that the country's petroleum wealth be invested in projects that are "contingent on sustainable development in the economic, environmental and social sense"; and that investments should not be made "which constitute an unacceptable risk that the Fund may contribute to unethical acts or omissions, such as violations of fundamental humanitarian principles, serious violations of human rights, gross corruption or severe environmental damages."

In 2005, the Council on Ethics took up one of its first assessments of a company in the Norwegian Government Pension Fund's investment portfolio: Total in Burma. Applying the criteria, the Council concluded that the company had likely been complicit in the extensive use of forced labor connected to security services and infrastructure construction; the forced relocation/deportation of villagers; rape; and violence perpetrated by the military. In the words of the Council, "there has been a *link* between some the reported human rights violations and Total's activity in connection with the construction of the pipeline." Moreover, the Council concluded that "it seems clear that parts of the activities of the Burmese authorities was a step in *facilitating* the operations" of Total, for instance, in securing and clearing the Yadana pipeline corridor. The report noted that it remained unclear what reasonable steps Total took, if any, to prevent the abuses.

Nevertheless the Fund declared that it would not recommend that Total be excluded from the Fund. In explaining its decision, the Council emphasized the *Guidelines'* commitment to avoid present and future unethical acts and stated that since the abuses had been associated with the construction of the pipeline, completed by the late 1990s, there were no longer any grounds for exclusion.

1. *Ethical Guidelines of the Norwegian Government Pension Fund – Global 1* (Basis), available at http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council/ethical-guidelines.html?id=425277.

2. Norwegian Council on Ethics. "Recommendation of 14 November 2005." (hereinafter "Norway Assessment"). Available at http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council/Recommendations/Recommendations/Recommendation-of-14-November-2005.html?id=425314. (last visited August 14, 2005) at 11-12, (emphasis in original).

3. *Id.* at 17.

4. *Id.*

5. *Id.*

6. *Id.* at 17-18.

7. *Id.* at 22.

Significantly, in its 2005 assessment, the Council curiously stated: “there appears to be general agreement, also within NGO circles, that human rights violations are not a significant feature in the pipeline area today.” Given the large volume of reports issued by ERI and other NGOs, as referenced in this report, concerning abuses in Yadana Project area *since* construction, this conclusion is very disconcerting.

ERI has since confirmed that the Council on Ethics consulted the CDA reports in reaching its conclusion. It thus appears that the Council on Ethics relied on and was misinformed by the flawed assessments conducted by CDA. This result is a serious and illustrative example of how the misinformation of CDA has a real impact on concerned stakeholders; both in their ability to obtain reliable information as well as act accordingly.

A recently discovered power-point presentation from Total, entitled, “The Experience of Total in Myanmar,” and uploaded to the International Petroleum Industry Environmental Conservation Association (IPIECA) website, demonstrates this misinformation campaign quite dramatically. In this presentation, Total not only continues to rely on CDA’s report, but then they rely on third-parties (Council on Ethics) who have been misled by CDA and Total, in attempting to demonstrate that abuses are not occurring in their project area.

External experts’ opinions

Myanmar today Total activities **Our socio-eco programs** Political issues

Independent experts have given their views on JV’s operations in Myanmar

- **CDA** (Collaborative for Development Actions – Cambridge, Mass.)
Field visits in October 2002, April and November 2003 and April 2005.
(see <http://www.cdainc.com>)
- **Dr Kouchner** : field visit in March 2003.

Conclusions :

- Yadana has an effective, well-designed socio-eco program, praised by villagers
- Some suggestions for improvements (broaden the area, focus more towards the poorer, minimize discrepancy with the area outside the corridor)
- The main benefit: JV’s presence in the area allows villagers “to sleep soundly”
- The JV should stay, but it should have a broader dialogue with the authorities and with NGOs

As a conclusion to their 6 month enquiry on Total’s presence in Myanmar, **The Advisory Council on Ethics of the Norwegian Pension Fund** states that “it will not recommend company’s exclusion from the Petroleum Fund” (see <http://www.odin.dep.no>)



Moreover, Total continues to refuse to confront any of the specific claims made by EarthRights International (ERI). Rather, Total's approach remains the simple one of publicly denouncing ERI's findings on Totals complicity in human rights abuses to industry partners, whilst relying on, and manipulating the findings in the CDA reports to their advantage.

The allegations related to the pipe construction (1995-98)

Myanmar today Total activities Our socio-eco programs **Political Issues**

Most of the allegations against the Yadana project come from the Earth Rights International reports. They blame the JV for...

- Sustaining the junta,
- Having increased the military presence in the area,
- Having subcontracted the Burmese Army,
- Having displaced villagers,
- Having had recourse to forced labour...

All those allegations are not founded...

- ▶ They are a human, technical and economical nonsense,
- ▶ There result from a confusion between Yadana and other work undertaken in the region (construction of the Ye-Tavoy railroad).
- ▶ These allegations have been fed by misinformation.



15 -

Total, Slide 15: Allegations Related to the Pipeline Construction

8. ERI communications with the Council on Ethics, 2005-2008.

9. Total, *The Experience of Total in Myanmar*, available at http://www.ipieca.org/activities/social/downloads/workshops/hr_06/Total_Myanmar.pdf, (last accessed August 14, 2009).

ENDNOTES

1. Total, *Human Rights in Myanmar*, at http://burma.total.com/en/contexte/p_1_1.htm (last visited August 6, 2009).
2. For details about the Shwe Gas Project and its impacts, see EarthRights International (ERI) & Shwe Gas Movement et al., *Complaint to the South Korean National Contact Point Under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises: Regarding Natural Gas Development by Daewoo International and KOGAS in Burma (Myanmar)* (October 29, 2008), available at <http://www.earthrights.org/files/Burma%20Project/Shwe/OECDComplaint10.29-ENGLISH.pdf>; Matthew Smith & Naing Htoo, *Energy Security: Security for Whom?*, 11 YALE HUM. RTS. & DEV. L.J., 217, 239-245, 254, 257 (2008); *The Shwe Gas Movement (SGM), Supply and Command: Natural Gas in Western Burma Set to Entrench Military Rule* (July 2006), available at <http://www.shwe.org/media-releases/publications/file/SUPPLYANDCOMMAND.pdf>.
3. ERI & Southeast Asian Information Network, *Total Denial: A Report on the Yadana Pipeline Project in Burma (June 1996)*, available at <http://www.earthrights.org/files/Reports/TotalDenial96.pdf>; ERI, *Total Denial Continues: Earth Rights Abuses Along the Yadana and Yetagun Pipelines in Burma* (1st ed. 2000; 2d ed. 2003), available at http://www.earthrights.org/mwt_journal_admin/TotalDenialContinues_2000.pdf and http://www.earthrights.org/mwt_journal_admin/TotalDenialCont-2ndEdition_2003.pdf; ERI, *Supplemental Report: Forced Labor Along the Yadana and Yetagun Pipelines* (supplement to *More of the Same: Forced Labor Continues in Burma*) (2001), available at http://www.earthrights.org/mwt_journal_admin/supplemental-moreofthesame.pdf; ERI, *Fueling Abuse: Unocal, Premier & TotalFinaElf's Gas Pipelines in Burma* (2002), available at http://www.earthrights.org/mwt_journal_admin/fuelingabusenglish.pdf; ERI, *The Human Cost of Energy: Chevron's Continuing Role in Financing Oppression and Profiting From Human Rights Abuses in Military-Ruled Burma* (2008), available at http://www.earthrights.org/mwt_journal_admin/HCoE_pages.pdf.
4. CDA Collaborative Learning Projects (CDA), *Project Profile – Corporate Engagement Project, Project Summary*, at http://www.cdainc.com/cdawww/project_profile.php?pid=CEP&pname=Corporate%20Engagement%20Project (last visited August 6, 2009).
5. Total, *The Socio-Economic Program*, http://burma.total.com/en/engagement/p_3_1.htm (last visited August 6, 2009).
6. MARY ANDERSON, DOUG FRASER & LUC ZANDVLIET, *FIELD VISIT REPORT (FIRST VISIT)* 1 (2002), at http://www.cdainc.com/cdawww/pdf/casestudy/cep_myanmar__first_visit_field_visit_report_Pdf.pdf [hereinafter CDA REPORT: FIRST VISIT]; LUC ZANDVLIET & DOUG FRASER, *FIELD VISIT REPORT (SECOND VISIT)* 1 (2003), at http://www.cdainc.com/cdawww/pdf/casestudy/cep_myanmar_second_visit_field_visit_report_Pdf.pdf [hereinafter CDA REPORT: SECOND VISIT]; LUC ZANDVLIET & DOUG FRASER, *FIELD VISIT REPORT (THIRD VISIT)* 1 (2003), at http://www.cdainc.com/cdawww/pdf/casestudy/cep_myanmar_third_visit_field_visit_report_Pdf.pdf [hereinafter CDA REPORT: THIRD VISIT]; LUC ZANDVLIET & ANA PAULA DO NASCIMENTO, CDA COLLABORATIVE LEARNING PROJECTS, *FIELD VISIT REPORT (FOURTH VISIT)* 1 (2005), at http://www.cdainc.com/cdawww/pdf/casestudy/cep_myanmar__fourth_visit_field_visit_report_Pdf.pdf [hereinafter CDA REPORT: FOURTH VISIT]; MARY ANDERSON & BRIAN GANSON, CDA

- COLLABORATIVE LEARNING PROJECTS, *REPORT OF FIFTH CDA/CEP VISIT TO THE YADANA PIPELINE 1* (2008), at http://www.cdainc.com/cdawww/pdf/casestudy/cep_fieldvisitreport_totalmyanmarburma_20080430_Pdf.pdf [hereinafter CDA REPORT: FIFTH VISIT].
7. See ERI, *Total Impact* (2009).
 8. CDA REPORT: FOURTH VISIT, *supra* note 6, at 6.
 9. Interview #001-2008 with community member, in Eindayaza, Burma (2008). On file with EarthRights Int'l.
 10. Interview #026-2008 with community member, in Eindayaza, Burma (2008). On file with EarthRights Int'l.
 11. CDA REPORT: FIRST VISIT, *supra* note 6, at 25.
 12. See *supra* note 6.
 13. U.S. Department of Labor, Bureau of International Labor Affairs, *Report on Labor Practices in Burma* (1998), available at <http://www.dol.gov/ILAB/media/reports/ofr/burma1998/main.htm>. Forced labor has reportedly been used on the construction of facilities to support the Yadana natural gas pipeline, and civilians have allegedly been forced to serve as porters for soldiers providing security on the pipeline. In addition, many villages have been forcibly relocated by the military.
 14. Interviews with community members, in Yadana pipeline region, Burma (2002-2009). On file with ERI.
 15. CDA Collaborative Learning Projects is a direct off-shoot of the for-profit Collaborative for Development Action, Inc., founded as a small consulting corporation in 1985 by Mary B. Anderson and Catherine A. Overholt. CDA, *Our History*, at http://www.cdainc.com/cdawww/aboutus_history.php (last visited August 6, 2009).
 16. *Id.*
 17. *Id.*
 18. CDA, *What is a Collaborative Learning Project?*, at http://www.cdainc.com/cdawww/project_home.php (last visited August 6, 2009).
 19. *Id.*
 20. CDA, *The Corporate Engagement Project*, at http://www.cdainc.com/cdawww/pdf/other/cep20brochure1_Pdf.pdf (last visited August 6, 2009).
 21. CDA REPORT: FOURTH VISIT, *supra* note 6, at 1.
 22. CDA, *Project Profile – Corporate Engagement Project, Donors*, at http://www.cdainc.com/cdawww/project_profile.php?pid=CEP&pname=Corporate%20Engagement%20Project (as accessed in April, 2009). The CEP Donors website no longer contains any mention of corporate funding.
 23. See *supra* note 6.
 24. *Id.*
 25. See LUC ZANDVLIET & MARY ANDERSON, *GETTING IT RIGHT: MAKING CORPORATE-COMMUNITY RELATIONS WORK* (2009).
 26. CDA REPORT: FIRST VISIT *supra* note 6, at 1.
 27. CDA, *Project Summary*, *supra* note 4.
 28. CDA REPORT: SECOND VISIT, *supra* note 6, at 3; CDA REPORT: THIRD VISIT, *supra* note 6, at 3; CDA REPORT: FOURTH VISIT, *supra* note 6, at 2-3; CDA REPORT: FIFTH VISIT, *supra* note 7, at 2-3.

29. *Id.*
30. *Id.*
31. CDA REPORT: THIRD VISIT, *supra* note 6, at 2; CDA REPORT: FOURTH VISIT, *supra* note 6, at 2.
32. *Id.*
33. See, e.g., CDA REPORT: FIRST VISIT, *supra* note 6, at 9 (“people do express fear of the Government and the army in general”); CDA REPORT: THIRD VISIT, *supra* note 7, at 18 (“young people we spoke with are simply afraid to publicly demand a change, expecting a forceful and violent response from the Government”); CDA REPORT: FIFTH VISIT, *supra* note 6, at 12 (“some villagers appreciated this military presence . . . while others seemed to resent and/or fear it”).
34. Interview #001-2008 with community member, in Eindayaza, Burma (2008). On file with ERI.
35. Interview #012-2003 with community member, in Michaunglaung, Burma (2003). On file with ERI. After fleeing his village, this man later died in a refugee camp on the Thailand-Burma border due to health complications.
36. Interview #007-2004 with community member, in Kanbauk, Burma (2004). On file with ERI.
37. Interview #044-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
38. Interview #015-2003 with community member, in Chaung Sone, Kaleinaung, Burma (2003). On file with ERI.
39. International Labour Office (ILO), *Governing Body, Developments Concerning the Question of the Observance by the Government of Myanmar of the Forced Labour Convention, 1930* (No. 29): *Report of the High-Level Team*. No. GB 282/4, 282nd Session (2001), at 6.
40. CDA REPORT: FOURTH VISIT, *supra* note 6, at 6.
41. CDA REPORT: FIFTH VISIT, *supra* note 6, at 3.
42. According to the report, “[the villagers] appreciate the health services provided through Total clinics...” ; “Some villagers appreciated this military presence as providing more security...” ; “they appreciate the security (of labor, of an opportunity to work)...” ; “village-level programs (fully underway and appreciated in the pipeline corridor)...” ; “CEP teams have found that virtually everyone expresses appreciation for Total’s programs”; “In all villages, people reiterated their appreciation for the programs that Total provides”; “[o]ne villager expressed her appreciation for the local health clinic”; and “[i]n a number of conversations as villagers described their interactions with Total (mostly with strong appreciation)...” CDA REPORT: FIFTH VISIT, *supra* note 6, at 3, 4, 5, 12, and 19.
43. CDA asks villagers if they had been prepped in advance of their visit. See CDA REPORT: THIRD VISIT, *supra* note 6, at 3.
44. *Id.* at 4.
45. *Id.*
46. *Id.*
47. Meeting between ERI Executive Director Ka Hsaw Wa, ERI board Member Dr. Charlie Clements and CDA, CEP staff member Luc Zandvliet in Cambridge, Mass (2005).

48. Dr. Charlie Clements is the current Chairperson of ERI's Board of Directors and the Executive Director of the Unitarian Universalist Service Committee (UUSC).
49. Meeting with CDA, in Cambridge, Mass. (April 16, 2009). Notes on file with ERI.
50. Interviews with community members, in Yadana pipeline area and Thai-Burma border (1994-2009). On file with ERI.
51. Interview #043-2008 with community member, in Michaunglaung, Burma (2008). On file with ERI.
52. CDA REPORT: FIRST VISIT, *supra* note 6, at 10-11; CDA REPORT: SECOND VISIT, *supra* note 6, at 15.
53. CDA REPORT: SECOND VISIT, *supra* note 6, at 14-15; CDA meeting, *supra* note 49.
54. CDA REPORT: SECOND VISIT, *supra* note 6, at 15.
55. *See infra* Part I(d) ("CDA Compromised the Personal Security of Local People").
56. CDA REPORT: SECOND VISIT, *supra* note 6, at 15.
57. CDA REPORT: THIRD VISIT, *supra* note 6, at 4.
58. *Id.*
59. Interview #026-2008 with community member, in Eindayaza (2008). On file with ERI.
60. Interview #041-2008 with community member, in Eindayaza, Burma (2008). On file with ERI.
61. International Bar Association: Human Rights Institute, *Guidelines for International Human Rights Fact-finding Visits and Reports* ("Lund-London Guidelines"), June 1, 2009, § 18, available at <http://www.unhcr.org/refworld/docid/4a39f2fa2.html> (last visited August 6, 2009).
62. Human Rights Watch, *Vote to Nowhere: The May 2008 Constitutional Referendum in Burma* (2008), at 3, available at http://www.hrw.org/sites/default/files/reports/burma0508_1.pdf (last visited August 7, 2009).
63. CDA meeting, *supra* note 49.
64. CDA REPORT: FIFTH VISIT, *supra* note 6, at 3.
65. *Id.*
66. Interview #026-2008 with community member, in Eindayaza, Burma (2008). On file with ERI.
67. CDA REPORT: SECOND VISIT, *supra* note 6, at 14-15.
68. CDA REPORT: FIRST VISIT, *supra* note 6, at 2.
69. *See* Andrew Selth, *Regional Outlook - Burma's Armed Forces: Looking Down the Barrel* (Griffith Asia Institute 2009), at 13.
70. CDA REPORT: FIRST VISIT, *supra* note 6, at 10-11 ("Most people, including those who were highly critical of forced labor, explained that the issue is driven by the need of local battalions for basic survival. . . the 'need' has arisen for the army to seek food, labor and money from local villagers to maintain their own survival.").
71. CDA REPORT: FIRST VISIT, *supra* note 6, at 17.
72. *Id.*
73. CDA REPORT: THIRD VISIT, *supra* note 6, 10.
74. *Id.*
75. In a letter to Total dated June 12, 2009, ERI Executive Director Ka Hsaw Wa specifically asked Total about this phenomenon and its response to it: "Has Total investigated the possibility that the company's presence has created an increased demand for forced

labor in villages surrounding the as-defined pipeline corridor? If so, will you please provide details or the conclusion of this investigation?" Total responded in writing two weeks later, explicitly refusing to answer ERI's questions. *See infra* Appendix B.

76. CDA REPORT: SECOND VISIT, *supra* note 6, at 14.
77. CDA REPORT: FIRST VISIT *supra* note 6, at 10; CDA REPORT: SECOND VISIT *supra* note 6, at 14-15.
78. CDA REPORT: FOURTH VISIT, *supra* note 6, at 5-6.
79. *See* "Methodology" section of this report; *see supra* footnote iii (these 25 non-pipeline corridor villages are: Ya Pu, Law Ther, Alersakan, Kwethonenyima, Singu, Pyingyi, Ler Gyi, Karen Shin Ta Pee, Burmese Shin Ta Pee, Yebone, Pwa Shin Ma, Min Tha, Nat Gyin Sein (Plaw mu ga), Maw Gyi, Ma Ya Chaung, Chaung Sone, Ta Line Ya, Nan Gye, Sin Thay, Ta Hlaing Myaw, Nein Lein, Paut Pin Gwin, Ma Yan Chaung, Maung Nen, Kyat Ta Yan).
80. CDA REPORT: FIRST VISIT, *supra* note 6, at 16; *see also* CDA REPORT: SECOND VISIT, *supra* note 6, at 15 (stating that "[o]bviously, Total's presence also has impacts on a national level").
81. CDA REPORT: FIFTH VISIT *supra* note 6, at 3.
82. *See supra* Part I(b) ("Conducting 'Open' Interviews in a Closed Society.")
83. *See generally*, CHRISTINA FINK, LIVING SILENCE: BURMA UNDER MILITARY RULE (2001) (arguing that people do not trust each other, even their neighbors, and that everyone in Burma knows the SPDC has informants planted in key communities).
84. CDA REPORT: SECOND VISIT, *supra* note 6, at 15.
85. CDA REPORT: FIFTH VISIT, *supra* note 6, at 3.
86. CDA REPORT: SECOND VISIT, *supra* note 6, at 15 (emphasis added).
87. ERI has documented at least fourteen infantry battalions that have regularly performed pipeline security duties: battalions nos. 25, 104, 273, 282, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410. Battalions 273 and 282 in particular have been widely known as "Total battalions."; *See* ERI, Total Denial Continues, *supra* note 3, at 72.
88. ERI, *Total Denial*, *supra* note 3, at 56; Interviews with community members, in Yadana pipeline area, Burma, and Thai-Burma border (2003-2009). On file with ERI.
89. CDA REPORT: FOURTH VISIT, *supra* note 6, at 2 (emphasis added). If CDA were denied access by Total or the Burmese regime to interview soldiers as part of their "site visit," as a matter of responsibility CDA should disclose that information. The inability of CDA to interview soldiers raises serious questions about the efficacy and nature of their site visits, as well as the integrity of the information they have collected in the Yadana pipeline area.
90. *Id.*
91. *See* ERI, *Total Impact* (2009).
92. Interview #045-2008 with Burma Navy defector, in XXX (2008). On file with ERI.
93. CDA REPORT: FIRST VISIT, *supra* note 6, at 2; CDA REPORT, SECOND VISIT, *supra* note 6, at 2; CDA REPORT: FOURTH VISIT, *supra* note 6, at 2.
94. CDA REPORT: THIRD VISIT, *supra* note 6, at 2.
95. CDA REPORT: FIFTH VISIT, *supra* note 6, at 2.
96. CDA REPORT, FIRST VISIT, *supra* note 6 (this visit included three CDA staff).
97. CDA REPORT: FIRST VISIT, *supra* note 6, at 13.

98. CDA REPORT: SECOND VISIT, *supra* note 6, at 19. *See also* CDA REPORT: THIRD VISIT, *supra* note 6, at 19 (“Personal relations in the Myanmar/Burmese contexts are important . . .”); CDA REPORT: FOURTH VISIT, *supra* note 6, at 13 (“[t]he key to doing business in Myanmar, and gaining the trust of the Myanmar/Burmese . . . is, ‘first to work on the relationship’”).
99. ERI, *Traditions of Conflict Resolution: Respected Insiders, Resource-Based Conflict and Authoritarian Rule* (2005), available at http://www.earthrights.org/mwt_journal_admin/ctwp_paper.pdf
100. *Id.*
101. *Id.* at 1.
102. *Id.* at 1-2.
103. Interview #026-2008 with community member, in Eindayaza, Burma (2008). On file with ERI.
104. Interview #043-2008 with community member, in Eindayaza, Burma (2008). On file with ERI.
105. *Id.* (a villager was jailed for almost one year and subjected to hard labor for traveling to the Thailand-Burma border).
106. CDA REPORT: FOURTH VISIT, *supra* note 6, at 4.
107. CDA REPORT: FIRST VISIT, *supra* note 6, at 3; CDA REPORT: SECOND VISIT, *supra* note 6, at 3; CDA REPORT: THIRD VISIT, *supra* note 6, at 3; CDA REPORT: FOURTH VISIT, *supra* note 6, at 2-3; CDA REPORT: FIFTH VISIT: , *supra* note 6, at 2-3. Due to Total’s company requirements, drivers had to report their location by radio as they moved among villages. Therefore, the Total Pipeline Center was always aware of the team’s location. *See* CDA REPORT: FIFTH VISIT: , *supra* note 6, at 3.
108. CDA meeting, *supra* note 49; CDA REPORT: SECOND VISIT, *supra* note 6, at 1 (CDA had traveled to the Thailand-Burma border to “learn additional information related to the impact of the pipeline on local civilians,” and to “verify why CDA’s observations in the pipeline area differ from the observations in some of the reports produced by international NGOs about the impact of the pipeline on the local contexts,” and “explore rumors . . . that some NGOs make a ‘business’ of producing allegations against companies, based on the testimonies from Myanmar/Burmese refugees.”).
109. CDA REPORT: THIRD VISIT, *supra* note 6, at 2, 20; Total, *Open Letter to EarthRights International in Response to its April 29, 2008 Report* (May 5, 2008), *see infra* Appendix B, available at http://burma.total.com/en/news/p_5_6.htm (last visited August 6, 2009) (accusing ERI of making accusations that would be “difficult to verify” because ERI does not disclose the “places, dates and names” involved).
110. CDA REPORT: FIFTH VISIT, *supra* note 6, at 3.
111. *Id.* at 2.
112. CDA’s Project Summary for the CEP, available at http://www.cdainc.com/cdawww/project_profile.php?pid=CEP&pname=Corporate%20Engagement%20Project contained the abovementioned assertion when accessed in April, 2009; since that time, CDA has removed the statement from the website.
113. CEP Donors, *supra* note 22.
114. CDA meeting, *supra* note 49.
115. CDA REPORT: FIRST VISIT, *supra* note 6, at 1.

116. See generally, International Bar Association, *The Lund-London Guidelines*, *supra* note 61.
117. See, e.g., United Nations, Office for the High Commissioner for Human Rights, *Training Manual on Human Rights Monitoring*, 7 OHCHR PROFESSIONAL TRAINING SERIES 89-92, U.N. Doc. HR/P/PT/7 (2001), available at <http://www.ohchr.org/Documents/Publications/training7part59en.pdf> (last visited August 7 2009).
118. CDA REPORT: FIFTH VISIT, *supra* note 6, at 5.
119. In order to document violations of property rights there must be three elements present: interference with the rights to property, state action, and illegality. Under international law, violations of the rights to property are justified only if the following three criteria are met: It is imposed by law, it is in the public interest, it is proportional to the public interest served. *UN International Covenant on Civil and Political Rights*, Article 19 (1966). The main international agreements explicitly protecting the rights of property include: *Universal Declaration of Human Rights*, Article 17; *International Covenant on Civil and Political Rights*, Articles 19, 26, and 27; *Convention on the Elimination of All Forms of Racial Discrimination*, Article 5; *Convention on the Elimination of All Forms of Discrimination against Women*, Article 16; *Convention Relating to the Status of Refugees*, Articles 13 and 14; *Convention Relating to the Status of Stateless Persons*, Article 13; *Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, Article 15.
120. CDA REPORT: FIRST VISIT, *supra* note 6, at 10.
121. *Id.*
122. *Id.*
123. ILO Convention (No. 29) Concerning Forced or Compulsory Labour, June 28, 1930, art. 2(1), 39 U.N.T.S. 55.
124. ILO, *A Global Alliance Against Forced Labour: Global Report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference, 93rd Session, Report I(B) (2005), at 5, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf
125. See *Doe v. Unocal*, 395 F.3d 932, 945 (9th Cir. 2002) (“forced labor is so widely condemned that it has achieved the status of a *jus cogens* violation”). *Jus Cogens*, Latin for “compelling law,” is a term used in reference to peremptory norms under international law from which no derogation is ever permitted.
126. *Id.* at 8-11; CDA REPORT: SECOND VISIT, *supra* note 6, at 12-15; CDA REPORT: THIRD VISIT, *supra* note 6, at 2-4, 8-10, 17-20; CDA REPORT: FOURTH VISIT, *supra* note 6, at 2-7, 12, 14, 19; CDA REPORT: FIFTH VISIT, *supra* note 6, at 4, 13.
127. CDA meeting, *supra* note 49.
128. CDA REPORT: SECOND VISIT, *supra* note 6, at 12.
129. *Id.*
130. ILO Forced Labour Convention, *supra* note 124, art. 2(1).
131. CDA REPORT: SECOND VISIT, *supra* note 6, at 12.
132. See, e.g., ERI, *Entrenched: An Investigative Report on the Systematic Use of Forced Labor by the Burma Army in a Rural Area* (2003), at 5, available at http://www.earthrights.org/mwt_journal_admin/Entrenched.pdf
133. CDA REPORT: SECOND VISIT, *supra* note 6, at 13.

134. *Id.* at 15.
135. *Id.* at 12-13.
136. Interviews with community members, in Yadana pipeline region and along the Thailand-Burma border (1994-2009). On file with ERI. *See also* ERI, *The Human Cost of Energy*, *supra* note 3, at 36; ERI, *Total Denial Continues*, *supra* note 3, at 23-25, 30 (2d ed., 2003).
137. ERI, *The Human Cost of Energy*, *supra* note 3, at 36.
138. CDA REPORT: SECOND VISIT, *supra* note 6, at 13-14.
139. CDA REPORT: SECOND VISIT, *supra* note 6, at 12.
140. CDA REPORT: FOURTH VISIT, *supra* note 6, at 4.
141. ILO Forced Labour Convention, *supra* note 124, art. 10(1).
142. CDA REPORT: THIRD VISIT, *supra* note 6, at 10.
143. CDA REPORT: THIRD VISIT, *supra* note 6, at 9.
144. *See* CDA REPORT: FIRST VISIT, *supra* note 6, at 12-14; CDA REPORT: SECOND VISIT, *supra* note 6, at 4-7; CDA REPORT: THIRD VISIT, *supra* note 6, at 4-5; CDA REPORT: FOURTH VISIT, *supra* note 6, at 6-8, 18.
145. Total, *The Socio-Economic Program*, http://burma.total.com/en/engagement/p_3_1.htm (last visited August 7, 2009).
146. Chevron, *Energy Partnership: 2007 Corporate Responsibility Report* (2007), at 25, available at http://www.chevron.com/globalissues/corporateresponsibility/2007/documents/Chevron_CR_report_050208.pdf (last visited August 7, 2009).
147. *See* CDA REPORT: FIRST VISIT, *supra* note 6, at 16.
148. Chevron, *Chevron Statement on Myanmar*, at <http://www.chevron.com/news/press/Release/?id=2007-10-02> (last visited August 7, 2009).
149. *Id.*
150. *Id.*
151. Total, *Local Socio-Economic Initiatives: Medical and health care*, at http://birmanie.total.com/en/engagement/p_3_3_1.htm (last visited August 7, 2009).
152. CDA REPORT: FIFTH VISIT, *supra* note 6, at 1.
153. *Id.* at 6.
154. *See id.* at 20-25.
155. *See, e.g.* CDA REPORT: SECOND VISIT, *supra* note 6, at 17.
156. LUZ ZANDVLIET & MARY B. ANDERSON, GETTING IT RIGHT: MAKING CORPORATE-COMMUNITY RELATIONS WORK 9 (2009).
157. CDA REPORT: THIRD VISIT, *supra* note 6, at 14.
158. *Id.*
159. *Id.*
160. *Id.*
161. *See* ERI, *Total Impact*, *supra* note 91.
162. *See id.* (providing a more in-depth analysis of the income to the Burmese regime and the impacts of revenue from the Yadana Project); *see Human Cost of Energy*, *supra* note 3, at 19-23.
163. ERI, *The Human Cost of Energy*, *supra* note 3, at 21.
164. *Id.*
165. *Id.*

166. CDA REPORT: SECOND VISIT, *supra* note 6, at 16.
167. Transparency International (TI), *Corruption Perceptions Index 2008*, available at http://www.transparency.org/policy_research/surveys_indices/cpi/2008 (last visited August 7, 2009)
168. See RESOURCE ABUNDANCE AND ECONOMIC DEVELOPMENT (Richard M. Auty ed., 2001); Michael L. Ross, *The Political Economy of the Resource Curse*, 51 WORLD POL. 297 (1999); Jeffrey D. Sachs & Andrew M. Warner, *The Big Push, Natural Resource Booms and Growth*, 59 J. DEV. & ECON. 43 (1999); Carlos Leite & Jens Weidmann, *Does Mother Nature Corrupt? Natural Resources, Corruption, and Economic Growth*, INT'L. MONETARY FUND, Working Paper No. 99/85 (1999), at 8-9; Jeffrey D. Sachs & Andrew M. Warner, *Natural Resource Abundance and Economic Growth*, HARVARD INST. FOR INT'L DEV., Discussion Paper No. 517a (1995).
169. Michael L. Ross, *Does Oil Hinder Democracy?*, 53 WORLD POLITICS 325 (2001).
170. See Paul Collier & Anke Hoeffler, *On economic causes of civil war*, 50 OXFORD ECON. PAPERS 563 (1998); Macartan Humphreys, *Natural Resources, Conflict and Conflict Resolution*, 49 J. CONFLICT RESOLUTION 508 (2005); Indra de Soysa, *The Resource Curse: Are Civil Wars Driven by Rapacity or Paucity?*, in GREED AND GRIEVANCE: ECONOMIC AGENDAS IN CIVIL WARS 113 (Mats Berdal & David M. Malone eds., 2000).
171. Xavier Sala-i-Martin & Arvind Subramanian, *Addressing the Natural Resource Curse: An Illustration from Nigeria*, NAT'L BUREAU OF ECON. RESEARCH, Working Paper No. 9804 (2003).
172. Michael L. Ross, *Oil, Islam, and Women*, 102 AM. POL. SCI.. REV. 107 (2008), available at <http://www.sscnet.ucla.edu/polisci/faculty/ross/Oil%20Islam%20and%20Women%20-%20apsr%20final.pdf> (last visited August 7, 2009).
173. CDA REPORT: SECOND VISIT, *supra* note 6, at 15-16.
174. Publish What You Pay (PWYP) is a global civil society coalition that helps citizens of resource-rich developing countries hold their governments accountable for the management of revenues from the oil, gas and mining industries. www.publishwhatyoupay.org.
175. Total, *Human Rights in Myanmar*, *supra* note 1.
176. Communication with former ILO Officer (March 16, 2009). On file with ERI.
177. See *supra* Part I(h).
178. Production Sharing Contract for Appraisal, Development and Production of Petroleum in the Moattama Area Between Myanmar Oil and Gas Enterprise and Total Myanmar Exploration and Production, signed July 9, 1992.
179. See *id.* at Sec. 17(c) ("MOGE [Myanma Oil and Gas Enterprise] Shall . . . assist and expedite CONTRACTOR's execution of the Work Programme by providing at cost . . . security protection. . . ."); *Doe v. Unocal Corp.*, 110 F. Supp. 2d 1294, 1300-01 (C.D. Cal. 2000) (A May 10, 1995 Unocal 'briefing document' states "according to our contract, the government of Myanmar is responsible for protecting the pipeline. There is military protection for the pipeline and, when we have work to do along the pipeline that requires security, then military people will, as a matter of course, be nearby."); CDA REPORT: FIRST VISIT, *supra* note 6, at 6 ("Responsibility for providing security in the pipeline corridor lies with the Myanmar/Burmese Government. TFE [TatalFinaElf]

management says they have no contractual arrangements with the Government, but there is an understanding that the army will provide a secure working environment for pipeline operations.”).

180. *See generally*, sources cited *supra* note 3
181. *See* ERI, *Doe v. Unocal*, at <http://www.earthrights.org/legal/unocal/> (discussing *Doe v. Unocal* cases in federal and state courts in California); Business & Human Rights, *Case profile: Total lawsuit in Belgium (re Burma)*, at <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/TotallawsuitinBelgiumreBurma> (summary of and resources on human rights lawsuit against Total in Belgium) (last visited August 7, 2009); James Rose, *Burma lawsuits – a Total settlement?*, ETHICAL CORPORATION, Feb. 20, 2006 (reporting on Total’s 2006 settlement of a French lawsuit by Burmese plaintiffs based on claims of forced labor), *available at* <http://www.ethicalcorp.com/content.asp?ContentID=4106> (last visited August 7, 2009).
182. *E.g.*, Braden Reddall and Anna Driver, *Big oil meetings draw activists, some protest votes*, REUTERS, May 27, 2009, *available at* <http://www.reuters.com/article/domesticNews/idUSTRE54Q4RP20090527> (last visited August 7, 2009); David R. Baker, *Chevron CEO attacks critics at meeting*, SAN FRANCISCO CHRONICLE, May 29, 2008, *available at* http://www.eiu.com/index.asp?layout=ib3Article&article_id=1193398304&pubtypeid=1142462499&rf=0 (last visited August 7, 2009); Bill Baue, *Corporate Operations in Burma Fuel Human Rights Abuses, Say Shareowner Activists*, SOCIAL FUNDS, Oct. 26, 2007, *available at* <http://www.socialfunds.com/news/article.cgi/2402.html> (last visited August 7, 2009).
183. *E.g.*, Zachary Coile, *Chevron’s dilemma over its stake in Burma*, SAN FRANCISCO CHRONICLE, July 5, 2008, *available at* <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2008/07/05/MNS311124I.DTL> (last visited August 7, 2009); Amanda Beck, *Chevron profits shadowed by human rights complaints*, REUTERS, May 28, 2008, *available at* <http://www.reuters.com/article/marketsNews/idUSN2845117720080528?sp=true> (last visited August 7, 2009); Michael Eрман, *Watchdog group says Chevron complicit in Myanmar*, REUTERS, April 29, 2008, *available at* <http://www.reuters.com/article/ousiv/idUSN2850022820080429?sp=true> (last visited August 7, 2009); *Oil firms continue to pump support*, THE AUSTRALIAN, Oct 1, 2007, *available at* <http://www.theaustralian.news.com.au/story/0,25197,22508771-25837,00.html> (last visited August 7, 2009); John Lichfielden, *France and Total under fire for ‘financing’ regime*, THE INDEPENDENT [LONDON], Sep 29, 2007, *available at* <http://www.independent.co.uk/news/world/asia/france-and-total-under-fire-for-financing-regime-403871.html> (last visited August 7, 2009); Bruce Hawke, *The Burma-Thailand Gas Debacle*, THE IRRRAWADDY, November 2004, *available at* http://www.irrawaddy.org/article.php?art_id=4216&page=2 (last visited August 7, 2009).
184. *E.g.*, International Federation for Human Rights, *Total pollutes democracy – Stop TOTALitarianism in Burma* (July 2005), *available at* <http://www.fidh.org/IMG/pdf/mm04062005a.pdf> (last visited August 7, 2009); Burma Campaign UK, *Totalitarian Oil – Total Oil: Fueling the Oppression in Burma* (February 2005), *available at* http://burmacampaign.org.uk/images/uploads/total_report.pdf (last visited August 7, 2009); ILO Regional Office for Asia and the Pacific, *ILO Conclusions on Myanmar Regarding Forced Labour*, Doc. ROAP/04/19 (June 18, 2004), *available at* <http://www.>

- ilo.org/asia/info/public/pr/lang--en/WCMS_BK_PR_96_EN/index.htm (last visited Aug 7, 2009); International Labor Organization, *Forced Labor in Myanmar: Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930* (No. 29) (July 2, 1998), available at <http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar.htm>.
185. For example, in 2007 Burma Campaign UK launched its “Total Out of Burma” campaign, at <http://www.totaloutofburma.blogspot.com/> (last visited August 7, 2009). Amnesty International kicked off its Share Power campaign in 2009 to support Chevron shareholder resolutions on divestment from Burma, see Amnesty Int’l, *Share Power 2009*, at http://www.amnesty.ca/blog2.php?blog=share_power_2009 (last visited Aug 5, 2009). See also Agence-France Presse, ‘Democracy polluting’ Total pushed to exit Myanmar, February 22, 2005, available at http://www.expatica.com/fr/news/local_news/democracy-polluting-total-pushed-to-exit-myanmar-17196.html (last visited Aug 7, 2009) (describing International Federation for Human Rights’ and Action Birmanie’s “Total pollutes democracy” campaign).
 186. Tom Lantos Block Burmese Jade Act of 2008 § 15, 50 U.S.C. 1701 (2008). In its original version, Section 15 of the Act would have eliminated a large tax break for Chevron, likely forcing the company to divest its 28% share in the Yadana Project. In the legislation as eventually passed, however, this provision was replaced with a section entitled “Sense of Congress with Respect to Investment in Burma’s Oil and Gas Industry”. It includes a “Statement of Policy” noting that “(1) Congress urges Yadana investors to consider voluntary divestment over time if the Burmese Government fails to take meaningful steps to release political prisoners, restore civilian constitutional rule and promote national reconciliation. (2) Congress will remain concerned with the matter of continued investment in the Yadana pipeline in the years ahead.”); Exec. Order No. 13,047, 62 Fed. Reg. 28,301 (May 20, 1997) (“Prohibiting New Investment in Burma”), amended by Exec. Order No. 13310, 68 Fed. Reg. 44,853 (July 28, 2003) (“Blocking Property of the Government of Burma and Prohibiting Certain Transactions”).
 187. Total, *The CDA Reports*, at http://burma.total.com/en/controversie/p_4_3.htm (last visited August 7, 2009).
 188. CDA became a non-profit company in 2003. CDA, *Who We Are*, http://www.cdainc.com/cdawww/aboutus_history.php (last visited August 7, 2009).
 189. See *supra* Part I(h).
 190. Total, *Sharing Our Energies: Corporate Social Responsibility Report* (2002), at 89, available at http://www.total.com/static/en/medias/topic1606/CSR2002_uk1.pdf (emphasis added).
 191. Total, *Total in Myanmar: A Sustained Commitment* (2008), at 48, available at http://burma.total.com/en/publications/sustained_commitment.pdf
 192. CDA REPORT: FIRST VISIT, *supra* note 6, at 9.
 193. *Id.* at 17.
 194. *Id.* at 18 (emphasis added).
 195. Total’s website included this assertion when accessed in April 2009. See Total, *Local Observations: Main CDA Findings*, available at <http://web.archive.org/>

- web/20061115011800/http://burma.total.com/en/controverse/p_4_3_1.htm (last visited August 7, 2009).
196. CDA meeting, *supra* note 49.
 197. Total, *Local Observations: Main CDA Findings (summary of the five reports)*, at http://burma.total.com/en/controverse/p_4_3_1.htm (last visited August 7, 2009).
 198. Total in Myanmar, *supra* note 192, at 42.
 199. Letter from Jean-François Lassalle, E&P Vice-President Public Affairs, Total, to Burma Campaign UK, *available at* http://birmanie.total.com/en/publications/burma_campaign.pdf (last visited August 7, 2009).
 200. *See generally*, ERI, *Total Impact*, *supra* note 91.
 201. *See supra* notes 99, 100 & 101.
 202. Total, *Human Rights in Myanmar*, *supra* note 1. (This statement was exposed as untrue in an August 12, 2009 article in Islam Online by freelance journalist Rajeshree Sisodia (Rajeshree Sisodia. "Burma: Forced Labor by Oil Giant Total" Islam Online (August 12, 2009), in which the ILO publicly refuted the claim, saying "as we understand it, forced labor is still being used [in the pipeline corridor]" by the Burma Army. Subsequently, the statement was replaced on the Total website by the following: "Long before the government's dialog [sic] with the ILO started, Total helped bring about a change in those practices by clearly and repeatedly demonstrating its opposition to forced labor in response to allegations regarding local incidents that came to Total's attention. This unique position was singled out in 2003, by Ms. Perret-Nguyen, ILO Representative in Yangon, during her mission to the area, when she stated 'I have no evidence of forced labour which would benefit TotalFinaElf.'")
 203. Communication with former ILO Officer, *supra* note 176.
 204. Communication with former ILO Officer (July 10, 2009). On file with ERI.
 205. Communication with ILO Officer (May 25, 2009). On file with ERI.
 206. Total, *Total in Myanmar*, *supra* note 191.
 207. Chevron Annual Shareholder Meeting, May 28, 2008. Notes on file with EarthRights International. Chevron Annual Shareholder Meeting, May 27, 2009. Notes on file with EarthRights International.
 208. Communication with Total Investor (June 2, 2009). On file with ERI.
 209. *Id.*
 210. *See also* ERI, *Total Impact*, *supra* note 91 (the benefits of Total's socio-economic are overstated, and in some cases false or even detrimental to local livelihoods).
 211. Total, *The Socio-Economic Program*, *supra* note 5; Total, *Total in Myanmar*, *supra* note 191, at 25.
 212. Solomon, *Chevron Determined to Retain Investments in Burma*, MIZZIMA, May 28, 2009, <http://www.mizzima.com/news/regional/2215-chevron-determined-to-retain-investments-in-burma.html> (last visited August 7, 2009).
 213. Interview #043-2009 with community member, in Michaunglaung, Burma (2009). On file with ERI.
 214. *E.g.*, Meeting with Daewoo International, in Seoul, South Korea (October 28, 2008). Notes on file with ERI.

215. CDA REPORT: FIFTH VISIT, *supra* note 6, at 18.
216. Smith & Htoo, *supra* note 2, at 247-251.
217. See, e.g., Daewoo International, *Social Contributions in Myanmar*, http://www.daewoo.com/english/introduce/myanmar.jsp?nav=1_6_0 (last visited August 7, 2009); Matthew Smith, Op-Ed., *The Politics of Doing Business with a Brutal Regime*, BANGKOK POST, Nov. 15, 2007, available at <http://www.earthrights.org/files/Burma%20Project/BKKPost-PoliticsOf...11.15.07.pdf>.
218. *Id.* at 233; SGM, *Supply and Command*, *supra* note 2, at 25-32. Once it enters into commercial production the project will surpass the Yadana Project as the military regime's largest source of revenue. *Id.* at 11, 40.
219. Meeting with Daewoo, *supra* note 215; Daewoo, *Social Contributions in Myanmar*, *supra* note 217.
220. CDA meeting, *supra* note 49; CDA FIELD REPORT: FOURTH VISIT, *supra* note 6, at 16 (CDA recommending Total, "[a]pproach Daewoo International to present lessons learned from the Yadana Project that could be used in the context of the Shwe pipeline project. *This project has attracted the attention of NGOs who are concerned about the negative impacts of the pipeline operations.*") (emphasis added).
221. See Diane Orentlicher, *Bearing Witness: The Art and Science of Human Rights Fact-Finding*, 3 HARV. HUM. RTS. J. 83, 85, 113 (1990).
222. Julie Mertus, *Considerations for Human Rights Fact-finding by NGOs*, available at http://academic3.american.edu/~mertus/HR%20fact-finding.htm#_ftnref3
223. See Orentlicher, *supra* note 221, at 114.
224. *Id.*
225. *Id.*
226. *Id.*
227. Mertus, *supra* note 222.
228. *Id.*
229. See Orentlicher, *supra* note 221, at 120; David Weissbrodt & James McCarthy, *Fact-Finding by Nongovernmental Organizations*, in INTERNATIONAL LAW AND FACT-FINDING IN THE FIELD OF HUMAN RIGHTS 187, 206 (B.G. Ramcharan, ed., 1982).
230. Weissbrodt & McCarthy, *id.* at 208-209; Orentlicher, *supra* note 221, at 119.
231. See Mertus, *supra* note 222.
232. See HANS THOOLEN & BERTH VERSTAPPEN, HUMAN RIGHTS MISSIONS: A STUDY OF THE FACT-FINDING PRACTICE OF NON-GOVERNMENTAL ORGANIZATIONS 19, 110 (1986).
233. See, e.g., Interview #012-2003 with community member, in Michaunglaung, Burma (2003). On file with ERI. See also Interview #26-2008 with community member, Eindayaza, Burma (2008). On file with ERI.
234. See, e.g., Ian MacKinnon, Burma's Leader Urges Citizens to 'Crush Destructive Elements,' THE GUARDIAN [LONDON], March 28, 2008, available at <http://www.guardian.co.uk/world/2008/mar/28/burma> (last visited August 7, 2009).
235. Paulo Sergio Pinheiro, Op-Ed., *End Burma's System of Impunity*, N.Y. TIMES, May 27, 2009, available at <http://www.nytimes.com/2009/05/28/opinion/28iht-edpineiro.html> (last visited August 7, 2009); See International Human Rights Clinic at Harvard Law School, Crimes in Burma (2009) (presenting evidence constituting

- “*a prima facie case*” for “violations amounting to possible crimes against humanity and war crimes” committed by the Burmese military regime and calling for a United Nations Security Council (UNSC) commission of inquiry into crimes against humanity and war crimes in Burma).
236. This letter is posted on Total’s website, *see supra* note 109.
 237. *See* ERI, *ERI Speaks to Oil Industry: New Investment in Military-Ruled Burma Poses Huge Risks to Companies* (April 28, 2009), *available at* <http://democracyforburma.wordpress.com/2009/04/29/eri-speaks-to-oil-industry-new-investment-in-military-ruled-burma-poses-huge-risks-to-companies/> (last visited August 7, 2009); ERI, *Prepared Remarks by Matthew F. Smith, On Corporate Social Responsibility and Burma’s Extractive Industries*, Presentation at IQPC Conference on “Local Content and Capability Development in the Extractive Industries 2009”, Shangri-la Hotel, Jakarta, Indonesia (April 15, 2009), *available at* http://www.earthrights.org/files/Burma%20Project/Yadana/Remarks_Smith_Jakarta_for%20web_Apr%2028%20final.pdf.
 238. *See, e.g.*, ERI, *Legal Programs*, at <http://www.earthrights.org/legal/>.
 239. The Burmese regime is widely known to be an unreliable and authoritarian business partner. According to an anonymous source working at a high-level in the energy sector for a Southeast Asian nation-state, “The Myanmar junta are unreliable liars and totally irresponsible.” Correspondence with Southeast Asian government official (May 18, 2009). On file with ERI.
 240. The Canadian firm Ivanhoe transferred its assets in Burma to an independent trust on February 7, 2007, tasked with selling the assets. At the time of writing, the assets have not been sold. Furthermore, in 2005, Unocal’s sale of its share in the Yadana Project to Chevron was mired in controversy.
 241. The Yadana Project, for example, was attacked several times by local resistance using 62mm single-use rocket launchers, 107mm rockets, 79mm mortars, and small arms fire from M16 and AK-47 assault rifles. The Burma Army providing security for the companies and the project responded with characteristic brutality, burning nearby villages to the ground. Numerous villagers unconnected to the attacks were arrested, tortured, and executed with impunity by pipeline security battalions for their suspected involvement. *See* ERI, *Total Denial*, *supra* note 3, at 15-18; ERI, *Total Denial Continues* (2nd ed. 2003), *supra* note 3, at 40-41, 116-117.
 242. *See* sources cited *supra* note 237.

