



EARTHRIGHTS INTERNATIONAL

TOTAL IMPACT 2.0:

A Response to the French Oil Company Total Regarding Its
Yadana Natural Gas Pipeline in Military-Ruled Burma (Myanmar)



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A Report by EarthRights International, December 2009

Cover Photo: Local villagers forced to dig roadside trenches
along the Ye-Tavoy road in the pipeline area
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EARTHRIGHTS INTERNATIONAL

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About EarthRights International (ERI)

EarthRights International (ERI) is a nongovernmental, nonprofit organization that combines the power of the 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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On September 10, 2009 EarthRights International (ERI) published almost 200 pages of new research in two publications linking the oil giants Total S.A., Chevron Corporation, the Petroleum Authority of Thailand Exploration and Production Company Ltd. (PTTEP), and the Myanmar Oil and Gas Enterprise (MOGE) to forced labor, killings, high-level corruption, and authoritarianism in connection to their Yadana natural gas pipeline in military-ruled Burma. The reports also document the flawed corporate social responsibility programs implemented by Total, the operator of the project, and reveal for the first time that the pipeline in Burma has generated more than US\$7 billion dollars for the companies and the ruling State Peace and Development Council (SPDC).

On October 15, 2009 Total publicly released a 12-page response to ERI.

This publication, *Total Impact 2.0*, is a detailed and fact-based rejoinder to Total's response to ERI. It finds that while the company may be softening to criticism and to the idea of engagement with a nongovernmental organization (NGO) such as ERI, it has yet again misled the general public, investors and policymakers regarding the impacts of their pipeline project in Burma. This report finds that the companies are still linked to violent abuses such as forced labor and killings in their project area, and that their project has generated multi-billion dollar revenues for the Burmese military regime.

In a section of Total's response entitled "Our Response to the Allegations Contained in the ERI Report," Total responded directly to some but not all of the findings in the 2009 ERI report *Total Impact: The Human Rights, Environmental, and Financial Impacts of Total and Chevron's Yadana Gas Project in Military-Ruled Burma (Myanmar)* ("Total Impact").¹ The company has yet to respond to ERI's second 2009 report, entitled *Getting it Wrong: Flawed "Corporate Social Responsibility" and Misrepresentations Surrounding Total and Chevron's Yadana Gas Pipeline in Military-Ruled Burma (Myanmar)* ("Getting it Wrong"). Chevron Corporation responded to ERI indirectly with a brief statement released in November 2009.² PTTEP did not respond to either report.

In its direct response to ERI's *Total Impact*, Total attempts to challenge the veracity and magnitude of ERI's original research and firsthand testimonies from pipeline-affected villagers, former Yadana project staff, representatives of the International Labour Organization (ILO), and others.

While the company denies and claims to categorically "refute" ERI's allegations of ongoing human rights abuses in its project area in Burma, a close reading of its carefully-worded document reveals that the company does not in fact refute ERI's evidence of ongoing human rights abuses. *Total Impact 2.0* examines in detail Total's response to the ERI report and finds that in fact, Total admits that human rights abuses such as forced labor and

1 Total, *Our Response to the Allegations Contained in the ERI Report* (Sept. 2009) (hereinafter "Total's response to ERI"), at 4-12, available at http://burma.total.com/en/publications/Total%20_in_Myanmar_update.pdf (last visited Dec. 3, 2009).

2 See Business and Human Rights Resource Center, at <http://www.reports-and-materials.org/Chevron-response-re-EarthRights-report-Nov-2009.doc> (last visited Dec. 3, 2009).

violations of property rights are on-going in their self-designated pipeline corridor.

Furthermore, this publication clarifies other non-trivial errors of fact and misinformation by Total with regard to ERI's research, evidence and documentation, including misconceptions regarding the geographic boundaries of the company's chosen sphere-of-responsibility in Burma, which according to documented impacts on the ground is wider than the company prefers to acknowledge in its response to ERI. Thus, Total continues to ignore abuses associated with their project that occur in villages just outside of their designated corridor; abuses committed by Burma Army soldiers providing security for the pipeline and related infrastructure.

In its response to ERI, Total in effect obscures the harsh realities of large-scale development projects in today's militarized Burma. The company would have the world believe its pipeline project and presence in Burma is beyond reproach, despite documented human rights abuses, including the vast body of evidence of land confiscation, ongoing forced labor, rape, torture, killings, and other crimes against local villagers by the Burma Army providing security for the company and the pipeline.

Total Impact 2.0 – and *Total Impact* and *Getting It Wrong* before it – shows clearly how Total and Chevron have contributed to confusion among investors and policymakers regarding their ethics and efficacy on the ground in Burma, and how the companies have thus far failed to heed ERI's reasonable and realistic recommendations, which are re-issued at the end of this report.

The companies' misinformation campaign is doubly problematic as more oil companies are undertaking new investments in Burma's oil and gas sector. These mostly Asian-based companies, fast descending on Burma's natural resources, are looking to Total and the Yadana project as a model for responsible oil and gas projects in Burma.

ERI's documentation in the country, conducted since the early 1990s, exposes disturbing trends in large-scale development projects in the extractive industries, particularly in the country's ethnic areas. Specifically, ERI has established that new large-scale extractive projects cannot proceed in the country without the direct involvement of the Burma Army and security personnel, and that when the Burma Army and related personnel are involved in extractive projects, widespread and systematic human rights abuses inevitably follow.

Troubling evidence of such abuses are emerging associated with the transnational Shwe gas and oil transport pipelines from western Burma to China, currently entering the construction phase. The cross-country Shwe gas pipeline will transport natural gas from Burma's Bay of Bengal to China, where it will provide electricity in Yunnan Province; the oil pipeline will transport non-Burmese oil acquired by China in Africa and the Middle East to Yunnan Province. These pipelines will far surpass the Yadana pipeline in physical length: The Shwe pipeline will cover approximately 2800 kilometers from western Burma to China, whereas the Yadana pipeline spans a mere 60 kilometers of onshore territory in Burma.

The Shwe gas project has already been linked to serious human rights abuses and has been the subject of a formal complaint to the Korean National Contact Point (NCP) for alleged breaches of the OECD Guidelines for Multinational Enterprises. Local nongovernmental organizations (NGOs) and others have called on the Korean company Daewoo International, the operator of the gas fields, and the Chinese National Petroleum Corporation (CNPC), the operator of the gas and oil pipelines and the buyer of the Shwe gas, to suspend the project until safeguards can be put in place to mitigate harms and ensure that local communities living along the pipeline have provided free, prior and informed consent (FPIC).

ERI has confirmed from Daewoo that the company regards the Yadana project as its benchmark and as a model for doing business in Burma. This is yet another indirect and harmful impact of Total's misleading public relations. ERI has also confirmed that Total has convened meetings in Burma between the oil companies invested in the country, ostensibly to discuss improving their collective presence and projects in-country: the military regime and MOGE have attended these meetings.

Total continues to refuse to meet with ERI to discuss our findings and recommendations for how the company could improve its presence in Burma. The company's previous and explicit denial to meet with ERI was received by ERI in writing and is published as an appendix in *Total Impact* and *Getting It Wrong*.³ Since the publication of our two reports on September 10, 2009, interested investors and other NGOs in dialogue with Total have privately suggested to the company that it meet with ERI. A high-level United Nations staff person also requested directly to Total that the company give ERI the same guided tour of its operations in Burma that is offered to journalists, diplomats, and others. This request was summarily rejected by Total's leadership for no explicit reason.

Total Impact 2.0 is an urgent re-issue of ERI's September 2009 recommendations, a clarification for policymakers and investors alike, and yet another request that Total meet with ERI to discuss its presence and impacts in Burma.

3 ERI, *Total Impact: The Human Rights, Environmental, and Financial Impacts of Total and Chevron's Yadana Gas Project in Military-Ruled Burma (Myanmar)*, App. B at 79-86 (Sept. 10, 2009), available at <http://www.earthrights.org/publication/total-impact-human-rights-environmental-and-financial-impacts-total-and-chevron-s-yadana> (last visited Dec. 3, 2009); ERI, *Getting It Wrong: Flawed "Corporate Social Responsibility" and Misrepresentations Surrounding Total and Chevron's Yadana Natural Gas Pipeline in Military-Ruled Burma (Myanmar)*, App. B at 56-63 (Sept. 10, 2009), available at <http://www.earthrights.org/publication/getting-it-wrong-flawed-corporate-social-responsibility-and-misrepresentations-surroundi>.

Natural gas development in military-ruled Burma, also known as Myanmar, is directly and indirectly connected to serious human rights crimes against local villagers and has generated multi-billion dollar revenues for the ruling Burmese military regime, most of which has not reached the rightful beneficiaries: the people of Burma.

Since 1994, EarthRights International (ERI) has focused on corporate accountability for abuses connected to Burma's most significant and controversial development project in operation, a transnational natural gas pipeline called *Yadana*, meaning "treasure" in Burmese, operated by the French oil giant Total and a consortium including Chevron and the Petroleum Authority of Thailand Exploration and Production Company Ltd (PTTEP).⁴

The subject of this publication is Total's response to ERI's September 10, 2009 report *Total Impact*.

In that report, ERI demonstrated in meticulous detail that Total's project in Burma is not only still connected to severe and ongoing human rights crimes against local people, but that the company's project has generated more than US\$7 billion in revenues since operations commenced a decade ago, including billions of dollars for the country's ruling State Peace and Development Council (SPDC). ERI has also found evidence that much of this revenue to the SPDC would be absent from the country's budget, and that hundreds of millions of dollars of Burma's gas revenues have found their way into at least two offshore banks in Singapore.

ERI has issued recommendations to Total, Chevron, and PTTEP; the international community; investors and shareholders in extractive companies in Burma; extractive companies invested in or considering investment in Burma; and to the ruling SPDC. These recommendations, located at the end of this report, would help mitigate negative impacts of Total's project and improve outcomes for the people of Burma. At the forefront of these recommendations is that Total should take immediate action to practice full and disaggregated revenue transparency in Burma since it signed a contract for the project in 1992, accept responsibility for the larger local impacts of its project, and facilitate villagers' option to file complaints of force labor with the International Labour Organization (ILO).

A litany of widespread and systematic human rights crimes against the people of Burma continue in every part of the country while the national political situation remains deeply repressive and profoundly complicated. Total is a piece of this complex and larger picture. The company and the gas revenues generated for the Burmese regime should remain under the scrutiny of investors and policymakers concerned with improving corporate behavior and supporting positive change for the people of Burma in 2010 and beyond.

4 A second pipeline called Yetagun, operated by Petronas (Malaysia), PTTEP (Thailand), Nippon Oil (Japan), and MOGE (Burma) shadows the Yadana pipeline to Thailand. These companies are equally responsible for the ongoing human rights impacts against local villagers in the pipeline area.

III. Summary of the ERI Reports *Total Impact* and *Getting It Wrong*

The two reports ERI released on September 10, 2009 were the organization's seventh and eighth advocacy reports including original documentation on the human rights, environmental, and financial impacts of Total and Chevron's Yadana natural gas pipeline in Burma.⁵

Based primarily on over two years of research, the first report, entitled ***Total Impact: The Human Rights, Environmental, and Financial Impacts of Total and Chevron's Yadana Gas Project in Military-Ruled Burma (Myanmar)*** draws on hundreds of interviews with current residents and recent refugees from the pipeline region, defected soldiers from the Burma Army and Navy, former expatriate staff on the Yadana Project, shareholders and investors in Total and Chevron, and current and former staff of the International Labour Organization (ILO). The compelling testimonies of hundreds of villagers from and in the area of Total and Chevron's gas pipeline reveal forced labor, killings, beatings, and violations of property rights and freedom of movement. These abuses were committed by the Burma Army that provides security for Total, Chevron, PTTEP and their gas pipeline project in Burma.⁶

In *Total Impact*, ERI estimates for the first time the ethically questionable amount of revenue the companies' project has generated for the Burmese regime since commercial gas production began in 2000⁷ and explains how the regime would have excluded more than 99 percent of that revenue from the country's national budget. Rather than benefit the people of Burma, ERI has learned that a portion of these and other gas revenues eventually found their way into two offshore banks in Singapore: the Overseas Chinese Banking Corporation (OCBC) and DBS Group.⁸

Total Impact also documents the links between Total, Chevron, and the Burma Army. The Burma Army is tasked with providing security for the pipeline, pipeline-related infrastructure, and for areas in the vicinity of the pipeline.⁹ The report details the militarization of the pipeline area as preparation for pipeline construction began, during the construction phase, and during the present operational phase of the project.¹⁰

Citing numerous testimonies of local people, former company staff, and documents obtained from the Yadana consortium companies, ERI's report provides details of the companies' often overlooked environmental impacts.¹¹ This includes new evidence of poor environmental planning at the construction phase of the project, as well as documentation about impacts that intersect environmental and human rights, what we

5 ERI, *Total Impact*, *supra* note 3, *Getting it Wrong*, *supra* note 3.

6 *Total Impact*, *supra* note 3, at 15–33.

7 *Id.* at 41–47.

8 *Id.* at 43.

9 *Id.* at 34–40.

10 *Id.*

11 *Id.* at 63–70.

call *earth rights*:¹² this includes land confiscation related to the project,¹³ forced labor related to the environment (forced logging),¹⁴ and the adverse impacts of a Total-sponsored “environmental protection group” which designated an area relied upon by villagers as protected, without any apparent strategies to compensate lost livelihoods.¹⁵

Lastly, *Total Impact* challenges the effectiveness of the companies’ socio-economic programs in the Yadana pipeline corridor, amplifying villagers’ own testimonies about their experiences with particular elements of Total’s socio-economic program.¹⁶ This includes testimonies about unintended and otherwise adverse impacts and inefficiencies of Total’s public health, education, agriculture, and micro-credit programs in the pipeline corridor. ERI concluded that some of these programs are in need of critical attention.

ERI’s second report released on September 10, 2009 is entitled ***Getting it Wrong: Flawed “Corporate Social Responsibility” and Misrepresentations Surrounding Total and Chevron’s Yadana Gas Pipeline in Military-Ruled Burma (Myanmar)***. Based on seven years of research, this 81-page report describes problematic aspects of Total and Chevron’s supposed independent impact assessments commissioned by the companies since 2002. The impact assessments were conducted by the US-based CDA Collaborative Learning Projects (CDA). *Getting It Wrong* finds that CDA’s generally favorable assessments of Total and Chevron’s impacts in Burma are inaccurate and misleading, due in large part to CDA’s grossly flawed methodology for conducting assessments in Burma.

In the report, ERI describes CDA’s methodology in detail and presents evidence from local villagers’ testimonies explaining why CDA’s assessments failed to accurately document conditions in the area. ERI regards CDA’s findings as especially problematic because investors, policymakers, and other oil companies have in fact relied on them as credible in making crucial investment and policy decisions.

In *Getting it Wrong*, ERI also presents evidence demonstrating that Total repeatedly lied when it claimed publicly for seven years that the International Labour Organization (ILO) certified that the company eradicated forced labor in its project area.¹⁷ The ILO made no such statements and has publicly disavowed the claim as untrue and inaccurate.¹⁸ *Getting it Wrong* also details Total and Chevron’s misleading public relations and outreach to investors around the Yadana project impacts, including efforts to misuse CDA’s findings.

ERI’s intention with *Getting it Wrong* is to cut through Total and Chevron’s misinformation about their impacts and presence in Burma, and to improve the process of impact

12 *Earth rights* are those rights that demonstrate the connection between human well-being and a sound environment, and include the right to a healthy environment, the right to speak out and act to protect the environment, and the right to participate in development decisions. See Jed Greer and Tyler Giannini, *Earth Rights: Linking the Quest for Human Rights and Environmental Protection* (1999), at 20.

13 ERI, *Total Impact*, *supra* note 3 at 30–32.

14 *Id.* at 66–69.

15 *Id.* at 69–70.

16 *Id.* at 47–70.

17 ERI, *Getting It Wrong*, *supra* note 3, at 40–43.

18 *Id.*

assessments in the extractive industries, which are an undeniably important aspect of responsible development projects in Burma and generally. As mentioned in the report, “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 currently found in Burma.”¹⁹

CDA responded to the report without addressing ERI’s fundamental critique of their methodology and applications in Burma.²⁰

¹⁹ *Id.* at 9.

²⁰ CDA Collaborative Learning Projects, at http://www.cdainc.com/cdawww/pdf/other/response_to_earth_rights_international_report_20090914_Pdf.pdf (last visited Dec. 3, 2005).

On October 15, 2009 Total released a 12-page response to ERI's 110-page report *Total Impact* (Sept 2009). This section details errors in Total's carefully-worded response as well as the company's failure to address or refute several types and instances of human rights abuses documented by ERI in the company's project area.

Geographic Boundaries of the Yadana Pipeline Corridor

In its response to ERI, Total denies ERI's claim that the company's impact area extends beyond the 25 villages in the company's defined pipeline corridor, thus denying responsibility for human rights abuses and other impacts in villages outside its delineated corridor. Total refers to what it regards as ERI's "blurred geographic distinctions" regarding the "Yadana pipeline area" and claimed that "of the 40 villages mentioned in the ERI report, 25 are located outside the pipeline area."²¹ The company claims "the Yadana consortium has never had a presence or operated in much of this territory."²²

Thus, Total defines its scope of responsibility by the physical presence of Total employees or villages' proximity to Total-managed operations.

ERI clearly states that our data collection area in Burma included 40 villages, 15 of which Total recognizes as "pipeline villages" and 25 of which the company fails to recognize as their responsibility. ERI included the 25 "non-pipeline villages," as defined by Total, because ERI has documented abuses in those villages as well as in "pipeline corridor" villages, committed by Burma Army battalions providing security for the companies and the gas project.²³ Thus, ERI's understanding of what constitutes the pipeline area is delineated by where impacts of pipeline security Burma Army battalions have been documented. ERI's report is very clear about this issue.

In its response to ERI, Total prefers to not acknowledge that Burma Army battalions self-identify as pipeline-security battalions and patrol a wider area than the "pipeline corridor" for project-related security.²⁴ Total and their consortium partners continue to benefit from this security arrangement and local people continue to suffer abuses from pipeline security battalions. Therefore, ERI implores Total to accept a wider sphere-of-responsibility defined by the project's impacts on local communities.

Forced Labor in Villages Not Recognized by Total as Their Responsibility

In its response to ERI, Total explicitly refuses to accept documentation of forced labor that has occurred in villages that it regards as "outside the pipeline area." Specifically, the company rejects abuses documented by ERI in Ya Pu, on the Ye-Tavoy road, and in

21 Total's response to ERI, *supra* note 1, at 5.

22 *Id.*

23 ERI, *Total Impact*, *supra* note 3, at 6.

24 *Id.* at 6–7.

Law Ther on the grounds that these villages are not their responsibility.²⁵ Total did not adequately respond to ERI's evidence that these forced labor crimes were committed by battalions providing security for the companies and the pipeline; thus failing to address their responsibility for the abuses.²⁶

Forced Labor in the Villages Total Recognizes as Their Responsibility

The headline in Total's response to ERI's documentation of forced labor in the company's accepted pipeline area is: "Total refutes allegations of forced labor in the pipeline area."²⁷ However, a close reading of the company's response reveals the company does not actually refute ERI's allegations, and in some cases the company confirms ERI's allegations without explicitly saying as much.

Forced Farming in the Pipeline Area

For example, regarding ERI's detailed documentation of villagers' testimony about their experiences being forced by pipeline security battalions to plant *jatropha* in the pipeline corridor,²⁸ Total does *not* claim this type of forced labor is not happening by pipeline security battalions. Instead, Total claims only that "[j]atropha farming was not as successful as hoped in the pipeline area, and the existing plantations are too small for commercial production." The company's subheading to this section claims they "refute" ERI's allegations, which is thus a misnomer.²⁹ The company merely dodged the allegation without directly responding to it.

Forced Security in the Pipeline Area

Regarding villagers' testimonies about being forced by pipeline security soldiers to provide security in the pipeline area, ERI's documentation is clear: Villagers were forced to build security facilities such as sentry huts, forced to attend abusive militia trainings led by pipeline security soldiers, forced to provide sentry duty in their villages, and forced to provide sentry duty over the pipeline itself.³⁰

Of all of the testimonies collected and published by ERI regarding allegations of forced security, Total responded only to the claims that villagers are forced to perform sentry duty over the Yadana pipeline, adding that the claims "are without foundation. Villagers do not perform sentry duty over the pipeline."³¹ It is noteworthy that the company ignored other documented cases of this type of forced labor (forced security) and only denied allegations

25 Total's response to ERI, *supra* note 1, at 5.

26 ERI, *Total Impact*, *supra* note 3, at 34–40.

27 Total's response to ERI, *supra* note 1, at 5.

28 ERI, *Total Impact*, *supra* note 3, at 23–25.

29 The subheading of this section in Total's response is "Total refutes allegations of forced labor in the pipeline area." Total response to ERI, *supra* note 1, at 5.

30 ERI, *Total Impact*, *supra* note 3, at 25–27.

31 Total's response to ERI, *supra* note 1, at 5.

of forced security “over the pipeline” itself, without providing evidence to substantiate their selective denial.³²

Forced labor on Infrastructure in the Pipeline Corridor

Significantly, Total affirmed that forced labor occurred in the construction of a police barrack in March 2009 in the pipeline village Zinba,³³ as documented and reported by ERI.³⁴ Thus, the company did not “refute” this claim at all, contrary to the heading in its response, but confirmed the abuse occurred. After confirming this particular case, the company claims that it “put a stop to this reprehensible practice and, following our intervention, the huts [constructed with forced labor] were given to the villagers.”³⁵ ERI has not confirmed that Total intervened in this case or that the huts were subsequently given to the villagers. Even if true, the company’s actions would not negate the forced nature of the work. Moreover, “donating” huts to villagers that they were forced to construct would not be a sufficient measure of justice, as implied and in effect determined by Total. Rather, Total should facilitate and encourage complaints to the ILO, as recommended by ERI and envisioned by Order No. 1/99 and the Supplemental Understanding between the ILO and the ruling State Peace and Development Council (SPDC).³⁶

Arbitrary Taxation as a Form of Forced Labor

In *Total Impact*, ERI documented that forced labor in the pipeline area often comes in the form of arbitrary taxation of local villagers by Burma Army soldiers providing security for the companies and the pipeline.³⁷ ERI has documented this type of forced labor through numerous interviews with local villagers, of which ERI quotes a representative sample in *Total Impact*. ERI’s evidence clearly demonstrates that villagers have been forced to provide local soldiers money, food, drink, and accommodation.³⁸ Total did not respond to these allegations.

Killings in the Pipeline Area

In *Total Impact*, local villagers explain to ERI several killings by pipeline security soldiers that occurred between 2005 and 2009. In its response, Total acknowledges that these allegations are “particularly grave” but the company did not refute that the abuses occurred, nor did the company respond to the allegation by ERI that the killings were committed by soldiers tasked with providing security for the company and their pipeline.³⁹ Instead, Total claims simply that the alleged killings occurred in an area that is not their

32 *Id.*

33 *Id.*

34 ERI, *Total Impact*, *supra* note 3, at 20–21.

35 Total’s response to ERI, *supra* note 1, at 5.

36 For more on the Supplemental Understanding, see ILO, *Developments Concerning the Question of the Observance by the Government of Myanmar of the Forced Labour Convention*, 1930 (No. 29), No. G.B. 304/5/1/Rev., 304th Sess. (March 2009).

37 ERI, *Total Impact*, *supra* note 3, at 27.

38 *Id.*

39 Total’s response to ERI, *supra* note 1, at 6.

responsibility.⁴⁰

The company claims further that “Total has no knowledge of these cases or of any similar cases in the pipeline area.”⁴¹ However, Total is now on notice of these killings through the testimonies published by ERI and should investigate the allegations thoroughly and take appropriate action until perpetrators are brought to justice and victims compensated fairly.

In one documented killing, pipeline security soldiers brought a villager to Kanbauk, the location of Total’s local headquarters, just before killing him in Ya Pu, which is a village situated only miles from Total’s pipeline.⁴² The killing was committed by soldiers in pipeline security battalion 273, which provides security for Total and the pipeline.⁴³ Total did not respond to this serious allegation.

Violations of Freedom of Movement

Total does not refute ERI’s documentation of violations of freedom of movement, while at the same time the company denies responsibility for restrictions of movement in areas outside its self-defined pipeline corridor.⁴⁴

In *Total Impact*, ERI presented documentation of violations of freedom of movement by Burma Army pipeline security soldiers. ERI explains in the report that from time to time movement restrictions are enforced against villagers by pipeline security soldiers, depending in part on perceived threats from armed opposition groups.⁴⁵ ERI also documented how villagers have faced severe repercussions for leaving their village without permission from the authorities, as well as how villagers have received explicit orders from the Army to not have contact with “outside groups.”⁴⁶

In its response, Total claims categorically that “[t]here are no restrictions on freedom of movement *between villages in the pipeline area*” (italics added),⁴⁷ but the company then goes on to admit there are restrictions on the Ye-Tavoy Highway, an area which includes villages impacted by pipeline security battalions; some of which were relocated closer to the road during the initial phases of the Yadana project for security reasons.⁴⁸ It is noteworthy that Total specifies that villagers’ movements are not restricted “between villages in the pipeline area” but the company fails to address restrictions of villagers’ movements from villages within the corridor to areas outside the corridor, particularly to areas along the Thailand-Burma border.

40 *Id.*

41 *Id.*

42 ERI, *Total Impact*, *supra* note 3, at 32-33.

43 *Id.* at 34-40.

44 *Id.*

45 *Id.* at 29-30.

46 *Id.* at 30.

47 Total’s response to ERI, *supra* note 1, at 6.

48 See *Total Denial Continues: Earth Rights Abuses Along the Yadana and Yetagun Pipelines in Burma* (2d ed. 2003) at 39-47.

The company also claims that it arranges “30 to 40 days of pipeline area visits a year for NGOs, diplomats, investors, journalists and evaluation teams” and that these visitors “can see that inhabitants are free to travel where they like.”⁴⁹ Even if it were true that foreigners made visual confirmation that “inhabitants” move around freely, such perceptions of foreign visitors during brief stays are inherently incomplete or inaccurate⁵⁰ and hardly compare to the years of documented testimony of local villagers themselves.

Violations of Property Rights

In *Total Impact*, ERI reported on the widespread and systematic violations of property rights against local villagers in the pipeline area, committed by Burma Army pipeline security battalions. This includes confiscation of land, food, drink, money, as well as the requisitioning of bullock carts and motorbikes for transport purposes.⁵¹

In its response to ERI, Total attempts to give the impression that ERI’s body of evidence of violations of property rights is small and irrelevant. Total claims that on page 31 of *Total Impact*, ERI’s allegation of violations of property rights “is based on testimony from two people outside the pipeline area, in Kywetalin and Ya Pu.”⁵² On the contrary, on page 31 of *Total Impact* alone ERI cites testimonies of violations of property rights from villagers in seven villages, not two: Kywetalin, Ya Pu, old Michauglaung, new Michauglaung, Kanbauk, Eindayaza, and Ohbingwin.⁵³ The latter four villages are “pipeline villages” recognized by Total as within their chosen area.⁵⁴ The testimonies of villagers are accurately and clearly footnoted in ERI’s report. Total did not refute or respond to these allegations.

ERI also documented that local villagers in the pipeline corridor village Ohbingwin were forced to sign a paper giving their land to the authorities. Local villagers tell ERI that they initially refused to sign over their land to the Burma Army, upon which a Burma Army soldier reportedly pointed his gun at the group of villagers and said, “If you don’t sign I will shoot you now.”⁵⁵ Villagers were thus forced to sign their land over to local pipeline security battalions. In response, Total simply claimed that “[n]o such event has been reported [to Total] in the pipeline area.”⁵⁶ In other words, Total did not refute ERI’s documentation, but simply claimed they had no knowledge of it.

Regarding ERI’s documentation that soldiers confiscated land in Michauglaung and Eindayaza and turned it into a palm oil plantation,⁵⁷ Total does not refute this claim. Of the property rights abuses in Michauglaung the company claims “[m]ost Michauglang villagers

49 Total’s response to ERI, *supra* note 1, at 6.

50 See *Getting it Wrong*, *supra* note 3, App. A.

51 *Total Impact*, *supra* note 3, at 30–32.

52 Total’s response to ERI, *supra* note 1, at 6.

53 *Total Impact*, *supra* note 3, at 31 & nn. 91–102.

54 For a list of which villages surveyed by ERI fall within Total’s acknowledged “pipeline corridor” see *Total Impact*, *supra* note 3, at 6–7.

55 Interview #036-2008 with community member, in Ohbingwin, Burma (2008). On file with ERI. Quoted in ERI, *Total Impact*, *supra* note 3, at 31.

56 Total’s response to ERI, *supra* note 1, at 7.

57 ERI, *Total Impact*, *supra* note 3, at 31.

own their own land and have planted rubber for the last three years.”⁵⁸ Likewise, of the situation in Eindayaza the company claims that “[n]o land confiscation has been recorded [by Total] in Eindayaza.”⁵⁹ Importantly, the company does not claim that land confiscation has not occurred, but that “most villagers” in Michauglaung own land and that the company has not “recorded” land confiscation in Eindayaza. The claim that most villagers own land and that the company has never recorded land confiscation in a village is clearly not a refutation of the allegations made by ERI.

Indeed, rather than refute ERI’s documentation collected from local villagers, the company claims violations of property rights “are extremely rare in the pipeline area.”⁶⁰ Again, the company does not claim violations of property rights do not occur. Moreover, confidential sources have recently confirmed to ERI that Total staff fully acknowledged, privately, that property rights violations by pipeline-security battalions are indeed the most common violations in the pipeline corridor, contrary to what the company acknowledges publicly.⁶¹

Total’s Connection to the Burma Army

In *Total Impact*, ERI devoted an entire chapter to the connection between the Burma Army and Total.⁶² Traditionally, Total has gone to great lengths to argue that the Burma Army does not provide security for the Yadana pipeline or the company. Since ERI published its reports in September 2009, investors who engage with Total have confirmed as much to ERI. One faithful investor was utterly convinced by Total’s claims that the Burma Army does not provide security for Total and the pipeline, stating to ERI categorically that “the Burma Army does not provide security for Total’s project.”⁶³ This investor based this claim on a guided tour from Total, much like those provided by Total for CDA, which is the subject of the ERI report *Getting It Wrong*.⁶⁴ The position of this particular investor is also based on conversations with Total’s head of security.⁶⁵ The claim that the Army does not provide security for the project works toward Total’s interests in avoiding appearances of complicity in the behavior of the Army around its project, and in denying responsibility for the Army’s abuses.

Unfortunately for Total, the Army does in fact provide security for the company and the project, as documented at length by ERI.⁶⁶

In its response to ERI, Total claims that ERI “creates serious confusion by referring to military units as ‘pipeline security battalions.’”⁶⁷ It is noteworthy that ERI’s designation of battalions as “pipeline security battalions” comes primarily from Burma Army soldiers themselves. ERI has interviewed a number of soldiers who explain that their

58 Total’s response to ERI, *supra* note 1, at 7.

59 *Id.*

60 *Id.* at 6–7.

61 Conversation with Confidential Sources, confidential location (Nov. 11, 2009).

62 ERI, *Total Impact*, *supra* note 3, at 34–40.

63 Telephone Conversation with Investor (Oct. 22, 2009).

64 *See supra* note 3.

65 Telephone Conversation with Investor, *supra* note 63.

66 ERI, *Total Impact*, *supra* note 3, at 34–40.

67 Total’s response to ERI, *supra* note 1, at 7.

explicit mandate is to provide security for the pipeline and the company.⁶⁸ ERI has also documented statements from Total and its consortium partners regarding the Army providing security for the pipeline,⁶⁹ and that local villagers have referred to certain battalions as “Total battalions.”⁷⁰

Furthermore, Total claims simply that “[m]ost of the units [referred to by ERI] are based outside the [pipeline] area and do not operate in it.”⁷¹ While true that some of the battalions referred to by ERI in *Total Impact* are not based in villages Total regards as within their responsibility, it is inaccurate and disingenuous to claim that these battalions do not provide security for the companies or the project.

Total claims that “it is interesting to note that...the military presence in the Yadana pipeline area is not significantly higher than average [in relation to other areas in the country].”⁷² Even if this point were true and accurate, it does not refute evidence that the Army provides security for the pipeline and the companies, nor does it address the fact that prior to planning for the project, there was little, if any, military presence in the area that is now branded a “pipeline corridor” by Total.⁷³ Thus the Yadana project ushered militarization into the area, and the Army has since continued to commit serious and widespread abuses in conducting their operations.

Multi-Billion Dollar Yadana Project Revenues

In *Total Impact*, ERI provides original calculations estimating the amount of revenue Total’s pipeline has generated for the Burmese military regime and the consortium partners. Since the Yadana Project began commercial production in 2000, ERI estimates that the project has generated approximately US\$7.58 billion in revenue. After a 30% tax imposed by the State Peace and Development Council (SPDC) and production costs (estimated at 10% by ERI) are deducted, Total has earned approximately US\$483 million from the Yadana Project, Chevron approximately US\$437 million, and PTTEP approximately US\$394 million.⁷⁴ According to ERI, the SPDC has earned approximately US\$4.83 billion from the Yadana Gas Project since commercial production began in 2000 (see Table 1).⁷⁵ If

68 For ERI’s most recent documentation of soldiers’ testimonies about their mandate to protect the companies and the Yadana pipeline, see *Total Impact*, *supra* note 3, at 38–40.

69 See *id.* at 40.

70 The “Total battalions” were LIBs 273 and 282. According to one villager, “LIB 273 had no other mission.” See, e.g., ERI, *Total Denial Continues: Earth Rights Abuses Along the Yadana and Yetagun Pipelines in Burma* (2d ed. 2003) at 72–73.

71 Total’s response to ERI, *supra* note 1, at 7.

72 *Id.*

73 ERI, *Total Impact*, *supra* note 3, at 34–40.

74 ERI, *Total Impact*, *supra* note 3, at 42. All told, the SPDC receives nearly 75% of the project income. After the cost of production has been deducted (estimated by ERI to be 10%), the regime takes a 10% royalty, followed by MOGE’s variable 66% share under the Production Sharing Contract. The revenues are then divided among the consortium members according to their shares: Total – 31.25%, Chevron – 28.25%, PTTEP – 25.5%, MOGE – 15%. The regime then extracts a 30% tax on each of these shares. Income figures for 2000–2008 for the SPDC, Total, and Chevron are calculated using the formula outlined in *Total Impact* and project income figures cited for Figure 1. See *id.* App. A at 75–78.

75 Annual revenues do not add up to total project income because the cost of production is deducted from

additional information around revenues comes to light, ERI will issue updated revenue figures.

It is noteworthy that Total does not in fact refute any of ERI's claims regarding the amount of revenue generated for the SPDC by its project, nor does the company refute ERI's claims that nearly US\$4.8 billion of the US\$4.83 billion generated by the project for the SPDC would not be included in Burma's national budget, due to an accounting trick employed by the Burmese authorities.⁷⁶

In its response to ERI, Total makes a factual error. The company claims, "With regard to ERI's calculation of the Myanmar government's revenues, Total would like to specify that, according to the IMF, natural gas exports accounted for 40% of the country's total exports in fiscal year 2007-2008, not 70% as ERI writes on page 43 [of *Total Impact*]."⁷⁷

However, ERI never wrote that natural gas accounts for 70% of Burma's exports, as Total claims. In fact, on page 43 of *Total Impact* ERI cites the IMF and claims 70 percent of Burma's *foreign exchange revenues* were from gas exports, not that 70 percent of Burma's exports were from natural gas.⁷⁸ There is an important distinction there and one that Total clearly missed.

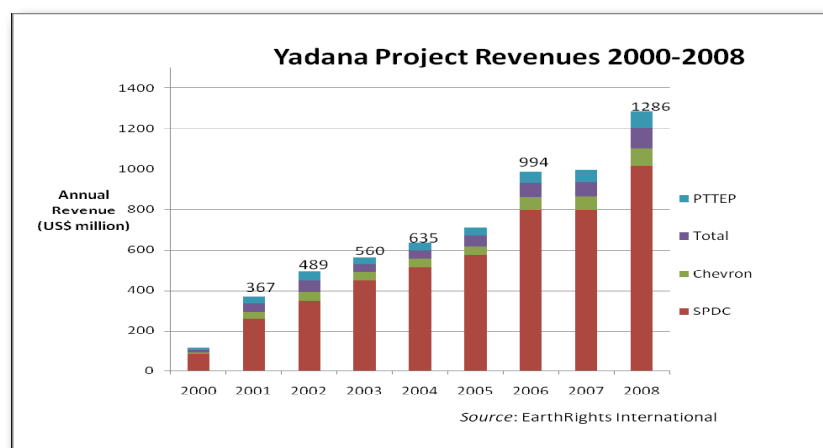


Table 1: *Yadana Project Revenues 2000-2008*⁷⁹

total project income before any revenues are taken. Based on media reports, ERI estimated this cost of production to be 10% of total project income. Annual revenues were calculated using the formula outlined in ERI's 2008 report *The Human Cost of Energy: Chevron's Continuing Role in Financing Oppression and Profiting From Human Rights Abuses in Military-Ruled Burma*, at 55-56, available at <http://www.earthrights.org/publication/human-cost-energy-chevron-s-continuing-role-financing-oppression-and-profiting-human-rig> (last visited Dec. 4, 2009). For specifics on the variables and formulas, see ERI, *Total Impact*, *supra* note 3, App. A, at 75-78.

⁷⁶ On Total not refuting ERI's claims, see Total's response to ERI, *supra* note 1, at 10 ("How the Yadana Project Revenues Are Used"); On ERI's claims regarding Yadana Project revenue, see ERI, *Total Impact*, *supra* note 3, at 41-46.

⁷⁷ Total's response to ERI, *supra* note 1, at 10.

⁷⁸ ERI, *Total Impact*, *supra* note 3, at 43.

⁷⁹ This does not account for revenue generated by the Yetagun Project, which exports gas to Thailand through a pipeline that shadows the Yadana pipeline and is operated by Petronas (Malaysia), Nippon (Japan), PTTEP (Thailand), and MOGE (Burma). See John Jackson, The Burma Campaign UK, *Destructive Engagement: Premier Oil's Social Report and Burma*, at <http://www.burmacampaign.org.uk/reports/premieraudit.html> (last visited Dec. 4,

Local Testimonies About Total's Socio-Economic Program

In *Total Impact*, ERI amplifies testimonies of local villagers who explain in detail their experiences with public health, education, micro-credit, and agriculture in the pipeline corridor.⁸⁰ In response to ERI's documentation, Total claims "[n]early all of the 'facts' mentioned by ERI in the section of the report dedicated to the socio-economic program are erroneous."⁸¹ The company states further that "ERI strives to discredit Total's socio-economic program in the pipeline area."⁸²

Nearly every villager interviewed by ERI about their experiences with the socio-economic program provided testimony that challenged the glossy socio-economic claims Total has for years published on its website for the benefit of investors, policymakers, and journalists. The evidence presented by ERI in these areas is a representative sampling of villagers' testimonies.

Public Health in the Pipeline Corridor

Regarding Total's public health initiatives, ERI has documented for several years that villagers do not have access to basic medications in the pipeline corridor and that villagers cannot afford medical care in the pipeline corridor, despite Total and Chevron's claims that health care is free and universal in the corridor. Villagers explained to ERI that the better option to receive necessary medical attention is to make the arduous and dangerous journey to the Thailand-Burma border, where they can receive medical attention and medications in refugee camps.⁸³

Villager after villager explained to ERI how the only medication available to them in the Total clinics is paracetamol (acetaminophen).⁸⁴ To wit, one villager told ERI that the doctor who is supported by Total in Michauglaung is referred to as "Dr. Paracetamol."⁸⁵

The company denied this claim. In its response to ERI, Total claims that "in the first seven months of 2009, Total spent US\$50,000 on medication [for villagers in the pipeline corridor]."⁸⁶ The company then sardonically adds, "[that] would buy a lot of paracetamol."⁸⁷

Indeed, it would. However, ERI did not make any claims about how much money Total

2009).

80 ERI, *Total Impact*, *supra* note 3, at 47–62.

81 Total's response to ERI, *supra* note 1, at 8.

82 *Id.*

83 ERI, *Total Impact*, *supra* note 3, at 49–52.

84 *Id.*

85 *Id.* at 50.

86 Total's response to ERI, *supra* note 1, at 8.

87 *Id.*

spent on medications in 2009 or during any other year. Rather, ERI claims that local villagers have not received medications.⁸⁸ This confusion goes to the heart of the issue when it comes to the socio-economic program – for Total, the inputs rather than outcomes are of primary concern. The primary concern of ERI and the people in the Yadana area is how the company and its projects affect their lives.

ERI is pleased that Total voluntarily published the amount of money it claims to have spent on medications. ERI recommends that Total be fully transparent about the entire socio-economic program, both inputs and outcomes, as it appears that the claimed inputs are not fully reaching their intended recipients. Disclosures should include disaggregated data about its payments by year, category, and recipient.

Education Initiatives in the Pipeline Corridor

In *Total Impact*, ERI documented that Total's published information about education in the pipeline corridor was far less impressive on the ground. Local villagers tell ERI that teachers lack support and that the teachers' salaries are paid by the military government. In its response, Total claims the company supports the teachers, adding, "[w]e support 340 teachers in the pipeline area."⁸⁹

ERI also documented that local ethnic Karen students are not allowed to learn in the Karen language or about Karen culture,⁹⁰ which would be consistent with well-documented discrimination against Burma's ethnic nationalities by the largely ethnic Burman military regime.

In response, Total claims that the company "cannot be held responsible or criticized for what is taught in the schools of Myanmar as part of the standard national curriculum."⁹¹

Total acknowledges that "the ERI report criticizes the lack of quantitative assessments of the outcomes of Total's education program," and the company goes on to cite a statistic that "50% of the students at the Total-supported remedial school who took the secondary school graduation examination, passed it. The national average is 20%."⁹²

If independently verified and true, this would be a noteworthy achievement and one that ERI would applaud. However, ERI's criticism of the lack of quantifiable assessments of Total's socio-economic impacts is not a request that *Total* provide quantifiable surveys, but that genuinely independent empiricists survey the same socio-economic indicators around which Total claims successes. Ideally, the local communities themselves would take part in such assessments, but given the repressive conditions in Burma, independent and outside experts could more readily provide such quantitative assessments, which to be credible would have to be conducted outside the purview of the military regime's ministries and outside Total's influence.

88 ERI, *Total Impact*, *supra* note 3, at 49–52.

89 Total's response to ERI, *supra* note 1, at 9.

90 ERI, *Total Impact*, *supra* note 3, at 52.

91 Total's response to ERI, *supra* note 1, at 9.

92 *Id.*

The Micro-Credit Program in the Pipeline Corridor

In *Total Impact*, ERI amplifies the testimonies of local villagers who have participated in Total's micro-credit scheme in the pipeline corridor. Villagers recounted experience after experience that indicated the reality of the micro-credit program was not as seamless or effective as Total would have investors and policymakers believe. Rather, numerous villagers explained that their participation in the program ultimately caused them economic hardship, or in some cases that the program perpetuated predatory lending. ERI's conclusion was that it appeared the micro-credit scheme was "in need of critical attention."⁹³

Total claims that "nearly all of ERI's claims concerning the program are inaccurate."⁹⁴ The company goes on to address logistical details about the structure of the micro-credit program as contrary to what was published in *Total Impact*. However, Total does not in fact refute the testimonies of local villagers documented by ERI. Villagers told ERI, for example, that the program did not provide economic benefit,⁹⁵ that they had to relinquish their personal assets to repay loans from the program,⁹⁶ and that the program led to predatory lending.⁹⁷ Instead, Total cites loan officers who visit borrowers to verify that predatory lending is not happening.⁹⁸ While this may in fact be accurate, the reality on the ground is that there is abundant evidence of unmitigated predatory lending.

The Agricultural Program in the Pipeline Corridor

In *Total Impact*, ERI amplified local peoples' testimonies regarding aspects of Total's agricultural program. At the time of writing *Total Impact*, Total claimed on its website and in information provided to investors and policymakers that there were two model pig farms in the pipeline corridor. ERI knew this to be untrue. In *Total Impact*, ERI published a photo of a dilapidated and abandoned pig farm in the predominantly ethnic Karen village of Michauglaung, clarifying that there is in fact only one "model pig farm" in the pipeline corridor. Total confirmed ERI's claim, adding that the farm had been abandoned since 2006.⁹⁹

ERI also documented how villagers suffered economic losses due to their participation in the agricultural program. Villagers who purchased pigs through Total's program explained to ERI how they suffered net losses for a variety of reasons, including: being unable to afford the pig and chicken feed provided by the socio-economic program,¹⁰⁰ pigs falling ill and not recovering,¹⁰¹ and an eventual neglect of attention from the program's

93 ERI, *Total Impact*, *supra* note 3, at 56.

94 Total's Response to ERI, *supra* note 1, at 9.

95 ERI, *Total Impact*, *supra* note 3, at 56–57.

96 *Id.*

97 *Id.*

98 Total's Response to ERI, *supra* note 1, at 9.

99 Total's response to ERI, *supra* note 1, at 10.

100 ERI, *Total Impact*, *supra* note 3, at 57–60.

101 *Id.*

management.¹⁰²

Contrary to the tone of Total's response, the company does not actually refute these allegations, but instead acknowledges that local farmers "sometimes lose money," adding simply that "it should be remembered that Total does not set market prices."¹⁰³ This qualification by the company would appear as though Total would be willing to accept responsibility for positive economic effects of its socio-economic program, but not negative effects, such as farmers losing money by participating in their programs.

Again, ERI's objective is to ultimately improve the livelihoods of local people in these socio-economic areas, not to drive away programs that could otherwise be effective given proper management.

Total's "comments" with regard to ERI's recommendations

ERI's recommendations for Total and other relevant actors are included at the end of this publication and on pages 72-74 of *Total Impact*, and on pages 46-48 of *Getting It Wrong*.

In its response to ERI's recommendations, Total published comments on five subject areas, titled by the company as follows: "Financial transparency;" "Broadening our sphere of activities;" "Demilitarizing the pipeline area;" "ILO statements;" and "Directing complaints to the ILO." Total's responses were inadequate and raise important questions. ERI's response, in turn, is below.

Financial Transparency

Regarding financial transparency, ERI recommended that Total "[p]ublish all payments made to the Burmese authorities throughout the life of the Yadana Project." Total responded by publishing that "Total's interest in the contract generated US\$254 million for the state in 2008."¹⁰⁴

ERI commends Total for publishing this figure, but also notes that it is far short of the amount of data for which ERI is recommending transparency. Total is actively involved in the Extractive Industries Transparency Initiative (EITI) and sits on EITI's board. The company has also published payments it has made to governments of other African countries where it operates. The company would thus understand the amount and type of data that would satisfy a call for thorough revenue transparency. Moreover, there are no provisions in the publicly available governing documents of the project that prohibit Total from disclosing their payments to the military regime. These documents are the Production Sharing Contract, the Memorandum of Understanding, the Export Gas Sales Agreement between Total and the Myanmar Oil and Gas Enterprise (MOGE), and the Export Gas Transportation Agreement. ERI thus reiterates its recommendation that the company practice full

102 *Id.*

103 Total's response to ERI, *supra* note 1, at 10.

104 *Id.* at 11.

revenue transparency around its project in Burma from 1992 to the present day. This recommendation is likewise intended for Total's partners Chevron and PTTEP.

“Broadening our sphere of activity”

Presumably in reference to ERI's recommendation that Total “acknowledge a wider sphere-of-responsibility in the Yadana ‘pipeline corridor,’ delineated by the impacts of the Burma Army pipeline security battalions,” the company responded with a comment about “broadening” its “sphere of activity.”¹⁰⁵ ERI did not call on Total to “broaden its *sphere of activity*,” but instead to broaden its “sphere-of-responsibility,” which is an important distinction.

“Demilitarizing the pipeline area”

Presumably in response to ERI's recommendation that Total “work towards cessation of Burma Army security presence in the Yadana Project area,” the company claimed that “countries have a sovereign right to determine the military presence in any given area of their territory.”¹⁰⁶ In effect, the company thus confirmed that it would be impossible for an oil company to undertake a project in military-ruled Burma without the direct or indirect involvement of the Burma Army. Again, it is critical to note that there was little Burma Army presence in the Yadana area before preparations for the Yadana project began.

“ILO statements”

Since 2003, Total maintained a statement on their website that read, “[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.”¹⁰⁷ This statement was removed shortly before ERI released our reports in September of 2009. ERI confirmed from the ILO directly that it had never made such a statement and that it knows Total's claim to be untrue.

In *Total Impact*, ERI recommended that Total “[p]ublicly retract and explain Total's untrue claims to have eradicated forced labor in the Yadana pipeline corridor, especially the statement [formerly] on the Total website that falsely attributes this claim to the International Labour Organization.” In its response to ERI, the company simply failed to explain the false statement on its website. Instead, Total quietly removed the statement with no explanation and replaced it with a statement made by the ILO that does not support their claim to have eradicated forced labor in the area.¹⁰⁸ Total has still not admitted nor addressed why from 2003-2009 they lied to the general public about the ILO's statements regarding forced labor in their project area.¹⁰⁹

105 *Id.*

106 *Id.*

107 See archived copy of Total, *Human Rights in Myanmar*, at http://web.archive.org/web/20080113131822/http://burma.total.com/en/contexte/p_1_1.htm (preserving a copy of Total's website as archived on Jan. 13, 2008).

108 See ERI, *Total Impact*, *supra* note 3, at 28.

109 Total's response to ERI, *supra* note 1, at 11.

Since the release of *Total Impact*, investors have told ERI that Total has privately admitted to them the ILO statement was “a mistake.” This discreet acknowledgement was not public and does not account for the length of time the false statement remained unchanged on the company’s website while other substantive changes were made to the site, as documented by ERI.¹¹⁰

In short, when asked whether the ILO ever certified that Total had eradicated forced labor in the pipeline corridor, as the company claimed, the only correct answer is a categorical “no.” ERI recommended that Total “publicly retract and explain” the false claim.¹¹¹ The company failed to do so. ERI renews its recommendation.

“Directing complaints to the ILO”

ERI recommended that Total facilitate local villagers’ option to file a formal complaint with the ILO regarding instances of forced labor in the pipeline area.¹¹² In its response to ERI, the company did not confirm that it will do so, which is concerning.

Traditionally, apart from ERI and others’ documentation,¹¹³ instances of forced labor in the pipeline area have been largely isolated from the outside world, including the ILO. ERI has learned that no complaints from the Yadana area have been received by the ILO representatives in Burma, making it the only area in the country with such a distinction. Total attributes this to the company’s supposed “vigilance,”¹¹⁴ an exceedingly dubious claim considering evidence documented by ERI.

Local people should be aware of their rights to report abuses under the laws of Burma, protected when they do report abuse, and Total should facilitate awareness-raising activities and facilitate complaints to the ILO. A useful first-step would be awareness-raising trainings by the ILO on the law and protections regarding forced labor with villagers and military personnel in the area.

ERI is concerned that perhaps Total has actively failed to facilitate complaints to the ILO out of concern for its international image or potential liabilities, in effect shortcutting the ILO’s important mandate in Burma, and in effect determining for the villagers what measure of justice they will access.

Other Areas Unaddressed by Total in its Response to ERI

There are several sections of ERI’s report *Total Impact* to which the company failed to respond. These include ERI’s research into the environmental impacts of the company’s project, the company’s claims about creating employment in Burma, and the company’s

110 ERI, *Getting it Wrong*, *supra* note 3, at 42.

111 ERI, *Total Impact*, *supra* note 3, at 72.

112 *Id.*

113 For other documentation from the pipeline area, *see* reports by Karen Human Rights Group (KHRG), at <http://www.khrg.org>.

114 Total’s response to ERI, *supra* note 1, at 11.

national impacts.

Total's Environmental Impacts in Burma

In *Total Impact*, ERI presented new information and documentation regarding the often overlooked environmental impacts of Total and Chevron's Yadana pipeline. The report documents serious problems with Total's Environmental Impact Assessment (EIA), conducted prior to the project's construction and legally obtained by ERI during the discovery process in the *Doe v. Unocal* litigation in US courts.¹¹⁵ The report marks the first time that information from this document appeared publicly or faced the public scrutiny of a third-party.

In *Total Impact*, ERI also documents new information about forced labor related to environmental issues in the pipeline corridor, such as villagers forced by pipeline security battalions to log trees in the pipeline area and soldiers who in turn profit from the illicit activities.¹¹⁶ ERI documents ongoing adverse impacts associated with an environmental protection group established by Total in the pipeline corridor. Lands traditionally farmed by local villagers have been designated as protected by a Total-supported conservation group.¹¹⁷ Alternatives were not presented to local people, who were largely uninvolved in the process of establishing this group and have suffered adverse impacts.¹¹⁸

Total did not respond to these allegations.

Total's Contributions to Employment in Burma

In *Total Impact*, ERI presents evidence that the Yadana pipeline has not made meaningful contributions to employment in Burma.¹¹⁹ There are two reasons for this: One, oil and gas projects are capital intensive, not labor intensive, which means no matter where they occur they often fail to make positive contributions to national employment rates. Indeed, empirical evidence suggests oil and gas projects can actually have adverse impacts on national employment rates in the resource-rich developing world, through an economic phenomenon known as "Dutch Disease."¹²⁰

115 ERI, *Total Impact*, *supra* note 3, at 63–66. For information on the *Unocal* litigation, see *John Doe I v. Unocal Corp.*, 395 F.3d 932, 943 (9th Cir. Cal. 2002) (chronicling case history).

116 *Id.* at 66–69.

117 *Id.* at 69–70.

118 *Id.*

119 *Id.* at 60–61.

120 See, e.g., Sweder Van Wijnbergen, *Inflation, Employment, and the Dutch Disease in Oil-Exporting Countries: A Short-Run Disequilibrium Analysis*, 99 Q. J. ECON. 233 (1984) (arguing that oil boom could create greater unemployment in short-run for countries with a large non-tradable goods sector, including much of the developing world); Luis Carlos Bresser-Perreira, *The Dutch Disease and its neutralization: a Ricardian approach*, 28 BRAZ. J. POL. ECON. 47, 60 ("The most important symptoms of Dutch disease are exchange rate overvaluation, low growth of the manufacturing sector, fast increase in the services sector, high average wages, and unemployment.") (emphasis added); Nienke Oomes & Katerina Kalcheva, *Diagnosing Dutch Disease: Does Russia Have the Symptoms?*, IMF Working Paper WP/07/102, at 8–9 (noting that in expansion of energy sector leads to decreased manufacturing output and employment and may lead to decreased employment in services sector).

Total's project has also not contributed meaningfully to local job creation, contrary to the company's claims, because local ethnic villagers are largely excluded from the project workforce. Villagers tell ERI that they would like to work for Total but are discriminated against by the majority ethnic Burman military regime, which controls hiring on the Yadana project.¹²¹

Total did not respond to these allegations.

Total's National Philanthropic Programs and National Impacts in Burma

In *Total Impact*, ERI commends Total for its national philanthropic programs in Burma and encourages more contributions from the company. However, ERI points out that the company's positive national impacts must be measured against the multi-billion dollar revenues the company's project has generated for the Burmese military regime. ERI estimates that since 2000, the Yadana pipeline has generated approximately US\$4.83 billion dollars profit for the Burmese regime. Rather than contribute to welfare of the people of Burma, ERI exposed how these and other export revenues are largely excluded from the national budget and in large part have made their way into two offshore banks in Singapore: The Overseas Chinese Banking Corporation (OCBC) and DBS Group.¹²²

In its response, Total states correctly that the banks have formally denied the allegations, but the company does not refute ERI's estimations of the Yadana project revenues nor analyze their national impacts in Burma in the context of the revenue their project has generated for the Burmese regime.

The 2009 ERI report *Getting It Wrong*

Lastly, Total did not respond to any of the serious allegations in the ERI report *Getting It Wrong: Flawed "Corporate Social Responsibility" and Misrepresentations Surrounding Total and Chevron's Yadana Gas Pipeline in Military-Ruled Burma (Myanmar)*.¹²³ This report was released in September 2009 simultaneously with *Total Impact* and serves as a companion report to *Total Impact*, documenting fundamental problems with Total's impact assessments conducted by the Corporate Engagement Project of the US-based organization CDA Collaborative Learning Projects (CDA). The report also documents misinformation communicated by Total to investors, policymakers, and the general public regarding its impacts and presence in Burma.

Total did not respond to these allegations.

121 ERI, *Total Impact*, *supra* note 3, at 61.

122 *Id.* at 43.

123 *See supra* note 3.

To Total, Chevron, and PTTEP:

- Publish all payments made to the Burmese authorities throughout the life of the Yadana Project.
- Acknowledge a wider sphere-of-responsibility in the Yadana area delineated by the impacts of the Burma Army pipeline security battalions.
- Direct local complaints of forced labor immediately to the International Labour Organization (ILO).
- Work towards cessation of Burma Army security presence in the Yadana Project area.
- Publicly explain Total's untrue 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 (ILO).
- Devote adequate attention to their socio-economic programs, including third-party, independent quantitative assessments of outputs from the specific programs to assess impacts and improve effectiveness.

To the International Community:

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

To Investors and Shareholders in Extractive Industry Companies in Burma:

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

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

- Cease new investments or project construction until negative human rights and environmental impacts can be adequately mitigated or prevented, and local communities 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 these recommendations are implemented.
- Conduct independent, objective, and verifiable third-party environmental and human rights impact assessments before the initiation of any oil and gas projects in Burma; include the full and free participation of local people and make the entire assessments publicly available in local languages.
- Facilitate independent, verifiable, third-party human rights monitoring of existing projects.
- Recognize 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 the State Peace and Development Council (SPDC):

- 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.

- Grant unfettered access to independent third-parties to conduct secure, anonymous assessments, fact-finding, and monitoring of existing or planned development projects in Burma.
- Adopt and implement the Extractive Industries Transparency Initiative.

ADDENDUM TO RECOMMENDATIONS

EarthRights International (ERI) is not advocating for Total or Chevron to withdrawal from Burma. This position does not in any way imply an ethical endorsement of the companies' presence in the country, nor does it imply a preferential option for the presence of western firms over Asian firms.¹²⁴

ERI opposes new investment or new projects in Burma's extractive sectors at this time.¹²⁵ Overwhelming evidence demonstrates that oil and gas projects in military-ruled Burma lead directly and indirectly to serious human rights and environmental impacts, during planning, at the time of construction and during the duration of operations. Participating in these projects requires a partnership with the SPDC, which is accused of committing crimes against humanity and war crimes against the people of Burma,¹²⁶ and project security requires a partnership with the Burma Army, which routinely commits human rights abuses.

ERI continues to work to promote and protect human rights and the environment in Burma. Total, Chevron and PTTEP continue to be linked to serious human rights abuses in Burma

124 Both western and Asian corporations operating in Burma's oil and gas sector have had negative human rights and environmental impacts. See ERI and SGM 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> (last visited Dec. 4, 2009); Arakan Oil Watch (AOW), *Blocking Freedom* (Oct. 2008), available at <http://www.oilwatch.org/doc/paises/birmania/BlockingFreedom.pdf> (last visited Dec. 4, 2009); Shwe Gas Movement (SGM), *Corridor of Power: China's Trans-Burma Oil and Gas Pipelines* (September 2009), available at www.shwe.org (last visited Dec. 10, 2009); Shwe Gas Movement (SGM), *Supply and Command* (July 2006), available at <http://www.shwe.org/media-releases/publications/file/SUPPLYANDCOMMAND.pdf> (last visited Dec. 4, 2009); Pa-O Youth Organization, *Robbing the Future: Russian-Backed Mining Project Threatens Pa-O Communities in Shan State, Burma* (June 2009), available at [http://www.burmalibrary.org/docs07/Robbing_the_Future\(en\).pdf](http://www.burmalibrary.org/docs07/Robbing_the_Future(en).pdf) (last visited Dec. 4, 2009).

125 This recommendation is apolitical. It is evidence-based and rights-based, drawing on a formidable body of firsthand research and documentation collected by ERI and others since 1994, much – but not all – of which has been cited extensively in this report. This research is available at http://www.earthrights.org/campaignfeature/yadana_pipeline.html and <http://www.earthrights.org/publications/>; For other recent reports on the harmful impacts of oil and gas development in Burma, See Human Rights Foundation of Monland (HURFOM), *Laid Waste: Human Rights Along the Kanbauk to Myaing Kalay Gas Pipeline* (May 2009), available at <http://rehmonnya.org/data/Laid-Waste.pdf> (last visited Dec. 4, 2009); *Blocking Freedom*, *supra* note 124; *Supply and Command*, *supra* note 124; *Corridor of Power*, *supra* note 124.

126 See International Human Rights Clinic at Harvard Law School (IHRC), *Crimes in Burma* (2009), at 74, available at <https://www.law.harvard.edu/programs/hrp/documents/Crimes-in-Burma.pdf> (last visited Dec. 4, 2009) (calling for a U.N. Security Council commission of inquiry into crimes against humanity and war crimes and documenting “a *prima facie* case for the existence of violations amounting to possible crimes against humanity and war crimes.”).

committed by pipeline security battalions and continue to refuse key elements of corporate responsibility related to their operations in Burma, such as revenue transparency. ERI therefore reiterates the preceding recommendations.

Aux groupes Total, Chevron et PTTEP (*Petroleum Authority of Thailand Exploration & Production*) :

- Publier le montant de tous les versements effectués aux autorités birmanes depuis le démarrage du projet Yadana.
- Reconnaître l'extension la sphère de responsabilité dans le « corridor du gazoduc » de Yadana aux zones délimitées par les impacts résultant de la présence des bataillons de l'armée birmane chargés de garantir la sécurité du gazoduc.
- Œuvrer afin qu'il soit mis fin à la présence de l'armée birmane dans la zone d'opération du projet Yadana.
- Publier un communiqué officiel expliquant et démentant les fausses annonces faites par Total à propos de l'éradication du travail forcé dans la zone du corridor du gazoduc de Yadana, plus spécifiquement la note que le groupe français a publiée sur son site officiel attribuant faussement cette affirmation à l'Organisation internationale du travail.
- Transmettre sur-le-champ les plaintes pour travail forcé à l'Organisation internationale du travail et ne pas les déposer dans les « boîtes à plaintes » de Total.

À la communauté internationale :

- Exercer une pression ciblée sur le secteur pétrolier birman (pétrole et gaz), prendre également des mesures restrictives afin que le *State Peace and Development Council* (le Conseil de l'État pour la paix et le développement, instance dirigeante du pays) ne puisse avoir accès aux marchés de capitaux en rapport avec les revenus gaziers actuellement générés par les projets de Yadana et de Yetagun ainsi que ceux qui découleront du projet de Shwe. Adopter également des mesures multilatérales ciblées afin de limiter les transactions internationales conclues par des personnes physiques et des institutions liées au secteur pétrolier en Birmanie.
- Maintenir et renforcer des restrictions ciblées sur tout nouvel investissement dans les secteurs pétrolier (pétrole et gaz), minier, forestier et hydroélectrique birman tant que des conditions préalables n'auront pas été solidement mises en place, et en particulier :
- la divulgation complète des versements effectués au *State Peace and Development Council* ;
- des garanties fiables sur les conditions d'exécution des projets de développement de grande ampleur afin qu'ils ne présentent pas un risque excessif de violations des droits de l'homme liées à la présence de l'armée birmane chargée de la sécurité des projets ;
- des garanties fiables sur la libre participation des communautés locales aux décisions relatives au développement, y compris le consentement préalable, donné librement et en connaissance de cause avant le démarrage des chantiers ;
- un recours aux instances judiciaires du pays d'origine des opérateurs pour les victimes étrangères des violations des droits de l'homme liées aux activités de l'entreprise.
- Adopter et renforcer les mécanismes juridiques et réglementaires dans le but de développer la transparence, les cadres normatifs et l'harmonisation de tous les systèmes. Ces mécanismes doivent avoir pour objectif de favoriser la stabilité des opérations des sociétés à l'échelle internationale, de prévoir la responsabilité des entreprises pour complicité dans les atteintes aux droits de l'homme commises à l'étranger, et garantir aux victimes un accès aux juridictions étrangères. Les

organisations de la société civile et les citoyens de ces pays devraient préconiser l'adoption de lois instituant de tels mécanismes.

Aux investisseurs et actionnaires des entreprises extractives opérant en Birmanie :

- Interpeller avec fermeté les entreprises sur leurs investissements, leurs activités en Birmanie et leurs répercussions dans le pays en fixant des objectifs à réaliser suivant des échéances précises en vue d'améliorer leur comportement.
- Appuyer les résolutions des actionnaires qui préconisent des politiques et des pratiques visant à améliorer l'État de droit, la promotion ainsi que la protection des droits de l'homme et de l'environnement ; la transparence des recettes et tout autre forme de transparence ; les droits des peuples autochtones et des communautés concernées, y compris le droit au consentement préalable, donné librement et en connaissance de cause.
- Promouvoir les objectifs de la campagne *Publish What You Pay* (« Publiez ce que vous payez ») et l' *Extractive Industries Transparency Initiative* (« Initiative pour la transparence dans les industries extractives »).

Aux entreprises extractives ayant investi ou envisageant d'investir en Birmanie :

- Cesser tout nouvel investissement ou projet de construction tant que des mesures appropriées visant à en réduire ou à en prévenir les effets négatifs sur les droits de l'homme et sur l'environnement n'auront pas été prises et tant que les communautés locales ne pourront pas exercer leur droit au consentement préalable, donné librement et en connaissance de cause. Sont particulièrement concernées les entreprises qui participent au développement du projet gazier de Shwe, y compris Daewoo International, Korea Gas Company, Gas Authority of India Ltd., ONGC Videsh, Chinese National Petroleum Company, PetroChina et d'autres encore. Ces entreprises devraient arrêter immédiatement toutes activités liées au projet tant que les recommandations présentées dans ce rapport n'auront pas été mises en oeuvre.
- Confier à des tiers la réalisation d'évaluations des incidences sur l'environnement et sur les droits de l'homme menées de façon indépendante, objective et vérifiable, avant le démarrage de tout projet pétrolier et gazier en Birmanie ; y inclure la libre et entière participation de la population locale et publier l'intégralité de ces évaluations dans les langues vernaculaires.
- Faciliter le contrôle du respect des droits l'homme, par des tiers, et de manière indépendante et vérifiable, s'agissant des projets en cours.
- Reconnaître le droit au consentement préalable, donné librement et en connaissance de cause comme étant un droit fondamental des peuples autochtones et consulter des tiers objectifs et indépendants afin que ce droit soit respecté dans le cadre des opérations envisagées par l'entreprise.
- Rendre public le montant de tous les versements effectués aux autorités birmanes.

Au State Peace and Development Council (SPDC)¹²⁷ :

- Respecter les obligations relatives aux droits de l'homme fondamentaux et à la protection de l'environnement en vertu du droit international. Cesser les atteintes aux droits de l'homme à l'encontre des populations vivant dans la région du gazoduc de Yadana et sur tout le territoire birman, mettre fin également aux exécutions extrajudiciaires, aux violences sexuelles, aux actes de torture, à l'usage excessif de la force, aux détentions et emprisonnements arbitraires, au travail forcé et aux déplacements forcés.
- Respecter et protéger le droit fondamental des populations birmanes à participer aux décisions relatives au développement, notamment le droit des groupes ethniques autochtones birmans au consentement préalable, donné librement et en connaissance de cause.
- Permettre à des tiers indépendants d'évaluer, d'enquêter et de contrôler librement, de façon anonyme et sans risque, les projets de développement en cours ou à venir en Birmanie.
- Adopter et mettre en oeuvre l'*Extractive Industries Transparency Initiative*.

Note additionnelle aux recommandations

EarthRights International (ERI) ne préconise pas le retrait de Total ou de Chevron de la Birmanie. Cette mise au point ne signifie en aucun cas que l'organisation cautionne sur le plan éthique la présence de ces groupes dans le pays, elle n'implique pas non plus une préférence pour la présence d'entreprises occidentales par rapport à des entreprises asiatiques.

ERI s'oppose à ce que tout nouvel investissement soit effectué ou à ce que de nouveaux projets soient lancés, pour l'heure, dans les secteurs de l'industrie extractive en Birmanie. De très nombreux éléments prouvent que les projets pétroliers et gaziers en cours dans ce pays dirigé par l'armée ont eu de graves conséquences directes ou indirectes sur les droits de l'homme et sur l'environnement dès leur mise en chantier et pendant toute leur durée d'exploitation. Pour participer à ces projets il faut signer un partenariat avec le SPDC, qui est accusé de crimes contre l'humanité et de crimes de guerre contre la population birmane;¹²⁸ de même, pour garantir la sécurité des chantiers, il faut conclure un accord avec l'armée birmane qui est, elle, responsable d'atteintes régulières aux droits de l'homme.

ERI continue à promouvoir et à protéger les droits de l'homme ainsi que l'environnement en Birmanie. Total et Chevron sont toujours liés aux graves atteintes aux droits de l'homme

127 EarthRights International reconnaît que la junte militaire Birmane n'a pas su préserver les droits les plus élémentaires de la population Birmane et, par conséquent, ne s'attend pas à ce que le SPDC applique les recommandations mentionnées ici. Toutefois, ERI est convaincu qu'il est important d'indiquer les mesures qu'un gouvernement, un tant soit peu responsable, devrait appliquer pour commencer à respecter les droits fondamentaux de la population Birmane.

128 See IHRC, *Crimes in Burma*, *supra* note 126, at 74 (calling for a U.N. Security Council commission of inquiry into crimes against humanity and war crimes and documenting "a *prima facie* case for the existence of violations amounting to possible crimes against humanity and war crimes.").

commises en Birmanie par les bataillons chargés de garantir la sécurité du gazoduc et ces entreprises persistent à refuser des éléments essentiels de la responsabilité des entreprises en rapport avec les opérations qu'elles mènent en Birmanie, telle que la transparence des recettes. En conséquence, ERI réitère les recommandations citées précédemment.