Unocal’s Destructive Engagement in Burma—
the Lawsuit Ensues*

Danya Marshman*

Earlier this year, a San Francisco federal appeals court continued the saga of the Unocal-Yadana Pipeline case, now stretching into its 7th year of litigation. On February 14, the 9th U.S. Circuit Court of Appeals announced that it would reconsider its earlier ruling, which reinstated a lawsuit calling question to the Unocal Corporation’s involvement in the mistreatment and murder of several Burmese villagers during the pipeline’s construction. Granting Unocal’s request, a majority of the court’s 24 judges voted for a rehearing in front of an 11-judge panel.

Background

The Yadana Project was a joint legal venture between French oil giant Total, California-based Unocal, and the Burmese government. The arrangement was to build a natural gas pipeline extending from Burma to Thailand via the Andaman Sea. Prominent Burmese human rights advocates didn’t initially oppose Unocal’s position, seeking a compromise—for Unocal to develop an effective plan to supervise pipeline construction, ensuring that fair labor standards were applied while monitoring the working villagers. In 1994 and 1995, before the physical construction began, advocates representing the Burmese villagers met with the Unocal Board of Directors, including President John Imle, on several occasions. According to U Maung Maung, General Secretary of the Federation of Trade Unions of Burma, the Unocal executives treated the human rights advocates with “arrogant contempt.” He believes the meetings were held only to appease outside observers weary of the plan rather than to foster cooperation with the human rights advocates.1
In another meeting on January 4, 1995, President John Imle warned, “Let’s be reasonable about this. What I’m saying is that if you threaten the pipeline there’s gonna be more military. If forced labor goes hand and glove with the military, then yes, there will be more forced labor. For every threat to the pipeline there will be a reaction.” These threats are a clear indication of his awareness of the government’s barbaric practices and his willingness to condone the military’s inhumane behavior for the financial gain of the Unocal Corporation.

Material Evidence

The first legal proceedings of John Doe & Others v. Unocal Corporation and Others took place in the U.S. in 1996. The Federation of Trade Unions of Burma (FTUB) and the National Coalition of the Government of Burma (NCGUB) joined the victimized villagers in the arraignment of France-based Total SA, the Unocal Corporation, senior officers of Unocal, and the Burmese military. The plaintiffs held that Unocal was completely aware of the forced labor under which the construction of the pipeline took place, yet allowed this practice and several other human rights violations, to continue. Under numerous international statutes, including the Universal Declaration of Human Rights, it is illegal for corporations to allow human rights abuses to take place for the corporation’s benefit, if said corporation is aware that such activity is taking place. The villagers allege that the Unocal Corporation had been aware of the Burmese government’s previous records on human rights before beginning the project. In addition, they claim that executive members of Unocal knew that abuses were taking place during the construction. Despite their knowledge, Unocal’s non-reluctance to continue the project exhibits behavior in violation of international law.

During and after the construction of the Yadana pipeline, many laborers came forward, insisting that they, and other workers around them, were subject to forced labor, beatings, and rape by government soldiers stationed along the pipeline. Although the government claimed that the primary purpose of the soldiers was to guard the pipeline, the villagers asserted that they also forced resident laborers to work without pay, and shot others who were too weak, or refused. These claims were denied by both Unocal and the Burmese government, despite the flood of irrefutable substantiation from lawyers, human rights organizations, and first-hand witnesses.

Some of the most incriminating evidence was found in the Robinson cable, a declassified cable sent from the U.S. Embassy in Rangoon to the U.S. State Department in 1995. The cable chronicles a meeting between
Robinson acknowledged that army units providing security for the pipeline construction do use civilian porters and Total /Unocal cannot control their recruitment process.”

Nor does he deny that Total and Unocal gave the Burmese military access to aerial photos and other information in order to “show the military where they need helipads built and facilities secured.” The construction of these helipads, however, was left to the military:

“Robinson indicated at one point in the discussion that the military had not given Total/Unocal foreign staff access to helipad sites within many miles of the border during the period of their construction, but had allowed access after they were built. What has gone on at those sites is perforce out of view of expats.”

Although Robinson noted that he didn’t think that Total would hesitate to transport Burmese military commanders in company helicopters, his most legally pertinent statement concerns Unocal’s relationship with the Burmese military:

“On the general issue of the close working relationship between Total/Unocal and [sic] the Burmese military, Robinson had no apologies to make. He stated forthrightly that the companies have hired the Burmese military to provide security for the project and pay for this through the Myanmar Oil and Gas Enterprise (MOGE). He said three truckloads of soldiers accompany project officials as they conduct survey work and visit villages. He said Total’s security officials meet with military counterparts to inform them of the next day’s activities so that soldiers can ensure the area is secure and guard the work perimeter while the survey team goes about its business.”

This belies Unocal’s claims that it is not responsible for the acts of the Burmese military. When Unocal and Total hire the military, tell them where to work and how to behave, and depend on them for the security of their project, they are morally and legally responsible for the abuses that their security forces commit. As the author of the cable concluded, “it is impossible to operate in a completely abuse-free environment when
you have the Burmese government as a partner.”

The August 2000 deposition by the District of California Central Court is further testament to Unocal’s prior awareness of the government’s policies before the construction of the pipeline began. According to the Control Risk Group, a consulting company hired by Unocal to assess the risks involved in foreign investment,

“Throughout Burma the government habitually makes use of forced labour to construct roads. In Karen and Mon states the army is forcing villagers to move to more secure sites (similar to the “strategic hamlets” employed by the U.S. Army in the Vietnam War) in the hope of cutting off their links with the guerrillas. There are credible reports of military attacks on civilians in the regions. In such circumstances Unocal and its partners will have little freedom of manoeuvre. The local community is already terrorized: it will regard outsiders apparently backed by the army with extreme suspicion.”

Also in the depositions are the discussions between Unocal and Total concerning the potential problems of employing the Burmese military to provide security for the project:

“…in our discussions between Total and Unocal, we said that the option of having the military provide protection for the pipeline construction and operation of it would be they might proceed in a manner that would be out of our control and not be in a manner that we would like to see them proceed, I mean, going to the excess. So we didn’t know. It’s an unknown, and its something that we couldn’t control. So that was the hazard we were talking about. It was out of our control if that kind of full relinquishment of security was given to the government.”

**Jurisdiction**

In 1997, a U.S. federal district court in Los Angeles agreed to hear Doe v. Unocal. The Court concluded that corporations and their executive officers can be held legally responsible under the Alien Tort Claims Act for violations of international human rights norms in foreign countries, and that U.S. courts have the authority to adjudicate such claims. After three years of discovery, the plaintiffs presented evidence demonstrating that, in the Court’s words,

“Unocal knew that the military had a record of committing human
rights abuses; that the Project hired the military to provide security for the Project, a military that forced villagers to work and entire villages to relocate for the benefit of the Project; that the military, while forcing villagers to work and relocate, committed numerous acts of violence; and that Unocal knew or should have known that the military did commit, was committing and would continue to commit these torturous acts.”

The Court also concluded that “the evidence does suggest that Unocal knew that forced labor was being utilized and that Unocal benefitted from the practice” and that “The violence perpetrated against Plaintiffs is well documented in the deposition testimony filed under seal with the Court.” Nonetheless, the Court dismissed the case, concluding that Unocal could not be held liable unless it was proven that they wanted the military to commit abuses, and that plaintiffs had not made this evident. 5

Subsequently, on August 20, 2001, Unocal’s motion to dismiss the case from state court was rejected. Because the plaintiffs’ state law-based claims against Unocal were dismissed without a ruling, the plaintiffs were able to re-file the same claims in California state court. Unocal argued to the state court that the federal court’s dismissal barred the plaintiffs’ state case on the premise that federal and state law are the same. The Court did not accept the argument, noting that state law does indeed differ from federal law. Unocal also made a number of arguments based upon the decisions of the U.S. Supreme Court and the U.S. Court of Appeals for the First Circuit. In particular, Unocal argued that it would violate the U.S. Constitution for a state court to hear the plaintiffs’ claims because doing so would intrude upon U.S. foreign relations, and that plaintiffs’ claims are preempted by the federal Burma sanctions law. The court turned aside all of these arguments.

June 11, 2002 marked another precedent-setting day in the case against Unocal when the lawsuit survived Unocal’s motion for summary judgment. The decision of the Superior Court of California made the case against Unocal the first in U.S. history in which a corporation would stand trial for human rights abuses committed abroad.

In that decision, Judge Victoria Chaney held that the case against Unocal should go to trial because there are material issues of fact with respect to whether Unocal is responsible for human rights violations. Specifically, the Court found evidence that would allow a jury to find that Unocal’s joint venture hired the military and that Unocal is therefore vicariously liable for the military’s human rights abuses, and to conclude that Unocal breached California Constitutional and Statutory law in its operations. 6
David vs. Goliath: The Lawsuit

The essence of the Court of Appeal’s decision is that US law prohibits a company from having knowing practical assistance in, or encouragement of, practices that had a significant effect on forced labor, murder, or rape. Unocal documents showed the company’s knowledge of military involvement in the pipeline’s construction through independent documents from the US Embassy in Rangoon, Burmese authorities, and inter-office emails. The facts presented in the pre-trial phases include overwhelming evidence that the Burmese military forced villagers to work during construction of the pipeline and for militarisation of the area. The evidence shows that Unocal knew the reputation of the military, knew these abuses were likely to occur, and knowingly benefitted from the actions of the military.\(^7\)

Through Unocal officers, US government reports, and most importantly, human rights organizations, the prosecution has been able to gather enough evidence to present a solid and convincing case against the Unocal Corporation. In striving to prove that Unocal was aware of the government’s treatment of pipeline laborers, some of the most seemingly insignificant reports and documents have been implemented as key evidence in order to impress the validity of the case. The value these accounts are to the case and the attention they have received serves as encouragement to the human rights organizations, activists and journalists, who must track and maintain seeming it obscure records despite their lack of immediate benefit.

The Junta’s longstanding record of human rights violations has also been of continued speculation throughout the case. The court has spent ample time discussing which law should apply to the offences presented in the scope of relevant international law. The court has considered the status of forced labor in international law and found that, like slavery, the prohibition against forced labor has become a general principle of international law applicable in all countries. The court has also referenced the decisions and principles coming from the International Criminal Tribunals for former Yugoslavia and Rwanda to support the ruling against Unocal. This demonstrates the importance of such international bodies, and reaffirms the urgency with which the International Criminal Court should begin operating to assist in development of this area of the law.\(^8\)

The lawsuit is of additional importance for the future of human rights advocacy and court procedure. The defendant, Unocal, is based in the US, while the events in question took place in Burma. Because of US legal doctrine, it has been very difficult to bring cases from other countries to

---

The court has also referenced the decisions and principles coming from the International Criminal Tribunals for former Yugoslavia and Rwanda to support the ruling against Unocal. This demonstrates the importance of such international bodies, and reaffirms the urgency with which the International Criminal Court should begin operating to assist in development of this area of the law.
US courts, even when US defendants are central to the case. The expanded application of the Alien Tort Reforms Act in the Doe vs Unocal decision has overcome this obstacle.

The further publicizing of the case will create a much broader awareness among the multi-nationals of the world that seek corporate profit at any expense. Though U.S. sanctions have prohibited trade relations with Burma for several years, the financial benefits of engaging in business transactions with the Junta have not fully prevented the agencies of U.S. from associating with Burma. Concern over Unocal case forces other powerful, controlling businesses to be more cognizant of international edicts, forewarned by the Unocal’s experience of investment with oppressive foreign governments. As Unocal has come to learn throughout the past 7 years of litigation, the smaller parties with whom they share business interactions are very significant, despite their limited resources or capital worth. The perseverance, and relative success, of a lawsuit brought about by the seemingly harmless Burmese villagers will serve as a reminder to all formidable, authoritative corporations—international law has regard for the interests of all citizens, even if multinationals do not.

*The author would also like to thank Mr. B.K. Sen for facilitating the production of this article.

Endnotes

* Danya Marshman graduated from Princeton University in 2000 with a degree in Anthropology. She is a legal researcher with the Burma Lawyers’ Council, Bangkok office.

3. “John Doe I, et al., Plaintiffs, v. Unocal Corp.; Union Oil Company of California; John Imle; and Roger Beach, Defendants…” August 31, 2000, United States District Court for the Central District of California, case no. CV 96-6959 RSWL (BQRx) court deposition.
6. Ibid.