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On Corporate Social Responsibility and Burma's Extractive Industries

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Good Morning,

Thank you to IQPC and the conference organizers for the opportunity to participate in this important conference on local content and corporate social responsibility (CSR) in the extractive industries.

Rare is the occasion, like this, when EarthRights International (ERI) and the oil industry are in direct dialogue. Part of the reason for that is that at ERI we don't usually work *with* oil companies, or even with corporate social responsibility (CSR) firms. Rather, we're usually involved in litigation or advocacy on behalf of and with local communities who have suffered serious human rights abuses in connection to oil, gas, and mining projects, or in working with community leaders in the area of education about human rights and environmental issues.

That said, we do recognize the critical importance of CSR, for business and for communities, and the evolution and growing attention to CSR in the industry is encouraging.

I was invited to speak today about the impacts of natural gas development and corporate social responsibility programs in Burma (Myanmar). There are two main points I'd like to stress with regard to that, but first I'd like to preface them by proposing that while the situation in Burma is unique, some of the issues I will discuss today may be applicable to other contexts and other developing countries beyond Burma. We hope you find it helpful.

The first point I'd like to stress is that investment in Burma's extractive sector poses unreasonably high reputation and material risks to companies and is therefore not recommended. While there is wide agreement inside and outside Burma that the country is in dire need of political transition, I think it's important to note here that our recommendation against new investment in Burma's extractive industries is not ideological. It is not a policy recommendation for how political change will come to Burma. That is, we are not recommending against new oil and gas projects because of an ulterior, specific agenda relating to whether economic sanctions should or should not be imposed on the country. Rather, this recommendation is borne from evidence we've

collected on the ground in the country and on its borderlands since the early 1990s to the present day, evidence of the adverse direct impacts when oil companies partner with the Burmese military on extractive projects: These are cold, hard facts.

Of particular interest to the industry is that due to the reputation and material risks posed by doing business in Burma's extractive sectors, it may actually cost a company more to go into Burma than to stay away from it.

The second point I'd like to stress today, and which we regret, is that Burma is a CSR black hole. By that I mean that there is historically no evidence that suggests effective CSR projects are possible in Burma under the ruling military regime. If the goal of CSR is to improve long-term returns for your firm, sustainable returns, while also benefiting society, it's important for companies to understand that this is simply an unrealizable goal in today's military-ruled Burma.

Our organization does not specialize in CSR or development. Our focus is on corporate accountability, advocacy, and education. However, we feel confident making the wider point here that while CSR programs must be context-specific, sometimes the local context is so complex and repressive that it precludes the possibility of a company achieving CSR deliverables. Oil, gas, and mining projects leave large social and environmental footprints no matter where they occur. Oil companies know this, but communities know it better. If CSR is impossible in a particularly repressive or brutal context such as Burma's, then that's a pretty clear indication that the preconditions for responsible investment are not in place and that companies should not undertake new projects. As a former executive at Rio Tinto told me in 2007 with regard to Burma, "There are some places you just don't go."

In support of these two propositions – that new investment in the extractive sector is a bad idea and effective CSR is impossible – I've organized these remarks into 3 parts: One, I'll give a brief introduction to the human rights situation in Burma and an introduction to our organization: Who we are, what we do, and how we do it. Two, I'll discuss a case study, the Yadana Gas Project by the France-based Total and the US-based Chevron, with a specific focus on the impacts and socio-economic program by these companies in Burma. Three, I'll discuss challenges and problems with independent auditing of existing CSR programs in Burma's extractive industries.

The goal here is to relate information about the realities on-the-ground in Burma and to demonstrate the evidence behind our recommendations, but also to extract lessons from the Burma experience that will perhaps be applicable in other contexts and countries.

EARTHRIGHTS INTERNATIONAL (ERI)

EarthRights International is a non-profit, non-governmental organization that focuses on the links between the environment and human rights, what we refer to as earth rights.

We work to eradicate human rights and environmental abuses committed in connection to development projects. We're activists, lawyers, and educators from a range of cultural and educational backgrounds. We're led, directed, and staffed by a mix of western activists and activists from Burma. We operate clandestinely in Burma, we have

offices in Washington DC and in Thailand, as well as two schools in Thailand, one for activists from Burma, another for activists from the Mekong sub-region countries.

ERI has been focusing on the impacts of the Yadana Gas Project since the project's beginning in the early 1990s. Specifically, our Burma Project focuses on the human rights and environmental impacts of the oil and gas sector in the country. We do research and investigations, publications, litigation and other legal work; grassroots organizing, education, and training; and local, national, regional, and international advocacy.

HUMAN RIGHTS IN BURMA

A brief update on the overall human rights situation in Burma is meant to demonstrate the wider context in which companies are operating in the country, and the wider context in which the people are suffering in the shadow of the ruling military regime.

The human rights situation has long been documented by the media, by governments, inter-governmental organizations, and the United Nations. Hundreds of local and international NGOs continue to document and expose abuses in the country, often at great personal risk.

Confirming information obtained and released by numerous NGOs, on February 25 of this year the US Department of State released a 33-page report documenting widespread and systematic human rights abuses in Burma. These reports are submitted by the US Department of State annually to the US Congress. This year's report noted a wide range of ongoing and systematic human rights abuses in the country and is available at the State Department website.

The International Labour Organization (ILO) has long documented the prevalence of forced labor in Burma. The ILO's Special Liaison in Rangoon, Steve Marshall, recently remarked that forced labor in the country is getting worse. According to Marshall, "Forced labour by civilian authorities might decline but the use of forced labor by the military is getting worse."

More recently, on March 17, 2009, Tomás Ojea Quintana, the UN Special Rapporteur on Human Rights in Burma released a 22-page report on the dismal human rights situation as part of his investigation in the country. Quintana's report "concentrates on the situation of prisoners of conscience, their right to a fair trial and due process of law, and conditions of their detention, as well as freedom of expression, assembly and association in the context of the upcoming elections in 2010" in Burma. He also noted forced labor on a gas pipeline in the eastern part of the country, which is related to the operations of Total and Chevron, running gas from the company's offshore gas block.

On March 27, 2009, the UN Human Rights Council issued a resolution on Burma citing "ongoing systematic violations of human rights and fundamental freedoms" of the people of Burma.

And at ERI, we can add from our own personal, firsthand experiences that the human rights situation in Burma is bad and worsening, particularly in regions historically controlled by Burma's ethnic nationalities. We have documented violations of civil and political rights, economic, social, and cultural rights, and environmental rights. Common abuses include sexual violence, land confiscation, arbitrary taxation, forced labor, torture,

killings, and environmental degradation. Often times these abuses occur under the guise of development projects. Local peoples' human right to participate in development decisions and right to information are summarily violated. Community members who have expressed dissent from the development plans of the military regime and its corporate partners have been detained, interrogated, arrested, and in some cases forced to flee their land, their families, and their everyday support structures, however tenuous they may be.

Corruption in Burma is also documented. In 2008, of 180 countries surveyed, Transparency International (TI) ranked Burma the world's second most corrupt country, tied with Iraq. This factor alone poses remarkable challenges to any company attempting to implement an effective CSR program, let alone the climate of ongoing human rights abuses.

THE YADANA GAS PROJECT: TOTAL AND CHEVRON

The Yadana Gas Project is operated by Total, Chevron, the Thai company PTTEP, and the state-owned company in Burma called the Myanmar Oil and Gas Enterprise (MOGE). The project transports gas from Burma's Andaman Sea via a pipeline that runs 40 miles (65km) overland in Burmese territory en route to Thailand, where the gas is used to generate electricity for the Bangkok metropolitan area. Nearly all of the gas is exported to Thailand. About 100-110 million cubic feet per day goes to the domestic Burmese market, specifically for a cement factory, while the rest out of a total of 750 million cubic feet per day is exported.

The direct impacts of the project on local people have been severe. They include forced labor, forced relocation, rape, torture and violence, killings, and land confiscation. All of these abuses are committed by the Burmese military providing security for Total and Chevron in the vicinity of the gas project. These are crimes that have been documented along the pipeline route in direct connection to the pipeline project.

Last year, our organization released a 76-page report, *The Human Cost of Energy*, detailing ongoing human rights abuses in connection to the project, and detailing how the companies' socio-economic program is of questionable utility to local people.

Militarization connected to the Yadana project began in the early 1990s, when the Burmese regime was negotiating contracts with the companies and moving the Army into the proposed pipeline area, clearing a path to make room for the pipeline and to establish a military presence.

According to one villager in the pipeline corridor, interviewed by ERI in 2000, "*After the foreigners came, the soldiers increased a lot...we the villagers had to work for the soldiers, so I am sure that it must be the foreigners who caused our problems.*"

In 2008, another villager in the area added, "*The soldiers keep coming to the village until today. About two to three soldiers come each time and they...ask villagers to plant kyat-su, to cut the forest and do other forced labor.*"

Despite overwhelming evidence that the militarization is connected to the gas project, including documented testimony of soldiers themselves explaining to ERI in detail their mandate to provide security for the pipeline, Total and Chevron still claim that this militarization and its impacts have had nothing to do with their gas project. Here, I quote Total's website: "*The Army's activity was entirely unrelated to the project.*"

It is also worth noting that cold, hard evidence of the link between the military and the project was accepted by US Courts in *Doe v. Unocal*, the lawsuit filed by our organization and others against Unocal (now Chevron) on behalf of villagers who suffered rape, forced labor, and killings. The United States Court of Appeals for the Ninth Circuit cited that “a Unocal memorandum documenting Unocal’s meetings with Total on March 1 and 2, 1995 reflects Unocal’s understanding that ‘[f]our battalions of 600 men each will protect the [pipeline] corridor’ and ‘[f]ifty soldiers will be assigned to guard each survey team.’”

The militarization in the area of the gas project continues to lead to severe impacts.

As mentioned, forced labor is an enormous problem in Burma, and it’s no different in the pipeline area. Local villagers are commonly forced to work for Yadana pipeline security battalions without pay and under fear of persecution. In villages along and in the relevant vicinity of the Yadana pipeline, villagers have been forced by pipeline security battalions to work on project-related infrastructure, on roads, in collecting bamboo for military barracks, and even in providing security for the pipeline itself. When villagers are working for the military they are unable to provide for their families or their own livelihood, and thus forced labor contributes to an ongoing cycle of poverty and suffering.

According to one villager, interviewed by ERI in 2003, “*Our village is one of the...villages under the Total Company’s development zone, but we still have to work on forced labor. The foreigners saw what we have to do but they do not say anything to us.*”

Another villager, interviewed in late 2008, tells ERI, “*Even though I see the company come, I still do not see our village situation getting much better since we cannot freely move around. We still have to work on forced labor and porter when the soldiers come and ask for it.*”

We estimate that thousands of incidents of forced labor occur per year in the pipeline area. The population in the “pipeline corridor,” as defined by Total and Chevron, is estimated at 50,000 residents. Even if only adult males were subjected to forced labor, which has not been the case, historically, this would equal about 16,000 individuals. Even if only one-third of these 16,000 adult male individuals had to do forced labor only one time per year, which has not been the case, historically, then that would be well over 5,000 incidents of forced labor in a given year. That is, conservative estimates suggest there are at least 5,000 violations of the human right to be free from slavery in one year in connection to Total and Chevron’s Yadana Project in Burma.

Incidents of violence, torture, killings and rape in the pipeline corridor are also well-documented, historically and in recent years, committed by pipeline security soldiers. These abuses are documented in at least six advocacy reports we’ve released publicly since 1996, all available on our website, www.earthrights.org.

ERI is perhaps best-known for representing villagers from Burma in the landmark lawsuit *Doe v. Unocal*, as mentioned, which was a lawsuit brought in US courts against Unocal Corporation (now Chevron) under the Alien Tort Claims Act (ATCA). The Alien Tort Claims Act is an old US law from 1789 that enables aliens to file suit in US courts alleging a tort, i.e. a wrongdoing, that violates the “law of nations,” i.e. a tort that violates international law.

Represented by ERI, villagers sued Unocal for complicity in forced labor, rape, and killings. These particular abuses were committed in the early-to-mid-1990's by soldiers providing security for the Yadana pipeline. The case involved almost ten years of litigation.

In the partial trial, ERI presented evidence in US courts that the companies were aware the abuses were happening, benefited from the abuses, and did nothing to stop them. In some cases, the abuses were aided and abetted by the companies.

The Superior Court of California eventually set a trial date for June 2005 on plaintiff's claims of murder, rape, and forced labor. In March 2005, just before the trial was set to begin, Unocal agreed to compensate the plaintiffs in a historic settlement.

This case opened space for communities to seek redress for harms they suffer. It's worth noting here that any company that has a presence in the US may be liable in US Federal courts under the Alien Tort Claims Act for human rights abuses committed in connection with their projects outside the US. After 3 years of discovery, in 2000, a US Federal Court found that:

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 tortuous acts.

With regard to human rights, it must be asked whether companies are comfortable with this legal standard, because if they're implicated in abuses and have a presence in the US, we believe this is the standard that applies and will lead to legal liability. Our organization investigates reports of abuse, and if the reports are credible, and if local people approach ERI, we will consider filing cases on their behalf.

Apart from litigation costs and potentially large costs associated with verdicts in favor of plaintiffs, these lawsuits also present risks to companies with regard to selling assets. We believe the litigation and the potential financial exposure of an adverse verdict in the Unocal case inhibited the sale of Unocal to Chevron in 2005. This is how serious the risks to companies can be. Unocal's legal fees were in the tens of millions of dollars; and beyond legal fees, companies risk also potential verdicts in the hundreds of millions of dollars.

But the liabilities don't stop there. Shortly after the Unocal case settled, Chevron acquired Unocal in competition with China's CNOOC, inheriting the company's assets as well as its liabilities. Now, Chevron's liabilities are significant. Any number of victims of the ongoing human rights abuses by pipeline security in Burma still have the right to file suit against Chevron in US courts.

Beyond the risks a company faces associated with direct human rights impacts of the Yadana Project and its attendant militarization, another dimension of the CSR puzzle is with respect to the amount of revenue generated by the gas development for the Burmese regime. Barring a UN-sanctioned effort to channel Burma's resource revenue into a recovery fund, rather than into the regime's coffers, the issue of revenue to the

regime is an aspect of doing business in Burma that could never be spun as something positive. Not only do these projects open companies up to massive legal liabilities and understandably drag company brands into the gutter, but they also finance a widely unpopular military regime.

The Burmese regime is unpopular not just in the international community, but with the people of Burma. This was demonstrated to the world in 2007 during the nationwide peaceful pro-democracy uprising that was subsequently crushed by the military, but that remains alive, if not under-reported by international media.

Regarding propping up the military regime, from 2005-2009, gas export sales to Thailand generated over US\$9 billion dollars. Generating this amount of export sales can never be construed by a company's public relations team as a positive thing. The court of public opinion is smarter than that.

Moreover, there is no revenue transparency in Burma, by the military government or companies. However, based on information made public in the *Doe v. Unocal* partial trial, at ERI we've been able to make what we think are the most accurate estimations of the amount of revenue the Yadana project has generated for the Burmese regime. In 2007, for example, the Yadana Project generated \$1.3 billion dollars, according to ERI, 75 percent of which went directly to the regime; that's roughly \$969 million. No matter what a firm does, no matter how responsible it fancies itself, financing the type of repression practiced by the Burmese regime in billion-dollar amounts can never be interpreted as responsible or ethical.

TOTAL AND CHEVRON'S CORPORATE SOCIAL RESPONSIBILITY (CSR) IN BURMA

Total and Chevron's CSR program in Burma began in 1995 and focuses on four areas: health, education, economic development, and infrastructure. Initially intended for 13 villages along the Yadana pipeline, the program was expanded to include 25 villages, which is now what the company defines as the "pipeline corridor."

The companies report significant successes in each of their 4 target areas – health, education, economic development, and infrastructure – claiming that the entire population of 50,000 people benefit from the program.

In their 4 impact areas, the companies claim that all 50,000 residents of the pipeline corridor enjoy free health care, that they have reduced the malaria, TB, and infant mortality rates by considerable factors. In education, the companies cite the construction of schools, the financial support of teachers, and a scholarship program. In economic development, the company cites a micro-lending program and an agricultural program; and in infrastructure, the company cites the construction of roads and bridges.

To people intimately familiar with Burma, these successes do appear amazing, almost too good to be true; that's because, regrettably, most of them actually are too good to be true.

Local residents tell ERI that health care along the pipeline corridor is neither free nor adequate. Rather than rely on what is available locally, when a villager needs medical attention they often make the arduous and dangerous trip to the Thailand-Burma border. According to one villager interviewed in 2007, "*We do not have enough money to go to the hospital so we decided to come to the border.*"

Another villager explained to ERI that the only available medication in the area is paracetamol, know more commonly, of course, as Tylenol. I quote here from an interview in late 2008: “*The doctor would only give us paracetamol no matter what was wrong with us. We call him Dr. Paracetamol. Now no one goes there because they don’t get any treatment.*”

Just so I’m clear here, villagers along the Yadana Pipeline are claiming that health care received in a refugee camp on the Thai-Burma border is actually better than the health care supported by Total and Chevron. Anyone who is remotely familiar with the conditions in the border refugee camps will understand the gravity of this claim. It suggests that two of the world’s most profitable corporations can’t manage to provide better health care than a grossly under-funded refugee camp on the fringe of a war zone in an inhospitable environment.

What’s more, the companies claim the contrary, that their health program is actually a beacon of corporate responsibility. The companies make quantitative empirical claims about decreasing infant mortality, malaria mortality, and TB mortality. If true, these claims would of course be very warmly welcomed, but the fact is that these claims and figures have never been independently verified, and villagers’ testimonies suggest they may be false, or at least greatly exaggerated. Numerous groups have been hired by Total and visited the area to officially audit their presence, which I’ll discuss more in a moment. After these “site visits,” many of these groups have subsequently showered praises about the companies’ public health impacts. The noteworthy fact is that none of these visitors brought with them the ability or methodological know-how to empirically test the public health claims made by the companies. Instead, the companies claims, the figures, were accepted at face value, and thus the opportunity to conduct a meaningful full-access inquiry was squandered.

In the area of education, villagers report to ERI that the teachers’ salaries are completely inadequate, and villagers who can ill-afford it are required to pay the salaries. We should be clear here, however, that we are not suggesting that the companies should play the role of the government and pay teachers salaries in full. Instead, exposing the reality on the ground is meant to expose the misrepresentations and lies publicized by the companies.

In the area of education, schools have indeed been constructed by the company, which is of course very warmly welcomed and encouraged. However, teachers are forbidden from teaching Karen or other local ethnic languages. All teaching is in the Burmese language, the language of the ruling military junta. This is consistent with a wider, documented phenomenon referred to as *Burmanization*, a sinister and blunt process whereby the ruling military regime systematically subjugates Burma’s non-Burman ethnic nationalities by dominating their land, their culture, and their way of life.

The education scholarship program for pipeline corridor students advertised by Total and Chevron is also very low impact and not to scale. Despite ERI’s vast network in the pipeline corridor, we have actually never met nor spoken to someone who has benefited from this program or even knew someone who has benefited from this program. In that sense, it’s an enigma.

The companies have arranged for a micro-lending program in the pipeline corridor. There are problems here, too. Many local villagers simply take the loan, turn around and lend it at high interest rates to other villagers who were ineligible for the loan

from the company. Most villagers use the money simply for survival, not private enterprise, which of course is not how micro-lending is supposed to work. Thus, the very concept of micro-lending is lost.

Regarding the pig and poultry farms, an update on those is quite easy: for the most part, they don't exist, and haven't existed for years, according to local villagers. But yet, we still read about them on Total's website. Again, the point here is not to suggest that the companies should assume all the responsibilities of the government, but rather to expose the reality on the ground; to juxtapose the reality on the ground with what the companies' public relations teams are claiming.

The so-called successes in infrastructure are uniquely problematic and warrant special mention. Total constructed a road between pipeline villages, which is warmly welcomed and encouraged, except that now, villagers confirm that they can not use the road. This restriction is on orders from the military, from pipeline security battalions. It is based in part on complaints from foreign Total workers who apparently complained that the local villagers' bullock carts were damaging the road. Moreover, local villagers are forced to maintain the road and keep it level. Here, we can see a quote from a local villager interviewed by ERI, explaining that they have to do forced labor on the road constructed by Total: *"In our village, we have one road that links to Kaleinaung village, which is about a mile and a half away. Foreigners constructed it a few years ago. . . Now we have to maintain the condition of the road... We do not get any payment; we have to do it free, but by doing this we don't have to go for other forced labor work."*

Just so I'm clear, this means that villagers are actually forced to work on a CSR project: they are slaves to a CSR project. I have to imagine that is unique even in an industry marred with a full range of adverse human rights impacts all over the world.

All of this raises the question, what do the companies have to say? When challenged on their human rights impact and on the billions generated by the project for the Burmese regime, Total and Chevron regularly cite their socio-economic programs. In other words, the question is dodged. This can only be interpreted as an attempt to divert attention away from the companies' direct human rights impacts and the non-transparent revenue generated for the military regime.

It is important to be clear on our intentions here: We are not pressuring the companies to leave Burma. They're already there, the project is in operation, the damage in some ways is already done. What we want of the companies is for them to clean up their act, to practice revenue transparency, to stop using the military for project security, to put an end to human rights abuses connected to their presence, and to acknowledge the true impact of their project, which would involve acknowledging a wider "pipeline corridor" than the companies are at present willing to acknowledge.

And with regard to CSR, it should be made clear that there are no off-sets. Companies cannot escape responsibility and liability for human rights abuses through CSR programs. That's not how it works.

INDEPENDENT AUDITING OF CSR PROGRAMS IN BURMA

Total and Chevron claimed that they decided to subject their activities to the critical scrutiny of independent experts. The companies have thus invited certain individuals and organizations to visit the pipeline area and assess its operations.

Overwhelmingly, these “site visits” have produced positive reports to policymakers, shareholders, and the international community about the companies’ impacts in Burma.

The problem is that these reports and this auditing are simply inaccurate. All of the independent auditors that have officially visited the pipeline corridor have used flawed or inadequate methodologies to assess the situation in Burma.

Burma is one of the world’s most repressive countries, full of smoke and mirrors. In the Yadana pipeline corridor, that’s no different. For years, we’ve documented a trend of the military prepping villagers in advance of visits by foreigners. Villagers are coerced into saying positive things to foreign visitors out of fear of persecution or the threat of violence. After a visit by a group hired to assess Total’s impact, a villager interviewed in 2008 tells ERI:

We did not say everything we knew clearly to these foreigners because we had been warned by the soldiers in advance...They said, ‘if people come and ask you anything, then say there is no forced labor because this is the country of Burma and not the country of foreigners.’ When the soldiers told us this we were afraid because what they meant was that the foreigners will eventually leave and then we will be in trouble.

Another villager adds, “No one dares say anything about what’s really happening when they ask because people are afraid of the consequences.”

The problems with the methodology practiced by “independent auditors” of Total and Chevron’s program in Burma go beyond that, however. For one, auditors have not been independent from the companies, and villagers are aware of it. Visitors arrive in company cars, accompanied by company staff, paid by the companies, and sometimes accompanied by military intelligence or soldiers. This influences the information they are able to collect.

Through its repression and violence, the military regime has so degraded the culture of trust in Burma that people often distrust each other and their own family members. Auditors did not take this into account, and interviewed villagers in groups, rather than in seclusion, which either limits what villagers will say or threatens their security, as some members of the group might be a civil informant to military intelligence, supplying information as a means to their own survival.

Villagers were also interviewed by auditors in plain sight of the military or company staff, changing the villagers’ comfort levels and no doubt influencing the integrity and depth of the information collected.

Western visitors, or auditors, have also used interpreters who are unfamiliar to the villagers, often provided by the company and coming from a different ethnicity and speaking a different language than the ethnic Karen, Mon, or Tavoyan villagers. Villagers do not trust these interpreters and so do not share their full story with them, plain and simple.

Lastly, visits are always brief. One organization that is regarded as an independent authority on Total’s presence in Burma has published 5 reports on the company’s presence over a 6 year period, hired by Total to do so. This particular company has, in

seven years, only spent a total of 20 days in the pipeline corridor, using interpreters unfamiliar to villagers and failing to realize the complexities of repression in Burma.

Moreover, all of these independent auditors have lacked the capacity to test the company's empirical socio-economic claims. Public health statistics, for example, have not been independently tested but instead accepted at face value. This is a problem.

CONCLUSION AND LESSONS LEARNED

In conclusion, what I've tried to demonstrate today is that investment in Burma's oil and gas sector poses unreasonably high reputation and material risks and is not recommended. Companies face litigation risks and legal costs and brand names will be dragged through the mud.

Moreover, there is an argument to be made that going after resources in Burma will actually cost you more than to stay away from the country. Unocal's legal costs were in the millions of dollars, and other cases, which can last for over a decade, can cost in the tens of millions of dollars, not including the potential legal liabilities, which could be in the hundreds of millions of dollars.

The second point today is that Burma is a CSR black hole. No matter what you put into it, it simply turns black. This is due in part to the unchanged, corrupt, and brutal nature of the military regime, especially in Burma's resource-rich ethnic areas. Effective CSR in Burma is simply impossible. Even the best-intentioned company is bound to fail. Moreover, another point is that inaccurate CSR auditing is harmful. It's harmful to the community, as their interests will not be adequately represented. It's harmful to the oil company, as it will come back to haunt them when the falsities are exposed, and because the company will not get accurate information about their local impacts. It's also harmful to the CSR auditing company itself, whose name likewise will be dragged through the mud and discredited.

Despite all of the risks associated with pursuing an oil and gas project in Burma, however, there is still the issue of the companies who chose to ignore the risks and invest in the country regardless. These companies may simply not care that their presence will create great harm, or perhaps they don't face the same pressures at home as western-based firms.

These companies should be aware, if they're not already, that there is a strong civil society both in Burma and in exile. These networks are increasingly sophisticated and increasingly transnational. They will expose the reality on the ground, and they'll continue to do it even at great personal risk. As recent examples, the NGO Arakan Oil Watch (AOW) released in 2008 the report *Blocking Freedom*, which details abuses connected to onshore oil development by China's CNOOC in western Burma. In 2008, ERI released *The Human Cost of Energy*, which exposes the ongoing human rights impacts of Total and Chevron's Yadana Gas Project, as well as a 2008 complaint to the Korean National Contact Point (NCP) on behalf of the Shwe Gas Movement (SGM) regarding Daewoo International and KOGAS's violation of the *OECD Guidelines for Multinational Enterprises* through their involvement in the Shwe Gas Project in western Burma. Regarding the same project, in 2006 the Shwe Gas Movement (SGM) released *Supply and Command*, a report highlighting the human rights and militarization impacts

of the Daewoo-led Shwe Project. All of these publications reached the general public, shareholders, governments, and policymakers.

There's also a committed international network of lawyers working to strengthen and enable extraterritorial jurisdiction. This means that companies that at present may not face liabilities in US or EU courts, could at some point face legal liability in jurisdictions outside the US or Europe.

But aside from that, extractive companies invested in Burma or in similarly complex environments should simply tell the truth. This may seem like common sense, because it is, but it is worth mentioning because we continue to encounter sophisticated public relations campaigns from companies bent on misrepresenting the facts. A company that misrepresents their presence will only hurt themselves in the long run. It's not only unethical, it's bad business, and it will be exposed.

Extractive companies should also practice revenue transparency voluntarily. This means publishing payments made to host governments, as well as encouraging the adoption of EITI.

Extractive companies should commission and voluntarily publicize human rights impact assessments (HRIAs) and environmental impact assessments (EIAs). While most definitely not a silver bullet, impact assessments are a minimum requirement of corporate responsibility, and one provided for under international law, as ERI demonstrated in a letter to Daewoo International and KOGAS dated November 16, 2006, which is available on our organization website. Impact assessments should necessarily involve local participation: Who else but local people would know what the potential impacts would be? And these assessments should also be conducted before a project begins, not during or after, and they should be transparent and conducted on an ongoing basis.

Companies should obtain the free, prior, and informed consent of indigenous communities. This means that potentially affected populations should have an adequate amount of information about the project and its potential impacts, and they should consent, or not, to the project before it proceeds, not during or after.

These would be considered minimum requirements of corporate responsibility. They are by no means exhaustive. And in the context of military-ruled Burma, even these, it must be said, will not eliminate or even minimize the risks associated with partnering with the Burmese military.

Thank you.