

REQUEST FOR POLICY RECOMMENDATIONS AND INVESTIGATION

A PETITION TO THE NATIONAL HUMAN RIGHTS COMMISSION OF KOREA

April 17, 2008

PETITIONERS

INDIVIDUAL PETITIONERS¹

**Individual Petitioner I
Individual Petitioner II**

ORGANIZATIONAL PETITIONERS

**Korean House for International Solidarity (KHIS)
NAWAURI
People for Democracy of Burma
Burma National League for Democracy—Liberated Area (NLD-LA) Korea Branch
BURMA ACTION KOREA
Solidarity for New Society
The Association for Migrant Workers' Human Rights
Citizens' Solidarity for Human Rights (CSHR)
Korean Confederation of Trade Union (KCTU)
Federations of Korean Trade Unions (FKTU)
Korean Federation for Environmental Movement (KFEM)**

**Petition prepared for Petitioners by:
The International Human Rights Clinic, Human Rights Program, Harvard Law School
Public Interest Lawyers' Group Gong-Gam**

¹ Petitioners have also filed a motion under seal that includes the identities of Individual Petitioner I and Individual Petitioner II. They are individuals from Burma, currently residing in Korea. To ensure their individual security as well as that of their relatives still living in Burma, petitioners request that their identities be kept strictly confidential.

I. REQUEST OF PETITIONERS

The Korea Gas Corporation (KOGAS), a public corporation whose foreign natural resource development projects are under the control of the Korean government, has been engaged in a major development project in Burma, known as the Shwe Natural Gas Project (Shwe Project). Our research on the project, its objectives, and an assessment of similar prior engagements in Burma lead us to suspect that the Shwe Project will result in a pattern of severe human rights abuses. The experience of previous gas pipeline developments across Burma in the 1990s provides ample evidence of the consequences of the involvement of that country's military forces in pipeline security and construction: systematic use of forced labor, forced displacement of local residents and the use of torture, rape, and extrajudicial executions to intimidate the population. Forced labor has gained special attention: in 2000, the International Labour Organization (ILO)'s Governing Body called on its members, which includes the Korean government, to review their relations with Burma because of concerns about the Burmese authorities' widespread practice of forced labor.

The Burmese military's systematic and egregious pattern of human rights abuses has long been documented in detail and attracted worldwide condemnation. Previous gas projects—the Yadana and Yetagun pipelines—resulted in severe militarization in the pipeline areas, in the name of providing “security” and facilitating construction. The result was the destruction of villages, the forcing of local people to perform hard labor, violence against civilians, and the repression of basic freedoms such as the right to assemble and voice concern about the project.

International standards and well-documented evidence of abuses in similar past projects counsel KOGAS and the Korean government to take effective precautionary measures to stop the Burmese military from committing human rights violations in connection with the Shwe Project. Because the decision to take such measures is to be made in Korea by members of the Korean government, the National Human Rights Commission of Korea (Commission) can and should take up the issue so as to prevent KOGAS and the Korean government from becoming complicit in human rights violations.

Petitioners ask the Commission:

1. To initiate a procedure to issue policy recommendations on mechanisms and procedures for the prevention and monitoring of situations that might lead to human rights abuses in connection with Korean corporate energy development projects abroad. These recommendations should allow for mechanisms specifically tailored to each country situation. The Shwe Project should serve as a test case, for which the Commission should recommend mechanisms that take into account the particular human rights conditions of Burma; and
2. To conduct an investigation into the risk of human rights violations in connection with the Shwe Project that may result from KOGAS' and the Korean government's involvement in that development project.

II. THE SHWE NATURAL GAS PROJECT

In August 2000, the Daewoo International Corporation (Daewoo International) purchased exclusive exploration rights from the Burmese military regime, the State Peace and Development Council (SPDC), in a major natural gas field off the coast of Burma's Arakan State, known as the A-1 block.² The project is known as the Shwe or "Golden" Project. In November 2001, KOGAS was assigned a 10% share in the four-company consortium of the Shwe Project.³ Production of gas is expected to begin in 2009. In August 2007, Daewoo International estimated that the commercially viable natural gas reserves developed by the Consortium in the combined A-1 and the A-3 blocks contain between 4.5 and 7.7 trillion cubic feet of gas.⁴ It also announced that during its negotiations with the SPDC, the parties had recently been prioritizing pipeline transportation options over the Liquid Natural Gas (LNG) option.⁵ If an LNG option is pursued, Korea has been reported to be among the major bidders to buy the gas. Analysts have projected that, if a pipeline route is chosen, China would be the favored pipeline recipient.⁶ If a pipeline to China is built, it is likely to connect southwestern China's Kunming in Yunnan Province with the city of Sittwe in Burma through Mandalay and Kyaukphyu, thus running a much longer distance than the Yadana or Yetagun pipelines (see Figure 1).⁷



Figure 1: Possible Shwe Pipeline Route to China (Source: ARAKAN OIL WATCH, THE SHWE GAS BULLETIN, Vol. 2, Iss. 9, May 2007, at 3).

² *South Korea's Daewoo urged to pull out of Burma gas deal*, BBC WORLDWIDE MONITORING, Oct. 17, 2005.

³ Two Indian companies also hold shares in the consortium: the Oil and Natural Gas Corporation Ltd. Videsh (ONGC Videsh) (20%) and Gas Authority of India Ltd. (GAIL) (10%). Daewoo International now holds a 60% share in the consortium.

⁴ The fields contain between approximately 5.4 and 9.1 trillion cubic feet of gas according to recent estimates by Daewoo International, see Ko Kyoung Tae, *Daewoo verifies Myanmar gas find*, THE KOREAN HERALD, Aug. 23, 2007. The amount of gas that may be commercialized may vary over time. See also Park Seung-Duk, Kim Ki-Suk, *Daewoo Inter.*, "The Value of the Gas Fields Cannot Be Discerned Yet," FINANCIAL NEWS, Aug. 24, 2007 (in Korean). Previously, the estimate has been around 10-14 tcf. or even bigger, see THE SHWE GAS MOVEMENT, SUPPLY & COMMAND (July 2006), at 11-12, and Kim Sung-mi, *Daewoo International finds potential jackpot*, THE KOREA HERALD, Feb. 13, 2004.

⁵ Oh Sang-hyun, *Import of Myanmar Gas to Korea Fails . . . Produced Portions Expected to Be Sold to China*, THE KOREA ECONOMIC DAILY, Aug. 23, 2007 (in Korean).

⁶ *Id.*

⁷ *Burma port projects said at standstill*, BBC WORLDWIDE MONITORING, Aug. 9, 2007.

III. THE SHWE PROJECT'S THREAT TO HUMAN RIGHTS

A. The History of Serious Human Rights Violations Arising from the Yadana and Yetagun Projects

A well-documented pattern of human rights violations has accompanied gas development projects in Burma, especially when the gas is transported across Burmese territory through a pipeline. Examples include the abuses that took place in connection with the Yadana Natural Gas Project (Yadana Project) as well as the Yetagun Natural Gas Project, which used the same security corridor. Violations related to the Yadana Project were exposed in lawsuits filed in the United States and France, providing ample evidence of what can be expected from the Shwe Project. See Appendix I: Evidence Presented in U.S. Court Case.

In the Yadana Project, which began in the 1990s, the U.S.-based company Unocal, the French-based company Total, the Thai state-run company PTT Public Exploration and Production Company (PTTEP), and the Burmese state-owned Myanmar Oil and Gas Enterprise (MOGE) built a pipeline (the Yadana Pipeline) through southern Burma, to transport natural gas from offshore gas fields to Thailand.

The Yadana pipeline resulted in heavy militarization of the construction areas and systematic human rights violations by the Burmese military in collaboration with the foreign energy companies. The violations included forced labor, confiscation of land, forced relocation and the destruction of villages, and physical violence, including rape, torture, and extrajudicial killings.⁸ Lawsuits against Unocal in U.S. federal and state courts led the company to agree in March 2005 to settlements that “will compensate plaintiffs and provide funds enabling plaintiffs and their representatives to develop programs to improve living conditions, health care and education and protect the rights of people from the pipeline region.”⁹ Similarly, the lawsuit against Total resulted in a settlement agreement in November 2005, which created a €5.2 million solidarity fund to compensate the plaintiffs and other similarly affected persons from the pipeline construction corridor.¹⁰ In one of the court cases brought against Unocal, the U.S. Federal Appeals Court for the Ninth Circuit, summarizing the facts as stated by the plaintiffs, noted that the plaintiffs had been subjected to human rights violations by the military in connection with the Yadana Project. See Appendix I: Evidence Presented in U.S. Court Case. The Burmese military committed acts of violence, including killings and rape, while also forcing individual plaintiffs to help build helipads and roads leading to the pipeline construction area, and to work as “porters” for the soldiers guarding the pipeline construction.¹¹ The Court of

⁸ See, e.g., EARTHRIGHTS INTERNATIONAL, TOTAL DENIAL CONTINUES (2000).

⁹ Joint Statement of Parties to *Doe v. Unocal*, available at:

http://www.earthrights.org/legalfeature/final_settlement_reached_in_doe_v._unocal.html (last accessed Feb. 9, 2008). The exact amount of money involved has not been disclosed.

EarthRights International was co-counsel to the plaintiffs in *Doe v. Unocal*. Unocal was acquired by ChevronTexaco in August 2005. See testimony by David L. Johnson, Director, NOAA, *Ensuring Fuel Supply During Hurricane Season*, CQ CONGRESSIONAL TESTIMONY, June 7, 2006.

¹⁰ Total Burma website, available at: http://burma.total.com/en/controversy/p_4_2.htm (last accessed Feb. 9, 2008).

¹¹ *Doe v. Unocal*, 395 F.3d 932, 939-40, 952 (9th Cir. 2002).

Appeals also recounted numerous facts indicating that Unocal knew about the violations. It noted that Burma has a “long and well-known history” of forced labor, well-documented by organizations such as the ILO; non-governmental human rights organizations that had specifically warned Unocal of the danger of forced labor in connection with the Yadana Project; and Unocal’s own consultants, who had made similar warnings.¹² The Court of Appeals also referenced a lower court’s finding that Unocal had been benefiting from the use of forced labor, and observed that Unocal knew or should have known that its actions in connection with the Yadana Project would “assist or encourage” the military’s use of forced labor.¹³

B. The Likelihood of Similar Violations Occurring as a Result of the Shwe Project

The Shwe Project is likely to result in a pattern of violations similar to those that plagued the Yadana Project, especially if the current plan to build a pipeline to transport the gas moves forward. It is highly probable that the SPDC will once again militarize pipeline construction areas in order to facilitate building and provide security for the Project. The link between militarization and surges in human rights violations in Burma is well-documented. An enlarged military presence that accompanies the Shwe Project is thus likely to lead to a corresponding rise in human rights abuse against civilians in these areas. The failure of KOGAS and other members of the consortium to adopt strong human rights policies or preventative measures increase the likelihood that significant violations will arise from the Shwe Project. Indeed, several human rights organizations have warned the Shwe consortium of the human rights risks associated with the project.¹⁴

As a stakeholder in the Shwe consortium, KOGAS can and should influence the consortium to take precautionary measures so that it does not allow or benefit from human rights violations committed by the Burmese military in support of the Shwe Project. KOGAS’ actions to prevent the occurrence of such abuses have thus far been inadequate. KOGAS and the consortium have not proactively taken adequate steps to reduce the likelihood of militarization in the region around the Shwe Project. Specific monitoring mechanisms are necessary to ensure that human rights violations connected to the Shwe Project do not occur. KOGAS could reduce the risk of abuses through various measures, for example, by contractually requiring ongoing human rights monitoring mechanisms along the proposed pipeline corridor, conducting independent monitoring of the Shwe Project, and publishing relevant financial information.

¹² *Id.* at 940-42.

¹³ *Id.* at 953.

¹⁴ *See, e.g.*, Kang I-hyun, “*Korean Corporations and Government Partnering with the Burmese Junta for Petty Economic Interests, Withdraw Immediately,*” *PRESSIAN*, Oct. 2, 2007 (in Korean); *see also* Lee Jae-hoon, *Korean Government Dragging Its Feet, Because of Natural Resources?*, *THE HANKYOREH*, Oct. 1, 2007 (in Korean).

IV. THE NEED FOR THE NATIONAL HUMAN RIGHTS COMMISSION TO EXAMINE THE PROJECT

A. The Importance of the Issue and International Standards

Recent reports state that the SPDC continues to use forced labor throughout the country despite its agreement seven years ago to enforce domestic laws and international standards prohibiting the practice.¹⁵ The United Nations (UN) Special Rapporteur on Myanmar continues to receive reports of widespread and systematic use of forced labor practices and forced recruitment by Burmese state actors as well as non-state actors, and has voiced concern that reports of such abuses routinely go uninvestigated.¹⁶

The ILO has long emphasized the unique seriousness of Burma's forced labor system and called on its members, including the Korean government, to ensure that they do not support forced labor in Burma. The ILO has repeatedly condemned the Burmese junta's continuing "widespread and systematic" use of forced labor¹⁷ and its failure to cooperate with the international community to address the problem. In 2000, the ILO's Governing Body passed an extraordinary and "unprecedented" resolution¹⁸ that, inter alia, called on all the ILO's constituents—including the Korean government—to:

¹⁵ See, e.g., *Effect Given by the Government of Myanmar to the Recommendations of the Commission of Inquiry Established to Examine the Observance of the Forced Labour Convention, 1930 (No.29)*, Int'l Lab. Off., 279th Sess., Agenda Item 6, G.B. 279/6/1(Add.1)(Rev.1) (2000), available at:

<http://www.ilo.org/public/english/standards/relm/gb/docs/gb279/pdf/gb-6-2.pdf> (last accessed Feb. 9, 2008). See also *Burma and Multinational Companies: Who Profits and How It Works*, ICFTU ONLINE, Jan. 2005, available at:

<http://www.icftu.org/displaydocument.asp?Index=991221183&Language=EN> (last accessed Feb. 9, 2008). While the SPDC has claimed progress toward ending forced labor, these appear to be "cosmetic." Larry Jagan, *Deposed PM's Allies Face Sentencing; More than 300 Myanmarese Officers Set to Receive Jail Terms This week, As Disquiet Grows in the Military*, SOUTH CHINA MORNING POST, Feb. 21, 2005. For an overview of the human rights situation in Burma, see, e.g., U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2004: BURMA (Feb. 28, 2005), available at: <http://www.state.gov/g/drl/rls/hrrpt/2004/41637.htm> (last accessed Feb. 9, 2008).

¹⁶ Special Rapporteur Paulo Sérgio Pinheiro, U.N. HUMAN RIGHTS COUNCIL, REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN MYANMAR, A/HRC/4/14, 4th Sess., February 12, 2007, available at:

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/4/14 (last accessed Feb. 9, 2008). The Special Rapporteur has also received reports documenting the use of child labor. *Id.* at 18.

¹⁷ REPORT OF THE COMMISSION OF INQUIRY APPOINTED UNDER ARTICLE 26 OF THE CONSTITUTION OF THE INTERNATIONAL LABOUR ORGANIZATION TO EXAMINE THE OBSERVANCE BY MYANMAR OF THE FORCED LABOUR CONVENTION, ¶ 536 (1998), available at: <http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar.htm> (last accessed Feb. 9, 2008).

¹⁸ International Labour Organization, Press Release, ILO Governing Body Opens the Way for Unprecedented Action Against Forced Labour in Myanmar, Nov. 17, 2000, available at:

review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with the member State concerned [Burma] and take appropriate measures to ensure that the said Member cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour.¹⁹

Since the passing of this resolution, the ILO has consistently pressed for an end to forced labor in Burma and has been met with intransigence by the Burmese junta.²⁰ The pro-democracy protests and their violent suppression since fall 2007 have once again brought the world's attention to the junta's lack of respect for the most basic human rights.²¹ Monitoring by the UN since the protests has shown that the junta regime remains resistant to international calls for the respect of human rights.²²

Consistent with the ILO Governing Body's 2000 resolution, the Korean government should review its relations with Burma and "take appropriate measures to ensure that such relations do not perpetuate or extend the system of forced or compulsory labour."²³ The Commission can play an important role in fulfilling this responsibility by examining KOGAS' involvement in the Shwe project. The history of the gas industry in Burma indicates that the Shwe project is very likely to make use of Burma's "system of forced or compulsory labour," a practice that violates a fundamental human rights norm.

http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang-en/WCMS_007918/index.htm (last accessed Feb. 9, 2008).

¹⁹ Reports of the Selection Committee, International Labour Conference, 88th Session (2000), *available at*: <http://www.ilo.org/public/english/standards/relm/ilc/ilc88/com-seld.htm> (last accessed Feb. 9, 2008).

²⁰ *See, e.g.*, Developments Concerning the Question of the Observance by the Government of Myanmar of the Forced Labour Convention: Report of the Very High-Level Team, ILO Governing Body, 292nd Session, GB.292/7/3 (2005), *available at*: <http://www.ilo.org/public/english/standards/relm/gb/docs/gb292/pdf/gb-7-3.pdf> (last accessed Feb. 9, 2008).

²¹ *See* Conclusions Concerning Myanmar, ILO Governing Body, 300th Session, GB.300/8(& Add.) (2007), *available at*: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_087572.pdf (last accessed Feb. 9, 2008) (expressing "serious concern at the Government's crackdown" and viewing the ILO's efforts to eradicate the use of forced labor in the context of the overall human rights situation in Burma).

²² *See, e.g.*, AFP, *Security Council Laments Lack of Progress on Myanmar Reforms*, Jan. 17, 2008 (reporting that Security Council has "bemoaned" lack of progress by the Burmese junta in areas of "democratic reforms, full respect for human rights, an end to forced labor and to repression of ethnic minorities"), *available at*: http://afp.google.com/article/ALeqM5hbmTqb3TayV_6KMjgsUJjvCWdPgw (last accessed Feb. 9, 2008); BBC News, *U.N. raps Burma's 'slow progress'*, Jan. 18, 2008, *available at*: <http://news.bbc.co.uk/2/hi/asia-pacific/7195313.stm> (last accessed Feb. 9, 2008).

²³ ILO Press Release, *supra* note 18.

B. The Need for Policy Recommendations from the Commission

In light of the seriousness and scale of the Shwe Project, as well as Korea's growing presence in international energy development, the Commission should initiate a procedure for issuing relevant policy recommendations. Specifically, the Commission should focus on the prevention of foreseeable human rights violations in the energy sector conducted in countries with known poor human rights records, in which abuses are foreseeable.

Korea is an increasingly large investor in foreign energy resource extraction. The Korean government has a well-publicized objective of supporting corporate energy investment abroad.²⁴ These investments can take place in countries in which there are clear risks of human rights violations occurring in connection with a given project. With no well-defined standards for responsible investment in such countries, the Korean government lags behind international efforts to ensure that economic activities do not support or lead to human rights violations abroad. With the appropriate policy recommendations by the Commission, however, the Korean government could instead take on a vital standard-setting role in the area.

The Commission should issue specific recommendations for both government and non-state actors, including industry and civil society organizations. Recommendations should include specific compliance standards for corporate actors as well as mechanisms for both governmental and independent monitoring for the prevention of human rights violations. Regular independent social and environmental impact assessment should also be included in the monitoring process. In addition, the recommendations should acknowledge that the human rights conditions of countries vary a great deal, presenting a range of challenges, and thus require tailored procedures that take into account specific country situations and project areas. The Shwe Project, as Korea's foremost foreign energy resource development initiative, should serve as the focal case of the policy recommendation procedure. Any recommendations should be applied promptly to the Project. Issuing such policy guidance, in addition to its impact on the Shwe Project, would help alleviate concerns that future projects may result in human rights violations.

C. Involvement of Respondents, Standing of Petitioners, and the Need for Investigation

The Commission should also investigate the Shwe Project and KOGAS' involvement in it to ensure that the Korean government acts consistently with international principles, such as those contained in the ILO Governing Body's 2000 resolution.²⁵

²⁴ See, e.g., National Policy Briefing, *Peace, Balance, Interest, National Quality: the Four Keywords of the Participatory Government's Diplomacy*, Nov. 22, 2007 (describing "energy diplomacy" as one of the Participatory Government's main diplomacy objectives) (available at: http://korea.kr/newsWeb/appmanager/portal/news?_nfpb=true&portlet_categorynews_2_actionOVERRIDE=%2Fpages%2Fbrief%2FcategoryNews%2Fview&_windowLabel=portlet_categorynews_2&_pageLabel=news_page_02&_nfls=false&portlet_categorynews_2newsDataId=148642890&portl) (last accessed Feb. 9, 2008).

²⁵ An investigation would also accord with the growing worldwide understanding—recently noted by the UN Secretary General's Special Representative on transnational corporations and human rights—that states' duty to protect against human rights violations includes a

KOGAS is a public corporation whose actions are reviewed by the Ministry of Commerce, Industry and Energy (currently the Ministry of Knowledge Economy; hereafter “Ministry of Commerce, Industry and Energy”) under the Korea Gas Corporation Law, as well as the Ministry of Strategy and Finance under the Public Corporation Operation Law of April 2007. According to Article 16.2 of the Korean Gas Corporation Law, all “gas enterprises” of KOGAS—i.e., the acquisition, storage, production, and construction of supply and accompanying facilities—must be approved by the Minister of Commerce, Industry and Energy.²⁶ In addition, the Korean government is the largest stakeholder of KOGAS, owning 62% of the company’s shares.²⁷ Moreover, press releases by the Ministry of Commerce, Industry and Energy show that the Ministry has actively participated in the development of the Shwe Project. For example, the Ministry announced in February 2007 that the Vice Minister of Commerce, Industry and Energy, along with officers from companies including KOGAS and Daewoo International, made an official visit to Burma and “closely consulted” with the Burmese government about the possibility of importing the Shwe gas to Korea.²⁸ The Korean government clearly has control over the nature of the engagement of KOGAS in the Shwe consortium, as well as the ability to influence the consortium to avoid causing and benefiting from human rights violations by the Burmese military.

Moreover, the Korean government is an active financial supporter of foreign energy development projects such as the Shwe Project. Public corporations such as KOGAS as well as Daewoo International have received significant loans from the Korean government under the government’s Energy Resource Special Account.²⁹ According to reports, Daewoo International is a leading borrower under this account, having received US\$22.52 million in support.³⁰

Individual Petitioner I and Individual Petitioner II are foreigners residing in Korea who originate from and have family residing along the projected Shwe pipeline route.³¹ The Shwe Project threatens both Individual Petitioner I and Individual Petitioner II’s basic rights to happiness and personal liberty. If the pipeline proceeds as projected, petitioners’ families will likely face severe human rights violations, including forced labor, forced relocation, and physical

responsibility to address the behavior of businesses in foreign countries. See John Gerard Ruggie, *Business and Human Rights: The Evolving International Agenda*, 101 AM. J. INT’L L. 1, 10-12.

²⁶ Korea Gas Corporation Law, Law No. 06841 (revised Dec. 30, 2002), Article 16.2.

²⁷ *Working Meeting Between A.Medvedev and Lee Soo Ho Was Held*, ECONOMIC NEWS, Sep. 10, 2007.

²⁸ Ministry of Commerce, Industry and Energy, *Second Vice Minister of Commerce, Industry and Energy Visits Myanmar for the Energy Cooperation Commission: Consultation on the Possibility of LNG Importation of Myanmar A-1, A-3 Gas Fields* (Feb. 23, 2007) available at:

http://mocie.korea.kr/mocie/jsp/mocie1_branch.jsp?_action=news_view&_property=b_sec_1&_id=155178664 (last accessed Feb. 9, 2008).

²⁹ See, e.g., *Foreign Resource Development “No Success Financing” – What is the Problem?*, THE SEGYE TIMES, June 26, 2006 (in Korean).

³⁰ See, e.g., *Foreign Oil Development Support Amount at US\$191 Million*, SEOUL ECONOMIC NEWSPAPER, Oct. 6, 2005 (in Korean).

³¹ Individual Petitioner I is a migrant worker from a town along the pipeline, where his wife and children currently reside. Individual Petitioner II originates from and has family in a different town along the pipeline route.

violence, and petitioners themselves will be able to return home only at the risk of suffering the same.³² Individual petitioners, as well as the organizational petitioners joining this petition, thus submit that the Commission should investigate the risks arising from the Shwe Project.

While it is true that human rights violations arising from the Shwe Project would take place outside Korean territory, the decisions made by government ministers and by KOGAS are not outside Korean jurisdiction. The Commission's previous willingness to examine the issue of Korean troops sent to Iraq, and to fund field research by NGOs in the Philippines, reflects its understanding that decisions made in Korea can have major human rights implications elsewhere and that the Commission may rightly consider such matters. Similarly, such decisions indicate that the Commission recognizes it has an interest in evaluating the practices of Korean actors abroad. No formal expansion of jurisdiction is needed for the Commission to exercise jurisdiction over the actions of KOGAS in this matter, since KOGAS' decision-making on foreign natural gas projects is directly controlled by the Minister of Commerce. Thus, the Commission may and should investigate the prospect of human rights violations arising from the Shwe Project.

The Commission should investigate, at a minimum, the following fundamental human rights issues: Individuals from Burma residing in Korea, who have homes and family in the construction areas (as well as other civilians residing in these areas), are almost certain to be subject to violations of their basic rights to happiness (Article 10 of the Constitution) and personal liberty (Article 12 of the Constitution). They are also at risk of violations of Article 8 (against slavery and servitude) and Article 9 (liberty and security of the person) of the

³² The Commission has adjudicated cases involving the human rights of foreigners. According to information publicized by the Commission, Article 4 of the National Human Rights Commission Law should be interpreted to mean that "in cases of human rights violations by state organs etc. of the Republic of Korea foreigners can bring complaints whether or not they are within the territory of the Republic of Korea and investigations and remedies are possible." *National Human Rights Commission Complaints Frequently Asked Questions: 'Can Foreigners Bring Complaints,' available at: www.humanrights.go.kr* (last accessed Feb. 9, 2008). The Commission has heard such cases. See, e.g., *Skin Color Discrimination With Regard to the Crayon Color Name*, Nat. Human Rights Comm. of Korea (decided Jan. 25, 2005) (holding that the label 'skin color' for a particular color of crayon violated the right to equality of other races "without rational reason," and that such labeling was "contrary to the temporal progression" in the "current situation of active interaction between nationalities and races due to internationalization and globalization"; *Forcible Expulsion of Compatriot 00*, Nat. Human Rights Comm. of Korea (decided Jan. 13, 2003) (holding that an admission ban on a foreigner married to a Korean national violated rights to protection of the family, even if the foreigner was not a Korean national and not allowed to enter Korean soil for five years); *Human Rights Violation Due to Disallowance of Marriage Visa Issuance*, (Nat. Human Rights Comm. of Korea (decided Aug. 31, 2005) (holding that the disallowance of a marriage visa to an Iranian non-national not residing in Korea at the time violated Articles 10 and 36(1) of the Constitution, Article 23(1) of the International Covenant on Civil and Political Rights (ICCPR), and Article 10(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR)).

International Covenant on Civil and Political Rights, which Korea has ratified, and customary international law on the rights to personal liberty and against slavery and torture.³³

V. CONCLUSION

For the reasons stated herein, the Commission should begin the process of issuing comprehensive policy recommendations to ensure that foreign investment by Korean companies in the energy sector does not lead to human rights violations. The policy recommendations should specifically address concerns raised by the Shwe Project outlined above. The Commission should also initiate an investigation on the involvement of KOGAS and the Korean government in the Shwe Project.

³³ Although the Commission Law does not explicitly mandate investigations under Korea's international law obligations, the Commission has adjudicated such obligations, as well as other Korean domestic law pertaining to human rights. *See, e.g.*, Human Rights Violations Due to Forcible Informing of Illegal Residents, Nat. Human Rights Comm. of Korea (decided Aug. 16, 2005) (finding violation of Article 18(2) of the ICCPR); Human Rights Violation Due to Disallowance of Marriage Visa Issuance, Nat. Human Rights Comm. of Korea (decided Aug. 31, 2005) (finding violation of Article 23(1) of the ICCPR and Article 10(1) of the ICESCR); Forcible Expulsion of Compatriot 00, Nat. Human Rights Comm. of Korea (decided Jan. 13, 2003) (finding violation of Korean domestic family law). The Commission has also relied on Korea's international obligations under human rights treaties in order to analyze claims of violations of the basic rights specified in the Constitution. *See, e.g.*, Human Rights Violations in the Process of Forcible Inspection of Illegal Resident Foreigners, Nat. Human Rights Comm. of Korea (decided May 23, 2005) (relying on standards articulated in Articles 9 and 26 of the ICCPR to adjudicate whether Korean law enforcement had violated Articles 10 and 11 of the Constitution against illegal resident foreigners).

Appendix I

Doe v. Unocal Corp., 395 F.3d 932 (9th Circuit 2002), ordered not citable by grant of rehearing en banc, 395 F.3d 978 (2003).

NOTE: The following excerpt from the *Doe v. Unocal* decision provides evidence of the allegations and factual information gathered through the case of the sorts of human rights violations surrounding the Yadana pipeline. This information demonstrates what abuses would likely arise surrounding the Shwe project. The excerpt is not included as legal precedent.

OPINION

PREGERSON, Circuit Judge:

This case involves human rights violations that allegedly occurred in Myanmar, formerly known as Burma. Villagers from the Tenasserim region in Myanmar allege that the Defendants directly or indirectly subjected the villagers to forced labor, murder, rape, and torture when the Defendants constructed a gas pipeline through the Tenasserim region. The villagers base their claims on the Alien Tort Claims Act, 28 U.S.C. § 1350, and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq., as well as state law.

The District Court, through dismissal and summary judgment, resolved all of Plaintiffs' federal claims in favor of the Defendants. For the following reasons, we reverse in part and affirm in part the District Court's rulings.

I.

FACTUAL AND PROCEDURAL BACKGROUND

A. Unocal's Investment in a Natural Gas Project in Myanmar.

Burma has been ruled by a military government since 1958. In 1988, a new military government, Defendant-Appellee State Law and Order Restoration Council ("the Myanmar Military"), took control and renamed the country Myanmar. The Myanmar Military established a state owned company, Defendant-Appellee Myanmar Oil and Gas Enterprise ("Myanmar Oil"), to produce and sell the nation's oil and gas resources.

In 1992, Myanmar Oil licensed the French oil company Total S.A. ("Total") to produce, transport, and sell natural gas

from deposits in the Yadana Field off the coast of Myanmar (“the Project”). Total set up a subsidiary, Total Myanmar Exploration and Production (“Total Myanmar”), for this purpose. The Project consisted of a Gas Production Joint Venture, which would extract the natural gas out of the Yadana Field, and a Gas Transportation Company, which would construct and operate a pipeline to transport the natural gas from the coast of Myanmar through the interior of the country to Thailand.

Also in 1992, Defendant-Appellant Unocal Corporation and its wholly owned subsidiary Defendant-Appellant Union Oil Company of California, collectively referred to below as “Unocal,” acquired a 28% interest in the Project from Total. Unocal set up a wholly owned subsidiary, the Unocal Myanmar Offshore Company (“the Unocal Offshore Co.”), to hold Unocal’s 28% interest in the Gas Production Joint Venture half of the Project.² Similarly, Unocal set up another wholly owned subsidiary, the Unocal International Pipeline Corporation (“the Unocal Pipeline Corp.”), to hold Unocal’s 28% interest in the Gas Transportation Company half of the Project.³ Myanmar Oil and a Thai government entity, the Petroleum Authority of Thailand Exploration and Production, also acquired interests in the Project. Total Myanmar was appointed Operator of the Gas Production Joint Venture and the Gas Transportation Company. As the Operator, Total Myanmar was responsible, inter alia, for “determin[ing] . . . the selection of . . . employees [and] the hours of work and

²The Unocal Offshore Co. was originally owned by the Unocal International Corporation, a Delaware corporation and wholly-owned subsidiary of the Union Oil Company of California. In 1999, ownership of the Unocal Offshore Co. was transferred to Unocal Global Ventures, Ltd., a Bermuda corporation and wholly owned subsidiary of the Unocal International Corporation, “to achieve tax and cash management efficiencies.”

³The Unocal Pipeline Corp. was also originally owned by the Unocal International Corporation. In 1998, ownership of the Unocal Pipeline Corp. was transferred to Unocal Global Ventures, Ltd.

the compensation to be paid to all . . . employees” in connection with the Project.

B. Unocal’s Knowledge that the Myanmar Military Was Providing Security and Other Services for the Project.

It is undisputed that the Myanmar Military provided security and other services for the Project, and that Unocal knew about this. The pipeline was to run through Myanmar’s rural Tenasserim region. The Myanmar Military increased its presence in the pipeline region to provide security and other services for the Project.⁴ 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.” A former soldier in one of these battalions testified at his deposition that his battalion had been formed in 1996 specifically for this purpose. In addition, the Military built helipads and cleared roads along the proposed pipeline route for the benefit of the Project.

There is also evidence sufficient to raise a genuine issue of material fact whether the Project hired the Myanmar Military, through Myanmar Oil, to provide these services, and whether Unocal knew about this. A Production Sharing Contract, entered into by Total Myanmar and Myanmar Oil before Unocal acquired an interest in the Project, provided that “[Myanmar Oil] shall . . . supply[] or mak[e] available . . . security protection . . . as may be requested by [Total Myanmar and its assigns],” such as Unocal. Unocal was aware of this agreement. Thus, a May 10, 1995 Unocal “briefing document”

⁴Although anti-government rebels were active elsewhere in Myanmar, the record indicates that there was in fact little to no rebel activity in the region where the pipeline construction occurred, and that the center of the Myanmar civil war was 150-200 miles distant from the pipeline project.

states that “[a]ccording to our contract, the government of Myanmar is responsible for protecting the pipeline.” (Emphasis added.) Similarly, in May 1995, a cable from the U.S. Embassy in Rangoon, Myanmar, reported that Unocal On-Site Representative Joel Robinson (“Unocal Representative Robinson” or “Robinson”) “stated forthrightly that the companies have hired the Burmese military to provide security for the project.” (Emphasis added.)

Unocal disputes that the Project hired the Myanmar Military or, at the least, that Unocal knew about this. For example, Unocal points out that the Production Sharing Contract quoted in the previous paragraph covered only the off-shore Gas Production Joint Venture but not the Gas Transportation Company and the construction of the pipeline which gave rise to the alleged human rights violations. Moreover, Unocal President John Imle (“Unocal President Imle” or “Imle”) stated at his deposition that he knew of “no . . . contractual obligation” requiring the Myanmar Military to provide security for the pipeline construction. Likewise, Unocal CEO Roger Beach (“Unocal CEO Beach” or “Beach”) stated at his deposition that he also did not know “whether or not Myanmar had a contractual obligation to provide . . . security.” Beach further stated that he was not aware of “any support whatsoever of the military[,] . . . either physical or monetary.” These assertions by Unocal President Imle and Unocal CEO Beach are called into question by a briefing book which Total prepared for them on the occasion of their April 1996 visit to the Project. The briefing book lists the “numbers of villagers” working as “local helpers hired by battalions,” the monthly “amount paid in Kyats” (the currency of Myanmar) to “Project Helpers,” and the “amount in Kyats” expended by the Project on “food rations (Army + Villages).”⁵

⁵Moreover, in March 1996, a cable from the U.S. Embassy in Rangoon reflects the Embassy’s understanding that “the consortium building the pipeline pays the Burmese military a hard-currency fee for providing security.”

Furthermore, there is evidence sufficient to raise a genuine issue of material fact whether the Project directed the Myanmar Military in these activities, at least to a degree, and whether Unocal was involved in this. In May 1995, a cable from the U.S. Embassy in Rangoon reported:

[Unocal Representative] Robinson indicated Total/Unocal uses [aerial photos, precision surveys, and topography maps] to show the [Myanmar] military where they need helipads built and facilities secured 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.

A November 8, 1995 document apparently authored by Total Myanmar stated that “[e]ach working group has a security officer . . . to control the army positions.” A January 1996 meeting document lists “daily security coordination with the army” as a “working procedure.” Similarly, the briefing book that Total prepared for Unocal President Imle and Unocal CEO Beach on the occasion of their April 1996 visit to the Project mentions that “daily meeting[s]” were “held with the tactical commander” of the army. Moreover, on or about August 29, 1996, Unocal (Singapore) Director of Information Carol Scott (“Unocal Director of Information Scott” or “Scott”) discussed with Unocal Media Contact and Spokesperson David Garcia (“Unocal Spokesperson Garcia” or “Garcia”) via e-mail how Unocal should publicly address the issue of the alleged movement of villages by the Myanmar Military in connection with the pipeline. Scott cautioned Garcia that “[b]y saying we influenced the army not to move a village, you introduce the concept that they would do such a thing; whereas, by saying that no villages have been moved, you skirt the issue of whether it could happen or not.” (Emphasis added.) This e-mail is some evidence that Unocal could influence the army not to commit human rights violations

that the army might otherwise commit such violations, and that Unocal knew this.

C. Unocal's Knowledge that the Myanmar Military Was Allegedly Committing Human Rights Violations in Connection with the Project.

Plaintiffs are villagers from Myanmar's Tenasserim region, the rural area through which the Project built the pipeline. Plaintiffs allege that the Myanmar Military forced them, under threat of violence, to work on and serve as porters for the Project. For instance, John Doe IX testified that he was forced to build a helipad near the pipeline site in 1994 that was then used by Unocal and Total officials who visited the pipeline during its planning stages. John Doe VII and John Roe X, described the construction of helipads at Eindayaza and Po Pah Pta, both of which were near the pipeline site, were used to ferry Total/Unocal executives and materials to the construction site, and were constructed using the forced labor of local villagers, including Plaintiffs. John Roes VIII and IX, as well as John Does I, VIII and IX testified that they were forced to work on building roads leading to the pipeline construction area. Finally, John Does V and IX, testified that they were required to serve as "pipeline porters" — workers who performed menial tasks such as such as hauling materials and cleaning the army camps for the soldiers guarding the pipeline construction.

Plaintiffs also allege in furtherance of the forced labor program just described, the Myanmar Military subjected them to acts of murder, rape, and torture. For instance, Jane Doe I testified that after her husband, John Doe I, attempted to escape the forced labor program, he was shot at by soldiers, and in retaliation for his attempted escape, that she and her baby were thrown into a fire, resulting in injuries to her and the death of the child. Other witnesses described the summary execution of villagers who refused to participate in the forced labor program, or who grew too weak to work effectively.

Several Plaintiffs testified that rapes occurred as part of the forced labor program. For instance, both Jane Does II and III testified that while conscripted to work on pipeline-related construction projects, they were raped at knife-point by Myanmar soldiers who were members of a battalion that was supervising the work. Plaintiffs finally allege that Unocal's conduct gives rise to liability for these abuses.

The successive military governments of first Burma and now Myanmar have a long and well-known history of imposing forced labor on their citizens. See, e.g., Forced labour in Myanmar (Burma): Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29) Parts III.8, V.14(3) (1998) (describing several inquiries into forced labor in Myanmar conducted between 1960 and 1992 by the International Labor Organization, and finding “abundant evidence . . . showing the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military”), <http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar.htm>. As detailed below, even before Unocal invested in the Project, Unocal was made aware — by its own consultants and by its partners in the Project — of this record and that the Myanmar Military might also employ forced labor and commit other human rights violations in connection with the Project. And after Unocal invested in the Project, Unocal was made aware — by its own consultants and employees, its partners in the Project, and human rights organizations — of allegations that the Myanmar Military was actually committing such violations in connection with the Project.

Before Unocal acquired an interest in the Project, it hired a consulting company, Control Risk Group, to assess the risks involved in the investment. In May 1992, Control Risk Group informed Unocal that “[t]hroughout Burma the government habit-

ually makes use of forced labour to construct roads.”⁶ Control Risk Group concluded that “[i]n such circumstances UNOCAL and its partners will have little freedom of manoeuvre.” Unocal’s awareness of the risk at that time is also reflected in the deposition testimony of Unocal Vice President of International Affairs Stephen Lipman (“Unocal Vice President Lipman”):

[I]n our discussions between Unocal and Total [pre-
ceding Unocal’s acquisition of an interest in the
Project], we said that the option of having the
[Myanmar] [M]ilitary provide protection⁷ for the
pipeline construction and operation of it would be
that they might proceed in the 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
excess.

On January 4, 1995, approximately three years after Unocal acquired an interest in the Project, Unocal President Imle met with human rights organizations at Unocal’s headquarters in Los Angeles and acknowledged to them that the Myanmar Military might be using forced labor in connection with the Project. At that meeting, Imle said that “[p]eople are threatening physical damage to the pipeline,” that “if you threaten the pipeline there’s gonna be more military,” and that “[i]f forced labor goes hand and glove with the military yes there will be more forced labor.” (Emphasis added.)

⁶In the same year, the U.S. Department of State similarly reported that “[t]he military Government [in Myanmar] routinely employs corvee labor on its myriad building projects” and that “[t]he Burmese army has for decades conscripted civilian males to serve as porters.” U.S. Department of State, Country Reports on Human Rights Practices for 1991 796-97 (1992).

⁷As noted above, the Production Sharing Contract between Total Myanmar and Myanmar Oil provided that “[Myanmar Oil] shall . . . supply[] or mak[e] available . . . security protection . . . as may be requested by [Total Myanmar and its assigns],” such as Unocal. (Emphasis added.)

Two months later, on March 16, 1995, Unocal Representative Robinson confirmed to Unocal President Imle that the Myanmar Military might be committing human rights violations in connection with the Project. Thus, Robinson wrote to Imle that he had received publications from human rights organizations “which depicted in more detail than I have seen before the increased encroachment of [the Myanmar Military’s] activities into the villages of the pipeline area.” Robinson concluded on the basis of these publications that “[o]ur assertion that [the Myanmar Military] has not expanded and amplified its usual methods around the pipeline on our behalf may not withstand much scrutiny.”⁸

Shortly thereafter, on May 10, 1995, Unocal Representative Robinson wrote to Total’s Herve Madeo:

From Unocal’s standpoint, probably the most sensitive issue is “what is forced labor” and “how can you identify it.” I am sure that you will be thinking about the demarcation between work done by the project and work done “on behalf of” the project. Where the responsibility of the project ends is very important.

This statement is some evidence that Unocal knew that the Myanmar Military might use forced labor in connection with the Project.

In June 1995, Amnesty International also alerted Unocal to the possibility that the Myanmar Military might use forced labor in connection with the Project. Amnesty International informed Unocal that comments from a Myanmar Department of Industry official “could mean that the government plans to use ‘voluntary’ labor in conjunction with the pipeline.”

⁸Similarly, the briefing book that Total prepared for Unocal President Imle and Unocal CEO Beach on the occasion of their April 1996 visit to the Project listed the following “area[] of concern”: “army = additional burden on the local population.”

Amnesty International went on to explain that “what they call ‘voluntary’ labor is called forced labor in other parts of the world.”⁹

Later that year, on December 11, 1995, Unocal Consultant John Haseman (“Unocal Consultant Haseman” or “Haseman”) a former military attache at the U.S. Embassy in Rangoon, reported to Unocal that the Myanmar Military was, in fact, using forced labor and committing other human rights violations in connection with the Project. Haseman told Unocal that “Unocal was particularly discredited when a corporate spokesman was quoted as saying that Unocal was satisfied with . . . assurances [by the Myanmar Military] that no human rights abuses were occurring in the area of pipeline construction.” Haseman went on to say:

Based on my three years of service in Burma, my continuous contacts in the region since then, and my knowledge of the situation there, my conclusion is that egregious human rights violations have occurred, and are occurring now, in southern Burma. The most common are forced relocation without compensation of families from land near/along the pipeline route; forced labor to work on infrastructure projects supporting the pipeline . . . ; and imprisonment and/or execution by the army of those opposing such actions. . . . Unocal, by seeming to have accepted [the Myanmar Military]’s version of

⁹Also in 1995, Human Rights Watch informed Unocal that forced labor was so pervasive in Myanmar that Human Rights Watch could not condone any investment that would enrich the country’s current regime. That same year, the General Assembly of the United Nations “strongly urge[d] the Government of Myanmar . . . to put an end to . . . the practices of torture, abuse of women, forced labour . . . , and . . . disappearances and summary executions” Situation of Human Rights in Myanmar, U.N. General Assembly, 50th Sess., Agenda Item 112(c), U.N. Doc. A/RES/50/194 (1995), <http://www.un.org/documents/ga/res/50/ares50-194.htm>.

events, appears at best naive and at worst a willing partner in the situation.¹⁰

Communications between Unocal and Total also reflect the companies' shared knowledge that the Myanmar Military was using forced labor in connection with the Project. On February 1, 1996, Total's Herve Chagnoux wrote to Unocal and explained his answers to questions by the press as follows:

By stating that I could not guarantee that the army is not using forced labour, I certainly imply that they might, (and they might) but I am saying that we do not have to monitor army's behavior: we have our responsibilities; they have their responsibilities; and we refuse to be pushed into assuming more than what we can really guarantee. About forced labour used by the troops assigned to provide security on our pipeline project, let us admit between Unocal and Total that we might be in a grey zone.

And on September 17, 1996, Total reported to Unocal about a meeting with a European Union civil servant in charge of an investigation of forced labor in Myanmar: "We were told that even if Total is not using forced labor directly, the troops assigned to the protection of our operations use forced labour to build their camps and to carry their equipments." In reply, Total acknowledged that forced labor did indeed occur in connection with the pipeline: "We had to mention that when we had knowledge of such occurrences, the workers have been compensated." Unocal President Imle testified at his deposition that in Unocal's discussions with Total, "[s]urrounding the question of porters for the military and their payment was

¹⁰Similarly, on May 20, 1996, a State Department cable stated: "Forced labor is currently being channeled, according to [non-governmental organization] reports, to service roads for the pipeline to Thailand. . . . There are plans for a helicopter pad and airstrip in the area . . . in part for use by oil company executives."

the issue of whether they were conscripted or volunteer workers.” Imle further testified that “the consensus was that it was mixed,” i.e., “some porters were conscripted, and some were volunteer.” On March 4, 1997, Unocal nevertheless submitted a statement to the City Counsel of New York, in response to a proposed New York City select purchasing law imposed on firms that do business in Myanmar, in which Unocal stated that “no [human rights] violations have taken place” in the vicinity of the pipeline route.