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# Recommendation of 14 November 2005

## **Recommendation concerning whether investments in Total, due to the company's operations in Burma, are contrary to the Petroleum Fund's ethical guidelines**

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The Advisory Council on Ethics for the Government Petroleum Fund

To the Ministry of Finance

# Recommendation of 14 November 2005

(Unofficial English translation)

## **1 Introduction**

On 13 April 2005, the Petroleum Fund's Advisory Council on Ethics received a letter from the Ministry of Finance requesting the Council to consider whether investments in Total, due to the company's operations in Burma, are contrary to the Petroleum Fund's ethical guidelines.

As of 31 December 2004, Norges Bank held shares worth NOK 5.7 billion in Total, equivalent to an ownership interest of 0.67 per cent. Norges Bank also holds bonds worth NOK 105.5 million in the company.

Total is accused of complicity in human rights violations in connection with the construction of the Yadana gas pipeline in the period 1995-1998. Total is also accused of complicity in Burma's ongoing human rights violations, one of the grounds being that Total's operations generate revenues for the regime. Allegations of human rights violations have been put forward by a number of national and international NGOs. <sup>1</sup>Among them Earth Rights International (<http://www.earthrights.org/>), The Burma Campaign UK ([www.burmacampaign.org.uk](http://www.burmacampaign.org.uk)), La Fédération des droits de l'Homme ([www.fidh.org](http://www.fidh.org)), The Norwegian Burma Committee ([www.burma.no](http://www.burma.no)). Total denies complicity in human rights violations. <sup>2</sup>Total's web pages, [www.total.com](http://www.total.com).

The Council recognises that Burma is governed by a military regime which for many years has been responsible for very serious and systematic violations of human rights. Moreover, the Council considers it likely that these violations will continue in the foreseeable future. It is, however, beyond the Council's mandate to assess whether exclusion of companies could contribute to improving the political situation within a state.

The Council considers it likely that Total was aware that human rights violations were taking place in connection with the construction of the pipeline in the period 1995-1998, and that the company did little to prevent such violations. This, however, does not in itself provide a basis for exclusion from the Fund, as it is only the risk for present or future violations of the guidelines which can prompt exclusion. In order to establish the existence of a risk of complicity in present or future human rights violations, there must, under the guidelines, be a direct linkage between the company's activities and the relevant human rights violations. Moreover, the violations must be perpetrated to secure the company's interests, and the company must be aware of the violations and still refrain from taking steps to seek to prevent them. The Council does not consider these conditions to be met in the present case.

The Council concludes that the ethical guidelines do not provide a basis for determining that the Fund is currently contributing to Burma's human rights abuses through its ownership interest in Total, and does not recommend exclusion of the company.

## 2 Background

## 2.1 TOTAL's operations in Burma

Total SA (hereafter referred to as Total) started operations in Burma in 1992 when the company signed a production sharing contract with the Burmese public corporation Myanmar Oil and Gas Enterprise (MOGE) to develop the Yadana gas field and lay a pipeline to bring the gas ashore and onwards to the Thai border. [3www.total.com](http://www.total.com). Total established a subsidiary, Total Myanmar Exploration and Production, in that connection.

Total subsequently sold off interests in the project to Unocal (28 per cent of the shares), the Thai company PTT-EP (Petroleum Authority of Thailand Exploration & Production (25 per cent), and further interests to MOGE (15 per cent). Total retains the largest stake of 31 per cent of the shares. The same consortium owns Moattama Transportation Company (MGTC) which was responsible for constructing the pipeline from the gas field to Thailand.

Total is among the largest foreign actors in Burma today. Total states that the company is also involved in oil and gas exploration in areas adjacent to the Yadana field together with, among others, Petronas (from Malaysia) and Daewoo (from Korea).

The Yadana field is a large gas field situated in the Andaman Sea off the south-west coast of Burma. The gas is transported by pipeline to Thailand. The pipeline runs undersea from the Yadana field to shore, thereafter 63 km across Burmese territory into Thailand. Work on the gas pipeline started with field surveys in 1994, infrastructure was built between 1995 and 1997 (including landing pads for helicopters, roads, buildings, etc), while the pipeline itself was laid in 1996 and 1997. Construction was completed in May 1998, and the pipeline came on stream in July 1998. Production was up to full speed in 2001. Total states that overall investments amount to USD 1.2 billion, including close to USD 1.2 billion for the pipeline. [4www.total.com](http://www.total.com).

In conjunction with the other participants in the consortium Total initiated a social development programme in the region in 1995, in tandem with the construction of the pipeline. The programme encompassed 13 villages closest to the pipeline route, but was extended to 23 villages in 2001 and now covers a population of some 45,000 in the pipeline area. The programme focuses on building up health services, education, local industry and commerce and micro credits, along with infrastructure development. [5](#)Total 2004: Sharing our energies. Corporate Social Responsibility Report, available at [www.total.com](http://www.total.com) The social development projects are funded by Moattama Gas Transportation Company (MGTC) which is owned by Total and the other consortium participants. According to Total it spent just under USD 13 million on the programme between 1995 and 2004. [6www.total.com](http://www.total.com)

## **2.2 In brief about Burma**

Burma is ruled by a military junta, the so-called *State Peace and Development Council* (SPDC). The regime is notorious for its violations of basic human rights and its suppression of all political opposition, including the country's largest opposition party, the NLD (National League for Democracy), which is headed by Aung San Suu Kyi. The regime maintains its power through oppressive measures such as strict censorship, suppression of individual rights and persecution of minorities. Among the human rights abuses of which the regime is accused are systematic and widespread resort to forced labour including in connection with infrastructure building, forced relocation of large population groups along with atrocities such as torture, rape, murder and use of child soldiers by the military forces. The regime appears to have dealt particularly harshly with the numerous ethnic minorities in Burma. A number of NGOs have reported on the regime's outrages against the population. <sup>7</sup>Among the many are Human Rights Watch, Amnesty International, Earth Rights International, the Burma Campaign UK. The UN Commission on Human Rights and the International Labour Organization (ILO) has in several contexts reported on and condemned the regime's systematic violations of human rights <sup>8</sup>See for example resolutions from the UN Commission on Human Rights: Situation of human rights in Myanmar. 61st Commission on Human Rights, UN doc.:E/CN.4/RES/2005/10 and E/CN.4/RES/2005/L.29. and use of forced labour. <sup>9</sup>See for example International Labour Conference 2005: Provisional Record 22, Ninety-third Session, Geneva, 2005; available at [www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/pr-22.pdf](http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/pr-22.pdf).