

A Big Win for Human Rights
Unocal's settlement with Burmese villagers may spur better corporate conduct
by Daphne Eviatar
The Nation magazine, May 9, 2005

Early in April, the California-based Unocal Corporation announced it was being bought out by its neighbor, the oil giant ChevronTexaco. Splashed across the business pages, the news overshadowed another announcement, made much more quietly two weeks earlier: that Unocal had agreed to pay to settle a long-running lawsuit charging the oil company with assisting and encouraging the torture, murder and rape of Burmese villagers by government soldiers so that Unocal could build a gas pipeline. The timing of these two announcements is no coincidence, and it underscores just how seriously these legal cases are now being taken in corporate boardrooms. Once considered mere nuisances, lawsuits implicating corporations in international human rights abuses have become major obstacles to corporate profitability and prospects. I "Companies like Unocal have been claiming all along that these cases are not to be taken seriously, that they're just brought by a bunch of activists for political reasons without legal grounds, and that no one's had to pay for them and no one ever will," says Katie Redford, a lawyer for EarthRights International, who helped put the case together in 1996 on behalf of one of two groups of Burmese refugees. (Most of the plaintiffs have fled the country and remained anonymous since the case was filed, to protect them from retaliation by the Burmese government; see also Eviatar, "Profits at Gunpoint," June 30, 2003.) "Companies have been able to mislead themselves and the public that human rights concerns would not affect their bottom line. That's just not the case anymore."

About two dozen cases have been filed against major multinational corporations charging complicity with foreign governments in extraordinary brutality ranging from executions to rape and genocide, usually committed by a foreign military contractually obligated to protect corporate operations. Although about half have been dismissed, usually on procedural grounds, another dozen are still pending. Defendants include some of the largest and most profitable companies in the world: Royal Dutch/Shell, Coca-Cola and ExxonMobil. The Burma case is the first of these to be settled for money damages. Although as a condition of the settlement the size of the payment is confidential, both sides say that the fifteen Burmese villagers who brought the case—each with a unique horror story—won significant monetary compensation. They'll also get money to develop a program to improve the living conditions, healthcare and education of the people who live in the pipeline region, and to help protect them from future abuses. "It's more money than these people will ever know what to do with," says Redford, who just returned from Thailand, where she was visiting the plaintiffs and took some of them shopping for the first time in their lives. "Now they can buy food when they're hungry or medicine when their kids are sick," says Redford. "No one can give them back what they lost, but they wanted this to be a deterrent."

Unocal unwittingly revealed the seriousness of the settlement when in March it boldly sued its

insurance companies for the costs of the case. "The allegations of forced labor, murder, rape, torture, battery, forced relocation and detention throughout the Myanmar litigation fall within the policies' 'personal injuries coverage," Unocal said in the lawsuit. The insurance companies-which together insured Unocal for up to \$60 million in damages-denied the company's claims. That Unocal sued both its primary insurer and its re-insurers, which would only reimburse claims beyond an initial loss of \$15 million, makes clear that Unocal's costs were significantly higher than that. Attorneys' fees alone are estimated to have been at least \$15 million.

But as important as the settlement is the strong legal precedent the Unocal case has set. A series of federal court rulings in California established that a corporation that assists ,r encourages human rights violations by a foreign government, in this case the Burmese military, can be held legally responsible in a US court. "The standard disclaimers that they've used: that it wasn't our president physically torturing the villagers who worked on the pipeline, it was the government, our joint venture partner, doing this-the Unocal case established that they can't say that anymore," says Jennie Green, a lawyer for the Center for Constitutional Rights who was one of a group of lawyers representing the Burmese villagers.

For years, business groups lobbied hard for repeal of the Alien tort Claims Act, the law that allowed the suit. The Bush Administration has also taken an unusually strong stand against these cases, intervening several times to ask courts to dismiss them. In the Unocal case Attorney General John Ashcroft filed a brief to the Court of Appeals for the Ninth Circuit denouncing the villagers' attempt to sue under the alien tort law and, in a sweeping argument that surprised even corporate advocates, argued that every court that had allowed these claims in the past twenty years had been wrong. The court rejected his arguments.

But in some ways, the case against Unocal was easy. "This case was unusually well documented," says Harold Hongju Koh, dean of Yale Law School and an expert on human rights law. "Not every case will have that." Indeed, the evidence against the company was damning. Although Unocal repeatedly denied that it knew the Burmese government was using forced labor to clear the land it needed to build the corporation's pipeline, documents revealed that Unocal's consultants had repeatedly warned it of the military's abuses, at one point stating unequivocally that "egregious human rights violations save occurred." The State Department and the United Nations had also denounced the brutality of the Burmese regime.

Experts say this case and the settlement will have a broad impact on corporations and force them to consider their conduct overseas. "It puts companies on notice that their relationships with foreign governments, and in particular with foreign militaries, can become the subject of judicial review in the United States," says Elliot Schrage, a former senior vice president of global affairs at the Gap who teaches business strategy and law at Columbia and is a senior fellow at the Council on Foreign Relations. Companies in the extractive industries-oil, gas and mining-will probably be most affected, since they often agree to have a foreign government's armed forces protect company operations.

"Boards of directors are now on notice that this is a governance issue, too," adds Schrage, who

believes the settlement was a prerequisite to ChevronTexaco's merger with Unocal. ChevronTexaco itself is now being sued for alleged complicity in a series of shootings and the destruction of two villages by Nigerian military forces protecting its oil operations in the Niger Delta; without a settlement, Unocal would have doubled ChevronTexaco's potential liability for human rights violations and compounded its public embarrassment. Schrage adds that insurance companies will now also scrutinize more closely clients who do business in countries with repressive governments and abusive militaries. The costs of genocide and slavery insurance could be pretty high.

Catherine Boggs, a partner at the international law firm Baker & McKenzie who advises major oil and mining companies on their overseas operations, agrees that the Unocal case has had a real impact. "Companies will give greater weight to this sort of political risk when they consider going into some of these countries, and will be more careful about how they do business with them."

The recognition that bad corporate conduct overseas can be costly at home is resonating abroad as well. In France, in 2002, Burmese victims sued officials of Total, Unocal's partner in the Burma pipeline and the fourth-largest oil and gas company in the world. And a case against Texaco charging massive environmental contamination in Ecuador is now in trial there [see Eyal Press, "Texaco on Trial," May 31, 1999]. "European corporate lawyers are very worried about such lawsuits," says Menno Kamminga, an international law professor at Maastricht University in the Netherlands, who advises corporations and human rights organizations. "And NGOs definitely want to bring them."

But if the movement for legal accountability is slowly going global, so is the pressure to find more oil. World oil consumption is rising dramatically, as is the price per barrel. With countries like China now competing against the major multinationals for drilling rights, the multinationals are under ever greater pressure to pump more oil, more quickly and more cheaply. Historically, that's meant moving into some of the most unstable and politically dicey resource-rich countries in the world.

Ultimately, experts say, only international standards can get all corporations operating overseas to follow the same rules. To that end, the UN is now drafting a set of norms designed to govern transnational companies. But US officials have already indicated they won't support anything that's enforceable. That leaves the standards to be set by the courts-and at the expense of companies that continue to do big business with bad governments.

Daphne Eviatar, a Brooklyn-based writer, is a 2005 Alicia Patterson Fellow. She has written about international law and development for The New York Times Magazine, The Nation and others.