

Civil action for Crimes against humanity  
and complicity in Crimes against humanity  
committed in Burma (Myanmar)

Lodged on Thursday April 25 2002 in the Brussels magistrates court against X, the company  
TOTALFINAELF S.A.,  
Thierry Desmarest and Herve Madeo.

**Summary :**

The present action was lodged by four Burmese plaintiffs, each a former victim of human rights violation or torture (chest burnt with cigarettes, “the iron road” (a steel bar rolled up and down along the shin until the skin is torn off), blows on the head with sand-bags leading to permanent damage of the optic nerve, etc) within the framework of a systematic, generalised and planned assault carried out by the Myanmar military junta through an arsenal of multiple means of repression which include massacre of opponents (1988), arbitrary arrests, torture, forced relocations and the massive use of forced labour.

This complaint, detailed over 78 pages, is the fruit of a long research and inquiry . Thus the file submitted to the magistrate includes 80 documents and proofs. It is initiated on the basis of the so-called law of universal competence which gives competence to the Belgian courts to sue the authors (even citizens of foreign countries) of crimes against humanity even if these were committed abroad and even against non Belgian victims<sup>1</sup>.

The choice made by the plaintiffs to bring a complaint against X –persons unknown but supposed to be the military junta- as the direct authors of crimes against humanity committed in Burma (Myanmar) results from a great difficulty of access to information in the field. Burma (Myanmar) is still today a tightly closed country where any witness of crimes committed by the military authorities takes huge risks for his own safety and that of his relatives if he testifies.

In many cases the military junta has taken severe reprisals against even distant relatives of human rights activists or democrats by very harsh means (arbitrary arrests, torture, disappearances). Thus the plaintiffs –who for this very reason have been granted refugee status by four different countries- are taking very serious risks for themselves and their relatives, particularly those still resident in Burma (Myanmar).

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<sup>1</sup> None of the individuals subject to the present complaint has any immunity. At least one of the plaintiffs resides in Belgium. Several of the individuals subject to the complaint have been, are, or may be “found in Belgium”.

## **Crimes against humanity**

The complaint begins with an account of the human rights violations of which the plaintiffs have been victims (see pp. 4 - 7). This account demonstrates the substantial damage the plaintiffs have suffered from the military authorities in Myanmar.

The plaintiffs proceed to show on the basis of several reports from the United Nations, the I.L.O. and Amnesty International (see pp. 16 - 26) how these human rights violations are an integral part of a systematic, generalised and well planned assault carried out by the military authorities in Myanmar through an arsenal of multiple means of repression including massacre of opponents (1988), arbitrary arrests, torture (to which the plaintiffs have been subjected and which Amnesty International describes as “institutionalised in Burma”), forced relocation of population and massive use of forced labour<sup>2</sup>.

The plaintiffs thus demonstrate not only the reality of these crimes against humanity committed by the Burmese military junta but also the previous knowledge by the junta’s partners of the existence of such crimes and of the risk taken in being associated to these crimes.

The plaintiffs then target the legal entity of TOTALFINAELF as well as Messrs. Thierry DESMAREST and Herve MADEO<sup>3</sup>, whom, as persons having suffered damage, they consider to have encouraged or participated in the criminal actions and thus to be equally responsible for the considerable damage that they have suffered.

### **The complicity in crimes against humanity of TOTALFINAELF, Thierry DESMAREST and Herve MADEO :**

The plaintiffs demonstrate the global moral and financial support (see pp. 38 - 49) given to the military regime in Rangoon, in perfect knowledge of the consequences of this support with respect to the continuing massive human rights violations by this regime, by the company TOTAL (now TOTALFINAELF) and its management (Messrs. Thierry DESMAREST and Herve MADEO). The plaintiffs also show how this support in full knowledge of the facts is considered by international standards and law as complicity in crimes against humanity.

### **Precise facts :**

The plaintiffs then demonstrate the moral, financial (see pp. 49 - 52) as well as logistical and military<sup>4</sup> (see pp. 52 - 55) local support given also in full knowledge of the facts by the company TOTAL and its management to many military battalions (nicknamed by the local population “TOTAL battalions”) in charge of security for the Yadana pipeline in the Tenasserim region, in full knowledge of the systematic and generalised human rights violations carried out by these battalions.

The “perfect knowledge” by TOTAL and its management of crimes committed by their military partners is demonstrated (see pp. 55 – 62) by several reports from international organizations, by several testimonies from forced labour victims and deserters now in refugee camps at the Thai-Burmese border, but also by some of the company TOTAL’ s internal mail and documents which show how the company was perfectly aware of the systematic and generalised use of forced labour by its partners in charge of security for the pipeline<sup>5</sup> (use of forced portering for the army and of forced labour to build their barracks). The plaintiffs also demonstrate that the company TOTAL and its

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<sup>2</sup> See for example p. 20 of the case.

<sup>3</sup> Individuals about whom they were able to gather a series of written proofs.

<sup>4</sup> Beyond the monthly payments to the battalions in charge of pipeline security which made systematic use of forced labour, several testimonies include in their statement the transport of troops as well as delivery of grenades and ammunitions to military personnel on the company’s helicopters. And finally a proof is given of the employment by TOTAL of mercenaries (“security consultants”) to support the Burmese army in “securising the site”.

<sup>5</sup> Paid for this duty by the MOGE

management knew how systematic and generalised forced labour was by supplying proof that the company chose to discretely give a “compensation” to no less than 463 victims of forced labour for the period of December 1995 to January 15 1996<sup>6</sup>.

The examining magistrate will confirm or not this belief of the plaintiffs that the company TOTAL benefited –at least indirectly- from the systematic and generalised use of forced labour by its partners.

The plaintiffs however show –even in the absence of any advantage drawn by TOTAL (quod non)-how the knowledge and acceptance<sup>7</sup> by the company TOTAL and its management of the fact that their own acts<sup>8</sup> facilitated the crimes against humanity committed by many batallions in charge of security for the group’s pipeline –and paid by TOTAL for this duty- constitutes complicity in the crimes against humanity committed in Tenasserim since the arrival of TOTAL in Burma.

### **Personal responsibility of Messrs. DESMAREST and MADEO**

Mr Thierry DESMAREST, present chairman and managing director of TOTALFINAELF S.A. was the first responsible for the Yadana project in his capacity as director of TOTAL EXPLORATION PRODUCTION from July 1989 until his nomination as the company’s managing director in 1995. The plaintiffs supply the examining magistrate with statements by Serge Tchuruk (TOTAL’s former managing director) naming Monsieur DESMAREST as responsible for the Burma project. They also supply two photographs of Monsieur DESMAREST personally signing contracts with the Burmese generals in Rangoon on September 10 1994. The plaintiffs sue Monsieur Thierry DESMAREST for complicity in crimes against humanity as responsible for the strategy of TOTAL’s operations in Burma.

In his response to questions on forced labour by three Belgian senators and members of parliament on May 31 2000 during the shareholders general assembly in Paris, Monsieur Thierry DESMAREST confirmed that he wished TOTALFINAELF to remain in Burma. The plaintiffs demonstrate however his awareness of the crimes against humanity committed by the TOTAL batallions in the pipeline region, and for this purpose they hand over to the examining magistrate 77 testimonies from Burmese refugees telling of massive forced labour (including children) used by the “TOTAL batallions” in charge of the pipeline security (paid, supplied with logistics and ammunitions by TOTAL) until after June 2001 (see pp. 73 and 74). This report was given to TOTALFINAELF and received no reaction from Monsieur Thierry DESMAREST.

Monsieur Herve MADEO, of French nationality, director of TOTAL MYANMAR EXPLORATION PRODUCTION from 1992 to 1999, is sued by the plaintiffs for complicity in crimes against humanity as responsible for TOTAL’s operations in the field. The plaintiffs prove that he has been informed several times by UNOCAL’s management of risks arising from the use of forced labour. They demonstrate also how he personally acknowledged the compensation given to forced labourers taken by the army (see pp. 60 – 62). He was in the field, organising the payment of the batallions, the loan of helicopters, the gift of cars, the works done by TOTAL for the army, the advice by “security consultants” employed by TOTAL.

### **Possible punishment :**

In the only precedent with regards to crimes against humanity judged by the Belgian courts applying the Law of universal competence, the four Rwandan citizens from Butare found guilty of complicity in crimes against humanity were handed punishments of 12 to 20 years imprisonment by the assizes court.

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<sup>6</sup> This compensation, of which the examining magistrate will demonstrate whether or not it recurred, demonstrates at the very least that TOTAL knew of the “massive” use of forced labour by the army in charge of security for the pipeline. Many testimonies which have reached TOTAL then (see below) demonstrate the massive use of forced labour at least until June 2001.

<sup>7</sup> Moral element (Mens Rea)

<sup>8</sup> Material element (Actus Reus) by way of moral, financial, logistical and military support.

The plaintiffs have no reason to believe that “X”, Monsieur Thierry DESMAREST and Herve MADEO might receive more lenient punishments when they are found guilty, according to the wish of the plaintiffs.

**Proceedings :**

The civil action was handed to the examining magistrate on Thursday April 25 2002. The decision rests with him with regards to the admissibility of the action. If he states that the prosecution is admissible, the magistrate can adopt any useful measure such as formal indictment, summons, warrant for arrest, search warrant, etc.