



US groups come under spotlight over human rights abroad.

An energy company faces the possibility of being held liable for abuses by the Burmese army.

By Gautam Malkani in Washington DC

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In a secret location in Thai land, Ka Hsaw Wa, a 28-year-old human rights activist, is teaching people how to document accounts of rape, beatings and torture at the hands of the Burmese military. The evidence is intended for use in legal battles thousands of miles away in the US.

His efforts have helped prepare a groundbreaking lawsuit against Unocal, the US energy company, that faces the possibility of being held liable for human rights abuses carried out by the Burmese army. Witnesses are now being

interviewed in preparation for the first trial of its kind, due next year.

Lawyers have begun to test this new frontier of corporate liability. Together with pressure groups seeking to influence both corporate and foreign policy in the US, they have started shifting their focus away from lobbying Washington and the United Nations and have filed at least five similar suits in federal and state courtrooms across the country.

"I believe corporations are out of control," Ka Hsaw Wa said bluntly while in the US recently to collect two human rights awards. "You cannot do business with the brutal military in Burma. You cannot do whatever you want."

The case against Unocal was filed in 1996 in a Los Angeles federal court. It alleges the Burmese military regime - which forcibly retained power after losing it in elections in 1990 - was given a formal role in providing security for the offshore Yadana natural gas field project, to which a Unocal subsidiary is a partner.

The plaintiffs say the company was aware of the military's modus operandi and is liable for the state's human rights abuses because its profitability depended on them. Unocal rejects the allegations but its attempt to dismiss the lawsuit as beyond the court's jurisdiction was rejected in 1997.

"Since then there's been an explosion of cases and of effort," says Jennifer Green, who brought the landmark suit for the Center for Constitutional Rights in New York and is now handling another two cases. "If companies go into business

with dictators, they can be held accountable for the activities of their business partners."

In a hearing this month, Gap and 17 other clothing retailers accused of inhuman employment practices in factories in Saipan, a US territory in the Pacific, will argue that a trial pending before a Los Angeles federal court should be heard in Saipan.

A motion to dismiss a similar suit filed in a California state court will be heard in August. Gap has rejected the claims, stating: "We simply do not, and will not tolerate the type of conduct alleged in factories where we do business."

A lawsuit has also been filed in a Louisiana state court against Freeport-McMoRan Copper and Gold claiming personal injury was caused by the pollution of drinking water by its Grasberg mine in Indonesia. The company says the claims are "baseless and outrageous" but its appeal to the Louisiana Supreme Court to have it thrown out was denied last summer.

The legal weaponry for importing a human rights case into the US has been evolving since 1980. Resurrecting a 1789 statute aimed at sea pirates, it was first used against individual torturers, then those who give the orders and now the private sector.

"The advantage of filing against corporations is that they do business in many places," says David Weissbrodt, professor of law at the University of Minnesota, who helped with the 1980 case. "They may be more amenable to lawsuits than individuals who may not travel to the US."

Terry Collingsworth, general counsel of the International Labor Rights Fund in Washington and another lawyer in the Unocal litigation, says the breakthrough lay in "a perfect alignment of the planets".

Not least of these were Ka Hsaw Wa's efforts to shepherd witnesses and the fact that the military's brutality was already well documented.

But Unocal rejects any notion of a partnership with the military to provide security and denies any abuses, forced labour or relocations were associated with a pipeline project.

"There's no contractual deal, there's no policy of systematically paying or compensating or supporting the military," says Chuck Strathman, a Unocal attorney.

This will be the critical factor in all such cases. Ralph Steinhardt, professor of law at George Washington University, says any ramifications of the Unocal trial are limited because few companies drift into such dangerous waters.

The latest case, filed last month against Chevron in a federal court in San Francisco, also demonstrates how fine this point is. They argue the company is liable for the shooting and subsequent detention of protesters by Nigerian military police trying to end a deadlocked occupation of its Parabe offshore platform in the Niger River Delta last year. Two of the protesters died.

Mike Libbey, of Chevron, acknowledges that the police used helicopters and pilots contracted by the company and that the

company's security chief was on board one of them. But he stresses that it was an emergency situation rather than any contractual arrangement, adding: "We weren't running the show."

However, Ms Green, who is also handling the Chevron case, points to a similar incident in 1997, adding: "They brought in what they knew or should have known to be an abusive force."

That argument has pushed the Unocal litigation further than many imagined possible and Prof Weissbrodt says it ought to make all companies think again about their involvement in situations where they know of serious human rights violations: "This gets the attention of the corporate managers in ways perhaps some of the other issues about corporate image may not have done."

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