PURSUIT OF LEGITIMACY: 
THE CASE OF A MULTINATIONAL CORPORATION IN BURMA

Abstract

TOTAL is the fourth largest multinational oil company in the world after Royal Dutch Shell, BP and Exxon Mobil. It has been strictly under the scrutiny of the public in regards to its operation in Burma where the governments significantly violate human rights. Its investment is considered by many international human rights groups to be supporting the military regime and thus supporting the junta’s human rights violations. It is clear that TOTAL has been facing a severe legitimacy problem, and struggling to regain legitimacy for more than a decade. TOTAL has responded to those criticisms in various ways. Throughout this study, case study research method is used to analyse and examine the responses of TOTAL in accordance with the Legitimacy Theory. Legitimacy Theory predicts that legitimising strategies are applied by company to regain legitimacy when there is a legitimacy problem or called legitimacy gap.

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1. **Background and Context**

TOTAL is a multinational oil company headquartered in France. It is the fourth largest international oil and gas company in the world along with Royal Dutch Shell, BP and Exxon Mobil (LaFrance & Lehmann, 2005). TOTAL’s operation spreads out to more than 130 countries and over 111,000 employees are presently working (TOTAL, 2007). TOTAL is under the scrutiny of the public in regards to its operation in Burma where the military governments significantly violate human rights.

In July 1992, TOTAL signed a contract for shared production with the State Company of Burma, MOGE (Myanmar Oil and Gas Enterprise), to exploit and develop the Yadana Pipeline in the Andaman Sea (The Burma Campaign UK, 2005: 11; TOTAL, 2006: 13). The construction of onshore pipeline crossing Myanmar into Thailand began in February 1995. A route was selected which was most environmentally friendly despite its higher expense compared to two other alternative routes (TOTAL, 2006: 12). The pipeline project was completed on schedule on July 1998 (TOTAL, 2006: 13), and then the first delivery was made to Thailand (LaFrance & Lehmann, 2005: 221; TOTAL, 2006: 13). The Yadana field is expected to have 30 years of field life (TOTAL, 2006: 39).

Burma, now officially called Myanmar, is a non-democratic military-ruled country. Its political system is under the tight control of the State Peace and Development Council, which is the Burmese military government. Despite the victory gained by Burmese Democratic Party led by Aung San Suu Kyi in the election of 1990, the military government refused to step down. Burma seemed to be one of the wealthiest countries in Southeast Asia when it was under the British administration. However, since the military coup happened in 1962; Burma has come down to being a least developed country in the world (United Nations, 2005). The Burmese junta is frequently criticised over its treatment of Aung San Suu Kyi, who has been under the house arrest for 12 of the last 17 years, and also its human rights abuses. The human rights abuses include the torture of detainees, and the use of forced child labour (Neligan, 2004).

Many international human rights groups consider that TOTAL’s investment in Burma is supporting the military regime and condoning the junta’s extensive human rights violations (LaFrance & Lehmann, 2005: 217). Moreover, human rights activists insist that the TOTAL pipeline has been closely associated with serious human rights abuses including forced labour, forced relocation, beating, rape and the use of civilians as human mine sweepers (The Burma Campaign UK, 2005: 12). Aung San Suu Kyi has also been calling TOTAL to withdraw its operation from Burma.

Foreign governments are also critical about investment in Burma. Government of United States has construed *Burmese Freedom and Democracy Act* 2003 to ban any new investment in Burma by US firms and placed an import ban and an arms embargo (United States Library of Congress, 2003). Similarly, the European Union has also placed sanctions on Burma (European Union, 2006).

In 2002, TOTAL was sued by eight Burmese villagers, claiming worker abuses and forced labour in connection with the Yadana pipeline, and complicity in ‘crimes against humanity’ and in ‘unlawful confinement’ (*BBC News* 2005; LaFrance & Lehmann 2005: 223). In February 2006, an *International Day of Action Against TOTAL* was held in more than 15 countries world wide. The independent Burmese Trade Union made a formal request to TOTAL to disengage its operation from Burma. The Burma Campaign UK constructed *dirty list* and *clean list* on the
website. While the clean list shows the foreign corporations which had already withdrawn from Burma, the dirty list shows the one that has not. Obviously, TOTAL is on the dirty list.

As such, it is clear that TOTAL has been facing a severe legitimacy problem and struggling to regain legitimacy. It is lasting for more than a decade. Regaining legitimacy has been increasingly difficult for TOTAL, because the longer the legitimacy problem continues; the more difficult it is in regaining it.

2. Purpose of the Proposed Study

The major purpose of the proposed study is to analyse and examine the TOTAL’s responses to the criticisms. During this study, the following research question will be pursued: How has TOTAL responded to the criticisms in regards to its operation in Burma according to the Legitimacy Theory? What are the outcomes of those responses? Are they effective in regaining legitimacy?

This study also aims to generalise the findings to other multinational oil companies who have similar characteristics to TOTAL.

3. Conceptual Framework

The conceptual framework which will be applied in this study is Legitimacy Theory. It allows analysing the legitimising strategies that TOTAL has applied to face public pressure and various criticisms. The conceptual framework also provides interpretation and examinations of TOTAL’s responsive actions.

Legitimacy Theory is often used to explain disclosures with regard to the environmental and social behaviour of organisations (Hooghiemstra 2000: 56). Social contract is an important underlying concept of Legitimacy Theory. A successful organisation generally meets society’s expectation; therefore it complies with the social contract. Under the contract, the society is considered to give the organisation license to operate (BHP Billiton, 2004, cited in Deegan, 2006: 285).

A company has a legitimacy problem when it breaches the social contract, and a legitimacy gap arises when societal expectations for corporate behaviour differ from societal perceptions of corporate behaviour (LaFrance & Lehmann 2005: 220). Thus, the company has to make sure to demonstrate its actions are legitimate and behave as a good corporate citizen (Hooghiemstra 2000: 56).

Legitimising strategies are frequently applied by companies to regain legitimacy when there is a legitimacy gap. According to Dowling and Pfeffer (1975: 127 cited in Deegan 2006: 282), there are three basic strategies to re-establish legitimacy: (1) changing itself, (2) changing the society’s perception, and (3) associating with a legitimate symbol. In fact, it is difficult for companies to prove their actual change to the public. Unless independent third party confirmed that the change did take place, there is a lack of transparency. Accordingly, many companies nowadays have adopted corporate governance frameworks to ensure the transparent and trustable reporting or, hire a credible independent party to ensure that its actual operation matches what it had said to the public. In the case of business in human rights violating country and TOTAL, as long as they remain in the country, it is both difficult to prove the change in them or achieve a change in societal perception. This leads to the failure of their legitimisation as legitimacy strategies do not work effectively.
4. Relevant Background Literature

Less academic studies have been conducted on legitimising strategies of companies which operate in human rights abusive countries. Moreover, there are few studies focusing on legitimising strategies of TOTAL in Burma, although the other companies seem to be more frequently studied, especially Shell in Nigeria.

Thus, the study conducted by LaFrance and Lehmann (2005) is invaluable. Their study examined TOTAL’s attempt to form a partnership with the United Nations Educational, Scientific and Cultural Organisation (UNESCO) from the perspective of Legitimacy Theory.

In May 2003, TOTAL approached the UNESCO’s regional office in Bangkok to discuss their potential partnership. As TOTAL had been implementing the Socio-Economic Program (SEP) around the Yadana pipeline area, the co-operation, by forming the partnership, was intended to focus on fostering and expanding such community development programs in Burma. LaFrance and Lehmann (2006: 224) assert that TOTAL’s efforts to regain legitimacy in Burma through the SEP had been overshadowed by the continued efforts of the global activist groups’ co-operation with foreign governments and the media. Moreover, the SEP that TOTAL was carrying out in Burma showed lack of transparency as there were no neutral parties to confirm the socially beneficial activities (2006: 225). Thus, their interpretation of TOTAL’s attempt to form the partnership based on their Legitimacy Theory perspective is that the inclusion of UNESCO as a partner would ensure a more neutral, legitimate and, possibly, accurate voice in terms of the results of the SEP.

Although not as relevant as the above literature, there are several papers that are considered relevant.

Magdalena Bexell (2005) examines the responsibility of multinational companies in the oil sector that operates in zones of armed conflict and pervasive human rights violations, which are usually committed by non-democratic regimes and armed opposition groups. She particularly focuses on the case of Talisman Energy, which is a Canadian multinational oil company that used to operate in Sudan. She mentions that organisations in such a country strive to increase corporate responsibility (or to gain legitimacy) through the use of international norms and codes on CSR, partnerships for evaluating actual CSR performance, and corporate self-regulation other than corporate social reporting. She also states that effectively meeting the society’s demand requires the company to provide transparency, verification and publicly available information.

Ian Holliday (2005) focuses on the corporate social responsibility of multinational companies operating in Burma. He suggests that MNCs in Burma should cooperate with non-governmental organisations for extending the frontiers of global CSR, and also contributing to change in Burma. This statement can be interpreted as MNCs in Burma may gain/regain their legitimacy by cooperating (or perhaps forming a partnership) with NGOs. This is consistent with the study of LaFrance and Lehmann (2005) that a partnership with a credible independent party can enhance its legitimacy.

Reggy Hooghiemstra (2000) focuses on the case of Shell in Nigeria, where situation is similar to Burma. In this study, Shell’s corporate social report is closely examined as a legitimising strategy. He states that corporate social reporting is used to legitimise a company’s actions as well as protecting and enhancing its image or reputation (2000: 64). Shell first responded to the criticism by emphasising rationality and compliance to regulation in their report. However, it was not successful. Shell later succeeded by changing its emphasis on ethical standards and indicating that business is not a question of “profits or principles” but that both are important. The key points were the openness and transparency which Shell gained through a stakeholder dialogue on its business principles and the publication of reports (2000: 64).
From the literature reviewed, the common principle addressed by those researchers in gaining legitimacy is transparency. It is clear that there is a strong relationship between legitimisation and a company’s transparency.

5. Methods

In order to analyse and examine the TOTAL’s response to the criticisms, case study research method will be applied. The case study research method is defined by Orum, Feagin and Sjoberg (1991: 2) as “an in-depth, multifaceted investigation, using qualitative research methods, of a single social phenomenon;” also, it is appropriate when the investigator has little control over events, and when the focus is contemporary phenomenon (Yin, 1994: 1). Therefore, the method will allow a detailed examination of TOTAL in Burma and seek to address, illuminate and understand the complex contemporary issue through the perspective of Legitimacy Theory (Otsuka, 2004).

This present study is referred as a positive study, which looks into the TOTAL’s response made in the past toward the criticisms. It describes and explains its responsive actions based on Legitimacy Theory, and eventually predicts the responses of other companies in similar circumstance – generalisation.

However, a common criticism concerning case studies focuses on problems related to generalisation and the representativeness of a single case (Bexell, 2005:10). Thus, it is important to clarify what is being generalised. TOTAL’s reaction against criticisms is considered representative of corporate action taken by other companies in similar circumstances, as their reaction is similar. Therefore, the case of TOTAL will be generalisable to other multinational companies in the oil sector, headquartered in the Western hemisphere, that operate in zones of human rights violations (Bexell, 2005: 10).

The study of TOTAL’s legitimising strategies draw upon a range of text sources, thus, document analysis is the underlying qualitative technique used in this case study. A wide range of documents will be examined for identifying and analysing the company’s response to the criticisms and the timing of its response. The following documents will be viewed closely: academic reports and news releases from TOTAL, books and articles containing references to TOTAL in Burma, newspaper articles, reports from investigation missions, reports from NGOs and so forth (Bexell 2005: 17).

6. The Finding So Far

TOTAL seems to use several techniques to regain legitimacy or legitimise its present practice in Burma. The legitimacy crisis has apparently become severer since late 1995, when the incident of forced labour occurred near the pipeline (TOTAL, 2006: 17).

First of all, TOTAL introduced a Code of Conduct in 1995. It says that the Code of Conduct was tailored to the local situations (2006: 8). The Code was developed particularly for its operations and its subcontractors in Burma. TOTAL also asserts that the Code is underpinned by several texts, OECD Declaration on International Investment and Multinational Enterprises, International Labour Organisation’s Tripartite Declaration of Principles concerning
Multinational Enterprises and Social Policy, the UN Secretary-General’s 1999 Global Compact Initiative, and international declarations concerning human rights.

The association with the principles above is considered as one of the legitimising techniques under Legitimacy Theory. By associating with the legitimate symbols, company is also likely to be perceived as legitimate. TOTAL has also set up the ethical guidelines for the operation in Burma. TOTAL says that its operation strictly comprises with the Code and guideline (TOTAL, 2006: 38).

In 1995, the Socio-Economic Program (SEP) was launched in the pipeline region. It aimed to contribute through its activities to the economic and social development of Burma especially of host communities (TOTAL, 2006: 18). It focused on development in health, education, economic development and infrastructure. TOTAL says that the program is benefitting 44,000 villagers in the region, and 13 villages located closely to pipeline were now extended to 25 villages. TOTAL has also established a comprehensive website for the operation in Burma. It seems that there is no such comprehensive website for the operation in other countries. The website particularly emphasises the importance of its corporate engagement. TOTAL states, “TOTAL has no doubt that the right choice was not to refrain from investment or to withdraw to preserve its reputation, but to be engaged and work for the welfare and protection of the population” (2006: 21), and “Multinationals can bring manifold advantages to developing country, including technology transfer, opportunities for personal development, and exposure to new ideas” (2006: 29).

Also TOTAL has been producing corporate social responsibility reports annually since 2002. The report contains the company’s commitment to the environment, safety, health and human rights. Also the responsibility towards the surrounding society and local development are shown with detailed figures and graphs of achievement.

What TOTAL has done, such as issuing guidelines and communicating the benefit of engagement through reports and websites, is a clear indication of TOTAL’s response to the public pressure and to its legitimacy crisis (Hooghiemstra, 2000: 63).

Deegan (2006: 384) asserts that some organisations are undertaking social audits as a means of gaining (or regaining) some legitimacy. It can be also used as a means of justifying controversial actions and protecting reputations (The Guardian, 1998 cited in Deegan, 2006: 385). Social Audits aim to assess its performance in relation to society’s requirements and expectations. Therefore, it enables company to examine its social impacts and whether it is meeting its own social objectives.

The information solely provided by the company is less credible and lacks transparency. Although the company state that it is behaving as a good corporate citizen, it cannot be ensured unless confirmed by a third party who must also be credible. Thus, companies often attempt to increase the perceived transparency through social audit conducted by a credible independent party (Deegan, 2006: 384).

TOTAL’s actions seem consistent with this theory. TOTAL first invited the Collaborative for Development Action (CDA) to visit the pipeline region in October 2002. CDA is an independent economic and social consulting agency chaired by Mary B. Anderson and based in Cambridge, Massachusetts (TOTAL, 2006: 34). It works with governments, international organisations, United Nations agencies, non-governmental organisations and universities (TOTAL, 2006: 34). TOTAL may have chosen CDA for the site inspection because CDA has apparent credibility, and also because it is the initiative of Corporate Engagement Project (CEP). The CEP helps multinational corporations better understand the impact of their activities in areas of socio-political tensions or conflicts (TOTAL, 2006: 34).
The CDA has visited TOTAL in Burma four times so far. It encourages TOTAL to continue and broaden its SEP in Burma. It states that the SEP has been transforming the pipeline region into "one of the very few pockets in Burma where some form of civil society structure is in place" (CDA, 2003: 9).

Next, TOTAL commissioned Bernard Kouchner to visit its site in September 2003. He is presently a Minister of Foreign Affairs in France and originally a humanitarian doctor specialised in public health and crisis issues (TOTAL, 2006: 36). TOTAL says that "a politically engaged public servant and a personal acquaintance of Myanmar dissident Aung San Suu Kyi, Bernard Kouchner, had all the necessary qualifications to provide critical, impartial opinion of TOTAL’s actions in Myanmar" (2006: 36). TOTAL is clearly addressing how credible he is. TOTAL would benefit from Kouchner’s visit in two aspects. Firstly, his social audit would increase the perceived transparency. He actually confirmed that TOTAL’s operation in Burma is positively influencing the living of Burmese. Secondly, Kouchner would act as a strong legitimate symbol. According to Legitimacy Theory, an organisation can enhance the legitimacy by associating with a strong legitimate symbol. Therefore, it seems clear that TOTAL has intentionally chosen Bernard Kouchner for the purpose of legitimisation.

The both independent inspectors have ruled out disengagement and left positive feedback on TOTAL’s engagement. This would have contributed positively to the corporate image. However, as long as those two credible parties were intentionally selected, the society would perhaps suspect its transparency. TOTAL should have announced that the pipeline corridor is open, and should have shown willingness to talk to any journalists, tourists or activists who want to find out about its activities in the region (Kouchner, 2003: 15).

The partnerships with credible organisations may also be used by companies as vehicles to regain legitimacy (LaFrance & Lehmann, 2005: 217). TOTAL and The United Nations Institute for Training and Research (UNITAR) have been strategic partners in a global alliance designed to enhance national and local government (TOTAL, 2006: 31). In regards to Burma, TOTAL and UNITAR signed a multi-year agreement under which TOTAL agreed to finance UN training program for Burmese diplomats and government officials (TOTAL, 2006: 31). TOTAL says as “TOTAL’s involvement in these government programs demonstrates our commitment to enabling Myanmar to take its place in the world community sooner rather than later” (2006: 31).

As mentioned previously, TOTAL had approached the United Nations Educational, Scientific and Cultural Organisation’s (UNESCO) regional office in Bangkok to discuss a potential partnership between the company and UNESCO (LaFrance & Lehmann, 2005: 217). LaFrance and Lehmann (2005: 217) assert as “because of mounting scrutiny from international stakeholder groups, TOTAL had decided that by partnering with UNESCO they could expand their programs beyond the pipeline corridor to reach impoverished people in other regions of the country and gain the credibility and transparency associated with a large international organisation”.

7. Expected Outcome

TOTAL acknowledges that “engagement in such countries involves taking a risk that could adversely affect corporate image” (2006: 21). Thus, it has responded in the ways as above. It also considers that as “a responsible multinational [it] has to reconcile its contribution to economic development with the progress of human rights where it operates” (2006: 21). However, although TOTAL’s effort to regain legitimacy, it does not seem that the amount of criticisms is decreasing, but rather escalating. It means that the legitimising strategies are not working effectively. This study expects to find that TOTAL’s legitimising strategies are failing to achieve regaining legitimacy. The legitimisation through the strategies above might be less effective to change the
society’s perception as long as it remains in the country. Doing business in Burma itself has been perceived as illegitimate. The society, especially international human rights groups, based on the voice of Aung San Suu Kyi, never stop calling TOTAL to withdraw from the country. Their expectation about TOTAL’s activity and TOTAL’s perceived activities do not match. Therefore, a significant legitimacy gap is likely to exist continuously until TOTAL withdraws from Burma.

8. **Further Study**

The responses of TOTAL seem consistent with Legitimacy Theory. However, one point which is uncertain is that the TOTAL’s decision to remain in Burma and not to withdraw. If TOTAL seriously concerns about its legitimacy problem and hopes to regain legitimacy, why do they not simply choose by withdrawing its operation from the country? What factors do not allow them to do so? Is it costly to withdraw or in other words, is it profitable to remain in Burma? Does it truly consider about the situation of Burma and feel obliged to make a difference for the Burmese? TOTAL prohibit itself from involving in the Burmese political matter. It is obvious that a change in the military government will change the country. If TOTAL hopes to improve the Burma’s situation and make a difference, why does it strictly prohibit from the political involvement? These will be the possible research questions to pursue in the future.
References


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