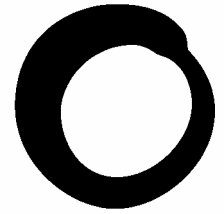


September 2005



**Friends of
the Earth**

Briefing

Barclays, Human Rights and the Trans Thai-Malaysia Gas Pipeline

Summary

In June 2004, Barclays Bank agreed to lead the financing of a controversial multi-million dollar gas pipeline development between Thailand and Malaysia which is beset by human rights abuses. Currently under construction, the pipeline threatens delicate ecosystems that support the livelihood of the local fishermen as well as their way of life. Despite substantial protest from villagers and opposition from the Thai Senate, the National Human Rights Commission (NHRC) and over 1300 academics, work on the pipeline and gas separation plant has gone ahead.

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The Pipeline Project

The pipeline development is a collaborative enterprise between the state-owned oil companies Petronas of Malaysia and the Petroleum Authority of Thailand (PTT). The pipeline will pump gas from offshore fields in the Gulf of Thailand to a separation plant in Chana district, southern Thailand, and then on to the Thai-Malaysian border where it will join the Malaysian gas grid.ⁱ However, it is a 255km section in the Gulf and the gas separation plant it is linked to in Talingchan subdistrict on the Thai coast that has stirred the most controversy and allegations of human rights abuses.

Mixed benefits

The key function of the pipeline is to fuel industrial development in southern Thailand. The separation plant will extract commercial gas that can then be sold in Thailand while the rest will be transported to the Malaysian gas grid via an 86km onshore pipeline.

The Trans Thai-Malaysia pipeline company (TTM) developing the project, together with the Thai government, claim that industrialisation of the area will improve the local economy, reducing poverty and socio-economic disparities in the region. Nevertheless, huge doubt remains as to the real need for the gas, although both government and big business stand to make massive profits from the development. Many local people doubt that local communities will benefit.

Environmental Impacts

Local communities are concerned about the effects of effluents and emissions that will be caused by the project. Villagers in the project area in Songkhla province, who are predominantly Muslim, earn their living mainly through fishing, farming and rearing cooing doves, and are directly dependent on clean air and natural resources.ⁱⁱ

Construction of the pipeline and the gas separation plant also threatens important areas of wetland forest and some of the few remaining stretches of rare sand dune forest along the coast. It is feared that this destruction will threaten food security in the surrounding areas.ⁱⁱⁱ

Financing the project

Barclays agreed in June 2004 to be the lead arranger for the financing of the US\$524.3 million pipeline project. It has provided a US\$257.1 million loan, nearly half the total loan, giving it significant leverage over the project. Its participation is crucial to the success of the development since its influence and credibility have played a huge role in attracting foreign investors.

A key aspect of Barclays' role as lead arranger is to carry out satisfactory risk assessment. This should consider all problems associated with the project, including the potential for environmental and social harm. This is important as it can affect the ability of a company to repay the loan.

Equator Principles

Barclays is one of four banks that led the way in creating a set of environmental and social guidelines (known as The Equator Principles) for private banks involved in project finance. Barclays must therefore be expected to ensure that the Thai-Malaysia gas project complies

with these guidelines, which are based on policies developed by the World Bank and its private finance arm, the International Finance Corporation (IFC).

Under the Equator Principles, an Environmental Impact Assessment (EIA) is required. The process involves an analysis of the likely effects on the environment and mandatory public consultation. The results of both must be taken into consideration when making the final decision.

Environmental Impact Assessment

Inadequate Consultation

Although pressure from the government has resulted in approval of the TTM EIA, it was initially rejected by the government's own expert panel appointed by the Office of Environmental Policy and Planning (OEPP), and remained so for over a year.^{iv} The EIA has been heavily criticised for omitting many environmental and social impacts and is the subject of an administrative lawsuit.^v

With regard to public consultation, two hearings took place in 2000, the second held because of the failure of the first. The second lasted only 25 minutes, although it was intended to take place over two days, and was prejudiced against those members of the public in opposition to the pipeline as they were forcibly excluded from participating. Those who were permitted to comment at the consultation were employed by TTM.^{vi}

Barclays & Human Rights

Human rights policy

The Barclays Group Statement on Human Rights, adopted in June 2004, defines the bank's approach to human rights. The Statement covers Barclays' responsibilities as an employer, as a provider of financial services, as a purchaser of goods and services and to communities.

Regarding its commitment to local communities, Barclays states:

'We will take the necessary steps to understand the impacts that our business may have on the communities with which we interact, including human rights impacts. Where there is potential for our operations to cause human rights violations we will take whatever action is necessary to avoid them'.^{vii}

UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (UN Norms)

As a leading participant in the Business Leaders Group in trialling the UN Norms, Barclays has committed itself to further responsibilities regarding human rights when involved in international project finance. Among these, businesses must avoid corruption, maintain transparency, respect economic, social and cultural rights and safeguard environmental protection in their activities.^{viii}

Barclays' actions in support of the TTM project are in breach of these pledges.

Human Rights Abuses

Peaceful protestors attacked

Over two years of peaceful and lawful protest by local people in southern Thailand has been met with increasing threats of police violence, mounting harassment and intimidation from security patrols in the area, creating what the UN Special Envoy on Human Rights, Hina Jilani, described as “a climate of fear”.^{ix}

A violent incident occurred in December 2002, when villagers attempted to give a letter to the Prime Minister. They were brutally dispersed by police, beaten violently, and large numbers of protestors, including 12 NGO staff members, were illegally detained. Since then, the Provincial Court of Songkhla has ruled that villagers were exercising their constitutional rights in the 2002 clash.^x

In November 2003, an adolescent taking photos near the construction site was brutally beaten by police and was left unconscious for two days with a cracked skull.^{xi}

Despite these and numerous other incidents, Barclays continues its association with a development that has been demonstrated to have involved serious human rights abuses. This clearly flouts its own policy, putting its reputation is at stake by undermining its own assurances to investits customers' money responsibly.

Illegal takeover of land

A further concern for Barclays is the means by which TTM acquired a parcel of land where part of the gas separation unit has been built. The land includes four public rights of way which are *wakaf* common lands passed down as part of Islamic custom. Islamic principles deem these rights of way as given over to God for community use. They cannot be bought, sold or exchanged.^{xii} TTM's fencing off and blocking of these rights of way is also in breach of Thai law. According to the law, before such public rights of way are interfered with, project developers must ask for consent from local residents and offer other paths in exchange, and a specific act must be passed by Parliament revoking the existing rights of way. None of this was done.

TTM has now almost completed construction of the gas plant on this land and the public rights of way have already disappeared.

In addition, villagers have proved that TTM forged documents to secure a strip of common beachfront land identified clearly in official land documents of 1990 as public land, which cannot legally be sold. In violation of Thai law, TTM arranged to “purchase” this land, partly covered with sand dune forest, from a bogus “private owner” in order to lay its gas pipeline onshore.^{xiii}

The National Human Rights Commission, an independent Thai body that assesses human rights concerns and abuses, has since issued a report stating that the land in question is common land and that the local people are entitled to access to it. The Commission recommended in December 2004 that the project be suspended until the issue is resolved.^{xiv}

Nonetheless, construction continues and villagers' rights of way remain blocked while

Barclays maintains both its silence and its inaction.

Demands for Barclays

Write to Peter Varley

Chief Executive Officer
Barclays Bank
1 Churchill Place
London E14 5HP

Demand that Barclays demonstrate its commitment to upholding human rights with regards to the Trans Thai – Malaysia pipeline by agreeing:

- To meet with the NHRC, TTM and local people to discuss local objections to the pipeline and associated industrial projects.
- To suspend construction in order that the illegal encroachment of common lands be investigated and the culprits found.
- To investigate the illegal blocking of public rights of way.

Demand that Barclays demonstrate its commitment to upholding human rights everywhere by agreeing to:

- Publish its human rights policy and report annually in compliance with UN norms.
- Publish compliance with the Equator Principles and state any deviation from the Principles.

Endnotes

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