

August 13, 2003

Pipeline to Justice

A Burmese Activist Has the Attention of The White House and, He Hopes, the World

By David Montgomery

Washington Post Staff Writer

He was a Burmese student dissident with a taste for American heavy-metal music. He fled the soldiers in the city and hid in the jungle. He began to collect the stories of the people he met there: tales of rape, torture, slavery, murder. He had the tattoo on his right forearm skinned off with a blade so the soldiers would have more trouble identifying him. The word "zeal" in Burmese was replaced by a scar.

For a long time nobody listened to the stories.

Now people are listening.

Human rights lawyers are listening, suing corporations for complicity in alleged abuses overseas.

The Bush administration is listening, declaring that the stories are being misused to threaten American foreign policy.

Global corporations are listening, complaining that the stories are distorted and bad for business.

One recent night upstairs in an Adams Morgan restaurant, dozens of activists are listening, too, to the slight, self-deprecating man in baggy clothes with his hair pulled back in a careless ponytail.

Ka Hsaw Wa, 33, has come a long way since those days in the jungle when at first he didn't even have pen and paper. Now he's an American citizen, married, with two children, living in a pink house in Takoma Park. He has a laptop to present a slide show on the wall of the packed barroom: Soldiers gunning down students in Rangoon during the 1988 protests for democracy. Families crouched in the jungle after being driven from their villages. Bloody comrades. Bodies.

"I was just an obnoxious teenager," he says, in his way of sprinkling humor to relieve the heavy message, "until I was tortured by the military dictatorship for three days."

He tells about the dead woman he found in the jungle, her body violated by someone using a tree branch.

These are powerful stories, but they aren't the ones causing angst at the Justice Department and in corporate boardrooms. He gets to those. They concern the natural gas pipeline. It was completed in 1998 by the French company Total; its minority investor, California-based Unocal Corp.; and the Burmese state oil company. It cuts 39 miles across the Burma panhandle, carrying gas from the offshore Yadana gas field to the Thai border. Villagers told Ka Hsaw Wa they were forcibly relocated to make way for the \$1.2 billion project or enslaved by the army to work on support facilities.

He shows what he says are pictures of men with sores from being beaten or forced to carry heavy loads for soldiers guarding the pipeline region.

He tells the story of a woman who says a soldier kicked her while she was holding her baby girl, and the infant fell into the cooking fire. The baby died several days later.

"They kill people, they rape women, just to prepare for the foreign investment," Ka Hsaw Wa says.

Unocal, whose main involvement was putting up 28 percent of the project money, says any relocations occurred before a pipeline route was chosen and before the company was involved. It also denies anyone was forced to work on the pipeline. And if the military committed atrocities, Unocal says, the acts weren't connected with the project and the company had no control over the soldiers.

But Ka Hsaw Wa's stories caught the ear of some American lawyers who employed a novel legal theory in 1996 to sue Unocal and Total in federal court for indirect responsibility in alleged human rights violations. The plaintiffs are a dozen villagers who talked to Ka Hsaw Wa.

The U.S. Court of Appeals for the 9th Circuit in San Francisco just heard arguments on what standard of liability should apply. (Total was dismissed from the suit because the French company does not have sufficient U.S. operations to be tried in American courts.) Meanwhile, the plaintiffs also sued Unocal in a California state court; that trial is scheduled for later this year. Picking up on the trend, foreign plaintiffs have begun to sue other corporations under the same theory -- including ChevronTexaco, for liability in alleged abuses in Nigeria; DynCorp in Ecuador; Occidental Petroleum in Colombia.

The U.S. government has frequently condemned Burma -- called Myanmar by the military regime -- for human rights violations. Congress just approved, and President Bush signed, economic sanctions after the regime recently detained democracy advocate Aung San Suu Kyi. But in the Unocal matter in the federal court, the administration filed a brief on the company's side, citing concerns that this new wave of lawsuits with foreigners using American courts for redress of grievances abroad could interfere with U.S. foreign relations.

"This court's approach . . . bears serious implications for our current war against terrorism," said the brief, "and permits . . . claims to be easily asserted against our allies in that war."

Could it be that global capitalism might soon find its business relationships with brutal regimes -- and with allies of the United States -- being scrutinized by unpredictable American juries? If so, the thin man who emerged from the jungle haunted by stories deserves no small share of the credit, or blame.

An Elephant's Strength

Ka Hsaw Wa (pronounced ka-SA-wa) means "white elephant" in Karen, the language of the minority Karen people in Burma, the activist's ethnicity. The appearance of a white elephant is considered a good omen in Southeast Asia.

Ka Hsaw Wa says he chose the name because it connotes truth and power. It was one of several cover names he adopted to protect his parents in Rangoon during his decade in the jungle documenting abuses. A few years ago, under the name Ka Hsaw Wa, he became recognized in Western activist circles, winning the Reebok Human Rights Award and the Goldman Environmental Prize. The moniker stuck.

How strange that this white elephant originally wanted to be a businessman. The son of a doctor, he says he had a comfortable upbringing. As a teenager he made extra money on the black market, trading U.S. dollars. He thought he'd be a wheeler-dealer all his life. He had long hair, outrageous earrings, a prized pair of Lee jeans, American combat boots, two American T-shirts -- one with a skull and bones, one with a Harley-Davidson. He liked American videos and bands such as AC/DC.

"My 'look' was ridiculous," he says, laughing at the memory in his sparsely furnished living room -- futon couch, coffee table, acoustic guitar, CD player, laptop. On this recent morning, he's getting ready for a trip to the Thai-Burmese border area, where he still spends much of his time, to prepare for the trials. But first he and his wife, Katie Redford -- a lawyer and co-founder, with Ka Hsaw Wa and another colleague, of EarthRights International -- are planning a quick camping trip to West Virginia with their children, Alexis, 6, and Htoo Eh, 2.

Serious again, Ka Hsaw Wa recalls the day life changed for him: One of his teenage friends got into a fight with the son of a member of the military, then had to go into hiding. Soldiers came looking for Ka Hsaw Wa. He didn't know where his friend was, but for three days he was grilled. The soldiers played sadistic games, making him squat on his toes and pretend he was riding a motorcycle, answering questions while going "vroom, vroom!" If he misspoke, or if his heels touched the ground, they beat him with a rod. He was punched and kicked. He started vomiting blood and woke up in a hospital -- no longer an apolitical budding capitalist.

He became prominent in the student-led pro-democracy demonstrations of 1988. There was widespread discontent with the one-party state. But before democratic change could come, the army staged a coup and installed the military regime.

Soldiers opened fire on unarmed crowds. Ka Hsaw Wa and another student leader were running in a street, and both fell in a heap. Ka Hsaw Wa had merely stumbled, the friend was fatally shot. Ka Hsaw Wa says he felt what he had felt when he was being beaten: fear being replaced by rage.

"When you see your friend fall in front of you, and you flip but he falls because of shooting, when that happens, you don't afraid anymore," he says in his sometimes-clumsy English. "When I was tortured, after 20 minutes you don't afraid anymore."

He and other students fled to the jungle in Karen territory near the Thai border. But Ka Hsaw Wa says he didn't follow others joining the armed resistance. He became fascinated with the farmers and villagers, and appalled at the atrocities they reported. He decided that if he could get their stories to the outside world, it might be a more powerful way of fighting back than picking up a gun. The armed dissidents sneered and said he lacked "man's blood."

With the help of Canadian and U.S. activists, Ka Hsaw Wa says some testimonies reached some international rights groups. But it didn't seem to make any difference.

He spoke of this bleak period in an interview with Kerry Kennedy Cuomo, published in her 2000 collection of profiles of rights workers, "Speak Truth to Power": "I think to myself, 'What am I doing?' I don't gain anything for myself and I can't seem to do anything to lessen the suffering of the villagers."

Veronika Martin, now an advocate with Refugees International based in Washington, met Ka Hsaw Wa around this time in a refugee camp. "I met him in 1992 when he was an unknown entity and, I would say, an angry young man," she recalls. "Even though he was this little nobody, he didn't care, he knew he was right, he knew he had to expose abuses and he was going to push forward without the promise of success."

Redford became friends with Ka Hsaw Wa in about 1993, when she sneaked into Burma to gather testimony for another organization on the effect of logging, and he helped her find witnesses. He had a knack for getting stories. Villagers were becoming weary of strangers -- human rights investigators, journalists -- showing up and extracting information like just another natural resource, then disappearing. Ka Hsaw Wa was different. He came back, year after year. He won their trust. He built networks of sources in the jungle.

"He just connects really well with people," Redford says. "He'll go into the jungle, put on jungle clothes, chew betel nuts, eat with [the people], cook with them, take the time."

Ka Hsaw Wa and Redford married in 1996 after co-founding EarthRights in Thailand. They opened the Washington office in 1999.

"A lot of people achieve success, become well-known and they become inaccessible," says Folabi Olagbaju, director of Just Earth!, Amnesty International's human rights and environmental program. "Ka Hsaw Wa, to his credit, is very easygoing and doesn't see himself as a high person, but part of the people."

And, Olagbaju continues, "he understands the need to attack the problem in a very structured and strategic way."

Making the Case

A structure and strategy emerged when Ka Hsaw Wa and other activists began to focus on the pipeline project in the mid-1990s.

American lawyers had rediscovered an obscure 1789 statute known as the Alien Tort Claims Act. It had been used to sue individuals for alleged human rights abuses abroad, but it hadn't been tested against a corporation.

Ka Hsaw Wa's stories provided the raw material for just such a legal challenge. EarthRights International, the New York-based Center for Constitutional Rights and some private attorneys filed the federal suit in 1996. (A different set of activists and lawyers, including the Washington-based International Labor Rights Fund, filed a similar suit against Unocal on behalf of other villagers around the same time; the cases are making their way together through the courts.)

The identities and depositions of plaintiffs who talked to Ka Hsaw Wa are sealed for their protection, though they are summarized in the complaint.

Jane Doe I said her family was forced to leave their village, but instead of moving to the village the military chose, they went to another. Soldiers harassed them there, and that was when Baby Doe was kicked into the fire.

John Doe V and wife Jane Doe II said they were forced to leave their village, and their house and goods were stolen by the military. In the new village, they had to pay for permission to work on their old farm. John Doe V was regularly forced to work as a porter for the soldiers so he couldn't farm his land and had to sell his livestock. He said soldiers tortured village leaders when they failed to provide enough porters.

After that, Jane Doe II and her great-niece Jane Doe III said, they returned to their old village to retrieve some pigs and on their way back were detained by soldiers providing security in the pipeline region. The soldiers raped Jane Doe III, 15, attempted to rape Jane Doe II, and stole a pig, rice and money, the women said.

John Doe VIII said a representative of Total, the French company, accompanied by soldiers, urged fellow villagers to support the project. Later, he said, soldiers forced the villagers to clear brush for outposts in the pipeline area and serve as porters, even carrying food the soldiers stole from the village. Their loads were so heavy the porters couldn't stand up, so they were beaten. Soldiers killed eight people, John Doe VIII said.

Representatives of the Myanmar Embassy did not respond to requests for comment.

A lawyer for Unocal says the stories have never been tested in court, and the company questions some of them.

About Jane Doe I and her baby, Unocal chief legal officer Charles O. Strathman says, "We have significant doubts that was in any way related to the pipeline, even if it occurred." He adds, "We have significant doubts regarding many of the alleged injuries -- both whether they actually occurred as alleged and whether they had any connection to the pipeline."

A question at the heart of the case is how much, if any, liability Unocal should have for acts not directly related to putting pipe in the ground, acts that Unocal did not direct.

"It all boils down to under what circumstances is it appropriate to hold a non-actor accountable for the behavior of someone else, in this case the Myanmar government, the Myanmar military," says Strathman. "How can you hold a company responsible for actions of a sovereign government and its military that you have no means of controlling?"

But Ka Hsaw Wa and his allies say Unocal is dodging responsibility. They say the soldiers were acting in the interest of the project.

"They knew about the violations," says Jennifer Green, a lawyer with the Center for Constitutional Rights. "It's not that something bad happened and they said, 'We can't participate in the project.' They knew about it and they continued to provide financial support and to invest in the project."

As for the Bush administration's argument that such lawsuits could interfere with foreign policy, Green says, "If someone is alleging torture and slavery, that's not against U.S. foreign policy because our foreign policy is to condemn those actions."

In 2000, a federal judge in Los Angeles dismissed the suit because Unocal did not directly participate in the alleged abuses, though the judge said there was evidence Unocal knew that forced labor was being used and that it benefited the project.

But in September, a three-judge appeals panel reversed the lower court, ruling there was enough evidence for a "reasonable factfinder" to conclude that Unocal may be liable for "aiding and abetting" the military in forced labor, murder and rape, under a theory that

hiring soldiers for security and providing maps and information in daily meetings constitutes assistance. Unocal disputes that the evidence warrants such a conclusion.

Now the full 11-judge appeals court is pondering whether and in what form to send the case back down to the trial court.

Today the pipeline carries 700 million to 800 million cubic feet of natural gas a day across the jungle. Unocal says the project has helped the region, citing lower infant mortality, higher school attendance and 587 new jobs.

Redford says Unocal exaggerates the benefits, and, in any case, they "can't take away the harmful impacts of their pipeline and the human rights abuses."

Ka Hsaw Wa thinks back to when his work seemed futile, when former comrades with guns laughed at his pen and paper. The words of powerless people have migrated from the jungle to an American courtroom.

"It changes their perspective, that there's another way to fight against those people," Ka Hsaw Wa says.

He and his colleagues are training legions of others to do the same work in Asia, Latin America, elsewhere. There are more stories.

"I want corporations to be accountable," Ka Hsaw Wa says. "I don't want corporations to do anything they want outside the United States."