

Thailand's Direct Investments in Neighbouring Countries

Impacts to the Environment and Communities,
and Violations of Human Rights

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Preface

Extra-Territorial Obligations Watch Coalition (ETOs Watch Coalition) formed by the civil societies and nongovernmental organizations that monitor the development and environment situation in neighboring countries of Thailand, consisting of Cambodia, Laos, Myanmar, and Vietnam (also known as CLMV), especially the situation of human rights violations and the struggle for natural resources arising from direct investment by state-owned enterprises or private Thai whether or not the said situation will affect the border crossing into Thailand.

Preparation of this report, “Thailand’s Direct Investments in Neighbouring Countries : Impacts to the Environment and Communities, and Violations of Human Rights.” This report was completed in September 2017, with 12 case studies in different countries, classified by country, consisting of;

Laos; Xayaburi hydropower project, Pak Beng hydropower project, Hongsa coal – fire power plant and mining.

Myanmar; Hatgyi hydropower dam project, Dawei Deep seaport and special economic zone Project, Ye coal-fired power plant project, Heinda tin mine project, Ban Chaung coal mine project, Mawlamyine cement factory and coal-fired power plant project.

Cambodia; Koh Kong economic land concession for sugarcane plantation and sugar factory project, economic Oddarmeanchay land concession for sugarcane plantation and sugar factory project.

Vietnam; Quang Tri 1 thermal power plant project.

12 Thai direct investment projects are only a part of direct investment. Accumulated investments during the years 2005 - 2016, Thai direct investment in Myanmar, Laos, Cambodia, and Vietnam in total were 114,362.01, 75,874.58, 32,287.83, 107,503.71 million baht, respectively. The main investments were the electricity sector, gas and oil drilling, steam and air conditioning industry, financial services sector manufacturing sectors (such as sugar, textiles), borrowing transactions between affiliates, trade credit, mining and quarrying sector, and concrete products, etc. According to the research of the Stock Exchange of Thailand, the main factors that attract and drive Thai investment to neighboring countries are searching for new markets and resources, increasing production efficiency and risk diversification.

The main content of this report dividing the main points into the following; an overview study of Thai direct investment globally and in the ASEAN region, the policy to promote investment in countries in the CLMV region, the situation of monitoring various projects by the National Human Rights Commission of Thailand (September 2017), 12 case studies (this section will show investment patterns, related departments, organizations or institutions, the impact of human rights violations, communities, and the environment).

This report has made important findings that the various problems arising from direct investment in neighboring countries, caused by important factors such as the gap in the law enforcement environment, the gap in the regulations of the Stock Exchange of Thailand, the

gap of the NHRCT's investigation and recommendation, the lack and incomplete of disclosure of information and the public hearing, the responsibility of commercial banks that provide loans to various projects, etc.

Although the cabinet issued the cabinet resolutions to improve the investment of the Thai private sector, including in the case of Oddarmeanchey sugarcane planting and establishing a sugar factory in which the cabinet passed a resolution on 2 May 2017, and the Dawei deep seaport project and special economic zone. The cabinet passed a resolution on May 16, 2016, which requires foreign investment supervision of Thai investors to respect the basic principles of human rights by adopting the United Nations Guidelines on Business and Human Rights (compliance of 3 pillars: protect, respect and remedy) as a framework for foreign investment of Thai investors. In practice, however, there is no mechanism by the government or the public sector that could be implemented in accordance with the cabinet resolutions.

ETOs Watch Coalition sincerely hopes that this study report will be the beginning of the process of monitoring the situation in neighboring countries, which will promote the learning process of Thai society and neighboring countries which will lead to the development of cooperation to enhance Thailand direct investments focuses primarily on the protection and respect of human rights rather than remedies because this is the basis of the process involved in deciding the future of the community who may have changed forever.

We, ETOs Watch Coalition, would like to thank Spirit in Education Movement (SEM) and the Heinrich Boll Foundation for the support of “Thailand’s Direct Investments in Neighbouring Countries: Impacts on the Environment and Communities, and Violations of Human Rights”.

With friendship across the border,
ETOs Watch Coalition.
April, 2018.

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1. Overall of Thailand Cross – Border Investment

Thailand cross-border investment or Thai direct investment abroad beginning in the late 1980s (around 1985-1989), the first group of companies that started to invest overseas were Bangkok Bank (1950s), Charoen Pokphand (1970s), S&P (1990), Saha Union. (1972s), Siam Cement Conglomerate group (1990), Thai Union Food (the 1990s) and have expanded under the policy "Change the battlefield to be a trade field "by the government of General Chatichai Choonhavan in 1991, both companies listed on the Stock Exchange of Thailand and generally listed companies which is under the trend of global economic development known as "Washington Consensus" by the World Bank and International Monetary Fund (IMF) played an important role in transforming the Washington Consensus. Is an economic development direction with 4 important matters, namely stabilization (creating economic stability), liberalization (liberalization of trade, investment, and international finance), deregulation (reduction of regulatory oversight) and privatization (transfer of production from the government to the private sector), with the direction of economic development in Thailand and the CLMV countries are driven under the Washington Consensus to this day.

Table 1: Value of foreign direct investment in Thailand 2005-2016

Country	2005 – 2016 (million baht)
ASEAN Countries	785,949.78
Hong Kong	287,794.40
Cayman Island	266,474.80
Mauritius	202,836.32
United States of America	166,502.66
British Virgin Island	133,562.89
Others	719,655.10
Total	2,562,775.95

Source: Bank of Thailand

http://www2.bot.or.th/statistics/Download/EC_XT_052_TH_ALL.XLS (This information was adjusted by July 31, 2017) developed by ETOs Watch Coalition

When looking at only ASEAN countries we found that during the year 2005-2016, Thailand invested in Singapore the highest, followed by Myanmar, Vietnam, Indonesia, Malaysia, Laos, Cambodia, Philippines, and Brunei.

The investment value is shown in table 2, the major Thai investment businesses are the investment in the electricity sector, drilling gas-oil steam and air conditioning systems, financial services sector, manufacturing sectors (such as sugar, textiles), borrowing transactions between affiliates trade-credit, mining and quarrying sector, and concrete products, etc. There are three types of roles which are roles as the project developer, project sponsor, and investors from financial institutions.

Table 2: Value of Thailand direct investment in ASEAN 2005-2016

ASEAN Countries	2005 – 2016 (million baht)
Singapore	261,064.09
Myanmar	114,362.01
Vietnam	107,503.71

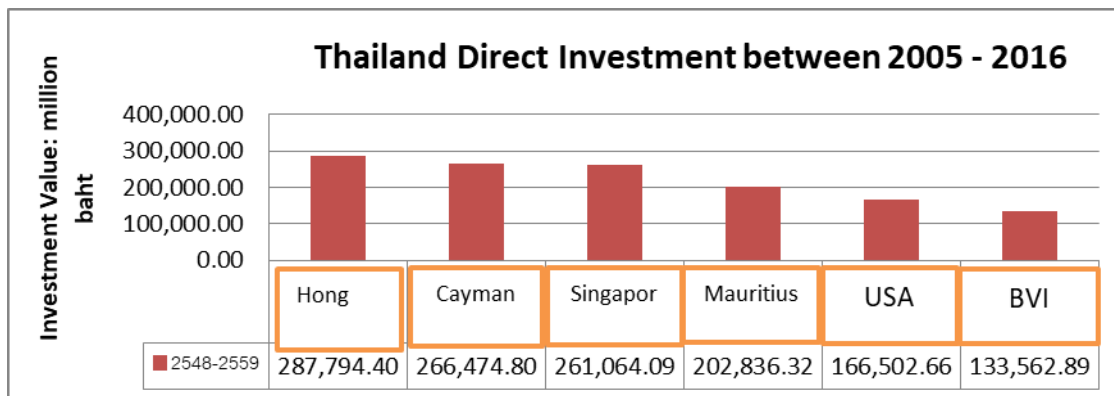
Indonesia	94,590.20
Malaysia	87,436.22
Laos	75,874.58
Cambodia	32,287.83
Philippines	12,698.91
Brunei	132
Total	785,949.55

Source: Bank of Thailand

http://www2.bot.or.th/statistics/Download/EC_XT_052_TH_ALL.XLS (This information was adjusted by July 31, 2017) developed by ETOs Watch Coalition

Therefore, when placing the order of direct foreign investment in descending order, the top 6 are Hong Kong, Cayman Island, Singapore, Mauritius, the United States of America, and British Virgin Island with accumulated value during 2005. -2016 are 287,794.4, 266,474.8, 261,064.09, 202,836.32, 166,502.66, 133,562.89 million respectively as shown in table 3, these countries use Thai businessmen as a base for financial transactions to continue investing in third countries Due to tax benefits and convenience in doing business.

Table 3: Top 6 Thai direct investment in foreign countries between 2005 – 2016



Source: Bank of Thailand

http://www2.bot.or.th/statistics/Download/EC_XT_052_TH_ALL.XLS (This information was adjusted by July 31, 2017) developed by ETOs Watch Coalition

The reasons for investing abroad in the Thai private sector are research department the stock exchange of Thailand conducted a survey and found 4 important reasons: firstly, to seek new markets or to maintain the existing market share in countries with large markets secondly, to find natural resources and access to raw materials and cheaper labor in the country (resource and labor seeking), thirdly, to increase production efficiency, including new technology (efficiency-seeking) and fourthly to help diversify business risks.

2. Cases' Status under NHRCT's Investigation

Past foreign direct investment created both positive and negative consequences especially those negative results most will be released regarding to non-transparency and lack of good governance, social and environmental impacts, human rights violations and including unfair remedies and there are many cases in which communities in Cambodia and Myanmar, affected by these projects, have complained to the Thai authorities for investigation. In particular, complaints to the National Human Rights Commission of Thailand to investigate human rights violations, such as the Koh Kong sugarcane planting and sugar factory project, the Oddarmeanchay sugarcane plantation and the sugar factory, the Dawei deep seaport project, and special economic zone, etc.

The NHRCT's investigation resulted in the Thai government officially accepted for the first time the situation of Thai direct investment. With the cabinet resolution on 16 May 2016 in the case of the Dawei deep-sea port project and special economic zone in Myanmar and on 2 May 2017, in the case of Oddarmeanchay sugarcane planting and sugar factory project Cambodia which has the essence of establishing mechanisms or regulate foreign investment investments of Thai investors to respect fundamental principles of human rights by adopting the United Nations Guiding Principle on Business and Human Rights (compliance with the protection, respect, and remedy) as a framework for foreign investment of Thai investors.

The project used as a case study in this study has passed and has not passed yet the National Human Rights Commission's investigation for a total of 12 cases, which can be summarized in 4 groups as follows;

Group 1 Projects that have complaints to NHRCT and the NHRCT have submitted the inspection report to the Cabinet and the cabinet (or the prime minister) passed a cabinet resolution or an ongoing order to government agencies such as the Hutgyi dam hydropower Project, the Oddarmeanchay sugarcane planting project and the sugar plant project, the Dawei special economic zone.

Group 2 Projects that have complained to the NHRCT and the NHRCT have already submitted the inspection reports to the cabinet, such as the Xayaburi Hydropower Project, Hongsa Lignite Power Plant Project, Koh Kong sugarcane plantation and factory construction.

Group 3 Projects that have complained to the NHRCT currently undergoing inspections such as Pak Bang dam hydropower project, Heinda tin mining project, Ban Chuang coal mining project.

Group 4 Projects that do not have a complaint to the NHRCT include coal-fired power plant projects, Mawlamyine cement and coal power plant projects, and Quang Tri 1 coal-fired power plant projects.

3. Government Investment Support Policies

3.1 Thai Government Investment Support Policies

Factors driving Thai investors to invest in neighboring countries which aside from the 4 reasons that the research department of the Stock Exchange of Thailand conducted a survey namely to seek new markets or maintain market share in countries with large markets or with high growth potential (market seeking), to find natural resources and access to raw materials and cheaper labor in the country (resource and labor seeking), to increase production efficiency, including new technology seeking (efficiency-seeking) and to help with the diversification of business risks Thai government support both policy and through state mechanisms is also an important part of building confidence in investing in foreign countries such as;

1) Neighboring Countries Economic Development Cooperation Agency (Public Organization) (NEDA) was established on May 17, 2005, as an agency to provide neighboring countries and other countries financial and technical assistance with economic development with neighboring countries, such as the preparation of a strategic report for cooperation with all 4 neighboring countries, namely the Lao PDR, Vietnam, Cambodia, and Myanmar, as well as supporting the district development project like Dawei special economic zone in Myanmar as the main project of the NEDA program.

2) Bank of Thailand has a role in determining the policy of capital inflow and outflow. In April 2015, the Bank of Thailand relaxed additional capital inflows under the master plan of International capital flows during 2015-2017 (apart from financial liberalization under Article 8 of the IMF resulting in the abolition of exchange control controls related to trade transactions Since May 4, 1990) which will help invest outside of the country to be more efficient and at a lower cost especially the costs associated with currency exchange in the future.

3) Export-Import Bank of Thailand (EXIM Bank) is a state-owned financial institution under the supervision of the Ministry of Finance. It was established under the EXIM Bank of Thailand Act 1993, effective since September 7, 1993, is a state-owned specialized financial institution that has a role in promoting and supporting exports, imports, and Invest both at home and abroad for the 4 case studies, EXIM Bank has provided loans for the Xayaburi Dam project in Laos and provided loans to TTCL in the An Lone power plant project in Myanmar.

4) Ministry of Foreign Affairs is the official representative of the government in negotiating the development of various agreements such as the arrangement of investment protection agreements which began in 1962 (agreement for the promotion and investment protection between Thailand and Cambodia) coming into force on 18 April 1997, Thailand and Laos coming into effect on 7 December 1990, Myanmar, effective at June 8, 2012) including the use of Thai embassies in various countries to support investment projects of both the public and private sectors such as the Thai embassy in Yangon organized a special lecture on Dawei special economic zone to the NLD's economic committee on May 17, 2016

5. The revenue department has a role in making redundant tax exemption agreements with various countries such as the convention which came into effect with Myanmar on 15 August

2011, Mauritius on 10 June 1998, Laos on 23 December 1997, Singapore on 27 April 1976, Hong Kong 7 December 2005, etc.

In that policy, The Thai government has developed various framework agreements with the CLMV countries in order to create direct investment in Thailand and promote more international trade such as;

1) Entering into an agreement to purchase electricity from neighboring countries which will provide an opportunity for both electric state enterprises and various companies from Thailand invested in building power plants to sell back to Thailand, including the agreement between Thailand - Laos electricity purchase in the amount of 9,000 megawatts, signed on 6 September 2016, an agreement between Thailand and Myanmar, purchase of electricity at 1,500 megawatts, signed on 4 July 1997, at present, Thailand - Myanmar beginning negotiations to sign a new agreement.

2) Strategic Economic Cooperation Irrawaddy - Chao Phraya - the Mekong between Cambodia, Laos, Myanmar, Thailand and Vietnam (Ayeyawady-Chao Phraya - Mekong Economic Cooperation Strategy: ACMECS), signed on 12 November 2003 in Bagan, Myanmar as an established sub-regional economic cooperation framework to carry out cooperation in 8 branches, namely 1) facilitating trade, investment, 2) agriculture, 3) industry and energy 4) linking transportation routes 5) tourism 6) human resource development 7) public health and 8) environment, and particularly, the link between the Dawei deep-sea port in Myanmar and the Laem Chabang port in Thailand is part of this strategy.

3.2 Cambodia Government Investment Support Policies

In the overall picture of Cambodia after the internal war ended and since the general election under the 1993 constitution, Cambodia has continuously rehabilitated and developed the country in all aspects, as can be seen from the Cambodian government's national economic and social development plan, national poverty reduction strategy, rectangular strategy for growth, employment, equity, and efficiency in Cambodia, as well as setting Cambodia's millennium development goals of United Nations.

In addition to the development plans and strategies that have been established The Cambodian government still has to rely on external factors such as free trade policy by using market mechanisms to allow free competition. It is one way to raise funds from foreign countries by helping trade guidance for both domestic and foreign businessmen and investors to conduct business in accordance with the directions, policies and laws of Cambodia including improving the enforcement of relevant laws to build credibility and promote the trading and investment climate in Cambodia. This will help stimulate the country's economy, trade and investment to grow as much as possible.

In particular, the sugarcane and sugar industry one way that the Cambodian government uses to support economic activities is by providing concessions for economic land, inviting the private sector both inside and outside the country to invest in growing agricultural industrial plants including transforms for export. Cambodia's Ministry of Agriculture, Forestry, and Fisheries (MAFF) open for submitting requests for economic land concessions in accordance with the Sub-decree on economic land concessions, together with

the land law of Cambodia in 2001, which clearly sets out the criteria for making concessions and approving economic land concessions.

3.3 Laos Government Investment Support Policies

The government of Laos PDR has laid out two important national strategies that will open opportunities for foreign investors, including Thailand able to invest in various businesses as specified by the strategy, as follow;

- 1) National Growth and Poverty Eradication Strategy (NGPES) is a national development framework based on the concept of the 6th People's Congress in 1996 which want develop the country, in the long run, to be free from the status of underdeveloped countries (Least Developed Countries) by 2020, with an emphasis on industrial investment in hydropower projects, mining, tourism, wood and agricultural products processing in the first phase, the Lao government has focused on investing heavily in Nam Theun 2 hydropower project and mining.
- 2) The strategy of becoming the "Battery of Asia" in order to earn income from the energy industry by generating electricity and selling to various countries in Asia with the goal is an expansion of the total electricity production base of 24,022 megawatts and want to sell electricity to foreign countries around 20,400 megawatts (85 percent of total production capacity) by 2030. The Xayaburi dam project is a project implemented under this strategy of the current Laos government.

In addition, the Laos government has issued some important laws to facilitate domestic investment namely;

2.1) Latest law on the promotion of the foreign investment promotion act was announced on 22 October 2004 with the principle of regulations and consideration of promotion protect and manage the foreign investment activities that occur within Laos. There are 3 types of foreign investment: 1) Business cooperation by contract 2) Joint ventures between foreign investors and domestic investors, and 3) One hundred percent foreign-owned enterprise.

2.2) Announcement of environmental protection laws (Environmental Protection Law: EPL) in 1999, following the first EIA Regulation in 2000 and the amendment to the Environmental Impact Assessment (The EIA Decree in 2010, which is under the responsibility of the Ministry of Natural Resources and Environment (MONRE). Environmental law on one side guarantees low-cost projects. Various in passing environmental regulations in practice, however, there are still gaps in the EIA process in Laos. For example, there is no disclosure during the process of considering the environmental impact assessment report to the public at large, as happened with the Xayaburi hydroelectric dam project.

3.4 Myanmar Government Investment Support Policies

Foreign investment in Myanmar, especially in the field of drilling, oil, natural gas, mining, has continuously invested and when the domestic political atmosphere began to open, particularly in the year 2010 before the general election. The Myanmar government has started to set investment promotion measures continuously importantly as follow;

1) 20 Year National Economic and Social Development Plan (2011-2031)

In 2010, the Myanmar government announced the "national reform" in accordance with the 20-year National Economic and Social Development Plan (2011-2031) that is important to the trade and investment sector including international investment mobilization in line with principles of grassroots people (bottom-up), people get the most (people-centered approach) from the state management. People participate in determining the direction, policy and development process which has important factors in improving the quality of life in various aspects of the people such as environmental conditions safety in life and property being in the community and the standard of living of the people.

2) Foreign Investment Law 2012

It was officially announced on 2 November 2012, allowing foreign investors to hold 100% of the company's shares. It canceled the minimum investment limit of USD 500,000 for the manufacturing industry and \$ 300,000 for the service business, extend the exemption period for corporate income tax is the first 5 years of the project implementation. It relieved machinery import tax requirements spare parts and raw materials needed for the construction of the project and investors would receive tax benefits with a corporate income tax exemption for 5 years.

The law also authorized the Myanmar Investment Commission (MIC) to be responsible for approving foreign investment projects. And still have the power to determine the production area and consider proposals for projects in prohibited or restricted businesses for foreigners and approved the issuance of business licenses as well.

3) Special Economic Zone Law

In 2011, the Myanmar government enacted a special economic zone law and Dawei Special Economic Zone Law. As for the special economic zone law, the objective is to define investment areas for various types of industries, in which the Dawei Project has targeted industries in the area that are heavy industries such as petrochemical and steel industries, high tech product industry such as IT equipment and electronics, etc. In addition, special economic zones are designated as export industrial zones that will receive special tax privileges.

As for the Dawei Special Economic Zone law, there are various privileges that investors will receive, such as exemption and reduction of corporate income tax, exemption from customs duties on imported raw materials. Machinery and equipment for production, exempt from commercial tax for products manufactured exported to sell abroad which in Dawei Special Economic Zone.

4) Myanmar Citizen's Investment Law 2013 is a law that allows both domestic and foreign investors to drive Myanmar's economic development at the national and local levels.

5) Directorate of Investment and Company Administration (DICA) is an organization that promotes and facilitates investment under the Ministry of National Development and Economic Development (MNPED). This unit has a long-term foreign investment promotion plan (Long Term Foreign Direct Investment (FDI) Promotion Plan - FDIPP) in collaboration with Japan International Cooperation Agency (JICA), which plans to stimulate Myanmar's economy by focusing on the entry of foreign investment projects with the goal of increasing

the FDI. The report also states that funds from foreign investments mainly from energy projects. The countries that invest the most in 2015 are China and Thailand.

6) Electricity and transmission system development plan under the National Electricity Plan / Electricity Master Plan which is the collaboration with international organizations such as the World Bank and the Asian Development Bank to support the economic development policy. The Myanmar government has opened an area for foreign investors to develop power plant projects nationwide, such as the signing of a memorandum of understanding to build 10 additional coal power plants with a total production capacity of over 7,000 megawatts in 2015 and open to investors. Foreign investment could acquire 100% of the energy project, including coal power plants small and medium-sized dams.

7) Regulations governing environmental resource protection.

Myanmar announces regulations for health impact assessment society and environment at the beginning of 2016, which is in accordance with Article 45 of the constitution and the Environmental Conservation Law 2012, which includes the process of public participation in the decision-making process. In addition, MIC has issued an order 1 / 2013 requires foreign investment to pass the environmental and social impact assessment (project environmental assessment, environmental impact assessment, social impact assessment), which includes the large investments to produce and sell electric energy, hydropower, and coal in Build, Operation, Transfer (BOT) as well.

3.5 Vietnam Government Investment Support Policies

Vietnam has promulgated the first foreign investment law was enacted on 1 January 1988. Later in 1992, there was an amendment to promote and attract more foreign investment. Currently, the latest foreign investment laws used are Unified Enterprise Law and Common Investment Law, announced in July 2005.

Vietnam's investment law is quite clear and will benefit investors. The government promoting foreign investment and insisting not to seize private business including allowing investors to send capital and profits back to the country. The government will not collect taxes on machinery and equipment and imported construction materials. In addition, the relevant departments have improved the approval of the foreign investment project by using the "One-stop Service" system to solve the delay regarding investment requests. The Vietnamese government has implemented various measures. In promoting and controlling investment in Vietnam, many measures are as follows;

Tax measures

- Corporate income tax beginning year 2009 at the standard rate of 25% (equal to both Vietnamese and foreign companies)
- Promoted businesses, the tax rate is based on the license, for example, 10 or 20 percent. In the case of a tax exemption, for example, 2-4 years, the exemption must start from the profitable year. (Not the year of operation)
- To transfer profits back to the country can be done on a quarterly basis And do not pay withholdings tax

- Between Thailand and Vietnam, there is a law for double taxation. RE-Investment is not tax-exempt or tax refund.

Establishment of an export promotion zone and various industrial areas

Currently, Vietnam has two investment zones, the Export Processing Zone (EPZ) and the Industrial Zone (IZ), especially in Ho Chi Minh City, Haiphong, Hanoi, etc., in order to attract foreign investors by setting a special low tax rate for businesses that invest in both industrial zones.

Other measures are given to foreign investors such as;

- Period of the right to lease land. This depends mainly on investment licenses. Foreign investors are normally granted leasehold rights for about 50 years and may expand to 70 years if the project is supported by The Standing Committee of the National Assembly. For foreign investment projects in the type of BOT (Build-Operate-Transfer Contract) foreign investors do not have to rent land. After agreeing to start the project, the government will grant the land to operate when the project is completed, investors must transfer the rights of that project to the government in the form of BOT.

- Foreign investors can use the right to use the land as collateral for loans and allowing foreign bank branches in Vietnam to get a mortgage on land use rights.

- Assurance for foreign investors by certifying that if the Vietnamese government has issued new laws that may damage foreign investors, the investors can choose to receive the same benefits as they previously received.

- Elimination of dual pricing in various business sectors such as plane tickets, train tickets, utility bills.

- Amendments to the Labor Law on 2 April 2002, for example, foreign companies are able to recruit workers without the need to hire workers through recruitment agencies.

4. Case Studies

4.1 Xayaburi Hydropower Project Xayaburi Province, Lao PDR



Thai Private Sector Involvement¹

- The CH. Karnchang Public Company Limited

The CH. Karnchang Public Company Limited was established on 27 November 1972 with the initial registered capital of 1.4 million baht² to engage in the general construction business sector. Subsequently, on 3 August 1995, the company was listed on the Stock Exchange with 700 million baht³ of registered capital.⁴ The CH. Karnchang Company subsequently founded the Xayaburi Power Company Limited (XPCL) on 10 June 2010 by registering as a limited company under the laws of the Lao PDR with the initial capital of US\$25 million of which the CH. Karnchang Company holds 95% of the shares, and the remaining 5% is held by the PT Construction Irrigation Company Limited. The Laos

¹ Information Memorandum of CH. Karnchang Public Company Limited on Sponsors Support to Xayaburi Power Company Limited.

<https://www.set.or.th/set/newsdetails.do?newsId=14634034175911&language=th&country=TH>

² On 27 November 1972, 1 USD=20.80 THB.

³ On 03 August 1995, 1 USD=24.79 THB.

⁴ The Stock Exchange of Thailand. Companies/Securities in Focus: CH. Karnchang Public Company Limited. <https://www.set.or.th/set/companyholder.do?symbol=CK&ssoPageId=6&language=th&country=TH>

government granted the project development concession for the Xayaburi Hydropower Project to the XPCL, which subsequently signed the Power Purchase Agreement (PPA) with the Electricity Generating Authority of Thailand (EGAT).

- The CK Power Public Company Limited

The CK Power Public Company Limited (CKP) was established by the CH. Karnchang Company to operate in the capacity of a holding company. The CH. Karnchang Company is the main shareholder of the CKP, holding 30.25% of the total shares.

- The Natee Synergy Company Limited

The Natee Synergy Company Limited (NSC) is a subsidiary of the Global Power Synergy Public Company Limited (GPSC), which holds 100% of the NSC's shares. The GPSC was founded in 2013 as a leading company within the energy business sector of the PTT Public Company Limited (PTT), and the PTT holds 22.85% of the GPSC's shares.

- The Electricity Generating Public Company Limited

The Electricity Generating Public Company Limited (EGCO) is a subsidiary of the EGAT, which holds 25.41% of the EGCO's shares.

- The Bangkok Expressway and Metro Public Company Limited

The Bangkok Expressway and Metro Public Company Limited (BECL) is a subsidiary of the CH. Karnchang Company. The CH. Karnchang Company is the main shareholder of BECL, holding 28.16% of the shares.

Project Investment

The Xayaburi Power Company Limited (XPCL) secured the loan agreement for the Xayaburi Hydropower Project from four Thai commercial banks, namely the Krung Thai Bank, the Siam Commercial Bank, the Kasikorn Thai Bank, and the Bangkok Bank with the total value of 78 billion baht^{5,6} and in this regard, the Krung Thai Bank represents the financial institution lenders of the project.⁷ The Krung Thai Bank subsequently approved the loan of 16.6 billion baht⁸ and US\$200 million.⁹ However, another two banks, the Tisco Bank and the Export-Import Bank of Thailand also provided financing to the project.

⁵ From an interview of Plew Trivisvavet. <http://www.ryt9.com/s/iq10/1029530>

⁶ In April 2010, 1 USD=32.2 THB.

⁷ Information Memorandum of CH. Karnchang Public Company Limited on Sponsors Support to Xayaburi Power Company Limited. 16 May 2015, Page 6.

<http://ck.listedcompany.com/newsroom/160520162012220239T.pdf>

⁸ In April 2010, 1 USD=32.2 THB.

⁹ The National Human Rights Commission of Thailand. The Investigation Report No. 1171/2558, Page 30.

On 10 June 2010, the CH. Karnchang Company founded the Xayaburi Power Company Limited (XPCL) and registered it as a limited company in the Laos with the initial capital of US\$25 million. The CH. Karnchang Company holds 95% of the shares and the PT Construction Irrigation Company Limited holds the remaining 5%. The XPCL was established in Laos to represent both the concessionaire of the Xayaburi Hydropower Project with the Laos government and the contractor with the Electricity Generating Authority of Thailand (EGAT).

Several weeks later, on 5 July 2010, in Vientiane, Laos, the CH. Karnchang Company signed a Memorandum of Understanding (MoU) with the EGAT for purchasing the electricity from the Xayaburi Hydroelectric Power Project. The MoU is effective for 18 months from the date of signing or until the Power Purchase Agreement (PPA) is signed.

After the signing of the PPA, the XPCL sold its shares to three companies, namely, the Natee Synergy Company Limited (NSC), the Electricity Generating Public Company Limited (EGCO), and the Bangkok Expressway and Metro Public Company Limited (BECL), which holds 25%, 12.5%, and 7.5% respectively.

On 15 March 2012, the XCPL signed an Engineering, Procurement and Construction Contract worth 51.8 billion baht¹⁰ and US\$711 million, with the CH. Karnchang (Lao) Company Limited, a subsidiary of the CH. Karnchang Company in Laos, to construct the Xayaburi hydroelectric dam. The construction is scheduled to be completed in the next 96 months (approximately 73,155,840,000 baht in eight years).

According to the Construction Obligation Commencement Date (COCD) in the contract, the EGAT is obligated to commence the construction of the electricity transmission lines by 29 April 2012, in order to accommodate power purchases from the Xayaburi dam in Laos. In this regard, the Council of Ministers of Thailand has approved the budget of 12,060 million baht¹¹ for the construction of the transmission lines.

On 7 November 2012, the Laos government held the official groundbreaking ceremony for the Xayaburi Hydroelectric Power Project.

On 18 July 2013, CH. Karnchang Company sold 20% of its shares in the XPCL to the Électricité du Laos (EDL). Subsequently, on 10 June 2015, the CH. Karnchang Company sold 30% of its remaining shares in the XPCL to one of its subsidiaries, the CK Power Public Company Limited.

On 16 May 2016, the CH. Karnchang Company approved the Sponsors Support for the XPCL by way of extending the loan under the Sponsor Loan Agreement in the amount of approximately 13,547 million baht¹², with the schedule for the full loan repayment by no later than 2031. The Laos government requested the XPCL to adjust the construction parameters of the Xayaburi Hydropower Project to take into account environmental aspects, which resulted in an increase in the cost of the project. In this regard, the Laos government

¹⁰ In March 2012, 1 USD=30.76 THB.

¹¹ In April 2012, 1 USD=30.78 THB.

¹² In May 2016, 1 USD=35.37 THB.

was also jointly responsible for certain portions of the increased costs by way of reduction of the royalty and corporate income tax rate, as well as granting an extension of the concession period for another two years from the Commercial Operation Date (COD). In addition, according to the Information Memorandum of the CK on Sponsors Support to the Xayaburi Power Company Limited, the Power Purchase Agreement between the XPCL and the EGAT will also be extended for a term of 31 years.¹³

Project Development

Located far upstream from the mouth of the Mekong River in Vietnam, the Xayaburi Hydropower Project is situated in Xayaburi province, Laos, at kilometre 1931, and about 200 kilometers north of Chiang Khan district in Loei province, Thailand. The project has the installed power-generating capacity of 1,285 megawatts (MW) (comprising seven turbine generator units of 175 MW each and one unit of 60 MW), which would produce an average of 7,370 gigawatt-hours of electricity per year.¹⁴ When the project is completed, the 1,220 MW (from seven turbine generator units of 175 MW) will be sold to the EGAT through the Thailand-Laos border transmission junction for a period of 31 years. The estimated investment cost of the project is approximately 115 billion baht (or around US\$3.8 billion). The construction commenced on 15 March 2012 and is expected to be completed in eight years. The Commercial Operation Date (COD) of the project is scheduled for October 2019.¹⁵

- The full supply level of the dam will be 275 metres above sea level.
- The reservoir will cover an inundated area of 49 square kilometres.
- The dam reservoir will extend 90 kilometres in length, and the gross reservoir volume will be 726.02 million cubic metres.
- The active storage volume of the reservoir will be 211.97 million cubic metres, and the dead storage volume will be 514.05 million cubic metres.
- During the period of generating electricity, the dam will have a maximum discharge of 5,000 cubic metres per second (cu.m./sec). The dam's design also includes sediment sluices that can discharge sediment in the dry season at the rate of 500 cu.m./sec, for six hours per day.

The project developer, the XPCL, signed the Power Purchase Agreement (PPA) with the EGAT on 29 October 2011. As per the terms of the PPA, the EGAT is required to complete the construction of the transmission lines in Thailand by the commercial operation date (COD) on 29 October 2019.

Based on the PPA between the XPCL and the EGAT, the purchased energy can be classified into three main types as follows; Primary Energy (PE), Secondary Energy (SE),

¹³ Information Memorandum of CH. Karnchang Public Company Limited on Sponsors Support to Xayaburi Power Company Limited. 16 May 2015. <http://ck.listedcompany.com/newsroom/160520162012220239T.pdf>

¹⁴ Project Profile. The Power Purchase Agreement Unit, the Electricity Generating Authority of Thailand. <http://www.eppo.go.th/images/Power/pdf/Xayaburi-pp.pdf>

¹⁵ Notification of the Amendment to Engineering, Procurement and Construction Contract Signing. The Stock Exchange of Thailand. <https://www.set.or.th/set/newsdetails.do?newsId=14678486586271&lan-guage=th&country=TH>

and Excess Energy (EE). The EGAT has only guaranteed to buy 4,299 million units (kilowatt-hour) of Primary Energy (PE) per year, and 1,410 million units (kilowatt-hour) of Secondary Energy (SE) per year. Throughout the period of the PPA contract, the electricity prices will be fixed rates as indicated below:

- Primary Energy (PE) costs US\$3.738+1.27 baht per unit or 2.542 baht per unit.
- Secondary Energy (SE) costs 1.652 baht per unit.
- Excess Energy (EE) costs 1.398 baht per unit.

(The exchange rate for the cost of electricity is set at the rate of 34 baht to one US dollar.)

On 7 July 2016, Mr. Anukool Tuntimas, Director and Executive Vice President: Human Resources and General Administration of CH. Karnchang Company, sent a letter to the President of the Stock Exchange of Thailand (SET) stating that on 6 July 2016, the CH. Karnchang (Lao) Company Limited, a subsidiary of the CH. Karnchang Company, had signed the Amendment to the Engineering, Procurement and Construction Contract for the First Work Phase and the Second Work Phase of the Xayaburi Hydropower Project with the Xayaburi Power Company Limited, with the total construction valued at 19.4 billion baht.¹⁶ The project is expected to be completed in October 2019, and it is divided into two additional construction work phases as follows:

First Work Phase: The construction value of 14.65 billion baht¹⁷ covered the necessary improvement and additions to the project construction on the right side of the Mekong River undertaken to adhere to the required environmental and engineering standards requested by the government of Laos. Specific improvements include adding the sediment flushing outlets and lowering the height of the spillway's threshold, adding the fish passage system, as well as reinforcing the steel structure.

Second Work Phase: The construction value amounts to 4.75 billion baht¹⁸ for revisions and modifications of the construction design, as well as for components of the project for the left side of the Mekong River that will be carried out during 2016 - 2019, specifically, modifying the fish passage system, reducing the sludge drain channels underneath the powerhouse and reducing the length of the powerhouse and installation site, including work relating to the mechanical and electrical system, etc.

Communities and the Environment Around the Project Area

The Xayaburi Hydropower Project will affect agricultural land around the project area, for example, 112.5 rai (one rai equals 0.16 hectare) of maize, sesame and tea farms, as

¹⁶ In July 2016, 1 USD=35.19 THB.

¹⁷ In July 2016, 1 USD=35.19 THB.

¹⁸ In July 2016, 1 USD=35.19 THB.

well as 1,012.5 rai of teak plantations. Moreover, the project will affect 391 households comprised of 2,130 people from 10 villages.¹⁹

The close proximity of the dam site to the village of Bak Neam Pha Dang and the Kaeng Luang rapids will greatly affect the local communities and the environment. The dam will stretch across the Mekong River at the Kaeng Luang rapids, the large complex of rapids that lie one kilometre across the river channel, which essentially functions like a large natural dam. To build the Xayaburi dam, many rapids including the Kaeng Luang rapids will be blasted away. The main livelihoods of the local people in this area are fishing, teak planting, and gold panning.²⁰

Policies Supported by Thailand

- Thailand's Power Development Plan 2010-2030 (PDP2010)
- The Memorandum of Understanding on Electricity Development Co-operation in Lao PDR²¹
- The Export-Import Bank of Thailand's policies on financial support for Thai investors both on domestic and overseas investment, especially the investment in the ASEAN countries.²²

Policies Supported by Lao PDR

- The National Growth and Poverty Eradication Strategy²³
- Development Strategy for the "Battery of Asia"²⁴
- The National Policy on Environmental and Social Sustainability of the Hydropower Sector in Lao PDR²⁵
- Law on the Promotion of Foreign Investment (2004)²⁶

¹⁹ The Mekong River Commission. Strategic Environmental Assessment for Hydropower on the Mekong River Mainstream, Inception Report. <http://www.mrcmekong.org/assets/Publications/Consultations/SEA-Hydropower/IRVOL2final.pdf>

²⁰ Varunporn Phupong. Kuen Xayaburi: Khwam Tongkarn Kong Krai? [Xayaburi Dam: Whose Desire?] <https://sites.google.com/site/mybook1064/kheuxn-si-ya-buri-khwam-txngkar-khxng-khir>

²¹ The Energy Policy and Planning Office. The Energy Cooperation between Thailand and Laos. <http://www2.eppo.go.th/vrs/VRS48-02-ThaiLaos.html>

²² The Export and Import Bank of Thailand. Report on Lao PDR. 28 May 2005. <http://www.exim.go.th/doc/research/econ/inter/neighbor/Internet%20V.pdf>

²³ The National Growth and Poverty Eradication Strategy. Lao PDR. http://www.la.undp.org/content/lao_pdr/en/home/library/poverty/NGPES.html

²⁴ Krungthep Turakit Online. Laos Reng Perm Sakkayaparb Faifa Phalang Nam Moong Song Ork [Laos Boosts its Hydropower Capacity for Export]. 29 October 2014. <http://www.bangkokbiznews.com/news/detail/613953>

²⁵ The National Policy of Lao PDR. The Environmental and Social Sustainability of the Hydropower Sector in Lao PDR by Science Technology and Environment Agency, Lao Environment and Social Project. 2006. [http://poweringprogress.com/download/National_Policy/National_Policy\(English\).pdf](http://poweringprogress.com/download/National_Policy/National_Policy(English).pdf)

Concerns Regarding the Environment and Community Livelihoods

The feasibility study of the Xayaburi hydropower project states that the construction of the dam will affect the 58 villages comprised of 25,676 people situated upstream of the Xayaburi dam along a 90 kilometre stretch of the Mekong River flowing through Luang Prabang province.

The Strategic Environmental Assessment of Hydropower on the Mekong River Mainstream Final Report, October 2010 (page 74, 75, and 125), clearly states that the changes in water levels downstream of the Xayaburi dam could greatly increase the fluctuation rate of water levels from a historically seasonal phenomena to a daily or even hourly phenomena. Approximately 1-2 hours after water is released from the dam, the towns and villages located 40-50 kilometres downstream will be affected by hourly spikes of 3-6 metres in the water level of the river. It is estimated that approximately 5,968 people who live downstream of the Xayaburi dam will be exposed to rapid fluctuation in water levels. It will also result in a significant increase in the sedimentation rate in the Mekong River.

In addition, the report also presents a chart of the Mekong water level at the Luang Prabang dam, 150 kilometres upstream of the Xayaburi dam, which shows that the daily fluctuations of the water levels could be up to 5.5 metres.

The significant fluctuations in the water level resulting from the dam barrier will completely destroy the riverine ecosystems that only emerge between seasons.

The daily discharge of the large amounts of sediment trapped behind the dam at the rate of 500 cu.m./sec for six hours (or 140-700 cu.m./sec during the nighttime) will dramatically dissolve the oxygen concentration downstream and will severely affect the fish in the Mekong River.²⁷

Although the Xayaburi dam has been designed with fish passes and fish ladders, the designated technologies are only applicable for 5-8 species, such as salmon and trout, to pass through. However, these technologies are not effective for use on the Mekong River, which has more than 50 migratory fish species, many of which are of great economic importance. Furthermore, the designated fish pass might be practical for low dams but for a 50-metre tall dam (such as the Xayaburi), the minimum requirement is a one kilometre fish pass.²⁸ Nevertheless, it remains unclear whether the fish passage facilities will be effective.

No environmental impact assessment (EIA) has been conducted on the transboundary impacts both upstream and downstream of the Xayaburi dam in Thailand, Cambodia and Vietnam.

²⁶ Law on the Promotion of Foreign Investment. 2004.

²⁷ Study on the Impacts of Mainstream Hydropower on the Mekong River. <https://wle-mekong.cgiar.org/study-on-the-impacts-of-mainstream-hydropower-on-the-mekong-river/>

²⁸ Eric Baran. Review of the Fish and Fisheries Aspects in the Feasibility Study and the Environmental Impact Assessment of the Proposed Xayaburi Dam on the Mekong Mainstream.

The Investigation by the National Human Rights Commission of Thailand

In meeting No.38/2558, dated 2 November 2015, the National Human Rights Commission of Thailand (NHRCT) finally agreed to halt the investigation of the Xayaburi dam case after Thailand's Administrative Court accepted the complainants' lawsuit against the Xayaburi Hydroelectric Power Project on 17 April 2014.

Concerns Regarding Human Rights

Under the 1995 Mekong Agreement (signed between the four Mekong downstream countries, namely, Laos, Thailand, Cambodia, and Vietnam), the member countries must hold prior consultations under the Procedures for Notification, Prior Consultation and Agreement (PNPCA)²⁹ in order to discuss the transboundary impacts that mainstream Mekong development may have on neighboring countries, before any commitment is made to proceed. However, the Lao government did not hold any consultations on the Xayaburi Hydropower Project under the PNPCA process. This reflects the situation of human rights in Laos where the citizens, especially the local communities whose livelihoods are directly affected by the Xayaburi Hydropower Project as well as the civil society groups, cannot freely express their views on the project.

Concerns Regarding Legal Loopholes and Accountability

Whilst the Thai commercial banks involved in the financing for the Xayaburi Hydropower Project have claimed that the loan agreements adhered to the legal procedures, the affected communities and environmental impacts of the project have been ignored. These financial institutions have not conducted any risk assessments in line with the Equator Principles³⁰ framework to determine, assess, and manage the environmental and social risk in their project finance in order to identify their responsible risk decision-making. (However, these six Thai banks still have not signed the Equator Principles.)³¹

Based on the Power Purchase Agreement (PPA) signed between the EGAT and the Xayaburi Power Company Limited, the EGAT plays significant roles as both seller and

²⁹ According to the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin or 1995 Mekong Agreement, which established the Mekong River Commission (MRC) and signed by four downstream Mekong countries, namely, Laos, Thailand, Cambodia, and Vietnam, the Joint Committee from four Member Countries will be formed and hold prior consultations under Procedures for Notification, Prior Consultation and Agreement (PNPCA) to discuss the issue of the mainstream Mekong development. The consultation process should take six months, but can be extended if necessary. Based on the Article 27 of the Mekong Agreement, the decisions of the Joint Committee "shall be by unanimous vote". However, whenever any difference or dispute may arise between two or more parties, the MRC shall first make every effort to resolve the issue. In the event the MRC is unable to resolve the difference or dispute within a timely manner, the issue shall be referred to the Governments to take cognizance of the matter for resolution by negotiation through diplomatic channels within a timely manner, according to the Article 34 and 35 of the Mekong Agreement.

³⁰ A set of voluntary standards created in 2003 that aid private financiers in assessing and managing social and environmental risk in project finance.

³¹ Sarinee Achavanuntakul. Credit, Environment, and Human Rights. 18 April 2013. <http://thaipublica.org/2013/04/xayaburi-and-equator-2/>

buyer, which highlights the issue of conflict of interest. The EGAT, as a buyer of 95% of the electricity from the Xayaburi project, is also a partial project owner due to its 25% shareholding in the Electricity Generating Public Company Limited (EGCO), which in turn is an investor in the Xayaburi project.

Additional concerns include the delay of the impact assessment study process and the concealment of the information related to the Xayaburi project by the responsible agency. For example, the Department of Water Resource of Thailand has ignored the findings regarding the transboundary impacts stated in the Strategic Environment Assessment of the Mekong Mainstream Hydropower Report, dated October 2010, prepared by the Mekong River Commission (MRC). The performance of the Department of Water Resources of Thailand demonstrates that the agency did not take into account the protection of the public interest. Moreover, the Department of Water Resources of Thailand only commenced its transboundary impact assessment after the PPA of the Xayaburi project had been signed, and two years after the construction of the Xayaburi dam had already started.

Although the set timeframe for the PNPCHA process has ended, the Mekong countries have not reached a consensus. Nevertheless, the Department of Water Resources of Thailand has acknowledged to the Ministry of Natural Resource and Environment that the PNPCHA process of the Xayaburi project has been completed and pointed out that the Xayaburi dam project is located in the sovereignty of Laos.³² Hence, the agency did not present this issue for discussion in the meeting of the National Mekong River Committee of Thailand. The incident has led the Ministry of Energy of Thailand to provide authorization for the EGAT to proceed with the PPA signing.

The Administrative Court of Thailand has denied jurisdiction of the Xayaburi dam case filed by the local villagers, stating that the PPA signing is not viewed as a state project that requires Thailand to comply with Thai laws, hence, there is no requirement to conduct the public hearings or environmental impact assessment study in line with the Thailand Constitution. Furthermore, the Administrative Court has deemed that the Xayaburi project is a private sector project and is not located in Thailand, therefore, it is beyond the authority of the Administrative Court of Thailand to rule over the case. Moreover, the state agency has the authority to proceed with the PPA of the Xayaburi project.

The Stock Exchange of Thailand mainly emphasises the transparency of the stock trading, however it has no investigative mechanism to discover facts or information regarding a case prior to the submission of a complaint. In addition, if any misconduct is found, the punishment mechanism is not severe.

There are inherent structural problems within the agencies involved with the PNPCHA process. Under the Mekong Agreement, the host of the PNPCHA process is chosen from the General Secretariat of the relevant Ministry of each country. Regarding the case of Thailand, the General Secretariat of the Ministry of Natural Resource and Environment is responsible for the decision-making in the PNPCHA process. However, this role has provided the authority to make a vital decision on a large-scale development project on the Mekong River, which will affect a huge number of people on the lower Mekong River. Instead, such an important decision-making process should lie with the administrative level of the Ministers. This

³² The Ministry of Natural Resources and Environment. Document No. 0630/2723, 26 October 2011.

implies that the four lower Mekong countries have allowed their administrative role and power to be diminished.

According to the press release dated 19 April 2011 by the Secretariat of the Mekong River Commission, the PNPCA process has finally created legitimacy for the Laos government to proceed with the Xayaburi project and ignore the demands from the remaining three Mekong member countries, which requested an extension of the project study period (after completion of the six-month process of the PNPCA).³³

³³ <http://www.mrcmekong.org/assets/Publications/Press-Release/Media-Release-Xayaburi-JCSS-19Apr11-Thai.pdf>

4.2 Pak Beng Hydropower Project Oudomxay Province, Lao PDR



Thai Private Sector Involvement

- The Electricity Generating Public Company Limited

The Electricity Generating Public Company Limited (EGCO), a subsidiary of the Electricity Generating Authority of Thailand (EGAT), was established on 12 May 1992 and subsequently registered on the Stock Exchange of Thailand on 16 January 1995. The EGCO holds 30% of the shares in the Pak Beng Hydropower Project.³⁴

Project Investment

The Pak Beng Hydropower Project is a joint-venture project by three companies which are;

1. The China Datang Overseas Investment Company Limited holds 51% of the shares. Founded in 2006, the company is a power generation subsidiary of the China Datang Corporation Limited based in Beijing, China.

³⁴ The Electricity Generating Public Company Limited. <http://www.egco.com/th/news-update/2017/เ้ก้กโก-กร้ป-ประกาททำไร-ไตรมาศ-1-ปี-2560-โตกว่า-2900-ล้านบาท>

2. The Electricity Generating Public Company Limited (EGCO)³⁵ holds 30% of the shares.

3. The Électricité du Laos (EDL) holds 19% of the shares.

In August 2007, the China Datang Overseas Investment Company Limited signed a Memorandum of Understanding (MoU) with the Laos government to develop the Pak Beng Hydropower Project. In January 2015, the Laos government granted approval to the China Datang Overseas Investment Company to conduct the project feasibility study, and the company was subsequently awarded a 30-year concession inclusive of the construction period for developing the Pak Beng Hydropower Project.

Project Development

The Pak Beng Hydropower Project is situated at kilometre 2188,³⁶ upstream from the mouth of the Mekong River in Pak Beng township, northern Laos. The dam will be built on the mainstream channel of the Mekong River, 97 kilometres downstream of the Kaeng Pha Dai Rapids in Wiang Kaen district of Chiang Rai province in neighbouring Thailand. The Pak Beng project comprises a 69-metre tall and 894.5-metre long concrete dam,³⁷ power generating facilities, floodgates, a ship lock system for navigation of vessels up to 500 tonnes, and a 15-metre wide and 1,000-metre long fish passage facility. The water level in the dam reservoir will vary from 16-27 metres depending on the seasonal water flow. The installed generating capacity of the dam is 912 megawatts, and the maximum working flow when all generating units are operational is 5,771.20 cubic metres per second.³⁸ The export of the electricity will depend on the seasonal flow of the water.

The China Datang Overseas Investment Company planned to commence construction in 2017. The operational testing of the first two power generation units is expected to begin in 2022 and all 16 units are expected to be fully operational by 2023. Around 90% of the electricity generated from the Pak Beng project will be exported to Thailand by EGAT and the remaining amount will be used in Laos.

The project had implemented the Procedures for Notification, Prior Consultation and Agreement (PNPCA) as required by the 1995 Mekong Agreement. The six-month process began in December 2016 and ended on 19 June 2017. In Thailand, the Department of Water Resources, which acts as the secretariat for the National Mekong Committee of Thailand, organised four meetings in three provinces to share information about the project.

Communities and the Environment around the Project Area

³⁵ Ibid.

³⁶ Document for Communities <http://www.livingriversiam.org/4river-tran/4mk/pak-bang-dam.pdf>

³⁷ Feasibility Study on Pak Beng Hydropower Project <http://www.tnmc-is.org/download/เอกสารจัดทำโดย-กรมทรัพยากรน้ำ>

³⁸ <http://tnmc-is.org/wp-content/uploads/2017/02/เอกสารประกอบการประชุมPNPCA09-02-16/3.2-เอกสารแนบแปล๑.pdf>

Pak Beng is a tourism town situated along the Mekong shipping route midway between Chiang Kong district, Chiang Rai province in Thailand and Luang Prabang in Laos,³⁹ which provides a significant rest area for cargo and tourist ships operating along the Mekong River. The local villagers in Pak Beng earn their living from tourism, as well as fishing and farming.

The Huay Leuk village is located on the Thai side of the Mekong River in Chiang Rai province near the Pak Beng project. Most members of this community of 156 households comprised of 650 people sustain their livelihoods as small-scale fishers and farmers from the richness of the Mekong River ecosystem and its variety of plants and fish species.

Policies Supported by Thailand

- Thailand's Power Development Plan 2015-2036 (PDP2015)
- The Memorandum of Understanding on Electricity Development Cooperation in Lao PDR⁴⁰

Policies Supported by Lao PDR

- Development Strategy for the "Battery of Asia"⁴¹
- The National Policy on Environmental and Social Sustainability of the Hydropower Sector in Lao PDR⁴²

Concerns Regarding the Environment and Community Livelihoods

• The Pak Beng project will completely destroy fish feeding grounds and habitats, especially the endemic species of the Mekong River.

• In Laos, at least 203 families will be resettled from the inundated reservoir area.⁴³ Moreover, approximately 8,166 people from 20 villages located 100 kilometres downstream will be affected by the 3-6 metre daily fluctuation of the water level.⁴⁴ However, the people in Laos are unable to voice their concerns nor do they have an opportunity to participate in any decision-making process regarding the Pak Beng project.

³⁹ <http://www.manager.co.th/QOL/ViewNews.aspx?NewsID=960000009044>

⁴⁰ The Energy Policy and Planning Office. The Energy Cooperation between Thailand and Lao PDR. <http://www2.eppo.go.th/vrs/VRS48-02-ThaiLaos.html>

⁴¹ Krungthep Turakit Online. Laos Reng Perm Sakkayaparb Faifa Phalang Nam Moong Song Ork [Laos Boosts its Hydropower Capacity for Export]. 29 October 2014. <http://www.bang-kokbiznews.com/news/detail/613953>

⁴² The National Policy of Lao PDR. The Environmental and Social Sustainability of the Hydropower Sector in Lao PDR by Science Technology and Environment Agency, Lao Environment and Social Project. 2006. [http://poweringprogress.com/download/National_Policy/National_Policy\(English\).pdf](http://poweringprogress.com/download/National_Policy/National_Policy(English).pdf)

⁴³ Pak Bang Hydropower Project, Social Impact Assessment. September 2015. Page 5-1. <http://www.tnmc-is.org/download/13-social-impact-assessment/>

⁴⁴ Pak Bang Hydropower Project, Social Impact Assessment. September 2015. Page 5-10, 5-11.

- The diversity and complexity of the Mekong River ecosystem will be destroyed. A number of islets, rapids, pools, and sand beaches along the Mekong River between Pak Beng township in Laos and Chiang Kong district in Thailand (upstream from the dam site) will be inundated. The sediment that usually carries rich nutrients downstream will be blocked by the dam. In addition, the local tourism routes along the Mekong River from Huay Xai to Luang Prabang, which annually attracts more than one million visitors will be blocked by the dam and will consequently affect the income of the local community. Moreover, the negative impact on local villagers who rely on the Mekong River for their livelihood will likely result in more labour migration from Laos to Thailand.



Gold Panning at Pak Beng Dam headwork

The Investigation by the National Human Rights Commission of Thailand

On 29 June 2016, the villagers in Thailand affected by the Pak Beng project filed a letter of complaint with the National Human Rights Commission of Thailand (NHRCT), and the case is presently in the investigation process.

Concerns Regarding Human Rights

- Approximately 6,700 people from 25 local villages in Laos will be directly affected by the Pak Beng project and will be resettled.⁴⁵

⁴⁵ NGOs Demand Halt to Pak Beng Dam in Laos. <http://www.rfa.org/english/news/laos/dam-06222017164057.html>

- Throughout the PNPCA process,⁴⁶ the civil society organisations have called for disclosing the project information from all relevant agencies, however, their attempts and concerns have been ignored. In addition, the project consultation process was only conducted in three out of eight provinces along the Mekong River instead of in all of the dam affected areas.

- Moreover, the project document titled ‘Prior Consultation Process for the Pak Beng hydropower project’, dated 21 April 2017, lacked significant information. For example, the environmental impact assessment of the dam on fish species and fishery was conducted only in six areas around the project site. The information on the fish passage facility and the fish species is unclear. Furthermore, the social impact assessment was conducted only within a five kilometre radius of the dam site, whereas the impacts on the local fisher folk who live in upstream areas of the dam, especially from the Keang Pha Dai Rapid area in Wieng Kaen district to Pak Ing village in Chiang Khong district, Chiang Rai province in Thailand, are not included. In addition, the document was not included in the Mekong River Commission’s previous studies, especially the proposed mitigation measures.⁴⁷

Concerns Regarding Legal Loopholes and Accountability

- The environmental assessment on the transboundary impacts of the project is not compatible with protecting the rights and freedoms of the neighbouring Thai people as well as the natural resources and environment in Thailand. Moreover, the information presented in the study does not reflect the situational reality in the areas, but is only used to support the project while the potential impacts are intentionally ignored.⁴⁸

- The PNPCA process was only used to support the project approval regardless of the principles of the Mekong Agreement. The PNPCA process did not cover all the areas potentially affected by the dam, which essentially reflects the intentional exclusion of the voices of the affected local people and is an effort to conceal the critical elements of the potential impacts of the project.

- There is greater potential for a conflict of interest among some Thai policymakers who oversee the electricity purchasing plan from neighbouring countries and also have positions on the management board of the Thai company EGCO. Essentially, these policy makers could benefit directly by simply exploiting their authority and position to make decisions about purchasing electricity.⁴⁹

⁴⁶ Information Sharing on the Pak Beng Hydropower Project in Lao PDR under the Mekong River Commission Procedural Framework: The 4th Meeting on the Procedures for Notification, Prior Consultation and Agreement (PNPCA) <http://www.tnmc-is.org/wp-content/uploads/2017/05/1.สรุปกระบวนการ-PNPCA.pdf>

⁴⁷ Summary of the 2nd draft Technical Review Report of Pak Beng Hydropower Project. <http://www.mrcmekong.org/assets/Consultations/PakBengHydropowerProject/2nd-RSF-ppt-presentations/Summary-of-2nd-Draft-TRR-290417.pdf>

⁴⁸ Response Letter on Initial Concerns before Implementing the PNPCA in Thailand, dated 20 December 2016. (Thai translation version). <http://www.tnmc-is.org/download/จดหมายขอแจ้งตอบประเด็นข้อ>

⁴⁹ Summary: The Verbal Explanations by the Related State Agencies on the Pak Bang Hydropower Project and the Salween Hydropower Project, in the Meeting Organised by the National Human Rights Commission of

- The Mekong River Commission (MRC) lacks a concrete regulatory mechanism. There are no measures for remediation and protection of the interests of citizens of its member countries. In addition, their research has not been effectively implemented. The Department of Water Resources has reported to the National Human Rights Committee of Thailand that the MRC had hired foreign experts to study the impacts on the Mekong River with a budget of US\$8 million, however four years since the study began, no progress has been made.

4.3 Hongsa Lignite Power Plant Project Hongsa Township, Xayaburi Province, Lao PDR



Hongsa Lignite Power Plant Project Area: photo by Jamon Sornpetchnarin

Thai Private Sector Involvement

- The RATCH Group Public Company Limited

The RATCH Group Public Company Limited (formerly named the Ratchaburi Electricity Generating Holding Public Company Limited) was founded on 7 March 2000 with the registered capital of 14.5 billion baht.⁵⁰ The Electricity Generating Authority of Thailand (EGAT) is its major shareholder, holding 45% of the shares. The company was listed on the Stock Exchange of Thailand under the trading name of RATCH.⁵¹

- The Banpu Power Public Company Limited

The Banpu Power Public Company Limited, or the Banpu Power, was established in 1996 as a subsidiary of the Banpu Public Company Limited, which holds the majority of shares (78.71%) of the Banpu Power. The Banpu Power is mainly involved in the investment and management of power-related businesses.

⁵⁰ In March 2000, 1 USD=38.06 THB.

⁵¹ Shareholder Structure as of 6 March 2017. <https://investor.ratch.co.th/shareholdings.html>

- The Hongsa Power Company Limited

The Hongsa Power Company Limited (HPC)⁵² was founded in 2009 by the Banpu Power, the Ratchaburi Electricity Generating Holding Public Company Limited (via the RH International (Singapore) Corporation Pte. Limited), and the Lao Holding State Enterprise (LHSE) – a business entity of the Laos government established for investment in the electric power sector. These three companies also founded the Phu Fai Mining Company Limited (PFMC).

Project Investment

The project investment is for the operation of the lignite coal mine and the lignite-fired power plant. The project was supported by loans from both state-owned and private commercial banks in Thailand, namely, the Government Savings Bank, the Export-Import Bank of Thailand, the Krungthai Bank, the TMB Bank, the Siam Commercial Bank, the Bangkok Bank, the Kasikorn Bank, the Thanachart Bank, and the Krungsri Bank.

The Lao Holding State Enterprise (LHSE),⁵³ the state-owned enterprise of the Laos government responsible for electric power generation, received funds from the International Development Association (IDA), the Asian Development Bank (ADB), the European Investment Bank (EIB), the Agent Français pour Développements (AFD), and the Laos government. The Lao Holding State Enterprise (LHSE) also holds 75% of the shares in the EDL-Generation Public Company. On the other hand, the EDL-Generation Public Company holds the shares through both the RATCH-Lao Services Company Limited and the RH International (Singapore) Corporation Pte. Limited, which operate as subsidiaries of the Ratchaburi Electricity Generating Holding Public Company Limited (RATCH).

Project Development

The Hongsa Lignite Power Plant Project is comprised of the lignite mining project and the lignite-fired power plant. The mine and plant are located approximately 10 kilometres from Hongsa township, Hongsa district in Xayaburi province of Laos, and 30 kilometres from the Lao-Thai border adjacent to Nan province in Thailand. The area of the lignite mine is 76.2 square kilometres. The Hongsa power plant generates electricity by burning coal to produce steam which flows into the turbine and spins the electricity generator. Two nearby dams, the Nam Kaen dam and Nam Leuk dam, serve as a water supply for the Hongsa power plant.⁵⁴

The Hongsa Lignite Power Plant Project was initiated in response to Thailand's Power Development Plan 2002-2021 (PDP 2007). The project has the installed capacity of

⁵² Shareholder and Board of Directors. <http://www.hongsapower.com/index.php?model=cms&view=item&layout=page&id=12>

⁵³ The Lao Holding State Enterprise. <http://www.laoholding.com>

⁵⁴ Banpu Public Company Limited. https://www.banpu.co.th/backoffice/upload/inv_news_176_8ad2a82c81963e1bf8cc1e1dd757c81c.pdf

1,878 megawatts (MW). On 2 April 2010, the Hongsa Power Company signed the power purchase agreement with the EGAT for selling 1,743 MW of electricity to Thailand. Subsequently, on 13 July 2010, the Thai Cabinet approved the project for connecting the transmission lines to the Hongsa power plant project.

The Hongsa Lignite Power Plant Project has three components as follows;

Lignite mine: The mine is operated by the Hongsa Power Company, however, a concession agreement to operate the lignite and limestone mines was initially signed on 30 November 2009 between the Phu Fai Mining Company, a subsidiary of the RATCH company, and the Laos government. The concession rights were then transferred to the Hongsa Power Company on the same day. The shares in the lignite mine are held by the Lao Holding State Enterprise (LHSE) (25%), the Banpu Power (37.5%), and the RATCH (37.5%). In addition, on 25 October 2012, the Italian-Thai Hongsa Company Limited, a subsidiary of the Italian-Thai Development Public Company Limited, was granted a concession from the Laos government for soil excavation and transportation.

Lignite-fired Power Plant: The first and biggest lignite-fired power plant in Laos is equipped with three 626 MW generating units. The power plant is operated by the Hongsa Power Company Limited and the shares are held by the Lao Holding State Enterprise (LHSE) (20%), the Banpu Power Limited (40%), and the RATCH (40%). In 2007, the project hired a Thai consulting company, the TEAM Group, to design the raw water system for the Hongsa power plant, as well as to implement the environmental management plan and the resettlement plan for the project.⁵⁵

Transmission Lines⁵⁶: The transmission system project in Thailand consists of a total of 237.5 kilometres of transmission lines passing through three provinces, namely, Nan, Phrae, and Lampang, and consists of 500 kilovolt (kV) transmission lines linking the delivery point on the Thai-Lao border (in Nan province) to the Nan 2 Substation, and 500 kV transmission lines linking the Nan 2 Substation to the Mae Moh 3 Substation. The EGAT hired Kasetsart University to conduct the environmental impact assessment on the areas where the transmission lines pass through the forest areas classified as Watershed Classification 1B.

Communities and the Environment around the Project Area

⁵⁵ The Electricity Generating Authority of Thailand.

https://www.egat.co.th/index.php?option=com_content&view=article&id=546:egatnews-20140401-01&catid=30&Itemid=112

⁵⁶ Investigation Report No. 1100/2558, Sitthi Chumchon: Koranee Krongkarn Korsang Saisong Faifa Rangsoong Nai Pheunti Changwat Nan Phue Rubsue Faifa Chak Krongkarn Mueng Rae Rongfaifa Phalang Khwarmron Hongsa Lignite Sathanarath Prachathipatai Prachachon Laos. [The Community Rights: In the Case of the Construction of the High Voltage Transmission Lines in Nan Province for Importing Electricity from the Hongsa Mine and Lignite-fired Power Plant in Lao PDR].

The 76.2 square kilometres area of the lignite mine is surrounded by forest. Six villages, with a total of approximately 400 households, mainly comprised of ethnic Tai Lue farmers, will be resettled by the project.⁵⁷

Policies Supported by Thailand

- Thailand's Power Development Plan 2008-2021 (PDP 2007)

Policies Supported by Lao PDR

- The National Growth and Poverty Eradication Strategy⁵⁸
- Development Strategy for the "Battery of Asia"⁵⁹

Concerns Regarding the Environment and Community Livelihoods

More than 2,000 villagers from 450 families will be affected by the Hongsa power plant and its lignite mine. No information was provided during the construction period, and the local authorities denied non-governmental organisations (NGOs) access to the affected areas to meet with the villagers.

Regarding the impact on the environment and community livelihoods, it is feared that the project will release heavy metals into local water supplies, which will consequently damage the forested areas that local communities rely on for their food source and way of life. Moreover, the new resettlement houses built by the Hongsa Power Company Limited are about eight kilometres from Hongsa township, and about 12 kilometres from the power plant site.

The Investigation by the National Human Rights Commission of Thailand

The National Human Rights Commission of Thailand (NHRCT) has ceased the investigation of the Hongsa power plant case after Thailand's Administrative Court accepted the case for consideration. However, in the NHRCT's meeting on 26 October 2015 (Investigation Report No. 1100/2558), the NHRCT had agreed to submit the policy recommendations to the Thai government.

Subsequently, the Thai Cabinet Resolution dated 5 January 2016,⁶⁰ reported on the results of taking into consideration the NHRCT's policy recommendations from the report titled, The Community Rights: In the Case of the Construction of the High Voltage Transmission Lines in Nan Province for Importing Electricity from the Hongsa Mine and Lignite-fired Power Plant in Lao PDR. The key points are;

⁵⁷ https://www.greenpeace.org/archive-thailand/campaigns/climate-and-energy/coal/true-cost-of-coal/coal-map/coal_lao/

⁵⁸ The National Growth and Poverty Eradication Strategy.
http://www.la.undp.org/content/lao_pdr/en/home/library/poverty/NGPES.html

⁵⁹ Krungthep Turakit Online. Laos Reng Perm Sakkayaparb Faifa Phalang Nam Moong Song Ork [Laos Boosts its Hydropower Capacity for Export]. 29 October 2014. <http://www.bang-kokbiznews.com/news/detail/613953>

⁶⁰ The Cabinet Resolution. http://www.cabinet.soc.go.th/soc/Program2-3.jsp?top_serl=99317530

- The Cabinet has acknowledged the NHRCT's policy recommendations regarding the revision of the National Power Development Plan, and the aim to promote 25% alternative energy usage in 10 years to be compatible with Thailand's Renewable and Alternative Energy Development Plan (2012-2021). The implementation shall take into account the participation and interest of the public, the adverse impacts to the local people, and also include the establishment of mechanisms to ensure that Thai investment abroad respects fundamental human rights.

- The Cabinet has assigned the Ministry of Energy to be the focal state agency responsible for advancing the policy recommendations as outlined in the NHRCT's report in collaboration with the Ministry of Foreign Affairs, the Ministry of Natural Resources and Environment, and the Ministry of Commerce.

Concerns Regarding Human Rights

- Regarding the concerns about human rights in Laos, in the early stage of the project development, it appears that there was no public participation from the affected local communities. Information on the overall impacts of the project was not provided. The compensation promised by the Lao government was also delayed.

- Regarding the concerns about human rights in Thailand, it appears that most of the people affected by the transmission line project have not been informed despite the consultation process beginning in early 2008. Additionally, while some local authorities and leaders were invited to the consultation meetings, the local people who would be directly affected by the project were not. Likewise, in early 2009, the EGAT still had not informed the local people about the environmental impact assessment (EIA), and did not disclose any information from the EIA when it was completed. Furthermore, it later became apparent that the EIA was conducted in an incomprehensible manner and did not cover all the affected areas. Moreover, the EGAT had trespassed onto the local people's properties to demarcate the transmission line system without providing prior notice to the landowners.

- The transmission lines pass through areas known as Huay Ton Peung and Kha Kong, which were issued a Crown Lands Certificate⁶¹ recognising its common use by the local people. However, the EGAT has cleared the lands and uprooted big trees without permission. The villagers' houses were dismantled, and the local people can no longer use the lands for the same purpose. They are also not allowed to build any structures, including houses, or maintain large trees, and can only grow some annual crops in the area.

- According to the Electricity Generating Authority of Thailand Act 1968, the EGAT has the authority to construct transmission lines under, above, along or across any land belonging to any person, so long as such land is not the site of a dwelling house. However, before starting any activities, the EGAT must inform the concerned property owners in writing and shall pay fair compensation to the property owners or another holder of a right for the lands. In the case where no settlement, between the property owners or another holder of

⁶¹ Regarding the land which is in the public domain of the State for the common use of the people or for the special use of the State, the Director-General may make arrangement for the issuance of the Crown Lands Certificate specifying its boundaries for the purpose of evidence.

a right and the EGAT, could be reached regarding the amount of compensation determined by the EGAT, or the property owners or another holder of a right could not be found, the EGAT Act allows the EGAT to deposit such compensation in the Court or the Deposit Office, or deposit it into the Government Savings Bank in the name of the owner of the property or another holder of a right, individually, even though the owner of the property or another holder of a right might not consent. Building of a dwelling house or other construction or growing any trees or plants are forbidden in the electricity transmission line laying zone even though the owners of the properties still hold their land titles in those areas.⁶²

Concerns Regarding Legal Loopholes and Accountability

- The public hearing process has become a way to legitimise the project as the project developers can always claim they have fulfilled the project requirements just by organising the set targeted number of public hearings. However, the people who attended the EGAT's public hearings were not the ones affected by the project. Furthermore, while only some local officials and local leaders were invited to participate in the hearings, the people who are directly affected by the project were not invited. The implementation of the project truly demonstrates the lack of genuine and meaningful public participation.

- There is no mechanism to provide severe punishment when state agencies fail to conduct a comprehensive EIA or do not disclose project information to the public. The EGAT has ignored the requirement to disclose the project information to the local people. Moreover, the EIA study does not cover all the areas affected by the project.

- The handling of the land issue during the implementation of the EGAT's transmission lines project is not in compliance with the Ministry of Interior's Ministerial Regulation on Criteria and Procedures to Allow Public Bodies to Utilize State Property.⁶³

⁶² The Electricity Generating Authority of Thailand Act 1968, Sections 28-35.

⁶³ Thailand Land Code B.E. 2541 (1998).

4.4 Hatgyi Hydropower Dam Project Karen State, Myanmar



Thai Private Sector Involvement

- The EGAT International Company Limited

The EGAT International Company Limited (a subsidiary of the Electricity Generating Authority of Thailand – EGAT) was registered as a limited company in December 2007 and has been involved in the Hatgyi Hydropower Dam Project since April 2010. Originally, EGAT was the developer of the project.⁶⁴

Project Investment

- First period: EGAT signed a Memorandum of Agreement (MoA) with the Department of Hydropower Planning, under the Ministry of Electric Power of Myanmar,⁶⁵ on 9 December 2005, for the joint development of four hydroelectric projects on the Salween

⁶⁴ Foundation for Ecological Recovery. Lamdab Hetkarn Thi Keawkhong Kap Keun Hatgyi [Chronology Related to Hatgyi Dam], 2010.

⁶⁵ The Ministry of Electric Power of Myanmar was superseded by the Ministry of Electricity and Energy in March 2016.

River. The Hatgyi dam, with a capacity of 1,200 megawatts (MW), is one of the proposed hydropower projects on the Salween River.

- Second period: Sinohydro Corporation Limited, a state enterprise from China, joined as a project developer, and the investment shares of the project were divided into three parts; EGAT held 45%, Myanmar's Department of Hydropower Planning 15%, and Sinohydro Corporation 40%. The investment cost was projected to be approximately US\$1 billion.⁶⁶

- Third period: On 23 April 2010, a new MoA was signed and another project developer, the International Group of Entrepreneurs Company Limited (IGOEC), joined the consortium. The investment share has subsequently changed as follows: EGAT International Company holds 36.5% of the shares, Myanmar's Department of Hydropower Planning holds 10%, Sinohydro Corporation holds 50.5%, and IGOEC holds 3%.⁶⁷ At present, the share proportion remains unchanged.

Project Development

The Thai government planned to build four dam projects on the Salween River, namely, the Hatgyi dam, Tasang dam (also known as the Mai Tong dam), Dagwin dam, and Weigyi dam.

The Hatgyi dam project is a run-off-river dam and, if built, will block the Salween River in Pa-an, located in Karen State, Myanmar. The proposed project site is about 47 kilometres (km) downstream of the Thai-Myanmar border at Sob Moei district of Mae Hong Son province. The normal high-water level of the dam would be 48 metres above mean sea level. The reservoir will store approximately 500 million cubic metres of water above the dam. The dam is 115 metres-high and 1,127.20 metres-wide. The installed capacity is 1,360 MW, which would generate 7,325 million units of electricity. The 1,190 MW of generated electricity will be sold to EGAT and the remaining amount will be used in Myanmar. The Hatgyi dam will be connected to the EGAT system at Tha Song Yang district in Tak province by a 45 km transmission line, and a further 300 km extension will connect it to the Phitsanulok 3 High-voltage Power Station.⁶⁸

Communities and the Environment around the Project Area

The Hatgyi dam will be situated on the Salween River near the Thai-Myanmar border. The dam and its reservoir will destroy the surrounding environment, especially the fertile forest resources. Unlike teak forests in other areas, the teak forests along the Salween River

⁶⁶ Foundation for Ecological Recovery. Yonroi Lamdab Hetkarn Krongkarn Keun Salawin [Tracing Back: Chronology of Salween Dam Project], 2007.

⁶⁷ EGAT International Company Limited, Krongkarn Faifa Palangnam Hatgyi [Hatgyi Hydroelectric Project], <http://www.egati.co.th/th/th-investment/hutgi.html>

⁶⁸ Towards Ecological Recovery and Regional Alliances, Saloop Krongkarn Keun Hatgyi [Summary of Hatgyi Dam Project], April 2010.

remain abundant. Located at the biological conjunction of the Indo-Burmese Region,⁶⁹ the Salween forests include hill evergreen forest, semi evergreen forest, mixed deciduous forest, deciduous dipterocarp forest, stone and limestone forest, and riverine forest. Moreover, these forests have high biological diversity and are home to many rare species of wildlife such as the goral (*nemorhaedus griseus*), serow (*capricornis*), gaur (*bos gaurus*), tiger (*panthera tigris*), and leopard (*panthera pardus*). The livelihood of the communities in the Salween River basin are dependent on the forest and its resources for activities such as farming, collecting vegetables and plants used for herbal medicines, etc.⁷⁰

Apart from the land ecology, the riverine ecology is also vital for local people's livelihoods. The Salween River has rich diversity. On the river, there are numerous rapids, small and large rock outcrops, islets, sand bars and beaches, and these sub-ecological systems provide food sources, agricultural land, and abundant aquatic animal habitats. Sandbanks are used by the local people for farming vegetables, or even growing rice, as well as tending orchards. The fish in the river are also an important source of food and income for the local people, as they undertake small-scale fishing for both family consumption and to sell in the market.⁷¹

Aside from the Salween River, the proposed Hatgyi dam site will also affect the Salween's tributaries, such as the Moei River, which are the breeding grounds for fish in the Salween River and important fishing grounds for the local people.

Constructing a dam on the proposed site would affect the local communities both in Thailand and Myanmar, most of whom are ethnic Karen and have retained their culture, language, and history.

A field survey undertaken by civil society organisations found that the Hatgyi dam, if built, will directly affect 41 villages along the Salween River both in Thailand and Myanmar – 21 villages on the east side of the riverbank and 20 villages on the west.⁷²

Policies Supported by Thailand

- The Cooperation Framework between Thailand's Ministry of Energy and Myanmar's Ministry of Electricity and Energy.
- Power Development Plan

⁶⁹ The Indo-Burmese Region includes the moist tropical and subtropical forests which extend from north-east India and southern China across the lowlands and isolated mountains of South-East Asia, as well as the Andaman and Nicobar islands.

⁷⁰ River for Life Project, Salween News Network, and Towards Ecological Recovery and Regional Alliances. Salawin: Sainam Sam Paendin [Salween: The River That Flows Through Three Countries], 2008.

⁷¹ Ibid.

⁷² Towards Ecological Recovery and Regional Alliances, Saloop Krongkarn Keun Hatgyi [Summary of Hatgyi Dam Project], April 2010.

Policy Supported by Myanmar

- The Cooperation Framework between Thailand's Ministry of Energy and Myanmar's Ministry of Electricity and Energy.

Concerns Regarding the Environment and Community Livelihoods

The Hatgyi hydropower dam project, including its reservoir and transmission lines, will have severe impacts on the ecosystem and the environment both in the dam site and in the surrounding areas in Thailand and Myanmar. The construction of the high-voltage transmission lines will destroy the forest areas, plants, wildlife, aquatic animals, and birds. It will eventually damage the whole ecological system, as well as change the climatic condition such as temperature, humidity and rainfall, and the geology of the Salween River. The changes and the loss of the ecological system will not only directly affect the local people's livelihoods – for example, fishing and dry-season riverbank gardening – especially for the 41 Karen villages, which are situated along both sides of the riverbank along the Salween and its tributaries, but it will also lead to forest encroachment, logging, and hunting wildlife in the dam reservoir areas. In addition, the Hatgyi dam will severely impact the ecology and the fishery in the mouth of the Salween River especially in the vicinity of the communities of Pa-an, Mottama, and Mawlamyine in Myanmar.⁷³

A study by EGAT stated that six villages in Myanmar, comprised of a total of 110 households, will be submerged by the dam, namely, Kalo Detha village, Shwe U We village, Kyaw Pulu village, Sa Seik village, Yun Matha village, and Baw Tayaw village.⁷⁴

The study also stated that there are three levels of impacts – high, medium, and low, that will affect the villagers in Mae Hong Son province, Thailand. For example, in Tha Ta Fang village, two households will be affected by the medium level of impact and 93 households by the low level. In Mae Sam Lab village, one household will be affected by the high level of impact and 48 households by the medium level. In Sob Moei village, two households will be affected by the medium level of impact and 85 households by the low level. Therefore, in the three villages, one household will be affected by the high level of impact, 52 households by the medium level, and 293 households by the low level.⁷⁵

The Investigation by the National Human Rights Commission of Thailand

The National Human Rights Commission of Thailand (NHRC) has investigated the community rights issue related to the Salween dam project (in this regard the Hatgyi dam), as the case is within the power and duty of the NHRC as stated in Article 25 of the National Human Rights Commission Act B.E. 2542 (1999), and the NHRC assigned the Sub-

⁷³ Ibid.

⁷⁴ The Document for the Sub-Meeting of Public Participation, The Additional Environmental Impact Assessment of Hatgyi Hydropower Dam Project along the Thai-Myanmar Border (The Electricity Generating Authority of Thailand), prepared by Chula Unisearch, Chulalongkorn University. December 2013.

⁷⁵ Ibid.

Committee on Water, Coastal and Mineral Resources to examine the case stated in the letter of complaint (No. 191/2549), dated 25 April 2006.

The Report of the Findings of the Investigation of the Human Rights Violation by the Sub-Committee on Water, Coastal and Mineral Resources (No. 526/2550) stated that the construction of the Hatgyi hydropower dam project will lead to human rights violations because the project is located in an area of conflict between the Myanmar military forces and the Karen National Union (KNU), which will result in the displacement of local villagers by the civil war. In addition, the villagers will lose their livelihoods as their houses and farmlands will be submerged by the Hatgyi dam's reservoir. Moreover, it will affect the ecosystem of the Salween River, which flows in both Myanmar and Thailand. In addition, the Sub-Committee on Water, Coastal and Mineral Resources has submitted a document to the Thai government, proposing that EGAT halt the Hatgyi dam project on the Salween River within 90 days commencing from the date the government received the Report.

Subsequently, in the NHRC's meeting (No.24/2550)⁷⁶ on 9 August 2007, the NHRC approved the Sub-Committee on Water, Coastal and Mineral Resources' Report and its recommendations and, then, submitted the Report to the Thai government on 22 April 2009.

The Thai Government's Action Following the Investigation Report by the NHRC
On 27 February 2009, the Thai Prime Minister Abhisit Vejjajiva issued an order to establish the Committee on Monitoring and Resolving the Human Rights Violations to examine the report findings on human rights violations associated with the proposed Hatgyi Hydropower Dam Project on the Salween River.

The Committee on Monitoring and Resolving the Human Rights Violations chaired by Mr. Satit Wongnongtaey, the Minister to the Office of the Prime Minister, issued Order No. 4/2552 dated 8 June 2018 to establish the Sub-Committee on Examining and Providing an Informed Perspective on Impacts and Human Rights Violations Associated with the Hatgyi Hydropower Dam Project. The Sub-Committee was chaired by Mr. Rapeephat Sariwat, the Chief Inspector General under the Office of the Prime Minister, and the Sub-Committee members included representatives from state agencies and civil society organisations. Subsequently, the Sub-Committee submitted a list of recommendations, the summary⁷⁷ is as follows:

1. Impacts on Human Rights

Policy Level: The Thai government should collaborate with the Myanmar government to establish regulations for the resettlement, rather than the forced relocation, of people affected by the Hatgyi dam.

⁷⁶ The National Human Rights Commission of Thailand. Rai Ngan Karn Truadsob Karnlamerd Sitthi Manussayachon, Reung Sitthi Chomchon Koranee Krongkarn Korsang Keun Nai Maenam Salawin [The Investigation Report on Human Rights Violations, Re: Community Rights – the Case of the Construction of the Salween Dam]. 2008.

⁷⁷ The Sub-Committee on Monitoring and Resolving the Human Rights Violations. The Report on the Points of View Related to Impacts and Human Rights Violations in the Case of Hatgyi Hydropower Dam Project on the Salween River in the Republic of the Union of Myanmar, the Project Developed by the Electricity Generating Authority of Thailand (EGAT). 2010.

Project Level: EGAT and Myanmar's Ministry of Electricity and Energy should collaborate to ensure the inclusion of several critical points in the MoA, specifically, project implementation will include mitigation measures for environmental impacts and assurances that there will be no forced resettlement, which violates human rights, and that the project will include programmes to improve the lives of the affected people. In addition, these key concerns should be addressed in a written document signed by triparty between the representatives of the Myanmar government, EGAT, and Sinohydro Company.

2. Impacts on the Environment

Although the environmental impact assessment (EIA) of the project was conducted in Myanmar, several aspects are still insufficient, including the ecological impacts and the impacts on fishery in the mouth of the Salween River. Furthermore, the Hatgyi dam would also create negative impacts in Thailand, especially on the riverbank agriculture and fishery along the Salween River and its tributaries. Thus, in order to identify these impacts, as well as adhere to Thai law, the Thai government should order EGAT to conduct additional impact assessments in the potential affected areas in Thailand, as well as determine environmental safeguards and mitigation measures.

3. Impacts on Health

Additionally, EGAT should conduct a health impact assessment (HIA) along the Thai border area. If the project results in the displacement of the villagers, they must be provided with opportunities to adapt to a new environment.

4. Impacts on the Thai-Myanmar Border

The dam could affect the Thai-Myanmar border because the dam will cause alterations in the water level of the Salween River and the Moei River.

5. Information Disclosure to the Public

The Thai government should allow an independent agency to conduct a public forum and disclose information to ensure that all stakeholders will have an opportunity to be informed and receive reliable and truthful information on every aspect, including the safeguard measures. To make the process transparent, the Thai government and the responsible state agencies should provide affected communities with opportunities to express their concerns and participate in the decision-making process.

The Sub-Committee submitted the report and a list of recommendations to the Committee on 16 December 2009, and the Committee subsequently submitted it to the Thai Prime Minister⁷⁸ Abhisit Vejjajiva, who then agreed with the recommendations of the report on 25 January 2010 as follows:

- To assign EGAT to take the report of the Sub-Committee into account and implement it in accordance with its recommendations regarding potential impacts, including human rights violations associated with the Hatgyi dam project, especially the requirement for conducting

⁷⁸ Ibid

the additional EIAs. In addition, to assign EGAT to disclose information to the public, provide truthful information regarding every aspect of the project to the local people, and organise public hearings with stakeholders and civil society groups. The implementation of these activities must be reported to the Committee.

- To set up a neutral body responsible for facilitating the information disclosure to the public in every aspect based on reliability and truthfulness to ensure that all stakeholders can access accurate information and facts. Relevant agencies were asked to collaborate and work on procedures for the establishment of the neutral body.

- The Office of the Secretariat of the Prime Minister issued the letter (No. Nor Ror 0402/7823), dated 4 August 2010, RE: The Conclusions of Proceedings by the Committee on Monitoring and Resolving the Human Rights Violations in the Case of Hatgyi Hydropower Dam Project on the Salween River in the Republic of the Union of Myanmar Developed by EGAT, addressed to the Governor of EGAT, and stated the key points as follows:

“To require EGAT to halt the construction of the Hatgyi dam and acquire the government policy prior to any implementation related to the project. In addition, to assign EGAT to provide clearer details of the Memorandum of Agreement (MoA) of the Hatgyi Hydropower Dam Project in order to be the baseline information for the public hearing with stakeholders in the affected areas. If the project is allowed to proceed, the EIA must be conducted to analyse the potential impacts and provide the remedies to the affected people.”⁷⁹

Subsequently, to adhere to the Committee’s proposal, EGAT hired Chula Unisearch, a research organisation from Chulalongkorn University to conduct an EIA study along the Thai-Myanmar border in 2013-2015. However, the local people persistently opposed the parameters of the study. For example:

- The public hearing on 18 December 2013 in Mae Sariang district, Mae Hong Son province in Thailand, was boycotted by 200 local villagers. They submitted a letter to the representatives of EGAT demanding the Hatgyi dam be halted as it will result in adverse impacts to the livelihoods and culture of the ethnic people who live in the Salween River basin. In addition, EGAT had not disclosed detailed information of the project to the communities, but had only handed out the project documents.⁸⁰

- At the meeting titled, “The Last Orientation for the Additional EIA Study of the Hatgyi Hydropower Project along the Thai-Myanmar Border”, held on 18 December 2015 at the Thong Sawat Wittayakarn School auditorium in Mae Sariang district, Mae Hong Son province, a local group called the Community Network of Salween Basin Resource Management demanded that Chulalongkorn University examine and halt the role of Chula Unisearch until such a time when Myanmar has attained a peaceful resolution to the conflict, and the local people are able to return to their original homeland and voice their concerns

⁷⁹

The Office of the Secretariat of the Prime Minister. No. Nor Ror 0402/7823 Re: The Conclusions of Proceedings by the Committee on Monitoring and Resolving the Human Rights Violations in the Case of Hatgyi Hydropower Project on the Salween River in the Republic of the Union of Myanmar Developed by the Electricity Generating Authority of Thailand (EGAT), addressed to the Governor of EGAT, 4 August 2010.

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Thairath Online. Shi Suksa Sang Keun Hatgyi Mai Krobklum [The Study of Hatgyi Dam is Incomprehensive]. <http://www.thairath.co.th/content/551520>

about the direct impacts on the environment and communities. Only then should an exhaustive and transparent process be initiated to consider an alternative energy supply.

Concerns Regarding Human Rights

- The Escalation of Human Rights Violations

The implementation of the Hatgyi dam in the battle zone between the Myanmar Army and the KNU will pose a risk to the 41 Karen communities located around the proposed reservoir area. In order for the project to proceed, the Myanmar government would need to take control of the project area, which will lead to a severe violation of human rights. Consequently, Thailand will have to bear the burden of receiving refugees. As of 2005, Thailand was providing sanctuary for at least 132,240 refugees in camps along the border in Tak and Mae Hong Son provinces.

In addition, the revenue from selling electricity to Thailand will enhance the capacity of the Myanmar army to gain control over areas of ethnic land, which will subsequently lead to more human rights violations.⁸¹

Furthermore, according to the conclusions of the investigation report on human rights violations in the case of the Hatgyi dam by the NHRC on 9 August 2007, the project site of the Hatgyi dam is still an ongoing conflict zone and battle ground between the Myanmar Army and the KNU, thus, the construction of the dam will affect Karen villagers and will be the catalyst for seeking sanctuary across the border in Thailand. Consequently, the Hatgyi dam project will escalate the human rights violations towards the Karen people in Myanmar, whereas, Thailand will subsequently bear the brunt of providing care for the refugees. Lastly, the NHRC has proposed that the Thai government order EGAT to halt the Hatgyi dam project.⁸²

- Transparency of Information Disclosure

To date, EGAT has still not disclosed information regarding the project such as the Memorandum of Agreement on the Development, Ownership and Implementation of the Hatgyi Hydropower Dam Project between EGAT and the Department of Hydroelectric, Ministry of Electricity; the Memorandum of Understanding of the Study and Development of the Hatgyi Hydropower Dam Project between EGAT and China's Sinohydro Corporation; The Feasibility Study and EIA of the Hatgyi Hydropower Dam Project; the map of the area that will be submerged by the Hatgyi dam's reservoir; and the real investment cost of the project. EGAT has claimed that due to the contract agreement with Myanmar's Department

⁸¹ Towards Ecological Recovery and Regional Alliances. Saloop Krongkarn Keun Hatgyi [Summary of Hatgyi Dam Project]. April 2010

⁸² The National Human Rights Commission of Thailand. Rai Ngan Karn Truadsob Karnlamerd Sitthi Manussayachon, Reung Sitthi Chomchon Koranee Krongkarn Korsang Keun Nai Maenam Salawin [The Investigation Report on Human Rights Violations, Re: Community Rights – the Case of the Construction of the Salween Dam]. 2008.

of Hydroelectric, Ministry of Electricity and Energy, all project-related information will be treated as confidential and will not be disclosed without prior consent of the counterpart.⁸³

Concern Regarding Legal Loopholes and Accountability

Legal Loopholes

Although the Hatgyi dam is located in Myanmar, it is clear that the reservoir area will also submerge Thailand's territory, therefore EGAT, as a state enterprise, must maintain its operational standards in the same manner as if the project was implemented in Thailand, which requires it to adhere to the Thailand Constitution, as well as other related laws such as follows:⁸⁴

- EGAT did not comply with Article 190 under Paragraph 2 of the Thailand Constitution B.E. 2550 (2007), which states that a treaty that provides for a change in the Thai territories must be approved by the Parliament. Moreover, prior to the conclusion of a treaty with other countries or international organisations under Paragraph 2, the Council of Ministers shall publicise relevant information, make arrangements for a public hearing on the matter, and provide clarification of such a treaty to the Parliament, in which the Council of Ministers is required to propose the negotiation framework to the Parliament for approval. In this regard, the Hatgyi dam reservoir will submerge an area of Thai territory, although it is still unknown how large the submerged area will be.

- EGAT did not comply with Article 67 of the Thailand Constitution B.E. 2550 (2007), which states a requirement to disclose comprehensive information, to hold a public hearing to obtain feedback from the general public, to conduct a feasibility study, EIA and HIA, including to obtain opinions from independent environmental organisations and, then, submit the EIA study for consideration and approval.

- EGAT did not comply with the Enhancement and Conservation of National Environmental and Quality Act B.E. 2535 (1992), which requires that EGAT must submit a feasibility study and EIA to both the Expert Review Committee and the National Environment Board for their consideration and approval.

Concerns Regarding the Borderline

The investigation report by the NHRC has concluded that the Hatgyi dam, if built, could alter the water level of the Salween and Moei Rivers, which would affect the Thai-Myanmar border. In this regard, Thailand's Ministry of Foreign Affairs acknowledges that the contract agreement for the Hatgyi Hydropower Dam Project, which is a joint initiative between Thailand's Ministry of Energy and Myanmar's Ministry of Electricity and Energy to build a dam in Myanmar, would raise issues of a highly political and sensitive nature. However, the relevant agency would bring the case to the Constitution Court for

⁸³ River for Life Project, Salween News Network, and Towards Ecological Recovery and Regional Alliances. Salawin: Sainam Sam Paendin [Salween: The River That Flows Through Three Countries], 2008.

⁸⁴ Towards Ecological Recovery and Regional Alliances, Saloop Klongkarn Keun Hatgyi [Summary of Hatgyi Dam Project], April 2010.

interpretation of Article 190 under Paragraph 6 of the Thailand Constitution B.E. 2550 (2007). Therefore, to avoid any problems that may occur and to be circumspect, the Ministry of Energy of Thailand – the state agency in charge of this case, should submit the contract agreement to the Council of Ministers and the Parliament for their consideration and approval prior to the implementation of the Hatgyi Hydropower Dam Project.⁸⁵

⁸⁵ The National Human Rights Commission of Thailand. Rai Ngan Karn Truadsob Karnlamerd Sitthi Manussayachon, Reung Sitthi Chomchon Koranee Krongkarn Korsang Keun Nai Maenam Salawin [The Investigation Report on Human Rights Violations, Re: Community Rights – the Case of the Construction of the Salween Dam]. 2008.

4.5 Dawei Deep Seaport and Special Economic Zone Project Tanintharyi Region, Myanmar



Thai Private Sector Involvement

- The Italian-Thai Development Public Company Limited (ITD)

Project Investment

Co-investment between the government and the private sector: The Italian-Thai Development Public Company Limited (ITD) initiated the Dawei Deep Seaport and Special Economic Zone Project and has played a part in promoting it. Currently, the Governments of Myanmar, Thailand, and Japan jointly own the project by holding equal shares through an established ‘special purpose vehicle’ company, which plays a role in attracting investors to participate in the project.

The ITD’s involvement in the project can be seen in two stages:

1. As a main developer in the preliminary stage (2010-2013)

- On 2 November 2010, the ITD signed the Framework Agreement with the Myanma Port Authority, under the Ministry of Transportation, for developing the Dawei Special Economic Zone (SEZ), and was granted a 60-year concession period with a potential option for future

extension.⁸⁶ However, prior to this concession agreement, the ITD was granted permission to conduct a feasibility study for the Dawei SEZ Project.⁸⁷

- The ITD established the Dawei Development Company Limited (DDC) for the management of the special economic zone. The DDC was a joint venture company between the ITD and the Max Myanmar Company Limited, holding 75% and 25% of the shares, respectively. However, the ITD holds 75% of the DDC shares through the Dawei Development Company Limited (BVI), which was registered in the British Virgin Islands under the name of a subsidiary company of the ITD.⁸⁸

- During 2010-2013, the ITD established more than 20 subsidiary companies in foreign countries such as Hong Kong, the British Virgin Islands, and the Republic of Mauritius. These companies are related to the development of the Dawei SEZ Project.⁸⁹

- On 21 November 2013, the ITD's existing concession agreement was terminated. However, a new agreement was signed and stated that the ITD will be compensated for its previous development costs by the newly established company under the special purpose vehicle (SPV) named the Dawei SEZ Development Company Limited, which is a joint initiative between the governments of Thailand and Myanmar, and formally became a government-to-government project, overseen by several joint governmental committees. In addition, the ITD retains the role of providing maintenance work for the project.⁹⁰

2. As a developer of the initial phase of the Dawei Special Economic Zone Project (2014-2017)

- After the first concession agreement was terminated on 21 November 2013, the ITD has since become involved again and was granted permission to develop the initial phase of the Dawei SEZ Project together with the Rojana Industrial Park Public Company Limited under the newly established company, the Myandawei Industrial Estate Company Limited, which was registered in Myanmar on 9 June 2015. The ITD holds 50% of the shares of this newly established company. The concession agreement for the initial phase was signed with the Dawei Special Economic Zone Management Committee (DSEZMC) on 5 August 2015 to develop the area of 27 square kilometres (sq.km), plus another eight sq.km. The development period is eight years, the investment cost is US\$1.7 billion, and the concession period is for 50 years and can be extended for another 25 years, for a total of 75 years.⁹¹

⁸⁶ Letter of Board of Director and Board of Management of Italian-Thai Development Public Company Limited to the Stock Exchange of Thailand No. CSD 2553/049, dated 4 November 2010 Re: Signing Framework Agreement to develop the Dawei Special Economic Zone Project, and Financial Report 2010. Page 40

⁸⁷ Foundation for Ecological Recovery. Khronkarn Tharua Namruek Tawei: Mong Hai Klai Kwa Phonprayote [Dawei Deep Seaport Project: Looking Beyond Tangible Benefits], 2012. Page 4.

⁸⁸ Italian-Thai Development Public Company Limited. Annual Report, 2011

⁸⁹ Italian-Thai Development Public Company Limited. Annual Report, 2012. Page 7 and 84.

⁹⁰ Italian-Thai Development Public Company Limited. Financial Report, 2013.

⁹¹ Myandawei Industrial Estate Company Limited, About MIE, accessed from http://www.daweiindustrialestate.com/page_a.php?cid=85&cname=About%20MIE

• In 2012, prior to the initial phase agreement of the project, the ITD proceeded to establish 22 subsidiary companies in Hong Kong, and five subsidiary companies in Singapore, and all of these companies are related to the development of the Dawei SEZ Project.⁹²

Project Development

The Dawei Deep Seaport and Special Economic Zone Project is located northwest of Dawei city in the Tanintharyi Region. It is one of the biggest development projects in Myanmar in terms of area and investment cost. Initially, the project area covered approximately 250 sq.km, however, it was resized to 196 sq.km, or about eight times larger than the Map Ta Phut Industrial Estate in Thailand. The investment cost is estimated to be about US\$50 billion.

The project primarily comprises an industrial estate area including a petrochemical plant, a steel mill, a 4,000-megawatt coal-fired power plant, a deep seaport, transportation links to Thailand (road links, railways, oil and gas pipelines, electricity transmission lines), and a water supply reservoir. It is expected to attract investors from around the world with the aim of job creation and the transfer of products, services, technologies, and other innovative knowledge. Moreover, the project is expected to connect the transportation links from the various member countries of the Association of South-East Asian Nations (ASEAN), particularly regarding the development along the so-called “Southern Economic Corridor” in mainland Southeast Asia.

Communities and Environment around the Project Area

The site of the Dawei Deep Seaport and Special Economic Zone (SEZ) is located along the coastal area of the Andaman Sea, about 20 kilometres northwest of Dawei city in the Tanintharyi Region. The selected project site is currently utilised by the local communities as agricultural land, which the villagers rely on for their agricultural livelihood and natural resources. The three main areas affected by the Dawei SEZ as well as other related projects are:

1. Lowland Villages: The Dawei SEZ and the deep seaport (inside the SEZ area) are located in Nabule, an area known for its prime farmland and fertile coasts that has attracted settlements for many centuries. The main ethnic group in this area is the Tavoyan who has retained their own history, language, and culture. The local villagers depend primarily on agriculture and have developed various types of farming, including orchards, paddy fields, and upland fields. The majority of the people in the lowland villages are landowners. In addition, in the villages located near the coast, the local livelihoods include fishing and salt production. The mangrove forests are also vital for aquatic animals to feed and breed.
2. Upland Villages (road link areas): Most of the villagers who live in the upland areas are ethnic Karen whose existence in the area has been recorded for more

⁹² Italian-Thai Development Public Company Limited. Annual Report, 2014.

than a thousand years. Other ethnic groups include the Mon, Tavoyan, and Bamar. The upland communities are more dependent on land and other resources than the lowland communities. Most of the villagers depend primarily on agriculture and upland farming including betel nuts, rubber, cashew nuts, and other economic crops. The villagers also raise cattle. Paddy fields are uncommon in the upland areas, however, many households practice rotational rice farming. Each year, rice is grown in rotational plots with other crops, and then the land is left to lie fallow. These agricultural products provide not only food but also a vital source of income for the communities.

3. Kalonehtar village (reservoir area): Kalonehtar is located in the upland areas but is in close proximity to the Nabule plains. Most villagers are ethnic Tavoyan and they depend on agriculture for their main livelihood. They also own orchards plots and rear livestock, which provides a supplementary income.⁹³

Policies Supported by Thailand

- The 11th National Economic and Social Development Plan (2012-2016)
- Seven-Year Investment Promotion Policy by Thailand's Board of Investment (BOI)
- The cooperation strategies between the Neighbouring Countries Economic Development Cooperation Agency (Public Organisation) or NEDA and Myanmar during 2014-2017

Policies Supported by Myanmar

- Twenty-Year National Economic and Social Development Plan (2011-2031)
- Foreign Investment Law 2012 (superseded by the Myanmar Investment Law 2016)
- Special Economic Zone Law 2011 (superseded by the Special Economic Zone Law 2014)

Concerns Regarding the Environment and Community Livelihoods

A report prepared by the Dawei Development Association (DDA) estimated that as many as 43,000 local people from 36 villages would be directly affected by the Dawei Deep Seaport and Special Economic Zone Project including other related projects such as the water supply reservoir (dam) and the road links. The affected areas can be described as follows:

Industrial Estate Area and Deep Seaport (inside the designated Dawei SEZ boundaries): In 2010, the ITD began its initial project activities near the coast without the prior feedback and informed consent of local communities. In 2011, there was an official announcement that 19 villages would be relocated to make way for the Dawei SEZ project. However, the unofficial number also included three more villages, which brings the total to 22 villages. These villages include Htein Gyi village, Kha Maung Chaung village, Lae

⁹³ Dawei Development Association. "Voices from the Ground: Concerns Over the Dawei Special Economic Zone and Related Projects", 2014.

Shaung village, Myin Gyi village, Mudu village, Pagawzone village, Paradat village, Wet Chaung village, Yalaing village, and Bawah village.

The DDA survey undertaken on the impacts in the area has demonstrated that the land owned by local villagers has been appropriated and many of their houses have been destroyed by the project operations. The road construction has blocked the water channels and paddy fields have been damaged and are unusable due to landslides and flooding. Some mangrove forests have been devastated and some wild animals in the mangrove forests have disappeared or become rare. It has affected the villagers' livelihoods and has threatened the communities' food security. In some areas, mountains have been blasted, which has caused landslides and damaged the local villagers' paddy fields, as well as blocked the waterways. In addition, the wastewater from the construction activities has polluted the streams, which are the main water sources for the communities, resulting in water that can no longer be used as a source of drinking water.⁹⁴

If the project proceeds, the potential impacts also include air pollution caused by the coal-fired power plant, which would release extensive amounts of carbon dioxide, as well as sulphur dioxide — a cause of acid rain. Moreover, the petrochemical industry also releases certain chemicals, which are known carcinogens, the substances that are capable of causing cancer. In addition, the quality of the water resources in the project areas will be contaminated with heavy metals such as mercury, lead, and other toxic substances from the petrochemical industry. In addition, once the contaminated water flows into the natural water resources and the ocean, it will further deteriorate the freshwater and marine resources. The aquatic animals would be contaminated by heavy metals and it would contribute to the extinction of their species. These will also affect people's health and their food security will also be at risk. Not to mention the mangrove forests that will be destroyed by sea erosion once the coastal areas are cleared for the project development.⁹⁵

⁹⁴ Ibid.

⁹⁵ Foundation for Ecological Recovery. Khronkarn Tharua Namruek Tawei: Mong Hai Klai Kwa Phonprayote [Dawei Deep Seaport Project: Looking Beyond Tangible Benefits], 2012.



Areas near the designated Dawei SEZ site: These areas are mostly agricultural lands that villagers utilise for paddy rice fields, orchards, salt making, and fisheries. Most of these villages are omitted in the official estimates of people affected by the Dawei SEZ Project.⁹⁶

- Small Port Area — In the coastal village of Ngapidat, which is located outside the designated SEZ area, approximately 70 families have already had their land appropriated since 2010 to make way for the construction of the coastal road and a small port used for coastal access and the transportation of construction equipment to the Dawei SEZ site.

- Resettlement Area — In Bawah village, which has been designated as the host village for the resettlement of displaced families, many villagers have had their land appropriated to make way for the construction of 480 new resettlement houses.

- Stone Quarry — In Paradat village, the hill has been leveled to produce tonnes of gravel to be used in the project construction, which has also affected the nearby village of Myin Gyi. In addition, approximately 28 households in Myin Gyi village have had paddy land appropriated in 2010 as a result of construction to access the quarry.

According to a survey undertaken by the DDA, these villages have been affected by the project construction activities, which resulted in the loss of farmland and houses, as well as the natural resources that the villagers rely on. The construction has blocked the irrigation

⁹⁶ Dawei Development Association. *Voices from the Ground: Concerns Over the Dawei Special Economic Zone and Related Projects*, 2014.

channels that feed their paddy fields. Farmlands were confiscated. Villagers are not allowed to build their houses or undertake activities related to their livelihood. In some areas, the villagers are also exposed to the dust pollution originating from the stone quarry.⁹⁷



Myingyi beach nearby proposed Dawei Deep Sea Port Area

Road Links Areas: These components consist of roads, railways, oil and gas pipelines, and high-voltage electricity transmission lines, which will connect the Dawei SEZ Project to Thailand. There will be two main routes. The first route is an access road from the SEZ area to the border town of Phu Nam Ron in Kanchanaburi province, Thailand, which has already been opened for transportation. So far, land belonging to households in at least 13 villages has been appropriated to construct the access road. The second route will be much wider in order to accommodate an 8-lane highway, electricity transmission lines, oil and gas pipelines, and railway lines. At some points along the route, the access road and the highway links will be constructed in the same location, in other places the two routes will diverge.

⁹⁷ Ibid.



Myitta Intersection toward Kamoethway Area heading to Dawei Special Economic Zone

Most of the villages that had land appropriated for the construction of the road links are situated in the uplands where the population is mostly ethnic Karen, whose existence in the area has been recorded for more than a thousand years. Their main livelihoods depend primarily on orchard fields where they plant economic crops such as betel nuts and rubber trees. Paddy fields are uncommon in the area, however, many households in the upland villages practice rotational rice farming. As many as 94 percent of the households in the upland villages own farmland. Their livelihoods also include raising cattle and catching freshwater fish. The upland villages affected by the road links include Khatara Khee village, Kahtaung Ni village, Myitta village, Pyin Thataw village, and Kalonehtar village.⁹⁸

Water Supply Reservoir Area (dam): The proposed water supply reservoir site is located in the hill areas to the northeast of the SEZ. The construction of the dam will flood an area of 7-12 sq.km to serve as the main water supply for the SEZ area. As a result, the entire village comprising 182 households or approximately 1,000 people have received notification about their imminent relocation out of the area. In addition, Kalonehtar village has already been affected by the construction of the road links.⁹⁹

98 Ibid.

99 Ibid.



The proposed Dam site

Some Areas Connected to Thailand: The western provinces of Thailand such as Kanchanaburi province that borders Myanmar would be also affected by the Dawei SEZ Project.

Firstly, the construction of the Bang Yai–Kanchanaburi Intercity Motorway (M81), which will connect Thailand at the border checkpoint in Phu Nam Ron, Kanchanaburi province, to the Dawei SEZ project in Myanmar. It is estimated that approximately 50,000 people in Thailand would be affected by the motorway (M81) as their land will be expropriated and they will have to be relocated.

Secondly, the Thungyai Naresuan Wildlife Sanctuary in Thailand would be affected by the Dawei SEZ project due to the south-west monsoon winds that blow through the area, which would bring toxic industrial air pollution from the SEZ site such as from the coal-fired power plant and other heavy industrial plants. It would also cause acid rain in the area and further threaten the status of this UNESCO Natural World Heritage Site. Moreover, the natural water resources in the sanctuary would be also contaminated by industrial pollution.

Thirdly, the road link from Phu Nam Ron to the Dawei SEZ project, which is cut through the Tanintharyi mountain range, will divide the forested areas by a 200-metre wide road, and wildlife would be affected by the transportation of numerous vehicles, and the forest in this area would subsequently become degraded.¹⁰⁰

The Investigation by the National Human Rights Commission of Thailand

In 2013, the Foundation for Ecological Recovery (FER), the Spirit in Education Movement (SEM), and the Dawei Development Association (DDA) submitted a letter of complaint (No. 107/2556) to the National Human Rights Commission of Thailand (NHRC), requesting an investigation into the human rights violations in the case of the Dawei Deep Seaport and Special Economic Zone project, which is operated by the Italian-Thai Development Public Company Limited. The Commission subsequently assigned the responsibility for investigating this case to the Sub-Committee on Community Rights.¹⁰¹

After investigating the case, the NHRC proposed policy guidelines to the Thai government. The NHRC's Investigation Report (No. 1220/2558), dated 23 November 2015, has pointed out the following:¹⁰²

- The Italian-Thai Development Public Company Limited (ITD) should consider providing compensation and remedies to the affected villagers – both living within and outside the project areas – for the damages and impacts that were incurred from the implementation of the Dawei SEZ project. The compensation and remediation processes should be transparent, thereby, providing affected people with the opportunity to participate in every step until fair and just compensation has been provided.

- The Council of Ministers, the Ministry of Foreign Affairs, the Ministry of Commerce, and relevant agencies should establish mechanisms or regulations to oversee the transnational investment by Thai investors to regulate their activities with respect to human rights by adopting the United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework (2011) as the implementing framework.

The Thai Government's Action Following the Investigation Report by the NHRC

The Cabinet Resolution on 16 May 2016 has acknowledged the findings of the NHRC's Report on the Complaint Consideration for Proposed Policy Recommendations – Re: Community Rights: The Case of Dawei Deep Seaport and Special Economic Zone

¹⁰⁰ Foundation for Ecological Recovery. Khronkarn Tharua Namruek Tawei: Mong Hai Klai Kwa Phonprayote [Dawei Deep Seaport Project: Looking Beyond Tangible Benefits], 2012.

¹⁰¹ Letter of Complaint submitted to the National Human Rights Commission of Thailand by the Foundation for Ecological Recovery, the Spirit for Education Movement, and the Dawei Development Association. Re: The Case of Dawei Deep Seaport and Special Economic Zone Project in Myanmar, (Complaint No. 107/2556), 2013.

¹⁰² The National Human Rights Commission of Thailand. The Investigation Report No. 1220/2558, 23 November 2015.

Project in Myanmar (under the Memorandum of Understanding (MoU) with Thailand as co-developer) and the Human Rights Violations of Dawei People, which was presented by the Ministry of Foreign Affairs.¹⁰³

The policy recommendations put forth by the Ministry of Foreign Affairs are the result of the discussions on 17 February 2016 among relevant agencies to review the NHRC Report. The representatives that attended the meeting were from the Ministry of Commerce, the National Economic and Social Development Board (NESDB), the Ministry of Justice, the Ministry of Transportation, the Ministry of Finance, the Bank of Thailand, the Neighbouring Countries Economic Development Cooperation Agency (NEDA), and the Securities and Exchange Commission. The participating representatives have supported the recommendations on establishing the mechanisms to regulate or encourage the private sector to respect human rights in accordance with the United Nations Guiding Principles on Business and Human Rights (UNGPs), for investment in Thailand, as well as by Thai investors overseas.

In addition, the dissemination of relevant information through training workshops, as well as document translation and distribution have also been proposed to further enhance an understanding of the UNGPs. Moreover, the government is urged to encourage Thai investors to adopt the human rights protection measures more intensively. For example, the investors should have consultation and grievance mechanisms in place for the affected communities and conduct human rights impact studies. Furthermore, the government should prepare an annual report on the business-related human rights violations and disseminate it to the public.

In addition, the government may adopt a national investment strategy that addresses human rights protection and assigns the relevant agencies to adopt a national action plan on business-related human rights. Furthermore, the government would consider the possibility of applying tax incentives, loan conditions or other incentives to encourage investors to respect human rights and protect the environment; to grant awards for well-operated companies; and to establish mechanisms to regulate investors in accordance with the UNGPs.¹⁰⁴

Concerns Regarding Human Rights

The research conducted by the DDA indicated that prior to the implementation of activities, no studies appear to have been undertaken regarding the potential losses and impacts to the local villagers or to the environment. Some villagers also reported that their lands were trespassed or damaged without prior communication or consent. The ITD only began to hire consultants to conduct an impact assessment study in September 2011, one year after the project had already started. The villagers viewed this approach as indicative of a lack of ethics and accountability. In addition, the communities are only aware of one environmental impact assessment (EIA) study on the impacts of the road link project,

¹⁰³ The Secretariat of the Cabinet. Report on the Complaint Consideration for Proposed Policy Recommendations – Re: Community Rights: The Case of Dawei Deep Seaport and Special Economic Zone Project in Myanmar (under the MoU with Thailand as co-developer) and the Human Rights Violations of Dawei People, 17 May 2016.

¹⁰⁴ Ministry of Foreign Affairs. Policy Recommendations Re: Community Rights: The Case of Dawei Deep Seaport and Special Economic Zone Project in Myanmar by Italian-Thai Development Public Company Limited, 11 March 2016.

however, while this study was being conducted, the construction of the road continued. Moreover, the road had already been cut through the villagers' land before the study was completed.¹⁰⁵

In addition, the research also found that there are critical flaws in the process of disclosing information about the project to the local villagers by the government officials and the project developer. Regarding the expropriation of land, the affected villagers received limited information both about the project as well as the potential impacts to their communities and livelihoods, especially regarding potential resettlement. The information dissemination activities undertaken by the project officials were not accessible by most of the affected villagers. There is no meaningful consultation with the affected communities, and informed consent was not given by the majority of the affected people. Only a few villagers received project documents while most of the villagers received information about the project by word of mouth and from the local media.¹⁰⁶

According to the DDA's research, 63 percent of the villagers reported that the ITD and government officials had not provided or disclosed accessible information about the amount and process of compensation. However, while some households already received compensation payments, in these cases, it was reported that there have been significant delays in payments to affected persons, and payments have not always been made in full. Of those who had received some level of compensation payment, many were still waiting for completion of payment. Only 9.3 percent of the villagers who provided information to the DDA reported that the received compensation was issued with official documentation recording the calculation and payment of the compensation. As many as 59 percent of those who received compensation received no documentation of the compensation payment, while 30 percent only received an unofficial piece of paper. Seventy two percent of villagers reported that the ITD did not establish a standard pricing structure for the determination. Sixty nine percent of villagers reported that the calculation of compensation was not fair or equal. Ninety one percent of the households surveyed stated that the compensation is not enough to sustain their family's future.¹⁰⁷

So far, 480 houses have been built in a large area within Bawah village, however, these houses are mostly uninhabited. Currently, only one family is living in the Bawah resettlement site as other targeted villagers are reluctant to move into the newly built resettlement houses. Most of the villagers who are affected by resettlement are not confident in the quality of the resettlement house construction after the roof of a house collapsed after a storm. In addition, the most frequent concern is that there is insufficient land available for farming in the resettlement area to accommodate all of the farming families, which are expected to be moved there. Furthermore, land prices in the local area are also reportedly several times higher than the rate of compensation offered to the villagers.¹⁰⁸

¹⁰⁵ Dawei Development Association. *Voices from the Ground: Concerns Over the Dawei Special Economic Zone and Related Projects*, 2014.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

Concern Regarding Legal Loopholes and Accountability

Before the ITD was granted the concession to develop the project, there was no Environment Law or any legal requirement to conduct an environmental impact assessment in Myanmar. Projects were only required to conduct studies such as a preliminary environmental assessment (PEA), an environmental impact assessment (EIA) and a social impact assessment (SIA) after Myanmar's Foreign Investment Law was promulgated in 2012 (it was later superseded by the Myanmar Investment Law 2016). However, the ITD had already commenced the project before the Law was introduced and the affected communities were not informed about the project development. Moreover, the Special Economic Zone Law only emphasises the benefits for investors and does not include land rights, public participation, and the consent of communities. Thus, these have created opportunities for land grabbing and violations of community and human rights.

4.6 Ye Coal-fired Power Plant Project Ye Township, Mon State, Myanmar



Thai Private Sector Involvement

The TTCL Public Company Limited¹⁰⁹ was registered as a limited company on 24 April 1985 with the initial registered capital of 20 million baht to engage in integrated engineering, procurement and construction (EPC), and it was under the joint venture between the Toto Engineering Corporation (Japan) and the Italian-Thai Development Public Company Limited, whose shares are 49% and 51%, respectively.

Subsequently, the TTCL was listed on the Stock Exchange of Thailand (SET) as a public company in July 2008 with its total registered shares worth 480 million baht. The TTCL also established several subsidiary companies in many countries around the world such as Thailand, Myanmar, Vietnam, Singapore, Malaysia, the Philippines, USA, and Qatar. All of TTCL's subsidiary companies report directly to the parent company in Thailand. In 2010, the Chiyoda Corporation from Japan joined the TTCL and holds 7% of the shares.

As of March 2016, the TTCL shareholders consisted of the following:

- Toto Engineering Corporation 15%
- Thai NDVR Company Limited 8.02%
- Global Business Management Company Limited 6.9%
- Mr. Hironobu Iriya, Chair of Management Board and CEO of TTCL 6.1%

¹⁰⁹ The company was formerly known as Toyo-Thai Corporation Public Company Limited and changed its name to TTCL Public Company Limited in April 2015.
<https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=10438548>

- Italian-Thai Development Public Company Limited (ITD) 3.29%
- Chiyoda Corporation 3%

As of August 2017, the TTCL shareholders consisted of the following:

- Toto Engineering Corporation 10%
- Global Business Management Company Limited 6.9%
- Mr. Hironobu Iriya, Chair of Management Board and CEO of TTCL 6.1%
- Thai NDVR Company Limited 6.02%
- Mr. Sakchai Charoenkul 4.11%
- Mrs. Surattana Trinratana 2.83%

Note that the ITD and the Chiyoda Corporation have withdrawn from the TTCL.

Project Investment

The TTCL and the Ministry of Electric Power of Myanmar signed a Memorandum of Understanding (MoU)¹¹⁰ on 21 March 2013 for the development of a 1,280-megawatt coal-fired power plant project in the Thilawa Special Economic Zone (SEZ), located near Yangon city, valued at US\$ 2.8 billion.¹¹¹

The TTCL also collaborated with the Win Young Chi Oo Company¹¹² to develop the coal-fired power plant project.

On 21 July 2014, the TTCL presented a proposal to the Myanmar government to relocate the coal-fired power plant project, capacity of 1,000 megawatts, from the Thilawa SEZ to Mon State, with the reason that the shore at Thilawa is very shallow making it impossible to transport coal by large shipping vessel, and it will result in a higher purchasing price of electricity. In comparison, the deep seashore in Mon State is more suitable and will result in approximately 15-20 percent savings on the purchasing price of electricity.¹¹³

On 9 April 2015, the TTCL and the Department of Hydropower Planning under the Ministry of Electric Power of Myanmar¹¹⁴ signed the Memorandum of Agreement (MoA) to develop and operate the coal-fired power plant. The construction contract value is US\$2.8

¹¹⁰ Toyo-Thai Corporation Public Company Limited. Letter to The President and the Stock Exchange of Thailand, Subject: Signing of Memorandum of Understanding with the Ministry of Electric Power of Republic of the Union of Myanmar. 22 March 2013. <http://ttcl.listedcompany.com/newsroom/20130322-TTCL-SET02-EN.pdf>

¹¹¹ TTCL. Signing Ceremony – Coal-Fired Power Plant Project in Myanmar. 9 April 2015. <http://ttcl.com/news/activities/view/71>

¹¹² Myanmar Business Today. \$2.8-b Mon Coal-fired Power Plant Suspended. 2 February 2016. <http://www.mmbiztoday.com/articles/28-b-mon-coal-fired-power-plant-suspended>

¹¹³ Krungthep Turakij. TTCL: Kao Klai Jood Plean [TTCL: Approaching to a Key Transition]. 21 July 2014. <http://www.bangkokbiznews.com/news/detail/593981>.

¹¹⁴ The Ministry of Electric Power of Myanmar was superseded by the Ministry of Electricity and Energy in March 2016.

billion.¹¹⁵ The planned construction period is 4 to 6 years with an expected commencement date of 2016.

Mr. Hironobu Iriya, Chair of the Management Board, Chief Executive Officer and President of TTCL stated in the Message from the President in the company's 2016 Annual Report that the power plant project in Myanmar is temporarily suspended.¹¹⁶

In 2015, the media reported that TTCL was going to mobilise capital for the Ye Coal-fired Power Plant Project from several channels such as:

1. Applying for listing its subsidiary company, Toyo Thai Power Holdings Pte. Limited (TTPHD) on the Stock Exchange of Thailand or the Stock Exchange of Singapore, to raise funds.
2. Applying for project loans from international commercial banks such as the Japan Bank for International Cooperation (JBIC).¹¹⁷
3. Applying for project loans from the Export and Import Bank of Thailand, the same source of the loan that TTCL received for the turbine natural gas-fired power plant project in Ahlon, Yangon Region.

Project Development

The TTCL hired the Environmental Resources Management (ERM-Siam Co., Ltd.) to conduct the feasibility study of the coal-fired power plant project, which stated the details of the project as follows:

The coal-fired power plant and port are located in the west of Ye township, about 16 kilometres from the city and about 14 kilometres from Highway No. 8. To the west, the project site is connected to the Andaman Sea, on the northeast is farmland, and on the southeast are mountains and farmland. The Environmental Resources Management stated that one village (Andin village) and one stream are located within a radius of 0.5 to one kilometre of the project site.

The coal-fired power plant project will cover an area of 1.5 million square metres. The port will be built 3 to 5 kilometres away from the shoreline for the transportation of 75,000 DWT (deadweight tonnage) coal vessels, and the coal will be unloaded by a conveyor belt system.

¹¹⁵ InfoQuest. Sen Sanya Krasuang Palangngan Phamar Tham Rong Faifa Thanhin Mullakha Krongkarn 9.1 Muen Lan Baht [Signing Contract on the Coal-Fired Power Plant Project with Myanmar's Ministry of Electricity Worth 91 Billion Baht (US\$ 2.8 billion)]. 9 April 2015.

¹¹⁶ TTCL Public Company Limited. Message from President and CEO.

http://www.ttcl.com/about/message_from_president

¹¹⁷ The Nation. TTCL. 27 July 2015. <http://www.nationmultimedia.com/business/TTCL-30265296.html>

The proposed 1,280-megawatt coal-fired power plant will utilise Ultra-Supercritical technology and is expected to use approximately 3.5 to 4.5 million tonnes of coal per year. The coal will be imported from Indonesia (60%), Australia (20%), and South Africa (20%). The 47 month construction period would require at least 3,850 workers and 1,600 cubic metres of water per hour.

The cooling circulation system of the power plant would require 200,000 cubic metres of purified seawater per hour and the coal yard would use 960 cubic metres of spray water per hour to control the coal dust.

Communities and the Environment around the Project Area

The Ye coal-fired power plant will be located in an area called Pharlain Mountain in Andin village, adjacent to the Andaman Sea in the Ye township in southern Mon State, Myanmar. The Pharlain Mountain area has a diverse ecosystem, which provides an abundant source of food for the local communities. On the mountain, there are betel nut gardens and wild fruits. In the lowland, the residential areas are surrounded by the web of creeks and canals that feed the communities' rice paddies. The coastal areas and the mangrove forests at the Sanint Krate river estuary are the communities' fishing grounds. The TTCL's study claims that only one village is located in this area, however, it is actually a vital economic area with 1,590 households within seven communities,¹¹⁸ namely Andin village, Sanint Krate village, Kwan Tamort Pea village, Sanint Janu village, Saigram village, Plaing Sam village, and Kwan Kaw Kha Raw village, including the nearby city of Ye. The majority of the population is ethnic Mon. They are Buddhists and continue to maintain their unique local traditional culture.

The Pharlain mountain is covered with evergreen vegetation and encircled with fruit orchards that have expanded to the lowlands. Betel nut is a key economic crop that generates a significant amount of income for the communities. Other tropical fruits such as durian, mango, banana, chempedak, orange, and lime, as well as mushrooms and jengkol bean are also the main sources of food and income for the communities. The traditional ways to grow betel nut and tend fruit orchards have been passed down from generation to generation and have become local wisdom. Practices, such as never cutting down a betel nut tree but, instead, allowing the old tree to fall naturally and the new young shoots to grow will create a natural succession of a healthy forest of edible flora, similar to how the forest regenerates itself. As a result, the springwater also remains clean all year round. The creeks that bring sediment and nutrients from the mountain pass through the paddy fields and flow into the Sanint Krate river estuary and mudflats before emptying into the sea. The rich and fertile soil extending from the foothills to the mudflats nourishes the paddy fields and provides locals with staple food, especially rice, vegetables, and aquatic animals.

¹¹⁸ Pharlain Community. Abundance of Pharlain Natural Resources and Communities: Pharlain Study by its Community. February 2016. <https://drive.google.com/file/d/0Bx60PIXMazQqRzRLWnZnMEpsX3M/view>



The mudflat areas connected to the Andaman Sea are teeming with millions of miniscule crabs and mollusks. The mangrove forest at the Sanint Krate river estuary has a complex and rich ecosystem and is a suitable aquatic nursing ground. The mudflats and mangrove forests act as natural buffer zones, protecting the communities from the strong winds and sea waves. The beach also acts as a parking area for the local fishing boats. The most commonly caught fish are the bombay duck (*harpadon nehereus*), paradise threadfin (*polynemus paradiseus*), Indian threadfin (*polynemus indicus*), giant seabass (*lates calcarifer*), giant freshwater prawn (*macrobrachium rosenbegii*), and lobster (*panulirus polyphagus*). The coastal areas and the Andaman Sea are important fishing grounds in the Pharlain area.



The research titled the Abundance of Pharlain Natural Resources and Communities found that the overall income obtained from betel nuts, rice, and fishery in the seven villages in Pharlain is as high as 7,240,499,650 kyat.¹¹⁹

Table: Total income based on business type from 7 villages in Pharlain in 2014-2015.

Village	Income from Betel Nuts	Income from Rice	Income from Fishery	Yearly Income (Kyat)
Andin	1,258,040,000	145,040,000	–	1,650,193,650
Sanint Krate	893,960,000	135,975,000	256,800,000	1,320,796,000
Kwan Tamort Pea	126,660,000	15,190,000	3,006,600,000	3,182,450,000
Sanint Janu	259,910,000	57,120,000	–	355,805,000
Saigram	392,150,000	122,801,000	–	601,905,500
Plaing Sam	77,800,000	29,540,000	–	124,449,500
Kwan Kaw Kha Raw	–	4,900,000	–	4,900,000
TOTAL	3,008,520,000	510,566,000	3,263,400,000	7,240,499,650

Policy Supported by Thailand

- The mobilisation of capital in the Stock Exchange of Thailand

Policies Supported by Myanmar

¹¹⁹ One US dollar is approximately 1,395 kyat

- Foreign Investment Law 2012 (superseded by the Myanmar Investment Law 2016)
- Power Development Plan

Concerns Regarding the Environment and Community Livelihoods

The construction of the coal-fired power plant requires an area of 202.3 hectares. The project design includes the building of a pontoon bridge that would stretch into the Andaman Sea, which will result in direct changes to the land use in the community in areas such as farmlands, mudflats, mangrove forests, and the communities' coastal fishery areas.

In addition, the proposed coal-fired power plant will create adverse social and environmental impacts in the communities such as dust pollution, wastewater, and the toxic contamination of water, soil, and air.

Concerned about the destructive and irreversible impacts to the livelihoods of the communities, on 24 May 2014, the villagers, dignitaries, monks, civil society groups, and youth groups from Pharlain organised a meeting in Sanint Krate village, Andin village tract in Ye township, to discuss the impacts of the proposed Ye coal-fired power plant project. They subsequently released the statement against the project, which included 10 concerns as follows:¹²⁰

1. Local environment will be damaged by the proposed project.
2. Traditional livelihoods and gardens will be affected by the proposed project.
3. The proposed project will destroy the soil and have a huge impact on cultivation. The proposed project will also pollute water resources.
4. The proposed project will cause climate change that will affect all sectors including the environment and agricultural business.
5. The proposed coal-fired power plant will produce chemical waste that kills all marine creatures.
6. The smoke emitted by the proposed coal-fired power plant will cause air pollution that damages health and shortens the life span of local villagers.
7. The noise resulting from the proposed project, the comings and goings, the use of huge vehicles and the seaport will alter the lifestyle of the locals and damage the marine related business of the villagers.
8. The proposed coal-fired power plant will produce so much noise pollution that the locals will not be able to hear the sound of the wind and sea, which acts as a natural warning system for possible natural disasters.

¹²⁰ Pharlain Community. Abundance of Pharlain Natural Resources and Communities: Pharlain Study by its Community. February 2016. Page 50.
<https://drive.google.com/file/d/0Bx60PIXMazQqRzRLWnZnMEpsX3M/view>

9. The chemical waste products from the proposed coal-fired power plant will cause significant damage to the health of the local people.
10. The proposed coal-fired power plant project would bring a huge number of migrant workers to Andin, and this will have a significant impact on the established livelihoods, the culture, the language, and the religious practices of the local people.

On 5 May 2015, more than 6,000 local villagers in Pharlain gathered at Andin village and staged a mass protest against the proposed coal-fired power plant in Ye. They also sent a letter stating their opposition to the project to the President of Myanmar, the Chief Minister of Mon State, and the Myanmar Investment Commission (MIC).

Concerns Regarding Human Rights

The feasibility study conducted by the TTCL is one-sided as it includes no participation from the communities. In addition, the signing of the Memorandum of Understanding (MoU) on 21 March 2013 is for the development of the coal-fired power plant in Thilawa Special Economic Zone. While the TTCL has changed the location to construct the plant in Mon State at Andin village in Ye Township, there was no consultation process with the communities on this matter. On 25 April 2014, after the completion of the feasibility study, the TTCL together with the Mon State and the Ministry of Electric Power went to Andin village to present information about the coal-fired power plant that will be constructed in Andin village. The villagers have requested the company translate the six study reports from English to the Mon language but their proposal was rejected, and the company did not allow the local people to keep any of the documents. The villagers who attended the meeting that day disagreed with the project and stated that they will not accept the construction of the coal-fired power plant in their area.¹²¹

Despite the villagers' opposition, on 9 April 2015, the Memorandum of Agreement (MoA) was signed by the TTCL and the Department of Hydropower Planning to develop the coal-fired power plant project. Subsequently, on 10 May 2015, the Chairperson of the TTCL and the representative of the Win Yaung Chi Oo Company came to Andin village and met with the abbot of the Andin monastery. In the course of the meeting, an admission was made that the signing of the MoA occurred without prior participation of the villagers

The representative from Andin village explained that the decision to sign the MoA might have been misled by photographs of activities that the company arranged and presented to the authorities as evidence that the local villagers supported the project.

Following the MoA signing on 9 April 2015, there were several attempts to conduct surveys in the Andin community by various companies, both Myanmar and foreign companies, as well as individuals and groups. Although there is no evidence to prove that these attempts were connected to the TTCL, the villagers believe that all of these activities have led to the approval for the construction of the coal-fired power plant. The key incidents are as follows:¹²²

¹²¹ Ibid, page 44.

¹²² Ibid, page 48 – 49.

1. On 15 May 2015, a woman went to Sanint Krate village to negotiate the purchase of land.
2. On 4 June 2015, Mr. Than Nine from the CEA Trading Company Limited accompanied by an officer from the Ye Immigration Office, went to Andin village asking the villagers about their opinion on the coal-fired power plant and threatened that if the new government wanted to build the coal-fired power plant, the military would be brought in to guard the area.
3. On 10 June 2015, Mr. Philip Fay, the Managing Director of Instant Ports-ECO Friendly Remote Port Solutions, and two Burmese persons went to Andin village but did not state the purpose of their visit and refused to answer any of the villagers' questions.
4. On 13 July 2015, representatives from the National Enlightenment Institute (NEI) and M. J. Marinoco LTD Company visited Andin village to survey the areas where potential impacts would occur. The villagers then informed the group leader, Mr. Kay San Win, that they would not allow anyone to conduct a survey in the Pharlain area.

However, on 30 December 2015, Mi Myint Than, the Ye Member of Parliament, asked a question about the coal-fired power plant at the Mon State Parliament and the Deputy Minister of Electric Power, Mr. Aung Than Oo, replied that the project and the survey for the project were suspended as local consent was not obtained.

Concerns Regarding Legal Loopholes and Accountability

The loopholes in the Securities Exchange of Thailand Act are as follows:

1. The Securities Exchange of Thailand Act has no investigative mechanism to discover facts or information regarding a case prior to the submission of a complaint. There are several cases that have occurred outside of Thailand. For example, the companies sent study teams to survey the location of the coal-fired power plant in the communities, which created tension and is regarded as a violation of human rights. These types of incidents make it difficult for the affected communities to use the existing grievance mechanism.
2. The Securities Exchange of Thailand (SET) is only required to rely on news related information provided by the listed companies. This narrow definition of news notification is insufficient without other investigative mechanisms. For example, the demonstration involving 6,000 people against the coal-fired power plant on 5 May 2015 was the largest demonstration against the project ever held in Myanmar and was publicised in the Myanmar-English media, as well as the Thai media. The company did not communicate this significant event to the SET.
3. The Myanmar joint venture company of TTCL has led survey teams to the communities as well as attempted to purchase the villagers' land. These activities created tension in the communities. What is the process for making the TTCL accountable for their actions

4.7 Heinda Tin Mine Project Myitta Sub-Township, Tanintharyi Region, Myanmar



Hein da Mining Site

Thai Private Sector Involvement

- The Myanmar Pongpipat Company Limited

The Myanmar Pongpipat Company Limited is a Thai company registered in Myanmar to operate tin mining business in Heinda, Dawei Township, Tanintharyi Region, Myanmar, under the registration number 10 FC-1999-2000.

The company started operations of the Heinda mine on 12 August 1999. It has stated it ceased operation on 11 August 2004, however, the mine is still currently operating. A report prepared by the Dawei Development Association (DDA) indicated that the company's head office is located at 57 (B-1), Shwe Hinn Tha St., 6 ½ Mile, Pyay Road, Hlaing T/S., Yangon, Myanmar, and was registered as a foreign company working in the industrial and manufacturing sector.¹²³

¹²³ Isra News. San Tawai Nut Phitjarana 29 Preusaphakom, Chao Ban Rong Borisat Mueng Por Ardeet Rathamontree [Dawei Court to Proceed on 29 May, Villagers Sued Mining Company Owned by Former Minister's Father]. 28 May 2014. https://www.isranews.org/isranews-news/29881-mining_29881.html

The Myanmar Pongpipat Company is a family business as the shareholders of the company have the same family name, Chavaltanpipat.¹²⁴

- The Sahakon Equipment Public Company Limited

The Sahakon Equipment Public Company Limited provides construction and mining services including the management and transportation of minerals, as well as mining related consultation. Moreover, the company is also involved with the Mae Moh coal mine project in Thailand and the Hong Sa coal-fired power plant in Lao PDR. It was listed as a limited public company on the Stock Exchange of Thailand. The company's main shareholders are from two families, Areekul and Sirison.¹²⁵

Project Investment

The Myanmar Pongpipat Company Limited (MPC) was granted a concession by the Myanmar government to operate the mine in Heinda in 1999. The project is jointly owned by the MPC and Myanmar's state-owned Mining Enterprise No. 2, the agency who oversees and facilitates the mining production in Myanmar including tin, tungsten, gold, titanium, and platinum. The Mining Enterprise No. 2 holds 35% of the project shares while the MPC holds 65%.¹²⁶

In addition, the Sahakon Equipment Public Company Limited became involved with the Heinda project in 2017 by signing the Ore Mining Service Contract with the MPC to provide ore mining services at the Heinda mine for a period of seven years. The specifics of the contracted work include the excavation of top soil and mine tailing; excavation of raw ore; management of ore processing; transportation of tailings (from the ore processing area to the waste disposal area); as well as the management and development of an ore processing facility.¹²⁷

Project Development

The Heinda mine is the biggest and oldest tin mine in Myanmar, located in the upper Tanintharyi River basin of Myitta Sub-Township, Dawei Township, Tanintharyi Region in southern Myanmar. The concession area is 2.097 acres (0.84 hectares).¹²⁸

¹²⁴ Directorate of Investment and Company Administration. Myanmar Pongpipat Company Limited.

<http://www.dica.gov.mm/en/company/myanmar-pongpipat-company-limited-0>

¹²⁵ The Stock Exchange of Thailand. Sahakon Equipment Public Company Limited.

<https://www.set.or.th/set/companyholder.do?symbol=SQ&ssoPageId=6&language=th&country=TH>

¹²⁶ Inclusive Development International. Investment Chain Report. 2017.

¹²⁷ Ibid.

¹²⁸ Karen News. Thai and Burma Joint Mining Operation Dirties Village Water.

<http://karennews.org/2011/09/thai-and-burma-joint-mining-operation-dirties-village-water.html/>

Communities and the Environment around the Project Area

1. The Heinda mine is only two kilometres from Myaung Pyo village. The creek, also called Myaung Pyo, flows past Myaung Pyo village and through at least 30 more villages before flowing into the Tanintharyi River and finally into the Andaman Sea. The Tanintharyi River is the main water source for the local people in the Tanintharyi Region, especially for Dawei residents.
2. The main livelihood of the villagers in the Heinda area is agriculture, and their economic crops are durian, betel nut, coconut, cashew nut, and rubber. Some villagers also grow vegetables for selling in local markets. In addition, some households earn their extra income by panning for lead ore in the Tanintharyi River – a small-scale activity that villagers in this area have been doing for many years. An estimated 40 to 50 people, most of whom are women, pan for ore in the creek that flows from the Heinda mine. Many men have left the village to seek jobs in Thailand.
3. Myaung Pyo is the closest village to the Heinda mine. The village is comprised of an estimated 100 households with an approximate total of 500 residents. They are ethnic Tavoyan or Dawei who have their own language and cultural identities, and they do not identify themselves as a subgroup of Bamar as is officially categorised by the Myanmar authorities.¹²⁹

¹²⁹ Thai Publica. San Tawei Taisuan Kadee Borisat Muang Rae Kong Thai Kor Phonkratob Chao Phamar Nat Raek 29 Preusaphakom Nee [Dawei Court Investigates Thai Mining Company on the Impacts on People in Myanmar on 29 May]. <http://thaipublica.org/2014/05/dawei-watch-1/>



Policy Supported by Myanmar

- Foreign Investment Law 2012 (superseded by the Myanmar Investment Law 2016)

Concerns Regarding the Environment and Community Livelihoods

In 2005, the first big flood caused the wastewater from the mine tailing ponds to overflow. Subsequently in 2012, the flooding was more severe than in previous years and lasted for 11 days. The flood level reached the height of a person's neck.¹³⁰ The incident caused the slag and sediment from the mine's three tailing ponds to overflow into the communities' water sources. The flood has critically damaged the environment of the area, the houses, and agricultural lands including the plantations of betel nut, durian, cashew nut, and other crops that were being cultivated for the communities' consumption and for selling.¹³¹

During the field visit to the Heinda area by the National Human Rights Commission of Thailand's Sub-Committee on Community Rights and Natural Resources on 22-27

¹³⁰ Isra News. San Tawei Nut Phitjarana 29 Preusaphakom, Chao Ban Rong Borisat Mueng Por Ardeet Rathamontree [Dawei Court to Proceed on 29 May, Villagers Sued Mining Company Owned by Former Minister's Father]. 28 May 2014. https://www.isranews.org/isranews-news/29881-mining_29881.html

¹³¹ EarthRights International. Thai Investors Can't Violate Human Rights in Myanmar. <https://www.earthrights.org/blog/thai-investors-cant-violate-human-rights-myanmar>

February 2017, the villagers raised concerns that their betel nut trees no longer bore an abundance of fruit, and the trees grow abnormally shorter, and some have died while still upright. As a result, the villagers have lost their source of income, and the fertility of the land has deteriorated.

In addition, Myaung Pyo creek was severely damaged. The sediment and slag that overflowed from the mine upstream completely filled in the creek basin. Myaung Pyo villagers can no longer use water from the creek, instead they have to obtain water from the mountain or use underground water. Subsequently, however, many families can no longer use the underground water because their wells are contaminated as the water from the wells has reportedly turned muddy red or orange coloured. Some families who had used the water for bathing consequently experienced skin allergies that manifested in rashes and itchy skin. Therefore, most villagers stopped using the underground water. Nevertheless, obtaining water for domestic use from the mountain and buying drinking water from outside sources have significantly increased the villagers' daily costs of living.¹³²

The Investigation by the National Human Rights Commission of Thailand

In 2015, the letter of complaint (No. 285/2558), Re: Request for the Investigation on the Human Rights Violations due to the Thai Company Operations at the Heinda Mine in Myanmar,¹³³ was lodged by Thai and Myanmar civil society organisations (CSOs) on behalf of the local residents of Myaung Pyo village to the National Human Rights Commission of Thailand (NHRC). On 22-27 February 2017, the NHRC's Sub-Committee of Community Rights and Natural Resources made an informal field visit to the Heinda mine area.

Concerns Regarding Human Rights

- Issue of non-transparency regarding information disclosure and public participation

The local villagers did not receive any comprehensive information regarding the project and no documents have been provided in the local language. Furthermore, the villagers were not asked for their opinions regarding the project's operation and were excluded from the public participation and decision-making processes.¹³⁴

- Impacts on health

Myaung Pyo villagers have lodged a complaint with the local CSOs about the foul odour and discolouration of their water supply, which resulted in skin allergies after using the water. Later, Ecolab and the local CSO, Dawei Development Association (DDA), suggested the villagers stop using the water for both consumption and other domestic uses because the

¹³² Document for the Participants: Field Trip to Dawei Special Economic Zone Project and Heinda Mine in Dawei Township, Tanintharyi Region, Myanmar, on 22-27 February 2017.

¹³³ The letter of complaint to the National Human Rights Commission of Thailand No. 285/2558, Re: Request for the Investigation on the Human Rights Violations due to the Thai Company Operations at the Heinda Mine in Myanmar.

¹³⁴ Document for the Participants: Field Trip to Dawei Special Economic Zone Project and Heinda Mine in Dawei Township, Tanintharyi Region, Myanmar, on 22-27 February 2017.

water was found to be contaminated with arsenic and lead substances, which could cause significant health problems such as rashes, headaches, as well as gastric and intestinal problems, etc.¹³⁵

- Impacts on livelihoods

The mining operations have adversely affected the communities' agricultural and residential lands. The mining residues, silt, and sediment have accumulated in the water sources and the soil. The floods and overflows have inundated the villagers' plantations and crops. Vast areas of the land have been critically destroyed and cannot be re-cultivated. Betel nut, which is the main economic crop for the communities, has been severely affected by the massive deposits of sediment. As a result, the roots of the trees were destroyed, and a large number of trees have died. Nevertheless, some of the surviving trees have subsequently become infertile. The damage to their land and crops have led many villagers, especially the younger generation, to migrate in search of employment in Thailand. Many children and young people had to interrupt their education to search for work in order to earn an income to support their families.¹³⁶

- Compensation for the affected villagers

The Myaung Pyo villagers who have been directly affected by the repeated environmental mismanagement of the mine have demanded the Myanmar Pongpipat Company provide compensation and redress for damages to their health, agricultural land and crops, houses or residential land, and their sanitation, as well as to rehabilitate the environment and water supply. To date, however, nothing has been resolved.¹³⁷

Concerns Regarding Legal Loopholes and Accountability

A significant weakness of the legal system in Myanmar is that it does not protect the rights of the citizens.

The Myanmar Pongpipat Company began operation of the Heinda mine in 1999. At that time, Myanmar still did not have an Environmental Law or the requirement to conduct an environmental impact assessment. The weak and undeveloped legal system at that time has created opportunities for companies to simply violate human rights.

135 Ibid.

136 Ibid.

137 Ibid.

4.8 Ban Chaung Coal Mine Project Dawei Township, Tanintharyi Region, Myanmar



Ban Chaung Coal Mining Site :Photo by Jamon Sonpetchnarin

Thai Private Sector Involvement

- East Star Company Limited

The East Star Company Limited is a medium-sized, privately owned Thai company in the lignite mine industry, which was registered on 29 September 1983 with capital of two million baht. The company's Juristic ID number is 0105526040797, and the address is 192/2 Moo 13, Nong O subdistrict, Ban Pong district, Ratchaburi province. The major shareholders and executive directors are comprised of members of the Chatchavalnanont family.¹³⁸ The company is not listed on the Stock Exchange of Thailand. The East Star Company Limited entered the coal mining business sector in 2007 and has also operated a coal business in Lamphun province, northern Thailand. In 2009, the company started undertaking research to identify coal deposits in Myanmar and has since acquired many coal mining concessions. On 15 May 2011, the East Star Company signed an agreement with the Karen National Union (KNU) to operate the Ban Chaung coal mine and began operations in 2012.¹³⁹

- The Thai Asset Mining Company Limited

¹³⁸ Department of Business Development, Ministry of Commerce. The East Star Company Limited. <http://datawarehouse.dbd.go.th/bdw/est/details1.html?jpNo=0105526040797&jpTypeCode=5&t=>

¹³⁹ Isra News. Tamroi Borisat Muang Rae Thai (Ton 3), Perd Lakthan "Toon Thai" Rook Keub Subphayakorn Phamar [Tracking the Thai Mining Company (Ep.3), Disclosing Evidence of "Thai Investors" Move Across the border for Grabbing Myanmar Resources. https://www.isranews.org/isranews-scoop/29382-mining_29382.html

According to Thailand's Department of Business Development, Ministry of Commerce, the Thai Asset Mining Company Limited was registered with capital of 75 million baht on 4 July 2011 to operate a business focused on the mining of non-ferrous metal ores, not classified anywhere else. The company's Juristic ID number is 0715554000570, and the address is 149/3 Moo 1, Tha Lo subdistrict, Tha Muang district, Kanchanaburi province.¹⁴⁰

- Energy Earth Public Company Limited

The Energy Earth Public Company Limited was listed on the Stock Exchange of Thailand on 15 January 1996 with the initial registered capital of 70 million baht to operate a coal import and distribution enterprise by acquiring mining concessions abroad and providing distribution services for customers in both domestic and international markets. The company's Juristic ID number is 0107538000240. Currently, the total registered capital is 4,978,089,394 baht.¹⁴¹

Project Investment

The Myanmar government originally granted a concession to Myanmar's Mayflower Mining Enterprise Company Limited to construct an access road for transporting coal from the Ban Chaung coal mine. The Mayflower Company has also been granted the concession to operate the coal mine in 2010-2011.¹⁴²

Subsequently, on 15 November 2011, the Thai owned East Star Company Limited was granted permission by the KNU to operate the Ban Chaung coal mine with a 25 year concession period, which will end in 2036.¹⁴³ Later, on 23 November 2012, the East Star Company signed a Joint Operating Agreement with the Energy Earth Public Company Limited who will finance the project and sell the coal.

According to the Energy Earth Company's 2012 Annual Report, the East Star Company acquired a coal concession including an area of 504.8 acres (204.2 hectares), and the Energy Earth Company is in charge of the mining and distribution of the coal. It also states that the Energy Earth Company has its own investments for financing the operation of the Ban Chaung coal mine, and that the profits will be divided between the Energy Earth Company receiving 70%¹⁴⁴ and the East Star Company receiving the remaining 30%. In

¹⁴⁰ Department of Business Development, Ministry of Commerce. The Asset Mining Company Limited. <http://datawarehouse.dbd.go.th/bdw/est/details1.html?jpNo=0715554000570&jpTypeCode=5&t=>

¹⁴¹ The Stock Exchange of Thailand. Companies/Securities in Focus. <https://www.set.or.th/set/companyprofile.do?symbol=EARTH&ssoPageId=4&language=th&country=TH>

¹⁴² Inclusive Development International. Karen Communities in Myanmar File Complaint with Thai Human Rights Commission. June 2017.

¹⁴³ Isra News. Tamroi Borisat Muang Rae Thai (Ton 3), Perd Lakthan "Toon Thai" Rook Keub Subphayakorn Phamar [Tracking the Thai Mining Company (Ep.3), Disclosing Evidence of "Thai Investors" Move Across the border for Grabbing Myanmar Resources. https://www.isranews.org/isranews-scoop/29382-mining_29382.html

¹⁴⁴ The Energy Earth Public Company Limited. Annual Report. 2012. <http://earth.listedcompany.com/misc/AR/20130405-EARTH-AR2012-TH.pdf>

2013, the Thai Asset Mining Company was involved in developing the transport infrastructure connecting the coal mine.¹⁴⁵

Project Development

Ban Chaung is an open-pit coal mine in Dawei Township, Tanintharyi Region. In 2010, the Myanmar government granted the local Mayflower Mining Enterprise Company Limited a 1,500 acre concession (607 hectares) for the mine and, in 2012, an additional concession of 600 acres (242.8 hectares) was granted. In 2011, the East Star Company from Thailand became involved in the project after receiving permission from the KNU. However, the East Star Company has operated the coal mine covering only 64 acres (25.8 hectares) of the total 2,100-acre licensed area (849.8 hectares). According to a publication produced by a non-governmental organisation, Inclusive Development International, permission to operate the coal mine in the Ban Chaung area was first granted to the Mayflower Mining Enterprise Company, but it was not involved in the project implementation. All developments in the area, however, have been implemented by the East Star Company. In addition, the Thai Asset Mining Company has been involved in developing the infrastructure to transport coal, and the Energy Earth Public Company has provided financial support for the operating costs of the mine.¹⁴⁶

Communities and the Environment around the Project Area

The Ban Chaung coal mine is located on the upper part of the Ban River, a tributary of the Tanintharyi River. The Ban River is a vital water source for the local communities in this area, who are mostly ethnic Karen. Ten villages rely on the Ban River, namely Kyeik Phee Lan, Phaung Daw, Hin Ga Pe, Pyar Thar Chaung, Hsin Swe Chaung, Maung Ma Htoo, Ka Htaung Ni, Kyuan Chaung Gyi, Tha Byu Chaung, and Kyauk Htoo. The local people's livelihoods primarily depend on agriculture and livestock. Their main crops are betel nut, rubber, cashew nut, and coconut, etc.¹⁴⁷

The site of the coal mine is in a former war zone that saw intense fighting between the Karen National Union (KNU) forces and the Myanmar military. Peace negotiations and political dialogue are ongoing and, in the interim, both the Myanmar government and the KNU exercise some level of administrative authority over the Ban Chaung area.

Policy Supported by Myanmar

- Foreign Investment Law 2012 (superseded by the Myanmar Investment Law 2016)

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146 Inclusive Development International. Karen Communities in Myanmar File Complaint with Thai Human Rights Commission. June 2017.

147 Isara News. Tamroi Borisat Muang Rae Thai, Rook Vithi Paa-Nam-Khon Bon Theuk Kao "Tanaosri" (Ton 1) [Tracking the Thai Mining Company, Encroaching the Forest-Water Resource-Livelihood in the "Tanintharyi" Region (Ep.1)]. <https://www.isranews.org/isranews-scoop/item/29186-mining.html>

Concerns Regarding the Environment and Community Livelihoods

According to the study and field research by the local civil society organisations, the Tarkapaw Youth Group and the Dawei Development Association (DDA), the development and operation of the coal mine has already affected, and will continue to affect, the environment, health and livelihood of the people in 22 villages, or approximately 16,000 people. In addition, the letter of complaint sent by the representatives of the local communities to the National Human Rights Commission of Thailand (NHRC) dated 9 June 2017, pointed out several impacts of the Ban Chaung coal mine on the local communities, as follows;¹⁴⁸

- Pollution of villagers' agricultural land

After the annual rainy season, the open-pit mining site is full of filthy water. The company has pumped out the water and released it into the villagers' farmland and the community's water sources. Thus, the contaminated water and sediment from the mine flows to the villagers' orchard areas, resulting in the death of their betel nut trees and other crops. These crops are vital sources of income for the communities.

- Impacts on health

The villagers have still not received any clear information about the potential negative health impacts they will be exposed to from the operation of the mine but they are extremely concerned for their health and their children's health, especially with regards to the burning of coal and the contamination of their water sources.

- Impacts on livelihoods

Most people in the Tanintharyi Region depend on fishing and farming for their livelihoods. Land in the Ban Chaung area has been passed down through generations and the villagers farm and manage the land according to their traditional customs. Pollution from the coal mine has destroyed crops and has had serious impacts on the villagers' livelihoods.

- Land acquisition

The company illegally appropriated people's agricultural land. Some people complained that their lands were seized and only a small amount of compensation was provided, while others have not received any compensation at all. The mine is located in a former conflict zone between the Myanmar military and the KNU. Some refugees and internally displaced people have still not returned to their former homes and properties. However, these people may never be allowed to return to their land because of the Ban Chaung coal mine project.

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The letter of complaint to the National Human Rights Commission of Thailand, RE: Requesting an Investigation of the Human Rights Violations by Thai Owned Companies in the Ban Chaung Coal Mine Project. June 2017.; Tarkapaw Youth Group, Dawei Development Association and Tenasserim River & Indigenous People Network. We Used to Fear Bullets, Now We Fear Bulldozers: Dirty Coal Mining by Military Cronies & Thai Companies. October 2015.

- Impacts on the Karen ethnic group

The majority of the local villagers affected by the project are ethnic Karen people. The project threatens their traditional way of life, livelihoods, and the right to self-determination.

- Fear of war and conflict

The operating of the mine resulted in an influx of outsiders arriving in the area for work, as well as the presence of armed soldiers providing security for the mine. After suffering through many years of civil war and conflict, once again, the local people feel unsafe.



The burning originated by coal own combustion on Ban Chaung coal mine:
Photo by Vichai Juntavaro

The Investigation by the National Human Rights Commission of Thailand

The 153 local representatives from eight villages adversely affected by the Ban Chaung coal mine submitted a letter of complaint (No.361/2560), dated 9 June 2017, to the National Human Rights Commission of Thailand (NHRC) requesting an investigation of the impacts on human rights resulting from activities implemented by Thai owned companies. On 11 September 2017, the NHRC invited the Thai companies, namely, the East Star

Company, the Energy Earth Public Company, and the Thai Asset Mining Company to clarify and explain their position in more detail at the NHRC's meeting.

Concerns Regarding Human Rights

- Lack of transparency

When the East Star Company started to implement the project in the Ban Chaung area, the company did not inform the local people about the project. Moreover, the company appropriated the villagers' land without prior notice about the project. The company only negotiated to buy the land from the villagers after they had already appropriated it.

- Lack of local peoples' participation

The affected communities were excluded from participating in all decision making processes regarding surveying, studying, and planning, before the decision was made to implement the project.

- Lack of effective environmental impact management

The project has no social and environmental impact management plan, lacks a process for monitoring and evaluating its mining operation and, furthermore, no remedial mechanism has been identified for those affected by the project.

- Lack of environmental impact assessment

The project did not conduct an Environmental and Social Impact Assessment (ESIA). Although the project is still in the first phase of its development, local people have already suffered significant impacts. The villagers fear that if the project continues and is expanded to cover the full concession area, there will be even more serious impacts on human rights and the environment.

Concerns Regarding Legal Loopholes and Accountability

- The dubious project concession

Many of the problems with the project stem from the fact that it was first implemented during a time of military dictatorship, and the official permit for large-scale mining in the Ban Chaung area was granted to the Mayflower Company in March 2010, before Myanmar's reform process began, while the military regime still fully controlled the government. However, the Mayflower Company has never been active on the ground at these sites and has never received permission from the KNU to operate in the area, which is under its administration.

Through a vaguely defined business partnership, the Mayflower Company allows the East Star Company to operate on their behalf. In 2011, the East Star Company received a certificate from the KNU's Mergui-Tavoy District, granting permission to extract coal from Ban Chaung, even though the company never received any direct permission from the

Myanmar Ministry of Mines. In addition, the East Star Company never received direct permission from the KNU Central Executive Committee and mining department, which is required by the KNU's policy.¹⁴⁹

¹⁴⁹ Tarkapaw Youth Group, Dawei Development Association and Tenasserim River & Indigenous People Network. *We Used to Fear Bullets, Now We Fear Bulldozers: Dirty Coal Mining by Military Cronies & Thai Companies*. October 2015.

4.9 Mawlamyine Cement Factory and Coal-fired Power Plant Project Mawlamyine, Mon State, Myanmar



Thai Private Sector Involvement

- The Siam Cement Group Public Company Limited (SCG) holds 70 percent of the Mawlamyine Cement Limited (MCL).¹⁵⁰

Project Investment

On 7 May 2013, the Mawlamyine Cement Limited (MCL) was registered as a joint venture between the SCG and the Pacific Link Cement Industries, holding 70 percent and 30 percent of the shares, respectively. In 2013, the Myanmar Investment Commission (MIC) granted the MCL a 50-year concession¹⁵¹ to build and operate a US\$400 million cement factory in Kyaikmayaw Township, Mon State, covering an area of 2,000 acres (809.3 hectares).¹⁵²

¹⁵⁰ The Siam Cement Group Public Company Limited. Financial Report. 2013. Page 19.

¹⁵¹ Mae Sai News. Chao Mon Kadkan Rob Song Mai Ao Rong Faifa Thanhin Phalid Poon Cement Nai Kreau SCG [Second Round Protest by Mon People Against Coal-fired Power Plant in the Cement Factory Owned by SCG]. 24 July 2017. <http://www.maesainewsonline.com/maesai/?p=9843>

¹⁵² Human Rights Foundation of Monland. Examining Foreign Direct Investment in Mon State. July 2016. Page 24-25. www.rehmonnya.org

Project Background

The MCL's cement factory in Kyaikmayaw Township, Mon State, has the capacity to produce 1.8 million tonnes per year.¹⁵³ The production of 5,000 tonnes of cement per day was expected to commence in 2016.

A 40-megawatt coal-fired power plant located on the factory premises is the main source of energy. In addition, a 9 megawatt waste heat generator has also been installed. The Pyar Taung Limestone Mountain is the main source of raw material for the project, with an estimated production of 90 million tonnes of limestone.¹⁵⁴ Coal, cement, and construction materials are transported approximately 60 kilometres along the Attaran River to the cement factory, which is connected to the river by a newly dug canal approximately 2.5 kilometres long and 60 metres wide.

Communities and the Environment around the Project Area

There are several communities situated near the cement factory and along the Attaran River, including Mon Grow village or Me Koro village, 280 households; Kaw Pu Naw village and Kaw Dun village, 1,050 households; Ka Don Sit village, 400 households; Pauk Taw village; Kwan Nyan village, 430 households; Ni Don village, 450 households; and Mae Ka Sam village. The majority of the villagers are ethnic Mon. The communities along the Attaran River are situated in Kyaikmayaw Township and Mawlamyine Township. The distance from the cement factory, or at the upper reach of the Attaran River in Kyaikmayaw, to the mouth of the Attaran River that flows to the estuary of the Salween River, is about 60 kilometres.

The main livelihoods of the communities in the vicinity of the cement factory are based on agriculture and fisheries. The agricultural crops include rice paddy, rubber, ground nuts, soy bean, sesame, pumpkin, okra, sugarcane, and fruits. For the communities along the Attaran River, their main livelihoods are fisheries, as well as farming. In addition, the communities situated near the Pyar Taung Mountain also catch fish in the nearby caves during the dry season for their household consumption.

The predominant aspects of the environment in the area are the mountain and its ecology, and the Attaran River with the mangrove forest along its riverbanks. The Attaran River is influenced by the tide originating in the Salween River estuary.

The Pyar Taung Mountain is a large limestone mountain surrounded by several communities. In the past, villagers named the mountain "Bee Mountain" or Pyar Taung in reference to the numerous bee hives found in the area. The mountain range stretches five kilometres from north to south. The villagers reported that Pyar Taung Mountain has several caves and some have natural springs, which flow all year round. This spring water flows into

¹⁵³ Myanmar Business Today. SCG to Pour in \$400m in Mawlamyine Cement Plant.
<https://www.mmbiztoday.com/articles/scg-pour-400m-mawlamyine-cement-plant>

¹⁵⁴ Human Rights Foundation of Monland. Examining Foreign Direct Investment in Mon State. July 2016.
Page 26. www.rehmonnya.org

the local creeks, which are the water source for the communities' agriculture, and then flows into the Attaran River. In the rainy season, fish from the Attaran River migrate to the local creeks. In the dry season, numerous fishes can be found in some caves in the mountain, and the villagers catch them for their household consumption. Some caves are also bat habitats and the villagers collect bat manure for using as fertiliser.

Some caves are also considered sacred religious places where Buddha images and monasteries are situated, whereas the mountaintops are covered with pagodas. These religious sites are highly respected by the villagers.

The forest around the Pyar Taung Mountain provides many vital natural resources for the local communities including non-timber forest products used for food and medicine such as honey, vegetables, and at least 53 identified varieties of herbs, however, only the elderly villagers possess knowledge of the traditional herbs. The forest also provides a habitat for wild animals such as monkeys, jungle fowl, bats, and wildcats. Furthermore, the villagers use the limestone as a material for household construction.

The Attaran River is a tributary of the Salween River. The Attaran begins its course from the mountain in the eastern part of Mon State where the borders of Myanmar and Thailand meet. It is a winding river that flows from east to west and meets the Salween River at the Salween estuary in Mawlamyine, Mon State. The distance from the mouth of the Attaran River to the cement factory is about 60 kilometres, which is the same distance as the influence of the marine tidal and brackish water found downstream of the Attaran River where the mangrove species such as *Sonneratia griffithii* and *Sonneratia alba* can be seen along the riverbanks of Mon Grow village, Kwan Nyan village, and Ni Don village.

The mangrove forest along the Attaran River plays an important role in preventing riverbank erosion and provides a breeding ground for marine animals.

The fishing community in this area has identified at least 53 fish species in the Attaran River, including giant seabass (*Lates calcarifer*), paradise threadfin (*Polynemus paradiseus*), and giant freshwater prawn (*Macrobrachium rosenbergii*). Several plants and fruits that grow along the riverbanks are also a source of food for the fish. A variety of fishing equipment is used in this area such as gillnets, nets, traps, and hooks, etc.

The local people also utilise plants from the mangrove forest along the Attaran River. For example, they earn supplemental income from weaving mats from a plant that grows in the mangrove forest. They also use a plant that is quite similar to bamboo for house construction.



Policy Supported by Myanmar

- Foreign Investment Law 2012 (superseded by Myanmar Investment Law 2016)

Concerns Regarding the Environment and Community Livelihoods

Changes to land use in the vicinity of the MCL's cement factory and coal-fired plant project sites have affected eight villages, including areas of paddy field, mountain, forests, the Attaran River, and the local water resources that the communities rely on.

Actually, these eight villages have been affected by three concession projects that were granted by the Myanmar government. Apart from the MCL, the June Cement Industry also received a concession in the Pyar Taung Mountain area, and these two companies received a concession on one side of the Attaran River. On the other side of the Attaran River, the Zaykabar Company Limited received a concession in the Sa Bae Gu Limestone Mountain.

The MCL and the June Cement Industry have bought land from the villagers in the communities, 3,000 acres (1,214 hectares) and 700 acres (283 hectares), respectively.¹⁵⁵ Consequently, the communities have lost 3,700 acres (1,497 hectares) of farmland, which sustains their food security and income. A villager from the Mon Grow village stated that

¹⁵⁵ Human Rights Foundation of Monland. Examining Foreign Direct Investment in Mon State. July 2016. Page 26. www.rehmonnya.org

after selling their land, many local people had to send their children to seek employment in foreign countries such as Thailand, Malaysia, and Singapore.

- Impacts on the Pyar Taung Mountain

The ecological diversity of the Pyar Taung Mountain will become significantly degraded in the future. Already, since the cement factory was constructed and the mountain has been blasted, several impacts have become apparent, for example¹⁵⁶:

The villagers from Ka Don Sit village are no longer allowed to collect sagawar flowers from the mountain. The sagawar flower has significant meaning in the traditional religious ceremonies of the Mon people.

The villagers are concerned that the mountain, which provides protection from natural disasters resulting from strong winds and storms, will no longer exist in the future.

Several limestone caves and creeks connect to water sources outside the caves where a large number of native fish species can be found. However, Mr. Nai Shine from Kaw Dun village stated that, normally in the dry season, the villagers can catch fish from the Ton Pa Lout Cave but the fish have now disappeared. He cannot identify the exact cause, whether it is the mining operation, the resultant tremors, or the polluted water but these impacts have occurred since the MCL started its operation in the area.

The large signboard, “Fishing is Forbidden”, written in the Myanmar language, was installed in the canal area near the limestone mountain where the project site is located. The signboard also includes an image of hands shackled with handcuffs.

The detonations required to blast the mountain have resulted in both excessive noise and dust pollution throughout the surrounding communities. The direction of winds and the weather at the time of the blasting activities also play a key role in the intensity of the negative impacts. The villagers from surrounding communities are also concerned that the polluted water from the rock quarry will contaminate the ground water sources under the limestone mountain, which will further affect the aquatic animals, as well as the communities’ water sources and farmland in the area.

- Impacts on the Attaran River¹⁵⁷

The transportation of coal, construction materials, and cement by large vessels from the mouth of the Attaran River to the cement factory, a distance of approximately 60 kilometres, has had a significant impact on the health of the Attaran River. Each day, 5 to 6 large vessels transport coal. The resultant constant traffic has created large waves, which have damaged the local fishing boats and equipment. In addition, the riverbanks, which are a part of the mangrove forest ecology, were also destroyed, further affecting the declining levels of fish.

¹⁵⁶ Ibid, page 66-67.

¹⁵⁷ Ibid, page 73-76.

Recorded incidents note that high waves created by large vessels transversing the Attaran River have resulted in 12 fishing boats capsizing. The estimated total value of the damage is approximately five million kyat.¹⁵⁸

Mr. Aung Tin Oo, the chairperson of the Kyaikmayaw Fishermen Association, stated in a report that the MCL representative had promised that the vessels will employ an alert system and operate at low speeds. In addition, the MCL also claimed that compensation would be provided to cover the fishermen's losses. However, the MCL did not follow through on their promise.



According to Mr. Aung Tin Oo, the local fishermen in Kyaikmayaw have suffered greatly from the large vessels passing their community's fishing grounds and significantly affecting their normal fishing routines. Previously, each fisherman used a gillnet 15 times per day to catch fish. With the large waves disrupting their activities, they can only use their nets 3-5 times per day, which has caused a significant decline in their incomes. In the past, they earned 100,000 to 150,000 kyat per day but now they can only earn 35,000 kyat per day.

Mr. Aung Tin Oo is also concerned that the canal recently constructed by the MCL would also be used to release wastewater from the factory. In this regard, he is afraid that it will affect both the upstream and downstream areas of the Attaran River. He explained that during the low tide, the wastewater would flow quickly into the Attaran River, and during the high tide, the wastewater would spread to the watershed area, while the communities still rely directly on the Attaran River.

Concerns Regarding Human Rights

- The decision-making process for granting the concession

¹⁵⁸ One US dollar is approximately 1,395 kyat.

The decision-making process for granting the concession to the MCL's cement factory is under Myanmar's Foreign Investment Law. In 2013, the Myanmar Investment Commission (MIC) granted a license to the MCL company, however, the local communities were not included in the decision-making process.

In 2013, the MCL hired the Resource and Environment Myanmar Company Limited to conduct the environmental impact assessment (EIA) and social impact assessment (SIA) but the full reports have never been disclosed to the affected communities nor to the public. According to the report, *Examining Foreign Direct Investment in Mon State* by the Human Rights Foundation on Monland (HURFOM), in order for the EIA and SIA processes to be meaningful, these assessments must be conducted prior to project approval. The communities and the public must be able to access the information and the findings of the assessments. Additionally, it is very important to respect the rights of the local communities and provide them with the full reports in their local language.¹⁵⁹

- The villagers' lands were purchased by the MCL

The report, *'Examining Foreign Direct Investment in Mon State'*,¹⁶⁰ by the HURFOM, also points out that the MCL employed a variety of strategies to obtain land from the residents, and many farmers were pressured into relinquishing their lands for a fraction of its value.

Mr. Nai Aung Mon from Kwan Ngan village stated that the Pacific Link Cement Company representative informed the land owners that, if they they did not accept the company's proposed land price now, they risked not receiving any compensation in the future.

A villager from Kaw Pa Naw village described the scenario in 2013 whereby Mr. Zaw Lwin Oo from the Pacific Link Cement Company provided information that misled the villagers into believing the cement factory is a "government project" and, if the villagers did not sell their land now, they might not receive any government compensation. Therefore, most villagers sold their land at a low price as they did not possess any understanding of land rights. In this scenario, only the land authority, the village administrators, and company representatives profit from the sale of the villagers' lands.

Mr. Taung Nyein from Kaw Dun village, who lost five acres (two hectares) of land, explained that the company had three different pricing strategies ranging from 50,000 to 500,000 kyat per acre depending on the type of land. If the land was classified as vacant or had any problematic issue, the price given was not more than 50,000 kyat per acre. For some cases, the company would only pay based on the land tax invoice that the villagers possessed even if, in reality, some villagers held more land than stated on their land tax invoices.

- Concealing information on the coal-fired power plant

¹⁵⁹ Ibid, page 77-78.

¹⁶⁰ Ibid, page 38-39.

The affected communities staged a protest against the MCL cement factory's coal-fired power plant as they claimed that the MCL never informed them about the coal-fired power plant in the factory. The Transborder News reported on 2 February 2016 that;¹⁶¹

“The company had not provided any information to the local residents about the coal-fired power plant. We only knew about the plant after the construction had started. Even the workers inside the factory did not know about it. If the company insists that the coal-fired power plant will not harm the local people's health, they must provide evidence. Now, an environmental group is organising a meeting with the local villagers who live near the coal-fired power plant and hundreds of villagers have joined”, said a local monk, U Kaysara.

Mr. Aung Naing Oo, a Member of Parliament from Mon State said, “The Siam Cement Group only informed the state agency about the construction of the cement factory but did not mention the power plant. Even the Parliament was not notified of this”.

In addition, even though Myanmar's Ministry of Industry granted the MCL permission to generate electricity on 19 March 2017¹⁶² and commercial operations started in April 2017, the company had still not received permission from Myanmar's Ministry of Electricity to operate the coal-fired power plant (even if it is only used inside the cement factory). Essentially, this means that the operation of the MCL's coal-fired power plant is not in line with Myanmar's Electricity Law.

The local communities have made several attempts to voice their concerns about the MCL's cement factory. For example, in April 2016, they staged a demonstration and submitted a statement with 3,780 signatures to the President of Myanmar demanding the government stop the MCL's cement factory.

On 18 February 2017, approximately 7,000 local villagers from seven villages gathered at the MCL's cement factory project site to protest the coal-fired power plant located within the factory premises.¹⁶³

Additionally, on 24 July 2017, approximately 2,000 ethnic Mon people from Kyeikmayaw and Mawlamyine in Mon State staged a demonstration against the MCL's coal-fired power plant.¹⁶⁴

¹⁶¹ Transborder News. Prasong-Sor Sor-Chao Ban Mon Nai Phamar Ruam Tan Rong Faifa Thanhin Nai Kreua Poon Yai, Wan Kratob Sing Waed Lom, MLC Borisat Look SCG Jang Marttrathan Soong Liew, Raboo Tham EIA Pen Chao Raek Nai Maung Mong [Mon Villagers Join Protest Against the Coal-Fired Power Plant in the Cement Factory Owned by a Large Corporate, Concerned Over Environmental Impacts, MLC – the Subsidiary Company of SCG, States Their High Standards and Claims to be the First Company to Conduct the EIA in Myanmar]. <http://transbordernews.in.th/home/?p=11553>

¹⁶² Global Cement. Mawlamyine Plant May Not Have Proper Power Plant Permission. 18 August 2017. <http://www.globalcement.com/news/item/6452-mawlamyine-plant-may-not-have-proper-power-plant-permission>

¹⁶³ Ibid.

¹⁶⁴ Mae Sai News. Chao Mon Kadkan Rob Song Mai Ao Rong Faifa Thanhin Phalid Poon Cement Nai Kreau SCG [Second Round Protest by Mon People Against Coal-fired Power Plant in the Cement Factory owned by SCG]. 24 July 2017. <http://www.maesainewsonline.com/maesai/?p=9843>



Concerns Regarding Legal Loopholes and Accountability

- The loopholes in the Securities Exchange of Thailand Act

The Securities Exchange of Thailand Act has no investigative mechanism to discover facts or information regarding a case prior to the submission of a complaint. In this regard, there are several cases involving the Thai private sector in neighbouring countries, where the affected communities cannot effectively apply the existing grievance mechanism.

The Securities Exchange of Thailand (SET) is only required to rely on news related information provided by the listed companies. This narrow definition of news notification is insufficient without other investigative mechanisms. For example, the demonstration against the MCL, which the SCG holds 70 percent of the shares, was publicised in the Myanmar-English media, as well as the Thai media. The company did not communicate this significant event to the SET.

The Myanmar joint venture company of MCL has claimed it employed a variety of strategies to buy 3,000 acres (1,214 hectares) of the villagers' land. What is the process for making the SCG accountable for their actions?

The Issue on the Definition of the Coal-fired Power Plant

1. According to the Myanmar Times, dated 8 February 2016, Mr. Wjit Terasarun, the MCL Managing Director, defined the coal-fired power plant as “a small self-use

electricity utility”, (and mentioned that the company has invited 14 monks from the local communities to visit the cement factory in Lampang province, Thailand.)¹⁶⁵

2. Mr. Surachai Pornjindachote, the SCG Country Director in Myanmar, gave an interview to the Myanmar Times, dated 9 May 2017, stating that the coal-fired power plant will use clean coal technology.¹⁶⁶
3. Mr. Chaitath Tongsalee, Senior Associate Director, Enterprise Brand Management Office SCG, sent a message to the Mon Studies Facebook Page explaining that the power plant in the MCL’s cement factory is only a “self-captive power system”, which is unlike other conventional coal-fired power plants that some people refer to. The reason for having this self-captive power system is because the factory needs a reliable energy source with a reasonable price, as he wrote:¹⁶⁷

“A self-captive power system was also included when we requested permission for the cement factory project. It is not a power plant as some people perceived. This is an electricity generating unit that uses coal as fuel to supply the engines in the factory. Apart from the coal-fired power plant, the power system in the factory also integrated with the waste heat recovery generator and biomass. The factory needs a reliable energy source but currently there are no other reliable sources available. If a reliable energy source with a reasonable price can be found, the factory is willingly to consider it. In addition, the factory uses clean coal technology to generate power. It can ensure that the processes of coal selection, transportation, storage, and power generation will not create impacts to the communities and environment.”

¹⁶⁵ Myanmar Times. Thai Cement Giant Tackles Mon Coal Fears. 8 February 2016.

<https://www.mmmtimes.com/business/18858-thai-cement-giant-tackles-mon-coal-fears.html>

¹⁶⁶ Myanmar Times. SCG to Use Clean Coal Tech for Mon State Plant. 9 May 2017.

<https://www.mmmtimes.com/national-news/25897-scg-to-use-clean-coal-tech-for-mon-state-plant.html>

¹⁶⁷ Mon Studies Facebook Page. <http://www.facebook.com/RamannMon/posts/1544044422337071>

4.10 Koh Kong Economic Land Concession for Sugarcane Plantation and Sugar Factory Project, Koh Kong Province, Cambodia



Thai Private Sector Involvement

- The Khon Kaen Sugar Industry Public Company Limited

The Khon Kaen Sugar Industry Public Company Limited (the Khon Kaen Sugar Company) was originally founded in 1976 to manage and operate sugar factories and related businesses. The company issued the Initial Public Offering (IPO) in 2005 and was listed on the Stock Exchange of Thailand under the trading name KSL. Subsequently, the company has diversified to include renewable energy related businesses, such as biomass power generation, and has also extended its sugar production base to the neighbouring countries of Laos and Cambodia.

In Cambodia, the Khon Kaen Sugar Company established two new sugar companies to operate in Koh Kong province which are;

1. The Koh Kong Plantation Company Limited (through shares held by the Wynn In Trading Company Limited)¹⁶⁸ operates the sugarcane plantation.
2. The Koh Kong Sugar Industry Company Limited operates the sugarcane plantation and sugar factory with the production capacity of 6,000 tonnes per day.

¹⁶⁸ The Khon Kaen Sugar Industry Public Company Limited, Annual Report, 2016.
<https://www.kslgroup.com/files/pdf/ar/ar2016-th.pdf>

The Khon Kaen Sugar Company initially held 50% of the shares of each company, while a Taiwanese joint venture company, Ve Vong Corporation, held 30%, and a Cambodian senator from the Cambodian People's Party, Ly Yong Phat, held 20% of the shares.¹⁶⁹

Subsequently, the Khon Kaen Sugar Company had increased its shareholding to 80% in both companies with an estimated investment capital of two billion baht (approximately US\$52 million). The sugar products of both companies¹⁷⁰ were exported as high cost items to the European Union (EU) through a special quota of EBA (Everything But Arms),¹⁷¹ a trade preference scheme which allows duty-free and quota-free import of certain goods from the Least Developed Countries to the EU.

On 2 August 2006, the Cambodian government granted 90-year economic land concessions to the Koh Kong Sugar Company and the Koh Kong Plantation Company, covering 9,567.2 hectares and 9,174.5 hectares respectively. The land concessions covered an area that included the three villages of Chhouk, Chikhor, and Trapaing Kandal in Srae Ambel district of Koh Kong province. Hence, the combined total amount of concession land held by these two companies is more than 18,000 hectares. However, according to Section 59 of Cambodia's Land Law 2001, an individual or legal entity, or collectively multiple legal entities controlled by the same individual – (a legal entity) cannot receive more than 10,000 hectares of land concessions combined.

According to the 2016 Annual Report, the company's performance throughout its years of operation up until 2016 has resulted in a financial loss.

Historical Background of the Project

20 March 2006: The Cambodian Cabinet granted land concessions of 10,000 hectares each to the Duty Free Shop and the Koh Kong International Resort Club.

19 May 2006: Security officers were sent to the area to clear the land.

29 May 2006: The Koh Kong Plantation Company Limited and the Koh Kong Sugar Industry Company Limited were registered as companies.

20 June 2006: The Duty Free Shop and the Koh Kong International Resort Club submitted documents to the Cambodian government requesting to change the names of the concession holders.

18 July 2006: The Cambodian Cabinet approved the transfer of the concession rights from the Duty Free Shop to the Koh Kong Plantation Company and from the Koh Kong International Resort Club to the Koh Kong Sugar Industry Company.

¹⁶⁹ The National Human Rights Commission of Thailand. The Investigation Report No.115/2558.

https://www.terraper.org/web/sites/default/files/key-issues-content/th_kohkong.pdf

¹⁷⁰ The Khon Kaen Sugar Industry Public Company Limited. <https://www.kohkongsugar.com/en/about-us>

¹⁷¹ The Ministry of Commerce. The Department of Foreign Trade. <https://www.dft.moc.go.th>

2 August 2006: The Koh Kong Plantation Company and the Koh Kong Sugar Industry Company each signed a Memorandum of Understanding (MoU) with Cambodia's Ministry of Agriculture, Forestry and Fishery, for the 90-year land concession.¹⁷²



Project Development

The Koh Kong Plantation Company operates a sugarcane plantation while the Koh Kong Sugar Industry Company operates a sugarcane plantation and sugar factory producing 6,000 tonnes per day in Srae Ambel district of Koh Kong province in Cambodia.

In 2008, the companies began to harvest the sugarcane and produce sugar. There are approximately 800 workers during the harvesting season of which 92% are Cambodian and the remaining 8% are Thai and other nationalities.¹⁷³

Communities and the Environment around the Project Area

Previously, the land concession area was fertile agricultural land which was allocated under Cambodia's Participatory Land Use Planning Policy (PLUP). According to the law,

¹⁷² The National Human Rights Commission of Thailand. The verbal testimony of the Khon Kaen Sugar Industry Public Company Limited to the Sub-committee on Civil and Political Rights of the National Human Rights Commission of Thailand, dated 20 July 2010. The Investigation Report No.115/2558.

https://www.terraper.org/web/sites/default/files/key-issues-content/th_kohkong.pdf

¹⁷³ Ibid.

villagers who have been farming and living peacefully on these lands for more than five years are eligible for the right to ownership of the land, and qualify for the land title deed and also for the market-value compensation in case of expropriation.¹⁷⁴ Research presented to the National Human Rights Commission of Thailand (NHCRT) revealed that the villagers have settled there for at least 70 years. They have planted various crops such as pineapple, mango, and durian. The land has been passed down from generation to generation. Most of them have lived there before 2000, even before Cambodia's Land Law was issued.¹⁷⁵

In addition, the villagers depended on the natural resources gathered in the community forest that surrounded their lands including items for household use such as various medical herbs, rattan weaving material, and firewood. Additionally, the forest areas were also used for livestock grazing.

Policies Supported by Thailand

- Thailand's Economic Development Policy.¹⁷⁶
- The Export-Import Bank of Thailand's financial resources, which provide information and consulting services, long-term credit, construction credit, and risk insurance.
- The double taxation exemption from the Ministry of Finance.

Policy Supported by Cambodia

- Sub-decree on Economic Land Concessions in the Socio-Economic Development Plan promoted by the Cambodian Investment Board (CIB) under the Council for the Development of Cambodia (CDC).¹⁷⁷

Policy Supported by International

- Everything But Arms (EBA), a part of the EU Generalised System of Preferences (GSP).¹⁷⁸

Concerns Regarding the Environment and Community Livelihoods¹⁷⁹

¹⁷⁴ The Khon Kaen Sugar Industry Public Company Limited. <https://www.kohkongsugar.com/en/about-us>

¹⁷⁵ The Land Law of Cambodia 2001. Section 31.

¹⁷⁶ https://www.boi.go.th/thai/clmv/Back_up/2010_cambodia/2010_cam_1_3.html

¹⁷⁷ The Institute of the East Asian Studies. Thammasat University. Cambodia Country Profile. 2009. (The report was proposed to the Office of the Board of Investment of Thailand).

¹⁷⁸ The Ministry of Commerce. The Department of Foreign Trade. <https://www.dft.moc.go.th>

¹⁷⁹ Towards Ecological Recovery and Regional Alliance, and the Community Legal Education Center. Sathanakarn Dan Vithichivit, Subphayakorn, Lae Setthakij Kong Krobkrua Nai Amphoe Sre Ambel, Changwat Koh Kong: Kon and Lang Karn Hai Samphan Thidin Pheu Setthakit Kae Borisat Suan Pa Koh Kong Chamkat Lae Borisat Namtan Koh Kong Chamkat. [The Situations on Livelihoods, Natural Resources, and Families' Economics in Sre Ambel District of Koh Kong Province: Before and After the Economic Land Concessions

As a result of the Economic Land Concession for Sugarcane Plantation and Sugar Factory Project in Koh Kong Province, the villagers have lost their houses and farmlands, and their incomes have declined. In addition, while vast areas of the forest have been cleared, the villagers can no longer freely access the nearby community forest as they are barred by the companies. An entrance fee was subsequently imposed to enter the forest.

The Investigation by the National Human Rights Commission of Thailand

On 12 January 2015, the National Human Rights Commission of Thailand (NHRCT) had agreed to include the findings of the NHRCT's Investigation Report (No.115/2558) in the policy recommendations, and submit them to the Khon Kaen Sugar Company, Thailand's Ministry of Foreign Affairs, and the Ministry of Commerce.

Concerns Regarding Human Rights

- The villagers claimed that, from the beginning of the project, they have never been informed or consulted. In addition, according to Cambodia's Economic Land Concession Law, the environmental impact assessment (EIA) must be conducted before granting approval for any economic land concession.

- The villagers claimed that they were forced off their lands by the police before the land concessions were granted. One of the incidents led to five people being injured reportedly by gunshots and beatings. The villagers' agricultural crops were damaged, and their livestock and valuable belongings were confiscated. As a result, more than 456 families from three villages, namely, Chhouk village, Chikhor village, and Trapaing Kandal village in Srae Ambel district, have lost over 5,000 hectares of land. A local villager had recorded an incident of bulldozers demolishing the villagers' houses and he was assassinated the following year. Moreover, lawyers and activists associated with the case have reported being stalked and threatened by security officers during their field visits.¹⁸⁰

- In May 2007, the Secretary of State for Cambodia's Ministry of Interior organised a meeting between the company representatives, community representatives and the Community Legal Education Center (CLEC), a local non-government organisation. The meeting concluded with recommendations that the companies must stop clearing land and forced eviction, and shall work with civil society to resolve the situation and provide redress. However, during the following year, the recommendations were still ignored by the company and the local government officials. Therefore, some villagers finally decided to accept compensation from the companies at a rate of less than US\$1,000 per hectare, which is lower than the actual value of the land.¹⁸¹

were Granted to the Koh Kong Plantation Company Limited and the Koh Kong Sugar Industry Company Limited]. The Investigation Report by the National Human Rights Commission of Thailand.

¹⁸⁰

The National Human Rights Commission of Thailand. The complaints' statement to the National Human Rights Commission of Thailand. The Investigation Report No.115/2558.

https://www.terraper.org/web/sites/default/files/key-issues-content/th_kohkong.pdf

¹⁸¹

The National Human Rights Commission of Thailand. The Investigation Report No.115/2558.

https://www.terraper.org/web/sites/default/files/key-issues-content/th_kohkong.pdf

- The loss of lands as a result of the project has led to the villagers seeking daily labour jobs in the companies with no option but to accept low-paid wages. As a consequence of losing their livelihood and work opportunities, the situation had deteriorated to the point whereby their children had to leave school in search of jobs to support their parents and families.

Concerns Regarding Legal Loopholes and Accountability

- In Thailand, there is no state agency responsible for holding Thai investors accountable for activities undertaken abroad. Furthermore, regulations are only applied to foreign investment in Thailand.

- In spite of the stipulation that only a specific number of hectares can be granted under the economic land concession in Cambodia, foreign companies could simply avoid this restriction by establishing subsidiaries in order to accumulate more land.

- The jurisdiction process for dealing with land disputes in Cambodia is unclear. Villagers from the 220 affected families filed a complaint with the Koh Kong Provincial Court on the illegalities of the land concessions between the companies and the Cambodian government. The villagers claim that they have never been informed or consulted nor given the opportunity to participate in the land concession process. However, in 2013 the Koh Kong Provincial Court had ceased the litigation process stating that the case was beyond its jurisdiction and subsequently transferred the case to the Cadastral Commission. Nevertheless, the Community Legal Education Center (CLEC) has submitted a letter to the Cadastral Commission, requesting that the lawsuit be returned to the Koh Kong Provincial Court for reconsideration and, if the case was to be transferred, the responsible agency should be the National Authority of Land Dispute Resolution instead.

- The company has attempted to avoid its responsibility by pointing out that the project development timeline indicates that the violent eviction and assault incident in May 2006 had occurred before the land concessions were legally transferred from the local Cambodian company to the Koh Kong Plantation Company and the Koh Kong Sugar Industry Company in August 2006. However, it appears that in April 2006, the Khon Kaen Sugar Company submitted a notice to the Stock Exchange of Thailand (SET) regarding its intention to establish a sugarcane plantation and sugar factory in Koh Kong province of Cambodia. Moreover, in 2005, the Khon Kaen Sugar Company had indicated its intention to establish two subsidiaries, namely, the Koh Kong Plantation Company and the Koh Kong Sugar Industry Company. Hence, the Khon Kaen Sugar Company must have been aware of the incident.¹⁸²

¹⁸² The National Human Rights Commission of Thailand. The verbal testimony of the Khon Kaen Sugar Industry Public Company Limited to the Sub-committee on Civil and Political Rights of the National Human Rights Commission of Thailand, dated 20 July 2010. The Investigation Report No.115/2558. https://www.terraper.org/web/sites/default/files/key-issues-content/th_kohkong.pdf

4.11 Oddar Meanchey Economic Land Concession for Sugarcane Plantation and Sugar Factory Project, Oddar Meanchey Province, Cambodia



Women in O’Bat Moan watch their houses burn which were torched by a mix of military police, hired demolition workers, forestry Administration officials and RCAF troops . October 2009 ©LICADHO via Clean Sugar Campaign via <http://www.boycottbloodsugar.net/where-is-it-happening/oddar-meanchey/>

Thai Private Sector Involvement

- The Mitr Phol Sugar Corporation Limited

The Mitr Phol Sugar Corporation Limited was founded in 1956, and is currently involved in five main business areas including sugarcane development, sugar production, wood substitute materials, energy, and investment.¹⁸³ The Mitr Phol Sugar Corporation Limited is the largest sugarcane and sugar producer in Asia. However, the Mitr Phol Sugar Corporation Limited is not listed on the Stock Exchange of Thailand, therefore, it is difficult to track down the company’s investments and financial statements, especially the businesses that are operated by subsidiaries abroad.

Project Investment

¹⁸³ The Mitr Phol Sugar Corporation Limited. <https://www.mitrphol.com/about-us.php>

In January 2008, the Mitr Phol Sugar Corporation Limited was granted 70-year economic land concessions from the Cambodian government for the sugarcane plantation and sugar factory in Samrong district and Chongkal district, both in Oddar Meanchey province in northwestern Cambodia. The concessions were granted to three companies registered in Cambodia, namely;

- 1) The Angkor Sugar Company Limited. Mr. Tat Wanakornkul (the Executive Vice-President of Mitr Phol Sugar Corporation Limited at that time) is the Managing Director of the company. The land concession area covers 6,523 hectares.¹⁸⁴
- 2) The Tonle Sugar Cane Company Limited. Mr. Buntoeng Vongkusolkit (the Managing Director of Mitr Phol Sugar Corporation Limited) is the Managing Director of the company. The land concession area covers 6,618 hectares.¹⁸⁵
- 3) The Cane and Sugar Valley Company Limited. Mr. Krisda Monthienvichienchai (the Chief Executive Officer and President of Mitr Phol Sugar Corporation Limited) is the Managing Director of the company. The land concession area covers 6,595 hectares.¹⁸⁶

The Mitr Phol Sugar Corporation Limited is the sole owner of one company and is a partner in the other two companies. However, there have been no Cambodian shareholders in any of these companies.¹⁸⁷ The three companies have been granted the combined total of 19,736 hectares of land.

Cambodia's Land Law 2001, Section 59, states that concession land granted to the private sector shall not exceed more than 10,000 hectares per person. Therefore, this stipulation to the economic land concession could be avoided by the establishment of three separate companies.

Project Development

During 2008-2009 (after the economic land concession was granted by the Cambodian government), the Mitr Phol Company had an initial investment plan of three billion baht (approximately US\$90 million) for the construction of a big sugar factory in Cambodia, with the production capacity of 10,000 tonnes per day.

The combined total area of the economic land concessions for the three companies is 19,736 hectares in the two districts of Samrong and Chongkal in Oddar Meanchey province

¹⁸⁴ Angor Sugar, Economic Land Concessions https://opendevelopmentcambodia.net/profiles/economic-land-concessions?feature_id=elc_gdc_267

¹⁸⁵ https://opendevelopmentcambodia.net/profiles/economic-land-concessions?feature_id=elc_gdc_196

¹⁸⁶ https://opendevelopmentcambodia.net/profiles/economic-land-concessions?feature_id=elc_gdc_273

¹⁸⁷ The National Human Rights Commission of Thailand. The Community Rights: The Case of the Operation of the Mitr Phol Corporation Company Limited. The Investigation Report No.1003/2558. 12 October 2015. <https://drive.google.com/file/d/0Bx60PIXMazQqMUNNWTNhbDFBaDA/view>

in northwestern Cambodia. These lands were developed for the operation of the sugarcane plantation and sugar factory for the period of the 70 year concession.

Communities and the Environment around the Project Area

Oddar Meanchey province is located in the Dangrek Mountains in northwestern Cambodia, covering an area of 6,158 square kilometres. The province has five districts and the main city of Samrong is located approximately 40 kilometres from the neighbouring Thai province of Surin, which can be reached by crossing the international border via the Chong Chom checkpoint. Oddar Meanchey is rich in natural resources including mineral deposits, especially gold and silver.¹⁸⁸ The local people mainly rely on the natural resources for agricultural purposes and raising livestock. The community forest area also provides the local people with some basic household necessities.

Policies Supported by Thailand

- Thailand's Economic Development Policy.¹⁸⁹
- The Export-Import Bank of Thailand's financial resources, which provide information and consulting services, long-term credit, construction credit, and risk insurance.
- The double taxation exemption from the Ministry of Finance.

Policy Supported by Cambodia

- Sub-decree on Economic Land Concessions in the Socio-Economic Development Plan promoted by the Cambodian Investment Board (CIB) under the Council for the Development of Cambodia (CDC).¹⁹⁰

Policy Supported by the International Community

- Everything But Arms (EBA), a part of the EU Generalised System of Preferences (GSP).¹⁹¹

Concerns Regarding the Environment and Community Livelihoods¹⁹²

¹⁸⁸ https://www.boi.go.th/thai/clmv/Back_up/2010_cambodia/2010_cam_1_3.html

¹⁸⁹ Ibid.

¹⁹⁰ The Institute of the East Asian Studies. Thammasat University. Cambodia Country Profile. 2009. (The report was proposed to the Office of the Board of Investment of Thailand).

¹⁹¹ The Ministry of Commerce. The Department of Foreign Trade. <https://www.dft.moc.go.th>

¹⁹² The National Human Rights Commission of Thailand. The Community Rights: The Case of the Operation of the Mitr Phol Corporation Company Limited. Investigation Report No.1003/2558. 12 October 2015. <https://drive.google.com/file/d/0Bx60PIXMazQqMUNNWTNhbDFBaDA/view>

The Investigation Report by the National Human Rights Commission of Thailand (NHRCT) on the case of the Mitr Phol Company states that;

- The clearing of concession land for the sugarcane plantation by the company has destroyed the public land and community forest area. The community forest is a very important source of food and income for the local communities. Although not all of the community forest areas overlapped with the concession land of the three companies, the remaining forest has been dramatically degraded. For example, the signs of forest degradation include a significant decline in wild mushrooms and the trees no longer produce the usual amount of resin (for burning).

- The water sources have dramatically diminished after the sugar industry was established in the area. The sugarcane plantation also blocked water access as well as contaminated the natural water resources, which local villagers primarily rely on for their consumption. The aquatic ecology has also been destroyed, resulting in the decline of fishery and plants. Some water sources were filled in with land to create additional sugarcane planting area. There was no environmental management and rehabilitation plan to mitigate the ecological damage.

The Investigation by the National Human Rights Commission of Thailand

In the National Human Rights Commission of Thailand (NHRCT) meeting No. 32/2558, dated 21 September 2015 (the Investigation Report No. 1003/2558), the NHRCT agreed to submit the policy recommendations to the Thai Cabinet, the Ministry of Foreign Affairs, the Ministry of Commerce, the Stock Exchange of Thailand, the Bank of Thailand, and other relevant agencies.

Subsequently, the Thai Cabinet responded to the case on 2 May 2016, as follows;

After consideration of the policy recommendations in the Community Rights: the Case of the Operation of Mitr Phol Corporation Company Limited that has Affected the Local People in Samrong and Chongkal Districts in Oddar Meanchay Province in Northwestern Cambodia, submitted by the NHRCT, the Ministry of Foreign Affairs has proposed that the mechanisms to regulate Thai outbound investment should be adopted in compliance with the United Nations Guiding Principles on Business and Human Rights (UNGPR). The Ministry of Foreign Affairs is willing to host the regular meeting, or when needed, with other relevant agencies as well as the private sector, to ensure that Thai outbound investment respects fundamental human rights as proposed by the Ministry of Foreign Affairs.¹⁹³

Concerns Regarding Human Rights

- There were incidents of forced eviction and burning villagers' houses. In O'Bat Moan village where the Angkor Sugar Company was granted the land concession, 254

¹⁹³ The National Human Rights Commission of Thailand. The Community Rights: The Case of the Operation of the Mitr Phol Corporation Company Limited. Investigation Report No.1003/2558. 12 October 2015. <https://drive.google.com/file/d/0Bx60PIXMazQqMUNNWTNhbDFBaDA/view>

villagers' houses were destroyed, 154 houses in the first incident and 100 houses in the second incident. In addition, the people in Bos village were forcibly evicted and their homes burned and demolished by approximately 150 police officers, soldiers, and forestry officials.¹⁹⁴ The villagers viewed the violent incident led by state officials as beneficial to the company and, therefore, no longer consider seeking justice through the state authority mechanism as a viable option.

- The villagers were arrested, prosecuted, and detained. For example, during the incident at Bos village, the former community leaders were arrested, assaulted, and detained during the forced eviction. Two community leaders were subsequently sentenced to two years imprisonment, and the other two were detained for six months before prosecution. After the forced eviction in Bos village, a group of villagers decided to walk to Phnom Penh to present a petition to Somdej Hunsen, the Cambodian Prime Minister. However, some of them were arrested, including a pregnant woman who was eventually sentenced to eight months and had to give birth during her imprisonment.¹⁹⁵

- Some villagers have received compensation¹⁹⁶ for the loss of residential land and farmland, as well as natural food resources. (It is still unclear which agency was responsible for the compensation, however, it was most likely a Cambodian state agency as the Mitr Phol Sugar Company claimed that the compensation process was the responsibility of the Cambodian government, and the company only mentioned compensation for the damages after its withdrawal from the investment in the concession area). Nevertheless, the villagers who received compensation reported that the amount assessed was lower than the cost of the actual damage caused. Additionally, some families (14 families) who agreed to be resettled, received compensation in the form of a house on new land, however, their fate remains insecure without possession of the land title. Furthermore, the houses and land in the resettlement area are of low quality, making daily life very difficult.

- Moreover, the compensation process was implemented without genuine public participation from the affected villagers as they were threatened and intimidated.¹⁹⁷

- The loss of land had impacts on income and occupations. Although some villagers from the affected areas were hired to work in the sugar plantation, each worker only earned 10,000 riel (US\$2.50) for a 10-12 hour workday, which was not enough to make a living and support their families. In addition, pregnant women and child workers were openly employed. As well, there was a lack of health protection standards in the workplace.¹⁹⁸

¹⁹⁴ Ibid.

¹⁹⁵ The Amnesty International. Eviction and Resistance in Cambodia: Five Women Tell their Stories. 2011.

¹⁹⁶ The National Human Rights Commission of Thailand. The Community Rights: The Case of the Operation of the Mitr Phol Corporation Company Limited. The Investigation Report No.1003/2558. 12 October 2015. <https://drive.google.com/file/d/0Bx60PIXMazQqMUNNWTNhbDFBaDA/view>

¹⁹⁷ Ibid.

¹⁹⁸ The Oxford. (Forthcoming Publication). Bittersweet Harvest: A Case Study on the Displacement Impacts of the EU Everything But Arms Initiative in Cambodia. 2013.

Concerns Regarding Legal Loopholes and Accountability

- In Thailand, there is no state agency responsible for holding Thai investors accountable for activities undertaken abroad. Furthermore, regulations are only applied to foreign investment in Thailand.

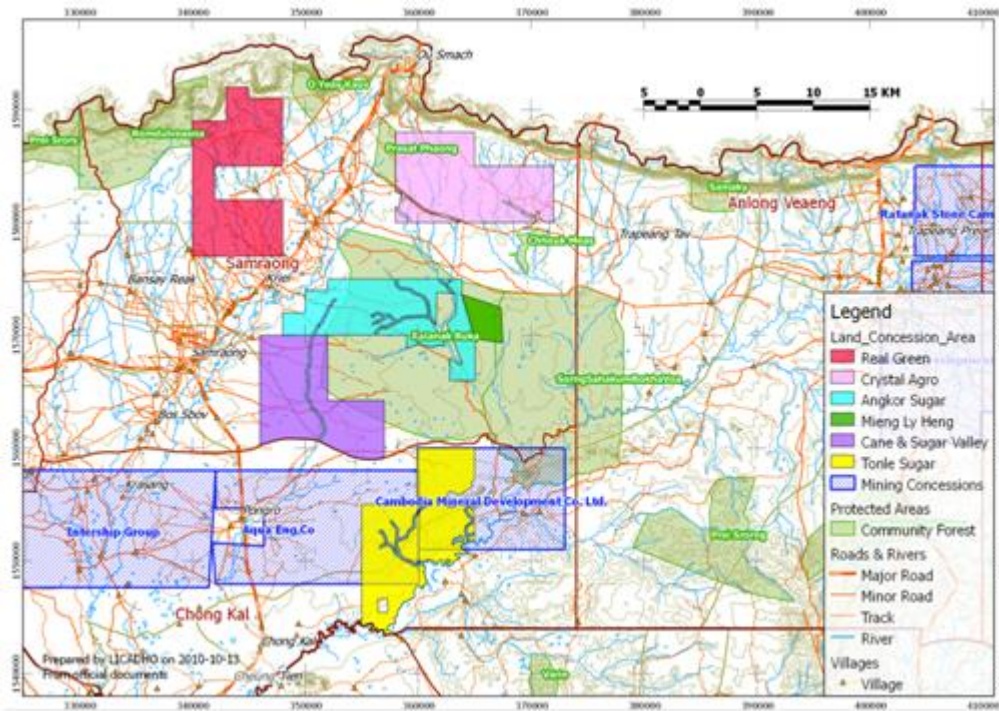
- In spite of the stipulation that only a specific number of hectares can be granted under the economic land concession in Cambodia, foreign companies could simply avoid this restriction by establishing subsidiaries in order to accumulate more land.

- The ineffectiveness of Bonsucro, the sugar industry's sustainability certification body, which failed to hold its member, the Mitr Phol Company, accountable. The Mitr Phol Company had withdrawn from Bonsucro's membership before the investigation into the local villagers' complaint was undertaken. However, after the Mitr Phol Company had withdrawn from the investment areas in Cambodia, the company had renewed its membership to Bonsucro once again and was awarded the Bonsucro Sustainability Award in 2015.¹⁹⁹

- The ineffectiveness of law enforcement by the Cambodian state agencies, which enables the authorities to employ legal loopholes to abuse their power or act unlawfully.

- In spite of the fact that the NHRCT is mandated to investigate human rights violations and non-compliance with the international human rights instruments that Thailand has ratified, the NHRCT has no legal power to prosecute human rights violators. Hence, the role of the NHRCT in this case was to investigate and then provide policy recommendations to the relevant agencies and the company, which could help resolve the problems or could mitigate the impacts for other similar cases in the future. However, it appears that the NHRCT's role in following up is also important, otherwise the remedy and redress processes for the case might not have happened, or would have merely been implemented in an ineffective manner.

¹⁹⁹ The Mitr Phol Sugar Corporation Limited. https://www.mitrphol.com/page_detail.php?p=1&topic=13



Companies' Economic Land Concession Area in Oddar Meanchay: figure by Clean Sugar Campaign via <http://www.boycottbloodsugar.net/where-is-it-happening/oddar-meanchey/>

4.12 Quang Tri Thermal Power Plant Project, Vietnam



The Scenario picture of Quang Tri Thermal Power Plant via <https://www.egati.co.th/en/investment/quang-tri-1.html>

Thai Private Sector Involvement

- The EGAT International Company Limited (EGATi)²⁰⁰
- The Electricity Generating Public Company Limited (EGCO)

Both EGATi and EGCO are subsidiaries of the Electricity Generating Authority of Thailand (EGAT).

Project Investment

EGATi has signed the Memorandum of Understanding (MoU) with Vietnam's Ministry of Industry and Trade (MOIT) to develop the Quang Tri Thermal Power Plant Project under the Build-Operate-Transfer (BOT) scheme over a 25-year period. In addition,

²⁰⁰ The EGAT International Company Limited. The Quang Tri Thermal Power Plant Project 1. <http://www.egati.co.th/th/th-invesment/th-quang-tri-1.html>

the Vietnam Electricity Power Engineering Joint Stock Company 2 was contracted to conduct the feasibility study and environmental impact assessment.²⁰¹

Subsequently, EGATi together with EGCO and Kyushu Electric Power Company Incorporation from Japan signed the Joint Development Agreement to co-develop the project, which EGATi holds 40% of the shares, EGCO 30 percent, and Kyushu Electric Power 30 percent.²⁰²

Project Development

The 1,200-megawatt Quang Tri Thermal Power Plant Project 1, composed of two units of 600 megawatts each, is located in the Quang Tri Special Economic Zone in Quang Tri province in central Vietnam, about 60 kilometres from the major city of Hue. The project site is on the coastal area, and the depth of the water measured 600 metres from the shoreline is approximately 12-15 metres deep. Approximately six million tonnes of bituminous coal will be imported from Indonesia each year for fueling the power plant, and sea water from the South China Sea will be used for cooling the circulation system. The overall budget for project development is US\$2.3 billion.

The first unit of the Quang Tri Thermal Power Plant Project is scheduled for commercial operation in December 2021 and the second unit will be operational in June 2022. The electricity generated by the plant will be sold to Vietnam Electricity (EVN), the state-run enterprise and the largest electricity company in Vietnam, under the 25-year power purchase agreement.²⁰³

Communities and the Environment around the Project Area

The Quang Tri Thermal Power Plant Project is located in Quang Tri Special Economic Zone in Quang Tri province in central Vietnam, about 60 kilometres from Hue, a major port city with many historical sites and the former imperial capital of Vietnam. The densely populated city of Hue is one of the country's economic cities targeted for industrial development.²⁰⁴

Policies Supported by Thailand

- Power Development Plan 2015
- ASEAN Power Grid

²⁰¹ The EGAT International Company Limited. The Annual Report 2014.
<http://www.egati.co.th/images/egati/thsite/annualreport/reannual2557.pdf>

²⁰² Ibid.

²⁰³ The EGAT International Company Limited. The Quang Tri Thermal Power Plant Project 1.
<http://www.egati.co.th/th/th-invesment/th-quang-tri-1.html>

²⁰⁴ Ibid.

Policies Supported by Vietnam

- Quang Tri Special Economic Zone Development Policy
- Foreign Investment Laws: Unified Enterprise Law and Common Investment Law 2005²⁰⁵
- ASEAN Power Grid

Concerns Regarding the Environment and Community Livelihoods

No information.

The Investigation by the National Human Rights Commission of Thailand

There is no complaint submitted to the National Human Rights Commission of Thailand for investigation.

Concerns Regarding Human Rights

No information.

Concerns Regarding Legal Loopholes and Accountability

No information.

²⁰⁵ The Board of Investment of Thailand. The Investment Promotion Policy of Vietnam. http://www.boi.go.th/thai/clmv/Back_up/2010_vietnam/2010_vietnam_3_0-1.html

5. Overview of Human Rights and Environmental Impacts' Conclusion

5.1 Community and environmental impacts can be categorized as follows;

- Impacts as indicated in the project document, publicly disclosed: For example, the Xayaburi dam's EIA report indicates quite a large number of affected people as high as 25,676. Still the number only accounts for members of the communities located at the dam site and the reservoir.

- Impacts as indicated in the project document, not publicly disclosed: For example, the Hongsa lignite and coal fired power plant the construction of which shall result in the relocation of more than 2,000 villagers to a new site prepared by the Hongsa Power Company Limited. The new site is eight kilometers away from the city of Hongsa and 12 kilometers from the power plant. The Sugar plantations and sugar refinery in Kokong, as indicated in the NHRCT's report that over 456 families from three villages are slated to lose over 5,000 hectares of land. The Dawei Deep Sea Port and Dawei Special Economic Zone, which according to the Dawei Development Association (DDA) shall directly impact over 43,000 people in 36 villages. And the Banchuang coal mining, which according to the Takapaw Youth Group and DDA, shall impact around 16,000 villagers in over 22 villages, in terms of their health and the environment.

- Other impacts, both indicated and not indicated in the project document and both publicly disclosed and not publicly disclosed including downstream impacts on the ecology and community. As to the hydropower project including sediment flushing of the Xayaburi dam that has yet to be evaluated how it will affect the level of oxygen in the Mekong water behind the dam and how it will affect fish in the Mekong or not. Impacts from the loss of the utilization of land, forest and water supplies in areas where concessions can be offered. It could cost the community, inside and outside the project site, their food security and income, particularly projects that cannot control the level of environmental contamination. Such contamination of natural water supplies would render severe impacts on the community's livelihood and health including the case of the Heinda Mine, etc.

5.2 Impacts stemming from human rights violation including

- All processes in all governments concerning decision making to approve investment projects, the feasibility study and/or social and environmental impact assessment do not include participation of local community to be affected. In addition, most reports are written in English with no versions in local languages. There is also a lack of disclosure of project detail since the beginning including the case of coal-fired power plant based in cement plant.

- There is no investigation if there is any lack of compliance with the legal procedure including the approval of economic land concessions that should be preceded by social and environmental impact assessment as required by the Cambodia law on economic land concessions.

- The use of violence against local community located in the project area including forced relocation, or burning to enable forcible evictions as well as judicial harassment and arrests. Those who have lost their land and their food security are unfairly compensated and

have to suffer from a loss of their income and livelihood. It has also been reported that pregnant women and children are visibly employed as labor and they are deprived of their health standards.

5.3 Legal loopholes and policy gaps: responsibility and accountability of Thai investments

- Legal loopholes and policy gaps are clearly found to support and boost overseas investments that garner transboundary impacts in Thailand. Yet, concerned state agencies or state enterprises are inclined to interpret the laws to excuse themselves from being abide by the laws that aim to protect the interest of the people and the environment in Thailand. In addition, there are no mechanisms that can be used by the state to hold accountable and to investigate conflict of interest of agencies under its charge, for example, by signing the power purchase agreement (PPA) between, the Electricity Generating Authority of Thailand and the Xayaburi Power XPCL, EGAT was acting both as procurer and seller of the same contract.

- Gaps in liability of commercial banks that bankroll various projects: The lending banks can claim that they have already acted in compliance with the laws without conducting the risk evaluation per the Equator Principles (all the six commercial banks that bankroll the Xayaburi hydropower dam project had yet to sign the Principles).

- Gaps in regional mechanisms: With regard to the MRC, government officials can act as the Head of the taskforce to carry out the PNPCA process, instead of leaving the power to make the decisions to officials at the Ministerial level.

- State agencies that are governed by their own laws and regulations are reluctant to implement and enforce other relevant laws applied in the areas where the projects are located. For example, EGAT avoids acting in compliance with the criteria and methods set out by the Ministry of Interior regarding the criteria and methods to allow public bodies to utilize state property. In addition, there are no agencies or regulations that have the power to directly regulate investments by Thai investors abroad. There are only rules and bodies that regulate foreign investments in Thailand.

- Since the mandate of the NHRCT does not entail follow up process, it shall not ensure the actualization of effective remedies and rehabilitation of affected persons.

- The promulgation of special laws including the Dawei Special Economic Zone Law in 2011 favors investments of private sector at the expense of land owners. It does not guarantee public consultation and consent of the community. As a result, it conveniently paves the way to land grabbing and violation of community rights and human rights

- Gaps in the Stock Exchange of Thailand Act: SET does not have fact-finding and in-depth investigation mechanisms without having to wait for complaint. Many of such cases also take place abroad. SET simply sticks to information supplied by the listed companies without investing extra effort to verify the information received from the listed companies. For example, there was a protest led by 6,000 villagers against the construction of a coal-fired power plant, the largest of which ever built in Myanmar, but SET has not mechanisms to investigate the matter.

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จังหวัดน่าน เพื่อรับซื้อไฟฟ้าจากโครงการเหมืองและโรงไฟฟ้าพลังความร้อนหงสาถักในต่างประเทศ สาธารณรัฐ ประชาธิปไตยประชาชนลาว
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คณะกรรมการสิทธิมนุษยชนแห่งชาติ. รายงานการตรวจสอบการละเมิดสิทธิมนุษยชน เรื่อง สิทธิชุมชน กรณีโครงการก่อสร้างเขื่อนในแม่น้ำ
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คณะกรรมการสิทธิมนุษยชนแห่งชาติ. รายงานการตรวจสอบการละเมิดสิทธิมนุษยชน เรื่อง สิทธิชุมชน กรณีโครงการก่อสร้างเขื่อนในแม่น้ำ
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คณะกรรมการสิทธิมนุษยชนแห่งชาติ. รายงานผลการตรวจสอบ ที่ 1003/2558 เรื่องสิทธิชุมชน กรณีการค้าเงินของ บริษัทน้ำตาล
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คณะกรรมการสิทธิมนุษยชนแห่งชาติ. รายงานผลการตรวจสอบของคณะกรรมการสิทธิมนุษยชนแห่งชาติ ที่ 115/2558

คณะกรรมการแม่น้ำโขง. ประเทศสมาชิกกลุ่มน้ำโขงตอนล่างนำกระบวนการปรึกษาหารือล่วงหน้าสำหรับโครงการเขื่อนไฟฟ้าพลังน้ำไซยะบุรีเข้าสู่การพิจารณาในระดับรัฐมนตรี. เข้าถึงได้จาก <http://www.mrcmekong.org/assets/Publications/Press-Release/Media-Release-Xayaburi-JCSS-19Apr11-Thai.pdf>

คณะทำงานติดตามและประเมินสถานการณ์สิทธิมนุษยชนอันเนื่องมาจากการดำเนินการของบุคคล/กลุ่มบุคคลสัญชาติไทยที่เป็นองค์กรภาครัฐและ/หรือมิใช่ภาครัฐที่จัดทำโครงการพัฒนาหรือธุรกิจขนาดใหญ่, “เอกสารข้อมูลการเดินทางไปปฏิบัติงาน การเข้าร่วมเวทีวิชาการ และการแลกเปลี่ยนข้อมูลในพื้นที่โครงการพัฒนาเขตเศรษฐกิจพิเศษทวาย และเหมืองเฮงดา ณ เมืองทวาย แคว้นคะฉานศรี สาธารณรัฐเมียนมา ระหว่างวันที่ 22 – 27 กุมภาพันธ์ 2560”

คณะอนุกรรมการศึกษาข้อมูลและเสนอความเห็นเกี่ยวกับผลกระทบในด้านต่าง ๆ รวมทั้งการละเมิดสิทธิมนุษยชน กรณี โครงการก่อสร้างเขื่อนฮัตจี ในแม่น้ำสาละวิน สหภาพพม่า ของการไฟฟ้าฝ่ายผลิตแห่งประเทศไทย, รายงานความเห็นเกี่ยวกับผลกระทบในด้านต่าง ๆ รวมทั้งการละเมิดสิทธิมนุษยชน กรณีโครงการก่อสร้างเขื่อนฮัตจี ในแม่น้ำสาละวิน สหภาพพม่า ของการไฟฟ้าฝ่ายผลิตแห่งประเทศไทย. 2553.

คำร้องเรียนต่อคณะกรรมการสิทธิมนุษยชนแห่งชาติ ในหมายเลขคำร้อง 285/2558 เรื่อง ขอให้ตรวจสอบการละเมิดสิทธิมนุษยชน ด้านสิทธิชุมชน กรณีประชาชนสาธารณรัฐแห่งสหภาพเมียนมาได้รับผลกระทบจากการทำเหมืองแร่ของบริษัทเอกชนสัญชาติไทย

คำร้องต่อคณะกรรมการสิทธิมนุษยชนแห่งชาติ เรื่อง การละเมิดสิทธิจากการดำเนินงานของบริษัทไทยในโครงการเหมืองบานของ ภาคคะฉานศรี ประเทศเมียนมา. มิถุนายน 2560.

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