

MIDCOURSE MANOEUVRES: Community strategies and remedies for natural resource conflicts in Myanmar



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Author(s): Meenakshi Kapoor, Nwe Ni Soe and Vidya Viswanathan

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Contact Information: Centre for Policy Research
Dharma Marg, Chanakyapuri
New Delhi-110021

Design and Layout: Printforce

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– Meenakshi, Nwe, and Vidya

Abbreviations

ADB	Asian Development Bank	ETTF	European Timber Trade Federation
AFFM	Agriculture Farmers' Federation of Myanmar	FAB	Farm Administration Body
ALRC	Asian Legal Resource Center	FAO	Food and Agriculture Organization of the United Nations
ASEAN	Association of Southeast Asian Nations	FD	Forest Department
BANCA	Biodiversity and Nature Conservation Association	FDI	Foreign Direct Investment
BEWG	Burma Environment Working Group	FLI	Forest Legality Initiative
BRN	Burma Rivers Network	FRPL	Farmers' Rights Protection Law
BSPP	Burma Socialist Programme Party	FUG	Forest User Group
CBO	Community based organisations	GAD	General Administration Department
CCVJV	Central Committee for the Management of Vacant, Fallow and Virgin Lands	GDP	Gross Domestic Product
CD-OGM	Community-Driven Operational Grievance Mechanism	GIC	Global Innovation Consulting
CHMC	China National Heavy Machinery Corporation	GPI	Green Peasant Institute
CSO	Civil Society Organisation	Ha	Hectares
CSR	Corporate Social Responsibility	ICJ	International Commission of Jurists
CTUM	Confederation of Trade Unions-Myanmar	IEE	Initial Environmental Examination
DAO	Development Affairs Office	JICA	Japan International Cooperation Agency
DFO	District Forest Officer	JTDL	Japan Thilawa Development Limited
DICA	Directorate of Investment and Company Administration	KAN	Kyoju Action Network
DICA	Directorate of Investment and Company Administration	KCSN	Karenni Civil Society Network
DPLN	Dawei Probono Lawyer Network	KESAN	Karen Environment and Social Action Network
ECC	Environment Compliance Certificate	KIO	Kachin Independence Organisation
ECD	Environment Conservation Department	Km	Kilometre
ECDF	Ethnic Community Development Forum	KNGY	Karen New Generation Youth
EIA	Environment Impact Assessment	KNU	Karen National Union
EITI	Extractives Industries Transparency Initiative	LIOH	Land in Our Hands
EMP	Environment Management Plan	LUC	Land Use Certificate
ERI	Earth Rights International	MATA	Myanmar Alliance for Transparency and Accountability
		MCRB	Myanmar Centre for Responsible Business
		ME2	Mining Enterprise 2
		MEC	Myanmar Economic Corporation
		MEPP	Myanmar Energy Master Plan

MJC	Myanmar-Japan Consortium for Thilawa Special Economic Zone Development Project	NLD	National League for Democracy
MJTDL	Myanmar Japan Thilawa Development Limited	NLUP	National Land Use Policy
MMG	Mine Monitoring Group	Norinco	China North Industries Corporation
MMID	Mandalay Myotha Industrial Development	NREC	Natural Resources and Environment Conservation
MMK	Myanmar Kyat	NTFP	Non-timber forest product
MNPC	Myanmar National Prosperity Company Limited	OECD	Organisation for Economic Co-operation and Development
MoALI	Ministry of Agriculture, Livestock and Irrigation	PA	Protected Areas system
MoECF	Ministry of Environmental Conservation and Forestry	PHR	Physicians for Human Rights
MoEE	Ministry of Electricity and Energy	PNO	Pa-Oh National Organisation
MoHA	Ministry of Home Affairs	PYO	Pa-Oh Youth Organisation
Mol	Ministry of Information	SIA	Social Impact Assessment
MoNPED	Ministry of National Planning and Economic Development	SLORC	State Law and Order Restoration Council
MoNREC	Ministry of Natural Resources and Environmental Conservation	SLRD	Settlement and Land Records Department
MoPO	Ministry of President's Office	TSDG	Thilawa Social Development Group
MP	Members of Parliament	TSEZMC	Thilawa SEZ Management Committee
MPC	Myanmar Pongpipat Company Limited	UF	Unclassified Forest
MTSH	Myanmar Thilawa SEZ Holdings Public Limited	UMEHL	Union of Myanmar Economic Holdings Ltd
MW	Mega Watt	UN-HABITAT	United Nations Human Settlements Programme
MWMWN	Molo Women Mining Watch Network	UNHCR	United Nations High Commissioner for Refugees
NA	Not Available	UNODC	United Nations Office on Drugs and Crime
NDF	National Democratic Force	USAID	United States Agency for International Development
NFMP	National Forestry Master Plan	USD	United States Dollar
NHRCT	National Human Rights Commission of Thailand	VFV Law	Vacant, Fallow, Virgin Lands Management Law

1 Introduction

Since its creation in the 1960s and particularly in the last decade, Southeast Asia has been going through an economic boom and has been attracting significant foreign investments. Myanmar, despite its land titling and registration tangles, is no exception. Investors are eyeing its land resources. Investors all across the globe are vying for a piece of the “Golden Land” and the country is reciprocating to their interest with equal fervour. Currently in Myanmar, foreign investments are being encouraged, private businesses are being pushed, and attractive tax and duty rebates are being offered for the same. “Building of a modern industrialised nation through the agricultural development and all round development of other sectors of the economy” is one of its national economic objectives (Aung & Kudo, 2012). This objective means that the course of development to be followed by the country is going to be highly land intensive.

Political developments in Myanmar, corresponding economic shifts, and land governance in the country are closely tied. Colonial rule still influences the manner in which independent Myanmar has managed its land. For the British, the fertile valleys of paddy lands of the current lower Myanmar that generated revenue were of importance. They developed functional administrative units of geographical areas here for the collection of taxes. The system, however, did not apply on uplands, the areas that were ecologically different from the lowlands. The British allowed these uplands to be under the partial rule of non-Burmese princes (Ferguson, 2014).

In independent Burma, the politico-economic developments, most often than not, resulted in arbitrary use of power in handling issues of land and its governance. In post-colonial times, the state took complete ownership and control of all “agricultural land”. While this largely happened in the lowland areas, in the upland border regions several ethnic groups initiated armed struggles against the state demanding complete autonomy. To curb the separatist movements, in 1962, General Ne Win staged a military coup against the democratically elected government. Under the control of the military, Burma¹ marched on a “socialist” path and deepened its control over land (Slow, 2016). This severed the relationship between the ethnic minorities and the central military government.

The state accumulated more power: it could confiscate land if farmers failed to cultivate a specific crop or give the set yield. At the same time, it curtailed private trade and transactions. These policies led to extreme levels of poverty, unemployment, and inflation. In 1965, the World Bank (n.d.) notes an inflation rate of 17.7 for the country. The inflation rate escalated to 25.5 in 1966. In 1975, it went on to touch 31.7 (World Bank, n.d.). This made the central military-led government rethink its development model and from state socialism it swerved to “state-mediated capitalism” (Jones, 2014). In 1988, the military successfully clamped the 8888² or People Power Uprising. Through State Law and Order Restoration Council, it established its control again and headed towards economic liberalisation. It opened the country’s doors for foreign investments and allowed commerce. Businesses that could forge close ties with the military secured contracts from the government for the construction of dams, roads, and agribusinesses and for oil and gas exploration. The results that were desired through economic liberalisation, such as reduction in poverty, low rate of unemployment, and containment of inflation were not achieved. “Crony” companies only added to the problems of forced displacement and insufficient or zero compensation, when acquisition of land for these projects took place (Scurrah, Hirsch, & Woods, 2015). The trend continued through the first decade of the 21st century.

In November 2010, with the military making way for the military-backed civilian government, a series of reforms began. Thousands of political prisoners were freed, as a sign of acknowledging public opinion construction of the controversial Myitsone dam was suspended, peaceful demonstrations were permitted in the country

¹ In 1989, Burma’s name was changed to Myanmar. ‘Burma’ is used to refer to the country, only when historical events are mentioned.

² Some major events occurred on August 8, 1988. Therefore, it is called 8888 uprising.

and military retreated from many ethnic areas (BBC, 2015). In response, the United States and the European Union have lifted economic sanctions against the country and many bilateral donors have come in, which has improved Myanmar's investment prospects (Haggblade et al., 2013). From a rank of 177 in 2014, on the World Bank's "Ease of Doing Business" Index, the country has made a jump of six places and reached 171 in 2015. By 2016, it was ranked 170 on the index (Trading Economics, n.d.). According to Asian Development Bank, between 2012 and 2015, the GDP (Gross Domestic Product) of Myanmar has not gone below seven. It was 8.4% in 2013, the highest so far (World Bank, n.d.).

The country has been trying to attract foreign investments from its ASEAN (Association of Southeast Asian Nations) neighbours, China and Japan, and from other parts of the world. In contrast to the Land Nationalisation Act of 1953, when the state sought to take land back from foreigners, in January 2017, the parliament approved a law that permitted foreigners to own 40% of a condominium building in Myanmar (Property Report, 2017). In addition, the new Farmland Law of 2012, while reserves with the state the right to decide land use, makes large-scale holdings and joint holdings with majority foreign ownership of farmland concessions possible (Aung & Kudo, 2017). All this is being done to revive the foreign investments in the country, which saw a decline in the last couple of years. In 2015-16, Myanmar received foreign investments of worth USD 9.5 billion, which came down to USD 6.6 billion in 2016-17. The changes mentioned before and the new investment law that allows state and regional investment commissions to approve investments reaped results and by the first four months of 2017, Myanmar had garnered foreign funds of worth USD 3.1 billion (Aung, 2017). While the economic implications of these changes are reflected in Foreign Direct Investment (FDI) and GDP figures, their impacts on environment and livelihoods of people (especially in a country, which has 60% of its population living in villages and pursuing agriculture (Aung, 2017)) are slowly coming to the fore in the form of conflicts.

This research tries to understand how land use change has occurred throughout Myanmar and what its consequences on communities have been. The first section provides an overview of land governance in Myanmar. The second section maps the extent of land use change driven by different sectors and the underlying issues in each sector of land use. The third section focuses on the impacts caused by land use change on farmers' and communities' lives. The fourth section explores the strategies employed by the people affected by these land transformations. The fifth section discusses the remedies sought and obtained by those affected by the land transformations. In the last section, a brief overview of the study has been provided with concluding remarks.*

*To develop this report, besides personal interviews, information available online on various government websites, in research studies and media reports as available till the end of February 2018 has been used.

2

Land Governance in Myanmar

2.1. The capitalist land governance of British Burma

In the pre-colonial Myanmar or Burma (as it was called by the British Colonisers), agricultural land was common land. If a piece of land was unoccupied, any villager could take it up and if not taken up, the land was treated as common fallow land, turning into wastelands of the village tract (Furnivall, 1862). The British, after colonising Upper Myanmar, issued the Burma Land and Revenue Act in 1879. It permitted individuals to hold title to land with rights to sell, transfer, and inherit. However, it also allowed for the state's involvement in land matters (Burma Land & Revenue Act 1879). As per the 2009 report titled *Housing, Land and Property Rights in Burma of Displacement Solutions*, the Act, by allowing for private ownership of land, eliminated the established customary land usage (Leckie & Simperingham, 2009). The legal framework resulted in land categories such as "land under grant (long and medium grants); leasehold lands; temporary lease lands (seasonal only); new colonies (newly opened lands); inundated and island lands (alluvial lands) found only in riverine areas (lands submerged under rivers during Monsoon season, which re-appear when river water recedes)" (Burma Land & Revenue Act 1879). With the formalisation of land rights, the colonial government was able to regulate land use and provide protection for owners, when it deemed necessary, while the ultimate ownership of the land across the nation vested with the state.



Land along the Yangon river is under multiple uses

The Bamar community is the dominant ethnic group of Myanmar and is largely limited within the lowlands. The Bamar cultivate rice and vegetables. They were governed by the existing legal framework. The British system of land governance had no place for village fallows or what it saw as "wastelands". Under their rule, land that used to remain fallow in a cycle of swidden agriculture was termed as "wasteland". They put in place the institution of land laws in 1839, with an objective to "convert waste and vacant lands into lands for cultivation". Thus the British did try to establish a sense of property and discourage fallow practice through their policies

such as charging fallow rates, demanding full revenue from abandoned lands, and granting of unoccupied land for free for a set period (Ferguson, 2014).

With the issuance of the Village Act in 1907, the British brought in a new system of tax collection that was based on mapped administrative boundaries. But this system did not extend to the hilly areas under the non-Burman princes. Uplands since the pre-colonial times maintained their autonomy to a certain extent if not fully as they were not under the control of the mainland Burmese rulers. Swidden agriculture or shifting cultivation was practised in the mountains and highlands, the areas inhabited by the ethnic groups. In these areas the tax regime of “Burma Proper” was not followed, instead the property rights were regulated through deeds between the princes and the British government. Ferguson (2014) claims that this dual system of land governance followed by the British created a divide between proper Burma (lower Burma) and the “Frontier Areas” (Ferguson, 2014).

Through the Land Acquisition Act, 1894, the British kept the power to take possession of “Waste” lands (part VI of the Land Acquisition Act 1894). However, as mentioned before, these wastelands were areas designated for common use of the village or sites used by nomadic tribes and grazing communities. This push towards a “commodity relationship” with the land by the British thus devalued the customary practices of land use mostly followed in the “frontier areas” of the British times or the ethnic dominated hill areas of today (Ferguson, 2014).

2.2. Land governance in post-Independence era

Post-Independence, the control over land was still with the state in Myanmar. As per the new Constitution that came into force in 1948, the state was the “ultimate owner” of all land (Constitution of Union of Burma 1947). This status remained unchanged in various versions of the Constitution, the latest one being of 2008. The Land Nationalisation Act, 1953 turned all land into the state’s property (Land Nationalisation Act 1953) and under a “land to the tiller” policy leased land to cultivators (Mark, 2016). Nationalisation and redistribution of land took place in Burma till 1962, through which 34% of the total cultivated land were given to landless peasants. What the British had done implicitly, the 1948 Constitution did in an overt manner—it gave the state the right “to take land as desired”. The “socialist” government decided to use this land for “collective and co-operative farming” or handed it to agricultural tenants and limited holdings, without setting any rights for private land ownership by its citizens (Guyitt, 2014).

In 1962, the army took over after orchestrating a coup in Yangon (Oxford Burma Alliance, n.d.). The Tenancy Law of 1963, “defined farmers as tenants on state-owned land” under the military rule (Mark, 2016). In the same year, ironically to protect farmers’ rights to till land, it issued the Farmers’ Rights Protection Law that restricted confiscation of land by any party other than the military in case the farmer defaulted on debt repayment. Through the 1970s and 1980s, land confiscations “in the interest of the working people of all national races”, took place extensively. For instance, in 1980, the Burma Socialist Program Party seized about four thousand acres of land in the Shwebo district for a government farm project called “Wet Toe” (Asia News, 2016).

In 1988, with its decision to move to a market economy, the State Law and Order Restoration Council (SLORC)³ passed the “Wasteland Instructions” in 1991 as a step to make “vacant land” available for private investment in agriculture production. Wasteland Instructions of 1991, opened the “wastelands” for private investments (Land Core Group (LCG), 2012). Since then, for two decades (from 1988 to 2008) Myanmar did not have a ratified Constitution (after the military suspended the Constitution of 1974). In the absence of a law to hold it accountable, the military got a freehand at confiscating land. This period was also marked by a “state-mediated capitalism” in which the state set a trend of supporting big businesses and crony capitalism (Jones, 2014). Deals involving “military conglomerates, government administrative bodies and crony companies” for construction of dams, roads, and other infrastructure; oil and gas exploration; and agribusinesses were executed. Almost all of these deals involved displacement of people and in most cases without any compensation (Mark, 2016).

Since 2008, the state through various legal reforms has opened the economy. While the state still remains the “ultimate owner”, the Constitution says that it “shall permit citizens a number of land related rights”. It means the citizens cannot enjoy the ultimate ownership rights but they can get land use rights (Guyitt, 2014). In effect it meant that now the “economic forces” would appropriate the land.

³SLORC’s name was changed to State Peace and Development Council in 1997.

Customary land practices are more widespread in highlands, where ethnic minority groups rely on subsistence farming and shifting cultivation (Burma Environment Working Group [BEWG], 2011). A common form of land use for ethnic nationalities is rotational agriculture. Shifting cultivation, also known as swidden agriculture, can be found in every township of the state. Some ethnic nationalities have been practising customary land management systems for centuries. For example, the Karen have long maintained a customary land management system known as Kaw; the Kayah customary land management system is known as Khay; and every Kachin tribe has their own system for managing community, residential, and cultivated lands (Ethnic Community Development Forum [ECDF], 2016).

The unsettled issues and the build-up of the frustration, which was paramount in the ethnic areas as these areas had a rich resource base and mostly land not categorised as “agricultural”, were kept in check through increased militarisation of border areas. While some pieces of land in the upland areas were used for rubber and other plantation crops or for producing timber, the fallow land largely remained ungoverned. Only in 2012, with the passage of the two laws—Farmland Law and Vacant, Fallow and Virgin Lands Management Law—the entire land of the country fell under a nearly comprehensive legal framework. However, under the Vacant, Fallow and Virgin Lands Management Law, land under swidden agriculture is not considered “agriculture”.

Table 1: Chronology of land governance and rights in Myanmar

Period	Land Rights
Pre-colonial times	Land was a common resource
Colonial times	Lower Burma Land and Revenue Act (1876), Upper Burma Land and Revenue Act (1879) State grants rights to inherit and transfer land after 12 years of continuous use (mostly followed in low lands) Customary law is practised in highlands dominated by ethnic groups
1948-1952 (Post-Independence)	Private land ownership is recognised Customary land tenure is not recognised
1953-1961	Land Reform (1953) State takes ownership of all land State grants tillage rights State makes transfers illegal Customary land tenure is not recognised
1962-1987 (early phase of Socialist rule)	Same as above
1988-2002 (Early liberalisation)	Same as above Informal land transfers were allowed due to increased profitability of deregulated crops
2003-2007	Same as above
2008-2009	Same as above
2011-2013	Farmland Law (2012) Vacant, Fallow and Virgin Lands Management law (2012) State ownership of all land State grants tillage rights State makes transfers and mortgages legalised Farmers contest land confiscations in Land Grabbing Reinvestigation Committee Customary land tenure is not recognised
2013-present	National Land Use Policy (2016) State recognises customary land use practices under National land Use Policy (<i>but not practiced and not followed in other land laws</i>) Land Acquisition Act 1894 is being revised Farmland Law and Vacant, Fallow and Virgin Lands Management Law Amendment Bill is being discussed

Some information extracted from USAID: Burma. (2013, July). *A strategic agricultural sector and food security diagnostic for Myanmar*. pp: 46. Retrieved from:

http://fsg.afre.msu.edu/Myanmar/myanmar_agricultural_sector_diagnostic_july_2013.pdf

2.3. Land use development priorities

From the time of the first military government until today, agriculture has been the bedrock of Myanmar's economic development policies. This sector is the largest contributor to the GDP, when compared with other revenue sources of the state. In 2013-14, the total land revenue collection through sub-national governments was over 15,000 million Kyats. In this year (2013-14) the total revenue for the union government was 13.2 trillion Kyats (24% of the GDP) (Dickensen-Jones, De, & Smurra, 2015). Over the years, there has been a shift in the emphasis from small scale farming to industrial scale agriculture led by private investors (Woods, 2012a). The policy priorities released by the National League for Democracy (NLD) in July 2016, aim for transparent fiscal management, privatisation of state-run companies, development of infrastructure, legal reforms to attract foreign investments, and economic activities that contribute to ASEAN (Jagan, 2016; Kyaw & Hammond, 2016). The policies also list financial systems to support agriculture. But these new policies do not create a distinction between small-scale agriculture and corporate monoculture farming. In fact, the two activities have been turned into competitors for land. Smallholder farmers can apply for permission to use available agricultural land but because of the inclination towards large-scale agriculture, which was made possible through the Farmland Law, only very small numbers of smallholder farmers meet the eligibility criteria such as continued and stable land use. It means that companies have more opportunities to get land use permission than smallholder farmers, creating a legal channel open for the private investors (Henley, 2014). According to the Directorate of Investment and Company Administration (DICA) under the Ministry of National Planning and Economic Development (MoNPED), Myanmar is aiming to procure FDI equivalent to USD 140 billion between 2014 and 2030 (in 2014 Myanmar managed to get an FDI of a little over USD 8 billion, which has been the maximum since 2012, when the country opened up to investments). Most of the investments so far have been in manufacturing enterprises and oil and gas. The country, seeing a drop in the FDI in 2015, has made changes to its Investment Law that has simplified long-term lease of real estate, tax exemptions, and overseas remittances (Oxford Business Group, n.d.).

Alongside economic policies, conservation goals also have a bearing on land use. As per the National Forest Policy 1995, 30% of the total land area of the country should be gazetted as reserved forest and five percent should be under the Protected Areas (PA) system (MoF, 1995). As per the website of Ministry of Natural Resources and Environmental Conservation (MoNREC)⁴, the target for PA system was adjusted to ten percent in 2000, after the 30-year National Forestry Master Plan (2001 to 2030) of the erstwhile Ministry of Environmental Conservation and Forestry (MoECF). Currently, Myanmar has 39 protected areas covering 5.75% of the country's total area (MoNREC, n.d.a). The National Forestry Master Plan (NFMP) along with the Protection of Wildlife and Protected Areas Rules issued in 2002, guarantee not to impinge on the local communities' privileges and traditions after an area is designated as a PA. The rules give rights for local communities to extract natural resources in a sustainable manner. According to the erstwhile MoECF, as of 2012, a population of 601,596 lived in the 828 villages located in the 19 Protected Areas of the country (Htun, n.d.).

As per the NFMP, the government intends to establish 2.27 million acres of community forests by 2030 (FLI, n.d.). The Community Forestry Instruction, 1995 states that local people interested in management of forests can form a Forest Users' Group (FUG). After the permission of the District Forest Officer (DFO) to establish the community forest, the FUG manages the forest with the help of the forest department. The DFO issues a community forestry certificate with relevant rules that are derived from the management plan. The land is leased to the community for 30 years initially, which can be extended and inherited. The FUG can harvest timber, fuel wood, and non-timber forest products (NTFPs) as per the management plan and can sell the surplus products. The DFO can revoke the permission if the management plan is not complied with. As of 2011, there were 572 FUGs managing over 100,000 acres of forest (Kyaw, Springate-Baginski, & Gyi, 2011).

⁴ MoNREC was formed in March 2016 merging the Ministry of Mines and MoECF.

2.4. Laws governing land use change in Myanmar⁵

As per UNHABITAT, UNHCR, and Norwegian Ministry of Foreign Affairs (2010), Myanmar has primarily 12 land categories. The official media and other groups often make reference to these administrative categories (provided in the annexure) (MCRB, 2015a). The 1963 Disposal of Tenancies Law defines “Agricultural Land” as “Land being utilised or kept in possession for agriculture purposes” that includes paddy land, garden land on which vegetables and flowers are grown, rubber plantation land, and others (Disposal of Tenancies Law 1963). While the Disposal of Tenancies Law was abolished after the issuance of Farmland Law in 2012, the definition provides the basis for many laws and policies discussed in this section.

According to USAID (2013a), there are at least 73 active laws, amendments, orders, and by-laws for land governance in Myanmar. These laws are in either conflict and/or are disconnected from the earlier laws (USAID, 2013a). While some have been superseded by new laws, the laws drafted by previous governments are still in use by the administrative institutions at state, district, and village levels (Henley, 2014). This leads to laws being overlapped, incongruous, and contradictory. Siu Sue Mark (2016) uses the term “stacked laws” to characterise Myanmar’s existing legal framework on land use as multiple layers of laws are at work together. These layers could consist of laws that are currently in place and the laws that have been superseded or revoked. This stacked system creates legal ambiguity that is used to the disadvantage of smallholder farmers by people in power (Mark, 2016).

Some of the laws that are in operation and have a significant bearing on farmers’ access and use of land in Myanmar are discussed in the following sections.

2.4.1. Farmland Law 2012

The Thein Sein government issued the Farmland Law in 2012, under which the state has devolved its powers to local bodies to regulate the land economy. The Farm Administration Body (FAB) grants rights to sell, exchange, inherit, and lease land and get credit on land. The FAB can cancel use rights if the conditions of use are not adhered to and can confiscate land in the “interest of the state”. According to this law, land can be sold, transferred, loaned, and pawned. However, only people, who have the Form No.7 (Land Use Certificate/LUC), can do so (Pyidaungsu Hluttaw, 2012a). Namati Myanmar⁶ has observed that only a small number of farmers possess this certificate (Pierce & Htwe, 2017). The farmers must comply with numerous complex procedures to obtain an LUC. They have to pay a fee for the registration of land rights as well (Pyidaungsu Hluttaw, 2012a).

There are many prohibitions on land users. Farmers are not allowed to grow crops other than the ones defined in the Farmland Law or leave the farm fallow without a sound reason. Transferring land to a foreigner without permission, pawning and obtaining loan to finance investment for agricultural production, or borrowing from any entity other than a government bank or authorised bank are not permitted. Failing to follow the regulations may result in imprisonment for up to three years, a fine equivalent to roughly USD 1,100, and the confiscation of materials related to the breach (Pyidaungsu Hluttaw, 2012a).

The Farmland Law does not provide comprehensive definitions for the different types of land it identifies. For example, according to this law, agricultural land in the upland areas, where ethnic communities practise shifting cultivation, falls under the categories of forestland or virgin, fallow, and vacant land (ECDF, 2016). The land classification as it stands under the Farmland Law renders smallholders at risk of losing their land in case they are unable to use the land as stipulated. There have been advocates for reducing the land categories to just agricultural— this encompasses uses such as seasonal and perennial farming, shifting cultivation, aquaculture, animal husbandry, and agriculture support activities—and forest and other land categories as suggested in the National Land Use Policy (NLUP) (Anderson, Hu, & West, 2017) (for NLUP, see section 2.4.6).

⁵For Myanmar, we have relied significantly on the donor reports on governance and regulations to understand the systems for these. In the absence of active government websites, this was very useful. However, unofficial translations of some laws were available which were accessed to compile this section.

⁶Namati Myanmar is an INGO focused on legal empowerment and is building a movement of grassroots level legal advocates, also known as “community paralegals”, who work with communities to bridge the gap between the law and real life.

2.4.2. Vacant, Fallow and Virgin Lands Management Law 2012 (VFV Law)

According to this law, farms from highland areas as well as land being used without legal land tenure are categorised as “fallow lands” (BEWG, 2011). The VFV Law governs the formal process for obtaining access to vacant, fallow, and virgin lands. Public citizens, private investors, and government entities are entitled to use this land by submitting an application to the Central Committee for the Management of Vacant, Fallow and Virgin Lands (CCVFL). Because this law allows the state to list land users without land title as “trespassers”, it can confiscate their land and transfer it to private investors. This increases the likelihood for small-scale farmers losing their land to business companies. The government specifically exercises the VFV Law to confiscate and distribute land (LCG, 2012). The term “virgin land” has been explained as:

[L]and which may be new land or other wood land in which cultivation was never done before. It may have forest, bamboo or bushes, and includes the land which has been cancelled legally from Reserved Forest, grazing ground, and fishery pond land, respectively for Agriculture, Livestock Poultry Farming and Aquaculture, Mining, and Government allowable other purposes in line with law (Pyidaungsu Hluttaw, 2012b).

In the words of Win Myo Thu (2017), Director, EcoDev, Myanmar, “Vacant, virgin and fallow (VFV) land includes forestland, agricultural land with no ownership and land without trees. This VFV land is being given out to investors.”

Scholars view the Farmland Law and VFV Law as tools to facilitate the transformation of Myanmar’s small-scale and upland farming into industrial agriculture. Local civil society groups have pointed out that these two laws will undermine the access to land rights and prioritise private business investment over subsistence farming that feeds a large majority of the population (LCG, 2012). They state that there seems to be a complementary logic at work; VFV Law can classify and transfer swidden lands to farmers while Farmland Law can prioritise private investors over small farmers for the grant of LUCs to these lands. Ethnic upland communities, who have been managing their land customarily for generations, are likely to be most affected by these laws as upland swidden agriculture is not recognised as an agricultural system within the legal land use framework of the state. Namati Myanmar observed that VFV committee at central, state and regional level can accept applications for VFV land application but in practice, it hardly takes place. In actual, VFV law legalises land grabs (Pierce & Htwe, 2017).

Myanmar’s constitution doesn’t differentiate between men and women regarding their rights to land. However, the laws issued in 2012—the Farmland Law and VFV Law—state that the land will be registered in the name of the head of the household, which in many Asian cultures is considered to be the husband (Neef, 2016). Yet, the laws do not explicitly mention women as rights holders, but they do not restrict women from obtaining property rights also. As of end of 2017, Namati’s work in Myanmar to obtain land registration for small holders had led to 105 applications of joint ownership by husband and wife. Protection of land tenure rights for women is one of the guiding principles of the NLUP (see section 2.4.6). In its clause 75 (a) the policy allows for individual or joint land holdings by both women and men. The policy also suggests that participation and representation of women in farmland management bodies should be encouraged (Anderson, Hu, & West, 2017).



A Namati paralegal with his client. They are from the Kone Township, Pyay District, Pegu Region.

2.4.3. Land Acquisition Act 1894

The Land Acquisition Act, 1894, has been in effect since pre-Independence. It allows the state to confiscate land from farmers for its development projects. The law lays out clear guidelines regarding the procedure of land acquisition, how to appeal against it, and compensation to original land users (Land Acquisition Act 1894). However, the previous military governments did not practise these guidelines. Instead, people would be asked to vacate land at a short notice. Intimidation and suppression of any opposition took place in most cases (Woods, 2014). Given the unregulated powers that the military enjoyed, there was no accountability to the law in the acquisition process. Article 17 (A) of the Land Acquisition Act states that only waste land and vacant arable land can be confiscated in an urgent manner. However, our case studies show that in practice all land may have been acquired in an urgent manner (Land Acquisition Act 1894).

The parliamentary land grabbing reinvestigation commission has stated in 2016, that land concessions done in the past mostly did not follow the Land Acquisition Act. In its first report it listed, urban development; industrial zones; military cantonments; infrastructure projects including railways, airports, and highways; state factories; and agribusinesses as the main causes of land confiscation. It further stated that out of the 500,000 acres of land confiscated in pre-2010 period, 60% was done by the military, and rest by the private sector and various government ministries (Mark, 2016).

2.4.4. The Farmers' Rights Protection Law 1963

After Independence, Farmers' Rights Protection Law came into being in 1963. The law states that no one, except the military can confiscate land from a farmer if the farmer fails to repay some debt. While the law was aimed at uprooting landlordism, since the government was to decide the target for agricultural yield from a particular piece of land, farmers often failed to meet these targets and would be in debt to the government. In effect, in the name of farmer's protection, the government allowed the confiscation of land by the army (UNHABITAT, UNHCR, & Norwegian Ministry of Foreign Affairs, 2010). The law was repealed after the issuance of the Farmland Law in 2012.

2.4.5. Forest Law 1992 and Community Forestry Instructions 2016 (CFI)

According to the Forest Law, 1992, forest is classified as areas under the Permanent Forest Estate (PFE). It includes: Reserved Forest, Protected Areas and Protected Public Forest. According to the old Forest Law, 1902, "Forest Land" included Reserved Forest that was under the control of the Forest Department (FD) and "Unclassified Forest" (UF) which was not protected and was outside the purview of Forest Department (Aung, 2002; NEPCON ETTF, 2013). The Forest Law 1992 classified some UFs as "Protected Public Forest" to bring them under the jurisdiction of FD, while the Reserved Forest category remained the same.

The Forest Law 1992 provides the Ministry of Forestry the authority to notify land outside the reserved forests as "protected public forest" for the purpose of "Conservation for sustainable production". Much of Myanmar's forest is UF as the old category still prevails and is used by the government offices and land maps in the country (NEPCON & ETTF, 2013). According to the current classification under the VFV Law, much of the unclassified forest falls under the category of public forest. Public forestland and forests on wastelands can be subject to timber extraction if the Ministry of Environmental Conservation and Forestry (MoECF) decides so (LCG, 2012; NEPCON & ETTF, 2013).

Reserved forests include forests managed by the state for teak and other timber extraction. Reserved forest is further classified in the below categories (NEPCON & ETTF, 2013)

- Commercial Reserved Forest
- Local Supply Reserved Forest
- Watershed/catchment Protection Reserved Forest
- Environment and Biodiversity Conservation Reserved Forest
- Other categories of Reserved Forest

According to the article 7 of the Forest Law, the minister of Natural Resources and Environmental Conservation may change the classification of any area of Reserved Forest land to Public Protected Forest Land and

denotify certain land out of the Public Protected Forest category, with approval of the government (SLORC 1992). However, there is no clear procedure as to how this would be accomplished or what standards are to be applied. Even though the CFI provide a legal procedure for people to access and manage their forest areas, these instructions do not consider customary arrangements and thus undermine customary land rights and change the way people use their land (Community Forestry Instructions of Myanmar 2016; Kyaw, Springate-Baginski, & Gyi, 2011).

Overlaps between forestland and farmland

The classification of forestland and farmland has been an issue of significant importance. Namati Myanmar noted many land disputes that erupted due to the mapping systems of different ministries. Even though, local farmers have been using their land for years, paid their taxes according to the previous Farmland Law, and received agricultural loans (some of them even have LUCs issued to them according to the new Farmland Law), the Ministry of Forestry have posted signs on their land, saying the land is forestland under the management of the Ministry. Sometimes, it is more than these two ministries. Some other ministries have also been mixed up in problematic classifications of land and this is happening in many parts of the country. One way to solve this problem could be for farmers to bring documents that show the forestland in question has been used for farming for years to the Forestry Department, so that the department may consider cancellation of the forestland classification. Afterwards, the farmers can apply for the permission to use the land as farmland⁷.

managed customarily have not received legal acknowledgement and clear classification, they are likely to be subject to exploitation and complex forms of management by various ministries.

In November 2016, the Commission for the Legal Affairs and Special Cases Assessment, in a memo to the parliament, recommended the withdrawal of key components of Land Use Policy, passed by the previous government. These components were concerning the protection of land rights of ethnic groups and of women; the establishment of separate land use council; and an independent body for arbitration on land restoration issues (Global Witness, 2017). Civil society organisations (CSOs) have been making efforts to improve the NLUP. They have made recommendations concerning ethnic and women's land rights, modernising land classifications, and removing restrictions on farmland utilisation and customary use of land (Anderson, Hu, & West, 2017).

The Karen National Union (KNU)⁸, has launched its own land policy that demands recognition of customary land rights and policies. During the time of the Ne Win government, the military and ethnic armed groups were engaged in the peace dialogue in their bid to develop a federal system. According to the KNU, the land policy was first issued during the 9th KNU's Congress in 1974. It was revised in 2000, and approved by its Central Executive Committee in December 2015. They called for "state governments to recognise the

2.4.6. National Land Use Policy 2016 (NLUP)

In 2016, the government issued a NLUP. While the goal of the policy is to "recognise and protect customary land tenure rights and procedures of the ethnic nationalities", Article 37 of the Constitution of the Republic of the Union of Myanmar clearly states "The Union:(a) is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union;(b) shall enact necessary law to supervise extraction and utilisation of State-owned natural resources by economic forces" (The Republic of Union of Myanmar, 2016).

This discord between the NLUP and the Constitution has weakened the claims of customary land rights. As observed by the Ethnic Community Development Forum, "the centralised governance structures stated in the policy, unclear wording and lengthy sections on government land acquisition has led to widespread criticism that the policy is incompatible with the realities on the ground and would facilitate continued centralised ownership, control and land grabbing in the ethnic states" (ECDF, 2016). Because lands that are used and

⁷With inputs from Tim Millar from Namati Myanmar programme between March 2016 and September 2017.

⁸Karen National Union is a political organisation representing the Karen people of Myanmar. The Union was founded in 1947. Karen or Kayin people reside primarily in Karen State, southern and southeastern Myanmar. (ref: <http://www.karennationalunion.net/index.php>).

landownership and land rights issued by ethnic armed organisations to the people.” The KNU’s Land Policy paper includes six chapters that cover farmland, forests, water resources, fishery, and other forms of natural resources (Karen News, 2016). There is some information regarding other ethnic states also preparing their own land policy by using its format. As of now, the present government has not recognised the KNU Land Policy and it is not clear how the government will approach this policy in the face of impending business investment, the existing development projects, and land management in the ethnic areas when nationwide peace is achieved.

2.4.7. Myanmar Foreign Investment Law 2017

This law was approved by both parliaments on October 18, 2016, and got enacted on April 1, 2017. It replaces the Foreign Investment Law drafted in 2012, and the Citizens’ Investment Law drafted in 2013. Under this new law, the Myanmar Investment Commission (MIC) has been formed and the MIC has permitted a total of 38 foreign investment projects worth USD383.877 million in five months since the new government took office in April. According to MIC, from late 1988 to August this year, the total foreign investments amounted to over USD64.4 billion. This law facilitates FDI in all sectors of Myanmar’s economy, including agriculture and agribusiness (Pyidaungsu Hluttaw, 2016).

2.4.8. Mines Law 2015

The Mines Law, 1994 was amended on December 24, 2015, to open the doors to potential investors, both local and foreign, in extractive industries. Unlike the 1994 law, this law has created a differentiation between subsistence miners and large-scale operators. Besides allowing foreign investment in large-scale mining projects, amendment also increased the period of concession for large-scale production projects from 25 years to 50 years (Charlton, 2016). The mine operators are liable to contribute to an environmental fund (Htoon, 2018). However, how this fund will be used is not clear. They are also responsible for post-mining rehabilitation. The law gives authority to the respective levels of government to monitor the mining operations to ensure they don’t damage the environment and comply with corporate social responsibility



Copper rich mountains of Sagaing

(Htoon, 2018). However, according to the experience of Namati Myanmar in facilitating and providing paralegal assistance to local residents to tackle cases of land disputes and environmental destruction, mining companies have a high rate of environmental non-compliance. The 2015 law defines 'feasibility study' and includes the assessment of social and environmental impacts under it (Charlton, 2016). The data on the locations of underground minerals across the country is held by the Department of Geological Survey and Mineral Exploration, which is under the Ministry of Natural Resources and Environmental Conservation (Htoon, 2018). Other laws that govern mining operations in Myanmar are Income Tax legislation, Companies legislation, State-owned Economic Enterprises Law (1989), Myanmar Official Secrets Act (1923), Environmental Conservation Law (2012), and Contract Act (1872).

Jade licensing

Global Witness reported that Myanmar's jade licensing system is wide open to corruption and cronyism. The main concessions are in government-controlled areas and blocks are awarded through a centrally controlled process, which multiple industry sources say favours companies connected to powerful figures and high-ranking officials. Global Witness also discussed in its report the issues around the taxes collected from jade mines, corruptions, revenues and mismanagement of the government funds (Global Witness, 2015a).

2.4.9. Special Economic Zone (SEZ) Law 2014

The law was enacted on January 23, 2014 and it replaced the 2011 SEZ law. The new law sets up an SEZ Central Management Committee. The 15-member committee is composed of many union ministers and is tasked to review the SEZ proposals and set policies for SEZ development in the country. The committee would also form subcommittees for planning and management of individual SEZ projects. Another committee formed under the law is the SEZ Central Working Committee that would implement policies as framed by the Central Management Committee (Mon, 2016). The new law encourages developers to speed up the construction of the SEZ (Kyaw, 2014).

2.4.10. Environment Conservation Law 2012

The law was enacted to implement the Myanmar National Environment Policy of 1994. It makes the "relevant government department and government organisations" responsible for "conservation, management, beneficial use, sustainable use and enhancement of regional cooperation" of forest resources. The Environment Policy suggests for sound ways of utilising water, land, forests, mineral, marine, and other natural resources so that those are conserved and are not degraded further. To achieve this, according to the ministry's website, so far it has planned a number of education and awareness building activities (MoNREC, n.d.b).

2.4.11. Environment Impact Assessment (EIA) Regulation 2015

Myanmar adopted the EIA procedures in December 2015. The regulation mandates that EIA procedures be followed by all those projects, which according to the MoECF have the potential of causing adverse impacts. It covers projects with multiple components and many pollution sources, have high risk of "significant, adverse" environmental or social impact, are of a type/size for which prior knowledge and experience do not exist. Also the projects with such potential environmental or social impacts or sensitive/vulnerable recipient that demand high level of expertise for management and control through the project life come under the jurisdiction of the law. It categorises projects as IEE (Initial Environmental Examination) type or EIA or a non-IEE/EIA type depending on the severity of the impact. These projects may need to undertake IEE or EIA to develop an Environment Management Plan (EMP) and obtain an Environment Compliance Certificate (ECC). Among other things the regulation asks the project proponent to arrange for public consultation through all phases of the IEE and EIA processes and disclose all "relevant" information related to the project to the public in a 'timely manner'. It constitutes an EIA Report Review Body that can be requested by the ministry to review the EIA of any project. It will identify any shortfalls in the EIA investigations or EIA report and would give recommendations on further assessments or studies to be taken. The regulations make the project proponent responsible for monitoring of the project and ask the project owner to notify in writing any violations committed by the project. Monitoring reports would be submitted at least every six months and these reports are to be made public (the procedure, however, is not mentioned) within ten days of completion of such reports.

The ministry reserves the right to inspect the premises of any project proponent for the purpose of monitoring with the help of the Environment Department's officers. It can collect samples, recordings, photographs, etc. Based on the evidence, the ministry would give the proponent sufficient time within which the project needs to be in compliance. In cases where the compliance seems unlikely the ministry can take "appropriate" measures including suspension of project operation. It can also impose penalties and administrative punishment (MoECF, 2015)

Also, while the Farmland Law and the VFV Law enacted in 2012, and Land Acquisition Act 1894, govern the use of agricultural, fallow, and wasteland, there is no overarching law governing the land ownership and transfer for the entire country. Land property ownership is a component of a number of other laws as well:

1. The Constitution of the Republic of Union of Myanmar, 2008
2. Transfer of Property Act 1882
3. Registration Act 1908
4. Transfer of Immovable Property Restriction Law 1987
5. National Housing Town and Country Development Board Act 1951

The effect of "stacked laws"

As mentioned earlier, several old land laws are still in practice. The General Administration Department (GAD)⁹ still refers to the Lower Burma Land Revenue Manual (1876), the Upper Burma Land and Revenue Act & Regulation (1889), and the Lower Burma Town and Village Land Manual (1899). These laws still hold an important place in land administration.

The multiplicity of land use laws often causes them to come in conflict with each other. For instance NLUP upholds the customary land use practices but VFV Law makes it possible to privatise fallow land and wastelands, on which ethnic communities customarily practise swidden cultivation.

Another example of laws contradicting each other is Article 17 (A) of the Land Acquisition Act, which states that only wasteland and vacant arable land can be confiscated in an urgent manner. However, National Housing Town and Country Development Board Act, 1951, allow the land management authorities to ignore that Article and confiscate any type of land without consultation with the landowners. According to Article 23 of Land Acquisition Act, compensation is to be calculated by the court (in event of objection to a compensation award) based on the market price of the day the land confiscation is declared and given to the landowner. However, National Housing Town and Country Development Board Act allows the authorities to create their own compensation rate. The Farmland Law provides a different set of guidelines for calculation of compensation.

As stated by Mark (2016) according to Article 25 (b) of the VFV Law, farmers who have used VFV land granted to them for an established period of time, are entitled to compensation when this land is under conflict with a third party or "original" owners. While this clause has hardly been used, Article 25 (a) of the law, which allows action against the local cultivators who cause "dispute, obstruction, trespass and mischief" to those granted formal rights by the state to use the VFV land, is used by confiscators. Further, Executive Order 1/64 that allows confiscation of land by the government if the land had not been farmed for five years is used selectively by the FAB to grant land to corporates. These clauses allow land grabs to be legitimised and the farmers are criminalised.

Mark says that farmers are often booked under section 427 of Myanmar Criminal Code for trespassing or under section 447 for damage to property. If the farmers resist, the state books them under more serious charges of "defamation of the state" under section 505 (b). According to Assistance Association for Political Prisoners, as of May 2015, 944 farmers faced imprisonment under this charge (Mark, 2016). The issue becomes more severe due to limited capacity of the local administration. As Mark quotes head of a local NGO in her paper: "There is no more land grabbing as the laws are used to legitimise them." (Mark, 2016)

⁹The General Administration Department (GAD) of the MoHA (MoHA) provides the administration for Myanmar's district and townships. It is central to the administrative functioning across the country. It supports coordination and communication between the 36 ministries of the union government and connects the capital with approximately 167,00 wards and village tracts. It collects tax, manages land and its certification and registration process. (Source: <https://asiafoundation.org/resources/pdfs/GADEnglish.pdf>)

3

Land Use Change and Impacts

3.1. Changes in land area by type and distribution

Myanmar’s rapid economic growth has come about due to its land use change. In the last two decades, while it has maintained the land under forests with a slight increase, a significant increase has been in the net sown area and occupied area. The categories of land that have decreased are current fallows, culturable waste other than fallows, other woodland, and land under other categories (see Figure 1).

It should be noted that there seems to be overlaps as the total of all these categories for year 1990-91, is coming out to be 192 million acres (i.e. 77.7 million hectares), whereas the total land area of Myanmar, according to the World Bank is 65.3 million hectares (World Bank n.d.-b). Even this figure of total land area is not constant across years in the dataset—it has been increasing over time. This points towards discrepancy in data maintained by the government. The trend of increase in net sown areas and occupied areas has continued. Current fallows, area under culturable wasteland, other woodland, and some of the other land are the land categories that are used by ethnic communities. Of these, current fallows have seen an increase between 2007 and 2013, which doesn’t imply that fallows are increasing as the amount of fallows keeps varying depending on the amount of land lying vacant between swidden cycles. Also, sometimes land acquired for state-sponsored projects ends up remaining fallow (LCG, 2012). That too may have contributed to the increase. Area under culturable wasteland other than fallows and other woodland has decreased. Overall, it can be said that the categories of land under use by ethnic communities have seen a decline all across these years.

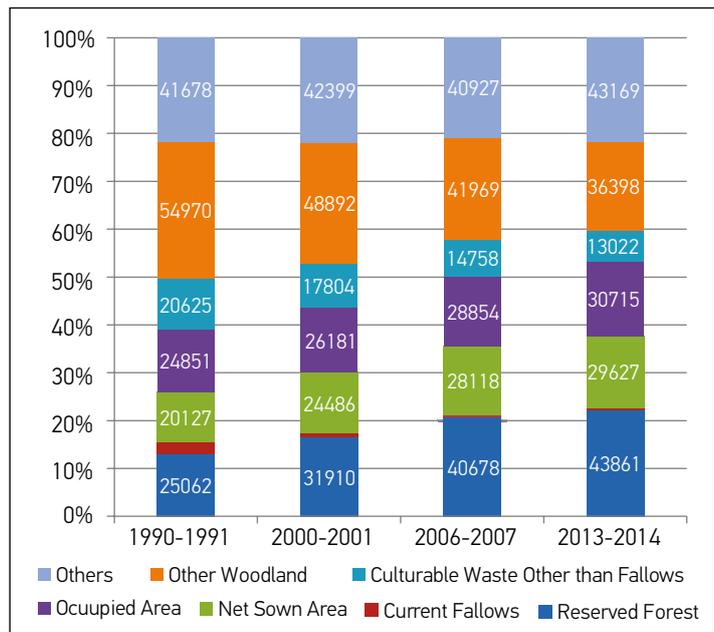


Figure 1: Change in land area by type and distribution between 1990 and 2014
 Source: Central Statistical Organisation and Myanmar Statistical Information Service (in 1000 acres)

Although the land under net sown area has increased, it would be worthwhile to see how much of it is under smallholdings and how much under large agribusinesses. Results of the Agricultural Census 1993, 2003, and 2010 while on one hand show an overall decrease in landlessness (from 52% to 22%), they also point towards a rise in number of holdings of 50 acres or more between 1993 and 2010. The data indicates that a mere 20% of rural households now hold 69% of the farmland and smallholder farmers and sharecroppers hold less than 30% of agricultural land (USAID, 2013b).

If one looks at how the patterns of landholding changed over years in rural households, number of households with less than one acre of land has seen an increase from three per cent to four per cent; number of farmers with one to five acres of land has increased from 23% to 38%; and commercial landholding (greater than five acres) has increased from 22% to 36% (Haggblade et al., 2013) (data is for time period: 1993-2010) (USAID, 2013b). This can mean that land distribution is taking place under the newly instituted land registration system using the Farmland Law and VFV Law in rural areas.

However, land consolidation may also be taking place as indicated by the increase in large landholdings. The shrinking rural population may also have added to this process. From 1993 to 2010, the share of rural population in Myanmar decreased from 75% to 66% (USAID, 2013b). This reduction could also show up as reduction in

landlessness as people sell their lands to other farmers and come to the city. If the increase in net sown area is seen in relation to the increase in commercial-size landholdings, it can be said that agribusinesses are gaining land. Over the past decade, a large number of local companies have invested in land development (TNI, 2013). Between 2003 and 2013, the government of Myanmar has allocated nearly two million acres (nearly 6–8% of total agricultural holdings) of land for large-scale agribusiness companies, many of which are local and have strong links with the military (Woods, 2012b). Global Witness (2015b) notes that by 2013, 5.3 million acres of land (0.03%) in Myanmar was leased out to investors for commercial agriculture. Small-scale farming that supports 40 million farmers all over the country has been neglected (World Bank Group, 2014). While some of the big-scale agribusinesses have been successful, some investors are interested in securing land concessions so that they can invest in mining, logging, or subleasing their land to small scale agribusinesses (MSU & MDRI/CESD, 2013).

Besides agribusinesses, mining, and hydropower have contributed to land use change. FDI in Myanmar between 1989 and 2011 was focused entirely on the extractive and power sector (Bissinger, 2012). According to the Myanmar Statistical Yearbook, 2015 foreign investment in mining industry amounts to USD2,868.683 million and it amounts to USD242.686 million in agriculture (CSO, 2015). Global Witness estimates that the value of official jade production in 2014, alone was well over the USD12 billion indicated by Chinese import data, and appears likely to have been as much as USD31 billion. This figure equates to 48% of Myanmar's official GDP (Global Witness, 2015a). To make matters worse, these sectors are poorly governed. In 2013, the Revenue Watch Institute in its resource governance index ranked Myanmar as the lowest out of 58 countries across Asia (Revenue Watch 2013).

3.2. Land use change by sectors

3.2.1. Small-scale farms to agribusiness

According to a report issued by the Ministry of National Planning and Economic Development, in 2015, five per cent of the total sown area, fallow land, and cultivable wasteland in the country has been marked as land for national entrepreneurs to do large-scale commercial farming. The total landmass of the sown area, fallow land, and wasteland is 17,650,000 acres, therefore, five per cent of that amounts to 961,902 acres (CSO, 2015).

By mid-2013 under the Thein Sein government, over 5.2 million acres of industrial agricultural concessions had been awarded across the country, mainly for biofuel and rubber production, and the majority of these pieces of land were located in the Tanintharyi region (1.9 million acres) and Kachin State (1.4 million acres) (Woods, 2015).

Opium Substitution

Another phenomenon of note particularly in Kachin State is opium substitution agriculture, which is linked to China's Opium Substitution Program. A 2012 report, issued by United Nations Office on Drugs and Crime (UNODC) stated that Myanmar Army and ethnic armed groups have been fighting for years. During that time, local ethnic communities opted for growing opium instead of other crops because opium had better financial incentives. Myanmar has been ranked the second biggest opium producer after Afghanistan (UN News Center, 2015). The report said land used for opium had risen by 17%, from nearly 40,000 hectares (100,000 acres) to 51,000 hectares. Kachin State and Shan State are the biggest opium producing areas in Myanmar (UNODC, n.d.).

For China, its domestic heroin use has been a big concern, so the Chinese are trying to tackle its consumption and production by investing in agriculture in Myanmar's border areas, to reduce opium cultivation there (TNI, 2012). In 2004, the central China government revamped its approach to tackling opium in the Golden Triangle by setting up the 122 State Council Working Group and they aimed to stimulate and coordinate Chinese investment in opium substitution plantations in northern Laos and Burma (Jianwen, 2010).

Under immense pressure from international community, the Myanmar government has also implemented an opium substitution programme. According to the 2015 report of Department of Planning under the Ministry of Agriculture and Irrigation, "Eliminating cultivation of opium poppy through terrace farming to improve the living standard of the people in hilly regions, and preserving and protecting natural environment" is one of its priorities (Kywe & Toe, n.d.). However, the substitution programme has led to further problems as the farmers have lost access to land that has been grabbed by large-scale plantation under the name of opium substitution programme. Therefore, the major benefits have gone to agro-industrial companies (TNI, 2012; Woods, 2015).

3.2.2. Deforestation

According to the 2015 Myanmar Statistics, 30% of Myanmar’s total land area is permanent forest estate (CSO, 2015). As mentioned in section 2.4.5., there are three types of forests within legal classification in Myanmar. Despite all the legal classifications, the state is the owner of all forestlands and wooded lands.

Myanmar Forest Resource Assessments show that the forest cover in 2010 was 317,730 km, approximately 46.96% of the total country area (MoECF, 2014). While forestland is all the geographic area mentioned as forest in the records of the Myanmar government, forest cover is the canopy cover in all lands of a certain acreage, which have a tree canopy of certain density as observed through satellite images (For India, Forest Survey of India defines tree cover as all lands more than one hectare in area having a tree canopy density of over ten per cent). Food and Agriculture Organisation (FAO) (2010) provides the area and percentage of different forest classes as below:

Table 2: Area and percentage of different forest categories in Myanmar

Forest Category	In km ²	Percentage (of total land area)
Reserved Forest	121,842	18
Protected Public Forest	40,949	6.05
Protected Area System	35,106	6.67
Total Forest Area (PFE)	197,899	30.73

It is widely acknowledged in the country that the clearing of forests is being done to make way for the expansion of commercial agricultural lands. Forests are being cleared for legal and illegal logging too (Htun, 2009). Myanmar has the third worst deforestation rate in the world. According to the FAO, between 1990 and 2015, Myanmar lost nearly 15 million hectares of forests and other wooded land (FAO, 2015).

According to a report released by Forest Trends and UKAid, since 2013, approximately 5.3 million acres of forestland have been conceded to private companies that invest in agriculture (Woods, 2013). According to Radio Free Asia news in February 2016a, Kachin State government authorities in

Upland farming

According to Ministry of Forestry, 10.18 million hectares of land in Myanmar (15%) was under swidden agriculture in 2003 (Htun, 2007). Regarding forest areas under swidden, according to Planning and Statistics Division, Forest Department of Myanmar (2008), swidden is practised in 0.29 million hectares of Reserved Forests and protected forests of Myanmar (Schmidt-Vogt et al., 2009). Many of these forests fall in areas dominated by ethnic minorities. The ethnic minorities in Karen, Shan, Kachin, and Chin states practise swidden¹⁰ in forest areas. They constitute 30-40% of Myanmar’s population with ethnic states having 57% of land area under their occupation (Win, 2016). However, all the governments that came before have been intent on promoting industrial agriculture in these areas.

As mentioned earlier, over half of the agribusiness concessions are from Kachin State and Tanintharyi Region. The ethnic minorities have been negotiating with the state for long to have their customary landuse practices included in the legal framework of land governance. Take the example of Chin. The British drafted the Chin Hills Regulation of 1896, so that it could work in a communal system towards preventing accumulation of land with the tribal chiefs and to make equitable land access possible, while not sidelining the customary practices of the community. The customary land systems of Chin were also recognised in the Panglong Agreement of 1947. Even the Land Nationalisation Act of 1953 did not have any effect on the Chin land tenure practices. Mark observes that the “colonial legacy” of allowing hill states to continue customary practices, emergence of armed group of Chin National Front and lack of interest of the state to govern these areas allowed a parallel system of land governance to continue till the passage of 2012 Farmland Law (Mark, 2015).

Throughout the ceasefire time, military government persuaded the armed groups to give up arms and gave them high hopes of benefitting from “Economic Development” (TsaJi, n.d.). But these development projects have reshaped and distorted the traditional relationship of local communities with their land (Mark, 2015).

¹⁰ The names hill agriculture and swidden or Shwe Pyaung Taungya, as it is called in Myanmar can be used interchangeably for the country.

northern Myanmar seized more than 20,000 metric tons (22,046 U.S. tons) of illegal timber near the country's border with China over the last five years. More than 90% of the Burma-China border trade in logs and sawn wood is illegal but the figures from the Myanmar Ministry of Forestry show that no timber crossed the Burma-China border during the financial year 2007-08 and only 38,000 m³ in 2008-09 (Global Witness, 2009).

3.2.3. Mining

Myanmar has been a major contributor of many minerals and gemstones from as far back as the time of the First World War ("Activities and investment opportunities," n.d.). Ninety per cent of the world's rubies come from Myanmar (Crimmins, 2007). In the pre-world war period, Myanmar was the biggest source of lead and silver, courtesy of its Bawdwin mine in northern Shan state (*Frontier Myanmar*, 2018). As of April 2016, as per MoNREC, there were 1,800 operational mines in Myanmar (Myint, 2016). EcoDev¹¹ estimates that there are 2,340 mines in the country with 570 potential additional mines (*Frontier Myanmar*, 2018). For this study, a list of mining permits issued by the Central Ministry of Mines (now called MoNREC) between 1998 and 2015 was obtained with the help Extractives Industries Transparency Initiative (EITI). According to this list, the total number of mine permits granted was 3,411.

The analysis based on this list shows that the number of mining permissions has increased significantly from 2010 onwards, and the highest number of permissions has been issued in 2013 (See Figure 2). However, the area allocated for mining activities is the highest in 2012, at 3.5 million hectares followed by 2008 (2.2 million hectares) (See figure 3). Total area of Myanmar is 65.3 million hectares and as shown in figure 4 total land area under mining is 6.5 million hectares. It means almost ten per cent of land in Myanmar is under mining.

Figure 4 also indicates that of the total mining area of the country, land area for coal, gold, marble, zinc and limestone makes the most.

It has been noted by many researchers that states dominated by ethnic minorities are also the mineral rich areas. The Myanmar section of the

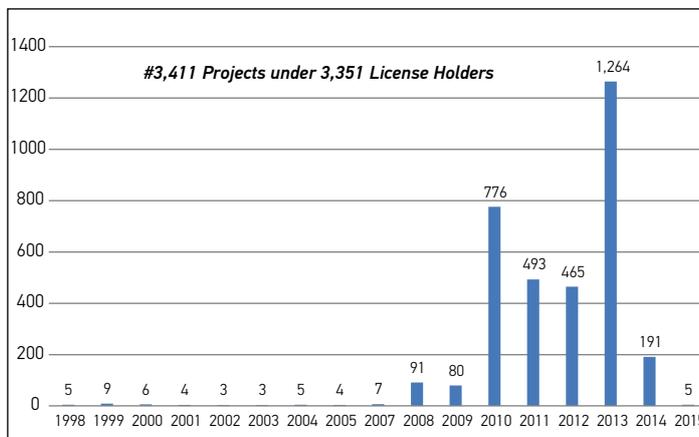


Figure 2: Number of mining projects in Myanmar (between 1998 and 2015)

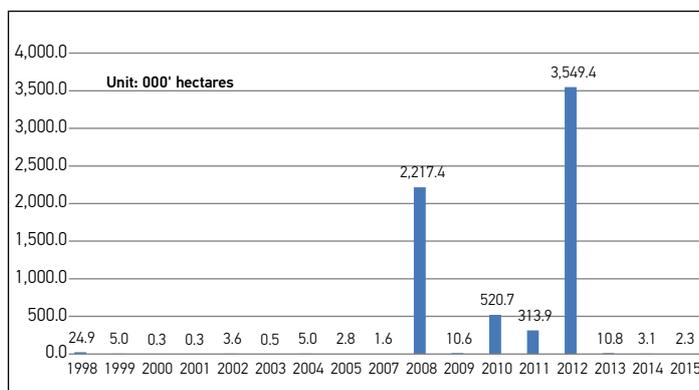


Figure 3: Area under mining projects (between 1998 and 2015)

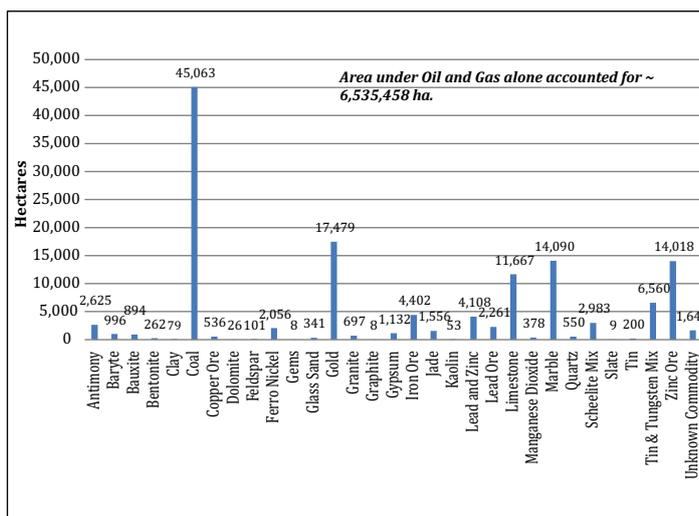


Figure 4: Area under different metals in Myanmar (between 1998 and 2015)

¹¹EcoDev is a "profit-for-purpose" organisation. Since 1999, it has been registered as Ecology and Economic Development Company Limited. It networks for public-private partnership with an aim of "Private sector led sustainable development" in Myanmar. (Source: <http://myanmaraffairs.com/?q=content/ecodev>)

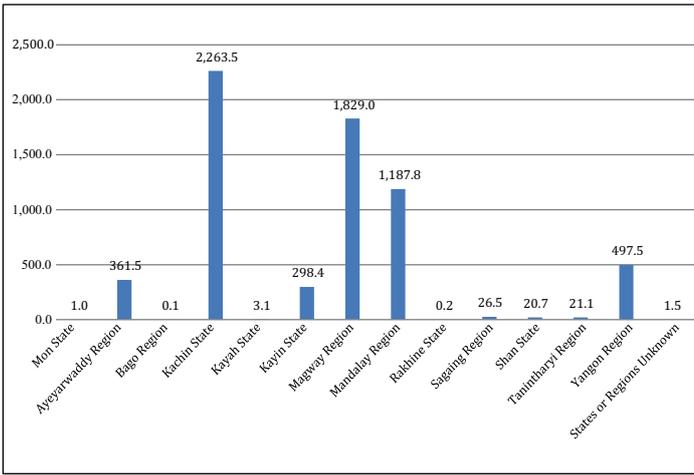


Figure 5: Area under mining across different regions and states in Myanmar (between 1998 and 2015)

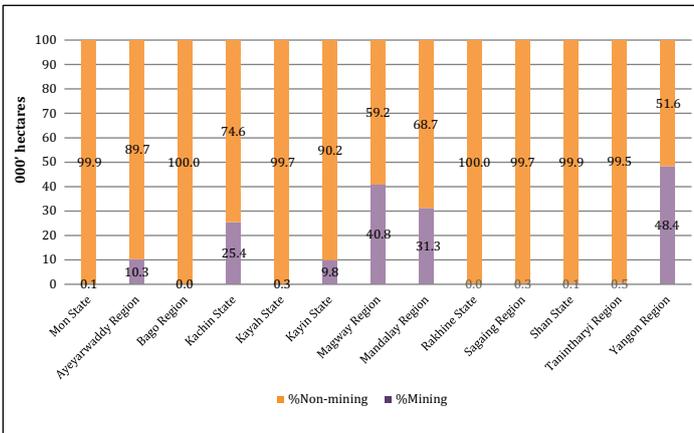


Figure 6: Percentage of an area under mining across regions and states in Myanmar (between 1998 and 2015)

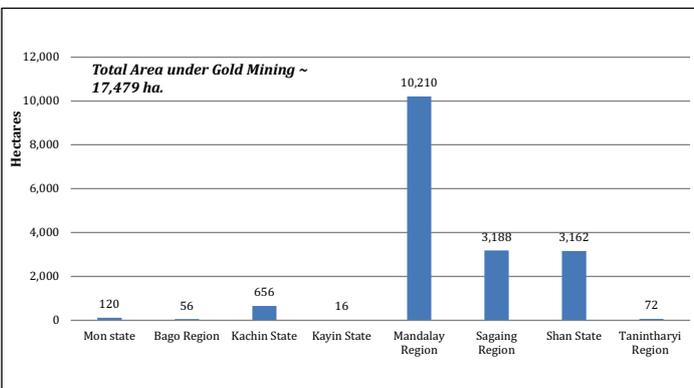


Figure 7: Area under gold mining across regions and states in Myanmar (between 1998 and 2015)

is coming from Sagaing Region, Tanintharyi Region, Shan State, and Kachin State. It is likely that unexplored deposits of Shan State and Kachin State will be licensed out in the coming years. The Myanmar Energy Master Plan sets a target of 30% share in electricity output for coal by 2030 (“Myanmar plans to boost electricity”, n.d.). As of early 2016, Myanmar had plans to build 11 coal-fired thermal stations in states and regions of Shan, Mon, Yangon, Sagaing, Ayeyarwaddy, and Tanintharyi (Kyaw, 2016).

tin and tungsten belt of Southeast Asia¹², which has been exploited extensively by the British and the national governments alike lies in the ethnically dominated Tanitharyi region. Eighty per cent of Myanmar’s mining operations are located in Kachin State and neighboring Sagaing Region (Sathisan & Bain, 2016). These states are the major suppliers of jade and gold. Problems related to resource extraction are prevalent in the mineral-rich regions like Kachin State, which is also known for its significant jadeite deposits. Hpakant, a jade mining area in Kachin State, is one of the most valuable places in Myanmar (Naing, 2014). Gold is mined all along the major rivers in Myanmar particularly in Sagaing Region (Tun, 2014). Figure 5 shows that with 2.2 million hectares, Kachin State has the maximum area under mining. Figure 6 provides percentage area under mining across different regions and states of Myanmar.

Figures 7 to 12 indicate where the top most minerals of Myanmar come from: while gold is being extracted from Mandalay and Sagaing regions and Shan State, tin and tungsten come from Tanintharyi Region and Yangon Region. Zinc is from Kayin and Shan states. Coal mining dominates in Sagaing Region, Tanintharyi Region, Shan State, and Kachin State. Most of the marble is coming from Mandalay Region and some comes from Rakhine State. Limestone is procured from a number of areas with Mandalay, Tanintharyi, and Ayeyarwaddy regions leading in it.

With its electrification targets being heavily reliant on thermal power, coal mining is also picking up in the country (“Myanmar plans to boost electricity”, n.d.). According to data from the Ministry of Electricity and Energy (MoEE), in 2016, the share of coal in Myanmar’s electricity output was two per cent. According to Figure 10, 90% of the total coal generated in the country

¹²Tin and tungsten belt of Southeast Asia is spread across eastern Myanmar and North-western Thailand crossing through Peninsular Malaysia to the Indonesian islands of Signkep, Bangka, and Belitung. (Source: <http://www.portergeo.com.au/database/mineinfo.asp?mineid=mn438>)

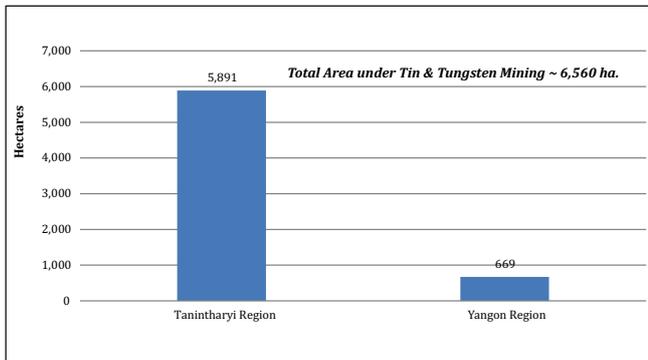


Figure 8: Area under tin and tungsten mining across regions and states in Myanmar (between 1998 and 2015)

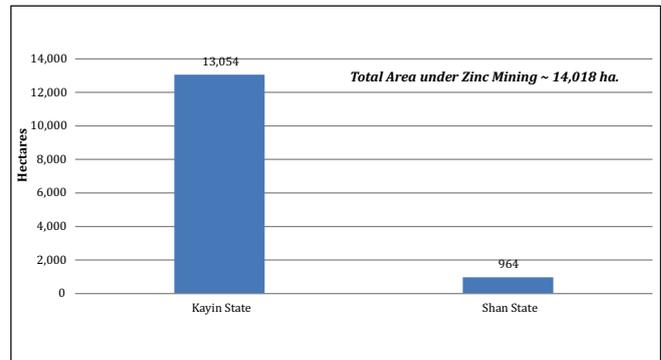


Figure 9: Area under Zinc mining across regions and states in Myanmar (between 1998 and 2015)

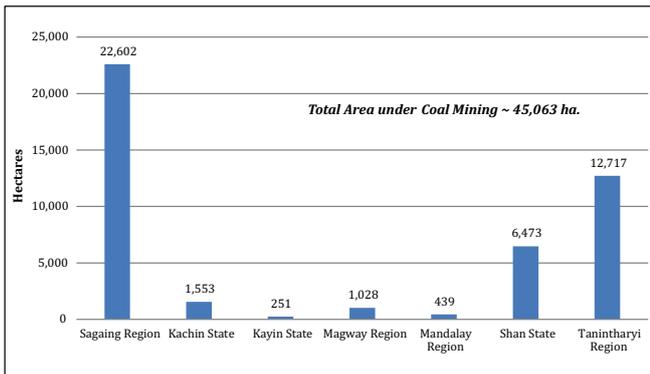


Figure 10: Area under coal mining across regions and states in Myanmar (between 1998 and 2015)

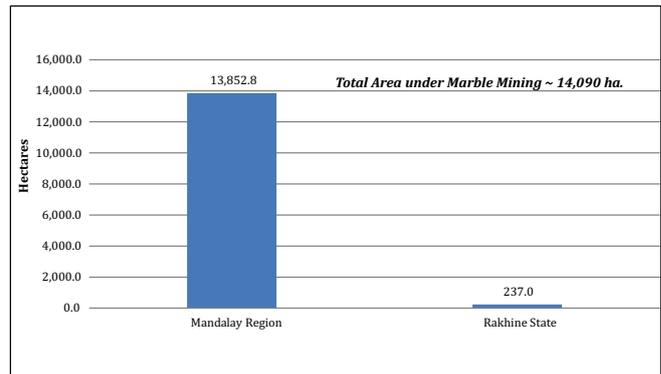


Figure 11: Area under Marble mining across regions and states in Myanmar (between 1998 and 2015)

3.2.4. Industrial and economic zones¹³

In April 2011, the government formed the Industrial Development Committee to boost the country's economy and prioritise the development of industrial zones. This committee supervised the development of 19 industrial zones throughout the administrative divisions and states. It has also planned the development of eight more zones (ADB, 2014). As of February 2013, there were 27 industrial zones four of which are in Yangon Region, and remaining in other divisions and states (Robertson & Taung, 2015). A report issued by Land Grabbing Reinvestigation Commission in 2013, stated that it received 63 complaints concerning 109,634 acres of land that have been used for expanding industrial zones. Most of these complaints came from Yangon and its neighboring towns (Pyidaungsu Hluttaw, 2013).

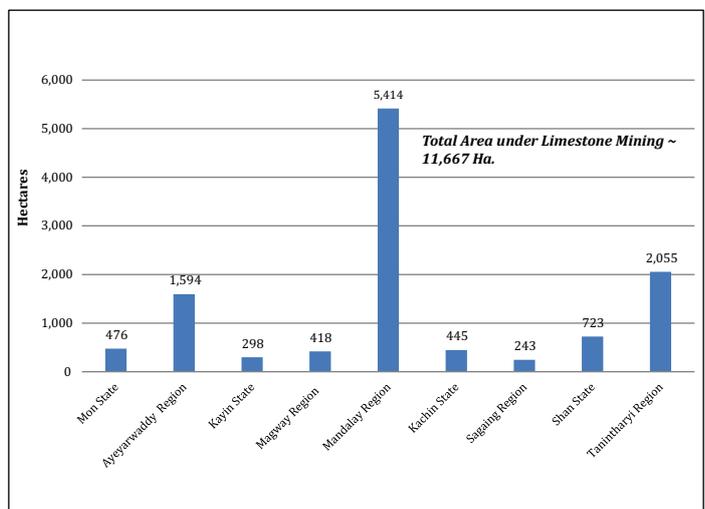


Figure 12: Area under limestone mining across regions and states in Myanmar (between 1998 and 2015)

One sector that is seen as key to attracting future foreign investment is Special Economic Zones (SEZ). There are currently three major SEZs in Myanmar at different stages of development: Thilawa SEZ in Yangon Region; Kyaukphyu SEZ in Rakhine State; and Dawei SEZ in Tanintharyi Region with investments sought from Japan, Thailand, and China. In Myanmar, once an SEZ project is started, local residents are threatened by land loss and expropriation, followed by land disputes. All three of the SEZs in Myanmar have been initiated without any consultations with the public. Local communities have been affected by the location of these SEZs and they have been exploited in terms of compensation and due benefits.

¹³Composite figures on land conversion for industrial and economic zones could not be located.



Fisherfolk of Dawei will be severely impacted due to Dawei SEZ

3.2.5. Hydropower¹⁴

Another sector that is looking at a large-scale land use change is hydropower. As yet the country has only developed about 3,000 MW of hydropower but has plans for projects of 46,000 MW capacity (Walker, 2017).

Unequal rates of electrification in Myanmar

Myanmar has the lowest per capita energy consumption in Asia. Although nearly half of the country's population has access to electricity, rural electrification rate is only 28% (OECD, 2013). Of a total of 62,000 villages, only 3500 villages have access to the grid. While the government sets electrification targets under the Electricity Law 2014, there are no separate targets for rural electrification. So far, there is no policy for rural electrification (Tun, Kennedy, & Nischan, 2015). If one leaves the major business centres aside, the electrification rates in Myanmar are low and some remote ethnic regions have near-zero electrification. The two ethnic minority provinces Tanintharyi Region and Rakhine State, the sites of Yadana and Shwe gas pipelines, have the lowest levels of per capita electricity use in the country (Simpson, 2016). When compared with Yangon Region, the consumption rates are miniscule (see Table 3). Yangon Region has 67% of its population connected in contrast to under 30% for the rest of the country (Chrisman, 2014)

The government has set a goal of reaching 100% electrification by 2030, and 38% of it is expected to be provided by large dams, with the rest from natural gas and coal and a little from renewables (Kyaw, 2016). The military government in the past had signed deals with investors from China, Thailand, and India, to develop 50 more dams in Myanmar, most of which would send power back to these nations (Walker, 2017). However, the deals with India got terminated (for details, see section 6).

Table 3: Electricity consumption of Yangon Region, Tanintharyi Region, and Rakhine State:

Area	Per capita electricity consumption (kWh)
Yangon region	569.0
Tanintharyi Region	5.0
Rakhine State	3.5

¹⁴Composite figures on land conversion for hydropower could not be located.

4 | Impacts of Land Use Change

According to a 2014 survey, 55% of the total village tracts in Myanmar's seven states, which are dominated by ethnic communities, have been subject to negative impacts from mining, timber production, industrial farming, and other forms of production industries since 2012, after ethnic armed groups agreed on ceasefire with the military (The Border Consortium, 2014). While the case of ethnic areas is peculiar due to their rich resource-base, smallholders in the lowlands of Myanmar have also suffered. The Report on Myanmar Census of Agriculture, 1993 states that agriculture in Myanmar is "characterised by small-scale, subsistence family farming". At that time, in 1992-93, over 98% of the agricultural landholdings in Myanmar were household-based holdings and more than half of these were below five acres (Thein, 1997). As indicated in section 3, land consolidation is taking place turning small farms into agribusinesses and driving many smallholders towards poverty. Effects of the land use changes are manifold but they begin with three key impacts on communities: loss of land, loss of livelihood, and environmental degradation.

4.1. Displacement and loss of land

Forced evictions and large-scale displacements, where communities are paid meager or no compensation for the loss of land and other property, have been going on in the country since the military regime. Forced nature of displacement continued through State Peace Development Council that caused displacement of hundreds of thousands of people especially in ethnic areas in the 1990s. Many smallholders lost their lands and became tenant farmers on plantations or cheap labour in mines and industries and many migrated to Yangon and Thailand. "Land grab" is a widely acknowledged, commonly used term in Myanmar to refer to the state-driven forced acquisition of land. Even after the first free elections of Myanmar, takeover of land for large-scale industrial, agricultural, mining, and power projects has been going on.

For instance, the Letpadaung copper project in Sagaing Region involves the acquisition of 6,785 acres of land, largely farmlands, from 30 villages. Between 2011 and 2014, the Myanmar authorities and Myanmar Wanbao (a Chinese mining company) forcibly evicted people without genuine consultation, due process, legal remedies, adequate resettlement, and compensation. Myanmar Wanbao has taken over approximately half of the land required for the project from the 30 affected villages. Two hundred and forty-five families from four villages have been moved to resettlement sites. One hundred and ninety-six families have refused to move and many people from the other affected villages are refusing to give up their farmlands. These people are now at risk of forced eviction (Amnesty International, 2014).

Myotha Industrial Park in Mandalay Region is one of the many cases of land takeover for insufficient compensation. The project was started in 2013, by a domestic company Mandalay Myotha Industrial Development (MMID) over 10,000 acres of land owned by over 1,000 households in 14 villages. As per the report, *Land of Sorrow: Human Rights Violations at Myanmar's Myotha Industrial Park*, in 2013, MMID paid MMK two million per acre to landowners with Form 7, and MMK 500,000 per acre to others. Farmers complained that only 10-25% of their total land taken over by the company has been accounted for in the compensation. Many farmers divulged that they accepted the low compensation out of fear as the company and the local authorities threatened them. At least 55 villagers were arrested many of who had not accepted the compensation and had tried to disrupt company's process of preparing the land. Under political and international pressure created by the communities and NGOs, the MMID and Mandalay Region government are trying to offer the landowners 480 square feet of land in the housing zone of the industrial park. However, 16% of the farmers have refused to accept this agreement (Win, 2017).

In Tigyit coalmine in Shan State, the largest coal mine in Myanmar, a total of 321 individuals were forced to relocate in 1998, when the land was acquired; some received compensation and some did not. Many villagers lost their farmlands and had to look for alternate sources of income. Some started working as agricultural labour on farms in neighbouring villages. The villagers, currently are living under the threat of

expansion of this mine and the operation of a thermal power plant (*Ref: Case Study I: Coal casts a dark shadow over Tigyit*)

Nay Pyi Taw Union Territory¹⁵, a greenfield city built on farmland was named Myanmar's new capital in 2005. The military government that ruled Myanmar for a half-century, confiscated farmland to build the planned administrative capital. Sean Turnell, an expert on the Burmese economy with Macquarie University in Sydney, Australia, said the cost of building this city was around USD four billion to USD five billion (NYT, 2008). According to the 2015 Myanmar Statistical Yearbook, the total area of Naypyidaw territory covers 2,728.875 square miles (CSO, 2015). How much of this was village and private farmland is not known.

The Nay Pyi Taw Development Law was enacted on 29 December 2009, during the time of the military government. In 2014, a member of the Union Parliament Land Investigation Commission pointed out that this law has created many land issues for local farmers. The authorities and their crony businessmen have grabbed land plots near Dakkhina Thiri Township of the Nay Pyi Taw Council Area, while the local landowners are being charged with trespassing on private lands. The commission member called for a reformation of the law (The Nation, 2014).

The local publication Eleven News Journal states that a total of 1,500 acres of land were seized under the Thein Sein administration for housing projects in the diplomatic zone in Naypyidaw between 2011 and March 2016. The Committee for Farmers' Affairs has received about 500 complaint letters from citizens, most of which are related to housing development projects (Eleven Media News, 2016). In urban areas, housing projects are followed by other infrastructure projects such as construction of roads and bridges. These infrastructure projects have also used farmland. The Asia Highway, a large-scale project funded by the Asian Development Bank and Thailand's Neighbouring Countries Economic Development Cooperation Agency (NEDA) has a section of it passing through Southeastern Myanmar from Eindu to Kawkareik town crossing 17 villages and three townships (Hpa-An, Kawkareik and Kyonedow townships) in Doolaya and Hpa-an districts. Construction of this segment is being supported by ADB. It has violated the villagers' right to FPIC, and individual properties and livelihoods are expected to be negatively impacted including displacement of many. The ADB project document says that the project would impact 154 households including loss of land for 125 households (KHRG, 2015). At least 17 households lost their lands as of August 2016, for the construction of its NEDA segment between Thin Gan Nyi Naung and Kawkreik. Also, many were coerced into accepting unfair compensation (KHRG, 2016).

The state has also confiscated land in the name of tourism. Local media has covered the Nay Pyi Taw Hotel Zone Project in detail; therefore, some information is available regarding this (Mon, 2014). Like other government departments, Myanmar Tourism Development Public Company has ignored the guidelines of the Land Acquisition Act, 1894, as it has approached farmers individually and convinced them to accept compensation that is less than the market price (MCRB, 2015b). According to MCRB's assessment report of Tourism sector, farmers are confused by the behavior of government officials because these officials have been persuading them to sell land, as they cannot grab land blatantly under the new regime (MCRB, 2015b).

SEZ projects are taking over large stretches of farmland in the name of economic development. Take the example of Thilawa: the construction of Thilawa Special Economic Zone was announced in January 2011. It is located near Yangon river and is 25 kilometers away from Yangon City. The military government started confiscating land from the local farmers in 1997, using the land laws prevalent then (Earth Rights International, 2014). Some farmers received very little compensation while others received none. Since this took place during the time of the military government, the farmers could not voice their protest. At the end of 2012, the governments of Japan and Myanmar signed a memorandum of understanding to develop the Thilawa SEZ, and the Japanese government pledged a ¥ 50 billion (USD500 million) loan to start the project. The Japan International Cooperation Agency (JICA) represents the Japanese government in the Thilawa Project (The Ministry of Economy, Trade and Industry of Japan, 2012). The project is divided into multiple phases: phase one, which began in 2013 includes the development of a 400 hectare area and phase two will develop 2,000 hectares in nearby farmlands (*For details, see Case Study V: Thilawa residents brace for upcoming land transformation*).

¹⁵While in official government documents 'Nay Pyi Taw' has been used, in media and donor reports 'Naypyidaw' is used. In this report whenever we are referring to a legislation or a government institution or body, we have used 'Nay Pyi Taw', else Naypyidaw has been used.

The Thai-funded Dawei Special Economic Zone in Tanintharyi Region was originally designed to be one-quarter the size of Singapore, creating hundreds of thousands of jobs and generating up to five per cent of Myanmar's GDP. A memorandum of understanding (MoU) was signed between Thailand and Myanmar to develop an industrial estate and deep seaport in southern Dawei district in 2008 (The Nation, 2012). The Dawei Special Economic Zone Law was passed on 27 January, 2011. The project is to be completed in three phases over a period of about ten years, from 2010 to 2019 (Win, 2012). Some villages in surrounding areas would be affected, as well as people living along the road to the coast by the project. However, since the signing of the original agreement, progress slowed because of lack of funds (Lwin, 2012). The biggest challenge for this project is that it can only continue and receive further funding if the local residents give their consent. Many experts and observers have speculated that Dawei SEZ will be a failure (Maierbrugger, 2013).

Near the end of 2015, the government announced its final decision regarding the construction of Kyaukphyu Special Economic Zone. It was stated in the *Global New Light of Myanmar* issued on 30 December, 2015 that the Union Parliament gave green light to the project that included a deep-sea port, an industrial park, and a housing project. The project area is 4,289 acres. This project will negatively affect local farmers while the project itself may experience some form of disruption caused by the ongoing conflicts inside Rakhine State. Most of the area that is proposed to come under the planned township is populated by poor fishermen and farmers, whose property and livelihoods will be significantly disrupted by the SEZ. The military government had confiscated farmland in the past from the local residents in the name of rural development. Many acres of confiscated land have been transferred to well-connected cronies and high-ranking military officers. Some of this land has also been sold back to foreign investors for the construction of Kyaukphyu SEZ (Mizzima News, 2016).

Another project that has caused land issues in Rakhine State is the Shwe Gas Pipeline, located near Kyaukphyu. The Shwe Gas Project is a large-scale natural gas project in Myanmar developed by Daewoo International Ltd. of South Korea; Korea Gas Corporation; ONGC Videsh Ltd. of India; and GAIL Ltd. of India, in a joint venture with the Myanmar Oil and Gas Enterprise. The state-backed newspaper *New Light of Myanmar* reported on February 2011, that Daewoo would launch production of gas at the Shwe Project by 2013. The pipeline is



Factories in Thilawa SEZ pose pollution threats for locals

in operation currently and passes through two states and two regions of Myanmar, where tensions and conflicts have occurred. In mid-May 2013, two employees of a Chinese National Petroleum Corporation (CNPC) sub-contractor were shot and killed on a project site in northern Shan State (Shwe Gas Movement, 2013).

Besides these projects, agricultural plantations have also had impacts. Karen News mentions that the former military regime and the new government has granted and leased land to contract farming projects, such as rubber and palm oil projects. Many of these areas are around Karen villages and include land that villagers use for farming and the forests that local people conserve (Karen News, 2013). An agricultural system in which a number of small-scale farmers grow multiple crops has become a monocrop system that employs a small number of people and is controlled by companies. Some of the new land users have opted for growing cash crops. Naung Chan village in Kachin State witnessed land grab in the name of grazing land. 1,600 acres of land that comprised of individual titles was designated by the village authorities as grazing land. The villagers suspected that it was a planned move to rent out 300 acres of this land to Chinese companies for banana plantations. According to news released by Eleven Media Group on 18 November, 2016, local residents in Kachin State voiced their concerns about Chinese companies buying thousands of acres of land in the state and turning the land into banana plantations (Win, 2016).

4.2. Livelihoods

4.2.1. Agriculture-based livelihoods

Direct impact of loss of land for many farmers and smallholders means a loss of livelihood. Farmers made landless, find it hard to secure jobs with stable income; the random jobs they pick up are unstable and pay very little. This situation has forced many farmer families to stop sending their children to school for they can no longer afford the expenses. These children help their parents by doing work for money, or they look after their young siblings and help with babysitting, when the parents are not home (PYO, 2011). As per FAO's report of 2015, more than 20% of households in each village are landless and work as wage-labourers. These 20% households only own less than one acre of land (Srinivas & Hlaing, 2015). The Paunglaung Dam case was



Loss of land for smallholder farmers of Myanmar pushes them to pursue unstable and less-paying jobs

widely reported in the media for the impacts it has had on the economic conditions of those whose agricultural lands were submerged in the project (*Ref: Case Study II: Its not water under the bridge for Paunglaung*).

The construction of Mone Hydropower Dam was started in Magwe Region back in 1995. By the time the construction was completed in 2004, 13 villages were submerged. The villagers relocated to a hill near their original villages. When asked whether the villagers received compensation and other forms of support for their relocation from the government, the respective government authorities replied that they were not responsible for anything because the displacement was not caused by land confiscation but by the flood (Land in Our Hands Network, 2015).

4.2.2. Coastal livelihoods

According to FAO (2006), Myanmar has 3,000 km long coastline supporting a vast network of fisheries livelihoods. Fishery sector employs five per cent (three million) of the total population of Myanmar. Most fishermen reside in Ayeyarwaddy Region, Mon State, Tanintharyi Region, and Rakhine State (Htoo, 2013). Marine fisheries in Myanmar accounts for about 75% of the total fish production, with the rest coming from inland fisheries. These coastal livelihoods have come to be impacted by the trend of intensive coastal land development. Dawei SEZ, planned over an area of 2,000 hectares in Tanintharyi Region, destroyed a vast area of mangroves. The SEZ is over eight times larger than the existing Thilawa SEZ (Mekong Watch, 2016). In December 2013, 30 villagers from Char Khan fishing village were asked to vacate the area for the first phase of the SEZ, when three fishers refused to move, they were imprisoned for a month. According to Aung Ko of Scholars' Institute (2017), "The government put a restriction on fisheries to facilitate Dawei SEZ". Three households of those who were moved migrated to Thailand and the fishing families that moved to the relocation site are struggling to make ends meet. In Yaw Dut Thar Village, 11 families dependent on salt making for livelihood are working as daily wage labour (DDA & local villagers, 2016).

4.2.3. Forest-dependent livelihoods

Farmers, who are dependent on forests, are often penalised for pursuing their livelihoods within forest areas. In August 2016, the Labutta Township Forestry Department sued 12 local farmers for illegally fishing, breeding prawns, and felling wood in a forest reserve. In order to plant a mangrove forest, the Labutta Township Forestry Department confiscated land from the farmers in 1992. The project was not implemented and the department handed the land over to another set of farmers. U Aung Moe Win, Chairman of the Labutta Farmer's Union, said that the tension between the FD and the locals is unavoidable if the FD continues to sue local farmers for trespassing on the forest reserve. "The forestry department did not enforce forestry laws in the past, but now they are applying them without studying the situation on the ground. I would say it is wrong to conserve forests in this way," he said (Zin, 2016).

Besides these livelihoods, artisanal mining activities are also disrupted due to large-scale mining operations. For instance, communities who traditionally made their living from small-scale jade collection, have been systematically squeezed out by government-licensed concessionaires. Now, some of them make a living by picking pieces of jade in the waste dumped by the mining companies. The same has been observed in Hpakan Jade mine in Kachin state (Reuters, 2015).

4.3. Environmental pollution

While land loss and impact on livelihood is seen immediately after the land transformations take place, pollution impacts start emerging gradually. People living close to the industrial projects, who most often are the ones initially displaced for initiation of these projects, find themselves facing the pollution impacts on a daily basis. Toxic and harmful wastes are discharged in local water sources and garbage is dumped on their farms and grazing lands. Air pollution and decline in groundwater are other challenges they are forced to live with.

In one of the cases that Namati Myanmar is working for in Tachileik, Eastern Shan State, the local villages suffer from pollution caused by the trucks constantly driving past them carrying coal. The dust from mines spreads and settles on the water sources, houses, and vegetable fields, threatening the well-being of people's health. There have also been problems coming from Tigyit Coal Mine. The Tigyit project spews dangerous



Coal refuse of Tigyit Coal Mine contaminates nearby farms

chemicals and pollutes the water and air. The operations compromise access of communities to their fishing areas, farms, and forests. Waste from the mine is dumped either on the grazing lands or on the path to the grazing areas. This inhibits their access to the grazing lands and their inability to raise animals has pushed the farmers to sell them cheap (*Ref: Case Study I: Coal casts a dark shadow over Tigyit*).

According to the Environmental Conservation Law (2012) and by-laws (2014), every company must have environmental management plans. However, it is not the case with Tigyit Coal Mine or the waste heaps created by the mine in Hpakant as the mining companies do not pay attention to how the waste is disposed. Some people, both local and from other parts of the country, enter these waste sites and search for jade illegally. Therefore, there has been a debate in local media as to who should be held responsible for the lives lost in the landslides (Htwe, 2015). There are several reports, which identified the adverse impacts of dams and reservoirs on the environment especially on biodiversity, forest, and altered water flows (BANCA, 2009). Lakes in industrial zones have been reported with high level of contaminants. Wastewater from the industries of Shwe Pyi Thar Industrial Zone is released indiscriminately into nearby water sources. Wastewater in Shwe Pyi Thar and Hlaing Tharyar industrial zones has been found to be high in organic pollutants. In 2014, Yangon City Development Council (YCDC) had ordered closure of three factories at Shwe Pyi Thar Industrial Zone. In the past YCDC had found that most of the 300 factories situated in Yangon did not have systems for waste disposal in place (Phyu, 2016).

5 | Land Conflicts

As part of this research study to understand land use change and conflicts, a quantitative analysis of 75 cases of conflict was carried out. For the purpose of this study, conflict is understood as the first known collective action against an existing or an upcoming project. This action could be about resisting the project or seeking certain demands from the state/project owners in lieu of the project or demanding certain changes to the process and/or timeline of approval and/or setting up of a project or project design or location.

Method: For the study media reports of such collective actions were relied upon. Since the primary criteria for selection of cases was that there must be a report of a collective action, these cases have been randomly picked up through online research from media reports; reports of international research and aid organisations; research papers; opinion pieces; photo essays; etc.

Limitation: The project team has been cognisant of the limitation that the media may pick up only “flash point” events in life of a conflict, such as flooding due to dam burst, public hearings for expansions, effluent discharge or accidents in the project site, and court decisions or international advocacy related to projects or sectors. The analysis is based on the information available online till the end of October 2017.

Out of the 75 cases taken for this analysis, 53 cases are concerning the power sector (with 36 cases concerning hydropower projects and 17 on thermal power projects); 16 cases concern mining; three cases are pertaining to SEZ; two cases are about industry; and remaining one case is in response to an infrastructure project. The only infrastructure project is a port in Rakhine State and one of the two industrial projects is a plant manufacturing sulphuric acid for treatment of copper ore extracted from a nearby mine. Industrial zones do not feature in this selection as their construction is only picking up pace now in Myanmar and land acquisitions for the same are still underway. While there are reports of impacts (see section 4.3) from the ones that exist, they do not feature as conflicts.

Of the 75 cases that were randomly selected for the analysis, 51 were found to be from areas dominated by ethnic groups. Forty-three of these are from the ethnic states and seven are from Tanintharyi Region, which has a large population of ethnic Karen people. This result in itself is reflective of where the current development focus of the government lies and where the conflicts are erupting.

5.1. From impacts to conflicts

Transformation of the rural landscape for industries, infrastructure, agricultural plantations, and conservation projects leads to impacts for people dependent on land and natural resources. However, not all impacts translate into conflicts. While impacts are experiential, conflicts are spoken forms of these impacts and are most often indicators of underlying injustices and biases. Conflicts are the actions through which impacts are communicated to those in power, those who could be agents in meting out justice to them or to those who can influence the pace or design of these transformations. There is usually a time lag between impacts and conflicts arising out of land use change. However, when people know of likely impacts, this gap is less or non-existent. Another reason for the time lag is often a hostile political context that does not grant an opportunity for communities to voice their concerns.

Conflicts do not pan out in a smooth, linear manner, but in a staggered way. They evolve, influence, and get influenced in the process till they are resolved. Thus a number of questions arise: Which impacts get translated into conflicts? When do these conflicts arise? Which strategies are used to resolve these conflicts? The following section is an attempt to answer these questions.

The political and economic changes in Myanmar have had an effect on how and when the impacts become conflicts. More and more impacts of land grabs and confiscations done in the past are coming to light, being spoken about and being actively pursued for justice. A country-wide research carried out by the network,

Land in Our Hands, through interviews with over 2000 individuals who faced land confiscations, reveals that 3/4th of the cases of land grabs took place between 1990 and 2009 and many cases occurred after 2010 as well (Land in Our Hands, 2015). However, many of these cases came to fore only after 2010 when the country transitioned to a democracy.

Since the data collected for this study relied on media and donor reports of conflicts, the cases in which the smallholders sought restitution of their lands, grabbed during the military rule, do not get reflected in it. Individual reports of these cases are not many; generally these cases are spoken about in large numbers and in geographic terms. The database of 75 cases created for this study represents the cases of conflicts other than those being pursued with the special commissions and committees for repatriation of land, grabbed by the army.

According to this dataset, of the 75 cases, conflicts have been reported in the same year as the year of execution of agreements for projects in 22 cases. In 48 cases, conflicts have been reported much later. It has been observed that conflict erupts when the physical dispossession of land takes place or when some work starts on the land in question. Maximum time between project commencement and conflict is 21 years. This was the case of a hydropower project initiated in Sagaing Region in 1996. While the farmers faced land loss at the time, when 72 villages were relocated for the construction of the dam, the impact did not get translated into conflict then, perhaps, due to the repressive practices of the erstwhile government. The conflict erupted in 2017, when the government authorities closed down small, unregulated gold mines near Thapansaik Dam in Sagaing Region. The government authorities of Sagaing Region stated that it was done to prevent siltation of the dam due to disposal of sand into the river. This has affected the livelihoods of not just hundreds of miners but also many residents of villages along the Mu river, who used to supply oil to these mines (Wai, 2017).

The data for 48 cases in which the conflict erupted after a year, shows that the average time taken for the conflict to erupt is 5.2 years. However, in 14 cases the conflict emerged in the year following the year of announcement/execution of agreement for the project. There are three cases where the conflict began before the project announcement/agreement date, with time period ranging between one and two years before the conflict. For two cases, this information is not available. For information on cases in which conflict emerged after the project was announced/executed, see figure 13.

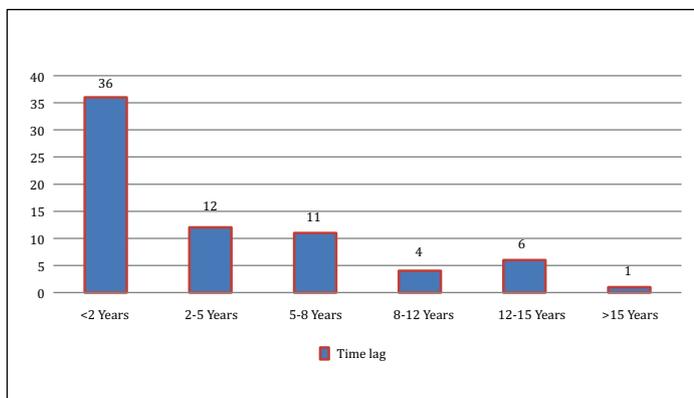


Figure 13: Impact to conflict: Time lag (based on the quantitative analysis of a database of 75 cases)

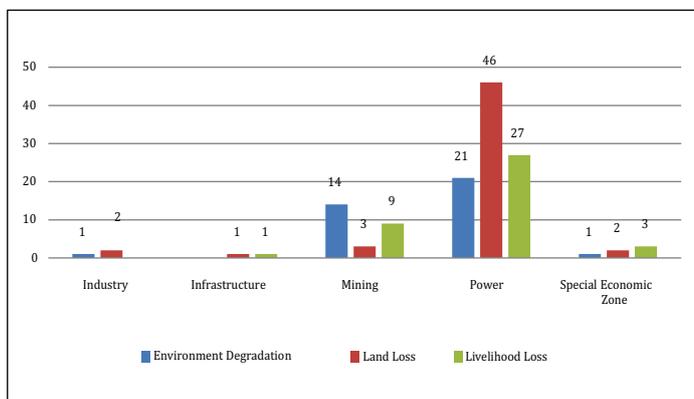


Figure 14: Causes of conflict (based on the quantitative analysis of a database of 75 cases)

5.2. Causes of conflict

The dataset shows (Figure 14) that land loss is the leading cause of conflict experienced by the communities, especially in the power sector projects such as hydropower and thermal power, followed by livelihood loss and environmental degradation. In the mining sector, environmental degradation is the prominent impact followed by livelihood loss, as per the communities. It should be noted that in two cases of mining of gold, the communities reported livelihood loss as a cause of conflict. This can be explained by the fact that communities in Myanmar have been mining gold in artisanal way for ages. With the arrival of big mining companies, many artisanal miners face the threat of losing their livelihood. For this data, a general point of observation is that the communities do not report these

impacts in isolation. Since in most cases, these impacts are interconnected, land loss, livelihood loss, and environmental degradation are also reported in combination with one another (see details in Table 4).

Commonly observed combination is land loss and livelihood loss. This could be understood by looking at the number of hydropower projects

represented in the dataset. There are 36 hydropower projects, which makes it the most represented sector in the dataset. Of these, 32 cases have led to conflict because farmers were losing or had lost land. Twenty of these cases have livelihood loss also reported as a cause of conflict. Remaining seven cases reporting this combination are from the thermal power sector (four cases) and SEZ and port (three cases). These were largely from areas where smallholders had lost their agricultural lands to dams, ports, and SEZs.

Table 4: Different combinations of causes of conflicts (based on the quantitative analysis of a database of 75 cases)

Combination of causes of conflicts	# Cases
Environment degradation and Land loss	18
Environment degradation and Livelihood loss	11
Land loss and Livelihood loss	27

6 Strategies for Seeking Remedies

6.1. Strategies used (based on generic observations)

The citizens of Myanmar have faced tremendous injustice over long periods of time in the form of dispossession of their lands, loss of livelihoods, and being booked under criminal cases. Under the new democratic system, Bamar nationals have made efforts to protect their land claims by registering their lands under the new laws of the government. Ethnic groups face a different struggle altogether. A national cease-fire was initiated by the Thein Sein government in 2011. This is because the ongoing civil war between the Bamar dominant state and ethnic minorities has posed hurdles to the dream of a unified state of Myanmar. However, this ceasefire is as much about peace in the country as it is about the governance and control of land and other natural resources. Through the peace talks, the ethnic groups seek to establish formal legal rights to govern their lands as per their customary practices. At the same time, as an alternative, they are also considering the protection granted to individual farmers through the new laws.

Efforts to seek justice under the new political regime have meant that cases of coercion and forced relocations done in the past are still being filed and reported. Citizens are engaged in many efforts to seek redress for past injustices as well as respond to new threats of forced land use change.

6.1.1. Legal and political education

The government has put in place new laws for land registration and repatriation. However, these mechanisms have proven ineffective by their own standards to resolve land conflicts. The government claims that this is due to the farmers' inability to understand law and demand their rights, which the government thinks can be addressed through public education. When Human Rights Watch asked Ministry of Agriculture in October 2015, about land complaints from Karen State, the officials replied that they had not received any complaints and they suspected that either farmers were not aware of this procedure of filing complaints regarding land confiscations or they found these mechanisms inaccessible or not useful (HRW, 2016).

Many NGOs and CSOs are working with farmers to build community awareness for land laws and regulations. On January 16, 2015, the Central Farmland Management Body instructed all FABs to issue LUCs to current land users on top priority. This opportunity has been used by farmers and companies alike. Although land registration or a land certificate doesn't really provide a safeguard against state's attempts at land take-over, it may offer better compensation and rehabilitation package. Hence, NGOs like Green Peasant Institute have conducted workshops to raise awareness on the certificate granting procedures and encouraged farmers to apply. It organised 20 workshops in Ayeyarwady division (Soe, 2015). Pyo Khin Thit Foundation in Maubin, Ayeyarwady Region ran a newsletter in 2013, for nine months covering issues related to land disputes and government departments. It built the much-needed awareness among the farmers of Maubin on legal issues around the land disputes (Soe, 2015). Activists like Bawk Ja, chairperson of National Democratic Force (NDF) in Kachin State have been educating villagers about their rights so that they can assert them on their own (Win, 2016).

6.1.2. Creation of networks

While groups at the grassroots level are involved in legal education and working with smallholders and landless peasants, most national NGOs, have been engaged in building networks of community based organisations like the ones mentioned before. They don't provide direct support to grassroots organisations or help solve their land cases, but facilitate a network that builds the capacity of grassroots organisations and provides them with financial support and technical knowledge. The aim is to create a well-networked and robust civil society that is a critical part of a functioning democracy.

Networks like Land in Our Hands (LIOH) created under Paung Ku programme help connect farmers with qualified people based on their needs (Soe, 2015). It could be a lawyer, who specialises in the land laws of the country or international regulations concerning rehabilitation or someone familiar with special guidelines for

responsible investments of the International Finance Corporation or Japan International Cooperation Authority. LIOH has 53 Community based organisations (CBOs) as its members, who are supported by the referral services of the network (Soe, 2015). Legal aid networks such as Myanmar Legal Aid Network (MLaw) and Dawei Pro Bono Lawyers' Network provide pro-bono legal advice to farmers. These networks play a critical role in the absence of state services for the support of farmers.

CSOs' work on land issues with other actors such as farmers, media, lawyers, and activists in Myanmar has turned it into a social movement (Soe, 2016). Myanmar has witnessed the bridging of the gap between bureaucratically structured way of functioning of NGOs and CSOs and loose, amorphous, and ever evolving character of social movements. Networks such as LIOH and networks based on ethnic identities such as KESAN have facilitated exchange of information and resources among these organisations and treaded towards a common goal making use of their varied strengths and approaches.

6.1.3. Community organising and unions

Between 1991 and 2011, trade unions were operating underground but in 2011, with the onset of a new law that permitted creation of unions in Myanmar, the Agriculture Farmers' Federation of Myanmar (AFFM) was set up. Since then farmers have been the fastest growing groups of workers forming unions in Myanmar (Connell, 2016). AFFM alone has organised 16,714 farmers into 503 trade unions. AFFM has a women's committee, a lawyers' network, and a land dispute settlement committee ("Myanmar dignity blossoms", n.d.). AFFM is a part of the Confederation of Trade Unions-Myanmar (CTUM), which negotiates agreements with the government, national and regional authorities, and employers for the promotion of better working conditions ensuring safety, health, gender empowerment, and a sustainable and fair economy. AFFM and Hlae Ku Township agricultural union in Ayeyarwady have over 10,000 farmers as its members (Connell, 2016).

Another example of such unionising is from Maubin, Ayeyarwady Region. The MP representing the National League for Democracy (NLD) party in Maubin, Min Zaw had assembled an investigation commission to look into the land disputes in the township. The commission gathered the data on land disputes and presented the same in the parliament. However, on realising the commission had not been too successful at remedying the land problems of the farmers, he quit the commission and started his own organisation called Farmers and Fishermen Support Group in 2013. When it received complaints from farmers regarding land disputes, it provided consultation and facilitated the process of filing complaints with the Land utilisation and Management Committees, committees formed by the government to solve land issues. As the organisation ran without funds, farmers had to spend their own money to cover expenses. The group also brings lawyers for legal consultations. Green Peasant Institute (GPI) is a local NGO based in Ayeyarwady Region. It was formed in 2012, and it also works using the union model and facilitates capacity building programmes for farmers on livelihoods and legal knowledge for land issues (Soe, 2015).

6.2. Strategies used (based on the quantitative analysis of a database of 75 cases)

In the database of 75 cases of active conflicts studied for this research, information on strategies used was also compiled. While the information available online on these cases was concerning the strategies employed using certain existing strengths and skills of the communities and groups actively involved in the conflicts, the strategies mentioned before such as legal education, referrals, and networking may have also been used.

Table 5 provides a collective analysis of the strategies used in these 75 cases. Column on the extreme left provides the different kinds of strategies observed in the 75 cases for which the data was collected. Column on the extreme right provides the aggregate number of cases in which a particular strategy has been used. The columns in between the two show different combinations of strategies. A coloured cell in a column against a particular strategy means that that strategy has been used in a particular combination. This way the table provides the aggregate number of cases in the row just above the bottom row with a particular strategy combination and also the number of cases in which that strategy has appeared singularly. The last row provides the total number of cases and the number of strategies they have used. The listing of strategies in this section carries examples of cases and their details. All these examples, if not mentioned otherwise, are from the dataset of 75 cases compiled for the report.

fresh period of limitation begins at every moment the wrong continues” as the river and their farms continue to be contaminated. The last hearing was on 5 February, 2018. The Supreme Court of Myanmar rejected the lawsuit because the nine-member bench felt that the case did not comply with Limitation Act. (Ref: *Case Study IV: Myaung Pyo resists water woes*). The case was selected in the 75 cases for conducting a detailed case study.

have been unsuccessful. Lawyers still take on such cases despite being aware of their poor chances of winning (Mark, 2016). Through these cases, they are looking to change the popular view that only the powerful and resourceful persons can use the law (Mark, 2016; Thu, 2017).

Legal stipulations used by the farmers in and out of courts

Other than what is reflected in the database, there are certain provisions in different laws that have been used by farmers to seek remedies from administrative bodies and even to argue their cases in courts. Article 445, Chapter 14 of the Myanmar Constitution makes the current government responsible for the actions of the previous government. Using this provision, in 2013, 19 villages in Sake Do Ta Ra Township in Magwe Region sought compensation from the government for a dam project that begun in 2010, under the previous Sein Thein government. Other provisions that lend space to farmers to obtain justice include Limitation Act, as amended in 2014, grants up to 12 years to a party to sue for damages caused to immovable property. When read with the Farmland Law, 2012, it allows its applicability in retrospect. Chapter 8 of the Farmland Law provides guidelines for granting compensation. The compensation is calculated factoring in the acres lost, price for the type of land lost, and total years since the land was grabbed. Both these stipulations have been used by the farmers to get their land back and claim compensation from the government (Mark 2016). This shows that remedies are being located not just in environmental laws (in fact rarely in environment, forest and sectoral laws) but in the administrative laws and the constitution too.

6.2.2. Administrative complaints and appeals

Administrative complaint is another strategy that people have started to use in recent times after the political change in Myanmar. The creation of legal channels for farmers to demand their land that were grabbed during the military era has helped in encouraging farmers to approach the government. Among the cases we studied, administrative complaint is one of the least used strategies. Since our data is based on media reports, it could also be that this strategy is reported only when it succeeds in its objective of getting the attention of the government or the company. Of the three cases where this strategy was reported, in the case of Shwe Pyi Thein gold mine in Sagaing Region, the villagers complained to the President's Office, Ministry of Mining and MoHA that the company was demanding money from them to allow them to operate their mines in the area over which the company had applied for a mining concession. When the company denied these allegations, the case got reported (Phyo, 2013). In the second case, Delco mining company in Tanintharyi Region restarted operations after paying compensation for death of a child and the destruction of a house due to sudden outburst of mine sludge from a breached tailing pond. The villagers had written to the chief minister of Tanintharyi Region and other offices in Dawei demanding the closure of the mine (Htwe, 2015). The cases appear in the database.

In the third case, in 2015, 46 evacuees of the sulphuric acid factory associated with the Letpadaung mine in Salingyi, wrote letters to the township and district-level GAD and the police to reclaim their land. In these letters, they mentioned that the Land Nationalisation Act, 1953 (the Act was active when the land was confiscated,) has been revoked and as per the Farmland Law, 2012, land that is lying unused should be returned to the original users. Since the factory has not used the 148 acres of land till date, the land should be returned to farmers. After two weeks of sending these letters to the GAD, they started farming again on the land (Ref: *Case Study III: Kankone confronts the toxic Salingyi Sulphuric Acid Factory*). The case was selected from the database to carry out a detailed study on. Table 6 provides a listing of spaces in Farmland and VFV laws that have been used by the farmers.

Table 6: Provisions of the Farmland and VFV Laws used by the farmers (reproduced from Mark (2016))

Chapter 8 By-laws of Farmland Law	Provides specific guidelines for calculation of compensation
Article 25 (b) of VFV Law	States that farmers, who have used VFV land for an established period of time, are entitled to compensation when this land is under conflict with a third party
Article 32 of Farmland Law	States that the land acquired in excess of what a project requires should be returned to the original user
Article 16 (b) of VFV Law	States that land that is unused for four years must be returned to the state

6.2.3. Public campaign

The seven cases from the database in which public campaigns have been used are against the thermal power plants. Five of them are to be situated in the delta areas of Yangon and Ayeyarwaddy regions. There are two projects from ethnically dominated Shan and Mon states. All these conflicts erupted between 2010 and 2015. The anti-coal campaign was spearheaded by civil society groups, which mobilised and organised communities. The Ministry of Electric Power of Myanmar had signed a MoU for a total of 11 coal-fired power plants with national and international private companies in 2010. But wide opposition across the country didn't let these MoUs move ahead. In 2015, all these thermal power plants were halted till the general elections were held in 2016 (Shin, 2015). Of the seven cases we have looked at, six were put on hold due to the approaching elections; one case got suspended because its MoU expired.

6.2.4. Participation in public hearing

The EIA notification mandates that public hearing should take place at all stages of EIA process for setting up of any new project or expansion of those existing. Last year, consultations were held to finalise the procedure for conduct of public hearings. Many see public hearing as a way to reduce conflict between projects and the affected people. In the Thilawa SEZ, industrial and manufacturing units are gradually coming up on the land, which has been cleared under Phase one. Some of the farmers who live close to this part of the SEZ are expected to relocate once the phase two of the SEZ begins. They have united themselves as Thilawa Social Development Group (TSDG). Members of TSDG are on one hand preparing to negotiate better land prices and rehabilitation facilities for the group, and on the other have also been participating in the public hearings conducted for these units individually. They believe that since they are going to live close to these factories, it is important that their environmental impacts are controlled (*Ref: Case Study V: Thilawa residents brace for upcoming land transformation*). This case was studied in detail and has been written about as part of the report. In another case of the TTCL company in Hpa-An, the locals had raised objections to the project in the public hearing. However, as per media reports, the chief minister of Kayin State made a statement in favour of the project in the EIA hearing meeting held in June 2017 (Eleven, 2017).

6.2.5. International redress

International redress has been used as a strategy in 18 cases, all of which were public-private partnership (PPP) projects. Of these, 11 were hydropower projects, six mining projects and one port-based SEZ. ten hydropower projects had investments from Chinese companies and one had investments from India. Five mining projects had Thailand investors involved with them and the SEZ had Japanese investors. International redress is usually seen in combination with protest or political advocacy. Construction of Dapein dams in Kachin State in 2011, had Kachin Independence Organisation (KIO) and the Burmese army at loggerheads. The KIO even issued a public warning letter to the Chinese government threatening it of civil war if it didn't stop its investment in dams (BRN, 2011). Most of the cases in which international redress has been tried, are from areas with majority population being ethnic. Thilawa is one of the few projects from the delta region in which international redress has been tried. The TSDG contacted the Japan International Cooperation Agency (JICA) seeking rehabilitation and relocation facilities as per its guidelines (*Ref: Case Study V: Thilawa residents brace for upcoming land transformation*).

6.2.6. Approaching the company

In all 16 cases pertaining to the opening/operation of mines, residents, who are likely to be affected, have approached the mining company. Myanmar has had a history of mining even from prior to colonial times. Communities maintain relationships with the nearby miners, either to sell the small amounts of ore they collect or to ensure continued access to the forests or water sources falling in the mine area. This strategy of approaching the company thus seems the most probable choice of action for affected locals. The two non-mining cases where affected people have approached the company are of thermal power plants, which are closely associated with mining operations. In case of Moethi Moemi mine in Mandalay Region, local miners approached the company, Myanmar National Prosperity Co. Ltd (MNPC), to let them continue to work in the mines, allow motorbike and taxi access through the mine, and relax the strict regulations of use of land. They also staged a protest on the mining site raising these concerns (Zan, 2013).

6.2.7. Protest

Protest is the most popular strategy despite the risks that come with it. One such kind of protest is “plow protest”, which is a form of demonstration whereby farmers plough the disputed land to symbolise their ownership of it. This may emanate from farmers’ belief that they have no other alternative to voice their grievances (Soe, 2015). Between 2013 and 2015, a number of farmers resorted to plough protests throughout the country. Many of them have consequently been incarcerated or are still facing trials. Despite the counter-action, protest remains a popular mode of resistance. Out of the 75 cases we collected data on, protest as a strategy appears in 57 cases either in combination with others or as a single strategy. In fact even as a lone strategy it has been used in 13 cases. In Shan State in 2016, 100 farmers from Ye Pu village in Taunggyi planted on 2,000 acres of confiscated land. Between 2010 and 2015, despite the land being confiscated the farmers were allowed to plant on the land on a payment of 10,000 Kyats per acre. In May 2016, the farmers were asked to sign documents transferring the land to the army. These 100 farmers didn’t sign the document and continued planting. The army filed a lawsuit against them for trespassing (RFA, 2016b).

6.2.8. Use of media

Reporting to media or running media campaigns has been used in combination with other strategies (media reporting and protest is the most common combination (ten cases)). Both the local and international media have kept the issue of land confiscations alive. Big cases such as the Letpadaung mine and Myitsone dam and campaigns against the thermal power projects have been on the radar of the media. Media has been key in influencing certain court cases as well. In the case of Pyin Oo Lwin village in Mandalay Region when only half of the 20,000 acres grabbed by the military was returned to the villagers in 2014, 30 farmers initiated a lawsuit against the company that was involved in confiscation¹⁶. The farmers were hopeful that with the pressure created by the media and national campaigns, judges could rule in their favour (Mark, 2016). Understandably media reports are common for projects that have faced public protests and the ones that have gone into litigation.

Women in protests

Molo Women Mining Watch Network (MWMWN) released a report titled “Lost Paradise” on the impacts of Mawchi mine. The report describes how its several tunnels spanning over 3,000 acres have caused landslides, water pollution, and deforestation and has impacted 4,500 ethnic people. This was after the government announced expansion of the mine in 2012. The Network issued a statement that demanded no more expansion of mines if the environmental impacts were not controlled and no benefits were shared with the locals (MWMWN & KCSN, 2013). The press statement released in October 2013 by Molo Women Mining Watch Network along with Karenni Civil Society Network (KCSN) stated that all mining projects be stopped “until there is constitutional reform granting ethnic states the right to control and manage their own natural resources under a federal system of government, and ensuring local communities the right to Free, Prior and Informed Consent to any projects”.

Similarly one of the case studies demonstrated how Pa Oh Women’s group has been a key part of the campaign against the expansion of Tigyit mine and the opening of the thermal power plant (*Ref: Case Study 1: Coal casts a dark shadow over Tigyit*). It has been observed that in cases of environmental impacts women have come out and protested against projects to safeguard their and their families’ wellbeing and future.

¹⁶The case is not part of the dataset of 75 cases.

6.2.9. Political advocacy

As per the database, after protests, political advocacy is the second most popular strategy. In all 34 cases (but one) in which it has been used, the strategy exists in combination with other strategies—the topmost being: with protest and public campaign (seven cases) and with protest and international redress (five cases). In ethnically dominated areas, political advocacy is a key strategy to demand suspension/halt of projects. One way the hydropower projects spread across the hilly regions of Myanmar are being tackled, is through political advocacy. Ethnic political parties are approached with requests to intervene in these cases. MPs from their constituencies are also contacted. Political groups such as the 88 Generation Students' Movement, political parties, and charismatic monk leaders have been asked to intervene in land issues from time to time. Out of court negotiations with involvement of these political groups have been more successful and have led to favorable outcomes for farmers affected by confiscations (Soe, 2015). In the case of Tigyit Thermal Power Plant, Pa Oh National Organisation (PNO), a political party representing Pa Oh ethnic group of Shan state, after being approached by the locals, got involved in the campaign against the thermal power plant. However, sometimes, the ethnic political parties in power sign agreements with investors for such projects. The same was observed in the case of Tigyit Thermal Power Plant as well and PNO although expressed concern in issues raised by the Pa Oh locals did not take any step against the plant (Ref: Case Study I: Coal casts a dark shadow over Tigyit).



The conveyor belt was used to transfer coal from Tigyit mine to the thermal power plant

Combination of strategies

Out of the cases where a combination of strategies has been used, protest and use of media (ten cases) followed by protest, public campaign and political advocacy (seven cases) have been the preferred combinations. These are also the kind of strategies that get picked up by the media. The involvement of an MP or a key member of political party attracts the media and intensity of the protest may also get attention. Public campaign against thermal power plants involved both protest and political advocacy. Public campaigns usually have components such as media outreach, writing petitions and memorandums to and meeting with politicians and taking to the streets against the issue. Due its global appeal, the anti-coal campaign received the attention of international media as well. Of the seven projects that represent this combination most are from Yangon and Ayeyarwaddy regions. All ten projects that used the combination of protest and use of media are from ethnically dominated areas and against power projects, SEZ, and port based projects in Rakhine State and Tanintharyi Region.

Mark notes that in the recent years farmers have started engaging with the law strategically. She observes that factors such as the judiciary that is constantly changing its nature and role, different legal strategies available to farmers and smallholders, media and civil society working jointly with farmers and responses of the state have had a contributing role (Mark, 2016). She notes that there have been several instances of land being returned to farmers as a result of the Parliamentary Land Confiscation Investigation Commission's work. Out of court negotiations have also led to better compensations or delayed confiscations in many instances. Research in the past has made a similar observation that effective mobilisation of a range of civil society actors, including farmers associations, political groups such as the 88 Generation Students Movement, political parties, NGOs, charismatic leaders, and members of the media has led to positive outcomes (Soe, 2015). In the past, lawyers have avoided appearing explicitly political in land cases, but the combination of legal and political strategies seems to be expedient in Myanmar as the law is still very much in the hands of people with "access to more political and economic resources" (Mark, 2016).

The study has not delved into actors involved in seeking remedies as beyond a point the distinction between different actors gets blurred: affected communities are also activists and members of networks/NGOs/movements. However, different groups may engage in the same case but in different capacities, with different demands and at different times. For example, in case of the Thilawa SEZ farmers who accepted the compensation and farmers who were denying relocation came in conflict with each other and divided and weakened the group's joint voice against the project (*Ref: Case Study V: Thilawa residents brace for upcoming land transformation*).

There are many out of court arrangements, which do not get covered through the cases we studied but are being used by people strategically. The multiplicity of laws allows people to select certain elements of the legal framework and strategically use them just as officials selectively implement certain laws or clauses. They not only use the currently valid laws, they also invoke the laws and policies that are no longer legally valid but may be still in use and practice. Prior to the promulgation of 2012 Farmland Law, there used to be over 70 laws and regulations related to land governance. Farmers, while building their argument use not just current laws but even old laws to protect their land from confiscation. While in the past it was rarely seen that farmers would use laws to protect themselves against dispossession, the cases of farmers reaching the courts are increasing in number.

7 Outcomes and Remedies

In the 75 cases of land conflicts, we studied the outcomes and resolutions sought or arising out of the efforts made by affected people to address the impacts of land use change. From the cases we found that interim outcomes were achieved in 22 cases, out of which six projects received more than one interim outcome. Four projects received suspension orders from the authorities, five projects were suspended until the test run, five projects were investigated by the authorities, two projects had to pay compensation to the affected communities on the order of the district court, three projects had site-visits from the relevant authorities and two projects each were either temporarily closed by the relevant authorities or had negotiations between the parties that didn't reach resolution. Remaining projects had interim outcomes such as cost benefit analysis of the project, test run, assurance of consent, etc. (See figure 15)

We call the above achievements as interim outcomes as these could be important milestones towards the resolution of conflicts, even though in themselves they may not change the existing situation or problem of those affected and hence cannot be called remedies. These could be a site visit to the project, constitution of a committee to investigate the case or initiation of a negotiation with the project owner, etc. However they are important victories for affected people as these steps are an acknowledgement of their problem and first step towards a change in their situation. Remedies are understood as actual resolution of conflicts such as good compensation, dignified rehabilitation and relocation facilities or return of grabbed land. Sometimes these outcomes (whether the interim outcomes or the remedies) are demanded and intended, sometimes they are unintended results of communities' efforts to bring their problem to government's attention.

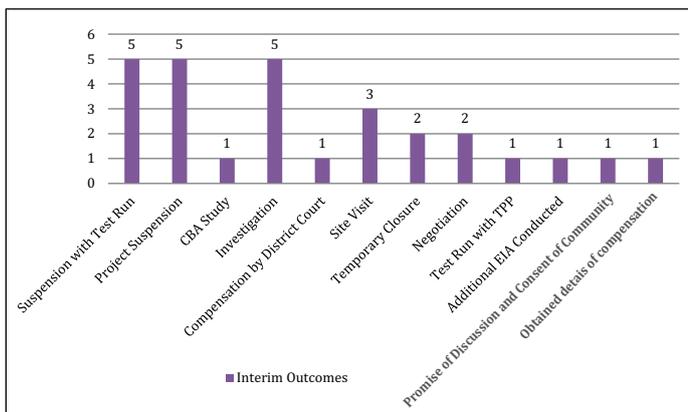


Figure 15: Interim outcomes (based on the quantitative analysis of a database of 75 cases)

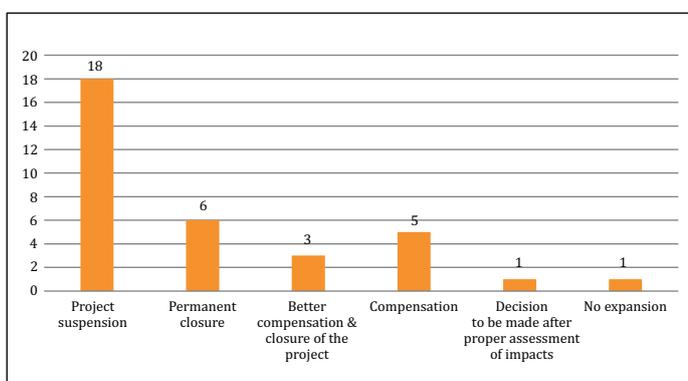


Figure 16: Remedies sought (based on the quantitative analysis of a database of 75 cases)

*Information on remedies sought was available for 34 cases. Sometimes multiple remedies are sought in one case.

Project suspensions have been sought largely for hydropower projects. Of the 18 cases in which suspension was sought, 11 are hydropower projects, three thermal power projects, two SEZs and two mining projects. Of the six cases in which permanent closure was demanded, all were mining projects (four coal, one quartz and one tin and tungsten). In all these mining projects, people had reported environmental degradation. Closure along with better compensation has been demanded in two mining projects and one associated industry in Sagaing Region. (See figure 16).

Only eight cases received remedies to address the ongoing conflict. Out of these, suspension of the project was ordered in three cases, compensation was granted in three cases, and permanent closures of the project was ordered in two cases. (See Figure 17).

The outcomes when seen with the strategies used show that no cases, which had used one strategy (in all 19 cases) have received any remedy or interim outcome. It can either mean use of only one strategy for a case resolution doesn't lead to outcomes or that these cases are relatively new in which affected people have started organising action only recently and so far have used just

one strategy. The data leans towards the first: of the 23 cases of single strategy, 20 conflict cases came up in the last six years. In the 19 cases, although the status of the conflict is not known, we can assume these conflicts are unresolved as no interim outcomes or remedies have been reported. Of these 19 conflict cases, 16 are not more than six years old.

Since the dataset of conflict cases is small with multiple varying factors such as different sectors, regions, and actors and different strategies and remedies sought and obtained, any further correlation between strategies and remedies has been avoided.

However, to get an understanding of what people seek as remedies and what they obtain on pursuing cases of conflicts, a comparison has been drawn. This is important because the contrast between the priorities of the communities and that of the state tell us how negotiated or compromised the outcomes are.

Using the database of conflicts, cases in which details of remedy sought are provided have been compared with what has been obtained. Since none of the cases in which information on 'remedy sought' was available obtained any remedies, the remedy sought in these cases has been compared with their interim outcomes. (See table 6).

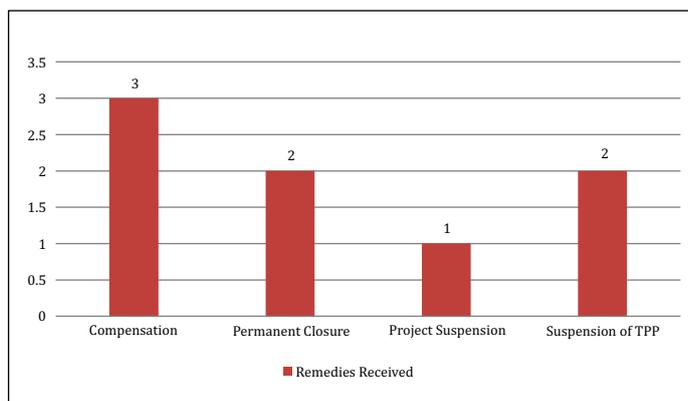


Figure 17: Remedies received (based on the quantitative analysis of a database of 75 cases)

Table 7: Comparison of remedies sought, interim outcomes obtained and remedies obtained (based on the quantitative analysis of a database of 75 cases)

	Remedies sought	Interim outcomes obtained	Remedies obtained
1	Better compensation	Obtained details of compensation	NA
2	Compensation	District court suggested compensation	NA
3	Relocation, better compensation	Constitution of investigation commission	Company take-over of compensation
4	Relocation, better compensation	Constitution of investigation commission	NA
5	Relocation, better compensation	Constitution of investigation commission	NA
6	Compensation	Negotiation	NA
7	Permanent closure	Negotiation	Compensation for damage incurred due to flood
8	Permanent closure	Project suspension, site visit, and hearing	NA
9	Permanent closure	Project suspension, site visit, and hearing	NA
10	Permanent closure	Project suspension, site visit, and hearing	NA
11	Project suspension	Additional EIA conducted	NA
12	Project suspension	Suspension, CBA study is conducted	NA
13	Project suspension	Investigation	NA
14	Decision to be made after proper assessment of impacts	Promise of discussion with and consent of community	NA

Of the remaining eight cases with interim outcomes, which are not presented in the table, six involved suspensions till the test runs are completed, one received a suspension followed by an investigation by a commission and one received temporary closure (because the elections were near and the government closed the project for the subsequent government to look into the matter). All these outcomes seem more as government responses to pacify the affected people and control the conflict. None of them achieved any remedies. According to the data set, it takes four to five years after conflict to obtain interim outcomes and five to ten years for remedies to come by. But in case of suspensions of projects that are currently being viewed as remedies could very well become interim outcomes in future, if government decides to resume those projects.

It was observed in the case of Tigyit Coal Mine: in 2014, the villagers got together and pressurised the government to suspend the thermal power plant situated next to the mine. However, the state is considering resumption of work on the thermal power plant, with a possibility of rerunning it. In October 2016, test runs at the plant began (*Ref: Case Study I: Coal casts a dark shadow over Tigyit*). This raises a question on how stable some remedies are and whether communities really have any say in the decision-making process. Below is an account of the remedies sought or achieved with certain examples.

7.1. Compensation

Out of the 34 cases, compensation has been demanded in eight cases (in four cases better relocation site and facilities were also sought). The only court case from pre-2012 period in which the court increased the compensation amount for the farmers is a very well known case from Kachin State. The commercial agriculture expansion project of Yuzana Company seized more than 270,000 acres of farmland in the Hukaung valley in 2007 for agricultural projects such as cassava and sugarcane plantations (Naing, 2016). The land was being used by 148 farmers who were granted compensation by the court at the rate of 80,000 MMK/acre of paddy land, 60,000 MMK/acre of non-paddy land, 30,000 MMK for garden land, 150,000 MMK for a new house and 20,000 MMK for temporary huts erected on the land. These rates were calculated on the basis of an assessment of the average value of land in the area. Since the 1894 Land Acquisition Act using which the land was acquired did not provide any guidance on compensation to be awarded by the government, Burma Judiciary Law (sections 13-3) and Civil Procedure Law (sections 16-19) were used to file a suit (under tort law). However, according to the lawyer for the case, as of end of 2015, 30% of the households had not accepted the compensation as they still demanded their land back (Mark, 2016). This case, since it is from pre-2012 period, is not part of the dataset. In case of Paunglaung dam affected farmers placed a different demand in their complaints to government offices. They demanded- details of compensation, how the compensation was calculated for the land and property they lost for the construction and operation of the dam. The information, though not reported in media pieces, was collected during a field visit to the site to do an in-depth study of the case. While the farmers were pursuing this with the hope of better compensation eventually, they received details of compensation as an interim outcome (*Ref: Case Study II: It's not water under the bridge for Paunglaung*).

In case of the Thilawa SEZ, while its first phase has started, communities' expectation from the project have changed: initially they were refusing to relocate, then they switched to seeking better relocation facilities, now the group is preparing and organising itself to run a community driven organisational grievance mechanism. Simultaneously the farmers who know they would be relocated for the second phase are thinking how much compensation would they demand and strategising and organising on this expectation (*Ref: Case Study V: Thilawa residents brace for upcoming land transformation*).

7.2. Better relocation

Better relocation and rehabilitation site along with compensation has been sought in four of the 34 cases in which information on remedies sought was available. Thilawa was an interesting case in this regard. The TSDG formed by the farmers who had to vacate their land for the first phase of the project made a visit to the relocation site for Dawei SEZ and saw the difference between what they were being offered and what Dawei evacuees were getting. They made a demand with JICA for better compensation and improved basic amenities at the relocation site. While JICA increased the compensation to the farmers, not much improvement was seen in their living conditions (*Ref: Case Study V: Thilawa residents brace for upcoming land transformation*).

7.3. Project suspension

Project suspension or permanent closure has been demanded in 24 of the 34 cases. In three cases, it has been demanded along with better compensation. Most of these cases are related to power (hydropower and thermal power). Another common factor in these cases is the fact that almost all of them had environmental damage as a cause of conflict. One non-power case is the sulphuric acid factory near Letpadaung mine in Sagaing Region. Here the villagers demanded relocation of the factory due to the dangers associated with toxic fumes emitted by it (*Ref: Case Study III: Poison no more: Kankone confronts the toxic Salingyi Sulphuric Acid Factory*). While some cases see a change in people's demands for remedies over time, in Myanmar hydro and thermal power projects have been in suspension for a long time perhaps due to persistent demands. Sometimes these demands for suspension of projects arise as the ethnic groups are not made part of decision-making and benefit sharing. In case of Tarpein I and II dams in Kachin State, the Kachin Independence Organisation (KIO) deployed soldiers around the two dams and suspended their construction work when the Chinese authorities of China Datang Corporation (CDC) company refused to pay taxes to KIO. KIO also complained that local residents were not given any role in decision-making on these projects (Naing, 2008).

7.4. No Expansion

In case of the Tigyt coalmine, although the residents made peace with the operation of the mine, which has been operating in the area for nearly 20 years, their demand is that the project not be expanded. The residents spent their energies in resisting a thermal power plant to be sited next to the mine and were successful in suspending the plant. They opine that if the thermal power plant doesn't run, the mine would not be given an expansion by the government. However, after being shut for two years, talks for the resumption of the thermal power plant are on and the villagers are bracing themselves to resist it again. As of end of 2017, test runs on the plant were being conducted and the government maintained that the plant will not be allowed if it is found to be linked with harmful impacts on health and livelihoods of the residents of Tigyt village in Shan state (*Ref: Case Study I: Coal casts a dark shadow over Tigyt*).

Why are remedies achieved?

Conflicts are not resolved in vacuum. Efforts to resolve these conflicts are ongoing along with the centre-state negotiations for power and control over natural resources, Myanmar's appetite for economic growth, international push for conservation, carbon emissions reduction agenda, fluctuations in global demands and price of coal, gas and other petroleum products, systems of accountability, all play a role in progress of conflict resolution and the kind of outcomes they obtain. Certain remedies are achieved under international pressure. It has been observed that conservation agenda sometimes works in favour of (and sometimes against) farmers and forest dependent people. Thus several external factors play a role in the achievement of remedies.

In the case of Shwe Pyi Thein gold mine in Sagaing Region, the villagers complained to the President's Office, Ministry of Mining and MoHA about company's demand of money from the villagers to continue to access the forests in mine area (Phyo, 2013). The mine was eventually closed as it was mining in an area much larger than what it had permission for and extended it to the nearby protected area. Also it was using dynamite and cyanide in mining. After an investigation, the regional chief minister and department officials decided to take legal action against the mine (Whtut, 2016). The remedy in this case was a result of people's efforts and state's inclination to act against encroachment of a conservation area.

Involvement of government mining enterprise ME2 and Delco being one of the biggest mines of Myanmar made closure of the DELCO mine in Tanintharyi region a tough choice for the government. This was despite the fact that it had led to an accident in the past. After temporary closure and negotiations, the matter was settled with paying compensation and rebuilding the houses that got destroyed and the mine was restarted (Htwe, 2015). This case also brings out the negotiations and balancing acts performed by the government while offering remedies.

7.5. Decisions to be made after consultations

In case of Baw KaHta Dam in Pegu division in Kayin State, KNU's affiliated company Thoolei Co. Ltd. and Ministry of Power signed a contract without public consultation. The Karen community was aggrieved by this that KNU had to issue a press statement that the agreement was not for construction but only for a pre-feasibility report. It assured to Karen people that the process would "not ignore the opinions of the local

Regional governments' role in conflict resolution

In case of dams on Dokhtawady river, the regional government of Mandalay suspended the projects till impacts on local communities are assessed. This was due to the strong opposition by locals against the five dams including the upper Yeywa dam. By law, dams generating less than ten megawatts of electricity are considered small-scale, and those generating less than 30 MW qualify as medium-scale. State- and region-level governments are allowed to manage small and medium-scale electricity generation. At six megawatts, 21 MW and 27 MW respectively, the three Thazi township dams would fall under the regional government's authority (Ko, 2016). While largely such assessments and investigations are ordered by the Central government through constitution of parliamentary commissions, this case highlights the role of Regional governments. In case of Salingyi factory, U Win Thein Zaw, the local MP (NLD), Salingyi got involved after the local people contacted him. He raised the issue in the lower house of the parliament in August 2017 and requested that the factory be relocated. However, the Ministry of Defense rejected this request and stated that the factory is in interest of the nation (*Ref: Case Study III: Poison no more: Kankone confronts the toxic Salingyi Sulphuric Acid Factory*). This case is another example of an MP making use of his authority and power to voice communities' concerns.

communities." This was while the sentiment in the village was against the dam as the residents feared that they would lose their ancestral land but KNU decided to stand by the project and convince the people to accept it (Isue, 2016).

7.6. Legal and policy reforms¹⁷

Many of the networks mentioned above alongside providing support to the grassroots organisations also work towards policy reforms that favour small-scale farmers, fisher groups and forest dependent people. Land Core Group and Paung Ku are engaged in policy advocacy to ensure that institutions for better remedies such as independent judiciary are in place, transparency, more and meaningful public participation, space for legal aid, channels for grievance redress, better-defined and clear legal definitions and parliamentary oversight. In August 2015 the Nay Pyi Taw Legal Support group launched a campaign against the appointment of 20 military officers to the Supreme Court. These reforms are again pursued through campaigns and advocacy and sometimes through litigation (Mark, 2016). Namati, through its work with community organisations on facilitating land registrations has suggested better coordination between different land management bodies, Myanmar Alliance for Transparency and Accountability (MATA), a network of over 450 civil



Paralegal collecting land grabbing data from his clients, Kyaung Kone Township, Irrawaddy Region

¹⁷The remedy description is based on observation and not represented in the dataset of 75 cases.

society organisations and individuals, examines economic and social policies and advocates for transparency and accountability in governance Extractives Industries Transparency Initiative (EITI) has also been advocating for transparency in sectors such as mining and bringing it under the regulatory framework of the state. Currently, two main land laws of the country Farmland Law and VFV Law both issued in 2012, are being opened for revisions. Over 50 civil society groups and farmers' organisations have criticised the process of drafting amendments for failing to consult farmers. The LIOH called for a dialogue with parliamentarians before the amendments bill was discussed. The LIOH held a consultation among its group members from July 17 to 19, 2017 to discuss the amendments bill and came up with their own recommendations (Phyo, 2017).

The Land Acquisition Act 1894 is another law, which is being replaced with a new law. Many NGOs and farmer groups are putting together their submissions in response to the drafts, so that the space for just and fair treatment of farmers in event of land transformations can be ensured.

7.7. Status of projects

In Myanmar, we have analysed project and conflict status for 74 projects including 14 ongoing conflicts and 60 projects, which don't have any definite information on status of conflict. Out of these 74 projects, information on status of project is available for only 49 projects, majority is in operation or preparation or proposed phase of the project, while six projects have been suspended by the authorities and remaining are either under-construction or where EIA is under process. (See Figure 18)

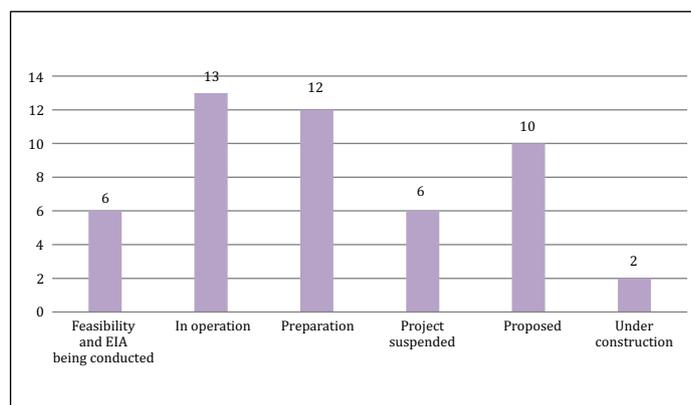


Figure 18: Status of projects

7.8. Counter action: militarisation, criminalisation, and human rights violations

In our dataset, militarisation of the site to avoid conflicts and repress opposition was undertaken in six projects; to protect these investment zones from any encroachment and disruption by the communities, under two projects the communities faced counter-litigation; and under two projects the communities faced criminalisation and police intimidation. Outside of this dataset, there are several reports of counter-action by the government of the companies. In a case in 2011, Naypyidaw Council prosecuted 21 households who refused to move to the resettlement village under the New Towns Program. Villagers moved their properties to the nearby monasteries or hills and stayed there due to the threat of being detained (ALRC, 2012). The government can take plow protestors¹⁸ to court under the charges of trespassing and criminal misconduct. The maximum punishment for this kind of case is six months prison sentence. In Kanbalu Township court, almost 200 farmers from five villages are facing trial for staging plow protests (Aljazeera News, 2014). Not only farmers, oppression of land rights activists by framing them under false charges is a common occurrence (HRW, 2015). Bawk Ja, an activist, led a group of farmers, whose lands had been confiscated in Hugaung valley. They sued Yuzana Company and its chairman MP U Htay Myint over illegal land grabbing in October 2010. A warrant for her arrest was issued and several attempts have been made to arrest her by military intelligence units under former military junta (KLN, 2013). Counter litigation is another popular action tried against the communities seeking their land back. For example, in Shan State in July 2016, 100 farmers from Ye Pu village in Taunggyi township had to appear in court after the military filed a lawsuit against them for planting on confiscated land. Two thousand acres of land was confiscated in 2004 during the rule of military junta. Between 2010 and 2015 they were allowed to farm the land on payment of an annual fee of 10,000 Kyats per acre. In early 2016, the army wanted the villagers to sign the land to them officially. One hundred of these villagers didn't sign and continued to plant on the land and got charged for trespassing (RFA, 2016).

¹⁸In plow protests, farmers plow their fields on the land in conflict. These could be lands for which farmers have land certificates or have been cultivating for years. They plow on the land seeking certain demands such as no take over or better compensation, etc.

After the failure of the “Burmese way to socialism”, Myanmar opened itself to foreign investments in 1988, but only in the recent years has it made legal and administrative changes to privatise and favour their greater role in Myanmar’s economy. Through a series of reforms between 2011 and 2015, the government reduced its role in sectors such as energy and forestry and passed a new foreign investment law. This has resulted in an increase in Myanmar’s FDI from USD 900 million in 2010 to USD 2.3 billion in 2013. The FDI touched the figure of USD 8 billion in 2015. Economic transactions between Myanmar and the global powers have been reinitiated and multinational companies are showing interest in the country (Xu & Albert, 2016). According to the study, as of end of 2015, nearly ten per cent of Myanmar’s total land mass was under mining and about three per cent was under commercial plantations. Besides these two land uses, large hydropower projects and industrial and economic estates were also expected to take up a considerable share of the total land of Myanmar. During the same period the state has begun returning the land grabbed by the military back to their original owners, the farmers. Land repatriation has been ongoing along with the massive land use changes facilitated by the state. Land in the hilly ethnic areas of the country, which was largely under swidden agriculture is being targeted for these large-scales changes. Conflicting laws governing the use of and jurisdiction over land are being used both by the citizens and the government to make claims over lands. Control over land takes the center stage in the dialogues towards long-desired nation-wide peace. All these opposite but intersecting interests in land have given rise to conflicts.

Four months after taking office, the new administration of Myanmar announced its 12-point economic policy on July 29, 2016. Promotion of market-oriented system in every sector, infrastructure development, privatisation of “appropriate” state-owned enterprises, support to agriculture, and attracting FDI feature prominently in the policy (Kyaw & Hammond, 2016). The Ministry of Hotels and Tourism is looking to expand the tourism facilities to cater to a tourist influx of 7.5 million by 2020—nearly ten times the number of tourists it received in 2010 (Heijmans, 2017). Two of the planned three economic zones are soon to start operation, seven industrial zones are at planning stage and the government intends to resume many of the thermal and hydropower projects that are currently on halt. Alongside, land registrations have assumed urgency and been on government’s priority since early 2016. If these incompatible goals are pursued in parallel and that too without resolving the issue of disparity between different laws and jurisdiction of various land-related institutions, and without issuing pending land claims, there are likely to be more ad-hoc or arbitrary decisions and conflicts.

The above analysis shows that there have been efforts from the communities and national and international NGOs to resolve these conflicts. NGOs have focused on legal and political education, creation of networks that work on land rights, and organising communities and creating unions of farmers and land-dependent people. Communities have relied on protests and engaging with companies that have caused trouble to them. Litigation has been tried in cases in which land ownership can be proven in court. Public campaign with the help of media to seek mass support (and sometimes international redress) for the causes is another popular strategy adopted by the activists and those affected. It has been observed that public campaigns are usually combined with political advocacy especially in ethnic areas. Administrative complaints and appeals are also slowly emerging as strategies adopted to resolve conflicts. Most strategies have led to interim outcomes such as detailed investigations, test runs of projects, and temporary suspensions. Better compensation and rehabilitation facilities and withdrawal of future expansions have been achieved in terms of remedies to these conflicts. While these efforts are directed towards resolving conflicts arising out of individual projects, many times, the cases are pursued collectively under public campaigns and policy advocacy. The community networks, unions, and NGOs at all levels have been making consistent demands of better policies and laws, more transparency, independent judiciary, etc. Analysis of strategies and remedies highlights the successes of public campaigns, strategic political

advocacy, and transient nature of suspension orders as permanent remedies. It also demonstrates the use of litigation and administrative accountability not just for land-related matters but also in cases of environmental pollution. Results of the study provide a timely aggregation of how communities are responding to large-scale state-mediated land use changes. It offers a concise picture of how impacts get translated into conflicts, how and why projects become active sites of conflicts, and in what ways the state's current measures are insufficient and lacking at addressing these conflicts. This picture can inform future changes to laws and policies governing natural resources so as to avoid situations of conflict and in cases of ongoing conflicts offer meaningful and long-term remedies.

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CASE STUDY I

Coal casts a dark shadow over Tigyt¹

Tigyt is a hill village in Pinlaung Township in the south of ethnically dominated Shan State of Myanmar. Country's second biggest lake Inle is located just 13 miles away from the village. The village also hosts the biggest opencast coalmine and the first functional thermal power plant of the country. In the early 2000s the mine and the associated thermal power plant began operations in the area. Over 60 families were displaced, many lost agricultural lands, and even more were forced to bear with the problem of coal dust and water contamination. In 2014, the Pa-Oh and Shan communities of the area got together and campaigned against the project. This led to the closure of the thermal power plant. However, since October 2016, the government is looking to expand the mine and restart the thermal power plant.

Myanmar's appetite for energy is growing, particularly to cater to its planned industrial growth and electrification targets. Its hope to fulfill this appetite hinges heavily on coal. According to data from the MoEE, in 2016, share of coal in Myanmar's electricity output was two per cent, while the remaining came from gas (33%) and hydro (63%) (Dobermann, 2016). The MEPP sets a target of 30% share in electricity output for coal by 2030 (Mol, Myanmar 2017). In line with the goal, Myanmar has plans to build 11 coal-based power plants (Mizzima, 2016; Naing & Lee, 2017). Myanmar's coal deposits are scattered all over the country in Shan, Kayah, Kachin, and Chin states and Sagaing, Magway, Mandalay, Bago, and Tanintharyi regions.

According to the MoNREC, 16 large-scale coal deposits of the country, largely in the northern regions, have 270 million tons of coal (Mizzima, 2011). Open pit coalmines are in operation in Shan State, Sagaing Region, and Tanintharyi Region. Over half of these coalmining operations are run as joint ventures with foreign companies. The coal is either exported to the energy-guzzling-neighbours such as China and Thailand or used to provide energy for other mining and industrial operations in Myanmar that have large foreign investments (PYO & KAN, 2011).



Inle Lake is at the risk of being polluted by Tigyt Coal Mine

¹Sources of information, if not mentioned, are the interviews, group discussions, and observations during field visits conducted in March 2017. Names and other details of interviewees are provided at the end of the case study.

Tigyit village in Pinlaung Township in the southern part of Shan State is the site of the biggest opencast coalmine and the first coal-fired thermal power plant of the country. A population of 3,000 has members of Shan, Pa-Oh, Taung Yoe, and Burman ethnicities residing in the village. The village is the watershed of Inle and is located only 13 miles away from it. It is Myanmar's second biggest lake and an ASEAN (Association of Southeast Asian Nations) heritage site (PYO & KAN, 2011). Balu, one of the three main creeks that merge into the lake flows through the village (Kritsanavarin & Vriezen, n.d.).

Tigyit mine produces 2,000 tons of coal per day most of which, till 2014, would get transported to Myanmar's only coal-fired power plant located in the same area at the time. After the suspension of the plant in 2014, for reasons mentioned below, the coal gets transported to the nearby Nagar Cement Plant. The main mine covers an area of 500 acres, which keeps on expanding with total deposit of 20.7 million tons of soft brown lignite, the most polluting of all types of coal (PYO & KAN, 2011).

Beginning of the mine

As per one of the interviewees, Sai Htoo, in 1998, the military started grabbing land in the area. It began digging tunnels under farms that belonged to villagers of Naung Thara and Tigyit. The army handed the land to a cooperative between China National Heavy Machinery Corporation (CHMC), Shan Yoma Nagar Company, ME-3², Shwe Than Lwin Company, Eastern Development Company, Eden Company, A-One Company, and Special Region (6) Business Group. Seeing that the mining operation was not making much profit, Shwe Than Lwin, A-One Company, and Special Region (6) Business Group withdrew from the project in 2003 (PYO & KAN, 2011). The villagers shared that in an announcement in the same year the government disclosed that 544 acres would be used for the mine.

In September 2002, construction of the only coal-fired power plant of Burma began and was completed in April 2005. The coalmine and the thermal power plant brought multiple problems for the locals. They not only had to vacate their land to make it available for mining operation and construction of the power plant, but since they hadn't moved much farther, they had to bear the pollution impacts of the project too. A report titled Poison Clouds on the Tigyit mine and coal-fired power plant prepared by the PYO and KAN in 2011, provides in detail the impacts of the coal project on communities and environment. It mentions forced relocation, land loss, impact on livelihoods, and pollution impacts.

Forced relocation, loss of land, and altered livelihoods

According to PYO and KAN (2011), 63 families of two villages Taung Pola (24 families) and Lai Khar (39 families) were displaced. A total of 321 individuals had to relocate under pressure. Interviewees shared that the amount they received as compensation depended on the condition of their respective houses and their bargaining powers. It ranged between MMK 50,000 and 1,20,000 and some families did not receive any compensation. Families from Taung Pola settled on a nearby hill and Lai Khar villagers were settled by local authorities on lands confiscated from the residents of Tigyit and Thar Yar Kone villages. The project used farmlands from Tigyit, Taung Pola, Pyin Thar, Lai Khar, and Bar Min Kone villages. While some lands were taken by the MoNREC without the due process, some were sold by farmers under immense pressure from the local authorities.

Pa-Oh of Upper Myanmar is a hill community. The community, customarily shares the land in the region for cultivation of leaves of thanapet trees (to make cheroots), onion, garlic, chilly, green tea, mustard leaves, etc. For them finding out exact limits of their land, trace the individual ownership, and locating the person who should be compensated for a patch of land is difficult. Most of the villagers, who lost their farmlands, accepted what was given to them. They were forced to look for alternate sources of income and some chose to work as agricultural labour on farms in neighbouring villages. Loss of land at the start of the project had a direct impact on their livelihood. Operation of the mine also had impacts. As per the interviewees, mine waste is often dumped either on the grazing lands or some times on the path leading to these lands, which restricted their access to the grazing lands. Unable to feed and raise animals, farmers were pushed to sell them for cheap. Distress sale of land and animals turned them into cheap labour from owners. Some farmers, who became

²ME-3 (Mining Enterprise-3) is a state entity under the MoNREC, which operates coal-mining projects in collaboration with domestic and foreign companies.



These farmers lost their land due to the mine

landless because of the mine, currently collect wood from the forests on the nearby hills and sell it in the local market. Two of the interviewees worked in the power plant for some time in 2008, for MMK 100 a day, but due to poor working conditions and low salary left the job.

Khon Win Htein and Khon Hla Kyaw, who worked in the power plant shared,

We used to do the cleaning job and throw coal on the conveyor belt. It is a very tiring job, we were not happy there. The company paid less, sometimes just coffee packets and that too not regularly. We will not work in the power plant again. Farming makes us happier. We have independence in farming.

The interviewees shared that while most people still work in the same area, a few have migrated to Thailand for work. Those who are still farming in the vicinity complain that the farmland has become hard to plow. They suspect that it is because of the contamination of Tigyit creek that waters their farms with mine waste. Also, during the rainy season, water flows from the mine and deposits the coal in their fields. Mine waste is also dumped on their farmlands and the villagers suspect that it has an impact on the agricultural produce and its quality.

According to PYO and KAN (2011) some people, whose land had been confiscated but was not used, were allowed by the local officers to continue farming. These farmers live in a constant state of anxiety. They do not invest in fertilisers or manure because they do not know when their land would be destroyed.

Impacts are felt more by women, who work not just in the house but on the fields as well. They feel constrained to meet the needs of their families. Children are forced to leave school and work on the remaining piece of land with women, while the men work as labour to meet the needs of the house.

Perils of living next to a coalmine: pollution impacts

The report prepared by PYO and KAN (2011) states that over 2,000 households spread across 25 villages live within a distance of eight kilometres of the coalmine and power plant. These are the families that face the daily impacts of the project. At the time when power plant was operational, trucks would transport coal, emitting

coal dust that polluted the nearby fields. Coal dust would cover the passers-by, the crops, animals, and their houses completely. Fly ash produced by the power plant would be dumped on roadsides exposing locals to the risk of mercury and arsenic poisoning. In 2011, about 50% of population living close to the power plant complained of skin rashes (Mizzima, 2011). The runoff from the piles of dumped soil from the mine contaminates their primary water source Balu creek and blocks other small water channels (Kritsanavarin & Vriezen, n.d.). In the rainy season, artificial ponds are created as the stagnating rainwater gets collected in the mining pits. In the absence of natural water sources, people are dependent on such pits for watering their crops. Locals also claim that blasts from the mine destroyed the nearby Pagoda and have led to cracks in several houses in Tigiyit village.

Half of the Tigiyit village has coal deposits underneath, but when the mine began, the village chose to stay back. It was saved from relocation because of the intervention of the abbot of Tigiyit Monastery. However, the ever-expanding mining operation is inching closer to the village. The villagers now are living with the everyday impacts of the mining operation. Coal dust and huge heaps of mine refuse endanger their health and crops. Similarly, residents of Thar Yar Kone village see with each passing day the heaps of mine waste growing bigger and getting closer. They live under the constant threat of all the waste reaching their village with the rainwater runoff.



Residue from Tigiyit mine contaminates Balu creek

Were legal remedies possible?

According to the Myanmar Mines Law, 1994, the mine operator needs to take permission from the land users before beginning a project. Villagers were either not informed, given incomplete information or were intimidated by the government authorities. Section 14 under Chapter 5 states:

The holder of permit for mineral production within an area under the Ministry's administrative control or which does not lie within the Mineral Reserve Area or Gemstone Tract, shall carry out such production only after coordinating and receiving agreement from the individual or organization having the right of cultivation, right of possession, right of use and occupancy, beneficial enjoyment, right of succession or transfer of the said land.

But in the subsequent section No. 15, the law states:

If, in the interest of the State, it is necessary to acquire the land where mineral production could be undertaken on commercial scale, the Ministry shall co-ordinate with the relevant Ministry for the acquisition of such land in accordance with the existing law.

Here the "existing law" would mean Land Acquisition Act, 1894, that does not mandate permission of landusers before acquisition of land for "public purpose". "Public purpose" has been defined loosely in the Act as anything the "Union" deems necessary. The Land Acquisition Act, 1894, under its section 5A provides an opportunity for persons "interested" to raise their objections with the collector. However, this exercise may not lead to much as it only guarantees a hearing to the person aggrieved, the final decision on acquisition would rely on the sole discretion of the President of Union of Myanmar.

As per a list of mines procured by the EITI from the MoNREC, the Tigyit coalmine was approved in 2003, for a period of 20 years (till 2023). Clause 8 of the EIA Procedure, Notification No. 616/2015 of the MoECF states that any project that is in existence prior to the issuance of the notification would need to develop an EIA or an IEE or an environment management plan and obtain an environmental compliance certificate. Clause 13 of the law mandates that public consultation takes place at all stages of EIA process and all project related information and IEE report (clause 38) or EIA report (clause 65), whichever is applicable be made publicly available within 15 days of submission of such report to the concerned department. However, it is not if the project has obtained an ECC. The villagers shared that no EIA or IEE reports or ECC has been made available in public domain.

Community's response

Due to years of suppression by the army, most people in Myanmar do not take antagonistic action against the atrocities of the state. They fear the law and adopt a beseeching attitude towards the companies, military and government. At the time when the mine was initiated the locals were too afraid to raise their voice. They feared of being put into the prison. But villagers shared their grievances when the mine and the power plant became operational and the coal dust covered their farms. They complained to the company. The company intimidated the farmers again by sending a captain from the army to hear their complaints. Also new kinds of dependencies on the mine were emerging. Even though the locals were not dependent on the mines for employment opportunities, with the suspension of the power plant, their other sources of sustenance got impacted. The mine was being relied on for water. Win Shein Myat from MATA, who has been supporting the community action in the area shared:

Tigyit mine is a peculiar example of farmers' dependence on mining operations, not for jobs but for water and their worry for future. Due to digging for coal by the mining operation the natural waterways in the region got changed. The waterways are now flowing to the coal mining pits. The mining company pumps this water out and this then reaches the nearby agricultural fields. The farmers worry that if they complain about the mine, the company will stop pumping the water out and the water that is reaching their fields currently will stop.

Most people who got impacted from the project belonged to the Pa-Oh community. The Pa-Oh community has its own education system with its own language and script. Many Pa-Oh people do not understand the Burmese language. Nan Nge Nge, a Pa-Oh woman involved in creating awareness on the impacts of mine, feels that even those who understand Burmese take time to open up to outsiders and believe them. She shares,

The only outsiders most Pa-Oh people have are the military, companies and the Government all of who coerced them to alter their lives for their mega plans. Since I can speak Pa-Oh language, I can convey my message easily. Local people believe me and they talk to me openly.

However, since 2011, after the dissolution of the military junta, things started shaking a little.

PYO and KAN came to the area with the aim to educate the communities of the impacts of mining and documented the experiences of the locals of living next to a coalmine and a power plant. They advocated for better compensation for those already impacted and demanded the closure of the mine. They also mobilised the local community and urged them to raise their voice against the exploitation. While the two organisations highlighted how the companies, who were involved, violated the prevailing laws, they did not pursue the legal route for seeking remedies for the locals.

In 2014, after finding out the impacts of coal extraction and experiencing the changes themselves, villagers started to stand together against the thermal power plant. Till then, the villagers were reluctant to take the issue to government departments but things changed. Sai Htoo, a local from the Shan community, who has been leading the campaign against the thermal power plant, says:

I wanted to write to the Government officers highlighting the impacts of the mine. I asked villagers to sign the complaint but they were afraid. So I signed it alone and mentioned that I was a representative of the local people. After two months, I discussed the issue again and this time villagers agreed to sign, perhaps because farmers saw that I was genuine. They started getting worried about their future and joined the campaign.

The news reports that the mine was not making profit pushed them into action. They approached the MPs from the area with the message that if the mine instead of making profit was causing problems for the locals, it better be discontinued. They approached the MPs at the state and national level as well and demanded that the mine and the thermal power plant be shut down. Seeing activity against the project in the area and anticipating receptiveness, MATA, a national network with civil society and individuals as its members all across the country, also got involved in the campaign. They complained of air pollution at all levels of the government. According to Sai Htoo, since the government was running the project and the laws were largely seen as the tools of the government, the campaign did not make use of the laws in seeking solutions. After seven to eight months of sustained follow-up to the complaints, the officials from the state government came to inspect the site. Eventually the plant was suspended in the same year (Mon, 2017).

Campaign against the power plant

In April 2016, the Chinese company Wuxi Huagaung Electric Power Engineering, currently upgrading the plant, claimed that the plant's environmental standards and its efficiency had been improved (Mirante, 2017). Following its claims, the efforts to reopen the plant have begun from the government's side. As per the interviewees, Myanmar Centre for Responsible Business (MCRB), responsible for conducting public consultation for the project, invited certain villagers for public hearing as part of the EIA process for the mine and reopening of the power plant on 24 April, 2016.



A man wearing an anti-coal T-shirt. These T-shirts were printed as part of the campaign against Tigyit Thermal Power Plant

MATA informed villagers of the upcoming consultation, which stirred them into action again. Around 500 farmers came at the site of consultation and protested. But the consultation still took place and the protestors were not allowed to participate, as they were not “invited” to the consultation. The farmers were angry. They demonstrated and expressed their displeasure at the developments. Interviewees shared that the company had chosen 30 people from the community for public consultation. They suspected that company persuaded the public figure of the community to be on its side and mobilised these 30 people in support of the project.

In the same month, the locals along with Sai Htoo met with the state government to raise their concerns against the power plant. Despite the opposition, the government of Shan State began to conduct test runs at the plant on 22 October, 2016 (Thiha, 2016). The locals, around 500 in number, this time decided to take to the streets. Huge number of women participated in this campaign. Together with PYO and the Pa-O Women’s Union, the farmers stuck anti-power plant slogans on their motorbikes and wore t-shirts with similar slogans (Zin, 2016).

In the last year (April 2016 to March 2017), the villagers have met the state government four times and the Pa-Oh area’s administration body once. The PYO is supporting them and bringing nation-wide and cross-country attention on the issue. In January 2017, in a press conference it shared that compared to the far-reaching impacts that the plant would have, energy generation would be miniscule (Mon, 2017).

Pa Oh National Organisation (PNO), a political party representing the Pa-Oh people, which is currently ruling the area, got involved in the issue some time back. According to the locals, the PNO-led government in the region has signed a contract with the Chinese company Wuxi Huagaung Electric Power Engineering, which is currently upgrading the plant. If the PNO withdraws support for the project, the PNO-led government will have to pay the penalty for terminating the contract. The locals are contemplating two plans of action to pursue two kinds of remedies: (a) no reopening of the power plant and (b) power plant to abide by the current laws and carry out development of the area. Sai Htoo is hopeful when he says, “There will be too many demands on the company. We will ask them to follow mine law, environment rules, follow the development plan and mine closure plan. All this will force the company to leave.”



“Pa Oh” women have been actively involved in the campaign against Tigyit Thermal Power Plant.

Current Status

The locals seem to have prioritised over the issue of reopening of the power plant instead of pursuing remedies for problems related to coal mining operation at its current scale. One reason is the lack of knowledge on mining laws. The other is a strategic reason: according to Sai Htoo, the mine's approval will expire in 2023. Only six years are left for it to get closed. However, the plant got its approval in 2015 for 22 years. If it restarts, it will continue till 2037 and with its operation, as he suspects, the mine will also expand. It is evident that the locals are choosing their battles: in the wake of approaching bigger dangers, daily impacts of the mine are being tolerated. Lack of political support from the local government also has a bearing on what the project affected people view as realistic.

As recently as May 2017, Shan State's Minister for Electricity, Energy and Industry announced that the Tigyit Thermal Power Plant would be run for a year on a test-basis. The state government has announced that it would organise a committee on health concerns with the current leader of the Pa Oh Self Administration Zone facilitating it. The minister promised that if serious concerns were observed after one year of the plant's operation, the plant would not be continued (Thiha, 2017). It seems that plan 2 that doesn't jeopardise the aspirations of Myanmar and Shan state to 'develop' has won. Hopefully this victory would not dampen the spirit of the villagers and it would turn out the way Sai Htoo had wanted it to. In the meanwhile the villagers are bracing themselves and making notes of what all to ask from the company including the tests the company needs to carry out on water, soil, and air.



Tigyit Thermal Power Plant, which has been shut since 2014, will be run for a year on a test-basis

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Interviews conducted between 1st and 3rd April 2017 in villages of Tigyt and Thar Yar Kone in Pinlaung Township, Taunggyi and Aungban town in Shan State.

- Win Shein Myat, Male, Secretary, Farmers' and Land Workers' Union (FLU)
- Sai Htoo, member, MATA, Shan State
- Nan Nge Nge, Pa-Oh woman activist, Shan State
- Khon Win Htein, project affected person, Thar Yar Kone village
- Khon Hla Kyaw, project affected person, Thar Yar Kone village
- U Ku Tha La, head monk, Monastery Taung Po Gyi, Thar Yar Kone village
- Khon Aug Thuna, project affected person, Thar Yar Kone village
- Pyo Li, project affected person, Thar Yar Kone village
- Khin Mey Than, nurse in the local government hospital
- U Chit Wait, social worker, Tigyt village
- U Sein Thaug, villager, Tigyt village

CASE STUDY II

It's not water under the bridge for Paunglaung¹

Upper Paunglaung Dam located in Southern Shan State was initiated by the government of Myanmar in 2006, and was officially opened in 2015. The dam has led to the displacement of 8,000 people from over 20 villages including many from ethnic communities. Those displaced have faced forced relocation without being compensated adequately for their homes, farmlands, and vegetable gardens. The compensation was disbursed in an opaque manner leaving many confused about how their compensation awards were calculated. Many have been relocated to sites, which were being cultivated by their fellow villagers. Several relocation sites are now under the threat of being flooded due to the rising levels of water in the dam reservoir. Affected farmers have organised themselves to seek better compensation from the government for their losses. They also demand ownership titles over the lands that they have started cultivating after being relocated.

Myanmar faces a huge energy crisis—not only does the country have the lowest per capita energy consumption in Asia, only 34% of its population has access to electricity (Walker, 2017). So far, Myanmar has relied on hydropower and natural gas for electricity generation. Share of hydropower is two-thirds of the total electricity output of the country (Billen, 2016). Myanmar was looking to increase the share of coal and cut significantly the share of hydropower in the total electricity output. However, opposition against thermal power plants across the country has made the government to reduce these cuts. From an initial plan to bring the share of hydropower down to 38% by 2030-31, the MoEE readjusted the target share of hydropower to 50-55% from the current 63% (Myint and Slodkowski, 2016). According to Burma Rivers Network (BRN), as of March 2015, 43 dams are planned for construction, over half of which are slated to be located in Shan State. In Shan State inhabited by Shan, Pa-Oh, Kayan, and other ethnic hill communities, BRN estimates that several dams, particularly on the river Salween, have replaced tens of thousands of people (BRN, 2015).

Upper Paunglaung Dam on the Paunglaung river in Pyinmana mountain range is located in the southern Shan State between Loikaw town and Nay Pyi Taw. Paunglaung river originates in Shan State, flows through the south-west Shan plateau and joins Sittang river in central Burmese plains east of Pyinmana. While the generating capacity of the dam is 140 MW (Harris, 2015), along with Lower Paunglaung Dam, it meets the electricity demands of the capital city located 26 miles away. The dam also provides water storage, which increases the generating capacity of Lower Paunglaung Dam, completed in 2005 (Kantarawaddy Times, 2008).

Upper Paunglaung dam stands uniquely as it was initiated during the military rule, but flooding due to the construction of the dam and the final completion of the dam took place in the democratic period in Myanmar. The case offers a peek into how communities responded to cases initiated by the *Tatmadaw*² and how the strategies changed after a democratic government took reigns of the country.

In February 2006, amongst eight documents signed between Myanmar³ and China, was an agreement for development of Upper Paunglaung Hydroelectric Project. According to International Rivers, China Export

¹Sources of information, if not mentioned, are the interviews, group discussions, and observations during field visits conducted in April 2017. Names and other details of interviewees are provided at the end of the case study.

²The armed forces of Myanmar are officially referred as *Tatmadaw*. Comprised of the army, the navy, and the air force, the armed forces are governed by the Ministry of Defence, Myanmar.

³From Myanmar's side, the documents were signed by the then Prime Minister of Myanmar, Soe Win.

Import Bank financed the project with over USD 120 Million (“Brief”, 2000; KNGY, 2011). The report prepared by Physicians for Human Rights (PHR, 2015) states that the dam is financed and built by Chinese, Swiss, and British companies and was implemented by the government of Union of Myanmar. Scott (2015) explains that besides the involvement of the Chinese firm, the design and construction of the project was supervised by Swiss Engineering consultant Colenco AG.⁴ British firm Malcolm Dunstan & Associates and German firm and FOSCE Consulting Engineers consulted on design and construction of the dam. Construction of the dam began in 2006, under the auspices of the MoEE and with the support from Township GAD⁵, the Ministry of Agriculture, Livestock and Irrigation (MoALI) and the MoECF. By January 2007, the ancillary work for the dam had begun—a canal for diversion of water was being constructed and earth works on each side of the perspective dam had started (New Light of Myanmar, 2007). According to International Rivers, construction of the plant was completed in 2012 (“Brief”, 2000). The project officially opened in October 2015 (Harris, 2015; Mizzima, 2015).

Displacement and inadequate compensation

As per the accounts of residents of Paunglaung town⁶, they heard for the first time in 2005, that they would be evicted because their villages would be flooded. Construction of the Lein Li bridge on the Paunglaung river and the dam began at the same time in early 2006. The villagers shared that they made room for it and made adjustments around it but didn’t move away as no official communication had been made to them till then. According to the residents, till 2009 officials from the district, township administration, and the military would visit their village often to take land measurements. In 2009, the government started preparing the land for clearing. As per villagers, in 2012, the construction was completed. In 2014, the water started coming into the dam. In May 2013, villagers were asked to vacate. People shared that under the pressure of the government, they moved out unwillingly. U Ohne Khaing, one of the displaced farmers, shares:

No one was happy about moving but we had to sign the papers because the government officers told us if we didn’t sign it then, we would have to sign it in Naypyidaw⁷. Forced demolition took place and we were afraid that we would receive no compensation at all.

As per a PHR study (2015), 8,000 residents of 23 villages of the Paunglaung river valley had been displaced for Upper Paunglaung Dam. Scott (2015) gives a similar number: 1,500 households from 24 villages have been affected because of the project. This includes the villages impacted by the reservoir that has flooded 12 villages and 5,000 acres of fertile land. The villagers shared that they were given “support money” based on the conditions of their house—A bamboo house would fetch around MMK 6.3 lakh, a wooden house would get one around MMK 18 lakh and a brick house would fetch around MMK 100 lakh. Farmland was compensated at the rate of MMK 10.5/acre. Standing coconut trees went for MMK 30,000/tree and other trees (e.g. mango) were MMK 10,000/tree.

The government didn’t pay any relocation allowance, but moved the belongings of the evictees to the new location. Maung Maung, a teacher and a displaced farmer says, “We had to destroy our houses with our own hands.” While there is no clarity on the law that was used to acquire land from the villagers, two laws that could have been used are the Farmland Law, 2012 and Land Acquisition Act, 1894. Under the Farmland Law 2012, the compensation should include the market price of the land and price of the standing crop and the sum should be multiplied by a factor. These stipulations have not been followed in most cases.

Further, Article 6 (1) of the Land Acquisition Act, 1894 mandates that possession of land will be taken only after compensation has been made available. This stipulation has not been followed in the case. According to the interviewees, they received compensation in two installments. Half before the relocation and half after

⁴In 2007, Colenco AG was taken over by the AF Group, a Sweden-based international energy company.

⁵The GAD of the MoHA provides the administration for Myanmar’s district and townships. It is central to the functioning of administration across the country. It supports coordination and communication between the 36 ministries of the union government and connects the capital with approximately 16,700 wards and village tracts. It collects tax and manages land and its certification and registration process. (Source: <https://asiafoundation.org/resources/pdfs/GADEnglish.pdf>)

⁶As per the residents of Paunglaung town, residents of most villages that got inundated with water were moved to Ta Lina Ma and Lone Ka villages. Our interviewees moved to Paunglaung town from there so as to be closer to the main road.

⁷The capital of Myanmar is popularly referred as ‘Naypyidaw’. However in government documents ‘Nay Pyi Taw’ is used.



Dam reservoir inundated the farms and houses of Paunglaung valley

the relocation was complete. They were promised the compensation papers providing the detailed breakup of how the compensation had been calculated, but they didn't receive any. This led to confusion about how the compensation award had been calculated. According to the interviewees, in just their village, around 25 people, who lost their farmland, did not receive any compensation for that and over 100 people have received no compensation for their lost homes. Substantiating villagers' claims the PHR study (2015) too shares that the process of compensation was opaque and inconsistent; farmland was not replaced; and there was no way to supplement the reduction and difficulty in income generation.

Relocation to lands already in use and soon to be inundated

According to the study conducted by PHR (2015), the villagers were relocated to a large settlement close to the Lein Li Bridge, near the middle of the reservoir. However, for long many did not know where to move to. Even later they were not granted any farmland in exchange of the agricultural land that they lost (Hseng, 2011). Each village was allotted a section of the land but was not granted an ownership. The government paid for construction of common facilities such as monastery, church, and library. It gave plots to build new houses on and assistance money for relocating. In the field visits it was found that ten farmers have lost their land not to the dam but to government's faulty relocation exercise. Their land (35 acres) has been bulldozed over and given for farming to 150 households. According to the farmers, who lost their land, these 150 households wanted to cultivate a nearby plot that was lying empty at the time but that land was taken over by the Department of Electricity, which relocated them to their current location.

The villagers, who were moved to other farmers' land, shared that they tried not to go there and invade into what belonged to other villagers. They shared that they had identified 35 acres of land in Hin Oeo Taung village to relocate. The area had good water sources. They showed the area to the government and the government promised that it would clear the land for them. But in 2012, the villagers shared that the staff of Department of Electricity and Township administration forced them to take up the alternate site that actually belonged to other villagers. According to the villagers, an official announcement of allotment of land came later. U Tin Oo, who is a farmer



A resettlement village developed on the farmland that was already in use by other farmers.

from Thapyay Kone village and has been moved to the land of fellow villagers, says, “We know that this land belonged to other people (there are only 200 households here, everyone knows everyone).” He recalls the incident; “I tried a lot to not come here, talked to the authority and the officer in the ministry of electricity. But he is rude, he has military background. He nearly hit me. Even though he is much younger than me, I had to apologise to him.”

Hla Win, who was relocated too, recalls:

We heard in the summer of 2013, after harvest, that our land is being given to relocated people. We went to the project leader and informed but we did not receive any answer. Then we went to the township, there too we did not receive any clear answer. My previous house is flooded now. I have been relocated to where I used to farm earlier.

However, Hla Win and U Tin Oo added that the water from the dam reaches this new site of relocation as well, especially during the rains. They are afraid that if the water keeps coming into this new site, they may soon have to relocate from here as well. This resettlement area is not alone to be facing the threat of being inundated. As reported by Scott (2015), there are at least four resettlement sites that had been re-flooded by January 2015, forcing the farmers to disassemble their newly constructed homes, leave their gardens and crops behind, and move to another site. This reportedly is happening primarily because the reservoir waters continued to rise way above the levels predicted by the government officials.

Impact on livelihood

Although, till early 2017, the villagers had not received an official allotment of farmland, they started cultivating land in the hills that are located two miles away from their place of new residence. These fields are accessible only through boat. Amar Sein, female activist from the area, who is campaigning against dams, shares, “Some villagers spend 10–20 days at a stretch on the farm because commuting to and from the farmland on a daily basis is not possible.”

U Tun Wai, who lost agricultural land, said:

I received compensation only for half of my land lost as at the time of land grab I had already harvested the land and the government officers thought that the land was not good, so he got paid only for half an acre. I went to the press media and the government and told them about it but nothing happened. There are many people like me who got less or no compensation at all. People who had good relations with the government got better compensation. Also people who were relocated did not get any documents that tell them about the calculation of compensation.

As per the PHR study, of the 80 households that they surveyed, 68% shared that they do not cultivate paddy anymore. Villagers, who were interviewed for this study, stated the same as they claimed that hills are not suited for paddy cultivation. Maung Maung, one of the displaced farmers compares the current situation with the past,

Before we used to grow paddy on the plains. Although the cultivated land was less compared to what we have now we used to earn more. We know how to farm the plains, we don't have the knowledge and skills to farm hilly lands. But we cultivate turmeric and ginger on hilly land. The production is more but the income is low. It has come to 1/3rd of what we used to earn earlier. We used to even hire labour to work in the farms but now we cannot afford to hire labour even though the work on the farm has increased.

Hla Win gives a similar comparison:

I used to own 5 acres of land. On 3.5 acres I used to grow paddy and on 1.5 acres I used to grow beans. In 2013, my land was given to 26 households to relocate to. Currently, I cultivate turmeric on 2 acres of forestland.

Many villagers, who used to offer labour at these farms, have become unemployed. They go to Thailand for work or work as helpers in restaurants in Yangon and Naypyidaw. As per newspaper reports, joblessness is pushing many to take extreme measures (Frontier Myanmar, 2015; Macdonald, 2016). According to villagers, as of March 2017, 20 people had committed suicide in the area. Amar Sein adds:

Females cannot farm lands anymore as the new farms are located faraway. Since they don't have money, they work in gas stations, they are leading an unsafe life. They do not have experience to go out, they may meet bad elements.

Obtaining compensation documents

In 2015, local Karen people in the area contacted KNGY (Karen New Generation Youth). KNGY had been active in the area since 2010, working with the Karen community and opposing the displacements in Paunglaung valley because of the project. KNGY published a report in May 2011, documenting the impacts of the hydropower plant on the valley. It also put the villagers in touch with Paung Ku, which runs a consortium of international and local agencies that work on the issues of land in Myanmar.

The villagers complained to Pang Ku about the lack of transparency in compensation procedures. Paung Ku got Law Home, a local organisation from the area (more details about the organisation could not be found) involved. Law Home provided legal training to people on their rights and issues of injustice. With the support of Law home, the villagers started demanding compensation papers from the government. They formed a Farmers' Labour Union and Environment Conservation Union for Paunglaung. There are 20 members in their organisation, of which seven are women. The group approached different government offices demanding compensation papers. After multiple visits they received photocopies of the record of compensation from the Settlement and Land Records Department (SLRD). From these papers, they found out that many people, who were not actually entitled to compensation, received it. They also found out that the Department of Hydropower Implementation, Township Electricity Department, Ministry of Labour, Immigration and population, Education Assistant Officer, policemen, village clerk, SLRD clerk, and village authority signed their compensation documents.

Litigation against faulty relocation

Regarding faulty relocation, initially the villagers complained to the electricity office and the Township administrator. They made an oral complaint followed by a complaint in writing. But the villagers shared that they did not receive any response. They went to Taunggyi, the state capital afterwards to meet with the Energy Department Officer. They also went to Naypyidaw to meet with the Minister of Electricity. There they were asked to get a confirmation with signatures from the Township administrator, the SLRD and the village administrator that the land given away for relocation belonged to them.

U Ohne Khaing and Maung Maung, two of the farmers whose land was given away by the government for relocation lamented that officers in the land department and village administration are scared of higher authorities and do not confirm anything on paper. About the officers, the two farmers said, "But all of them are afraid. They just say 'I don't understand.'" After not finding any concrete way to get their lands back, seven of the ten farmers whose land had been allotted for relocation decided to file a case in Taunggyi district court. While the case documents could not be accessed, it is likely that a number of current laws would be useful in the case. The constitution of Myanmar makes the current government responsible for the actions of the previous governments. Also, under the VFV law of 2012, if a farmers uses a piece of farmland for an established period of time, the land becomes entitled to compensation when it is under conflict with a third party. Further, the Limitation Act 1909 allows up to 12 years of time for a party within which it can sue the other party for damage to immovable property. As of April 2017, they had served two notices to Minister of Electricity in Naypyidaw. First notice was sent in December 2017, second notice was given in January 2017, as a civil case (*Tayama-Hmu* in Burmese)

Current Status

As per villagers, in 2013, the government asked them to look for land on their own. They cleared land in the nearby forest, and made it usable after toiling on it for more than a year. In 2015, MoEE made an official announcement and informed the government that 8,000 acres of farmland would be allotted to those who lost farmland. But they never received any land. The villagers fear that in future the government may announce land for them, which is already under cultivation by others. This may lead to conflict. The interviewees said in a common voice, "Redistribution of land should have been done earlier. Now it is late. We have already worked our current pieces of land and made it suitable for farming. We want to continue to use these." Since the land they are currently using is not officially recognised, they want land ownership titles for the land in use. Alongside, in Paunglaung town, where many of those displaced by the dam live, lacks facilities such as water supply, drainage, and sewage. They want the government to provide them with these facilities. Through their case in the court the seven villagers whose farmland was given to others for resettling without anything to them in exchange, are seeking compensation from the government for the lost land.

The entire exercise of land acquisition in the case of Upprer Paunglaung Dam is marred with lack of transparency, complete disregard to people's right to livelihood, and inadequate resources to compensate the project affected people. The resettlement sites scattered above the Paunglaung valley lack basic amenities. They have been created robbing more people of their livelihoods. These sites are under the threat of being submerged due to miscalculations and wrong estimates on government's part of the future water-level rises. Government's indifference towards the villagers' concerns, though was observed during the term of the previous government, it is the duty of the current government to address their concerns. The villagers, while initially were coerced into accepting whatever little compensation the government offered them, are gradually standing up for their rights. They have been discovering errors in the process of compensation, which they are presenting to the government through administrative recourse and legal routes. With a demand that the impacts be better offset, the villagers' struggle for just remedies is slowly gaining strength.

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CASE STUDY III

Poison no more: Kankone confronts the toxic Moe Gyo Sulphuric Acid Factory in Salingyi¹

Mountains of Monywa in Central Myanmar hold rich deposits of copper. The deposits have been developed as two mining operations—Sabetaung and Kyisintaung mines and the recent Letpadaung mine (Dominguez and Staudenmaier, 2015). The sulphuric acid factory in Salingyi Township was initiated in 2007, to meet acid requirement of Sabetaung and Kyisintaung mines. With the initiation of Letpadaung mine, the factory is expected to take care of its need of sulphuric acid as well. Frequent toxic emissions from the factory pose health risks for the residents of village Kankone, which is situated only 100-200 yards away. The project has brought the regional government of Sagaing and the union government of Myanmar in conflict. Approaching the two levels of government with complaints and protests, the residents of Kankone village hope for the factory to be relocated to an alternate site.

In Monywa district of Sagaing Region copper ore is found across four reserves: Letpadaung, Sabetaung, Sabetaung South, and Kyisintaung. Development of these regions has been in discussion since as early as 1960s. In 1978, Mining Enterprise No. 1 (ME1), a Myanmar government-owned enterprise began developing the Sabetaung and Kyisintaung deposits. In 1996, Monywa was turned into a joint project with 50-50 partnership between ME1 and Ivanhoe Mines, a Canadian mining company. The joint venture was called Myanmar Ivanhoe Copper Company Limited.

In 1996-97, the government nationalised 5,411 acres of farmland in Monywa and transferred it to ME1 on a 30-year lease contract (Amnesty International, 2015). As per the villagers of Kankone, till this time people could access their land and continued farming. By using the Land Nationalisation Act of 1953², the government absolved itself of the requirements under the Land Acquisition Act of 1894, such as giving prior notice, inviting objections, compensation, etc. Instead, the government used section 144 of the Code of Criminal Procedure and restricted access to land to all persons and prosecuted anyone who failed to comply. Altogether farmers from 11 villages had to relinquish their land for the copper project without any prior notice under the fear of prosecution. At this time this land was zoned out of agricultural land (Amnesty International, 2015). As per the villagers, at the time, the farmers were compensated for crop damage but not for the land. The villagers shared that while open cut mining began in Sabetaung and Kyisintaung mountains, a building was constructed on the land in Kankone village but was abandoned later on.

Mined ore is broken down and then treated with sulphuric acid to create a copper laden solution, from which copper is extracted and plated onto electrodes for sale (Amnesty International, 2015). As shared by Tint Aung Soe, member, MATA³ till 2000s sulphuric acid for processing the copper ore was being sourced from other countries. He adds, "They realised the acid could be produced closer to the mine." In 2007, 52.80 acre of area falling in Kankone village from the original 5,411.03 acres was used for an industry.

¹Sources of information, if not mentioned, are the interviews, group discussions, and observations during field visits conducted in August- September 2017. Names and other details of interviewees are provided at the end of the case study.

²The 1953 Land Nationalisation Act made all land the State's property

³MATA is a national network of civil society organisations and individuals focusing on accountability and transparency in governance of natural resources.



Kankone village is subjected to toxic fumes from the Sulphuric Acid factory located in the village and waste water from the neighbouring copper mines.

The villagers shared that they didn't know what factory it was and what it was going to manufacture. In the past there had been talks of a shoe factory and a paper factory and going by those the villagers thought it would be manufacturing something similar. On July 25, 2005, military conglomerate, Union of Myanmar Economic Holdings Limited (UMEHL) and China North Industries Corporation commonly known as Norinco⁴ signed a contract for the factory. The factory was constructed in 2006, and began operation on April 20, 2007 ("Sulphuric Acid on the Web", 2017; Zaw, 2017). The locals maintained that they were not informed that sulphuric acid was being produced in the factory. U Bo Than, an elderly from Kankone village recalls, "We saw that sulphur packets were being brought in the area. They gave out a pungent smell. We checked with the factory labour and security and found out that sulphuric acid was being produced there." The industry was called Moe Gyo or Thunder Sulphuric Acid Factory. The factory is located a few kilometers west of the S&K (Sabetaung & Kyisintaung) mines. The factory produces 50 tonnes of acid per day and takes care of 98% of the needs of the S&K mines.

Pollution and suspected impacts on health and agriculture

According to the census conducted in 2014, as noted in the report of Amnesty International (2015), Kankone village has 720 households. As per the villagers, approximately 50 houses of the village are only 100-200 yards away from the factory. These households share that they are not given any notice prior to the toxic emission. Every time the factory chimney releases toxic fumes, these families get inside their houses and close all the doors and windows. Yet many complain of bad cough, vomit, irritation in eyes, and sore throat after such instances of emissions. Four persons in the village are suffering from soft bones, which the villagers suspect

⁴Norinco is involved in a range of businesses including auto-mobiles, machinery, chemicals, explosives, etc.

is linked with the frequent release of toxic fumes from the factory. Nyo Nyo Win, who lives just 100 yards away from the factory, has a daughter suffering from soft bones. She says,

I think my daughter was born with the disease because I inhaled toxic air during pregnancy. I have become careful since, we cannot afford to live anywhere else. So every time the chemicals are released, I leave my house with my children and return only when the air is clean again.⁵

The basic high school of the village is only 50 meters away from the factory. The 789 students (between five and 16 years of age), who study in the school, are at constant risk. Tint Aung Soe thinks that teachers at the school are not in a position to do something about the issue. He says, "Teachers don't dare to speak about it (as they are government staff). In events of toxic emissions from the factory, they just bring the students inside the classrooms and close the doors." He also shared that crops die when they come in contact with the smoke from the factory. The villagers talk about their plight and share that the front of the village that has about 40 families faces the factory and the back of the village is impacted due to waste dumps and waste water discharge into Yama river from the Kyisintaung mine. Due to waste dumping, the villagers believe, the riverbank is not stable anymore. U Bo Than says, "The river bank has collapsed and some farmland has also come under water due to river expansion."



Kankone villagers, for long, were kept in the dark about the purpose of the factory.

⁵ Sulphuric acid can dissolve toxic metals such as copper, aluminum, lead, and mercury from nearby rocks. This mixture of acid, metal, and water can seep into the soil and water and contaminate them. Metals such as lead and mercury even in very small amounts can be detrimental to humans. Sulphuric acid is corrosive and can cause harmful effects on the skin, eyes, and respiratory and gastro-intestinal tracts if there is a direct exposure to it. Sulphur dioxide in high concentration can impact breathing. Children, elderly, and individuals with respiratory tract diseases are more vulnerable to the impacts (Amnesty International, 2015).

Series of demonstrations against the factory

In 2012, mid-term elections were conducted to fill a few empty seats in the government and NLD⁶ won some of those seats. The villagers shared that they approached their contacts in the NLD party. Responding to mass protests against the soon to begin Letpadaung mine⁷, an independent national-level investigation commission was constituted. The commission had 30 members with Aung San Su Kyi as its leader (Lwin, 2013). Three persons from the community were also a part of the commission. Kyisintaung, Sabetaung, and Kankone villages selected one member each. At the end of 2012, the commission got the permission to enter the factory premises.

The local member of the commission from Kankone recounted that they entered the factory premises and spoke with the manager, who admitted that the factory was dangerous. He shared that they mentioned the same in the report. Later they found out that the manager was fired. However, in the final report (released in March 2013), the commission only acknowledged the fact that the factory was operating without the permission of the Ministry of Industries and other requisite permits (Myanmar Wanbao, 2014). It recommended that the necessary permissions be obtained (Amnesty International, 2016). In July 2013, UMEHL obtained a permission to keep the factory running. (RFA, 2016).

Despite a clean chit from the commission, the problem of toxic fumes persisted. In August 2013, about 500 villagers protested and demanded that the factory be relocated. The villagers shared that in October 2013, the smoke from the factory didn't get dispersed but stayed low and spread around. They suspected that it was the acid, as acid is heavy and tends to stay longer at a low height. Rain showers, afterwards, cleared the smoke but it settled on crops and damaged those. The villagers complained to the Ministry of Agriculture, its officers came and checked the site but they didn't say anything clearly. Eventually the villagers discussed the issue of smoke with different NGOs that were visiting the area at that time and they found out about a laboratory in Yangon. The villagers took the soil samples and a few saplings to the laboratory in Yangon.

The laboratory confirmed that the soil had high content of sulphuric acid. They complained to the factory, this time with the report. U Bo Than, resident Kankone village and member of Letpadaung Investigation Commission shares, "This time the factory could not deny it. The manager said that it was an accident as some technical fault took place in the industry. We asked the company what could be done for us. But the company didn't provide us anything."

In August 2014, around 200 residents from Kankone village protested against the decision of Global Innovation Consulting (GIC) for issuing an ISO⁸ certificate to UMEHL ("Sulphuric Acid on the Web", 2017). The villagers shared that when GIC came to Kankone and asked questions about UMEHL's activities, they had complained, many didn't fill the opinion survey. But they shared that the village administrator at that time didn't raise concerns regarding the factory. Tint Aung Soe recollects:

One time GIC came to local monastery and asked our opinion about the factory. We protested, nothing happened and GIC went back. Village administrator at that time supported the project, perhaps GIC got him to fill some forms. He didn't have much idea then. Later when he got to know of the certificate he regretted his decision.

In 2014, in another instance of toxic emissions, the villagers couldn't stand the smell anymore, and protested outside the factory. The villagers shared that in 2015, after they blocked the way to the factory, the company officials agreed to meet them. In the meeting, issues of land grabs, pollution from the factory, and the working conditions of the labour⁹ were discussed. The company, in this meeting admitted that there were serious

⁶NLD is a social- democratic and liberal democratic political party in Myanmar. It came in power in Myanmar in 2015 and is the governing party currently.

⁷Land take-over for Letpadaung mine has been facing opposition from the locals since 2011. The locals have complained of mine work progressing without giving adequate compensation to those displaced and for destructing the environment. In 2012, the riot police raided a protest camp injuring over 100 protestors, an investigation commission was formed with Aung San Suu Kyi chairing it. In 2015, the project was suspended by the outgoing president, Thein Sein, but it resumed work in 2016.

⁸ISO certification is an assurance that a company runs according to one of the internationally recognised ISO management systems developed at International Organization for Standardization.

⁹As per the locals, earlier 700 local people were working, now only 100 people are left.

concerns regarding the labour, environment, and health of the villagers. The company offered to pay two per cent of its profit (MMK 580 lakhs for two years—2015-16 and 2016-17) as Corporate Social Responsibility (CSR)¹⁰. But the villagers didn't want to accept the offer. The regional MP assured them that the government would stop the factory if it poses an environmental threat regardless of whether they accept the offer or not. He further conceded that the village did not have means to monitor the air pollution. He also pointed out that according to the equipment in company premises, the pollution was within the permissible limits. The villagers felt betrayed as the regional government instead of siding with the community was negotiating on behalf of the company (Wai, 2016). As shared during the interview, most of the villagers did not accept the CSR funds as they thought it compromised their position and came in the way of their demand for relocation of the factory.

Regional government's support

In Myanmar, union level authorities are the primary institutions regarding matters of land jurisdiction. In fact, key positions in the governments of regional/state levels, district, and township administrators belonged to the union civil service and they hold offices in the GAD under the MoHA. Hence the villagers engage with local offices of union ministries regarding the applications and requests for their day-to-day needs. However, after creation of state and region governments in 2011, municipal governance and rural development were moved from the center to the state and region governments. This was in accordance with Schedule II, which gave the state and region governments complete control of rural and municipal development. Following this, in 2012 and 2013 the states and region governments have issued their respective municipal laws. Under these Municipal Laws¹¹ the Township Municipal Committees are partially-elected. Through a presidential notification in 2013, the executive branches of the state and regional governments (and not the GAD) were asked to constitute the Township Development Support Committees and Ward/Village Tract Development Support Committees and draft Municipal (Development Affairs) Laws and form Township Municipal Committees (UNDP Myanmar, n.d.). The Municipal Committees are part of Township Development Affairs Committee, which is then part of Development Affairs Organization (DAO) at the township level. The DAO is responsible for issuing licenses to and regulating local businesses (market vendors, restaurants, slaughter houses, etc.) and manufacturing industries (Arnold et al., 2015).

According to a media report, after obtaining permission from the Ministry of Industries in 2013, the factory also received a one-year operating extension, (although not mentioned in the news report, the extension was perhaps granted in 2015), which expired in October 2016 (RFA, 2016). However, another media report, states that the factory was granted permission from the Ministry of Industries in 2013, for a three-year test run, which was expiring in October 2016 (Gilmore & Wai, 2016). Regardless of which permit was about to expire, it was clear that due to this upcoming requirement of the renewal of license, the regional government got involved in the issue. Myint Kyi, the municipal minister of Sagaing Region, reportedly said in July 2016, that on the request of the villagers the factory be relocated, and the government should conduct an investigation on health and environmental issues (RFA, 2016).

However, as per the villagers' account, in May 2016, the company approached the Chairman of the Municipal Development Committee of Salingyi, U Ko Ko Naing for the renewal of their operating license. He communicated to the company that he would give permission if the village tract administration agreed to the project. The license, among other documents, required health and environment certificate from the village. The Village Tract Manager maintained that the factory was not as per the law and, therefore, he didn't give his consent. The villagers further share, "Municipal chairman is sitting in the middle between higher government and villagers. He is putting the onus to decide on to the village tract manager." The villagers divulged that initially the Village Tract Manager was in favour of the company but he subsequently changed his opinion. The villagers say, "This is his second term. The second time he came to power because internally community persuaded him to act on the matter. After all he is also living in the village." Subsequently, Myint Kyi shared with the media in July

¹⁰CSR is a company's initiatives to mitigate impacts of its operations on environment and social wellbeing.

¹¹Most states and region parliaments passed their municipal laws in 2012-13. These laws are based on the 1993 Development Committees Law passed by the SLORC (law no. 5/93).

2016, that after investigating the plant based on the villagers' complaints the ministry was of the opinion that the factory should be relocated. He shared that he had communicated the decision to the central government (RFA, 2016).

Another online report shared that the Regional Development Minister of Sagaing, Myint Kyi while clarifying that the regional government did not have any authority to make a decision, opined that the union government should make a plan to deal with the problem of toxic emissions. He offered to share reports from his ministry, the villagers, and the company about the issue after reviewing those ("Sulphuric Acid on the Web", 2017). On May 27, 2017, in a meeting of the regional level officials including the Education Minister, municipal department and the Ministry of Housing held at the Basic Education Middle School, the villagers demanded again that the factory be relocated from Salingyi ("Sulphuric Acid on the Web", 2017).

There is confusion as to within the union government, who has the authority to decide the future of the factory—is it the Ministry of Industries or the Ministry of Mines, which was merged with the Ministry of Environment in 2016. According to U win Htein, as reported by *Myanmar Times*, although the factory is permitted by the Ministry of Industries, the factory's operation is bound by the license granted to the Letpadaung mine. He opined that the Sagaing regional government can stop the factory for environmental reasons but it would need to establish the same with reports from "qualified environmentalists" and then submit the request with the union government (Gilmore & Wai, 2016).

U Win Thein Zaw, the local MP (from NLD) from Salingyi, raised the issue of environmental and health impacts of the factory in the lower house of the parliament in August 2017, and requested that the factory be relocated. He demanded that international practices of providing a buffer zone between the residential area and a unit handling/producing hazardous chemicals should be followed. However, the Minister of Defence rejected this request and stated that the factory was in the interest of the nation and was not harming the locals. He argued this on the ground that the company had received three ISO certificates, which certified its "advanced production technology". He further added that the factory was following the recommendations of the Letpadaung Copper Mines Investigation Commission with two per cent of its profits being spent in regional development and 51% going to the state funds (Zaw, 2017; Min, 2017).

The villagers shared that till the end of August 2017, they have already protested seven times before the factory. Tint Aung Soe expressed sorrow at the take of the Defence Minister. He says, "Currently the company doesn't have the operating license. They only have permission for a pilot but it is still running, testing, waiting for how many health impacts?"

Unaddressed land conflicts

As per the villagers, the company grabbed 148 acres of additional land in 2007. The land belonged to 46 farmers. The villagers claim that they were lied to and told that the company needed their signatures for a farming support scheme. The farmers gave their signatures and later on found out that the signatures were for transfer of land. The villagers shared that the company had also given them some money as "farming support". This amount was equivalent to the amount they paid as tax in 2008. They informed that barring some staff buildings, the land is empty, which the farmers were using till 2013. In 2013, the factory sued the farmers for trespassing. The farmers lost the case after two years of case proceedings in the court. They paid a fine of MMK 500 per person for each time they entered their land or each article they kept on the land. The farmers lamented that they had to sell the animals because of the court case expenditure and they have not been able to keep the animals since.

In 2015, with support from Paung Ku and a legal counsel, who advised them to begin cultivating the land again after informing the government of the same. The legal counsel told them that the Land Nationalisation Act of 1953 was not in force anymore. The counsel also shared with them that the Farmland Law of 2012 allows the original users to claim their land back if it remains unused for a stipulated period of time. Accordingly, the villagers informed at all levels of the government and to the factory. They asked for permission to use the land from the district GAD on 15 October, 2015. The letter stated that the acid factory did not implement their project for nine years and hence the villagers should be given their farmland back. On October 30, the GAD replied that they were forwarding the letter to the Township office. By that time, farmers had already resumed work

on the land. In the end of October, the factory informed the district level office of the GAD about the farmers' possession of the land. It demanded that they be stopped.

A week after the company wrote to the GAD office, the township level office invited them for a meeting. In November 2015, in a meeting, the government tried to negotiate on behalf of the company but the villagers said determinedly that they would continue to farm. They stated, "We are going by the law, we informed to GAD and police." No decision was reached in the meeting. Initially very few farmers started farming but by September 2017, farmers were using all of the 148 acres. The farmers alongside are trying to obtain land use certificates or Form 7, the proof of having the right to use the land¹². Moe Khainng Oo from Kankone village intends to take up other unaddressed land issues of the area as well. He shares, "Some of the 148 acres has been built upon. These farmers lost their land in 2006 and they didn't receive any compensation. Currently the issue is not on our agenda but we will pick up this issue and ask for compensation for them too."

Current Status and future plans

After the Deputy Minister of Defence, Major General Myint Nwe stated that they had no plan to move the sulphuric acid factory from Kankone village, Amnesty International has issued a press release condemning the take of the Ministry of Defence. The villagers are looking to direct their action towards the centre. With a hint of disappointment, Tint Aung Soe shared, "Since it's apparent that the only decision maker is the central government, we plan to approach the union government. But we will do this keeping the regional government with us, on board." The case is unique for the largely centralised governance system of Myanmar. Despite the UMEHL being a military-owned enterprise, the regional government lent its support to the issue and has been vocal about its opinion on the matter. This is being observed, perhaps for the first time in the country. Media has been persistently bringing people's attention to the issue creating pressure and building support for the cause. Media reporting and involvement of an international organisation in the matter may have also had an effect in invoking accountability from the regional government.



Copper laden mountains that surround Kankone village and Moe Gyo factory that processes the copper ore are viewed as projects of 'national interest' by the Central Government.

¹²Farmland Law of 2012, allows for the grant of land use rights to individuals through the issuance of land use certificates or Form 7. However, farmers must comply with numerous complex steps to obtain Form 7.

Despite gaining political support from the regional government, due to the centralised decision making the situation on-ground has not changed for the villagers. The villagers have been kept in dark about the purpose of the factory, permissions and approvals granted to the project and its responsibility to mitigate environmental and social impacts. Clause 8 of the EIA Procedure of 2015, mandates that any project that is in existence prior to the issuance of the notification would need to develop an EIA or an IEE or an environment management plan and obtain an environmental compliance certificate. For preparing the EIA report and obtaining the environmental compliance certificate, public consultation is obligatory at all stages of the EIA process. U Win Thein Zaw, the local MP, informed in his submission at the lower house of the parliament in August 2017, that Canada-based Green Environmental, Health, Safety & Social Consultancy Company conducted an EIA-SIA (Environmental Impact Assessments and Social Impact Assessment) in 2014, and UMEHL submitted this report to the MoNREC. However, the villagers did not know of any such exercise or didn't recollect any public consultation being conducted or their opinions being taken by the project in the past.

Besides the environmental laws, Article 35 of the Constitution makes the state responsible for conservation of environment and Article 390 makes every citizen responsible for the same. Also, Article 41 of the Myanmar Investment Law bans such investments that have the potential of harming the people and the environment. However, the project is linked with the contentious Letpadaung mine. Now that the mine has resumed work after months of being suspended, the factory's operation at its current proximal location to the mine becomes crucial for its operation. With mining at Sabetaung mountain being nearly over, half of copper deposits at Kyisintaung being exhausted, Letpadaung's operation gains even more importance. The union government thus views the Thunder Sulphuric Acid factory as a project of "national importance". All this is making the government turn a blind eye towards its environmental and social obligations. Nevertheless, despite all the odds, the villagers are determined to fight. Tint Aung Soe and Moe Khainng Oo say in one voice, "We have only one demand; we want the company to go away from here. We will continue to resist. Before we did demonstrations, we will continue to do so."

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Interviews conducted between August 31 and September 1, 2017 in Salingyi Township

- Tint Aung Soe, farmer, member of MATA working group, Kankone village
- U Bo Than, farmer, member, Letpadaung Investigation Commission, Kankone village
- Nyo Nyo Win, female, Kankone village (lives very close to the factory)
- Moe Khainng Oo, farmer, Kankone village
- U Kado/U Tin Win, farmer, Kankone village

CASE STUDY IV

Myaung Pyo resists water woes¹

Heinda Tin mine in Tanintharyi Region of Myanmar has been in operation since the British Times. After the take-over of the mine by the Thai Company Myanmar Pongpipat and Mining Enterprise 2, a state-owned company, in 1999, the villagers of Myaung Pyo filed complaints of its ill effects. In 2012, the village was flooded due to the breakage in the mine's tailing ponds and streaming of sediments from the mine into the local creek. The villagers filed a lawsuit against the mine and demanded compensation for the damages to their property. Alongside, the villagers have been engaging the regional level government to ensure that the mine complies with environmental safeguards. Approaching the company, administrative complaints, lawsuits and international redress—the villagers are reaching out to all possible avenues where mitigation of ill impacts and compensation for past damages is possible.

As of October 2015, Myanmar was the third largest producer of tin in the world. The country was a major tin and tungsten producer in the pre-World War II period, but since the 1960s, the nationalisation of the development operations reduced tin mining to an artisanal affair (Gardiner et al., 2015). The metals were being extracted from a part of South-East Asian belt of tin and tungsten that fell in Myanmar. Since 2011, a sudden surge in tin production was observed in Myanmar largely through a new mine in Wa state but upgradation of its existing mines also played a role. As of August 2016, Myanmar came to be catering to a third of China's demand for tin and 10% of the global demand (Peel & Sanderson, 2016).

Heinda Tin Mine in Myitta Township, Dawei district of Tanintharyi Region is one of the largest and oldest mines from the belt. As per a case study on Heinda mine completed by DPLN (2016), after the tin ore is separated from the rock, it is shipped out of Myanmar to China, Thailand, and Malaysia for smelting and refining. Most of the tin processed this way, lands in China eventually.

According to the locals the mine has been in operation for over 100 years. It was in fact a major part of the cluster of tin mines spread across the port town of Dawei run by the British at the time. It contributed significantly to the mining boom that Burma experienced in the early twentieth century. Post-World War II the mine, though operational, continued at levels much below its potential (DPLN, 2016). Mining is embedded so deep in the local culture and economy of the region that Myaung Pyo village that lies two kilometres downstream of the Heinda mine, derives its name from the mining activity. In Burmese "Myaung Pyo" means "canal collapse" as the nearby water stream would collapse often due to sedimentation. The mine, post-Independence, came to be managed by the Mining Enterprise 2 (ME2), a state-owned enterprise.

Production at Heinda mine picked up in 1999, when the mining rights were transferred to Myanmar Pongpipat Company Ltd (MPC), a Thai-owned company, under a production-sharing contract between MPC and ME2 (DPLN, 2016). The agreement's term is till the end of June 2019. Under the agreement, ME2 has been overseeing and facilitating the investment in the mine and MPC is involved in the day-to-day operation of the mine. As per the agreement, MPC has the right to mine an area of 2,110 acres in the region. As per DPLN (2016), Myanmar's Directorate of Investment and Company Administration (DICA) reported that MPC's company registration expired in 2004. The study (DPLN, 2016) shares that MPC's permit to invest in Heinda was renewed after 10 years in 2009, by Myanmar Investment Commission, and again in 2014. Under the agreement, MPC is responsible for providing all technical and financial requirements and ME2 is responsible for securing government permits

¹Sources of information, if not mentioned, are the interviews, and group discussions, and observations during field visits conducted in August 2017. Names and other details of interviewees are provided at the end of the case study.



Heinda Tin mine has been in operation since the British era.

required for the mine's operation including mineral exploration permits (DPLN, 2016). Latest information on MPC was not available on the website of DICA as accessed in September 2017.

Impact of the mine: Forced relocation, economic and pollution impacts

As per Soe Ayung, an elderly man of village Myuang Pyo and the study by DPLN, the village was originally situated right under the Tenasserim hills, where the current mine concession area lies. In 1983, the MoNREC coerced them to move to the current location. They were allotted 200 acres for setting up the new village and farming but the land was not sufficient and much less than what they had under occupation earlier. The new location was divided into lower and upper Myuang Pyo villages by a road that passed through it. The villagers claimed that at the time of relocation they were not provided any compensation or financial assistance for the same. They were not assured farmland in exchange of the agricultural land they lost. Soe Ayung says, "I used to have five acres of flat land for farming. Now I cultivate as much land as I can manage in the hills. It is less than what I had earlier and the land is less productive."

As per the villagers and the DPLN (2016) report, the mining companies and the authorities have not acknowledged the current location of the village and they accuse the village to be illegal. Lack of any documentation of the relocation has only made it difficult for the villagers to prove their location of residence and work for the past 30 odd years (DPLN, 2016). The villagers counter the accusation by asking if the village were illegal why the regional government provided it with services like a medical clinic and a village school. They say this is a proof of their legitimate and legal existence. They further shared that there were disputes between the village and the company over current boundaries of the mine site. Soe Naing, a farmer from Myuang Pyo village states, "We used to pay taxes, we have tax receipts till 2005-06. But since 2005-06, we are not getting tax receipts. Now many of us are applying for land use certificates or Form 7."²

²Farmland Law of 2012, allows for grant of land use rights to individuals through the issuance of LUCs or Form 7. However, to obtain Form 7, farmers need to comply with numerous complex steps. According to Myuang Pyo villagers, SLRD has denied their application for Form 7 because a recommendation from the Village Tract Administrator is one of the requirements for obtaining Form 7. In their case the SLRD at village level has already denied them the recommendation.



Original location of Myaung Pyo village has been razed to extract tin.

As per the case study by DPLN (2016), the Heinda village tract comprises of ten villages that are all situated in the Tenasserim hills and are impacted by the functioning of the Heinda mine. The study mentions that the ten villages together have 1,100 households and a population of 53,000 as per census records of 2015. The population is a mix of people from the Dawei ethnic group³, the Kayin, and the Muslim groups.

The mine employs hydraulic pumps with high-pressure water hoses to separate the rocks from the earth. The large amount of water that is used in the process is drawn from the nearby water bodies. This has an impact for all ten villages of the Heinda village tract. The villagers shared that there used to be a creek named the same as the village, which has been completely dried up due to the operations of the mine. The company initially in 2001, blocked this creek and later on it became completely dry (DPLN, 2016).

According to DPLN (2016), there are three open-pit mine sites spread across the hills falling in the concession area. As shared by the DPLN staff in August 2017, Site A was not working for the last three years; Site B was working intermittently based on the availability of electricity; and Site C was still running, except for the last two months when the mine was ordered to be shut (see the details below) and, therefore, pollution impact was felt more by the villages closer to Site C. Myaung Pyo village is situated two kilometres downstream from the Heinda mine close to Site C and is the most severely impacted village. It has approximately 100 households. Most of the villagers are of Dawei ethnicity.

Residents of the village stated that they started experiencing frequent floods due to the operation of the mine since 2005-06. Water from the mine area is suddenly released downstream, which leads to flood. Their farmlands would frequently be covered entirely with mine debris and waste. This waste would end up in the Myaung Pyo creek affecting its water quality too.

Farmlands falling between the mine and Myaung Pyo village had to be abandoned as there was constant fear of sudden rush of water coming in and destroying the crops. Approximately 30 acres of land has been abandoned for this reason.

³Dawei ethnicity is distinct from the Bamar ethnicity but has been treated as a sub-group of the Bamar ethnicity by Myanmar government for administrative purposes.

Due to the poor maintenance of tailing ponds, the company has filled the water bodies upstream with sediments from the mine. Due to this, the waste streams downwards and Myaung Pyo faces severe flood situation every time there is a heavy rainfall. One such incident took place in 2012. All this has affected the fresh water supplies of the village. The village faces scarcity of water as the Myaung Pyo stream either runs shallow or dry due to heavy amount of sediments reaching the stream. Even whatever little water is left in the stream is toxic. The drinking wells also get filled with sediments laden with heavy metals. After a report from a laboratory in Netherlands that tested the water samples and found dramatically high levels of lead and arsenic in it and declared it unfit for drinking, the villagers stopped using the water from the Myaung Pyo stream for domestic consumption. They now get water from a stream further away from the village.



Mine waste often reaches the local water streams

Their sanitation systems are also destroyed. Roads, during floods become muddy and afterwards cracked and dry. Commuting on those roads becomes another challenge (Rujivanarom, 2017).

The villagers also shared that panning for tin has been a livelihood for the villagers for years. Before 1999, the villagers could enter the mine area. The company used to keep the mine waste at a designated point in the mine area. The villagers would separate the tin from the waste and sell it to the company. They divulged that they would receive passes from the company to enter the mine and separate the tin out of the waste. Some villagers were also pursuing farming in the area. After 1999, when the agreement between MPC and ME2 was executed, for a year the company granted them the entry to collect waste. According to DPLN (2016) the company also bought tin from the villagers at a rate of MMK 5,000 per *peitha* (1.6 kg). The villagers also claim that before 1999, there were less noticeable impacts of the mine, perhaps due to smaller operation and less harmful ways of extraction of the mine.

After three to four years of intermittently letting the villagers enter the mine site in zones that were designated for people to access, the company barred the entry of villagers completely. Soe Ayung recollects, "In the second year of its operation, sometimes, the company would stop us from entering the mine. Later the company

stopped it altogether and declared the mine site as a restricted area.” Nay Win from Heinda village, shared that the company used to claim that it employed 300 people. However, the villagers’ estimate was 146. Out of them, 80 were from Heinda village and 50 from Phaung Taw Meesat village. According to the villagers, compared to Myaung Pyo village, Heinda and Phaung Taw Meesat have not been at the receiving end of that many negative impacts from the mine. Nay Win says, “Myaung Pyo village is the most impacted but no one from the village received employment in the mine.”

Villagers and government collaborate

Between 2005 and 2011, the villagers complained to the company. They also went to the Peace and Development Council⁴ at the village level. Soe Naing, farmer from Myaung Pyo village shared, “We complained to different levels of government offices, sometimes some officer would come to check but nothing changed. Every year during rainy season, we used to complain.” The villagers shared that since 2014, their commute to Dawei has been easier, which has made it possible for them to complain to the regional office. But, villagers lamented that the officers from the regional government also only carried out site inspections. Soe Naing added, “We complained to the government several times but we didn’t get a response. That’s when we realised we needed to keep record.”

In 2013, after the worst flood Myaung Pyo had ever seen, NGOs such as DPLN, Dawei Development Association, and Tanintharyi Friends visited the area offering assistance to the villagers in rebuilding and restoration work. Based on the suggestions from the NGOs working in the area, the villagers realised that they needed evidence to substantiate their problems. In March 2014, the villagers got water samples tested from a laboratory in Yangon and received reports that showed that the content of arsenic and lead was much higher than the international permissible standards. They submitted these reports with the regional government.

The villagers shared that since 2015, they had been observing action on the part of the government. In February 2015, over 100 villagers had staged a big protest at Heinda mine against its impacts. Local civil society groups and political parties joined the protest (Saning, 2015). It should be noted that in December 2015, Myanmar issued the EIA procedures mandating all existing industries to have an EIA report and an EMP. They should also obtain an environmental compliance certificate. Prior to this in 2014, the Environment Conservation Rules empowered the MoECF to form an investigation team to monitor and investigate. The ministry could order projects that violated the environmental safeguards to close. According to a sector-wide assessment of mining sector by Myanmar Center for Responsible Business (MCRB), 2015 was also the time, when changes were made to the Mining Law of 1994, that created space for regional/state governments to weigh in their views on the proposed mining projects⁵. All these changes had set the necessary framework for government to monitor and take action against the violating units.

After repeated complaints from the village with evidence of contamination of its water sources and the protest, the government of Tanintharyi Region demonstrated interest in the matters. According to the villagers, sometime in 2015, the MoNREC decided to create a mine scrutinising group with the involvement of local people. It had issued a letter to the village administrator asking them to appoint members in the group. In each village, members were selected through voting. The villages, afterwards, reported to the government of their selections. The group was headed by the Minister and had nine other members—three from Myaung Pyo village, the

⁴State Peace and Development Council used to be the official name of the military government of Myanmar. In 2011, the council was dissolved.

⁵In late 2015, amendments to the 1994 Myanmar Mines Law introduced Mines Plot Scrutinizing and Permit Granting Boards at the state/region level. These boards can review permit applications and may, after obtaining comments from the Union Ministry, grant permits for prospecting; exploration; feasibility studies; and small or subsistence-scale production and processing, buying, and selling within the region or state. It appears that the amendment has not been implemented at the regional level at the time of writing this report. However, a system whereby the Union Department of Mines takes comments from regional authorities to know whether permit allocation was already in place prior to the amendment. It is believed to have originated in an MoNREC notification to regional governments. If this notification has been implemented, according to it, prior to issuing a permit, the Department of Mines receives recommendations from the state/regional government, recommendations from respective Township General Administration Department, Township Land Records Department, Township Forestry Department, Village Administrator, and villagers, who would be affected by the project (Source: MCRB, 2018. Retrieved from: <http://www.myanmar-responsiblebusiness.org/swia/mining.html>)

Township Administrator and a woman and four men from other villages of Heinda village tract. The inspection group carried out an inspection on June 3, 2016 and confirmed that the mine was violating many laws. The three members from Myaung Pyo village meet regularly and discuss violations committed by the company. However, as per Soe Ayung, all members of the group meet only in instances of emergency such as the sudden release of wastewater and flood in the area. So far the members cannot enter the mining area. Nevertheless, the members of the group are hoping to get permission from the government with assurance of their safety to enter the mine area. Soe Ayung says, "If we get security we would enter the company premises and take photos, collect evidence of company's ill practices."

Soe Ayung shared that as a step ahead, in July 2017, the group went to the office of the regional NREC (Natural Resource and Environment Conservation) Department and asked questions regarding what to monitor and how to do it. They also raised concerns about their security and safety. They only received an oral promise from the department but no concrete action. They heard that local newspapers reported that the Minister announced in public that they would get cards and instructions for monitoring the mining activity. However, this could not be confirmed at the time of writing this study.

In the meanwhile, the Regional Level Environment Conservation Department (ECD) recommended to the Union-level ECD to regulate the mine more stringently. In the end of June 2016, ME2 suspended the mine's operations till it had submitted an EMP and proven that it was complying with the laws (Win, 2016a). To summarise all these changes, Soe Ayung said, "We see some change, only in the last one year. We cannot see changes in environment. But we can talk about the changes we observe in government's response. Now the government passes orders to investigate if we complain." However, in July 2016, MPC reopened its mine



A resident of Heinda village providing details of mine site

after it declared that it was complying with the laws. The mine started testing operations at two of its four sites. Tanintharyi regional Minister of NREC, U Myint Maung assured in July 2016, that they were monitoring the company's operations during the test-period and if they found anything "improper" they would close the mine again (Win, 2016a). A month after, in August 2016, U Myint Maung made a public announcement that companies flouting the mining law or causing environmental damage will not be granted extensions of their licenses (Win, 2016b).

In an attempt to prevent cancellation of its permit, since 2016 the company has been writing the EMP. According to clause 13 of the EIA law public consultation should take place at all stages of the EIA process. But the company has not consulted the farmers. It is in the process of completing the EIA as mandated under the EIA procedures (The Nation, 2017). The NGOs and villagers didn't accept public consultation as it was done in secrecy. The villagers shared a list of information that the company should share with the villagers two weeks prior to the public hearing prescribed under the EIA procedures. In the public hearing that took place in the first half of 2017, the village government did not let the company continue with the hearing as it flashed many English words in its presentation. The regional ministers of environment and some ethnic communities were present in the public hearing. They suspended the license of Evergreen, the consulting company conducting the hearing.

Legal case

In August 2012, Myaung Pyo observed the worst flood in its history—water entered the houses and destroyed 27 houses and 20 acres of farmland was water logged and standing crops were destroyed. The local pagoda too came under its effect and got damaged. The villagers demanded compensation from the company and on being ignored, they wrote to the government offices. The regional government sent an inspection team to assess the damage but the villagers felt that the team did not make a complete record of all the damages suffered. MPC and the local government afterwards offered a measly compensation of MMK 50 lakhs for all the damages caused to the village. The villagers declined the offer and instead at the suggestion of DPLN, decided to sue the company. Soe Naing says, “In 2013, some NGOs and legal networks came in the area and gave us information. In 2014, we sued the company in District Court, and demanded compensation as per international standards for labour cost and crop damage.”

In May 2014, nine villagers from Myaung Pyo became plaintiffs on a civil case against the negligence of ME2 and MPC (Vrieze, 2014). Besides seeking a compensation of MMK 300 million, they demanded proper disposal of waste, restoration of the stream, and protection of the stream bank. A retired Deputy Director of Department of Mines, Sein Myint, supported the villagers’ claim and confirmed that Heinda mine was ignoring environmental stipulations (Saning, 2014b). The first hearing on the case took place on May 29, 2014 (Business & Human Rights Resource Centre, n.d.). Dawei District Court found merit in the case and recommended it for trial (Thai PBS, 2014; Saning, 2014a). MPC and ME2 appealed against this decision in the Regional Appeals Court in Tanintharyi Division, which overturned the decision of the District Court. One major argument for this decision was found in the Limitation Act, 1909. The Act stipulated that claims for any injuries must be filed within one year of the injury occurring. Since the flooding occurred in August 2012, the case should have been filed before August 2013. The villagers challenged the decision in Union High Court in Nay Pyi Taw in June 2016. The Union High Court upheld the decision of the Divisional Court. On September 30, 2016, the villagers appealed to the Special Appeals Bench of the Union Supreme Court arguing that the case is of “continuing [a] wrong” and “a fresh period of limitation begins at every moment th e wrong continues” as the river and the farms continue to be contaminated (DPLN, 2016; Aung, 2016). As of August 2017, the case was ongoing. Aye Mon Thu, Director of DPLN, shared that in the hearing on June 30, 2017, a three-judge bench was hearing the case and trying to assess if the case could be accepted or not. It subsequently sent it to a nine-member board for a final decision. On February 5, 2018, the nine-member board at the Supreme Court of Myanmar in Nay Pyi Taw rejected the lawsuit on the ground that it failed to comply with the Limitation Act 1909 (Zaw, 2018).

After the villagers filed the case in Dawei District Court, MPC filed a case against Soe Aung, one of the plaintiffs, for harming the environment by burning his land. But since the company did not own the land, the court dismissed the case. The company wanted to deter him and discourage him. Similar thing happened with another farmer who was booked for trespassing. In that case, the farmer was sent to the jail and now he has to report to the police station regularly.

Invoking cross-national action

Simultaneously with the court proceedings, Myaung Pyo village wrote to the National Human Rights Commission of Thailand (NHRCT) in May 2015. The villagers sought its intervention in ensuring that MPC follows international human rights standards while operating in Heinda (DPLN, 2016). A subcommittee of the NHRCT visited the site in February 2017, after opening an official inquiry into the matter (Wongcha-um, 2017). The team found that access to clean and safe water is denied to over 500 people due to the pollution caused by MPC’s operations (The Nation, 2017). However, the investigation is still ongoing and the team is yet to present its final findings (The Mekong Butterfly, 2017).

The issue gained international attention and invoked interest of International Civil Society in March 2017, when MPC filed a defamation lawsuit at a Thai court against a Thai journalist and a media portal for reporting on the alleged violation committed by the mine (Rujivanarom, 2017). Soon after, a joint statement was issued by 80 Burmese and Thai CSOs condemning the company’s action and calling for the withdrawal of the lawsuits (Nadi, 2017). In response to this report in the Thai newspaper and as a result of mediation facilitated by the Thai

court, in September 2017, the newspaper agreed to run MPC's statement insisting that it had been complying with the environmental laws of Myanmar (The Nation, 2017).

Media has been used strategically in the case. It has given the required attention to the case since the time the villagers approached the NHRCT and filed a lawsuit. It has been used as a tactic to pressurise the international tribunal and create a public opinion on the case, which may have an influence on how the case is decided. Aye Mon Thu, Director, DPLN, confirms:

We use the media to influence the judge's decision and we share the information through villagers with the media that is aligned with our cause. We also connected with Thai CSO group in the hope of influencing the Thai Human Rights Commission.

Current status and future

Since June 2017, the mine has been shut, but the villagers suspect that it will reopen soon.

The court has decided against the villagers and denied them the compensation against the damages they incurred in 2012. While the villagers viewed the closure of the mine as positive outcome, they seek compliance and compensation for the harms they bore. Soe Ayung clarifies further:

The mine has been closed for the past two months. In the past we could not imagine this happening. We can say this is a success but villagers need other benefits like compensation as their land got damaged. The stream is still polluted. We heard that tin has side effects. If we get land and livelihood and clean water back, that is the success.

The villagers opine that the company and the community should work amicably and not cause harm to each other. They want the company to respect the community. They also expect the government to listen to them. Soe Ayung adds, "Community can give advice and the government should listen to the community's voice."

This case showcases how the recent spaces made available in the mines law and environmental laws of the country can be used creatively by the citizens and regional governments. The regional minister constituted a monitoring group with the involvement of community members. This is a ready example of how an opportunity for communities to officially participate in monitoring of a project could be created. The use of parallel measures to seek remedies from different platforms was another less-tried way of case resolution in Myanmar. Use of the legal space by the community for seeking compensation for environmental damages is also a unique instance in the country. So far, most cases in which the farmers/communities have challenged the government are the cases concerning acquisition of land for development projects. Although the court has decided against the community, this case hopefully will encourage more affected communities to seek compensation for the various acts of injustice that they are made to tolerate.

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Interviews conducted in Dawei between 23rd and 24th August 2017:

- Soe Ayung, member, MMG; farmer, Myaung Pyo village
- Soe Naing, farmer, Myaung Pyo village
- Nay Win, member, MMG; farmer, Heinda village
- Ni Ni Htwe, female; member, MMG; volunteer with NLD, Heinda village tract
- Aye Mon Thu, Director, DPLN

CASE STUDY V

Thilawa residents brace for upcoming land transformation¹

The Thilawa SEZ, located approximately 25 kilometers south of Yangon between Thanlyin and Kyauktan townships, is spread over an area of 2,400 hectares (MTSH, n.d.). First phase of the project (spread over 400 hectares) has led to forced displacement of 68 families. The compensation given to them was inadequate and the relocation site lacks basic amenities. The farmers, united as Thilawa Social Development Group (TSDG) reached out to Japan International Cooperation Agency (JICA), the project financier, seeking improvements in the relocation site. While the impacts of the first phase are yet to be addressed, second phase of the project has begun. Alongside, individual factories are coming up on the land acquired for the project in the first phase. The land users and SEZ authorities are negotiating compensation for land acquisition in the second phase. In June 2017, 39 families were trapped because the Thilawa town officials had erected a wall around their homes claiming that the land belonged to the government.

Thilawa port on the river Yangon in Thanlyin Township has been in operation for decades. It has had a history of land confiscations starting from 1983 till 2007, to make space for industries. In 2012, the government of Japan and Burma signed a memorandum of agreement to develop the site as Thilawa SEZ² (PHR, 2014). Around the same time the Myanmar-Japan Consortium for Thilawa SEZ Development Project (MJC) called Myanmar Japan Thilawa Development Limited (MJTDL) carried out a feasibility study for developing Thilawa SEZ (MJC, 2013). The Japanese government made a commitment of USD 500 million towards the project. The JICA, an independent governmental agency coordinating Japan's development assistance programmes internationally is the official Japanese face of the project. The agreement has Japan Thilawa Development Limited (JTDL), JICA, and three Japanese firms—Mitsubishi, Sumitomo, and Marubeni—together holding 49% stakes and the Thilawa SEZ Management Committee (TSEZMC, the Burmese agency to oversee the development of Thilawa SEZ) and Myanmar Thilawa SEZ Holdings Public Limited (MTSH, a consortium of nine Burmese companies) together having 51% of stakes (PHR, 2014). In 2014, the project was granted the status of an SEZ to grant tax rebates to the foreign companies operating there.

Thilawa Project is supposed to be developed in multiple phases—the initial phase that began in 2013, included development of industrial complex on 396 hectares of area called Zone A. As of November 2017, 30 factories were operational in Zone A (UN, 2017). Zone A falls in Alwan Sut village and Thilawa Kone Tan village. Sixty-eight households from these two villages were displaced for the initial phase (PHR, 2014).

Villagers' resistance to forced displacement for Zone A

In the 1990s, the government of Myanmar had built Zamani Dam in Thanlyin Township close to the site of Thilawa project. One of the purposes of the dam was to meet water requirement of the planned industrial

¹Sources of information, if not mentioned, are the interviews, group discussions, and observations during field visits conducted in August 2017. Names and other details of interviewees are provided at the end of the case study.

²A SEZ, in simplest terms, is an area (usually near a port facility) carved out and delineated for business activity and regulated by a special regulatory system. So far in Myanmar, three SEZ projects have been at various stages of development: Thilawa, Kyauk Phyu and Dawei. Of these Thilawa is the only SEZ, which has begun operation. There are talks of an SEZ on a recently developed port in Sittwe in Rakhine State with the support from Indian government (Source: Chaudhary, D.R. India planning to set up SEZ in Myanmar's Sittwe. 2016, August 2, *The Economic Times*. <https://economictimes.indiatimes.com/news/politics-and-nation/india-planning-to-set-up-sez-in-myanmars-sittwe/articleshow/53496839.cms>)



Yangon river has been the site for big harbours and ports for decades.

development in the area. However, due to slow industrial development in the subsequent years, the dam reservoir had water in surplus. According to the villagers, in 2001, a military commander from Yangon came to this area and pushed the locals to use the vacant land for paddy cultivation. The villagers from Alwan Sut claimed that to use the surplus water from the dam, the government asked them to plant paddy for two seasons per year (as compared to the usual one crop/year). Farmers were reluctant to plant in the rainy months. But under government pressure, they agreed to do so. They cultivated two crops per year till the end of 2012. Farmers shared that at the time they were supposed to pay water cess and land tax. They stated that land tax was a small amount but for water they had to pay MMK 9000/acre to the Water Resources Department. For the period mentioned above the farmers had to pay both taxes to the government for two seasons every year. The land that farmers were cultivating till 2012 had been subsequently demarcated for the Thilawa project.

The villagers shared that on January 31, 2013, the village received a notice letter signed by the officer of the Thanlyin administration. According to the villagers, the notice letter directed close to 1,000 households to vacate the entire project land within two weeks of the issuance of the notice. An investigation carried out by PHR, 2014 also states that Thanlyin and Kyauktan authorities sent such letters and asked them to vacate the land or “face a punishment of 30 days in prison.” (PHR, 2014). On February 8, 2013, villagers sent a letter to the Director of Thanlyin Township rejecting the notice letter. In this letter they argued on the basis of the Farmland Law of 2012 that granted the original farmers the right to claim the lands back if the projects are terminated or not implemented within the prescribed period. The villagers contacted Paung Ku³ and Mekong Watch⁴, NGOs that trained the villagers in land laws and helped them draft this letter. After two weeks, on the 14th day since the complaint, two ministers (details not available) held a public hearing in the village. According to the villagers, in the public hearing, the ministers said that in 1996, the government planned to start this project and it gave compensation to farmers at the rate of MMK 20,000/ acre of farmland. The ministers claimed that the land for

³Paung Ku works as a networking organisation bringing aid workers, local organisations, government, academics, and students in contact with each other on key policy concerns in Myanmar.

⁴Mekong Watch is a Japanese NGO that advocates against environmental and social impacts of development projects in Mekong region.

alternate housing was also provided. On this ground, the ministers pronounced that the current occupation of the land by the farmers was illegal. However, the farmers shared that in 1996, the government did not push them for relocation. Some farmers moved and started living in the relocation area, but some did not. In response to the claims of the two ministers, the farmers shared that according to Article 32 of Farmland Law, 2012, if a project did not start within a stipulated time (four or five years) after acquisition of land, the land would go back to the “original farm owner (person or organisation)”, who had the right for farming. The villagers recalled, “lot of arguments were given from both sides and the meeting didn’t reach any result. Farmers continued to plant paddy on the contested land.”

Efforts of TSDG

The affected villagers wrote to JICA in February 2013, and stated in the letter that they did not support the project. Residents of villages other than Alwan Sut, who had received similar notices, were also reaching out to JICA and other government offices. In a community meeting held in February 2013, the villagers decided to consolidate their efforts as a group. They formed the TSDG with members from all six villages that were going to be affected by the project and were actively pursuing redress for their concerns and grievances⁵. At the end of April 2013, TSDG had 36 farmers as its members. The members were selected by the communities to collaborate with local and international NGOs, such as Earth Rights, to advocate for the rights of local communities. In June 2013, the affected farmers started communicating with the project and JICA as TSDG. U Mya Hlaing, member of the Executive Committee of TSDG, recollects, “Initially the project authorities did not accept the group but we did not care. We continued to highlight our concerns.”

As a first step the group decided to conduct a survey and prepare a comprehensive list of affected farmers. In October 2013, the group submitted the list with the local SLRD. The office tallied the list with its records and confirmed the people affected by the project. Simultaneously, the group decided to write to JICA demanding



The first phase of Thilawa SEZ began in 2013 for development of an industrial complex spread over 396 hectares.

⁵According to the villagers, Thilawa SEZ Project affected seven villages but the seventh village is only partly affected. Members from only six villages were actively involved in pursuing remedies.

better arrangements for rehabilitation and relocation. After sending six letters to the Yangon office of JICA and not receiving any reply, the group wrote to the Japan office of JICA addressing the letter to its president. In response, the president visited the site and had a meeting with the community in Yangon on October 15, 2013. In this meeting JICA and project authorities offered to give an allowance of MMK 2,500,000 per family for house construction or a government-allotted house in the relocation site and compensation for damage to crop and animals. But no agreement regarding compensation was reached at the time.

In November 2013, 68 farmers, some from Alwan Sut village and some from Thilawa Kone Tan village, were relocated. Many villagers had lost pieces of land, which they used for rearing and grazing animals and growing seasonal crops. However, the villagers shared that the project only offered alternate housing and compensation for crop and animal loss, as it maintained that land compensation was paid to them in 1996. The government and the project were never open to discuss the farmland compensation. However, according to the PHR study (2014), people who lost farmland were given cash equivalent of six years of harvest.

TSDG communicating on behalf of the 68 families, demanded a higher relocation support money and also demanded that families get to choose their new site of residence. U Mya Hlaing said, "We had visited the Dawei SEZ and the compensation rate there is 180 lakhs per family for house construction. We asked for the same rate." But subsequently, according to the members of TSDG, the project authorities stopped inviting the group for meetings and held negotiations with the families directly. Gradually, members from the group of 68 affected families started accepting the project's offer. U Mya Hlaing claimed, "One farmer didn't relocate till the time the project started." PHR study (2014) notes that most people who relocated, found the compensation inadequate but accepted it because they feared losing everything if they denied the offered compensation.

Opaque relocation process and inadequate arrangements

According to the SEZ law 2014, the Thilawa SEZ Committee is responsible for managing the development of the project including relocation of those getting displaced (GoM, 2014; PHR, 2014). But through the interviews, we noted that for a long time the villagers did not know who was responsible for the relocation. They were reaching out to everybody from township authorities to local land offices to SEZ committee to JICA. PHR (2014) observed that the residents were not clearly informed of the relocation process. The study adds that the JICA guidelines for social and environmental considerations provided for access to resettlement work plan for residents but it found that many people did not even know that they could see the resettlement work plan (PHR, 2014).

The EIA report for Thilawa SEZ Project⁶ states that a Terms of Reference for the project was finalised in 2013. It was discussed in the first stakeholders' meeting held on April 10, 2013. A field survey on environmental and social impacts was conducted between March and August, 2013. The results of the survey and the EIA investigation were discussed in the second stakeholders' meeting on August 23, 2013 (MJC, 2013). However, the PHR study (2014) noted in its investigation that the villagers did not know until after they were relocated, that they had the right to see the results of the environmental and social surveys. They did not know of the EIA process. The villagers received copies of their compensation papers and agreements of acceptance of compensation that they had signed in the end of 2013, only in August 2014. These papers were shared after the TSDG complained about the lack of transparency in the disbursement of compensation.

The relocation site for those displaced in the first phase of the project was eight miles away from their original village. The site lacked proper arrangements for sanitation and drainage of water. As reported by PHR (2014), water sources and toilets provided at the relocation site did not meet the minimum standards for people in humanitarian emergencies. Water in all the wells and pumps provided in the resettlement site by the Thilawa SEZ committee was found by PHR to be contaminated with faecal bacteria. The livelihoods of the displaced families were affected due to the relocation because (a) they lost their farmland and/or (b) time and cost to commute to factories where they used to work from this new site increased significantly. This led to reduced income or complete loss of income. Some of the villagers even sold their houses and returned to their original

⁶Till September 2013, at the time when the EIA report for the project was prepared, Myanmar did not have a law mandating the conduct of EIAs. However, the MoECF was in the process of drafting EIA procedures, and, therefore, an EIA report and an EMP were prepared for the Thilawa SEZ Project.

villages so as to be closer to their site of work. According to PHR (2014) their average monthly income dropped from MMK 327,000 to MMK 71,000. The compensation money was not enough for them to sustain their lives for long. Met with decline in their incomes, many families mortgaged (put up as collateral) their new houses. U Mya Hlaing, villager, Alwan Sut, informs, “30 farmers have lost their new houses. Some live in their own houses as tenants now.”

Approaching JICA’s grievance redress platform

Within three months of relocating to the new area, the farmers realised that the standard of living there was not what they had expected. In March 2014, TSDG complained to the project authorities and different departments in the government about the poor relocation arrangement. But no response was received from the government. They also wrote to JICA’s Yangon office, to which JICA replied that rehabilitation was the responsibility of the government of Myanmar. It stated that it did not hold responsibility for it. In December 2013, Paung Ku arranged for the group a training on the JICA guidelines for social and environmental considerations⁷. During the training they found out about the procedures followed by the JICA to invite objections under the above-mentioned guidelines. They realised that as per this procedure, the affected farmers and people, who could potentially suffer, could complain against the non-compliance of the guidelines.

With the financial support from Earth Rights International (ERI)⁸ and Mekong Watch, on June 2, 2014, three members of the group travelled to Japan to file a complaint with the JICA demanding due process of relocation of the displaced, just compensation, and the suspension of the project till the complaint was resolved (UN 2017; Ami, 2017). The complaint alleged that the project had led to “loss of farmland/access to farmland, loss of livelihood opportunities, impoverishment, loss of educational opportunities, substandard housing and lack of basic infrastructure and loss of access to adequate clean water.” (JICA Examiner, 2014) The complaint letter stated that the provisions of the guidelines concerning democratic decision-making, participation of stakeholders in assessment of environmental and social impacts, international human rights standards, fair compensation, and resettlement in consultation with people had been sidelined. A MP from Japan and some Japanese media also attended the meeting in which the TSDG members filed an official complaint with JICA.

The external examiners for the guidelines appointed by the JICA accepted the complaint on June 6, 2014 (JICA Examiner, 2014). The members of the TSDG, who had travelled to Japan, also made a conference with the Japanese media and some MPs of Japan. The issue picked up quickly in Japan. It was for the first time that JICA’s compliance with its environmental and social guidelines was being scrutinised (Mekong Watch, 2015).

In its report in November 2014, the external examiners acknowledged some of the concerns, but it did not observe non-compliance of JICA guidelines (UN, 2017). It noted that livelihoods other than farming had not been considered in the resettlement plan. It suggested tripartite meetings for project affected people to voice their concerns and discuss their resolution, establishment of a framework for flood prevention in low lying resettlement sites, repair of wells, addressing the issue of toilet drainage, implementation of measures to mitigate the changes in the lives and livelihoods of those resettled, and allowing farmers, who wanted to continue farming, an opportunity to do so (JICA Examiner, 2014). Following the suggestions of the external examiner, following measures were taken:

- Eighty-one households (65, who used to live in Phase I area, and 16 households, who had farmlands in phase I area) were given MMK 3,000,000 each. The amount was given in three installments.
- A community development fund was created to provide microfinance assistance to those affected. Villagers shared that the fund was of MMK 40,000,000.
- Affected families were given vocational training
- Improvement of infrastructure, including measures to prevent water ingress at the resettlement site. Villagers shared that a community center was also constructed at the site (Mekong Watch, 2015).

⁷JICA published the “Guidelines for Social and Environmental Considerations” in April 2010.

⁸ERI is an international NGO that works towards protection of human rights and environment. It provides legal help, campaigning support and community trainings to groups working for similar causes at the grassroots.

Villagers shared that these commitments were realised, but the relocation area was still flooding. The water in the area was still not of drinking quality as it was still getting mixed with sewage. TSDG members, in general, felt that the external examiner's observations were lacking complete acknowledgement of impacts. While Mekong Watch, TSDG and other NGOs appreciated the recommendations of the examiner, they found them insufficient (Mekong Watch, 2014; Mekong Watch, 2015; UN, 2017).

Relocations for Zone B

In September 2016, when JICA was about to determine whether to invest in the second phase of the project to develop Zone B or not, the villagers went again to Japan. They went there to create awareness on the impacts of phase I among the policy makers and Japanese grassroots groups (Ami, 2017). They also met with the Japanese companies including Mitsubishi, Sumitomo, and Marubeni that were involved in the project (ERI, 2016; Gilmore, 2016). They informed the Social and Environmental Affairs Committee and Farmers' Affairs committee of JICA that basic infrastructure was still lacking, land in exchange of land was yet to be provided, and livelihood issues still remained (ERI, 2016). According to PHR (2014) estimates, development of Zone B would displace 846 households. The villagers demanded till issues pertaining to development of Zone A was resolved, Zone B should not be developed. They also enquired about the EIA-SIA of the project and highlighted that EIA and Resettlement work plan for the second phase did not contain the details that are required to assess whether they were enough. They complained that the consultations for the second phase are being held without sufficient notice, do not provide opportunity for all concerns to be raised and many people have been turned away from meetings (ERI, 2016).

Villagers shared that they also demanded water distribution system in the resettlement site and after this visit the project provided it. It also provided common farmland for 68 families. But other concerns remain unaddressed. U Mya Hlaing does not think it is only Japanese companies' fault. He says, "We cannot just blame the Japanese. Problem is the Myanmar government. The SEZ Committee is not following the existing law. It often violates the environment law and SEZ law."



Farmers, who would lose land in the second phase of development of the SEZ, hope to be compensated fairly for their losses.

For development of the remaining 2000 hectares in the nearby farmlands, the joint venture was updated in October 2016 and construction began in early 2017 (UN 2017; The Bangkok Post 2016). According to UN (2017), in early 2017, development of Zone B had affected 108 families and in May 2017, 90 of them had been relocated to the same site as Zone A. Villagers provided similar account. They shared that under the phase II of SEZ development, in the first half of 2017, 91 families shifted to the relocation site. This time they received 60 lakhs per house. House compound is also bigger. However one of the village leaders, who was part of TSDG shared that these villagers were not part of TSDG anymore. TSDG faced a split when some members demanded suspension of Phase II given the unaddressed impacts of phase I and some wanted better compensation. U Mya Hlaing said about those who accepted compensation for the second phase, "They received a lot of compensation. One person got 3500 lakhs for 5 acre of land."

Concerns regarding pollution impacts and EIA-SIA

In late 2014, TSDG designed a new strategy called Community-Driven Operational Grievance Mechanism (CD-OGM) to address issues arising out of development projects. U Mya Hlaing says, "The government is supposed to form a grievance watch mechanism but they only have government and company on it. Now we have formed CDOGM." CD-OGM takes up people's concerns in the form of complaints and tries to find appropriate remedy alongside finding immediate steps to prevent or mitigate the damage. CD-OGM is a strategy that makes use of TSDG's unique position as a group of project affected people who know the legal provisions, can predict impacts of project activities, have experience of negotiating with government officials and project financiers alike.

TSDG also started asking about EIA-SIA after the members' first trip to Japan in 2014. According to villagers, in August 2015 the government made the SEA- Strategic Environment Assessment Report of the project public. The group compared it against the EIA procedures. They submitted the comparison to Thilawa SEZ committee in February 2016. They gave suggestions such as making the report available in Burmese. They also request for simple language and small reports. Having received initial training on EIA procedures from ERI, the group now reads individual EIA reports for each factory to be set up in Zone A and gives its suggestions in the public hearings and submits those with the company too. According to the members of the group, Thilawa SEZ committee members, companies, JICA, MoECF all join the public hearings. U Mya Hlaing shares his experience of dealing with companies in public hearings,

The companies listen but do not implement. If the problem is related with the law, companies act. But SIA is difficult and relocation related problems are bigger. Companies agree on small points and on big points they negotiate. But in the end the company continues even without our consent signatures.

He shared that 20 factories are already running and villagers don't know if they prepared EIA-SIA. He thinks these factories did not conduct public hearings. Overall he thinks environmental impacts are easier to get compliance on, as the impacts are visible. He concludes,

For EIA we don't need to negotiate because companies can see the non-compliance and impacts and they accept our suggestions. But in livelihood issues, people accept compensation early and easily and then problem occurs. We do not want people to accept compensation and leave the struggle. Organising and keeping people together is difficult.

Currently, TSDG is also assessing the EIA-SIA report of phase II.

The government sues the farmers for trespassing

On 5 May 2014, 33 farmers from Thida ward in Kyauktan township received a notice letter from the township administrator office. The notice said that their small shacks on the land should be removed and no farming on the land is to be done. In August 2014, they got the third letter in the series, that summoned them to the court because they were still using the 808 acres of land in question. Myanmar Economic Corporation (MEC) claimed that the farmers were using the land illegally and sued them under article 442 of criminal law for "trespassing". The Myanmar government confiscated the land of these 33 farmers in 1996 through Urban and Housing Development Department, a department under the Ministry of Construction. The UHDD, reportedly

paid very little compensation for the land and tried to transfer the land to the Myanmar Port Authority and MEC (Hardman, 2018). “MEC sued me for working on 20 acres of my land. We sought help from Earth Rights International through the TSDG. The ward administrator recommended TSDG to me. We trust TSDG.” Said U San Win from Thida Ward, Kyauktan. He is one of the 33 farmers who were sued by MEC. A lawyer from Earth Rights International is arguing the case on behalf of farmers in the court. While these charges of the government are being challenged in the court, the MoHA issued a notification under the Land Acquisition law 1894 that the land was to be acquired for the Ministry of Defence for use by MEC. This notification is in contradiction to MEC’s claim that they have trespassed and in fact is recognition of farmers’ claims over their land (Hardman, 2018). The farmers added that they had been paying tax till the enactment of the Farmland Law in 2012. With the issuance of the Farmland Law the practice of paying taxes stopped and farmers were required to obtain land certification of Form 7, as it is called in Myanmar, a proof of ownership of land. The farmers applied for Form 7 in 2013, the same year in which the Thilawa SEZ project began. Since 2013, the land office has denied them Form 7 on the pretext that the land was near the Thilawa Project. “We have argued in the court that we have not been issued Form 7 because the government wants to grab our land. The government doesn’t want to pay due compensation to us.”, says U San Win. Parallel to court case, the Kambawza Bank (KBZ), which is also involved in Thilawa SEZ project, has been receiving signed agreements from farmers that they are willing to forego their land at a compensation of 250 lakhs per acre. As of September 2017, U San Win reported that 30 farmers had accepted the offered compensation and relinquished some part of their land. He recalls,

First hearing of the case was in November 2014. Every two weeks we used to have a hearing in which one person’s case would be heard. In August 2016, the court suggested that the farmers should pay a small fine and case could be closed. But we didn’t agree as it would seem that we had ‘trespassed’. The case was strong then because we were united. The case has become weaker now because only two persons are left for hearing now, MEC also is not seriously talking in the court. They are looking to close the case fast.

He suspects that this litigation was a pressure tactic to get them to accept less compensation. He adds,



Myanmar Port Authority and Myanmar Economic Corporation are trying to acquire the land is use by the inhabitants of Kyauktan Township.

“MEC has no plan to give compensation, that’s why they sued us. They tried negotiation with the farmers before suing, They said: ‘we will fence but you can still plant.’ Farmers didn’t let them fence the area off. This area is under Yangon region. According to SLRD the market price for the land is around 65,000,000 per acre. We had asked for 50,000,000 per acre. But we are not getting this amount.”

Two of the farmers shared that initially the bank offered them MMK 4000,000 per acre and later increased the compensation to 25,000,000 per acre. Since February 2017, farmers started accepting the offer. U San Win shared:

The entire negotiation happened in two weeks, they gave us examples from other sites, showed us news reports to convince us. I also accepted the offer of 250 lakhs per acre for 15.37 acres of my land and signed the agreement.

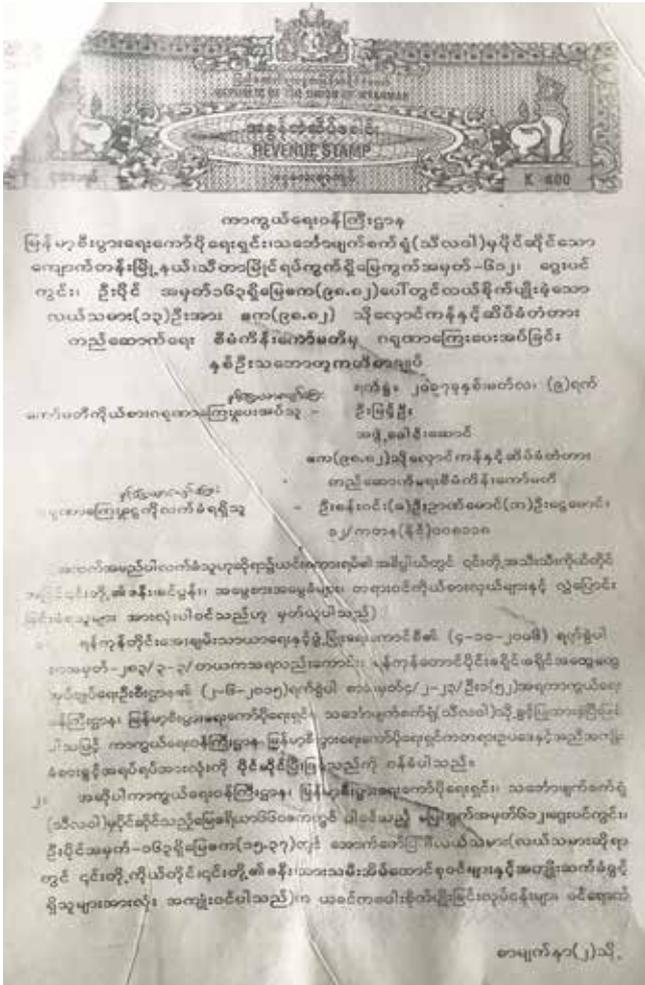
But he is hopeful for future transactions. He says, “For future next year if they come for more land, I will ask a higher price.”

Land troubles stretch: beyond the SEZ and into the port

U Than Win from Myaing Thaya settlement site in Kyauktan Township shared that in 1996, the Ministry of Construction gave MMK 20,000 per acre to approximately 1,000 families of all seven villages who would be displaced for Thilawa SEZ project. The government also gave some space for building new houses. After receiving the compensation, some farmers left the site and some shifted residence but continued farming on the site. On January 19, 2017 MEC tried to fence a part of the land. Similar to Thida ward, MEC had received this land from Port Authority who had got it from the Ministry of Construction. The land later on was divided in blocks, which were sold to individual businesses. MEC claimed that it had permission from Chief Minister of Yangon region and border affairs department to do so. U Than Win, who used to cultivate 17 acres of the land from the area, shared that MEC had come prepared. He adds, “They brought many people: 100 policemen, 100 labour, 15 police cars, heavy machine, ambulance, etc. to take people to jail. They blocked the road. We were few in number. We could not do anything. MEC cleared the land.” The land that was cleared in January 2017 was outside the 2400 ha that was earmarked for the SEZ but was situated close to the SEZ area.

According to U Than Win, initially, individual businesses offered a small compensation and tried to get communities to vacate the land. But the communities did not accept the compensation. The companies eventually fenced the land causing 30 families to be trapped inside. Farmers informed to the local MP from Kyauktan Township, who expressed helplessness. They complained to the land grab investigation committee, the vice president and Aung San Su Kyi, but nothing changed.. In July 2017, they complained to the Myanmar National Human Rights Commission. Within two weeks the commission visited the site. After the field visit, the commission negotiated with the company and allowed an opening in the fence.

Later on, MEC built a concrete wall around the homes of 39 families (Asian Correspondent, 2017). Some of these families pursue farming, some are agricultural labour and some are fishers. Because of the wall their movement is restricted. To access the road, they have to take boats through a small creek first. They cannot access essential amenities like school, monastery and the hospital (Asian Correspondent, 2017). They have



Legal notice served to the farmers by the port authority

complained again to the commission, as no opening had been provided in the concrete wall. The commission hasn't replied. In August 2017, they wrote second letter to the commission. The farmers are considering suing the MEC, the port authority and the companies involved. Their demand is not to get the land back as it is under the port projects but they want better compensation as per the market price. They also want the government or the company to take responsibility for 39 families. The farmers sent notices in July and expected a reply by September (within two months), failing which the farmers intend to take the matter to court.

Current status and future

As of September 2017, villagers displaced in the first phase of the project continue to have inadequate facilities and many of them are still struggling to earn enough income to sustain them. It is apparent that people have accepted the Thilawa SEZ as a reality and are looking to make the most of the upcoming development. Villagers from Thida ward shared that they were waiting to be relocated. But they know that JICA guidelines grant them the right to choose the site they want to relocate to and they are determined to make use of the right. With the help from TSDG and ERI, they are negotiating the land deals with project authorities. U San Win says,

Our strategy is negotiation and discussion. We will not oppose the project if the guidelines are followed. We have given this message to JICA as well. We think if JICA follows its guidelines fully, relocation cannot take place till 2020. Take the example of acquisition of land for Zone B of the project. Some farmers have not accepted the compensation as yet. The project has difficult times ahead. The more they delay, the project will face more difficulty. People are getting more knowledge. Rice production is good here. So we don't care if they don't give us compensation. We are in no hurry.

Yin Nyein A Yarcor Grace from Paung Ku says something similar, "Regional officers don't know the law very well. Now the community knows the law, better than the regional level officers. Hence the people have chosen to negotiate directly with the company and JICA."

Alongside their efforts to get as best compensation as possible, they are also bracing themselves for the negative impacts of the expected development. Through CD-OGM, TSDG is looking to work as a vigilant group or a watchdog keeping a close eye on development of the project and ensuring that it causes least harm to the surrounding area. Many people in Myaing Thaya settlement site plan to buy land with the compensation money and continue agriculture. U Than Win says, "Farmers don't have higher studies, they cannot get high paying jobs in the factories here. They will only get jobs of daily labour or security guard, which is not good for them. They will prefer agriculture over it."

The SEZ law establishes governance bodies to facilitate investment but it lacks accountability for violation of human rights and environmental laws. The EIA procedure mandates that EIA-type projects comply with international standards on involuntary resettlement, as accepted by the World Bank and Asian Development Bank. However, it does not state that EIA should be prepared and resettlement planning should be carried out prior to land acquisition (ICJ, 2017). Despite these lacunae in the law, people have managed to extract remedies for their problems from the governance system. Different NGOs contributed to the case according to their individual strengths- Earth Rights International provided the technical support, Paung Ku, helped in community organising and Mekong Watch turned it from a domestic issue into an international one. It got the attention of Japanese media, politicians and policy makers to the case. The case is an example of how different entities get together with their individual strengths and support a case resolution. Thilawa SEZ also provides an insight into how remedies are shaped along the path of case resolution and project development. Either at different stages or due to involvement of different people different remedies have been pursued in the conflict journey: improved relocation, higher compensation, project suspension, alternative livelihood and mitigation of environmental impacts. Some activists view different interests of communities as a shortcoming and weakness of their otherwise, organised action against the project. Some see it only as a difference in response. Nang Khin Khin Tun from Paung Ku compares Thilawa and Dawei:

In Dawei people are saying no to the SEZ. They are better organised. There are strong CSOs in Dawei. There the SEZ became a regional concern. Communities in Tanintharyi are indigenous. They depend on natural resources. In Thilawa the concern is only about loss of land. In Thilawa people say yes to the SEZ but with conditions.

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Interviews conducted between 28th and 30th August 2017:

- U Mya Hlaing, member, executive committee, TSDG, Alwan Sut village, Thanlyin Township
- U San Win, Thida ward, Kyauktan Township
- U Than Win, Myaing Thaya settlement site, Kyauktan Township
- Nang Khin Khin Tun, Paung Ku, Yangon
- Yin Nyein A Yarcor Grace, Paung Ku, Yangon

Annexure I: Questionnaire administered to collect data for the case studies

Case Research Report

Name of Case & Case Number : Location : Interview Date(s) : Persons interviewed/spoken to about this case (names & role in case): 1. 2. 3. 4. 5.
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I. Case Chronology

I. Case Summary

- Location, country
- Type of case (circle one): hydropower/ports/mining/plantation/other
- Give a short summary of the case (5 lines max):
- Status of the case (pending/solved): if a case is resolved is there a chance that the solution may not be enforced?
- When was this case first reported?

II. Full Description of case

- Give a full description of conflict. What the dispute is about, and between what parties?
- If any, mention big differences in interpretation of the involved parties: Do they 'frame' the conflict (i.e. interpret what is going on) in different ways? Illustrate with short quotes. (other peoples analysis)
- Give a chronology of events: what happened when? What actions were undertaken by different parties?
- If the case went to court, describe the proceedings at the court.
Analysis: Describe the background of main parties involved: Briefly mention relevant characteristics (profession, local status, relevant social connections, etc). of all the parties involved (including dispute resolvers)
Brief legal analysis: According to you, what outcome does state law (and, if relevant, customary law) prescribe for this case?

III. Adopted Strategies

- Name and describe the different courses of action that affected communities undertook at different moments in time.
- What reasons did informants give for choosing these different courses of action at that moment? Why were alternative possible strategies (e.g., legal action, lobby, etc.) not pursued? Give quotes.
- Representation: Which local actors were most active as representatives of affected communities? Why them? Was their role as representatives contested and/or raise concerns among others?
- Discuss the involvement of outside NGO-actors. If so, how did affected communities get in touch with outside NGOs? How did they affect the strategies and the final outcomes? How is their involvement viewed by informants?

5. Did the affected communities and their partners pursue a media strategy? What effect did media reports have on outcome of the case?
6. Discuss the involvement of political actors: did affected communities seek help from them, what did they contribute and at what cost? How do informants evaluate their support?
7. Did affected communities opt for legal action? Why (not)? What kind of legal action was undertaken, and why in this form?
8. Did negotiations between affected communities and company/state take place? Describe the proceedings: who was present, who represented the community, what claims were being discussed and what outcome was reached? Give quotes of informants' description of negotiation
Analysis: what might be the main reasons for the failure or success of these negotiations?
Analysis: what was the role of State representatives in this conflict? Did they adopt a neutral position, or support either side of the conflict? If so, what actions suggest that they were partial?

If paralegal involved:

- How and why the paralegal was involved in this case? Did the client first report the case to others?
- Ask informant: How would he have dealt with the case if there was no paralegal? Would the outcome have been different? Give quotes.
- Ask the paralegal: What was his main advice(s) to his or her client? Why this set of advice? Give quotes.

IV. Final Outcome

1. How long did it take for this case to reach the present outcome?
2. If a solution was proposed (as described above): Were the parties involved satisfied? Why (not)? Give quotes.
3. If a solution/verdict or deal was reached: was it enforced? If not, why not? Give quotes
4. What was done to make sure the proposed solution was enforced?
5. Monetary compensation: Did affected families receive compensation? Yes/no?
 - a. If agricultural land: How much per hectare?
 - b. If displacement of home: how much per family?
 - c. Was alternative housing provided?

Did or would the land use change cause environmental degradation? If yes how?

What other consequent effects did the land use change cause socially and politically?

6. Did the land use change affect the livelihood of affected communities, in positive and negative ways? Describe and give quotes.'

V. Researcher's Analysis

Give your own thoughts and ideas about why the case progressed as it did, what were the main causes, why the parties took the steps they did, etc. Also, please point out any inconsistencies in the accounts given by different parties in the case, and what your best guess is on how to resolve the different accounts.

Annexure II: Administrative land categories in use in Myanmar

	Land Type	Purpose	Owned by	Ownership Type	Revenue	Governance & acquisition	Location
1	Freehold		Families (ancestral)	Conclusive, transferable	No land revenue to the government	Can be acquired for "state interest" under Land Acquisition Act 1894	Mostly in cities and towns
2	Grant		State, leases it for 10 or 30 or 90 years	Transferable	Land revenue to the government	Can be acquired during the lease period for "state interest" under Land Acquisition Act 1894	Mostly in cities and towns, few in villages
3	Agricultural	Includes paddy, garden, plantation, and virgin (riverine & coastal) land and land on which vegetables and flowers are grown, only for agricultural purpose ²	State, leases it to farmers on conditions, non-citizens can also get the lease	Non-transferable	Land revenue to the government	Can be taken back by the MoALI if stipulated conditions are not met but it is seldom taken back	
4	Garden	Only for agricultural purpose (is a type of agricultural land)		Non-transferable but in practice, is often sold	Land revenue to the government	MoALI	
5	Grazing		State, Village Peace Development Council looks after the land		No land revenue to the government	District PDC and MoHA grant permission for construction on it	Villages
6	Culturable land, fallow land and waste land		State, grants the rights (for a maximum of 30 years) to cultivate/ utilise for commercial use		No land revenue to the government		
7	Forest	Includes the Reserved Forest Area	State, grants permission for timber and firewood extraction, catching fish, mining, producing charcoal, oil extraction, and gem-mining		License fee to the forest department	Ministry of Forestry and usually the cabinet as well. Only Ministry of Forestry can re-designate it into another category of land.	
8	Town	Comes under freehold land/ grant land/ La Na 39 type land, can be used for non-agricultural purposes	Grant land and La Na 39 type land are leased by the state, freehold land is privately owned	Transferable	Land revenue to the government	Agricultural land can be transformed into La Na 39 type land	

9	Village	Grant land or La Na 39, agriculture and for building houses ⁴	State	Transferable, land with buildings is non-transferable	Land revenue to the government		Villages
10	Cantonment	Military use	State	Land to be returned to government when not required by the military	No land revenue	MoHA designates land as cantonment land and acquires as per Land Acquisition Act with compensation (compensation only for freehold/grant/La Na 39; not for agricultural land)	
11	Monastery	Monastery use	State	Land status unchangeable	No land revenue	MoHA designates land as Monastery land and acquires as per Land Acquisition Act with compensation (compensation only for freehold/grant/La Na 39; not for agricultural land)	
12	Others	1. "Hill Plots" (Taung Yar) for swidden agriculture 2. Fire gutted land (land left over after the structures on it are lost in fire)	State		Land revenue to the government		Hill states of Chin, Shan and Kachin

