

# Conflicting development priorities in Tanintharyi Region, Myanmar

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Despite the implementation of a range of political and economic reforms following the 2011 transfer of power from military dictatorship to a quasi-civilian government led by President Thein Sein,<sup>1</sup> reform in Myanmar is severely restricted by the 2008 Constitution. The 2008 Constitution was written by the Myanmar military leadership to protect the military institution's privileged position in all aspects of the country's political and economic affairs.<sup>2</sup> Myanmar's 2008 Constitution was passed in a sham public referendum held just a week after the devastating Cyclone Nargis killed over 100,000 people in the south of the country. The former State Peace and Development Council (SPDC) military dictatorship viewed the passage of the 2008 Constitution as 'step four' in its stage-managed "Roadmap to Discipline-flourishing Democracy" process. The 2008 Constitution certainly does contain a lot a 'discipline-flourishing' provisions.<sup>3</sup> According to the Constitution: 25% of seats in all parliaments (the bicameral national-level *Pyidaungsu Hluttaw* and the 14 unicameral State and Region *hluttaws*) are reserved for unelected military-appointed representatives; a super-majority of 76% of all *Pyidaungsu Hluttaws* is required for significant constitutional amendments; and the Myanmar military maintains direct control over three powerful Ministries: Defence, Home Affairs and Border Affairs.

## Case study: Dawei Deepsea Port & Special Economic Zone project

In 2008, an MOU was signed between the government of Thailand and the then-military dictatorship government of Myanmar to move ahead with the Dawei Deepsea Port & Special Economic Zone (DDSEZ) project. The proposed DDSEZ project was to be the largest project of its kind in Southeast Asia, and included the development of a deep sea port; an SEZ; an industrial/petrochemical zone; and road and rail links to Thailand connecting into the Greater Mekong Sub-region Economic Corridor.<sup>4</sup>

Local communities understood that the proposed mega-project posed numerous threats to their livelihoods. The range of threats included forced relocation of villages; pollution from the industrial zone damaging crops and harming human health; environmental impacts such as increased sediment in local streams; blockage of local roads and access to farmland following the highway construction; and increased access to rich people from urban areas to buy up rural land or engage in other destructive investments. As the DDSEZ was taking place in a conflict area, there were also concerns that the project could exacerbate the on-going armed conflict and destabilize the burgeoning peace process.<sup>5</sup>

In 2010, Bangkok-based construction conglomerate Italian-Thai Development (ITD) was given long-term concessions to develop the US\$8 billion DDSEZ project on 250 square-kilometres of land.<sup>6</sup> Initial site preparation at the coast and construction on the road link started soon after the deal was signed. As part of the concession, land along the highway route were cleared and prepared for construction without informing the local land people who own and use the land for the livelihoods.

Project-affected communities mobilized in coordination with network of domestic CSOs and international supporters. International support to local communities included organizing workshops, exposure trips to Thailand, and raising the public profile of the communities' demands through presentations at universities and seminars and in the Thai media. Due largely to community opposition and the wide-ranging concerns they raised, the DDSEZ implementer failed to secure investors and publicly withdrew from the project in 2013.<sup>7</sup>

The project was reignited in 2018 when the Myanmar parliament approved the acceptance of a 4.5 billion baht (US\$133 million) loan from Thailand's Neighbouring Countries Economic Development Cooperation Agency to finish the construction of the Dawei-HteeKee highway link.<sup>8</sup> The development of a well-paved multi-lane road link is seen as a crucial factor for attracting the investment required to complete the DDSEZ.<sup>9</sup> This highway will form a small section of the long-planned Greater Mekong Sub-region Economic Corridor. The future form that the DDSEZ project will take is not entirely clear, but it is clear that the concerns raised by local communities in the past are still relevant today.

### **Threats to livelihoods across Tanintharyi Region**

After mobilizing against the DDSEZ, local people observed that other forces were threatening their livelihoods and traditional way of life: investments in extractive industries (tin, coal & gold) and mono-crop plantations (oil palm & rubber); 'green-grabbing' of customary land by government and conservation INGO programs; and a lack of land rights.

Local people in Tanintharyi Region have experienced land grabbing and environmental impacts from extractive industries. People from Shwe Chaung village<sup>10</sup> have been severely affected by the operations of the Heinda tin mine. The Myanmar-Phongphipat company was granted the concession to re-start operations at the Heinda mine site in 2008. The company's dumping of mining waste polluted local drinking water; and flooding caused local villagers' farmlands to be covered by mining waste and sediments from the mine site. Local people submitted complaint letters to the Region government many times, but no one took any action until 2015. Ultimately, the Region-level Minister of Natural Resources and Environment Conservation suspended the Heinda mine to allow time for a comprehensive Environmental Impact Assessment before any consideration of extension of the mining permit.<sup>11</sup>

Another example of the impacts of extractive industries is the Ban Chaung coal mine.<sup>12</sup> The coal mine operations have been suspended temporarily, but are still a source of major pollution for local people as the coal in the open-pit mine continues to burn and emit toxic smoke.<sup>13</sup> The concession to develop a coal mine on up to 2,100 acres of land was given to Myanmar-based May Flower company in 2010, which then brought on a consortium of three Thai companies (Energy Earth PCL, East Star and Thai Asset Mining) to begin operations in 2012. In its few years in operation the mine was plagued with complaints from local people about land-grabbing, damage to crops, water pollution and air pollution. It is estimated that the mine could impact around 16,000 people.<sup>14</sup> A compliant against the mine was submitted to the Thailand National Human

Rights Commission in 2017.<sup>15</sup> While the mine is currently suspended, there are concerns that operation could be resumed.

Tanintharyi Region has long had large areas under rubber plantations, but a worrying recent trend is the arrival of large-scale oil palm plantations. Local people have complained about land grabbing and environmental impacts from mono-crop plantations. One notable example is the 38,000-acre concession granted to Myanmar Stark Prestige Plantation (MSPP) by the Myanmar Investment Commission in 2011.<sup>16</sup> MSPP is a Malaysian-Myanmar joint venture (Malaysian Prestige Platform with 95% and Myanmar Stark Industries with 5%), a company created specifically to take advantage of the concession opportunity. To date, 6,000 acres of oil palm plantations have been planted. Local communities have raised opposition to expansion of MSPP's plantations into the remaining 32,000 acres of the 2011 concession, much of which locals claim as their customary agricultural and forest lands.

Another threat to customary land rights is conservation programs implemented by the Myanmar government and international conservation organizations without the consent or participation of local people. This is a phenomenon also known as 'green-grabbing'. While local people in Tanintharyi Region understand that their territories contain ecologically significant forests and wildlife habitats, they oppose the top-down conservation model brought to the table by the Myanmar government and conservation INGOs.

The situation in Tanintharyi is also unique due to the dynamics of the decades-long armed conflict and the history of displacement from many of the sites of proposed protected areas and national parks. What people want is for the development of conservation areas to: be postponed pending the achievement of a durable peace agreement; respect the rights of refugees from the area; be in compliance with FPIC, the Durban Accord and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP); respect Indigenous Community Conserved Areas (ICCAs); and be created as part of an overall political reform process including clarity on land rights.<sup>17</sup>

The current land law and policy framework<sup>18</sup> in Myanmar is very problematic. Rather than improving the situation, it seems that the stricter enforcement of new and existing laws is actually restricting the land rights of regular people. The laws do not protect local people, and the confiscation of 'vacant,' 'unoccupied' or 'untitled' have been on the rise, despite land-grabbing having been a problem in Myanmar for decades.<sup>19</sup> The confiscation of 'untitled' land disproportionately affects people in ethnic states; as according to the Department of Agricultural & Land Management Statistics 82% of Myanmar's 'untitled' land lies in ethnic States."<sup>20</sup>

Land issues are one of the key demands of non-state armed groups in Myanmar, yet this land has received a surprisingly limited attention during the peace process. A recent report from USIP noted that "the land and resource sectors and their reform have received minimal attention in peace dialogues and related government-appointed institutions, concluding that land and resources issues must play a central role in the peace building process."<sup>21</sup>

## **Conflict dynamics**

The threats facing local communities in Tanintharyi Region were increasing in the dynamic period of rapid change following the signing of preliminary ceasefires between the Karen National Union (KNU) and the Myanmar government. In 2012 an initial ceasefire agreement was signed between several Myanmar ministers and the leadership of the KNU.<sup>22</sup> In 2015, the KNU joined seven other non-state armed groups in signing the Nationwide Ceasefire Agreement (NCA) with the Myanmar government. Two additional non-state armed groups signed the NCA in 2018, bringing the total number of NCA signatories to 10, but it should be noted that the 11 active non-state armed groups who have not signed the NCA account for approximately 80% of the non-state soldiers in Myanmar.<sup>23</sup> In another sign that the peace process is completely stalled, as of early November 2018 the two largest among the NCA signatories—the KNU and the Restoration Council of Shan State (RCSS)—have both suspended their involvement in the peace process.<sup>24</sup>

## **TRIP NET's strategies**

In order to be more resilient against the threats they are facing, forest dependent communities started to work on community-driven development approaches which emphasized the rights of indigenous people to manage forestland and natural resources. The Tenasserim River and Indigenous People Network (TRIP NET) has played a support and facilitation role for a number of communities across Tanintharyi Region.

TRIP NET's community-driven approaches include facilitating the creation of local people's organizations; forming indigenous knowledge working groups (forest edible plants, herbal medicine, wildlife, etc.); mapping and demarcating traditional forest management and land use; conducting 'local knowledge-based research' species inventories; and documenting indigenous forest management practices.<sup>25</sup>

## **Pushing for ILO169 ratification in Myanmar**

Another of TRIP NET's strategies is to push the Myanmar government to recognize and respect indigenous natural resource and forest management practices, including by recognizing Indigenous and Conserved Communities Areas (ICCAs) and ratifying the ILO's Indigenous and Tribal Peoples Convention (Convention Number 169). Success is far from guaranteed as there is significant resistance to ratifying ILO 169 among Myanmar's policy makers and government and military officials. TRIP NET has engaged in advocacy at various levels including the Tanintharyi Region government, the Myanmar Union government, and the Karen National Union government.

The essence of the strategy is to create a wider space for indigenous natural resource and forest management practices to be recognized and included in law and policy decision-making processes. TRIP NET has supported local people's organizations from Tanintharyi Region to speak at policy forums attended by Union and Region-level government officials including the Second National Workshop on Strengthening Forest Tenure Rights in May 2018; the National Land Use Policy Forum in October 2018; and the Third National Workshop on Strengthening Forest Tenure Rights in November

2018. Government officials present at these forums included ministers, ministry director generals, bureaucrats, and members of parliament. Local people spoke from the stage about the challenges they are facing and about their vision for the future.

## Challenges

Despite some major successes, there remain challenges. Myanmar Union and Regional government officials use language supportive of local forest management, but encourage the use of existing legal frameworks such as Community Forest Instruction and Public Protected Forest rather than moving towards meaningful legal reforms. Karen National Union officials have said the Kamoethway model is in line with KNU Forest Policy, but are hesitant to follow-up by legally recognizing land rights. Top-down and money-incentivized programs of conservation INGOs and international development agencies are implemented without prioritizing local people's consent and participation. The Dawei SEZ project has been revived and laws encouraging investment and giving of massive land concessions to the private sector at the expense of local people continue to be made.

There are numerous human rights and development related challenges emerging during this period of political and economic transition in Myanmar. A major challenge faced in TRIP NET's work is that it has been difficult to convince the Myanmar government to recognize indigenous people's rights. The Myanmar government argues that because there are 135<sup>26</sup> officially-recognized 'ethnic minorities' in Myanmar, it is not possible to give them all the same rights under indigenous rights frameworks such as the ILO 169 and the UNDRIP. The government's perception of 'indigenous people' is that they walk with bare foot and live in the forest without access to any infrastructure development including education. In opposition to this perception, TRIP NET promotes<sup>27</sup> the idea that the uniqueness of indigenous peoples is a worldview and way-of-life that gives primacy to coexistence between human beings and nature.

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<sup>1</sup> Thein Sein is a former General and was Prime Minister under the SPDC military dictatorship in the early 2000s. While he was President he also held the position of Chair of the Myanmar Military's proxy political party the Union Solidarity and Development Party (USDP); holding both positions simultaneously was in violation of the 2008 Constitution.

<sup>2</sup> Tun, Aung Hla. "New Myanmar constitution gives military leading role," Reuters, 19 February 2008. <https://www.reuters.com/article/us-myanmar-constitution/new-myanmar-constitution-gives-military-leading-role-idUSBKK10184120080219>

<sup>3</sup> "Constitution of the Republic of the Union of Myanmar (2008)" <http://www.wipo.int/edocs/lexdocs/laws/en/mm/mm009en.pdf>

<sup>4</sup> "Challenges of Change: Dawei Deep Sea Port and Special Economic Zone Development Project – ADFB" (video), Another Development for Burma, 9 March 2012.

<https://www.youtube.com/watch?v=JbwKbiyue3U>

<sup>5</sup> Tun, Soe Zeya. "Myanmar signs ceasefire to end 62-year ethnic conflict," Reuters, 12 January 2012. <https://www.reuters.com/article/us-myanmar-ethnic/myanmar-signs-ceasefire-to-end-62-year-ethnic-conflict-idUSTRE80B0EX20120112>

<sup>6</sup> "An Industrial Project That Could Change Myanmar," New York Times, 26 November 2018.

<https://www.nytimes.com/2010/11/27/world/asia/27iht-myanmar.html>

<sup>7</sup> Shin, Aung. "Dawei SEZ out to tender as Ital-Thai steps aside," Myanmar Times, 10 June 2013.

<https://www.mmtimes.com/national-news/7073-italian-thai-to-scale-down-dawei-involvement-mic.html>

<sup>8</sup> Chantanusornsiri, Wichit. "Dawei Road Loan Nears," Bangkok Post, 13 April 2018.

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<https://www.bangkokpost.com/news/transport/1445562/dawei-road-loan-nears>

<sup>9</sup> National News Bureau Of Thailand (NBT World). “Promising future for Thailand after recent development in Thilawa & Dawei SEZ,” (video) 26 July 2018.

<https://www.youtube.com/watch?v=bGLqJgizsso>

<sup>10</sup> Shwe Chaung village is in Myitta township, Dawei district, Tanintharyi region, Myanmar.

<sup>11</sup> Win, Su Phyo. “Tanintharyi tightens mining oversight,” Myanmar Times, 17 August 2016.

<https://www.mmtimes.com/business/22005-tanintharyi-tightens-mining-oversight.html>

<sup>12</sup> Tarkapaw Youth Group, Dawei Development Association (DDA), and the Tenasserim River & Indigenous People Networks (TRIP NET). “We Used to Fear Bullets Now We Fear Bulldozers: Dirty coal mining by military cronies & Thai companies Ban Chaung, Dawei District, Myanmar,” October 2015. <http://www.mata-nrg.org/wp-content/uploads/2016/07/Ban-chaung-coal-mining-report-2015-English.pdf>

<sup>13</sup> Aung, Myat Moe. “Dawei villagers seek president’s help to stop Banchaung coal mine,” Myanmar Times, 9 May 2018. <https://www.mmtimes.com/news/dawei-villagers-seek-presidents-help-stop-banchaung-coal-mine.html>

<sup>14</sup> “Myanmar: Ban Chaung Coal Mine” <https://www.inclusivedevelopment.net/campaign/myanmar-coal-mine/>

<sup>15</sup> Zue, Zue. “Thai Human Rights Body Hears Complaints Against Tanintharyi Coal Mine,” The Irrawaddy, 15 September 2017. <https://www.irrawaddy.com/news/burma/thai-human-rights-body-hears-complaints-tanintharyi-coal-mine.html>

<sup>16</sup> Environmental Investigation Agency, Tarkapaw, TRIP NET, Southern Youth, Candle Light, Khaing Myae Thitsar, Myeik Lawyer Network and Dawei Development Association. “Green Desert: Communities in Tanintharyi Renounce the MSPP Oil Palm Concession,” January 2017. <https://eia-international.org/wp-content/uploads/Green-Desert-FINAL.pdf>

<sup>17</sup> Conservation Alliance of Tanawthari. “Our Forest, Our Life: Protected Areas in Tanintharyi Region Must Respect the Rights of Indigenous Peoples,” February 2018.

[https://www.theborderconsortium.org/media/97682/CAT\\_Our-Forest\\_Our-Life\\_Feb2018\\_eng.pdf](https://www.theborderconsortium.org/media/97682/CAT_Our-Forest_Our-Life_Feb2018_eng.pdf)

<sup>18</sup> Vacant, Fallow & Virgin Land Act of 2012; Farmland Act of 2012; Community Forest Instruction of 1995; Myanmar Investment Law of 2016; etc.

<sup>19</sup> Land in Our Hands Network. “Destroying People’s Lives: The Impact of Land Grabbing on communities in Myanmar,” December 2015. [https://www.tni.org/files/article-downloads/lioh\\_research\\_report\\_eng\\_0.pdf](https://www.tni.org/files/article-downloads/lioh_research_report_eng_0.pdf)

<sup>20</sup> Land In Our Hand press release, 6 November 2018.

<sup>21</sup> Woods, Kevin M. “The Conflict Resource Economy and Pathways to Peace in Burma,” United State Institute of Peace, 19 November 2018, page 29. <https://usip.org/publications/2018/11/conflict-resource-economy-and-pathways-peace-burma>

<sup>22</sup> “Govt, KNU sign ceasefire,” Myanmar Times, 16 January 2012. <https://www.mmtimes.com/national-news/1258-govt-knu-sign-ceasefire.html>

<sup>23</sup> Linter, Bertil. “Myanmar peace process being destroyed on multiple fronts,” Asia Times, 26 May 2018. <http://www.atimes.com/article/myanmar-peace-process-being-destroyed-on-multiple-fronts/>

<sup>24</sup> Mon, Ye. “Peace Commission to meet as ceasefire signatories withdraw from peace process,” Frontier Myanmar, 12 November 2018. <https://frontiermyanmar.net/en/peace-commission-to-meet-as-ceasefire-signatories-withdraw-from-peace-process>

<sup>25</sup> Rays of Kamoethway Indigenous People and Nature and Tenasserim River and Indigenous People Network. “We Will Manage Our Own Natural Resources: Karen Indigenous People in Kamoethway Demonstrate the Importance of Local Solutions and Community–Driven Conservation,” March 2016. <http://www.burmapartnership.org/2016/03/we-will-manage-our-own-natural-resources-karen-indigenous-people-in-kamoethway-demonstrate-the-importance-of-local-solutions-and-community-driven-conservation/>

<sup>26</sup> Lintner, Bertil. “A question of race in Myanmar,” Asia Times, 3 June 2017.

<http://www.atimes.com/article/question-race-myanmar/>

<sup>27</sup> TRIP NET has produced a series of short video documentaries on TRIP NET’s work:

[https://www.youtube.com/channel/UCWW0H2J8\\_vEDHD71WU4SCkg/videos](https://www.youtube.com/channel/UCWW0H2J8_vEDHD71WU4SCkg/videos)