

# SPECIAL ECONOMIC ZONES AND HUMAN RIGHTS VIOLATIONS IN MYANMAR

Cristina Donateo

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A salient aspect in analyzing land grabbing in Myanmar is the proliferation of Special Economic Zones, which overall in Southeast Asia caused a “competitive regionalized economic landscape” seeking to attract investment and facilitating access to land for factory investors.

Myanmar has currently three SEZ sites, in Dawei (Tanintharyi region), Thilawa (Yangon region) and Kyaukphyu (Rakhine State), all of which are at different stages of development on the ground. Recently, the Yangon government announced its plan to develop a fourth SEZ, in the Dala, Kawhmu and Kungyangon townships.

The three projects have been considered as a crucial step in the context of greater trade liberalization, investment and industrialization in Myanmar. The SEZs are in accordance with the Special Economic Zone Law, enacted in 2014, which “stipulates that the developer or investor may lease the land for up to 50 years upon payment of a lease fee, a period which can be extended a further 25 years”.<sup>1</sup> Additionally, the SEZ Law reaffirms in many cases the applicability of national laws on land, labor and environment and does not mention human rights in any of its three chapters. An analysis of the relevant legal framework in Myanmar conducted by the International Commission of Jurists has revealed concerns regarding compliance with the State’s international law obligations on human rights protection and the universal principle of legality, according to which laws must be clear and unambiguous.<sup>2</sup>

Ever since the three projects have been approved by the Myanmar Investment Commission, civil society groups have warned on and reported human rights violations on communities living in the investment areas. This report focuses on the state of human rights violations entailed by the initial stages of construction in Thilawa and Dawei, providing a background overview and evidence collected on the ground.

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<sup>1</sup> Yukari Sekine (2016) Land Confiscations and Collective Action in Myanmar's Dawei Special Economic Zone Area: Implications for Rural Democratization, Global governance/politics, climate justice & agrarian/social justice: linkages and challenges, An International Colloquium, 4-5 February 2016 Colloquium Paper No. 59

<sup>2</sup> International Commission of Jurists (2017) Special Economic Zones in Myanmar and the State Duty to Protect Human Rights

## DAWEI SPECIAL ECONOMIC ZONE

The Dawei Special Economic Zone is the largest in Myanmar, located in a populated agricultural area about 20 km north of Dawei, the Capital of Tanintharyi Region in Southern Myanmar, and approximately 350 km to the west of Bangkok, Thailand.

If completed, the Dawei SEZ will be an industrial estate primarily composed of: a deep sea port and dockyards; an oil refinery complex; fertilizer and petrochemical plant; medium and light industry factories; pulp and paper processing plant; steel mill; a large water supply reservoir and electricity generators. The infrastructure project extends beyond the SEZ and includes an international road link to Thailand and railways, which are projected to connect the deep sea port to be built beside the SEZ to the Myanmar Thai border, thus serving as an alternative to the traditional trade route crossing the Malacca Straits.<sup>3 4</sup>

It goes without saying that a huge number of households will be displaced to make space for infrastructure development. However, totally clear, comprehensive and updated data about the number of households and villages whose livelihoods will be impacted by the project are still not available.

A report published in September 2014 by the Dawei Development Association (DDA) observed that people from within 20-36 villages will be directly affected by the project (within the SEZ and beyond). It is estimated that between 4,384 and 7,807 households corresponding to 22,000 to 43,000 people are expected to be directly impacted by the project.

Despite the lack of substantive data, health and environmental impacts on rural and urban population living in Dawei districts do also need to be clearly assessed.

The Dawei project is ten times larger than the Map Ta Phut Industrial complex, the current fifth largest industrial estate, located in Thailand, which has attracted interest on human rights violations and ecological abuses.

In 2011, former Thai Prime Minister Abhisit Vejjajiva reportedly said that “[s]ome industries are not suitable to be located in Thailand. This is why we decided to set up there in Dawei”. With regards to this statement, TNI argued that “the nexus of private and public actors can no longer get away with new catastrophic industrial developments of this kind anymore on Thai territory, because of an increasingly progressive human rights and environmental legal framework. Alternatively, Myanmar – despite the recent parliamentary approval of two land laws (the Farmland law and Vacant, Fallow and Virgin Land Management Law), and the imminent passing of the Foreign Investment Law – remains relatively attractive for investors wanting to develop projects that come at social and environmental costs”.<sup>5</sup>

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<sup>3</sup> Robert Finch, Alex Moodie, Rebeca Leonard, Luntharimar Longcharoen, Jessica Armour, Ratawit Ouprachanon, Areewan Sombunwattanakun (2014) *Voices from the Ground: Concerns over the Dawei Special Economic Zones and related projects*, Dawei Development Association (DDA)

<sup>4</sup> Mekong Watch (2016) *Fact Sheet on Dawei Special Economic Zone Development Project*

<sup>5</sup> Transnational Institute (2012) *Land Grabbing in Dawei (Myanmar/Burma): A (Inter)National Human Rights Concern*, Briefing Paper, Agrarian Justice program

The project started in 2008, when Samak Sundaravei was Prime Minister of Thailand. The primary stakeholder in the Dawei project was initially the Italian-Thai Development Public Company Limited (ITD), the largest infrastructure construction company and one of the largest corporations in Thailand. ITD won the bidding to run the project for 75 years concessionaire. The major shareholder of ITD is former Thai Prime Minister Taksin Chinnawat, who appointed Samak Sundaravei before leaving to exile, blamed for corruption.

ITD signed a MoU with the Myanma Port Authority. All works in Dawei SEZ were to be carried out by the Dawei Development Company Ltd, a joint venture company ran by ITD (75%) and Max Myanmar (25%). However, after Max Myanmar withdrew its investment in July 2012, ITD struggled to find new partners. Hence, since then, there has been pressure coming from the Thai government to push the project to be a government-to-government project. Officially due to lack of financial resources, the Japanese Government was asked to join the venture for funding and technical support. The Japanese agreed to enter the project and they signed for it in July 2015, but the situation still remains unclear and the project is currently stalled.

According to Tanintharyi Region government officials, plodding progress is being made on the project, the *Myanmar Times* reported. Tanintharyi Region Chief Minister Daw Lae Lae Maw, together with other region government officials, visited Japan last January. Later on January 29 a special advisor to the Japanese Prime Minister Shinzo Abe visited Nay Pyi Taw to discuss Japan's interest in the project, which seems to have been strengthened, as reported by Tanintharyi Region finance minister and vice president of the Dawei SEZ Management Committee U Phyo Win Tun. "We cannot announce what was discussed in the meetings with the Japanese government as there are still further discussions to take place between the SEZ committee and the regional government," said U Phyo Win Tun. "But it is very obvious that Japan has become more interested in the project, and that's a sign that we should restart it after its pause." Reportedly, the SEZ committee has also had more interaction with ITD. As of now, the consortium of private developers that signed a concession agreement with the government in 2015 is formed by ITD, Japanese-Thai joint venture Rojana Industrial Park Public Company and LNG Plus International Company, also from Thailand.<sup>6</sup> Most of all, it would seem that the Japanese are primarily interested in the road link that leads from Thailand to Dawei and providing access to the Andaman Sea. It should also be noticed that Japan is massively involved in the Thilawa SEZ project, the most advanced among Myanmar SEZs, of which the Japanese hold a 49% share. The Myanmar government repeatedly stated that, as a pioneer project, Thilawa would be a model for the SEZ projects to follow; it is therefore reasonable to believe that Japan is not interested in investing in a far bigger industrial park, at least for the moment.

After the governments signed the agreement, the Dawei Development Association filed a complaint asking Japan to reconsider the investment, due to the effects it would have on the environment.

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<sup>6</sup> Su Phyo Win, Tanintharyi officials say work on Dawei SEZ could restart, *Myanmar Times*, 2 February 2017

ITD was initially granted access by Myanmar government to 250 km<sup>2</sup>; a subsequent company's annual report declared that the project was reduced to 204.9 km<sup>2</sup> (current project size is 196.5km<sup>2</sup>).<sup>7</sup>

In an international colloquium held in February 2016, Yukari Sezine argued that tenure security and livelihoods in the targeted area are attributable to a number of reasons, namely:

1. „the planning and initial construction of the Dawei Special Economic Zone (DSEZ) and related projects;
2. increased land speculation due to an emerging and market and increased land prices;
3. the formalizing of a new private property system based on the Farmland Law and the Vacant, Fallow and Virgin Lands Law;
4. present and past confiscations by the military;
5. mining and large-scale plantation concessions in the surrounding areas.“<sup>8</sup>

According to TNI, the Dawei project implementation entails two kinds of land grabbing: direct land grabbing and indirect land grabbing. As by the end of 2012, they were reported as follows<sup>9</sup>:

**Box 3. Dawei SEZ Land Grabs At a Glance**

**Direct Land Grabs**

*Officially Reported:* 32,274 people to be relocated by ITD in SEZ area (50,631 acres or 204,9 km<sup>2</sup>). Additional preliminary estimates of 182 households in the proposed Dam Reserve area (1,730 acres or 7km<sup>2</sup>). Official (i.e. published) data is currently unavailable for the road link area and (the potential) four relocation sites.

*Unofficial Estimates/Research Findings:* ITD data fails to recognize the number of SEZ, dam, road link, and relocation area residents who are internally displaced, and those who migrate to Thailand for employment, many of whom, given the opportunity would return to their homes and agricultural land in the Dawei Region. Therefore, an exact affected-population estimate is not possible, however the total calculated acreage of the direct land grabs is potentially 63,768 acres.

**Indirect Land Grabs**

*Officially Reported:* No ITD or Myanmar government reports have linked an indirect wave of land grabbing to the SEZ project.

*Unofficial Estimates/Research Findings:* Potentially 500,000 people from the region surrounding Dawei will be directly and indirectly affected by massive land grabs, economic speculation, and the decimation of the current rural economy. Already, total land confiscation from only four insider-reported projects is 153,919 acres (see case list).

Figure 1: Direct and Indirect Land Grabs in Dawei SEZ, Source: TNI

7 Transnational Institute (2012) Land Grabbing in Dawei (Myanmar|Burma): A (Inter)National Human Rights Concern, Briefing Paper, Agrarian Justice program, *Transnational Institute*

8 Yukari Sekine (2016) Land Confiscations and Collective Action in Myanmar's Dawei Special Economic Zone Area: Implications for Rural Democratization, Global governance/politics, climate justice & agrarian/social justice: linkages and challenges, An International Colloquium, 4-5 February 2016 Colloquium Paper No. 59

9 Since the TNI report dates back to 2012, it is important to notice that these data refer to activities linked to ITD and other affiliated companies.

More recently, a field study was conducted by DDA: research was undertaken in 20 villages, situated respectively within the official boundaries of the Dawei SEZ, in the road link areas and outside the boundaries of the SEZ. The research team interviewed a total of 1,583 households out of 3,699 households registered in these villages.

Findings revealed that the vast majority of interviewees (71%) considered agriculture as their primary occupation (particularly orchard farming and paddy farming), both for subsistence and income. 71% of households expected to lose some or all of their land to the SEZ. Much of the land was lost either directly, by confiscation, or indirectly, because it was damaged by landslides and water channel blockages due to the project development.

As for prior consultations between investors and villagers, two thirds of the respondents declared they were not given any kind of information from the government or company. Only 27% of households surveyed had attended meetings that dealt with project implementation, and the vast majority of them were unable to actively participate in discussions (mostly because they were afraid to speak up or because the organizer did not invite questions; language barriers were also reported as a key point in line). Furthermore, "[I]and confiscation was not discussed in meetings, as the fact that the land would be confiscated had already been decided prior to talking with affected villagers".

Overall, only 8% of households surveyed felt that they had given the government their consent prior to project implementation. Only 15% of respondents reportedly received payment of compensation.

In particular, amongst interviewees who had a housing plot in areas designated for the project (corresponding to 79% of households surveyed) only 1% stated that they had received compensation. On the other hand, 18% of farmers who lost orchard land were compensated, whereas paddy owners who were paid compensation corresponded to some 9%. Overall, compensation process was reported to be non-transparent and uneven and no list of compensation payments was made public. According to many villagers, people connected to officials received higher amounts of compensation payments.



Figure 2: Payment of compensations received by households surveyed, Source: DDA

Some farmers declared they would have been favorable to resettle, if the compensation offered was sufficient to acquire equivalent land elsewhere. However, according to 91% of respondents, the amount received was not enough to sustain their household future.<sup>10</sup>

Reliable and comprehensive data about most recent developments in forcible evictions and resettlements in Dawei District still lack. In late 2015, Walsh stated that the creation of Dawei SEZ has actually involved the forcible relocation of the population inhabiting an area the size of Singapore (which is roughly the size of the project as initially planned).<sup>11</sup>

As a matter of fact, Myanmar could greatly benefit from the Dawei Project, if it was carried out in an accountable and transparent manner. The country's geopolitical position between China and India and the one it holds within the ASEAN context are two examples of how both the national government and population could take advantage of infrastructure development for sustainable economic growth.

However, information available so far imply that the Dawei SEZ “has already destroyed farmland, severely polluted bodies of water with heavy metals and fertilizer chemicals, blocked access to coastal areas for small-scale fishing, and tripled local cancer rates.”<sup>12</sup>

### **HBS Myanmar in the Dawei SEZ area**

In August 2016 HBS Myanmar met some of the residents of the SEZ Area. The research was conducted with the intermediation of DDA.

At the time, the state of the Dawei SEZ project was officially marked as stalled. The main reasons appeared to be generated by the amount of investment needed to develop the project. As mentioned above, the ambitious plan was initially to build an industrial park of the size of 250 sq. km. Subsequently, the project size was reduced to 204.5 sq. km. However, according to the latest news, the area covered by the project has been further reduced to 196.5 km. So far, only the construction for an initial phase of 27 sq. km has been launched.

The Initial industrial Estate is located 30 km north of Dawei and, as stated by the Myandawei Industrial Estate Company Limited, will be divided into four phases, with phase A covering a total area of 7 sq. km with 25% of green area. Besides the land preparation work, the components of the industrial park also include: road system, drainage system, lighting system, water and power distribution system, waste water treatment system, solid waste system, firefighting etc. Although the initial phase has been on for more than two years, there are still few signs of development in the ground.

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10 Robert Finch, Alex Moodie, Rebeca Leonard, Luntharimar Longcharoen, Jessica Armour, Ratawit Ouprachanon, Areewan Sombunwattanakun (2014) *Voices from the Ground: Concerns over the Dawei Special Economic Zones and related projects*, Dawei Development Association (DDA)

11 John Walsh (2015) *The Special Economic Zones of the Greater Mekong Subregion: Land Ownership and Social Transformation*, Conference Paper No. 19, Land grabbing, conflict and agrarian-environmental transformations: perspectives from East and Southeast Asia, 5-6 June 2015, Chiang Mai University

12 Jennifer Franco, Hannah Twomey, Khu Khu Ju, Pietje Vervest, Tom Kramer (2016) *The Meaning of Land in Myanmar: A Primer*, Transnational Institute



State of work of the Initial Industrial Estate of the Dawei SEZs Project in August 2016

The construction of the 138km-long road link to Thailand has already taken place, leading to expropriation for hundreds of villagers. Currently a 2-lane dirt road, it is planned to expand it into a highway (depending on the plan, between 6 and 16 lanes).<sup>13</sup> The route passes through seven villages. HBS met farmers who experienced severe income losses, due to the road link development.

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<sup>13</sup> Mekong Watch, Dawei Special Economic Zone Project, url: <https://mekongwatch.wordpress.com/dawei-sez/>



Road leading from Dawei to Kanchanaburi border in Thailand

Findings reveal that land confiscation took place in 2012, concerning two types of cultivations: permanent plantations and *ku* or *taungya*, also known as shifting cultivation or *swidden* agriculture. This type of rotational farming is predominantly practiced across the Mekong region, where small areas of land are cultivated for a short period of time, then left to regrowth whilst the farmer moves to another area to do the same.

Across the area, the main crops grown are cashew nuts, betel nuts, bananas and coconuts, while outside the SEZ, rubber and palm trees are also major cultivations.

The vast majority of farmers in Dawei do not possess any ownership title, as land is mostly traditionally inherited and customary law is not systematically recognized in Myanmar. The only documents they were provided as proof of use were tax receipts.

In this particular case, damages to the affected community were mostly caused by the construction of the route, rather than by the confiscation itself. *Per se*, the plots of land confiscated are not significant in size. Greater damages were caused by the position of the plots and how the road construction affected the adjacent land. Although farmers might not have had all of their land confiscated, the road construction blocked the water flow and destabilized slopes, thus causing landslides and damages to the entire territory.

Compensation amount corresponded to 10 million kyats per acre; the process was held between 2012 and 2014. As mentioned, the 2014 report *Voices from the Ground* by DDA highlights the main issues concerning the process. After the process was stalled, so were consultations. According to what interviewees stated, prior to the road link construction a meeting was held, but only to the purpose of informing the farmers about compensation amounts and giving general updates about the project. Farmers didn't have any negotiation power 'against' the SEZ Management Committee. (*"You will get that amount. That is the highest the Committee can pay"*). Participants were very clear on affirming that the 10 million kyats compensation per acre is considered as not fair (*"It cannot cover for the long-term. The*



*committee said - you still have the farmland, you can still grow crops - but we cannot grow them anymore*). By conducting the meetings in line with a top-down process, the Committee stated that negotiations were not possible, because the “Government compensation system” was being adopted. However, these findings lead to doubts: to our knowledge, up to date there is no registered information about official standards for compensation in Myanmar.

Depending on the amount of compensation received (measured according to the size of the confiscated plot), farmers tend to invest mainly on plantations, especially on those which require a high level of maintenance, like rubber.

Although the current stalled state of the project, the participating group of farmers already experienced severe losses in income, since the route to Thailand was constructed on their land. While some of the participants own other plantations they can rely on for their living, the majority of households in the six villages had to find other sources of income in order to make ends meet. People who lost all of their farmland are sometimes employed as labor workers. Migration to Thailand is a strong option: many have moved since project was initiated, even whole families. A minor destination appears to be Malaysia, while there is almost no domestic migration, mainly because migrants are attracted by foreign minimum wages (Thailand 300 baht corresponding to 8-9 USD a day vs Myanmar 3-4 USD – non-regulated) and higher number of job opportunities. Migrants are mostly employed as construction workers and are able to send modest amounts of money to their families.

Thanks to remittances one of the interviewees renovated his house in the SEZ area. This example might be considered as anecdotal evidence: although farmers are aware the Dawei SEZ project might resume and affect its entire planned size, they prefer to invest in the area rather than outside. There are a number of reasons for this. First, farmers are aware of the local soil fertility, thus reducing the risk of losses related to farming. A second strong factor which makes the difference in locating small investments is strong fluctuation of land price that the region is experiencing. Indeed, the price of property in Dawei has dramatically increased beyond the reach of local population in the last few years, following the announcement of the SEZ establishment. U Swan Shein, chair of the Myanmar Real Estate Services Association (MRESA) in Tanintharyi Region, reported to the Myanmar Times: “Local real estate price changes are not driven by local demand. Buyers are mostly from upper Myanmar. In particular, Kachin and Shan investors migrating from civil wars have been looking for business opportunities in border areas such as Dawei where business is going well”.<sup>14</sup> However, it is also crucial to notice that the SEZ is not the only investment destination attracting foreign and local businesses. The Tanintharyi region - particularly the Dawei district itself– stands as a major destination for investment on natural resources.

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<sup>14</sup> Aye Nyein Win and Su Phyo Win, Investors buy up Dawei real estate, Myanmar Times, 16 February 2016

## **Bawah relocation site**

The Bawah relocation site is located about a 30 minutes drive from one of the main villages in the area. The site hosts 638 houses, built in 2012. Although villagers who lost their land because of the road link construction have been offered to relocate in the newly constructed houses, almost all of them have refused to move there. To date, only one family lives in the relocation site. HBS Myanmar met them, in order to assess the state of living conditions and displacement process.



Empty housings in Bawah relocation village

The relocated family was part of a community of 30 households residing near Km 0, that is, the beginning of the industrial zone located next to the coast. Among these 30 households, 26 were able to afford relocating to other villages.

In total, four families decided to move to the Bawah site. Two of them eventually changed their mind and sold their new houses; the other one moved out after a short period.

Before the households decided to accept the offer to relocate, three days of consultations were held. The households requested 20 million kyats as compensation for property and land, so that they would build their house in the main village, but the committee in charge for dealing with displaced villagers refused. Instead they were offered 1 million kyats and the house in the newly built relocation site. However, this has not to be considered as a standard amount of compensation. According to findings, corruption played a huge role in the negotiation process and compensation was not equal for everyone. Information about compensation was not open to the public.

The new accommodations were available in three sizes: small, medium and large. According to what the Committee reported, their value corresponded to 15.5, 18 and 22 million kyats. The size each household is given is measured according to the number of family members.

Despite their claimed value, the two families who decided to sell their accommodation got only 1.7 million, slightly more than 10% of what they should have received.



Housing of participant household, the only inhabited one in Bawah

When the family moved in the new house in 2013, water and electricity were not provided. After 4 years, the situation remains the same. There are visible signs of mold on the ceilings throughout all the accommodation and the housing standards, despite the appearance, are very poor. No well has been provided by the constructors. For the first two years, the family could ask the security in charge for looking after the site to bring water, but the security service has been stopped in 2015.

Villagers from the SEZ area refused to live in the relocation site not only because there is no agricultural land nearby, but also and especially because the site is located in a highly remote area.

It is still not entirely clear if the new government will be willing to pull the trigger on the project construction or not. During her visit to Thailand last June, Aung San Suu Kyi has remained silent with regards to the controversial project, while Thailand's caretaker Prime Minister Gen Prayuth Chan-ocha reaffirmed Thailand's commitment and willingness to kick off the project, in line with mutual trade interests.<sup>15</sup>

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<sup>15</sup> Colin Hinshelwood, Thailand reaffirms Dawei plans, but does Myanmar?, Mizzima, 25 June 2016

## THILAWA SPECIAL ECONOMIC ZONE

### Background

The Thilawa Special Economic Zone is the first project of its kind established by the Myanmar government, which implemented it as of November 2013. It is located 23 km southeast of Yangon and covers an area of 2,400 hectares. At the moment, Thilawa is the sole SEZ site in operation.

The project is being developed under the supervision of Thilawa SEZs Management Committee and in cooperation with Japan International Cooperation Agency (JICA). JICA, together with several Japanese companies, owns a 49% stake, making Thilawa SEZ easily Japan's biggest investment in Myanmar so far.

Thilawa is the most advanced of Myanmar's three SEZ projects, the other two being located in Dawei (Tanintharyi Region) and Kyaukphyu (Rakhine State). As this is also the first Myanmar project to be implemented in line with international standards, the national government is willing it to "develop it as a model of all future projects of that kind in Myanmar"<sup>16</sup>.

Ever since the project design was being developed in 2012, the Thilawa SEZ has been promoted by Myanmar stakeholders as a "transparent" and "exclusively inclusive" project, in terms of investors involved, which would lead to the creation of thousand jobs for Myanmar people. Local residents were promised prioritized access to jobs in the SEZ. As we will see later, this did not happen.

The SEZ project is divided into two phases, each corresponding to a different zone.

Phase 1, launched in September 2015, affects Zone A, 400 hectares for mainly industrial use. Zone A is reportedly home to more than 40 companies. Here, land eviction has already taken place for 81 households, 68 of which were moved to a relocation site, about 4.5-8 km away from the project area, in November 2013.

Phase 2 is expected to affect another 2,000 hectares of land. Here, villagers are still to be evicted, although they have been warned they would be required to leave soon. As it already happened to villagers from Zone A, communities residing in Zone B could be forced to leave with just a few days notice.

The Thilawa SEZ area concerns six villages: Shwe Pyi Thar Yar, Aye Mya Thida, Thida Myaing, Phaya Kone, Ahlwan Sut and That Yar Kone. Combined, they are home to 1,123 households, corresponding to 4,313 people.<sup>17</sup>

The SEZ project is not the first one to threaten the livelihoods of rural households in Thilawa. In 1996-1997 the military government known as State Law and Order Restoration Council (SLORC) confiscated 1,230 hectares of land in the very same area, in order to build the

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<sup>16</sup> Today Myanmar – Thilawa SEZ, video url: <https://www.youtube.com/watch?v=RxPt2xIDrOY>

<sup>17</sup> International (2014) Analysis of the Affected Communities' Rights and Remedies under Myanmar Law and JICA's Guidelines, A Briefer on Thilawa's Special Economic Zone

Thanlyin-Kyauk Tan Industrial Zone. During those months, an estimated 800 households were ordered to relocate. The SLORC provided compensation to some of them, in the amount of 20,000 kyats per acre for the rice paddy and 10,000 per acre for other farmland. This amount, however, did not correspond to the market value of land at that time. In addition to compensation for crops, some of the households were to be provided with a small plot of replacement land (40 x 60 feet), on which to build new homes.

It has been found that the 1996-7 confiscation by the SLORC did not comply with the existing laws at the time. The 1953 Land Acquisition Act provided that residents should be notified with an announcement in the National Gazette and a publicly available written notice, as well as an opportunity to object. On the contrary, villagers were forced to take the compensation amount and some were forcibly evicted from their home by military force.<sup>18</sup>

In spite of such developments, the industrial zone project never came to life and households were allowed returning to their farmland; some of them had to resume paying taxes until 2013.

In 2012 the new Myanmar Government made an agreement with the Japanese External Trade Organization (JETRO), in order to establish the first SEZ in Myanmar in Thilawa.

Subsequently, the national government planned to re-confiscate the land already taken by the SLORC almost two decades before, plus an additional 1,200 hectares. Here, once again, proper procedures were not followed.

In June 2014, three members from the affected community (Zone A) filed an Objection to the Examiner for the Japan International Cooperation Agency (JICA).

Villagers reported damages incurred in their relocation and concerns for similar developments to be experienced by communities in Zone B. In particular, damages were listed as: loss of farmland and access to farmland, loss of livelihoods, loss of educational opportunities, substandard housing, basic infrastructure and loss of access to clean water.<sup>19</sup>

The complaint further entailed concerns about non-compliance with the 2010 JICA Guidelines for Environmental & Social Considerations. JICA was considered responsible for not ensuring accountability and guidelines implementation among stakeholders, including the Yangon Regional Commitment and the Thilawa SEZ Management Committee, while developing Phase I of the project. Thus, the resettled community has arguably benefitted neither from JICA's internal guidelines nor from international standards.

As a response, JICA conducted a 5 months investigation of the SEZ project. Findings from examination released in November 2014 revealed that JICA had complied with internal guidelines, although several recommendations were provided by the independent examiner. Recommendations included: to create more opportunities for transparent consultations and negotiations with residents; to improve water drainage, sewage problems and wells

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<sup>18</sup> Ibid.

<sup>19</sup> Mekong Watch and Thilawa Social Development Group, Displaced Villagers File Complaint Regarding Japan's Investment in Myanmar's Thilawa Special Economic Zone, 2 June 2014

construction; to increase opportunities for livelihood restoration for resettled villagers (both related to farming and other jobs).<sup>20</sup>

## **HBS in Thilawa SEZ**

In August 2016 HBS conducted research in Thilawa SEZ. Two different meetings with affected villagers were held. The first one took place in the relocation site where villagers from Zone A have been relocated. The second one was held with villagers from Zone B, who are still residing on their land.

### **Myaing Thar Yar Relocation Site**

The first meeting was held with 7 villagers from Zone A, who had been relocated following the beginning of the initial phase of the SEZ project. All the villagers were particularly eager to share their experience and views, by often taking the lead of the conversation. Interviews were semi-structured: although a set of questions had been prepared, integrations have been made according to inputs given by interviewees.

*“Thilawa area is a bit complicated. We can say that it was expropriated two times”.*

In 1996-7 the Government of Myanmar issued a notice of expropriation for the same villagers affected by the SEZ project. Communities were evicted and some households were given a compensation of 20,000 kyats per acre. Once the project was cancelled, communities returned to live in their village and resumed farming their land. However, since then, land titles (usually issued every year following tax payments) have no longer been provided by relevant authorities.

In January 2013 farmers “*unexpectedly*” received a notice announcing the construction of an industrial zone of the size of 2,400 ha. According to the document, people inhabiting Zone A had to leave the area within 15 days; otherwise they would have been jailed for a month.

The Thilawa Social Development Group (TSDG) was immediately founded in order to provide villagers with a “lawyer” in opposition to the Yangon Regional Government, the main body in charge for expropriations. However, the 1996-7 background was used by authorities as a tool to claim rights over the land. Villagers had already received compensation, government officials said, and they did not have either land titles or tax receipts attesting ownership for the previous 16 years.

*“In 2013, this project approached harshly. There is no give and take, but command. They approached with power, not with consultation.”*

After the TSDG advocated for the right of farmers to participate to consultations, the Yangon Regional Government held 6 or 7 meetings with the affected community from Zone A. The discussions were not open either to villagers from the remaining 2,000 has or to other members

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<sup>20</sup> JICA response to Examiner’s report in full:

[http://www.jica.go.jp/english/our\\_work/social\\_environmental/objection/c8h0vm00008zvp4f-att/report\\_141201.pdf](http://www.jica.go.jp/english/our_work/social_environmental/objection/c8h0vm00008zvp4f-att/report_141201.pdf)

of TSDG coming from CBOs and NGOs. Hence, villagers particularly struggled to get their demands heard. Reportedly, the main reason why TSDG was created in the first place was to give support to the uneducated 68 relocated households and in general to the whole community residing in the 7 villages. As findings reveal, by not allowing the presence of members of civil society to the meeting, it has been easier for the Yangon Regional Government to neglect farmers' demands.



One of the houses provided by the Government to the displaced 68 households affected by Phase I of the Thilawa SEZ Project.

During consultations, interviewees repeatedly asked for a bigger plot (40x60 rather than 25x50 feet), which would have allowed them to farm in their courtyard. They also requested better housing standards: the houses provided from the government were small and most of the villagers preferred receiving 2,500,000 kyats of compensation for building their own accommodation. Nevertheless, the amount of such compensation proves to be insufficient, when taking into account both losses due to relocation and money needed to build an adequate accommodation. Compensation for livestock was also claimed, given the fact that the relocation site is too small to allow residents to bring animals. However, villagers reported that such compensation was inadequate and uneven (*"They said they would count as livestock ducks, pigs, goats and chickens. But in reality they only paid for cows and buffalos"*).

Another controversy during these meetings concerned terminology. Authorities from the Yangon Regional Government and the Directorate of Investment and Company Administration (DICA) insisted on using the word *gratuity*, instead of *compensation*, whenever they referred to the amount of money that villagers would receive following evictions in 2013. According to what interviewees said, the reason was that the Government made clear that they already gave compensation for land in 1996-7, and that now villagers were only granted an additional amount labeled as gratuity.

From a gender perspective, consultations were not inclusive. According to the words of a female participant (incidentally, the only woman who attended our interview meetings in Thilawa),

women would attend consultations only if the *head of the family* was full of activity. When this happened to her “*the official said: we will pay the gratuity, all the same*”, she remarked.

As mentioned, 68 households moved to the relocation site. According to findings, all members are not educated and rely on farming, agri-business and husbandry for their livelihoods. They all consider the 2013 compensation amount and accommodation insufficient. Out of the 68 displaced households, 20 had no other choice but to sell their houses, in order to cover debts. Some of them abusively built small huts nearby the site and live in destitution.

The 25x50 feet plot is too small for farming; therefore most of the households have mainly been relying on loans from Yangon-based businessmen. Additionally, each farmer received 1,500,000 kyats per acre every 6 years.



Huts abusively built by indebted displaced households in front of the relocation site

During consultation meetings, residents had been promised privileged access to jobs in the SEZ. A specific Income Restoration Program was established by the Government in order to help displaced villagers find jobs. The Program, however, was implemented only in late 2014, when most of the jobs in the SEZ had been taken and houses in the relocation site already sold.

*“Let me share my experience. There is a sewing industry called “Lu Hai”. They held job interviews under the IRV system with the mediation of DICA, so many of us went there. DICA suggested us to tell the interviewer that we were villagers affected by the SEZ project. Around 30 people applied for jobs there. Although there were many office-work vacancies we hesitated to apply for positions requiring education. In addition, some interviews were accessible only to those who passed a preliminary matriculation exam.*

*We were asked if we had experience on working at sewing industries. Of course, most of us are farmers and all we know is agriculture and husbandry. We apply for jobs where we have to work with our physical effort. We mentioned that we were the ones who lost*



*our jobs because of the industrial zone establishment. But they replied they had nothing to do with that and all they want is workers who are well-educated and experienced. Out of 30 people, only 2 or 3 got a job. Therefore, what we experienced in reality is very different from what we expect. Even cleaning and security job are hard to get. We could never reach their job skill requirements. For this reason, I no longer expect anything they promised.”*

## 1. SECTOR 2.1 - ZONE B

As mentioned, the Thilawa SEZ project has taken place only in Zone A, at the time of writing. Villagers from the 2,000 in Zone B who still reside on their land, but could receive final notice of eviction at any time.

HBS met with 5 villagers residing in an area inside Zone B labeled as Sector 2.1, home to 7 families. Here, main crops include rice and betel nut and households strongly rely on livestock.

As found above, according to participants, ongoing consultations with stakeholders are not completely inclusive and transparent, especially when it comes to information on redeployment. Communities have not been informed about where they will be relocated and how much land and compensation (/gratuity) they will get, once the project will affect their area.

They formally requested having their relocation site close to their village, Aye Myat Tida, but apparently the Committee wants to build the site 7 or 8 miles away from there.

O Ein, a committee part of the Ministry of Internal Affairs seems to be the main body in charge for the resettlement program.

*“I attended a meeting on 31 July. Dr. Tan Tan New, a manager from the committee, discussed about redeployment. There were many attendees from the new government, including the wife of the Minister of Electrical Power, Daw Ni Lar. At first we thought that all the attendees were from the old government. At the meeting Dr. Tan Tan New displayed base on Zone A, describing how it was done nicely and also in area 2.1 (where we reside and work) negotiations, this and that such as plants and corps are done nicely. But when the Q&A session came, I said in front of the minister that everything they say about plants and trees negotiation is a lie. I also said that if the redeployment plan is not made properly, providing exact information on resettlement location and plot size, accommodation and livelihoods, then I object the negotiation and the project.”*

Based on the experience of Zone A and with the promise of a more inclusive decision-making process, a redeployment report was drafted and submitted it to the community for feedback. However, once comments had been provided, stakeholders did not seem to take them into account.

According to the Article 39 of the 1953 Land Nationalization Act, agricultural land may be used for other purposes (including building houses), following approval by the Ministry of Agriculture

and Irrigation. Once the approval process is completed, a document called La Na 39 is issued. “La Na 39” type of land is transferrable.

According to interview findings, a residential area has been built on grabbed land labeled as “La Na 39” land with the official purpose of using it for resettlement. However, farmers argued that government officials built this currently empty area in order to sell the houses for their own profit (maybe to workers from the SEZ), in collaboration with cronies.

Another problem faced by villagers from the Thilawa SEZ area concerns the presence of so-called *intruders*. These are farmers who did not own land either by customary law or traditionally, but settled nonetheless in Thilawa in order to use it abusively. In Zone A, the presence of intruders caused significant problems when it came to receiving compensation. As far as the villagers stated, intruders received the same amount of compensation as villagers actually owning plots of land, thus causing conflicts within the resident community. These disputes should be avoided during consultations for Zone B, where farmers are strongly objecting the possibility of receiving the same amount of compensation as abusive farmers, arguing that *“we were the first ones to pay the price and have losses – whereas they are the ones making a profit out of it”*.

As for future perspectives, farmers from Sector 2.1 (and Zone B in general) were also promised new jobs and restored income. However, so far stakeholders only provided driving lessons, without giving any possibility of work afterwards.

*“[Once resettlement will take place, there will be] nothing I can do with a 40x60 feet plot of land. There are even people who own farmland, but do not have any house [in the SEZ area]. So they are not even getting the 40x60 plot. Nothing will be left for them. Redeployment [in sector 2.1] will be only for 7 families, but there are around 50 households working on the land. They are bargaining us.”*

By learning from the experience of Phase I, it is now crucial for the National Government, Japan International Cooperation Agency (JICA) and other stakeholders to ensure fair compensation as well as adequate living standards to all displaced residents. Relocation must neither imply a decrease in living standards, nor losses in income. In fact, villagers should benefit from inclusive consultations, complaint mechanisms and an effective income restoration program.

Thilawa’s controversial history reflects long-standing problems in the acknowledgement of customary and traditional law in Myanmar. With the new government coming to power and the country experiencing an investment surge, it is expected that the land legal framework will effectively take into account land issues related to foreign direct investments. With regards to this, the future National Land Use Policy has to prove itself as part of a larger and crucial effort to improve legal conditions for land administration and social justice in Myanmar. What will happen in Thilawa will set an example for the development of the other SEZ projects in Dawei and Kyaukphyu, where even more significant problems are to be faced. It will be therefore crucial for the new government to ensure that the investment spike will no longer affect the rights and livelihoods of local communities.