

SUMMARY of the Key Points

Report on the Complaint Consideration for Proposed Policy Recommendations by the National Human Rights Commission of Thailand

RE:Community Rights: The Case of Dawei Deep Seaport and Special Economic Zone Project in Myanmar (under MoU with Thailand as Co-developer) and the Human Rights Violations of Dawei People, dated 23 November 2015.*

Background

Dawei Development Association (DDA) submitted a complaint letter to the National Human Rights Commission of Thailand (NHRC) on 5 March 2013, regarding to 'concerns on violation of human rights and community rights related to the Dawei Special Economic Zone Project, pointed out that the implementation of the project has created numerous impacts especially regarding to the rights violations of indigenous and ethnic people, involuntary resettlement and unfair compensation.

The NHRC has looked into the case and also requested the related state agencies as well as the developer to provide relevant information and explanation on their role and involvement regarding to the project. In addition, the NHRC also visited Dawei in June 2013 to gather more information and listen to the local people in the affected areas.

The NHRC completed the investigation report on 23 November 2015, and submitted the report which included the fact findings, NHRC's opinion, as well as policy recommendations, to the Thailand's Council of Ministers on 25 December 2015, with the cover letter stated that *"the construction of the [Dawei SEZ] infrastructure facilities have caused human rights violations to Myanmar people without providing fair and just compensation or remedy. The local villagers have also lost their houses and farmlands, and their livelihoods have been adversely changed. No environmental impact assessments have been conducted in line with academic standards. Project implementation by Italian-Thai Development Public Company (ITD), therefore, has violated the human rights of Myanmar people"*.

Key points from the report can be summaries as follows:

According to the NHRC's report, it stated that the NHRC has reviewed the complaint and found that "Italian-Thai Development Public Company (ITD), a Thai private company, might operate their business with no regard to the international human rights obligations that Thailand has endorsed, for example, the International Convention on Civil and Political Rights (ICCPR), ASEAN Human Rights Declaration, as well as it may contradict with of the United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework (2011) which includes the fundamental principles that the business enterprises should respect human rights, and should avoid infringing on the human rights of others, and should address adverse human rights impacts with which they are involved, as well as seeking to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts".

However, the **Italian-Thai Development Public Company Limited** (ITD), as a defendant, sent letters of explanation on 11 June 2013, 16 October 2014, and 8 May 2015. The letter on 16 October 2014 stated that, “at the present (October 2014) ITD has stopped their role in the DaweiSEZ Project, as its concession rights were terminated since November 2013. The project is now under the supervision, decision making, and responsibility of the Governments of Thailand and Myanmar”.

In addition, ITD’s letter on 8 May 2015 stated that, “the project is operated at the state level between the Governments of Thailand and Myanmar, and the Company is one of bidders for concession rights which is still in the process of negotiation for the development of the project. Therefore, the Company has not obtained the concession rights to be a developer of the project, and has no authority to give any explanation and decision related to the project which is now under the responsibility of the Governments of Thailand and Myanmar”.

Other related agencies have also been requested by the NHRC for the explanation of their roles and involvement regarding to the Dawei SEZ project, which are;

- Office of the National Economic and Social Development Board (NESDB)
- Chair of Thailand-Myanmar Joint High-Level Committee for the Comprehensive Development in the Dawei Special Economic Zone and its Related Project Areas
- Ministry of Foreign Affairs
- The Neighbouring Countries Economic Development Cooperation Agency (NEDA)
- Kanchanaburi Province
- The Environment Research Institute of Chulalongkorn University (ERIC)

According to the **National Economic and Social Development Board** (NESDB)’s letter on 4 June 2015, stated that:

1. NESDB has been informed of the development projects for basic facilities (seven projects in the Initial Phase) for the Dawei project, which is expected to comprise of;
 - 1) Initial industrial estate which will emphasise on intensive labour industry in the area of 27 square kilometres, which will depend on whether it passes the development framework within eight years.
 - 2) Two-lane road from Dawei Special Economic Zone Project to the Thai border, 138 kilometres (concessions have been granted only for the implementation and road maintenance).
 - 3) Residence houses for workers in the area, about 126,000 people.
 - 4) Small power plant such as a 15-megawatt (MW) temporary power plant during the construction period, a 450-MW boil-off gas and combined cycle gas turbine power plant, and LNG fuel storage for usage in the power plant and industrial estate.
 - 5) Two small ports, with the capacity of 13,000 DWT
 - 6) Small reservoirs (Pa YinByu and Ta Laing Gya)
 - 7) Telecommunication system (Landline) for internet and telephone.
2. NESDB has been informed by the Myanmar government agency regarding to the road construction that the compensation payment process was enacted under the agreement of three parties – the concessionaire company, local government and local people in the area, in order to set up the compensation price together, and create a genuine participatory process. In

addition regarding to road construction, there has been an attempt to avoid the residential areas as much as possible. Moreover, the environmental impact assessment (EIA) will be conducted in accordance with international standards, and also requires to find social and environmental experts for recommendations and inspection in every key step of the project development.

3. Regarding to the relocation of the people, it is the responsibility of the Myanmar government as the land owner, and Thai government has insisted that the Myanmar government must take the main responsibility. Therefore, the requirement for any details related to the relocation issue should inquire directly through the Myanmar government.

According to the **Ministry of Foreign Affairs'** letter dated 22 October 2014, it stated that at the implementation level, at present (October 2014), Myanmar is on the process of selecting the private companies to work in the Initial Phase, with an aim to create employment by 2015. Regarding to the preventative procedure of environmental and social impacts, Ministry of Foreign Affairs has received information that the Terms of Reference (TOR) has stated that the implementation has to comply with the international standards of the international development institutes, and the special experts on environment and social aspects have to be involved for recommendations and inspection of the project.

According to the **Neighbouring Countries Economic Development Cooperation Agency (NEDA)**'s letter dated 11 December 2013, stated that the Cabinet Resolution on 21 May 2013, has assigned the Ministry of Finance through NEDA to co-establish and invest in Dawei SEZ Development Company Limited with the Myanmar state agency on an equal share basis – each holding 50 percent, and not over 100 million baht.

The development of the Dawei Project is divided into two phases. The first phase is the Initial Phase that comprises of key infrastructure facilities such as 1) industrial estate, 2) deep seaport, 3) small power plant, 4) tap water system, 5) road, and 6) residential area. The second phase is the Full Phase which will be the development of the sub-projects and implemented by the special purpose companies. The development of the Full Phase will be further discussed among the joint committee at the policy level.

The Dawei Project is established as a special purpose vehicle (SPV) under Thai law, with the objective to carry out the task on coordinating, facilitating and providing advice to Myanmar's Dawei Special Economic Zone Management Committee, and to invite the investors to invest on the sub-projects in DaweiSEZ such as road, deep seaport, industrial estate, water facility, power plant and residential area, under the structure of the special purpose company (SPC).

According to the **Environment Research Institute of Chulalongkorn University (ERIC)**'s verbal explanation in the meeting of the NHRC's Sub-committee on Community Rights, dated 21 October 2014, there are some key points as follows;

- ERIC found later that the company had already started the construction, which is against the principal of conducting an environmental impact assessment according to the World Bank's standard.

- During the study, the construction of the road was already completed and impacts already occurred, such as landslides and soil erosion, forest areas occupied by the new comers, and there were many outsiders coming to the area. There were some places that could not be accessed by the researchers.
- Many villages have their local roads for transporting their farming products, and building the new road will cut access to their local existing roads.
- The study also found adverse impacts of the road construction along the Tanintharyi River, the highland area, both which had already occurred, and will continue to occur.
- From the discussion with the villagers, there are problems on compensation payments since their lands had already been confiscated, and there were limitations on using the land.
- In the case of the construction road on hills where local people plant and farm, the construction has caused soil erosion and landslides resulting in the villagers' small plants buried by soil and blocking the villagers' waterways. There was no compensation for the impacts that destroyed their farming and water resources.
- Myanmar has ratified on the Convention on Biological Diversity (CBD). The study has found elephant routes from Kanchanaburi to southern Myanmar, however, the construction of the road will result in blocking these routes.
- Regarding to human use values, the study found that the villagers' land use is connected profoundly with nature. Therefore, the project that made changes to the patterns of land use and its environment will definitely create negative impacts to peoples' livelihoods, professions, and food resources. This is because the areas where local people are living are situated along the mountainous areas and rivers, and their livelihoods are very dependent on these resources.
- Regarding research procedures, the researchers have struggled with the attempt to conduct the research in a transparent manner, the local people do not believe that the ITD's project will alleviate their poverty. They do not believe they will gain any benefits derived from the project.
- ERIC views that the assessment of this project needs to be revised according to the issues of the viability of the project, sustainable development, and how it will benefit to Thailand, and how it will impact to Myanmar people.
- Finally, the study results were put into the environmental impact assessment report of the project, and were submitted to ITD for their acknowledgement. After completion of the eight-month study, the researcher team was not able to access to the areas for any further study, and ITD then terminated the agreement to conduct the final report.

Facts from the study trip to listen to more information from the complainants in the areas.

Mr. Nirun Pitakwatchara, Thailand's Human Rights Commissioner, and Chair of the Sub-committee on Community Rights visited the Dawei SEZ Project area on 9 June 2013, to listen to the local people,

together with Dr. Sereenonthasoot, Representative of Thailand to the ASEAN Intergovernmental Commission on Human Rights (AICHR), key points can be sum up as follows;

1. Losses and impacts that already occurred, and expected that will occur

Prior to the implementation of activities, potential losses and impacts of the local populations do not appear to have been studied. ITD began to hire consultants to conduct environmental assessment studies in September 2011. Of the three studies commissioned, so far, affected communities are only aware of one EIA study – the one to assess the road link project. This study was still being conducted in mid-2013, years after the road had already been constructed through village lands.

The research found that 71% of the total Households surveyed (1,583 households) expect to lose some or all of their land to the Dawei SEZ. This includes not only the loss of various types of farmland, which provide both food and income, but also the loss of access to water on which many people rely for irrigation, drinking and domestic use. The study also shows that overall 25% of the households are suffering problems related to access to water resources. Such problems were reported much more frequently in the upland villages. In the lowland villages, the villagers are experiencing problems related to the access and quality of water sources after initial project activities. Of the households reporting difficulties, those problems most often experienced included a change in colour or cleanliness of the water, sediment in the streams, and the drying up of water sources. Overall, 96% of households in the area report that they obtain their drinking water from shallow wells. An almost equal number use these wells also for washing and other domestic uses, and the remaining households also use this water source for feeding their animals and crop irrigation. Therefore if the water sources are destroyed or contaminated it will be severe impact to the community as it happened in HteinGyi where villagers have already lost a shallow well.

In addition, there are social impacts such as poverty, as well as depression and tension due to the immigration of the outsiders into the areas. There are also health impacts such as dust pollution and road safety because an increasing number of cars on the roads.

2. Access to information

Affected villagers have had very little access to information about the Dawei SEZ Project, its several sub-projects and displacement effects. The opportunities for meaningful consultation have been limited and ineffective. Information activities conducted by the Company and government officials have not reached the majority of affected villagers. Printed materials were received by few and understood by only half of those who received them. Community meetings were not consultative, participatory or inclusive.

However, most affected villagers found out about the Dawei SEZ project informally – most commonly through words of mouth, or from local media. Even though the villagers heard about the project, most of them are still in the dark about what the project involves. Research found that affected persons learnt about the project only when officials came to survey their land, farms and gardens; or by witnessing the commencement of construction activities.

3. Meaningful consultation

There is very little evidence of meaningful consultation of the communities affected by the

Dawei SEZ Project. When community meetings were held, only limited groups were invited to participate, and rarely were people invited to contribute their views, concerns, questions, conditions, and recommendations. Limited access to prior information also undermined the ability of affected villagers to engage in meaningful consultation. Affected villagers had little or no time to discuss the implications of the project in detail amongst themselves before or after meetings, and were rarely informed prior to the start of construction activities, meaning they could neither discuss compensation nor contribute to resettlement plans at the right time.

4. Meaningless consultations and image building

In May 2013, academics from ERICorganised a consultation with villagers as part of the process of the environmental impact assessment (EIA) on the road link. This effort at consultation occurred some three years after the commencement of road construction activities that had already resulted in displacement. Affected villagers complained about the belated consultation adding several further points of dissatisfaction with the process. These included the fact that official written invitations had not been issued; only people from certain villages in the village tract were invited, thus raising suspicions that the effort was designed to divide communities; the meeting time was too short; and the agenda and purpose of the meeting was not notified beforehand. As a result, affected villagers refused to participate in this meaningless consultation.

5. Land confiscation and resettlement

Villagers in both the upland and lowland areas are being threatened with displacement as a result of the Dawei SEZ Project. However, land 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 79% of households were clear that if they were free to decide, they would not want to move out of their current home village as they tie to their birthplace, association of the land with identity, ethnicity to fears of the unknown future.

6. Compensation problems

The research found that 63% respondents said that company and government officials had not provided or disclosed accessible information about the pricing and process of compensation. Overall, only around 15% of all households surveyed reported having received compensation payments. Where compensation has been provided, there have been significant delays in payments to affected persons, and payments have not always been made in full. The vast majority of households surveyed have not yet received compensation despite being located in areas that will be directly affected by the Dawei SEZ Project.

Amongst the households surveyed who own their housing plot, four fifths (79%) are living in areas designated for use by the Dawei SEZ project. Only 1% of households reported that they had received compensation for the loss of their homes and housing land.

Regarding to orchard land, around 84% of the households who have orchard land have learned that their orchard fields are in the area designated for use by the Dawei SEZ Project. However, only 18% or less than 1 in 5 of these households have received some level of compensation for orchard land.

Regarding to paddy fields, almost all (90%) of paddy owners have fields located inside Dawei SEZ area. Just over 8.5% of paddy owners have received some compensation for their fields, while 91.5% report that they have received nothing at all.

Regarding to upland plots, of the households who have developed upland plots, 30% have been informed that their lands will be used by the Dawei SEZ Project. So far only five households or 9.09% report that they have received compensation.

Many villagers indicated they were not confident that cash compensation could be effectively used to restore their livelihoods because they do not have the skills or experience required to manage such amounts of cash over a period of time.

At the end of the report the NHRC has provided the summary of findings, opinion, and policy recommendations to the Thailand's Council of Ministers regarding to the Dawei SEZ Project, which can be summarized as follows;

Summary of findings

- (1) The inspection found that ITD signed an agreement with Myanmar government, and has implemented the construction of the infrastructure facilities, which has included confiscation of lands without informed consent, and conducting the environmental, health, and social impacts assessments after the project was implemented. The company only commissioned the Environment Research Institute of Chulalongkorn (ERIC) to conduct the environmental impact assessment (EIA) after the construction has been completed, which did not comply with the principle of conducting EIA as it must align with the purpose to prevent and mitigate impacts that will impact the people in the affected area.

ITD commenced the project in 2008, and in the proposed deep seaport site, forest was cleared, lands were confiscated and local people – in the Dawei SEZ, deep seaport, reservoir areas, as well as along the 150 kilometre road link that cut through the mountain along the Tanintharyi River – were to be resettled. The implementation of the project by ITD has caused dramatic impacts to the local people in the proposed project areas, as well as along the road links, especially as they have lost their farmlands without adequate and fair compensation. However, the EIA of the road link project conducted by ERIC found that the construction of the road that cut through the mountains along the Tanintharyi River has caused landslides and forest clearing, and it has directly affected to rivers and tributaries, and community's agriculture products, of which the company did not compensate for any damages. In addition, the study found that local people feel profoundly connected with the natural resources as their livelihoods depend upon them, especially the land, forest, water sources, and coastal resources. Therefore, the implementation of the project has resulted in adverse changes of livelihoods and the use of land and natural resources of the people in the affected areas.

- (2) In 2012, ITD struggled to gain the financial support, and the concession for the construction, and management Dawei SEZ Project with the Myanmar government was then terminated. Subsequently, the Governments of Thailand and Myanmar signed an MoU for cooperating on the development of Dawei SEZ Project. Thailand-Myanmar Joint Committee was then set up, and the Dawei SEZ Development Company Limited was established as a special purpose vehicle (SPV). On 17 July 2013,

Thai government assigned NEDA to co-found and co-invest in the Dawei SEZ Development Company with the Myanmar government, each holding 50:50 shares. The Dawei SEZ Company plays the role of advising, inviting and selecting the investors, as well as granting concession for the development projects in the Dawei SEZ area through bidding process, as was the previous role of ITD.

- (3) The Dawei SEZ Project, is officially supported by the Thai government – as a co-founder and co-investor of the Dawei SEZ Development Company Limited or the SPV, which play the role of encouraging investors to invest in the project. ITD, a Thai private company, initially implemented the Project at the beginning, and has violated human rights of Myanmar people. Local people from many villages are forced to give up their lands and move out from their home villages to live in the resettlement area involuntarily. The compensation process has no standard and has been unfair; villagers were not paid on the damages of agricultural products, or other losses, such as water sources and forest resources, that were caused by the project. Local people lost their housing and farmlands, and their livelihoods have ultimately been altered. Moreover, before the commencement of the project, there was no information provided, no genuine public consultation to listen to the people. The EIA did not comply with standard principles, resulting in the lacking of procedures to prevent or mitigate the potential impacts. And there are no agencies or persons to take responsibility to resolve the problems.

Opinion

The NHRC views that the impacts and human rights violations that already affected local people are the consequences of the project implemented by ITD. Although ITD aborted its role on developing the Dawei Deep Seaport and SEZ Project, as its concession was terminated on 21 November 2013, the ending of the agreement and role do not omit its responsibility to the impacts that arose from the company's operations. Moreover, after the previous concession was terminated, ITD is still involving with the Project as a developer under the support of the Governments of Thailand and Myanmar.

In addition, it is a fact that the Dawei Project is a project of the Myanmar government, co-implemented by a Thai private company, and is supported and facilitated by the Thai government under the Thailand-Myanmar Joint Committee. The Thai government has assigned NEDA to co-establish and co-invest with the Myanmar government, and the agency has a role on advising, inviting, and selecting the investors, as well as undertaking bidding. Therefore, the Thai government has direct involvement and an engaging role in the project.

Additionally, Governments of Thailand and Myanmar have agreed and backed the DaweiSEZ Project in spite of the violations of human rights that were created by the Thai company and still have not been resolved, and with impacts projecting to continue to occur in the future. Particularly the impacts to villagers' livelihoods, farmlands and water sources – key resources for local people – have to be urgently resolved.

The NHRC understands that the responsibility to respect human rights is a global standard, and ASEAN countries have also ratified the ASEAN Human Rights Declaration. Moreover, business enterprises, no matter where they operate, must adhere to human rights obligations to take account of social responsibility. Therefore, in order to adhere with the internationally accepted standard of human rights protection, Thailand must not ignore to investigate the human rights violations that derived from the transnational corporation project by a Thai company, and seek for concrete resolutions including the

mechanisms to protect and respect human rights, as well as provide effective remedies where adverse human rights impacts are identified.

Nevertheless, impacts and damages that already incurred from the construction implemented by ITD, even though its concession has expired, the company inexorably, still has the direct duty and responsibility for resolving and providing remedies for those impacts already incurred, and has to oversee the remediation process and results to ensure that all problems are fairly resolved in accordance with the United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework (2011), Section II, Articles 11, 13, 17, 18, 22 and 23.

Policy Recommendations

The NHRC has reviewed the case, and would like to propose policy recommendations to ITD, the Council of Ministers, Ministry of Foreign Affairs, Ministry of Commerce, the Stock Exchange of Thailand, the Bank of Thailand, and relevant agencies as follows;

- (1) ITD should consider to provide compensation and remedies to the affected villagers – both living within and outside Project areas – for the damages and impacts that were incurred from the implementation of the Dawei SEZ Project. Compensation and remediation processes should be opened for affected people to participate in every step until fair and just compensations have been made.
- (2) The Council of Minister, Ministry of Foreign Affairs, Ministry of Commerce, and relevant agencies, should establish the mechanisms or regulations to oversee the transnational investment by Thai investors to regulate them to respect human rights by adopting the United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework (2011) as the implementing framework.

** This summary is done by Dawei Development Association (DDA). The full report of NHRC can be viewed at http://www.mediafire.com/download/541bcfb52276can/NHRC_Full_Report_English_version.pdf*