

NHRCT 7

Report of the Complaint Consideration to Propose on Policy Recommendations

The National Human Rights Commission of Thailand

23 November 2015

Report of the consideration No. 1220/2558

Subject: Community rights: the case of Dawei Deep Seaport and Special Economic Zone Project in Myanmar which Thailand has signed the MoU to co-develop and it has violated the human rights of Dawei people.

Complainers: Foundation for Ecological Recovery, SEM Sikkalai, and Dawei Development Association

Complainees: Italian-Thai Development Public Company (ITD)

1. Background

The National Human Rights Commission of Thailand received the complaint from Foundation for Ecological Recovery, SEM Sikkalai, and Dawei Development Association (Complaint No. 107/2556) stating that in 2008, Italian-Thai Development Public Company (ITD) signed agreement with Myanmar Port Authority to develop Dawei Special Economic Zone (DSEZ) Project in Myanmar. Subsequently, in 2012, the project was transferred since a Memorandum of Understanding (MoU) was jointly signed by the Governments of Thailand and Myanmar. The project comprises of several large-scale projects including; deep seaport, oil refinery, petrochemical industry complex, coal-fired power plant, water storage dam to supply water to the industrial estate, as well as the road-link to Thailand. However, the implementation of these projects have affected the local livelihoods and caused the human rights violations to the people in the areas.

2. Consideration of the complaint

The National Human Rights Commission of Thailand 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 might be against of the United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework (2011) which has 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.

The complaint then has an incentive that the implementation of the Thai business enterprise might involve and lead to human rights violations of Myanmar people. Moreover, the complainers are the private organisations, registered under Thai law. They are non-political and non-profit organisations whose work is to promote and protect human rights. Thus, they are considered to have legitimate rights in accordance with the Article 24 of the National Human Rights Commission Act B.E. 2542 (1999). The case consequently is within the power and duty of The National Human Rights Commission of Thailand as stated in the National Human Rights Commission Act B.E. 2542 (1999), Section 15 (1), (2) and (3): to promote the respect for and the practice in compliance with human rights principles at domestic and international levels; to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties relating to human rights to which Thailand is a party and propose the policies and recommendations with regard to revision of laws, rules or regulations to the National Assembly and the Council of Ministers for the purpose of promoting and protecting human rights.

The National Human Rights Commission of Thailand has assigned the Sub-committee on Community Rights to examine the case.

3. Investigation

3.1 The complainers' explanation

The complainers have clarified and explained the case in more details at the Community Rights Sub-committee's meeting on 21 October 2014, which can be sum up that – in 2008, Italian-Thai Development Public Company (ITD) signed a MoU with Myanma Port Authority to develop Dawei Deep Seaport and Special Economic Zone Project. From the initial agreement, ITD was the main investor of the project. In July 2012, the project has been transferred to be a Government-to-Government project which is by between Thai government and Myanmar government. ITD has then signed an agreement to terminate their existing concession on constructing and managing Dawei Project, and the concession rights was transferred to the special purpose vehicle (SPV) to take the responsibility for putting up bids.

Although there were some significant changes related to the project, the complainers found that ITD still involves with the project. For example, in October 2014, the company has proposed to be the developer for the road-link network from Thai border to the project and industrial estate; in January 2015, the media has reported on ITD's involvement of the proposed coal-fired power plant project in Dawei industrial estate; in July 2015, the media reported that the Myanmar government was setting up the date for signing agreement with ITD and Rojana Industrial Park to develop the initial phase of Dawei Project; and the interview of ITD representative in August 2015 also stated that ITD has received the license from the Myanmar government to develop the area of 45 square kilometres (sq.km.) which was increased from the original plan of 27 sq.km.

Dawei Special Economic Zone Project (Dawei Project) will comprise with several large-scale projects including; deep seaport, oil refinery, petrochemical complex, steel mill, coal-fired power plant, the construction of storage dam to supply water to the industrial estate, and the road-link to Thailand. The proposed project site is located in the north of Dawei, the capital city of Tanintharyi Region in Myanmar. According to the Myanmar government, there will be 20–36 villages, comprising approximately 22,000–43,000 people from 4,384–7,807 households, which will be affected by Dawei Special Economic Zone Project.

The implementation of Dawei Project has created impacts as summarised as follows;

1. Rights violations of indigenous and ethnic people

Dawei Project will cause impacts on indigenous people living in Nabule since pre-historical era (before Bagan period) and Karen ethnic people living on the road-link project. All the agreements and plans made between ITD and Myanmar government were signed without any consultation and informing to local indigenous and ethnic people. Although the project was started to implement in 2010, ITD has later commissioned TEAM Consulting Engineering and Management Co.Ltd., Panya Consultants Co.Ltd., and Environmental Research Institute of Chulalongkorn University (ERIC) to conduct environmental impact assessment in Dawei Deep Seaport and Special Economic Zone, water storage dam in Kalonehtar village, and the road-link to Thailand which was started only in September 2011 after the construction has already begun, and being continues.

2. Involuntary resettlement and unfair compensation

More than 32,000 Dawei indigenous people in Nabule and 1,000 people in Kalonehtar village have been facing with forced relocation. There is no systematic survey related to relocation or meaningful consultation on the desire in local people. The relocation site has been building without any consent of local people, and the houses in relocation area were built in a low quality as they usually collapse when the wind blows.

Many unfair and unequal compensation cases have occurred in the project while the villagers' lands are confiscated for buildings of company office and access road. Although it is one project implemented by one company, differences are arose based on areas and power of each residence. For example, in some areas that controlled by Karen National Union (KNU), local people have privileges to participate in decision making for compensation while in some areas, especially in Nabule, the local people are being threatened and receive less compensation. Moreover, the Company does not disclose any information related to compensation.

3.2 The complaineer's explanation (Italian-Thai Development Public Company Ltd.)

(1) Italian-Thai Development Public Company Ltd. sent the letter for explanation on 11 June 2013, attached with the copy letter that was sent to Dawei Development Association, which summarised as follows;

Italian-Thai Development Public Company Ltd. (ITD) was initially signed a MoU with Myanma Port Authority to develop the deep seaport project, industrial estate, road-link to Thailand, and etc., which concerns that the whole mentioned projects will cause impacts to livelihoods, and human rights of the local people living in three areas; Nabule, Kalonehtar, and along the road-link from Phu Namron to Dawei Industrial Zone. At present (June 2013) under the MoU in July 2012, the project was transferred to be a Government-to-Government project, which is by the Governments of Thailand and Myanmar. During the working of the project, the Company has been aware of the impacts that would occur from the implementation of the project, economically, socially, and environmentally, and has implemented as follows;

1. TEAM Consulting Engineering and Management Co.Ltd., Panya Consultants Co.Ltd., and Environmental Research Institute of Chulalongkorn University (ERIC) were hired to conduct the social and environmental impact assessments of what impacts would occur

and what are mitigations for those impacts. Although there is no law and regulations on conducting such studies in Myanmar, the Company has done these by adopting the Asian Development Bank (ADB)'s standard.

2. The Company has set up the CSR (Corporate Social Responsibility) Unit to cooperate between Myanmar authority, the Company, and Myanmar local people, as to solve the problems or impacts that would arise. The Company has developed schools, and provided the educational and sport materials for schools in the area. Regarding to the health issue, the Company has helped to take care of sick people, and has implemented the project on preventing and solving the distribution of malaria by cooperating with USAID on blood test and treatment, as well as giving 8,000 mosquito nets to villagers.
3. Government of Thailand, through Ministry of Foreign Affairs (as one of the Sub-committees in Thailand-Myanmar Joint Coordination Committee for the Comprehensive Development of the Dawei Special Economic Zone and its Related Project Areas), has set up a working group to work on the quality of life of the people who will be relocated from the project site, in order them to be able to live their normal lives in the new resettlement area. The action plan is under implementing and planning as an urgent phase (year 2013-2015) in Bawar community, and comprises of integrated farming system, community welfare, skill and vocational training. And the Company's CSR Unit has also cooperated on this work.
4. Regarding to the involuntary resettlement and unfair compensation, along the implementation process, the Company has worked on the compensation payment under Myanmar's policy and framework. The Supporting Working Body (SWB) was set up by the Myanmar government as a working group, and has a task of surveying the property of the villagers as well as doing land measurement. This working group acts as middle persons to negotiate with the villagers on the prices of the villagers' farming products, in order to reach their satisfaction. The Company has the role on considering the compensation payment based on the villagers' satisfaction as well as the Myanmar authority has to agree upon that fact. There are no threatening or forcing people to accept the price at all. The compensation payments are different from one to another, as they are based on type of plants, size, and the fertility of each plant, as well as how many years the plants could give yield, which the Committee will consider together and be fair to any villagers. Regarding to the relocation, it is voluntary, and it depends on the villagers' satisfaction of the new resettlement site which they will be provided with basic infrastructure such as tap water, electricity, temple, school, and public health care.
5. Regarding to the resettlement site, the location and the housing design were decided by Myanmar government. The Company did the construction by using quality and standard materials. All houses are stronger and more secure than the original houses that the villagers own. The villagers will also be provided with skill and vocational training, and their lives will be improved according to the cooperation plan between Thai and Myanmar Governments which will take this as an urgent task.
6. The problem arising on different compensation payments in each community that would be viewed as unfair and unequal – in some areas that controlled by Karen National Union (KNU), local people have privileges to participate in decision making for

compensation, while in some areas, especially in Nabule, the local people are being threatened and receive less compensation – this is untrue. The Company respects the community rights, if the community is strong and united, the Company is willing to listen and follow what the community demands. Even in Nabule area, the Company has opened the chance for villagers in each village to express their opinions every Tuesday. The meeting includes villagers, government authorities, and the Company's CSR Unit, and the villagers have rights to voice on any unfairness, for example, if the villager raised the problem on the miscounting of their trees as referred to their properties, the Company will send the official to recheck on that, and if anything was wrong, the Company is willing to give the fairness for the villagers.

The Company, as the initiator of the project, has sincere intention to develop the project with awareness to create the benefits to Myanmar and their people. As it can be seen when the company started the project, it created approximately 1,000 jobs for Myanmar people, bringing benefits to economics and society. The migrant workers came back to work for the project in their hometown, creating income and being with their family. The local people can make a good sell of their agriculture products as there are many people coming in to live and work in the area. The health care also improve to take care of their sickness. Students are provided with educational materials, and the schools have been developed. Many roads have been improved. During our working period, the Company can work very well with the community.

However, any development would inevitably create impacts and the Company is well aware of these impacts, and also has a strong attempt to reduce them to a minimum.

- (2) ITD sent the letter on 16 October 2014 stating that, at the present (October 2014) ITD has stopped their role in the Dawei Deep Seaport and Special Economic Zone Project as its concession rights was terminated since November 2013. The project is now under the supervision, decision making, and responsibility of the Governments of Thailand and Myanmar.
- (3) ITD sent the letter on 8 May 2015 stating that, the current status of Dawei SEZ Project, as seen on media, pointed out that the project has been revived, and the Company also gets involvement. However, the project is operated in the state level between the Governments of Thailand and Myanmar, and the Company is one of bidders for concession rights which is still in a process of negotiation for the development of the project. Therefore, the Company has still 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.

3.3 The explanations of related agencies

3.3.1 Office of the National Economic and Social Development Board

- (1) Office of the National Economic and Social Development Board, explained in the letter on 18 June 2013 that Dawei Project is initiated by Thai private sector and Myanmar state agency, and both governments play the roles of supporting and facilitating, details as follows;
 1. Dawei Project is one of the implementation work in accordance with ASEAN Charter which has “the Master Plan on ASEAN Connectivity” as a supporting mechanism for

ASEAN member countries, with an aim to create a single production base and market, free-flow of productive resources that can be produced in anywhere by using the resources, both raw materials and labor, in each country, under the same standard and regulations.

2. Dawei Project is a Myanmar's special economic zone under the close supervision of Myanmar's agency called Dawei Special Economic Zone Management Committee, working in accordance to Myanmar's Special Economic Zone Act. The project has done under the strict regulations in every aspect, including the environmental aspect that required to comply with international standards.
3. The relocation of the people is done under the supervision of Myanmar authority, which led by Minister of Social Welfare, Relief and Resettlement and Taninthayi Region. The resettlement procedure has adopted the international institution's guidelines, such as of the World Bank.

Under the resettlement process, local people have been asked for their opinions and consent, as a consequence, the area of special economic zone was then reconsidered and revised in response to the local peoples' desire, and the number of households that have to be resettled were reduced about a half from the original plan.

4. The Governments of Thailand and Myanmar have set up the national mechanism to support the development of Dawei Project. There are three committee levels: (1) Thailand–Myanmar Joint High-Level Committee, the policy level that have Thailand's Deputy Prime Minister (Mr. Kittirat Na Ranong) and Myanmar's Vice President (U Nyan Tun) as a co-chairpersons, in charge of making the policies towards the Comprehensive Development of Dawei Special Economic Zone and its Related Project Areas as well as any development in connection to the areas in Thailand and other related issues as necessary; (2) Thailand–Myanmar Joint Coordination Committee, Thailand's Minister of Prime Minister's Office (Mr. Niwatthamrong Boonsongpaisal) and Myanmar's Minister of Industry (U Aye Myint) as co-chairpersons, this committee functions for the Comprehensive Development of the Dawei Special Economic Zone and its Related Project Areas, and (3) the Joint Sub-Committee in six areas; 1) Infrastructure and Construction, 2) Focused Industries and Business Development, 3) Power and Energy, 4) Community Development, 5) Rules and Regulations, and 6) Financing.
5. A brief background of the project

Since 2008, Myanmar has plans to establish the special economic zone to attract the foreign investors to invest and do business in Myanmar. In 2012, ITD was granted the concession to develop the Dawei Deep Seaport and Industrial Estate (Dawei Project) and it was only area under the Law of Investment Promotion that accepted the foreign investment.

On 29 June 2010, the Council of Ministers was acknowledged the results of the meeting of the Committee on the National Transporting Management System of Goods and Services (No.1/2010) and agreed to support the development of Dawei deep seaport in Myanmar as the project has capacity for supporting the expansion of Thailand's

industrial base in the long-term, especially petrochemical industry, iron and steel, and automobiles, as well as the efficient capacity for regional transportation connectivity. Thailand therefore should develop the transportation route for transporting goods between Dawei deep seaport, Leam Chabang deep seaport and other countries in the region, to enhance Thailand to be the regional hub for transportation and logistics. Ministry of Foreign Affairs, Ministry of Transportation and relevant agencies were assigned to work by adopting Dawei deep seaport development framework into their strategies and creating the collaboration with the neighbouring countries. The Board of Investment of Thailand and Ministry of Industry were also assigned to promote the role of Thai private sector to involve in the development of Dawei deep seaport and industrial area.

On 2 November 2010, Thai private company signed the framework agreement with Myanma Port Authority, Ministry of Transportation of Myanmar, to develop the Dawei Project in the form of the Special Economic Zone, road and rail systems to connect to Thailand, as well as a township and related facilities, under a 60 year Build-Operate-Transfer (BOT) concession.

On 30 November 2010, the Council of Ministers was acknowledged on the result of the second Mekong–Japan Summit meeting dated 29 October 2010 in Hanoi, Vietnam, and approved the Mekong–Japan Economic and Industrial Cooperation Initiative (MJ-CI) Action Plan which has a proposal to support the development of deep seaport on the west coast of Mekong Region such as the development of Dawei port in Myanmar and utilisation of Ranong port in Thailand, as well as the development of roads and railways linking Bangkok and those potential deep seaports, with regard to the Southern Economic Corridor under the infrastructure development cooperation framework.

On 22 February 2011, the Council of Ministers was acknowledged the results of the meeting of the Committee on the National Transporting Management System of Goods and Services (No.1/2011) dated 25 January 2011, and agreed on the proposed preparation plan to advance development of basic infrastructure linking the western neighbouring country in related to Dawei Project, and assigned the relevant agencies to speedy implement for the readiness of the custom service at Phu Numron, and quickly seek for the solution on borderline issue between Thailand and Myanmar.

On 10 January 2012, the Council of Ministers was acknowledged the results of the meeting of the fourth Greater Mekong Subregion (GMS) Summit dated 19-20 December 2011 in Nay Pyi Taw, Myanmar, which one of the Prime Minister of Thailand's (Ms. Yingluck Shinawatra) proposals is to support the development of Dawei Deep Seaport, as in the future it will be the key production base for the region. Therefore, there should be an urgent development on basic infrastructure to link Dawei city and the special economic zone in Kanchanaburi, with an aim to promote the economic activities along the Dawei–Kanchanaburi Economic Corridor.

On 21 April 2012, the Prime Minister of Thailand participates in the fourth Mekong–Japan Summit, titled “Cooperation between Japan and Mekong Region Countries”, and affirmed the importance of the joint cooperation framework as a development partnership with Japan, and proposed to support the development along the Southern

Economic Corridor by inviting Japan to support and participate in the development of Dawei Deep Seaport and Special Economic Zone Project in Myanmar. As for development in Thai side, there will be a highway project linking Bangkok and Thai–Myanmar border for the fiscal year of 2012. This project will finally link the Andaman Sea and South China Sea on the Southern Economic Corridor.

On 20 May 2012, the Council of Minister approved the development plan of the economic area linking the western part with Myanmar, and the supporting for the readiness of Myanmar, as proposed by the National Economic and Social Development Board (NESDB), and assigned NESDB to conduct the master plan of the development of the economic areas linking the western region and Dawei Deep Seaport and Special Economic Zone Project, as well as integrated the plan and its related projects by collaborating with relevant agencies, and then proposed to Council of Minister – as according to an additional proposal by the secretariat of NESDB. Regarding to further implementation, NESDB was also asked to consider views from Ministry of Foreign Affairs, Ministry of Natural Resources and Environment, Ministry of Labour, and Ministry of Industry.

(2) The National Economic and Social Development Board describes in the letter dated 25 June 2013 as follows;

- Dawei Project is a special economic zone by the Republic of Union of Myanmar, situated in Nabule village, Dawei city, Tanintharyi Region, with approximate area of 204 square kilometres. The project aims to construct the public facilities such as electricity system, tap water system, wastewater treatment system to serve the construction activities of deep seaport, the industrial estate, as well as roads and railways linking the project to Thai-Myanmar border.
- From the second meeting of Thailand–Myanmar Task Force on 7–10 May 2013, there was a discussion on resettlement issue, and it was agreed that Ministry of Social Welfare, Relief and Resettlement of Myanmar and Tanintharyi Region will take the responsible for the issue, and the private investors from foreign countries will take care of related expense.
- The latest progress (June 2013), from the second meeting of Thailand-Myanmar Joint High-level Committee on the Comprehensive Development of Dawei Special Economic Zone and its Related Project Areas, dated 17 June 2013, the meeting has agreed upon the structure and the establishment of Dawei SEZ Development Company Limited. The Company will have the role in advising, inviting and selecting investors for the Dawei Special Economic Zone Project, and is viewed as the key step of creating the concrete mechanism to push ahead the Dawei Project. However, the government still maintains their supporting and facilitating role in order to run the project to its desired goal, in accordance to capability of the project, market demand, and investors, by adopting the international standard on environment together with the improvement of quality of lives, and income generating for the people in the area, as to create a sustainable development.

(3) The National Economic and Social Development Board describes in the letter, dated 16 December 2013 as follows;

Dawei Special Economic Zone Project is located in Myanmar, and was initiated by Thai private company and Myanmar state agency. Regarding to this project, the NESDB has the role on supporting and facilitating for the meeting of the Thailand–Myanmar Joint Committee for the Comprehensive Development in the Dawei Special Economic Zone and its Related Project Areas. NESDB acts as the secretariat of (1) Thailand-Myanmar Joint High Level Committee (JHC) and (2) Thailand-Myanmar Joint Coordinating Committee (JCC), as nominated by the Prime Minister Office Order No. 303/2555, dated 20 November 2012.

On 21 November 2013, the New Framework Agreement on Dawei Special Economic Zone Project was signed between Myanmar’s Dawei Special Economic Zone Management Committee (known as DSEZ Authority) and Dawei SEZ Development Company which is a private company or Special Purpose Vehicle (SPV), shared by Thailand and Myanmar. The agreement stated that the DSEZ Authority granted the rights to SPV to act as coordinator and advisor for the DSEZ Authority, as well as has a role to invite, consider and propose lists of the potential investors to DSEZ Authority for selection, and oversee the overall development of Dawei Special Economic Zone Project for the effective implementation. Thus, the Dawei Special Economic Zone Project is implemented under the supervision of Myanmar agency, which the SPV plays a role on coordinating and providing advices.

Regarding to the economic benefits of the Dawei Special Economic Zone Project to Thailand, NESDB would like to refer to the research paper conducted by the Economics Research Institute for ASEAN and East Asia (2009: 45) which states that Dawei Special Economic Zone Project including the road-link to Thailand, as well as the custom facilities (the significant element of Mekong-India Economic Corridor: Chennai–Dawei–Bangkok–Phnom Penh–Ho Chi Mint) will benefit to Thailand. It is also expected that the project may increase national GDP of Thailand by 1.9%, where some provinces like Chachoengsao and Ayutthaya will receive the most positive impact than other areas. In addition, the research conducted by Kumagai et al (2012: 20) states that if built, the Dawei Special Economic Zone Project, including the road-link to Thailand and custom facilities, as well as the non-tariff barriers, may add further increase of economic growth by 1-5% in many provinces along the economic corridor in Thailand such as Chachoengsao, Samut Prakarn, Sra Kaew, Kanchanaburi, Nakorn Pathom, and Bangkok, than the non-existence of Dawei Special Economic Zone Project and those facilities.

- (4) The National Economic and Social Development Board describes in the letter, dated 17 October 2014 as follows;
- The Myanmar government’s concept on implementing the project is to commence with the Initial Phase with an aim to create jobs by 2015, and the further step is to hire the consulting company to conduct the Master Plan and Investment Plan for the bidding of the Second Phase (Full Phase).
 - Regarding to policy and the social and environmental impacts of the project, the Myanmar’s agency has informed NESDB that, it has been stated in the project’s Terms of Reference (TOR) which is required to comply with the international standard of the international development institute like the World Bank or the Asian Development Bank etc. As well, the concessioners are required to find the social and environmental experts for recommendations and inspection in every key procedure of the project development.

(5) The National Economic and Social Development Board describes in the letter, dated 4 June 2015 as follows;

1. NESDB has been informed of the development projects on basic facilities (seven projects in the Initial Phase) for Dawei Project, which is expected to comprise of;
 - 1) Initial industrial estate which emphasis on intensive labour industry in the area of 27 square kilometres, and it will depend on whether it passes the development framework within eight years.
 - 2) Two-lane road from Dawei Special Economic Zone Project to 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 using in power plant and industrial estate.
 - 5) Two small ports, with the capacity of 13,000 DWT
 - 6) Small reservoirs (Pa Yain Byu and Ta Laing Gya)
 - 7) Telecommunication system (Landline) for internet and telephone.
2. NESDB has been informed by Myanmar government agency regarding to the road construction that the compensation payment process was done under the agreement of three parties – the concessioned company, local government and local people in the area, in order to set up the compensation price together, and create the genuine participatory process. In addition regarding to road construction, there is an attempt to avoid the residential areas as much as possible. Moreover, the environmental impact assessment (EIA) will be conducted in accordance with the international standards, and also require to find the social and environmental experts for recommendations and inspection in every key procedure of the project development.
3. Regarding to the relocation of the people, it is the responsibility of Myanmar government as the land owner, Thai government has insisted that the Myanmar government must take the main responsibility. Therefore, the requirement of any details related to relocation issue should inquire directly through Myanmar government.

3.3.2 **Chair of Thailand–Myanmar Joint High-Level Committee for the Comprehensive Development in the Dawei Special Economic Zone and its Related Project Areas** (Mr. Niwatthamrong Boonsongpaisan, Deputy Prime Minister and the Minister of Commerce at that time) described in the letter dated 27 December 2013;

1. The working framework of Thailand–Myanmar Joint High-Level Committee (JHC) for the Comprehensive Development in the Dawei Special Economic Zone and its Related Project Areas as in the Prime Minister Office’s Order No.303/2555 dated 20 November 2012 are; 1) co-considering on cooperation strategy, 2) monitoring the project development in the overall picture, 3) coordinating on implementation, and 4) evaluating the progress of the project implementation in accordance with the MoU on the Comprehensive Development in the Dawei Special Economic Zone and its Related Project Areas signed between Governments of Thailand and Myanmar.
2. Of the agreement on the Investment Plan between Thailand and Myanmar, Thailand does not have that Investment Plan due to the role and mission of Thai government is to

cooperate and support on the sustainable development of the Comprehensive Development in the Dawei Special Economic Zone and its Related Project Areas with Myanmar government, by providing technical assistances, not co-invest directly in Dawei Special Economic Zone Project.

The procedure of the Comprehensive Development in the Dawei Special Economic Zone and its Related Project Areas is in accordance with the new Framework Agreement which was signed on 21 November 2013 between Dawei Special Economic Zone Management Committee (or DSEZ Authority), a Myanmar agency, and Dawei SEZ Development Company Ltd. – a private company or special purpose vehicle (SPV) shared by Thailand and Myanmar. The Framework Agreement states that DSEZ Authority granted the rights to SPV to coordinate and provide advices to DSEZ Authority, including to invite, consider, and propose for the list of potential investors, and DSEZ Authority has a role on selecting the investors from that proposed list, as well as overseeing the implementation of Dawei Project. Therefore, the Investment Plan of Dawei Special Economic Zone Project is under supervision of Myanmar agency and SPV has the role on coordination and consultation.

3.3.3 Ministry of Foreign Affairs described in the letter dated 22 October 2014 as follows;

1. Dawei Project is located in Tanintharyi Region in Myanmar. Thailand and Myanmar governments signed the MoU on the Comprehensive Development in the Dawei Special Economic Zone and its Related Project Areas on 23 July 2012, and Thailand-Myanmar Joint High Level Committee for the Comprehensive Development in the Dawei Special Economic Zone and its Related Project Areas was set up, and the NESDB and the Ministry of Foreign Affairs act as the co-secretariat to coordinate and support for the Joint Committee meetings.
2. In the policy level, Thailand supports Myanmar's Dawei Special Economic Zone Project which will be benefit to the economic development and improve the well-being of Myanmar people. The project will create the linkages to Thailand, and expand Thailand's economic opportunity, as well as enhance the regional connectivity. The implementing of the project is under Myanmar laws and overseen by Myanmar government.
3. In the implementing 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 preventing procedure of environmental and social impacts, Ministry of Foreign Affairs has received information that the Terms of References (TOR) has stated that the implantation 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 recommending and inspecting the project.
4. In order to support the community development in the area, Ministry of Foreign Affairs has set up programmes to provide assistances, for example, the development of Dawei Hospital – renovating the area, providing medical equipment and improving human resources. As well, Ministry of Foreign Affairs is also setting up the programme to develop the curriculum on vocational studies for educational institutes in Dawei.

Ministry of Foreign Affairs described in the letter dated 9 July 2015 as follows;

1. Thailand and Myanmar are aware of the significant of the sustainable development on the Comprehensive Development in the Dawei Special Economic Zone and its Related Project Areas, in order to provide concrete benefits to the local communities such as creating jobs,

increasing income, improving people's well-being, and developing the environmental friendly project.

2. On 12 November 2012, the Council of the Minister approved the composition of Thailand-Myanmar Joint Sub-committees in six areas which are; infrastructure and construction, focused industries and business development, energy, community development, financing, and rules and regulations. The Minister of Foreign Affairs is the Chair of the Sub-committee on Community Development which Thailand and Myanmar have agreed to implement in two areas, which are;

- 2.1 Dawei Hospital Development Project: At present (June 2015) Thailand and Myanmar have agreed to construct an emergency ward for Dawei Hospital, as Myanmar government viewed that the project will response to the local communities' needs. In the meantime, Thailand has set up the programmes and activities by sending a group of experts, in several fields of expertise, to discuss with Myanmar government such as the details of building design, and related activities.

- 2.2 The Curriculum Development for Vocational Study in Dawei: In July 2015, Thailand will provide a short course training for teachers at the Technological High School of Dawei and Technological University of Dawei under the programme of Instructor Development. Moreover, there will be further support on the curriculum development, and the educational materials and tools.

- 3.3.4 **The Neighbouring Countries Economic Development Cooperation Agency (NEDA)** described in the letter dated 11 December 2013.

The Neighbouring Countries Economic Development Cooperation Agency (Public Organisation) (NEDA) 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 (Dawei Company) with the Myanmar state agency on the equal share basis – each holding 50 percent of the share in Dawei Company, and not to be over 100 million baht, details as follows;

1. The MoU on the Comprehensive Development in the Dawei Special Economic Zone and its Related Project Areas, dated 23 July 2012, is a MoU signed between the Governments of Thailand and Myanmar. The key content of MoU is to express the determination for cooperation between Thailand and Myanmar on the Comprehensive Development in the Dawei Special Economic Zone Project and its Related Project Areas, as approved by the Council of Ministers on 17 July 2012.

2. Regarding to the policy and plan related to Dawei Project, it can be summarised from the second meeting of the Thailand–Myanmar Joint High-Level Committee (JHC) for the Comprehensive Development in the Dawei Special Economic Zone and its Related Project Areas as follows;

- 2.1 The establishment of the special purpose vehicle in the name of Dawei SEZ Development Company which has the role on coordinating, facilitating and providing advices, and collaborate with Dawei Special Economic Zone Management Committee (DSEZMC) on inviting investors to develop on the infrastructure facilities under the Special Purpose Company (SPC) structure.

2.2 The Shareholders Agreement of Dawei SEZ Development Company states that Thailand and Myanmar each holds the share on equal basis.

2.3 The development of 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 in the policy level.

3. The plan to establish special purpose vehicle (SPV) and the co-investment of Dawei Company

3.1 On 17 June 2013, NEDA signed the agreement between the shareholders of Dawei SEZ Development Company and Myanmar's Foreign Economic Relations Department (FERD). The Committee consists of three persons from each country. The original registered capital investment is 20,000 baht, and it will increase to 12 million baht by December 2013.

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

4. Plan and figures of the investment in Dawei SEZ Development Company Limited

Dawei Company or SPV is established with the objective mentioned above, and the initial capital only 12 million baht. However, as assigned by the Council of Ministers, NEDA could co-invest in Dawei, but not over 100 million baht. The increase of the company's capital can be made only by the approval of both sides committees. NEDA and Myanmar's FERD are now working on the process to increase the company's capital to 12 million baht, and it will be completed by December 2013.

3.3.5 **Kanchanaburi province**, described in the letter dated 18 June 2013 as follows;

1. The Cabinet Resolution on 20 May 2012 approved the principle of the development of the economic zone linking western region with Myanmar. And according to the Cabinet Resolution dated 29 June 2010, the Council of Ministers was acknowledged the result of the meeting of the Committee on the National Transporting Management System of Goods and Services No.1/2553 which agreed to support the development of Dawei deep seaport in Myanmar.
2. ITD's Dawei Deep Seaport and Sprcial Economic Zone Project is located in Dawei city of Myanmar's Tanintharyi Region, about 160 kilometres from Phu Namron Border Checkpoint in Kanchanaburi, covering the areas of 250 square kilometres, and project's cost is about 330 billion baht, the principle infrastructures are comprised of;

- 1) Road-link from Dawei to Phu Namron, Kanchanaburi province (160 Kilometers), the construction period is five years. It is four-lane road.
 - 2) Deep seaport: the suitable location was selected at Nabule (35 kilometres north of Dawei city), and geographically it is a vast plain area spanning from Myanmar's western coast to Dawei River, with the coastal line straight up to 20 kilometres. Land in this area is a U shape basin, approximately 15 metres deep from the Chart Datum level (about the same level as Leam Chabang). There will be two basins, one basin will be first constructed in the Initial Phase. In addition, there will be shipbuilding facility which is capable of providing services for large vessels like VLCC and ULCC, and can handle up to 22 vessels at the same time.
 - 3) The industrial estate: covered the area about 250 square kilometres or about 400,000 *rai*, and is divided by zoning which are: (1) Zone A – Port & Heavy Industry such as port, shipyard, still industry, coal-fired power plant, wastewater treatment system; (2) Zone B – Oil & Gas Industry; (3) Zone C1 – Upstream Petrochemical Complex, Zone C2 – Downstream Petrochemical; (4) Zone D – Medium Industry such as pulp and paper, gypsum, rubber, automobile; (5) Zone E – Light Industry such as food processing, textile, cosmetics; (6) Other zones such as residential area, official area like one-stop service, township, commercial centre, and recreation area.
 - 4) Public facility system: For the comprehensive development, the project also include the public facility system – which will contribute to the community's need and well-being – such as power plant, water treatment plant, tap water, residential houses, administrative area like one-stop service, local road improvement, etc.
3. Kanchanaburi province has accelerated some projects to facilitate the deep sea port project as follows;
- Accelerating the Highway Project No.81 (Bang Yai Expressway) – the concession road which will cut through four provinces, Nonthaburi, Nakhon Pathom, Ratchaburi and Kanchanaburi. The road will start from Bang Yai district in Nonthaburi and pass to Phutthamonthon district, Nakhon Chaisri district in Nakhon Pathom, Ban Pong district in Ratchaburi, Tha Maka in Kanchanaburi, and end at Tha Muang district in Kanchanaburi, total length is 100 kilometres.
 - Expansion of the transportation route to border trade areas such as the route between Kanchanaburi city and Kanchanaburi's border checkpoints such as Kanchanaburi-Phu Namron route, and Kanchanaburi-Sangklaburi route.
 - Upgrading the military airport of the 9th Infantry Brigade to the commercial airport.
 - Establishing the special economic zone along the border in Three Pagodas Pass, Sangklaburi district, Kanchanaburi.
 - Opening the border checkpoint in Phu Namron, Ban Kao subdistrict, Muang district, Kanchanaburi

3.3.6 **The Environment Research Institute of Chulalongkorn University** gave an oral explanation in the meeting of the Sub-committee on Community Rights, dated 21 October 2014 which summarised as follows;

The Environment Research Institute of Chulalongkorn University (ERIC) signed an agreement with ITD. ERIC has drafted the project proposal by adopting the World Bank's guidelines for conducting the study that focus on transparency, equality, and poverty alleviation. ERIC only did the study on the road construction, and the study took eight months. However, after the agreement was signed, the access to the areas for surveying was very difficult due to the conflict in the areas. In addition, ERIC has found later that the company already started the construction which is against the principal of the conducting environmental impact assessment according to the World Bank's standard. The researchers have agreed that the study of the environmental impact in this case will report from the real situation. During the study, the construction of the road was already completed and the impacts already occurred such as the landslide and soil erosion, forest areas had been occupied by the new comers, and there are many outsiders coming to the area. Our study focuses on social impacts, and the researchers were divided to study in different areas but there were some places could not be accessed.

The study is divided into 4 parts: (1) Physical impacts, such as noise, air, water quality, soil erosion; (2) Biological environment, the impacts on both in land and rivers such as Tanintharyi River, Dawei River, Talaingya River, and tributaries; (3) Human use values, such as energy sources in the area, types of land use; (4) Socio-economic aspect, such as community environment, quality of life of the population especially the people who are directly affected by the road project. Although the road is built to bring the development to the area but by nature of building road, the people both sides of the road will get the negative impacts. Many villages have their local roads for transporting their farming products, and building the new road will cut out their local existing roads.

The study also found the adverse impacts of the road construction along the Tanintharyi River, the highland area, both that already occurred, and will continue to occur. Additionally, from the discussion with the villagers, there are also problems on compensation payment since their lands have already confiscated, the limitation of land use. In the case of the construction road in the hill, where local people plant and farm, the construction causes the soil erosion and landslide, resulting villagers' small plants were covered with soil and died, and it also blocks the villagers' waterways. And there were no compensations for the impacts that destroyed their farming and water resources.

In addition, Myanmar has ratified on the Convention on Biological Diversity (CBD). The study has found the 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 the negative impacts to peoples' livelihoods, professions, food resources. This is because the areas that local people living are situated along the mountainous areas and rivers, and their livelihoods are very dependent to these resources.

Regarding to quality of life, the researchers have studies on changes of the income, livelihood, education, and health, with focusing on the public security, social impacts due to a large number of outsiders have immigrated into the areas.

Of the research procedure, the researchers have struggled with the attempt to conduct the research with transparency manner, because of the communication problem, as the local people use Dawei dialect for communicating, and Myanmar still has the domestic conflict. In addition, the local people do not believe that the ITD's project will alleviate their poverty. They do not

gain any benefits that derived from the project. However, it seems that the villagers do not dare to express their opinions, there is only a village that has stated their opinions.

ERIC viewed that the assessments of this project needs to be revised on the issues of the viability of the project, the sustainable development, and how it will benefit to Thailand, and how it will impact to Myanmar people?

At last, the study results are put into the environmental impact assessment report of the project, and has submitted to ITD for their acknowledgement. And after completed the eight-month study, the researcher team did not access to the areas for any further study, and ITD has then terminated the agreement to conduct the final report.

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

Mr. Nirun Pitakwatchara, Thailand's Human Rights Commissioner, and Chair of the Sub-committee on Community Rights visited the Dawei Special Economic Zone Project area on 9 June 2013 to listen to the local people, together with Dr. Seree Nonthasoot, Representative of Thailand to the ASEAN Intergovernmental Commission on Human Rights (AICHR), during his trip to Myanmar on 8-11 June 2013, which can be sum up as follows;

1. Information from Kalonehtar village leaders

- There is the construction of the road that approaching near to the village which the villagers have not been informed about this. When the villagers asked the constructor, it was told that the route of the road was changed and getting close to the village. However, but there is no any consultation with the villagers. The company insisted that the road is higher than the village and will definitely has no impact.
- There are changes after many constructions have started coming into the area. In the past the village has the common land that own by the community, every villager can use that land. But after the concession was given, the business people have made uses of the land, including some forest area. As a result, it affected to the amount of farmlands that people could use for farming. In addition, the road construction has caused dust pollution and landslides into the streams and rivers, which are water sources for villagers.
- Although the villagers were told that the project will benefit to all, we are now only receiving the impacts.

2. Information from school leaders

- There was no acknowledgement and no information on dam building provided to the villager before the project started. But after the project has already been started, the local authority came and said that the construction of the dam will cause the water level rising up and flood the village, and everybody has to move out from the area, and the authorities (the project developer and government) have already prepared the new resettlement houses, and everybody must move out only.
- After knowing about this, the villagers held the meeting and discussed on this issue, whether insisting on living in the village, or relocating to new area. There were discussions and meeting continually, and most people insisted to stay living in the village, or if the relocation

would take place, the process must be done in the right and appropriate way, and with fair compensation. Villagers have submitted their complaints to many government agencies, including the President of Myanmar, stating that the villagers do not want to move out from the area.

- After several meetings, coordinating, and working together, villagers also started to seek for cooperation and assistance with other groups, and have cooperated with Dawei Development Association (DDA) which provided suggestions to the villagers. The villagers have also created mechanisms to work together, and set up the negotiating and coordinating committee to work on this issue.
- After that ITD's staffs and state authorities have been coming to the area to talk with villagers and urged the villagers, both village leaders and elderly people, to understand the situation and move out from the area, but the villagers still insisted that – 'No Relocation and No Dam'. Subsequently, the villagers started to discuss among themselves and affirmed that they do not want to be against the development with groundless reasons, however any development has to conserve the environment, the access to clean water, as well as maintain local peoples' livelihoods.

3. Information from monks

- The ITD's representatives visited the area and met with the abbot, they told that according the development of Dawei Special Economic Zone Project the dam is needed to be built in the village area. However, the abbot once asked about the details of MoU signed by the Governments of Thailand and Myanmar, it was confirmed that there is no dam construction in the area, but the ITD's representatives now insisted that there is a dam construction project.
- The villagers, together, viewed that the project area or the construction plan are in the forest areas and far from the authority's eyes, therefore there is no close watch of the ITD's project implementation. And the villagers also do not know about the company's plan – both regarding to the development and any changes of the area. The villagers have inspected around the nearby village's areas and saw the construction and changes, which caused many impacts.
- Kalonehtar village is the community that people have been living together over 40 years. The villagers have built a small road to access to the village which is a community road, but after ITD has arrived, there was the road construction happened in the area without any consultation to the villagers. Forest and watershed areas are also destroyed, causing landslide during the heavy rain, and destroyed villagers' properties.
- In the meetings between monk leaders and the ITD, the company always agreed that they will strictly follow the rules and regulations but in practice they are not following. There is no consultation with the villagers. The villagers have to discuss and brainstorm among themselves, however the dam construction project is still being continued.
- ITD once informed that, firstly, there will be a feasibility study of the dam construction. However, they also sent the public relation officer to the area and asked the villagers to accept the compensation and moving costs and sign their names on the letter of consent, which states that the villagers will move out from the area. The company has tried very hard to get the villagers' consent.

- Recently, the local administrative authority has cooperated with the business people and the business people came to negotiate with the villagers. This is an attempt to divide villagers into groups and destroy the unity of the community, and it is spread out to many levels from township, district, and city. However, the villagers are trying to oppose in every form and insist to try every way to fight against the dam building in the area.
- The villagers have tried to find the alternative location by starting to study on the dam building by themselves and at the same time looking for another appropriate site. They have presented the proposal that shows the alternative of dam building in other areas that would not cause impact to the village or other communities. The villagers also created the slogan for their campaign which is “No Dam, No Relocation.”
- Since a group of monks also fights with the villagers, there is another group of monks criticised that it is against the monk discipline. However, if the dam is built, the monastery will also be moved as the water level will arise to the level of the standing trees in the area, according to the official’s estimation.
- If the dam is built in the area, the deepest water level will be up to 100 metres and it will be a reservoir (the affected area by flood) covering 7–12 square kilometres. There will be 182 households or about 1,000 people will be affected. There also about 5,436 acres of farmlands (agriculture areas) will be flooded. Schools including the school in the monastery will also affected.

3.5 Fact from the document attached by the Complainers

The Complainers have sent a document report titled “Voices from the Ground: Concerns over the Dawei Special Economic Zone and Related Projects,” which is a joint research done by several Thai and Myanmar non-governmental organisations. The information can be sum up as follows;

1. Research areas

The research was undertaken in 20 villages which are nine villages located within the official boundaries of the Dawei Special Economic Zone (SEZ) Project, eight villages in the road link areas, and three villages lie outside the SEZ area but will also be directly affected by the project. The local researchers collected information from 1,583 households by using the questionnaires with the random sampling method of visiting every third house of each village. The additional information also comes from the focus group discussion in 18 villages, as well as from interview on the villagers’ experiences of the resettlement.

2. Background history

2.1 Background

The Dawei Special Economic Zone Project has covered an area of 204.51 square kilometres, which lies in a populated agricultural area 20 kilometres to the north of Dawei. Dawei is the capital of Tanintharyi Region in Southern Myanmar, and is located around 350 kilometres west of Bangkok, Thailand.

The project was launched in 2008 and infrastructure development has already begun. The project will comprise primarily of an industrial estate area including: deep seaport and dockyards; oil refinery complex; steel mill; fertiliser and petrochemical complex; pulp and paper processing plant; medium and light industry factories; and power plant. The source of energy for the industrial estate is still under discussion. The original plan included the establishment of a large 4,000-megawatt (MW) coal-fired power plant. Current plans for power production include the construction of a 3,000 MW LPG power plant. Until now, there has been little information made public about the scope or form of many components of the project. Preparatory works already completed include the clearing of land near Kilometre "Zero", a quarry, a small port, a visitor centre, and VIP housing.

The infrastructure project also extends beyond the designated Dawei SEZ area. A cross border road link is being constructed linking the Dawei SEZ with Thailand. Additional transport links along a similar route are also planned, along with the construction of a new oil and gas pipeline to Thailand. A large water supply reservoir is also planned to the northeast of the Dawei SEZ, a small port to the south, a quarry to the north, and several resettlement villages are planned to receive the populations that will be displaced from the project areas.

The Dawei SEZ project is a bilateral economic cooperation project owned jointly between the national governments of Thailand and Myanmar, who must take overall responsibility for the management and conduct of this project. The project was formally agreed in May 2008, shortly after Cyclone Nargis brought about Myanmar's worst recorded natural disaster. In the following month, the Myanma Port Authority signed a MoU with Italian-Thai Development Public Company Limited (ITD) to develop the Dawei SEZ and deep seaport. Works have been carried out in the name of the Dawei Development Company Limited, a joint venture company owned by ITD (75 percent) and Max Myanmar (25 percent).

If realised, the Dawei SEZ Project will establish one of the largest industrial zones in Asia. Dawei is projected to become a hub of logistical activity in the Greater Mekong Sub-region (GMS), connecting cargo ships from India, the Middle East and Europe to the Southeast Asian mainland and China, significantly reducing transportation costs by bypassing the Malacca Straits, one of the busiest shipping lanes in the world.

Its development is a key element in the East–West Economic Corridor envisaged by the Asian Development Bank (ADB). A proposed highway leading to Bangkok, and possibly beyond, will provide Thailand an outlet to the Andaman Sea, and allow for oil and industrial products produced in Dawei to be transported to Thailand. The project would connect the East–West Economic Corridor (Myanmar, Thailand, Lao PDR and Vietnam) with the Southern Economic Corridor (connecting to Cambodia) and the North–South Economic Corridor via rail links to Kunming in China. It is also expected to increase trade between member states of the Association of South–East Asian Nations (ASEAN), particularly following the inception of the ASEAN Economic Community in 2015.

2.2 Project status (as of September 2014)

Project partners have encountered many problems in securing the US\$50 billion in investment capital they have estimated will be required to develop the Dawei SEZ Project. In July 2012, ITD's local partner, Max Myanmar Company announced that it was withdrawing its investment from Dawei Development Company, leaving ITD searching for new investment partners.

The search for new investment partners has so far been fruitless and the project is currently stalled. In November 2013, the 60-year concession granted to ITD since 2010 was cancelled and rights transferred to a new type of company referred to as a “Special Purpose Vehicle” (SPV). The SPV, which was established on 17 June 2013 and is jointly owned (50 to 50) by the Governments of Myanmar and Thailand, has responsibility to oversee the Dawei SEZ Project. The initial investment in this company amounts to 12 million baht (US\$ 400,000). Clearly there is a major shortfall in the project finances at present.

It has been agreed that seven special purpose entities (SPEs) will be established under the SPV corresponding to seven components of the Dawei SEZ Project, namely the deep seaport, road link, industrial estate, electricity, water supply, telecommunications, and rail links. Foreign companies will be encouraged to invest in these SPEs, to be selected on a tender basis. ITD has said that it intends to bid to participate in all of the seven SPEs. The Terms of Reference (TOR) and selection criteria for the bidding process have not been made public.

Both Thai and Myanmar governments have hosted public events to encourage Japanese and other interested investors to join as major financial backers to the revised Dawei SEZ Project. However given the current hiatus in decision-making power of the Thai government which has lasted since November 2013, the SPE tender process has been significantly delayed. It is not yet known whether investors see any future in the stalled project, or who will take on the financial responsibilities for remedies, as far as possible, the damages already incurred.

Local people have been told that the 4,000-MW coal-fired power plant project has been cancelled. A public announcement was made on 9 January 2012 by Myanmar’s Electricity Minister, citing “environmental problems”. Nevertheless, there are indications that plans to construct coal-fired power plants in the area have been revived. A press release has been issued from three corporations, Mitsubishi, ITD and Thailand’s Electricity Generating Public Company (EGCO) on 26 November 2013, indicating their interest of building coal and natural gas power plants in the Dawei SEZ with an output capacity of up to 7,000 MW. Additionally, Myanmar press have also reported that a decision has been taken by the Regional Government of Tanintharyi, citing their source from the Regional Electricity and Industry Minister Win Swe, to build five coal-fired power plants, ranging from 50 to 2,640 MW, pending approval of the EIA and SIA reports by the national government and the World Bank. However the construction of the coal-fired power plant project in the Dawei SEZ area has not been officially announced to the local people.

2.3 Project locations

The sites of the Dawei SEZ industrial estate, deep seaport and the routes of the road links and water supply reservoirs (dam) appear to have been selected on technical criteria, focusing on suitability for construction and trade. There is little evidence that the choice of location was examined on social and environmental criteria before the project began to be implemented. By selecting the current project sites however, it is certain that entire villages will be required to move, other villages will lose productive farmlands and fisheries, forests will be cleared, coastlines destroyed and cultural sites enclosed. Four areas can be distinguished – one area inside the SEZ, and three areas outside the SEZ, as follows;

- (1) Inside the Dawei SEZ boundaries: Industrial estate area and deep seaport

Official notification of the boundaries of the Dawei SEZ was made on 12 May 2012, in accordance with the Dawei Special Economic Zone law. In 2011, it had been declared that 19

villages would have to be moved as a result of the Dawei SEZ Project. This was later revised to 16 villages.

The boundaries of the industrial estate area may be changing again. An unofficially obtained map produced by ITD dated 17 August 2013, shows that a large area in the southwest of the Dawei SEZ has been exempted and a new area to the north now included. On 9 September 2013, a report by the Supporting Working Body of the Dawei Special Economic Zone during the visit of the Speaker of the Lower House to the Dawei SEZ reported that the demarcated area for the Dawei SEZ Project has been revised “enclosing a total of six villages”. When a subsequent announcement was made to the press, however, about the revisions to the project area in Yangon on 2 December 2013, no civil society groups were invited or informed.

Legal notification of new boundaries has not yet been published in the official gazette, and local administrations have not yet been formally notified of any change. In this context, the situation remains unclear for the affected populations. Villagers in the areas supposedly “exempted” to the southwest were informed by the Township Land Department in early 2014 that their lands are not eligible for land registration because they are still within the area demarcated as the Dawei SEZ.

(2) Near the Dawei SEZ area

Several households outside the SEZ area will also be affected by the Dawei SEZ Project, or by additional or preparatory works related to the Dawei SEZ, some of which have already begun operation, as follows;

2.1 Small port construction area

In the coastal town of Ngapidat, village leaders report that approximately 70 families have already lost their land to the ITD to make way for the construction of a coastal road and a small port for marine access to the Dawei SEZ site. The land was lost approximately three years ago in 2010–2011. This village lies outside the official Dawei SEZ demarcation area to the south.

2.2 Resettlement area

In Bawar village, which has been designated as the first village to host the resettlement of displaced households, approximately 15 households have lost their land to make way for 480 new houses. This village lies to the north of the Dawei SEZ.

2.3 Stone quarry area

A hill has been destroyed in the village of Paradut to the north of the Dawei SEZ boundaries, which has affected neighbouring Myin Gyi village. In Myin Gyi approximately 28 households have lost paddy land during 2010 as a result of works to access the quarry. The quarry is operated by ITD and is expected to produce up to 3,000 tonnes of gravel per year.

Outside the designated Dawei SEZ area, it is expected that the livelihoods of many other households will also be directly affected by the project. For example, local rice farmers are already experiencing the direct impact of construction of new roads, which is causing

irrigation channels to be blocked and paddy fields to be flooded at the wrong time. Other farmers nearby the Dawei SEZ may see access to irrigation reduced by the diversion of water resources to the Dawei SEZ Project. The fisherfolk villages and populations along the coast may also expect their fisheries to be disrupted by the operation of the port and heavy industries. None of these households, families, and populations outside the boundaries of the Dawei SEZ are currently recognised in official lists of affected people. There are at least two fishing villages in the immediate neighbourhood of the Dawei SEZ Projects – Bawar to the north and Pandat Inn to the south – which are also likely to be disrupted.

(3) Road links

The road, rail, pipeline and electricity transmission links are an integral part of the Dawei SEZ Project connecting the Dawei SEZ to Thailand. Many farmlands will be displaced to make way for their construction. There will be two main routes through the Tanintharyi Mountain Range. The first is termed an “access road”, from Phu Namron in Thailand to the Dawei SEZ Project, and while not yet completely surfaced, is now open for traffic. The second road link will be much wider, carving a route 200 metres wide to accommodate an eight-lane highway, transmission lines, oil and gas pipelines and a rail link. At some points along the route, the access road and the highway links will be constructed in the same location, in other places the two routes will diverge. So far, land belonging to households in at least 13 villages has been confiscated to construct the access road.

(4) Water supply reservoir (Dam)

Plans are in place to construct a large dam to flood an area of 7–12 square kilometres to serve as the main water supply reservoir for the Dawei SEZ. Its location has been selected in the hill areas to the northeast of the Dawei SEZ, in an area currently occupied by the people of Kalonehtar, who have established homes and farmlands there. As a result, the entire village, comprising 182 households or approximately 1,000 people have been notified to move out of the area. However residents have raised serious objections to the project. Kalonehtar is doubly marked by the Dawei SEZ as it is not only due to be flooded but also has already been affected by the construction of the road links described above.

In summary, there is still uncertainty about the precise area, numbers of households, and even the total number of villages that will be directly affected by the Dawei SEZ Project. Without clearer data, it is impossible for government to measure and consider the full impacts of the project. Equally, in the absence of comprehensive data, project investors will not be able to understand the full costs they must take responsibility for, such as to remedy and compensate the damages that they will create for the affected people if the project goes ahead.

At this initial stage in the project development, from the figures noted previously, it can be estimated that people from within 20–36 villages, (comprising a total of 4,384–7,807 households or approximately 22,000–43,000 people), are expected to be directly affected by the construction of the Dawei SEZ and related projects, including industrial estate, ports, road links, reservoirs (dam) and resettlement areas. Additionally, the rural and urban populations, from the estimated population of 790,000 people living in urban and suburban of Dawei District, that are also likely to be subjected to negative impacts from the operation of the industrial and petrochemical complex.

3. Current local people livelihood

(1) Lowland villages

The selected site of the Dawei SEZ is located in an area known locally as Nabule, known for its prime farmland and fertile coasts that have attracted populations to settle there for centuries. The main ethnic group in and around the Dawei SEZ area are the Tavoyan group. As many as 99 percent of the respondents in these villages identified as Tavoyan people. Many of the Dawei community traditions, represented in festivals, songs, dialects and pagodas, are based around the story of the sacred city of Thagara established in the first millennium. The site of Thagara is located very close to the current Dawei SEZ Project site. A revered footprint of the Lord Buddha, and footprint of the King Bull, central to Thagara traditions, are located in Kyidawyar Pagoda compound near the villages of Lae Shaung and Paradut. This pagoda will be surrounded by the heavy industrial zones of the Dawei SEZ, if the scheme goes ahead.

As elsewhere, the majority of people in the lowland villages depend primarily on agricultural livelihoods, developed more than one type of farm field, including orchard fields, paddy fields, upland fields and other lands, allowing them the chance to have diverse sources of food and income from different fields, enhancing their livelihood security. Rice farming is an important component in lowland livelihoods. The village most dependent on paddy fields is Myin Gyi, where approximately three quarters of families hold paddy lands and considered paddy farming their primary occupation. The villages of Yalaing, Htein Gyi, Paradut, and Mudu also have many rice fields also own large number of paddy land. Paddy fields produce not only rice in the rainy season but also other crops. For example, focus group participants in Mudu village reported growing crops such as watermelon, roselle, red pepper and other vegetables on their paddy fields after the annual rice harvest. These crops are harvested both for family consumption and for sale. However, orchard farming was reported to be the most important source of livelihood in lowland areas, and the most commonly reported was cashew nuts, followed by rubber trees, betel nut, and coconut respectively. Other common fruit crops include rambutan, lime, durian, pomelo and mango.

The majority of people in the lowland villages are landowners, owning some area of farmland, while landless households reporting daily wage labour and raising livestock, as their main occupation. In the villages located near the coast, livelihoods include fishing and salt production. Some lowland villagers engage in seasonal migration to the coastal areas, conducting farming activities with fishing activities in different seasons. Mangrove forests used to be found along the coast that forms the western edge of the Dawei SEZ before a large area of 369 acres (1.49 square kilometres) was cleared to build a coastal road into the Dawei SEZ. These forests used to provide a rich environment for fish to feed and breed, and were thus important fisheries as well as forests for the nearby villagers. Fisheries provided income for around 13 percent of the households in the lowland villages.

(2) Upland villages: Road links

The road links have been constructed through the uplands of the Tanintharyi Mountain Range, where the main ethnic group are Karen, whose existence in the area has been recorded for over a thousand years. Upland communities are even more dependent on land and other natural resources than lowland communities. Orchards are as important in the uplands such as rubber and betel nut trees and other cash crops. Betel nut processing, which

is highly labour intensive, is often carried out in these villages. The produce is sold locally, as well as traded for sale in Yangon. Paddy fields are not common in the upland areas, however many households in the upland villages practice swidden rice farming. By this practice, rice is grown in rotation with other food crops at different times of a given year, and then the land is left to regenerate for several years to allow the forest to regenerate and restore fertility. Households also raise cattles, which graze on vacant and fallow land. Fisheries are also important in the Karen villages, which are located close to rivers.

In addition, research also collected information of the Kalonehtar village (reservoir or dam area), as well as of landless people's livelihoods in the affected areas, and of incomes in affected areas. In summary, land is a critical livelihood asset for the majority of people in the areas to be affected by the Dawei SEZ. The majority of affected people consider agriculture to be their primary occupation. The loss of land can therefore be expected to affect people in the areas studied profoundly. Additionally, land-related livelihoods are diverse. Several fields are developed and several uses may be made of one field including various crops throughout the year, which provide both food and income. Also, land-related livelihoods are not only derived from crops – livestock raising, fisheries, and forest products also provide significant incomes for households. Many of the other income sources in the affected areas are indirectly related to land, in particular, agricultural processing work and jobs which depend on the wealth of the community, which are therefore likely to be affected by the drop in agricultural production and the potential collapse of the local economy.

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

The Dawei SEZ Project has begun its initial implementation phase. Based on reports from local residents, project activities began in 2010 near the coast and in early 2011 on the road links. Preparatory works already completed include the clearing of land near Kilometre "Zero", which indicates the location of the deep seaport and the start of the road link to Thailand. Furthermore a quarry, a small port, a visitor center, and VIP housing, have been built amongst other constructions. Through the mountains, a 150 kilometre long road from Phu Namron on the Thai border to the project site, has been constructed and is now open for traffic.

However, 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 percent 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 percent 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 percent 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 Htein Gyi 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.

5. 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.

6. 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.

7. Meaningless consultations and image building

In May 2013, academics from the Environmental Research Institute of Chulalongkorn University, Thailand organised a consultation with villagers from Thabyu Chaung village 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 from Thabyu Chaung village 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 from Thabyu Chaung village refused to participate in this meaningless consultation.

8. 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 percent 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.

9. Compensation problems

The research found that 63 percent of 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 percent 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 percent) are living in areas designated for use by the Dawei SEZ project. Only 1 percent of households reported that they had received compensation for the loss of their homes and housing land.

Regarding to orchard land, around 84 percent 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 percent 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 percent) of paddy owners have fields located inside Dawei SEZ area. Just over 8.5 percent of paddy owners have received some compensation for their fields, while 91.5 percent report that they have received nothing at all.

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

The research on the compensation found that of those who had received cash payments, only 30 percent of respondents invested this compensation in potential income-generating activities, and only three percent reported saving the cash. Reports from the focus group indicate that the low rates of compensation is a major reason why the majority of households who received compensation did not use their money to purchase additional land. The most common in which the compensation monies were spent is for paying debt. 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. No support for the development of financial literacy skills appears to have been provided by government or company officials.

4. Constitution, international obligations and related laws

The Sub-committee of Community Rights reviewed the case by looking into the Constitution of the Kingdom of Thailand (Interim) B.E.2557 (2014), the Constitution of the Kingdom of Thailand B.E.2550 (2007), which are enforced during the investigation, and also other related laws.

(1) The Constitution of the Kingdom of Thailand (Interim) B.E.2557 (2014)

Section 4: Subject to the provisions of this Constitution, all human dignity, rights, liberties and equality of the people protected by the constitutional convention under a democratic regime of government with the King as the Head of State, and by international obligations bound by Thailand, shall be protected and upheld by this Constitution.

(2) The Constitution of the Kingdom of Thailand B.E.2550 (2007)

Section 82: The State shall promote friendly relations and cooperation with other countries and adhere to the equal treatment principle and shall comply with treaties related to human rights to which Thailand is a member, as well as other international obligations that have made with other countries and international organisations.

Section 257: The National Human Rights Commission has the powers and duties as follows;

- (1) to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to persons or agencies committing or omitting such acts for taking action. In the case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further proceeding.

(3) The National Human Rights Commission Act B.E.2542 (1999)

Section 3: In this Act, "human rights" means human dignity, right, liberty and equality of people which are guaranteed or protected under the Constitution of the Kingdom of Thailand or under Thai laws or under treaties which Thailand has obligations to comply.

Section 15: The Commission has the powers and duties as follows;

- (1) To promote the respect for and the practice in compliance with human rights principles at domestic and international levels;
- (2) To examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties relating to human rights to which Thailand is a party, and propose appropriate remedial measures to persons or agencies committing or omitting such acts for taking action. In the case where it appears that no action has been taken as proposed, the Commission shall report to the Nation Assembly for further proceeding;
- (3) To propose policies and recommendations to the National Assembly and the Council of Ministers with regard to the revision of law, rules or regulations for promoting and protecting human rights.

(4) The International Covenant on Civil and Political Rights (ICCPR) which Thailand becomes a party on 29 October 2006.

Article 1:

- (1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- (2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
- (3) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 47: Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilise fully and freely their natural wealth and resources.

(5) The International Covenant on Economic, Social and Cultural Rights which Thailand becomes a party on 5 December 2009.

Article 1:

- (1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- (2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
- (3) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 25: Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilise fully and freely their natural wealth and resources.

(6) The ASEAN Human Rights Declaration which Thailand ratified on 18 November 2012.

Right to Development

Article 35: The right to development is an inalienable human right by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably and sustainably from economic, social, cultural and political development. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. While development facilitates and is necessary for the enjoyment of all human rights, the lack of development may not be invoked to justify the violations of internationally recognised human rights.

Article 36: ASEAN Member States should adopt meaningful people-oriented and gender responsive development programmes aimed at poverty alleviation, the creation of conditions including the protection and sustainability of the environment for the peoples of ASEAN to enjoy all human rights recognised in this Declaration on an equitable basis, and the progressive narrowing of the development gap within ASEAN.

Cooperation in the Promotion and Protection of Human Rights

Article 39: ASEAN Member States share a common interest in and commitment to the promotion and protection of human rights and fundamental freedoms which shall be achieved through, inter alia, cooperation with one another as well as with relevant national, regional and international institutions/organisations, in accordance with the ASEAN Charter.

Article 40: Nothing in this Declaration may be interpreted as implying for any State, group or person any right to perform any act aimed at undermining the purposes and principles of ASEAN, or at the destruction of any of the rights and fundamental freedoms set forth in this Declaration and international human rights instruments to which ASEAN Member States are parties.

(7) United Nations Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework

Section I: The State Duty to Protect Human Rights

A. Foundation Principles

1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

B. Operational Principles

General State Regulatory and Policy Functions

3. In meeting their duty to protect, States should:

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

Ensuring Policy Coherence

8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

Section II: The Corporate Responsibility to Respect Human Rights

A. Foundation Principles

11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

12. The responsibility of business enterprises to respect human rights refers to internationally recognised human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

13. The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek 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.

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.

15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

B. Operational Principles

Policy Commitment

16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- (a) Is approved at the most senior level of the business enterprise;
- (b) Is informed by relevant internal and/or external expertise;
- (c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

Human Rights Due Diligence

17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- (c) Should be ongoing, recognising that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

- (a) Draw on internal and/or independent external human rights expertise;
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

Remediation

22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

Issues of Context

23. In all contexts, business enterprises should:

- (a) Comply with all applicable laws and respect internationally recognised human rights, wherever they operate;
- (b) Seek ways to honour the principles of internationally recognised human rights when faced with conflicting requirements;
- (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

Section III: Access to Remedy

A. Foundation Principle

25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

B. Operational Principles

State-Based Judicial Mechanisms

26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

Non-State-Based Grievance Mechanisms

28. States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

5. Opinion of the Sub-committee of Community Rights

5.1 Summary of fact

- (1) The inspection found that Italian-Thai Development Public Company Limited (ITD), which is a Thai private company, signed an agreement with the Public of the Union of Myanmar, and has implemented the construction of the infrastructure facilities, including confiscated lands without informing, or conducting the environmental, health, and social impacts assessments. 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 lie with the purpose to prevent and mitigate impacts that will affect to 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 kilometres road link that cut through the mountain along the Tanintharyi River – were to be resettled. The implementing of the project by ITD has dramatically caused impacts to the local people in the proposed project areas as well as along the road link since 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 mountain along the Tanintharyi River has caused landslides and forest clearing, and it directly affects to river and tributaries, and community's agriculture products, and 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, especially the utilities of land, forest, water sources, and coastal resources. Therefore, the implementing 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 has 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 a 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 the Neighbouring Countries Economic Development Cooperation Agency (Public Organisation) (NEDA) to co-found and co-invest in the Dawei SEZ Development Company with Myanmar government, each holds 50:50 shares. The Dawei SEZ Company will play 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 used to be the role of ITD.

- (3) Dawei SEZ Project, is officially supported by 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 the investors to develop into 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 village to live in the resettlement area by involuntary. The compensation has no standard and unfair, and were not paid on the damages of agricultural products, or other losses, such as water sources and forest resources, that caused by the project. Local people lost their housing and farmlands, and their livelihoods are ultimately altered. Moreover, before the commencement of the project, there is no information provided, no genuine public consultation to listen to the people. The EIA did not comply with standard principle, resulting in the lacking of the procedures to prevent or mitigate the potential impacts. And there are no agencies or persons to take responsibilities to resolve the problems.

5.2 Opinion of Sub-committee on Community Rights

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

In addition, there is a fact that Dawei Project is a project of Myanmar government, co-implemented by a Thai private company, and is supported and facilitated by Thai government under the Thailand–Myanmar Joint Committee. Thai government has assigned the Neighbouring Countries Economic Development Cooperation Agency (Public Organisation) (NEDA) to co-establish and co-invest with Myanmar government, and the agency has a role on advising, inviting, and selecting the investors, as well as undertaking bidding. Therefore, Thai government has a direct involvement and an engaging role on the project.

Additionally, Governments of Thailand and Myanmar have agreed and backed Dawei SEZ Project in spite of the violations of human rights that created by the Thai company still have not been resolved, and impacts tend to continue to occur in the future. Particularly the impacts to villagers' livelihoods, farmlands and water sources – key resources for local peoples – have to be urgently resolved. The Sub-committee sees that the responsibility to respect human rights is a global standard, and ASEAN countries also ratified to the ASEAN Human Rights Declaration. As well, the business enterprises, no matter where they operate, they 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 into the human rights violation that derived from transnational corporation project

by 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 was expired, the company still inevitably have direct duty and responsibility for resolving and providing remedies for those already incurred impacts, and have 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.

5.3 Policy Recommendations

The Sub-committee on Community Rights would like to propose the policy recommendations to Italian-Thai Development Public Company (ITD) and the Council of Ministers as follows;

- (1) Italian-Thai Development Public Company (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 incurred from the implementing 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 with the 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.

6. Opinion of the National Human Rights Commission of Thailand

The National Human Rights Commission of Thailand has reviewed the complaint and the opinion of the Sub-committee on Community Rights, and the Commission's point of view is that Italian-Thai Development Public Company (ITD) has implemented Dawei Special Economic Zone Project in Dawei, the capital city of Tanintharyi Region in Southern Myanmar. The constructions of the infrastructure facilities have caused human rights violations of 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. There are no environmental impact assessments have been conducted in line with academic standards. Such implementation of ITD, therefore, has violated the human rights of Myanmar people. Furthermore, the Governments of Myanmar and Thailand have signed agreement to continue supporting Dawei Special Economic Zone Project.

7. Policy Recommendations

The National Human Rights Commission of Thailand has reviewed the case, and would like to propose the policy recommendations to Italian-Thai Development Public Company (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) Italian-Thai Development Public Company (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 incurred from the implementing 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 with the 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.

8. The Resolution of the National Human Rights Commission of Thailand

According to the reasons mentioned above, the National Human Rights Commission of Thailand, in the meeting No. 38/2558 dated 2 November 2015, agreed to apply the power in accordance to the National Human Rights Commission Act B.E. 2542 (1999), Section 15 (3), to recommend the policy the Council of Ministers, Ministry of Foreign Affairs, Ministry of Commerce, the Stock Exchange of Thailand, the Bank of Thailand, and relevant agencies, according to No.7 (Policy Recommendations) above, and assigned the Office of the National Human Rights Commission to follow up the consequence.

Prof. Amara Pongsapich
Chairperson of the National Human Rights Commission of Thailand

Report on the inspection result of human rights violation No. 1220/2558
23 November 2015

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Commissioner of the National Human Rights Commission of Thailand

Dr. Niran Pitakwatchara, M.D.
Commissioner of the National Human Rights Commission of Thailand

Mr. Parinya Sirisarakarn
Commissioner of the National Human Rights Commission of Thailand

Mr. Paiboon Varahapaitoon
Commissioner of the National Human Rights Commission of Thailand

POL. GEN. Wanchai Srinualnad
Commissioner of the National Human Rights Commission of Thailand

Ms. Visa Benjamano
Commissioner of the National Human Rights Commission of Thailand