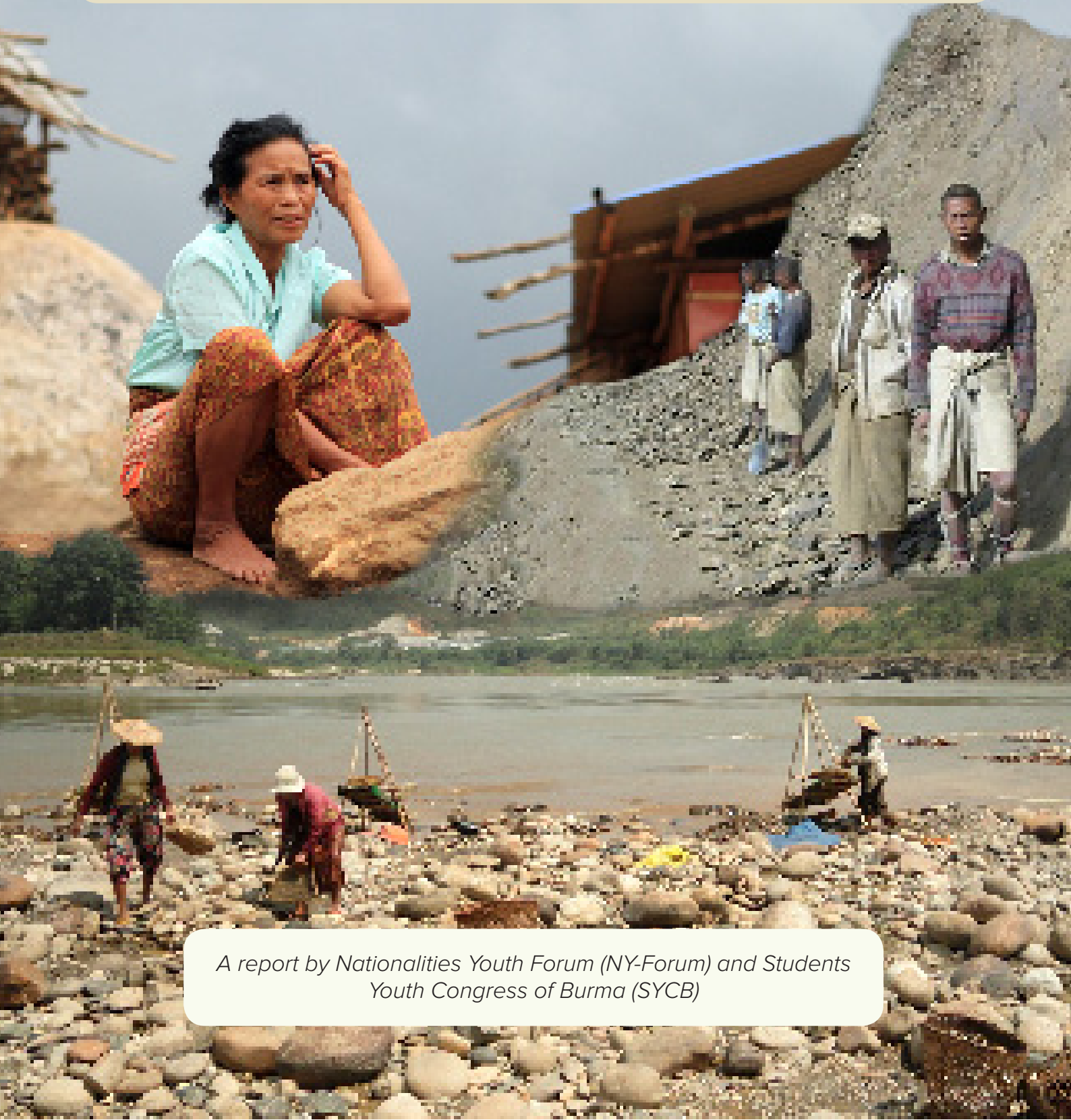


Excluded

*Burma's Ethnic Nationalities on the Margins of
Development & Democracy*



*A report by Nationalities Youth Forum (NY-Forum) and Students
Youth Congress of Burma (SYCB)*



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Excluded

Burma's Ethnic Nationalities on the Margins of Development & Democracy

About CORE

Community Organizing and Rights Education-Burma (CORE) is a joint project of Nationalities Youth Forum (NY Forum) and the Students and Youth Congress of Burma (SYCB), and implemented by a coalition of 14 youth member organizations from largely ethnic nationalities and indigenous communities in seven states and two divisions of Burma. CORE organized the publication of the report Excluded.

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All information in this report was compiled by ethnic nationality youth groups throughout Burma who put themselves at great risk in order to document the gross negligence of participation rights.

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Disclaimer

All the names of the local villagers interviewed for this report have been changed to protect their safety and security.

Cover photos courtesy of Francis Wade and ZSYO.

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Executive Summary

Close to 90% of those surveyed did not receive any information about the development project before it was started by a decision maker. In all but 2 sites, not one person was given any information.

This report presents documented evidence that ethnic nationalities directly affected by development projects in Burma are systematically denied their right to free, prior, and informed consent (FPIC). While development related abuse has been well documented, no report has shed light on the staggering scale of the widespread denial of participation rights in Burma.

The data collected for this report, based on 261 interviews conducted across 7 states and 1 division, involved 10 ethnic nationality groups and 9 development projects, reveal a trend of intimidation by project authorities, active suppression of project-related information, and an impression on the part of affected communities that development projects will not positively impact their lives. The results paint a grim portrait of Burma where ethnic nationalities are systematically intimidated into not seeking further information about a development project and kept completely in the dark about decisions that directly affect their livelihood. These findings suggest that Burma's diverse populations cannot reap the benefits of development without their free, prior, and informed consent.

Although Burma has ratified the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which set out clear provisions for free, prior, and informed consent, there is still no national law in Burma that enshrines the right of individuals to participate in decisions that affect them. Encoding FPIC standards in domestic law is a necessary step if the UNDRIP is to have any real impact on the lives of affected individuals. Moreover, in engaging in abusive practices that often accompany development projects, such as confiscating land, Burma is in direct violation of its own domestic laws as well as regional and international human rights obligations. This report finds that shadowy and non-inclusive development projects frequently result in grave abuses of the local population, and therefore, can not be trusted to self-monitor their conduct. Regional and international monitoring of development projects is necessary to stem these onerous abuses. The report urges Burma to immediately codify provisions of free, prior, and informed consent into domestic law.

Great care was taken to ensure statistical integrity in order to present an accurate portrayal of how participation rights are respected, or not respected, in ethnic nationality areas throughout Burma. We can state, with a 95% confidence level, that the findings made by this report hold true for all ethnic nationality rural (non-security heightened) areas in Burma affected by infrastructure and industrial development projects¹.

Our research shows that:

- Close to 90% of those surveyed did not receive any information about the development project

¹ In total 261 surveys were conducted using random sampling. Due to this, and because of the methodology described in this report, we assert that data, unless specified, maintains a 6.07 Confidence Interval at a 95% Confidence Level for all similar areas (rural, non-security heightened areas) affected by infrastructure and industrial development projects.

before it was started by a decision maker. In all but 2 sites, not one person was given any information.

- Approximately 80% of the total survey population did not know who to contact or where to go to find out more information about the project. In 3 sites, the figure soared to 100%.
- Less than 1% said a public forum was held by a project decision maker where the local community could attend.
- Of the total sample population, less than 2% felt they would not be punished if they sought information about the project.
- Close to half (44.1%) felt unsafe seeking further information about the project, while 45.2% were not sure whether it was safe or unsafe.
- Less than 1% experienced positive impacts from the development project.

This report is meant to serve as a warning of the risks entailed in denying participation rights as well as a reminder to potential investors of their human rights obligations.

Every development project surveyed showed some incidences of human rights abuse. In one project, Chin villagers were not only forced to construct part of a road being funded by India, but also pay for parts of the construction. Illegal taxation, forced evictions, and land confiscations are among the most common development related abuses practiced to this day.

While project security forces from the Burma army commit much of the abuse, Burma is not the sole party responsible for these human rights breaches against ethnic nationalities. All companies, whether multinational enterprises, state-owned, or private, have an obligation to uphold human rights standards regardless of the country they are operating in. The first step in achieving this is by ensuring all relevant parties comply with international standards of free, prior and informed consent.

This report makes a number of recommendations to the government of Burma, ASEAN member states, international finance institutions (IFIs), and the international community in this regard. All recommendations are made in line with the principles of transparency, accountability, participation, and community empowerment in mind and the belief that a firm respect for human rights is the foundation of sustainable development.

Map of Development Projects



Foreword

Untapped Potential: Youth in Burma

“The ethnic nationality youth of Burma are afraid to speak out against development projects in their area. They are afraid they will lose their jobs. The youth need to be empowered to know their rights, so they can serve as a loudspeaker for their community.”

Ta'ang youth activist²

The idea behind this report has its roots in a network of youth organizations that believe that the vibrant youth population is one of Burma's most valuable untapped resources. We hope to give voice to the voiceless in Burma by documenting the concerns and needs of ethnic youth who are at risk of being sidelined and silenced by potentially harmful development projects.

The youth of Burma have shown that they have a vital role to play in paving the way for positive democratic reform. It was the youth who poured onto the streets in 1988 calling for an end to military rule, sparking the largest demonstrations in the nation to date, and again in the 1990s to denounce police brutality and advocate for human rights. Through their actions and visibility, youth have shown that any national political agenda must address their needs.

Unfortunately, successive administrations have systematically neglected the well-being and development of Burma's youth, particularly in ethnic nationality and rural areas. Instead of using the gains made from development projects to increase investments in social spending, the government allocates only about 3% of the national budget to education, one of the lowest investment levels in the world and poor compared to regional standards³. A paltry 2% of the budget goes to health care while close to 30% of children under 5 years of age are chronically underweight from malnourishment⁴. Burma, which already has one of the poorest health indicators in Asia, has even poorer indicators in ethnic nationality areas: in some remote communities, only 32% of ethnic nationality youth receive a full course of vaccination⁵.

State money that can improve the livelihoods of millions who live on less than a dollar a day is instead being used to strengthen the state military, a breeding ground for project security forces responsible for abusing and instilling fear in ethnic nationalities residing near development projects. As one affected youth lamented, “they are always with guns so we are afraid to approach them...we really hate who came with soldiers for projects⁶.” Close to a quarter of the national budget goes to the military

² Interviewed for the report Excluded.

³ “[U.S. policy toward Burma](#),” testimony before the Senate Committee on Foreign Relations Subcommittee on East Asian and Pacific Affairs, U.S. State Department, by Joe Yun, Principal Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs, 26 April 2012

⁴ “[The World Factbook: Burma](#),” Central Intelligence Agency, 20 June 2012

⁵ “[Burma Operational Plan: Gender Annex](#),” UK Aid, Department for International Development, 2011, p.2

⁶ Interviewed for Excluded.



an ethnic Kachin woman in Myanmar

when no external threat to Burma exists. This means that state-sponsored schools and hospitals around Burma are largely dilapidated and in serious need of reform, forcing citizens, who are poor themselves, to self-subsidize healthcare and educational projects.

The lack of domestic educational and employment opportunities for youth in ethnic nationality areas puts them in vulnerable and precarious situations. Burma, long referred to as one of the world's worst offenders for child soldier recruitment, has seen no positive change in this area since the official dissolution of military rule in 2011: the UN has verified that in the first 3 months of 2012 24 children were recruited into the army⁷. This is a rate of 2 per week.

Children go to neighboring towns or urban cities in search of employment to support their families, leaving them susceptible to forced labor, portering, and trafficking. This is by no means an exaggeration,

as the worst forms of child labor are rampant throughout Burma. Often, they go into neighboring countries in search of economic prospects. A study by the World Health Organization (WHO) showed that the majority of cross border migrants were youth from rural areas with little to no formal education⁸.

The chronic problem of youth with shattered hopes is one in dire need of worldwide action and attention. An overwhelming 90% of youth are unemployed in Burma. Aung San Suu Kyi has referred to the soaring youth unemployment rates as a "time bomb" that threatens the future of Burma⁹. Restless and hopeless youth who do not realize their potential, and are not given a chance to succeed, often turn to a life of drug use, crime, and gambling. A report by Kachin Drug Watch (KDW) shows that illegal drug use among youth aged 14-25 has been increasing in northern Kachin state, concluding that one of the main reasons for the increase is a high unemployment rate. According to KDW, youth turn to drug use because of a feeling of hopelessness: "Young people feel they have no opportunities to fulfill their dreams for the future¹⁰."

Foreign direct investment and development projects have the power to contribute to ending such chronic youth unemployment and more importantly, give youth a future to look forward to. This can be done by linking projects with vocational trainings, creating educational opportunities, and prioritizing the employment of local youth rather than bringing in foreign employees. By promoting participation rights, relevant project and government authorities can be made aware of how revenues

⁷ "Two Burmese children a week conscripted into military," Jerome Taylor, *The Independent*, 19 June 2012

⁸ "[Fact Sheet: Myanmar and Adolescent Health](#)," World Health Organization, January 2007

⁹ "[Myanmar Dissident Cautions Perspective Investors](#)," *NYTimes*, 2 June 2012

¹⁰ "[Getting Higher: Number of Kachin Youth Using Illegal Drugs is Rising](#)," *Kachin News*, 24 August 2009

gained from a proposed development project can best benefit the community, whether it is by building a school or technical training center.

Empowering youth is not just a moral imperative, but also makes political and economic sense. Burma is currently on the brink of a demographic transition to a young population with close to 30% of the population under the age 15 years¹¹. These youth will one day be responsible for moving Burma forward, and the best way to equip them is by providing educational opportunities and capacity building so they are able to effectively and collectively manage the future of Burma.

¹¹ ["Population under age 15 \(percent\) 2011."](#)The Henry J. Kaiser Family Foundation

Recommendations

We, the ethnic nationality youth of Burma, make the following recommendations in the hope that it will promote the use of participation rights with the ultimate aim of setting a foundation for inclusive, sustainable development in Burma where benefit is shared between all stakeholders, particularly affected locals in ethnic nationality regions.

Each of the targets below is uniquely poised to ensure proper consultation processes are respected in ethnic nationality areas. The Myanmar National Human Rights Commission (MNHRC), for example, has an obligation to protect the rights of all in Burma and has a key role to play in introducing and keeping ethnic nationality issues on the national policy agenda, while ethnic nationality political parties have the authority to ensure affected locals are not short changed by a development project. All of the recommendations aim to support Burma's adherence to globally accepted human rights standards.

We urge the government of Burma to:

- Codify the provisions of free, prior and informed consent into domestic law with a priority given to Burma's expressed international commitments such as the UNDRIP and related ILO Conventions.
- Halt development projects that take place in conflict zones, and not pursue new ones in areas of active conflict or where there are fragile ceasefire negotiations taking place, until meaningful participation rights are fully respected.
- Work with the MNHRC to implement a grievance or complaint mechanism for the affected community that is accessible, transparent, independent, and impartial.

We urge ASEAN to:

- Establish a regional policy that ensures ASEAN governments respect the rights of local people to FPIC.
- Formally include FPIC rights into the Bali Declaration on Business and Human Rights.

We urge ASEAN Intergovernmental Commission on Human Rights (AICHR) to:

- Carry out concrete activities to support its first thematic study focusing on Business and Human Rights. This should include: allowing civil society a safe space to provide direct input in business operations that affect them, as well as supporting victims of development-related abuses.

- Provide concrete and binding guidelines to businesses and other stakeholders regarding participation rights that reflect progress made by the UN Principles on Business and Human Rights, including the “Protect, Respect, and Remedy” framework.

We urge the World Bank to:

- Provide and make public in advance a clear timeline and strategy for civil society consultations regarding country strategy, and ensure the consultations are broad and representative of Burma’s diverse communities. This is in line with the Bank’s Good Practices, which states any Bank-financed operation will “solicit views and concerns of beneficiaries and affected parties, and promote the active participation of such people in project activities.¹²”
- Build capacity of World Bank staff members in order to ensure staff is appropriately informed and able to implement requirements of the World Bank’s Indigenous Peoples Policy and international standards on participation rights, as enshrined in the UNDRIP.
- Establish a consultative mechanism on the national level with the aim of providing ethnic nationalities a safe space to provide effective input on World Bank operations in ethnic nationality areas.

We urge International Finance Institutes (IFIs), particularly the Asian Development Bank and International Monetary Fund, to:

- Ensure that meaningful engagement with affected ethnic nationalities and community stakeholders is in line with FPIC provisions and an essential element of all IFI country strategies in Burma.

We urge any current or potential companies seeking to work in Burma to:

- Refer to the benchmarks developed by the Burma Environmental Working Group which include¹³:
 - » Community grievances must be fully addressed in existing and proposed investments.
 - » Civil society should be free to fulfill its role without fear of repression or abuse.

We urge the Myanmar National Human Rights Commission (MNHRC) to:

- Immediately act on existing complaints in ethnic nationality areas and implement existing protection mechanisms as a matter of urgency, in order to avoid further marginalization and loss of

¹² “[Involving Nongovernmental Organizations in Bank-Supported Activities](#),” Bank’s Good Practices, World Bank, February 2000

¹³ To read the rest of the BEWG benchmarks, please refer to: “[Burma Environmental Working Group Issues Benchmarks for Investment in Energy, Extractive and Land Sectors in Burma](#),” BEWG press release, 22 March 2012

life and livelihood.

- Enhance partnerships with civil society organizations and foster an environment favorable to the development of independent civil society organizations, with an aim of empowering civil society to monitor development initiatives in ethnic nationality areas.

We urge Burma's political parties to:

- Voice community grievances, such as non-respect with participation rights, and bring them to the attention of Parliament. This is in line with Article 25 of International Covenant on Civil and Political Rights (ICCPR) that states every citizen shall have the right and opportunity “to take part in the conduct of public affairs, directly or through freely chosen representatives¹⁴.”
- Ensure laws that target investments or businesses, such as the recent foreign investment law already signed by President Thein Sein, include clear provisions that protect the right to FPIC.

¹⁴ [International Covenant on Civil and Political Rights](#), Office of the United Nations High Commissioner on Human Rights, adopted by UN General Assembly on 16 December 1966.

Introduction

"This is a country that still has ongoing war. If you're going to a war-torn country to do business, you might as well share responsibility in the peace process."

May Oo Mutraw, Karen activist¹⁵

The publication of *Excluded* comes at a time when Burma is at an unprecedented cross road. After decades of isolation, brutal dictatorship, and branding as a pariah state, Burma surprised onlookers by embarking on a rapid succession of small-scale reforms beginning in 2011. In one fell swoop, the military regime was officially dissolved, a nominally civilian government was established, over 600 political prisoners were released in 4 separate presidential orders, Aung San Suu Kyi became an elected Member of Parliament, and tentative cease-fire negotiations are being brokered. These changes have earned Burma legitimacy in the eyes of the international community and have paved the way for a suspension of economic sanctions and the decision to grant Burma the prestige of chairing ASEAN.



Villagers working alongside the Myitsone

Businesses from all over the world are now scrambling to take advantage of this new open Burma. In 2011, more than US \$20 billion poured into Burma in the form of foreign investment, mainly from China and Thailand. This is more than all of the foreign direct investment from the last 20 years combined¹⁶. Both large-scale and small-scale development projects are mushrooming throughout the country at a dizzying speed. Burma is all of a sudden sparking renewed interest and is referred to as a rising economic powerhouse and a global hotspot for investors.

These investors will be operating in an exceedingly risky environment where there is still no rule of law, no independent judiciary, and human rights abuses in certain areas are perpetrated on a scale that arguably amounts to crimes against humanity. Those who stand to lose the most, however, are not the investors, but the ethnic nationalities who account for close to half of the population and reside in the resource rich areas of Burma. Ethnic nationalities are forced to bear the brunt of development projects while receiving none of the benefits.

All ethnic nationalities in Burma have a right to participate in decisions that affect them, including granting or withholding consent to a development project that takes place on lands they have

¹⁵ ["Myanmar: Ending the world's longest running civil war;"](#) Global Post, 5 May 2012

¹⁶ ["How not to invest in Myanmar;"](#) Brian P. Klein, Foreign Policy, 25 July 2012

traditionally used or inhabited. These rights to free, prior, and informed consent are enshrined in Burma's expressed international obligations, including the UNDRIP and ILO (169). However, there is not one known incidence in Burma where FPIC rights were fully respected. This report strongly urges Burma to immediately integrate FPIC standards into national law to show its commitment to promoting and protecting the livelihoods of ethnic nationalities.

Adherence to the provisions of FPIC minimizes abuses that commonly accompany development projects¹⁷. By being inclusive of the needs and concerns of affected ethnic nationalities, development projects have the potential to empower local communities through job creation, skills training, and revenue-sharing initiatives. Respecting FPIC is thus an integral tool to promoting sustainable development and poverty alleviation.

¹⁷ These abuses include torture, rape, forced labor and extrajudicial killings of ethnic nationalities residing near a project.

Section 1

Ethnic Nationalities at Risk: The Background

Statistics show that rural poverty rates, populated largely by ethnic nationalities, stand at a staggering 36% of the total population, and in some areas, such as in Chin state, the poverty level is an appalling 80%...according to the UNDP¹⁸.

Ethnic nationalities and the resource curse

A tumultuous history

The bulk of Burma's vast natural resources lie in remote ethnic areas, where control over the valuable resources between the government and ethnic armed groups has resulted in frequent and protracted conflict. Burma is one of the most ethnically diverse nations in the Asian region, and arguably the world, with over 100 ethnic groups, languages, and dialects. Ethnic nationalities make up some 35-40% of the nation's population and are located in the 7 ethnic nationality states, where they constitute the majority¹⁹. When Burma first emerged as a unified nation in 1886, a key point of contention was the ability of ethnic nationalities to administer the resources found on their land. This issue remains unresolved to this day. Each of Burma's largest ethnic nationalities has engaged in armed resistance against the government, due mainly to disputes over natural resources, many of which continue today.

These ethnic and often remote regions rich in resources also have minimal human rights protection.

¹⁸ "[Chin State Applies for Special Region Status](#)," Unrepresented Nations and People's Organization, 2 September 2011, accessed 18 June 2012

¹⁹ "[Burma's ethnic nationalities](#)," Canadian Friends of Burma, accessed 18 June 2012

Those who should be protecting the civilians, such as local police and security forces, are often the main perpetrators of abuse. Numerous reports have documented that business ventures and development projects in these areas have exacerbated this entrenched abuse and often result in forced relocation, land confiscation, portering, and at times even torture, rape, and extrajudicial killings.

Price of Progress

After decades of international isolation, the wave of suspensions of economic sanctions against Burma has sparked a global rush to develop natural resources and invest in Burma. Now referred to as “a holy grail²⁰” for foreign investors, Burma is said to supply 90% of the world’s rubies, have 98% of the world’s jadeite, the world’s 10th largest natural gas reserves, thousands of megawatts of untapped hydropower potential, and explored mineral reserves valued 11th in the world and the highest among Asian nations - boasting valuable minerals such as copper, nickel, gold, and silver. With rich, varied, and largely unpolluted ecosystems, the “last frontier of biodiversity in Asia” also holds 80% of the world’s last teak forests, resulting in the destruction of forests and the livelihoods of those who primarily depend on the forests for sustenance²¹.

The lucrative potential dormant in ethnic areas, made even more attractive by their valuable geostrategic proximity to vibrant economies such as India, China, and Thailand, have recently catapulted Burma into a new identity as an emerging economic powerhouse. The IMF predicted “high growth potential” for Burma with an expected 6% increase in economic growth in January 2011²². In the same month, one analyst went so far as to say a “tsunami wave of cash” is heading towards Burma²³. This excitement to invest in Burma is evident in the eagerness of countries to lift economic sanctions while the human rights situation in ethnic areas has demonstrably deteriorated. In the 2012 annual report, Amnesty International accused the government of committing crimes against humanity in Kachin state, where the unregulated exploitation of natural resources and mega development projects has had disastrous consequences²⁴.

Financial gains have not benefitted most people

Burma is the one of the poorest countries in Asia, ranking dangerously low in the UN Human Development Index with an overall poverty rate of 32%: over triple the rate of neighboring Thailand and the highest level of poverty in ASEAN²⁵. Ethnic nationalities are considerably poorer, however, with broad strokes of the population teetering on the brink of starvation. Statistics show that rural poverty rates, populated largely by ethnic nationalities, stand at 36% of the total population, and in some areas, such as in Chin state, the poverty level is an appalling 80%, remaining one of the least developed

²⁰ [“Stock exchanges battle for a piece of the frontier.”](#) Democratic Voice of Burma, 14 May 2012, accessed 18 June 2012

²¹ Stevens, Jane. “Teak Forests of Burma Fall Victim to Warfare.” *The Oregonian* [Portland, Oregon], March 16, 1994

²² [“Statement at the conclusion of the 2011 Article IV Mission to Myanmar.”](#) International Monetary Fund, 25 January 2012, accessed 18 June 2012

²³ [“Burma opens for business.”](#) Irrawaddy, 11 January 2012, accessed 18 June 2012

²⁴ [“Myanmar: Annual Report 2012, The state of the world's human rights.”](#) Amnesty International, 2012

²⁵ Thailand’s poverty rate is 9.6%

regions in the country according to the UNDP²⁶.

Table of poverty levels in ethnic nationality areas researched for this report^{27,28}:

Region	Poverty %	Food Poverty* %	Development Project
Tenasserim Division	35-49%	Not available	Dawei deep seaport
Southern Shan State	44%	14%	Paunglaung Dam
Kachin State	47%	17%	Myitsone Dam
Chin State	81%	49%	Teddim-Rih Road
Arakan State	41%	13%	Sittwe deep seaport
Karenni State	38%	13%	Cement factory
Mon State	21%	4%	Kadaik Dam
Karen State	12%	2%	Special Economic Zone

* Food poverty is considered the "poorest of the poor" and refers to those who are unable to access a nutritionally adequate diet.

This stands in stark contrast to the enormous income revenue generated from development projects that take place on lands ethnic nationalities have traditionally inhabited for generations. If current production rates and purchasing prices are maintained, Burma is set to make \$2 billion per year just from selling natural gas reserves for the next 40 years. This number is expected to increase by 60% if production expands as planned, potentially by 2013²⁹.

The Yadana pipeline, running through several ethnic nationality areas to Thailand, and marred with human rights violations, has earned the Burmese government an estimated \$4.6 billion between 1998 and 2009³⁰. The 50 some hydropower projects currently being built around Burma will generate an estimated \$4 billion in annual revenue³¹. The Shwe gas pipelines, traversing volatile and poverty-stricken Shan and Kachin areas into China, will earn the government \$1 billion a year in revenues for three decades. This highly profitable scenario is expected to balloon in the coming years as foreign direct investment increases. Aung San Suu Kyi referred to this spike in foreign investment as "reckless optimism" on the side of potential investors.

In Burma, the nation's financial dealings and development projects are never transparent or accountable, a contributing factor to its earning of 2nd place in the world for corruption by Transparency International, the same level as Afghanistan³². The lack of transparency in business deals means that

²⁶ "[Chin State Applies for Special Region Status](#)," Unrepresented Nations and People's Organization, 2 September 2011, accessed 18 June 2012

²⁷ All poverty statistics, unless otherwise noted, come from the United Nation Development Program report "[Targeting the Most Vulnerable](#)," 1 May 2008, accessed 18 June 2012

²⁸ Number comes from data compiled by Thai-Burma Border Consortium, "[Poverty Incidence in Southeast Asia Burma/Myanmar, 2010-2011](#)," accessed 18 June 2012

²⁹ Projected profits come from following article "[Despite reforms, Western oil firms avoid Myanmar](#)," Aung Hla Tun, 24 November 2011, accessed 18 June 2012

³⁰ "[Burma's Natural Resources Add Fuel to Conflict](#)," Simon Roughneen, Irrawaddy, 25 July 2011, accessed 18 June 2012

³¹ "[Attempts to boost development in Burma fuel conflict](#)," David Myers, Deutsche Welle, accessed 18 June 2012

³² "[Myanmar's path to prosperity strewn with obstacles](#)," Dane Bryant, World Politics Review, 8 June 2012

the lucrative profits are not tracked and those who are not directly involved in the project have no idea where the profits are going. It is clear, however, that the money is not going towards social spending such as improving the livelihoods of surrounding communities by building hospitals, schools, or promoting job generation.



Kayan cultural celebration

Human rights consequences of development

The negative impacts of development projects, which most often include rape, forced labor, portering, land confiscation, and forced evictions, are not isolated to the immediate victims, but have a ripple effect on successive generations of ethnic nationalities. For example, whenever there is forcible displacement, those who are forced to move often have enormous difficulty in finding a suitable area where they can continue to practice their traditional means of subsistence. For many ethnic nationalities, this means some form of

agricultural production. However, victims of forced relocation are often made to live in barren areas or on the side of a highway, resulting in the loss of their primary means of economic activity. In one instance, there is a growing concern that displacement due to the damming of important rivers in Karenni State will lead to the extinction of the Yintale - a sub-group of the Karenni ethnic group who number around 1,000 and subsist along the banks of the rivers³³.

A civil matter: ASEAN Investment in Burma

"The Myanmar government is not yet in a position to enforce ethical business laws, so the international community, including ASEAN, and civil society groups must take on a role of watchdog. As a minimum, the U.S and other governments must enforce the same standards they do at home on entities from their respective countries doing business in Myanmar."

Eva Kusuma Sundari, ASEAN Inter-Parliamentary Myanmar Caucus president³⁴

ASEAN nations have been widely complicit in bolstering the military regime in Burma and sponsoring development projects in Burma that are accompanied by human rights abuses. While broad strokes of the international community responded to the brutal crackdown of peaceful protestors in 2007 by imposing sanctions, ASEAN members were continuing to keep key players of the regime afloat by

³³ ["Karenni State: Dam Construction Threatens Community,"](#) Unrepresented Nations and People's Organization, accessed 18 June 2012

³⁴ "Asean MPs urge caution in Burma investment," Mizzima, 13 July 2012

investing in sectors that essentially served as the regime's critical lifeline. Sanctions did not really have any affect on ASEAN investment in Burma. For the past decade, the main source countries of foreign investment have been mainly from ASEAN members, and almost exclusively from Asian countries that have dismal domestic human rights records.

ASEAN countries, particularly Malaysia, Singapore, and Thailand, have a history of being implicated in serious human rights violations with regards to business conduct in Burma. This is partially due to ASEAN's explicit policy of non-interference. This policy essentially calls for member states to turn a blind eye to human rights abuses, referring to it as a domestic matter. ASEAN countries care little for regional human rights enforcement and often take overly simplistic and dismissive notions on the issue. For example, ASEAN's expectation that Burma's admission to the regional bloc in 1997 would prompt the military generals to behave more responsibly turned out to be gravely wrong as repression against activists and oppression increased significantly.

Singapore is Burma's number one investor for the hotel and tourism industry, a sector that is inextricable from the previous military junta. The first country to broker business ties with Burma after the brutal crackdown on 1988 demonstrations was Singapore. In the mid-1990s, Singapore's head of foreign trade effectively stated it is uninterested in human rights in saying "Singapore's position is not to judge them (Burma) and take a judgmental moral high ground³⁵." As of December 2011, Singapore's investment in Burma amounted to US\$2 billion, with most invested in hotels and tourism, real estate, industrial estates and oil and gas³⁶.

Malaysia has been primarily investing in Burma's lucrative oil and gas sector. Several complaints have been lodged against Petronas, a Malaysia state oil firm that is involved in a \$650 million Yetagun gas field development project started in the 1990s. The project has been implicated in human rights abuses such as forced labor and rape. In response to the accusations, Petronas issued a terse official statement that read, "It has been amply demonstrated that respect for human rights will inevitably increase, and entrenched habits get neutralised, whenever a country achieves good economic and social progress³⁷." This overly simplistic response is the only action taken by Petronas in accounting for documented human rights abuses to date.

Until 2011³⁸, Thailand was Burma's number one foreign investor: between 1988 and 2009 it invested close to \$7.5 billion, accounting for 47% of the total foreign investment in Burma³⁹. The majority of Thai investment goes to building major facilities that harness Burma's natural resources and export them to Thailand in order to satiate growing domestic demand for electricity and power. Thailand has been the driving force behind major hydropower dams along the Salween River such as the Tasang Dam. The Thai government has earmarked \$6 billion USD for the Tasang Dam alone.

Thailand has poured the most significant amount of money into Burma's gas and oil sector through

³⁵ "[Singapore – a friend indeed to Burma](#)," Sydney Morning Herald, Eric Ellis, 1 October 2007, accessed 18 June 2012

³⁶ "[Singapore hits at increased role](#)," MyanmarTimes, Aye Thidar Kyaw, 20 February 2012

³⁷ "[UK Group to lodge complaint against Petronas to Suhakam](#)," Malaysiakini, Yin Shao Loong, 30 April 2001, accessed 18 June 2012

³⁸ Thailand has been surpassed by China in 2011 when it unveiled foreign investment of \$20 billion USD.

³⁹ "[Thai-Burma Relations](#)," Arakan Rivers Network

collaborations with the Burma state-owned PTT Exploration and Production (PTTEP). About 20% of Thailand's annual energy consumption is sourced from Burma⁴⁰. Thailand collaborated with PTTEP in the controversial Yadana Pipeline that transports gas from the Andaman Sea off the coast of Mon State. This project was the previous military regime's largest single source of income. The pipeline has been mired in controversy because pipeline security forces were implicated in abuses that are trademarks of the previous military regime, including conscripting villagers to severe forced labor projects, such as portering heavy loads for military patrols, rape and torture.

According to Sulak Sivaraksa, a prominent Thai activist who protested the Yadana Pipeline, "the pipeline project has not provided benefit for local people both Thai and Burma. It is a shameful project. The Thai government has to pay \$400 million per year to the Burmese government and they use this money to abuse and threaten ethnic people in their country⁴¹."

Future ASEAN investment repeat of past?

"And those investors [interested in areas of oil and gas, mineral and timber] are going to strip the country bare, leave the money in the hands of a few top people and give little back to the general population."

Steven Dickinson, American lawyer
2012 New Myanmar Investment Summit organized by Centre for Management Technology, a Singapore-based firm⁴²

There has been little indication that ongoing investments by ASEAN member states will be any different from the past. The fact that Burma has been awarded the role as ASEAN chair in 2014 amidst a deplorable human rights situation, including alleged crimes against humanity, shows that ASEAN members are not prioritizing investment in projects that alleviate poverty, promote sustainable development, and protect basic rights.

In April 2012, Petronas was awarded onshore blocks in the country to explore energy fields. In the same month, Singapore led a delegation of 50 businessmen to look into potentially investing in the hotel and tourism sector. There is concern that Thai investment will follow the same road of environmental destruction it has in the past: Thai companies decimated teak forests in eastern Burma in the 1990s, and these same players, such as Italian-Thai Development Corporation, are now involved in the Dawei deep seaport project. Dawei locals have expressed fear that their unsullied region will now become polluted. Accounting for the social and environmental impact of a business or country should not be left to self-regulation, especially when the majority of these projects occur in areas inhabited by vulnerable and marginalized ethnic nationalities.

⁴⁰ Same as above.

⁴¹ "[Yadana Pipeline Protest Case Dismissed](#)," by Sai Silp, 18 August 2006

⁴² "[Investment conference draws mixed reaction from crowd](#)," Victoria Bruce, Myanmar Times, 25 June – 2 July 2012, volume 32, no.

All roads lead to Burma

ASEAN has highly ambitious plans to transform a patchwork of disparate nations into a seamless European Union style powerhouse by 2015. If ASEAN operated as a single economic entity, it would be Asia's 3rd largest economy, boasting a GDP of \$1.8 trillion dollars, and would act as a lucrative bridge between economic tigers like China, India, as well as the Middle East and the Pacific. Noise that the global center of gravity is shifting to Asia is prompting ASEAN to rebalance and accelerate its long-held dreams of regional economic integration.

The first step to turn ASEAN's dream into reality is through the establishment of regional connectivity networks so that goods and people can travel easily within ASEAN and beyond. The ability to trade is vital to the economy of ASEAN. Already ASEAN has unveiled a master plan that includes the establishment of an ASEAN Transit Highway and a regional gas grid.

The missing piece in completing this puzzle is Burma⁴³.

Many of the overland and sea transport linkages that aim to open up surrounding dynamic economies to ASEAN would have to go through Burma. The quest for ASEAN integration is thus a large driver of current development projects in Burma. This includes the Chin-based Teddim-Rih Road and the Dawei deep seaport, which aims to connect Burma to Thailand by a series of highways and sea routes.

ASEAN claims less-developed countries like Burma stand to benefit the most through infrastructure development and the opening up of remote inland areas. But the government of Burma and the people of Burma are not the same. Respecting participation rights is essential if the people, including ethnic nationalities, are to realize the benefits of development projects.

Concept of Free, Prior, and Informed Consent

"Free, prior and informed consent is essential for the [protection of] human rights...in relation to major development projects⁴⁴."

Rodolfo Stavenhagen, former UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples

⁴³ Burma is referred to as a missing link several times in the report: "[Master Plan on ASEAN Connectivity](#)," by ASEAN Secretariat, January 2011

⁴⁴ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2001/65 (Fifty ninth session), U.N. Doc. E/CN.4/2003/90, January 21, 2003, para 66

We all have a right to fully and effectively participate in decisions that may affect us. Meaningful participation in decision-making processes enables control over their own destinies on conditions of equality. As stated by UN Special Rapporteur on indigenous peoples James Anaya, “Without this foundational right, human rights, both collective and individual, cannot be fully enjoyed⁴⁵.” Participation rights is thus essential to the realization of all human rights and freedoms, and is a fundamental corollary of a myriad of human rights standards, particularly the right to economic, social, and cultural development and right to self-determination. The latter includes the right to full sovereignty over all

natural wealth and resources found on lands traditionally inhabited by a particular ethnic group.



A gathering of a group of local activists involved in the anti-Myitsone dam campaign

What is FPIC?

Consent is generally understood to be “free” when it is not accompanied by threats, harassment, or unequal bargaining power. That it is “prior” means that consent is to be sought sufficiently in advance of any final decisions made regarding the proposed project, and especially well before any activity, such as construction, begins to take place. Consent is “informed” when all relevant information, including both the anticipated negative and

positive impacts of a project, are fully disclosed in a manner that is easy to understand and accessible.

The interpretations of what constitutes “consent” have varied, but it is accepted that it is the right to voluntarily say either yes or no to a project, i.e. granting or withholding consent. However this is not the same as the right to veto, which is effectively the power to prohibit a course of action from taking place. For the right of consent to have any meaningful impact on the lives of affected individuals, it must also include their right to stop a potentially negative project from taking place in their area. Unfortunately, whether or not consent includes veto power has been the most controversial aspect of participation rights. The only legally binding interpretation of FPIC, the UNDRIP, has remained silent on the issue.

FPIC is a universal standard

Regardless, the right to FPIC has achieved near-universal acceptance in the international community. The provisions outlined in FPIC have been referred to as a new standard for code of conduct for businesses and has already influenced how businesses conduct their work, especially in regards to natural resource extraction and development projects. FPIC provisions have been referred to in court decisions at both the domestic and international levels. At least one Supreme Court, as well as a

⁴⁵ Report of the Special Rapporteur on indigenous people, James Anaya, Addendum “Report on the Situation of Human Rights of Indigenous Peoples in Brazil” UN Doc A/HRC/12/34/Add.2 (26 August 2009) at para. 22.

number of UN bodies, have referred to FPIC as an international standard⁴⁶.

Amazon Watch, a respected NGO that works towards advancing the rights of indigenous people, released a report that made the strong case that respecting the right to FPIC is “not just a moral imperative, but also a business necessity for corporations to avoid financial risk, reputational damage, divestment campaigns, operational delays due to social unrest, multi-billion dollar legal liabilities, and loss of license to operate⁴⁷.” Parallel to this is a report released by the World Bank which concluded that free, prior, and informed consent of affected people is a “necessary condition” if an extractive project is to have any positive impacts on sustainable development and poverty alleviation. Meaningful community stakeholder participation became mandatory in the World Bank in 1992⁴⁸.

FPIC promotes and protects a spectrum of human rights

Development projects are often accompanied by negative consequences such as forced displacement and loss of employment. States and corporations that abide by FPIC regulations would enable affected communities to promote sustainable alternatives to destructive development projects, as well as secure appropriate compensation for any land, negotiate favorable relocation terms, secure ongoing support for the communities’ equitable development - including access to education and job opportunities, and ensure that any decisions made are legally binding. Affected communities can also use FPIC as leverage for negotiating revenue and benefit-sharing on fair and enforceable terms.

While the scope of this report is focused on development projects in Burma, FPIC is broadly applicable to any key decision that may have a direct or indirect impact on a group of people. The UN Department of Social and Economic Affairs identified close to 20 key areas where FPIC should be required. Besides developmental planning, they include: entry of military in a new area; new settlements in indigenous lands and territories; human development and education; cultural heritage and expression; and legislative and administrative measures. It is clear then that FPIC is largely seen as a primary tool to promoting and protecting a spectrum of human rights, especially for historically vulnerable and marginalized people.

Ensuring FPIC is fully respected

There are certain steps that must be initiated by businesses or governments responsible for implementing a project to ensure the full spectrum of FPIC rights are respected. Failure to do so violates a constellation of basic human rights that go beyond FPIC rights. This section is meant to provide guidelines that the government of Burma, partner countries, and corporations must follow before

⁴⁶ Maia S. Campbell & S. James Anaya, *The Case of the Maya Villages of Belize: Reversing the Trend of Government Neglect to Secure Indigenous Land Rights*, 8 Hum. Rts. L. Rev. 377, 379 (2008).

⁴⁷ “[Why companies need to operate with free, prior, and informed consent of indigenous peoples](#),” press release by Amazon Watch on 3 February 2011, accessed 18 June 2012

⁴⁸ “[Free, Prior and Informed Consent and the World Bank Group](#),” Robert Goodland, *Sustainable Development Law & Policy*, Vol. 4, Issue 2, p. 61

making any decisions on a development project in a particular territory, including Burma⁴⁹.

Step 1: FPIC Investigative Review

An FPIC Investigative Review is initiated, along with relevant rights-holders, by those responsible for the project, such as the government, partner countries, and corporations. The FPIC Investigative Review must include:

- A detailed description of the proposed project.
- A description of all rights-holders that are to be impacted by the project, along with how they wish to be engaged in the FPIC process.
- A description of applicable legal frameworks, including relevant domestic, regional, and international mechanisms. A review of the legal status of the land and how it has been formally or informally used by rights-holders.
- Assessments of social, cultural, and environmental impacts on rights-holders by the proposed project that initiated the FPIC process, and how these impacts are to be minimized or mitigated.

The Investigative Review should be ongoing until the outcome is agreed upon by all parties. A community type forum that allows rights holders to air their concerns and speak about the project on their own terms, including how natural resources are traditionally allocated, should also be included in the Review.

Step 2: FPIC Proposal

Once the FPIC Investigative Review has been mutually agreed upon, an FPIC proposal is to be drawn up by relevant decision makers in consultation with rights-holders that include:

- Where and how consultations will take place.
- How decisions will be taken and recorded by relevant rights-holders.
- The geographic area that the consultations will include.
- Whether there will be external monitoring of the FPIC process, such as by independent observers, UN bodies, national human rights institutions, or other monitoring agencies.
- How often the FPIC process will be reviewed by decision makers and rights-holders in order to

⁴⁹ Information sourced from draft [UN-REDD Guidelines of Free, Prior, and Informed Consent](#) dated | December 2011

ensure the agreed-upon conditions are being upheld.

- Framework for a mechanism that allows rights-holders to voice concerns throughout all stages of the FPIC process and adequately seek recourse if necessary.

Step 3: FPIC Process

The FPIC process can only proceed once all relevant parties have agreed upon the terms in a culturally appropriate way. It is important to bear in mind that the proposed project cannot begin until an FPIC Investigative Review has been undertaken and the FPIC process has received approval from all stakeholders involved in the consultations.

If there is any question on the validity of the FPIC process, an external institution or agency should launch an independent evaluation to ensure the process was carried out in line with the proposed outline.

Legal basis for claiming FPIC rights

The UNDRIP, which Burma voted in favor of, provides legal protection for all indigenous peoples in Burma, especially in regards to their right to free, prior, and informed consent in any decision that affects them, directly or indirectly. This section is meant to show that Burma's ethnic nationalities qualify as indigenous and are thus able to legally claim FPIC rights set out in the UNDRIP.

What is an ethnic nationality?

The term ethnic nationality is very specific to the Burma context and is a term used to group the majority of Burma's ethnic nationalities into approximately 135 national races⁵⁰. As elaborated below, status as an ethnic nationality comes with many political benefits in Burma. Everyone surveyed for this report falls under an ethnic nationality group. Although all the ethnic nationality groups in this report can qualify as indigenous and therefore claim the right to FPIC, the report uses the term ethnic nationality for consistency.

There is no legal definition for an ethnic nationality or an indigenous person. While there are international working definitions that attempt to clarify the difference, it is first important to understand why a group would want to claim official indigenous status over nationality status or vice versa.

The rights of indigenous peoples

⁵⁰ The State Law and Order Restoration Council, which ruled Burma beginning in 1988, referred to these 135 national races but never produced a reliable list of names. Please refer to "[Ethnic Groups in Burma: Development, Democracy and Human Rights](#)," by Martin Smith in collaboration with Annie Allsebrook, Anti-Slavery International, 1994, p. 15 for more information .

From the perspective of international law, indigenous peoples are accorded with broader and more robust protections than ethnic nationalities. For example, the only international document that enshrines the right to free, prior, and informed consent, the UNDRIP, protects indigenous populations. In general, indigenous groups can claim a wider array of specific rights especially in regard to land, self-government, and participation in shaping policy and projects that affect them.

When acting collectively, indigenous peoples have the power to politically lobby and transform, for example, how multinational corporations do business on lands they have traditionally owned and used. Status as indigenous people is what allows them to articulate their concerns at an international and legal level. Self-ascription as indigenous is thus often seen as part of a broader strategy to claim such rights.

To claim indigenous status, one must first self-identify as indigenous while also meeting the criteria set out by international working definitions, such as those outlined by the former UN Special Rapporteur on Discrimination against Indigenous Peoples Jose Martinez Cobo. Many ethnic nationality groups in Burma could in fact qualify as indigenous and would therefore be able to claim all the associated rights that accompany indigeneity, including the right to free, prior and informed consent, if they were to choose to seek official status.

Why identify as an ethnic nationality?

Not many in Burma have sought official status because, in general, choosing to identify as an ethnic nationality rather than indigenous is a politically strategic move, in Burma's very specific context.

Seeking indigenous status through formal channels might open the door to heavy criticism by government authorities and fellow ethnic nationalities, resulting in further marginalization. National law and the 2008 Constitution are underpinned by the principle of "unity in diversity" and ethnic togetherness. These were the principles Burma was founded on in 1948. Therefore, there are many legal protections and avenues for national political participation that are available to members of Burma's official ethnic nationalities, but not for others. Ethnic nationalities who attempt to claim indigeneity face the risk of losing their ethnic nationality status.

Loss of this official recognition would have several adverse effects. The first possible one is loss of citizenship. Under Burma's Citizenship Law from 1982, full citizens are those belonging to one of the official 135 national races⁵¹ who lived in Burma before the British conquest in 1823. If a group decided to seek indigenous status, it can be seen as a breakaway from the national races and thus, all the associated privileges such as citizenship.

Similarly, the 2008 Constitution states only national races are allowed to participate in the national political system⁵². This includes becoming Members of Parliament as well as the right to vote to elect

⁵¹ The government of Burma officially recognizes 135 ethnic groups, referred to in Burma as "national races." These national races form the 8 major ethnic nationalities.

⁵² As an example, Article 15 of the Basic Principles of the 2008 Constitution states, "For national races with suitable population, National races representatives are entitled to participate in legislature of Regions or States and Self-Administered Areas con-

Parliamentary representatives of their ethnic nationality for their region or state Parliament.

Ethnic nationalities are accorded with a valuable political platform to voice their concerns and enact legislative change that is not available to non-ethnic nationalities. For the first time in decades, ethnic nationalities are carving a space for themselves in the national political discourse. For example, revered Shan leader U Khun Htun Oo is now an elected Member of Parliament and is thus well poised to articulate the needs and desires of the Shan in a politically concrete way.

These steps are critical to any ethnic nationality group that has long sought self-determination within a future federal union of Burma. This issue is of particular importance now that the government of Burma is attempting to forge a path towards national reconciliation by brokering ceasefire negotiations with ethnic resistance groups throughout the country. Opting to choose indigenous status in this context can threaten fragile legal and political advantages, and is a reason why ethnic nationalities would choose to refer to themselves as ethnic nationalities.

Anyone not part of an ethnic nationality group would face difficulty in seeking any of these rights. A group who seeks indigenous status risks losing a coveted role as an ethnic nationality and all the related benefits, not to mention the divisions in the ethnic nationalities community it might provoke. So while many of Burma's ethnic nationalities can identify as both an ethnic nationality and indigenous, there is an overall sense that using the term ethnic nationality is the most strategic as it affords them the most amount of rights under national law.

Burma's ethnic nationalities can qualify as indigenous

The standard working definition of indigenous peoples is the one set by former UN Special Rapporteur Cobo. According to Cobo, indigenous peoples must exhibit a combination of four factors to determine indigenous status. These factors include historical continuity; commitment to preserving ethnic identity; distinct differences from the prevailing sectors of society; and formation of non-dominant sectors of society.

Descendants of a population who inhabited a region at a time of conquest or colonization and retain some of their political, social, and economic institutions is one way of exhibiting historical continuity. Burma's ethnic groups had their own system of governance that were distinct from the central Burmese government's system. These ethnic political systems lasted well into the 20th century and some vestiges are still present to this day. For example, the Chin, Kachin, Karen, Karenni, and Shan were all practicing their own feudal systems with their own respective titles, such as Ram-Uk or Duwa, until the establishment of the Union of Burma in 1948⁵³.

Some of the political systems, such as the Sawphya (prince) centered one adopted by the Karenni and Shan, had no history of paying tributes to any of the Bamar monarchs. The emergence of brutal socialist-military dictatorship led by General Ne Win in the 1960s sought to eliminate ethnic self-rule

cerned." [Constitution of the Union of the Republic of Myanmar \(2008\)](#), p.5

⁵³ "Designing Federalism in Burma," edited by David C. Williams and Lian H. Sakong, *Peaceful Coexistence: Towards Federal Union of Burma*, UNLD Press, 2005

and bring all of Burma under one party. Ethnic nationalities continue to struggle for the right to self-government and in the process, have maintained elements of their political, cultural, and economic institutions that existed long before British annexation in the late 19th century to this day.

Preserving culture has its difficulties in Burma, as ethnic groups have long been treated as second-class citizens by successive Burmese governments. Ethnic nationalities have had their linguistic and cultural diversity denigrated rather than celebrated, and are forced to choose between absorbing the mainstream Bamar culture or risk social marginalization.

Many times, there is not a choice. Ethnic nationalities have little opportunity to preserve and develop their ethnic identities. For decades, teaching ethnic languages and ethnic history has been prohibited, and social cultural development for ethnic nationalities is severely limited. Not practicing the dominant Buddhist religion is also a risky endeavor, as persecution against Chin Christian nationalities, for example, has been well documented.

Ethnic nationalities still find novel ways to articulate, protect, and develop their ethnic identity within the constraints of an oppressive and predatory state structure, showing their high level of commitment to cultural preservation. The New Mon State Party (NMSP) implemented a state-wide educational system whereby “the main objectives were to preserve and promote Mon literature...Mon culture and history, to not forget the Mon identity⁵⁴.” This is a direct response to the government educational system that is often seen by ethnic groups as assimilationist because it pushes ethnic nationalities to learn and speak Burmese as well as learn only about Burmese culture. Whether it is starting a cultural preservation institute, such as the Karen History and Culture Preservation Society, or passing on the ethnic language to the next generation, ethnic nationalities in Burma have in their own way resisted the forces of assimilation.

Lastly, Burma’s ethnic nationality groups account for about 30% of the total population and thus constitute non-dominant sectors of Burma society. The dominant ethnic group, the Bamar, comprises two thirds of the population in Burma, are Buddhist of the Theravada tradition, speak Burmese, and mainly reside in the Irrawaddy basin. They have a distinct history and cultural practice than the other ethnic nationality groups.

The Right to Participate in Law and Policy in Burma

In Burma, important decisions surrounding development projects are made behind closed doors, away from the reach of the law. Every step of the way, from preliminary planning to completion of the project, relevant discussions are normally held solely between government authorities and corporate executives. While it is accepted international standard that no decision directly affecting a community should be taken without their prior and informed consent, successive regimes in Burma, including the current Thein Sein administration, have done the exact opposite.

⁵⁴ [“Mon Nationalist Movements: insurgency, ceasefires, and political struggle,”](#) Ashley South, Mon Unity League, January 2008

Although Burma has approved a small patchwork of major international instruments that enshrine the right to free, prior, and informed consent, the majority are not legally binding. Further, it is not clear as to how the human rights standards articulated in these instruments have been incorporated into national law, if at all. For human rights standards to be effective, they must be affirmatively integrated into national law. It is worth noting that a number of international treaties specifically mandate the adoption of domestic laws as part of their implementation framework⁵⁵. More, the Vienna Declaration and Program of Action, a key declaration that outlines approaches to strengthen human rights work around the world, explicitly urges governments to incorporate international standards into national law as an effective way to safeguard and protect human rights⁵⁶.

Until there are fundamental legal protections addressing the right of local inhabitants to grant or withhold consent and the rule of law is firmly implemented, these wide gaps in the law will continue to allow state authorities and corporations across Burma to drive villagers into precarious situations without any form of protection.

National Law in Burma

The draconian legal system has not changed with Burma's transition to democracy, as evidenced by Burma's ranking in the bottom 5% of countries around the world with respect to the rule of law in every year since 2002 by the World Bank's World Governance Indicators project⁵⁷. Burma has also been labeled as having the world's worst legal system for doing business, where conflict, authoritarianism, and instability are the main political forces, according to a 2012 report by risk analysis firm Maplecroft⁵⁸. The firm goes on to refer to Burma as a nation of "extreme risk" for foreign corporations given the complete absence of legal protections⁵⁹. Burma has held this dismal distinction for the last 5 years.

Although Burma has no laws that enforce participatory decision-making, a small number of laws appear to protect the right of local inhabitants to own the land they have traditionally owned, cultivated, inhabited, or used for a period of time. These laws include the 1963 Law Safeguarding Peasants Rights, the 1963 Tenancy Law, and the Land Nationalization Act. With that said, these laws are virtually never enforced in Burma. When they are, the laws are twisted in such a way as to justify nationwide land grabs. Land ownership in general has been vague since the 1960s when the socialist regime sought to nationalize most lands. The erosion of the rule of law means land ownership depends primarily on political connections and money.

The 1963 Law Safeguarding Peasants Rights is one of the few national laws that aim to safeguard against land confiscations and forcible evictions⁶⁰. The law broadly defines a peasant as anyone who

⁵⁵ One such example is the Convention of the Rights of the Child, ratified by Burma.

⁵⁶ "[Vienna Declaration and Program of Action](#)," UN General Assembly, 12 July 1993, A/CONF.157/23

⁵⁷ [Rule of Law, The Worldwide Governance Indicators \(WGI\) project](#), The World Bank Group

⁵⁸ "[Five key business risks in Myanmar](#)," 7 February 2012, Maplecroft, referring to QI Country Risk Report

⁵⁹ "[Weak 'rule of law' in Myanmar, S Sudan, Turkmenistan, Libya, Angola and Iraq poses significant risk to oil and gas firms – new report](#)," Maplecroft, 8 March 2012

⁶⁰ "Housing, Land, and Property Rights in Burma: the current legal framework," Scott Leckie and Ezekiel Simperingham, Displacement

has worked agricultural land as their primary means of livelihood, and outlines actions that would be deemed unlawful, even if decreed by a civil court. These include confiscation of agricultural land, court orders prohibiting peasants to enter agricultural land, or the arrest or detention of a peasant in relation to the above circumstances. Whenever the government of Burma directly confiscates or enables the confiscation of agricultural land, it is blatantly in direct violation of the 1963 Peasant Rights law.

The Land Nationalization Act and 1963 Tenancy Law are both examples of legislation which were originally intended to protect villagers by ensuring they owned the land they worked on, but have since been perverted to serve the interests of corrupt government officials and corporations. The Land Nationalization Act, for example, sets out to give farmers ownership of their land in small holdings. However, subsequent amendments distorted the intended aim and now allow state authorities to drain resources from the villagers while pocketing the benefits.

In the example of the Land Nationalization Act, the perversion is largely because the government is given vague and broad powers over the use and distribution of the land. Thus, although there are basic laws that safeguard against arbitrary land confiscations and evictions, they mean nothing considering Burma's unwritten policy of selective enforcement that primarily protect the interests of government officials over the fundamental rights of Burma's people.

In 2011, the debate over land reform was brought to a peak with the submission of two proposed land laws into Parliament, the Farmland Bill and the Vacant, Fallow, and Virgin Land Management Bill. The laws have received criticism from concerned farmers and land rights activists in Burma to international heavyweights such as Joseph Stiglitz, academics at Harvard University's JFK School of Government, and UN-Habitat. The main concern is that the proposed land laws will not protect farmers from wide scale land grabs.

There are wide gaps in the proposed laws, notably, the lack of freedom of crop choice, lack of clarity of definitions, including what circumstances allow compulsory land acquisition. In its current form, the Vacant, Fallow, and Virgin Land Management Bill leaves lands that are regularly fallow susceptible to acquisition by large scale firms. The UN-Habitat raised concern that, the proposed bills "would legalise and extend many of these land acquisitions...and create a large class of rural landless," leading to acceleration in "disparities in wealth and incomes⁶¹."

Also, there has been no genuine consultation with civil society and community stakeholders during the draft legislation process. In a report after visiting Burma, the head of Land, Tenure, and Property Management at UN-Habitat, Dr. Augustinus, wrote that "successful implementation of any land bill rests on prior actions⁶²", including consultations. Farmers in Burma, not being consulted on their concerns, are instead making their voices heard, and in January 2012, a letter signed by 1,421 farmers was sent to the President⁶³. The letter outlines seven points they feel need to be addressed in the proposed land laws, such as the right to own farmland and ability to solve land conflicts through

Solutions & HLP Institute, p. 565, 2009

⁶¹ "[More warnings over land bills](#)," Thomas Kean, Myanmar Times, 20-26 February 2012, volume 31, no. 615

⁶² Same as above

⁶³ "[Farmers seek landbill changes](#)," by Ei Ei Toe Lwin, Myanmar Times, 27 February 2012

courts. Land reform is seen as critical to achieving inclusive and sustainable development as two thirds of the population is subsistence farmers.

Even if the national law was brought up to code, the prevailing un-rule of law in Burma makes the enforcement of any relevant legal safeguards and provisions exceedingly difficult. Central concepts to the rule of law, including the establishment of an independent judiciary, and ensuring no one is exempt from the law - including government officials, are distressingly absent in Burma. Secret courts and detention centers abound and local authorities continue to use bullying tactics with impunity. Aung San Suu Kyi issued a stern warning to potential investors at the May 2012 World Economic Forum when she stated, “Even the best investment laws would be of no use whatsoever if there are no courts that are clean enough and independent enough to be able to administer those laws justly. This is our problem: So far we have not been aware of any reforms on the judicial front⁶⁴.”

ASEAN policy on business and human rights

ASEAN has been embarking on overdue initiatives to remind businesses of their responsibilities to respect human rights regardless of the national laws and human rights obligations of the country they are operating in. This is important because inadequate national laws are often used as justifications for businesses to ignore human rights. With effective regulation and guidance, however, businesses can play an important role in protecting and promoting human rights in the ASEAN region.

Perhaps the most powerful initiative taken to anchor businesses in human rights law is the Bali Declaration, born out of a landmark meeting among Southeast Asian national human rights commissions and UN experts. The Bali Declaration is heavily influenced by the main theme of the meeting: that corporate compliance with human rights is a global standard and expected code of conduct, regardless of where the business enterprise operates.

Specifically, according to the Declaration, the human rights responsibility of businesses “exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights⁶⁵.” It is expected that the development of the Bali Declaration, referred to as a regional human rights standard, will address dangerous gaps between human rights governance and businesses that have arisen due to the rapid rise of emerging markets in Southeast Asia.

The Declaration focuses on ensuring the rights of ethnic nationality and local inhabitants situated near development projects are respected, while acknowledging the communities’ right to development and the positive role businesses can play in improving their situation and welfare. Both States and business enterprises have a responsibility to protect the rights of those affected by development projects, especially in regards to their right to own lands they have long inhabited, occupied, or used,

⁶⁴ [“Democracy leader cautions investors against ‘reckless optimism’ in Myanmar.”](#) Thomas Fuller, NYTimes, 1 June 2012

⁶⁵ [“Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie.”](#) Human Rights Council, Seventeenth Session, 21 March 2011

and importantly, their right to grant or deny consent to any projects that affect them.

While not legally binding, the Bali Declaration has a strong foundation in international human rights standards such as the Edinburgh Declaration, which sets a roadmap for national and international monitoring of corporate compliance with human rights law. The Declaration is also deeply rooted in the former UN Special Rapporteur John Ruggie's "Protect, Respect, and Remedy" framework, a landmark set of guidelines that is based on 3 pillars: the state's responsibility to protect against human rights abuses committed by non-state actors, such as businesses; the corporate responsibility to protect human rights; and the importance of facilitating remedies to any problems that arise, either judicial or non-judicial. This framework was unanimously adopted by the UN Human Rights Council and has already proved influential in policy reform.

A second welcome initiative is the announcement that the first thematic report by the ASEAN Intergovernmental Commission of Human Rights will focus on business and human rights. According to one of the Commissioners, the main goal of the report is to develop "an ASEAN Guideline that is fully compliant with the UN frameworks, especially the Protect, Respect, and Remedy Framework for Business and Human Rights and the Guiding Principles for Business and Human Rights⁶⁶."

It is expected that these two initiatives will raise the human rights bar for businesses seeking to operate in the ASEAN region and remind businesses they can be held accountable if they leave a negative human rights footprint. States are also liable for the conduct of businesses, and it is anticipated that these initiatives will prompt Southeast Asian states to integrate the guidelines into national law and policy. For these initiatives to have a real impact, nations need to enact domestic legal reform especially in regards to land use, ownership, acquisition and participation rights. These reforms will help developing countries meet global standards of human rights and comply with human rights obligations.

While these initiatives are welcome, their potential impact may be diluted by the overriding policy of noninterference that legally binds all ASEAN member states. Enshrined in the ASEAN charter, this policy effectively instructs member states to turn a blind eye to human rights violations as long as it remains within the country's borders. What this means is that ASEAN as a mechanism cannot be counted on to monitor corporate compliance to human rights in the region. Therefore, it is imperative that States take on the task of protecting human rights. The non-binding nature of the Bali Declaration paves the way for businesses operating on their ground to continue violating the rights of local and rural communities. To ensure this does not happen, the Declaration must be incorporated into the laws and policies of each member country.

⁶⁶ ["Building on a landmark year and thinking ahead."](#) John Ruggie, Institute for Human Rights and Business, 12 January 2012

Burma's International Obligations

Burma voted in favor of the UNDRIP and is a full member state⁶⁷ of the International Labor Organization. However, the cases illustrated in this report show a clear pattern of abuse whereby Burma continues to fall desperately short of its international commitments. The absence of legal protections that go beyond mere window dressing put Burma directly in contempt of international standards on the right to involvement and participation in issues that affect the livelihood of ethnic nationalities and indigenous peoples.

ILO Convention 169

ILO Convention 169 is the only international law that protects the rights of indigenous and tribal people to own the land they live on and make decisions about initiatives that affect them. Articles 13 - 16 of the Convention deal exclusively with land rights and, notably, emphasizes that relocation of local inhabitants is an exceptional measure to be taken only with the community's free and informed consent⁶⁸. While Convention 169 has a dismal ratification rate among member states, it must be pointed out that under the ILO Constitution, if a State does not ratify a new convention within a year, it must explain the reasons for the delay. Unlike the United Nations, the ILO views the refusal to ratify a convention as a potential human rights violation, and the ILO monitors the on-the-ground situation for all member states alike regardless of their ratification status. Therefore, even though Burma did not formally ratify Convention 169, it is still held accountable for implementing the rights outlined in the Convention and is subject to monitoring by the ILO.

UNDRIP

The only textual expression of free, prior, and informed consent is found in the UNDRIP, which Burma voted in favor of in September 2007. Article 32 requires free and informed consent prior to "the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources"⁶⁹. This declaration, while not legally binding, is cited as an international standard by other UN human rights bodies and one Supreme Court⁷⁰.

Responsibility to protect

Even though Burma has not ratified certain international instruments does not mean it can act in a manner that is inconsistent with those instruments. There are human rights standards that are so generally accepted by States worldwide that they pass into customary international law and thus

⁶⁷ The ILO lifted restrictions on Burma on 13 June 2012. Burma is now a full fledged ILO member state.

⁶⁸ Article 16-2 of the [Indigenous and Tribal Peoples Convention](#), 1989 (No. 169), adopted 27 June 1989 and entered into force 5 September 1991, International Labor Organization

⁶⁹ Article of the UNDRIP, adopted by UN General Assembly 13 September 2007, A/61/L.67 and Add.1

⁷⁰ Maia S. Campbell & S. James Anaya, The Case of the Maya Villages of Belize: Reversing the Trend of Government Neglect to Secure Indigenous Land Rights, 8 Hum. Rts. L. Rev. 377, 379 (2008).

become binding even though the State never formally ratified, accepted, or acceded to it. A clear example of this is the Convention Against Torture or the Universal Declaration of Human Rights. It is common for courts to invoke customary international law and standards as a way to inform their judicial decision making process.

Therefore, Burma still has the international responsibility to respect certain widely accepted rights even if it did not formally agree to do so. The right to self-determination, the basis for FPIC and founding principle of the movement to protect the rights of indigenous peoples and ethnic nationalities, is arguably a generally accepted human right that rises to the threshold of customary international law. Self-determination, which includes “a range of alternatives including the right to participate in the governance of the State⁷¹”, is clearly articulated in a number of major international instruments, including the ICCPR, International Covenant on Economic, Social and Cultural Rights (ICESCR), and Committee on the Elimination of Racial Discrimination (CERD). Combined with the wide ratification of the UNDRIP⁷², it is clear that Burma can and must be held accountable to ensure communities meaningfully participate in decisions that affect them.

⁷¹ Erica-Irene A. Daes, Special Rapporteur on the Rights of Indigenous Peoples, Prevention of Discrimination and Protection of Indigenous Peoples: Indigenous Peoples' Permanent Sovereignty over Natural Resources: Final Report of the Special Rapporteur, United Nations, U.N. Doc. E/CN.4/2004/30, at 17 (2004).

⁷² 144 states voted in favor of the UNDRIP

Section 2

The Data Behind the Discrimination

The findings presented here reveal an entrenched and disturbing trend of aggressive intimidation by project authorities, and active suppression of project-related information: Close to 90% of those surveyed did not receive any information about the development project before it was started by a decision maker.

These findings suggest that Burma's diverse populations cannot reap the benefits of development without their free, prior, and informed consent.

Key Findings

Researchers from 9 organizations, organized and trained by CORE collected the information for this report during April and May 2012. Each organization was asked to gather 30 interviews using random sampling.

Overall, 261 interviews were conducted across 7 states and 1 division, involved 10 ethnic nationality groups and 9 development projects. Areas chosen for sampling were those affected by development projects and include Kachin State, Karen State, Shan State, Chin State, Arakan State, and Karenni State. Structured interviews were conducted in villages and towns in order to collect a variety of data associated with free, prior, and informed consent in the context of development projects.

The report found:

- Close to 90% of those surveyed did not receive any information about the development project before it was started by a decision maker. In all but 2 sites, not one person was given any information.
- Less than 1% said a project decision maker held a public forum where local community could attend.
- About 80% did not know who to contact or where to go to find out more information about the project. In 3 sites, the figure soared to 100%.
- Less than 2% felt they would not be punished if they sought information about the project.
- Close to half (44.1%) felt unsafe seeking further information about the project, while 45.2% were not sure whether it was safe or unsafe.
- Only 0.8% said a public forum by decision makers took place where affected locals were able to attend.
- 60.8% said they made a suggestion to a decision maker on the project but were ignored and 35.4% said they never made any suggestion to anyone.
- 9.6% said community based organizations provided information before a project started while 25.2% said such organizations provided information after a project was underway or finished.

Data conclusion

With the Confidence interval of 6.07 and a Confidence Level of 95% we can conclude from the descriptive statistics that the people of Burma are not receiving free, prior, and informed consent on industrial and infrastructure development projects that directly affect them and their communities. The problems seen in our sample population is clear and suggests that these problems must be massively widespread and affect tens of millions of people.

Sittwe Seaport followed the most acceptable project as far as free, prior, and informed consent goes. While this project is starting to achieve free, prior and informed consent, they still miss the goal by a lot.

To play a legitimate role in decision-making, villagers need to be consulted before any development project is started and every stage along the way should they have any concerns. Any fears or grievances locals may have are to be addressed in an appropriate and comprehensive manner, and their concerns are to have an impact on the course of the development project for FPIC to have any real meaning.

The findings presented here reveal an entrenched and disturbing trend of aggressive intimidation by project authorities, and active suppression of project-related information. These findings suggest that Burma's diverse populations cannot reap the benefits of development without their free, prior, and informed consent.

Section 3

Ethnic Exclusion: The Documentation

responsibility, a career development project, and environmental restoration project⁷⁵. This commitment has yet to be reflected on the ground.

Current stakeholders

Company	Country	Percent Share of revenue
Italian-Thai Development	Italy and Thailand	75%
Myanmar Port of Authority	Burma	25%

Costs

\$58 billion dollars. The framework concessionary agreement is worth \$13.4 billion.

Profits

While the amount of generated income from this project is unclear, it is expected to increase the Thai GDP by 1.9%.

Key Findings

- No one was provided information about the project before it started by decision makers.

⁷⁵ ["Environmental and Social Impact Concerns for Dawei Project,"](#) Dawei Development Company Limited official website, accessed 17 July 2012

"We, the people of Burma, were kept completely in the dark about what was in the contracts, about what was going on.

This is very dangerous for a country. It endangers national reconciliation. It engenders more and more suspicion and mistrust."

Aung San Suu Kyi referring to the Dawei Deep Seaport
World Economic Forum in Bangkok⁷³

Dawei Deep Seaport, Tenasserim Division

"We don't know anything. Only the Thai construction workers arrived near our village and they asked us to sell vegetables to them. Then, we know they came here to construct the roads and search for a route. We cannot communicate with them and later they brought one translator. Later on, they came with big machines."

Affected local from Mu Du village⁷⁴

Brief background

In November 2010 the Myanmar Port of Authority signed a deal with Italian-Thai Development (ITD) to develop a special economic zone (SEZ) in Dawei, Tenasserim Division that would include a deep seaport, a gas pipeline to Thailand, commercial and real estate developments, and an industrial zone with rail and road infrastructure links to Vietnam, Cambodia, and Thailand. The project is to take place in largely Karen areas that are controlled by the armed resistance group Karen National Union (KNU).

SEZs are often heralded as a primary catalyst for economic growth and regional development among ASEAN countries, and for underpinning the dramatic economic rise of China and other East Asian countries. Burma is now following in ASEAN's footsteps with plans to construct Burma's first SEZ in Dawei Township. The project is expected to be completed in 10 years.

Both the government of Burma and ITD authorities have publicly emphasized their commitment to having an inclusive decision-making process, protecting the local ecosystem and improving the living standards of surrounding ethnic nationalities. According to the official website for the Dawei project, this is to be done by implementing an environmental and social project bounded by corporate social

⁷³ ["Myanmar Dissident Cautions Perspective Investors,"](#) NYTimes, 2 June 2012

⁷⁴ ["No Rights to Know,"](#) Dawei Project Watch, p.14

- Even though community organizations provided information about the project afterwards, 24% still fear punishment if they try to seek further information.
- Close to half, 43.3% of those surveyed, have already been negatively impacted by the project.

Negative impacts

Emerging reports show that local villagers are under constant duress due to the societal and environmental impacts the Dawei mega-project will bring, such as where they will be relocated, if they will receive any jobs, what are the compensation benefits, if any, and whether their crops will also be taken⁷⁶.

Minimal genuine inclusion in the decision-making process

Construction began on the project without any prior consultations or investigations into how the Dawei project would adversely impact the economic and social livelihood of surrounding areas.

In December 2011, the KNU blocked access to the ITD construction road in an effort to force the ITD to carry out an environmental and social impact assessment to address the villagers' concerns. The first impact assessment, carried out in February and March 2012 by a team from the Thai Chulalongkorn Environmental Research Institute, was a major disappointment to villagers, as only the project's benefits were emphasized and there was no mention of any potential negative impacts. Basic major concerns were not addressed, including what projects will even be associated with Dawei, showing that a lack of transparency is yet another hurdle for the villagers to overcome in their struggle for justice. When villagers asked impact assessment authorities as to how the large scale construction of roads and clearing of vast tracts of land will affect their rivers, the authorities claimed they did not know the answers to such questions. Fed up villagers left the meeting early and did not bother to fill out the forms provided by the surveyors⁷⁷.

The overwhelming disappointment of the first survey, plus strong-arming from the KNU, has prompted agreements from ITD that they will do a more comprehensive analysis. However, villagers are not allowed to accompany the conductors on their assessment, again undermining legitimacy of the assessments.

Villagers forced to pay for road construction

Representatives of the ITD demanded villagers along the Dawei-Kanchanaburi highway to pay for diesel fuel as compensation for building the road. The inhabitants of 9 villages are expected to pay 8,000,000 kyats, the equivalent of approximately \$8,000 dollars, for 60 barrels of diesel fuel. The villagers, hard pressed to collect such a large sum, are now being forced into selling their collective year's harvest of betel nut, their main and largely only source of income⁷⁸.

⁷⁶ "[Locals under stress when SIA unveils on Dawei Deep Seaport Project](#)," by Nilar, Eleven Media Group, accessed 17 July 2012

⁷⁷ "[Dawei Development: Environmental Impact Assessment team a major concern for villagers](#)," Karen News, 23 February 2012

⁷⁸ "[Villagers accuse Burma Army and government officials of extortion](#)," Karen News, 10 June 2012

Forced evictions and no fair compensation for land

Since January 2011, local authorities from the previous SPDC military government have been drawing up lists of the names of local villagers whose houses, businesses, plantations and paddy fields are located within the boundaries of the Dawei project. According to a report released by Dawei Project Watch (DPW), a group of concerned local activists who have been observing implementation of the Dawei project, approximately 8,000 acres of paddy fields, 10,000 acres of rubber plantations, 12,000 to 14,000 acres of cashew-nut plantations, and over 150,000 acres of orchid plantations will be confiscated by authorities from the ITD and Dawei Special Economic Zone. It is predicted that 21 communities will lose all of their property. As of July 2012, DPW reported that houses will be removed in 9 communities due to proximity to road reconstruction sites⁷⁹. More, the Dawei SEZ is slated to encompass 204.5 square kilometers⁸⁰, affecting 30,000 people. This includes 21 primary schools, 23 Buddhist temples, and a nationally revered pagoda with Buddha's footprint in the village of Nabule.

Villagers are being threatened into signing unfair contracts that allow for their lands to be sold at drastically low prices – sometimes tens of millions of kyats less than the lands' value. These lands, which include cashew and coconut plantations, are a source of sustenance and economic survival for the inhabitants of Mindat village in Yebyu Township. One villager said, "Even if the authorities give compensation, we cannot depend on the compensation for our whole life. We cannot give the compensation to our next generations as inheritances. We don't want to move⁸¹."

Most recently, ITD signed an agreement saying that all those affected will be compensated for their land. However, the compensations have so far been drastically uneven. According to local activists, residents on the east side of the Dawei River received 300,000 kyat for one rubber tree, but those on the west of bank of Dawei River only received 150,000 kyats⁸².

Concern that Dawei will be another Map Tha Phut

There is grave concern that the Dawei industrial zone, which is to include a huge petrochemical complex similar to the Map Tha Phut plant in Thailand's Rayong province, will have the same fatal and devastating long-term impact. The Map Tha Phut project is Thailand's largest industrial port and the world's 8th largest petrochemical complex.

In 2003, the Thailand National Cancer Institute found that "rates of cervical, bladder, breast, liver, nasal, stomach, throat and blood cancers were highest in Rayong Province, where Map Ta Phut and other industrial zones are located." Another study in 2007 showed that communities near Map Tha Phut "had 65 percent higher levels of genetic damage to blood cells than people in the same province who lived in rural areas." This cell damage is a possible precursor to cancer, and was 120% higher in

⁷⁹ These include Kamyaingswe, Mudoo, Htaingyi, Mudoo Ngae (Western Mudoo), Pan Tin Inn, Bagaw Soon, Yalai, Paradat and Kyakhatabin Inn according to DPW.

⁸⁰ Information from Dawei Development Association

⁸¹ Same as above.

⁸² "[Conference and photography exhibit highlight dangers of Dawei Seaport](#)," Kaowao Newsgroup, 27 July 2012

refinery workers than for rural villagers of Rayong Province⁸³⁸⁴.

The Dawei project in Burma is slated to be 10 times bigger than the industrial estate in Map Tha Phut, and there is a serious concern that the same industries who have been operating recklessly in Map ThaPhut, might relocate in Dawei, given that Dawei has been dubbed the “new global gateway of Indo-China” and is hoped to be Southeast Asia’s largest industrial complex⁸⁵. In order to protect the health of locals residing near Dawei, the environment, and ensure the project benefits nearby communities, not just financial investors and corporations, there needs to be genuine communication with community stakeholders and a transparent and comprehensive environmental and social impact assessment. This is essential in preventing Dawei from becoming a fatal disaster like Map ThaPhut.

Testimony: “It is difficult for us to survive”

Hla Hla Thein, A victim of the forthcoming forced eviction details how their move will have a devastating impact on their livelihoods:

“We will be forced to move and live in a new place that the authority gave us on the mountain. It is really difficult for us to survive there as we are depending on our gardens and farms.”

Hla Hla Thein goes on to describe how the lack of an inclusive decision making process combined with false promises has engendered mistrust and suspicion in the affected community. A project representative only met with one resident in secret, a grievous warping of FPIC standards:

“There was no information for us before the project started. The authority that is responsible for this project came and had a meeting with one resident. They promised and decided by themselves how much compensation would be given to the persons who lost their lands. And they asked owners to sign a document that stated all land-owners agree to construction and the amount of payment even though we were never consulted. But they didn’t say any thing about when will they [project authorities] come back and pay for the damages.”

Meager benefits fall short for affected rights-holder Bo Phyu, and are not an appropriate substitute for FPIC, who says:

⁸³ All quotes and statistical information for this paragraph taken from: “[Map Tha Phut: Thailand’s Minamata?](#),” HURIGHTS Osaka, Focus, June 2012, Vol. 68

⁸⁴ In May 2012, sections of the Map Tha Phut plant exploded, claiming 12 lives and injuring 129. The disaster sparked a chemical leak, forcing nearby villagers to evacuate. The toxic leak also triggered asthma attacks in at least 125 villagers. This catastrophe is the latest in a string of fatal chemical mishaps at Map Tha Phut: according to Pollution Control Department’s data since 2009, there have been at least 25 chemical related accidents, including illegal dumping of chemical wastes, resulting in the death of 3 and injuries of 187. For further reference: “[Map Tha Phut needs to earn public confidence](#),” by Achara Deboonmee, The Nation, 8 May 2012

⁸⁵ “[Map Tha Phut: Thailand’s Minamata?](#),” HURIGHTS Osaka, Focus, June 2012, Vol. 68

"Some villagers are happy that they will get a job but some people like us are not sure and worry for our future. We don't want to move from our native land because we have been living here so long. Whatever, they should have told us before the project so they can see what development our community needs."

Economic Industry in Pa'an, Karen State

"We are aiming to create job opportunities for local people here in their own region, which means they will be able to stay with their families. On the other hand, we are aiming to bring economic opportunities as well."

- U Zaw Min, the Chief Minister of Karen State at the Pa'an economic industry inauguration ceremony⁸⁶

Brief Background

In October 2005, it was announced that an economic and trade zone would be set up in Pa'an, Karen State. The zone is the first of 3 industrial zones that are to be bilaterally implemented by Thailand and Burma. Though there are no publicly available figures on the costs or profits of the project, both countries expect to reap long-term economic and social benefits from this initiative.

The establishment of the Pa'an economic and trade zone constitutes part of an economic cooperation strategy (ECS) program agreed upon at a summit attended by Laos, Cambodia, Burma, and Thailand. The summit was held in Bagan, Burma in November 2003. According to press reports of the Bagan meeting, "the five-country economic cooperation is aimed at fully harness[ing] their huge economic potential to promote spontaneous and sustainable economic development by transforming the border areas of these countries into zones of durable peace and stability as well as economic growth⁸⁷". The economic industry in Pa'an is thus part and parcel of a larger vision to create trading centers with many ASEAN member states. According to U Zaw Min, the Chief Minister of Karen State, "This industrial zone will not only be connected to East and Southeast Asia but South Asia as well⁸⁸." Reportedly 9,766 acres of land in Pa'an have been allocated for this project⁸⁹.

The Pa'an economic and trade zone is still inviting investors. It is reported that Thai businesses are looking to run enterprises in foodstuff such as soft drinks, consumer goods, and manufacturing of industrial raw goods such as cement.

For Burma, it is believed benefits from the Pa'an zone will include job creation; access to new technologies; and profits from taxes levied on factories and businesses within the zone. Thailand is set to

⁸⁶ ["Kayin Chief Minister opens Hpa-an IZ."](#) by Juliet Shwe Gaung, Myanmar Times, Vol. 31, No. 605, December 12-18, 2011

⁸⁷ ["Industrial zones in Burma and Burmese labour in Thailand."](#) by Guy Lubeigt, chapter 8 of "The State, community, and the environment," published October 2007 by Asia Pacific Press

⁸⁸ ["Kayin Chief Minister opens Hpa-an IZ."](#) by Juliet Shwe Gaung, Myanmar Times, Vol. 31, No. 605, December 12-18, 2011

⁸⁹ ["Myanmar stresses establishment of industrial zone."](#) Xinhua, 21 December 2011

benefit from profitable conditions if Thai factories relocate to Pa'an, including a potential low-paid workforce and access to new markets such as Burma, China, and India⁹⁰. Although there is much to be gained financially from the Pa'an zone, the same cannot be said for those who live in the vicinity of the project.

Current Stakeholders

Thailand and Burma are jointly implementing the project. There has been aggressive invitation of foreign investment that is still underway. It has been reported that the Thai-based Siam Cement Group is planning to establish factories in the Pa'an zone.

Costs

Unknown. However, Thai-Burma bilateral trade jumped 98% from 2009-2010 to 2010-2011, where it reached \$3.614 billion dollars making Thailand Burma's 2nd largest foreign investor.

Profits

Unknown, however expected benefits have been outlined above.

Key Findings

- Only 20% of affected locals knew where to go to voice concerns about the project.
- No one felt safe in seeking further information about the project, with half fearing punishment.
- No community based organization provided information about the economic zone.
- 80% have felt negative impacts from the project, and the remaining 20% were unsure whether the impacts were positive or negative.



Special economic zone in Pa'an. Photo: CORE

Negative Impacts

There is very little reported on the Pa'an industrial zone. Any reports in the media are, unsurprisingly, overwhelmingly positive. This may have to do with the absence of any community organizations working in the Pa'an area to advocate on behalf of the affected community and provide a voice that

⁹⁰ [Industrial zones in Burma and Burmese labour in Thailand](#)," by Guy Lubeigt, chapter 8 of "The State, community, and the environment," published October 2007 by Asia Pacific Press

have been negatively impacted by the project. If the human rights abuses that accompany the construction of previous industrial zones are any indicator, then we can assume that the villagers around the Pa'an area have experienced some level of abuse, including forced relocation, land confiscations with inadequate compensation, and forced labor. The testimony of an affected resident, shown below, reveals that some villagers have had their lands confiscated and authorities harass locals.

Chief Minister of Karen State U Zaw Min claimed that Pa'an residents had thrown their support behind the project. A glance at this report's key findings shows that this statement is patently false, as not one person interviewed has perceived any positive impacts from the Pa'an Zone. Also, since there was no community forum that discussed the project, it is unclear who Chief Minister U Zaw Min is referring to. Project officials also claim the project will "encourage young people" to stay in the Pa'an area rather than crossing into Thailand to look for jobs⁹¹. However, this positive outlook was nowhere to be seen in our findings.

Testimony: "Authorities harass villagers"

The testimony of Soe Kywe, a villager affected by the Pa'an zone, sheds valuable light on how the Pa'an Zone falls into the same pattern of abuse:

"Our lands were confiscated in the past and it still continues to happen. So I wanted to demand the authorities to stop the land confiscation and let the local people to be involved in any decision for development project in our area. They should consider what we, the local people, are asking for."

In addition to land confiscations and denying villagers their right to participation rights, the villager explains how civil and political rights are also denied as demonstrations against the industry zone are not allowed:

"The public demonstrations do not happen because authorities harass villagers. I was interrogated once and shut from speaking out about this project because I organized the villagers to participate in demonstrations to be able to stop this industry zone."

Upper Paunglaung Dam in Pin Laung Township, Southern Shan State

"The forced relocation will leave villagers [of Paunglaung area] destitute: each household must tear down their home and abandon their farm fields, receiving in return just US\$50 in compensation. Security for the dam project has led to increased militarization and abuse of local populations while workers constructing the dam are toiling night and day for a mere US\$30 per month."

⁹¹ ["Hpa-An Project Aims to Halt Worker Exodus."](#) Juliet Shwe Gaung, Myanmar Times, 19-25 December 2011

from the report *Ordered Out: The costs of building Burma's Upper Paunglaung Dam* by Kayan New Generation Youth⁹²

Brief Background

The Upper Paunglaung Dam project was proposed to supply power to Naypyidaw, Burma's capital. The dam is to be situated along the Paunglaung River in southwestern Shan State, just 50km from Naypyidaw. The dam's reservoir will be approximately 60 square km, generating fears that those living in surrounding areas, numbering close to 8,000, will be flooded out of their homes.

The project started in 2004 and consists of two dams, an Upper and Lower Paunglaung Dam. The Lower Paunglaung Dam has been completed and is currently in operation. The Upper Dam is under construction and is expected to be completed by 2015, over 7 years later than was originally expected. Naypyidaw is slated to start receiving hydropower electricity from the Upper Dam by 2015.

Contrary to the World Commission on Dam's recommendation that local communities be the first to benefit from dam projects, and that their living standards should not only be maintained but improved, the Paunglaung Dam has driven local villagers to poverty and has been accompanied by human rights abuses. In addition, the affected communities do not stand to benefit from the power generated by the dams as electricity from both dams are to be sent to Naypyidaw. Villagers do not hold any illusions about receiving any electricity once the upper dam is completed.

In August 2012, local youth activists pressed their local Parliamentary representative to raise their concerns about the impact of the Paunglaung Dam on their livelihoods in a parliamentary proceeding. Burma's Minister of Electric Power responded to these concerns by stating that the government will provide compensation of homes lost according to their current value, provide electricity, build roads, and aid in the resettlement process. However, no specific details were given about how the actions would be implemented or a timetable. The Paunglaung area remains under heightened security.

Current Stakeholders

Company	Country	Responsibility
AF-Colenco	Switzerland	Feasibility study (2004); design (2006); Construction design of civil works (2008); ongoing supervision
Malcolm Dunstan and Association	Great Britain	Review of dam development
Yunnan Machinery and Export Company (YMEC)	China	Provide machinery and equipment under an \$80 million dollar contract

⁹² ["Ordered Out: The costs of building Burma's Upper Paunglaung Dam,"](#) by Kayan New Generation Youth, p.1, May 2011

China Exim Bank	China	Provided a loan over \$120 million dollars to build the Lower Paunglaung Hydropower Station
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Financial Investment

Investment in Lower Paunglaung Dam amounted to approximately \$300 million dollars. China Exim Bank provided a loan of over \$120 million, and YMEC provided machinery and equipment under a \$160 million dollar contract for the lower dam. YMEC has also agreed to provide machinery and equipment for the Upper Paunglaung Dam under an \$80 million dollar contract.

Therefore, a total of at least \$560 million dollars have been invested into the Paunglaung Dam⁹³.

Key Findings

- No one knew who to contact to voice concerns or seek further information about the dam.
- No information was provided before the project was started by decision makers, and there was no public forum about the dam.
- Everyone felt negative impacts from the dam, and not one person noticed any positive impacts.

Negative Impacts

Forcible relocation with inadequate compensation

Close to 8,000 villagers living in vicinity of the proposed dam and reservoir were given a deadline of October 2011 to move from their houses. They were given the equivalent of \$50 dollars as compensation, described by one villager as an “insult.” One affected villager said “\$50 dollars is nothing for us. Don’t say it will help us rebuild our house and plant new fields, it is not even enough to remove my current house.”

Those who will be evicted from their homes will be hard pressed to find a suitable place to live, as the majority of the communities rely on agriculture as their main economic activity. However the dam will destroy the local agricultural economy. Local residents are expected to be relocated in June 2013.

Forced Labor

In late 2006, nearby villagers were ordered by Battalion 606 to build military camps for the security of Naypyidaw. Until now they are forced to bring supplies and regularly clear the areas around the camps without compensation.

⁹³ Information on financial investments found at above source.

Increased security and forced taxation

Once the project is finished, the dam site and reservoir area will be demarcated as Naypyidaw. As a consequence, the area is very restricted. Villagers were forced to build security posts for Burma soldiers and each household must now pay the equivalent of \$1 dollar per month as a “security fee.”

No outside groups are allowed in the village. World Food Program was barred entrance in 2007, and villagers believe it is linked to the dam project.

Villagers must alert security forces of any outside guests at their houses. If not, the guest must pay the equivalent of \$50 dollars, and the house owner must pay \$100 as a fine.

Local environment showing signs of deterioration

Since the beginning of the dam project, the flooding in the local area has worsened steadily each year. Since 2009, there has been a marked increase in deforestation in the project area, especially near HintarKone village.

Testimony: “I knew nothing about this project”

One affected resident, Phoe Kyaw, expressed frustration that his village was not consulted on the proposed dam:

“The authority doesn’t emphasize what we told them. The head of village has to agree what they did as well. We want them to consult with the residents before starting this project.”

Aung Khaing Min echoed a similar refrain and went on to explain the hardships villagers have had to endure as a result of the dams, which include forced relocation with inadequate compensation and loss of farmlands:

“I knew nothing about this project. The head of village told us we have to move our village for the government construction. They gave us a little amount of money to move our places. Some have to stop working with their farms, hillside cultivations and gardens because the construction is too close. Even though they seize our lands we expect nothing from them. The construction is nearly finished. If possible, we want all villages to get electricity.”

Kadaik Dam Project in Mon State

Kadaik Dam bringing regional development to Mon State:

Thanks to Kadaik Dam, the agricultural production is increasing as the farmers in the region enable to grow their farms in all seasons with their utmost effort.

Excerpt from an article glorifying Kadaik Dam from the government backed New Light of Myanmar⁹⁴

Brief Background⁹⁵

Towards the end of 2001, the State Peace and Development Council (SPDC) began confiscating lands in order to build a dam in Paung Township in western Mon State. The motivation behind the dam, located in Kadaik community, was to facilitate the growing of rice in the summer season. Rice is usually grown in the rainy season, and the only way to cultivate it in the summer is to facilitate irrigation with the construction of a dam. This extra rice season is against the will of the people, who claim the project was forced upon them by the then-ruling military regime. The Kadaik Dam is a government project that is part of a larger national development plan for the country of Burma.

government project that is part of a larger national development plan for the country of Burma.

In 1962 General Ne Win imposed a “two crops” policy as a way to spur rice production throughout Burma. Over 40 years later, the policy became mandatory in parts of Mon State, forcing all farmers to cultivate rice in the summer season. However, the “two crops” policy has proven to be a major disaster, with thin profit margins and long-term losses far outweighing any financial gains.

Construction on the dam began in November 2001 and finished in April 2007. According to the Minister of Agriculture and Irrigation, Major General HtayOo, Kadaik Dam is 5,200 feet long, 134 feet high, and can

store over 56,000 acres of water⁹⁶. He went on to explicitly state the purpose of the dam is to irrigate a summer rice project and for the “development of the local community.” However, documented evidence show this project was forcibly imposed upon the Kadaik community without any input and has devastated the surrounding area, environmentally, socially, and economically.

Current Stakeholders

Company	Country	Responsibility
Construction Group 6, Irrigation Department, Ministry of Agriculture and Irrigation – Paung Township	Burma	Full responsibility for construction of the dam.

⁹⁴ “Kadaik dam bringing development to Mon State,” New Light of Myanmar, p.1 and 7, Vol. XVII, Number 282, 23 January 2010

⁹⁵ Unless otherwise noted, information is taken from section “[From Grassroots to Global:Voices from Burma on Earth Rights Abuses](#),” pp.110-124, Earth Rights International, 2009

⁹⁶ Above ERI report p. 112



Villagers in Kayan area.

Costs of the Project

The construction of the dam cost at least 7 million kyats.

Key Findings

- No one knew who to contact or where to go to inquire further about the project.
- No one was provided information about the project before it started.
- There was no public forum where rights holders could express their concerns or have a say in the project.

Negative Impacts

Even though construction of the dam finished in 2007, land confiscations and forcible evictions by government authorities continue. In addition, the driving force behind the construction of the dam essentially amounts to setting up a platform for forced labor as the Kadaik community is expected to work another rice season against their will.

Although the dam is relatively small compared to other projects in this report, the negative impact it has had on the surrounding community has been similar. They include:

Land confiscations

The government confiscated a large amount of land from the people to build the dam, and it is estimated that at least 190 acres of farmland, the equivalent of 200 football fields, were confiscated for making canals in order to irrigate water from the dam to farmlands. No one received prior notification or compensation for lost land. This has had a disastrous impact on the community, as the majority of individuals in Kadaik are farmers and gardeners who depend on the land for their livelihood.

Those who claim their land has been confiscated are threatened with imprisonment.

Forced labor

That the Kadaik community is being ordered to work an extra artificial season to harvest rice, against their will, by government authorities or face punishment, is tantamount to forced labor.

Locals driven to poverty

Summer rice harvesting is risky and costly. Farmers must invest all profits made in rainy season that has resulted in huge losses and a seemingly inescapable debt cycle. According to an affected farmer, “The people do not want to grow rice in the summer, but they have to, even if they know they are

going to lose most of their investment⁹⁷.”

Testimonies: “We feel like we lost”

ZawZawAung, a farmer from the ChaungPyar area of Kadaik village, explains the ripple effect the dam project has on the lives of the villagers, affecting their livelihood and in some circumstances, breaking down the family fabric as locals were pushed to find economic opportunities outside Kadaik:

“When the Kadaik dam project first started, over 30 households were relocated. Homes, yards, and farms were confiscated just for this dam. We, myself and other villagers, faced a lot of hardship and struggled for our livelihood because we did not get any compensation for our lost properties. Some of us were separated from our families as we had to find new jobs in other places or countries.

Moreover, the locals were banned from doing any farming near the project area. Some people were dissatisfied with this ban and spent a lot of money to try and unsuccessfully get their farms back. The one good thing from the Kadaik Dam is they (government) repaired the road and it is good for the local people for transportation.”

Government representatives were hostile towards the villagers and left them completely in the dark about what was taking place on their lands, as explained by U KyawKyaw, a farmer from Jonhaw village:

“The government came, measured the land, and set up the flags but said nothing to us as to what they are going to do on the land. The government authorities said, “this is government land, so no one dare ask anything.” They ordered us local people to harvest their paddy fields. Then, they left. The villagers still did not know anything about what they were going to do on the lands they measured. Only when they returned to build irrigations did we know.

First, we consoled ourselves about our lost land by telling ourselves we will get water for months of the year and can grow rice twice a year. But, even though we grow rice twice a year, we lose a lot of our money. We are also forced to grow paddy in the summer season. Some of us villagers felt upset and sold our fields. We feel like we lost.”

⁹⁷ ERI report p. 116

Myitsone Dam in Kachin State

"We are stuck here [relocation camp] with nothing to do. I am a farmer without land."

Kachin local forced to live in a permanent relocation camp⁹⁸

Brief Background⁹⁹

The planned construction of the 152-meter tall Myitsone Dam is the first of 7 anticipated dams that are to be built along the Irrawaddy River, one of Asia's great river systems. The dam is estimated to generate 6,000 megawatts of power, 90% of which will be transported to China as part of China's West to East Power Transmission Policy. The power generated from the Myitsone Dam will amount to an estimated \$500 million dollars per year.

A Memorandum of Understanding for the Myitsone Dam, including the other dams situated along the Maykha and Mlikha Valleys, was signed in December 2006 by the Ministry for Electric Power No. 1 of Burma and the China Power Investment Corporation (CPIC). The Myitsone Dam is part of a larger goal by the government of Burma to harness hydropower throughout the country and export it to neighboring countries at a great profit. While the government stands to make enormous revenues from these joint initiatives, the people of Burma, who were not involved in the decision making process, are forced to bear the costs.

The proposed area for the Myitsone Dam, which has been dubbed one of the world's eight "hottest hotspots for biodiversity"¹⁰⁰ and a global conservation priority, is expected to flood an area the size of Singapore and force 20,000 from 47 villages to relocate, losing their livelihoods and exacerbating problems in the area.

On September 30, 2011, President Thein Sein announced the suspension of the Myitsone Dam as a "reflection of the will of the people," much to the surprise of thousands of activists who have struggled for years to bring an end to the Myitsone Dam. Although this news was roundly celebrated across the globe and hailed as a symbol of progressive reform in Burma, construction equipment and worker housing remain at the Myitsone Dam site, so work can resume at a moment's notice. Relocated villagers still cannot go home. According to a statement released by Kachin Development Networking Group in March 2012, public school buildings and orange orchards were destroyed in Tangphre to discourage people from returning home¹⁰¹.

Current Stakeholders

⁹⁸ ["The Kachin: Washed away by the Myitsone Dam,"](#) by Jason Motlaugh, Pulitzer Center, 9 July 2012

⁹⁹ Unless otherwise noted, information on Myitsone was taken from AKSYU report "[Damming the Irrawaddy](#)" and "[Lessons from the Kachin Development Experience](#)" by Kachin Development Networking Group, 2012

¹⁰⁰ "[Irrawaddy/N'Mai/Mali Dams](#)," Burma Rivers Network, 2012

¹⁰¹ "[Myitsone Dam Continues: Kachin NGO](#)," Irrawaddy, 5 March 2012

Company	Country	Responsibility
Ministry of Electric Power (1)	Burma	Generating power
China Power Investment Corporation	China	Project Manager of the “Confluence Region Hydropower Projects;” designing outlines for a master plan of the whole river basin; construction of the Myitsone and Chibwe hydropower stations.



An undammed river in Kachin State

Costs

It is estimated that the costs for constructing the Myitsone Dam will amount to \$3.6 billion dollars.

Project Revenue

The potential revenue generated by the Myitsone Dam is between \$558 million and \$597 million dollars per year.

Due to lack of transparency, it is difficult to calculate profits and the stakeholders’ share of those profits. This depends on a number of factors, including maintenance and operational fees, payments made under concessionary agreements, etc.

Key Findings

- No one knew who to contact or where to go to find more information about Myitsone Dam.
- No one was provided information by decision makers about the proposed dam before the project was started.
- 40% of those surveyed do not feel safe seeking further information about the project, and 60% were not sure whether it was safe or not. Close to half, 43%, fear punishment if they do.
- 30% received information about the dam project from a community based organization after the project was already underway.
- Everyone has felt negative impacts from the project, no one claimed to have noticed any positive impacts.

Negative Impacts

Forced displacement

Once the reservoir begins to be filled up, everyone living below the water level will be forced to move. This is expected to affect 60 villages inhabited by 15,000 villagers. Already there have been many accounts of villagers brought to relocation camps with appalling living conditions.

Loss of livelihood

The large-scale flooding set to occur by the Myitsone Dam will result in the submersion of villages, reduced farm land, loss of forests, and inundation of transportation routes among many other things.

The majority of those living near the Myitsone Dam depend on nature for their economic livelihood – nature that is slated to be destroyed with the construction of the dam. This includes harvesting herbs and flowers used as natural medicines to be sold in local markets; farming along the fertile river banks – set to be inundated by the dam; and fishing, as the proposed dam is set to block migration of the local fish and lead to the extinction of some species.

Cultural heritage sites submerged by floods and ruined

These include historical churches, temples and a sacred banyan tree.

The Myitsone confluence area is of great cultural significance to the shared Kachin history. If it is ruined, it will negatively impact the cultural survival of the Kachin people, and a place that is often celebrated will be lost to future generations.

Increased militarization

In September 2006, Light Infantry Battalion 29 with an estimated 50 soldiers relocated to north Myitkyina, approximately 20 miles from the Myitsone Dam site. Over 50 households that lived in the area were forced to evacuate with no compensation.

Increased vulnerability to trafficking

A Kachin NGO, KWAT, has documented in its report *Driven Away* how women dispossessed by development projects often leave women vulnerable to trafficking¹⁰². This grim pattern is unfortunately all too common in Kachin State: women searching for work are lured into dubious jobs that lead to sex work, drug trafficking, or sold as wives over the Chinese border.

Testimonies: Villagers forced to live in relocation camps

Villagers living in areas near the Myitsone Dam have not only been forced out of their homes, but also forced to live in shelters where conditions are appallingly substandard. Both the government of

¹⁰² [“Driven Away: Trafficking of Kachin Women Among the China-Burma Border,”](#) KWAT, 2005

Burma and the Asia World Company are responsible for setting up these shelters that have more in common with a refugee camp than the villager's homeland. These testimonies provide a glimpse into what life is like into the Aung Myin Tha temporary shelter.

One family was forced to move from their native Myitsone to the permanent relocation camp called Aung Myin Tha:

"The obligators from Asia World Company, the head of villagers and fire-brigade leaders had meeting with local people to draw the lots of houses number and they forced us to move to the number that we got. Even though they gave compensation for damages it is not enough for my family. The houses were



Check Point at the gate of Aung Min Tha village

built with bamboos so it is not strong enough to protect against the weather. The area that we got is too narrow and we can't cultivate anything on it. We used to live in a place that supports us for daily life but now we are facing the problem with not enough food. Water here is not good for health as well. People have often suffered from diarrhea and malaria. There is a clinic in this camp. It hasn't got enough not only equipment and medicines but also it cost a lot for patients. We can't support our children to go to the school that the government opened in this camp.

villagers who went back were arrested and threatened by authority. We don't know how to keep on our lives in this camp."

Because of this situation we want to go back to the place where we used to live but the

Ma Yee Nge is a widow with five children who was also forced to move into the Aung Myin Tha relocation camp. Her family was dependant on panning for gold and hillside cultivation in Tan Hpe Village. Before the construction started her lands were confiscated by local authorities and the Asia World company. Even though she didn't want to move, the head of village and authority often came and threatened her to relocate to the camp.

"In this new village we only got one year support from Asia World company. We don't know what to do because there are no places for agriculture. That is why every one wants to go back to Tan Hpe Village."

Teddim-Rih¹⁰³ Road in Chin State

"The government officials come and go only for the opening ceremony of the road. They make a lot of promises and never keep them. Therefore, we, the local people, have got to rely on ourselves and work together."

Community leader referring to the network of Indo-Burma roads that pass through Chin State¹⁰⁴



Aung Min Tha model village

Brief Background

In 2000, India undertook a preliminary survey to assess the feasibility of constructing and upgrading a road that would unlock northeastern India to ASEAN countries and boost border trade with Burma. The proposed road is approximately 80km long linking Teddim in northern Chin State to Rih, a town in Western Chin State that is one of two operational border points between India and Burma. The road is expected to be completed in 2012-2013¹⁰⁵.

Although the Teddim-Rih road project is comparably small, financially and in scope, it is a pivotal piece to India's much larger plan of strengthening relations with ASEAN. Burma is the only ASEAN country that shares a land border with India and is thus critical to the successful implementation of India's Look East Policy. This policy, in the works since the early 1990s, seeks greater integration with ASEAN and the establishment of an Asian Economic Community. In short, the crux of the policy is to boost economic ties with ASEAN member states. Burma has always been the missing piece in the puzzle. If the Teddim-Rih road is executed as planned, it will reportedly "transform Indo-Myanmar relations¹⁰⁶" and end the isolation of northeastern India.

India has been heavily courting ASEAN through Burma since the official end of military rule in Burma. In August 2012, it was revealed that India extended its credit line to Burma, of which US \$100 million will be earmarked for upgrading and building road networks in India that will connect India to Burma and Thailand. More, India is slated to hold an India-ASEAN summit in December 2012 to commemorate the 20th anniversary of India-ASEAN relations. According to Anil Wadhwa, the India ambassador to Thailand, "India's connectivity with other ASEAN countries via roads, rail and other forms of transportation would be at the top of the agenda¹⁰⁷."

¹⁰³ Also known as Tiddim-Rhi Road.

¹⁰⁴ "[Over 260 Households Forced to Contribute for Indo-Burma Rih Road Construction](#)," Chinland Guardian, 25 April 2012

¹⁰⁵ "[Rhi Tiddim Rhi Falam Road](#)," Aid Data, information sourced from Donor Annual Report, accessed 30 July 2012

¹⁰⁶ "[Bolster Ties with Myanmar](#)," Arvind Gupta, New Indian Express, 25 May 2012

¹⁰⁷ "[India Funds Three Nation Road](#)," by Nophakhun Limsamarnphun, The Nation, 11 August 2012

India has noted serious concern about possible delays, stating regardless of built up infrastructure in Zowkhatar, Rih's India counterpart, trade will not be possible without the establishment of a Teddim-Rih road. Priority has been given to this project and assistance has been flowing from India¹⁰⁸. In a visit to Burma in May 2012, the India Prime Minister, Dr. Manmohan Singh, boasted about the benefits of developing border infrastructure, including the Teddim-Rih road, saying "these efforts will give a boost to the local economies and provide livelihood opportunities; trade will expand; (and) will also help curb the activities of insurgent groups and other criminal elements in these areas¹⁰⁹¹¹⁰."

India has heavily invested in road construction in Chin State, reportedly providing \$2 million dollars to the government of Burma for this purpose¹¹¹. India is also actively involved in upgrading and resurfacing the 160km long Tamu-Kalewa-Kalemyo Road and the Kaladan Multimodal Transport Project. In 1994, India and Burma signed a border trade agreement, and more recently, both sides agreed to triple bilateral trade to \$3 billion dollars by 2015¹¹²¹¹³. India has also extended a line of credit worth \$300 million for development of railways, transport, and power transmission lines to the Burma government, showing it is committed to taking a big stake in Burma¹¹⁴.

Chin State, Burma's poorest state with an appalling 80% poverty rate has a long and troubled history of forced labor, especially in road construction. In 2011, Physicians for Human Rights conducted surveys in western Chin State and found that nearly 92% of the households interviewed reported at



Laitui village, forcibly relocated to make way for the Teddim-Rih road. Photo: ZSYO

least one episode of forced labor, such as portering of military supplies or building roads. Government authorities, primarily soldiers, committed more than 98% of the abuses¹¹⁵. Reports already show that villagers are forced to aid in the construction of the Teddim-Rih road. The government of Chin State has been heavily criticized for providing no assistance to the development of the road and claiming credit for hard labor performed by the local communities.

If India is going to funnel millions of dollars into developing infrastructure in Chin State, it also needs to share responsibility in ensuring documented patterns of abuse are not repeated in development projects funded

108 ["Myanmar Keen to Reopen Stillwell Road,"](#) The Assam Tribune, 14 October 2011

109 ["Myanmar Critical Partner in India's Look East Policy,"](#) Truth Drive, 29 May 2012

110 From the same source, the Prime Minister also stated, "We are working to develop border infrastructure, including the Rhi-Tiddim road that will enable greater cross-border links and trade between Mizoram and Chin state."

111 ["USDP Will Spend India Funds,"](#) Burma News International, 23 August 2011

112 ["Indian PM to Relax Terms on \\$500 million line of credit reports,"](#) Mizzima News, 23 May 2012

113 ["Indian-Myanmar Relations,"](#) India Ministry of External Affairs official website, accessed 18 July 2012

114 ["Bolster Ties with Myanmar,"](#) Arvind Gupta, The New Indian Express, 25 May 2012

115 ["Life Under Junta: Evidence of Crimes Against Humanity in Chin State,"](#) Physicians for Human Rights, 2011

primarily by the Indian government and companies. While the Indian Prime Minister has stated the need for “special measures to be taken to help disadvantaged sections of society who are not yet empowered to benefit from the fruits of growth and globalization,” there is no trace of this in India’s investment policy in Burma. He goes on to say “the needs of local communities and people displaced...should be taken on board” while it is clear from the findings of this report that Indian-sponsored companies did not follow their own advice.



Forced labor along the Teddim-Rih road. Photo: ZSYO

Current Stakeholders

Company	Country	Responsibility
Indian Ministry of External Affairs	India	Full responsibility for design, planning, and construction of the road. Fully funding the project.
Burma Ministry of Construction	Burma	Unclear

It is important to note that the Teddim-Rih Road is part of a 3,200km trilateral highway linking India, Burma, and Thailand. The World Bank and Asia Development Bank are among the funders for this trilateral highway.

Key Findings

- 58% of those surveyed did not know who to contact if they wanted to seek more information on the project.
- No one was provided information on the project before it was started.
- 51% did not know whether it was safe or not to openly inquire about the development project.
- Only 9% received information about the Teddim-Rih road from a community based organization.

Negative Impacts

Increased militarization in Chin State

Since November 2010, the Burma Army presence in parts of Chin State, including Teddim, has increased significantly. Although accurate figures are difficult to obtain, a respected Chin source told Christian Solidarity Worldwide that in at least 5 different camps in Teddim, Falam, and Tonzaang

townships have tripled since November. Also, at least 3 battalions have moved to the border area¹¹⁶.

Forced labor used to build roads

In a Chin Human Rights Organization (CHRO) submission to the ILO are details that residents of Teddim town are forced to engage in extending the town's street since May 2004¹¹⁷. Each resident has a quota they must fulfill before a certain date or face punishment by the local authorities, although the nature of the punishment was never made clear. The Teddim Township Peace and Development Council ordered the town residents to partake in forced labor. The order has greatly affected the livelihood of the residents, the majority of whom are poor farmers. They are left with no time to care for their crops and this has had an adverse effect on their livelihoods.

Locals subject to extortion when using the Teddim-Rih Road

A collective force involving the local immigration authorities, police and soldiers, have set up 2 arbitrary checkpoints along the Teddim-Rih road where traders and locals are forced to pay fees to use the road. The checkpoints do not appear to be lawful and are seen by locals as a method of extorting more money from them. Any person using the road is forced to pay a "tax" and the fee increases if the person is transporting goods. Illegal checkpoints are common in development projects throughout Burma, and have also been noted in the Dawei deep seaport project.

Environmental destruction will have long term adverse effects

The construction of the Teddim-Rih Road has already resulted in rampant deforestation and the hollowing out of a mountain. Locals are concerned the drastic change in the environment will have a direct impact on their livelihoods, as the farmers in the area heavily depend on consistent rain patterns for their living. Nearby residents believe managing the environmental toll of the Teddim-Rih Road will be their biggest challenge.

Villagers forcibly relocated

Fourteen houses situated along the Teddim-Rih Road in the village of Laitui have already been forcibly relocated to an area farther from the planned road. The families were not given enough compensation and insufficient time to move out. This scenario is expected to be repeated in the villages of Lamzang, Old Haimual, and New Haimual.

¹¹⁶ "[Briefing: Visit to the India-Burma Border](#)," Christian Solidarity Worldwide, November 2010

¹¹⁷ "[CHROS Submission to the ICFTU and ILO Expert Team on Forced Labor in Burma/Myanmar](#)," Chin Human Rights Organization, 31 August 2005

Sittwe Seaport in Arakan State

Now it [Sittwe Seaport construction] is also troubling to the nearby hospital, which is the only one in our town. The patients in the hospital are being disturbed and troubled by the noise and dust coming from the day and night construction of the port. That is why we have to demand they shift the [Sittwe] port to another place away from the town."

Aung Kyaw Myint, local youth activist¹¹⁸

Brief Background

On 2 April 2008 the Indian government and the previous Burmese military regime signed an agreement for the Kaladan Multi-Modal Transit Transport Project. This project, which essentially awards India with a piece of Burma's extensive gas fields off of Sittwe, includes Sittwe Seaport and road construction that would link Sittwe in Arakan State to Mizoram state in northeastern India. Overall, the Kaladan Multi-Model Transit Transport aims to connect Calcutta to Sittwe by sea transport, and link Sittwe to Mizoram by river and road. The establishment of the Sittwe Seaport is perhaps the most major component of the entire project.

There are 3 key components to the Kaladan Transport Project: developing the Sittwe Seaport; deepening and widening the Kaladan River up to northeastern India; and constructing a 122 km highway starting in Chin State that will open up the landlocked Mizoram state in India. The project is scheduled to take 3 years, from 2010 to 2013. Work began on Sittwe Seaport in September 2010 and according to Burma's Commerce Ministry, is to be completed in 2 years.

So far, 70,000 square meters have been allocated to establish the Sittwe Seaport. Locals are concerned by the location of the Sittwe project as it is set directly in a residential center, raising fears about the potential relocation of the surrounding communities. Local youths started a campaign in January 2012 calling for the relocation of Sittwe Seaport. They argued that the construction was causing environmental damage, ruining the natural beauty of their town, and disrupting the lives of the city's residents. The leader of the youth campaign referred to the port as "a great loss for our town's people¹¹⁹," going on to say dissatisfaction with the main contractor was growing among the Sittwe residents as the construction has been ongoing without regard to the concerns of the people or the environment.

When the project was first agreed upon in 2008, the government of India received criticism for inking a deal with a government that, less than a year ago, ruthlessly opened fire on peaceful protestors during the Saffron Revolution. All Burma Student Leader, Kyaw Than, bluntly said, "This is not the time to do business with Burma¹²⁰." The situation in the Sittwe region has deteriorated significantly during

¹¹⁸ "[Local Youth Campaign for Relocation of Indian Seaport in Sittwe](#)," Narinjara, 8 January 2012

¹¹⁹ "[Local Youth Campaign for Relocation of Indian Seaport in Sittwe](#)," Narinjara, 8 January 2012

¹²⁰ "[For India and Burma, it's Business as Usual](#)," The Epoch Times, 9-15 April 2008

the time this report was written, experiencing the worst sectarian violence in decades. Arakan State was placed under a state of emergency amidst ongoing deadly violence. It is unknown whether this has had any impact on the Sittwe project.

Current Stakeholders^{121 122}

Company	Country	Responsibility
Indian Ministry of External Affairs (IWAI)	India	Piloting and Funding the entirety of the project
Rail India Technical Economic Services (RITES)	India	Preliminary Feasibility Studies
Inland Waterways Authority of India with Essar Group	India	Construction of Sittwe seaport and Paletwa port, as well as dredging
Unknown Burma government department	Burma	Road construction from Paletwa to Mizoram



View of Kaladan Multi Modal Transit Project construction in Sittwe

Costs

It is estimated that the Sittwe and Paletwa ports will cost \$74 million and the highway will cost at least \$140 million, for a total \$214 million dollars¹²³. It is understood that India will assume all costs of the Kaladan Transport Project, including Sittwe. The government of Burma is to provide security for the entire project for free, as well as for technicians and other workers. Other than that, there is no explicit financial obligation on the Burmese government.

Profits

India stands to be the main beneficiary of the Kaladan Transport Project as it will gain unprecedented access to new markets in Southeast Asia as well as an alternate trade route to northeastern India. “Once [the project] happens, it will hugely benefit northeast India and save transport costs to the region by 40%, even 50%,” said AtinSen of the Calcutta-based Asian Council of Logistics Management¹²⁴. Other than Burma collecting additional revenue on goods being transported in the region, the tangible benefits for the country and local community seem to pale in comparison.

¹²¹ Both RITES and IWAI are state-run India companies.

¹²² Essar Group is main contractor

¹²³ “[India Seeks Stronger Burma Ties](#),” Montreal Gazette

¹²⁴ “[Myanmar to be Site of Sino-India Cooperation?](#),” Ramtanu Maitra, Executive Intelligence Review, 2007

Key Findings

- Half of those surveyed were given information about the Sittwe Seaport before construction began. Over 80% of that information came from company and government authorities.
- There was no public forum held that allowed those affected by the project to provide any meaningful input or air their concerns about the project.
- Everyone surveyed feared some form of punishment if they tried to inquire further about the project.



ESSAR company constructs Kaladan Multi Modal Transit Project in Sittwe, next to City Point restaurant

Negative Impacts

The agreement to develop Sittwe Seaport quickly led to a vast increase in the number of military personnel hired as security for the project and the project's personnel and technicians. This heightened presence led Sittwe locals to fear human rights abuses that commonly accompany project security forces, such as rape, forced labor, and land confiscations, would soon follow suit. A prominent Arakan activist, AungMarmOo, has been closely monitoring Sittwe Seaport, criticized it for failing to involve locals in the decision making process in saying, "We're not saying the project should never be implemented, but it should be put on hold until there is a more accountable government in Burma that will think about the impact and the effects of the project."

So far, human rights abuses include¹²⁵:

Increase in illegal taxation along Kaladan River

A group comprised of soldiers, army intelligence, and police have set up tollgates around Sittwe in order to collect tolls from both cargo and personal boats. This extortion includes illegal tolls and tax collections.

Land confiscations

People working and living near Sittwe are very concerned about their livelihoods if their homes or work places are taken from them as there are plans to build around 30 warehouses near the port. There are currently residential homes, restaurants, and other businesses in this area. According to one local, "I am very concerned that I will not receive adequate compensation and I am sure that I will be

¹²⁵ Information taken from monthly updates on Sittwe Seaport provided by [Arakan Rivers Network](#)



Construction on seaport in Kyauk Phyu

removed because my restaurant is very close to the construction.” Yet another said, “We have no choice but to leave if we are at any time ordered to do so, since there is no rule of law.”

Cement Factory in Karenni State

“I want them to stop their [construction] activities because it is without the people’s will...I want to say to the government: is there any sympathy and consideration for the people?”

local affected villager

There is no available information on the cement factory that is currently being built in Karenni State. The findings of this report and testimonies show that participation rights were not respected and the totality of those surveyed felt the cement factory would not bring the local communities any positive benefits.

Current stakeholders

Company	Country	Responsibility
Square Power Co LTD	Burma	Unknown

Key Findings

- 80% did not know where to go or who to contact to find more information on the cement factory.
- 72% were provided information about the project before it started by key decision makers.
- 64% said the information was provided by the government, and 12% said the information came from a village leader.
- 92% said there was no public forum set up by decision makers in which locals were able to participate.
- 100% said input that was provided was ignored.
- 72% do not feel safe seeking further information about the project.



Pipeline passing through Rambree township

- Roughly half (48%) were provided with information from a community based organization before the project was started.
- 100% said they felt negative impacts from the cement factory.

Testimonies: “As a youth, we will lose our culture”

One villager, KhuKho Lay, describes how a company manager verbally insulted him for not being satisfied with the paltry amount of money that is to serve as compensation for lost lands:

“One of the company managers came and said earlier that “you (the people) won the lottery and you will get money soon. Now we bring money for you but you are stupid.” I don’t understand what they mean and I resist him with anger and embitterment, saying: “What do you say that it is good for us? What are the benefits for us? The benefits are only for you and just only you can get the benefit. Do you think that I am stupid?”

KhuKho Lay went on to explain how losing lands will not only negatively impact his family, but also generations to come. These villagers have cultural and historical ties to their land, showing that land confiscation is about much more than just money. He asked the company managers:

“Do you know that we need our lands for our lives? Now you are coming and destroying our rice p̄ot and our lifeblood,” I added. Then they replied that “OK, we will compensate for your lost lands”. After that, I said, “I don’t want to get any compensation from you because you just give us a little amount, only for 1-2 months for our family. The lands that we currently own are inherited from our ancestors and we want to keep the lands for our grandchildren so they can use it for their livelihood year by year in the future.”

The cement factory has resulted in heightened militarization of the village and decreased freedom of movement for the villagers, as explained by Maw Reh:

“Our lands are confiscated for the cement industry and there is no advantage or benefit for us. Moreover, there are many limitations for our movement. We can’t go to our farms freely and we are inspected and restricted by the army at the gate. This cement industry is a huge building and many troops are encamped here for security, so we have to bring identification when we go to the farms. We always use two roads to go to the farms. If there are many encampments, we will face many difficulties for our transportation.”

Maw Reh is not necessarily against the cement factory, but it should have been built in line with the considerations of the local people:

“If they wanted to build the cement industry, it would have been better to build it in a place far away from Pa Kye’ area. They should be considerate of the local people. For me, I don’t want them to build



Landscape in Karenni region

the industry and I want them to stop their activities because it is without the people's will. Finally, I want to say to the government: is there any sympathy and consideration for the people?"

Di Di Paw expressed concern that there is no way for local people to benefit from cement industry if no decision makers consulted them on what their needs were:

"If there is no meeting or discussion regarding the cement industry project by the obligators...then, the farmers will face many difficulties. Even though they said they will create jobs for the local people, how can 90% of farmers get jobs at a cement

factory? One day, they will bring their own workers for the project."

Htoo Law Mra spoke about a blanket feeling of hopelessness in being able to change the situation. There is a worry that speaking out, although it is their basic right, will lead to arrest:

"We are farmers who are not educated and fear to speak out because we might get arrested. That feeling is always in our mind. Some people are very weak in education, so they just give up and keep their feeling in their mind. The local people say that everything is in their hands (the government and company) and they (locals) can do nothing."

Not respecting the people's right to participate engenders mistrust and pessimism against both the company and the government, as explained by one affected local, Plar Maw:

"If there is no discussion regarding the industry project by the obligators and the industry is completed, I will be dissatisfied with the government. I hate them and feel bitter as well. I see that they ignore the local people's will and just do whatever they want."

Plar Maw went on to elaborate on how the prospective cement industry will adversely affect women in the local area:

"It is not good for pregnant women who will breathe the smoke emitted from the cement industry. Moreover, it is insecure for women especially, when they go to the farms because of all the troop encampments. It will be better to build the industry far away from us."

Many of the people who live in the area near the cement industry are farmers who grow paddy, crop, peanut and other vegetable plants since ancestral times. There is concern that the cement industry will result not only in loss of livelihood but also loss of culture and tradition, as articulated by ShaReh:

“We honestly struggle for our livelihood, health and education for our children and we maintain our tradition and culture for many years. Just only a few people who completed university can get job from the cement industry but most will remain jobless. If this happens, the local people will not only lose their traditions and livelihood. Moreover, I would like to say as a youth that we will lose our culture.”

Shwe Gas pipeline in Arakan State

“The authorities asked us what our next plans were, and then we told them that we have no other plan other than to peacefully demand a share of rights and benefits from Arakan’s Shwe Gas for Arakan state”

Arakan youth activist who organized a peaceful campaign to demand locals share of benefits in Shwe Gas project, including making shirts that read “Our Gas, Our Future¹²⁶.”

Brief Background¹²⁷

In June 2009, the China National Petroleum Company (CNPC) signed a Memorandum of Understanding (MoU) with the state-run Myanmar Oil and Gas Enterprise. The MoU allows CNPC to purchase gas from the Shwe gas fields and construct a 1,800km dual gas and oil pipelines from Kyaukpyu in Arakan State to Kunming in China. The majority of the pipelines, close to 1,000 km, are set to traverse Burma soil, including extremely restive and volatile regions in southern Shan State, northern Kachin State, and western Arakan State. The oil pipeline is being designed to transport over 220 billion tons per year, while the natural gas pipeline will funnel 12 billion cubic meters annually¹²⁸. 80% of the gas and oil resources will go to China. The pipelines, part of a massive energy development project that is singlehandedly Burma’s largest source of foreign income, are slated to be completed by May 2013.

The Shwe Gas pipelines have been mired in deep controversy since November 2009, when constructions on the pipelines began. The start of construction was accompanied by reports of land confiscation, heightened militarization, and forced evictions. There are a myriad of civil rights problems along the pipelines as they are set to pass through areas that are controlled by ethnic cease fire groups that still experience clashes with the Burmese army. The security forces along the pipelines is compromising fragile ceasefire negotiations and thus, hindering the national reconciliation process.

The eruption of skirmishes between the Kachin Independence Army and the Tatmadaw (Burma Army) has already impacted construction on the pipeline, leaving the CNPC caught in the crossfire. CNPC is beginning to realize that the lack of consultations with affected communities, and the absence of a legitimate social impact assessment, is taking a massive toll on the project. Civil society

¹²⁶ [“Local youths campaign for share of benefits from Shwe Gas.”](#) Narinjara, 7 March 2012

¹²⁷ Unless otherwise stated main sources of information for this project come from Main sources: [Corridor of Power](#) and Shwe Gas Movement

¹²⁸ [“Construction begins on China-Myanmar oil, gas pipelines.”](#) Shwe Gas Movement, 7 May 2012

has been actively campaigning against the Shwe pipelines and is demanding a halt to the project until their input is adequately incorporated into the project and the concerns of the community are taken into account.

Resentment against the pipeline continues to grow, chiefly due to widespread human rights abuses, lack of consultation with affected rights-holders, and the absence of any benefit-sharing scheme with local communities. For example, most of the energy will go to China while the majority of Burma remains off the power grid. CNPC have tried to offset this by investing in social projects. They have reportedly set aside several million dollars to go towards schools, health clinics, and wells¹²⁹. This has done little to reverse the tide against the pipelines, however.

Current Stakeholders of the Project

Company	Country	Responsibility	% Stake
China National Petroleum Corporation (wholly owned by Chinese government)	China	Design, construction, operation, expansion, and maintenance of the twin pipelines	50.9%
Myanmar Oil and Gas Enterprise	Burma	Sole operator of domestic gas transmission through online pipeline grid	49.1%
Petro China (subsidiary of CNPC)	China	Distribution of gas in Yunnan Province	n/a

Costs of the Project

The pipelines are expected to have a final price tag of \$2.54 billion dollars¹³⁰.

Profits of the Project

The financial profits of the pipelines are unclear. However, the government of Burma is predicted to make 970 million dollars per year from the entire Shwe gas development project, amounting to \$29.1 billion dollars in 30 years.

Key Findings

- 80% of those surveyed did not know who to contact if they had any concerns about the project.
- No one was provided any information about the Shwe pipelines before it was started by decision makers.

¹²⁹ ["Burma-China pipelines brings benefits, complaints,"](#) by Daniel Schearf, Shwe Gas Movement, 7 May 2012

¹³⁰ ["Pipeline in the crossfire,"](#) by Yin Hongwei, Shwe Gas Movement, 7 May 2012

- 76% do not feel safe seeking further information about the Shwe pipelines, and 100% of those fear punishment if they do.
- No one received information from a non-decision maker such as a community based organization about the project and its potential impacts.
- Everyone surveyed described negative impacts from the pipeline, and not one person has felt any positive impacts.

Negative Impacts

Increased militarization

The twin pipelines are set to pass through 22 townships and are surrounded by 44 infantry and light infantry battalions. Each battalion has about 300 soldiers, for a total of 13,200 soldiers that are in the vicinity of the pipeline.

Forced evictions and forced labor

According to a survey by Arakan Youth Network Group (AYNG), 500 people in Arakan State who resided along the pipeline routes were forcibly relocated by the Tatmadaw to the India-Burma and Bangladesh-Burma borders. Those relocated were also forced to provide uncompensated forced labor on road construction for the pipelines¹³¹.

Land confiscation

There have been numerous accounts of land confiscations along the pipeline routes. Victims often are not compensated or if they are, the compensation is unreasonably low. According to Earth Rights Institute Campaigns Director Paul Donowitz, “in many areas corrupt local officials have demanded payments of up to 50 percent of the compensation provided to land holders in order to gain land title that allows them to receive compensation¹³².”

Victims are left stranded, as there is very little available land nearby for them to relocate to and do not have enough money to buy new land.

In all documented cases, local authorities decide arbitrarily who receives compensation and who doesn't.

¹³¹ [“Shwe Gas pipeline project to India: another Yadana begins?”](#), Shwe Gas Bulletin, vol. 1, Issue 10, February 2006

¹³² [“New laws for investors but lawlessness for Burmese in the way.”](#) William Boot, The Irrawaddy, 22 May 2012

Testimonies: “The people are just hostages”

Though the government of Burma is taking advantage of Arakan’s vast deposits of gas and oil by exporting it to neighboring countries at lucrative prices, Arakan State continues to suffer in the dark. Arakan State is not connected to Burma’s national power grid, nor has it been since Burma gained independence. This means the people of Arakan State are forced to buy expensive private generators, rely on costly independent electricity companies, or simply live without electricity. Access to electricity is a basic human right that falls under the right to adequate housing, as does drainage, safe water, and sanitation. Those interviewed expressed their frustrations at the absence of any shared-benefit scheme for resources that are found on their lands, for example Saw Phru who states:

“Shwe gas from Arakan state is prosperous for the people. Natural gas and natural resources in Arakan State are not for the people from Arakan State. Moreover, the people are just hostages suffering from the effects of the [Shwe gas] project while other people receive benefits from this project. The government has a responsibility to change this kind of situation. For us, we will be against any project in which there is no benefit for the local people.”

Local Kyaw San echoes a similar refrain and asks simply for the government to provide 24 hour electricity in Arakan State:

“Natural gas and other natural resources in Arakan State are owned by the local people but the local people could not get any benefit from this project and the local people are also more suffering from these negative impacts of building pipelines, seaports and extracting gas. The government should use the benefits from this project for developing and providing the electricity for 24 hours in the country.”

Saw Htoo Maun elaborates on how the lack of consultation with affected rights holders engenders mistrust and hostility against the proposed project, as has happened with the Shwe pipelines:

“The relevant authorities should inform the local people about the project, including what we should know before implementing the project. If not, the government and its relevant companies must take accountability for their local peoples’ benefits with regards to the project. The project should be implemented with the local people’s desire and will.”

Negative impacts sparked by the Shwe pipelines, such as exploitation and land confiscation, could have been averted if there were direct consultations with rights-holders, as explained by Aye Khine, an affected individual:

“Every project should be implemented with agreement from the local people agreement because we are the ones who directly suffer from the negative and positive impacts of the project. If there is no clear information about the project’s negative consequences on the local people, it will lead to more negative effects in the future.”

Currently, there are many land confiscations in our village because of investment projects from international companies. We know this will lead to much exploitation of the local people. Therefore, not one project should be implemented without the will of the local people."

Another local, Marm Oo, felt the implementation of the Shwe pipelines without consultations was tantamount to an insult to those living in affected areas:

"The government should explain clearly about this project. The local people need to understand the positive and negative impacts of the project. The government and the international companies doing whatever they want is insulting to the local people."

Conclusion

Participation Rights Key to Sustainable Future for Burma

It is clear that Burma is not doing enough to protect the participation rights of ethnic nationalities. While certain welcome initiatives have been taken, such as voting in favor of the UNDRIP and becoming a full ILO member state, more needs to be done to translate Burma's rhetoric into action.

As a first step, international and regional obligations should act as guidelines to including participation rights in Burma's national structure. Including participation rights in Burma's domestic policy has the power to affect the mandates and codes of conduct of potential investors in Burma, and also commit all relevant parties, businesses, investors, and NGOs alike, to addressing participation rights. Any new laws in Burma oriented towards participation rights must not be superficial or vague; it should include reporting and accountability mechanisms, and be drafted with the agreement of a broad range of community stakeholders.

Respecting the participation rights of ethnic nationalities should not be seen only as fair and just, but also practical and pragmatic. Including ethnic nationalities and being responsive to their needs is key to long-term sustainable development and should be a cornerstone of the national reconciliation process.

Without participation rights, there can be no sustainable future for Burma.

Appendices

Appendix A

Methodology

Researchers from 9 organizations, organized and trained by CORE collected the information for this report during April and May 2012. Each organization was asked to gather 30 interviews using random sampling.

Letters have been assigned to each organization that participated to designate the development project information was collected on, as follows:

Group Letter	Project and Location
A	Dawei Deep Seaport, Tenasserim Division
B	Economic Industry, Karen State
C	Paunglaung Dam, Southern Shan State
D	Kadaik Dam, Mon State
E	Myitsone Dam, Kachin State
F	Teddim-Rih Road, Chin State
G	Sittwe Seaport, Arakan State
H	Cement Factory, Karenni State
I	Shwe Gas Pipeline, Arakan State

Interviews were conducted across 7 states and 1 division, involved 10 ethnic nationalities and 9 development projects. Areas chosen for sampling were those affected by development projects. Structured interviews were conducted in villages and towns in order to collect a variety of data associated with free, prior, and informed consent in the context of development projects. No interviews were conducted in cities because there are significant risks associated with collecting data.

Interviewees were chosen through random household sampling in order to increase confidence in survey design. Due to field restrictions we elected to perform simple random sampling (SRS). With SRS the researchers placed numbers in a bag and the numbers corresponded with the amount of households in the village. The numbers in each village were chosen at random and households interviewed. Whenever possible researchers alternated between interviewing adult men and women in the households. This was done to keep SRS simple and to generate data that provided both male and female perspectives.

In villages and towns, only small populations were chosen. Researchers were advised to interview small samples per village in an affected site. This was done to decrease the chance of their detection.

Due to safety issues several of the research groups dropped out of the study. In addition, Research group B, due to safety issues was only able to gather 10 interviews.

In total 261 surveys were conducted using random sampling. Due to this, and because of the methodology described in this report, we assert that data, unless specified, maintains a 6.07 Confidence Interval at a 95% Confidence Level for all similar areas (rural, non-security heightened areas). In most cases the percentages are very one sided, making the Confidence Interval much lower and thus more likely a reflection on the reality of the whole population. We make no assertions on the effects of development projects in urban areas or in security heightened areas.

No real names of people interviewed, their villages or collecting organization have been used in this report to protect sources.

Appendix B

Descriptive statistics

Interviewees came from 7 states and 1 division, 10 ethnicities, 57.1% were male and 42.9% female. The median age was 34.5 for males and 29.5 for females.

Appendix C

The questions

Q1: Do you know where to go or who to contact about the development project?

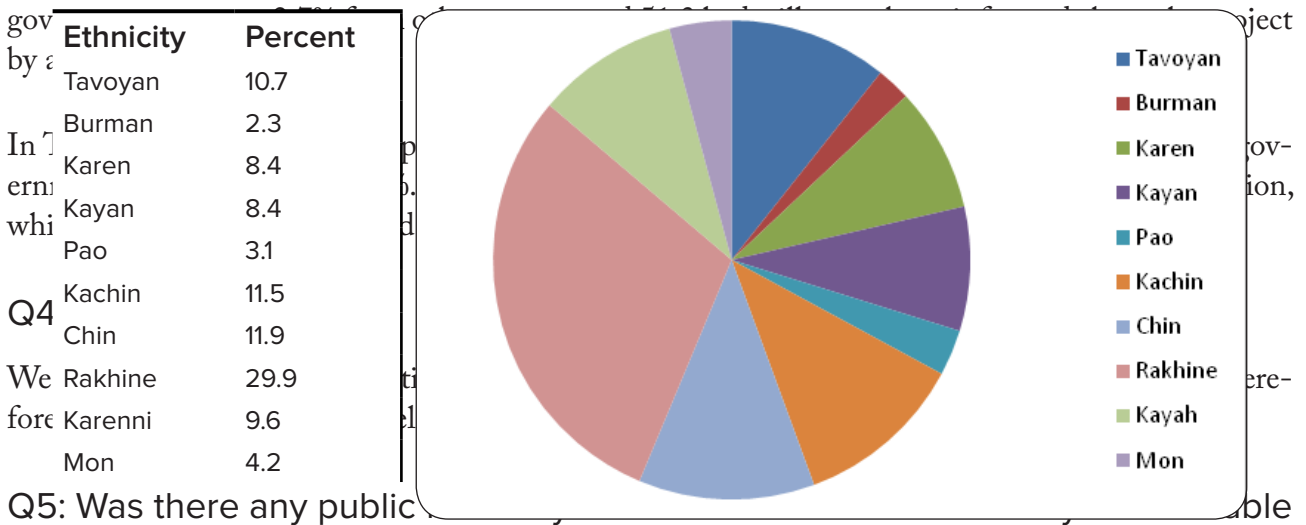
78.5% of the population reported that they do not know who to contact. In the development projects covered by Paunglaung dam, Kadaik dam, and Karenni cement factory, 100% of interviewees said they did not know where to go or who to contact about the development project. Twice as many men 24.8% as women 12.5% felt they knew who to contact.

Q2: Were you provided information about the project before it was started by decision makers?

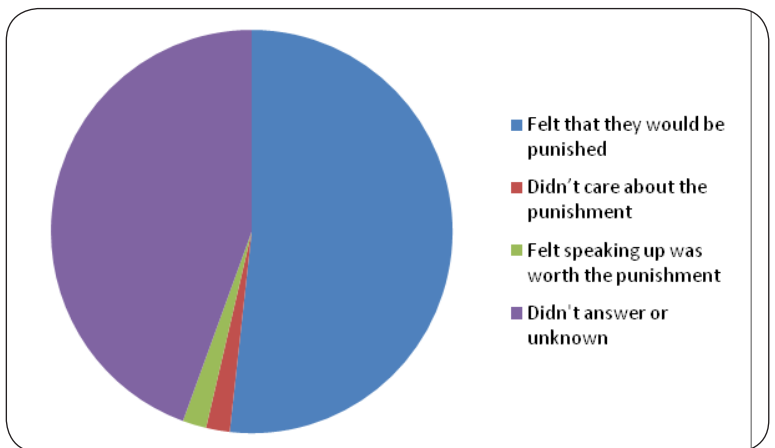
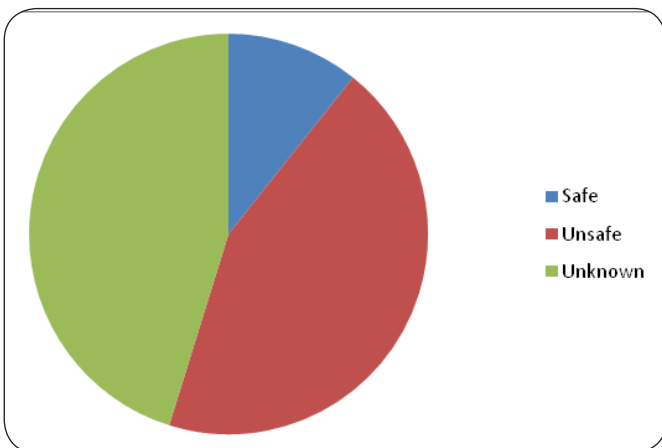
87.4% said they did not receive information. In all but 2 sites, everyone stated they were not provided information prior to the project. In Teddim-Rih road 50% of the interviewees said they did receive information. 72% of those near Sittwe seaport 72% stated they received information.

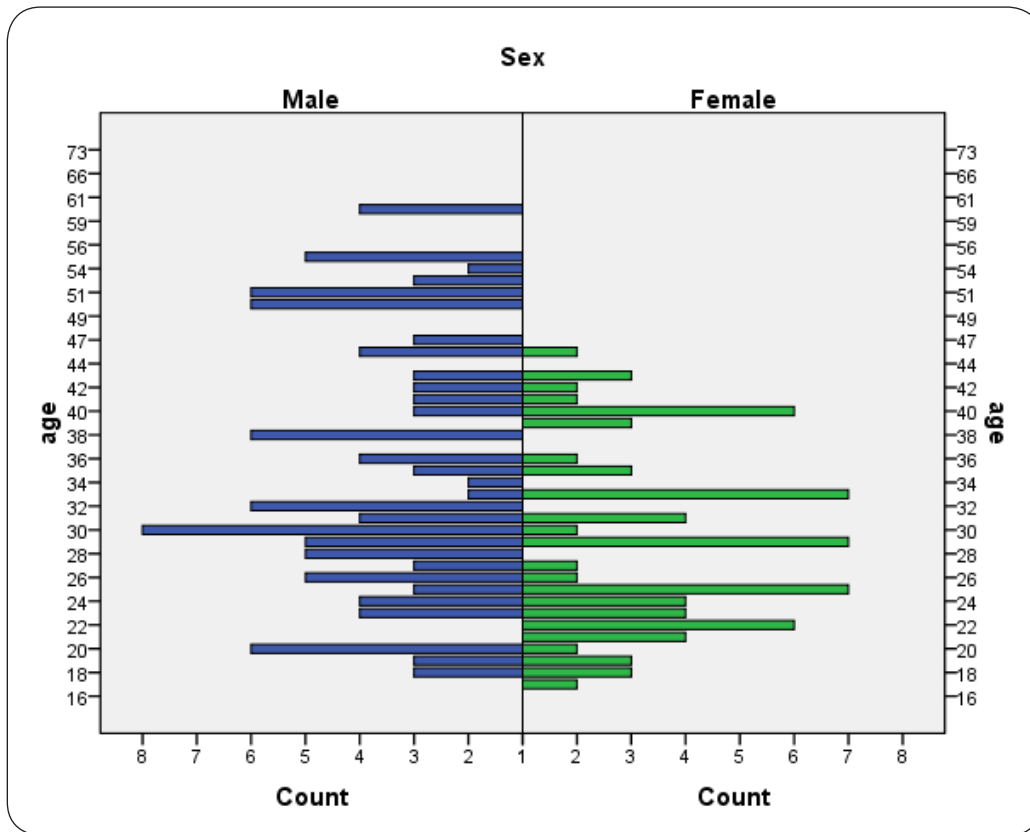
Q3: If you ever received information, who was the information provided by?

18% had received information from their village leader, 5% from company spokesman, 23% from



Q5: Was there any public





to attend?

Only 0.8% said such an event took place. All came from Sittwe Seaport. Within the area affected by Sittwe Seaport, of 30 people were interviewed, only 2 claimed to know that there was a forum, both were men, 6.66% of the project sample population. As the sample near Sittwe Seaport was random, with 30 individuals, we can state that there was a Confidence Interval of 8.5% at a 95% Confidence Level. Because of this, 6.66% in any given community, even with a margin of error that could bring that number as high as 15.13, is still a very small portion of the population and unacceptably low.

Q6: If you presented any information to any decision maker on this project, what was the result?

35.4% of the sample population said they never made any suggestion to anyone. 60.8% said they did make a suggestion but were ignored. 3.8% said they made a suggestion and it was listened to. Every member of the sample population which said their suggestion was listened to came from Teddim-Rih Road. Women were much less likely to be listened to with only 1.8% of the female population feeling that their input was listened to while 5.4% of male population felt that way.

Q7: How safe do you feel seeking further information on the project?

10.7% said they felt safe, 44.1% said they felt unsafe, the remainder did not know if it was safe or unsafe. Only interviewees from three development projects said they felt safe asking a question. At Myitstone Dam 45.2% felt safe, 30% at Teddim-Rih Road, and 20% at Sittwe Seaport. Men were more than twice as likely (14.1%) to feel that seeking further information would be safe over women (6.3%).

Q8: Why do you feel safe or unsafe?

Of the total sample population, 51.7% felt that they would be punished in some way if they sought additional information. Only 1.9% felt they would not be punished, another 1.9% didn't care about the punishment because they felt that speaking up was the right thing to do and thus worth the punishment. 44.4% did not know or did not answer.

Only interviewees around Sittwe Seaport felt that they should seek further information. 20% believed it was the right thing to do, 20% believed they would not suffer repercussions if they did so. However a majority of 52% around that development project felt that seeking more information would lead to punishments.

Q9: Have community based organizations provided information on the project?

9.6% said that such organizations did provide information before the project started; another 25.2% said that such organizations provided information after the development project was underway or finished. 64.2% were never informed by these organization types.

Community based organizations provided information after the project was underway to 100% of the interviewees in Dawei seaport, 33.3% for Kadaik Dam and 46.6% in Sittwe Seaport. 48% of the sample population of Teddim-Rih Road was informed by community based organizations prior to the start of the project.

Q10: Have you experienced any positive or negative impacts from the project

84.7% said they had experienced negative impacts, 0.8% said they experienced only positive impacts, and 5.7% say they felt both positive and negatives impacts.



Excluded: Ethnic Nationalities on the Margins of Democracy & Development

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