

Special Economic Zones in Myanmar and the State Duty to Protect Human Rights

Executive Summary

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Myanmar's 2014 Special Economic Zones (SEZ) Law does not conform to the State's international law obligations to protect human rights. The legal framework for SEZs in Myanmar does not establish clear procedures and lines of responsibility and accountability. This has contributed to human rights violations and abuses at Myanmar's three SEZ sites in Dawei, Kyauk Phyu and Thilawa.

Civil society groups have documented human rights violations by the State and human rights abuses by companies resulting from a lack of meaningful consultation, inadequate compensation and limited access to remedies for persons displaced in the development of SEZs in Dawei and Thilawa. People living on land acquired for these SEZs were displaced without proper planning for involuntary resettlement and before an Environmental Impact Assessment (EIA) was undertaken. This report finds similar problems occurring during preparations for the development of an SEZ in Kyauk Phyu, Rakhine State.

Minor infrastructure facilities constructed for the Kyauk Phyu SEZ in 2014 resulted in deterioration in living standards for persons displaced from farmland. The current land acquisition process for the SEZ, initiated in 2016, lacks transparency and contravenes national law governing land acquisition. If this process persists, land acquisition will result in further human rights violations.

Denying persons affected by development projects opportunities to participate in decision-making, and depriving them of adequate compensation or other reparation when resettlement occurs, is incompatible with human rights. It also contravenes international human rights standards. These include rights protected in the International Covenant on Economic, Social and Cultural Rights – which Myanmar has signed and is in the process of ratifying.

The Government of Myanmar can avoid human rights violations in SEZs by ensuring that SEZs are developed in line with the State's international human rights law obligations, and with international standards on involuntary resettlement that are recognized in the 2015 EIA Procedure and thus form part of Myanmar's national laws.

Further human rights violations abuses could be avoided in Kyauk Phyu by suspending the current land acquisition process and ensuring that the SEZ is developed and implemented in line with rule of law principles. In Rakhine State, one of Myanmar's poorest provinces and the site of widespread rights violations, the protection of human rights will be critical if the SEZ in Kyauk Phyu is to create economic opportunities and not contribute to the existing grave human rights situation.

The change in Myanmar's Government, transition in national governance structure and the reconstitution of SEZ governance bodies, in 2016, presents opportunities to reform and implement a legal framework for SEZs that protects human rights. In order to comply with Myanmar's human rights obligations, and with international standards on involuntary resettlement recognized in national law, the Government must amend the SEZ Law and 2015 SEZ Rules.

Further development of Myanmar's SEZs, and related investment agreements, should wait until legislative amendments are in place to facilitate the full protection of the rights of residents and workers in the zones.

The ICJ in this report identifies the legal framework for SEZs in Myanmar, including applicable national and international law. A case study of the Kyauk Phyu SEZ illustrates human rights concerns with the legal framework and its implementation in SEZs. The ICJ makes a series of recommendations directed towards government officials, investors and civil society actors with a view to protecting human rights in SEZs.

The report is based on both legal and factual research. The research includes interviews with over 100 people, from affected communities as well as actors from the business sector and government officials.

The report has two overall objectives: 1) to encourage and support effective measures by the Government of Myanmar aimed at bringing the development of SEZs into line with its international human rights law obligations; and 2) to provide a legal resource that supports efforts by affected communities, lawyers, civil society actors, NGOs, Government and investors to enable and ensure accountability for rights violations and abuses in SEZs.

Special Economic Zones

An SEZ is a delineated geographical area with a special legal regime for business activity. Many Southeast Asian countries have adopted SEZs, which typically involve major investments in infrastructure and demand large amounts of land. Proponents say that SEZs facilitate rapid economic development by creating investment incentives, while others say their economic success has been mixed. Human rights violations and abuses have often accompanied SEZs, both in Myanmar and elsewhere in Southeast Asia.

In the late 2000s, Myanmar's military government initiated the development of SEZs. The military-dominated Union Solidarity and Development (USDP) Government, which governed from 2011 to March 2016, enacted the 2014 SEZ Law to govern all of Myanmar's SEZs, replacing two previous SEZ laws. The SEZ Rules were issued in 2015 and provide further regulations.

In November 2016, the National League for Democracy (NLD)-led Government affirmed its commitment to SEZ projects previously initiated in Thilawa (operative since 2016), in Dawei and in Kyauk Phyu (both non-operative). In late 2016 plans for a fourth SEZ near Yangon were reported but the Union Government have made no formal announcements confirming these reports.

Law and governance in Myanmar

Myanmar's legal system is derived from the British common law system. However certain standard elements of this system, such as stare decisis (judgments based on precedent), have rarely been given effect since the 1962 military coup. The executive and military still wield significant influence over the judiciary and the legal profession, which lack independence. Public confidence in the legal system is very low and few people use the courts to access remedy.

The 2008 Constitution establishes a five-level system of national and subnational governance. The Union Parliament enacts legislation, promulgated by the Union President. Legislation often authorizes Ministries to issue bylaws providing further rules for implementation of laws. The General Administration Department (GAD) forms much of Myanmar's civil service, particularly at the state/region and township levels. The GAD reports to the Ministry of Home Affairs, which is headed by one of the three Ministers who are constitutionally appointed by Myanmar's military, the Tatmadaw.

Myanmar's international law obligations

Like all States, Myanmar has a duty to respect, to protect, and to fulfil human rights. Myanmar is also party to three international human rights treaties: the Convention on the Elimination of all forms of Discrimination Against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

Despite Myanmar's relatively low rate of adherence to the principal international human rights treaties, many of the treaty rights form part of general international law and customary international law, and are therefore applicable in Myanmar.

International law also recognizes the rights of people affected by development projects to access timely and transparent information, have opportunities to be involved in meaningful consultations, and to participate in decision-making related to project developments and the resulting changes for the affected population.

Myanmar signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2015. The right to an adequate standard of living, enshrined in the ICESCR, protects the right to an adequate standard of living, including adequate food, water, clothing and housing. These rights also include security of tenure and protection against forced eviction. The rights to health and to education are also important ESC rights that require protection.

In the development of SEZs, several international standards apply that are derived from international human rights law. These include the UN Guiding Principles and Guidelines on Development-Based Displacement, which reaffirm the prohibition on forced eviction in international law. The UN Guiding Principles on Business and Human Rights are also applicable, and reflect the consensus that States must protect the rights of people who may be adversely affected by economic activities.

Safeguard policies of the Asian Development Bank, the International Finance Corporation and the World Bank also provide commonly accepted standards. Myanmar's national laws require compliance with these safeguard policies in the development of SEZs.

These safeguard policies, and therefore Myanmar's national law, share the objectives of avoiding involuntary resettlement and/or minimising its adverse impacts. They include the principle that the livelihoods of displaced persons should improve or at least be restored. Persons experiencing relocation must be provided with secure tenure for replacement land, regardless of whether they previously possessed or did not possess formal land tenure rights.

Every right must be accompanied by the availability of effective remedies and reparation in the event of a rights violation or abuse. Human rights violations and abuses must be addressed by judicial mechanisms provided by the State, or by non-judicial mechanisms provided by States and/or business enterprises – these must always allow for recourse to judicial measures.

Myanmar's legal framework for SEZs

The SEZ Law must be read in connection not only with international law and standards, but also with other national laws. Multiple provisions in the SEZ Law reaffirm the applicability of national laws on land, environment and labour. This Law contains three chapters on investor's benefits but does not mention human rights. The SEZ Rules mainly elaborate investment procedures.

Key aspects of the legal framework for SEZs:

- The legal framework combines the SEZ Law, SEZ Rules and national laws such as on land, environment and labour.
- The SEZ laws establish governance bodies to facilitate investment, but do not clarify accountability for rights violations.
- The SEZ Law does not contemplate establishing governance arrangements where SEZ bodies may interfere with the authority of Ministries in SEZs: line Ministries retain their legal powers, such as for issuing approvals and enforcing environmental and labour standards.
- Myanmar's Environmental Impact Assessment (EIA) Procedure requires involuntary resettlement to comply with international standards of the Asian Development Bank and World Bank.
- Article 83 of the EIA Procedure provides that an SEZ Permit can only be granted to a Developer after the issuance of an Environmental Compliance Certificate by the Environment Ministry.
- To ensure compliance with the objectives of international standards on involuntary resettlement, recognized in national law, land acquisition in SEZs should occur only after the completion of a resettlement plan.
- The SEZ Management Committee must ensure worker's rights and entitlements, including wages, are not lower in SEZs.
- SEZ bodies govern SEZs; the Myanmar Investment Commission has no authority.

Governance & investment arrangements

The SEZ Law establishes a three-tier governance structure for the administration of SEZs. The Central Body is a multi-ministerial peak body that authorizes the development of SEZs and supervises implementation by lower bodies. The Central Working Body develops and provides policy advice to the Central Body, while each SEZ Management Committee manages and supervises the development and implementation of its respective SEZ.

The SEZ Law directs each Management Committee to establish a One Stop Service Centre (OSSC). The OSSC hosts representatives of various government departments in order to provide investors with all services in one place. The SEZ Law does not permit deviations from procedures and powers established in other laws applicable in SEZs, such as for company registration or environmental permits.

The special investment regime established by the SEZ Law is independent of the 2016 Myanmar Investment Law. The Myanmar Investment Commission (MIC) has no authority in SEZs, and its notifications and prohibitions do not apply in SEZs.

Land laws

The SEZ Law confers responsibility for land acquisition to the Ministry of Home Affairs. The Law does not specify which of the over fifty national laws governing land, overlapping and often conflicting, apply in SEZs. In practice, the 1894 Land Acquisition Act is the primary law used for State land acquisition in SEZs. Land laws enacted in 2012 – the Farmland Law and the Vacant, Virgin and Fallow Land Law – have also been applied in practice to determine compensation entitlements for persons affected by the acquisition of land for SEZs.

The SEZ Rules detail procedures for leasing land to investors in SEZs, but neither the Rules nor the SEZ Law considers procedures for planning or carrying out resettlement for persons whose home, land and/or livelihoods are displaced.

Environmental laws

The SEZ Law reaffirms the applicability of environmental laws in SEZs, without qualification. Under the 2015 Environmental Impact Assessment Procedure, the Government may commission a Strategic Environmental Assessment (SEA) to assess the cumulative environmental and social impacts of the SEZ and related developments. In each SEZ, an initial EIA must be undertaken for the entire zone while subsequent EIAs may also be required for individual business activities within the zone. The Environment Ministry determines when an EIA is required and issues an Environmental Compliance Certificate for projects it deems to be compliant with the 2012 Environmental Conservation Law.

The EIA Procedure mandates that EIA-type projects comply with international standards on involuntary resettlement, as accepted by the World Bank and Asian Development Bank. To comply with these standards, resettlement planning should occur prior to land acquisition, to ensure that alternatives have been explored and livelihood restoration plans are in place before any displacement. An EIA may explore alternatives to displacement, and so the EIA Report should also be finalized prior to commencing preparations for land acquisition.

While under international standards the State has ultimate responsibility for resettlement, the EIA Procedure and SEZ Law do not clearly delineate responsibilities between the SEZ developer, investors and the State.

Labour laws

While Myanmar's labour laws generally apply in SEZs, the SEZ Law provides for the Management Committee to be the first instance arbiter in disputes between employers and employees. It is unclear if this arrangement undermines or complements mechanisms under existing laws.

The Management Committee has a mandated duty to ensure labour rights and entitlements, such as the national minimum wage, are not diminished for employees in SEZs.

Human rights & the legal framework for SEZs

An analysis of the legal framework for SEZs in Myanmar reveals that it does not comply with the State's international law obligations to protect human rights. Checks and balances to accompany the discretionary powers of government bodies are inadequate. There are also concerns regarding the compliance of the SEZ Law with the principle of legality, which is a universal general principle of law requiring laws to be clear and unambiguous.

This report identifies five principal human rights concerns with the legal framework for SEZs:

- 1) Management Committee members exercise significant authority directing the development and implementation of SEZs, but the SEZ Law does not establish responsibilities for them to protect human rights in SEZs or provide for accountability for adverse human rights impacts.
- 2) Human rights protections in national laws are undermined because there is no clear guidance aimed towards the coordination of the application of land acquisition, EIA and involuntary resettlement procedures in SEZs.
- 3) Administrative arrangements for SEZ-level OSSCs could enable deviation from national laws protecting human rights and the environment.
- 4) The national minimum wage does not protect the right to just and favourable conditions of work and is insufficient to ensure a decent living.
- 5) Provisions in some national laws, including the 1894 Land Acquisition Act and the 2012 land laws, unlawfully challenge the constitutional jurisdiction of the courts, via finality clauses stating the decision of statutory bodies is final.

SEZ Committees have unclear accountability

Management Committees have various duties to supervise and coordinate the development and implementation of SEZs, while ensuring compliance with applicable laws. But the nature and scope of many of these duties are ambiguous. This makes it difficult for persons adversely affected by the SEZ to discuss, challenge or litigate in response to administrative decisions in the SEZ. This may also make it difficult for the Central Body to effectively manage Committees and ensure accountability.

Management Committees exercise significant influence over the development and management of SEZs. In each of Myanmar's three SEZ areas, the Committee has coordinated land acquisition and resettlement arrangements, in some instances in violation of national laws as well as international law and standards on involuntary resettlement.

While Management Committees instruct the GAD to acquire land, and have played a central role in coordinating EIAs, the SEZ Law does not clearly define the functions and duties of Committee members in these procedures. Nor does the SEZ Law establish

clear lines of authority and responsibility between the Committee members and other directly concerned actors such as companies and government departments. There is no formal means of accountability where Management Committee members fail to protect the rights of people in the zones.

Uncoordinated application of laws

The SEZ Law reaffirms that the development of an SEZ is subject to national land laws including those governing land acquisition, EIA and involuntary resettlement. The SEZ Law does not provide guidance or assign responsibility to coordinate these procedures, and the application of these laws tends to be uncoordinated.

To be compliant with international standards on involuntary resettlement, required by Myanmar's EIA Procedure, a resettlement plan should be developed prior to any land acquisition. Such a plan informs key decisions on where land acquisition will occur and how it will be implemented. An EIA may also lead to changes in development plans and so this should also precede any land acquisition involving resettlement. However, in each of Myanmar's three SEZs, land acquisitions have been carried out before the completion a resettlement plan. This is inconsistent with international standards, which form a part of national law, and with the State's international human rights law obligations.

The SEZ Rules undermine national laws

The SEZ Rules instruct Ministries to fully devolve statutory powers from the Ministry to departmental representatives on the OSSC. Article 22 provides that OSSC staff will issue permits and permissions in SEZs 'without getting any approvals or recommendations from the relevant Ministries.' This procedure undermines national laws and may weaken critical human rights and environmental protections.

Take for example decisions related to a developer's compliance with the EIA Procedure. The implementation of Article 22 would see a number of powers devolved to a small team sitting in the site-level OSSC Office. These include: the authority to determine whether an EIA is required; technical review of EIA reports and Environmental Management Plans; and critical decision-making on the issuance of an Environmental Compliance Certificate.

This arrangement undermines the principle of accountability because, unlike the relevant Minister, OSSC representatives do not have clear or formal systems or procedures for legal accountability in respect of their decisions. Without support from the responsible Ministry, the OSSC is unlikely to have the technical capacity and human resources to make considered and lawful decisions on issuing permits and approvals.

A conflict of interest may also arise between the dual roles of OSSC representatives. Under the SEZ Law the OSSC is 'supervised by' the Management Committee. Since the reconstitution of these Committees in October 2016, some OSSC representatives also serve as Committee members. They therefore have dual roles of promoting the zone as a Management Committee member, while also regulating the zone as an OSSC representative. Promoting while regulating the zone may present a conflict of interest, for example when an OSSC representative is considering issuing an approval, repealing a permit, or levying fines for a legal breach.

While the 2008 Constitution states that bylaws must conform to parent legislation, the Article 22 arrangements are not contemplated in the SEZ Law. For this reason, and because the provision interferes with other applicable laws, on its face Article 22 appears to be unconstitutional.

Minimum wage cannot protect livelihoods

Many recent studies show that minimum wage employment in Myanmar does not protect the right to just and favourable conditions of work. For people displaced by the development of SEZs, minimum wage employment appears to be the most likely

potential opportunity for an alternative livelihood, for instance in garment factories. However these jobs tend to be exploitative in Myanmar, particularly for women, and are insufficient to restore the livelihoods of persons who have experienced involuntary resettlement.

Administrative bodies do not displace courts

The jurisdiction of Myanmar's courts is provided for and described in the 2008 Constitution. Parts of the legal framework for SEZs, such as the 1894 Land Acquisition Act and the 2012 land laws, include a finality clause stating that the decisions of concerned statutory bodies are final, thus notionally exempt from judicial review. These provisions do not conform to the authority constitutionally conferred to courts and therefore the decisions of these bodies should not be considered as final.

Courts must have some power of review, at least to ensure that administrative bodies are acting reasonably and in accordance with the law, whilst respecting and protecting human rights. While few administrative disputes are referred to the courts in Myanmar, the judiciary nonetheless has authority to review administrative decisions, particularly through the application of constitutional writs.

Human rights concerns at Kyauk Phyu SEZ

This report provides an overview of the planned Kyauk Phyu SEZ in Rakhine State. Unlike Myanmar's two other SEZ sites, the ICJ is unaware of any widespread or systematic practice of involuntary resettlement or human rights violations associated with its development to date.

However this report identifies human rights concerns associated with the Kyauk Phyu SEZ, including recent preparations for land acquisition that do not comply with Myanmar laws and international standards. If these concerns are not addressed, there is a risk that human rights violations associated with the development of other SEZs will be replicated in Kyauk Phyu. This is particularly concerning in the context of Rakhine State, where there are significant ongoing human rights violations and an unstable security environment associated with the presence of armed forces and relations between Buddhist and Muslim communities.

Findings are informed by interviews with local residents, local leaders, civil society groups, Government officials and private sector actors in Kyauk Phyu, Sittwe, Yangon and Nay Pyi Taw from April to December 2016. Government documents also inform such findings.

Site profile

Kyauk Phyu Township has a predominantly rural population mainly dependent on subsistence agriculture and fisheries for their livelihoods. Around half of farmers do not hold formal title but affirm land rights under customary tenure. Research for this report found that local residents generally have little if any information about plans for the SEZ.

There have been significant international investments in Kyauk Phyu over recent years. The township is the source of an oil and gas dual pipeline traversing four states and regions to China's western Yunnan Province. Linked to this, a crude oil unloading terminal is located on Madei Island, adjacent to Kyauk Phyu. In 2013 a group of community organizers were charged and convicted of unlawful assembly for expressing dissent against land acquisition related to these investments. Disputes over compensation for displacement of land and livelihoods are ongoing and access to remedy has been limited. These existing projects are widely derided by local residents, with many saying that investments have not translated into benefits for the wider community.

These experiences of international investment are reflected in sceptical community perceptions toward new investments, as well as in a general lack of trust in local authorities to fairly oversee any future resettlement.

Key human rights findings of the Kyauk Phyu SEZ study:

- Around 20,000 people potentially face involuntary resettlement due to the SEZ.
- SEZ-related displacements in 2014 constituted forced evictions, violating the right to an adequate standard of living.
- The current land acquisition process, which will impact on human rights, is unlawful because key procedures of the 1894 Land Acquisition Act, such as for public notification, have not been followed.
- Government officials reportedly stated that possession of formal land tenure will be a prerequisite for receiving compensation, however residents of the designated SEZ area have been unable to register land, and international standards require that displaced persons are supported to restore their livelihoods regardless of if they hold formal tenure.
- Persons affected by the SEZ do not enjoy procedural rights established in international law, such as the right to information, or the right to access effective remedies and reparations.
- Minimum wage employment in the SEZ would be insufficient to restore livelihoods of displaced persons.

A minority Muslim population, predominantly of Kaman ethnicity, were based mostly in Kyauk Phyu Town before being displaced during violent conflict in Rakhine State in 2012. As with the Rohingya Muslim minority in other parts of Rakhine State, Kaman Muslims in Kyauk Phyu experience severe restrictions on movement, to which Buddhists are not subject, that constitute multiple violations of human rights. Ongoing tension between Muslim and Buddhist communities may contribute to future instability yet to date this does not appear to have been considered in plans for the SEZ or in broader economic planning for Kyauk Phyu.

Project overview

Plans for an SEZ and two deep seaports in Kyauk Phyu appear to have emerged around 2009, over time developing into plans for a megaproject. In December 2015 the then-outgoing USDP Government awarded tenders to the Chinese-led consortium CITIC, to develop the SEZ and the seaports. In November 2016, the NLD-led Government affirmed its commitment to developing this SEZ. As of February 2017, investment agreements had not been publically announced, and significant construction activities had not yet started.

There is limited publically available information about these projects. A promotional video by the project developer, China's CITIC Group, suggests the SEZ would create an investment and economic hub akin to Singapore. The seaports would process cargo to and from Europe, Africa and West-Asia. Associated road and potentially rail links to China could create alternative trade routes, linking China's western provinces with shipping routes through the Bay of Bengal.

The development of an SEZ in Kyauk Phyu should be understood in the context of foreign relations between the governments of China and Myanmar and the geopolitical significance of the deep seaports and transport links, which would reduce China's reliance on the congested Malacca Strait.

The value and viability of an SEZ in Kyauk Phyu is highly contested by stakeholders interviewed for this report as well as among many economists and analysts knowledgeable about the region. On the basis of existing evidence and research on the Kyauk Phyu SEZ, there are significant questions over its economic feasibility and its potential to contribute to economic development in Rakhine State.

Many have also expressed scepticism about the longer-term viability of an oil and gas industry in Kyauk Phyu, however not all economists share this view. Overall there appears to have been a lack of economic assessments and planning to inform Government decision-making about the SEZ.

According to internal Government documents the projects are scheduled to be completed by 2038 and consist of 'textile parks', 'construction parks,' 'residential parks' and the seaports. These projects combined would cover 1,736 hectares. Textile parks would likely centre on garment manufacturing. For the construction parks, Government and CITIC officials have identified logistics, machinery assembly, food processing and petrochemical processing as possible activities. No tender was awarded to develop the residential parks. Energy infrastructure would also be required.

The designated SEZ area covers 35 villages across nine village administrative tracts with a population of around 20,000 people. While information about resettlement plans is not publically available, land acquisition documentation acquired during research indicates that 20,000 people potentially face involuntary resettlement to make way for the SEZ and related projects. CITIC claims these projects will create 103,000 jobs, a figure roughly equivalent to the total working age population in the township as enumerated in the 2014 census.

Site-level preparations

Of Myanmar's three planned SEZs, the Kyauk Phyu SEZ is the least advanced in terms of its development. The only construction activities to date occurred in 2014-15, for two water reservoirs built to service a future zone. These subprojects displaced around 26 families.

In 2016 the GAD coordinated preparations to acquire 1,832 acres of land for the SEZ, most of which is farmland. This included surveying and planning for the compulsory acquisition of 250 acres for Phase 1 of the SEZ construction. There has been no publically available information about these activities.

An Environmental Impact Assessment for the zone has not yet been conducted, and again there is no publically available information about involuntary resettlement plans. Local authorities have identified a potential site for relocation, however that area is understood to be insufficient to provide for all persons facing displacement.

In Myanmar, while the State has the authority to acquire land for public purposes, compulsory acquisition must be carried out in line with national laws and international law obligations. The acquisition of land for the Kyauk Phyu SEZ is so far not compliant with national or international laws.

Forced evictions in 2014 for SEZ subprojects

When families were displaced from farmland in 2014 to construct reservoirs for the SEZ, officials did not follow legal procedures under the Land Acquisition Act, including provisions requiring public notification and guiding compensation. Management Committee members coordinating compensation (most of whom were replaced in October 2016) did not fulfil their promises of replacement land.

In 2014, compensation and relocation seems to have been an afterthought rather than part of a planning process. Overall the process was opaque, with payments divided into different categories, including 'compassionate money,' some of which a private company paid.

Displaced persons say they felt pressured to accept compensation which was insufficient to restore their livelihoods, and that their living standards deteriorated as a result. This deterioration in their standard of living, including decreased access to food and livelihoods, constitutes retrogression in the fulfilment of ESC rights, and is in contravention of international standards. These displacements constitute forced evictions, prohibited by international law, and are not compliant with international standards on involuntary resettlement.

The management of these initial activities has established a poor precedent for the development of the SEZ in Kyauk Phyu.

Land acquisition preparations during 2016

In February 2016, seemingly at the direction of the then-Management Committee, the Ministry of Home Affairs issued a Notification of intent to acquire 1,832 acres of land for the SEZ. However, the Notification was not posted in the area or published in the Union Gazette, as is required by the Land Acquisition Act. Over one year since preparations started, basic information about this acquisition is still not publically available.

Persons interviewed for this report indicate that at a meeting with the then-Management Committee and CITIC in January 2016, local leaders were told that only persons with formal land title would receive compensation for land acquired. Some farmers in the designated SEZ area say they have since faced difficulties registering their land. This suggests the administrative process for issuing Land Use Certificates under the 2012 Farmland Law is not working effectively in Kyauk Phyu. There is a risk that these farmers will not receive adequate compensation, resulting in deteriorating living standards.

In March 2016, surveying activities were conducted in the 250 acres Phase 1 area of the planned SEZ. By November 2016, detailed plans had been developed to acquire land from 77 farming families. People who will be affected by this acquisition say they have not been properly consulted and are yet to be included in any decision-making processes.

Land acquisition is unlawful if the process does not follow procedural requirements established in the Land Acquisition Act. And because the EIA may lead to changes in project plans, land acquisition occurring before its completion may interfere with the international principle of avoiding resettlement.

Alternative livelihood options

Local residents have limited experience in income generation outside agriculture and fisheries, and there are no legal obligations on SEZ employers to hire local residents. There are no legal guarantees that the development of an SEZ will lead to employment opportunities for residents of Kyauk Phyu.

Significant support will be required to assist residents, particularly those who have experienced resettlement, to change from agricultural livelihoods to jobs in industry. So far there has been a lack of planning to protect livelihoods and support alternative jobs. Proper resettlement planning, occurring prior to any displacement, is critical to enabling the State to protect the right to just and favourable conditions of work. This is ever more important for marginalized and disadvantaged social groups in Kyauk Phyu including women, children and Muslim religious minorities.

Impacts on the rights of Muslims

Muslim residents of Kyauk Phyu have lived in camps since 2012, two of which are located in the township, others in neighbouring townships. Their movement remains severely restricted. Mostly forbidden from leaving the camps, these women, men and children rely on assistance from aid agencies and Muslim associations based in Yangon.

The Muslim community, which has been faced with a deteriorating human rights situation in Rakhine State, has so far not been included or considered in planning processes for the SEZ. To a lesser degree, Buddhist residents displaced during the 2012 conflict also have heightened vulnerabilities that need to be taken into account. The failure to address this situation contributes to human rights violations and undermines the potential for sustainable development in Kyauk Phyu and Rakhine State more broadly.

Impacts on the rights of Women

Women in Kyauk Phyu have a lower socioeconomic status than men because of gender discrimination. They are not represented in key positions of authority in local administration, religious institutions or on the SEZ Management Committee. This makes women less likely to receive relevant and timely information about the SEZ, and to participate in decision-making processes affecting them.

Economic and demographic transformations associated with big infrastructure projects can have significant impacts, for better or worse, on women. Experiences in Myanmar and in Asia indicate that women are more likely than men to be employed in textiles, which may be a key entry point for local employment in the SEZ. However recent studies show that conditions in Myanmar's garment factories are often exploitative. If jobs materialize, these may be insufficient to restore the livelihoods of persons displaced by the SEZ.

Conclusions

In Myanmar, there has been a lack of accountability for human rights violations committed during the development and implementation of SEZs. A key impact has been interference, by the State and companies, with the enjoyment of the right to an adequate standard of living and other economic, social and cultural rights.

The SEZ laws do not adequately protect the rights of persons living or working in SEZ areas. Amendments to the SEZ Law and SEZ Rules are required to bring the legal framework for SEZs in line with the State's international human rights law obligations.

Changes to laws alone are insufficient to protect rights: laws must be fully implemented by the relevant authorities. Broader reforms, including updating land laws in line with the National Land Use Policy and international standards, enhancing the independence of the judiciary, and including in investment agreements an affirmation of the State's right to regulate, are also critical to protect human rights in Myanmar.

To protect against further human rights violations in SEZs, the Government of Myanmar must place a moratorium on further land acquisition and construction activities in SEZs, and deter from entering binding investment agreements in SEZs, until an improved legal framework is in place that can enable the protection of human rights in SEZs.

Recommendations

To the Legislature:

1. Protect human rights by amending the SEZ laws, through meaningful public consultation in accordance with international standards, to: a) ensure genuine public participation in planning and decision-making processes; b) establish specific duties and lines of accountability of the Management Committees to protect human rights; and c) specify differentiated responsibilities for involuntary resettlement in SEZs, in alignment with the 2015 EIA Procedure.
2. Align land laws with international human rights law obligations and with the National Land Use Policy, which recognize customary land tenure and women's rights to own and use land.
3. Protect the human rights of Muslims in Rakhine State in accordance with the rule of law, including by conferring rights in line with the State's international law obligations.

To the SEZ Central Body:

4. Order a moratorium on the development of SEZs, and on entering related investment agreements, until the SEZ laws have been amended to ensure conformity with international human rights law and standards.
5. Appoint as Management Committee members women, representatives from communities affected by SEZs and legal experts in the protection of human rights and the environment.

To the Ministry of Commerce:

6. Commission a Strategic Environmental Assessment, in line with Chapter 10 of the EIA Procedure. This would involve consultation to inform decision-making on the Kyauk Phyu SEZ and related projects, by identifying cumulative environmental and social impacts of all the developments in Kyauk Phyu, while considering conflict dynamics and economic development in Rakhine State.

To the Kyauk Phyu Management Committee and General Administration Department:

7. Suspend land acquisition until after the completion of a resettlement plan that is in line with international standards, as required in the EIA Procedure.
8. Establish a mechanism to enable genuine public participation in decision-making.

To developers and investors in SEZs:

9. Take heightened due diligence measures to ensure investments are not complicit in human rights violations, particularly related to unlawful land acquisitions that violate human rights.

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