



Fishermen in Kyauk Phyu. Photo: Kaung Htet

# RESPONSIBLE INVESTMENT IN MYANMAR

## Lessons from experiences of SEZ developments

Special Economic Zones (SEZs) aim to increase foreign investment and economic growth using special incentives, services and regulations. Their success is usually viewed in terms of economic impacts, overlooking wider social and environmental impacts. But experience in South-East Asia has shown that without transparency and accountable governance, or a clear strategy for local linkages, SEZs are more likely to result in harmful environmental and social impacts and fail to deliver expected benefits. The local population are the losers in such investments. As Myanmar proceeds with several SEZ developments, fundamentally transforming livelihoods, it has an opportunity to learn from experiences in the region and to take action to improve prospects for local communities and mitigate the negative impacts of SEZs.

# SUMMARY

Special Economic Zones (SEZs) are clearly demarcated geographic areas where different legal and regulatory regimes relating to business and trading activities apply. Originally established as a way of circumventing trade restrictions, SEZs are usually intended to create an environment that will boost manufacturing, stimulate trade and foreign direct investment (FDI), and act as a testing ground for new governance reforms and incentives. SEZs vary in size as well as in their objectives and performance. Some have become huge centres of growth, while others have either failed to get off the ground, failed to increase exports or benefits beyond their enclaves, or have not been able to sustain success over time. Some have had serious negative impacts on the surrounding environment and on local communities, particularly women and girls.

As Myanmar continues to navigate its rapid economic expansion triggered by the end of military rule in 2010, the development of SEZs forms a key element of the country's industrialization plan. Myanmar now has the opportunity to learn from its neighbours to pursue the success factors and avoid the pitfalls that lead to failed SEZs. Most research focuses exclusively or largely on the economic impacts of SEZs as a measure of their success, with less attention devoted to the wider social and environmental impacts and to the political economy of such zones. This report draws on evidence from the South-East Asia region to explore the wider social and environmental impacts of SEZs, with case studies from Thailand, Indonesia, Cambodia and Vietnam.

Oxfam has been providing humanitarian assistance and working with local communities to improve livelihoods and reduce poverty in Kyauk Phyu township – one of the sites of Myanmar's three SEZs. Based on experience of SEZ developments in the region, this report identifies issues and lessons with relevance to the Kyauk Phyu context.

Key factors for a successful SEZ include (but are not limited to): a clear vision and objectives; the location, depth and skill levels of local labour markets; linkages to domestic markets; and strong coordination and consistent support for policies across central and local government. Transparent and accountable planning, decision making and implementation are also crucial. The context in Kyauk Phyu and available information about the SEZ development indicate that there are many risks to be mitigated and challenges to overcome if it is to succeed, while avoiding serious environmental damage and bringing greater prosperity to local communities.

If the Government of Myanmar decides to pursue development of an SEZ in Kyauk Phyu, Oxfam proposes the following recommendations to support responsible investment, maximize positive opportunities and minimize any potential negative impacts.

## **The Government of Myanmar should:**

- Undertake a Strategic Environmental Assessment (SEA) to situate the immediate SEZ development in the wider economic, social and environmental context – which is essential for proper planning and coordination.
- Align SEZ plans with wider national sustainable economic development plans, and include approaches to support job creation and specific measures to improve education and skills opportunities for women to increase their economic empowerment. This should be an inclusive process that involves consultation with a wide range of stakeholders, including the public and, most importantly, the affected communities.

- Invest in new land transport linkages to open up access to national and regional markets.
- Invest in local economic infrastructure and provide support to local farmers, workers and enterprises so they can benefit from opportunities to engage with new local, regional and national markets.
- Enforce environmental laws to ensure that full, rigorous and consultative Environmental Impact Assessments (EIAs) are conducted for SEZs in accordance with the 2015 EIA Procedure. These must cover not only the construction phase but also the operation of an SEZ and baseline requirements of the industries expected within it.
- Provide the necessary support and regulatory clarity to ensure that the investment is conducted to the highest standards and in coordination with regional and national economic development plans.
- In coordination with relevant investors and companies, implement best practice international standards and procedures for land acquisition and resettlement processes. Under Myanmar law, this must conform to the World Bank Policy on Involuntary Resettlement. This also means that no land use rights should be transferred from pre-existing land users without their Free, Prior and Informed Consent (FPIC).<sup>1</sup>
- Given the importance of revenue-raising through strategic investments such as SEZs, the government should draw on regional expertise and establish – through regional forums of the Association of Southeast Asian Nations (ASEAN) – guidelines and criteria for the circumstances under which tax incentives and exceptions are acceptable.

**Investors and project developers should:**

- Operate transparently by establishing clear mechanisms to ensure that the local community is informed and consulted about the SEZ and its impacts in line with international standards, including the United Nations Guiding Principles on Business and Human Rights (UNGPs).
- Establish operational complaints and grievance mechanisms in consultation with local communities and in line with the United Nations Guiding Principles on Business and Human Rights.
- Take specific steps to ensure that women’s voices are heard, their concerns are addressed and their knowledge informs decisions.
- Work with government, civil society and development partners to ensure that investment and development projects support the communities most in need and can provide the skills training most likely to enable those communities to access jobs or other benefits.

Transparency underpins all the recommendations proposed here. More can be found in the Recommendations section of the full report.

# 1 AN INTRODUCTION TO SPECIAL ECONOMIC ZONES

## 1.1. DEFINITION AND TYPES

The term Special Economic Zone (SEZ) is used to describe clearly delineated geographic areas within which there is a different legal and regulatory regime relating to business and trading activities. Beyond this basic definition, there is extremely wide variation in the location, size, composition and objectives of SEZs.

The earliest free trade areas appeared in the late 1930s, providing benefits such as tax or tariff advantages. It was not until the world noted the success of the Kaohsiung Export Processing Zone (EPZ), established in 1966 in Taiwan, that there was widespread proliferation of SEZs. By 1978, 22 countries had established SEZs; by 2015, there were 4,300 SEZs in more than 130 countries, employing 68 million workers.<sup>2</sup>

SEZs began as a way to circumvent trade restrictions and earn foreign exchange revenues; they were a means of boosting manufacturing and gaining access to new global markets, and acted as a testing ground for new governance reforms and incentives. This can be viewed as a three-stage progression:

- First stage: SEZs can bring employment and foreign exchange revenues (this might include low-skilled employment as in the garments or electronics industry, for example).
- Second stage: SEZs can create greater linkages with the domestic economy in supply chains and markets, such as with own-branded merchandise.
- Third stage: SEZs can facilitate reforms in areas such as labour markets and the service sector, which might assist nationwide development by improving productivity, raising skill levels and stimulating innovation.<sup>3</sup>

SEZs are often governed by dedicated authorities that have some autonomy over the design and application of regulations, administration and incentives, and frequently provide a single point of access to central government functions – known as a ‘one-stop service centre’.<sup>4</sup> Some analysts argue that this gives them a paradoxical character: they have both more and less government control than the rest of the country, and are frequently in breach of World Trade Organization (WTO) agreements while also existing to promote international trade. Political economy analysis suggests that there are practical reasons for establishing SEZs in small areas rather than implementing similar reforms nationally (e.g. testing reforms at a manageable scale, and encouraging clustering of businesses) as well as political reasons for doing so (certain industries may be protected nationally due to their public purpose and/or their value to local political elites).<sup>5</sup>

Functional differences between SEZs are clear in some cases. Common examples include:

- Free trade zones – with facilities for storage, shipment and distribution of goods.
- Export processing zones (EPZ) – focused on manufacturing and/or industrial processing and logistical support for export industries.
- Free ports – may combine both elements in large and diversified zones.

The most well-known SEZs are those which have become huge clusters of manufacturing and technology industries for export. These are significant in national and global economic terms, but represent only one part of a wide spectrum of SEZ types. Most early SEZs were state-owned. Some publicly run SEZs had become associated with high costs and inefficiency, while early private SEZs (with state support) were characterized by poor social and economic impacts and weak domestic connections. The proportion of SEZs that are privately owned and managed has increased over time – up from less than 25 percent in the 1980s to 62 percent in 2007.<sup>6</sup>

## 1.2. PERFORMANCE

Globally, the performance of SEZs varies enormously. Some have become huge centres of economic growth (e.g. Shenzhen in China), while others have either failed to get off the ground at all, failed to generate increases in exports or benefits beyond the enclave of the SEZ itself, or have not been able to sustain success as they become uncompetitive over time.<sup>7</sup> There is evidence to suggest that SEZs do increase exports (rather than just reallocating trade), and some appear to support increased productivity and sales at enterprise level; but others either fail to deliver improvements or even have a negative impact.<sup>8</sup>

The Chinese experience with SEZs is viewed as successful overall. Four were established in the early 1980s, starting with Guangdong and Shenzhen. By March 2013, there were 191 national-level SEZs. In 2010, SEZs accounted for 46 percent of foreign direct investment (FDI), 60 percent of exports and 30 million jobs. SEZs were strongly linked to national economic development plans, and became highly successful as testing grounds for innovation and new institutions for a market economy.<sup>9</sup>

In Africa, SEZs have often been unsuccessful. There have been some exceptions in Mauritius, Kenya and Madagascar, although in the case of the latter, tens of thousands of jobs were lost when political turmoil resulted in the country's exclusion from regional trade agreements.<sup>10</sup>

Most SEZs in Cambodia are stand-alone areas aimed at manufacturing. This is in contrast to the clusters seen in China, India or Bangladesh, which are more diverse in their outputs. SEZs in member countries of the Association of Southeast Asian Nations (ASEAN) have struggled to create domestic linkages, remaining as enclaves and failing to deliver broader development benefits. Many of the new SEZs in the 'CLMV' countries (Cambodia, Lao People's Democratic Republic (PDR), Myanmar and Vietnam) have a rather unclear rationale, but often appear to be following an 'agglomeration economy' approach based on industrial clusters. Central Asia has a number of economies dominated by natural resource revenues. Several of these have SEZs, including 10 in Kazakhstan and seven in Turkmenistan. They often aim to diversify highly commodity-dependent economies, but have had very limited success so far. Some African countries such as Zambia have similar natural resource-focused SEZs dedicated to mining.<sup>11</sup>

Understanding and analysis of the impacts of SEZs has also changed over time. Broadly speaking, there are two main approaches to understanding their economic impacts. First, static analysis focuses on specific design and the direct outputs and impacts of a development. Second, dynamic analysis (or evolutionary approaches) – as their name suggests – look at wider changes and objectives such as fostering domestic industrialization, forming clusters, and developing or integrating border areas.



Most research on SEZs focuses exclusively or largely on economic impacts as a measure of their success, with less attention devoted to the wider social and environmental impacts and to their political economy. The variety of types and sizes of SEZs makes it hard to generalize about these factors, but it is clear that many of them have resulted in significant environmental damage and negative impacts on local communities.

## 1.3. SUCCESS FACTORS AND CAUSES OF FAILURE

A recent assessment by the Asian Development Bank (ADB) identifies a range of success factors for SEZs, focusing on economic success (and also reasons why they fail, which are discussed later in this section):

- Fiscal incentives can attract enterprises initially, but good governance (e.g. effective SEZ authority and legal framework) is more important in the long run.
- Factory sites, plentiful labour, strategic location, and good transport connections to resources/inputs and trading destinations.
- Reliable institutions and judicial systems and good transparency standards.
- Strong support from central and local government, backed up by consistent policies.<sup>12</sup>

### **Transparency**

It stands to reason that good planning and consultation processes should be important for the success of SEZ developments, given that they can generate huge public costs and have transformative impacts on the environment and on large numbers of people over a long period of time (if not indefinitely). Governments which foster public debate over the implementation of an SEZ development are less likely to suffer from a range of problems stemming from inadequate knowledge for decision makers and distorted incentives (combined with weak governance and accountability mechanisms). This applies to economic feasibility studies and prospective links to local and national development plans, as well as to environmental and social impact assessments and due diligence. Under Myanmar's EIA Procedure, public disclosure and consultations are mandatory.<sup>13</sup> In fact, transparency – as part of an effective planning and decision making process before initiating an SEZ development as well as for implementation and ongoing accountability – is of such importance that it underpins all other factors discussed here.

### **Timing**

One factor that is often overlooked is the timing of an SEZ development, not only in relation to national developments but also the state of global economic growth and trade. The huge success of some Asian SEZs in the 1980s and 1990s coincided with a period of extraordinarily high growth in global production and trade levels as well as growth in the region. The same strategies may not be replicable in the current context. This is especially of concern at a time when global economic growth and trade is stagnant and there are increasing indications that the recent trend of rising trading openness and cooperation may even go into reverse.

### **Location**

To succeed economically or in contributing to broader development goals, SEZs need to have a clear vision and objectives. Numerous factors need to be carefully assessed,

including: geographic location and relationship to key markets as well as resources and inputs; labour; trading destinations; housing; and amenities. These factors affect many things: the costs of development and operation; the possible areas of comparative or competitive advantage for business; the environmental and social impacts; the prospects for positive spill-overs to the local economy and for harmonious community relations; and more. Some studies show that SEZs in remote locations have been especially slow or even unable to generate wider social and economic benefits.<sup>14</sup>

Unrealistic assumptions or inadequate assessment of the suitability of the chosen location to deliver the planned SEZ and related developments significantly increase the chances of failure. For example, the Philippine government spent \$200m on the Bataan EPZ port and industrial project, developed in the 1970s and 1980s, but could not overcome the disadvantages of its remote location. Its failure and expense drove international commentators to question the entire SEZ model. The experience suggests that, although good infrastructure is vital for cluster formation, spending more on infrastructure may not be a viable solution to an unsuitable location.<sup>15</sup>

### **Strategy for local linkages**

This is closely connected to the question of location. The depth and skill levels in local labour markets are vital for developing diverse industries in SEZs – more so than low wages. In South Asia, being close to cities has often been more important than proximity to major transport infrastructure for this reason. This relates over time to the question of how strongly the SEZ plan is linked to the existing local conditions and to long-term development plans. This may enable a transformation over time and in phases, but requires careful planning and sustained investment over a long period. China provides some examples of SEZs transforming agrarian regions into large cities although, as described above, China's economic conditions and implementation capacity are highly unusual (even leaving aside the huge social and environmental impacts and the degree of consent of local communities to those changes).<sup>16</sup>

### **Over-reliance on FDI**

It is not surprising that attracting FDI is a central objective and strategy in SEZ developments. Yet it can be dangerous to rely too heavily on FDI. Technology and skills transfer as well as other frequently cited benefits often do not materialize, especially with an industrial enclave. Moreover, despite low wages not being the most important investment driver in most cases, competition means that international investors are very sensitive to costs (e.g. land, labour, operational costs), and SEZs that struggle to remain competitive can find that early success does not last. This is particularly so in sectors like light manufacturing and processing, which are highly mobile.<sup>17</sup>

### **Land issues**

Land acquisition is a major priority and cost for investors as well as a major source of conflict, human rights violations and negative social impacts for communities. SEZs have often been established by claiming large amounts of agricultural land. The case studies in this report will go into more detail on the impact of land use change and resettlement (often forced displacement of farmers) in terms of the security of livelihoods of affected communities. Unlawful, irresponsible or ineffectively managed land acquisition and the conflict this brings also results in major delays to SEZ implementation as well as high compensation costs and substantial reputational risks for investors. For example, in Vietnam, around 100,000 people in rural villages were displaced in order to develop industrial zones.<sup>18</sup>

## Governance and stability

Failures and negative impacts are often caused and exacerbated by failures of governance. This can take many forms, including: unclear or unaccountable delivery and implementation institutions; uncertain legal frameworks and weak judicial oversight; weak implementation capacity and fragmentation of limited resources across several SEZs; poor coordination and inconsistent support or policies across central and local government; and wider political instability or conflict and security issues. Again, the case studies will look in more detail at examples with relevance to Kyauk Phyu.

## 1.4. IMPACTS ON WOMEN

It is important to pay specific attention to the extent to which women are included in SEZs and how they are affected by them. Women account for between 60 percent and 80 percent of employees (on average) in SEZs and, in some cases, as much as 90 percent – often in light industries such as garment manufacturing. However, critics argue that women are employed in low-skilled, low-wage jobs, with poor health and safety conditions and little prospect of greater economic empowerment.<sup>19</sup> Research by the World Bank found that significant improvements are possible for women workers and employers if gender-inclusive assessments are conducted, policies established and implemented, dedicated services provided, and steps taken to ensure the representation of women in governance through dedicated committees and grievance mechanisms.<sup>20</sup>

Assessing the social and environmental impacts of SEZs as well as workplace issues facing women and girls is also vitally important. This is especially so in areas where women and girls already suffer high levels of vulnerability or exclusion, including, for example, lack of control over land and finances, or high rates of domestic and sexual violence. These issues will be addressed in subsequent sections of this report.

## 1.5. THILAWA AND DAWEI SEZs

### Thilawa SEZ

As outlined earlier, as well as the Kyauk Phyu SEZ, Myanmar has two other major developments under way, in Thilawa and Dawei. This subsection briefly describes those projects and highlights issues and lessons of relevance to the Kyauk Phyu development.

The Thilawa SEZ (see Figure 1 below) is 23km south-east of Yangon and is the first SEZ to be developed in Myanmar. It is part of a joint project between the Myanmar and Japanese governments. The Thilawa development commenced prior to the enactment or implementation of environmental safeguard laws that are now in place, as well as prior to the general SEZ Law (there were previously zone-specific laws, which have been replaced by the 2014 Law). Unlike Kyauk Phyu, the Thilawa SEZ is partly operational, has a range of international investors, is close to major cities and markets, and aims to focus on the manufacturing, innovation, services and technology sectors (rather than heavy industry and commodities).<sup>21</sup>

The SEZ is being developed in two phases by Myanmar Japan Thilawa Development (MJTD) Ltd, which is a joint venture between the respective governments (10 percent stake each), a consortium of Myanmar businesses, plus 18,000 individual shareholders



(41 percent), and a Japanese consortium that includes Mitsubishi Corporation, Marubeni Corporation and Sumitomo Corporation (39 percent).<sup>22</sup>

A total of 81 households were affected in Phase 1, with 68 being relocated late in 2013,<sup>23</sup> although it is alleged that several hundred people were evicted from the same land earlier, in 1997. The manner of the evictions (including reports of threats of imprisonment if people did not agree to move and lack of due process and documentation), and the subsequent resettlement conditions (including inadequate compensation and training, and inadequate provision of clean water and housing) resulted in significant grievances being raised by affected communities.<sup>24</sup>

One critical area of concern around the Thilawa SEZ is the EIA process. Analysis has found that the EIA for Phase 1 (published in 2013) was seriously flawed and deficient.<sup>25</sup> There are also concerns that the EIA for Phase 2 has serious deficiencies. These deficiencies, detailed below, need to be addressed in order to comply with the EIA Procedure:

- Myanmar's EIA laws were not in place when the EIA for Phase 1 was conducted, but the government and SEZ authorities had committed to follow international best practice; partners such as the Japan International Cooperation Agency (JICA) are required to ensure that relevant standards are applied but they failed to do so.
- The EIA covered only Phase 1, rather than the whole SEZ development, and did not identify the types of enterprise expected to locate there.
- The EIA only addressed impacts from the construction and development stages of the SEZ, not from its ongoing operation, and failed to address impacts of the industries that would be based there. There was little or no analysis of impacts on local livelihoods or social and resettlement-related issues, or of environmental impacts such as air pollution and waste management. Some of these impacts were assessed separately in a Resettlement Work Plan prepared by the Yangon regional government together with the SEZ authorities.<sup>26</sup>
- The process did not include adequate public disclosure or consultation with affected communities (including discussion of alternative plans or resettlement sites).<sup>27</sup>

The conflict, negative impacts and complaints that arose resulted in an investigation being conducted by the examiner's panel for the JICA guidelines for environmental and social considerations. The examiners are selected by JICA to assess a range of alleged areas of non-compliance with JICA operations.<sup>28</sup> Despite acknowledging a range of negative impacts, the resulting report found that non-compliance with JICA guidelines was not proven. However, it did so on the basis of superficial analysis, often merely commenting that procedures did take place while ignoring the fact that they were clearly not adequately implemented or necessarily undertaken in good faith.<sup>29</sup>

Some of the issues reported at Thilawa indicate that there is considerable work to be done to clarify the role of the SEZ Management Committee and improve its ability to effectively fulfil its role, as well as the roles of other administrative bodies such as the One-Stop Service Centre and MJTD Ltd. There are additional concerns about the accountability of the Management Committee given that it has established a limited liability company to carry out some of its duties.<sup>30</sup> It has been able to drive the development forward to reach the operational stage, but – despite extensive technical assistance from JICA – it does not appear to have been able to ensure that important processes like EIA and land acquisition and resettlement have been undertaken correctly.

Issues raised at Thilawa that are of relevance to the Kyauk Phyu SEZ include the following.

- It is not clear to what extent (if any) the Management Committee has a responsibility to provide a point of access for information and grievances for affected communities. For example, how is the One-Stop Service Centre accountable to other stakeholders? What role does MJTD Ltd – which issues quarterly monitoring reports on EIA implementation – play in handling community complaints? Also, what are the parameters of determination and permission powers held by representatives of the various government departments represented in the One-Stop Service Centre?<sup>31</sup>
- Regional government was not actively involved in Phase 1 at Thilawa. This is both a problem and a missed opportunity for utilizing more locally trusted or accountable institutions. This appears to be changing for Phase 2, with a new government in place. Its involvement should be monitored to provide learning about how best to involve local institutions in planning and implementation in Kyauk Phyu. However, it may be necessary to do more advocacy work to encourage the Yangon regional government to set high standards for social protection in Thilawa, as it is currently unable to meet these standards in other industrial developments in the Yangon area.
- Key informant interviews indicate that some investors were advised by the SEZ authorities that they did not need to complete an EIA, but rather should just complete an 'Environmental Compliance and Monitoring Plan' for the Management Committee, as the SEZ development had already conducted its EIA. Not only does this go against the SEZ Law (which clearly states that national environmental laws apply, including the requirement for an EIA to be completed and signed off by the Environment Ministry), it is also questionable, as the EIA process for Thilawa has been heavily criticized as deficient in many respects. However, a few other projects, such as the Golden Dowa Ecosystem Myanmar Waste Management facility, were required to undertake an EIA. This EIA was finalized in June 2016 and became publicly available only after civil society actors advocated for its release. Civil society claims the assessment is of poor quality and the delay in its release is not in accordance with the EIA Procedure.<sup>32</sup>

The location of the Thilawa SEZ as well as the type of industries involved mean it should be much less complex and risky than the Kyauk Phyu project. The fact that so many issues have arisen, and that grievance and accountability mechanisms have been largely ineffective, suggests that greater efforts are required around enforcing laws and regulations, and strengthening implementation and monitoring capacity, to ensure that risks are mitigated in Kyauk Phyu – let alone the potential benefits of the SEZ being maximized.

## **Dawei SEZ**

The Dawei SEZ (see Figure 1 below) was launched in 2008. The ambitious plans were for one of the largest SEZs in South-East Asia, covering an area of more than 200km sq north of the city of Dawei, capital of Tanintharyi region, in south-east Myanmar. Plans include a deep sea port, oil refinery and petrochemical plants, steel mill, pulp and paper processing, and other medium and light industry or manufacturing. A 4,000 MW coal-fired power station was also planned but later revised to a 3,000 MW gas-fired plant, though the plans remain unclear. Related infrastructure projects include a major road link to Thailand, connecting to the Greater Mekong Subregion (GMS) Southern Economic Corridor, and a major reservoir.<sup>33</sup>

It was estimated that \$50bn would be needed to develop these projects, but the consortium of ITD (Italian-Thai Development Company) and Max Myanmar struggled to raise investment. Max Myanmar withdrew in 2012 and the contract was cancelled in 2013, with a new Special Purpose Vehicle (SPV) formed between the Government of Myanmar and the Government of Thailand to oversee the project. The Japanese government was invited to join the project in 2016 as a third-equal-share partner.<sup>34</sup>

Research by the Dawei Development Association,<sup>35</sup> a coalition of local civil society groups, found a wide range of serious issues with the process and impacts surrounding the Dawei SEZ so far:

- Many people in affected communities had already lost land due to confiscation or damage, and 71 percent of those surveyed expected to lose some or all of their land.
- Only one-third of people had received any information about the project; of those, three-fifths had only received information about positive benefits, while only six percent of all households knew that oil and gas or petrochemical facilities were to be built in their neighbourhoods.
- EIAs were conducted late and not made public. In 2014, of three studies commissioned, communities were aware of only one – for the road project, which was still being conducted in mid-2013 after roads had already been built through community lands.
- Consultation was very limited; only eight percent of households reported giving consent prior to the project starting.
- Compensation processes were severely delayed, with only a small minority of households having received payments and even fewer given official documentation.

## 2. THE KYAUK PHYU SEZ

### 2.1. BACKGROUND AND PROGRESS SO FAR

**Figure 1: Location of Kyauk Phyu, Thilawa and Dawei SEZs in Myanmar**



#### **Origins of the Kyauk Phyu SEZ: design, planning and tendering**

In 2012, the Kyauk Phyu SEZ Management Committee was established by the Government of Myanmar. A Bid Evaluation Committee was formed in order to manage key tendering processes. Its roles included selecting a consultant to develop a market-based analysis for the SEZ, creating a regional development plan for Kyauk Phyu and Rakhine State, and advising in the selection of the project developers. This was won by a Singaporean consortium led by CPG Corporation.<sup>36</sup>

In July 2014, the Bid Evaluation Committee released an invitation for expressions of interest from companies for the development of the Kyauk Phyu SEZ, with a deadline of 25 August 2014.<sup>37</sup> From 60 companies that expressed an interest, 12 were shortlisted

(though no list was published) and invited to submit full bids by 10 November 2014, with a decision set to be made by the end of the year. The decision was delayed and eventually a decision was made public in late December 2015 – declaring that a consortium led by CITIC (formerly China International Trust and Investment Corporation) – a giant Chinese state-owned enterprise – had been selected to develop the port and industrial zone. The consortium includes four other Chinese companies (China Harbor Engineering, China Merchants Holdings, TEDA Investment, and Yunnan Construction Engineering Group) and the Thai Charoen Pokphand Group.<sup>38</sup>

The bidding process has received praise from some official quarters. Nonetheless, in 2013, well before the call for expressions of interest was announced, press reports stated that a number of Memoranda of Understanding (MoU) had already been signed with foreign and domestic companies, including CITIC from China and Myanmar's Htoo Trading Company. There was also reported to be a separate MoU with the China Railway Engineering Corporation to build a railway linking Kyauk Phyu to Yunnan province in China.<sup>39</sup>

Media reports put the size of the Kyauk Phyu development at around 1,000 hectares, with the main components being: a deep sea port (spread across two locations) to be constructed over 20 years; an industrial zone containing a range of capital-intensive and labour-intensive industries; and a road and bridge connecting the industrial zone to the port.

However, the lack of clear and transparent data is itself a block to understanding the full scope of the development. For example, the port is expected to have 10 berths, with a planned capacity of 7.8 million tons of bulk cargo and 4.9 million twenty foot equivalent unit (TEU) containers per year (possibly to be expanded to seven million in future).<sup>40</sup> Media reported that the leading investor would hold a stake of up to 85 percent in the development of the port and up to 51 percent in the industrial zone, with consortia of Myanmar enterprises gaining some of the remaining share alongside the government.<sup>41</sup> However, interviews conducted for this research suggest that these agreements may be subject to renegotiation.<sup>42</sup> It remains unclear how the development of the SEZ will be split among the different parties – signalling again the need for clear and transparent data.

There are unconfirmed plans for a new power station, and confirmed plans for two small dams and reservoirs, one of which has already been completed.<sup>43</sup> Stakeholder interviews indicated that local communities are very concerned about the health and environmental impacts of a coal power station, but that they have no reliable information about the water quality or any usage/supply plans related to the new dams and reservoirs.<sup>44</sup>

## **Governance of SEZs**

The legal framework and governance structures for SEZs are established under the Myanmar Special Economic Zone Law of 2014.<sup>45</sup> This sets out the key institutions of decision making and management, as follows:

- Central Body – a single committee appointed at Union level, which has ultimate responsibility and decision making power over the implementation of SEZs, including related policy making.
- Central Working Body – appointed at Union level by the Central Body, will assist in the implementation of SEZ activities, including scrutinizing proposals and submitting recommendations to the Central Body for decision making.

- SEZ Management Committee – appointed by the Central Body for each SEZ development, responsible for implementing and supervising the development and investment, coordinating with relevant central government ministries, and establishing a one-stop shop service for investors. It must include one representative from the state or regional government. The chairperson is responsible to the president, through the Central Body.

The SEZ Law explicitly requires investors to abide by the Myanmar Environmental Conservation Law and international standards, although it does not specify which standards. However, the 2015 EIA Procedure, enacted under the Environmental Conservation Law, requires that complex projects conform to the World Bank Policy on Involuntary Resettlement.<sup>46</sup> The SEZ Management Committee has unclear supervisory duties in these processes. It stated that the Ministry of Home Affairs is responsible for carrying out the transfer or taking over of land intended for SEZs in accordance with ‘existing laws’, though it is not made clear what those laws are. The Law includes stipulations for investors to employ certain quotas of Myanmar citizens, namely all positions requiring no expertise, and for skilled work, 25 percent of jobs in the first two years, at least 50 percent in the second two years and 75 percent thereafter – although there is a qualifier that the SEZ Management Committee may waive this requirement. It is not clear if this includes the developers of the SEZ – possibly an important omission.<sup>47</sup>

Under the previous government, the SEZ Management Committee was chaired by the Deputy Minister of Railways, with the Deputy Minister of Finance as Vice Chair. It also included a senior figure in the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) and head of the Myanmar Garment Manufacturers Association. This extremely important committee appears to have been inactive after the 2015 change of government and there has been a delay in making new appointments.

Two committees, a new SEZ Central Body and Central Working Body, were formed in August 2016. The SEZ Central Body consists of 15 members, most of whom are Union Ministers. The Central Body is headed by Vice President Henry van Thio, while the Central Working Body is led by the Minister of Commerce. The SEZ Central Body is tasked with reporting to the Union government on SEZ-related matters.<sup>48</sup> In November 2016, the Central Body formed new Management Committees for all three SEZs, including Kyauk Phyu. Dr U Soe Win, a former senior civil servant, has been named Chairperson of the new Management Committee. U Nan Da, a Director in the Department of Trade at the Ministry of Commerce, will act as Joint Secretary.<sup>49</sup>

### **Significant activities on the ground**

Despite the fact that detailed information about the plans and timetable for the Kyauk Phyu SEZ development remains unavailable, and that the change of government means that the future of the entire project is being questioned, a range of preparatory activities have occurred. These include:

- Numerous visits to Kyauk Phyu by the chairperson and members of the former Management Committee (and by other Union and State politicians). Some interviewees describe opportunities for dialogue and questions, but this appears confined to a small number of local administrators, businesses, community leaders and civil society organizations (CSOs). The last Management Committee visit was in January 2016, together with CITIC, to announce awarding of the tender.<sup>50</sup>
- Land demarcation – in March 2016, a government-led survey team involving the General Administration Department (GAD), the Land Survey Department and the



Agricultural and Forest Departments reportedly marked 250 acres as the first development area for the SEZ. No formal notification or record was provided to communities.

- CITIC has been active and visible in local communities – sharing very positive images of the development through a DVD and brochures, and informing villagers they will be able to get skills training and jobs.
- CITIC has also set up a corporate social responsibility (CSR) project providing microfinance loans in up to 50 local villages. This ‘Village Fund Programme’ is supposed to be administered through a committee of villagers, though there is no clarity about how this will operate on the part of the communities involved. It is supervised through the Department of Livestock Breeding and Veterinary Health, with involvement of the General Administration Department. CITIC also plans to establish a vocational training school in the area, including a training programme for students from low-income families.

### **Kyauk Phyu socioeconomic context**

During 2015, Oxfam conducted a baseline socioeconomic assessment of Kyauk Phyu township and of four villages within the area. This study found that the economy is dominated by farming and fishing, with an estimated 70 percent of the workforce employed in these sectors. Most farmers own less than five acres of land and are primarily subsistence farmers, only selling crops if there is a surplus or to meet short-term cash needs. The remaining workforce is largely casual labourers or government officials. Only 12.6 percent of the population live in urban areas, according to the 2014 census.<sup>51</sup>

The development of the South-East Asia oil and gas pipeline port and terminal has had a huge impact on local livelihoods. It has dramatically reduced access to land and fisheries among some communities, and has also reportedly brought an influx of foreign workers. Jobs were created, mostly in the form of casual labour during construction, but prices for basic commodities and land have risen.<sup>52</sup>

Most of the workforce is male, but women tend to run local family businesses. Most women (90 percent) work to supplement their household’s income, mostly selling goods on local markets. Some women work as seasonal or casual labourers, but are estimated to earn less than men for this work – being paid 3,000 to 5,000 MMK per day, whereas men earn 5,000 to 7,000 MMK a day. Women are largely excluded from formal and informal decision making positions, though there are some exceptions. Concerns raised by women during key informant interviews included sexual abuse, low education, poor access to healthcare, and inadequate job opportunities.

Access to essential services is limited and inconsistent. Two-thirds of households have no access to toilet facilities.<sup>53</sup> Availability of clean water is unreliable for the two to three months prior to the monsoon season, and women face the main burden of water collection. While in some areas access to electricity has improved and become cheaper as a result of infrastructure development for the Shwe gas terminal, other areas have not yet benefited from the change. In most of Kyauk Phyu township, the road network remains poor, apart from the main highway, and while telecoms access has improved somewhat, mobile phone signals are weak or absent in most locations outside the town.

### **Early issues**

Interviews and discussions with CSOs and community members in villages surrounding

Kyauk Phyu – conducted for this report and by Oxfam partners working in the area – suggest that there have been some initial meetings regarding land titling and compensation. Some local stakeholders report estimates that half of the land for the proposed SEZ development has no legally registered land titles and documentation.<sup>54</sup> Combined with the fact that local communities are having great difficulty trying to secure clearer documentation, and with the assertion that affected people without legal title will not receive compensation, this raises concerns that many people will be worse off in terms of access to land and secure livelihoods after the development.

CSOs and communities in Kyauk Phyu have heard about the experiences of communities in Thilawa and Dawei regarding compensation and land acquisition, and fear that they may face similar challenges. For instance, villagers in the Thilawa SEZ area were told that only those with registered land would be eligible for compensation. As a result, many villagers tried to register their farmland, but their applications were not accepted by local officials. Moreover, legal procedures for land acquisition and compensation were often not followed.<sup>55</sup>

For many communities, securing land tenure and seeking redress for past land grabs and impacts from the South-East Asia oil and gas pipeline project (see below for further details on this) remains the priority. But there are also several reports of rising concerns about the SEZ process being used to grab land; this is due to incentives for speculation and high vulnerability of local land users, linked to the lack of clear land tenure and limited access to accountability or grievance mechanisms.

Local and national speculators have been buying land in Kyauk Phyu and already there are indications of a steep rise in prices, according to local interviewees and press reports. An article in the national press reports a rise of 50 percent according to local property agents.<sup>56</sup> Other reports suggest price rises of up to 1,000 percent.<sup>57</sup> Interviews with community members reveal concerns regarding the transparency and fairness of incoming investment and land acquisitions, including allegations of collusion between village administrators and land purchasers. Some displacement has already occurred as part of the construction of two small dams built to service the SEZ.<sup>58</sup> Rights groups say that local laws and international standards on land acquisition and resettlement were not followed in either instance.<sup>59</sup>

Information is very hard to obtain, and remains largely in the hands of a few organizations and well-connected individuals. CSOs are increasing their knowledge, skills and resources, and organizing to share information and coordinate activities, but interviews with local stakeholders confirm that most villagers have very little access to information or means to raise their voices.

## 2.2. KEY CHARACTERISTICS OF THE KYAUK PHYU SEZ

This section assesses the characteristics of and prospects for the Kyauk Phyu SEZ. It does so with reference to the success factors discussed in Section 1.3, and addresses related political economy and institutional factors. It also builds on two possible scenarios for the ultimate size and shape of the SEZ: one an industrial enclave; and the other a more diverse cluster that includes export processing and manufacturing.

## **Politics, funding and developer dynamics**

As already noted, the Kyauk Phyu SEZ development is being planned by a consortium led by a Chinese company, CITIC, alongside the Myanmar government and an unidentified Myanmar business consortium. CITIC Group is listed on the Hong Kong stock market and, as such, is open to some investor scrutiny, but remains in essence a state-owned enterprise, with the Chinese government controlling the vast majority of shares.<sup>60</sup> The Kyauk Phyu development has strategic significance for the governments of international investors as well as the Government of Myanmar.<sup>61,62</sup> Most of the investment appears likely to come from China, although it is not clear what the financial commitments and liabilities of the Government of Myanmar or Myanmar companies will be. Regarding the existing plan, there is opposition from the local political party, the Arakan National Party (ANP) and, in some places, the Rakhine State government, linked to demands for greater regional control over natural resources and revenues, as well as ethnic and cultural priorities.

In contrast, the Thilawa SEZ is described as a business-to-business project between Myanmar and Japanese enterprises (although there are substantial government interests, funding and shares in the SEZ development on both sides). While Dawei's SEZ emerged as a Myanmar/Thai government-to-government project (again, with private sector investors involved in delivery), they have now been joined by Japan, which has been invited in after recent delays and funding problems. The reactions and perceptions of local political parties regarding the Thilawa and Dawei SEZs are not clear.

## **Location (including market connections and infrastructure)**

Myanmar's economy is dominated by natural resources and commodities to a greater degree than other countries in the Greater Mekong Subregion (GMS). That fact is not reflected very strongly in the Thilawa SEZ near to Yangon.

Thilawa and Dawei are both close to Thailand and to GMS trade and transport corridors. Thilawa is very close to Yangon, providing access to a large labour force. It is focused on light manufacturing, technology and innovation, and (potentially) services. Dawei may include heavier industry such as oil and gas and petrochemicals as well as activities including vehicle assembly and light manufacturing or export processing. Although the local population is quite large, labour is already in short supply in this region as so many people travel to work across the border in Thailand.

Kyauk Phyu is very isolated, apart from its port and new gas pipeline, and has a small local labour supply and very few market connections (see Table 1, which compares characteristics of the three Myanmar SEZs). Its backers are Chinese and its linkages are with China, and its development is of strategic geopolitical importance as well as economic significance. Thilawa and Dawei are also strategically important to Japan and Thailand respectively.

Assessment of the context and drivers of the Kyauk Phyu SEZ development in relation to international experiences suggests that it could go along one of two possible trajectories. With regard to the elements included in documented plans and other discussions, the following two scenarios seem most likely:

- An oil and gas logistics hub for Myanmar (and China) with related heavy industries and transport links to Yunnan (enclave).
- A larger and more diverse SEZ with the addition of major transport links inland towards Mandalay, opening up opportunities as a major export processing centre for agriculture and possibly other sectors.

An oil and gas-centred port and industrial zone with a rail link to Yunnan province in China still appears the most likely outcome (albeit probably a very expensive one<sup>63</sup>) for three key reasons: the proximity of offshore gas field developments; the potential for a sheltered deep sea port; and the fact that the transport route across Myanmar and access to port facilities in the Bay of Bengal are a priority for China at this highly strategic location.

The limited road or other links inland and lack of regional transport and trade routes are big barriers that will be expensive to overcome. The Rakhine Yoma (mountains) sit between Kyauk Phyu and other transport routes or corridors, and existing national transport infrastructure plans do not include the creation of any major linkages.<sup>64</sup>

### **Local linkages and markets**

Experience of heavy industrial ports and enclave projects shows that both scenarios for how the Kyauk Phyu SEZ might develop are unlikely to create large numbers of jobs for local people in the short or medium term, or to generate strong links to local markets for inputs.<sup>65</sup> It may also cause significant additional living costs – for example, inflation in land and food prices. An SEZ which includes a more diverse range of sectors with the possibility of creating more job opportunities in export processing and light manufacturing does not seem plausible unless major transport links are established to inland Myanmar and beyond.

High poverty rates in the area, poor education and healthcare, lack of transport and electricity, dependency on fishing and small-scale farming, and low agricultural productivity combine to limit the prospects for beneficial linkages with the local economy. These factors also increase the risk that investment will bring changes such as price inflation, which appears more likely to reduce purchasing power and economic and food security than to provide chances for more profitable local enterprises. Interviewees in Kyauk Phyu already report steeply rising land prices, and say that the foreigners arriving with the Shwe gas terminal pay over the odds in local food markets, driving up prices and depleting scarce supplies of food (in addition to increasing pressure on water and land).<sup>66</sup>

It is possible that highly mobile garment manufacturing investors could be attracted to a remote location like Kyauk Phyu, if there is an industrial zone with reliable electricity and port facilities for direct export. But this does not appear likely in the near term and may not succeed at all in such a competitive sector. This suggests that realistic plans must also include alternative approaches to supporting women's economic empowerment and the security of women in and around the SEZ area.

The costs of the port and any transport links are likely to be high and it is not clear to what extent the Government of Myanmar might be liable for these costs or the terms on which finance might be raised. In other countries (e.g. Vietnam), large port projects have struggled to make a return on their investment as they do not reach full capacity (or even close to it at times).

During the construction phase, it is likely that there would be jobs for local workers, but that these may be confined to insecure, hard and poorly paid casual labour. Reports of conditions and pay for local workers at the Shwe gas pipeline terminal around Madaya Island suggest poor working conditions and low (or even zero) pay. Some reports note that workers had to pay a fee to register for work, which was costly and also resulted in denied applications that further excluded some people from the work opportunities available.<sup>67</sup>

## **Timing**

In most plausible scenarios, many of the SEZ developments will not be fully up and running for many years, even decades. Existing plans show that the deep sea port construction accounts for Phases 1 and 2 of the project. This is followed by the industrial park in Phase 3 and the real estate development in Phase 4 (ambitiously said to include a tourism zone, and service sector industries as well as housing and other municipal infrastructure, though a contract for this has not yet been awarded).<sup>68</sup>

There is a significant chance of hostility from local communities affected by negative impacts and/or disappointed that the promised benefits are slow to appear or altogether absent. Both potential scenarios suggest a fundamental transformation of livelihoods in Kyauk Phyu, so the plans should include very significant levels of investment and support to improve services and livelihoods prospects, and mitigate negative impacts for local communities.

Many people in local communities in this area are fearful of and hostile to foreign investors due to the negative impacts of the existing oil and gas terminal and pipeline projects. There is also a legacy of previous military-linked land grabs, resolution of which is only now beginning to be discussed following the recent change of government.

The overall global economic and political environment is not positive for SEZ developments to succeed on a purely economic level, given that global growth remains low and trade volumes, openness and cooperation appear to be contracting after a long boom period for global commerce.<sup>69</sup>

## **Transparency**

Communities are mostly receiving very little information about the planned SEZ. It is difficult for people to understand the potential impacts on the environment and their livelihoods, or the jobs that might be created and training that might be useful in order to benefit from the SEZ investments. Stakeholder interviews indicated that local people feel they are being given a one-sided picture, focusing only on potential benefits and with little or no information on possible negative impacts or on specific investments and job prospects.

In the short term, uncertainty may even have increased as the process for finalizing the SEZ is not clear, and there are different interests at play within Union- and State-level government.

## **Governance, peace and security**

The role and composition of the SEZ Management Committee remains unclear since the general election, which was held in November 2015.

The SEZ is subject to Myanmar's environmental law, which includes a requirement for EIAs – both for major projects such as the port and industrial zone and for individual investments within the zone. The responsibility for approving these assessments – which are meant to include full public disclosure and consultation – lies with the Environmental Conservation Department in Naypyidaw. In Thilawa, the Department's inability to meet the needs of the SEZ and its investors led to the creation of a parallel process without any basis in Myanmar law, and which, according to interviewees, has led to major oversights and failings.

However, now that the EIA Procedure is in place, extremely limited steps are being taken to resolve inconsistencies. To date, even where EIAs have been conducted (whether connected to SEZs or not), their quality and disclosure has been poor. Furthermore, the size and cumulative nature of the existing and planned investments in the Kyauk Phyu area suggest that the government should first undertake a Strategic Environmental Assessment (mandated under the 2015 EIA Procedure) to discuss and define the parameters for future investment and links to wider development objectives; this should be done before having the investment consortium embark on an EIA.

Local communities are not only anxious about potential negative environmental impacts and loss of livelihoods and resources (particularly land); they are also concerned about the cultural impact of a large influx of foreign capital and workers. There are strong concerns that the safety of women and girls will be put at risk unless specific measures are put in place to support women's empowerment and raise awareness of community actions, which have brought benefits for women in other places.

Similarly, people are concerned that the construction of a railway to China might result in land grabbing during construction as well as major cultural and economic changes arising from a large influx of Chinese workers and an increase in Chinese influence in the area. For local communities, the absence of basic road transport and electricity or water supply to many rural parts of Kyauk Phyu township remains a primary concern.

## **Land**

Kyauk Phyu, in common with many other parts of Myanmar, has an extensive history of land grabs linked to powerful interest groups. In recent years, the construction of the South-East Asia oil and gas pipeline and terminal facilities has brought a new wave of land grabbing and displacement issues alongside other harmful social impacts and great tension between local communities, investors and workers.<sup>70</sup>

Research from non-government organizations (NGOs), including the Shwe Gas Movement, has found that there was minimal information disclosure or consultation about the pipeline projects, non-transparent land surveys and, in some cases, illegal transfers of land and access rights.<sup>71</sup> There was also no meaningful consultation on compensation, and inadequate compensation and other support to farmers, leading to significant negative impacts on livelihoods, corruption and alleged extortion in the administration of the compensation payments at local level. In addition, few permanent or decent jobs were provided despite the promises made. Women were reported to be paid less than men for the same work, while some workers were paid much less than was agreed.<sup>72</sup>

Local communities in Kyauk Phyu were affected by these issues. Fishing communities were particularly badly affected, with disruption of access to waterways and fishing grounds as well as destruction of coral reef (due to dynamiting) and other habitat, and depleted fish stocks.<sup>73</sup>

Interviews with local stakeholders showed that pressure on land is already increasing, and there are a number of cases emerging whereby communities have been approached and sometimes pressured to sell land. Some local residents have found it difficult to gain access to or support from local authorities in order to confirm or establish legal tenure over their lands. The main point of contact at local level for land issues is the General Administration Department, which is also charged with administering land acquisitions for SEZs in Myanmar. Land prices have already risen dramatically in some areas according to local agents.<sup>74</sup>



It is important to note that conflict over land tenure poses risks for investors (including the Government of Myanmar) as well as affected communities. Research has found that land disputes present material risks for investors in infrastructure (and other) projects, with financial damage ranging from delays, closures and massively increased operating costs (up to 29 times) to the abandonment of operations.<sup>75</sup> Reputational risks for investors are also very high.

In recent years, land conflicts have resulted in delays and cancellations of numerous investment and infrastructure projects. Research in India has shown that in many cases, public sector banks have ended up having to bear the large losses from non-performing assets resulting from failures to assess and manage risks associated with privately implemented projects.<sup>76</sup> The Indian experience also illustrates how land is sometimes acquired for SEZ developments that do not eventuate, with the land then diverted for other purposes rather than being returned to the original occupiers.<sup>77</sup>

## **Women**

Women are not strongly represented in decision making in rural communities in Kyauk Phyu (nor elsewhere in Rakhine and across Myanmar). They face numerous vulnerabilities due to lack of control of land, finances and other resources, and experience high levels of domestic and sexual violence.<sup>78</sup>

There are some strong advocates for women's interests and rights, particularly the Rakhine Women's Union. Interviews with local stakeholders indicated that many women and girls are hopeful they might be able to find jobs linked to the SEZ and, in some respects, they are regarded as more supportive of the project. Some women in Kyauk Phyu have received training and equipment for sewing – to make and sell garments and other small items on a microenterprise level – and hope to expand this type of enterprise with greater access to markets and finance, rather than seeking jobs in factories.

However, there are also many concerns about the impact of the proposed SEZ on women and girls. Interviews with women's rights groups indicated that there are already issues around domestic and sexual violence in the communities that will be affected by the SEZ, and expect this to get worse with the influx of workers, business people and money from the development. Women expressed concerns that they are paid less than men for the same work (though verified data are not available, reports on pay and conditions for workers on the Shwe gas terminal strongly suggest that this occurs), and also that they need plans to have a safe working as well as home environment.

There was no expectation of significant benefits accruing to women working as sellers and traders in local markets. Rather, there are concerns that inflation will raise the prices of food and other basic goods to unaffordable levels – a trend that has already begun with the arrival of foreigners working on the oil and gas pipeline and terminal.

**Table 1: Comparison of Myanmar's SEZ developments**

	<b>Thilawa</b>	<b>Dawei</b>	<b>Kyauk Phyu</b>
<b>Location</b>	<ul style="list-style-type: none"> <li>Near Yangon</li> <li>Ayeyarwaddy river</li> <li>Planned road link to Thailand</li> </ul>	<ul style="list-style-type: none"> <li>Near Dawei city</li> <li>Coastal port</li> <li>Road link to Thailand</li> </ul>	<ul style="list-style-type: none"> <li>Remote coastal/island</li> <li>No large towns nearby</li> <li>Limited land transport access</li> </ul>
<b>Type</b>	<ul style="list-style-type: none"> <li>Cluster</li> <li>Light manufacturing and services focus</li> <li>Technology and innovation focus</li> </ul>	<ul style="list-style-type: none"> <li>Enclave</li> <li>Heavy industry, port and trans-shipment</li> <li>Oil and gas, petrochemical</li> <li>Some manufacturing</li> </ul>	<ul style="list-style-type: none"> <li>Enclave (tbc)</li> <li>Oil and gas logistics</li> <li>Heavy industry</li> <li>Some light manufacturing, export processing, and tourism/services planned</li> </ul>
<b>Developers and drivers</b>	<ul style="list-style-type: none"> <li>Myanmar (51%) / Japan (49%) project</li> <li>Diversify manufacturing base for trade</li> <li>Skills and technology transfer</li> <li>Pilot reforms, e.g. in labour market</li> </ul>	<ul style="list-style-type: none"> <li>Myanmar / Thailand / Japan (equal shares)</li> <li>Shift heavy industry to Myanmar</li> <li>Open trade route from Straits of Malacca</li> <li>Oil and gas sector infrastructure</li> </ul>	<ul style="list-style-type: none"> <li>Myanmar (minority) / external (majority) consortium dominated by Chinese companies, including Thai investment</li> <li>China 'One belt, one road' project (economic and strategic objectives)<sup>79</sup></li> <li>Logistics and trade hub for offshore oil and gas</li> <li>Develop industrial base</li> </ul>
<b>Local context</b>	<ul style="list-style-type: none"> <li>Large supply of labour<sup>80</sup></li> <li>Near existing business and trade hub</li> <li>Relatively stable governance with central government dominant</li> </ul>	<ul style="list-style-type: none"> <li>Substantial population but shortage of labour</li> <li>Good access to regional markets by sea and land (once road complete)</li> <li>Militarized area but no recent active conflict</li> <li>Poor rural agricultural economy, many workers migrating to Thailand</li> </ul>	<ul style="list-style-type: none"> <li>Limited supply of labour</li> <li>Poor transport and far from major markets</li> <li>High poverty and vulnerability</li> <li>Economy dominated by small-scale agriculture and fishing</li> <li>Ethnic tensions</li> <li>Historic and ongoing tensions between local people and Union government / military</li> </ul>
<b>Economic prospects</b>	<ul style="list-style-type: none"> <li>Fair prospect of success</li> <li>Investment already flowing and factories operating</li> <li>Prospects for expansion and diversification remain unclear</li> <li>Economic benefits, especially for larger Myanmar businesses</li> </ul>	<ul style="list-style-type: none"> <li>Development costs are high and could be a burden</li> <li>Significant local opposition</li> <li>Importance to Japan and ASEAN plus proximity to key trade routes suggests there are multiple drivers pushing for possible success</li> <li>Local economy benefits and job prospects are unclear</li> </ul>	<ul style="list-style-type: none"> <li>Expensive site to develop and operate</li> <li>Little chance for local economy to benefit if it is a heavy industry enclave</li> <li>Poorly placed to attract light manufacturing/processing without massive infrastructure / labour force investment</li> <li>Risk of negative impacts on local communities from price inflation</li> </ul>
<b>Key risks</b>	<ul style="list-style-type: none"> <li>Displacement of communities from land and livelihoods</li> <li>Limited public benefits if incentives cut tax revenue and local economy linkages are weak</li> <li>Poor assessment and management of environmental and social impacts</li> </ul>	<ul style="list-style-type: none"> <li>Large-scale displacement of affected communities</li> <li>Significant environmental pollution and livelihoods damage from development and operations</li> <li>Excessive costs make it unaffordable for the government and uncompetitive for investors</li> </ul>	<ul style="list-style-type: none"> <li>Displacement and loss of livelihoods for local communities</li> <li>Exacerbates existing poverty and vulnerability (including of women/girls, ethnic minorities)</li> <li>Significant environmental damage from poorly assessed and managed impacts</li> <li>Inflames tensions / conflict</li> <li>Large cost – potential public burden and uncompetitive SEZ</li> </ul>

# 3 EXPERIENCES FROM INFRASTRUCTURE PROJECTS IN THE REGION

This research has identified remarkably few examples of recent analysis that look in depth at the development and governance of individual SEZs. There are some studies assessing impacts at a broad level, or exposing individual cases of harmful impacts. But very little attention is given to understanding how the particular governance dynamics and characteristics of SEZs affect the ability of local communities to have a say in decision making, protect their rights and environment, and share in any benefits from the developments. This selection of case studies looks at examples of SEZs or major infrastructural investments which have relevance to the plans, issues or context of Kyauk Phyu.

## 3.1. ENVIRONMENTAL IMPACTS AT MAP TA PHUT (THAILAND)

### Overview

The deep sea port and industrial zone developments at Map Ta Phut were established as a major component of the Eastern Seaboard (ESB) Development Plan, which was announced as part of Thailand's National Economic and Social Development Plan for 1981–1986. It aimed to transform the ESB into an industrial hub for national growth, and was implemented with significant support from the Japanese government and investors. Thailand invested around \$12bn to develop two deep sea ports, a petrochemical zone and industrial parks.<sup>81</sup>

The Map Ta Phut industrial estate originally had a total area of 672 hectares, but by 2013 occupied around 1,200 hectares, which together with two neighbouring estates housed over 90 industrial facilities. It is dominated by heavy industries, including petrochemicals processing (45 facilities), oil and gas refineries, other chemicals plants and iron and steel plants.<sup>82</sup> The area was previously dominated by a rural economy based on agriculture and fishing.

From the late 1990s, local people observed serious environmental and health impacts. In 1997, hundreds of schoolchildren in a nearby school fell ill with headaches, vomiting, dizziness, and breathing difficulties, and many were sent to hospital for emergency treatment. From 1998, toxic chemical monitoring found a range of dangerous substances in urine samples and in the air in communities around Map Ta Phut. Community protests began and further hazardous waste dumping was seen.<sup>83</sup> A study conducted in 2001 and 2002<sup>84</sup> identified a range of very serious environmental, health and social impacts, including:

- Serious health issues, including chronic coughing, chest pains, skin diseases and cancers.
- Coastal erosion and toxic contamination in soil, surface water, underground water and rainfall.
- Social problems linked to the influx of outsiders and cultural shifts.

- Higher cost of living and lower incomes due to the destruction of agricultural livelihoods.

Later studies revealed high levels of dangerous volatile organic compounds (VOCs), many of which are carcinogenic, and significant heavy metal contamination in water supplies.<sup>85,86,87</sup> There is also evidence of a substantial decrease in fishing catches in the region, contamination of fish and other sea-life, and of seawater causing skin irritation and rashes.<sup>88</sup>

The ESB developments are vast; they have created large numbers of jobs and contributed to Thailand's industrialization and growth, reportedly even when Bangkok lost jobs after the Asian financial crisis of 1997–1998. But the cost to many local communities and the environment has been very great.

In the early 2000s, opposition and challenges to the developments grew alongside increasingly incontrovertible evidence of severe pollution and health impacts. This culminated in an initial court decision designating Map Ta Phut as a 'pollution control zone' but allowing activity to continue; then, in May 2009, a court order was issued, stating that 76 projects (most under construction) must halt as they were not compliant with environmental provisions in the Thai Constitution.<sup>89</sup> The ruling clearly stated that the Ministry of Natural Resources and Environment had failed to ensure that proper assessments and mitigation steps were taken prior to development, as required by law.

Under significant pressure from large investors, who claimed that they could not have implemented the law as the detailed rules had not yet been published, the Thai government scrambled to provide reassurance (especially to Tokyo). Months later, in 2010, the Central Administrative Court overturned its own verdict, allowing all but two of the projects to resume.<sup>90</sup>

### **Key issues of relevance for Kyauk Phyu**

Despite growing and sustained pressure from affected communities, it took years for the serious harm caused by the Map Ta Phut development to be acknowledged, more than a decade until the courts began to address the issue, and even then decisions were overturned and activities resumed without adequate mitigation, even to this day.

Relevant lessons for Kyauk Phyu include the following:

- Lack of clarity about legal requirements for impact assessment and lack of enforcement and monitoring can cause serious environmental problems that are difficult or impossible to resolve in future.
- Heavy industrial developments, including petrochemicals processing, have profound environmental impacts even when managed well. When managed poorly, they can be devastating to health and ecology. It is even more important that projects involving such sectors commit to rigorous impact assessment and public consultation.
- It is vital that long-term plans are clear, detailed and accountable. The Map Ta Phut development was always intended to be large scale, but it expanded hugely beyond what people originally expected, compounding the existing failings in impact assessment and governance.
- The importance of the project for both economic and political relations with key trading partners such as Japan contributed to difficulties in enforcing environmental standards and holding investors to account for failures or suspending harmful activities.

## 3.2. IMPACT OF INDUSTRIAL PORTS ON FISHERIES (WEST PAPUA)

The Tangguh Liquefied Natural Gas (LNG) Project is located on Bird's Head Peninsula, West Papua, Indonesia. The area is remote, highly bio-diverse, and with small local communities reliant on farming (often shifting cultivation), hunting and fishing. The LNG Project, which began construction in 2006, includes deep water port facilities, gas production wells and platforms, gas transmission and pipeline systems, and an LNG plant and facilities.<sup>91</sup>

The International Finance Corporation (IFC) used this project as the basis for a handbook on addressing impacts on fisheries-based livelihoods, in part with reference to compliance with the IFC Performance Standards.<sup>92</sup> This includes considering direct impacts on subsistence, artisanal and commercial fishing, and indirect impacts on livelihoods or economic displacement. Its study found that:

- Assessment and management of project impacts on fisheries is generally inadequate, despite how common these impacts are.
- Small-scale fisher-folk are often highly marginalized politically and poorly represented in decision making structures, so the sector lacks support generally, which contributes to the failure to assess and manage impacts on habitats and livelihoods.
- EIAs often do not provide enough information to systematically identify impacts.
- Poor assessment, consultation and mitigation often result in ongoing damage to livelihoods and poor relations and conflict between operators and fishing communities.

The IFC's study argued that when projects have direct impacts on specific groups of fisher-folk and their communities, then specific livelihoods restoration plans should be developed, rather than just area-wide fisheries development plans. Without adequate assessment and resource management, other measures may simply accelerate unsustainable resource use.

The IFC report provides a detailed assessment of the activities that need to be undertaken at each stage of project planning and implementation to identify likely impacts and develop effective plans to manage them.

### **Key issues of relevance for Kyauk Phyu**

Fishing is the main or only source of livelihood for many households in Kyauk Phyu. As has been seen with the South-East Asia oil and gas pipeline and terminal, the fisher-folk and fishing associations have the ability to mobilize at times, but seem to remain quite isolated from the SEZ development process, and also rather separate from farming-based NGOs. The distinction is not absolute, but it does appear that specific attention is needed to ensure that the impacts of the SEZ on fisheries and fishing-based livelihoods are not underestimated or left unaddressed in the EIA process or in the economic and social development plans.

### 3.3. LAND AND RESETTLEMENT (CAMBODIA)

Bridges Across Borders Cambodia has produced a very detailed analysis of the implementation and impacts of the Rehabilitation of Cambodian Railways Project, which was carried out in 2006.<sup>93</sup> This is not an SEZ development, but the study is valuable in that it provides a thorough and authoritative analysis of resettlement issues arising from a large infrastructure project in the region. The study covers the involuntary resettlement process and its direct and indirect impacts on affected communities. The findings show failings across the board:

- **Information and consultation**

Project information was disseminated through public information booklets and community meetings, which were wholly inadequate to convey the details of the project, its potential impacts, and people's entitlements. Households were given minimal information on compensation rates; they did not have options explained to them, and were not meaningfully consulted about their options. Hand-written 'Post-it' notes were used for pre-contract disclosure, and households that did not agree to terms were given no documentation to prove what was offered. Basic measures to ensure women's representation were not fulfilled, despite being an explicit requirement of the consultation process.

- **Compensation**

Assets were under-reported and undervalued, and compensation was often clearly inadequate even to pay for materials to build a basic shelter or house. Many households were very poor and previously lived in inadequate conditions, but were only compensated to the value of similar inadequate shelters. Residents were denied legal claims to land without due process.

- **Resettlement sites**

Tenure for some affected households was improved but still not secure. No options were given on resettlement sites, which were often far away, and none of the sites met ADB standards at the time of resettlement. Some families could not construct adequate housing and this, plus service costs, resulted in new and high indebtedness.

- **Livelihoods**

Almost all households reported a drop in income, with women reporting a greater impact on their livelihoods. Skills training proved deeply inadequate and had not commenced at the time of resettlement.

- **Accountability and remedy**

Low levels of education and awareness of rights, little access to legal aid, and intimidation and fear prevented people from accessing grievance mechanisms. Weak capacity and unwillingness by competent authorities to address communities' concerns prevented access to remedies.

Further evidence on different projects highlighted in research by the Office of the High Commissioner for Human Rights (OHCHR) in Cambodia specifically addresses challenges around the issue of resettlement. It focuses on urban areas, but nevertheless provides insights into issues and possible solutions to improve outcomes.<sup>94</sup>

This research highlights that poorly planned and non-participatory resettlement processes with weak legal protections and inadequate investment in livelihoods development result in aggravated poverty, while the opposite approach can produce benefits for people. It recommends that resettlement needs to be effectively linked to a comprehensive plan for sustainable development, not just short-term compensation. The



research also finds that social integration with neighbouring communities is rarely considered in resettlement plans, and weakened community cohesion and participation is often found at resettlement sites. This could be a significant risk for an area such as Kyauk Phyu, where inter-communal tensions are already high. There are some examples of communities working with NGOs and aid agencies to organize and plan resettlement themselves, and this resulted in much higher satisfaction levels and improved living standards.

### 3.4. WOMEN'S PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENTS (VIETNAM)

The Center for Environment and Community Research (CECR) recently published new research analysing the participation of women in EIAs in infrastructure projects in Vietnam, produced with technical support from the Stockholm Environment Institute.<sup>95</sup> The research focused on two projects: the Trung Son Hydropower Plant (supported by the World Bank) and the Hoa Phu Landfill Project (supported by the ADB). It assessed the role of women in each stage of the EIA process, the constraints to women's participation, and the benefits of women's participation.

#### Key findings

Both projects lacked gender analysis at most stages of the EIA process. The initial EIA for the hydropower project was sent to communities after it had been drafted. A supplementary EIA, which was conducted to enable World Bank investment, underwent three rounds of consultation. The public consultation targeted ethnic minority and women participants and had a higher rate of participation than household meetings. Women's representation did not equate to active participation due to language, cultural and norm-related barriers. Women were present but their voices were rarely heard and their concerns were not prioritized.

Vietnam's Law on Gender Equality (2006) requires the integration of gender equality into the preparation and implementation of laws, but it has not been fully implemented. Policy enforcement is an issue, mainly due to the lack of gender expertise. Gender expertise is not required in an EIA consultancy team and the consideration of gender issues is not included in the terms of reference of consultant group leaders or members.

Operational guidelines and standards are not clear enough to ensure gender-sensitive impact assessment, nor do they guarantee women's access to information, participation in consultation and access to accountability mechanisms.

Women within the same community do not have access to the same information, or to opportunities to voice their concerns and take part in or influence decision making. Existing policies and processes do not support and ensure inclusion of gender issues and allow women's voices to be heard.

On the other hand, the potential benefits of greater gender awareness and participation were also demonstrated. Women had specific and different concerns relating to environmental, health and livelihoods issues, as well as to safety and security. Where there was active participation of women, positive results were seen. For example, women often have unique knowledge of the local environment and social context, and some suitable resettlement sites were identified due to women's insights into local soil, plants and water resources.

## Key issues of relevance for Kyauk Phyu

There are some institutional parallels between Vietnam and Myanmar. Myanmar's Environmental Conservation Law is very new and full implementation guidelines and capacity development are still under way with the support of development partners. The National Strategic Plan for the Advancement of Women is also a recent development, and research shows that it lacks effective resources, enforcement and funding to be implemented across government.<sup>96</sup>

There are significant cultural and practical barriers to women's active participation in consultation and decision making processes in Myanmar, as in Vietnam. Specific and adequate steps must be planned and taken to ensure that women's voices are heard, their concerns addressed, and their knowledge used to inform decisions. This is especially so for ethnic minority women, for whom language and cultural barriers can present additional obstacles to participation.

The analysis details a range of stages in the EIA process at which gender and women's engagement should be included:

- Screening – determining at which levels communities are impacted to guide EIA focus.
- Scoping – deciding which impacts and issues will be considered.
- Baseline study – include gender-disaggregated data and analysis.
- Projected impacts – identify gender-specific impacts.
- Public consultations – including attendance, participation and identification of gender-specific concerns, priorities and solutions.
- Approval – note any changes made in response to consultation.
- Monitoring and reporting – specify how women's position and concerns are being addressed in practice.<sup>97</sup>

One of the key findings is the need to design and support ways to enable local civil society organizations (CSOs) and community-based organizations (CBOs) to play a role in facilitating and capacity building throughout the process, including through participatory planning and monitoring.

## 4 TOWARDS RESPONSIBLE INVESTMENT IN KYAUK PHYU

This section summarizes important risks and opportunities outlined in the research, and identifies some potential solutions as well as areas for further investigation. It draws again on the framework of success factors for SEZs (although it does not confine itself to those categories).

### **Transparency, consultation and participation**

The Government of Myanmar and the private sector companies involved in the planning and development of the Kyauk Phyu SEZ need to take on board lessons not only from the experiences in Thilawa and Dawei, but also from other cases in the region with comparable characteristics. CSOs are keen to coordinate more effectively with each other and to learn from experiences elsewhere. However, sustained support and engagement is needed to enable CSOs to access decision making mechanisms and participate in planning and identifying potential benefits, as well as raising and resolving grievances.

The 2015 EIA Procedure is critical in relation to land rights and land use, as well as a host of other environmental and social issues. It is also mandatory for the lawful development of an SEZ. Full and timely disclosure of information and participatory, meaningful consultation with communities on the plans and implementation is urgently needed, as well as being required by law. Evidence shows that better outcomes are possible in terms of resettlement, women's empowerment, and sharing benefits of growth, if transparent and participatory governance mechanisms are put in place. Conversely, weak and unaccountable processes are likely to lead to increased environmental damage, exacerbated poverty and vulnerability, and ongoing tensions and conflict.

The capacity of local providers to conduct rigorous EIAs remains limited. International providers have capacity (though they need to work with local partners to have sufficient contextual awareness), but investors are often reluctant to pay for or fully engage with the level of assessment, consultation and project refinement that is required for a development of this scale and type. As well as being a legal requirement, this is a prerequisite for positive outcomes, especially in the longer term. Government, donors and other stakeholders must take clear steps to encourage, support and monitor the delivery of such a process.

Local people are currently preoccupied with trying to resolve existing and historic land disputes. Nonetheless, most of the local population are aware of the threat posed by the SEZ development to individuals and communities with insecure land rights, and have already observed a wave of speculative land buying near to the port and industrial zone sites.

The land acquisition process for the SEZ development must be transparent and accountable, legally compliant, and documented. It would be beneficial if this is implemented in a coordinated manner alongside the resolution of existing grievances, and used proactively to increase people's security of tenure, especially for farmers and women. This is a major challenge given the severity and complexity of the issues and limited (though growing) capacity to address them. This is necessarily costly and time-

consuming if carried out thoroughly and fairly, but there is real concern that developers want to push forward hastily.

### **Local economic and development linkages**

There must be clear plans about how the SEZ development fits into broader plans for sustainable long-term development and peace-building at Union level and in Rakhine State and its hinterland. A development of this scale would reshape the economy and development path of Rakhine State and, perhaps, the economic and geopolitical position of Myanmar itself.

It is vital to conduct a Strategic Environmental Assessment while the SEZ is still in the planning phase. This is made clear in the EIA Procedure, which includes social, cultural and health effects in its definition of environmental impacts.<sup>98</sup> This should situate the immediate SEZ development in a wider economic, social and environmental context, including national and state development and peace-building plans. Without such an assessment it is very hard to plan or engage effectively. Communities cannot understand or engage with the environmental, social, cultural and health impacts, among other effects, nor can they know what jobs and other economic opportunities might arise in order to prepare and advocate for training and support to maximize such opportunities.

Similarly, without such an assessment, state and local government and development actors cannot act to ensure that any transition does not exacerbate poverty and vulnerability. Nor can they plan and invest to maximize the immediate benefits (e.g. identifying ways in which local communities can benefit from planned energy, transport or water infrastructure; or from providing inputs and basic goods such as food during the construction phases), or establish a long-term development plan that accounts for and builds on the transformations that the SEZ might bring.

The same is true at national level. A development of this scale is of national significance in terms of its social and economic impact, strategic political implications, and the financial cost and administrative capacity demands it places on government officials and politicians. This means the objectives of the development – in the context of national development, peace and security – must be clear (including addressing the vital and contentious question of natural resource revenue-sharing).

The reality is that local agricultural and labour markets and resources are poorly placed to be able to benefit from linkages and spill-overs from the SEZ development, and evidence suggests this is even more unlikely in the near term if it is primarily a port and heavy industrial enclave. Unless there are clear plans and substantial long-term investment to improve transport and other infrastructure to open up access and build the capacity of local farmers, workers and enterprises to engage with local, regional and national markets, the prospects for positive economic impacts look poor. There is also a significant chance that existing disparities and vulnerabilities will be exacerbated and new divides created.

### **Women**

The context gives reason to doubt that Kyauk Phyu will see substantial and successful development of light manufacturing industries such as garments and household products in the near future (if at all). This suggests there is a serious need to address the other ways in which women might benefit economically and otherwise from the SEZ development. The World Bank has published substantive research looking at the impact of SEZs on women.<sup>99</sup>

Women account for between 60 percent and 80 percent of employees in SEZs on average, and over 90 percent in some cases. For many women, it is their first experience of formal sector employment. Critics argue that women are typically employed in low-skilled and low-paid jobs in export-oriented industries and that there is a failure to challenge gender stereotypes of working roles.

Enhanced skills and education, as well as income, can improve women's ability to find employment outside the home and enhance their decision making power within the household and community. Gender-inclusive policies can deliver business benefits for some SEZs by targeting the most significant segment of the workforce. Some studies show a link between investing in female employees and enhanced profits and performance at company level.<sup>100</sup>

Evidence from the case studies in this report points to some major barriers to be addressed, which are highly relevant for Kyauk Phyu:

- Legal rights not only need to be enshrined in national and SEZ-level regulations, but there also needs to be a greater focus on enabling women to participate at all levels so that they are able to benefit from the development. For example, special measures may be required to enable women to fully participate in public consultation processes required by the EIA and involuntary resettlement procedures.
- Social and cultural barriers to women's involvement include not only gender stereotypes but also lack of access to education and health, as well as safety and security risks in the workplace (including while travelling to and from work). These could be addressed – for example, through awareness-raising, training programmes, and provision of childcare and health services for women, as well as provision of safe, reliable and affordable transport.
- Barriers to women entrepreneurs include lack of control over assets, notably land rights. Business support services are often not available to women. These both contribute to women's lack of access to finance.

Several of the recommendations in the World Bank report might also be applicable in Myanmar and specifically in Kyauk Phyu:

- Improve collaboration between national committees/ministries for women/gender and labour (and also with regional and SEZ authorities).
- Establish specific women's committees at zone level, a dedicated grievance mechanism for women, and conduct a gender diagnostic to assess women's participation in the SEZ and its impacts on them.
- Include women at decision making levels, such as the SEZ Management Committee, to increase access for women from affected communities.
- Provide dedicated infrastructure and services to support women (health, education, childcare, transport, financial literacy and business support).
- Specific roles should be identified for important stakeholder groups: zone authorities, zone operators, enterprise owners and managers, worker organizations, governments, NGOs and donors.
- Impact monitoring and evaluation must be specifically tailored to disaggregate by gender, and to encompass short-, medium- and long-term objectives and impacts.
- In China, implementation of community-based programmes that provide information, training and support services to women (particularly vulnerable migrant women) has resulted in a large number of successful legal aid cases with real protection benefits.<sup>101</sup>

The unique governance and management structures of SEZs present opportunities as well as risks; the clear management role of operators enables a strong role in embedding and overseeing implementation of gender-sensitive initiatives, while zone authorities often have greater ability to apply and enforce regulations than national governments. (For example, Shenzhen in China was the first SEZ to issue implementation guidelines for national laws on the protection of the rights and interests of women, supported by the SEZ's women's federation.)<sup>102</sup>

Kyauk Phyu may face much greater challenges. However, its context and drivers suggest it may not have a high proportion of light manufacturing jobs taken up by women. If so, there will be little incentive to create the necessary supporting structures and capacity to really focus on improving the opportunities and outcomes for women (both within and around the SEZ).

## **Governance**

There are clear links between poor performance of SEZs and weak institutions, unclear and unpredictable policies, inadequate infrastructure and transport, and limited opportunities for connections to local communities and markets.

There is a strong need and opportunity to design governance mechanisms for Kyauk Phyu that are more inclusive of local and regional interests than has been the case in other SEZ developments. At present, local people are not clear about who is responsible and accountable for the development; dedicated grievance mechanisms and participatory planning and monitoring processes should therefore be established as a priority. A clearer governance framework established by the SEZ Law would contribute to improved transparency and accountability. Experience in Thilawa and Dawei provides some examples of mistakes that can be avoided, as well as ideas for improved approaches.

The fact that Kyauk Phyu is part of a region where there is significant tension between national and local political priorities and governance structures is significant. Central government and the most important local authorities at present, such as the General Administration Department, face challenges in gaining trust and developing capacity to represent and support the priorities of local communities. There is a strong case for identifying and supporting local institutions and participatory processes to identify shared priorities and benefits for local communities, as well as to establish accountability and grievance mechanisms.

## **Long-term development, peace and security**

There is an opportunity for the Rakhine State government to be proactive – to come forward with proposals for Kyauk Phyu which ensure that the interests and rights of local communities and Rakhine State are protected, and that the SEZ and accompanying infrastructure fits into a sustainable development plan to bring peace and prosperity for Rakhine and for Myanmar.

Experience in other countries illustrates how the development of SEZs in areas with recent histories of inter-communal and ethnic tensions and conflict can serve to perpetuate insecurity and block routes to reconciliation. In Sri Lanka, a number of High Security Zones (HSZs) were established as the military occupied land following conflicts, displacing thousands of people.<sup>103</sup> Some of these areas – such as the Sampur port and industrial complex in Trincomalee – became gazetted for SEZ developments, though in the case of Sampur, some will not go ahead after a change of government. More



recently, a Supreme Court ruling stated that an Indian-built coal power station could not go ahead due to environmental and health concerns.<sup>104</sup> The development also generated concerns that it would entrench the exclusion of displaced and marginalized groups through increased militarization of the area.<sup>105</sup> Furthermore, the involvement of China and the strategic importance of the port raise further parallels with the Kyauk Phyu case in terms of how the development might be perceived internationally (and regionally) and delivered on the ground.

The recent history in Kyauk Phyu is one of inter-ethnic and inter-communal tensions, with the Rakhine population feeling excluded and marginalized by the Bamar-dominated central government. Interviews with stakeholders indicated that some people fear the SEZ development will increase these concerns among local communities, which may be exacerbated by the dominant role of foreign investors and workers. The ongoing existence of camps for internally displaced persons (IDPs) around Kyauk Phyu, combined with the added uncertainties and pressures (e.g. on land) around the SEZ, raise important questions about how the development might contribute to, exacerbate or mitigate existing insecurities and tensions. Much will depend on how it is planned and implemented. Kyauk Phyu has seen significant inter-communal violence and tensions, including in late 2012 when the Muslim quarter was largely destroyed and the residents forced to flee. Many of these residents are still displaced in camps on the outskirts of Kyauk Phyu town and in neighbouring townships. These questions should be specifically addressed by linking assessments to development and community support plans.

# 5 CONCLUSIONS AND RECOMMENDATIONS

## 5.1. CONCLUSIONS

Experience shows that to succeed both economically and in terms of contributing to sustainable development and poverty reduction, SEZ developments need to have a clear vision and objectives. To develop diverse industries, the location, and the depth and level of skills in local labour markets, are often more important than low wage levels. The timing of SEZ developments, in relation to national developments and the state of global economic growth and trade, is critical but often overlooked.

SEZs are often governed by dedicated authorities that frequently provide a single point of access to central government functions – known as a one-stop service centre. In theory, this creates opportunities for effective and innovative governance, but this will only be realized if they are transparent, accountable, and coordinate well with other relevant actors (e.g. all relevant government departments).

SEZs in ASEAN member countries have struggled to create domestic linkages, remaining as enclaves and failing to deliver development benefits. SEZs in remote locations can be especially slow to generate wider social and economic benefits, if at all. Unrealistic assumptions, or inadequate assessment of the suitability of the location, significantly increase the chances of failure. This is a significant challenge for Kyauk Phyu's prospects.

Negative impacts and poor performance are very often caused or exacerbated by failures of governance. Strong coordination and consistent support for policies across central and local government are necessary for SEZs to succeed.

Transparency – as part of an effective planning and decision making process before initiating an SEZ development, as well as for implementation and ongoing accountability – is of such importance that it underpins all other factors. Governments that foster public debate over the implementation of an SEZ development are less likely to suffer from serious problems.

While Myanmar's recently-introduced EIA Procedure is applicable to SEZ developments, a general absence of clarity about legal requirements for impact assessments and lack of enforcement and monitoring can cause serious environmental problems that are difficult or impossible to resolve once the development is under way. Heavy industrial developments, including petrochemicals processing, have profound environmental impacts even when managed well; when managed poorly, they can be devastating to local health and ecology.

Detailed information on the Kyauk Phyu SEZ development is currently very hard to obtain, and remains largely in the hands of a few organizations and well-connected individuals. CSOs are becoming better resourced, more skilled, and are organizing to share information and coordinate activities, but many villagers have very little access to information or the means to raise their voices.

Two scenarios seem most plausible for how the Kyauk Phyu SEZ will develop:

- An oil and gas logistics hub for Myanmar and China with related heavy and natural resource-related industries (enclave).
- A larger and more diverse SEZ with the addition of major transport links inland towards Mandalay, opening up opportunities as a major export processing centre for agriculture and possibly other sectors.

Prospects for beneficial linkages with the local economy are not good. Local and national speculators have been buying land and already there is reported to be a steep rise in prices, amid allegations of non-transparent, unfair and corrupt deals.<sup>106</sup> Irresponsibly or ineffectively managed land acquisition and the conflict this brings can result in major delays to implementation as well as high compensation costs and substantial reputational risks for investors.

Some people in local communities have found it difficult or impossible to gain access to or support from local authorities in order to confirm or establish legal tenure over their lands. There is a high chance of hostility to the SEZ from local communities affected by negative impacts and/or disappointed that the promised benefits are either slow to appear or absent altogether.

Women are not strongly represented in decision making in rural communities in Kyauk Phyu, and face specific vulnerabilities due to lack of control of land, finance and other resources. Community members are concerned that domestic and sexual violence will increase with the influx of workers, business people and money to the area as a result of the SEZ.

Significant benefits may be possible for women workers and employers if gender-inclusive assessments are performed, policies established and implemented, dedicated services provided, and steps taken to ensure the representation of women in governance through dedicated committees and grievance mechanisms. Assessing the likely social and environmental impacts on women and girls, as well as workplace issues, is also vitally important.

It is possible that garment manufacturing investors will not be attracted to a remote location like Kyauk Phyu. The strategy to create jobs for local people, and especially for women, should address this possibility and ensure that local economic and employment benefits are broader and that support and training is appropriate and timely.

The SEZ Law states that Myanmar citizens should get 25 percent of jobs in the first two years, at least 50 percent in the second two years and 75 percent thereafter – a requirement that can be waived by the SEZ Management Committee. Importantly, it is not clear if this includes the development phase of the SEZ (rather than jobs created once the SEZ is operating). A lot will depend on if and how 'skilled labour' is defined.

There is extensive documentation of human rights abuses that can be associated with the development of SEZs, including in Myanmar. The literature regarding the environmental and social impacts of SEZs on host communities once operations have begun, and on the specific ways in which the governance of SEZs affects accountability, is quite limited. It is important to develop a more detailed understanding of how to distinguish between different types of infrastructure and industrial development projects, and then how best to engage with and influence their planning and implementation.

## 5.2. RECOMMENDATIONS

Any major SEZ development in Kyauk Phyu suggests a fundamental transformation of people's lives and livelihoods. Such large-scale and long-term investment should be matched with plans for significant investment and support to improve essential services and livelihoods prospects as well as to mitigate negative impacts for local communities. Oxfam proposes the following recommendations to facilitate responsible investment in Kyauk Phyu.

### **The Government of Myanmar should:**

- Ensure that SEZ plans align with wider national sustainable economic development plans. Ensure they include approaches to support job creation and specific measures to improve women's education and skills opportunities, to increase their economic empowerment.

This will be particularly important given that it seems unlikely the SEZ will attract many garment manufacturers. Plans should be made through an inclusive process that involves consultation with a wide range of stakeholders, including the public and, most importantly, the affected communities.

- Undertake a Strategic Environmental Assessment (SEA) to situate the immediate SEZ development in a wider economic, social and environmental context – this is essential for proper planning and coordination. This must precede an EIA (see recommendation below).

Given the scale and complexity of the Kyauk Phyu SEZ development – which is likely to include port facilities, heavy industry and petrochemical sectors and have impacts beyond Kyauk Phyu township – an exhaustive impact assessment and full public consultation will be necessary.

- Ensure that long-term plans are clear, detailed and accountable – so that harmful impacts can be identified and mitigated or avoided, and potential benefits can be identified and maximized.

This means that plans must include detailed information about the types of businesses that will be investing in the SEZ, which will enable relevant stakeholders to better target investment in education and vocational skills training for the local population so that they can take advantage of the opportunities that are most likely to become available to them. This should include a specific focus on improving education and skills for women.

- Ensure that the SEZ development is planned and implemented in coordination with national economic development plans, including the government's region/state-level social and economic development plans (SEDPs). This is particularly the case for Kyauk Phyu, where the costs, risks and needs for development impact are so large and far-reaching.
- Undertake a skills mapping among the local population to ensure that there is good understanding of the gaps in skills that are necessary for the SEZ to develop meaningful linkages with the local economy.

Implementation of findings from such a mapping should be directly linked to wider investment plans for improved education and vocational skills training for the local population – including through the SEDPs.

- Invest in new land transport linkages to open up access to national and regional markets.

- Invest in local economic infrastructure and provide support to local farmers, workers and enterprises so that they can benefit from opportunities to engage with new local, regional and national markets.
- Enforce the law to ensure that full, rigorous and consultative EIAs are conducted for SEZs, in accordance with the 2015 EIA Procedure. These must cover not only the construction phase but also the operation of the SEZs and baseline requirements of the industries expected within it. An EIA must be done for the designated SEZ area in its entirety, prior to development. Each investment application must also be assessed by the Ministry of Natural Resources and Environmental Conservation (MONREC), and an Initial Environmental Examination (IEE) or EIA for that business must be conducted in accordance with the Procedure.<sup>107</sup>

Private investors often lack sufficient incentives to spend the required money for a fully comprehensive assessment and consultation process. Unless the EIA comprehensively addresses issues such as the impact on fisheries and fishing livelihoods, or the way in which resettlement will affect inter-community cohesion, in the case of Kyauk Phyu, it will be difficult if not impossible to mitigate negative impacts.

- In coordination with the investors and companies involved, implement best practice international standards and procedures for land acquisition and resettlement processes. Under Myanmar law, this must conform to the World Bank Policy on Involuntary Resettlement. This means that no land use rights should be transferred from pre-existing land users without their Free, Prior and Informed Consent (FPIC). These procedures should be well-planned and participatory, with adequate legal protections and investment in livelihoods development to ensure benefits for local people. Resettlement needs to be effectively linked to a comprehensive plan for sustainable development, not just short-term compensation, and should address social integration with neighbouring communities to avoid exacerbating tensions.
- Given the importance of revenue-raising through strategic investments such as SEZs, the government should draw on regional expertise and establish (through ASEAN regional forums) guidelines and criteria for the circumstances under which tax incentives and exceptions are acceptable.
- Ensure that local institutions – including state-level government (alongside the Union government), local businesses and civil society – play a role in identifying shared priorities and benefits for local communities, as well as in establishing accountability and grievance mechanisms.

It is also important that institutions with support and capacity in the local area are guaranteed roles in governance structures (such as the Management Committee) and planning processes. Negotiating a community development or benefits-sharing agreement with local communities could be a useful trust-building process.

#### **Investors and project developers should:**

- Operate transparently by establishing clear mechanisms to ensure that the local community is informed about the SEZ in line with international standards, including the United Nations Guiding Principles on Business and Human Rights (UNGPs).
- Conduct a full, rigorous and consultative EIA for the Kyauk Phyu SEZ as required by law, with particular attention to the fisheries sector as one of the main livelihoods on which local people depend.
- Establish operational complaints and grievance mechanisms in consultation with local rights-holders, which meet the eight effectiveness criteria of the UN Guiding Principles

on Business and Human Rights. These stipulate that operational grievance mechanisms should be: legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and should be based on engagement and dialogue.<sup>108</sup>

- Plan and take specific and adequate steps to ensure that women's voices are heard, their concerns are addressed, and their knowledge informs decisions. This is especially important for ethnic minority women, for whom language and cultural barriers can pose even greater obstacles to participation.
- Work with government, civil society and development partners to ensure that investment and development projects target training and support to the communities most in need and equip people with the skills they will most likely need to enable them to access jobs or other benefits.

## NOTES

- 1 The Organization for Economic Co-operation and Development (OECD), in its Investment Policy Review of Myanmar, recommends the use of FPIC as a core element of any responsible investment strategy related to land. OECD. (2014.) *OECD Investment Policy Reviews: Myanmar 2014*, p.68. See also: Myanmar Centre for Responsible Business. (2014.) *Myanmar Oil & Gas Sector Wide Impact Assessment*, pp.132–137. This highlights the trend by OECD, international financial institutions (IFIs) and others in Myanmar to require FPIC for projects.
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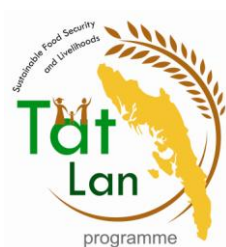
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