

GREEN DESERT



Communities in Tanintharyi renounce
the MSPP Oil Palm Concession

2016

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A film that complements this report titled Green Desert: Communities in Tanintharyi renounce

the MSPP Oil Palm Concession was produced by ALARM with additional footage from Wide Awake Productions. A CD of the film is distributed with this report. You can also find it at: www.flegt-alarm.org and https://www.youtube.com/channel/UCWW0H2J8_vEDHD71WU4SCkg

The contents of this publication are the sole responsibility of the organisations that co-authored this report. If you wish to directly contact any of the organisations below that published this report please contact: greendesert.tnty@gmail.com

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List of Acronyms

ALARM	Advancing Life and Regenerating Motherland
CFS	Committee on World Food Security
CSO	Civil Society Organisation
DALMS	Department of Land Management and Surveys
EAO	Ethnic Armed Organizations
EIA	Environmental Investigation Agency
EIA	Environmental Impact Assessment
FAO	Food and Agriculture Organization of the United Nations
FPIC	Free, Prior and Informed Consent
HCV	High Conservation Value
IDI	Inclusive Development International
IDP	Internally Displaced Person
JBIC	Japan Bank for International Cooperation
JMC	Joint Monitoring Committee
KNU	Karen National Union
MIC	Myanmar Investment Commission
MOAI	Ministry of Agriculture and Irrigation
MONREC	Ministry of Natural Resources and Environmental Conservation
MSP	Myanmar Stark Prestige Plantation
NBIM	Norges Bank Investment Management
NCA	National Ceasefire Agreement
RSPO	Roundtable on Sustainable Palm Oil
SIA	Social Impact Assessment
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
VFV	Vacant, Fallow or Virgin land
VGGT	Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security
WWF	World Wildlife Fund
GPFG	Norwegian Government Pension Fund Global

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Executive Summary

Around the world, oil palm plantations have been criticized for forced evictions of indigenous communities, labor abuses, and rampant deforestation. This notorious industry has now expanded to Myanmar,¹ with devastating consequences for human rights and the environment. More than 1.8 million acres of oil palm concessions have been awarded in Tanintharyi Region in the far south of the country, often to companies with close ties to the former military regime. Poor land-use planning has allowed oil palm companies to clear cut High Conservation Value (HCV) forest, including globally important lowland rainforest. Furthermore, oil palm plantations have encroached on the customary territory of indigenous communities, causing land conflict and damaging livelihoods in contested areas affected by more than six decades of civil war.

With foreign investment in Myanmar expected to increase following the country's ongoing political transition, there is a serious risk that oil palm expansion will continue to fuel social and environmental harm in Tanintharyi Region. This report aims to understand and highlight these risks. Based on 18 months of research by local civil society organizations, this report documents the impacts of oil palm in Myanmar, using the controversial Myanmar Stark Prestige Plantation (MSPP) project as a case study.

In 2011, MSPP was granted a permit by the Myanmar Investment Commission (MIC) to establish a 38,000-acre and \$36.75 million oil palm project in Tanintharyi Township, Myeik District, Tanintharyi Region of Southeastern Myanmar. The Karen National Union (KNU) administers this area as Ler Muh Lah Township, Mergui-Tavoy District. However, lack of transparency makes

it difficult to determine the actual size of the concession area. A project signboard erected by MSPP in 2014 lists the concession area as 42,200 acres, while a company map from 2015 shows a concession boundary measuring 49,227 acres.

MSPP is a joint venture between Malaysia-based Prestige Platform, which owns a 95% stake, and Myanmar-based Stark Industries, which owns a 5% stake. Stark Industries is owned and founded by Mya Thida Sway Tin,² a Myanmar businesswoman with connections to military and business elite.³ Prestige Platform is a subsidiary of Glenealy Plantations, which, in turn, is a subsidiary of Samling Group, a Malaysian conglomerate. Samling Group and Glenealy Plantations have deplorable reputations, and have been decried for environmental crimes and human rights violations.⁴ Their MSPP project is financed by Maybank, a Malaysian commercial bank that has issued \$124 million in bonds to Glenealy Plantations.⁵ Maybank itself is financed by several international entities, including the

1. Myanmar Oil Palm Plantations – productivity and sustainability review 2016, Chapter 4, History of the Oil Palm in Myanmar, Flora and Fauna International, 2016: <http://www.fauna-flora.org/publications/reports-documents/>

2. Facebook, Mya Thida https://www.facebook.com/myathidar.swaytin?fref=ts&__mref=message_bubble and <https://www.linkedin.com/in/mya-thidar-sway-tin-809b7631>

3. Facebook, Tein Htay. https://www.facebook.com/myathidar.swaytin?fref=ts&__mref=message_bubble

4. Section 4.2 of this report details abuses committed by Samling and Glenealy, which are also documented by the following sources: Global Witness. "The Untouchables," December 1999. <https://www.globalwitness.org/sites/default/files/pdfs/untouchables.pdf>
Global Witness. "Background investigation into companies bidding for Liberian forest management contracts," July 2009 https://www.globalwitness.org/sites/default/files/pdfs/global_witness_background_investigations_into_forest_management_contracts_15_july_2009_1.pdf
National Geographic, "Can Borneo's Tribes Survive 'Biggest Environmental Crime of Our Times'?" January 2015. <http://news.nationalgeographic.com/2015/01/150111-borneo-rainforest-environment-conservation-ngbooktalk/>
BBC, "Borneo tribe fights for survival," December 2009 <http://news.bbc.co.uk/1/hi/8395000/8395357.stm>
Global Witness, "We're back Sarawak. But this time we're watching from space," July 2014 <https://www.globalwitness.org/en/blog/were-back-sarawak-time-were-watching-space/>

5. Thompson One: <https://www.thomsonone.com/>



MSPP Oil Palm Concession (Credit Thet Oo Maung)

Japan Bank for International Cooperation (JBIC), Norwegian Government Pension Fund Global (GPF) managed by Norges Bank Investment Management (NBIM) and eight other European and North American pension funds.

The MSPP oil palm project is located in an area that has seen more than six decades of civil war between Myanmar's central Government and the Karen National Union (KNU). Myanmar military offensives have forced indigenous Karen villagers to flee their homes multiple times, hiding out in the forest, or refugee camps in Thailand.⁶ Between 1997 and 2007 the Myanmar Army committed many human rights violations in the MSPP area, including looting and destruction of property, forced labor, rape, torture, and arbitrary killing of civilians.⁷ In 2012 the KNU signed a preliminary, bilateral ceasefire agreement with Myanmar's

central Government, which opened up former civil war zones to foreign investment. The villages around MSPP are under mixed-administration of both the Myanmar Government and the KNU, which leaves civilians vulnerable to abuse as both governments shift the blame for the oil palm plantation's impact.⁸

Many of the problems resulting from MSPP activities arise from poor Government land use planning that failed to reflect reality on the ground. Due to civil war and displacement, indigenous Karen villagers have never been able to register their lands with either the Myanmar Government or the KNU, leaving them vulnerable to dispossession. The MSPP concession overlaps with 38,900 acres of community and agricultural lands belonging to four villages, which were incorrectly classified as 'vacant land' by the central Government.⁹ The MSPP concession also overlaps with the proposed boundary of Tanintharyi National

6. <https://www.hrw.org/reports/2005/burma0605/3.htm>
<http://khrgh.org/2011/03/khrg11f3/militarization-development-and-displacement-conditions-villagers-southern>
 Revolution as Development: The Karen Self-Determination Struggle Against Ethnocracy (1949 - 2004), Jack Fong, Universal Publishers, 2008

7. "Burma Army Killed 11 hiding Karen villagers," KNU Mergui-Tavoy Information Department. 25 November 1999. <http://www.burmalibrary.org/reg.burma/archives/199911/msg00849.html>
 Arnott, David. Collected Reports to the UN General Assembly by the Special Rapporteurs on the Situation of Human Rights in Myanmar. August 2003. http://www.burmalibrary.org/docs/Collected_SRM_GA_reports-B.htm

8. 20-25 February 2016: When villagers complained to the KNU, they were referred to the Myanmar Government as it is they who issued the permit to MSPP. However, when villagers complained to the Myanmar Government, they were referred back to the KNU who controls the area.

9. Personal communication with staff at Department of Land Measurement and Surveys (DALMS)

Park,¹⁰ allowing the company to destroy forest in an area of high biodiversity and important tiger habitat.

MSPP activities have caused severe negative social and environmental impacts for four indigenous Karen villages, home to approximately 4,480 people (see in Annex), within the concession area, and in total 13 villages are affected.¹¹ Since 2011, the company has cleared more than 6,000 acres, including the betel nut and cashew orchards villagers depend on for their livelihoods. Families who have lost their productive land have fallen into high levels of debt or been forced to work as day laborers for low wages. Many villagers do not earn enough money to feed and clothe their families. Furthermore, run-off from chemical fertilizers and pesticides used by MSPP has polluted local water sources, causing livestock to die and villagers to fall ill with skin irritations and dysentery.¹² MSPP has never offered villagers fair compensation for these impacts.

The MSPP oil palm project has failed to comply with both domestic law and international human rights principles. Following the granting of the MIC permit, MSPP should have acquired permission from the Central Committee for the Management of Vacant, Fallow and Virgin Lands to use the relevant land. There is no evidence that it did so. Further, because the land belonged to the communities, the only way that it could have been acquired is under the 1894 Land Acquisition Act. This would have required a public notification process and opportunities

to raise objection, neither of which took place.¹³ MSPP has also violated the indigenous Karen community's right to Free Prior and Informed Consent (FPIC)¹⁴ enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).¹⁵

In July 2016, the Tanintharyi Joint Monitoring Committee (JMC), a body tasked with monitoring complaints in the ceasefire region, discussed the issue of MSPP – following up on a request by the impacted community. Based on the decision at this meeting, the Tanintharyi Township Police office then sent a letter to MSPP requesting that operations be temporarily suspended until the company can properly negotiate with villagers to resolve the land dispute. After more than a year and a half of protests and complaints, this suspension represents a crucial opportunity to implement long-term solutions to the problems caused by the MSPP oil palm project.

The case of MSPP clearly highlights the environmental and social risks of oil palm expansion in Myanmar. As such, this report advocates that the Government of Myanmar not only resolve disputes around MSPP, but also address the entire oil palm sector. The Government should place a moratorium on oil palm expansion and new concessions until appropriate safeguards are put in place to guarantee human rights and environmental protection.

This report also demonstrates the high risks of large-scale investment in conflict areas, where administration is mixed between the Union level Government and ethnic armed organizations, and governance is very weak. In these areas, ethnic communities have not been able to register land due to civil war and have no land tenure security.

10. At present community land has been allocated by different Government ministries as both an oil palm concession and a national park. The boundaries of the national park have been re-drawn but have not yet been approved by the Regional Minister.

11. There are 4 villages in the concession area with the following population in each; 1) Thein Pyin – 865 people, 2) Kawat – 189 people, 3) Baw Sa Nway – 190 people, 4) Swae Chaung Wa – 66 people.

12. Testimony by affected community members, February 2016

13. See section 4.5 of the report for a full explanation of how MSPP did not comply with the 1894 Land Acquisition Act.

14. https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/oxfam-community-right-decide-infographics-v2.pdf

15. http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf



Community members whose land has been grabbed by MSPP carry out a peaceful protest (Credit Thet Oo Maung)

A moratorium should be placed on large-scale investment in conflict areas until there are strong governance mechanisms in place and an inclusive and meaningful peace accord.

Key Recommendations

- MSPP should cease current operations, enter into dialogue to fairly compensate the villagers for any area previously planted, and follow any future government instructions to return unplanted land to villagers.
- MSPP and other oil palm projects must carry out an Environmental Impact Assessment (EIA) and produce an Environmental Management Plan (EMP) in accordance with the Environmental Conservation Law and EIA procedures. MSPP and other oil palm companies should also fully disclose all project information.
- The Myanmar Investment Commission (MIC) should withdraw its permit for the MSPP project for failing to follow relevant laws and procedures.
- The Ministry of Agriculture and Irrigation (MOAI), Ministry of Natural Resources and the Environment (MONREC), and the Tanintharyi Regional Government should place a moratorium on all oil palm expansion until there are appropriate laws, safeguards, and a meaningful peace accord in place. They should also enforce the requirement that all existing oil palm projects carry out an EIA and produce an EMP.
- The Karen National Union (KNU) Central Committee should suspend MSPP operations, carry out an investigation, and take actions to resolve land conflict between MSPP and local Karen communities.
- Maybank should divest from Samling Group and its subsidiaries. JBIC, the Norwegian Sovereign Wealth Fund, and other financial institutions should ensure that their investments in Maybank are not indirectly financing Samling Group and its subsidiaries.

Methodology and Report Structure

The research and analysis for this report was carried out by 12 organisations over an 18-month period. Different organisations worked together in partnership collecting various kinds of information including documenting human rights abuses, carrying out interviews, mapping the concession area, remote sensing and investigating the revenue chains that fund MSPP.

■ ■ **Community mapping** was carried out by different organisations that mapped village lands and collected spatial data. This approach involved using detailed contour maps, Google Earth images and participatory mapping tools. Whilst the report only documents the total village area, the researchers made detailed land use and land cover maps. These maps were also shared and discussed between different neighbouring communities in order to triangulate and ensure the data was verified and accurate.

■ ■ **GIS and remote sensing applications** were used to digitise community maps and land cover and land use categories. To analyse land use cover and areas that have been cleared or planted with palm oil an array of tools and data sets were used, which include Google earth, Global Forest Watch¹⁶ and the *Hansen et al.*¹⁷ annual global deforestation data set titled *High-Resolution Global Maps of 21st Century Forest Cover Change*. For detailed information of forest change to bare ground or plantations including oil palm, GIS analysts used remote sensing data from the Smithsonian Institute, American Museum of Natural History and ALARM Myanmar

forest cover change mapping project.¹⁸

■ ■ **Community testimonies on human rights abuses** were conducted by interviewing people directly affected by MSPP activities in a secure location over a period of one week, which included focus group discussions and individual interviews. These interviews provided first-hand accounts of historical abuses by the Myanmar Army and current rights violations resulting from MSPP activities. These interviews provided primary data that created a historical profile of the area.

■ ■ **Key informant interviews** of lawyers, retired Government officials, civil society organisations and individuals, academics and international experts were carried out to determine and evaluate breaches of both national and international law by MSPP, and also compare land conflict relating from oil palm from other scenarios in the region. There has also close coordination with international advocacy organisations in the research preparation of this report. Many attempts were made to contact MSPP staff in Myeik via telephone and messages, however there was no response. This report has been sent to the company prior to publishing.

■ ■ **Review of official Government data and a literature review** have been carried out in depth. There are many different Government data sources on oil palm, so considerable care was taken to choose the most up-to-date current information that was prepared for MPs in the regional parliament by the Department of Industrial Crop Development, Myanmar's

16. <http://www.globalforestwatch.org/map/4/22.37/90.76/MMR/grayscale/loss,forestgain?tab=analysis-tab&begin=2001-01-01&end=2015-01-01&threshold=30>

17. High-Resolution Global Maps of 21st-Century Forest Cover Change. M. C. Hansen^{1,*}, P. V. Potapov¹, R. Moore², M. Hancher², S. A. Turubanova¹, A. Tyukavina¹, D. Thau², S. V. Stehman³, S. J. Goetz⁴, T. R. Loveland⁵, A. Kommareddy⁶, A. Egorov⁶, L. Chini¹, C. O. Justice¹, J. R. G. Townshend¹ <http://whrc.org/wp-content/uploads/2015/09/HansenetalScience.13.pdf>

18. Entitled: "Losing a Jewel—Rapid Declines in Myanmar's Intact Forests from 2002-2014." In review, submitted February 2016. Tejas Bhagwat, Andrea Hess, Ned Horning, Thiri Khaing, Zaw Min Thein, Kyaw Moe Aung, Kyaw Htet Aung, Paing Phyto, Ye Lin Tun, Aung Htat Oo, Anthony Neil, Win Myo Thu, Melissa Songer, Katherine LaJeunesse Connette, Asja Bernd, Grant Connette, and Peter Leimgruber.



Military era propaganda signboard in Myeik. A reference to the role of oil palm in the military junta's national self-sufficiency plan. (Credit Naw Baby Lay)

Ministry of Agriculture and Irrigation (MOAI), in August 2015. An extensive literature review was also carried out of oil palm and the political economy of agribusiness and agrarian reform in Myanmar and the effects of oil palm in the region.

■ ■ **Investigation of the MSPP investment chain** was carried out by Inclusive Development International (IDI). IDI's 'follow the money' approach identifies financial and corporate actors in the investment chain behind harmful projects using information in the public domain and hosted on financial and trade databases.¹⁹

Individual names of affected community members who have been interviewed and given testimonies, the name of the specific village where they come from and the names of organisations that carried out research on the ground have not been included in the report due to security risks.

Report Structure

This report aims to understand and highlight the social and environmental impacts caused

by industrial oil palm expansion in Tanintharyi Region of Southern Myanmar, and advocate for the rights of local communities suffering those impacts. First, it provides background information on global oil palm expansion and the historical and scientific context for the growing oil palm industry in Myanmar. Next, the report focuses on the case study of Myanmar Stark Prestige Plantation (MSPP), a Malaysian-Myanmar joint venture that has operated a large-scale oil palm concession in Myeik District since 2011. It documents the history of civil war, displacement, and human rights violations in the MSPP area, and then identifies the international investors backing the project. It investigates the flawed policies that allowed an oil palm concession to be granted on land belonging to indigenous Karen villagers, and details the resulting impacts to villagers' livelihoods and environment. The report analyzes how MSPP has not complied with domestic law or international human rights principles. Finally, the report makes recommendations for resolving the MSPP case and preventing future negative impacts from oil palm in Tanintharyi Region.

19. <http://www.inclusivedevelopment.net/new-idi-resource-following-the-money-an-advocates-guide-to-securing-accountability-in-agricultural-investments/>

2. Global Oil Palm Expansion

Palm oil production has boomed during recent decades driven by its increased use as frying oil, as an ingredient in processed food and non-edible products (detergents and cosmetics), and more recently in biodiesel production.²⁰ Unfortunately, because current palm oil production methods often cause the destruction of carbon-rich tropical forests and peat-lands, it is a major contributing factor to global warming.

Between 2000 and 2012, the area used for oil palm plantations globally grew from nearly 24.7 million acres to 35.6 million acres.²¹ The World Wildlife Fund (WWF) estimates an area equivalent to 300 football fields per hour are cleared for oil palm globally, the organization also projects that the demand for palm oil will double by 2020, and again by 2050.²² The fruit that is used to make the oil comes from the African oil palm tree and is suited to environments with abundant heat and rainfall. The tree is grown commercially in Africa, Asia, North America, and South America. However, Indonesia and Malaysia make up more than 85 percent of the production and export of palm oil globally.²³

Oil palm expansion has also become synonymous with environmental crime and human rights abuses across the globe, especially against indigenous people. In Asia, Africa, South and Central America – wherever oil palm grows – abuses carried out by both companies and governments and their impacts have been well documented.

20. Thoenes, P., 2006. Biofuels and Commodity Markets—Palm Oil Focus. <http://www.fao.org/economic/est/publications/oilcrops-publications/en/>

21. What are the limits to oil palm expansion? Johannes Pirker, Aline Mosnier, Florian Kraxner, Petr Havlík, Michael Obersteiner International Institute for Applied Systems Analysis (IIASA), Luxemburg, Austria

22. http://wwf.panda.org/what_we_do/footprint/agriculture/palm_oil/

23. <http://www.economist.com/node/16423833>

2.1. Impacts on local communities and indigenous people

The continuing spread of the oil palm industry risks causing further displacement of indigenous people and threatens their claim to the surrounding forests. Since the 1970s, nearly 2.5 million people²⁴ have been displaced by oil palm expansion in Borneo alone, with similar trends occurring in all other regions where oil palm is grown. Forced evictions and ignoring indigenous rights in order to cultivate palm oil has had 'dire cultural, social and economic consequences' on populations, a report by Rainforest Foundation Norway stated in 2013.²⁵

2.2 Labour

There is also extensive evidence of labour and human rights abuses of employees across the oil palm sector. Forced labour in the oil palm sector is most commonly a result of transnational people trafficking. Workers in oil palm plantations are particularly vulnerable to forms of modern slavery because of the remoteness of oil palm plantations. These are among the least monitored work sites, due to their remoteness and size, and trafficked undocumented persons are brought to these sites for these reasons.²⁶ It is commonplace for employers to take possession of workers' visas, passports, and work permits, thus restricting the workers' ability to leave the plantations.

In 2010, widespread labour abuses on oil palm plantations were uncovered in East Kalimantan, Indonesia. These included physical abuse, intimidation, unpaid wages, indebtedness, child labour, lack of employment contracts, unsatisfactory living conditions, and dangerous

24. <http://www.aljazeera.com/indepth/features/2014/04/palm-oil-fuels-indonesia-deforestation-indigenous-displa-201443145636809366.html>

24. <http://www.regnskog.no/en/publications/reports>

26. <http://www.verite.org/Commodities/PalmOil>

working conditions, including unprotected work with chemicals.²⁷

2.3 Impacts on the environment

Clearing forest for oil palm has also been linked to forest fires and haze, spreading across South East Asia and causing health problems and further environmental destruction. Peat soils can hold 18-22 times as much carbon as forests above ground: in acting as natural carbon sinks to keep CO₂ out of the atmosphere, intact peat lands are vital. In Indonesia in particular, where tropical peat soils are abundant, they contain some three-quarters of the world's tropical peat-soil carbon—an amount comparable to the carbon stored in the above-ground vegetation of the Amazon forest.²⁸

Severe fires on peat land dried and cleared for planting in Indonesia have released hundreds of years' worth of sequestered carbon, sending pollutants into the atmosphere, burning for weeks or even months. In both 2013 and 2015, fires in Indonesia resulting from palm oil development caused smog, haze, and respiratory problems as far away as Malaysia and Singapore and prompted a global health alert. In very dry years, emissions can be extraordinarily high: in 1997 for instance, burning peat and vegetation in Indonesia released as much CO₂ into the atmosphere as the United States did in that entire year.²⁹

Palm oil producing countries have all experienced extremely detrimental effects from the expansion of the commodity, including the loss of forest and biodiversity, human rights violations especially against indigenous people,

labour abuses, and very high CO₂ emissions contributing to climate change.

Experiences from other palm oil producing countries gives warning that Myanmar, and specifically the Tanintharyi Region, may experience many negative consequences from the development of the sector. These are likely to be compounded as they would occur at a sensitive time during the reform process as renewed peace talks are taking place; and with very weak land tenure arrangements and environmental safeguards in place. These consequences have already played out in the Myanmar Stark Prestige Plantation (MSPP) concession in Myeik District, which should serve as a warning to those considering further expansion of the sector.

26. <http://sawitwatch.or.id/2011/09/what's-happen-in-the-indonesian-palm-oil-industry-2/>

27. Ibid.

29. Environmental Protection Agency (EPA). 2013. Inventory of U.S. greenhouse gas emissions and sinks: 1990–2011, EPA 430-R-13-001. Washington, DC. Online at <http://www.epa.gov/climatechange/Downloads/ghgemissions/US-GHG-Inventory-2013-Main-Text.pdf>, accessed on October 30, 2013.

3. Oil Palm expansion in Myanmar

Oil palm expansion has grown at an unprecedented rate in Myanmar.³⁰ In 1999, the Government initiated a military sponsored industrial oil palm scheme as part of its national self-sufficiency plan. Tanintharyi Region, in particular Myeik and Kawthoung Districts and to a much lesser extent Dawei District, were to become the edible-oil basket of the country, ensuring national self-sufficiency.

In the early 2000s, the military junta head and former dictator of Myanmar, Retired. Senior General Than Shwe, decided that agribusiness expansion in Myanmar would be a cornerstone of economic development. The rationale was that Myanmar had a comparative advantage in an abundance of vacant land that could be made 'productive'. Large economies of scale would ensure high profits and self-sufficiency. Oil palm was chosen as a key crop to boost economic returns from land.³¹

However, this military project to boost the national economy had two major flaws. First, much of the land targeted was not vacant but populated by local communities and people who had been affected by conflict; or belonged to absent refugees and IDPs who wish to return to their former land. Second, the potential for investment and technology to lead to greater efficiency or to create an economy of scale was grossly overestimated. The highly inefficient, environmentally unsustainable and socially inequitable palm oil sector had the opposite effect to what was expected. A recent report released by Fauna and Flora International (FFI) and the Forest Department³² found that:

- Government policies on the allotment of land for extension plantings without adequate land use planning ensure undue deforestation; adverse social and environmental conditions; and planting on unsuitable soils and steep hill slopes to the detriment of future crop yields and economic returns.
- In general, with a few exceptions, plantations are poorly managed. Management strategies do not appear to focus on crop optimisation, primarily due to poor staff / worker policies and lack of training, as well as poor agronomic practices. Fruit processing facilities on some of the plantations are woefully inadequate resulting in high production losses.

To meet the goal of becoming self-sufficient in edible oil, Retired Senior General Than Shwe enlisted an array of 'crony'³³ companies. These are companies with strong connections to the military dictatorship. They formed an economic elite in a privileged position to access and exploit Myanmar's untapped natural resources. It was these same companies, including those with headquarters in Yangon, the economic capital, and crony businesspeople in Myeik, the economic capital of Tanintharyi, that were called upon to develop Myanmar's oil palm sector. More than 40 companies have been awarded more than 1.5 million acres in total. Many of these companies were, until recently, on the US sanctions list³⁴ for human rights abuses against communities and for aiding and abetting the former military regime.

These companies often lacked both the technical expertise and financial capital to support

30. Supra note 1

31. Interview with retired Government staff

32. Baskett, J.P.C. 2015. Myanmar oil palm plantations: A productivity and sustainability review Report no. 28 of the Tanintharyi Conservation Programme, a joint initiative of Fauna & Flora International and the Myanmar Forest Department.

33. cronyism: noun [mass noun] derogatory: the appointment of friends and associates to positions of authority, without proper regard to their qualifications.

34. <http://www.bscn.nl/sanctions-consulting/sanctions-list-countries>

responsible oil palm expansion, and focused instead on clearing the land for lucrative timber, failing to plant oil palm in its place. This not only defeated the purpose they had been given to promote Myanmar's self-sufficiency, but also had devastating consequences for the country's natural resources as the land intended for oil palm development had been allocated almost entirely in High Conservation Value (HCV) forests, including in the regions last low-lying sundaic forest.³⁵

A worrying trend has appeared since the reform process began in 2010 with the inception of the 'reformist' Thein Sein Government. The former Government made a large effort to try to raise the tarnished image of Myanmar, and this included passing various laws to attract foreign investment. It is hoped that foreign investment and much-needed overseas capital will lead to an economic transformation of the country. Since 2010, oil palm is no longer allocated only to domestic 'crony' companies, but to joint ventures between foreign companies and Myanmar partners. To date, two concessions have been granted to joint ventures, MSPP (discussed in detail in the next section); and Myanmar Automotive Company (MAC), a combined Myanmar and Korean investment. But with weak land tenure arrangements and large areas affected by conflict, land-based investment in Myanmar presents many environmental and social risks. As demonstrated by the case of MSPP, foreign investment in Myanmar has not attracted ethical investors: the Samling Group (the Malaysian conglomerate behind MSPP) is a company with a very poor record of regional and international investment that has broken national and international laws and carried out widespread human rights abuses.³⁶

The generation of such economic interest both from domestic and foreign investors is likely to put enormous pressure on Myanmar's natural resources, especially as oil palm can only be

grown in Tanintharyi, a region with bio-physical characteristics found nowhere else in the country. With a high annual rainfall over nine months of the year and a relatively flat terrain and rolling hills that can be terraced, Tanintharyi appears to have ideal conditions for oil palm. However, despite oil palm only being found in this ecological niche in the far Southern tip of Myanmar, productivity there is still poor and well below international standards,³⁷ due to climatic conditions.

In total 1.8 million acres of oil palm have allocated to the private sector from 2011 to 2016, which represents 35% of all agribusiness concession areas nationally. However, of the 1.8 million acres, only 535,000 acres will be planted by the end of 2016, which is equivalent to 29% of the total area granted. Such low conversion rates are due to high investment costs and limited expertise. Instead the land is being cleared of its HCV and commercial value forests, as logging is technically easier and requires less capital.

35. Supra note 31

36. See this report, section 4.2, 1A

37. Saxon, E.C. and Sheppard, S.M. 2014. Land Suitability for oil palm in southern Myanmar. 17 June 2014. Working Paper No. 1 of the Fauna & Flora International (FFI) Myanmar Programme, Yangon. [Online pdf] Available at: <http://www.fauna-ora.org/wp-content/uploads/Working-Paper-01-Oil-Palm-Suitability-in-South-Myanmar-July-2014.pdf>

4. The Myanmar Stark Prestige Plantation (MSPP) Case Study

4.1 Social context of the area: the lasting effects of ethnic conflict and violence

The south east of Myanmar has experienced ethnic conflict for more than half a century. Villages throughout Tanintharyi Region, including those in and around the concession area granted to MSPP, have been subjected to repeated cycles of violence by the Myanmar Army (Tatmadaw)³⁸. Villagers have had to flee their villages and take refuge in forests, IDP camps and refugee camps in Thailand.³⁹

In collective memory, violence erupted in 1942 with the Japanese occupation of Myanmar, which led to heavy fighting in Myeik District (at the time called Mergui). In 1948 the Karen formed the KNU and civil war began between 'Kawthoolei'⁴⁰ and the Myanmar Government. This also marks the beginning of local communities suffering as a result of civil war. Communities have

experienced torture⁴¹ and other human rights abuses⁴² at the hands of the Myanmar Army.⁴³ They have had their villages burnt and their crops destroyed multiple times. Until 2007, the Burmese army had a policy of shooting villagers on sight as they considered the area a "black area" controlled by ethnic armed groups.

Most of the villages in the MSPP area were established before the 1920s, but conflict between the Myanmar Government and Karen National Union (KNU) has often forced them to flee their land, returning during pauses in the conflict. Local people were always on alert and checking the news in case fighting had broken out nearby. During this time, one of the communities in the concession area had no choice but to flee in 1986. They subsequently

38. Supra Note 5

39. <http://www.oxfordburmaalliance.org/refugees--conflict.html>

40. Kawthoolei is the Karen name for the state that the Karen people of Myanmar have been trying to establish since the late 1940s

41. The Mon Forum, Issue No. 5/2003. Human Rights Foundation of Monland, 31 May 2003. <http://www.ibiblio.org/obl/docs/MF2003-05B.htm>

42. An Independent Report by the Karen Human Rights Group, Manerplaw, January 27, 1992 <http://khrhg.org/1992/01/92-01-27/incident-reports>

43. Testimony by affected community members, February 2016.

Oil palm in Tanintharyi – a misguided quest

Oil palm requires evenly distributed annual rainfall of (at least) 2000 mm without a defined dry season. Tanintharyi has a 3 to 4-month long dry season. Temperature is a limiting factor for oil palm production, best yields are obtained with max temperatures between 29-33 degrees centigrade and a minimum average temperature of 22-24 degrees centigrade. Higher diurnal temperatures such as those in Tanintharyi cause floral abortion in regions with a dry season. Only 66% of planted oil palm falls in areas that are characterised as suitable, most other allocated areas fall in areas that are not ideal for oil palm which will have low productivity or floral abortions.

(Saxon & Sheppard, 2014, Flora and Fauna International)



Protesters peacefully demonstrate against the negative environmental impacts in the MSPP concession area

had to move from place to place, relocating to different villages or refugee camps, until they were finally able to return in 2004.⁴⁴

Starting in 1997, the Burma Army committed

many human rights violations in the MSPP area, leading to a period of brutality that peaked between 2001 and 2007.⁴⁵ The Myanmar Army would enter villages and slaughter all the livestock including cows, buffalo and goats.

44. Testimony by affected community member, February 2016

45. Supra Note 6

Table. 1: Oil Palm Area allocated versus actually planted

Number	Years	Acres of plantation	Acres of successful plantation	Percentage planted
1	2011-12	329,650	95,721	29
2	2012-13	353,659	96,856	27
3	2013-14	363,399	102,887	28
4	2014-15	375,894	106,457	28
5	2015-16 (Proposed)	408,755	133,382	33
Total		1,831,357	535,303	29

Source: Department of Industrial crop development, MOAI from Tanintharyi Hluttaw News, No.8, August 19th, 2015, page 44

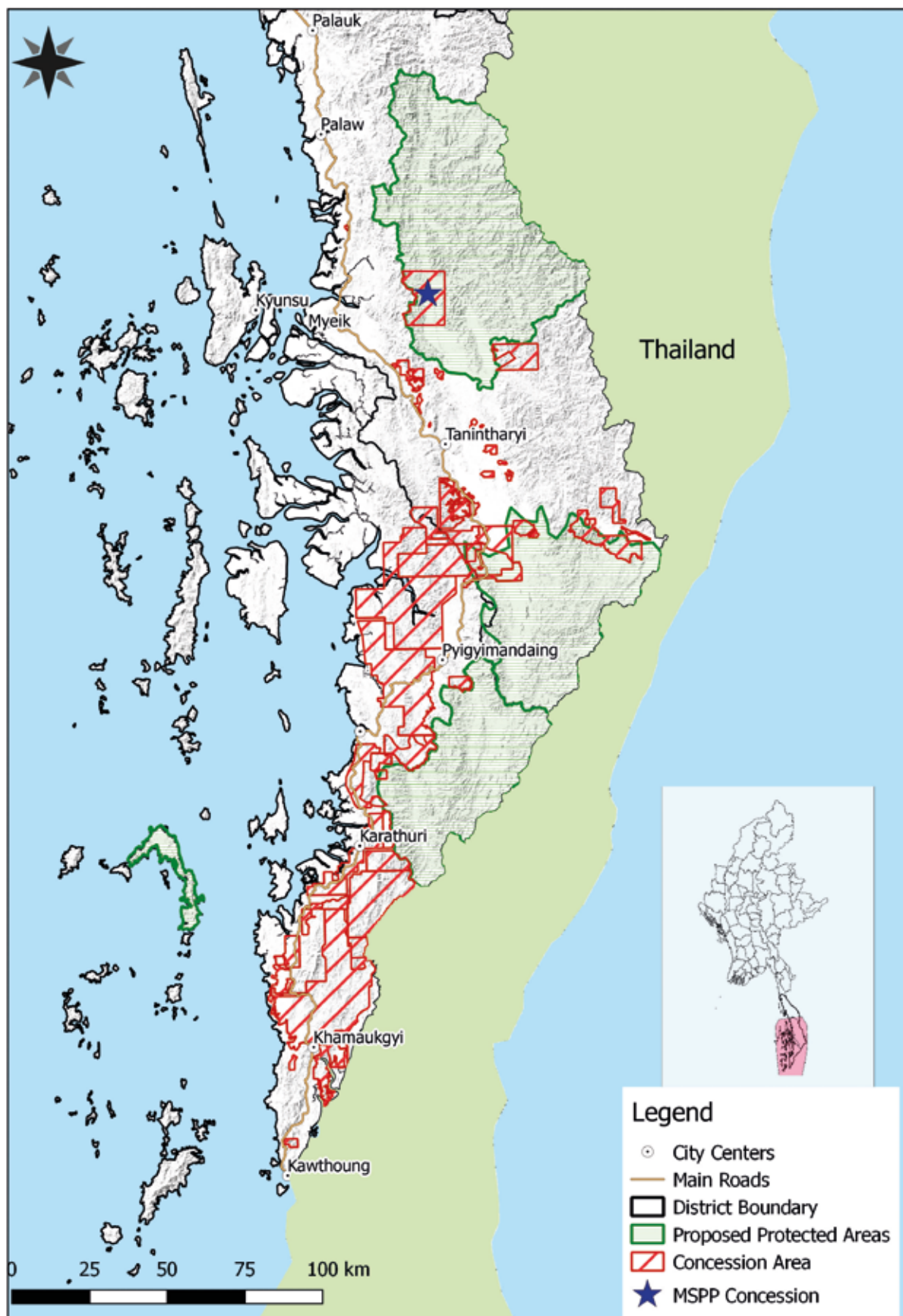


Figure 1: Oil Palm Concessions in Southern Tanintharyi

Some they would skin and take back to their base, the rest they left dead in the village and surrounding area. Reserves of rice were burnt, as well as houses, property and churches.⁴⁶ Thein Pyin (Tapo Khee) village was burnt to the ground three times by soldiers.⁴⁷ In some villages this happened multiple times, with inhabitants having to flee and stay away for up to one year at a time. The army would also cut down the betel trees and crops. This strategy was part of the Myanmar's Army's Four Cuts⁴⁸ strategy that was used for inland counter-insurgency operations.⁴⁹ Forced portering, where villagers were forced to carry goods for the Myanmar Army became commonplace. Villagers were also forced to provide free labour for road construction.^{50 51} Active conflict and persecution from the military only ceased in 2010, the year the 'reformist' Thein Sein government came to power. One year later, MSPP was awarded a permit for its oil palm concession.

This historical account of the local area and the effects of conflict explains why it was impossible for communities to register their land and secure tenure. Combined with this, during the period of military dictatorship (1962-2010), Government departments lacked resources and were unable to deliver adequate state services in non-conflict areas, let alone areas of active conflict.⁵² Communities in conflict areas across Myanmar have suffered similar experiences and are now

being dispossessed of land.

Since the 'reform' process began in 2010, the communities in the MSPP concession have still not been able to register their land with either the Government or the KNU. Swae Chaung Wa (Ta Mae) village is under the control of the KNU, and Union Government officials have not been to this area. The KNU offered to register the land under their system, however there has been no follow up from that agreement. The Myanmar Government came to discuss registering land in 2006/2007 in some of the other villages, however there was never any follow up. Thein Pyin (Tapo Khee) is a mixed control village, where people pay taxes to both the Government and the KNU, however neither side has been able to offer secure land tenure to its inhabitants.⁵³

There has been no effective communication or transparency from either the Myanmar Government or the KNU towards the affected communities. Government officials only come to the area to collect taxes or accompanied by MSPP employees.⁵⁴ This situation has led to miscommunication and many rumours which have increased tension between all parties. MSPP company officials often claim that the

46. Testimony by affected community members, February 2016

47. Testimony by affected community member, February 2016

48. Four cuts campaign : A strategy where intelligence, financing, food and recruits are eliminated through a scorched-earth policy

49. Tenasserim Division: Forced Relocation and Forced Labour, Karen Human Rights Group. 9 February 1997. <http://khrgh.org/1997/02/khrgh97u1/tenasserim-division-forced-relocation-and-forced-labour>

50. Testimony by affected community members, February 2016

51. The Mon Forum, Issue No. 2/2001. Human Rights Foundation of Monland, February 28, 2001. <http://www.ibiblio.org/obl/docs/MF2001-02.htm>

52. Interview with key informant. February, 2016

" "They (Burmese Army) used various ways to torture us. They would put a plastic bag on our head and tie it with a longgyi. They would put a plastic bag on our head and pour boiling water on our heads and punch us. Some of us were murdered or raped."

Villager from MSPP area

53. Testimony by affected community members, February 2016

54. Interview with key informant. June, 2016

KNU sold them the land, with neither the Government, KNU nor company providing detailed information.

Governance is often weakest in areas of mixed administration, as different parties shift the blame to one another, and no-one assumes responsibility. Due to both active and structural conflict and violence that has spanned decades, land tenure security is very weak and conflict-affected communities are most vulnerable to land grabbing.

"Before, during the time of fighting, we could flee to the jungle, but we always had our land to return to. Now there is peace, they (who?) have taken our land and we have nothing left"

Villager from MSPP area

The KNU signed a bilateral preliminary ceasefire agreement in 2012, shortly after the MSPP concession was granted. The 2012 ceasefire has played a major role in opening up former 'black areas' to foreign investment and the signing of the Nationwide Ceasefire Agreement (NCA) in 2015 indicates that another wave of investment, potentially bringing with it land conflict and dispossession, is likely to follow. This transition from the former threat of civil war, to the opening up of land in conflict areas for investment captures a shift from physical to structural violence.

The MSPP land grab highlights the need for a moratorium on large-scale investment and development activities in conflict areas until there is a meaningful peace accord and strong governance mechanisms in place.

4.2 Joint venture structure and revenue flows of MSPP

Myanmar Stark Prestige Plantation (MSPP) is a holding company incorporated in 2011⁵⁵ for the purpose of operating a large oil palm plantation in Myeik District, Tanintharyi Region, Myanmar. The \$36.75 million plantation project is a joint venture between the Malaysian conglomerate Samling Group, which owns 95% of MSPP through its subsidiaries, and the Myanmar company Stark Industries, which owns 5%.⁵⁶ MSPP's board consists of four Malaysians and one person from Myanmar.⁵⁷

A. Stark Industries Co. Ltd (Myanmar)

Stark Industries Co. Ltd. is owned and founded by Mya Thida Sway Tin, a Myanmar businesswoman with connections to military and business elite. Mya Thida Sway Tin takes her name from her ex-husband, Maung Maung Sway Tin, who recently died. They are both named in the Panama Papers.⁵⁸

She is now married to Thein Htay, a high-ranking military officer.⁵⁹ He has also served as a Government official in the Ministry of Labour. In addition to being the director of MSPP, Mya Thida Sway Tin is also listed on the professional networking website LinkedIn.com as, inter alia:

A. Managing Director of Services International

55. Open Corporates, Myanmar Stark Prestige Plantation. <https://opencorporates.com/companies/mm/3FC-2011-2012>

56. Myanmar Times, "Peace brings plantations and displacement in Myeik hills,"

57. Open Corporates, Myanmar Stark Prestige Plantation. <https://opencorporates.com/companies/mm/3FC-2011-2012>

58. The Panama Papers are 11.5 million leaked documents that detail financial and attorney-client information for more than 214,488 offshore entities. The leaked documents were created by a Panamanian law firm and corporate service provider, Mossack Fonseca. The leaked documents illustrate how wealthy individuals and public officials are able to keep personal financial information private. While offshore business entities are often not illegal, reporters found that some of the Mossack Fonseca shell corporations were used for illegal purposes, including fraud, kleptocracy, tax evasion, and evading international sanctions.

59. Facebook, Tein Htay. https://www.facebook.com/myathidar.swaytin?fref=ts&__mref=message_bubble

Co., Ltd which is reported to be involved in logging and tin mining in Tanintharyi Region.⁶⁰

- B. Director of Pioneer Services International Co., Ltd. ("PSI") that runs Bahosi Hospital.
- C. Managing Director of Services International (SI) Co., Ltd. that is involved in agriculture development as well as teak and sandal wood plantations. Her daughter is also a director of the company.⁶²

Mya Thida Sway Tin's second husband, Thein Htay is a former military officer⁶³ and a well-known figure in Myanmar business society as the owner of MRTV 4, a prominent Myanmar television channel. Mya Thida Sway Tin's daughter with her former husband is Isabella Sway-Tin. She is a co-owner of Yangon-based restaurant Rangoon Tea House.

B. Samling Group (Malaysia)

Samling Group is a Malaysia-based diversified conglomerate. The company was established in 1963 and has its headquarters in Sarawak. In total over 15,000 people are directly employed by Samling.

Father and son, Yaw Teck Seng and Yaw Chee Ming respectively, are the founders and owners of Samling Strategic Corp. They have logging operations in countries from China to New Zealand and are increasing their focus on property, with projects in the Sarawak city of Miri, Kuala Lumpur and Hanoi. In 2016, Forbes Rich List placed them as the 19th richest business in Malaysia with an estimated wealth of US\$950 million.⁶⁴ Samling is an umbrella company that owns many subsidiaries and carries out business

60. LinkedIn, Mya Thidar Sway Tin. <https://www.linkedin.com/in/mya-thidar-sway-tin-809b7631>

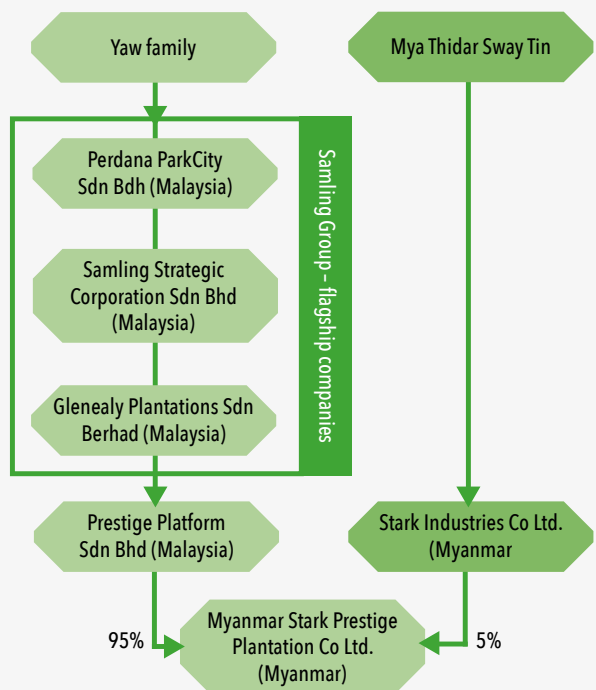
61. "Brilliant Woman – Dr. Mya Thidar Sway Tin" MRTV. 4 October 2013. <https://www.youtube.com/watch?v=fGnwzAjqUZU>

62. Supra note 2

63. Ibid.

64. http://www.forbes.com/malaysia-billionaires/list/#tab:overall_search:Yaw%20Teck%20Seng

Figure 2: Investment Chain for MSPP



activities including logging and timber extraction, value-added wood product manufacturing, and property development.

Glenealy Plantations Sdn Bhd, is a Samling Group subsidiary responsible for oil palm production. Glenealy has been in existence for more than 50 years. The Samling website claims they are "committed to implementing sustainable forest management practices which are designed to ensure the long-term supply of our forest resources".⁶⁵

However, Samling Group and its subsidiary Glenealy have been decried internationally for abysmal human rights abuses against indigenous people, environmental crimes and illegal activities across South East Asia and Africa. Samling Group has one of the worst reputations in Malaysia where it is based that also spans the three continents where they conduct operations. Some of the most notorious cases illustrating

65. <http://www.samling.com/upstream.php>

Samling's poor treatment of people and the environment include:

- In Cambodia in 1997, Samling Group started forest exploitation before receiving proper Government approval, including the concession agreement, harvesting in areas that was not permitted and breaking guidelines on timber extraction.⁶⁶ Samling Group continued extracting timber despite a logging ban that came into effect on 31st December 1996. In the following year, Samling Group began operations in the Snoul Wildlife Sanctuary.⁶⁷ When the Government increased the timber royalty rate in 1999, Samling Group ceased its operations in protest and refused to pay the royalties it owed.⁶⁸
- In 2007, Barama, a Samling subsidiary, lost its Forest Stewardship Council certification in Guyana in South America due to evidence of no free, prior and informed consent from local communities and failure to conduct thorough environmental impact assessments. Later in the same year the President of Guyana said that the subsidiary and the Guyana Forest Commission were colluding to defraud the Government.⁶⁹ In 2009, the former British Prime Minister, Gordon Brown, called Samling's operations in its home state of Sarawak the "biggest environmental crime of our times."⁷⁰ The

Malaysian Government found Samling Group complicit in systemic rape and abuse of tribal women, according to a BBC report from 2009.⁷¹ Members of the Penan indigenous minority who have protested Samling's actions have been met with Government intimidation or indifference.⁷²

The conglomerate's palm oil subsidiary, Glenealy, received a score of 2 out of 56 from the Sustainable Palm Oil Transparency Tool Kit, third-worst among the 50 companies ranked. Glenealy is not a member of the Roundtable on Sustainable Palm Oil, the leading industry certification scheme.⁷³

C. Revenue flows and financiers

There are many financial actors connected to Glenealy Plantations, the parent company of Prestige Platform that provides finances to MSPP. This section sets out key actors involved in the investment chain through general corporate bonds and other funds that are unstructured and not ring-fenced and therefore may be used to finance MSPP. See below for how different actors are involved in the investment chain that are tied to Maybank which has issued \$124 million in bonds to Glenealy Plantations.

1) Maybank

Malayan Banking (Maybank) is a large commercial bank based in Kuala Lumpur, Malaysia.⁷⁴ The bank has provided tens of millions of dollars of financing to Glenealy that may have been used to fund MSPP.

66. Global Witness. "The Untouchables," December 1999. <https://www.globalwitness.org/sites/default/files/pdfs/untouchables.pdf>

67. Ibid.

68. Global Witness. "Background investigation into companies bidding for Liberian forest management contracts," July 2009 https://www.globalwitness.org/sites/default/files/pdfs/global_witness_background_investigations_into_forest_management_contracts_15_july_2009_1.pdf

69. http://www.fsc-watch.org/archives/2007/01/18/FSC_audit_of_SGS_leads_to_suspension_of_largest_tropical_logging_certificate

70. National Geographic, "Can Borneo's Tribes Survive 'Biggest Environmental Crime of Our Times'?" January 2015. <http://news.nationalgeographic.com/2015/01/150111-borneo-rainforest-environment-conservation-ngbooktalk/>

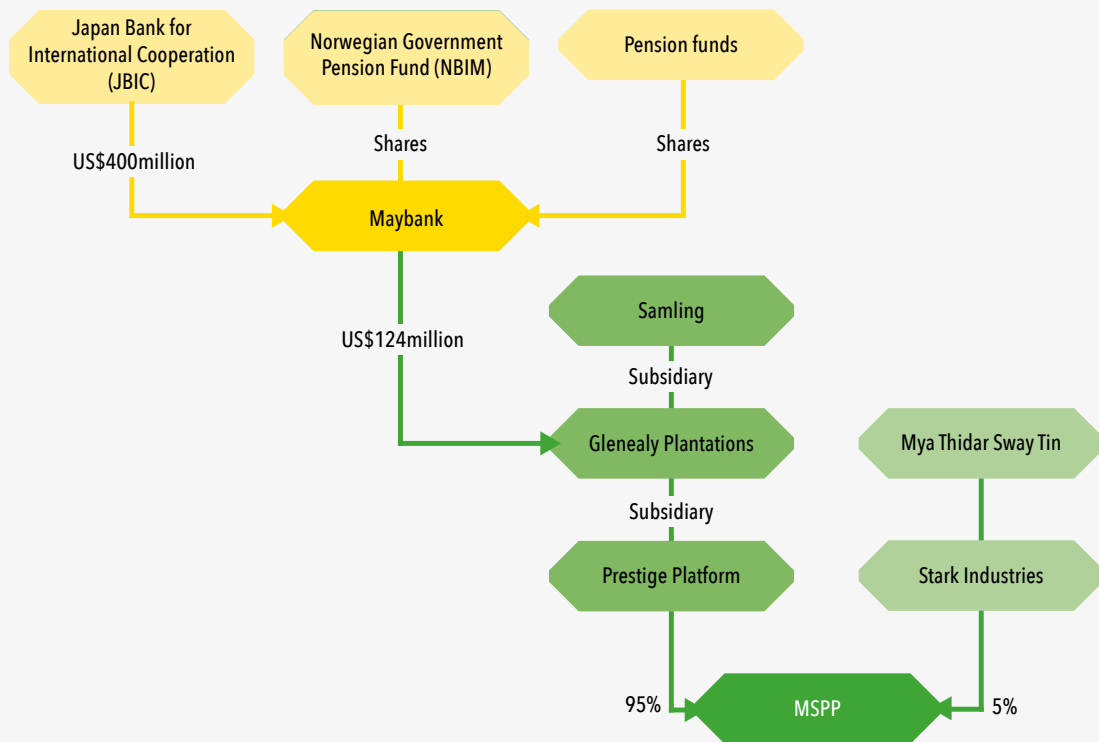
71. BBC, "Borneo tribe fights for survival," December 2009 <http://news.bbc.co.uk/1/hi/8395000/8395357.stm>

72. Global Witness, "We're back Sarawak. But this time we're watching from space," July 2014 <https://www.globalwitness.org/en/blog/were-back-sarawak-time-were-watching-space/>

73. Sustainable Palm Oil Transparency Tool Kit. <<http://www.sustainablepalmoil.org/company/glenealy-plantations-sdn-bhd/>>

74. Bloomberg, Malayan Banking. <<http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=874260>>

Figure 3: Financial Actors Involved in Revenue Chain



Since 2011, when MSPP was formed, Maybank has arranged and guaranteed US\$124 million in Glenealy bonds.⁷⁵ Bonds are forms of debt that, like loans, are designed to raise capital. “Underwriting banks”, in this case Maybank, buy the bonds from the company, in this case Glenealy, and then sell them on to third parties, often at a higher price, producing a profit for the underwriters.

Capital raised from these bonds was designed to finance the “acquisition of new plantation estates,” among other purposes, according to a March 2013 bond prospectus filed with the Malaysian Securities Commission.⁷⁶ As such, proceeds from the bonds could be used for the

plantation in Myanmar. The prospectus targeted a total amount of \$500 million in bonds. To date, only \$124 million has been issued. Given this, it is likely that Glenealy, with Maybank’s support, will issue more bonds in the future which in turn may lead to further environmental despoliation and human rights abuses.

On its website, Maybank claims to prioritize “conserving the environment” and “enriching the lives of community members.”⁷⁷ The bank publishes an annual sustainability report that reviews the bank’s environmental and social performance over the year. In the 2015 edition, Maybank Group President and CEO Abdul Farid Alias wrote in an introductory letter, “Every day, we consider economic, environmental, and social impacts when we interact with our

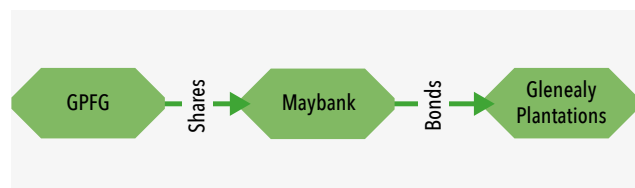
75. Thomson One: www.thomsonone.com

76. Malaysian Securities Commission, March 25, 2013 filing. <<http://issuance.sc.com.my/MemberAccessIssuance/documents/view-file/4102>>

77. Maybank, Sustainability. <<http://www.maybank.com/en/about-us/sustainability/about.page>>

customers, develop solutions, and manage our operations.”⁷⁸ However, by financing to the MSPP oil palm concession in the Tanintharyi Region, Maybank has failed to adhere to these ethical standards.

2) Norwegian Government Pension Fund Global (GPFG)



The government pension fund of Norway, commonly known as the Norwegian Government Pension Fund Global (GPFG) managed by Norwegian Sovereign Wealth Fund, invests in banks and companies around the world. It is managed by Norges Bank Investment Management (NBIM). The fund owns 0.37% percent of Maybank’s shares, valued at \$73 million.⁷⁹ As detailed above, Maybank has, in turn, provided financing to Glenealy through general corporate bonds, the proceeds of which could have been used to finance the plantation project.

In August 2010, NBIM placed Samling Group on its exclusion list for “severe environmental damage,”⁸⁰ and yet it may be exposed indirectly to providing finance to Samling Group through its client, Maybank.

NBIM has human rights, social and environmental standards for its investments. NBIM describes itself as an engaged, active shareholder in the companies in which it has invested. “We have clear expectations of companies in areas such as corporate governance, shareholder rights,

78. Maybank Sustainability Report 2015. <http://www.maybank.com/iwov-resources/corporate_new/document/my/en/pdf/Maybank-SR2015.pdf>

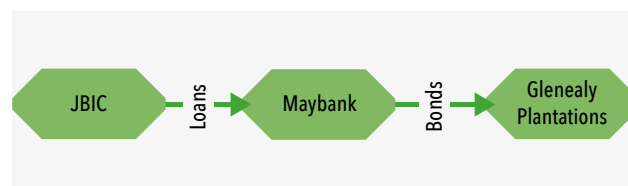
79. Thomson One: www.thomsonone.com

80. NBIM, Exclusion List. <<https://www.nbim.no/en/responsibility/exclusion-of-companies/>>

social issues and the environment,” NBIM says on its website.⁸¹ NBIM has three focus areas of concern: climate change, water management and children’s rights⁸² all of which have been violated by Samling Group.

NBIM’s independent Ethics Council makes recommendations to the bank on whether or not the Norwegian pension fund’s investments are inconsistent with its Ethical Guidelines.⁸³ The Ethics Council has therefore already assessed Samling Group as being in serious violation of NBIM guidelines, and should request Maybank to divest from Samling Group.

3) Japan Bank for International Cooperation (JBIC)



JBIC is the Japanese Government’s policy and development bank. JBIC provided \$400 million in loans to Maybank in two equal instalments in 2009 and 2010.⁸⁴ The funds were to be used by Maybank to support “industries in Malaysia which have business relations with Japanese enterprises.”⁸⁵ Samling has extensive business operations in Japan, including distribution networks and strategic partnerships with the

81. NBIM, Responsible Investment. <<http://www.nbim.no/en/responsibility/responsible-investment/>>

82. NBIM, Risk Management. <<http://www.nbim.no/en/responsibility/risk-management/>>

83. Council on Ethics for the Norwegian Government Pension Fund Global. <<http://etikkradet.no/en/>>

84. JBIC, Untied Loan for Maybank. <<https://www.jbic.go.jp/en/information/press/press-2009/0330-7166>>

85. Maybank, “Maybank secures USD400 million total JBIC funding for Japanese-linked businesses,” <http://www.maybank2u.com.my/mbb_info/m2u/public/personalDetail04.do?channelId=Personal&cntTypeId=0&cntKey=AU10.04.02&programId=AU02.02-ArchiveNews&newsCatId=/mbb/AU-AboutUs/AU02-Newsroom/2010/04&chCatId=/mbb/Personal>

Itochu and Daiken corporations.⁸⁶ As such, Samling and its subsidiaries fit within the terms of the loans, and JBIC funds may have been used by Maybank to provide finance to Glenealy and the plantation in Myanmar.

JBIC's Guidelines for Confirmation of Environmental and Social Considerations⁸⁷ state that JBIC assesses social and environmental impacts of its investments that must be addressed. These impacts include impacts on human health and safety as well as the natural environment through air, water, soil, waste, accidents, water usage, and ecosystem; and social concerns including respect for human rights, such as involuntary resettlement, indigenous people, cultural heritage, landscape, gender, and children's rights, working conditions and community health, safety, and security.⁸⁸

The guidelines state that "JBIC makes the utmost efforts to ensure that appropriate environmental and social considerations are undertaken in accordance with the nature of the project for which JBIC provides funding" and that "over a certain period of time following funding decisions, JBIC will if necessary monitor or take steps to encourage borrowers and related parties to ensure that appropriate environmental and social considerations are undertaken."⁸⁹

Under the guidelines, JBIC considers information brought to its attention by concerned organizations and stakeholders. The guidelines state, "JBIC welcomes information provided by concerned organizations and stakeholders, so that it may consider a diverse range of options and information..."

86. Samling, Distribution. <<http://www.samling.com/distribution.php>>

87. JBIC, Guidelines for Confirmation of Environmental and Social Considerations <<https://www.jbic.go.jp/en/efforts/environment/confirm>>

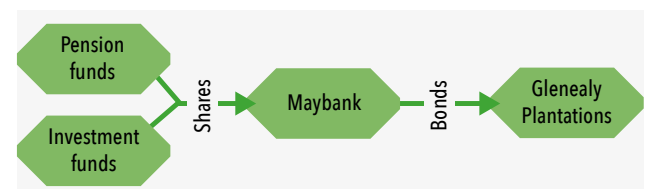
88. Ibid, page 19.

89. Ibid, page 4.

The guidelines further state: "If it becomes evident that the borrower and the project proponents have not met the conditions required by JBIC under the Guidelines, or if it becomes apparent that the project will have an adverse impact on the environment after funding is extended due to the borrower's or related parties' failure to supply correct information during the environmental reviews process, JBIC may, in accordance with the loan agreement, suspend the disbursement or declare all the outstanding principal at the time, with interest and any other charges thereon, to be payable immediately."⁹⁰

JBIC should take immediate measures to ensure that funds it has provided are in no way assisting Samling Group and if it is found to be compromised it should take action to divest immediately.

4) Pension Funds and Investment Firms



There are a number of other prominent shareholders involved in Maybank. Foremost among these are European and North American pension funds. In total, eight of these pension funds hold shares in Maybank. Individually, these investments are relatively small, but collectively they are worth approximately US \$132 million.⁹¹ They are:

- PGGM (Netherlands): 0.17% stake worth \$34 million
- British Columbia Investment Management (Canada): 0.12% stake worth \$24.5 million
- APG Asset Management (Netherlands):

90. Ibid, page 13.

91. Thomson One: www.thomsonone.com

- 0.12% stake worth \$23 million
- TIAA Global Management (United States): 0.10% stake worth \$19 million
- CPP Investment Board (Canada): 0.05% stake worth \$10.5 million
- Forsta AP-Fonden (Sweden): 0.05% stake worth \$9.5 million
- Caisse de Depot et Placement du Quebec (Canada): 0.03% stake worth \$6.5 million
- AMF Pensions for sakring (Sweden): 0.02% stake worth \$3 million

These pension funds manage the retirement savings of tens of millions of people, many of them public-sector employees such as teachers and health workers. Many of them have publicly committed to responsible investment and have environmental and social guidelines. Both pension funds and investment firms should request that Maybank divests from Samling Group or in turn they should sell their shares in Maybank.

4.3 MSPP Concession and land conflict

The following section highlights a number of conflicting land uses in the concession area, and sets out a chronology of events detailing the human rights abuses committed by MSPP and the impact these have on ethnic Karen people's lands and livelihoods.

The MSPP oil palm concession is located in Tanintharyi Township, Myeik District, Tanintharyi Region. The Karen National Union (KNU) administers this area as Ler Muh Lah Township, Mergui-Tavoy District. In all, 13 villages with a total population of 4,480 people are experiencing the negative effects of MSPP activities.⁹² The customary lands of four ethnic Karen villages are included in the concession area (see figure 2 on page 30). These four villages are: Thein Pyin (Tapo Khee), Kawat (Kawae), Baw Sa Nway (Ba Tanaw), Swae Chaung Wa (Ta Mae).⁹³

92. Supra note 10

93. These villages have both Burmese language and Karen language names. The Karen names are listed in parentheses.

They have a combined population of 1,504 people.⁹⁴ Altogether 38,900 acres of community land is situated within the concession boundary shown on company maps.

At present, MSPP operations have been temporarily suspended following a meeting by the Joint Monitoring Committee (JMC), a multi-stakeholder ceasefire monitoring body in Tanintharyi. Following this meeting the Tanintharyi Township Police sent a letter requesting that operations be temporarily suspended until the company negotiates and reaches an agreement with impacted villagers (see page 29). Whilst the plantation is in a temporary state of suspension, meaningful action must be taken to ensure that the project is stopped; that local people receive adequate compensation; and that the company leaves the vicinity and their ancestral lands.

A. Government Issuance of the MSPP concession

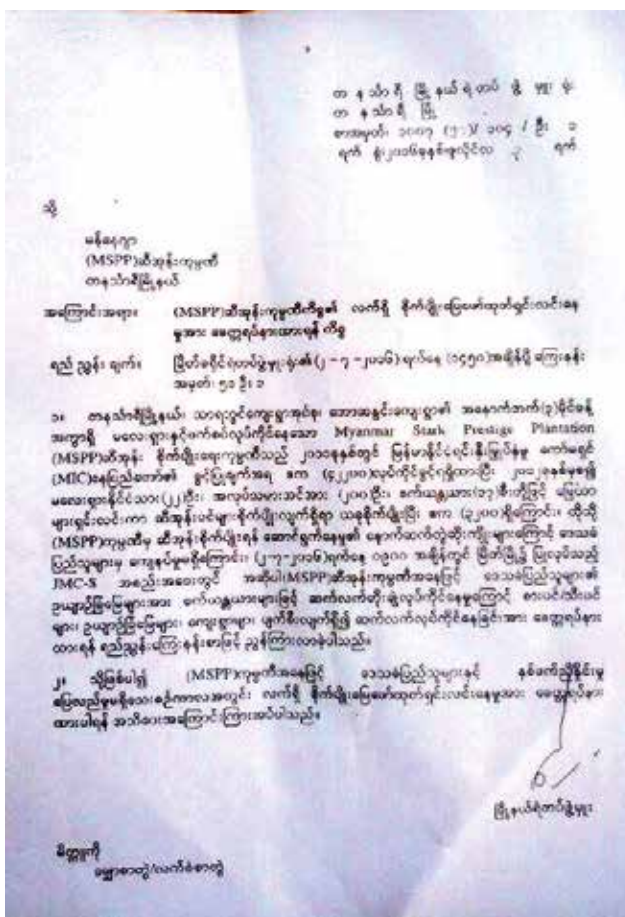
Myanmar's legal framework favours company interests and large land concessions over the rights of smallholder ethnic communities who have been living in this area for generations. Centralised Government planning in Myanmar has led to vast swathes of land classified as Vacant, Fallow or Virgin land (VFL) or Reserved Forests being degazetted for agribusiness expansion. Land allocation has historically been carried out centrally in Myanmar's capital, Nay Pyi Taw. There have been few safeguards or processes to protect small hold farmers' rights and customary land practices when allocating land – and those that exist have not been enforced. As a consequence, huge areas of Myanmar have been allocated to companies as agribusiness concessions, which has exacerbated land conflict and caused dispossession. The same is true for the communities affected by the MSPP oil palm concession.

94. Supra note 10



Above: MSPP signboard at the entrance to the concession area

Below: Letter from the Police Department ordering MSPP to suspend operations



At the time the permit was awarded in 2011, the area where the MSPP concession is allocated (which has belonged to local communities for generations) was incorrectly classified as vacant land.⁹⁵ In 2012, the Myanmar government passed a new VFV lands management law that is essentially a repackaging of an 1861, colonial era law, and the 1991 procedures conferring the right to cultivate land. The VFV law and those preceding it, have been widely used as a mechanism to allocate large areas of 'wasteland' to businesses. However, there is frequently a discrepancy between how the Government classifies the land, and how it is actually being used on the ground.

In addition to this, the process for acquiring land requires completing a 105 land form.⁹⁶ This should have been completed by the Settlement Land Records Department (SLRD)⁹⁷ and involves

95. Personal communication with Department of Land Management and Surveys (DALMS) 25 October 2016.

96. According to the Burma Land Record Manual

97. SLRD is now Department of Land Management and Surveys (DALMS)

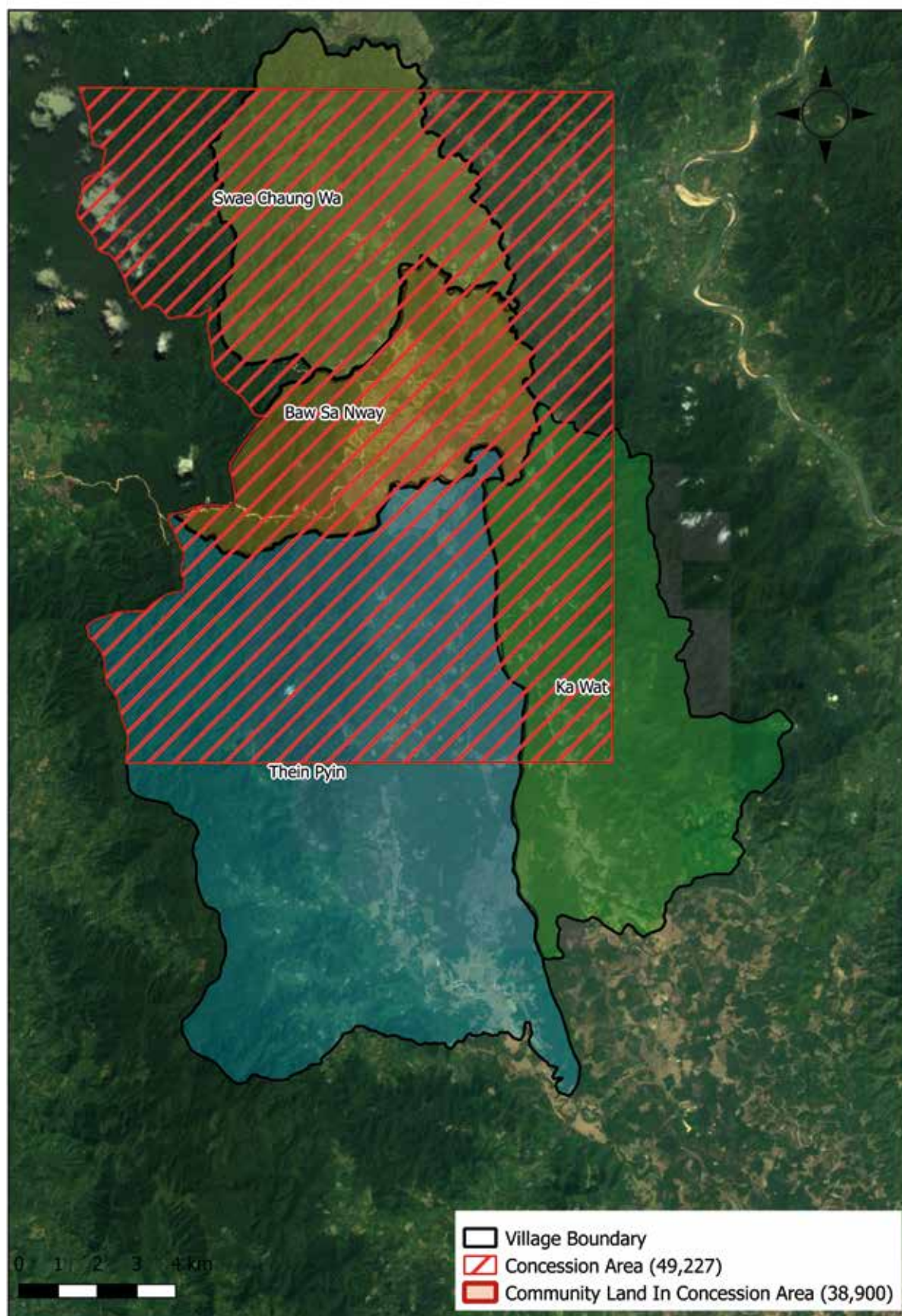


Fig. 2 Map showing Community land that is in MSPP Concession Area



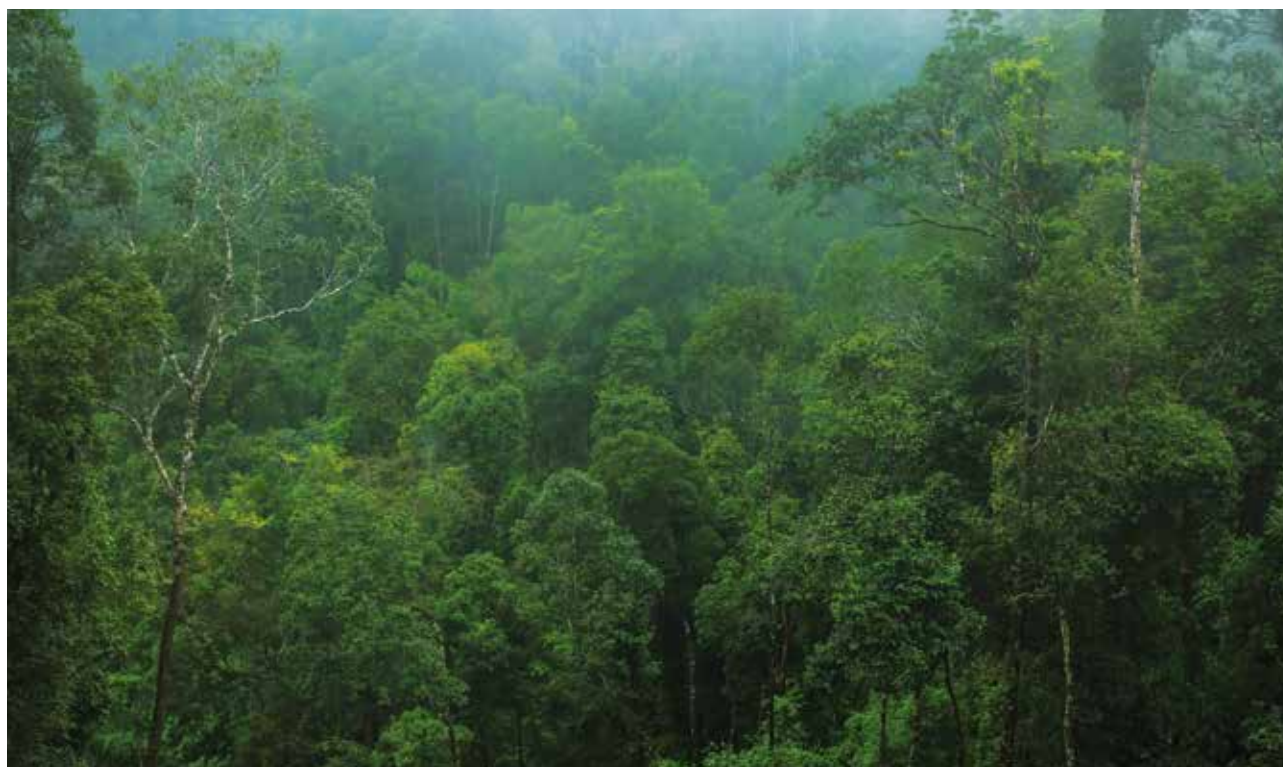
The misty mountains and forests to the West of the MSPP concession area

submitting a detailed map of the area showing what is actually there on the ground. This process has never been carried out for the MSPP oil palm concession. Due diligence has not been carried out by the company or government officials to ensure that the land was not being used by farmers.

B. Discrepancies Over Concession Area

One major challenge – stemming from the lack of transparency that plagues Myanmar’s natural resource and investment sectors – is determining the actual land area claimed by the

MSPP concession. The permit from Myanmar Investment Commission (MIC) awarded in February 2011 lists the area as 38,000 acres, but this document was originally kept confidential (see in annex). This number does not match the concession area measurement of 42,200 acres listed on a signboard erected at the MSPP company compound in October 2014 (see in annex). Furthermore, in July 2015, researchers for this report obtained an MSPP company map showing the concession boundary (see annex). Mapping technicians used GIS to calculate the area inside the concession boundary included



The rainforest in Myeik District, Tanintharyi Division

on this company map, and determined the area to actually be 49,227 acres.

Summary of MSPP Concession Area Discrepancies

Source	Concession Area
MIC Permit Issued in February 2011	38,000 acres
MSPP Company Signboard Erected in October 2014	42,200 acres
GIS calculation based on concession boundary on MSPP company map obtained in July 2015	49,227 acres

Lack of transparency and discrepancies between various MSPP project documents have led to confusion among the community and civil society over exactly how much land area MSPP has been permitted to use by the government.

This represents a serious violation of the local community's right to Free Prior and Informed Consent (FPIC) that is detailed in section 4.5 part C of this report. The community cannot give FPIC without accurate, timely, and transparent information disclosure by MSPP and the Myanmar government.

C. Overlapping Government Land Designations

The Government has also designated the land where the MSPP concession is in a national park, although it is trying to amend the situation.⁹⁸ The fact that there are 38,900 acres of village land within the MSPP concession area, which has also been designated a national park, demonstrates that the Government carries out land use planning and land zonation with ministries failing to coordinate and instead working in silos.⁹⁹

98. At the time of writing (July, 2016) the Government with the assistance of FFI is trying to amend this, and there is a new proposed national park boundary that is waiting to be approved by the Regional Minister

99. There is little or no coordination, and the Ministry of Natural

The site of Tanintharyi National Park has been chosen as virtually all the area is covered by pristine evergreen forest which supports a rich biodiversity. Within the proposed park's boundary sambar deer, Asian elephants, barking deer, red goral, rare bird species, leopards and tigers are found.¹⁰⁰

When creating a protected area system, there is a process whereby officials are meant to seek Free, Prior and Informed Consent (FPIC)¹⁰¹ from communities. In practice this has not taken place, instead Forest Department officials have visited

Recourses and Environmental Conservation (MONREC) and the Ministry of Agriculture and Irrigation (MOAI) both rely on territory as their power base and have a long history of trying to expand areas under their respective jurisdiction. Both ministries are also very reluctant to relinquish land to another ministry especially to each other.

100. Instituto Oikos & BANCA (2011). Myanmar Protected Areas: Context, Current Status and Challenges. Milano, Italy, Ancorra Libri.

101. Supra note 13

villages in the area demanding that they sign documents to create a protected area, without explaining what this is, where its boundaries are and what the implications are.¹⁰²

This highlights the degree to which Government agencies have not carried out ground truthing of actual land use, or followed safeguards to protect Myanmar people. It exemplifies how different Government Ministries work in silos with no communication and make conflicting decisions about land. As a consequence, MSPP is destroying the high conservation value (HCV) forests in an area earmarked by the Ministry of Natural Recourses and Environmental Conservation (MONREC) as a national park for its high levels of biodiversity and pristine evergreen forest.

102. Focus group discussions with affected communities, February 2016.



Piles of unmarked logs from the MSPP concession area

MSPP: A timeline of events

- 1996-1997 ● ● People forced to flee from their villages due to Myanmar Army offensive
- 2007 onwards ● ● People started returning in higher numbers back to the villages from refugee and IDP camps
- 2007 ● ● Stark Industries came and started logging Dar Thway village (near where the MSPP entry gate is now).
- 2011 February ● ● MIC awards a 30-year permit to MSPP to establish a \$36.75 million oil palm project on 38,000 acres.
- 2011 June ● ● MSPP Joint Venture is officially incorporated by permit of the Ministry of National Planning and Economic Development
- 2011 June -December ● ● MSPP begins clearing land
- 2012-2013 ● ● Over 2,500 acres of land logged, cleared and oil palm planted
- 2013 onwards ● ● Villagers livestock including buffaloes and goats begin to die from drinking water contaminated with chemical fertilizers and pesticides from MSPP plantation areas
- 2014-2015 ● ● Approximately 3000 acres logged and clear cut
- 2014 October ● ● Company erects notice board displaying permits and prohibitions that deny ethnic people access to their land
- 2015 March ● ● KNU Mergui-Tavoy District issues an order to MSPP to halt operations. However operations carry on
- 2015 December ● ● Company offers 10,000,000 MMK (7900 USD) for 1000 acres of land as compensation. That is 10,000 MMK (7.9 USD) for 1 acre. The company threatens local farmers saying this is the final chance to receive compensation.
- 2015 December -June 2016 ● ● Company carries out aggressive logging activities
- 2016 July ● ● Following the decision by the Joint Monitoring Committee (JMC) Tanintharyi Township Police office sends a letter ordering MSPP to temporarily suspend operations. MSPP suspends clearing new land.



Women and Children protest against the MSPP concession

4.4 The impact of MSPP on local livelihoods

From March 2011 onwards, Stark Industries Co. Ltd, the Myanmar partner of the joint enterprise came into community-owned lands allocated as VFV and began logging commercially valuable trees in village areas.¹⁰³ These large, old-growth trees were then transported out of the area. Once all the trees of commercial value had been removed the remaining undergrowth was burnt off and oil palm saplings were planted.

A. Logging and destruction of crops

The company used two teams to carry out the logging process, one team selectively logged the valuable trees, while a second team cleared the remaining trees and foliage. In total there were between 200-300 people at any one time depending on the workload. A fleet of bulldozers also supported land preparation for clearing, along with chainsaw operators and convoys of trucks. Members from the affected communities state that MSPP was able to clear two to three

hills a day due to the large number of workers.¹⁰⁴ Most villagers farm betel nut and cashew trees, and entire families have to invest a huge amount of time and effort to prepare the land for planting. Once planted it takes five years for the trees to mature; and once mature the trees and the land increase dramatically in value. The betel nut tree is the cash crop of choice for farmers in the area and is a long-term investment, with some trees growing to be over 100 years old. Due to the longevity of a betel nut tree, IDPs and refugees can come back to their orchards and make a living once more.¹⁰⁵

Substantial areas of cashew and betel that belong to affected communities were destroyed and burnt by MSPP, with no warning and no offer of compensation, which is illegal under Myanmar Law (see page 39). Prior to 2016, 6000 acres of land had been cleared, 1200 acres

103. Testimony by affected community members, February 2016

104. Testimony by affected community members, February 2016

105. Testimony by affected community members, February 2016

of which was comprised of villagers' orchards.¹⁰⁶ In early 2016, MSPP carried out an aggressive land clearing campaign before the monsoon started and many more acres of villagers' lands have now been lost.

B. Water contamination by MSPP

Once the valuable timber had been extracted and the remaining scrub removed, MSPP prepared the land and planted oil palm. Fertilizers and pesticides are applied to the crops regularly. The chemicals run off the surface and leech into the natural waterways and irrigation ditches built by the company. The contaminated water then flows from the smaller streams and ditches into the larger rivers.¹⁰⁷

The effects of chemical pollution in natural waterways is causing devastating effects on communities who rely on these water sources for drinking water.¹⁰⁸ The community is unable to drink the water and has been forced to find alternative drinking sources.

Local people in the vicinity now also experience constant skin irritation from using water contaminated with chemicals from MSPP.¹⁰⁹ With no available health facilities in the area, this is very difficult to treat. Livestock have also died across all the affected villages due to drinking the contaminated water.¹¹⁰

During the monsoon season that lasts from May to November in Tanintharyi, the use of machinery to clear the land means that there is a lot of mud and sediment in the water. The company built wells in some of the villages, however livestock

defecate into these wells due to poor design and it is no longer safe to use them. In some of the villages there are existing wells that can be used; however, during the summer months the wells dry up and there is not enough water to supply the whole village.¹¹¹

As a result of drinking contaminated water which contains both pesticides and animal faeces, there have been repeated outbreaks of dysentery.¹¹² This has placed additional strain on adults who work as farmers, and dysentery symptoms can be more serious for children and older people. Livestock, especially cattle have died as a result of the use of pesticides and fertiliser that have made their way into waterways. As the company has begun clearing different areas, there are fewer areas left for pasture. Some households have lost all their cattle.¹¹³

C. Loss of livelihood and Increased Debt

Local livelihoods have been totally destroyed by MSPP destroying crops and contaminating water supplies and killing livestock. Families have had their productive farmland destroyed and they have lost everything. As a result, many households have fallen into high levels of debt, as they have been left with no other choice than to borrow money to survive.¹¹⁴

Consequently, many villagers from the concession area now have to work as day labourers on very low wages.¹¹⁵ They are unable to feed their families or adequately clothe their children and food insecurity is commonplace. Ethnic Karen and Burmese villagers who live in that area have a strong connection to the land,

106. Interview with key informant, June 2016

107. Testimony by affected community members, February 2016

108. Eleven Myanmar, "Tanintharyi villagers demand end to palm-oil project," May 2016. <http://www.elevenmyanmar.com/local/tanintharyi-villagers-demand-end-palm-oil-project>

109. Testimony by affected community members, February 2016

110. Ibid.

111. Ibid.

112. Ibid.

113. Ibid.

114. Ibid.

115. This is the definition of modern day slavery: the company has created conditions whereby local communities have no economic alternative than to work as laborers on the plantation, and can consequently pay low wages knowing they cannot afford to leave.

especially the land that they have cultivated for generations. This link between the community and the land is being severed.

D. Response from the affected Local People

Since the company entered into the area and began implementing the oil palm project on community lands that had been allocated as VFV, local people have tried to access information from the company and Government and hold them accountable.

Community members called a mass meeting in Thein Pyin with villagers, religious leaders, KNU leaders and representatives from MSPP on 4 December 2014 and initiated a dialogue to explain that they did not accept their lands being taken illegally.¹¹⁶ Two weeks after this, two villagers and three civil society representatives met with KNU district officers and complained about MSPP once more. In January 2015, seven representatives from the affected communities went to the MSPP office in Myeik and once more requested the company to stop all activities. However, after these three meetings, there was no indication that MSPP would stop its operations.

Therefore, on 13 January 2015, the local community submitted a complaint letter to the Myanmar Central Government, the KNU Central Committee, and the Ethnic Affairs Minister of Tanintharyi Region. This was the first of many complaint letters sent to the Regional Government, company director, and State Counsellor Daw Aung San Suu Kyi from January 2015 to May 2016 (see a summary of these complaint letters in the annex). These complaints about MSPP often went unanswered, or were met with empty promises. No meaningful actions were taken by either the Myanmar government, the KNU or the company to resolve the land dispute.

In February 2015, the affected communities invited media groups to document the MSPP

"Before we sold betel nuts and could support the whole family and we owned our own land. We didn't have to worry how big our families are. Now we worry every day".

Villager from MSPP area

land grab, in total ten different domestic media agencies came and collected information from the local community. Villagers whose lands were seized and their crops destroyed met with Myeik and Dawei lawyers and discussed legal ramifications. The villagers then measured the land the company has taken with GPS units to accurately document their loss.

In March 2015, KNU issued an order for MSPP to suspend operations, but MSPP did not listen to this order and continued operating. Since then, affected communities have conducted regular workshops and meetings for FPIC awareness-raising events and environmental protection. The communities have also created an alliance in the form of a committee called Khaing Myae Thitsar, whose focus is on safeguarding the sustainable development of the villages, which includes natural conservation, prayer ceremonies, participatory mapping activities, company engagement and strategic planning.

In April 2016, Khaing Myae Thitsar sent a complaint letter about MSPP to the Tanintharyi Joint Monitoring Committee (JMC), a body tasked with monitoring complaints in the region during the ceasefire period. The JMC met in Myeik in July 2016 to discuss the MSPP project, and issued a temporary stop of MSPP operations since they were destroying villagers' orchards. Following this JMC decision, the Tanintharyi township police office issued a letter ordering MSPP to temporarily suspend operations until a

¹¹⁶ Interview with key informant, June 2016

Community response timeline

4 December 2014 ●● Meeting with villagers, religious leaders, KNU leaders, company representatives to discuss the MSPP land grabbing.

21 December 2014 ●● Two villagers & three CSO representatives met with KNU district officer and discussed MSPP

13 January 2015 ●● Submitted first complaint letter about MSPP to Myanmar central government (Nay Pyi Taw), KNU central committee, and Tanintharyi Region Ethnic Affairs Minister.

25 January 2015 ●● Seven villagers went to the MSPP office in Myeik to demand they cease clearing villagers' land

21 February 2015 ●● Submitted letter to chief minister of Tanintharyi Region requesting to see MSPP's permit and concession map.

15 February 2015 ●● Land confiscated by MSPP is mapped by the community

20 February 2015 ●● Villagers meet lawyers from Myeik and Dawei to discuss MSPP

23 February 2015 ●● Media Trip to MSPP area and meeting with 150 villagers regarding land grabbing and MSPP. 120 villagers and media groups go to MSPP office requesting official documentation and permits, but are turned away with no response

12-14 March 2015 ●● FPIC workshop with villagers in Thein Pyin

30 July, 2015 ●● The community impacted by MSPP forms Khaing Myae Thitsar committee to promote sustainable development and natural resource conservation.

March-December 2015 ●● Regular follow up meetings and community events

16-26 August 2015 ●● Village Boundary Mapping in Tharabwin Village Tract

12 September 2015 ●● Local community holds interfaith prayer services to stop MSPP from clearing their land

28 April 2016 ●● A complaint letter is lodged with the Joint Monitoring Committee (JMC) responsible for overseeing complaints in ceasefire areas.

11 May 2016 ●● Complaint letter sent to the managing director of MSPP about water contamination.

12 May 2016 ●● Complaint letter sent to Myanmar government State Counselor Daw Aung San Suu Kyi, President U Htin Kyaw, and Vice President U Henry Van Thio

proper negotiation is carried out with villagers to resolve the land dispute.

After a year and half of protests and complaints, the local community was finally granted a reprieve from the environmental and human rights abuses been carried about by MSPP. This temporary suspension represents a crucial opportunity to implement long-term solutions to the problems caused by the MSPP oil palm project.

4.5 MSPP: Non-compliance with Myanmar Law and International Standards

In Myanmar there is a complicated legal context, with different laws from different political eras still in effect. These different periods include the British colonial period, the socialist period, the gradual economic liberalisation under the military dictatorship, and the 'reform' period from 2010 onwards. MSPP and the Myanmar government failed to follow the proper legal procedures when MSPP was first granted its permit by the Myanmar Investment Commission in 2011 and operations began. Furthermore, MSPP has failed to come into compliance with updated legal requirements that have been promulgated since 2012.

A. Former legal framework not followed

see in Annex

1991 Procedures Conferring the Right to Cultivate Land

MSPP, was awarded a permit for a 38,000-acre oil palm project on 4 February 2011 by the MIC. However, there is no evidence that MSPP received the required permission from the Central Committee for the Management of Vacant, Fallow and Virgin Lands as was required by the 1991 Procedures Conferring the Right to Cultivate Land.¹¹⁷ Furthermore, the MSPP concession is at least 38,000 acres (possibly as large as 49,227 acres), in violation of the 1991 procedures requirement that the committee may only grant cultivation rights for plantation

crops of up to 5,000 acres.¹¹⁸

1894 Land Acquisition Act

The majority of land within the MSPP concession is community and agricultural lands belonging to four villages. The acquisition of this land should have followed the requirements of the 1894 Land Acquisition Act. It failed to do so for the following reasons:

Section 4 sub-section (1) states that whenever land is needed in any locality for public purpose, notification to that effect shall be published at convenient places in that said locality. However, in practice not one of the four villages¹¹⁹ in the concession area was notified in advance of the project.

Section 5 (A) sub-Section (1) to (3), any interested person including any person who would be entitled to compensation if the land were to be confiscated has the opportunity to object to the land acquisition. The objection letter must be provided in writing to the Collector¹²⁰ within 30 days of the public notice. No villagers in the MSPP were notified or given a chance to object to the project.

Section 6 (1) requires a published declaration that the land will be confiscated. Before this declaration can be made, there must be plans by a company or the Government to pay compensation for the confiscated land. However, no adequate declaration was ever made, therefore people who live in the concession area were unable to raise any objection.

B. MSPP should comply with New Laws

Since MSPP received its permit from MIC in 2011, new laws and procedures have been enacted.

117. SLORC notification #44/91

118. Chapter II, Section 3, Article A of the 1991 Procedures

119. Supra note 10

120. A Collector is a person who has been designated by the government to carry out this task. The chain of command for this role is delegated from the Ministry of Home Affairs to the General Administration Department to the GAD district office.



Dead livestock, a result of toxic pollution caused by MSPP

The Myanmar government needs to scrutinise the process and ensure that the company fully complies with the relevant new laws.

Environmental and Social Impact

The Environmental Conservation Law passed in 2012 the 2013 Environmental Conservation Rules before and the 2015 Environmental Impact Assessment (EIA) Procedure and the 2015 Environmental Impact Assessment (EIA) Procedure set out a framework for environmental protection and measures to be taken by companies in Myanmar. Under section 8(a), existing projects must undertake an environmental compliance audit. This audit should include “on-site assessment, to identify past and/or present concerns related to that Project’s Environmental Impacts”.

Following the audit, MONREC can order a company to carry out an Environmental Impact Assessment (EIA) and/or produce an Environmental Management Plan (EMP). An EIA would require a comprehensive review and consultation with stakeholders including

affected communities, led by a registered third-party EIA consultant and requires an EMP to be produced. Even if only an EMP is required by the MONREC, it must identify Adverse Impacts (being “environmental, social, socio-economic, health, cultural, occupational safety or health, and community health and safety effects on the environment and communities”) and put in place measures to mitigate adverse impacts. MSPP has not undertaken consultations with the communities or put in place effective measures to mitigate adverse impacts such as pollution and loss of livelihoods. MSPP does not appear to have an EMP or has not at least made one publically available.

Where a project may potentially have an Adverse Impact on indigenous people, the EIA Procedures also specify that it must “adhere to international good practice (as accepted by international financial institutions including the World Bank Group and Asian Development Bank) on Involuntary Resettlement and Indigenous Peoples.” The International Finance Corporation, the private sector arm of the World

Bank Group, prescribes that companies should obtain Free, Prior and Informed Consent (FPIC). The requirements of FPIC are considered in part D, and it is clear that these have not been met by MSPP.

C. International standards and human rights frameworks

There are international standards and human rights frameworks that protect land tenure and rights of smallholder farmers and indigenous people. It is widely recognised that indigenous people bring unique cultural contributions and diversity to society, however historically they have been marginalised.

This section applies both the Food and Agriculture Organization of the United Nations (FAO's) Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (VGGT)¹²¹, and UN Declaration on the Rights of Indigenous Peoples (UNDRIP)¹²² adopted by the UN General Assembly in September 2007.

UNDRIP is not a legally binding instrument under international law, and the VGGT is voluntary; however both are internationally negotiated documents that provide frameworks and international standards for best practices that are equitable and protect human rights. These guidelines provide frameworks and safeguards, that should be incorporated into land investment and foreign investment in Myanmar, however as the section below explains, they have been woefully ignored by MSPP.

UN Declaration on the Rights of Indigenous Peoples¹²³

UNDRIP is an a non-legally binding instrument, nonetheless the Myanmar Government is a

signatory and voted in favour of this tool "towards eliminating human rights violations against the planet's 370 million indigenous people and assisting them in combating discrimination and marginalisation".¹²⁴

UNDRIP establishes a universal framework of minimum standards for the survival, dignity, well-being and rights of the world's indigenous peoples. It addresses both individual and collective rights; cultural rights and rights to education, health, employment, and language, among others. It calls on States to prevent or take action for abuse against indigenous peoples, including any action aimed at dispossession from their traditional lands (Article 8). Below are a series of articles related to free prior informed consent (FPIC) that are set out in UNDRIP that both MSPP and the Myanmar Government have failed to follow in their treatment of indigenous Karen people whose villages are within the concession area.

Article 10 of UNDRIP states that 'Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return'.

Article 11 states that 'States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs'.

Article 19 requires that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them;...".

121. <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>

122. Supra note 14

123. Ibid.

124. <http://www.un.org/esa/socdev/unpfii/documents/FAQsindigenousdeclaration.pdf>



A man breaks down and weeps due to loss of land

Article 28 provides the right to redress for indigenous peoples whose traditional lands have been “confiscated, taken, occupied, used or damaged without their free, prior and informed consent...”.

Article 32 gives indigenous peoples the right to develop their own priorities and/or strategies for their own lands, and requires States to obtain FPIC before approving any project affecting indigenous lands or territories.

Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security

The VGGT seeks to improve governance of land, fisheries and forests. They seek to do so for the “benefit of all, with an emphasis on vulnerable and marginalized people with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic

development”.¹²⁵

The VGGT were officially endorsed by the Committee on World Food Security (CFS) in 2012. The CFS is the top forum of the United Nations for reviewing and following up policies concerning world food security. The text of the Guidelines was finalised during CFS-led intergovernmental negotiations, which were held in July and October 2011 and in March 2012. The text was developed by many different organisations globally, with 10 regional consultations, one private sector consultation and four CSO consultations.

The following clauses relate to FPIC, and minimum safeguards that are designed to promote good governance, responsible investment and protect indigenous rights and small holder tenure that have not been followed by MSPP or the Myanmar Government.

Article 7.1. When States recognize or allocate tenure rights to land “they should establish, in

125. Supra note 119

accordance with national laws, safeguards to avoid infringing on or extinguishing tenure rights of others, including legitimate tenure rights that are not currently protected by law”.

Article 7.3. When States allocate land they should “first identify all existing tenure rights and right holders, whether recorded or not. Indigenous peoples and other communities with customary tenure systems, smallholders and anyone else who could be affected should be included in the consultation process”.

Article 9.5. “Where indigenous peoples and other communities with customary tenure systems have legitimate tenure rights to the ancestral lands on which they live, States should recognise and protect these rights. Indigenous peoples and other communities with customary tenure systems should not be forcibly evicted from such ancestral lands”.

Article 12.4. “Responsible investments should do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights”.

Article 14.2. Regarding restitution, “where possible, the original parcels or holdings should be returned to those who suffered the loss, or their heirs, by resolution of the competent national authorities. Where the original parcel or holding cannot be returned, States should provide prompt and just compensation in the form of money and/or alternative parcels or holdings, ensuring equitable treatment of all affected people”.

MSPP Violations of UNDRIP and the VGGT

Both the MSPP company and the Myanmar government’s actions in establishing the MSPP oil palm plantation represent a clear violation of the international human rights principles enshrined in UNDRIP and the Voluntary Guidelines. There has been no effort to ensure Free, Prior, and Informed Consent (FPIC) of the local indigenous Karen communities impacted by MSPP.¹²⁶

Instead, they have seen their ancestral lands and forests confiscated and clear cut, their traditional agricultural crops destroyed, and their waterways contaminated – all without FPIC. In December 2015, MSPP threatened local farmers to accept an extremely low rate of compensation – only 10,000 Myanmar Kyats (7.9 USD) for 1 acre of their land that had been confiscated by the company.¹²⁷ This is a clear violation of UNDRIP article 10 that protects the right to just and fair compensation.

Furthermore, the land allocation process for the MSPP concession does not meet the standards outlined in the VGGT that protect customary land rights of indigenous peoples (Article 9.5). The Myanmar government failed to identify customary land tenure rights of the indigenous Karen community it allocated land for the MSPP concession (Article 7.3).

126. See UNDRIP Articles 10, 11, 19, 28, 32 above

127. Focus group discussions with impacted communities, February 2016

5. Conclusions and Recommendations

Since beginning the transition to democracy in 2010, the Myanmar Government has made many commitments to fight corruption, alleviate poverty and carry out sustainable development. Myanmar has also tried very hard to improve its image both regionally and internationally, in order to attract foreign investment. The country received approximately \$28 billion in foreign direct investment during President Thein Sein's five years in office (2010-2015), driving rapid economic growth estimated at 8% in 2016.¹²⁸

The current Finance Minister, Kyaw Win recently said, "the new government, which came into power at the end of March [2016], plans to attract even more money through such changes as making it easier for foreign investors to buy land."¹²⁹ Given the current situation this will only increase land conflict and deter responsible investment.

If there is an influx of investment into Myanmar, without having proper land laws and land tenure security in place, and accountability mechanisms that ensure that responsible government line departments follow procedures and adhere to safeguards carefully, land conflict and dispossession will increase, as the MSPP case has clearly demonstrated.

It is important that there are strong legal and regulatory frameworks in place to attract responsible investors who will follow sovereign laws and procedures. If it is made easier for foreign investors to confiscate land for large-scale mono-crop plantations, it will create incentives for unethical companies with track records of committing human rights abuses to exploit Myanmar's natural resources, such as Samling

group and its subsidiary Glenealy.

This report calls for a moratorium on large-scale investment in conflict areas. As this report illustrates, due to violent conflict between the Myanmar army and ethnic armed groups that has spanned more than six decades, it has been impossible for ethnic communities to register their land. There is also no legal framework in place that recognizes ethnic rights to land or protects customary land rights. Instead, concessions are allocated on supposedly VFPV land and reserved forest, despite actual and historical land-use, such as with land belonging to returning IDPs and refugees.

Concessions that are awarded in areas of mixed-administration between the Myanmar Government and Ethnic Armed Organizations (EAO)s present very high risk to local communities. The fact that these are mixed-administered areas suggests that they are areas that are contested by both parties and therefore it is very likely that, due to conflict, communities will have no land tenure security. Conversely, there will be increased threats to livelihoods and to land; these include increased security threats as these areas are militarised; multiple taxation regimes and claims to the land; and increased opportunities for rent-seeking behaviour from both Government and EAOs who are at the limits of their respective territorial control in remote areas where governance is very weak.

Large-scale investment should only resume when Myanmar is in a situation where there is no more contestation over land and natural resources between the Government and EAOs – i.e. there is a meaningful, inclusive peace accord. A moratorium should remain in place until there are strong laws and institutions in place with strong accountability mechanisms.

128. <http://asia.nikkei.com/Politics-Economy/Policy-Politics/Myanmar-seeks-to-build-on-foreign-investment-momentum-finance-minister>

129. Ibid.

Below is a set of recommendations for:

- MSPP including both Myanmar and Malaysian counterparts to the joint-venture
- The Union of Myanmar Government and relevant ministries and line departments
- The Karen National Union (KNU)
- Maybank, Norwegian Government Pension Fund Global (GPF), JBIC, and other investors

5.1 MSPP and its counterparts Samling Group (Malaysia) and Stark Industries Co. Ltd (Myanmar), need to urgently undertake the following actions:

- To comply with the letter sent by Tanintharyi Township Police in July 2016 that orders a temporary suspension of operations until further investigation. This letter was sent as a result of a meeting of the Joint Monitoring Committee (JMC) in Tanintharyi Region that monitors the ceasefire.
- To follow any future government instruction to return all land that belongs to affected communities that has been cleared but not yet planted with oil palm, including compensation for damaged or despoiled land belonging to the communities.
- To place all documents that relate to MSPP in the public domain, including the contract between the project and the government, and between Samling Group and Stark Industries Co. Ltd. To make available to the public quarterly reports to MIC since the project began.
- To provide compensation, having entered dialogue and reached an agreement with affected villagers.
- To carry out an EIA and produce an EMP, in accordance with the Environmental Conservation Law and EIA procedures. To fund an independent assessment of pollution and contamination of land and waterways as a result of the use of pesticides and fertiliser.

5.2 The Union of Myanmar Government needs to urgently undertake the following actions:

1). The Attorney General's Office

- Launch an investigation into MSPP and take appropriate actions in line with the law towards MSPP and its affiliates involved in the joint-venture due to the law being broken and failure to follow Government procedures and guidelines.
- In the course of the investigation and taking remedial actions ensure that the affected communities are fully compensated for loss of land, destruction of crops, loss of livelihoods and environmental damages including loss of livestock caused by MSPP.

2). The MIC

- To withdraw the permit and halt operations of MSPP for failing to follow legal and procedural regulations set by the Union Government of Myanmar.
- To suspend all operations until MSPP is in compliance with the current legal framework on land and environment, including laws that have been promulgated since the MSPP permit was issued in 2011.
- To develop guidelines to vet companies seeking to invest in Myanmar, in order that only responsible companies are invited to operate in Myanmar, and that companies like Samling Group are unable to invest in the future.
- To place all documents relating to MSPP in the public domain, including quarterly reports and form 105 detailing land use in the area before the concession was granted.

3). MOAI, MONREC and Tanintharyi Regional Government

- To place a moratorium on oil palm, including allocating new concessions and to prevent any further land conversion for oil palm or planting to take place until there are appropriate laws, safeguards and a meaningful peace accord in place.
- To enforce the requirement for all new and existing palm oil operations to carry out an

EIA and produce an EMP.

- To carry out an investigation into the oil palm sector with input from civil society to determine which unconverted and unplanted areas to have been designated as concession areas should return to the government based on contracts, law, environmental sustainability and land conflict between communities (including refugees and IDPs).
- To provide emergency medical assistance and fresh water to villagers who are suffering from contaminated water and toxic poisoning from chemicals that have been used by MSPP.
- To ensure that there is proper compensation to affected communities for loss of land, destruction of crops, loss of livelihoods and environmental damages including loss of livestock caused by MSPP.
- Take long-term environmental monitoring actions to ensure that MSPP is not causing damage to the environment and livelihoods by using fertilisers and pesticides. Take immediate actions with due compensation to affected communities if this is found to be the case.

4). The President, State Councilor and all relevant Ministries in the Union Government

- To issue a moratorium on large-scale investment in all conflict areas until there is a meaningful, inclusive peace accord, and robust laws and institutions in place with strong accountability mechanisms.
- To reevaluate all national policies and laws on foreign investment and agricultural development to protect human rights and the environment. Specifically, to initiate an inclusive, multi-stakeholder process to establish a new land law and regulations with strong representation from women and ethnic people.
- To make it mandatory for all companies in Myanmar to follow the international oil palm industry standard, RSPO (Roundtable on Sustainable Palm Oil)¹³⁰ for existing oil palm that has already been planted.

5.3 The Karen National Union (KNU) needs to urgently undertake the following actions:

- To initiate a moratorium on large-scale investment in Karen areas until there is a meaningful and inclusive peace accord, with strong laws and institutions in place. Whilst a moratorium is in place, to develop a policy on large-scale investment on KNU areas in line with international best practices with strong social and environmental safeguards and accountability mechanisms that include FPIC and EIAs and SIAs before projects commence.
- To place land and natural resource management as a high priority during the peace process so that safeguards are in place to protect Karen people's land. To make adequate provisions for refugee and IDP returns that are voluntary and receive adequate support and adhere to the Pinheiro principles.
- For the Central Committee to carry out an investigation into MSPP and take actions to resolve the land conflict including suspending operations, registering Karen peoples land and taking action against KNU officials who have been complicit in corruption and aided or abetted MSPP to dispossess Karen people of their land.
- For KNU Mergui-Tavoy District to act more transparently in the future and to be accountable for its actions. For KNU Mergui-Tavoy District release into the public domain all records and contracts, including payments made with companies in Mergui-Tavoy District.

5.4 For Maybank that has provided Samling Group and its subsidiary Glenealy Plantations US\$124 million in unstructured bonds:

- To divest all investments to Samling Group the basis of human rights abuses and severe environment damage.
- To Conduct a review of its portfolio of investments in the oil palm sector and to divest from companies who are perpetrating human rights abuses and destruction of the environment.

130. <http://www.rspo.org/certification>

5.5 For Financial Institution that are indirectly exposed to MSPP through unstructured bonds or loans or other funds that are not ring-fenced to Maybank, to divest immediately unless Maybank withdraws all bonds and funds provided to Samling Group and Glenealy plantation:

- For JBIC, Norwegian Government Pension Fund Global (GPF) managed by the Norwegian Sovereign Wealth Fund managed by NBIM, and other financial institutions to ensure that their investments in Maybank are not indirectly financing Samling Group and its subsidiaries.

Annexes

Annex 1:

No.	Village Name	HH	Population			Village Tract
			Male	Female	Total	
1	Thein Pyin	120	420	430	850	Tharabwin
2	Swel Chaung	24	60	58	118	Tharabwin
3	Ka Wet	70	160	185	345	Tharabwin
4	Bawsanway	43	117	99	216	Thinbaw Oo
5	Paing Chaung	60	145	132	277	Tharabwin
6	Ah Shae Kan	240	543	653	1196	Tharabwin
7	Tharyar Kone	30	78	64	142	Tharabwin
8	Kyaut Taung	80	197	203	400	Tharabwin
9	Moe Pyae	30	64	87	151	Tharabwin
10	Talaing Tut	70	169	187	356	Tharabwin
11	Pyin Kadoe	50	117	129	246	Tharabwin
12	Kawt Mapyin	15	34	42	76	Kawtma Pyin
13	Hein Latt	20	48	59	107	Kawtma Pyin
Total		852	2152	2328	4480	

Laws and procedures applicable when permit was issued	(2011) Applicable laws and procedures at present
1894 Land Acquisition Act	2012 Vacant Fallow and Virgin Land Law
1991 Procedures conferring the right to cultivate land	2012 Foreign Investment Law
	2012 Environmental Conservation Law
	2013 Environmental Conservation Rules
	2015 Environmental Impact Assessment (EIA) Procedure

Annex 2: Summary of Complaint Letters Submitted by Community Impacted by MSPP

#	TO	SENT	MAIN POINTS	SUBJECT
1	Myanmar central government, KNU Central Committee, and Tanintharyi Region Ethnic Affairs Minister	13 Jan 2015	<p>Eight villages with females (769) and males (798) in total (1567) are having too much struggling with the difficulties in our villages so that we submitted this appeal letter to help us according to the humanitarian point of view. Since before 1986, we lived here very happily but we had too much conflict after 1986 so that we lost our land, orchard and cattles including houses. After the conflict, we come back again and set up our lives again but we faced with MSPP investment here again in our place. We are very worried with what investors are implementation here in our own land as they never listen to us whenever we met with them. They always bring one translator and they only reply us to talk with Nay Pyi Taw for everything as they got permit and approval from Nay Pyi Taw. If you do not agree with us, we will return back to Military and it will become in the previous situation. Then, they said that they already give compensation for the orchards so that they will clear them even though the owner of the orchard asked them to keep it like that. Besides, fish in the river and dogs and animals who drink the river water even died because of the pesticide used for the plantation which came into the water we use it. Therefore, we asked them not to use those kinds of chemical but they did not listen to us. last of all, they never listen to us and they just did whatever they wanted to do so that we sent this letter to you for helping us to solve this difficulties we are facing now. Together with this letter, we attached our collected signatures of the villagers for your references to hear our voice.</p>	Appeal letter
2	Tanintharyi Region Chief Ministerw	21 Feb 2015	<ul style="list-style-type: none"> • Request the map of MSPP project as the villagers learned that their orchard and land are included in the concession. • Request a copy MSPP's permit and company profile. 	Request for the Permit and Map of MSPP company project including Company profile

Continues on next page

#	TO	SENT	MAIN POINTS	SUBJECT
3	Chairman of Joint Monitoring Committee (JMC) Tanintharyi Region	28 Apr 2016	<ul style="list-style-type: none"> The community has not given FPIC for MSPP project and MSPP is committing human rights violations. Villagers have already requested compensation from MSPP for their orchards that were destroyed, but the company rejected their request and referred them to the central government. MSPP promised it would dig five wells for villagers' drinking water, but this has not been implemented yet. The company should implement this before moving forward with their other operations. 	Complaint letter to solve the drinking water problem in the villages which are affected by the MSPP company
4	Managing Director of MSPP office, Myeik township	11 May 2016	<ul style="list-style-type: none"> Request to solve the problem of contaminated water from MSPP project. There has been no implementation yet of digging wells for drinking water, which was promised by MSPP. 	Submit letter for temporary suspension of clearing forest in Ba Sa Nway village area because there is a drinking water problem in the villages
5	U Htin Kyaw, President, Taw and Daw Aungg San Su Kyi, State Counselor, and Vice President Henry Van Thio.	12 May 2016	<ul style="list-style-type: none"> MSPP did not follow the procedures of the land acquisition acts so it should suspend forest clear cutting activities until the current problems are solved according to the proper procedure. Although MSPP company got the permit from MIC there is no permit from land management committees on the VFV land. MSPP grabbed the land of the indigenous people and destroyed all the orchards and forest so that the local community is facing many difficulties for their livelihood. Due to the use of pesticide and chemical spray, local communities' cattle are dying. And there is no drinking water because MSPP clear cut forest. Request to suspend MSPP until they solve this land issue according to the law. 	Suspend MSPP's forest clear cutting operations on the project land until the problems are solved in a proper process of land titles according to the Land acquisition act.

Annex 3: Confidential Permit from MIC (1)

FIRST GENERAL ORIGINAL

THE GOVERNMENT OF THE REPUBLIC OF THE UNION OF MYANMAR
MINISTRY OF NATIONAL PLANNING AND ECONOMIC DEVELOPMENT
FORM 1
FORM OF PERMIT
(See section 27 A)

Permit No. 007/2011
Date 1st November, 2013

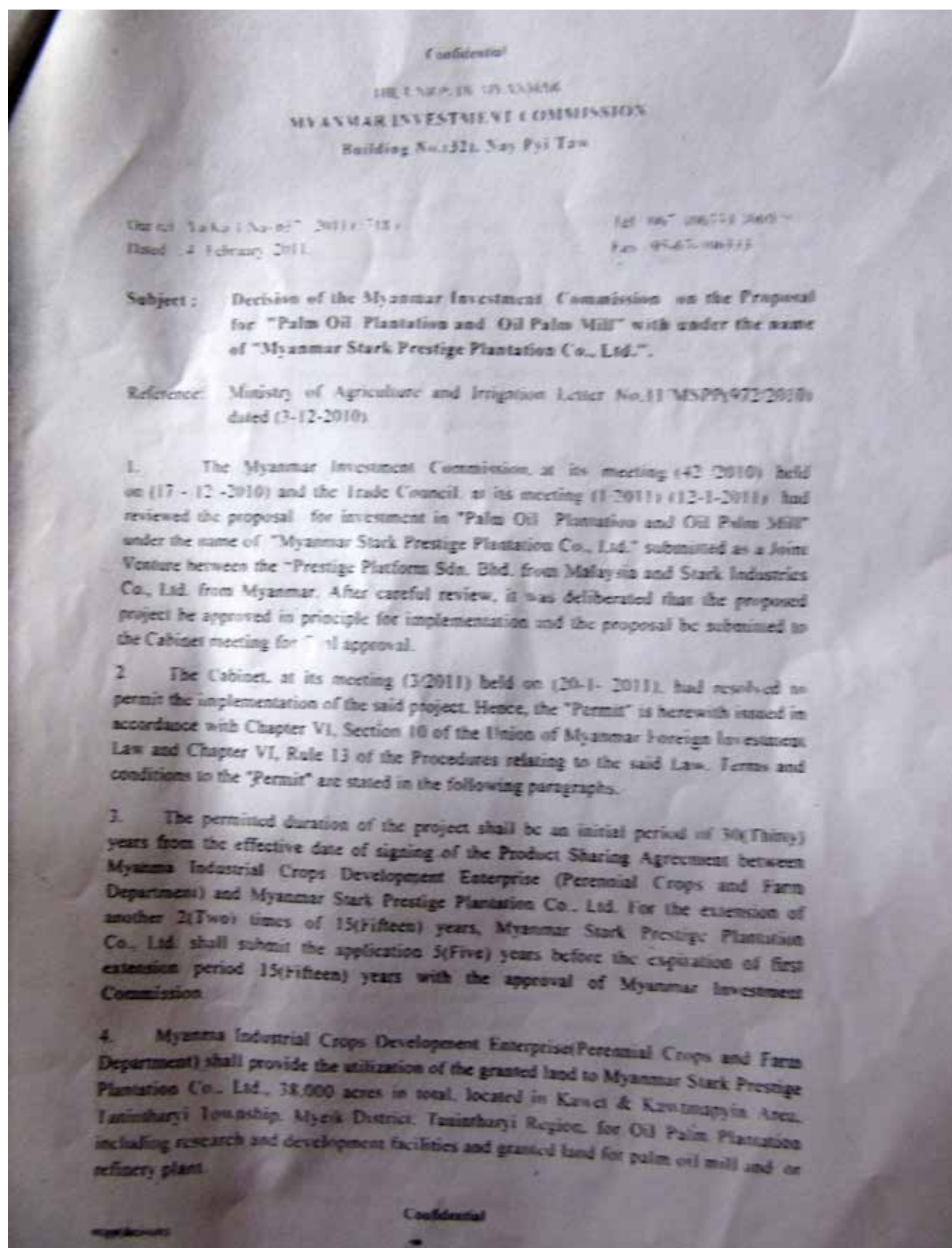
*The Ministry of National Planning and Economic Development of the Government of the Republic of the Union of Myanmar in pursuance of the Myanmar Companies Act hereby grants a permit to the MYANMAR STARK PRESTIGE PLANTATION COMPANY LIMITED. in respect of which particulars are detailed below, to carry on its business within the Republic of the Union of Myanmar subject to the provisions contained in the said Act.

(1) Name of the Company	Myanmar Stark Prestige Plantation Co., Ltd.
(2) Country of incorporation of the company.	The Republic of the Union of Myanmar.
(3) Location of the company's Head Office and / or Principal Office in the Republic of the Union of Myanmar.	No.33, Nawaday Road, Yaw Min Gyi Ward, Dagon Township, Yangon.
(4) The object for which the company is formed (field of business).	Mentioned in back page.
(5) (a) The amount of Capital and the number of shares into which the Capital is divided.	K. 500,000,000 /- divided into 5000 shares of K. 100,000/- each.
(b) If more than one class of shares is authorised, the description of each class.	Only one class.
(6) The names, addresses and nationality of the directors.	As per List attached.
(7) The maximum amount of indebtedness which may be incurred by the company and also a prohibition against the contracting of debts in excess of that amount.	As per conditions attached.
(8) Period of validity of permit.	June 3, 2013 to June 2, 2018.
(9) Statement of compliance with legal requirements for issue of Capital including the amount to be paid in before business is commenced.	As per conditions attached.
(10) Statement of compliance with such conditions as may be prescribed.	The conditions attached to the permit and conditions as may be prescribed from time to time are also to be strictly adhered to by the company. By order

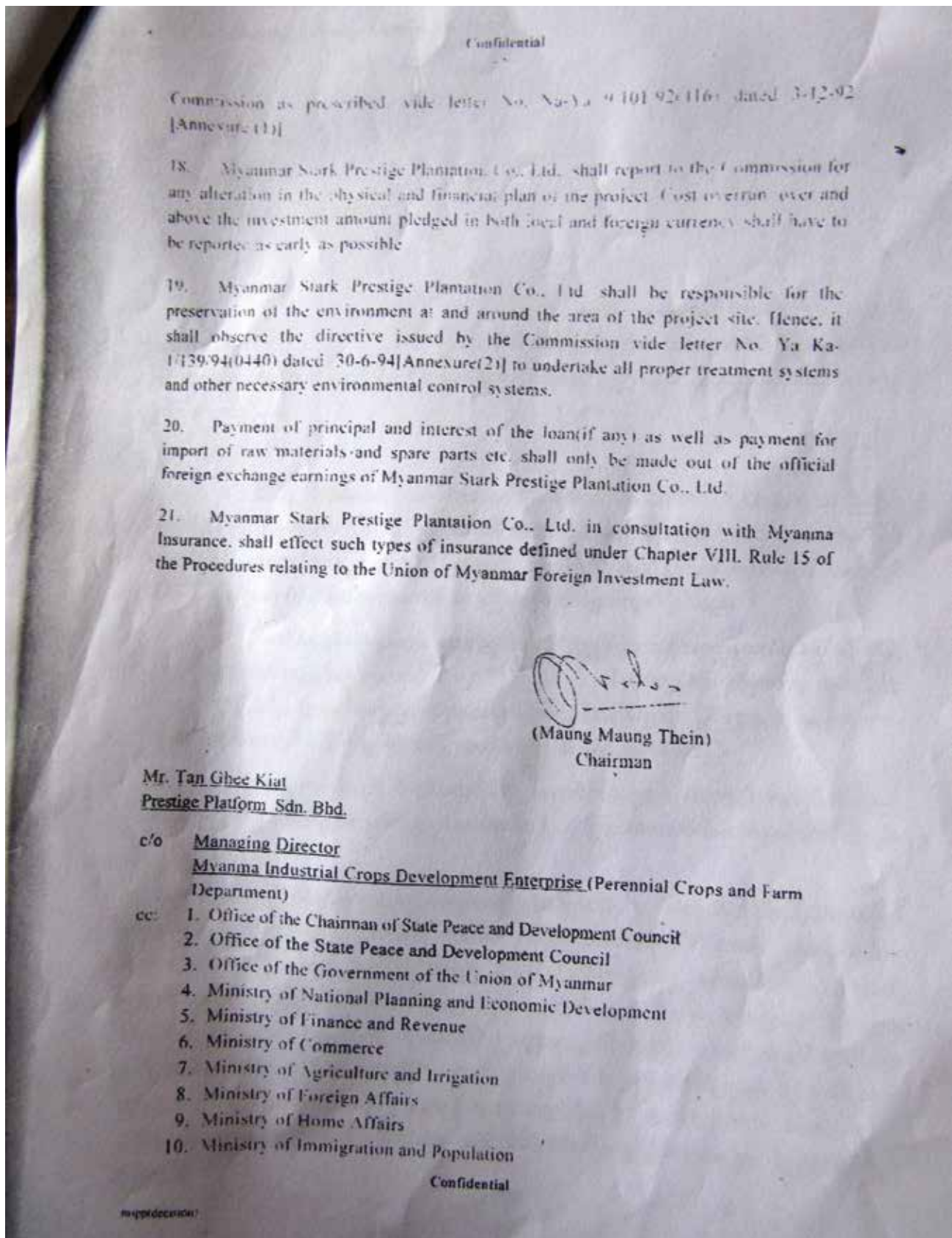
Original received.
1-8-2014.

For Director General
(Nang Yi Yi Than, Director)
Directorate of Investment and Company Administration

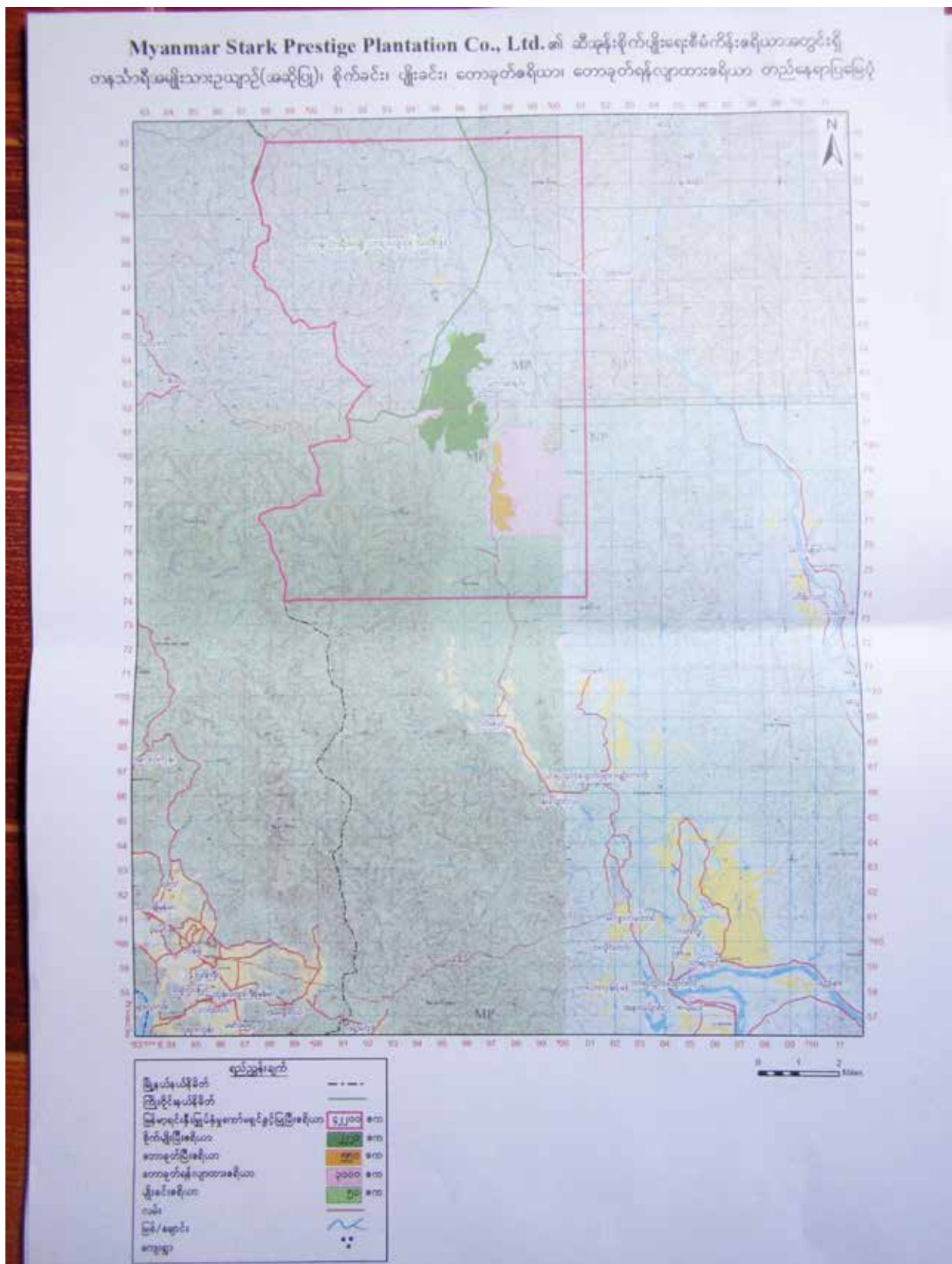
Annex 4-A: Confidential Permit from MIC (2)



Annex 4-B: Confidential Permit from MIC (3)



Annex 5: Map for Proposed National Park in MSPP Area



Annex 6: Signboard Erected for 42200 Acres at MSPP company

