

A white truck is driving on a dirt road, carrying a large load of palm oil fruit bunches. The background shows a dense forest of palm trees and other vegetation under a clear blue sky. A large, dark blue diagonal graphic is overlaid on the left side of the image.

HUMAN RIGHTS AND CROSS-BORDER INVESTMENTS IN ASEAN

The case of the Myanmar
Stark Prestige Plantation

Report of APHR's Fact-Finding Mission
to Myanmar in February 2020

INTRODUCTION

In February 2020, ASEAN Parliamentarians for Human Rights (APHR) organized a fact-finding mission to Myanmar to investigate the human rights impacts of Malaysian cross-border investment into Myanmar's palm oil sector. The mission focused on the Myanmar Stark Prestige Plantation (MSPP) in Tanintharyi Region in southern Myanmar.

MSPP is a holding company incorporated in Myanmar in 2011, a joint venture between the Malaysian conglomerate Samling Group and the Myanmar company Stark Industries, and which has been repeatedly accused of human rights violations by surrounding communities.

The delegation, which included legislators from Malaysia and Thailand, as well as Malaysian civil society representatives, traveled to Myanmar from 16 to 19 of February 2020 to visit the MSPP site. The mission focused on gathering information on alleged human rights violations committed by the company, in particular those suffered by the surrounding communities.

It met with affected communities, plantation staff, Myanmar civil society groups including Myeik Lawyers Network, Peace and Open Society, Mergui Archipelago Green Network, Myanmar Alliance for Transparency and Accountability, and national institutions such as the Myanmar Investment Commission and the Myanmar National Human Rights Commission.

The delegation was composed of Hon. Noor Amin bin Ahmad, a Member of Parliament (MP) of Malaysia; Hon. Chamnan Chanruang, Former MP of Thailand; Mr. Sevan Doraisamy, Executive Director, SUARAM, Malaysia; Mrs. Debbie Stothard, Founder and co-director of ALT-SEAN Burma, and Ms. Cannelle Gueguen-Teil, Advocacy and Campaigns Officer at APHR.



The APHR delegation meets with the Myanmar National Human Rights Commission

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LAND CONFISCATION

In 2011, MSPP obtained a permit from the Myanmar Investment Commission for a 38,000 acre palm oil project in Tanintharyi Region, Myanmar. The MSPP concession overlapped with 38,900 acres of community and agricultural land that has, since at least three generations, belonged to residents of four villages that are home to around 4,480 people.

Due to displacement caused by civil war, the villagers had not been able to register their lands with the Myanmar Government or the Karen National Union (KNU) - the political arm of an ethnic armed group that has administrative responsibilities in the area - and the land was incorrectly classified as 'vacant land' by the central Government. This has been a recurring issue across Myanmar where this vacuum enables the government to allocate community-owned land to companies.

In addition, following the granting of the permit, MSPP should have acquired permission from the Central Committee for the Management of Vacant, Fallow and Virgin Lands (VFV Committee) to use the land. There is, however, no evidence that this took place.

Despite this, in 2011 MSPP began logging trees and planting on the overlapping land. By 2016, 6,000 acres of land had been cleared, 1,200 of which comprised villagers' orchards.

“After we arrived in the 2000s we thought now we can re-start farming but shortly after the company arrived and started destroying the land.”

- Male villager interviewed by APhR

In 2018, the company applied for a new permit of 10,000 acres, including land belonging to 96 households from Thein Pyin village. Interviewed communities said they were informed by the Department of Agricultural Land Management and Statistics (DALMS) that, of the 10,000-acre concession, 2,170 acres would be left for them to cultivate. However, the villagers said they were left with only 15 acres to cultivate, and are requesting for the remaining to be returned.

“We don't want compensation, we want our land back.”

- Head of the Thein Pyin village whose land is included in the new 10,000-acre permit

The villagers further reported that the Myanmar Government was not undertaking its duties of site inspection and land registration in the area around the MSPP project.

“We have requested the land department staff to come register the land, verify the border and collect the land tax (...) They said: 'We don't have human resources in our department, we are busy.' They said they need to pay 100,000 kyat [around USD 60] per visit for them to come.”

- Female villager interviewed by APhR

The destruction of productive farmland led to the loss of villagers' primary source of income. In addition, this has increased expenditures related to food consumption, including rice, meat, and vegetables, which were previously grown or raised on the land for private consumption.

“Now we spend at least 150,000 kyat [around USD 90] per month. Before the company came, we only paid 20,000 kyat per month. Our income before per year was around 10 million kyat [around USD 6,000]. Now the income is zero.”

- Male villager interviewed by APHR

“Before I had trees for the thatch roof I could sell (...) but now I don't have land anymore because the company took it. My house collapsed because I did not have enough money to repair it.”

- Elder female respondent interviewed by APHR

Some villagers are employed as daily labourers by MSPP. However, because of the daily pay rate of 5,000 kyat [around USD 3] and strict employment conditions, they do not view it as an adequate and sustainable source of income.

“Now we have limited space and nowhere to go, six families already moved out of the village.”

- Male villager interviewed by APHR

Villagers also reported that since 2018 this loss of income has led to more than a quarter of the villages' 80 children above 12 years of age dropping out of school after grade four. The lack of income meant families could not afford to send their children to school in neighboring villages, the residents said.

This loss of income and livelihood was exacerbated by the fact that the villagers were not given adequate compensation for their loss of land. As MSPP did not consider its concession area as belonging to villagers, it did not provide any compensation for the land until 2015. In 2015, in light of mounting criticism and protests, the company offered compensation of 30,000 (USD 18) per person per acre. The villagers reported not being informed this was compensation at the time, but were made to sign forms in English (a language many do not speak) without explanation to receive the money. Some reported being forced into accepting it.

“They told me: “You can take this 30,000 kyat, if not, you will not even get a single kyat later.”

- Male villager interviewed by APHR

The villagers also reported that the calculations of land ownership for compensation were undertaken by the company using GPS data that did not reflect the villagers' ownership.

“The company determined who owns the land, not the villagers themselves.”

- Female villager interviewed by APHR

After 2017, the company acquired new land from villagers at a compensation rate of 10,000 kyat per acre (USD 6), and in 2019 at a rate of 160,000 kyat per acre (USD 100) leading to conflict among the communities. Six persons refused compensation throughout the rounds, despite reporting being pressured by the company and the KNU into accepting it. They are asking for compensation of 500,000 kyat per acre (USD 300). The villagers estimate the market price of their land to be five million kyat per acre (USD 3,000) based on the market price of surrounding villagers' land. There was also no compensation offered for damages to natural resources.

“The KNU local authority informed one villager to pass the info that the villagers are advised to not make trouble. The local authority told them, “Do you want to go to jail? We will send you to jail.””

- Male villager interviewed by APHR

Following APHR's visit, the MSPP offered the six villagers compensation of 300,000 kyats per acre (USD 200) which has been accepted by the villagers. This is a welcome step but APHR notes it is still well-below the villagers' original demand of 500,000 kyat per acre (around USD 300) and the market price.

“Until now, the local villagers have not received the compensation that they deserve.”

- Female villager interviewed by APHR



Land that a local villager claims was sold to Myanmar Stark Prestige Plantation without her consent and turned into a palm oil nursery

According to the communities, none of the residents of the four villages in the concession area were notified in advance of the project, no social and environmental impact assessments were conducted, and there was no process set up by the company for consulting with communities or obtaining free, prior, and informed consent. The plantation head denied this and informed the delegation they had undertaken an internal report.

Following the granting of the MIC permit, the company should have acquired the land under the 1894 *Land Acquisition Act*, which would have required a public notification process. There is no evidence this took place.

“The company said: “We got this land from the government in Naypyidaw. If you want this land back, you need to ask Naypyidaw.”

- Female villager interviewed by APHR

Although the company indicated to the delegation that villagers were free to raise their grievances with the MSPP, the villagers informed the delegation of the company management’s unwillingness to meet, lack of Burmese-language skills of its representatives, or the use of poor or biased translators, and threats made against them that hindered their ability to communicate their grievances.

“When we go for a meeting with the company, they will say, “Oh no we have no staff here.”

- Female villager interviewed by APHR

Lack of transparency and discrepancies between various MSPP project documents have also led to confusion among the community and civil society over exactly how much land area MSPP has been permitted to use by the government. When the company applied for expansion in 2018, under the *Vacant and Fallow and Virgin Lands Law*, MSPP should have advertized this to the local communities two months in advance.

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VIOLATION OF THE RIGHT TO A CLEAN, SAFE, HEALTHY AND SUSTAINABLE ENVIRONMENT

According to the communities, from 2013 onwards, the fertilizers and pesticides applied to the palm trees leaked into the waterways, making villagers' drinking water unfit for human consumption, and led to outbreaks of dysentery, death of livestock and constant skin irritation.

“From the water we have diarrhea, the whole village. We cannot drink the water anymore. Now we dig a well to get the water.”

- Female villager interviewed by APHR

“They put the fertilizers at the plant of the tree and the cattle ate it and died.”

- Male villager interviewed by APHR

The communities reported biodiversity loss in the local environment after the company's operations. They claimed that a waterway was blocked following the company's digging works, leading to a shortage of fish as well as reduced numbers of species in surrounding forested areas. The plantation head denied this. There are, however, no publicly available records of an environmental audit or Environmental Impact Assessment being carried out by MSPP.

“Before the river had many fish, now there is not even one left (...) This area is composed of many small forests with different animals in each forests, now all the animals and the different kinds of forests are gone.”

- Male villager interviewed by APHR



The Shwel Chaung waterway, which the affected communities report has been blocked following the MSPP's digging works

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ALLEGED VIOLENCE AND INTIMIDATION FROM LOCAL AUTHORITIES

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), the political branch of the ethnic armed group. In 2012 the KNU signed a preliminary, bilateral ceasefire agreement with Myanmar's Government, hence the villages are under mixed-administration of both the Myanmar Government and the KNU.

The villagers reported that following their unwillingness to cede their land to MSPP and protests, the KNU threatened them into accepting compensation and "keeping quiet" about the human rights impacts of the MSPP.

"The KNU threatened me, grabbed my collar and said: "You won't be able to find your dead body."

- Male villager interviewed by APHR

APHR was not able to meet with the KNU during the visit to verify such allegations but is concerned that villagers felt pressured into accepting compensation.



A landscape view in Tanintharyi Region, southern Myanmar

RECOMMENDATIONS

These recommendations were drawn up prior to the February 1st 2021 military coup and change in the political situation and administration in Myanmar. Therefore, at the time of the publication of the report it is not clear whether the institutions below are still operating or carry the same mandate as prior to the coup.

1

TO THE MYANMAR STARK PRESTIGE PLANTATION AND SAMLING GROUP

- Comply with the 2015 Myanmar Environmental Impact Assessment Procedure Law and undertake an environmental compliance audit that includes “onsite assessment, to identify past and/or present concerns related to the project’s Environmental impacts.” This audit should be made available and accessible to the affected communities and concerned civil societies;
- Put in place a policy commitment to meet the company’s responsibility to respect human rights, including a human rights due diligence process to identify, prevent, mitigate and account for how the company addresses its impacts on human rights and processes, to enable the remediation of adverse human rights impacts caused or contributed to in accordance with the UN Guiding Principles on Business and Human Rights;
- Faithfully take part in regular community negotiation meetings open to all community members every three months, using a commonly-agreed translator, with relevant staff members present and meeting minutes made available to all parties with the objectives of:
 - Providing adequate compensation for and addressing the human rights impacts and damage to natural resources, local biodiversity and ecosystems of the MSPP plantation;
 - Obtaining free, prior and informed consent from the community members for the planned expansion of 10,000 acres, as well as any future developments on the customary land of the villagers or on the surrounding lands if it may affect the human rights of the villagers; and
 - Ensuring that communities are able to enjoy their human rights without interference on their land, including freedom of movement and safety from threat and harassment.

2

TO THE GOVERNMENT OF MYANMAR AND THE KAREN NATIONAL UNION

- Suspend any expansions or new permits awarded to MSPP until it is able to obtain free, prior and informed consent from all customary land rights holders;
- Order the Department of Health and the Environmental Conservation Department to release the results of their samples of affected water and other natural resources to the communities;
- Investigate claims of impacts on children’s rights, violence from local authorities and assess the impact of MSPP on the surrounding biodiversity, local ecosystem and natural resources;
- Act upon the recommendations of the Myanmar National Human Rights Commission concerning the MSPP case;
- Review and amend the *Virgin, Fallow and Vacant Management of Lands Law* to respect and protect indigenous Karen and other ethnic group’s customary land rights; and
- Appropriately redress those whose lands were incorrectly classified as vacant by the *Virgin, Fallow and Vacant Management of Lands Law*.

3

TO THE GOVERNMENT OF MALAYSIA AND OTHER ASEAN MEMBER STATES

- Take necessary steps to prevent and redress infringements of civil, political, economic, social and cultural rights that occur outside their territories by corporations domiciled in their territory and/or jurisdiction (whether they were incorporated under their laws, or had their statutory seat, central administration or principal place of business on the national territory);
- Ensure that corporations domiciled in their territory and/or jurisdiction are required to act with due diligence to identify, prevent and address abuses to human rights by subsidiaries and business partners, wherever they may be located;
- Take steps to ensure MSPP provides redress for the villages affected by the Malaysian Samling Group in accordance with ICESCR General Comment No. 24 (2017); and
- Ensure that financial institutions only contribute to activities abroad that are in compliance with international human rights and environmental standards and adhere to applicable principles such as the UNEP Principles for responsible banking.

FOR MORE INFORMATION:

- [Green desert, Communities in Tanintharyi renounce the MSPP palm oil concession, report, 2016](#)
- [Myanmar National Human Rights Commission, Findings report on field inspection to the oil palm plantation of MSPP company in Myeik township, Tanintharyi region, 2018](#)
- [Committee on Economic, Social and Cultural Rights, General comment No. 24 \(2017\) on State obligations under the International Covenant on Economic, Social and, Cultural Rights in the context of business activities](#)
- [Human Rights Watch, Human Rights and land confiscation in Karen state, report, 2016](#)

Cover photo: A truck carrying palm for palm oil production in Tanintharyi Region, southern Myanmar. All Photos: Cannelle Gueguen-Teil (APHR)