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FIDH

The International Federation for Human Rights, known by its French acronym FIDH, is an international human rights NGO representing 192 organizations from 117 countries. Since 1922, FIDH has been defending all civil, political, economic, social, and cultural rights as set out in the Universal Declaration of Human Rights.

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MATA

Myanmar Alliance for Transparency and Accountability (MATA) is a national network comprised of over 429 civil society organization representatives and some individuals from all of Myanmar's 14 states and regions. MATA supports members to collaboratively examine economic, political, and social reform issues and to advocate for transparency and accountability of governance in Myanmar – with a focus on extractive industries.

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Introduction

1. The significant increase of Foreign Direct Investment (FDI) in Myanmar over the past decade has been accompanied by numerous human rights violations that have directly stemmed from the operations of businesses operating in the country.
2. Investment and infrastructure projects, many of which conducted through joint ventures between state or privately-owned Burmese companies and foreign businesses, have often resulted in violations of economic, social, and cultural rights of local communities. In many cases, such violations were directly linked to environmental degradation and pollution caused by the projects.
3. While the nature, size, and impact of these projects vary, they are often characterized by the presence of certain elements that have resulted in human rights violations of individuals and communities affected by the implementation of the projects. These elements can be summarized as follows: 1) failure to engage in meaningful and adequate consultation with affected communities during the design and implementation stages of the projects; 2) violations of relevant domestic laws and lack of compliance with international human rights standards, including the International Covenant on Economic, Social and Cultural Rights; 3) insufficient compensation measures and lack of effective redress mechanisms at the domestic level; 4) use of repressive laws to silence and punish human rights defenders - including land and environmental rights defenders - and community members who documented the negative impacts of these projects and advocated for redress.
4. This joint submission highlights six case studies that illustrate the patterns of human rights violations suffered by local communities as a result of the implementation of infrastructure and investment projects in various parts of Myanmar.

Pearl farm operations negatively impact livelihood of indigenous Salon community in Tanintharyi Region

5. The Salon (also known as 'Moken', 'Sea Gypsy' or 'Sea Nomads') are indigenous people in the Myeik archipelago in Myanmar's Tanintharyi Region. They are expert swimmers and divers who wander around the Andaman Sea for their livelihood, mainly by fishing squid, in small boats that they call *kavan*. The Salon go out to sea all year round and make their living there except in extreme weather conditions. As a result, they need safe access to the sea for their survival and livelihood. There are approximately 1,750 Salon people in the Myeik archipelago, according to official figures from the General Administration Department. Their numbers have been dropping as many have been settling in Thailand due to the decrease in water resources and settlement areas, which have reduced the sea areas where they can forage.
6. Myanmar Tasaki Company (MTC) is a subsidiary of Japan's privately-owned company of Tasaki & Co. In 1997, MTC entered a joint venture agreement with Myanmar's state-owned

company Myanmar Pearl Enterprise (MPE) to start pearl farms. In April 2000, MTC and MPE received permission for the establishment of pearl farms at Dome Island in the Myeik archipelago, under a 15-year contract that was extended by five more years until 31 March 2020.

7. Salon community members from the Langan Islands (which include Dome Island and the nearby Saw Mon Hla Island) said they are concerned about the “strings of buoys” or *baw-tan* in the area allocated for pearl farms because it is an off-limits area and they usually have to go around it, forcing them to spend more time for fishing. The Salon also reported having fewer habitats where they can catch squid, since they cannot fish squid in the open sea. In addition, the Salon feel threatened by the presence of Myanmar Navy personnel who have been deployed to guard the pearl farm since the early days of its operations.
8. The Salon demand unrestricted access to the ocean surrounding the islands on which they rely for their livelihood. In late August 2018, the Salon sent letters to MTC and the Tanintharyi Region Chief Minister to express their opposition to the pearl farm operations. On 25 April 2019, a similar letter was sent to the Ministry of Natural Resources and Environmental Conservation. However, the Salon never received a response to either letter. Meanwhile, in 2019, MTC continued to expand its operations by adding more floating wooden rafts for pearl farming at Saw Mon Hla Island.
9. MTC and MPE have applied for an extension of the sea and land concession until 2025, and for an additional 9,966 acres and 2,582 acres respectively, at Saw Mon Hla Island to expand their oyster and pearl farming operations. If the application is approved, it would bring the area of MTC and MPE operations to a total of 14,439 acres of sea and 4,333 acres of land. As of June 2020, the application remained pending.
10. The proposed expansion area for pearl farms at Saw Mon Hla Island overlaps with the livelihood area of the Salon. The increase in the area for pearl farms has resulted in the shrinking of the area of survival and livelihood for the Salon. Saw Mon Hla Island is also the place where the Salon can take shelter from winds and rough seas during the rainy season.
11. The expansion of the pearl farm operations was carried out in violation of existing domestic laws, which impose an obligation on MTC to complete an Environmental Impact Assessment (EIA) procedure. To date, MTC has failed to take any of the steps required to comply with the EIA procedure. The EIA procedure involves the following steps: 1) conducting consultative meetings with affected communities to explain and inform them about the impacts of the project; 2) producing an EIA report; 3) organizing public consultation meetings with affected communities to present the EIA report; and 4) announcing an Environmental Impact Management Plan and presenting it to the MNREC. Only then, MNREC can grant to project developers an Environmental Compliance Certificate.

Operations of the Tigyt coal-fired power plant in Shan State adversely impacts health and environment, contribute to climate change

12. The Tigyt power plant - Myanmar's first coal-fired power plant - is located in Tigyt Village, Pinlaung Township, Shan State - 21 Kilometers from Inle Lake, an Association of Southeast Asian Nations (ASEAN) heritage site and one of the country's most famous tourist destinations. Low-quality lignite coal from a nearby mine is being used to fuel the plant.¹
13. The Tigyt power plant and its related operations (coal mining; coal handling, transport, and storage operations; and coal ash handling and storage) are responsible for the release of detected pollutants of the highest concern (PM2.5, PM10, SO2, and NOx) with regard to health and environment. The greenhouse gas emissions from the coal plant not only have a direct and irreversible adverse impact on the health and environment of the communities living in the plant's area but also contribute to climate change.
14. Air and water pollution continues to threaten the livelihood and health of nearly 12,000 people who live within an eight-kilometer radius of the project. Women and children are particularly affected, with reproductive health problems, miscarriages, and low birth weight among the impacts reported. Many farming families struggle to survive as their income and livelihoods have suffered significantly, with livestock falling ill and the quality and yield of crop and vegetable production decreasing.
15. The waste from the plant's operations, which includes toxic coal ash, has been discharged into Tigyt Creek, one of the tributaries of the upper Balu Creek, which runs into Inle Lake. The power plant uses water from the Tigyt's main water sources for its operations. To deal with the shortage of drinking water, villagers have dug out ponds and wells but the water from these sources have also been contaminated by coal ashes.
16. After a suspension of the power plant's operations in 2014, in September 2015 the government granted a 22-year license to China's privately-owned company Wuxi Huaguang Electric Power Engineering ("Wuxi Huaguang") to resume operations on the condition that the company upgraded waste management systems to avoid environmental damage. To date, there has been no public disclosure or information released regarding what waste management systems Wuxi Huaguang has implemented.
17. In April 2016, Wuxi Huaguang held a multi-stakeholder consultation at Myo Oo Monastery in Tigyt regarding the restart of the Tigyt power plant's operations. During this consultation meeting, Wuxi Huaguang officials stated that the company would conduct SIA, EIA, and HIA in accordance with Myanmar's Environmental Conservation Law, World Bank standards, and other relevant national laws, rules, and regulations. Wuxi Huaguang officials also pledged to guarantee full accountability for the operation of the plant and its impact on the environment. They stated that if locals could provide concrete evidence of harm from the power plant's operations, Wuxi Huaguang would relinquish its license and withdraw from the project.²

18. In June 2017, the Tigyt power plant was officially re-opened for a one-year “testing period.” Communities were invited to participate in a Monitoring Group for this period. However, only a number of hand-picked individuals, mostly local leaders, were invited to be part of the group.
19. On 5 May 2018, government authorities and Wuxi Huaguang officials organized a meeting in Shin Lin Hall in Tigyt to discuss the end of the testing period. Civil society organizations were not invited to this meeting. Participation by local communities in the meeting was limited to about 20 individuals who had ties to either the company or the authorities. At the meeting, officials from the township’s Health Department presented information that showed an increase in the Tigyt power plant’s adverse health impacts from 2013 to 2017 in seven villages (Tigyt, Than Te, Lone Poe, Pin Khin, Lat Pan Pin, Mawe Pin, and Pin Sone) in the area.
20. In early 2018, independent scientific testing and expert analysis of air and water quality in the vicinity of the Tigyt coal-fired power plant showed hazardous level of air and water pollution. From 11 to 13 March 2018, air samples were collected by the local NGO Advancing Life and Regeneration Motherland (ALARM) in the vicinity of the Tigyt power plant. The expert analysis of atmospheric conditions “strongly indicated” that emissions from the power plant were contributing to the observed pollution concentrations, and could account for a substantial part of the pollution levels.³ The analysis found that the observed high levels of air pollution caused by the power plant’s emissions in the area represented “very substantial health risks to the affected populations”⁴ and that all key pollutants far exceeded Myanmar’s national guidelines.⁵ The analysis concluded that the risk of death from lung cancer, stroke, and ischemic heart disease for adults was estimated to increase by 50%, 140%, and 100% respectively, and that the risk of death from acute respiratory infections for children was estimated to increase by 90%, if they were continuously exposed to the observed pollution levels.⁶
21. Water samples were also collected by ALARM in the vicinity of the Tigyt coal-fired power plant. Expert analysis showed that heavy metals (including included selenium, cadmium, lead, nickel, and arsenic)⁷ concentrations were significantly (between almost three and 27 times) above World Health Organization (WHO) guidelines for safe drinking water in 12 of the 13 water samples. These levels exceed maximum concentrations of one or more parameters under the national guidelines in nine water samples.⁸
22. The expert analysis concluded that the Tigyt power plant, and particularly the coal ash dump and the coal ash storage areas, is most likely the major source of the majority of the high heavy metal concentrations and other pollutants identified in the water samples analyzed.⁹ In addition, expert analysis also reported evidence of serious toxic impacts on fish, aquatic life, plants, and animals.
23. Given the evidence provided during the 5 May 2018 meeting of air pollution testing and statistics regarding increasing adverse health impacts, together with the independent

scientific testing and expert analysis of air and water quality in Tigyt, it is highly unlikely that Wuxi Huaguang upgraded their waste management systems.

24. Despite the company's failure to complete SIA, EIA, and HIA as promised, and preliminary evidence of air pollution and evidence of increased adverse health impacts to communities, in May 2018, the Ministry of Electricity and Energy extended the plan operation's "testing period" until May 2019, and, then, again, until May 2022.¹⁰

Community affected by copper mine in Sagaing Region still await compensation for land confiscation and harmful environmental and health impacts

25. In Sagaing Region, operations of a copper mine have resulted in significant land confiscation without adequate compensation and harmful impacts on the environment and the health of local communities.
26. The copper mine is located on the Sabae Taung and Kyisin Taung mountain ranges, which are situated across Salingyi and Yinmabin Townships. The mine is operated by the Myanmar's military-controlled conglomerate Union of Myanmar Economic Holdings (UMEH) and China's state-owned company Myanmar Yang Tse Copper (MYTC), under a production sharing contract (PSC) that grants UMEH 51% of the production profits and MYTC 49%. The Myanmar government receives a royalty of three million kyat (approximately US\$2,100)¹¹ per square kilometer as dead rent in addition to taxes on a yearly basis. The total area of the mine currently covers 6,035 acres under a 30-year land concession from 5 November 1997 to 4 November 2027. In September 2014, the copper extraction from the pit of Sabae Taung was stopped, because mining operations were no longer viable economically. The copper extraction is currently carried out only on the Kyisin Taung mountain range.
27. Land confiscation to make way for the mine started in 1996 and about 2,900 acres of land were seized from 17 villages. Residents of these villages received a one-time crop compensation amounting to a maximum of 1,500 kyat (approximately US\$1) per acre in the 1990s. Local farmers have repeatedly demanded the government and the mine's operator provide adequate compensation for land confiscation. However, to date, authorities have failed to properly address the issue. In 2013, about 217 acres of land were returned to local villagers in Salingyi Township. In May 2015, the government and MYTC issued a letter making a commitment to pay land compensation to communities affected from land confiscation. In June 2016, MYTC pledged to award up to 1.2 million kyat (US\$840) per acre in compensation and requested the Sagaing Region government supervise the land compensation process. However, community members responded they were entitled to 1.4 to 1.5 million kyat (US\$981 to US\$1,051) per acre, in accordance with the recommendations made by the government-established Land Compensation Committee. To date, the government has failed to break the deadlock and villagers still await compensation.
28. Meanwhile, local farmers have continued to farm more than 254 acres of land that was earmarked as mining area but that had not been used for mining operations.

29. The mine operations have also had a negative impact on the underground water sources of the local communities. MYTC failed to implement a proper system of waste water drainage, which polluted the underground water for four villages on both Sabae Taung and Kyisin Taung mountain ranges, whose resident now have no other options than to buy drinking water.
30. In addition, despite recommendations by the environmental impact assessment (EIA) report to use a “drop system” instead of a “sprinkler system” to spray the ores with acid, the company has failed to fully comply with this recommendation and has continued to use the “drop system.” As a result, residents of 12 villages in both Salingyi and Yinmabin Townships reported skin problems and sore eyes, in addition to damage to their crops.

Authorities fail to address water pollution, target environmental activist in Rakhine State

31. In late July 2018, local fishermen reported that the water of Than Zit River near Maday Island in Kyaukphyu Township, Rakhine State, had turned black. Local fishermen believed the phenomenon was caused by the disposal of oil storage tank sludge from the Kyaukphyu deep-sea port on Maday Island.
32. On 10 August 2018, local fishermen from Ann, Kyaukphyu, Ramree, Taungup, and Myebon Townships - where the black water was observed – held discussions with the authorities to inform them about this development. Subsequently, local communities collected data and communicated their concern to the Rakhine State Chief Minister and other members of the Rakhine State government. On 7 September 2018, representatives of local communities traveled to Naypyidaw to request the Ministry of Natural Resources and Environmental Conservation investigate the matter.
33. On 22 September 2018, Mr. Myo Lwin, MATA regional member in Rakhine State, posted a video and photos on his Facebook account to document the death of high numbers of clams in Kyar Aut stream, in the upper parts of Than Zit River in Kyaukphyu Township. On 23 September 2018, local officials from the Ministry of Health went on a field visit to the site and concluded that the clams had died due to the intrusion of fresh water from nearby streams. Mr. Myo Lwin criticized the authorities’ findings on social media. As a result, on 1 October 2018, a government official in Ann Township filed a complaint against Mr. Myo Lwin under Article 68(a) the 2013 Telecommunications Law with the township police station.¹² On 17 October 2018, Mr. Myo Lwin was granted bail after depositing 1.5 million kyat (approximately US\$1,050) at Ann police station. Between October 2018 and March 2020, Mr. Myo Lwin has appeared for hearings at the Ann Township Court 30 times.
34. On 21 February 2019, local communities raised the issue of the pollution affecting Than Zit River in an open letter to the Rakhine State government and the Ministry of Natural Resources and Environmental Conservation on the occasion of a visit by State Counselor Aung San Suu Kyi to Thandwe, Rakhine State. The letter urged Aung San Suu Kyi to instruct local authorities in Rakhine State to conduct a thorough investigation into the Than Zit River water pollution. However, to date the authorities have not responded to the letter.

Land confiscation protests result in imprisonment of farmers in Kayah State

35. In Kayah State, authorities have often prosecuted and arbitrarily detained farmers who opposed the ongoing and long-term land confiscation by the Tatmadaw [Myanmar military].
36. In Dawaso Village, Demoso Township, land confiscated by the Tatmadaw since the late 1980s has not been returned to the farmers despite their numerous requests. In addition, in 11 villages in Loikaw Township, land that the Tatmadaw confiscated in 1991 for the construction of military bases has not been returned to farmers despite several letters of appeal sent by the farmers to the authorities. In 2019, Tatmadaw soldiers started to build a fence around the land the farmers had cultivated. The enclosed farmland included not only traditional farmland but also the land for which permission to tend had been granted to the farmers in accordance with the 2012 Farmland Law.
37. Authorities took legal action against a total of 41 farmers. Among these farmers were five women - four of them widows. In Demoso Township, 19 farmers were arrested, charged, and arbitrarily detained between July and September 2019 for objecting to the building of the fence. During the same period of time, in Loikaw Township, a total of 22 farmers were arrested, charged, and arbitrarily detained for farming on the confiscated land.
38. Authorities prosecuted the farmers under Article 6 (1) of the Protection of Public Property Act and several provisions of the Criminal Code, namely: Article 294 ('obscene acts'); Article 353 ('obstruction of performance of public duty'); Article 427 ('causing damage'); and Article 447 ('trespassing').
39. On 4 February 2020, a court in Loikaw found the group of 22 local farmers guilty of charges under all the above-mentioned provisions, and sentenced them to six months in prison with hard labor, and imposed fines ranging from 10,000 to 20,000 kyat {US\$7-14). On the same day, a court in Demoso found the other group of 19 local farmers guilty of charges under Article 6 (1) of the Protection of Public Property Act and Article 447 of the Criminal Code, and sentenced them to six months in prison and a fine of 20,000 kyat (US\$14). All 41 farmers were immediately released from prison for having already completed their prison terms or paid their fines.

Water pollution near cement factories triggers repression in Kayin State

40. In Kayin State, the operation of two local cement factories run by Myanmar's military-controlled conglomerate Union of Myanmar Economic Holdings (UMEH) caused concerns over unprecedented water pollution affecting many villages in Hpa-an Township. Activists who sought to assist the villagers' in raising their concerns over the pollution with local authorities faced harassment and intimidation by township officials.
41. Water discoloration was first observed on 8 October 2019 when local villagers visited Zee Taw Lake, to catch fish and noticed that the water in the lake had become murky. On 10

October 2019, Zee Taw Lake, which is a water source for nearby villages, turned completely black. On 15 October 2019, the lake in Yay Twin Kone Village turned murky and fish were found dead floating on the surface. On 24 October 2019, members of a local community development committee reported that the water in 94 of the 96 wells in Kan Kalay Village had turned black. On 30 October 2019, residents from Khae Tauk Village noticed that the water in Kyone Pite stream, a tributary to the Salween River, had also turned black. In mid-January 2020, residents in Ma Yin Kone Village found over 100 dead fish of varying sizes in Taung Kalay Conservation Lake.

42. Many villagers believed the water pollution was connected with the operations of two coal-powered cement factories in Myainggalay Village, Hpa-An Township. The two factories, powered by coal-fired generators, produce nearly 5,000 tons of cement daily. Villagers believed the factory dumped significant amounts of coal on the ground, which, coupled with heavy flooding during the rainy season, resulted in black water runoff to streams and also intruded into ground water sources.
43. The local civil society organization Karen Environmental and Social Action Network (KESAN) reported that across 30 villages in Hpa-an Township, 502 of 1,320 wells were found to be discolored, 372 villagers (150 men and 222 women), including adult and children, suffered skin problems, 79 villagers (44 men and 35 women) suffered from blotchy skin, and 15 livestock died. In addition, in January 2020, five women suffered miscarriages in the late stages of their pregnancies. Villagers remained concerned that water from lakes and streams in the area was unsafe for washing, bathing, and potable for the cattle, because no comprehensive lab result had been conducted.
44. On 17 January 2020, a peaceful traditional prayer ceremony was held by monks and villagers who were concerned about the local water pollution in the proximity of the cement factories. One of the local environmental rights activists, Saw Tha Phoe, Campaign Coordinator of KESAN, was charged under Article 505(b) of the Criminal Code ('disturbing public tranquility'). The charges against Saw Tha Phoe were related to his participation in the prayer ceremony. If convicted, Saw Tha Phoe could face up to two years in prison.

Recommendations:

45. FIDH and MATA call upon United Nations member states to make the following recommendations to the government of Myanmar:
 - Ensure that all investment and infrastructure projects are implemented in full compliance with domestic legislation, including provisions related to Environmental Impact Assessment procedures.
 - Ensure that all investment and infrastructure projects respect the rights guaranteed by the International Covenant on Economic, Social and Cultural Rights.
 - Ensure the enjoyment of land rights and other economic, social, and cultural rights in accordance with the International Covenant on Economic, Social and Cultural Rights.
 - Conduct thorough, professional, and independent investigations in cooperation with international experts into the environmental impacts of infrastructure and investment

projects in consultation with affected communities, publicly release their findings, and provide adequate redress for damages.

- Provide compensation and rehabilitation for communities and the environment affected by investment and infrastructure projects in accordance with domestic laws and international standards.
- Ensure operations by businesses are conducted in compliance with domestic laws and international standards, including the UN Guiding Principles on Business and Human Rights.
- Ensure that individuals and communities affected by investment and infrastructure project are able to exercise their right to freedom of opinion and expression and their right to participate in public affairs.
- Ensure that adequate compensation is provided for all individuals whose land has been confiscated to make way for investment and infrastructure projects.
- Immediately end all acts of harassment, including at the judicial level, against land and environmental rights defenders.
- Review and amend all domestic laws that have been used to take action against land and environmental rights defenders and farmers for the legitimate exercise of their rights to freedom of opinion and expression and to freedom of peaceful assembly.
- End the harassment and prosecution of farmers who have demanded the return of confiscated land and immediately and unconditionally release them.
- Accelerate the process of review of claims of long-lasting land confiscation by the Tatmadaw with a view to return lands confiscated to the farmers.
- Conduct a thorough review all domestic laws related to land rights to ensure a comprehensive reform of land-related legislation in accordance with international standards and best practices.

¹ Lignite is the most polluting type of coal and one of the dirtiest fossil fuels contributing to climate change.

² Golden Triangle Regional News, *Interview meeting at Platinum Star Hotel in Tachileik Town*, 15 June 2017; available (in Burmese) at: <https://www.facebook.com/GoldenTriangleRegionalNews/videos/1484061961657000/>

³ Lauri Myllyvirta, *Assessment of air quality sampling results around Tigyit coal-fired power plant, Shan State, Myanmar* (“Air Quality Report”), 26 June 2018 - Page 14; available at: <https://www.mata-nrg.org/wp-content/uploads/2018/09/Air-Statement-of-Ti-Gyit-ENG-Version.pdf>

⁴ *Air Quality Report*, Table 2, Page 14

⁵ The PM 2.5 levels were found to be twice as high as the annual average level of all cities in China and 10 times as high as in the US; *Air Quality Report*, Page 9

⁶ *Air Quality Report*, Table 2, Page 14

⁷ *Water Quality Report*, pp. 5, 13; heavy metals are significant environmental pollutants, and their toxicity adversely affects human health and the environment.

⁸ Paul Winn, Waterkeeper Alliance, *Pollution impact assessment of Tigyit, Myanmar* (“Water Quality Report”) 15 May 2018. The analysis focused on a total of 13 samples of waste water (4) and drinking water (9) collected by ALARM in March of 2018, pp. 4-5, 11-13

⁹ *Water Quality Report*, p. 16

¹⁰ Shan Nationalities League for Democracy, *Ministry of Electricity and Energy answered at the 16th Pyithu Hluttaw meeting*, 19 May 2020; available (in Burmese) at: <https://www.facebook.com/356410201094521/posts/2879897222079127/>

¹¹ 1 US\$ = 1,427 kyat (June 2020 exchange rate).

¹² Article 68(a) of the 2013 Telecommunications Law punishes with a prison term of up to one year, a fine, or both, those who are found guilty of “communication, reception, transmission, distribution or conveyance of incorrect information with dishonesty or participation.”