

Beautiful Words, Ugly Actions

The Asian Highway in Karen State



Burma/Myanmar

August 2016

Acknowledgements

KHRG and KESAN would like to thank the THWEE research team members for their work in conducting field research on the ground, risking their lives to seek out, visit and interview villagers along the road in an area of active conflict. THWEE, KHRG and KESAN would also like to thank the International Senior Lawyers Program for their substantial pro-bono legal analysis assistance. Thanks also go to Anya Chang Depuy, Jared Naimark and Nick Lo who contributed substantially to the research, drafting and editing of the report. The report would not have been possible without the financial support of The Border Consortium (TBC) and Paungku. Finally, we also would like to provide our greatest thanks and sympathies to those community members who spoke of their experiences despite their fears.

Cover photo - Border Guard Forces on patrol on the Asian Highway during a fighting outbreak between Democratic Karen Buddhist Army and Border Guard Forces. (Photo credit KHRG)

Back photo - A section of the Asian Highway AH1 between Thin Ga Nyi Naung and Kawkareik. (Photo credit KHRG)

Table of Contents

I.	Introduction.....	3
II.	Key findings.....	4
III.	Map of Asia Highway road link.....	6
IV.	Methodology.....	7
V.	Human rights violations surrounding the Asian Highway project (Thin Gan Nyi Naung to Kawkareik).....	8
VI.	Serious concerns about ADB’s planned upgrade Project from Kawkareik to Eindu.....	14
VII.	The Ministry of Construction’s (MoC) Resettlement Plan improperly prioritizes economic compensation.....	23
VIII.	The Ministry of Construction’s (MoC) proposed Grievance Redress Mechanism is inadequate and ambiguous.....	26
IX.	Risks to the Peace Process and civilian safety.....	28
X.	Conclusion.....	33
XI.	Recommendations.....	34
	Index 1: Known and recorded cases of conflict around the Asian Highway in Karen State.....	37

I

Introduction

The Asian Development Bank (ADB) and Thailand's Neighboring Countries Economic Development Cooperation Agency (NEDA) have been financing highway construction in southeast Burma/Myanmar in Karen State, which has been the location of prolonged civil conflict. The aim of the Project is to complete the missing link between the Asian Highway 1 (AH1) and East-West Economic Corridor (EWEC), a flagship project of the Greater Mekong Subregion (GMS) Program. The projects are intended to improve connectivity within Karen State, between Karen State and Yangon, between Myanmar and Thailand, and onwards across the South Asia and Southeast Asia regions.

NEDA funded the construction of a section of AH1 from Thin Gan Nyi Naung, close to the Thai border, to Kawkareik. The newly widened stretch of highway officially opened to the public in August 2015. While the road project has improved transport links between Myanmar and Thailand, this report documents how the project forcibly dispossessed villagers of their land and property without proper consultation or adequate compensation.

Meanwhile, ADB is financing a planned upgrade of a section of the Asian Highway from Kawkareik to Eindu, with construction slated to start sometime in 2016. Despite promises to safeguard the rights of affected communities, ADB appears poised to repeat the same mistakes as NEDA, potentially leading to similar violations of human rights. Furthermore, in the past two years, multiple armed clashes have broken out in the project area between the splinter group Democratic Karen Buddhist Army¹ (DKBA) and the Myanmar Army and its Border Guard Forces (BGF). The Myanmar Army has used BGF in Karen State as a proxy to extend its control over areas where armed groups with tense relations with the military operate. This conflict, driven by competition for control over and access to the upgraded highway, has destabilized an already fragile peace process in Karen State, putting civilians at risk.

The aim of this report is to raise concerns about the unresolved issues of human rights violations and armed conflict associated with highway construction in Karen State, and to ensure that ADB and its partners avoid making the same mistakes as they prepare to upgrade the next stretch of AH1.

¹ The Democratic Karen Buddhist Army formed in 1995 after splitting from the Karen National Union (KNU). A large majority of the original DKBA were transformed into a Myanmar Army-supported BGF in 2010. One faction refused to join the BGF and changed its name to the Democratic Karen Benevolent Army. In July 2015, a splinter faction of the Democratic Karen Benevolent Army was dismissed from its ranks after clashes with the Myanmar Army over control of the Asian Highway. On January 16th, 2016, this splinter faction re-established itself as the Democratic Karen Buddhist Army. Therefore, confusingly, there are now two groups using the acronym DKBA – the main 'Benevolent' DKBA and the splinter faction 'Buddhist' DKBA.

II

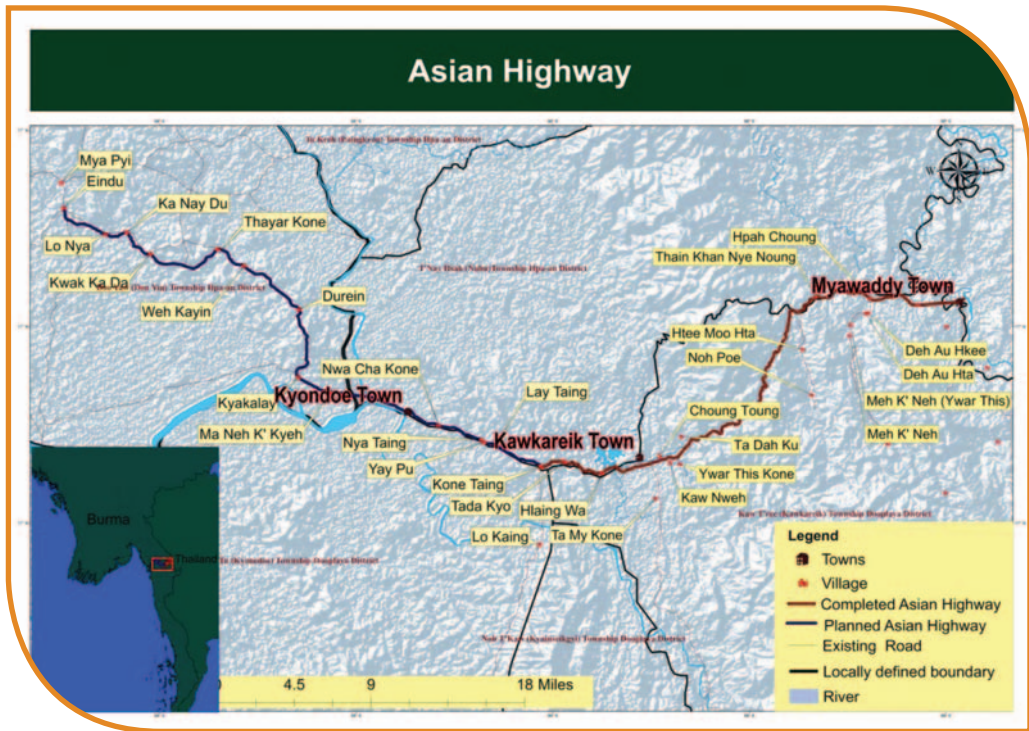
Key Findings

1. The construction of the Thailand-financed segment of the Asian Highway between Thin Gan Nyi Naung and Kawkareik violated the right to Free, Prior, and Informed Consent (FPIC) of local communities, who have been negatively impacted by the road project.
 - Contrary to the principle of FPIC, affected villagers were not properly informed or consulted prior to the commencement of development activities, only learning about the project once construction had begun.
 - At least 17 households were forcibly dispossessed of their land and property due to an order issued by the Karen state government, which failed to provide adequate compensation to displaced villagers.
 - There is no publicly accessible evidence of project proponents conducting either an initial environmental examination (IEE) or environmental impact assessment (EIA) in advance of implementation.
 - Villagers were not compensated for environmental damage to their farmlands as a result of the project.
 - Rice production along the affected section of the highway has been reduced due to excessive water on one side of the road and insufficient water on the other side as a result of improper installation of drainage pipes.
 - Project affected persons were coerced into accepting inadequate compensation for their losses.
 - The Ministry of Construction did not consult or negotiate with project affected persons on compensation, as amounts were pre-determined and not subject to reconsideration.
 - No grievance redress mechanism was established to facilitate mitigation of negative impacts to project affected persons and ensure that their rights are protected.
 - There is no resettlement plan for those who were displaced from their land due to the project.
 - There is no system in place to provide replacement land for farmers whose livelihoods have been disrupted due to road construction.
 - There have been no consultation or arrangements to relocate project affected persons whose homes were destroyed by the project.

2. The ADB and Burma/Myanmar Ministry of Construction (MoC) appear poised to repeat these mistakes in relation to a planned upgrade of a stretch of the AH1 between Kawkareik and Eindu, despite assurances otherwise.
 - Villagers have not been properly informed or consulted about the project, with consultations taking place from December 2nd to December 5th, 2015 in only six out of 16 total affected villages. In these meetings, ADB indicated that compensation would be provided as money in envelopes and given to the affected villagers, but at the time, did not specify who would distribute it.
 - ADB also indicated that it would not deal directly with compensation and resettlement
 - From June 17th to June 19th, 2015, inadequate consultations took place in three villages – Loneyaw, Nga Taing, and Wei Kayin.
 - The number of people who will lose their land due to a government-demarcated right of way is unknown since ADB excluded the right of way from its resettlement plan.
 - Without proper oversight, the ADB has entrusted the MoC to carry out sensitive resettlement and compensation activities in accordance with its Safeguard Policies.
 - Compensation procedures have not been disclosed to project affected persons despite a number of plans and strategies issued by ADB in relation to the project since 2015.

3. With a full peace agreement still pending, road construction projects have increased tensions between different actors competing for control of the highway area. If the project continues before political agreements to create a decentralized federal union are finalized, and a benefit-sharing scheme for the Asian Highway in Karen State is not established, the potential for armed conflict to break out will continue to exist.
 - NEDA, ADB and MoC have not adequately considered or addressed the risks to the wider peace process when pushing through the Asian Highway project.
 - Past and continue skirmishes between the DKBA and the BGF/Myanmar Army over control of the AH1 has endangered villagers, forcing them to flee their villages and disrupting their livelihoods. To date, some still have not been able to return.
 - Recent outbreaks of violence and ongoing risk of new clashes continues to drive villagers away and prevent them from returning home.

III Map



Map of Asian Highway Road Link

“

Road projects have the potential to bring benefits for rural communities in Karen State, but only if implemented in a democratic and transparent manner. The reality is these roads are being built in conflict zones, where massive displacement has already occurred, information is withheld from local communities and civil society, and villagers are vulnerable to human rights violations. Large-scale projects in Karen State should wait until a full peace agreement can be reached, democratic rights guaranteed, and a decentralized federal union achieved. Instead, motivated by the potential for massive profits from cross-border trade, highway proponents have quickly pushed the risky project to completion.

”

Karen Peace and Support Network (KPSN)
Asian Highway project undermines peace in Karen State, July 10th, 2015

IV

Methodology

The majority of the research for this project was conducted by THWEE Community Development Network. THWEE is a local, community based organization that has been supporting and mobilizing communities in areas where the road construction is taking place. They have been empowering communities to learn about their rights and about policy and law.

The research took place over a two week period from October 16th to October 31st, 2015. The research team was comprised of 6 THWEE staff. The research team interviewed 28 people throughout 6 Areas of the Animal Husbandry Zone between Thin Gan Nyi Naung and Kawkareik: Chaung Taung, Kaw Nwe, Ta Dan Khu, My Kone, and Ywa Thit Kone. The 28 people interviewed were chosen because they were directly affected in some way by the construction of the road. Interviews were conducted face-to-face and recorded through voice recorders and photographs. Along with these interviews, a survey was distributed among the 6 villages that asked questions about villagers' personal experiences in regards to land that had been taken from them for the use of constructing the road. Questions addressed included: "How many acres have been taken?; Why was land taken?; Are you satisfied with the process?; How have you been compensated?; What is the current status of land?"

Through the interviews, THWEE researchers aimed to understand the perspectives of villagers on the ground regarding the Asian Highway road construction process. Although they were able to get some very valuable information and insight in the situation, due to time constraints, they were not able to reach all the affected areas, nor speak with all affected villagers. This report therefore provides a brief but representative sample of affected communities' experiences.

V

Human Rights Violations surrounding the Asian Highway Project (Thin Gan Nyi Naung to Kawkareik)

Overall, the lack of prior consultation, forced displacement, environmental damage and lack of fair compensation associated with the new Asian Highway construction constitute a series of clear violations of the local communities' right to Free Prior and Informed Consent (FPIC)². This is unfortunately the norm for large-scale development projects in Burma/Myanmar, and international actors should do more to enforce safeguards for community rights. Having recently resumed funding projects after a long period of sanctions in Burma/Myanmar, development actors and financiers should be doubly careful to set an example of best practices in funding development projects.

Neighboring Countries Economic Development Cooperation Agency (NEDA), the international development arm of the Royal Thai Government, financed the construction of a new 28 km section of the Asian Highway from Thin Gan Nyi Naung to Kawkareik. The Thai company Seesaeng Kanyotha Company Ltd. was hired in conjunction with Thailand's Department of Highways³ to complete construction, with the 1,140,343,350 Thai baht (32,581,239 USD) contract awarded on January 11th, 2012.⁴ This new highway section was completed and opened to the public in August 2015. The new route cuts through the Dawna mountain range, bypassing the old one lane road that went up and over the mountains, and reducing travel time from Myawaddy to Kawkareik from three hours to 45 minutes.

a) Lack of proper consultation

Local communities impacted by construction of the Thin Gan Nyi Naung to Kawkareik highway segment reported that they only found out about road construction after it had already started. No effort was made by any of the developers involved to communicate with affected villagers about when construction would begin, how it would impact their land, and whether they would receive any compensation for land and property lost. Villagers

² Articles 10 and 28 of the United Nations Declaration on the Rights of Indigenous People (UNDRIP) which Burma/Myanmar signed on September 13, 2007

³ <http://www.unescap.org/sites/default/files/Mynamar.pdf>

⁴ “สืบสง่า หนุนส่วน บรรหาร คู่สัญญา 20 โครงการหมิ่นล้าน” from <http://www.108acc.com>

did notice people coming to survey the land in the area, but were never informed of whom these people were, or why they were conducting land surveys. Villagers were left completely in the dark, and were only able to deduce project plans from demarcation signs erected once construction was already imminent. Some villagers were away from home during the road construction period, working as migrant workers in other parts of the country, and returned to find that their land had been illegally confiscated during their absence.

b) Forced displacement

Villagers whose houses were destroyed as a result of the road construction were forced to relocate, staying with friends or relatives in neighboring villages. Aside from losing their homes, some villagers lost their most vital source of income: their land. This has had grave consequences for villagers' livelihoods, which are inextricably linked to the lands they farm.

c) Environmental damage

In some places, the construction of the road has also had a detrimental impact on the surrounding environment. For example, in Section 6, Kawkareik, road construction has altered the flow of water into villagers' irrigated paddy fields, leading to excessive amounts of water on one side, and too little on the other. Pipes have been installed to mitigate this damage, but villagers told us this was ineffective and that their crop yield has suffered.

“The stream was filled with soil. So, water overflowed into paddy fields in rainy season and the paddies were destroyed. The paddies are not good like before. The water does not flow and it stops in the farms and [in the village], therefore the paddy is not good and it affects our livelihood.”

U Chit (pseudonym), Section 6, Kawkareik

d) Coercion to accept unfair compensation

Villagers were never consulted about compensation for lost or damaged land. Instead, after road construction was already completed, affected villagers were invited to attend a meeting at the Kawkareik Town Administration Office on 7 March 2014. At this meeting, the Karen state Chief Minister, U Zaw Min, informed the affected villagers that they would each receive 1.5 million Kyat (1,270 USD) in compensation from the Government for every acre of land that they had lost. This amount would cover the cost of rebuilding a simple bamboo shelter, but does not include the cost of purchasing new land to build the house on. Furthermore, no opportunity was given for negotiation. When villagers raised concerns that the compensation would not be enough to cover their expenses of relocating, they were told that if they did not accept the amount, the money would be distributed for public use and they would receive no compensation at all.

In the absence of a grievance mechanism for the project, villagers complained to the Karen National Union (KNU), which negotiated with the Thai construction company, Seesaeng Kanyotha Company Ltd, to allocate an additional 500,000 Kyat to each villager impacted. Even with the additional compensation, most villagers report that the amount they received is simply not enough to start their lives afresh after being displaced by the Asian Highway Project.

Without any prior negotiation between villagers and government authorities, villagers were pressured into signing a piece of paper that proclaimed they were paid in full for compensation, and given a predetermined amount of money that authorities deemed sufficient. Villagers were never asked what they felt they deserved for their loss of land, or what an appropriate amount of compensation would be.

"In the meeting, we [villagers] agreed that we would not take the money, if we don't get 3,000,000 Kyat per acre for land compensation. However, authorities said that if we didn't take the money, the government will put it in the bank. Then we were being threatened that our land would be taken anyway, so finally we have to take what has been given to us."

U Gyi (pseudonym), Kaw Nwe village

e) Destroying villagers' livelihoods

The research team was able to interview some villagers whose livelihoods have been affected by the Asian Highway road construction about what is happening on the ground from their perspective. Daw Su (pseudonym) from Section 6 of the Animal Husbandry Zone of Kawkareik provides us with a perfect explanation of why land is so important to these villagers and how monetary compensation is not sufficient to maintain their livelihoods.

"The farms are the rice pot of our family. We can send our children to school because of this farm. I did not want to give it up for road construction. Our children can work on this land for their whole life. But I did not say anything because other people's land was also included in road construction. They decided to give us 1,500,000 per acre of land. But we disagreed because we would get this only one time in our life, whereas the farm will provide for us forever. The Seesaeng Kanyotha Company Ltd. gave 500,000 kyat and it became 2 million kyat. I signed the paper but I felt very bad in my mind."

Daw Su, Section 6 from Animal Husbandry Zone, Kawkareik

Other villagers expressed their unhappiness with how their land was taken and what compensation was seen fit by the Ministry of Construction (MoC). The MoC can easily name a monetary value for a piece of land, but for villagers, their land is more valuable than any amount of money. U Saw (pseudonym), also from Section 6 of Kawkareik, also explained his discontent with how things were handled, and how his livelihood is now jeopardized because of the road construction.

"They used a lot of clay for road construction and the clay erodes, flowing down to cover what is left of the farm. The clay will destroy my farms in the future. They are giving us a little compensation and effectively taking a lot of land from us."

U Saw (pseudonym), from Section 6 of Kawkareik

Besides that, the streambed was not properly reconstructed, and so the stream keeps flooding his paddy fields, burying them under thick layers of clay. Paddy fields are an essential part of livelihood for U Saw and all other villagers, and cannot be replaced with money. Furthermore, the compensation given to U Saw did not sufficiently cover all of his assets that were lost.

“They did not give us money for our plot. They only gave us money for the trees [that we planted in our plot] but not even for every tree. They only gave us money to dismantle our house and to rebuild it. They gave two or three million per house, but it is merely enough for the carpenter fees. We had to use our own money and had to spend our time to rebuild our own house.”

U Saw (pseudonym), from Section 6 of Kawkareik

Daw Lay (pseudonym) from Kanadan village, Section 3, experienced similar issues with compensation.

“I had only recently just bought two pieces of land and I haven’t planted anything on the land yet, but the land is located on the road project, so the government didn’t give me any compensation, saying that I don’t have any plants in my land, and they only give compensation for land that has plants on it.”

Daw Lay (pseudonym) from Kanadan village, Section 3

f) Concerns about road expansion

According to villagers in November 2015, the government had already made plans to expand the road by 100 feet more on either side, taking even more land from affected villagers. Authorities have already set up demarcation posts without any consultation for the road expansion.

“There was no consultation about the extension of the road area. They came and marked the area with poles. I had to destroy my rambutan plantation but I did not get compensation for it. They sent me a letter that I will be jailed for two years if I do not destroy it. I am very sad that they will extend the road area because it goes through in the middle of my farms. Over two acres of my land was included in the road area. I had to dismantle all the poles and fences. I feel sad but we are afraid of them.”

Daw Aye (pseudonym) from Chaung Taung Village

Daw Blu (pseudonym) from Section 6 from Animal Husbandry Zone, Kawkareik, explained how she has 4 acres of land and how the road passes through the middle of her farm. She received 800,000 Kyat (678 USD) in compensation, but she had not been previously informed about the road construction and said people just came and measured the road by themselves.

“I do not know when they demarcated the road area, but I disagree with the extension of it. I cannot give up my land for road construction and I do not want any replacement. I have ten children and I am keeping this land for them. I only want this land because this is my only plot. Livelihood is bad compared to the past. The soil fertility has been destroyed because of the road construction. The soil was very good in the past, but now it is not good for growing food anymore.”

Daw Blu (pseudonym), from Section 6 of Kawkareik

g) Tension in the affected communities

The process the MoC has used for deciding the amount of compensation per household was unequal and has caused tension among villagers and communities. MoC surveyors did not demarcate land properly to confirm who actually owns how many acres of land in the area. Instead they relied on their land record books to define how many acres of land each villager owned, and paid compensation in accordance with their records. However, the actual number of acres that villagers own and the numbers in MoC records do not always match up. As a result, when villagers received compensation, some villagers who had more land than recorded received less money, and those who had less land than recorded received more money. For example, one farmer had only five acres of land but received compensation for seven acres, as listed in the the record books. This created tension between him and those villagers who have more land but received less compensation.

“What they should have done is come to do a land survey and demarcate each household’s property to ensure who actually owns how many acres of land before they decided to pay for compensation.”

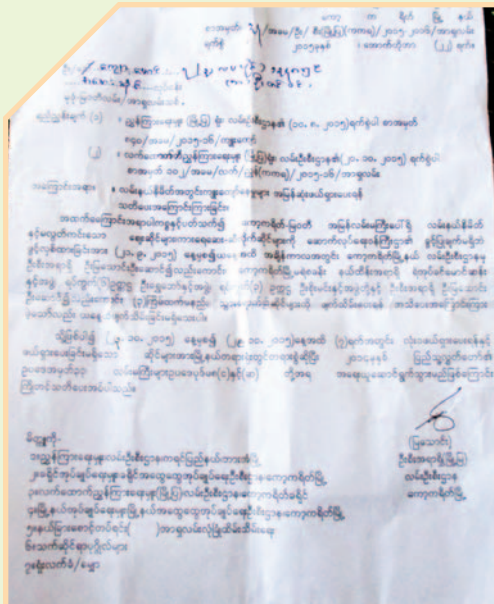
U Hla (pseudonym) from Chaung Taung village



This photo was taken on 24th October 2015 showing the post marker stating “Right of Way”, which the government uses to demarcate road boundaries. The villagers have to dismantle their houses and shops if they are located within the road boundaries. [Photo credit : KHRG]



This photo was taken on 24th October 2015 beside the Asian Highway in Kawkareik Township. The photo shows the pipe that was built to allow run-off water from the road to flow into the paddy field. [Photo credit : KHRG]



The two photos were taken 24th October 2015 beside the Asian Highway in Kawkareik Township. The left photo shows the letter from the government that ordered the villagers to dismantle their shops by 29th October 2015. The letter states the government will sue them if they do not comply. The right photo shows the houses and shops located beside the Asian Highway. [Photo credit : KHRG]

VI

Serious concerns about ADB's planned upgrade Project from Kawkareik to Eindu

a) The MoC's Asian Highway upgrade project has consistently violated ADB's safeguard policy for displaced people

In October 2015, the ADB approved a \$100 million loan to the MoC for (i) reconstruction of a highway connecting Eindu to Kawkareik Town in southeastern Myanmar; and (ii) widening of the adjacent Right of Way (collectively referred to in this document as the “Project”). In July 2016, the Chinese state-run newspaper, China Daily, announced that the China Road and Bridge Corporation Ltd. (a state-owned enterprise) had been granted a multimillion-dollar contract to expand the Eindu-Kawkareik section of the highway to a four-lane road. This is the first tender to be publicly awarded to a Chinese company since the change in government in March 2016.⁵

The Project crosses through 17 villages and one town, and will inevitably displace those who live and earn their livelihoods along the planned route. As required by the ADB safeguards policy, the MoC submitted the Resettlement and Ethnic Group Development Plan (referred to in this document as the “Resettlement Plan”) to ADB in June 2015 to apply for the loan. Notwithstanding the fact that the Resettlement Plan lacks specificity on a number of key details, including actual compensation values and grievance redress procedures, the ADB approved the MoC's loan application. Despite these shortcomings, the MoC has already begun Project implementation, without either addressing the issues or encountering any intervention by the ADB, giving no chance for affected people to have any say whatsoever in this infrastructure development project. The Resettlement Plan fails to comply with many of ADB's resettlement policies⁶ or the best practices of other international agencies. It does not provide the specifics necessary to protect the rights of those who will be displaced, and it fails to address the Project's potential negative impacts on the peace process.

⁵ Zhong N. & Jing, Shuiyu. CRBC on road to deals in Myanmar. http://www.chinadaily.com.cn/business/2016-07/08/content_26011138.htm

⁶ ADB's resettlement policies are described in *Involuntary Resettlement Safeguards: A Planning and Implementation Good Practice Sourcebook*, Asian Development Bank, November 2012 (“ADB Safeguards”).

In January 2016, the Republic of the Union of Myanmar instituted a National Land Use Policy (NLUP) to systematically implement, manage, and carry out land use and tenure rights in the country. One of the policy’s guiding principles is “to make effort promoting appropriate international good practices in land and natural resource governance.”⁷ Specifically concerning resettlement and compensation, the policy states:

“When managing the relocation, compensation, rehabilitation and restitution related activities that result from land acquisition and allocation, unfair land confiscation or displacement due to the civil war, clear international best practices and human rights standards shall be applied, and participation by township, ward or village tract level stakeholders, civil society, representatives of ethnic nationalities and experts shall be ensured.”

Currently in Myanmar, existing laws do not have enough specificity to carry out the NLUP policies that mandate adherence to international best practice standards which require involuntary resettlement to be minimized by prioritizing the least drastic planning alternatives. As a result, involuntary resettlement has occurred on a large scale in the country in the recent past.⁸ With the adoption of the National Land Use Policy, this past pattern of conduct must be altered and abuses must not be repeated during Project implementation.

b) The Resettlement Plan fails to adequately consider alternative designs that would minimize involuntary resettlement

Involuntary resettlement for development projects is a disruptive process that often causes severe distress to already marginalized populations. In order to limit the impacts of involuntary resettlement in its funded projects, ADB safeguards require that projects: “(i) avoid involuntary resettlement wherever possible; (ii) minimize involuntary resettlement by exploring project and design alternatives.”⁹ ADB is not alone in having policies that attempt to minimize involuntary resettlement. According to the International Finance Corporation, “involuntary resettlement should be avoided.”¹⁰ The Food and Agriculture Organization of the United Nations states: “in accordance with human rights laws, evictions should occur only in exceptional circumstances,” and that prior to any project implementation: “Options should be analysed and presented in order to choose the site that presents the fewest obstacles and the best outcomes, having regard to all impacts, including those on any owners and occupants.”¹¹

⁷ The Republic of the Union of Myanmar. National Land Use Policy. January 2016. Principle 7(e). English: <http://faolex.fao.org/docs/pdf/mya152783.pdf>. Burmese: http://www.burmalibrary.org/docs21/Government-of-Myanmar-2016-01-National_Land_Use_Policy-bu.pdf

⁸ Land Acquisition Law and Practice in Myanmar, Displacement Solutions, May 2015, p. 21.

⁹ ADB Safeguards, p. 2.;

¹⁰ International Finance Corporation. IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement. January 2012, p. 1. http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES.

¹¹ Compulsory acquisition of land and compensation, FAO Land Tenure Studies, 2008, p. 19 (“FAO Handbook”).

According to ADB’s own policy objectives, “[t]he ideal way to minimize resettlement impacts is to design projects that avoid or minimize the number of persons affected by physical relocation, loss of land, or disturbance of income generation activities.” The MoC even explicitly recognizes the importance of avoiding resettlement to ADB’s policies, stating in the Resettlement Plan: “A key component of ADB’s resettlement policy is to avoid, as much as possible and wherever possible, the need for involuntary resettlement.”¹²

Despite universal recognition of the importance of minimizing the displacement of people, the MoC’s Resettlement Plan gives no indication that any such alternative designs were discussed with the affected villages and communities, or even considered. The only reference to an attempt to comply with ADB’s safeguards are statements that the Project’s “[c]onsultant made every effort to reduce the requirements for new land acquisition” and that “many solutions for reducing land acquisition and other impacts were discussed by the Consultant, local people and businesses.”¹³ Despite these vague statements, the Resettlement Plan does not reveal who the consultant is, the people to whom the consultant supposedly spoke, or the substance of the conversations concerning the “many solutions” to minimize impacts. Furthermore, there is no indication that civil society and experts acting on behalf of displaced persons were involved in the alternatives analysis. There is simply not enough information in the Resettlement Plan for ADB to have rightfully determined whether the MoC satisfied its obligation to minimize resettlement impacts, or whether there were any alternative designs that could have reduced the impact of displacement.

c) The MoC did not consult with the necessary stakeholders nor receive informed consent prior to commencing the Project

Meaningful consultation with affected persons prior to implementation of a resettlement plan is a vital part of any resettlement activity. The ADB Safeguard Policy requires borrowers to inform and consult with affected persons regarding resettlement and compensation options, and provide them with project-related information during resettlement planning and implementation. In order to satisfy ADB standards, meaningful consultation is defined as follows:¹⁴

“A process that (i) begins early in the project preparation stage and carried out on an ongoing basis; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion.”

¹² Resettlement and Ethnic Group Development Plan, p. 6. <http://www.adb.org/projects/documents/gms-ewec-ein-du-kawkareik-road-improvement-project-remdp>. (“Resettlement Plan”).

¹³ Resettlement Plan, pp. 6-7.

¹⁴ ADB. Safeguard Policy Statement. 2009. <http://www.adb.org/sites/default/files/institutional-document/32056/safeguard-policy-statement-june2009.pdf>



This road will be expanded by 35 meters on each side into existing farmland, and villagers have been told that these areas are slated for road construction and thus will not be eligible for any compensation. [Photo credit : KESAN]

If all of these statements were honored, then the harmful aspects of the Project might be mitigated, and the right to FPIC respected. However, reports from the field paint a very different reality, namely that disclosure of information and meaningful consultations with affected communities have been seriously lacking throughout the entire process. Many villagers still do not know if and when their property will be taken over, how much land they will lose, when road construction will start, and whether or not they will receive fair compensation.

The ADB has failed in its obligation to fully inform and consult with all affected communities along the highway, before the project was approved in November 2015. The MoC Resettlement Plan was produced in June 2015 without any prior consultation and/or knowledge of the villagers. Villagers noted that ADB representatives came to speak with them in mid-June 2015, but did not provide any information when villagers inquired about whether they would receive any compensation for their lost land, demonstrating how these consultative visits were inadequate.

Although there were further consultations conducted by ADB with six affected villages in December 2015, these were also inadequate, and only held after the project was already approved. From the consultations, it was clear that most villagers did not know about the ADB project and the process in any detail. They did not even know the start date of the project. When villagers asked questions, the ADB representatives were unable to provide satisfactory answers. Although ADB claims to honor the principle of FPIC, it seems unlikely that ADB will be able to follow through on its promises. Moreover, for the consultations that have been held, villagers were not being provided information ahead of time in order to review the project so that they would be able to raise pertinent questions or provide informed comments. In addition, the information that was provided was delivered in language that was too technical for villagers to easily understand.

While the Resettlement Plan claims that public information meetings were held with affected persons in each village prior to, and following the initial land survey process, in contrast, the Resettlement Plan's own summary shows pre-survey consultations in only four villages, all of which allegedly occurred on the same day.¹⁵ Furthermore, the Karen Human Rights Group reported in March 2015 that only one of the affected communities had been consulted at that time, despite the fact that the Resettlement Plan claims that all consultations had occurred by November 2014.¹⁶ In the one village where consultation did occur by March 2015, Thayar Gone, ADB representatives did not provide any information when villagers asked whether they would receive compensation for their lost land.¹⁷ Despite the lack of any meaningful consultation, survey teams had been seen placing signs and concrete markers along the planned highway route since late 2014. These route markers have caused villagers along the route to “feel under threat due to not knowing if and when their property will be taken over, when the road construction will start and whether or not they will receive fair compensation.”¹⁸

¹⁵ Resettlement Plan, p. 30.

¹⁶ KHRG. The Asia Highway: Planned Eindu to Kawkareik Town road construction threatens villagers' livelihoods, p. 1

¹⁷ KHRG. The Asia Highway: Planned Eindu to Kawkareik Town road construction threatens villagers' livelihoods, p. 2.

¹⁸ KHRG. The Asia Highway: Planned Eindu to Kawkareik Town road construction threatens villagers' livelihoods, p. 3.

The subsequent release of the Resettlement Plan project document did nothing to assuage villagers' fears or to provide meaningful information concerning fair compensation. Instead, the Resettlement Plan presents only preliminary figures, without any explanation for their basis or calculation, and promises that the compensation rates will be updated prior to finalization of the Resettlement Plan.¹⁹ Adding to the Resettlement Plan's opaque, confusing nature, the document states in one section that compensation will be disbursed in "Q1 2016 prior to rainy season,"²⁰ while the implementation schedule estimates that compensation will be disbursed "from Sept 2016."²¹

Even if ADB and MoC had properly informed and consulted with the affected villagers prior to beginning the Project's implementation, the lack of clarity with regards to formal land rights in Burma/Myanmar make it difficult, if not impossible, for affected persons to truly provide prior informed consent. As Human Rights Watch has warned²²:

"There are growing problems in Burma with land confiscation and inadequate compensation, particularly for farmers. Burma should enact new land laws that provide security of land tenure for people, particularly small-scale farmers, and meet international human rights standards. Currently farmers cannot use land as collateral since they do not have legal land titles, creating economic hardship and rendering them vulnerable to forced eviction... Too much authority appears to rest with farmland management bodies controlled by the state, including powers to order what can be cultivated on particular land... Land reform should be undertaken together with other legal reforms to ensure access to justice when rights are violated."

As the Resettlement Plan correctly notes, while the 2012 Farmland Law established a system of registered land-use certificates to attempt to document land rights, "mechanisms for realizing this scheme are not yet in place."²³ Displaced persons in Myanmar are also not yet in a position to understand the rights they are giving up, or to advocate for specific types or amounts of compensation. Without clarifying land rights, free, prior and informed consent cannot be effectively obtained. At a time when the Government is finally attempting to formalize the country's land-use management system, the Project only serves to further complicate an already muddled landscape. As such, given that free, prior and informed consent cannot be truly obtained, proceeding with infrastructure projects like the Asian Highway is a clear repudiation of international best practices, which is mandated by the National Land Use Policy. How can an affected person or a governmental official, or an appeal tribunal, effectively participate in a process where the land rights have yet to be clearly delineated?

¹⁹ Resettlement Plan, p. 53.

²⁰ Resettlement Plan, p. 30.

²¹ Resettlement Plan, p. 58.

²² Human Rights Watch, Feb. 2012, as cited in Myanmar at the HLP Crossroads, Displacement Solutions, Oct. 2012.

²³ Resettlement Plan, p. 42.

d) Failed consultations: ADB consultation events and feedback from villagers

Interview One:

ADB has not provided enough time or information for villagers to understand the project well. There is no information about how villagers will be affected, how will they be compensated, what rights do they have and where to express grievances.

According to Nan Moe (pseudonym) from Wei Kayin Village, the MoC came to demarcate the road boundaries in early 2015 and stated that the loss of houses and buildings that were built after 2014 would not be eligible for compensation.²⁴ She said that ADB did come to do a “consultation” and distributed leaflets and documents, but that she didn’t understand anything. She said nobody talked about land issues and ownership issues. During the meeting, villagers asked about compensation, but neither ADB nor MoC were able to give clear answers, only that they would compensate more to those who lose more. Villagers were informed that roadside vendors will have to close their shops during road construction, and would be compensated on a daily basis.

Nan Moe’s daily income from selling food from a roadside shop was 200,000 Kyat per day, but she still doesn’t know whether her house would be compensated, because the project developers have not mentioned anything about paying compensation for houses and buildings. She still does not know whether her house will be affected by the road construction, and throughout the whole process, she has been unsatisfied with the way she has received information relating to the project.

Interview Two:

ADB brought government local staff, local and division police forces to the consultation events, which created an environment where villagers were afraid to speak freely and raise their concerns over the Asian Highway road construction.

“I learned from the village tract officer that ADB would come and do consultations with villagers. The next day, 70 villagers from near Kyone Don City came to join the consultation event. At the consultation event, local police, staff of the Health, Road Transport, and Electrical Power departments and division police forces were present at the consultation meeting. ADB staff often come to meet with government staff at the local office.”

U Thawda (pseudonym) from Kyone Don City, 16 Dec 2015

²⁴ Interview, 15 December 2015.

Interview Three:

It is still not known how compensation will be paid to those who will be affected by the road construction. Experience from the Thin Gan Nyi Naung to Kawkareik highway section, which was funded by NEDA, showed that the compensation was provided by the local government and they decided how much they would pay and which properties they would compensate for. Local villagers could not take part in determining the amount of compensation. In this case, the MoC has allegedly hired a “qualified appraiser to update the unit compensation rates in detail”, but again, decisions will be made without villagers’ input.²⁵

“I learnt about the ADB’s consultation from local village tract officer. They said, our village won’t be affected much from the road construction. They said, they won’t make too much curve but will straighten the road to reduce the impact to the village. They also said that they will not pay for houses and buildings that are built on the designated road areas. I don’t believe they would give us what we want and I know that the local government staff are corrupted and they will not pay full compensation to us”

U Chit (pseudonym) from Lone Nya, 17 December 2015

e) It remains unclear how many people will lose their land

The Resettlement Plan explains impacts that road construction is expected to have on local people, and how MoC plans to minimize impact and “improve, or at least restore, livelihoods and living standards of affected households while allowing them to maintain their cultural identity.” It goes on to say, “It is designed to provide full compensation to all individuals who stand to lose their respective houses, lands, or other livelihood assets due to construction and/or upgrading of the road.” The document states that a total of 114 households (528 people) will be affected by the project.²⁶

However, this number does not appear to account for the many more households who are worried they will lose their land and property to the planned government Right of Way, extending 35 meters on either side of the roadway. Instead, the MoC only considers impacts on land within the 2.5 meters they are expanding on either side of the roadway, or on small sections where they creating a new alignment. This is of little help to villagers who are not included in the Resettlement Plan, but have seen Right of Way markers erected on their land, and fear that the government will take their land without compensation. According to a video report by Voice of America²⁷, in Thayar

²⁵ Resettlement Plan, p. 2.

²⁶ Resettlement Plan, p. 1.

²⁷ Voice of America. Trouble on the New Asian Highway in Myanmar, October 2015.

Gone village, the government put up signs saying that certain areas now belong to the government, even though those areas are located on land that villagers have been living on for generations. Villages reported that no dialogue took place before any of the signs were posted.

f) The Ministry of Construction

A major concern is that the Myanmar Ministry of Construction (MoC) and its approved contractor, the China Road and Bridge Construction Co. Ltd, will be carrying out the Project. Experience from the past has shown that Government agencies in Myanmar are corrupt and ineffective.²⁸ Past projects carried out by the MoC in Karen State have utterly failed to safeguard the rights of affected communities, most recently in the new Asian Highway alignment section financed by NEDA. The ADB claims it can ensure that the safeguard policies are followed, but however the evident reality is that they are too disconnected from what is really happening on the ground in Karen State, and have no way to hold the MoC accountable if it fails to follow the guidelines.



This road will be expanded by 35 meters on each side into existing farmland, and villagers have been told that these areas are slated for road construction and will not be eligible for any compensation. [Photo credit : THWEE]

²⁸ Khaing Sape Saw. 13 April 2015. "Tackling Myanmar's Corruption Challenge." Focus Asia Perspectives & Analysis, no. 13. Institute for Security & Development Policy. <http://isdpeu.com/content/uploads/publications/2015-khaing-corruption-myanmar.pdf>. See also Trautwein, Catherine. 28 January 2016. "Close to bottom of corruption index but improving slightly." Myanmar Times. <http://www.mmtimes.com/index.php/national-news/nay-pyi-taw/18688-close-to-bottom-of-corruption-index-but-improving-slightly.html>.

VII

The MoC's Resettlement Plan improperly prioritizes economic compensation

Both ADB policy and international best practices are clear that land-based resettlement is the preferred option in cases of involuntary land acquisition. In fact, ADB safeguard policy stipulates that its borrowers can only consider compensation options not based on land, if the borrower presents evidence to ADB to demonstrate that replacement land either does not exist, or is unaffordable. ADB safeguard policy states that land-based income restoration is the preferred option in rural areas because livelihoods of the displaced are generally based entirely on land. This approach is also favored by the UN FAO and the World Bank.

In such situations, the UN FAO requires resettlement on alternative land “when the loss of their land means a loss of their livelihoods and they are unable to use financial compensation to purchase similar land elsewhere or to find new ways to earn a living.”²⁹

Similarly, the International Finance Corporation requires that “[e]conomically displaced persons whose livelihoods or income levels are adversely affected will also be provided opportunities to improve, or at least restore, their means of income – earning capacity, production levels, and standards of living.”³⁰ The reason for this is simple: “Resettlement without income restoration undermines project development of objectives and risks swelling the numbers of poor rather than achieving ADB’s mission of reducing them.”³¹ According to ADB’s country director for Myanmar, while growth is important, “[a]t the same time, it is necessary to raise the income of families in rural areas. You have to make sure nobody is left behind.”³²

Despite widespread recognition of the principle of replacing land that is taken with other land, rather than with financial compensation, the Resettlement Plan almost entirely relies on cash payments. In fact, the Resettlement Plan estimates that only four

²⁹ FAO Handbook, Housing and Property Restitution for Refugees and Displaced Persons, pp. 38-39. <http://www.fao.org/3/a-ai31e.pdf>; see also IFC Performance Standard 5 (stating that where livelihoods of displaced persons are land-based, they must be offered land-based compensation).

³⁰ IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement. January 2012. http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/performance+standards/enviro nmental+and+social+performance+standards+and+guidance+notes.

³¹ ADB Safeguards, p. 58.

³² Khine Kyaw. New Myanmar govt faces test, The Nation, Apr. 1, 2016.

households will be resettled to another site, out of the approximately 114 households that the MoC considers to be affected by the Project.³³ As mentioned previously, there are even more households along the highway that are affected by the Right of Way extension, but are not eligible for even financial compensation. This leaves a vast majority of the affected households with far less land and financial compensation that cannot fully make amends for the loss of livelihood associated with the loss of land.

ADB fails to meet its own safeguards policy principles by approving the MoC loan:

As stated in Asian Development Bank, *Involuntary Resettlement Safeguards: A Planning and Implementation Good Practice Sourcebook* (p. 7), the assistance that is provided to economically and physically displaced persons is meant to achieve the following:

- “a) Secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities;
- b) Transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and
- c) Civic infrastructure and community services, as required.”

The Resettlement Plan seriously fails to satisfy ADB or international best practices not only because it provides cash compensation rather than land resettlement to the vast majority of displaced persons, but also does not provide anywhere near adequate compensation to protect and maintain the livelihoods of displaced persons.

In theory, business owners and employees who lose their businesses and jobs to the project will be given a cash allowance of one month income; vulnerable people (households below the poverty line or headed by a woman or a disabled person) are given three months allowance based on the minimum subsistence level; farmers who lose crops will receive cash assistance equivalent to six years value of crops in areas that can no longer be cultivated.³⁴ Nowhere, however, does the Resettlement Plan explain how the MoC arrived at these figures, or how such compensation will adequately account for the livelihoods that are being lost.

³³ Resettlement Plan, p. 2.

³⁴ Resettlement Plan, pp. 47-50.

In fact, the entire “Income Restoration and Rehabilitation” section of the Resettlement Plan consists of only one page and does not explicitly include a detailed assessment of needs and preferences for income restoration.³⁵ Yet nevertheless, the Project moves forward despite not knowing what the displaced persons will need or want in order to maintain their livelihoods.

There is also a lack of clarity concerning the status of homes that are located within the soon to be established Right of Way (ROW). The Resettlement Plan provides that: “Households who have remaining land they occupy within the Right of Way and opt to move/rebuild their house on to such land with permission of relevant authorities will be provided written guarantee of security of tenure.”³⁶ However, in this case it is not clear who the relevant authorities are, the extent to which affected villagers will provide the necessary permission to move a house within the Right of Way, or what is meant by a written guarantee of security of tenure. The Resettlement Plan must be amended to detail specifically what form this guarantee will take, and what rights it grants, to ensure that displaced persons retain all of their land rights in regards to land within the expanded Right of Way.

The Resettlement Plan also does not establish the necessary monitoring systems to ensure that resettlement and compensation occur fairly. ADB safeguard policy requires the establishment of both a resettlement unit and an external resettlement monitor for projects with significant resettlement impacts.³⁷ However, the Resettlement Plan makes no mention of a resettlement unit, and states only that the MoC will hire an external resettlement monitor in the coming months. Furthermore, ADB requires the establishment of an independent advisory panel during project preparation and implementation for highly complex and sensitive projects.³⁸ Despite being well beyond the preparation phase, and close to Project implementation, the Resettlement Plan does not identify an independent advisory panel. Such a panel, if properly constituted, would be well-suited to advise the MoC and ADB of the deficiencies in the Project preparation process, and likely would have called attention to many of the problems with the Resettlement Plan at a much earlier stage. Instead, watchdog organizations such as the Karen Human Rights Group and the Karen Peace Support Network have assumed the role of external monitors from afar, without the support and access that a typical monitor would enjoy.

³⁵ Resettlement Plan, p. 52.

³⁶ Resettlement Plan, p. 47.

³⁷ ADB Safeguards, pp. 67, 73.

³⁸ ADB Safeguards, p. 43

VIII

The MoC's proposed Grievance Redress Mechanism is inadequate and ambiguous

A robust and accessible grievance redress mechanism is essential to the protection of the rights of displaced persons, as without a legitimate ability to challenge resettlement actions, the government is left free to ignore the interests of displaced persons without fear of repercussions. Recognizing this significant factor, ADB's resettlement policy mandates the adoption of a robust grievance redress mechanism that incorporates the following principles:³⁹

- (i) Personnel investigating complaints and determining response should be separate from those involved in day-to-day project management;
- (ii) Involve communities in procedure design;
- (iii) Procedures should be easy to understand and known to all;
- (iv) Honor multiple methods of communication;
- (v) Consider cultural norms regarding reporting;
- (vi) Reporting stations where community liaison officers can collect oral complaints and record them in writing; (vii) Informal complaint methods such as phone texting; and
- (viii) Provide protection for retribution.

³⁹ Summarized from ADB Safeguards, Article 141, pp. 50-51.

The Resettlement Plan addresses the creation of a grievance procedure, which will be “established to allow [displaced persons] to appeal any disagreeable decision, practice, or activity arising from implementation of the Project.”⁴⁰ However, the true scope of the grievance mechanism is not clear from this vague and ambiguous language. A grievance process that is open to all must allow for challenges to any aspect of the Project and the phrase “disagreeable decision, practice, or activity” must not be interpreted in a way so as to limit the ability of displaced persons to bring challenges.

Most problematic is that grievance procedure described in the Resettlement Plan does not sufficiently protect the rights of displaced persons so as to comply with ADB and international safeguards, and merely pledges to involve stakeholders in discussions concerning the actual structure and process. The initial challenge is heard by a local point of contact, although this individual’s relationship to the Project is not clarified. According to the Resettlement Plan, in order to appeal the decision of the local point of contact, the displaced person must file an appeal in writing with the Grievance Redress Group (“GRG”) within three days of the decision. The GRG includes MoC staff, a Construction Supervision Resettlement Consultant, a Lands Officer, the local point of contact, and two members of the community. The GRG then holds a hearing, at which the displaced person must provide proof in support of his or her claim. The displaced person can subsequently appeal the GRG decision to the District GRG.⁴¹

This structure is prohibitively burdensome on displaced persons, particularly the three-day period in which the challenger has to file a written appeal of the decision of the local point of contact. Other potential pitfalls include the composition of the GRG, the burden of proof resting on the displaced person, and the failure to provide for a trained advocate. In reality, such requirements limit any appeal to those who: (i) are either literate or have the means to obtain assistance; and (ii) are able to act within the three-day time limit. The consequence of such limitations is that the vast majority of challenges will never make it past the point of local contact to reach higher authorities.

Even for those rare cases that do reach the GRG, the group is made up almost entirely of people involved in the day-to-day management of the Project, and thus cannot produce a fair and impartial ruling. This Project cannot move forward without an open and accessible grievance redress mechanism, for the sake of the communities that it claims to benefit. Such a system should include the principles advanced by the ADB, including allowing for multiple methods of communication, establishing reporting stations where local officers can collect oral complaints of displaced persons and record them in writing, and formally recognized protections against retribution that will encourage displaced persons to seek to protect their interests. Only then will displaced persons have a truly accessible outlet through which to voice their concerns regarding the resettlement process.

⁴⁰ Resettlement Plan, p. 34

⁴¹ Resettlement Plan, p. 39.

IX

Risks to the Peace Process and civilian safety

The project site of the Asian Highway transverses through an area that is extremely sensitive with regards to the ongoing peace process, which has already encountered countless setbacks. ADB even admitted, “ADB has limited recent experience in Myanmar and the MoC’s capacity for managing internationally-assisted projects is similarly limited. Thus, it is considered a complex project.”⁴² It has perhaps underestimated the situation when in its concept note, under the section “Other social issues and risks,” they also label “creating political instability” as low risk and “creating internal social conflicts” as medium risk. The fact that the ADB perceives these two social issues as low and medium risks is hugely problematic, especially when considering the exceptionally long and ongoing history of internal armed conflict and displacement in the region.

a) Conflict and displacement

The security situation in the area near the Asia Highway is very unstable, and renewed violence could flare up at any time between the various armed groups that are stationed near the Asian Highway route. The armed groups in the area have an economic interest in controlling the highway route in order to procure taxes and informal fees on trade, while the Myanmar Army seeks to control the flow of resources into armed groups’ controlled territory, and similarly extract economic benefits from the highway trade.

The Karen Peace Support Network attributes recent outbreaks of fighting to competing claims over territory along the Asian Highway.⁴³ Starting in July 2015, clashes between the DKBA splinter group and the joint forces of Myanmar Army and BGF displaced over 1,000 people (117 households) from four villages.⁴⁴ They were forced to flee their homes and seek shelter at monasteries in Kawkareik Town. The schools in these villages were forced to close temporarily out of fear for the safety of students. The villagers also feared that they would be forced to carry supplies for the Myanmar Army soldiers if they stayed in their villages, as has frequently happened in the past.

⁴² ADB Concept Note for Eindu to Kawkareik Road Upgrade Project, p. 4.

⁴³ Karen Peace and Support Network (KPSN). “Asian Highway project undermines peace in Karen State”. <http://www.burmapartnership.org/wp-content/uploads/2015/07/KPSN-Asian-Highway-Statement-1.pdf>

⁴⁴ KHRG. “Fighting between Myanmar Army and DKBA soldiers along the Asian Highway displaces villagers in Dooplaya district, July 2015.” 3 September 2015.

While villagers were on the run, their belongings, property, livestock and many other belongings were stolen or lost. According to research conducted by THWEE, the monetary value of the losses in each village ranged from 15 to 20 million Kyats. Since farming is essential for their daily lives, this situation has caused social and economic problems for villagers.

At the time of research in November 2015, 480 villagers from the Kawkareik area had yet to return to their villages since they fled in July because BGF forces have continued to station themselves nearby or in their villages. At the time of this report’s publication in August 2016, with the exception of 15 of the households from Pyar Pin village, all villagers have returned to their homes. In order to avoid new clashes between DKBA and BGF, their return home has been postponed even longer. Some villagers do not dare to work in their farmlands because it is contaminated with the remains of mortar shells and other unexploded ordinance that were fired and left behind by either the BGF or DKBA.

The most recent violent incidents took place from the 23rd till the 26th of January, 2016, as well as two separate incidents in May and August 2016. The January conflict was initiated when a splinter faction of the Democratic Karen Benevolent Army (DKBA) was fought against the Myanmar Army and the BGF. On January 25th, 2016, the splinter group of the DKBA issued a warning letter urging villagers to leave their villages temporarily. On the same day, 10 houses were burned down in the Pyar Pin village in Kawkareik by the BGF.⁴⁵ Currently, 5 Myanmar Army battalions and 2 BGF battalions have been reinforced in the area of Noela, Pyar Pin, Kaung Mu, Yangote, Mi pa Lae, and Naung Kain villages, all in the vicinity of the Asian Highway.⁴⁶

Although the violence displacing villagers may not be directly caused by Asian Highway construction process, it is clear that rising tensions over control of an important new trade route has led to violence and fighting. It is also clear that large-scale infrastructure development projects like the Asian Highway have many unanticipated impacts and domino effects that are not taken into consideration by development actors and financiers. As a result of the economic imperatives of the various armed groups and national level economic policies, the communities in the area suffer.

Numbers of household displaced due to the conflict in July 2015

No	Village	Household	Villagers	Male	Female	Note
1	Pyar Pin	33	180	65	115	15 households yet to return (Aug 2016)
2	Kaung Mu	40	223	99	124	Returned
3	Zaw Hae	33	195	105	90	Returned
4	Ywa Thit Kone	11	77	39	38	Returned

⁴⁵ Lawi Weng. DKBA Splinter Group, Govt Army and Allied BGF Clash in Karen State. 26 January, 2016. <http://www.irrawaddy.com/burma/dkba-splinter-group-govt-army-and-allied-bgf-clash-in-karen-state.html>.

⁴⁶ <http://kicnews.org/2016/01/ဘေးလွတ်ရာ-ရှောင်ရှားကြရ/>

b) Villagers' houses burnt down

A community member from Tha Nay Moo village, Kawkareik Township, reported fresh armed clashes between the Myanmar Army and the DKBA in January 2016, not far from Pyar Pin village. The fighting resumed when the Myanmar Army and the Border Guard Force cleared the DKBA splinter group from the Asian Highway segment that had been built between Thin Gan Nyi Naung and Kawkareik. Many villagers' homes were burnt down by the Myanmar Army and BGF during the clashes in Tha Nay Moo. Nine houses were burned down in the first round of fighting, then the soldiers returned and burned more of the homes. Out of 20 houses in this village, only 4 homes were spared from destruction.

After fighting had ceased, Myanmar Army and BGF soldiers asked villagers to return to their village, but they simply did not have the means to rebuild their houses. None of the villagers dared to return to their village until March 2016, but even then, they still had to fear leftover landmines scattered in nearby areas. Myanmar Army soldiers continue to pass through Tha Nay Moo village every day, making it difficult for villagers to recover a sense of normalcy in their daily lives.



The photos were taken by a KHRG-affiliated community member in March 2016 in Tha Nay Moo village, Kawkareik Township. [Photo credit : KHRG]

Since the start of the Asian Highway road construction, researchers and civil society have observed a consistent trend of armed clashes breaking out between the military and armed groups. At the national level, there is a clear need for a fair power sharing system between central government and the state/region governments, as the Myanmar government’s centralized decision making has not adequately addressed the needs of communities in the ethnic states. At the local level, there is a great need for clear political agreement over control of the Asian Highway route, benefit sharing, and livelihood restoration for the communities. All infrastructure or economic development projects should include a conflict impact assessment and mitigation plan, as well as a fair land ownership and livelihood restoration program, with fair implementation to avoid further harm to communities.

c) The Resettlement Plan does not address how the Project will affect the ongoing peace process

In order to understand the true impact of the Project on the people of Myanmar, ADB and the MoC must consider the Project’s social impacts, particularly as it affects the ongoing efforts to achieve peace within the country, and particularly in Karen State. As noted by the International Association for Impact Assessment, “projects can create opportunities and benefits for people, but at the same time they can also create harmful effects... good management is needed to ensure that the benefits of a project are maximized and the negative impacts are avoided on an ongoing basis during the life of the project.”⁴⁷

Unfortunately, southeastern Myanmar’s recent history demonstrates the negative impacts road projects can have on the peace process and the safety of those in the affected regions. The fighting has killed local villagers, disrupted trade, and prevented children from going to school. This situation follows a familiar pattern seen elsewhere in Myanmar’s ethnic areas, where large-scale development projects take place in active conflict zones. Development projects move forward under temporary and fragile ceasefire agreements, leading to increased militarization, which in turn reignites conflict. Put simply, development can promote peace and improve material standards of living, but can also result in persistent conflict and displacement.⁴⁸

ADB itself has identified the peace process as a potential risk to Project implementation, and will “monitor the emerging peace process and engage with key stakeholders, including ethnic armed organizations.”⁴⁹ ADB’s safeguard policy also requires the establishment of an independent advisory panel for highly complex and sensitive projects, which the borrower should engage to determine whether its project activities are complying with ADB social and environmental safeguards.⁵⁰

⁴⁷ Social Impact Assessment, International Association for Impact Assessment, April 2015, p. 1.

⁴⁸ Critique of Japan International Cooperation Agency’s Blueprint for Development in Southeastern Burma/Myanmar, Karen Peace Support Network, September 2014, p. 12.

⁴⁹ Risk Assessment and Risk Management Plan, Asian Development Bank.

⁵⁰ ADB Safeguards, p. 43.

As a result of the unrest and violence caused by prior construction of the Asian Highway, the Karen Peace Support Network has called on development actors financing large-scale development projects in Karen State, including ADB, to “re-evaluate their approach to be conflict-sensitive.”⁵¹ ADB and other development actors should “align their strategy according to recent political developments on the ground, in order to reduce risk to their investment and reputation.”

Despite these warnings and the potential negative impacts the Project could have on the ongoing peace process, the MoC did not establish an independent advisory panel and there is no indication that a thorough conflict impact assessment on the ongoing peace process has been or will be conducted. Recent history has shown what can be expected if the Project continues without properly taking the peace process into account: increased militarization, unrelenting conflict, and repeated casualties suffered by innocent villagers and bystanders. Development can complement peace, but the two must work hand-in-hand in order to do so. As it currently stands, the Resettlement Plan prioritizes development at the expense of peace.



Construction truck on the Asia Highway road link from Thin Gan Nyi Naung to Kawkareik [Photo credit : KESAN]

⁵¹ Karen Peace Support Network. Asian Highway project undermines peace in Karen State, p. 2. 10 July 2015.

X

Conclusion

None of the villagers interviewed were given the opportunity to file claims or formally contest their claims to compensation or the way in which their land was confiscated. It is beyond the scope of this paper to comment on the dysfunction of the court systems in Karen State. However, villagers told us they did not even consider trying to use the courts to seek redress, as their perception is that doing so would not achieve a positive result. After extensive investigation, it appears that no effective ‘grievance mechanism’ was put in place to provide communities impacted by the Asian Highway project from Myawaddy to Kawkareik, an opportunity to address their concerns or complaints. Although ADB has outlined its own accountability mechanism⁵², it is essential that it be made easy for affected people to understand, navigate, and actually put into practice.

Although proponents of the Asian Highway / EWEC project claims that it will improve the livelihoods and living standards of villagers in the surrounding area, the project has already impacted and will continue to severely damage the livelihoods of many, if international safeguards are not followed. Development actors and financiers need to understand that monetary compensation is not comparable to the loss of productive farming land and the loss of livelihood. For the two phases of the Asian Highway project in Karen State, it appears that NEDA, the Ministry of Construction and the ADB have not taken into consideration that many villagers feel that no amount of monetary compensation for their lands would ever be enough for them, and that monetary compensation is not the equivalent to the restoration of livelihoods.

Not only does the ADB-approved Resettlement Plan by the Ministry of Construction fail to meet ADB’s own safeguard standards, it also does not provide satisfactory solutions for the problems they will inflict on affected villagers. Villagers clearly have not been included in meaningful consultations or been given sufficient information, and their fears and concerns have not been addressed adequately. The Asian Highway project has not been fully completed, but the ADB has already gone astray from its promises. In order to prevent this trend from continuing and making the situation worse than it already is, the ADB should take immediate action and urge the Myanmar government and companies implementing the project to change their approach.

If the ADB and the Myanmar government truly want to achieve sustainable development and alleviate poverty, they must listen to and seriously address the local communities’ grievances and provide them with tangible benefits, instead of further marginalization and more empty words.

⁵² ADB. Accountability Mechanism Policy. 2012. <http://www.adb.org/sites/default/files/institutional-document/33440/files/accountability-mechanism-policy-2012.pdf>.

XI

Recommendations

An open and transparent resettlement, compensation, and sustained livelihood rehabilitation process should have been established before the project groundwork was implemented. The free, prior, and informed consent of affected individuals and families must be obtained before project development processes are set in motion. This failure should be remedied without further delay with all potentially and actually affected families fully informed of the resettlement plans and compensation processes to enable them to seek remedy.

To Neighboring Countries Economic Development Cooperation Agency (NEDA) and Thai investors:

1. Thailand government institutions and other development actors financing large-scale development projects in Karen State should re-orient their approach to be more conflict-sensitive. Thai institutions should avoid being complicit in conflicts, human rights violations, and environmental abuses that are associated with the projects to reduce risks to their financial investments and Thailand's international reputation.
2. An independent Environmental and Social Impact Review of the Thin Ga Nyi Naung to Kawkareik highway section should be commissioned and implemented without delay to:
 - i. Identify and adequately assist those displaced, dispossessed or suffering damage to their livelihoods along the highway route and in nearby communities as a result of repeated armed clashes and both official land expropriation and unofficial land grabbing.
 - ii. Identify the extent of soil, stream, biodiversity and forest degradation that has occurred and how it can be effectively remediated.
3. If any Environmental and Social Impact Assessment (ESIA) has been conducted for the Thin Gan Nyi Naung to Kawkareik section of the Asian Highway, the Myanmar government and NEDA should promptly make it publically available.

To the Myanmar government, the Ministry of Construction (MoC), and Asian Development Bank (ADB):

4. A process for clarifying land tenure that is transparent, impartial, and inclusive must be established for all land areas that the Asian Highway project encompasses.
5. Suspend further development of the Asian Highway / East-West Economic Corridor until an independent Strategic Environmental Assessment (SEA) is conducted to identify, avoid, and mitigate environmental impacts that the entire highway corridor will have in Karen State, including on habitat fragmentation, air and water pollution, flooding and erosion, and public health.
6. ADB and MoC should make immediately available to potentially affected people in accessible language, all information needed to understand how the Asian Highway project can negatively affect their land, livelihood and environment, especially in regard to involuntary resettlement.
7. ADB and the Myanmar government must establish substantive, credible and inclusive partnerships and consultative processes with all affected peoples, local civil society organizations and representatives, in order to ensure the sustainable and equitable development that benefits local communities and mitigates risks to the ongoing peace process.
8. Those who will be displaced by the Kawkaik-Eindu highway section construction process must be given the choice of adequate resettlement options, either with replacement land and formal land title or adequate financial compensation and other support allowing restoration of socio-economic circumstances to equal or better conditions, in accordance with international best practices.
9. A credible, accessible and transparent grievance mechanism should be established to address abuses of indigenous and human rights, as well as threats to safety and security.
10. Given the serious conflicts noted in the report and the media, a comprehensive peace and conflict assessment must be conducted and potential sources of future conflicts be resolved before further project construction is implemented.

To ADB:

11. The ADB must ensure that the Myanmar government and Ministry of Construction adhere to ADB's safeguard policy, and if its borrowers fail to do so, that appropriate measures are taken to address these shortcomings.
12. The ADB must fulfill its responsibility to ensure that the Myanmar government and Ministry of Construction make contact and negotiate with all affected people in good time and with transparency regarding clear demarcation of project affected areas, compensation, resettlement and livelihood support options.

13. The IEE that has been conducted is insufficient in scope to address the many long term impacts on both environment and communities of a major transport route linking rapidly expanding industrial zones. A comprehensive ESIA or SEA should be done using Terms of Reference (ToR) that covers the full range of short to long term impacts, not just those of the immediate construction work.

To companies/contractors:

14. Respect the human rights and property of local communities. Refrain from use of equipment to damage buildings, crops, or land of people whose relocation and resettlement cases remain unresolved.

To Myanmar government, Myanmar Army, and BGF:

15. Government forces must respect the Nationwide Ceasefire Agreement and halt military activities in the area and refrain from further provocations, avoid targeting civilian areas and prevent further harm to local communities, and agree to and abide by a military code of conduct and territory that is achieved through dialogue.

To Democratic Karen Buddhist Army:

16. Respect the lives of civilians, and avoid confrontations that endanger local communities' safety and security.
17. The DKBA should adopt non-violent approaches to resolving territorial disputes.

To KNU:

18. The Karen National Union (KNU) leadership should remain mindful of their primary responsibility as de facto representatives and protectors of the Karen peoples. Their actions should be consistent with the concerns of Karen society to bring about fair and peaceful resolution of current land, indigenous and human rights disputes along the Asian Highway.

Index 1: Known and recorded cases of conflict around the Asian Highway in Karen State

No	Date	Location	Conflict actors	Remarks
1	September 18, 2014	Aung Shwe Bo section of Myawaddy	Myanmar Army, BGF vs DKBA	Myanmar Army troops opened fire on a truck driven by the DKBA soldiers that refused to stop for questioning. One DKBA soldier was shot dead and another injured.
2	September 27, 2014	Myawaddy Township, Karen State, Kyaikmayaw, Mon State	Myanmar Army vs DKBA	Heavy fighting breaks out between DKBA and government forces in Myawaddy, Karen State. The Friendship Bridge that links Mae Sot to Myawaddy is closed for security reasons. Heavy fighting between DKBA and government forces also takes place in Kyaikmayaw, Mon State and lasts throughout the weekend.
3	October 7, 2014	Me Zine Taung Chay, Kawkareik Township	DKBA vs Myanmar Army (BGF)	Fighting first breaks out at Me Zine Taung Chay.
4	October 10-17, 2014	Me Zine Taung Chay, Kan Nyi Naung, Waboe Taung, Mae Tha Waw, Kawkareik Township	Myanmar Army and BGF vs DKBA	Fighting erupts at Me Zine Taung Chay, Kan Nyi Naung, Waboe Taung, and Mae Tha Waw. Heavy fighting between DKBA and government forces in Kawkareik Township. Fighting continues at Kan Nyi Naung village, and Kan Nyi Naung and Waboe Taung villages are subjected to mortar shelling.
5	October 10-11, 2014	Kaung Mu village in Kawkareik Township	Myanmar Army, BGF vs DKBA	DKBA and Myanmar Army break out in Kaung Mu village, and mortar fire the following day kills four civilians at the Ah-lae Po-htaw camp, near Myawaddy-Kawkareik road. Road is closed due to conflict.
6	February 27-28, 2015	Kawkareik Township	Myanmar Army and BGF vs DKBA, Myanmar Army vs KNLA	One skirmish took place between the BGF and KNLA, resulting in the death of one KNLA soldier. Another skirmish took place between the Myanmar Army (with the BGF) and the DKBA, leading to the death of one DKBA soldier, two BGF soldiers and one Myanmar Army soldier.
7	March 10-11, 2015	Near Kawkareik Town	DKBA and Myanmar Army	Myanmar Army began heavy fire on DKBA position. Fighting was lasted for one week and spread to other parts of Karen State

No	Date	Location	Conflict actors	Remarks
8	July 2-6, 2015	Area between Kawkareik Town and Myawaddy, including Ta Dan Khu, Sin Gone Paing, Pyar Pin villages	Myanmar Army vs DKBA group led by Brig. Gen. Kyaw Thet	Myanmar Army launch sustained attacks to clear a DKBA camp to secure the area for the Asian Highway opening ceremony, displacing more than 1000 villagers from 5 different villages in Kawkareik Township along the Asian Highway. Fighting continued sporadically throughout the month and spread to other parts of Karen State.
9	July 6-7, 2015	Mae Tha Waw village, Hlaing Bwe Township	Myanmar Army vs DKBA splinter group	Myanmar Army soldiers attacked a DKBA camp near Mae Tha Waw village, and two villagers were killed.
10	July 17, 2015	Kawkareik Township	Myanmar Army vs DKBA splinter group led by Col. San Aung	Fighting between DKBA and BGF caused villagers to flee for safety in Kawkareik Town and other locations.
11	July 21, 2015	Kaw Tha Wa Mountain, Hlaing Bwe Township	Myanmar Army vs DKBA splinter group	Villagers reported fighting between DKBA and Myanmar Army battalions near Kyaikdon Town.
12	August 29, 2015	Kawkareik Township	BGF vs DKBA splinter group	DKBA splinter group troops fired on a village where BGF troops were stationed.
13	October 8, 2015	Hlaing Bwe Township, Kaw Moo village	Myanmar Army vs DKBA splinter group	Increased military presence of Myanmar Army BGF reported in Hlaing Bwe Township leads to clashes between DKBA and government forces.
14	January 23-26, 2016	Kawkareik Township	DKBA splinter group vs BGF	DKBA warned villagers to relocate, and BGF burnt down 10 houses of villagers.
15	May 11, 16, 2016	Pyar Pin village, Kawkareik Township	DKBA splinter group vs Myanmar Army and BGF	Two Myanmar Army battalions and two BGF battalions skirmished with DKBA splinter group.
16	August 4, 2016	Kaw Nwei and Ta Dan Khu villages, Kawkareik Township	DKBA splinter group vs BGF	BGF battalion skirmished with DKBA splinter group. Four villagers were severely injured by artillery shelling.

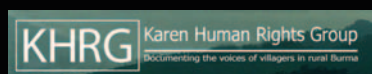
Sources:

- 1 <http://karennews.org/2014/09/deadly-fighting-breaks-out-between-burma-army-and-karen-armed-groups- border-crossing-closed.html/>
- 2 <http://www.irrawaddy.com/burma/heavy-fighting-erupts-near-myawaddy-residents-flee-homes.html>;<https://monnews.org/2014/09/29/heavy-fighting-breaks-dkba-govt-troops-residents-flee-safety/>.
- 3 Karen Rivers Watch. Afraid to Go Home: Recent Violent Conflict and Human Rights Abuses in Karen State. 7 November 2014.
- 4 Karen Rivers Watch. Afraid to Go Home: Recent Violent Conflict and Human Rights Abuses in Karen State. 7 November 2014; <http://kicnews.org/2014/10/တော့ကရိတ်မြို့နယ်အတွင်း-2/>.
- 5 <https://monnews.org/2014/10/13/artillery-mortar-fired-unknown-armed-group-kills-4-injures-twelve/>; <http://www.irrawaddy.com/burma/fighting-karen-state-forces-villagers-flee.html>.
- 6 <http://khr.org/2015/04/15-3-nb1/two-separate-clashes-between-armed-actors-kawkareik-township-dooplaya- district.>
- 7 <http://karennews.org/2015/03/dkba-and-burma-army-fighting-forces-kawkareik-traffic-to-a-standstill.html/>.
- 8 <http://khr.org/2015/09/15-15-nb1/fighting-between-tatmadaw-and-dkba-soldiers-along-asian-highway-displaces.>
- 9 <http://khr.org/2015/08/15-13-nb1/recent-fighting-between-tatmadaw-and-dkba-soldiers-leads-killing-and-displacement.>
- 10 <http://khr.org/2015/09/15-15-nb1/fighting-between-tatmadaw-and-dkba-soldiers-along-asian-highway-displaces.>
- 11 <http://khr.org/2015/09/15-15-nb1/fighting-between-tatmadaw-and-dkba-soldiers-along-asian-highway-displaces.>
- 12 <http://khr.org/2016/07/16-20-s1/dooplaya-situation-update-kawkareik-township-august-october-2015.>
- 13 <http://www.irrawaddy.com/burma/dkba-splinter-group-clashes-with-bgf-in-karen-state.html.>
- 14 <http://www.irrawaddy.com/burma/dkba-splinter-group-govt-army-and-allied-bgf-clash-in-karen-state.html.>
- 15 <http://kicnews.org/2016/05/မြန်မာအစိုးရ-ပူးပေါင်းတ/>.
- 16 <http://www.dvb.no/news/dkba-bgf-clash-karen-state/69147.>



THWEE COMMUNITY DEVELOPMENT NETWORK

Thwee Community Development Network is a non-profit local community based organization that is working towards social change, rule of law, human rights and sustainable development. It carries out research, and provides capacity building and awareness-raising to serve the needs of local communities.



KHRG is an independent local organisation committed to improving the human rights situation in Burma by projecting the voices of villagers and supporting their strategies to claim human rights. We aim to increase villagers' capability and opportunity to claim their human rights, and ensure that their voices, priorities and perspectives influence decision makers. We encourage other local and international groups and institutions to support villagers' self-protection strategies.



The Karen Environmental and Social Action Network (KESAN) is a community-based, non-governmental, non-profit organisation that works to improve livelihood security and to gain respect for indigenous people's knowledge and rights in Karen State of Burma.

Construction is taking place on Asia Highway road link from Thin Gan Nyi Naung to Kawkareik [Photo credit : KESAN]

Road projects have the potential to bring benefits for rural communities in Karen State, but only if implemented in a democratic and transparent manner. The reality is these roads are being built in conflict zones, where massive displacement has already occurred, information is withheld from local communities and civil society, and villagers are vulnerable to human rights violations. Large-scale projects in Karen State should wait until a full peace agreement can be reached, democratic rights guaranteed, and a decentralized federal union achieved. Instead, motivated by the potential for massive profits from cross-border trade, highway proponents have quickly pushed the risky project to completion.

*Karen Peace and Support Network (KPSN)
Asian Highway project undermines peace in Karen State, July 10th, 2015*

