



PUBLIC PARTICIPATION, SOCIAL MOVEMENTS, AND ENVIRONMENTAL DECISION MAKING PROCESS:

Case Study of the Letpadaung Mining Project

Lwin Lwin Wai



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Foreword

The Understanding Myanmar's Development (UMD) Fellowship program, supported by the International Development and Research Centre (IDRC), Canada, is designed to enhance knowledge of Myanmar's development processes, strengthen the capacity of Burmese researchers, and encourage them to actively engage the study of development policy and practice. The fellowship seeks to promote sustainable academic exchange and dialogue among researchers from Myanmar, Thailand, and other GMS countries. Under this program, 30 fellowships have been awarded to midcareer researchers in their respective areas of social and economic transformation, agricultural, environment and climate change, health and health care systems, and social media and innovations.

Lwin Lwin Wai's research examining the protest movements that emerged in opposition to large scale land grabbing involving the Letpadaung copper project in Sagaing Region and the decision making process surrounding the development of the multi billion dollar copper mine, backed by a massive Chinese state owned enterprise, provides some fascinating insight into what clearly became one of the most controversial episodes of Myanmar's democratic transition period. As her extensive field work has shown, the opportunities for villagers affected by the Letpadaung mine to make a meaningful contribution to the decision making process involving the planning and approval of the project were few if any. Raising serious questions about the possibility for genuine public participation with similar future large scale development projects in Myanmar, of which many are expected.

Reading this study it is clear that Lwin Lwin Wai took her role as a researcher and scholar seriously, paying close attention to the voices and experiences of the villagers of Letpadaung, whose continued opposition to the project, in the face of very heavy pressure, resulted in their enduring great hardships.

As China accelerates its ambitious overseas investment and development plans, the trials and tribulations of the people of Letpadaung will in the coming years serve as important lessons not just for Myanmar but the entire South East Asian region as a whole. Lwin Lwin Wai's valuable contribution to the growing body of critical research on development in Myanmar will undoubtedly serve as both a very useful source of information and analysis for further research and also a fine example for future Myanmar scholars to follow.

Chayan Vaddhanaphuti, PhD
Director, RCSDS

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Abstract

Public participation is of crucial importance when it comes to development projects due to the socio-economic impact these projects have on local people and the degradation of the environment they can cause. This paper focuses on the participation of local people and other stakeholders in the Letpadaung Copper Mining Project, currently being implemented by the Wanbao Company of China, the military-owned Union of Myanmar Economic Holdings Limited (UMEHL) and Mining Enterprise 1 (ME-1), a Myanmar state owned company. The Letpadaung Copper Mine Project continues to be a nexus of social conflict due to abuses of power, human rights violations, lack of social justice and the limited participation of stakeholders. Local people have protested against the project with the support of civil society organizations and environmental groups. They also took part in a process of community consultations and even performed a traditional cursing ceremony. There has been a lot of controversy and hence, the project has gained a lot of national and international media attention.

The purpose of this paper is to describe the reality of what is happening in the Letpadaung area as a way to understand the possibilities for public participation in decision-making about development projects in Myanmar today. Public participation is a democratic practice that engages people in the development activities that affect their lives. It can also be considered as a process that makes it possible for different people from different sectors to integrate their opinions into decision-making. This research used qualitative research methods to get information through semi-structured interviews, key informant interviews, group discussion, field notes and observation.

This research will attempt to answer the question: “What role does public participation and stakeholder involvement play in the decision making about development projects in Myanmar, looking specifically at the Letpadaung Copper Mine case?”

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Abbreviations and Acronyms

| | |
|---------|---|
| CSD | Community and Social Development |
| CSOs | Civil Society Organizations |
| ECC | Environmental Conservation Committee |
| ECD | Environmental Conservation Department |
| ECL | Environmental Conservation Law |
| ECR | Environmental Conservation Rules |
| EIA | Environmental Impact Assessment |
| EITI | Extractive Industries Transparency Initiative |
| EMP | Environmental Management Plan |
| ESIA | Environmental and Social Impact Assessment |
| IC | Implementation Committee |
| IEE | Initial Environmental Examination |
| IFC | International Finance Corporation |
| IMT | Independent Monitoring Team |
| KP | Knight Piésold Consulting |
| MATA | Myanmar Alliance for Transparency and Accountability |
| MDGs | Millennium Development Goals |
| ME-1 | Mining Enterprise 1 |
| MEITI | Myanmar Extractive Industries Transparency Initiative |
| MIC | Myanmar Investment Commission |
| MICCL | Myanmar Ivanhoe Copper Company Limited |
| MOECAP | Ministry of Environmental Conservation and Forestry |
| MSG | Multi-stakeholder group |
| MWMCL | Myanmar Wanbao Mining Copper Limited |
| MYTCL | Myanmar Yang Tse Copper Limited |
| NORINCO | North China Industries Corp |
| NCEA | National Commission for Environmental Affairs |

| | |
|-------|--|
| NGOs | Non Government Organizations |
| NLD | National league For Democracy |
| NSDS | National Sustainable Development Strategy |
| OHSAS | Occupational Health and Safety Assessment System |
| S & K | Sabaetaung and Kyisintaung Copper Project |
| SIA | Social Impact Assessment |
| SLORC | State Law and Order Restoration Council, 1988 - 1997 |
| SME | Small and Medium Enterprises |
| SPDC | State Peace and Development Council, 1997 – 2011 |
| UMEHL | Union of Myanmar Economic Holdings Limited |
| UNEP | United Nations Environment Programme |

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1

INTRODUCTION

The Letpadaung Copper Mine Project is in the Sagaing Region of Myanmar and is currently being implemented by a consortium of companies led by China's Wanbao Company, who are in partnership with the military-owned Union of Myanmar Economic Holdings Limited (UMEHL) and Mining Enterprise 1 (ME-1). There has been a lot of controversy since February 2011. Local villagers complained about the mining project not only because of the loss of their farmland and displacement from where they normally live, but also because of the abuse of power by authorities. They have made protests against the project with the support of civil society organizations and environmental groups.

In the beginning of the protests, political activists drew attention to the land grabbing connected to the project and the unreasonable levels of compensation offered for those who lost their land. Soon after, environmental activists and environmentalists also pointed out the environmental problems. Which include pollution of the Chindwin River, soil damage and dust in the villages. The issue has gained a lot of national and international media attention.

Development projects require the participation of different people from different sectors to achieve the best and most acceptable decision. It requires a process in which affected people and interested groups are consulted before a decision about the project is made. In Myanmar, who approves the projects and how are these decisions made? In the process of decision-making, were the real desires of people are given weight, was the voice of the people heard? At present, can social movements have any effect on Myanmar's development?

My research will attempt to understand the role that public participation plays in the decision making process about development projects in Myanmar, looking specifically at the Letpadaung Copper Mine case.

Problem Statement of the Research

Development projects are being carried out in the context of important political changes that have taken place recently in Myanmar. Myanmar was under direct military rule¹ from 1988 until 2011. During this period many western countries downgraded their trade relations with Myanmar, with some putting place in travel bans and economic sanctions in response to the regime's human rights abuses. China, a neighboring country, had the chance to invest enormously in the natural resource-extraction sector, including in oil, gas, timber, minerals and gems. In projects like resource extractive industries, foreign business investors, powerful military individuals, and domestic cronies had financial interests. Throughout Myanmar their business activities had many negative impacts on the environment and the livelihoods of local people.

After the 2008 constitution was ratified during a controversial referendum, an election was held in 2010 and a new "civilianized" government was put in place. At the time, there was a lot of popular protest against the Myitsone dam project on the upper Ayeyarwaddy River, in Myanmar's northern Kachin State. Environmentalists and activists all over the country raised concerns about the dam's negative impact on the environment and society as a whole. The previous military government, without public consultation, had initiated this project. In September 2011 President Thein Sein decided to suspend the Myitsone dam project for the duration of his presidential term. He cited public opinion

1. Direct military rule means the SLORC-SPDC period (1988-2011). The Ne Win era was from 1962 to 1988 and after the 1974 constitution was put in place, Ne Win ruled by "indirect" military-socialist rule. On September 18, 1988 the government was replaced by a military junta called the State Law and Order Restoration Council (SLORC). In 1997 the junta changed its name again to the State Peace and Development Council (SPDC).

as the main factor in his decision. This decision received a lot of international attention.

Given the state of affairs in Myanmar today, can the public really have an impact on determining whether and how large scale development projects go ahead? Currently, construction for this project is underway, even though the community living in the project-affected area has repeatedly demonstrated against it. The Myanmar government, the military-owned Union of Myanmar Economic Holdings (UMEHL) and China's Wanbao Company have continued to implement this project despite significant public opposition. The purpose of my research is to describe the reality of what is happening in the Letpadaung area as a way to understand the possibilities for public participation in decision-making about development projects in Myanmar today. Communities affected by the Letpadaung mine project have gone through long periods of conflict because of the human rights violations and environmental degradation around the Letpadaung mine area. This poses some critical questions. Has there been any public participation in the Letpadaung area? How do social movements affect development in Myanmar?

My paper argues that public participation has so far yet to receive attention as an important issue in Myanmar. Additionally, the public does not have an impact on the current decision-making about the Letpadaung mining project. This suggests that more needs to be done to improve public participation in development.

Research Questions

This research will attempt to answer the question: "What role does public participation and stakeholder involvement play in decision-making for Myanmar's development projects, specifically the Letpadaung Copper Mine case?"

I would like to pose some sub-questions:

- Does Myanmar have legal requirements for public participation: organizing public hearings and administrative proceedings in decision-making?

- What are the problems associated with public participation in the Environmental and Social Impact Assessment process (ESIA), especially in the Letpadaung area?
- What are the main barriers to public participation in the Letpadaung Copper Mine Project?
- Has there been any impact from the Letpadaung Mining social movement on national-level decision making for Myanmar development?

Description of Field Site

The Monywa Copper Project is located in the Salingyi Township of Sagaing Region, Central Myanmar. The project is Myanmar's largest mine and consists of four mine deposits: Sabaetaung, Sabaetaung South, Kyisintaung and Letpadaung. The first three have been developed as one project, called S & K. The Letpadaung mine site is approximately 7 kilometres southeast of the Sabaetaung and Kyisintaung mine site and just about 26 kilometres west of Monywa.

The project area has affected people in 26 villages with a total population of approximately 25 000 people (Knight Piésold 2013). Most people living in the area are from Myanmar's Burman majority. They live a rural lifestyle and their main economic activity is farming (Plate 1).

There are plentiful mineral resources in this area, gifted by nature. There are natural farmlands that provide livelihoods for local people around the mountains. In the vicinity of Letpadaung mountain, men have life-long experience on their farmlands. Many of the women, youth and elderly make a living as farm laborers (Plate 2).

The Letpadaung mine site is a mountainous region, having about 33 mountains rising to a height of 162 m. They are situated on the western side of the Chindwin River, a tributary of the Ayayawaddy River. The mine project area comprises 3,191 hectares. Within the Letpadaung mine site, there were several buildings of historic and religious significance, the Tawya Valley Stupa and associated buildings as well as the *Ledi thein*, or Ledi ordination hall, a special hall for Buddhist monks and *ganaguritaik*, a special chamber also

for monks (Plate 3). There are also small stupas, monasteries and a meditation centre around the mountain. The local villagers call the stupas Shwemyintin, Shwezarli, Anumyudatpaungkatkyaw and Kha.

The Letpadaung copper mine project took a total of 2,746 hectares of land from 30 villages (Knight Piésold Consulting 2013). The local authorities forced four villages situated within the mine project area to relocate to clear land for mine project use. These resettled villages, Sae Tae, Zee Taw, Wet Hmay and Kan Taw, consist of 442 households (Salingyi Township Administrative Office 2013). The UMEHL and Sagaing regional government began the resettlement process in October 2010. The four villages were relocated into two new sites; Sae Tae-Zee Taw and Wet Hmay - Kan Taw villages. Most of the households of Kan Taw have moved to the new site. The remaining three villages are still in place and have refused to move to the new villages.

For my research study, I went to villages around the Letpadaung copper mine area (Figure 1). I chose eleven villages, including three villages in Ton village tract, three villages in Moe Gye Pyin village tract, two villages in Letpadaung village tract and also the villages of Old Sae Tae, New Sae Tae - Zee Taw village and Kyaw village.

Ton Village Tract: Ywar Ma, Ywar Thit, Alae Taw

In Ton village tract, I visited three villages: Ywar Ma, Ywar Thit and Alae Taw. The villagers are very strongly motivated to protest against the mine project. There are a certain number of college graduates in the Ton village tract. People from this village tract have better education and tend to be financially better off than those in other village tracts. They mostly earn a living from farming: peanuts, sesame, sunflower, onion, paddy, garlic, tomato, pea and bean. Other livelihoods are loom-weaving, growing betel, and gathering firewood around the mountains.(Plate 4, Plate 5, Plate 6, Plate 7).

Moe Gye Pyin Village Tract: Moe Gye Pyin (North), Moe Gye Pyin (South) and Moe Gye Pyin (Middle)

I went to three villages in Moe Gye Pyin village tract. The villages are Moe Gye Pyin (North), Moe Gye Pyin (South) and Moe

Gyoe Pyin (Middle). The residents here earn their income from agriculture and they mainly cultivate sesame, corn, wheat and beans. Other work includes animal husbandry. Most of the people are poor and many are field workers who depend on farm owners for employment. The level of education amongst most of the villagers is low.. Moe Gyoe Pyin (South) village has a primary school and a small -health centre. In Moe Gyoe Pyin (Middle) village there is no primary school and the children of this village go to the South Moe Gyoe Pyin for schooling. Moe Gyoe Pyin (North) has a primary school and in this village approximately 15 villagers are working at the Sabaetaung and Kyisintaung mine site.

Letpadaung Village Tract: Taw Kyaung, Shwe Hlay

I stayed in Taw Kyaung village of Letpadaung village tract to collect my primary information. The villagers there joined those in Ton village tract to oppose the copper mine project and many still continue to take part in the protest movement. There are fears that waste water from the mine site will flow into the local alluvial land. Many of the villagers own alluvial land near the Chindwin River that has good topsoil which is good for onion and peanut cultivation (Plate 8). Their livelihood is growing crops such as peanut, onion, chickpea and tomato. These villagers largely depend on farming for their income.

My next stop was Shwe Hlay village in Letpadaung village tract. Traditionally the people here are farmers, producing palm sugar and making baskets from thin strips of palm tree. Some residents have worked in the Monywa brokers' sale centre.

Old Sae Tae

Another village I chose to visit in the field site was Sae Tae (old/new village), this was also home to people who experienced land grabbing and displacement. The source of the villager's income is farming. In March 2013 about 20 percent of the households from Sae Tae village were moved to a new village, that was resettled by the government (Salingyi Township Administrative Office, 2013). The original village is within the Letpadaung mine area and is considered a restricted area under section 144 of the Criminal

Procedure Code. This means that no one from outside is allowed to enter the area, according to an official order from the township administrator of Salingyi Township, dated May 1, 2012. Although no one is supposed to enter the area, I was able to make seven half-day visits to the village to interview villagers. Tensions in the village are high with regards to the mine project.

New Sae Tae - Zee Taw

I also went to the new Sae Tae - Zee Taw village. The two old villages have been combined into one new community. In the new village, some villagers are working in Wanbao's mine site as general workers and some in the garden nursery. The villagers from the new village and those from the old village are in a bitter dispute due to their different opinions about government resettlement. I saw that many new houses are shuttered as their residents have refused to move into the new village (Plate 9). It has a pre-school, a primary school, a rural health centre, fire station and a monastery. A liaison office was been opened by the Implementation Committee on August 2013 in the new village to address the difficulties of local people and submit complaints to higher levels of government. The liaison office team includes one minister from the Sagaing Region government; one representative each from the Ministry of Mines and the Ministry of Environmental Conservation and Forestry and company representatives of Wenbao Company and UMEHL. Most of the households still remain in the old Sae Tae village (New Light of Myanmar, 2013).

Kyaw Village

Another village I went to is Kyaw village, just about 1.5 km from the Letpadaung mine site. Their economy was based on agriculture in the past. Now, some villagers who owned farmland before are working as daily wage laborers in the Salingyi Textile and Garment Factory. Some villagers are local tradesmen who buy goods from Monywa and sell them to local villages. Other villagers are company workers from the Sabaetaung and Kyisintaung mine site. The village has a primary school and a monastery.



Plate 1 Sesame crops collected after harvest, South Moe Gye Pyin village



Plate 2 Onion plantations near the Chindwin River



Plate 3 Letpadaung Hill and Ledi *thein* (Ledi Ordination Hall)



Plate 4 A female villager winds dyed threads to weave into cloth, Ton Ywar Thit village



Plate 5 Loom with woven cloth, Ton Ywar Thit village



Plate 6 Betel garden, Ton Ywar Ma village



Plate 7 Gathering firewood



Plate 8 Alluvial land near the Chindwin River



Plate 9 Shuttered resettlement houses as villagers have refused to move into the new Sae Tae - Zee Taw village, 15 Dec 2013.



Figure 1 Field Site

Research Methodology

I used qualitative research methods to get information through semi-structured interviews, key informant interviews, group discussion, field notes and observations.

To get primary data, I interviewed local villagers, political activists, members of the Community Social Development Team (CSD) created by Wanbao Company, journalists, environmental consultants, government officials, people from NGOs, and those who have worked at the Letpadaung Copper Mine Site.

To get secondary data, I conducted a research study. I used a variety of other sources, including the report of the investigation commission for the Letpadaung Copper Mining Project, annual report of the Implementation Committee of the Letpadaung Copper Mining Project, a report from the Lawyer Network and Justice Trust; draft Environmental and Social Impact Assessment report; community consultation records from the Knight Piésold Consulting Company, official government documents, press releases and pamphlets printed by the Wanbao Company, documentation produced by Ivanhoe Mines, academic papers and texts on public participation, statements posted on the Ministry of the President's Office website, MOECAP website, Wanbao Company website, Eleven Media website, Irrawaddy news, and Mizzima News, and printed journals and government newspapers including The New Light of Myanmar and The Mirror.

During my research I went to the field site three times. I conducted primary data collection in local communities for 45 days. I travelled around the selected 11 villages at least two or three times on each visit. I had a short stay in Monywa for five days to meet Monywa-based CSOs and I also went to Nay Pyi Taw to interview policy makers.

I used purposive sampling to obtain information from specific predefined groups: environmental consultants, government officials, political activists, media, company workers and local villagers. Purposive sampling helped me get the opinions of local villagers and other stakeholders. The technique was suitable for my research because of the large number of people who are either

affected or involved in the Letpadaung Copper Mine Project. I reviewed data while I was collecting it.

Regarding units of analysis, I focused on ordinary villagers and company workers from my field site as major participants and then selected other participants from a variety of sectors. This included government authorities, political activists, environmental consultants, NGO staff, reporters and journalists.

2

LITERATURE REVIEW ON “PUBLIC PARTICIPATION IN DEVELOPMENT”

Why is public participation important?

In the field of international development, many authors emphasize that public participation is supposed to play a central role in a development project. Development projects have socio-economic impacts which can affect people's lives. Thus, people need information about proposed projects and the project proponents need to provide sufficient relevant information. People need to have a role in decision-making in the development activities as well.

There are different definitions of public participation according to concepts of democracy, human rights and empowerment. The question of who participates arises as we define participation. People who are directly or indirectly affected by development projects have a right to voice their opinions on the project proposed in their community and should have the opportunity to participate in decisions that affects their lives. Furthermore, there needs to be an exchange of views with other stakeholders (NGOs, CSOs, academic experts, etc.) during the participation process. The government needs to take their input into account for decision-making. Hence, public participation is a democratic practice that not only people directly affected by the development activities become involved in, but it is also a process where people

from different sectors integrate their opinions into decision making (Slocum and Thomas-Slayter 1995).

In the literature there has been much debate about defining who is a participant in a development project. Some authors say that the “public” should be those who are directly impacted in a positive or negative way. Others suggest that whoever may be indirectly affected should count as the “public.” In order to have truly public participation, there should be no bias in the selection of public or stakeholders in the development planning or policy making process. The public consists of many different actors from divergent sectors, not just one collective group. The following major stakeholders should be identified for successful public participation:

- The people—individuals, groups and communities who are directly affected by the project;
- The proponent and other project beneficiaries;
- Government agencies;
- NGOs and interested groups;
- Others, such as donors, private sector, academics etc. (UNEP 2002)

Public participation is crucial in decision-making that affects the natural environment and quality of life. It brings many benefits for different groups: local communities, government agencies and businesses. Through participation they can create good relationships, accountable decisions, mutual trust, and confidence. It aids the growth of healthy democracy by valuing the public’s views. A scholar has pointed out that public participation is a cornerstone of responsible democratic governance and a fundamental prerequisite to achieving sustainable development (Bastidas 2004). Creighton (2005) suggested the following benefits of public participation:

- Improved quality of decisions
- Minimizing cost and delay
- Consensus building
- Increased ease of implementation

- Avoiding worst-case confrontations
- Maintaining credibility and legitimacy
- Anticipating public concerns and attitudes
- Developing civil society

Typology of Public Participation

In the literature, there are different types of public participation. Pretty et al. (1995) outlined seven types which demonstrate the different aspects of public participation. (Box 1).

Passive Participation: People participate by being told what is going to happen or has already happened. It is a unilateral announcement by an administration or project management without listening to people's responses.

Participation in information giving: People participate by answering questions posed by using questionnaire surveys or interviews or similar approaches.

Participation by consultation: People participate by being consulted, and external people listen to views. These external professionals define both problems and solutions, and may modify these in the light of people's responses. Such a consultative process does not concede any share in decision-making, and professionals are under no obligation to take on board people's views.

Participation for material incentives: People participate by providing resources, for example labour, in return for food, cash or other material incentives.

Functional Participation: People participate by forming groups to meet predetermined objectives related to the project, which can involve the development or promotion of externally initiated social organization. Such involvement does not tend to be at early stages of project cycles or planning, but rather after major decisions have been made. These institutions tend to be dependent on external initiators and facilitators, but may become self-dependent.

Interactive participation: People participate in joint analysis, which leads to action plans and formation of new local institutions or the strengthening of existing ones. It seeks multiple perspectives and makes use of systematic and structured learning processes. These groups take control over local decisions, and so people have a stake in maintaining structures or practices.

Self-mobilization: People participate by taking initiatives independently of external institutions to change systems. They develop contacts with external institutions for resources and technical advice they need, but retain control over how resources are used. Such self-initiated mobilization and collective action may or may not challenge existing inequitable distribution of wealth and power.

Source: Pretty et al. (1995)

Pretty et al. (1995) developed the seven typologies of public participation based on rural development projects and research. Through it, I want to discuss the different types of public participation from the perspective of development planning, policy making processes and community participation.

Passive participation

People get information on development projects, programs, plans, and policy through pamphlets, press releases and community meetings. There they are just being told what has already happened or what will happen without any consideration of the people's voice. People also receive information on decisions that have already been made by authorities or power-holders in a one-sided, top-down system. People have no chance to participate in the decision-making process.

Participation in information giving

People are included when collecting data, for example, baseline assessments of the environmental and socio-economic situation. People partake in information gathering by answering questions or telephone interviews. People do not have the opportunity to get involved in situational analysis or development action plans.

Participation by consultation

Participation by consultation: People are consulted by professionals, consultants, or planners from external organizations who note people's opinions. The external professionals identify problems and solutions, and may modify plans with these responses, but they are under no obligation to consider the people's comments. Such a consultation process does not bring any share of power to the people in the decision-making process.

Participation for material incentives

People's labor, assets, or lands are used in development projects. In exchange, people are given money, food, or other incentives. Even though people contribute to the success of the development project, they have no chance to influence any of the decision-making.

Functional participation

A group of people is organized by power-holders as a committee. The committee performs functions to achieve a predetermined project goal and mostly depends on external facilitators. There is no involvement before project implementation or in the early stages of planning. People have the opportunity to participate only after major decisions have already been made.

Interactive participation

People take part in joint situational analysis, development of an action plan and the establishment of local institutes or strengthening of existing ones. People have a chance to be involved prior to project planning and implementation. This creates constructive dialogue between community, authorities and relevant stakeholders. Interactive participation tries to find different perceptions from divergent sectors (state, organization and individual) and decisions are made only after taking into account the different opinions of people. People have an opportunity to integrate their views in the decision-making process.

Self-mobilization

People independently initiate projects, or change processes or institutions through collective action. External agencies act to aid providing resources and technical advice as a support network, while the people hold control over the use of these resources.

Environmental and Social Impact Assessment in Myanmar

One mechanism that is used to ensure that public concerns are taken into account in development decision making is the EIA process. Previously there was no formal procedure for EIA/SIA in Myanmar. Myanmar Agenda 21 (1997)² recognized the necessity of EIA: “the process of EIA is an important mechanism for the integration of environment and development. The establishment of a transparent and participatory process of EIA will bring about optimal integration of environment and development.”

In development planning in Myanmar, there was no clarity or attention to environmental factors. In 1990, the National Commission for Environmental Affairs (NCEA) was formed by the military junta (SLORC - State Law and Order Restoration Council, 1988- 1997) under the Ministry of Foreign Affairs. The military government wanted to show changes to reflect a commitment to the environment. The chair of NCEA was the minister of Foreign Affairs. The NCEA was a national focal point, as well as the coordinating agency for environmental matters. Since then Myanmar has signed on to international conventions on environmental conservation as a member state, and has also signed international treaties related to the environment, such as the Kyoto Protocol to the United Nations Framework Convention on Climate Change; ASEAN Agreement on the Conservation of Nature and Natural Resources; and the Cartagena Protocol on Biosafety.

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2. "Myanmar Agenda 21" is essentially an environmental action plan for Myanmar. Its policy and program areas cover social, economic and environmental dimensions and reviews the state of Myanmar's development and environment. In 1997, Myanmar Agenda 21 was drafted by the National Commission for Environmental Affairs (NCEA), a government appointed body (UN 2002 and James 2003).

Every nation, including Myanmar, agreed to develop a National Sustainable Development Strategy (NSDS) corresponding to the Millennium Development Goals (MDGs) at the Earth Summit held in Rio de Janeiro in 1992. Myanmar was funded by the United Nations Environment Programme (UNEP) to develop a NSDS. The NCEA led the development of a NSDS in consultation with the government and a small number of NGOs (Knight Piésold 2013). In 1994, the NCEA adopted a National Environment Policy. Although the NCEA had committees and made policy associated with the environment and development, there were no EIA rules and procedures concerned with development planning.

In 2005 the NCEA was transferred under the Ministry of Forestry. The NECA adopted strategies, including the National Sustainable Development Strategy (NSDS), which was published in 2009. This NSDS described three goals: sustainable management of natural resources, integrated economic development and sustainable social development.

“The Ministry of Forestry” was renamed the “Ministry of Environmental Conservation and Forestry (MOECAF)” on September 6, 2011. MOECAF opened an office of Environmental Conservation Department (ECD) on October 11, 2012 in Nay Pyi Taw to implement the national environmental policy, to control environmental management, and to manage natural resource conservation (Environmental Conservation Department 2013).

The Pyidaungsu Hluttaw (“Assembly of the Union:” Myanmar’s bicameral legislature) enacted the Environmental Conservation Law ECL in 2012. The MOECAF issued Environmental Conservation Rules (ECR) to implement this ECL on June 5, 2014. The ECD, under MOECAF, adopted EIA procedures. Currently, the EIA procedure is pending approval from the government.

An EIA is supposed to provide stakeholders access to project descriptions; the environmental and social impacts of a proposed project; and environmental and social management plans before major decisions are made. In addition, EIA is supposed to include public comment. The public comments associated with a proposed activity are to be consider in decision-making.

Importantly, the EIA is not a formula just for preparing documents, but a tool for the decision-making process. EIA is not only a study to assess the key impacts of a planned activity on environmental and socio-economic issues, but also an instrument for decision-making. Regarding EIA report decisions, a member of ESIA Review Committee from MOECF told me:

Government forms Environmental Conservation Committee (ECC) including 33 ministers from different ministries. The chairperson of the ECC is a Minister of Environmental Conservation and Forestry (MOECF). The chairperson of the ECC will make a decision that will approve ESIA report as guided by ECC members.

The Myanmar EIA process involves various stages which a project undergoes from proposal to approval for project implementation. This includes several stages:

- Screening a project to determine whether it needs preliminary assessment (Initial Environmental Examination - IEE) or detailed assessment (Environmental Impact Assessment - EIA)
- Scoping process for the likely environmental impacts of the proposed project;
- Carrying out detailed baseline studies about the environmental situation before project implementation;
- Preparing a detailed assessment report EIA;
- Conducting a public consultation process on the draft EIA report;
- Carrying out a panel review of the EIA report; and
- Obtaining approval, if suitable.

3

PROTEST AND PARTICIPATION AT LETPADAUNG COPPER MINE PROJECT

Background History of Letpadaung Copper Mine Project

The presence of copper in the Monywa area has been known for centuries and accounts from the late 19th century describe Letpadaung as being the site of an old copper mine (Moore and Pauk Pauk 2001). Some mineral exploration in the area took place during the British colonial period. Further research into the area's mineral potential, including exploration drilling began in the late 1950s under the predecessor of the Myanmar government's Department of Geological Survey and Mineral Explore (DGSE). Teams from Japan, Yugoslavia, Britain and the United Nations assisted in studying the area's geology at various times from the 1950s till the 1970s (Mitchell et al. 2011).

In June 1978, Myanmar Mining Enterprise No. 1 (ME1), a state owned enterprise, entered into an agreement with Yugoslav government authorities to develop the Sabetaung and Kyisintaung deposits (Ivanhoe 2005, New Light of Myanmar 1994) which are about 7 km northwest of Letpadaung. This agreement came several years after Ne Win visited the Bor copper mine during a state visit to Yugoslavia in October 1974 (Taylor 2015). Under the 1978 deal, the Yugoslav state run, Invest Import Company, agreed to provide a \$70 million loan for the project (Kinney 1979, Financial Times 1978). From 1978 to 1983 the Yugoslav state run RTB Bor Copper Institute conducted a feasibility study on Sabetaung and

Kyisintaung (Mitchell et al. 2011). The Yugoslav experts also built a small commercial-scale plant at the site which was completed in 1984. ME1 operated the plant, which used a flotation process and was built to process 8,000 tons of copper ore a day. According to a report by the joint venture that later took over the mine site “the S&K ores were not perfectly suitable to the flotation process and consequently, the recovery was not economic” (MICCL 2001). According to this and other reports produced by the Burmese-Canadian joint venture who took over the project the plant ran until January 1998 (MICCL 2001). Other sources suggest the plant closed much earlier, a subsequent ESIA conducted for the Chinese firm, Wanbao, whose subsidiary currently run mining operations at the site, describe operations at the plant being “stopped soon afterwards” from when it was completed in 1984, “due to low recovery and poor economic benefits” (Knight Piesold 2015).

In addition to low recovery rates, the flotation concentration method used by the Yugoslav designed plant generated a considerable amount of waste known in the industry as tailings. According to research conducted by Amnesty International in 1995 and 1996, “ME1 discharged hazardous copper tailings (waste) from the S&K mining operations over more than 150 acres of land and into the Chindwin River” (Amnesty 2015). These actions are said to have caused significant amount of environmental damage to the local area. Assessments conducted in 1996 and 1997 on the mine site found high levels of arsenic, chromium, copper, iron and manganese in local groundwater (Amnesty 2015).

The Canadian firm, who became a partner in a joint venture with ME1 to operate the mine area, described the 150 acres area where the waste was dumped as being to the east of the joint venture operations where “[m]ost of the spill area was under the jurisdiction of local Myanmar authorities” (Ivanhoe Mines 2012). According to the firm “[f]or years, some residents of nearby villages engaged in unauthorized, unregulated hand-mining on the tailings spill area, digging pits in the waste crushed rock and employing crude and hazardous improvised processes to recover small amounts of residual copper that were sold to middlemen buyers to supplement villagers’ meagre incomes” (Ivanhoe Mines 2012).

The Canadian firm and its owners became involved in Monywa in the early 1990s. In 1994, Ivanhoe Myanmar Holding (IMH), a private firm registered in the British Virgin Islands, reached an agreement with state run ME1, to conduct a “Feasibility Study of Developing, Mining and Processing Mineral Resources within the Monywa Copper Complex in the Union of Myanmar” (Amnesty 2015). As part of this agreement, Ivanhoe Myanmar Holdings obtained the right to mine and process mineral resources from all deposits in the Monywa Copper Complex deposits including Sabetaung (which includes Sabetaung South), Kyisintaung and Letpadaung. Ivanhoe Myanmar Holdings was later absorbed by Ivanhoe Mines (then called Indochina Goldfields) a publicly traded firm based in Vancouver Canada, whose founder and chairman also controlled the private firm that made the initial 1994 deal with ME1 (Amnesty 2015).

In April 1996 Ivanhoe Mines and ME1 formed a joint venture company, Myanmar Ivanhoe Copper Company Limited (MICCL) to mine, process and market copper from Sabetaung, Sabetaung South, and the Kyisintaung deposits which were dubbed the S&K mine. MICCL was formed as a Myanmar-based joint venture company in line with the Union of Myanmar Foreign Investment Law, the Special Company Act 1950 and the Myanmar Companies Act (Indochina Goldfields 1996). As part of the agreement 50% of MICCL was owned by an Ivanhoe subsidiary, Bagan Copper Holdings Ltd. (formerly Ivanhoe Myanmar Holdings, Ltd.) and the other 50% was controlled by state owned ME-1. At the time of the agreement Ivanhoe indicated in its regulatory filings in Canada that its agreement with ME-1 indemnified the firm for “environmental liabilities resulting from activities occurring prior to the date of the agreement” (Amnesty 2015). As Amnesty noted, further mining operations involving MICCL were allowed to proceed on the site without first cleaning up the pollution that was caused by the previous operations (Amnesty 2015).

According to Amnesty’s research many farmers living in the vicinity of the S&K mine area had their land seized by Myanmar authorities in 1996 just before the joint venture took control. “Thousands of people were forcibly evicted in 1996 to make way for investment by Ivanhoe Mines; the company knew their

investment would lead to the evictions – this was included in the original agreement – yet it took no action to ensure the evictions did not lead to human rights violations,” the London based rights group alleged (Amnesty 2015).

MICCL started commercial production of copper at the mine site in 1998 using a different process considered more efficient at processing copper ore than the method introduced by the Yugoslav experts, called heap leaching-solvent extraction-electrowinning (SX-EW).

MICCL's development of the Monywa Copper Project was planned in two phases. The S&K project was the first phase. At the time MICCL was mining the Sabaetaung and Sabetaung South deposits, the Kyisintaung and Letpadaung deposits were left undeveloped (Knight Piesold 2015). Ivanhoe had come up with a plan to develop the Letpadaung deposit as a second phase, this would have expanded MICCL's copper production considerably but ultimately these plans did not move forward (Lake 2000 and Ivanhoe 2003).

In 1997, in light of the what the Canadian government called a “deteriorating human rights situation” in Myanmar, Canada added Myanmar to the Area Control List (ACL), a list of countries where the Canadian government “deems it necessary to control the export or transfer of any goods and technology”. This meant that all exports to Myanmar from Canada had to first obtain an export permit issued by the Canadian government (Canada Gazette 2012).

This restriction, however, did not block or ban Ivanhoe from operating in Myanmar and the firm, which had in 1996 received from Canadian authorities “assurance that it did not discourage companies from investing in Myanmar”, continued operations in Myanmar (McClearn 2003).

Ivanhoe did, however, face many other problems at Monywa as a result of US sanctions, which caused an international insurance firm to cease covering the project and an offshore banking institution also stopped doing business with MICCL, events that led to MICCL's operations being disrupted in March 2006 (Amnesty 2015).

The Monywa project also saw a decrease in copper production in 2005-2006, due to repeated delays in obtaining relevant import permits from Myanmar authorities for required mining equipment (Smith 2007). According to regulatory filings Ivanhoe found itself in a dispute with Myanmar authorities over taxation and royalty rates (Smith 2007).

In February 2007 Ivanhoe announced that it had transferred ownership of its 50 % interest in MICCL to what it chose to describe as “an independent third party”, to sell Ivanhoe’s 50 % stake (Ivanhoe 2012). According to the 2014 ESIA “[t]he mine essentially ceased operating between April 2008 and August 2010, with only sporadic production continuing” before [s]ome production was resumed in September 2010” (Knight Piesold 2014). In August 2011 Ivanhoe Mines acknowledged that its stake in MICCL had been sold for US\$103 million dollars (Ivanhoe 2011).

In early 2011 prior to Ivanhoe’s announcement that its stake in MICCL had been sold, Myanmar state media and the Chinese Embassy in Yangon, announced that a Production Sharing Contract (PSC) for Sabetaung, Sabetaung South and Kyisintaung, involving China North Industries Corporation (NORINCO), a Chinese state owned weapons manufacturer and the military controlled Union of Myanmar Economic Holdings Limited (UMEHL) was reached during visit of Jia Qinglin, a senior Chinese official, to Myanmar. This followed an announcement in June 2010 from Norinco that it had signed a “Monywa Copper Mine Project Co-operation Contract” with UMEHL, while then Prime Minister Thein Sein was visiting China with a trade delegation. (Mizzima 2011).

Wanbao Mining Ltd was founded as a subsidiary of NORINCO in September 2011 to implement the copper project. Wanbao Mining Limited created two companies, namely Myanmar Yang Tse Copper Limited (MYTCL) and Myanmar Wanbao Mining Copper Limited (MWMCL) to implement and develop the Monywa Copper Mine site. Currently MYTCL is operating the S & K Mine which is producing about 11,000 tons of copper a year, and MWMCL is making preparations to develop the Letpadaung Mine (Knight Piesold 2013).

Social Protest History

On December 12, 2010, villagers from Wet Hmay village were summoned to a meeting and told that their village owned lands would be used for extending the copper mine project by U Khin Maung San, Monywa District governor, and U Zaw Min Han, Sarlingyi Township administrator. It was announced at the meeting that compensation would be given by the mine company of 530,000 kyat (about US\$500) per acre for three years for the use of the land. Similar meetings were done in other villages in the area. It was a time when quiet villages in the Letpadaung region began to feel overwhelmed by a storm of injustice brought by the military and foreign investment, which was focused solely on profit. Before mining, local farmers were happy on their farms, making an income from farming and were able to donate to monks and also support religious events, such as the community monks' novitiation ceremony³ (*Shin-pju jahan-khan ahlu*). Farmers' lives were simple and without major worries.⁴

At first the villagers refused the compensation for fear of losing their livelihood. The local authorities promised that (a) there would be no excavation or construction of buildings on their land; (b) there would be no dumping of earth and mining by-products on their lands; and (c) their land would be returned in the same condition after three years. After these promises, the villagers signed the agreement, which allowed the land be used for 3 years (Lawyers Network and Justice Trust 2013).

The government did not give villagers clear messages, terms or conditions related to land acquisition. Local villagers were kept in the dark, and none of them imagined their farmland and villages would be confiscated legally under rules giving the government the upper hand. No one saw it coming. According to rules long in place, legal authority lies with the town planning authority and deputy commissioners, officers appointed by the government including township administrators and district governor.

3. Buddhist donation or Bamar Traditional Ceremony of being Novices and entering Monkhood

4. Interview with Thwe Thwe Win, local activist.

Local villagers were tricked into signing an agreement by signing their name or making thumbprint at the end of a paper, that they did not know the legal standing of. The township staff did not allow them to read what they signed. As the Letpadaung commission later determined, there were major discrepancies in the actual documents villagers were asked to sign and the announcement authorities had previously issued. “The term ‘compensation for farmland/crops’ is stated in the notice letter/summons advertisement to claim the compensation”, but in the agreement villagers were asked sign or thumbprint, it was stated that this “an agreement for the receipt of the compensation and to relinquish ownership of the lands” (Amnesty 2015). The Commission “also stated that authorities did not read out and explain the documents before asking people to sign or provide their thumb prints” (Amnesty 2015). According to the Commission “local populace thought that they were receiving compensation only for the crops” when in fact they were giving away their rights to the land.

Some villagers asked the township administrators “will this waste dump be removed from our land after 3 years?” The administrators replied that the agreement is not for 3 years, but that the compensation the villagers received covered 30 years. The villagers objected, as what they received was crop compensation for only 3 years, not 30 (Weekly Express Time Journal 2013).

The local people lost their right to get information about the project that was to be built in their area; to get correct compensation for their farmland; and to be able to live the livelihoods they had been engaged in. According to figures provided by the 7,867.78 acres of farmland was confiscated for the mining project (Committee for Implementing the Investigation Report on Latpadaungtaung Mining Project 2013). The project evicts people from their houses and farmlands. Local residents from Sae Tae, Zee Taw, Wet Hmay and Kan Taw, have been displaced to government resettlement homes by force.

From 2011 onwards there was a long and growing dispute between Wanbao Company and local villagers. Despite bitter objections and strong disagreement, Wanbao started construction. When villagers saw soil waste from the mine site being dumped on their farmland, they became very worried.

Initially, local villagers made complaints against the firms involved—military-owned UMEHL and China Wanbao—for their operations which threatened the survival of local livelihoods. They were not only upset about confiscation of private farmlands, but also about the removal of public buildings in the Letpadaung area, such as schools, monasteries, and even one entire village.

In February 2012 farmers from two villages, Sae Tae and Wet Hmay, started attempts to stop Wanbao's waste dump and construction of new buildings on their farmland. They demanded that the companies and township authorities stop dumping soil and building on their farmland. News of the event spread very rapidly to other villages affected by the project.⁵

In March 2012 Ko Myo Thant, a member of the 88 Generation Peace and Open Society, a group of veteran student activists and former political prisoners, first arrived in Wet Hmay village, Letpadaung area. Ko Myo Thant, who is a member of his organization's Agri-Business and Farmer Affairs Committee—which focuses on helping farmers get confiscated land returned—said he tried to improve the landless farmers' understanding of the relevant laws,

I emphasized how to solve the land grabbing issue by law. I tried to raise land-loss farmers' awareness, drew media attention and invited Yangon People Honorary Network and other political groups to join the Letpadaung case.

On the first three days of June 2012, in front of the Wanbao Headquarters building, villagers from four area villages started to protest against the project. They made four demands, to temporarily suspend waste soil dumping, to stop construction of company buildings, to reopen the monastery of Wet Hmay village which was sealed in December 2011 and cancel relocation of the remaining households in Wet Hmay, Sae Tae, and Zee taw villages (Zayar Maung 2012).

5. Interview with a local farmer from Sae Tae village

During this time, both the project manager of UMEHL and the district governor were in agreement with local villagers that their demands would be submitted to the highest level and during this time period mine operation would be temporarily suspended. However, after 2 months and seventeen days, UMEHL restarted work without any consultation on the villagers' demands (UMEHL 2012).

Yangon civil society organizations that supported the villagers and their protest against the Letpadaung mine arrived in the local community in August 2012. Among them were some former political prisoners. The civil society groups went around the project-affected villages near the Letpadaung area and talked with farmers about land grabbing issues. Soon after farmers and activists erected signboards that read "No encroaching onto village-owned farmland". From that point, the activists and local residents made a lot of activity together. Thousands of local villagers and monks participated in the demonstrations. The protests were supported by civil society organizations from Yangon, Mandalay, and Monywa; environmental groups; and political groups, and received a lot of attention in local and international media.

Mandalay-based and Yangon-based environmental organizations joined together over the Letpadaung issue by conducting public talks about social and environmental impacts and the requirements of EIA, SIA, and international standards. The environmental impacts concerning dust pollution and soil damage due to past Sabaetaung and Kyisintaung mining practice were also of concern to local people. The local villagers complained that the mining industry had adverse impacts on the natural environment, social life, and the public health of communities affected by mine projects. The political activists raised public awareness of land grabbing issues. The environmental groups promoted environmental awareness of mining practices.

Concerned people based in Monywa formed the "Letpadaung Mountain Salvation Committee," consisting of 26 members as a support group to assist project-affected people in August 2012. The Committee held a *taung-kye-pwe* which can be translated as a mountain-viewing ceremony—similar to a kind of demonstration.

U Chit Khin, chairperson of Letpadaung Mountain Salvation Committee explained the reasons the group was formed.

We and local villagers are united, so we organized a committee to protect Letpadaung Mountain. Our committee didn't involve itself in direct activities, but played a supporting role to help villagers who encountered difficulties: for example, land-grabbing and forced displacement. We built public awareness and gained media attention to increase awareness of environmental damage due to mine practices.

On September 10, 2012 local authorities arrested 12 village women who organized and took part in a group prayer for Letpadaung Mountain. After the arrests, there were protests for 4 days in front of the Monywa police station. The Monywa Student Union and Letpadaung Mountain Salvation Committee participated in the demonstration. In order to free the arrested villagers, the 88 generation student group Daw Khin San Hlaing, a recently elected NLD Member of Parliament, negotiated with the local authorities. Daw Khin San Hlaing, met local villagers frequently to stay informed on the real current situation. She also had frequent discussions with the Sagaing Division government team about the Letpadaung case (Thet San Yee 2012).

Both political activists and local people organized the "Committee for Protecting Letpadaung Taung People's Benefit" as a community-based organization. They created a logo and flew a "victory flag" representing the Letpadaung area (Plate 10, Plate 11).

On September 30, 2012, the 88 generation group organized a Letpadaung press conference, including local people, environmentalists, CSOs and NGOs in Yangon. During 18-19 October 2012 local villagers held a public conference with leaders of the Yangon People Honorary Network in Sae Tae village. Local farmers and representatives from different organizations and political groups attended the conference and issued a statement to "stop the project" and other political issues (The Nation News Journal 2012). Through the conferences, the Letpadaung issue received greater media attention.

Local people and activists set up six protest camps near the mine site from 17-22 November 2012 and called for a strike against the project. The mine company stopped work, conditionally. Local residents from over 30 villages and monks from Monywa and Mandalay were involved in the campaign camps. The Letpadaung Taung Salvation Committee and other civil societies supported protesters with food, drinking water, blankets and other items.

In parliament Daw Khin San Hlaing (NLD), proposed the Letpadaung issue on 23 November 2012 as a topic for consideration (Mizzima 2012). On that day U Aung Min, Union Railways Minister as well as the President's chief advisor on peace negotiations, visited the protest camps in Letpadaung. He pledged to the local villagers that the government would find a non-violent solution for the problem⁶. Daw Aung San Suu Kyi, NLD leader, also had a plan to visit the controversial Letpadaung area on November 29, 2012.

On November 28, 2012, the Union Minister of Home Affairs, Lieutenant General Ko Ko, issued a public notice that by midnight police would take action against protesters “in accordance with the law” (NLM 2012). Security forces cracked down forcefully on the peaceful protesters. Around 2:30 am on the 29th of November 2012, the security forces commanded all protesters to leave within 5 minutes. After that, security forces moved into the protest camps; firing water cannons first and then “black balls” that exploded into sparks. The security forces destroyed the six protest camps. Local villagers and monks were seriously injured when police used grenades—including what was later identified by a government appointed commission as a kind of white phosphorus-incendiary munition—which they fired into the camps and at peaceful protesters which caused many serious injuries. As Amnesty pointed out the use of the white phosphorous caused more than 100 people to be injured with “some suffering horrific burns and lifelong disability (Amnesty 7). The November 29 events turned the spotlight on the crackdown and brought international attention (Lawyers Network and Justice Trust 2013).

6. Interview with a local monk, Zee Taw village

On December 1, 2012 the President formed an Investigation Commission with 30 members to look into two things: (1) whether the project should be continued or not, and (2) what happened with the protest on November 29. The Investigation Commission was chaired by Daw Aung San Kyi, the leader of the NLD and a recently elected member of parliament. The commission was formed pursuant to the President's Office Notification No. 92/2012. It was then reconstituted pursuant to President's Office Notification No. 95/2012 on December 3, 2012. The first name list of the Investigation Commission included Min Ko Naing and Ko Ko Gyi from the 88 generation student group, but they independently resigned from the Commission. The Commission was reorganized with 16 members on December 3, 2012.

During this time of inquiry, local villagers and activists were still protesting. On December 12, 2012 local residents again pitched a protest camp with the help of anti-mine activists after six protest camps were destroyed. In February 2013, local villagers and activists set up a new campaign camp on Inngyin Mountain to defend the Ledi *thein*, a religious building situated within the Letpadaung mine site (Plate 13).

After the release of the report of the Investigation Commission on 12 March 2013, local residents turned against Daw Aung San Suu Kyi because there was not any recommendation on "November 29 violence" in the report, and she made the decision that the project should be allowed to go ahead for the benefit of the nation. The villagers weren't alone in their criticism of the report, Australian academic Nick Cheesman has observed that the commission handled the entire task, "not as an opportunity for dialogue with the affected villagers as substantive political and legal equals, but as a mechanical exercise in which questions of the rule of law were subordinated to the findings of technicians, and the rule of law itself was reduced to the notion found in the mandate of Aung San Suu Kyi's rule of law committee, that enacted law should be obeyed by everyone. Far from holding the police and local authorities responsible for the violent attacks on demonstrators, the commission placed the blame on an ignorant population and stated that administrative agencies needed to put more effort into educating people about the law" (Cheesman 2014).

After the publication of the report villagers began arguing with each other about what to do. Some of them wanted to wait and see. They wanted to watch how the company and government authorities would carry out the project. Others were totally against the report. The Ton protest camp was disbanded. Nevertheless, local villagers continued their protest against implementing the project (Plate 14). The activists were seen by some to be the main players behind local villagers actions. With some national media reporting that the activists, including those abroad, were controlling the process from behind the scenes.

The Commission suggested that the project should continue on the grounds that the economic benefits for Myanmar were very good. Moreover, the commission also recommended that, while the project should continue, the following aspects must be addressed.

- Follow the rule of law
- Conduct EIA (Environmental Impact Assessment), SIA (Social Impact Assessment), EMP (Environmental Management Plan) and OHSAS (Occupational Health and Safety Assessment System)
- Pay adequate compensation for the host community
- Give back land taken unnecessarily
- Look after social and health of project-affected community
- Create work opportunities and SME (Small and Medium Enterprises) development
- Protect religious sites without damage; and
- Revise the contract. (Myanmar Extractive Industries Transparency Initiative 2013)

In March 2013 the President formed an “Implementation Committee” with 15 members in order to follow the recommendations of the report of the Letpadaung Investigation Commission. The chairperson of the committee was the Minister of the President’s Office, two were company directors and others were high-level government members. The committee organized

four working groups to implement compensation and reclamation of farmland; environmental conservation; socio-economic development; and relocation of religious buildings (Annual Report of Implementation Committee, March 2013 - March 2014).

Wanbao Company and the Myanmar government's Implementation Committee were to continue construction work on the Letpadaung Copper mine even though the EIA process was not complete. After consultation with the Implementation Committee and a government appointed body called the "Independent Monitoring Team" (IMT), Wanbao reached an agreement to continue with the construction phase of the project on April 14 2013 (Myanmar Wanbao Mining Copper 2013, October).

The IMT, which was comprised of 14 members, was formed to examine whether or not the project was being carried out according to international norms. The team leader was an academic expert from the Knight Piésold Consulting Company who prepared the ESIA report. Other team members included four local villagers from 26 project-affected villages, an external consultant from a private environmental institution, government officials, and Salingyi Township staff. The responsibility of the IMT is to monitor and detect environmental issues and problems on the Letpadaung Copper Mine Project (Committee for Implementing the Investigation Report on Latpadaungtaung Mining Project 2014). However, the formation of the IMT was unknown to most of the villagers in the region.

Information related to the tasks and responsibilities of the Implementation Committee was similarly inaccessible for most people in the region. The public relations section of the IMT and the Implementation Committee remained unreliable as they were composed of high-ranking officers who failed to connect with the local grassroots community, and the flow of communication from each side was virtually none. As a result of the Implementation Committee's failure to function in accordance with the recommendations of the Investigation Commission, protests against the project continued.

The Implementation Committee agreed to the resumption of the project on April 14, 2013. According to the agreement, Wanbao

could continue construction work on the Letpadaung Copper mine. The villagers did not receive this information, and they understood that the project would be restarted when the ESIA report was completed. The Implementation Committee released virtually no information and conducted important activities, such as consultations with local people, in such a way that was not up to international standards .

Ma Yin Yin from Alae Taw village is a day wage-laborer. She depends on work from her farm owner for a living. She did not have confidence in the committee:

The Implementation Committee cannot implement the recommendations of Investigation Commission. So I still continue to protest against the project. The mine will impact our livelihoods, health, and environment. If the project is continued, *u-paing*,⁷ Wanbao Company and Implementation Committee will need to consult with local people.

Daw Thandar Khin, an environmental consultant, stated

Transparency is very weak at present. The Implementation Committee should systematically carry out the tasks according to the Investigation Commission Report. It needs to collaborate with three panels: local people, the Implementation Committee and the project developer. If not, there will be social conflict in this area.

On 25-26 April 2013 there were violent clashes between police and local farmers when local farmers and activists from the Yangon People Honorary Network tried to resume agricultural activities on their farmland. The farmers did not take a second round of compensation. They called it “ploughing battles”. They fought to build field huts and plough the land within the confiscated area. They attempted to show their stand against the project. In a violent

7. *U-paing*, which in Burmese literally means holding company, is a common way people refer to UMEHL.

clash, a villager from Ton Ywa Thit was severely injured and security forces arrested an activist and two villagers from Sae Tae village.

A protest leader supporting the local villagers in the Letpadaung area told me

We've done a lot of movement with the villagers. Despite the arrests, we fought "ploughing battles" on confiscated farmlands. We helped farmers who've lost their land against the seizure of their lands by the mining company. Why are we involved in the Letpadaung case? We aim to regain back the villagers' farmland. We stand for people and the right to justice.

Local people have faced many problems in this area. One of the problems is that they are forced to accept unfair compensation. Another is that they have no right to legal justice. Some villagers feel angry; some feel sad. There has been social conflict among the villagers; between villagers and the company; and between villagers and local authorities. They are always worried and feel insecure about their life and full of uncertainty, since their land and properties are at risk of being seized by powerful companies and government. Many seem to have lost hope and they think nothing would happen, however hard they tried. Some feel aggressive and others feel depressed.

There is a lot of social movement in the Letpadaung area. According to the annual report of Implementation Commission there were 127 protests in the area from March 2013 to February 2014 (Table 1). The local villagers have learned how to raise their voice from civil society groups.

Table 1 Protest Movements from March 2013 - February 2014

| | |
|-------------------------|-----|
| Protests with Permit | 32 |
| Protests without Permit | 95 |
| Total | 127 |

(Source: Committee for Implementing the Investigation Report on Latpadaungtaung Mining Project 2014)



Plate 10 Logo of “Committee for Protecting Letpadaung Taung People’s Benefit”



Plate 11 Flag of “Committee for Protecting Letpadaung Taung People’s Benefit”



Plate 14 Protest after release of the Report of the Letpadaung Investigation Commission Source: Photo: Han Win Aung's facebook

Arbitrary Arrest and Notification from Security Force

Currently, local villagers continue their protest against the controversial Letpadaung copper mine project. During my study there were further arrests and crackdowns on protesters in this area. The government ordered a restriction on people's access to the land and villages around the mine area through Section 144 of the Code of Criminal Procedure (Appendix 1). Following Section 144, the security forces clamped down on the demonstrations and protesters opposing the mine project.

During the 25 April 2013 clash between police and villagers, a male farmer was shot and wounded when local villagers and activists tried to resume farming work within confiscated land areas. In this case, Aung Soe, a land-rights activist and member of Yangon People Honorary Network, was sentenced to 11 years and 6 months in prison, and two villagers from Sae Tae village were also sentenced to 18 months. The three prisoners were released on

November 15, 2013⁸. The deputy manager of Union of Myanmar Economic Holdings Limited (UMEHL) sued eight activists⁹ from Yangon on 30 April 2013 for supporting the villagers' protest. They were charged with trespassing, instigating a riot, and disturbing officials on duty (Appendix 2). Sagaing Division Security Force issued a warrant for their arrest (Committee for Implementing the Investigation Report on Latpadaungtaung Mining Project 2013).

On 13 August, 2013 Naw Ohn Hla, a female activist from Yangon, gathered more than 50 local villagers in Monywa. This demonstration was to object to the controversial Letpadaung Copper Mine and to amend the 2008 Constitution. She applied for official permission before the protest, but was denied by the Monywa security forces. At the demonstration she was seized and on 29 August, she was sentenced to two years of hard labor in prison under Section 505(b) of the Penal Code for disturbing the public peace, and under Section 18 of the Peaceful Assembly and Peaceful Procession Law for holding a protest without permission. She was freed from prison under a presidential amnesty on 15 November 2013 (Front Line Defenders, 2013).

On February 11, 2014 Thaw Zin, an activist and well known former political prisoner who opposed the Letpadaung copper mine, from the Myanmar Art and Science Student Network, was arrested by six plainclothes police officers. Shortly after the arrest, about 100 villagers marched to the Nyaung Pin Gyi police station, calling for Thaw Zin's release, but the authorities declined to explain the reason for his arrest. Later, the Salingyi police superintendent stated that Thaw Zin had two outstanding charges, one for organizing demonstrations ploughing land inside the mine area, and another for threatening Wanbao company staff. In the last week of March, Thaw Zin was sentenced to 15 months imprisonment under Section 505(b) and 447 of the penal code for

8. Interview with Aung Soe

9. The activists include Aung Soe, Ba Htoo and Ko Thu from the Yangon People Honorary Network, Thaung Htike Oo and Thaw Zin from Myanmar Art and Science Student Network, Han Win Aung of the Political Prisoners Families' Beneficial Network, as well as Ko Lat and Thar Gyi.

assisting local villagers against the mine project (FIDH 2014).

Salinyi Police Station sent notifications dated 15th March 2014 in connection with 2012 offences to local villagers who strongly opposed the project. Local authorities dismissed the cases of grievances filed by the villagers. Lawsuits filed by UMEHL—a military-controlled entity—were, however accepted (Appendix 3).

One-sided Top-down Land Compensation Process

On July 24th 2013, the Myanmar Ministry of Mines, represented by Mining Enterprise No.1, signed an amendment to the production-sharing contract for the Letpadaung Copper Mine Project with UMEHL and China's Wanbao Mining Ltd in Nay Pyi Taw. U Hla Tun, Minister of the Myanmar President's Office; U Myint Aung, Minister of Mines; Khin Zaw Oo, UMEHL Chairman Lieutenant-General; and Chen Defeng, President of Wanbao Mining Ltd all attended the signing ceremony. A press release from the Wanbao Company stated that the "Amendment provides the government of Myanmar with 51 % of the benefit, whilst UMEHL and Wanbao retain 49 %." The amendment legally sets 2% of net profits for a Corporate Social Responsibility program (CSR) related to the mine project (Myanmar Wanbao 2013). On Myanmar Wanbao's website, an open letter from the Wanbao President, Chen Defang claims that the firm is proud to be supporting CSR programs. "We are delighted that 2% of our profit will go towards Corporate Social Responsibility (CSR) investment for the lifetime of the mine, once it becomes operational" (Chen Defang). In previous contracts, a CSR program was not included.

According to the Production Sharing Contract and its amendments between the contract parties, the government is responsible for all consultation with the community and UMEHL is responsible for land acquisition, compensation and resettlement. MWMCL is responsible for the design, operation, and mine closure of the project, as well as completion of the ESIA (Knight Piésold 2013).

At present, compensation has been paid to project-affected villagers three times. In 2010 the government confiscated farmland for the project using Section 39 of the 1953 Land Nationalisation Act. The

section which is commonly referred to in Burmese as “La Na-39”, gave the government broad powers to “take over agricultural land for any specific use that it considered necessary” (Amnesty 2015).¹⁰ Compensation was provided from April 5th to November 6th, 2010 (Committee for Implementing the Investigation Report on Latpadaungtaung Mining Project 2014). But the villagers only understood the first payment as compensation for loss of crops for three years, not as land compensation. This is because the township authorities told the villagers that the crops could be damaged when mine company vehicles passed through crop fields, and after three years villagers’ farmlands would be returned.

In 2010 the governor of Monywa District told the villagers of Wet Hmay village at a meeting that village lands were to be used and that villages would have to move as the copper project extended its scope. Wanbao would pay compensation for 3 years for crop damages if their vehicles passed through crop fields. At first, the villagers did not accept compensation. But then the authorities seized U Thein, a village leader from Paunka village for refusing compensation. All villagers from the project-affected area were very frightened and therefore accepted compensation without the chance to ask any questions and without any negotiation. Later, the villagers accepted this first round of compensation because they thought they could return to farm their land after 3 years.¹¹

The Myanmar Wanbao company website states that “the first payment is compensation according to the laws of Myanmar, which is three times the market price of the crops (between 525,000 and 552,000 Kyat) as guided by the regional government.” This amounts to only US\$ 500 per acre.

In accordance with the Investigation Commission Report of Letpadaung project led by Daw Aung San Suu Kyi, a second compensation was paid to villagers beginning in March 2013. Payments ranged between 1 – 1.5 million kyat per acre (about US\$ 1000 - US\$ 1500), depending on the different types of land value.

10. The Land Nationalisation Act was replaced in 2012 by the Farmland Act.

11. Interview with Thwe Thwe Win, local activist

Villagers from 10 villages affected by the copper mine project refused this second round of compensation (Mizzima 2013).

Daw San San from Myo Gye Pyin (South) said

We didn't accept the compensation because this money will not secure our lives and our next generation. They said they would give one job to each family who lost up to 10 acres. We are non-educated people, so we can only get very basic work that is not suited to our way of living. How can we live with that low salary for our whole family? We want to work our farmland. We love planting crops.

Despite refusing compensation, the company fenced in the confiscated area and bulldozed the crops on October 3, 2013.

The Irrawaddy News on 14th October 2013 published a quote from Daw Khin San Hlaing—a member of parliament and the National League for Democracy—about why farmers were not accepting compensation.

Since there's no transparency from the mining companies and the authorities, plans for the livelihoods of farmers are still unknown. As they have not been assured, the farmers refused to take the compensation. If the mining company really understood and cared about the lives of the locals and the farmers, they would not move forward like this.

On February 3 2014 the government added a third subsidy of between 0.3 – 1.2 million kyats per acre (about US\$ 300 - US\$1200) to the villagers. When villagers received the first round of compensation, they signed a contract but did not receive a copy of it. Instead they were given a piece of paper that showed only the amount of compensation (Plate 15). There were contracts between township administrators and villagers for the second and third rounds of compensation payouts.

The mine company initially used the total area of 7867.78 acres for mining. According to the report of the Investigation Commission, the government's Implementation Committee returned 903.74 acres

of land that was not needed to their owners. Most of these returned areas were roads, lakes, dams, drainage channels, village, and forest and biodiversity conservation areas. Of the total area returned, only 283.9 acres was farmland. The land issue resolution team, organized by the Implementation Committee, returned land along the Nyaung Pin Gyi to Salingyi road. The remaining mine project area was now 6963.26 acres (Committee for Implementing the Investigation Report on Latpadaungtaung Mining Project 2014). The villagers complained that the returned land along the road was very narrow and long, and they could not plough small plots.

As of December 2014, about 34% of landowners had not accepted the second round of compensation. An announcement issued by Wanbao in December 2014 claimed that “66% of the total land-lost people have taken up second subsidies, which means the majority of villagers losing land are willing to release their land to the project” (Myanmar Wanbao Mining Copper Limited 2014).

The farmers understood that they could plough their farmland and still own the land because they did not take compensation. The local authorities said that villagers’ lands were confiscated using to Section 39 of the 1953 Land Nationalization Act, The company officials said that they had already given compensation. As a result of the unresolved land compensation issue, it is not easy to succeed in any consultation with the community regarding the ESIA or discussions regarding the project status.

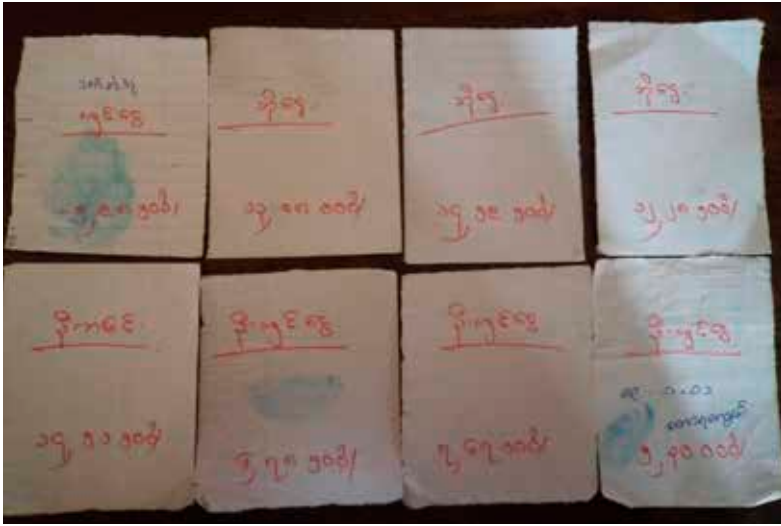


Plate 15 At the first round of compensation, villagers received only these pieces of paper—receipts of payment.

Relocation of Tawya Valley Stupa and Ordination Hall without Community Consultation

In this section, I will discuss the forced relocation of Tawya Valley Stupa and Ordination Hall without community consultation (Plate 16). The Tawya Valley Stupa is a Buddhist religious monument and a place where local villagers honor a famous monk, Ledi Sayadaw (1846-1923), an influential Buddhist leader. He wrote many books on Dhamma in Pali as well as in Burmese. According to historical records, he stayed in the area during Buddhist Lent from July 1903 to February 1904. He practiced meditation in a small monastery on the side of Letpadaung Mountain. While residing on the mountain he wrote five books¹² (Vipassana Research Institute 2010).

The government relocated Tawya Valley Stupa and its associated Ledi *thein* (Ledi Ordination Hall) and *ganaguri* buildings from the Letpadaung Copper Mine Site without consent from the people of

12. Quoted from A Short Biography of Ledi Sayardaw, written by Venerable Ashin Nyanissara

the area. The senior monks were summoned to Kan Swe monastery of Salingyi Township on February 25, 2014 to aid the authorities. The state run New Light of Myanmar reported that government officials consulted senior abbots from the national and Sagaing division-level Sangha committees about the relocation and reconstruction of the religious buildings, after which the government announced it had received permission from the Sangha (2014). The “Team for Relocation and Reconstruction” of religious buildings, formed by the Implementation Committee, also distributed leaflets to the local community through CSD members. The religious buildings were moved to a new location near Kyaw Ywar village, Salingyi Township, 1500 yards away from the original location. It is a 400 x 200 square foot area (1.84 acre), permitted by the Ministry of Religious Affairs official order no. (165/2013) on December 13 2013 (Implementation Committee April 2014).

After the government’s announcement, local villagers and local monks began protesting against the removal of Ledi *thein*. The Wanbao Company stated on their website that the relocation of religious buildings began with a religious ceremony on 25th February at Sarlingyi Township, with 27 senior monks from across the country agreeing to relocate the Buddhist pagoda at Letpadaung to another location. Local monks complained that seldom do they build a *thein*; monks in favour of the government were invited, and the voice of the majority of the order of Buddhist monks across Myanmar was ignored. The local monks from the areas near the Letpadaung project were not involved in the religious ceremony. (Zarni Mann 2014)

There have been many debates about the Ledi *thein*, but clear, factual and historical accounts are hard to find. Much of the historical record is oral history from local people. The local residents identify the Ledi *thein* as having spiritual value. The great magnitude of its sentimental value cannot be denied. The spiritual value of the place is related to and identified with its connection to Ledi Sayadaw, an influential Buddhist monks who was a central figure in the development of modern Burmese Buddhism in the early 20th century, who lived on Letpadaung for a time in 1903 (Braun 2013 202). The draft ESIA report prepared by Knight Piésold Consulting Company downplayed Ledi Sayadaw’s connection to Ledi *thein*.

Two boundary pillars in the consecrated area of the stupa are evident. The newest of the pillars is in good condition and quite ornate and the other pillar is ancient, unadorned and in poor condition. The ancient boundary pillar may have been erected in the period that Ledi Sayadaw was in the area but this cannot be confirmed.

The draft report concluded,

...there is insufficient evidence to confirm the current stupa location as being the original location of the Ledi Sayadaw hut or monastery and so this issue remains contentious.

Local villagers are very proud of the Ledi *thein* and its connection to Ledi Sayadaw. The villagers believe there is spiritual connection between the original site where Ledi Sayadaw resided and the current site with its stupa and *thein* (ordination hall). The *thein* is a special religious building where monks are ordained, and a spiritual center of worship and offering for people of the Buddhist faith. Local people have recognized the stupa and the Ledi *thein* as having historical, religious and cultural importance.

Daw Su, a 47 year old woman from Ton Ywar Thit said of the religious site:

I was surprised to hear of the destruction of the religious buildings. In my childhood I first visited Tawya Valley Pagoda at a time when it was covered with forest. I felt very calm there. We believers worshiped at the Stupa and Buddha image in the Ledi *thein* building on Letpadaung Hill. I believe that there are many spirits protecting and guarding the mountain and forest. When I visited there, I worshiped the guardian spirits. Now we've lost our land, lost our traditions, and lost our culture due to the mine project.

The Implementation Committee carried out the relocation of the Ledi ordination hall with the help of senior abbots of monks' organizations from regions outside of the disputed area. No monks

and villagers from the affected area were involved. The Investigation Commission recommended that the religious buildings should be moved to a suitable place in their current condition, and that the mining company should consult with local people and respective authorities about it, and recommended greater transparency (Commission of Inquiry into the Letpadaung Hills Copper Project, 2013).

Ma Mar Swe from Sae Tae village said

There hasn't been any consultation with local people and local monks regarding the removal of Ledi *thein*, and it was totally the government's decision. The process was done with the help of monks from "Township Sangha Nayaka¹³." We opposed the plan but they take no account of our wishes. Whatever we say, they do what they want to do.

There were a lot of protest activities, such as a prayer ceremony, cursing ceremonies, and street performances opposing the removal of the religious buildings from Letpadaung. In addition to the protests held in the area other demonstrations were held in Yangon, Mandalay and Pyay.

U Win Myo Thu, a respected environmentalist and co-founder of EcoDev—a well known Myanmar NGO of which he is managing director—believes that the buildings should have been left in their place.

Historians must study whether it was the actual Ledi *thein*. It does not matter—what does matter is Ledi Sayartaw did reside at that place. That is a more important fact. In other words, it can surely be considered as a land of victory. It was because of Ledi Sayartaw that Theravada Buddhist Vipassana has spread all over Myanmar. After Buddhist year 2500, it is certainly undesirable that his Ledi *thein* be

13. Township Sangha Nayaka is the Salinyi township monk organization including patrons and monks from outside the disputed area.

demolished. It is possible to consider technically that Ledi *thein* should be left where it is in the process of the mining operation (Pyoe Wai 2014).

Despite many peoples' actions and opinions on the Ledi *thein*, the Implementation Committee completely demolished the buildings in the mine area during the last week of April 2014. The Implementation Committee built a new, substitute Ledi *thein*. Local villagers and monks were not pleased about the demolition and complained that the Implementation Committee removed the Ledi *thein* in non a transparent manner. On May 1, 2014 they went to a Liaison Office that had been set up by the government's Implementation Committee to address the difficulties of locals and submit them to higher levels of government. The villagers demanded a clear explanation for the removal of the pagoda and Ledi *thein* from the mine area, but no one was at the office (The Voice Weekly 2014).

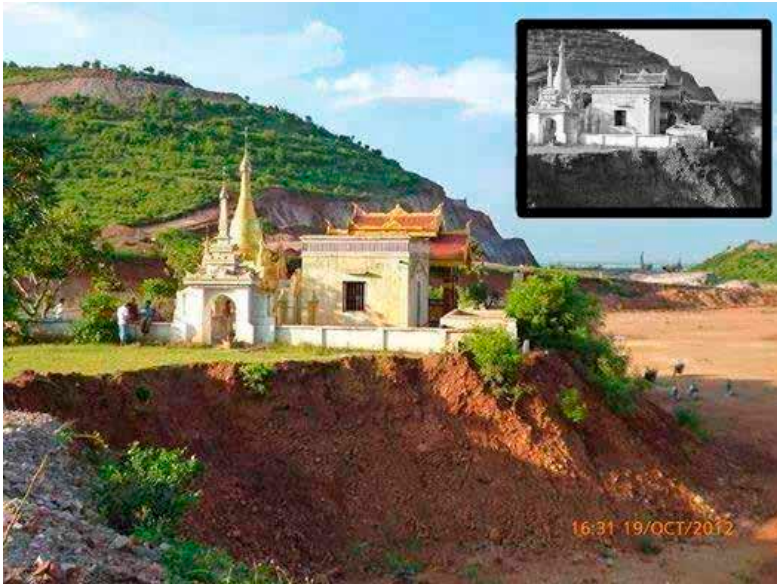


Plate 16 Tawya Valley Stupa and Ledi *thein* Source: Han Win Aung, Facebook

Cursing Ceremony or Traditional Belief

Supernatural belief, along with Buddhism, is rooted deeply in Myanmar folk culture and is very common in various forms, even in cities. Rural farming villages have a long tradition of worshipping different types of spirits or *nats* from 37 spirit pantheons. Every mountain, every river, every big tree and every field is considered to be protected by certain types of supernatural beings. Offerings of sacrifice and gratitude are made to these *nats*—spirits or supernatural beings—in various types of ceremony, including animal sacrifice, across all of Myanmar. Whenever ill luck falls upon a village or a region, the respective spirit mediums or elders who know the traditions will organize a ceremony to offer both apology and appeasement.

In the Letpadaung region, local villagers, according to tradition, have always worshipped guardian spirits of the mountains and forests. It is a custom and traditional belief that farming and harvest need the blessing of the spirits to be successful, and that guardians must never be offended. There are folktales and legends of the Letpadaung Mountain being guarded by guardian spirits. The local villagers believe that guardian spirits protect the Letpadaung Mountain. The main guardian spirit is called *taung-gyi-shin* (great-mountain-master) and there is a shrine for this spirit at the foot of Letpadaung Mountain. When cutting trees for firewood or picking bamboo shoots and vegetables in the area around Letpadaung Mountain, the villagers have to ask permission from the *taung-gyi-shin* and other local spirits. Every year villagers make an offering to local *nats* at the *taung-gyi-shin* shrine and pray for what they want. In olden times their grandparents worshipped the guardian spirits of Letpadaung Mountain according to tradition for good weather, increasing crop yields, avoiding disease, and maintaining peace in the region. They believed the spirits of the mountain and local *nats* guarded their lives.

In order to protect the Ledi *thein* or sacred place, the local community held a cursing ceremony. It is a ritual in which worshippers invoked the guardian spirits, and prayed to them to bring pain and ill fate upon outsiders who had come to ruin the peace of the region. The first cursing ceremony was on February

18, 2014. People from all ten villages in the area took part. After the relocation of Ledi *thein* local residents changed from protesting to conducting cursing ceremonies. They have to request official permission for a protest, but not for a cursing ceremony. Since they could not achieve anything with protest, they turned to traditional practices and supernatural entities.

Local residents organized several cursing ceremonies to put a curse on the two mining companies. In a cursing ceremony the villagers put a curse (*kyein-sa-taikdeh*) against the people responsible for the removal of Ledi *thein* (Plate 17). A lord-consort (*nat-kadaw*)¹⁴ led the villagers to hold the ceremony in the *nat-kunn* (shrine) where they invited *taung-gyi-shin* and all the local *nat* to come. The villagers practiced the ceremony in a traditional way with *gadaw-pwe*—offerings of banana, coconut, pickled tea leaves, cigars, incense, candle and *aung-thapyay-pan* (spring of Eugenia; regarded as auspicious) (Plate 18). They requested the guardian spirits to make a curse to preserve the mountain. Some villagers played local musical instruments and sang *nat* songs.

Ma Nyo Nyo from Ton Ale Taw village said of the event:

I called upon local nats and guardian spirits to bring bad luck to people who spoilt our environment, troubled our community and demolished the religious buildings. We believe the local *nat* that guard the mountain will help us. We will continue to protest against the project. To stop the mining process we will do everything in our power.

The local villagers use traditional ways to oppose the copper mine project because they want to have more power than authorities. By this time, the villagers had no faith in the government or the company at all; they did, however, believe in their local nats. They thought that no one could help with their problems and that there was no other solution other than to invoke the nats. Instead of protest, they

14. The term *nat-kadaw*, literally lord-consort, often translated as “spirit spouse” or “spirit wife,” refers to people who are possessed or “loved by” one or more supernatural beings called *nat*.

continued to voice their objection through cursing ceremonies.

The villagers continued to perform the cursing ceremony every month for a year. On May 24, 2014 they held the fourth cursing ceremony near the Wanbao company fence. This was not like earlier ceremonies (Jpaing 2014). The villagers burned two coffins, on which were written the names of Wanbao Company and UMEHL. They asked *taung-gyi-shin*, to punish the two mine companies. During the ceremony a woman carried a *gadaw-pwe* on her head and recited curses that “they meet a bad fate” and “be totally destroyed.”

On July 29 2014 they performed another ceremony (*kyein-sa-taikdeh-pwe*) to mark the 20-month anniversary of the destruction of the protest camps on 29 November 2012. A female farmer who had lost her land, Ma Htay Htay, told me about the ceremony.

Nobody can help us so we depend on the 'great-mountain-master' *nat*. The Lord will support us to save our troubled community.

Holding cursing ceremonies (*kyein-sa-taikdeh-pwe*) relieved the minds of the villagers and gave some temporary satisfaction. The media did not pay much attention to the cursing ceremonies. The company and government authorities also were not interested. But the villagers strongly believe that bad things did indeed happen to mine workers and officials. For instance, a Chinese mine worker burned himself; a government official had a car accident and an acid factory near the S&K mine site caught fire.

Despite many rites and rituals done in different ways and different times throughout the year, performing a collective curse is a rare event and it is not usually done against people. The cursing ceremonies mean quite a variety of things and show the participation of people who assume there is no other way of solving the problem.



Plate 17 Going to Cursing Ceremony



Plate 18 A villager call upon local *nat*

Letpadaung Copper Mine Project ESIA

When large projects such as the Myitsone Dam and Dawei Special Economic Zone are proposed EIA reports are commissioned to assess the impact of a project. However, the Letpadaung Mine project had only poor-quality EIA documentation. Before the Chinese firms became involved in the project, Myanmar Ivanhoe Copper Company Limited (MICCL) submitted the following Environmental and Social Impact Assessment Reports:

- S & K Environmental Assessment (1996, March)¹⁵
- Muir Environmental and Social Assessment and Management Programme - Final Draft for Letpadaung Copper Project (1997, March)¹⁶
- Environmental Preliminary Impacts Assessment of Letpadaung Project Area (2004, July)

(Knight Piésold Consulting 2013)

All of the above-mentioned ESIA reports were not publicly released. According to the Investigation Commission report, from March 12 2013, the reports reviewed and predicted the environmental and social impacts of the mine project on a general level. In such a way that could be considered too weak to meet international norms and legal requirements. In an EIA model, information disclosure to interested parties and affected communities is very important. In the Letpadaung ESIA reports, there was no provision for information disclosure and public participation. When the military-owned UMEHL and Wanbao Company of China started the project, no EIA was submitted and there was no public consultation and participation (Commission of Inquiry into the Letpadaung Hills Copper Project 2013).

15. Environmental Assessment - Feasibility Study Sabaetaung and Kyisintaung Copper Project prepared by AATA International Inc., Fort Collins, Colorado USA.

16. Feasibility Study Letpadaung Copper project commissioned by Ivanhoe Myanmar Holdings; Presented to No 1 Mining Enterprise, Ministry of Mines, Government of the Union of Myanmar.

Hence, the Investigation Commission recommended writing a new ESIA report for the Letpadaung Copper Mine Project due to the poor documentation in the previous EIA. Wanbao made an agreement with the Australian branch of Knight Piésold Consulting to write the EIA. Knight Piésold is an international consulting firm providing engineering and environmental services in the mining, power, water, transportation and construction sectors. Knight Piésold prepared the ESIA report for the Letpadaung Copper Mine Project in accordance with standards from the International Finance Corporation (IFC), the private sector lending arm of the World Bank. On December 2013, Myanmar Wanbao Mining Copper Ltd legally submitted the draft ESIA report, which is still under review by the ESIA Review Committee. The ESIA Review Committee was set up on August 28, 2013,¹⁷ and includes 39 members from the government and six members from the private sector, to revise the draft ESIA report for the Letpadaung Copper Mine Project.

In the past the military government often implemented development projects without conducting studies or EIA. The EIA process still remains a little understood subject in Myanmar today. When implementing an EIA processes there is limited knowledge. Technical and capacity constraints are also common. In theory, or in the legal framework, large-scale projects involve a large number of stakeholders, NGOs, CSOs, individual professional experts and others from the private sector. In practice, various stakeholders, especially CSOs and environmental NGOs, were not involved in the ESIA consultation process for the Letpadaung Copper Mine project.

According to the rhetoric of Myanmar's EIA procedures, public participation bears a significant role and it must be processed from the IEE preparation stage to the EIA review report. In practice, members of a team that had been selected by the mining firm were deployed as "dummy participants" during the process to adopt ESIA reports for the Letpadaung Copper Mine Project. The Community and Social Development (CSD) team was organized to present and account for community, social, health, and

17. Union Government Office Notification No. 1640/309 phwe-see-khwint 3-38/ah-ph-ya (2013)

education development in the Letpadaung mine area. Myanmar Wanbao Mining Copper Ltd (MWMCL) hired CSD members to work as liaison officers to work not only for villages but also for the company (The Future, August 2013). CSD members are company staff who receive a salary of about US \$150. When the ESIA is implemented, the company works with CSD members, not with ordinary villagers.

Ko Aung Myo from Ywar Thit village explained that he has serious concerns about the CSD committee,

I did not know the organizing CSD committee. CSD members were not representatives of the villages. The villagers didn't select the CSD members, but they were chosen by the township administrator. CSD members didn't communicate with villagers.

The draft ESIA prepared by Knight Piésold, mentioned:

Myanmar Wanbao Mining Copper Ltd has created and staffed a Community and Social Development (CSD) team which will be responsible for organizing community information and consultations, participatory workshops and household surveys, and to obtain the views of local NGOs and affected groups.

In theory, there are various aspects and levels of public participation including information, consultation, interactive participation and negotiation, and large numbers of techniques and tools for communicating with the public in such cases. In practice, some government officials seem to have misunderstood the concept of public participation in the EIA process. They think that sharing only a certain degree of information with the local community is "public participation." For example, they distributed pamphlets on the Ledi *thein* relocation to the local community through CSD members, but without any community consultation on the issue.

In order to legitimize the ESIA report, only one public consultation meeting was held by the Implementation Committee, and two other times in a village organized by Knight Piésold. The first public consultation, set up by the Implementation Committee, was

held in the Town Hall of Salingyi Township, Sagaing Region on January 12, 2014. The Implementation Committee, Environmental Conservation Committee, Wanbao Company, UMEHL Company, Knight Piésold, Local Communities and CSD members all attended the meeting.

During the meeting, U Hla Maung Thein, chairperson of the ESIA Review Committee, who also served as deputy director general of the Environmental Conservation Department, made suggestions on the preliminary findings of the draft ESIA report. Brett Loney, a consultant with Knight Piésold, also discussed the implementation of the ESIA process, baseline studies and key issues for environmental management planning (New Light of Myanmar 2014). The government-style formal meeting was just a clarification of the ESIA draft report on the Letpadaung Copper Mine Project. In the meeting Knight Piésold did not consult villagers, while 18 villagers from the local community asked many question related to the mining project. Before the meeting ended, some villagers returned home and organized a protest against the mine project.

Ma Sabai from Alae Taw village said of her experience in the meeting,

They explained the ESIA with a slide show, but I didn't understand it. Before finishing the meeting I protested the project because the ESIA report was written without villagers' knowledge.

Strongly motivated villagers opposing the project were not given the opportunity to attend the meeting. Although the implementation of public participation in the EIA process is included in the draft procedure, the government did not apply it in reality.

Following the January meeting, on February 19 2014, Knight Piésold released an English language document titled "Responses to the Questions and Discussion Raised by Local People at Public Consultation Meeting." The villagers couldn't read Knight Piésold's report. Additionally, the document was not distributed and most villagers did not know of its existence.

U Myint Htay from Taw Kyaung complained at the public consultation meeting on 12 January, 2014. His complaint was described in the Knight Piésold document:

People want to know what percent of the public sector has been included in the ESIA draft report. Is it possible and reasonable to develop an ESIA report only with consultants and technicians and without the public's needs? The ESIA should include people's needs.

He added that:

As the current ESIA draft report didn't include people's needs, we request the inclusion of the local community. Who and what organizations have been involved in discussion until now?

Knight Piésold stated:

Over 1000 households were visited in the collection of information to enable preparation of the ESIA document. The consultants will visit villages commencing in March 2014 to include people's desires. Discussion occurred at the household level with those people willing to participate.

In the current EIA public participation mechanism, there are some limitations. A significant one is that villagers who protest against the mine project have no chance to participate in the preparation of the ESIA report.

Although the concept of stakeholder involvement is an essential requirement in both the EIA literature and Myanmar draft EIA procedures, Knight Piésold and the Implementation Committee did not invite any organizations to attend the consultation meeting. Knight Piésold performed the consultation process only within the direct project-affected community. There was no opportunity for interested groups to participate in the ESIA process—for example, CSOs and environmental NGOs. After the release of the report of the Investigation Commission, chaired by Daw Aung San Suu Kyi, the voices of Myanmar environmental NGO's were very weak regarding the Letpadaung project and there is still a great deal of problems with the way the Letpadaung ESIA process has been implemented. For a truly public participation process, the way in which “public” is defined and selected should not be biased.

A meeting was held at the Mount Pleasant Hotel, Nay Pyi Taw, to explain the draft ESIA report. The attendees were members of the Independent Monitoring Team (IMT), organized by the government and Knight Piésold. NGOs, CSOs and independent experts were not invited. The government did not want any negative perceptions or divergence among the “stakeholder” groups.

One of the members of the Myanmar Engineering Council observed that not all the stakeholders had been consulted:

The ESIA draft report took about 3 months. Currently the government and KP [Knight Piésold] haven't yet communicated with all stakeholders about the draft report to get comments and recommendations from divergent interest groups.

Knight Piésold did not consult with two “old” villages that had been set for relocation but whose residents remained in place, Sae Tae and Wet Hmay. Presently, about 140 households from Sae Tae village and 37 households from Wet Hmay remain in their old villages and have not moved to the government-mandated new settlement. They have put up a brave challenge to the mine project and expressed their strong disagreement. These villagers are standing firmly against the project.

Ma Htay Htay from Sae-Tae said:

I don't know why KP [Knight Piésold] didn't visit our village. Haven't we the opportunity to discuss the mine project? We have grievances and have [been] badly affected by the project. Our lands have been confiscated and we are forced to move our homes. Doesn't KP need to include our say in the ESIA? We are ready to discuss with KP. The current ESIA report doesn't include our discussion or our desires.

Knight Piésold announced to the local community that public consultation meetings would commence on March 7, 2014 and would take about 6 weeks. Meetings were held twice in each village. The first was for public hearings, and the second for answering questions asked by villagers about the project. During

these meetings Knight Piésold's stated aim was to learn villagers' opinion on the ESIA and to understand how the project would affect local people and how the impacts could be managed and mitigated.

I attended these public consultation meetings set up by Knight Piésold. In the meeting the attendees were local villagers, Knight Piésold consultants, translators, note-takers and special guests. The latter group included staff from UMEHL, policemen, village-tract heads, members of the CSD team and government informers. Some villagers were not pleased by the attendance of these "special guests." The government informers recorded everything the villagers said. Villagers felt they were being watched and were hesitant to express their thoughts freely.

The latest version of the ESIA report is a second draft consisting of more than 3,000 pages. The firm that drafted it, Knight Piésold, distributed a Burmese-language summary of the draft ESIA report that was only 15 pages long, to villagers during the first public consultation meeting. They also provided a map of the mine site, flowchart of the simplified copper ore process, photos of the copper extractive process plant, photos of ore being placed on a heap leach pad, village refuge schematic diagram for flood emergencies, an organization chart of Myanmar Wanbao Mining Copper Limited, their recruitment process and an information sheet on how villagers could raise a complaint with a list of CSD team representatives.

U Aung Naing, from Alae Taw village told me that he was not pleased with how this done.

I am not satisfied with the consultation with KP. I have a lot to talk about the real situation of our community. I also have many questions about their environmental and social management plan, but there was not enough time for us. We are farmers and we are not educated. I don't know the ESIA process, but I submitted to KP what I could. In my past experience, after meetings there are no guarantees for us.

Local villagers feel it will not make any difference, whatever they

do. They have been through a long period of conflict. They do not believe any organization, as they do not believe the government. Daw Oo from Ton Ywar Thit explained how the villagers feel.

We don't trust any organization. Nobody understands our grievances. KP will return home after finishing their work. But our community will have a lot of trouble.

I interviewed a government official on the Letpadaung Copper Mine Project in Nay Pyi Taw who acknowledged there was a lack of trust between the villagers and the government.

This project has been approved by the previous military government. The Investigation Commission recommended that the project should continue, so the Implementation Committee is running step by step. The main challenge of this project is that it is difficult to see local people's participation. Another thing is very little cooperation of villagers. I think public relations are very important. Successful implementation needs a good relationship with local people. Now the local people lack trust.

Knight Piésold has prepared a new ESIA report. Most of the villagers do not know about the implementation of the ESIA process. The villagers have no chance to receive information or to participate in the process.

Min Min from Ywar Ma village, a villager who has completed higher education and holds a bachelor's degree in mathematics told me that he thought the firms should do more.

I knew the ESIA was required before implementing the project only when it was so stated in the Letpadaung Investigation Commission report. I didn't get environmental information related to the project. The Implementation Committee and company should discuss with us about the environmental impacts and should consult about how to manage them.

I interviewed an environmental management consultant. He authored a part of the Letpadaung Investigation Commission Report. He suggested in the report that a new ESIA report be written according to international norms and a technical approach to implement the project, consistent with an Environmental Management Plan (EMP) and Occupational Health and Safety Assessment System (OHSAS).

When I visited villages around the Letpadaung area I saw that construction work was going on without completing the EIA process. I don't know who officially agreed to do that. Who approved the project implementation? The current draft ESIA report has been released, but the EIA process was not fulfilled with participation by the local people. I think the Implementation Committee has no ability to put into practice the recommendations of the Letpadaung Investigation Commission.

There has been a lack of government commitment in the past. Government authorities make promises that are rarely kept. For example, the government has claimed that if landowners agree to take compensation and promise not to protest they would get employment, electricity, modern water supply facilities and repaired roads. The failure to follow on these promises undermines public trust.

Ko Myo from Ton Ywar Thit village said that he didn't have confidence in the government or the firms involved.

Knight Piésold has written an ESIA report. Who will take responsibility to comply with the recommendations in the ESIA report? Who is accountable? KP told me that Wanbao will be responsible for any environmental impacts and government agencies will control whether Wanbao complies or not. I don't believe government or the company. The government always breaks their promises.

The Wanbao company website claimed that the firm would provide employment opportunities for local people:

The following employment terms are offered to inhabitants of the 26 villages affected by the mine:

- For villagers who lost up to 10 acres, the company will provide one job per household;
- For villagers who have lost 10-20 acres, the company will provide 2 jobs per household;
- For villagers who have lost more than 20 acres, the company will provide 3 jobs per household

Wanbao Company announced job openings and some villagers accepted compensation in the form of employment. However, they have yet to receive a job.

Ko Myat Soe from Shwe Hlay said that he took the deal because of the promise of future employment.

I have accepted compensation for my land on the basis that I would be provided a job, but I haven't got any job yet.

From my research, I have learned that the villagers feel insecure because the previous operations at Sabaetaung caused serious social and environmental impacts. Villagers have gradually become aware from past experience that there will be land degradation, pollution, damage to water quality and harm to livelihoods.

Ma Sander, a 32-year-old woman from Alae Taw village with a university degree explained the villagers concerns.

I've been always afraid that we will experience drawbacks and bad results from mine projects like Kan Gone and Done Taw villages near Sabaetaung and the Kyisintaung mine area. If the Letpadaung project is continued, our environment will badly be damaged. I will have trouble making a living. If I have no drinking water, how do I survive? If alluvial land is spoilt, what work can I do to make a living? Who will be responsible for these difficult situations?"



Plate 19 Consultation Meeting on ESIA report, North Moe Gye Pyin village



Plate 20 Consultation Meeting on ESIA report, Taw Kyaung village

4

DISCUSSION AND RECOMMENDATIONS

Discussion

Role and Responsibilities of Key Actors in the Participation Process

This section explains the importance of roles and responsibilities of different actors involved in the Letpadaung copper mine project. All the different actors involved in the mine project can be divided into five groups: government, business and investors, NGOs/CSOs, private consultancies and local people. The degree of participation of the key actors throughout the project is discussed as follows.

Government: With the Letpadaung copper mine project, reliable practices are weak in the regulatory and legislative frameworks guaranteeing environmental protection and community participation. Hence the government should have applicable laws, EIA procedures, environmental standards, participation guidelines and policies concerning development activities. It should have information management to prevent undesirable or controversial projects in the future and a well-organized administration to facilitate investment from foreign and local companies.

Business Investor: Business investors should share information with the public about a project's status. They should implement the Letpadaung mine project in compliance with national laws and international norms. Although they allocated a percentage of

the net profit to a CSR program for the affected community, there was no transparency of the CSR programs finances. Most importantly, they should address the interests, priorities and needs of local people. They should seek to understand local knowledge and values through public input.

NGOs/CSOs: The Letpadaung mine project lacked NGO/CSO participation during the ESIA report consultation period. NGOs should support technical input on the EIA report and comments on policy improvement. CSOs should educate and empower local people on development-related issues to get involved in the consultation process. They should lobby on particular issues, like river pollution. They can represent villagers' voices and can get involved as volunteers, especially in community service.

Private Consultancy: This group involves experts in particular issues who contribute to EIA preparation and provide technical information. They advise on how project design and management systems can be more protective of the environment and the community. They provide knowledge and information on technical issues as a solution to the lack of capacity and competence of government agencies. Although they consult with the local community on project-related issues, they cannot deliver more effective engagement activities. They facilitate the involvement of local people and other stakeholders and report public contributions that influence decisions.

Local People: Individuals or groups in affected communities need to know about projects planned in their community. They need to have knowledge and information on the local environment and project-related impact in order to participate in a meaningful way. They should participate in the consultation process regarding project status and ESIA discussion. They need to comment on environmental and social issues within their local community to get justice and have a role in making decisions that affect their lives.

An illustration can show how interactive communication could work among key stakeholders involved in the Letpadaung copper mine project. As shown in Figure 3, the need for an actor to communicate with the other four actors is described.

In Figure 3, the outer arrows show the links from NGOs/CSOs to business investors and private consultancy. We see that NGOs/CSOs get information, provided by business investors, on project status and also participate with private consultancies in the Letpadaung ESIA consultation process.

Similarly, the inner arrows also demonstrate the connection of NGOs/CSOs to local people and the government. The NGOs/CSOs attempt to educate local people to be more aware of project-related issues such as environmental impacts, laws and regulations on mining, and environment and CSR programs. Furthermore, NGOs and CSOs advocate a long-term view for resource sharing and improvements to policy from the regional and central government.

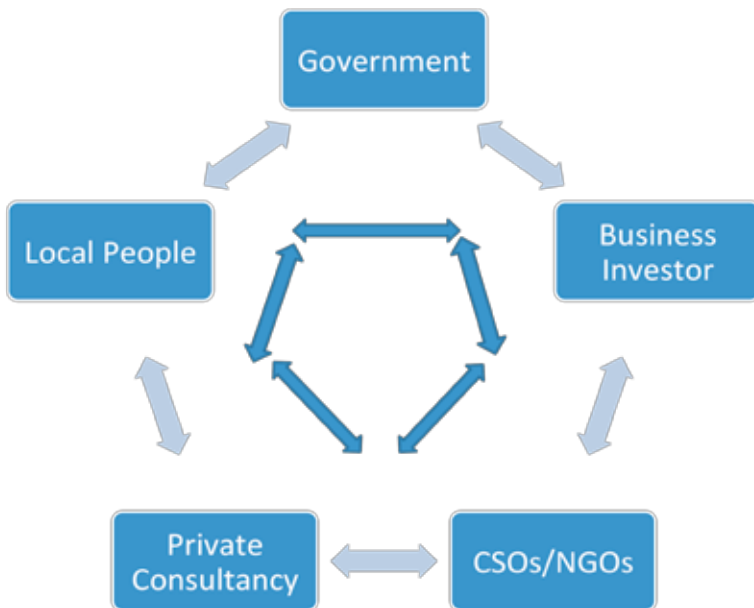


Figure 2 Interactive Communications between Key Actors

Situational Analysis on Public Participation

Weakness of Administrative Procedure in the Compensation Process

During the first round of compensation payment, local community members received no contracts and received only paper receipts, on which was written the amount of money they received. Township authorities signed a contract, but locals didn't have a copy of it. The villagers had limited information about what was in the contract and gave up their land. The villagers had no opportunity to get adequate information about the loss of their farmland. There was a lack of transparency in the land compensation process during this first round. Government administration performed poorly and they did not take responsibility for their mistakes. During the second round of compensation, there was some consultation with local villagers, albeit only those selected by the local authorities. But as a consequence, the people did not accept this second round of compensation and continued protesting to demand consultation with the regional government and two companies, Wanbao and UMEHL, over the amount of compensation being offered for their land. It is not easy for both the firms involved and government to have discussions with the local community regarding the project status as land compensation issues were not handled well.

Weakness of Communication between Authorities and Local People

The Implementation Committee, formed to follow the report of the investigation commission, agreed to resume the controversial Chinese-backed Letpadaung Copper Mine Project before the Investigation Commission's suggestions were implemented. The project remains very unpopular with local villagers who continue their protests. The villagers, farmers and monks from the within project-affected areas maintain that the project will impact their livelihood and environment.

Although the public access to environmental information has increased, public disclosure of this information is insufficient and

limited. There remains a lack of trust among government agencies, business investors and the local community. The lack of transparency and openness disrupts public participation. Due to past experiences, local people have lost trust in government bodies, government departments and business investors. There are still many weaknesses in communication between the project authorities and villagers who oppose the project. Protesting villages did not get information disseminated by the government and the company. Without sufficient information, there could be further misunderstanding.

On the subject of the relocation of Ledi *thein*, the Implementation Committee distributed pamphlets to some villagers through their CSD members. Although the Investigation Commission recommended consulting with local villagers, the Implementation Committee only provided information to the villagers. This is just one example of what Pretty et al. (1995) calls “passive participation,” where people got information but there was no opportunity for participation.

Weakness of Consultation in the ESIA process

The Implementation Committee set up a formal meeting that featured a PowerPoint presentation. Some of the villagers couldn't understand the issues discussed at the meeting because they were very technical in nature. This lack of understanding made it difficult to contribute during the discussion. There was limited opportunity for village level participation. In the formal meeting there was no interaction between villagers and officials. The villagers had to listen to long talks and didn't have enough time to submit their voices. The time for engaging the local people was also short. Effective participation needs to provide the best available information and to educate participants so that local people will understand the subjects being discussed.

The public should have had the chance to voice their concerns and desires during the public consultation meeting Knight Piésold conducted on the ESIA process. However, this was only convened to inform the public and did not include villagers in the decision-making process. Theoretically, consultation means a two-way flow

of information sharing between the business investor, responsible government agencies, and various stakeholders on the potential effects of a development project. The stakeholders should be able to give oral or written comments on the project. Meaningful participation would involve a government agency considering stakeholders' opinions in the decision-making process. With regards to the typology of public participation, Pretty et al. (1995) highlighted "participation by consultation," as mentioned in part II of this study. When consultants or technical experts consult with local residents, they listen to people's voices and record their opinions. However, with this case they did not integrate people's comments into the decision making. Knight Piésold's consultation process did not obligate taking action in the best interest of the public. For example, local people demanded that Ledi *thein* (ordination hall) not be relocated during the public meetings conducted by Knight Piésold. But the government-formed Implementation Committee demolished the Ledi *thein* before the ESIA was approved. An indication that the process was problematic. "Participation" refers to a process through which stakeholders can influence and share control over development initiatives and the decision and resources which affect them (World Bank 1996). Participation, if allowed, offers more public influence over the decision for ESIA approval.

Limitations of Public Participation

Both the Implementation Committee and Knight Piésold did not consult with Environmental NGOs, Civil Society Organizations and interested academic experts. Two villages that refused to relocate to a new settlement had no chance to participate in the Knight Piésold consultation meeting. Local security forces arrested anti-mine activists and issued arrest warrants. This was to prevent activists from being involved in the consultation process. Principle 10 of the Rio Declaration on Environment and Development (1992) states:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have

appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided” (UNESCO 1992).

A number of studies have shown that the level of public participation was restricted during the Letpadaung ESIA process (Amnesty 2015). Because of limited participation, social movements have sprung up. These movements go beyond civil society and traditional political groups—the situation is beyond what civil society and political groups can handle. Letpadaung has become the focus and embryo of a social movement. Consequently, more complicated problems are being caused. This has led to a lot of social conflicts. For a long period of time, local villagers and activists held demonstrations together to stop the mine project, but the situation did not change and they received no answers. Later, some villagers accepted land compensation and expected employment opportunities from the Wanbao company for their survival because of their limited livelihood choices. At the same time, some villagers continued protesting with the support of activists and CSOs. All this has led to growing tensions between those villagers who have and those who have not accepted compensation.

Legal and Institutional Analysis of Public Participation

In March 2012, Thein Sein, President of a new “civilianized” government, announced a range of political, economic and social reforms. These included the release of political prisoners, creating dialogue with ethnic armed groups, relaxation of media control, push for transparency and accountability, legal reforms, and reforms for economic development.

According to the reform process, the government of Myanmar started to implement the Extractive Industries Transparency Initiative (EITI)¹⁸. A Myanmar EITI office was established to implement and coordinate all essential tasks. The office conducted regular meetings with Multi-stakeholder groups (MSGs) government, businesses and civil society. Natural Resource Governance Institute (NRGI) supported awareness-raising activities about the EITI to CSOs. Pyoe Pin also provided the financial resources for organizing a coalition of CSOs. Hence, a civil society umbrella body has rapidly organized to advocate for transparency and accountability in all sectors, including natural resource management. The CSO's network organization is called Myanmar Alliance for Transparency and Accountability (MATA). MATA has set up working groups comprised of civil society representatives from 14 states. The working members selected civil MSG representatives for collective decision-making. Currently, CSO participation is in the EITI formal process.

During EITI implementation, MATA emphasized EITI standard 1.3 which states, "the government is required to commit to work with civil society and companies and establish a multi-stakeholder group to oversee the implementation of the EITI" (EITI 2016). During a national MSG meeting, MATA, demanded the release of people arrested in connection with opposing natural resource extraction projects. On December 22 2014, Daw Khin Win, a female farmer, was shot and killed by police during a protest in the Letpadaung area. Police later that month arrested Naw Ohn Hla and three other activists who staged a protest in front of the Chinese embassy in Yangon, in response to her violent death (Agence France Presse 2015). MATA also complained that the government was breaching its EITI commitments. In a statement dated December 24, 2014, MATA mentioned, "The government has violated its promise to guarantee freedom of expression on

18. EITI is a global standard whose purpose is to promote open and accountable management of natural resources. It seeks to "strengthen government and company systems, inform public debate, and enhance trust. In each implementing country it is supported by a coalition of governments, companies and civil society working together" (Source: <https://eiti.org/eiti>).

natural resource-related issues” (Wa Lone and Kean 2014). MATA protested in Monywa on January 5th 2015 with official permission and submitted the case to EITI’s international board. Although there was an urgent MSG meeting, the CSO’s did not obtain a solution from the government.

Parliament passed the Right to Peaceful Assembly and Peaceful Procession Law in December 2011, the law which came into effect on July 5th 2012, recognized the right to peacefully assembly. The law requires protesters to obtain permission from a township’s police force before peaceful assembly or a procession can be held. Section 18 of the law provides up to one-year of imprisonment for peaceful protesters if they do not have permission. Parliament amended the law on June 19, 2014. In the amended law, they permit procession or assembly, and punishment is up to six months imprisonment or a maximum fine of 30,000 kyat (US\$ 30), or both. The amended law still mandates the arrest and imprisonment of those who protest without permission. This continues to limit people’s freedom of expression and right to peaceful assembly.¹⁹

The Myanmar parliament, known in Burmese as the Pyidaungsu Hluttaw, passed the Environmental Conservation Law (ECL) in 2012. In June 2014 Environmental Conservation Rules (ECR) were completed in order to implement ECL 2012. Rules concerning EIA procedure are at present waiting for approval from the Pyidaungsu Hluttaw. In the draft EIA procedures, project proponents or business investors take on the responsibility of disseminating sufficient information and consulting with CSOs and local people, but the responsibility of government agencies is still not clearly defined. Many of the applicable rules related to environmental management and protection are still in the draft phase and have not been finalized. Moreover, there is no comprehensive guideline for public participation, especially on development planning and implementation. Myanmar also lacks

19. Naw Ohn Hla and the other three activists who were arrested for protesting at the Chinese embassy were charged with violating Section 18 of the Right to Peaceful Assembly and Peaceful Procession Law (Amnesty 2015).

the legal framework concerning community protection against pollution caused by mining industries and businesses. The lack of environmental legislation in Myanmar limits environmental protection and natural resource conservation. Local communities have received more harm than good from mining operations. In order to restore public trust and meaningful participation, more realistic and effective environmental laws and policies will have to be formulated.

As a government institution, ECD is responsible for implementing the rules and regulations of the new Environmental Conservation Law. Although ECD has extended regional offices, there is no adequate government capacity. For instance, the Implementation Committee held formal meetings to which local villagers were invited. In the meetings, villagers had an opportunity to participate, but the Implementation Committee did not create a constructive dialogue with local people. Government institutions have no experience in fostering public participation and remain apart from the local community. Government officials behave as if they are superior to local people. Most important, what is needed is a change in the mindset of government authorities. The tasks of environmental protection are still government-oriented. Government agencies lack the necessary technical skills to monitor the large and complex mining industry. There are institutional problems, not only in the public participation process, but also of technical capacity regarding the extractive resource industries. Local communities are still not familiar with the EIA process. The conditions are not yet mature for full public participation.

Although the government has made positive progress on EIA procedure, it is still not easy to strengthen public participation in Myanmar, and effective conduct of public participation in EIAs is still a long way off. Government top-down planning and management does not prioritize the needs of local people. This prohibits public participation. Public participation has yet yet a be given the importance it deserves in Myanmar today.

Recommendations

Every development project impacts the environment and often, the livelihoods of local people. Development will not improve the lives of people without environmental and social protection. No development can be successful unless it is carried out in cooperation with the public. There needs to be a balance between environment and development through public participation. Public participation is crucial in development projects that have socio-economic impacts on local people, in order to handle environmental damage. With the Letpadaung Copper Mine Project there is weakness in the practice of implementing public participation. In a meaningful participation process, it is essential to get all groups of stakeholders involved: local public, government, business investors and civil society organizations. Most important, the opinions and priorities of the public should be considered in the decision-making process in democratic participation. Another major need is to develop criteria in the context of the participation process in Myanmar, for instance, well-organized administration, sharing available information, using participation tools and techniques, educating local people and other stakeholders, early participation prior to development projects, and a transparent decision making process.

To get effective public participation, the recommendations and critical issues for the Letpadaung Copper Mine Project are presented as follows:

Recommendations for the Central Government and Regional Government

- Develop a legal framework for public participation in all stages of the EIA process
- Make use of public participation tools and techniques that facilitate a continuous dialogue among different stakeholders
- Build good neighborly relations amongst local community, business investors and government authorities, and through that build public trust
- Create constructive dialogue in the consultation process for

open discussion of questions in order to improve the quality of participation

- Be more transparent about different areas of the project: design choice, costs, benefits, contracts, project beneficiaries, project status, and the environmental, social and health impacts
- Give feedback after public input to all stakeholders on how to consider and address all arguments and comments before decision making
- Make sure that government authorities do not force local people off their lands and their homes
- Open space to get civil society organizations involved
- Take time to resolve conflicts to achieve mutual solutions
- Foster capacity building in government agencies and environmental institutions in the context of public participation and environmental management
- Encourage interactive participation with all stakeholders to achieve better and fairer decisions

Recommendations for the Business Sector

- Provide sufficient information to the local community by using suitable channels of communication (for example, press releases inviting comments, social media, local newspapers, ballot boxes, and community meetings)
- Listen to the concerns and interests of project-affected people and then conduct face-to-face discussions to better understand the situation, problems, issues, and opportunities.
- Meet the guidelines on public participation processes according to international norms, such as the IFC standard
- Establish accessible grievance mechanisms to respond to community members' suggestions and complaints
- Respect environmental rights: right to know, right to participate, and right to justice as described in international conventions

Recommendations for Civil Society Organizations

- Raise awareness of the environmental and social impacts of mining industries within the affected communities
- Establish public monitoring mechanisms with the local community to watch mine sites and record violations of the law by mine developers
- Advocate against and bear witness to weak and inadequate implementation of existing laws, such as environmental conservation and mining laws
- Make sure that legislation is compliant with international human rights standard, especially the freedom of expression and access to information on extractive resource industries
- Search for the best way to shift from protest to the negotiation table

Suggestions for Future Research

The development of the public participation process requires further study. This research was conducted “to investigate public participation and stakeholder involvement in the decision making process of development projects in Myanmar, specifically in the Letpadaung area.” To work in practice, one needs to seek the root causes of the difficulties encountered in the public participation process and also study environmental governance and its relation with development planning. To strengthen laws and policies, one can study public participation in the environmental policy-making process and analyze the strengths and weaknesses of existing environmental laws. Further studies can be carried out by examining current contentious projects and the problems associated with them. Looking at how to increase the participation of local people and those civil society in the decision making process, should also be a focus of further study.

Conclusion

In the years of the military junta, Myanmar developed projects without environmental management systems, applicable laws, or sustainability concerns. At present, all government sectors are still undergoing reform. Although the policies and laws associated with development projects have positively improved, public participation has still not been taken into account and given the importance that it deserves. The policies that pertain to public participation still remain weak and underdeveloped. How to fully and fairly conduct public participation remains a major challenge in Myanmar today. It is not easy to effectively and efficiently participate because of the top-down management system of Myanmar's government. The public has a chance to express their real concerns and desires, but their voices cannot affect the environmental decision making of government. The Letpadaung Copper mine project still causes social conflict because of the abuse of power, the weakness of the legal framework and administrative mechanisms, lack of just legality and limited participation. It is difficult to overcome these obstacles under the current political constraints. Myanmar has a long way to go before reaching the point where meaningful public participation becomes standard practice.

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About the Author

Dr Lwin Lwin Wai's work is focused on environmental governance and social justice. She has been working with various ministries in Myanmar, international and local organizations, and research firms about environmental issues, social research, natural resource management, and the public consultation stakeholder dialogue process. She has done extensive participatory research and advocacy work with local NGOs and civil society organizations.

She received a Ph.D. in Nuclear Technology at Yangon Technological University in 2004, after which she worked for ten years as an assistant director in the Food and Environmental Monitoring Department of the Ministry of Science and Technology, Myanmar.

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Appendix 1

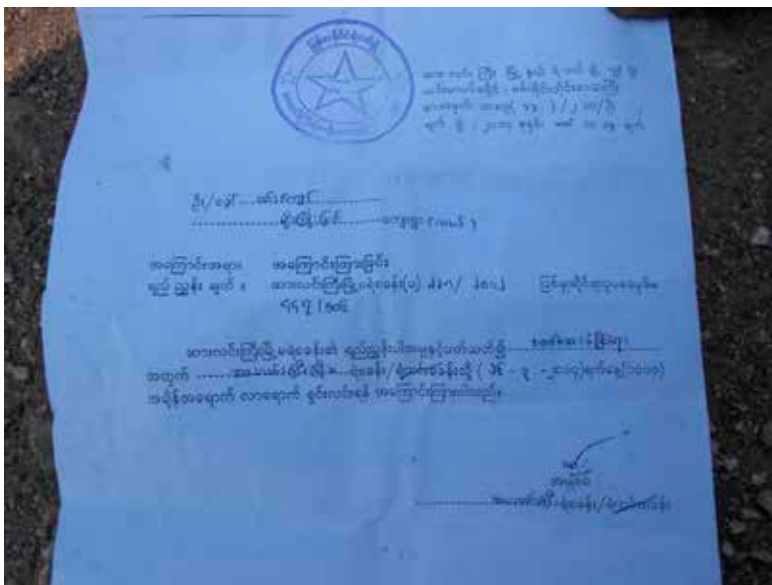
Chronology Monywa - Letpadaung Copper Project

| | |
|-----------------------------------|--|
| July 1903 to February 1904 | The influential Buddhist monk Ledi Sayadaw lives in Letpadaung |
| 1978 | The state owned Mining Enterprise No 1 (ME-1), signs an agreement with the Bor Copper Institute of Yugoslavia to jointly develop the Sabaetaung and Kyisintaung deposits. |
| 1984 | With Yugoslav support construction of a copper smelting plant at the mine site is completed. The plant which is operated by ME-1 is built to process 8,000 tons of copper ore per day. |
| 1994 | Feasibility Study Agreement is signed by Ivanhoe Myanmar Holding Ltd and ME-1 to study the feasibility of recovering copper using the SX-EW method at four deposits: Sabaetaung, Sabaetaung South, Kyisintaung and Letpadaung. |
| 1995 | Ivanhoe Myanmar Holding Ltd operates a 1 ton per day copper pilot plant using the SX-EW process. |
| 1996 | A 50-50% joint venture partnership agreement is made between Ivanhoe Mines (then called Indochina Goldfields) and ME-1 to mine, process and market copper from Sabaetaung, Sabaetaung South and Kyisintaung deposits. It is called the S&K project. Myanmar Ivanhoe Copper Company Limited (MICCL) is formed as a Myanmar-based joint venture company. The development of the overall project is planned in two phases. S&K is the first phase of the Monywa Copper project. Ivanhoe makes plans to implement the Letpadaung Copper Mine Project |

| | |
|-------------------------------|---|
| 1996-1997 | Farmland is nationalised for the S&K mine |
| 1998 | The S&K project begins commercial production of copper |
| Feb 2007 | Ivanhoe transfers ownership of its 50 % interest in MICCL to the Monywa Trust |
| April 2008 to Aug 2010 | Mine operations cease, but copper production continues on an irregular basis |
| 5 March 2010 | UMEHL receives approval to nationalise 7,867 acres of land for the Letpadaung project |
| 3 June 2010 | NORINCO and UMEHL agree to production sharing contract for the S&K and Letpadaung mines |
| 12 December 2010 | Officials from the Monywa District Government meet villagers from Wet Hme and claim to them that they would receive compensation payments for damage to their crops and that their farm lands would not be seized |
| November 2012 | President Thein Sein announces the creation of the Letpadaung Investigation Commission |
| March 2013 | The Letpadaung Commission report is issued, making a list of recommendations to the government and the companies involved |
| 22 December 2014 | Daw Khin Win is shot and killed during a protest against the project in the Letpadaung area |

Appendix 4

Salingyi Township Police Station's notification that summons calls to inspect local villagers on 2012 offences, dated 15 March 2014



PUBLIC PARTICIPATION, SOCIAL MOVEMENTS, AND ENVIRONMENTAL DECISION MAKING PROCESS:

Case Study of the Letpadaung Mining Project

Public participation is crucial in development projects due to their socio-economic impact on local people and degradation of the environment. This research reports on the participation of locals and other stakeholders in the Letpadaung Copper Mining Project, currently being implemented by the Wanbao Company of China, the military-owned Union of Myanmar Economic Holdings Limited (UMEHL), and Mining Enterprise 1 (ME-1). The Letpadaung Copper Mine Project is a nexus of social conflict due to abuses of power, human right violations, lack of social justice, and the limited participation of stakeholders. Locals have protested against the project with the support of civil society organizations and environmental groups. There has been a lot of controversy, and hence, it has gained a lot of national and international media attention.

This volume seeks to describe the reality of what is happening in the Letpadaung area to understand the possibilities for public participation in development project decision-making in Myanmar. Public participation is a democratic practice that makes it possible for people from different sectors to integrate their opinions into decision-making. This research attempts to find what role public participations play in decision making about development in Myanmar—specifically at the Letpadaung Copper Mine.

The Understanding Myanmar's Development series is an exploration of the transformation taking place in Myanmar on multiple levels: social, economic, and political. In this series, RCSD hopes to realize the dual goals of both building up the body of knowledge on Myanmar and strengthening the research capacity of Burmese scholars in their study of development policy and practice. This volume is just one piece of the puzzle of development practice, as felt by the people and communities of Myanmar.



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