



Thai ETOs Watch

Executive Summary

For the report

“Thailand direct investment in the neighboring countries:
adverse impacts to environment and communities, and human
rights violation”

By

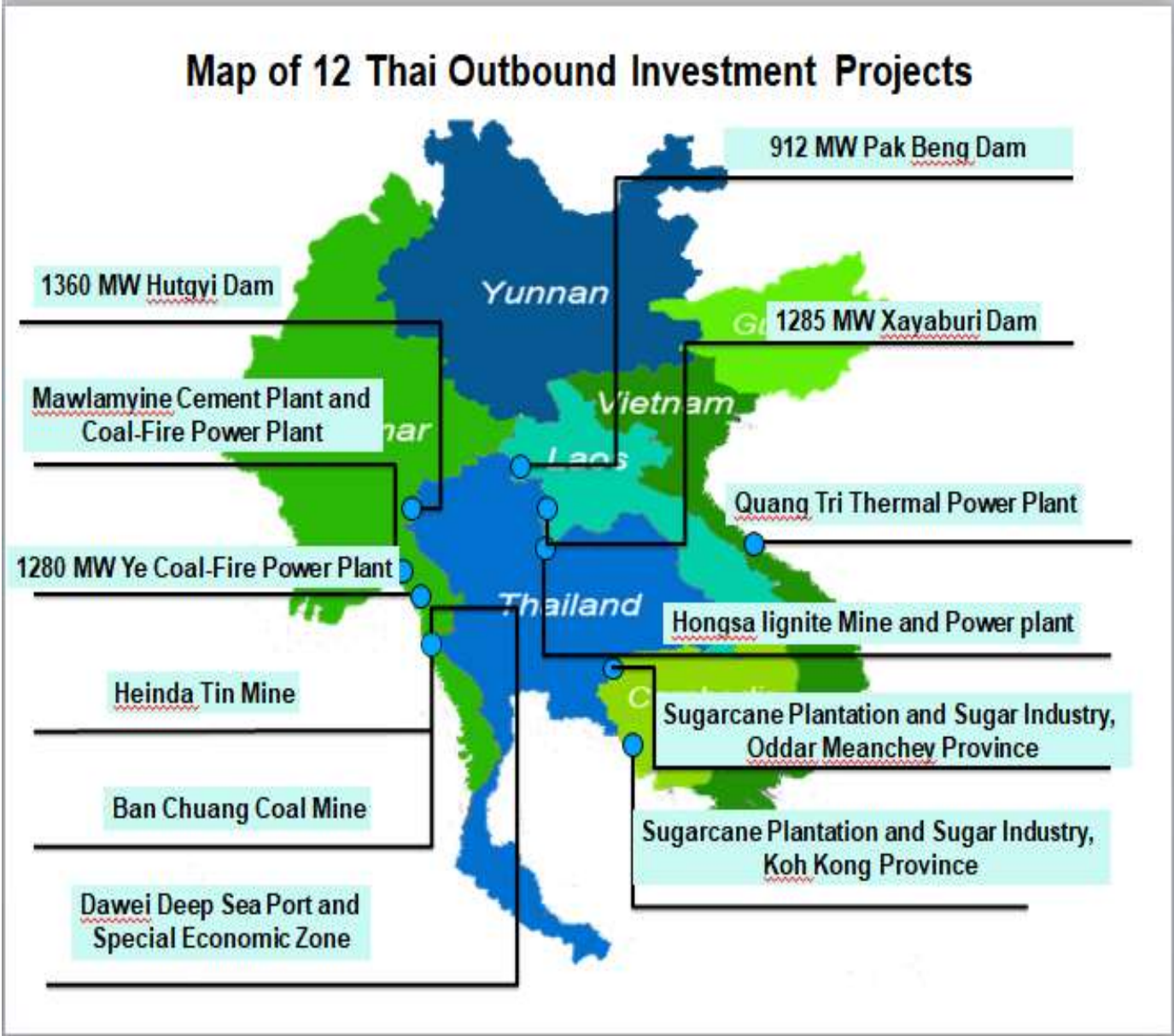
The Mekong Butterfly

A member of

Thai Extra-Territorial Obligation Working Group

(Thai ETOs Watch)

Map of 12 Thai Outbound Investment Projects



Executive Summary

Thailand direct investment in the neighboring countries: adverse impacts to environment and communities, and human rights violation

The report entitled “Thailand direct investments in the neighboring countries: adverse impacts to environment and communities, and human rights violation” **is the collation of** transboundary investments and case studies in the Mekong region. The report examines accountability issues and patterns of Thai investments (and practices) in overseas investments, and adverse environment, social impacts and human rights violation.

Focusing on 9 projects of dam (from 12 projects), coal and economic land concessions in the Mekong region (and Myanmar), communities affected by Thai overseas investments have submitted complaints to National Human Rights Commission of Thailand (NHRCT) regarding adverse environment, and social impacts caused by Thai investments and human rights violations. The submission articulates legal loopholes and policy limitations that support the investments in a way that breach human rights especially the communities who live in the project area and nearby. In addition, the submission included policy recommendations that may contribute to enhancing accountability of the investors in order to compile with the universal principle of human rights and advancing human rights commitment beyond the borders (transnational human rights obligations) which is pragmatic and influential for policy change. The regulation aims to regulate Thai overseas investments in the neighboring countries.

Procedure and method of Thai direct investment overseas

Thai investment overseas could be traced back during the 1980 or 1985-1989. Thailand has started capitalizing its direct investment in the neighboring countries (such as Cambodia, Lao PDR, Myanmar and Vietnam) since 1980s, and expanded insensitively according to two main overarching policy phenomena: the implementation of **‘from the battlefield into market place’, initiated by the government** of Prime Minister Chatchai Choonhavan; and the globally economic ideas and policies that enhance reform agenda, liberalization and free markets economy.

The study of Thailand’s direct investment (TDI) in the past 10 years (2005-2014) founded accumulative value totaled 8 billion USD. In ASEAN countries, TDI ranked third in Singapore; ranked 4th in Hongkong and 5th in British Virgin Island, respectively. These countries are popular destinations as a base for capital transfer to invest in the third countries because these countries have initiated tax incentives and convenient transactions. The TDI accumulative value in Cambodia, Lao PDR, Myanmar and Vietnam is 18,170, 45, 403, 70,355 and 56,097 million baht, respectively. Most of TDI are in electricity and energy sector, oil and gas exploration, steam and domestic air cooling (in Lao PDR), financial sector, industrial production sector (e.g. sugar and textile), loans transaction among affiliates, trade credits, mining and quarry and concrete. Main driving factors that boost TOI overseas are market seeking, resources and labour seeking, efficiency seeking and assistance in risk diversification of the business sector.

Support from Government

There are several factors driving the growth of TDI in the neighboring countries; they are such as increased standard wage labour in Thailand, inadequate raw material, the growth of labour advocacy that demands for greater benefits for the workers and strong civil society that protest against land and natural resources grabbing conducted by government and private sectors. The research has identified additional measure and policy instruments are created and enacted in order to boost overseas investments such as the following:

- a. bilateral agreement that signed by National Economic Development Assistance (NEDA) which is the organization set up to providing development aids to the neighboring countries,
- b. secure loan given from Export-Import Bank (EXIM),
- c. strong support from Ministry of Foreign Affairs
- d. electricity trading agreement signed with the neighboring countries
- e. designation of special economic zone by which the investor obtain tax deduction such as SEZ in Myanmar, Investment Promotion Law in Laos and Poverty Alleviation Strategy of Cambodia (focusing on economic land concessions and foreign investments)
- f. drafting of national economic development plan that focusing on foreign direct investments that relying on high technology

NHRCT's role in the investigation of human rights violations

In the past years, TDI in the neighboring countries has resulted in both benefits and disadvantages. The growing trend of TDI has been met with growing concerns about investor disregarding environmental and social governance, environmental and social impacts of the project, negative implications for human rights and the environment in their business practices including unfair and unjust remedy provided to the project affected people. There are several cases in Cambodia and Myanmar that are impacted by TDI and the villagers have submitted the complaint to the Thai National Human Rights Commission (NHRC) for investigation, there are 9 cases in total-for example the case of Dawei SEZ, sugar plantation in Oddarmeanchey province; and Hongsa transmission lines from Hongsa coal fire power plant, Lao PDR. Of total 9 cases, 4 projects are located in Myanmar, 3 projects are in Lao PDR, and 2 cases in Cambodia.

The investigation of NHRCT has resulted in a set of policy recommendations that inform the cabinet resolution on Thai overseas investment released on 16 May 2016 and 2 May 2017. The Cabinet Resolution indicates the need to establish a mechanism to regulate and monitor practices of Thai investors overseas by respecting fundamental principle of human rights and adopting the overarching principles of United Nations Guiding Principle on Business and Human Rights (UNGPR). However, the relevant ministries designated to follow up the resolution have not made any significant progress.

A brief detail of 9 cases are presented as below.

Hatgyi hydropower dam: A run-off-river dam, it will be built on the Salween River in **Karen State's** Hpa-An, around 47 kilometers from Thailand border at Sob Moei District, Mae Hong Son. Its reservoir is 48 meters above mean sea level and can contain about 500 **million cubic meters**. **The dam's height is 115 meters and width 1,127.20 meters with installed capacity of 1,360 megawatts**. It can produce 7,325 units of power. 1,190 megawatts of the power generated shall be sold to the Electricity Generating Authority of Thailand (EGAT) and the rest is reserved for domestic consumption in Myanmar. The power transmission line shall be installed from the Hatgyi dam to the border of Tha Song Yang District of Tak province covering the distance of 45 kilometers. Then, the grid line shall be developed through Pitsanuloke at the Pitsanuloke high power station 3 covering the distance of 300 kilometers. The whole transmission will cost nearly 100 billion baht. And the construction is expected to last six years and

three months and will be jointly invested by EGAT International Co., Ltd. And Sino-hydro Corporation Limited plus the Department of Hydropower and International Group of Entrepreneur Co, Ltd. with their shares of investment at 36.5%, 50.5%, 10% and 3%, respectively.

Dawei SEZ is located 25 kilometers northwest of the city of Dawei by the Andaman Sea. The project site covers the area of 196 **square kilometers, about ten times as big as Thailand's Map Ta Pud Industrial Complex**. To be made possible by the investment of over 300 billion baht, it shall house all kinds of industry including petrochemical, steel production, chemical fertilizer production, coal-fired power plant, deep sea port, access to Thailand (including road, oil pipeline, a high-power transmission line) and reservoirs. It is expected to draw investors from around the world. The project was initially, from 2010-2013, developed by the Italian-Thai Development PLC. At present, the company has been downgraded to be just initial developer, while the whole final phase of the development shall be taken over by the governments of Thailand, Myanmar and Japan, based on a government to government basis.

Heinda Mining: One of the largest and oldest tin mine, Heinda is located on the upper Tenasserim River, Heinda, Myitta Subtownship, Dawei District, Taninthayi Division, South of Myanmar. The concessional land covers 2,097 acres and situates close to Myaung Pyo, just two kilometers from the village. It has been operating more than 70 years since the colonial time. In 2009, Myanmar Pongpipat Co., Ltd. has taken over the project and won a concession from the government of Myanmar in a joint venture project with the Mining Enterprise [ME2] under the Ministry of Natural Resources and Environmental Conservation [MONREC] with profit sharing at 35% and 65% between ME2 and Myanmar Pongpipat Co., Ltd.

Banchuang coal mining: Located North of Ban River, a subsidiary of Taninthayi River, the coal mine is located in Banchuang, the village of Kadawni. Its operation has commenced since 2012 after a ceasefire deal was struck between the government of Myanmar and other ethnic minorities in the area including the Karen National Union (KNU). Initially, May Flower Enterprise Co, Ltd. was awarded a concessions from the government of Myanmar to operate the coal mine. But on 15 November 2011, East Star Co. was awarded the concessionary rights from KNU covering the span of 25 years (to be ended in 2036. On 23 November 2012, the Energy Earth Co. signed a deal with East Star Co. to operate the Banchuang coal mine as well. Then East Star Co. won bidding to operate in 504.8 acers of land. The mining and distribution business is taken charge by Energy Earth Co. Energy Earth Co. has been mentioned as facilitating access to financing of this coal mine project as well. The profit sharing between Energy Earth Co. and East Star Co. is 70% and 30%, respectively. Nevertheless, during a meeting with the villagers on 18 January 2014, a manager of East Star Co. told the villagers that the company was tipped to operate on more than 8,000 acres of land.

Xayaburi hydropower dam: Located on the 1,931st kilometer-stone from the mouth of the Mekong in Xayaburi province, the dam has been developed by Xayaburi Power XPCL with the installed capacity of 1,285 megawatts. The 7,370 million of units of power generated by the dam are slated to be sold to the Electricity Generating Authority of Thailand (EGAT) with 1,220 megawatts to be shipped to the Thailand-Laos border point for the span of 31 years. The project shall cost around 115 billion baht and should take around eight years to complete. Construction of the dam has already commenced since 15 March 2012 and commercial sale shall start in October 2019.

Hongsa lignite and coal fire power plant: Composed of three modules, the lignite mine in Hongsa, **Xayaburi province about 30 kilometers from Thailand's Nan Province**, the Hongsa power plant project features thermal power plant using energy from coal to operate the turbines to produce power. Water from Nam Kaen dam has to be pumped up and used as part of power generation process. The thermal

power plant utilizes lignite with lower heating value and boasts the total installed capacity of 1,878 megawatts. Hongsa Power Co. (HPC) signed a power purchase agreement with the Electricity Generating Authority of Thailand (EGAT) to sell 1,743 megawatts of power on 2 April 2010. The 500 kv power grids shall cover three provinces including Nan, Phrae and Lampang.

Pakbeng hydropower dam is composed of concrete dam, powerhouse, dam sluice gates, lock catered to 500 gross tonnage vessels and fish ladders. The power plant can generate up to 912 megawatts through the export of power shall vary to seasons. Developed by Datang Overseas Investment, the construction has commenced in 2017 and it should be completed and ready to generate power in 2023. 30% of shares are held by Electricity Generating Public Company Limited or EGCO.

Sugar plantations in Kohkong and sugar refinery: Composed of two components including sugar plantation operated by Koh Kong Plantation (KPT) which has been awarded concessionary right on 9,174.5 hectares of land and the plantation and sugar factory with the capacity to process 6,000 tons of sugar cane daily operated by (K Koh Kong Sugar Industry Co., Ltd. (KSI) SI) which won concessions on 9,567.2 hectares of land. 80% of shares in each of the two companies are held by Khon Kaen Sugar Co.

Sugar plantations in Oddarmancheay and sugar refinery: It constitutes a large sugar factory in Cambodia with the capacity of 10,000 tons per day. The land obtained through economic land concessions procedure by the three companies cover as much as 19,736 hectares of land and it has been used for sugar plantation and a sugar factory with the concessions to last 70 years in two districts of ឃុំ Oddarmancheay including Samrong and Chongkal, Northwest of Cambodia.

An overview of human rights and environmental impacts

Community and environmental impacts can be categorized as follows:

- Impacts as indicated in the project document, publicly disclosed: For example, the Xayaburi dam's EIA report indicates quite a large number of affected people as high as 25,676. Still the number only accounts for members of the communities located at the dam site and the reservoir.
- Impacts as indicated in the project document, not publicly disclosed: For example, the Hongsa lignite and coal fired power plant the construction of which shall result in the relocation of more than 2,000 villagers to a new site prepared by the Hongsa Power Company Limited. The new site is eight kilometers away from the city of Hongsa and 12 kilometers from the power plant. **The Sugar plantations and sugar refinery in Kohkong, as indicated in the NHRCT's report** that over 456 families from three villages are slated to lose over 5,000 hectares of land. The Dawei Deep Sea Port and Dawei Special Economic Zone, which according to the Dawei Development Association (DDA) shall directly impact over 43,000 people in 36 villages. And the Banchuang coal mining, which according to the Takapaw Youth Group and DDA, shall impact around 16,000 villagers in over 22 villages, in terms of their health and the environment.
- Other impacts, both indicated and not indicated in the project document and both publicly disclosed and not publicly disclosed including downstream impacts on the ecology and community. As to the hydropower project including sediment flushing of the Xayaburi dam that has yet to be evaluated how it will affect the level of oxygen in the Mekong water behind the dam and how it will affect fish in the Mekong or not. Impacts from the loss of the utilization of land, forest and water supplies in areas where concessions can be offered. It could cost the community, inside and outside the project site, their food security and income, particularly projects that cannot control the level of environmental contamination. Such contamination of

natural water supplies would render severe impacts on the community's livelihood and health including the case of the Heinda Mine, etc.

Impacts stemming from human rights violation including

- All processes in all governments concerning decision making to approve investment projects, the feasibility study and/or social and environmental impact assessment do not include participation of local community to be affected. In addition, most reports are written in English with no versions in local languages. There is also a lack of disclosure of project detail since the beginning including the case of coal-fired power plant based in cement plant.
- There is no investigation if there is any lack of compliance with the legal procedure including the approval of economic land concessions that should be preceded by social and environmental impact assessment as required by the Cambodia law on economic land concessions.
- The use of violence against local community located in the project area including forced relocation, or burning to enable forcible evictions as well as judicial harassment and arrests. Those who have lost their land and their food security are unfairly compensated and have to suffer from a loss of their income and livelihood. It has also been reported that pregnant women and children are visibly employed as labor and they are deprived of their health standards.

Legal loopholes and policy gaps: responsibility and accountability of Thai investments

- Legal loopholes and policy gaps are clearly found to support and boost overseas investments that garner transboundary impacts in Thailand. Yet, concerned state agencies or state enterprises are inclined to interpret the laws to excuse themselves from being abide by the laws that aim to protect the interest of the people and the environment in Thailand. In addition, there are no mechanisms that can be used by the state to hold accountable and to investigate conflict of interest of agencies under its charge, for example, by signing the power purchase agreement (PPA) between, the Electricity Generating Authority of Thailand and the Xayaburi Power XPCL, EGAT was acting both as procurer and seller of the same contract.
- Gaps in liability of commercial banks that bankroll various projects: The lending banks can claim that they have already acted in compliance with the laws without conducting the risk evaluation per the Equator Principles (all the six commercial banks that bankroll the Xayaburi hydropower dam project had yet to sign the Principles).
- Gaps in regional mechanisms: With regard to the MRC, government officials can act as the Head of the taskforce to carry out the PNPCA process, instead of leaving the power to make the decisions to officials at the Ministerial level.
- State agencies that are governed by their own laws and regulations are reluctant to implement and enforce other relevant laws applied in the areas where the projects are located. For example, EGAT avoids acting in compliance with the criteria and methods set out by the Ministry of Interior regarding the criteria and methods to allow public bodies to utilize state property. In addition, there are no agencies or regulations that have the power to directly regulate investments by Thai investors abroad. There are only rules and bodies that regulate foreign investments in Thailand.
- Since the mandate of the NHRCT does not entail follow up process, it shall not ensure the actualization of effective remedies and rehabilitation of affected persons.

- The promulgation of special laws including the Dawei Special Economic Zone Law in 2011 favors investments of private sector at the expense of land owners. It does not guarantee public consultation and consent of the community. As a result, it conveniently paves the way to land grabbing and violation of community rights and human rights
- Gaps in the Stock Exchange of Thailand Act: SET does not have fact-finding and in-depth investigation mechanisms without having to wait for complaint. Many of such cases also take place abroad. SET simply sticks to information supplied by the listed companies without investing extra effort to verify the information received from the listed companies. For example, there was a protest led by 6,000 villagers against the construction of a coal-fired power plant, the largest of which ever built in Myanmar, but SET has not mechanisms to investigate the matter.

Recommendations

- The development of National Action Plans (NAPs) must be carried out in compliance with the United Nations Guiding Principles (UNGPs) and the Equator Principles must be applied to regulate financing. The Bank of Thailand should take the lead in this process.
- The **Securities and Exchange Commission (SEC)**'s **voluntary/semi-mandatory** disclosure measure must be seriously applied.
- NHRCT should promote the application of UNGPs and apply it in its investigation. Such standard should be invoked to provide for public disclosure of information and a formal line of communication should be established with the Securities and Exchange Commission to enable the mechanisms to regulate business operations.
- The government should set up a mechanism or a special committee for regulation and it should be advocated by the NHRCT.