

# Thai Outbound Investments in the Mekong Region and Myanmar

PROTECTING HUMAN RIGHTS AND ENSURING DUE DILIGENCE IN THAILAND'S OUTBOUND INVESTMENTS

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This Brief is prepared by Thailand's Extraterritorial Obligations Watch Working Group (Thai ETO Watch WG), a coalition of Thai CSOs and NGOs working to stop human rights violations, environmental damages, and social impacts caused by Thailand's outbound investments. We monitor practices of Thai investors in the Mekong countries and Myanmar, and support communities who are negatively affected by these projects in defending their rights to natural resources and remedies in cases of abuses. We advocate for policy changes to enforce the extraterritorial obligations of Thai investors, including to conduct due diligence. Working with academic think tanks, CSOs in Myanmar and the Mekong region, and government actors, including the National Human Rights Commission of Thailand (NHRCT), we work to develop mechanisms to hold Thai investors accountable.

**All information presented here belongs to the Thai ETO Watch WG and member organizations.** The information presented is based on research conducted by the Mekong Butterfly Group, with the support of Spirit in Education Movement (SEM), EarthRights International (ERI), the NHRCT, and Thai ETO Watch WG. For more information about the research, please contact Montree from Mekong Butterfly at [nokmontree@yahoo.com](mailto:nokmontree@yahoo.com), Arreewan from SEM at [ae-sem@edu.org](mailto:ae-sem@edu.org), and Wora from ERI at [wora@earthrights.org](mailto:wora@earthrights.org).

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## KEY FACTS

1. Thai investors currently finance 13 megaprojects across Association of Southeast Asian Nations (ASEAN) countries, including energy projects and large-scale sugar concessions. They have become key players in the global market economy, as coal, oil and hydropower investors, and as major buyers of electricity.
2. Human rights violations are common across Thai outbound investments, as acknowledged by the National Human Rights Commission of Thailand (NHRCT). These violations are caused by land grabs, forced evictions, and a disregard for host country and international law.
3. Affected communities struggle to access justice and remedies in part because there is no legislation in Thailand to ensure that Thai investors fulfill their extraterritorial responsibilities.
4. Thailand has taken no concrete steps to implement binding laws for outbound investors, through a National Action Plan (NAP) on business and human rights or other measures, despite the fact that PM General Prayuth Chan-o-cha affirmed Thailand's commitment to the UN Guiding Principles on Business and Human Rights (UNGPs) in a speech in May 2017.
5. Domestic efforts to push for regulation of Thai outbound investment face challenges due to a lack of implementation of Thailand's commitments to regulate outbound investment. Civil society groups are struggling to push this agenda due to restrictions on freedom of expression and assembly, including a ban on gatherings of five or more persons and increased, broader enforcement of the Computer Crimes Act for cases of defamation, often used to silence human rights defenders, including journalists and community leaders.

## ACTION STEPS

1. We call for the Thai government to take concrete steps to monitor, prevent, investigate, and redress human rights abuses by Thai investors, and to enforce stronger regulations for activities of Thai investors abroad, including around projects with transboundary impacts.
2. We call for Thai investors to adopt the UNGPs in their businesses outside of Thailand, to respect communities' rights to remedies, and to conduct due diligence for all operations.

## UNREGULATED THAI OUTBOUND INVESTMENT: A HUMAN RIGHTS LIABILITY

Across ASEAN, Thai investors are backing energy and economic infrastructure projects with little regulation and often with disregard for the human and environmental rights impacts of their projects. The Electricity Generating Authority of Thailand (EGAT) is pushing for aggressive expansion to Cambodia, Laos, Myanmar and Vietnam (CLMV countries) in order to secure long-term energy security for Thailand's economy. Thai investors are developing major hydropower dams and coal power projects across the region to produce energy for export back to Thailand.

Thailand's Power Development Plan for 2015-2036 includes the following: the Xayaburi dam (completed)<sup>1</sup>, the Pakbeng dam (approved)<sup>2</sup> and the Hongsa coal-fired power plant (operational)<sup>3</sup> in Laos; the 7000 MW Mongton dam (planned)<sup>4</sup>, the Hatgyi dam (planned)<sup>5</sup>, the Banchaung coal mine (operational)<sup>6</sup> and the Ye, Hpa-An and Ann Din coal-fired power plants (planned)<sup>7</sup> in Myanmar; and the Stung Nam dam (planned)<sup>8</sup> and the Koh Kong coal-fired power plant (planned)<sup>9</sup> in Cambodia. More than 90 percent of the electricity generated by these projects is for export to Thailand. For many of them, EGAT subsidiaries EGAT International and EGGO enter into joint ventures with domestic energy operators and enterprises. There are documented human rights concerns around many of these projects and public pressure to stop the projects or to protect the affected communities' rights to remedies.

Beyond the energy sector, Thai foreign direct investments focus on Special Economic Zones (SEZs) and Industrial Complexes, including deep sea ports, crude oil and petrochemical factories, and oil refineries. These investments include the \$37 billion Dawei SEZ<sup>10</sup> in Myanmar and sugar plantations<sup>11</sup> in Cambodia, primarily operating for export to Europe. In one case, Thai company Mitr Phol Group<sup>12</sup>, the world's fourth-largest sugar producer, invested in 20,000 hectares for sugar

<sup>1</sup> <https://news.nationalgeographic.com/news/special-features/2014/07/140711-mekong-river-laos-thai-land-dams-environment/>

<sup>2</sup> <https://www.internationalrivers.org/resources/thai-investments-must-recognize-local-rights-l-bangkok-post-16487>

<sup>3</sup> <https://www.mekongeye.com/2015/09/08/thailand-imports-first-coal-power-from-laos/>

<sup>4</sup> <https://www.internationalrivers.org/blogs/254/thailand%E2%80%99s-responsibility-to-the-people-of-the-salween-river>

<sup>5</sup> <https://www.earthrights.org/blog/let-salween-flow-freely>

<sup>6</sup> <https://www.inclusivedevelopment.net/campaign/myanmar-coal-mine/>

<sup>7</sup> <http://www.nationmultimedia.com/detail/Corporate/30330229>

<sup>8</sup> <http://www.nationmultimedia.com/detail/politics/30325900>

<sup>9</sup> <http://www.nationmultimedia.com/news/business/EconomyAndTourism/30318511>

<sup>10</sup> <http://www.thailand-construction.com/italian-thai-development-seeks-update-on-dawei-plan/>

<sup>11</sup> <https://www.farmlandgrab.org/post/view/24887-dogged-by-abuse-allegations-mitr-phol-pulls-out-of-cambodia>

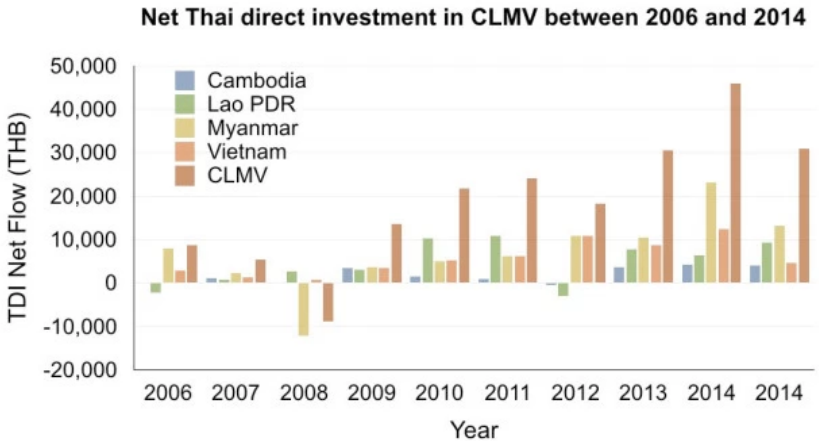
<sup>12</sup> [http://www.sugaronline.com/website\\_contents/view/1191523](http://www.sugaronline.com/website_contents/view/1191523)

plantations in Oddar Meanchey province, Cambodia. Mitr Phol is a major sugar supplier to Coca-Cola and Pepsi Co. But concerns soon arose over massive land grabs, forced evictions, irresponsible business practices, and human rights violations and, following public pressure, Mitr Phol withdrew its concession in Cambodia in 2014<sup>13</sup>.

**THE SCOPE OF THAI OUTBOUND INVESTMENT**

Thai outbound investments are showing aggressive growth, especially in ASEAN countries and specifically in the CLMV countries. According to Thailand's Board of Investment (BOI), Thai investment abroad totaled \$13.3 billion in 2016<sup>14</sup>. The Stock Exchange of Thailand (SET) announced double profits for outbound investments in 2016. According to research by SET, there are up to 192 Thai firms investing abroad, 79 percent of them invested in ASEAN and 60 percent invested in the CLMV countries in 2016.

There are multiple factors driving Thai investments in ASEAN countries<sup>15</sup>. Thai investors are driven to seek new markets for their services and products, access to resources and raw materials, cheaper labor, partnerships with or acquisition of international brands, transboundary supply chains, and opportunities to diversify the business sector. Other contributing factors include weak legislation in Thailand around these investors' extraterritorial obligations and weak business regulations in host countries.



Source: Mekong Butterfly, Thai Outbound Investment in Mekong and Myanmar

<sup>13</sup> <https://www.cambodiadaily.com/archives/thai-human-rights-body-says-plantations-stole-land-66456/>

<sup>14</sup> <http://thaiembdc.org/2017/08/02/overseas-direct-investment-by-thai-listed-firms-doubles/>

<sup>15</sup> [http://www.ditp.go.th/contents\\_attach/99273/99273.pdf](http://www.ditp.go.th/contents_attach/99273/99273.pdf)

Thai outbound investment is defined as an investment transaction in which an investor is based in Thailand but has controlling stakes in an entity or project in a foreign country, though procedures vary depending on the investment. Common patterns include investing in subsidiary companies, purchasing entire enterprises, investing in joint ventures, and acting as both developer and investor for projects.

Public Thai companies are key investors regionally and globally. These companies include: Charoen Pokphand<sup>16</sup>, which operates in 20 countries with over 500,000 employees; Siam Cement Group<sup>17</sup>, with revenues from its businesses in and exports to ASEAN totaling \$3 billion; Banpu PCL<sup>18</sup>, one of the largest energy providers in Asia and also invested in the U.S. and Australia; and PTT<sup>19</sup>, a state-owned energy enterprise.

### **KEY THAI COMPANIES BACKING DEVELOPMENT PROJECTS ABROAD:**

- › Italian-Thai Development PCL is developing the \$37 billion Dawei Special Economic Zone in Myanmar.
- › Ch Karnchang PCL, a leading infrastructure company in Asia, is developing the \$3.8 billion Xayaburi dam in Laos.
- › Toyo-Thai Corporation, a global energy developer, is supporting the Hpa-An and Ann Din coal-fired power plants and the Ahlone gas-fired power plant in Myanmar.
- › Banpu and Ratchaburi Holding together hold 80 percent of the \$3 billion Hongsa coal mine and power plant in Laos, two large concessions in Indonesia and one coal project in Cambodia.
- › The Electricity Generation of Thailand (EGAT) is a major investor and buyer for seven coal and dam projects in ASEAN countries.
- › Mitrphol is the world's fourth largest sugar producer and was developing sugar plantations in Oddar Meanchey, Cambodia, until the company withdrew its concession following allegations of human rights abuses.

<sup>16</sup> <http://www.cpgroupglobal.com/>

<sup>17</sup> <http://www.nationmultimedia.com/detail/Corporate/30329006>

<sup>18</sup> [https://www.banpu.com/business\\_and\\_cg\\_awards/](https://www.banpu.com/business_and_cg_awards/)

<sup>19</sup> <http://ptt.listedcompany.com/misc/presentations/20151123-ptt-investor-update-201511.pdf>

## **THE STRUGGLE FOR ACCOUNTABILITY IN THAI OUTBOUND INVESTMENT: STEPS TOWARD IMPLEMENTATION**

The trend of growing Thai Outbound investments in the CLMV countries continues at a breakneck pace without mechanisms to ensure compliance with international human rights standards and best practices. This has resulted in both benefits and disadvantages. There is growing concern over a lack of accountability for the human rights violations. Negative impacts commonly include destruction of livelihoods, land grabs, and forced eviction. Communities have voiced their complaints and sought remedies through litigation and non-judicial channels such as the National Human Rights Commission of Thailand (NHRCT).

The NHRCT's recommendations have emphasized that Thai investors in outbound businesses should comply with international best practices on social and environmental safeguards and human rights principles. The NHRCT has investigated multiple cases of human rights violations caused by Thai investors in the region. These include: a sugar plantation developed by Khon Kaen Sugar Limited (KSL) in Koh Kong, Cambodia; a sugar plantation developed by Mitr Phol in Oddar Meanchey, Cambodia; Dawei SEZ, developed by Italian-Thai Development PCL, in Myanmar; Banchaung coal mine, developed by Energy Earth PCL, East Star Company and the Thai Asset Mining Company in Myanmar; and the transmission lines carrying power from the Hongsa coal-fired power plant in Laos to Thailand. The investigations resulted in recommendations from the NHRCT to the Thai government pertaining to business and human rights. These recommendations emphasized that the government has a duty to 'protect' and the investor to 'respect' the rights of the impacted communities. In the case of violations, the Thai government and Thai investors should collaborate to ensure that there is fair and just compensation and 'remedies' for the affected people.

Thailand's junta government affirmed these recommendations in a May 2016 Cabinet Resolution, making it clear that Thai investors must comply with human rights principles and avoid causing or contributing to adverse human rights impacts. The Cabinet assigned the Ministries of Foreign Affairs, Justice and Trade to implement these recommendations and take the lead on implementing the UNGPs and developing a framework that enforces the extraterritorial obligations of Thai investors, including the development of Thailand's national action plan on business and human rights (NAP).





*A woman on the beach near Dawei Special Economic Zone, Myanmar, prepares fish for the local market, a sign of the rich natural resources that are vital to communities in Dawei.*



*Italian-Thai Development is constructing the \$37 billion Dawei Special Economic Zone in Myanmar, but the project has been investigated by the National Human Rights Commission of Thailand for its impacts on local communities.*



*A community organizer in Tha Ta Fang village, Thailand, speaks about the sustainable livelihoods and agriculture that are threatened by the proposed Hatgyi Dam on the Salween River.*

## **THAILAND'S NATIONAL PLAN ON BUSINESS AND HUMAN RIGHTS: A WORK IN PROGRESS**

In May 2017, PM General Prayuth affirmed the government's intention to implement the UNGP, starting with the development of the NAP. PM General Prayuth signed a Memorandum of Understanding with the three responsible ministries, the Thai Banks Association, the Thai Chamber of Commerce, the NHRCT, and the Global Compact Network of Thailand. The drafting of the NAP has involved input from CSOs working on migrant labor, human trafficking, LGBT rights and discrimination, and land and natural resource rights within Thailand.

However, based on civil society engagement in the drafting process, a number of CSOs are concerned that Thailand's NAP may fail to integrate both the extraterritorial obligations of Thai investors and a mechanism for affected communities to seek justice and remedies. The NAP is scheduled to be officially launched by September 2018, but loopholes and gaps remain, particularly around remedies for affected communities. **Thai ETO Watch WG** has been lobbying various stakeholders to make sure that the NAP integrates regulations around outbound investment and the obligations of Thai investors operating internationally as well as communities' rights to remedies.

## REMAINING CHALLENGES

While some progress has been made on business and human rights issues in Thailand, difficulties stem from a lack of implementation of Thailand's commitments to regulate outbound investment. Civil society groups are pushing for concrete steps based on the UNGPs, following the May 2016 Cabinet Resolution. But these efforts are limited by the shrinking space for civil society, as restrictions on freedom of expression and assembly continue. According to Human Rights Watch<sup>20</sup>, the commitment of the Thai Government to supporting human rights defenders is in doubt.

The civil rights situation has worsened in the past year due to a sharp increase in SLAPP (Strategic Litigation Against Public Participation) lawsuits<sup>21</sup>. In these cases, investors such as EGAT exploit cases of supposed “defamation” under the Computer Crimes Act to charge and silence human rights defenders<sup>22</sup> and deter activists from calling for accountability and seeking justice. The Computer Crimes Act sets out punishment for those who distribute and share any information digitally which is deemed to affect national security. These SLAPP cases<sup>23</sup> are also used to control the journalists who report on human rights infringements in business<sup>24</sup>. We call for the Thai government to reconsider the broad application of these laws, to intervene in cases of SLAPP lawsuits, and to decriminalize defamation.

## THE WAY FORWARD

We call for the Thai government to take proactive steps to protect the rights of communities that have already been or may be affected by Thai outbound investments, and to pass legislation that will implement the UNGPs and regulate Thai investors activities outside Thailand. We call for Thai investors to conduct due diligence and to comply with UNGPs and other international human rights best practices and standards.

<sup>20</sup> <https://www.hrw.org/news/2017/05/21/thailand-junta-entrenched-3-years-after-coup>

<sup>21</sup> <https://www.bangkokpost.com/print/965933/>

<sup>22</sup> <http://www.nationmultimedia.com/news/national/30302378>

<sup>23</sup> <http://www.nationmultimedia.com/detail/politics/30322931>

<sup>24</sup> <https://rsf.org/en/news/thailand-rsf-backs-thai-journalist-pratch-rujivanarom>

