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BEHIND THE OIL PALM

Consequences of International Investment in Oil Palm Plantations

This report was co-authored by Advancing Life and Regenerating Motherland (ALARM) in conjunction with its partners organisations mentioning below. The contents of this publication are therefore the sole responsibility of the authors and can in no way be taken to reflect the views of any funding agencies. Please contact any of the following organisations should you need any more clarifications or have any questions ;



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Last but not least, we are most grateful to all partner organizations and individuals for providing technical and financial support. Without their support the report would never have been possible.



CONTENTS

	Abbreviations & Acronyms	3
	Executive Summary	4
1	Agribusiness Projects in the Tanintharyi Region	6
2	Rationale for Reporting of MAC Oil Palm Plantation Project	6
3	Chapters Included in the Report	7
4	Background Information of MAC	7
5	Location of the Project Area and Implemented Activities	9
5.a)	Location of the project area	9
5.b)	Current activities	11
5.c)	Timelines of MAC project activities from the beginning to February, 2018	12
6	Stakeholders of the MAC Oil Palm Project	14
7	Findings	15
7.a)	Illegal logging or illegal timber trade?	15
7.b)	Land confiscation for agricultural development?	25
7.c)	Whether MAC complies with the existing laws & regulations?	27
8	Impacts on Socioeconomic Conditions of Local Communities due to MAC Oil Palm Plantations	31
8.a)	Economic impacts	31
8.b)	Social impacts	33
8.c)	Environmental impacts	35
	Land use changes	
	Loss of tree species and herbal plants	
	Loss of wild animals and destruction of plantations by wild elephants	
	Depletion of Freshwater Resources	
9	Local People's Attitudes and Perceptions towards MAC Project	43
10	Conclusions and Recommendations	44

Abbreviations & Acronyms

AEAC	-	Auto Electric America Corp
AESC	-	Auto Electronic Shanghai Corp
AIC	-	Auto Industrial Co.Ltd
EIA	-	Environmental Impact Assessment
ESIA	-	Environmental and Social Impact Assessment
FPIC	-	Free, Prior and Informed Consent
GDP	-	Gross Domestic Product
HCVF	-	High Conservation Value Forests
KNU	-	Karen National Union
MAC	-	Myanmar Auto Corporation
MIC	-	Myanmar Investment Commission
MRPP	-	Myanmar Royal Pearl Plantation
MRT	-	Myanmar Rice Trading Co.Ltd
MSPP	-	Myanmar Stark Prestige Plantation
R&R	-	Resources and Resources Pte.Ltd
UNDRIIP	-	United Nations Declaration on the Rights of Indigenous People

Executive Summary

From 2011 to 2016, a total of 1.9 million acres have been allocated for the establishment of agricultural plantations such as rubber and oil palm in an effort to encourage agricultural-based economic development across Myanmar. The largest areas of land has been allocated in Tanintharyi Region. The findings of this report suggest that projects may not have been implemented in accordance with the terms and conditions stated in the permit and they may have intended to exploit natural resources for short-term benefits. They have also not supported the original purpose of promoting socioeconomic development of local communities, and caused losses of appropriate government revenues and economic opportunities due to unnecessary social and environmental degradation. Until now, about 25% of total granted areas, i.e. 1.9 million acres, have been implemented by the permitted projects; as an evidence of various companies' intention to earn present benefits. As most of the lands granted to the agribusiness projects were customarily used and owned by local ethnic minorities, local communities trust in the agribusiness projects had been broken and the opposition was increasingly growing instead of collaborating with them when they found out the projects did not support regional development even though they lost their lands. As a consequence, conflict over land use has arisen between local communities and investment companies; resulting in labor shortage for companies and poor livelihood opportunities for local communities.

Myanmar Auto Corporation (MAC) is a joint venture of Auto Industrial Co. Ltd. (AIC) based in South Korea and Resources & Resource Pte. Ltd, based in Singapore, is the company that received largest concessions for oil palm plantation among other companies in Myanmar. R & R Pte. Ltd seems to be a branch of AIC, which has oversea's branches in Indonesia,

Singapore, and United States of America including Myanmar. It has run business by trading in auto spare parts, electronic and communication devices, and investments in oil palm plantation, mining, agribusiness, and construction. Though MAC has been granted a total of 133,600 acres including local community traditionally owned home gardens, taungya, and lands that have been cleared for cultivation, the Company has established about 3% (3315 acres) of total permitted lands. It can be clearly seen that a total of 13000 acres of forest has been destroyed after implementation of MAC oil palm plantation project in the area. According to local communities, a total of 16,000 acres of forests have been cleared, and so far about 13,000 tons of timbers have been extracted. According to the international research findings, nonetheless, about a million tons of timbers can be harvested from lowland rain forests. It was found that MAC has extracted large amounts of timbers considerably more than the volume that has been previously estimated by local residents.

Based on the results of interviews with the Company employees and timber extraction workers, and local communities' experiences, it can be concluded that extracted timbers have been exported to international markets in collaboration with Yadanar Moe Pyae Tun Co.,Ltd. In addition, MAC posted an advertisement on Alibaba internet web page to export illegal timbers (conversion timbers) produced from oil palm plantation areas by transforming illegal logging to legal. These evidences have clearly indicated the intention of MAC investment to earn benefits from logging other than oil palm plantation in Myanmar

Land that has been granted to MAC is not only located in areas easily accessible to transport timbers and other products, but also situated in key area and easily accessible to Dawei,

Myeik, and Kawthaung city, which are most important cities for present and future business in the region, by road and water route.

As MAC is also located in area, from which raw materials can easily be transported to the Greater Mekong Southern Economic Corridors, there is suspicion whether MAC has confiscated the land for the aforementioned reasons.

MAC may have violated the existing Vacant, Fallow and Virgin Law and Rules (2012); Environmental Conservation Law (2012) and related rules and regulations in land confiscation and implementation of the projects. MAC project activities did not meet neither the international standards nor country's minimum standards to be followed by the investment companies.

In addition, MAC may have violated the existing laws by means of not informing and organizing consultation meeting with local ethnic minorities, who are the original land owners, about project activities, confiscating the lands without compensation, not proclaiming the information concerning security fees to receive a permit and land revenue, not effectively implementing planned activities in accordance with the work plan, and not submitting environmental impact assessment (EIA) report. MAC has failed to comply with the principles of free, prior and informed consent (FPIC) recognized by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Land confiscation in the form of agribusiness projects has affected the tenures and rights of ethnic minorities which in turn has affected the implementation of project activities. In addition, land confiscation has seriously affected confidence building, which plays critical roles in peacebuilding among the ethnic minorities in Myanmar. International investors have failed to comply with the existing laws and to exercise due diligence to avoid the consequences. Projects implementation by making use of an opportunity of weak law enforcement has reduced local community's trust in the international investments and it is the main cause of conflicts between local communities and foreign investment projects.

Obviously, land use changed after MAC came in the area; changing from forests to oil palm plantation and abandoned land overgrown with trees and bushes due to timber extraction and deforestation. As MAC oil palm plantation project area is located within the priority biodiversity corridors and key biodiversity area, environmental sustainability which is important in sustainable development of the country is under threat. Up to present, a total of 16,000 acres of forest has been cleared with the reason of establishment of oil palm plantation. Together with locally disappearance of native species such as Thingan (*Hopea odorata*), Kanyin (*Dipterocarpus alatus*), Pynma-phyu (*Lagerstroemia floribunda*), and Pynma-ni (*Lagerstroemia*

speciosa), the co-occurring species such as medicinal plants and vegetables have been destroyed, as well as, wild animals have been disappeared. As a consequence, livelihoods of local communities who heavily relied on natural resources have been seriously affected.

Therefore, Myanmar Investment Commission (MIC) was recommended to inspect whether MAC has complied with terms and conditions stated in permit, and thus, to stop MAC project activities during inspection, to revoke the Company rights to use the lands, to exclude forested areas while granting a permit for agribusiness projects in the future, to encourage local community's participation in monitoring of project implementation activities, designing and implementing grievance redress mechanism inclusive of civil society organizations (CSOs), as well as, to assure access to information concerning permitted project activities. In addition, the relevant ministries should afford to legally gazette the biodiversity corridors and key biodiversity areas fall under the land use category of vacant, fallow and virgin land as Biosphere Reserve and to get access to fair and justice compensation and development aids to compensate the losses of local communities.

For Karen National Union (KNU), the requirements to take into account such as to help ethnic minority groups to obtain customary land tenure and rights for the customary use and ownership of the lands belonged to the ethnic minorities who are inhabited in KNU controlled area including MAC project area and to carry out in accord with the Extractive Industries Transparency Initiative (EITI) standards in granting a permit to development project and Regarding MAC, it is recommended to provide fair and justice compensation to the local communities for confiscation of their home gardens and lands, which are fall under MAC project implementation areas. In addition, it is necessary to reallocate the lands, on which oil palm plantation has not been established, to the original owners with the provision of fair compensation, to provide information about project activities, to comply with the principles of free, prior and informed consent (FPIC) in the implementation of project, as well as, to establish revolving fund for socioeconomic development of local communities.

Regarding MAC project, it was recommended to provide fair and justice compensation to the local communities for confiscation of their home gardens and lands, which fall under MAC project implementation areas. In addition, it is necessary to reallocate the lands, on which oil palm plantation has not been established to the original owners with the provision of fair compensation, to conduct environmental impact assessment (EIA) and submit EIA report, to provide information about project activities, as well as, to comply with the principles of free, prior and informed consent (FPIC).

1 . Agribusiness Projects in the Tanintharyi Region

Myanmar is an agricultural-based country, in which, about 75% of local people rely on agriculture and related activities. The agriculture sector plays an important role in country's economy; contributing about 30% of gross domestic product (GDP)¹. The central government has managed agricultural development and about 4% of national budget has been allocated and spent for agriculture and livestock sector in 2016-2017 fiscal year².

In 2011 the inauguration of the cabinet of president U Thein Sein, industrial agriculture was encouraged to attract national and foreign investments and included terms and conditions to be followed in land allocation for the development of agro-industrial plantations such as coffee, mulberry, rubber, cassava, oil palm, and jatropha in Vacant, Fallow and Virgin Land Management Act issued in 2012³.

In addition, State sponsored agriculture projects have been implemented and promoted for agro-industry and a wide range of agricultural products. Large-scale land confiscation has occurred for these agro-industrial plantations, and thus this type of land confiscation was common features in the past⁴. Nonetheless, land confiscated for these agro-industrial plantations have not been implemented in accordance with the terms and conditions stated in the permit, leading to growing land use conflicts and leaving the land as fallow.

A large area of land has been granted to rubber and oil palm plantation among other Agricultural plantations and with the greatest allocation of land in the Tanintharyi Region. In Myanmar commercial rubber plantations were first established in Yebyu Township, Tanintharyi in 1926. During 1970-1980, the government expanded into oil palm projects in various locations across the country⁵. Despite the fact that in 1999 the government of Myanmar implemented a 7-year-project plan to meet the demand for domestic edible oil by declaring the Tanintharyi Region as the potential oil bowl of Myanmar, the project has not been effectively implemented. The main reasons for this failure in implementation are; 1) most oil palm concessions have been allocated in areas under control of the Karen National Union (KNU), 2) permissions have been granted to the businesses, friends, and relatives of the political powerful, and 3)

establishment of National Park in areas inhabited by ethnic groups⁶. It was recognized that the lands customarily inhabited by ethnic groups including lowland monsoon forests have been allocated to the oil palm concessions due to the weakness in land use policies and laws. As a consequence, land use conflicts have grown and socioeconomic status of local communities has been affected⁷.

In 2012, a ceasefire agreement was signed between the Myanmar Government and KNU. This allowed areas that were previously conflict zones to attract agricultural expansion and some foreign investment throughout the region with the assistance of Government concessions⁸. From 2011 to 2016, a total of 1.9 million acres (35% of total land areas allocated for agribusiness) were granted to 44 oil palm companies. To date, these companies have only established oil palm plantation of an estimated 25% (535,000 acres) of total land areas allocated to agribusiness⁹.

Although local investment in the oil palm industry is strong there are a number of foreign investment companies also operating in the region. These include, Myanmar Stark Prestige Plantation (MSPP) (a joint venture between Myanmar and Malaysia companies) and MAC, an joint venture investment company from South Korea and Singapore. Among the foreign companies, MAC has been allocated the largest oil palm plantation in the Tanintharyi Region with a total of 133,600 acres. The entire area of this land allocation is located within the 60-year ethnic conflict area between Myanmar Government and KNU in the Kawthaung District.

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2. Rationale for Reporting of MAC Oil Palm Plantation Project

The report was produced in collaboration with local communities in examining whether MAC oil palm project has complied with existing Myanmar laws, investigating the impacts of oil palm projects on environment and local communities as the ethnic minority groups who originally owned the land have claimed for their losses.

The main objectives of the report are:

- To investigate MAC's intentions to gain additional financial benefits from the land allocation other than just oil palm production.
- To examine whether MAC has complied with the conditions of their permit, Myanmar Government regulations, environmental legislation, and international human rights obligations, i.e. respect, protect, and fulfill human rights.
- To resolve conflicts between MAC and local communities by documenting the impact of land confiscation to local communities to enable in supporting them to receive compensation for the loss of sustainable livelihoods and ancestral lands in accordance with their desire and other suitable rights,

This report has been produced with the main purpose of providing information that can be used to study and review the procedures for the effective protection and recognition of customary tenure rights over land and natural resources to ethnic minority groups throughout Myanmar and to provide policy recommendations to government.

3. Chapters Included in the Report

In the report, the following information is provided:

- Background information about MAC
- Project information and implementation progress
- Analysis of stakeholders relating to investment
- Land use changes before and after the permission of concessions for oil palm plantation
- Impacts on local communities' socioeconomic condition and environment
- Conclusions and recommendation

The aforementioned information was based on the results of interview with local communities, people who lost their land, company staff, results from field inspection, news and reports from national and international media, and experiences.

4 Background Information of MAC

Myanmar Auto Corporation (MAC) is a joint venture Company established by Auto Industrial Co. Ltd based in South Korea and Resources & Resources (R & R Pte. Ltd.) based in Singapore with a contribution of 51% and 49% share from the former and latter respectively.

Auto Industrial Co. Ltd was firstly established in 1982. The Company first traded under the name Auto Electric Corp (AEC) and was renamed as Auto Industrial Co. Ltd. (AIC) in 2009 (Table 1). AIC has branches in Indonesia, China, and America, specializing in the manufacturing of pressure sensors, car's spare parts, and electronic communication devices.



Figure-1 Stakeholder mapping of MAC with International Companies
Source : Adapted from AIC Website

Myanmar Auto Cooperation (MAC) was registered as a company in 2011 through permission of Ministry of Agriculture and Irrigation with validity up to March, 2018. MAC then later received permission for the establishment of oil palm plantations and processing plant from Myanmar Investment Committee (MIC) in October 2011. It was the first company granted permission for 100% foreign investment in the oil palm industry. Interestingly the AIC website describes the Company interests in Myanmar as being granted permission for not only the establishment oil palm plantations and refinery plants but also timber extraction

and furniture production. Mr. Choi Joon-Kook, the president of AIC Company based in South Korea, is also acting president for MAC in Myanmar. The managing director for MAC is Mr. Hyung Sig Han while the Ms. Ji-Su Shin, Mr. Jung Pil Chol, Mr. Lee Bum Jum, and Mr. Park Chang Kyoo are members of the board of directors¹⁰.

10 Directorate of Investment and Company Administration. (2016). Company information, Myanmar. Retrieved from <http://www.dica.gov.mm/en/company/myanmar-auto-corporation-0>

Table 1. Historical events of MAC

	Year	Event
1900	March, 1982	Foundation of Auto-electronic corp.(AEC)
	January, 1900	Expansion into communication construction industry
	March, 1900	Magnet Research & Development
	September, 1994	Entry into industry of Automotive parts from the technology agreement With Germany
	January, 1996	Foundation AEC Co. R & D Institute
	July, 1997	AQS production sales started
	September, 1998	QS-9000, ISO-9001 certificate
	December, 1998	ISO-9002(Construction of communication works) certificate
	January, 1999	Appointed as a superior company in electronic base technology(SMBA)
2000	January, 2000	Optonica Corporation Establishment
	May, 2003	Obtained World Premier Product Certificate
	November, 2003	SQ mark acquisition
	December, 2003	IJAK Solution Investment
	April, 2004	2004 Success Design Product certificate
	July, 2004	Appointed as a excellent cooperate company of first half year of 2004 by Hunday Mobis
	December, 2004	American Corporation (AEAC) and Autoica Certification
	January, 2005	Halla Climate Control Corp.'s HQA-3 certificate
	June, 2005	Foundation of Auto Electronic Shanghai Corp.(AESC)
	March, 2006	ISO/TS 16949:2002 certificate
	March, 2006	KS A 9001:2001 ISO 9001:2000 certificate
	July, 2007	Appoint as Venture company by Small Business Corporation
	August, 2007	Appoint as INNO-BIZ company by Small Medium Business Administration
	July, 2009	Company name changed to Auto Industrial Co. Ltd.
	October, 2010	Myanmar government palm plantation authorization
	December, 2010	Electrical construction license, Acquisition and construction work started
	July, 2011	Foundation of MAC
	June, 2012	Foundation of SanTong Investment Consulting Company.Ltd in Beijing.
	July, 2012	Appointed as "Best Employer" by Seoul City
	March, 2013	Appointed as "Hidden Star 500" by Kookmin Bank
	May, 2013	Indonesia, Kalimantan sinttang , zirconium mining authorized Song-Do Institute of Technology completed the development of pressure sensors.
	December, 2013	Zirconium mine production started
	July, 2017	AIC sell automotive parts business divison to Sensirion Automotive AG and Sensirion Automotive Korea Co.,Ltd.

AIC established Auto Electronic Shanghai Corp (AESC) in Shanghai, China in 2005, as well as an oversea branch named PT R&R A Indonesia in Indonesia in 2010. The main operations of AIC in Indonesia are mining, agriculture and construction with a substantial investment in manganese and iron ore extraction, exporting minerals to China and other Asian countries. There agricultural investments are focused on Tapioca production exported locally with in the region¹¹. In addition, AIC trades equipment for mining and construction such as bulldozer, crane, vibrator roller, rubber roller, asphalt aver, and generator, etc. In 2013, AIC received mining permission to extract Zirconium in Kalimantan, Indonesia¹².

AIC has worked in partnership since December, 2013 with Auto Electric Corp (AEAC) and Autorica LLC, two USA registered companies based in Alabama and Grogania respectively (Figure-1). AIC produces and trades factory automation systems, provides part processing and associated equipment. AIC has been awarded certificate by AESC and Autorica Company in December, 2014¹³.

In 2008, R & R Pte.Ltd was established in Singapore and annulled in 2017. R & R Pte. Ltd seem to became a branch of AIC as Mr. Choi Joon Kook was a shareholder of the AIC. All though an effort has been made to collect information about R & R Pte.Ltd., no relevant information to this report was discovered.

5. Location of the Project Area and Implemented Activities

5.a) Location of the project area

MAC's oil palm plantation project of is located 92 miles from Myeik in Pyigyimandaing Subtownship, Kawthaung District, Tanintharyi Region and transected by the Myeik-Kawthaung Road. The project area is bordering with Pyigyimandaing City in the South, Myanmar Royal Prestige Plantation Co.,Ltd in the North and extending west of the Myeik-Kawthaung Road to the coastal line. The entire Lenya River watershed and its river estuaries are located in the MAC project area (Figure 2).

Although there are a number of villages in the project area, it has been reported by local communities that villages such as Ma Noe Yone, Ma Noe Lar, and Htaung Kha Met located closest to the project area have been the greatest affected by MAC's activities. In 1996, these villages fled civil war conflict between the Myanmar Government army and KNU and re-settle by the roadside of Myeik-Kawthaung Road. It is estimated a total of 84 households and 407 people (207 males and 200 females) collectively live in these villages. Most of the villagers are Kayin ethnic groups and Christian minorities (Table 2) and have relied on growing areca nut, cashew nut, taungya, and hunting as the major livelihood activities since their migration to

¹¹ <http://wk114573744.company.weiku.com/about/>

¹² <http://www.autosanup.com/?menu=01-03>

¹³ <http://www.aeac-autorica.com/history.php>

Table 2. Overview of MAC oil palm plantation project in Tanintharyi Region

Name of project	Oil palm plantation project
Location	Tanintharyi Region, Kawthaung District, Bokpyin Township, Pyigyimandaing Subtownship
Year permit granted	2011
Organization granted permit	Myanmar Investment Commission
Year established	2011
Proposed project activity	Oil palm plantation
Area allocated	133,600 acres
Established area	3,351 acre (4%)
Other activities	Timber production
Affected villages (households, male, and female)	3 villages, 84 households (male- 207 and female- 200) (Ma Noe Yone, Ma Noe Lar, and Htaung Kha Met village)
Major race	Kayin ethnic groups (Poe and Sakaw)
Sustainable livelihood activities of communities	areca nut, cashew nut, jackfruit plantations, taungya, and take up any job that come by
Current impacts	Displacement of village Land loss Deforestation Destruction of fish resources Declining wild animals population Destruction of areca nut plantation Loss of sustainable livelihood income

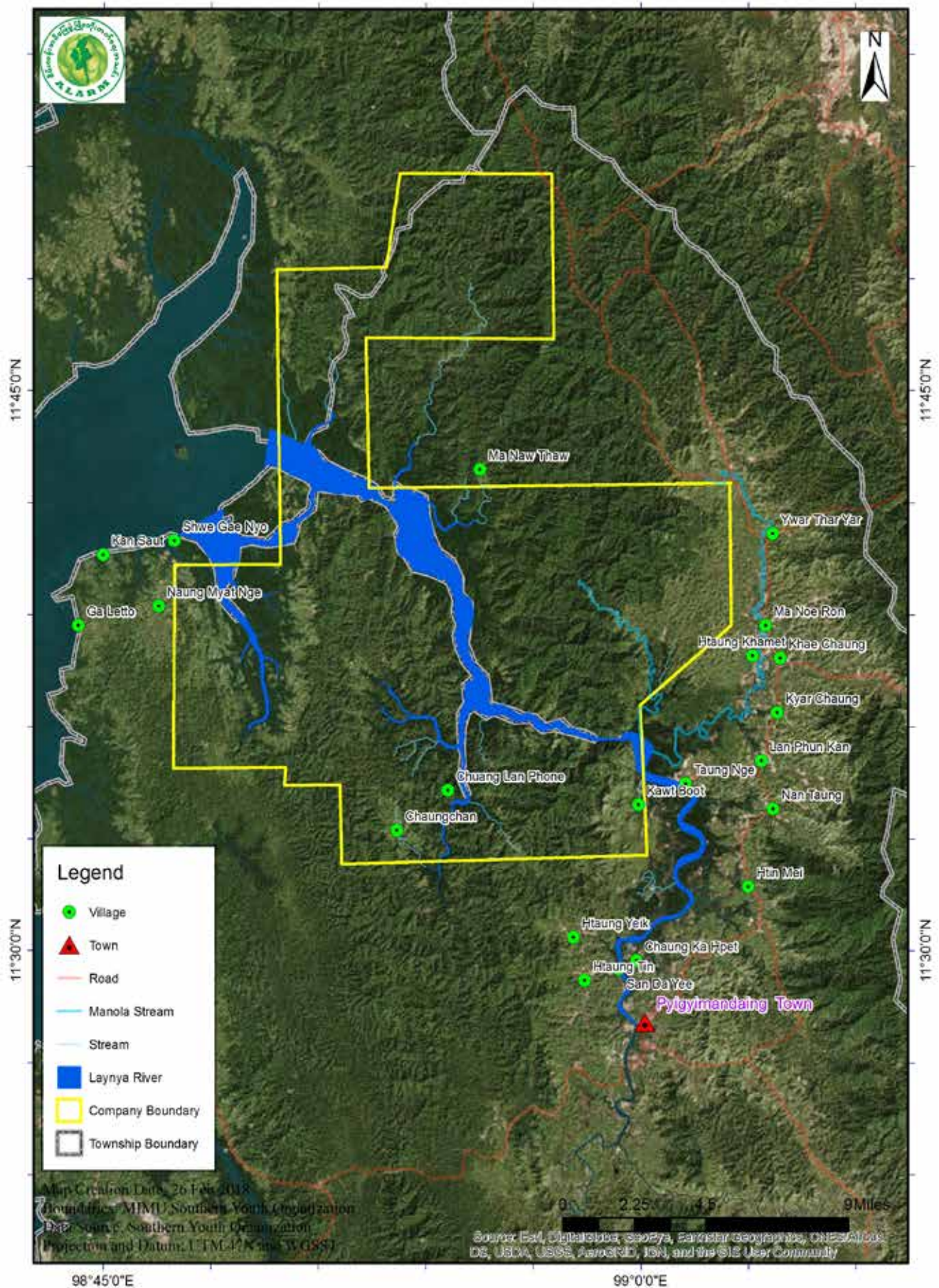


Figure-2 Map Showing MAC Company permitted area and affected villages

Figure-3 Land confiscated areas by individual villager, Before and current land use types
Source - Participatory Action Research Results (January 2018)

စဉ်	အမည်	ဧက	ယခင်	ယခု	မှိုက်ဖျက် အခြေအနေ
၁	ဦးကျော်သာ	၇၇.၇၆	ပဲခူးမြို့နယ်	ပဲခူးမြို့နယ်	-
၂	ဦးမိုးမိုး	၆၃.၆၇	ပဲခူးမြို့နယ်	ပဲခူးမြို့နယ်	-
၃	ဦးမိုးမိုး	၆၃.၆၇	ပဲခူးမြို့နယ်	ပဲခူးမြို့နယ်	-
၄	ဦးမိုးမိုး	၆၃.၆၇	ပဲခူးမြို့နယ်	ပဲခူးမြို့နယ်	-
၅	ဦးမိုးမိုး	၆၃.၆၇	ပဲခူးမြို့နယ်	ပဲခူးမြို့နယ်	-
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၉	ဦးမိုးမိုး	၆၃.၆၇	ပဲခူးမြို့နယ်	ပဲခူးမြို့နယ်	-
၁၀	ဦးမိုးမိုး	၆၃.၆၇	ပဲခူးမြို့နယ်	ပဲခူးမြို့နယ်	-
၁၁	ဦးမိုးမိုး	၆၃.၆၇	ပဲခူးမြို့နယ်	ပဲခူးမြို့နယ်	-
၁၂	ဦးမိုးမိုး	၆၃.၆၇	ပဲခူးမြို့နယ်	ပဲခူးမြို့နယ်	-
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၁၅	ဦးမိုးမိုး	၆၃.၆၇	ပဲခူးမြို့နယ်	ပဲခူးမြို့နယ်	-
၁၆	ဦးမိုးမိုး	၆၃.၆၇	ပဲခူးမြို့နယ်	ပဲခူးမြို့နယ်	-
၁၇	ဦးမိုးမိုး	၆၃.၆၇	ပဲခူးမြို့နယ်	ပဲခူးမြို့နယ်	-
၁၈	ဦးမိုးမိုး	၆၃.၆၇	ပဲခူးမြို့နယ်	ပဲခူးမြို့နယ်	-
၁၉	ဦးမိုးမိုး	၆၃.၆၇	ပဲခူးမြို့နယ်	ပဲခူးမြို့နယ်	-
၂၀	ဦးမိုးမိုး	၆၃.၆၇	ပဲခူးမြို့နယ်	ပဲခူးမြို့နယ်	-

the area. Since MAC activities begun in the area in 2012 about 2500 acres of gardens and taungya including areca nut, cashew nut and jackfruit plantations have been destroyed (Figure 3) having a significant impact on the sustainable livelihoods of local community.

5.b) Current activities

It has been estimated from field inspection and interview with local residents, that about 40 workers are currently employed by the MAC project although around 500 from Myeik, Ayeyarwaddy, and Kawthmu Township were engaged on full time wages at the beginning of the project. Most of the employees are from the Tanintharyi Region while others are from the nearby villages. The employees are known to be paid above average salary and most engaged in timber production more so than oil palm plantation. Although MIC was granted over 0.1

million acres for oil palm plantation since 2011, it has been estimated by the local community that about 5,000 acres have been used for the purpose. However, analysis of satellite imagery indicates that only 3,351 acres, i.e. only 4% of the total allocated areas (See in land use changes) has been planted as oil palm plantation. In 2017, over 120 acres of oil palm plantation have been established.

5.c) Timelines of MAC project activities from the beginning to February, 2018

According to the discussion with the local community, the following activities are found to be implemented by MAC Company from the beginning of the project to the end of February 2018.

May 2011

After camping in Pyigyimandaing Subtownship, the company initiated roadside oil palm plantation establishment (1-2 acres) using timber extraction roads. Since then, MAC has started harvesting of timber.

Mid 2011

Marking of selected stand by Forest Department

October 2011

MIC granted permission for oil palm concession

November, December 2011

Timber extraction along Ma Noe Lar Nge and Ma Noe Lar Gyi streams using logging equipment that were borrowed from MRPP. Initially 4 villagers were assigned as local guides in this activity.

End of 2011

Transporting sample logs to Yangon and sizing of logs.

Beginning 2011

Timber extraction along tributary of Lenya River

Mid 2012

MAC initiated license less logging equipment using sea transport.

Mid 2012

MAC office opened and officer-in charges of MAC met with Ma Noe Yone villagers who were affected by oil palm project together with KNU. Constructed MAC oil palm nursery

End Of 2012

Employment of 100 labors from local people and Ayeyarwaddy Region for clear-cutting of forest, burning, re-burning, and weeding. Assigned Malaysian expert as a consultant.

End of 2012

Reject to grant a permit to MAC to build a plywood factory
Study tour of 3 South Korean advisors to the MAC project area.

End of 2012

Allowed unlimited use of logging equipment and oil were transported using sea transport.

End of 2012

Labors from Taung Nge village were employed to drive vehicles for logging
Inspection by the Director General of Myanmar Forest Department who warned that MAC needed to establish oil palm plantation

Mid 2013

Higher salary were paid to labors without considering the cost.
Resignation of MAC managers and translators working on the project.

End of 2013

Gradual redundancy of MAC staff (Although there were staff for oil palm plantation in the beginning, these labors were dismissed later).

Beginnig of Rainy Season 2014

MAC has not begun timber export

Mid 2014

Timber extraction in collaboration with Yadanar Moe Pyae Tun Co.,Ltd. was possible

End of 2016

MAC established oil palm plantation in 4,000 acres although about 10,000 acres of forest area has been clear-cut.

June 5, 2017

MAC management met with villagers from affected villages to discuss their claim for compensation for their loss of land.

June 6, 2017

MAC Managing Director Mr. Shell met and discussed to re-allocate the land with the help of translator U Nyo Than.

June 13, 2017

KNU Tanintharyi Township responsible person invited MAC translator U Nyo Than for a meeting.

June 13, 2017

MAC representatives met with 3 community members from the affected villages and KNU Tanintharyi Township responsible person. After the meeting MAC agreed to work with community to resolve the issues in July, 2017.

November 2017

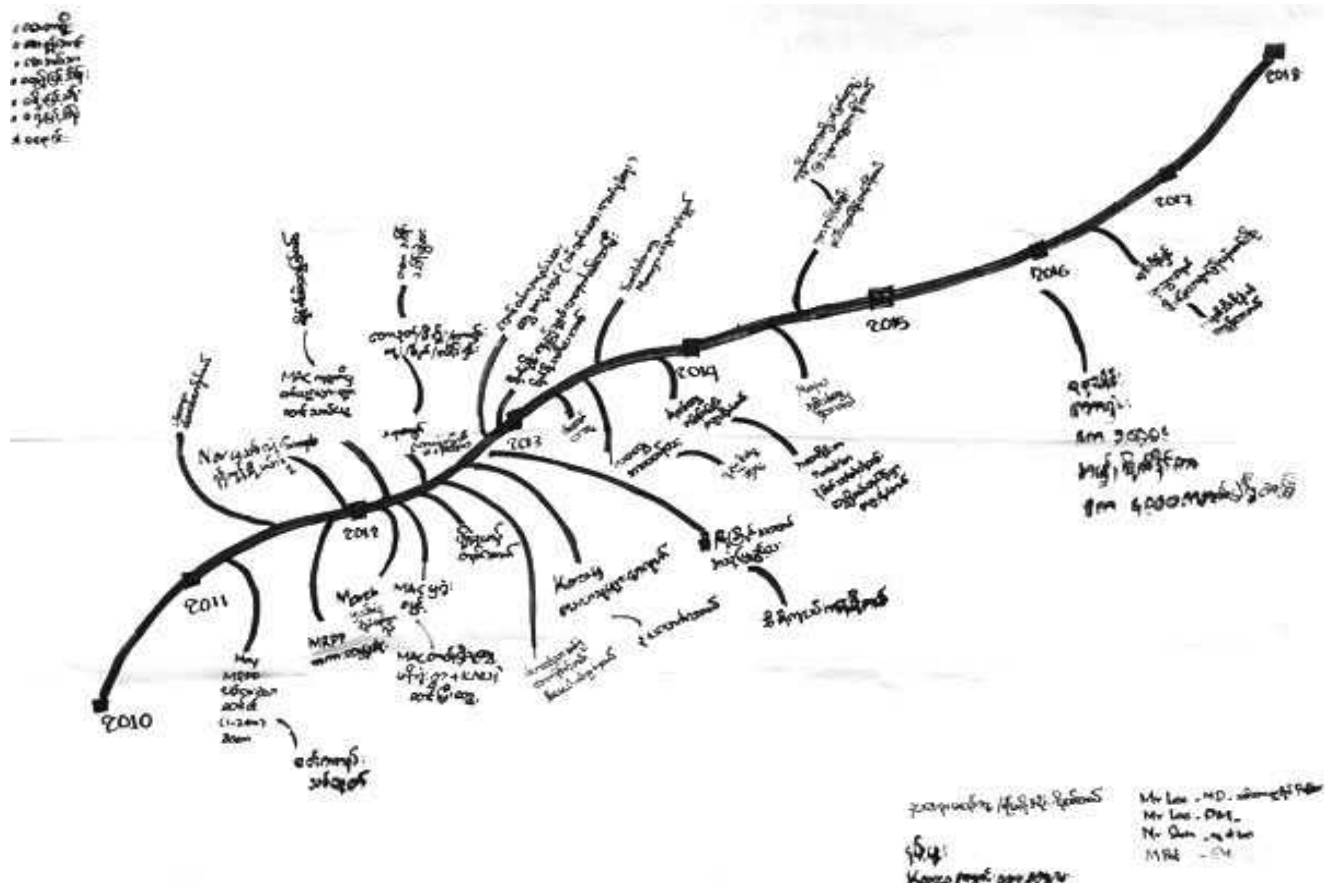
Inspection by MIC and representatives from Agriculture Department, Forest Department, Department of Agriculture Land Management and Statistics, General Administration Department of the MAC project area.

Up to February 2018

MAC Company established about 6590 acres of oil palm plantation (Based on results of interview with local people and the actual oil palm plantation areas were over 3000 acres) and grow 160000 oil palm seedlings in the nursery

Figure-4 MAC Timeline of Events

Source - Participatory Action Research Results (January 2018)



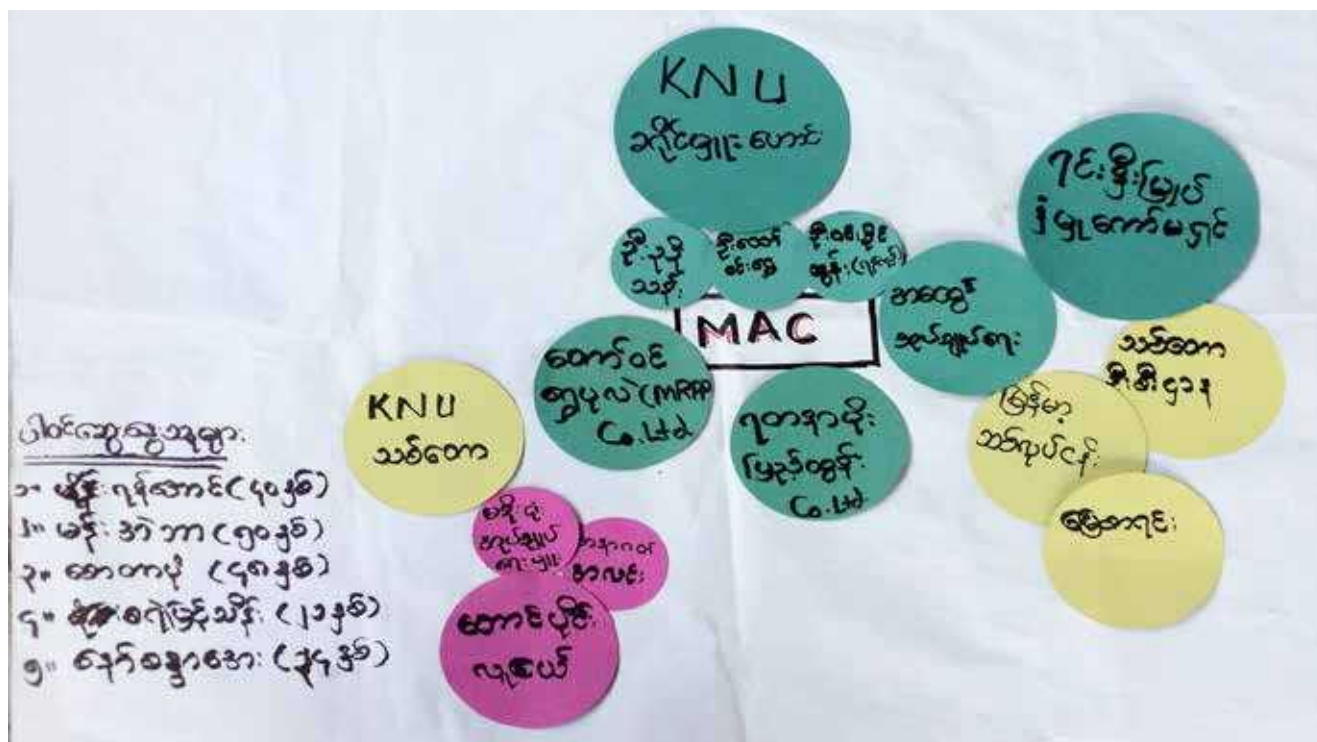


Figure-5 Venn Diagram of MAC

Source : Participatory Action Research Results (January 2018)

6. Stakeholders of the MAC Oil Palm Project

After receiving a permit from MIC, MAC undertook an onsite inspection of the proposed project site with the help of local people employed as local guides and KNU District authority (as the project area was situated under control of KNU). MAC's South Korean management team participated in the inspection with the help of translators to communicate with local residents about the implementation of project. Despite this local communities have reported that conflicts between MAC and local communities have happened since the beginning of the project due to translators' weakness in stakeholder engagement and their intention to earn benefits.

Although MAC was awarded a licence by the government to produce oil palm on this land, according to local communities the process has felt like land grabbing due to the lack of consultation and explanation about the project activities by taking advantage of local people's poor knowledge and weak information sharing. Although MAC said that they acquired the lands, MAC grabbed the lands in reality.

"I didn't receive the actual amount paid for my land. As MAC translator said that the company wanted to hire for 3 years to raise oil palm seedlings, I lent about 10 acres of my land with a rate of 10000 MMK per acre. The day after hiring the land, MAC

used bulldozer for clearing of ground including cashew nut trees and they didn't listen to my complaint about uprooting of the trees."

A land lost villager from Ma Noe Yone Village

"We cannot say anything as they have strong relationship with the political powerful"

A villager, local community

MAC has implemented oil palm plantation project against the wishes of local communities and village-based Civil Society Organizations. Indeed, the collaboration of MAC with relevant government institutions is a weak form of collaboration though MAC has received a permit from MIC. Union level government responsible person has warned MAC because of weakness in implementation of project activities in project site inspection.

Evidence suggests that MAC has worked in close collaboration with companies invested in oil palm plantation and timber extraction in the Tanintharyi Region. MAC has hired logging equipment, log yards, and logging roads from MRPP. Similarly, MAC has harvested timber in collaboration with Yadana Moe Pyae Tun Co., Ltd. and so far it is assumed that MAC has transported log from log yards in the project area (Figure 5). Despite MAC's good relationships with these other companies they have maintained weak collaborations with relevant government institutions.

7. Findings

In tropical and subtropical countries, about 70% of deforestation is caused by agricultural activities, 7% due to mining, 30% to infrastructure development, urban expansion, and other activities. As in many other tropical countries, agricultural expansion is the main driver of deforestation in Myanmar¹⁴. Between 1988-2006 agricultural expansion resulted in forest cleared land increasing from 19.8 to 30.9 million acres¹⁵.

For the investment company, it is very important to earn short-term benefits from other opportunities as oil palm plantations are long-term investments. In addition, companies that invest in oil palm plantation projects in developing countries have been widely accused of extracting timbers from rain forests for commercial purpose and confiscating lands by keeping one jump ahead for market manipulation through buying and selling of these lands. Therefore, it is necessary to examine whether MAC has engaged in similar activities as documented in other developing countries.

In addition, there is a concern that MAC project activities such as establishing oil palm plantation only in easily recognizable areas other than the entire project areas is to cover up other potential activities such as harvesting of timbers through clear-cutting of forest with the reason of oil palm

plantation establishment, mining (or) allowing mining in the project area. The aforementioned activities of MAC created an atmosphere of suspicion amongst local residents that the company was more invested in the benefits of these activities and not that of oil palm plantations.

7.a) Illegal logging or illegal timber trade?

“MAC clear-cut about 10,000 acres out of over 0.1 million acres that was allocated to the company. But, MAC established oil palm plantation to a maximum of 5000 acres.”

Former employee of MAC

According to the local residents, though MAC has established oil palm plantation in a small area, deforestation has occurred on a large scale. Satellite imagery comparison has also revealed a decrease in forest area of about 16,000

- 14 Hosonuma, N., et al. (2012). An assessment of deforestation and forest degradation drivers in developing countries, Centre For International Forestry Research. Retrieved from <https://www.cifor.org/library/3917/an-assessment-of-deforestation-and-forest-degradation-drivers-in-developing-countries/>
- 15 Woods, K. (2015). Commercial agricultural expansion in Myanmar: links to deforestation, conversion timber, and land conflicts. Forest Trends Report Series, Forest Trends.



Figure-6 Clear cutting of forest in Concession Area for oil palm plantation
Source : Southern Youth Organization(2017)

Figure-7 A Ship Carrying Logs from MAC Area at Myeik Harbour
Source : Southern Youth Organization(2017)



Box 1- Log yards and logging tracks

MAC oil palm plantation area is 133,600 acres in which almost all of Lenya River's watersheds and tributaries are included. Based on satellite images it is clear that MAC has placed 6 log yards along the Lenya River and according to local communities there may be many more along the river that are too small to be seen from satellite imagery (Figure 9). MAC has been establishing log yards along the river to provide ease of transportation using river networks. The main yards were MRPP (Malaysia log yard), Yadanar Moe Pyae Tun Co.,Ltd. (Ma Noe Yone yard), Paung Laung Wood (Kawbot stream mouth, Kawlan stream mouth, Wae Nge Ahut) and Shwe Ge Nyo. Based on satellite images and field inspection, MAC has transported logs by ships from the aforementioned log yards in which logs are stacked in piles. There was evidence of transportation of timbers extracted from MAC project area to the aforesaid log yards through logging tracks. These timbers were transported from yards to Bokpyin and Myeik and sold to international markets.

There were two main logging tracks to the main yards; the first track was from the east of the Company where the largest areas of existing oil palm plantation to Ma Noe Yone Log yard, and the second one was from other logging areas to Shwe Ge Nyo log yard by passing through the Company area. Shwe Ge Nyo was main log yard in which logs were stacked in a pile and it was assumed that logs were exported to foreign countries from Shwe Ge Nyo log yard.



acres during 2011 to 2017. MAC has cleared the land for oil palm plantation in the east, south and southeast of the project area. Nevertheless, MAC has currently cleared land in the northwestern forested areas.

MAC has only established about 3,000 acres of oil palm plantation mainly on easily noticeable areas along roadsides though MAC cleared a total of 16,000 acres out of 133,600 acres that have been granted to the Company (See detail in land use change). It can be said that the deforestation of 16,000 acres was not only for the establishment of oil palm plantation but potentially for timber extraction as well.

In the field inspection to MAC oil palm plantation area, it was found that MAC transported timber after harvesting from the project area by using logging tracks, log yards (Box 1) and river networks. According to satellite imagery records, a total of 16,000 acres of forests has been cleared since MAC started its oil palm plantation project, indicating that MAC have extracted timbers to earn additional benefits from oil palm plantations.

According to international studies, there are high pressures on timber extraction in and outside Myanmar. Illegal logging and related timber trading is one of the major drivers of deforestation and it plays important role in Myanmar; losing an estimated 10 billion MMK per year due to illegal logging¹⁶. The origins of tropical value-added timber products found in international trade are predominantly from Southeast Asia. It is without doubt that Myanmar conversion timbers would also be contributing to this trade. In addition, illegal timbers including

16 World Bank (August, 2016). Strengthening Forest Law Enforcement and Governance Addressing a systemic constraint to sustainable development, Report No.36638, the World Bank.

Figure-8 A Ship Carrying Logs from MAC Area at Myeik Harbour
Source : Southern Youth Organization(2017)



timber from land use change from Myanmar are exported to foreign countries in various ways due to weak law enforcement. As business companies relating to forest products face losses due to political and economic instability, corruption, and law enforcement endeavors, they will certainly make an effort to reduce losses through various ways.

The location of the MAC project area is strategically located close to

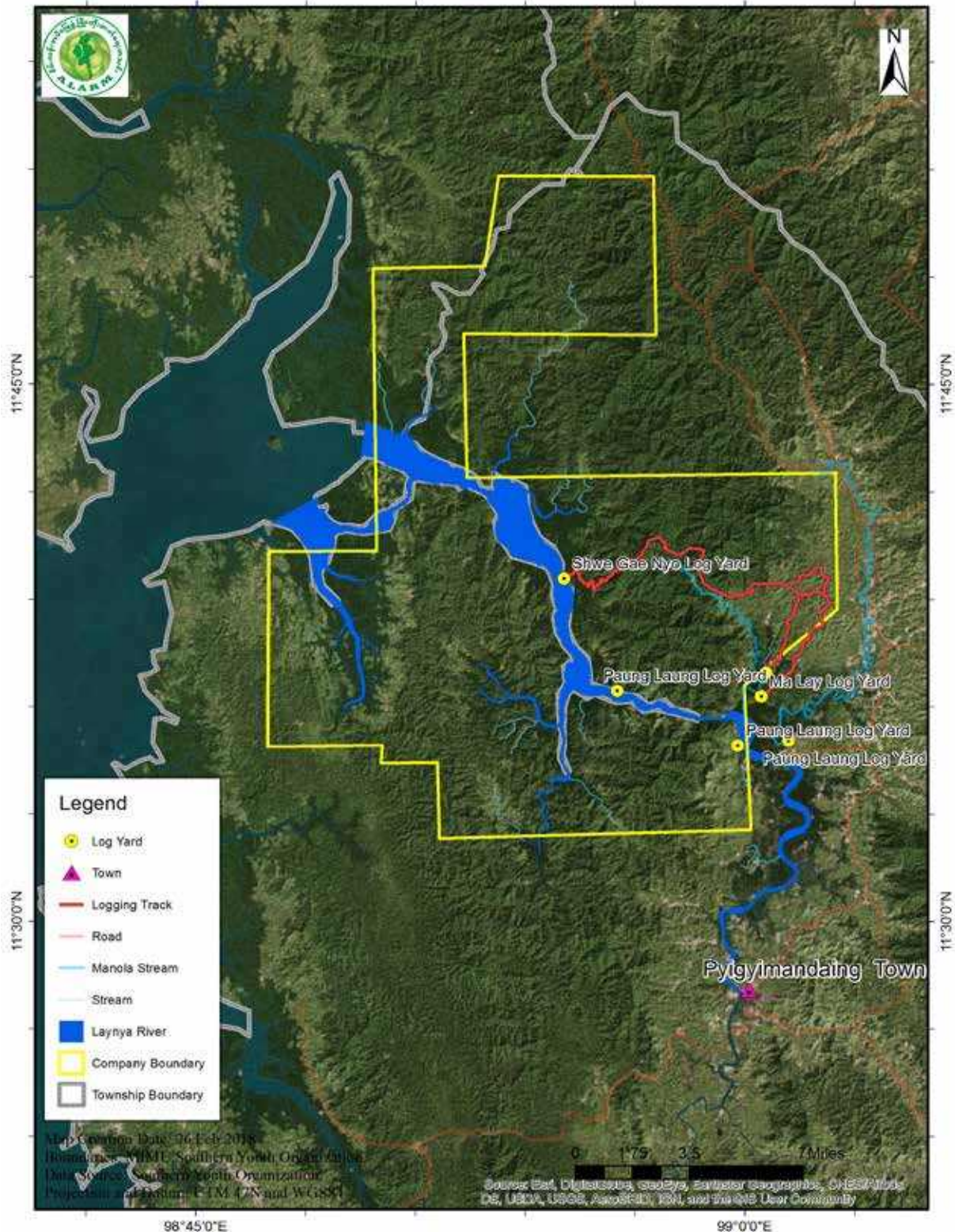


Figure-9 Map Showing Log Yards and Logging Tracks in MAC Concession Area



Figure-10 Log Piles at Shwe Gae Nyo Log Yard before Export
Source : Southern Youth Organization(2017)



Figure-11 Shwe Gae Nyo Log Yard

some of Myanmar's main shipping and transportation routes providing cost effective options to export timber to neighboring countries like Thailand, Singapore, Malaysia, and Indonesia. According to the existing Myanmar laws and regulations companies are only allowed to export timber from the Yangon Port, however, there is an exception that timbers can also be exported from Myeik Port¹⁷. It is commonly believed that many companies take advantage of weak enforcement of legislation allowing opportunities for illegal timber to be exported to international markets. There is also the possibility that illegal timbers have been exported by mixing with legal timber due to weak law enforcement and rampant corruption. In interviews,

¹⁷ Springate B. O., et al. (2016). Legally and illegally log out: the status of Myanmar's Timber Sector and options for reform, Yangon, Myanmar.



Figure-12 Log Piles at Shwe Gae Nyo Log Yard

local communities expressed their concerns regarding the legitimacy of timber extraction activities carried out by MAC. Further investigation uncovered an advertisement notice for export of Myanmar timber on the Alibaba Internet Webpage posted by MAC. This information has indicated that MAC has exported timber from the project area to the international markets (Figure 15 and Box 2).

“I found that timbers from MAC oil palm plantation project area are being loaded onto ships. Three days later, I heard that these ships are found at the Myeik Port.”

Local resident from Ma Noe Yone Village

“We found the ships at Myeik Port three days after reporting by local residents. Later we don’t know where the ships are.”

A member of Southern Youth Organization

According to the local communities, MAC has produced a total of 13,000 tons of timber from the areas granted for oil palm plantation. As a study from the Asia Development Bank states deforestation in the tropics is closely related to land



Figure-13 A Log Yard in MAC Concession Area
Source : Advancing Life And Regenerating Motherland (ALARM)2018



Figure-14 Heavy Machine Used for Logging
Source : Advancing Life And Regenerating Motherland (ALARM)2018

18 Raitzer, DA, et al. (December, 2015). Achieving environmental sustainability in Myanmar, ADB Economics Working Paper Series, No-467, Manila, the Philippines.

Product Details | **Company Profile** | [Report Suspicious Activity](#)

Quick Details

Type:	Hardwood	Shape:	Round	Color:	Other
Grade:	ATIBT	Length (cm):	6m+	Diameter (m):	50cm+
Place of Origin:	Myanmar	Brand Name:	MAC		

Packaging & Delivery

Packaging Details: Bulk in Barge Vessel
 Delivery Time: 30 days [Bulk in Barge Vessel](#)

Specifications

Timber Log (Keruing) exporter from Myanmar Woodland Owner

Dear
 Re : Log export from Myanmar

We are a Korean Company named Auto Industrial Co., Ltd. (www.autosanup.com), we have a big logging project of 54,666 hectares at Tanintharyi Division in Myanmar (lower part of Myanmar) which we got logging permission from Myanmar Government on December 2012. Our registered local company name in Myanmar Yangon is Myanmar Auto Corporation (MAC). Our product shall be mainly large diameter of Keruing (Grujun, Hollong) and it will be produced from June 2013 and I am looking for a good business partner in China, India who wants to import large diameter of Keruing and other timber from Myanmar. Please e-mail me if you are interested in this business.

Best Regards,
 Harry Han
 Director / Overseas Business Dept.
 Myanmar Auto Corporation (MAC)
 #10, Thiri Street, Parami Ward, Yangon Township, Yangon, Union of Myanmar.
 Tel : +95-9-4931-7969
 Cell : +95-9-862-9330

Figure-15 Advertisement of MAC for log exporting at Alibaba Website
 Source : Alibaba Website

Box 2. Advertisement of MAC in Alibaba internet webpage

"AIC is a Company based in South Korea. In December 2012, we were granted timber harvesting permit on areas of 54000 ha (133,380 acres) from Myanmar Government in Tanintharyi Region. Our Company registered with a business name of Myanmar Auto Coporation (MAC) in Myanmar. We will start producing Keruing timber in June, 2013, and thus, we are looking for business partners from China and India who are interested in export of Keruing and others. Partner companies who are interested in timber exports can contact to us."

confiscation by keeping one jump ahead of others and logging, MAC has potentially undertaken similar practices through its timber extraction activities¹⁸.

According to an international study, the productivity of tropical lowland forests is about 12 tons per acre¹⁹ and so far MAC has extracted not less than 19,000 tons of timber from the clear-cut forest. It can be concluded that MAC has extracted more than the volume that has been previously estimated by local communities. The evidence has found that MAC has extracted timber in collaboration with Yadanar Moe Pyae Tun Co., Ltd. Local people said that MAC not only hired logging equipment, logging tracks, and log yards from Yadanar Moe Pyae Tun Co., Ltd. but also transport timbers from MAC project area with the ships from Yadanar Moe Pyae Tun Co., Ltd. It is

necessary to investigate if MAC has exported timber with the help of Yadanar Moe Pyae Tun Co., Ltd. as the latter has been exploited timbers before MAC came into the Tanintharyi Region and the Company was granted corresponding timber export permit.

"Though MAC hired a number of employees to cut the trees, they did not produce themselves. The Company probably exported timbers in collaboration with partner companies."

Former MAC employee and political expert

19 Phat NK, et al. (2000). Stand dynamics of Dipterocarp trees in Cambodia's evergreen forest and management implications: a case study in Sandan District, Kampong Thom, Journal of forest planning, Volume 6, pp 13-23, DOI - <https://doi.org/10.20659/jfp.6.1.13>

“When I have worked on MAC project, I knew that they wanted to produce veneer (or) plywood as they looked for the place to build a factory. However, they didn’t receive permission from corresponding.”

Former MAC employee and a villager from Ma Noe Yone village

Based on the information, it can be said that MAC has intensively extracted timber from the beginning. Research has been unable to confirm if MAC has received permission from MIC for production and trading of value-added timber products in the project area. In addition, the companies, which jointly established MAC, have invested in Myanmar in order to export raw materials to the countries where their companies are based and have had previous business interests in timber related operations. It is obvious that MAC has focused on timber extraction and established small area of oil palm plantation. Therefore, it is necessary to examine whether extraction of timbers by MAC is legal or illegal.

Table 3. Legality of timbers

Legality condition
- Legal right to harvest and validity
- Correct location and forest area for standing trees
- Marking of trees for felling
- Payment of taxes and fees
- Provision of complete legal documents
- Correct location of timber source
- Equality of extracted and transport timbers
- Record of stumps inspection
- Not mixing with illegal timbers
Source : Forest Law(1992), Forest Principle(1995)

In Myanmar, there are neither exact provisions nor definition with regard to defining “legal timber”, legal timber is defined based on the following international criteria;

“Legal timber is defined as timber produced in compliance with corresponding permit to harvest timber within legally gazette boundaries, including compliance with requirements concerning taxes, compliance with forest law, environmental conservation law, and timber harvesting law, compliance with requirement regarding import and export duties, royalties and fees directly related to timber harvesting and timber trade, compliance with requirements with regard to respect for tenure or use rights to land and resources, compliance with labor rights, health, safety and community welfare, compliance with relevant environmental legislation and socioeconomic condition.”²⁰

As stated in forest Law (1992) and Forest Rules (1995), terms and conditions for trading of legal timber, it is necessary to examine whether timbers extracted by MAC are in accord with these terms and conditions (Table 3).

²⁰ Advancing Life and Regenerating Motherland. (2015). FLEGT in Myanmar: laying foundations and mobilizing society, Yangon, Myanmar.

Figure-16 Oil Palm Nursery for Planting Purpose
Source : Advancing Life And Regenerating Motherland(ALARM)2018

According to the Vacant, Fallow, and Virgin Land Management Act (2012), it can be concluded that MAC's export of timbers (conversion timbers) produced from the project area is illegal as the terms and conditions prescribed for the company to comply with "not extract other natural resources above or

below the ground except the permitted business". As Forest Trends have also described the conditionality of illegal timber (conversion timbers - Box-3), the illegality in timbers extraction of

21 Woods, K. (2015). Commercial agricultural expansion in Myanmar: links to deforestation, conversion timber, and land conflicts. Forest Trends Report Series, Forest Trends.

Box 3. Conversion Timber

Conversion timber is timber that is produced from clear-cutting of forests for activities such as mining, road and dam construction, plantation establishment (e.g. oil palm and rubber) and for agricultural crops.

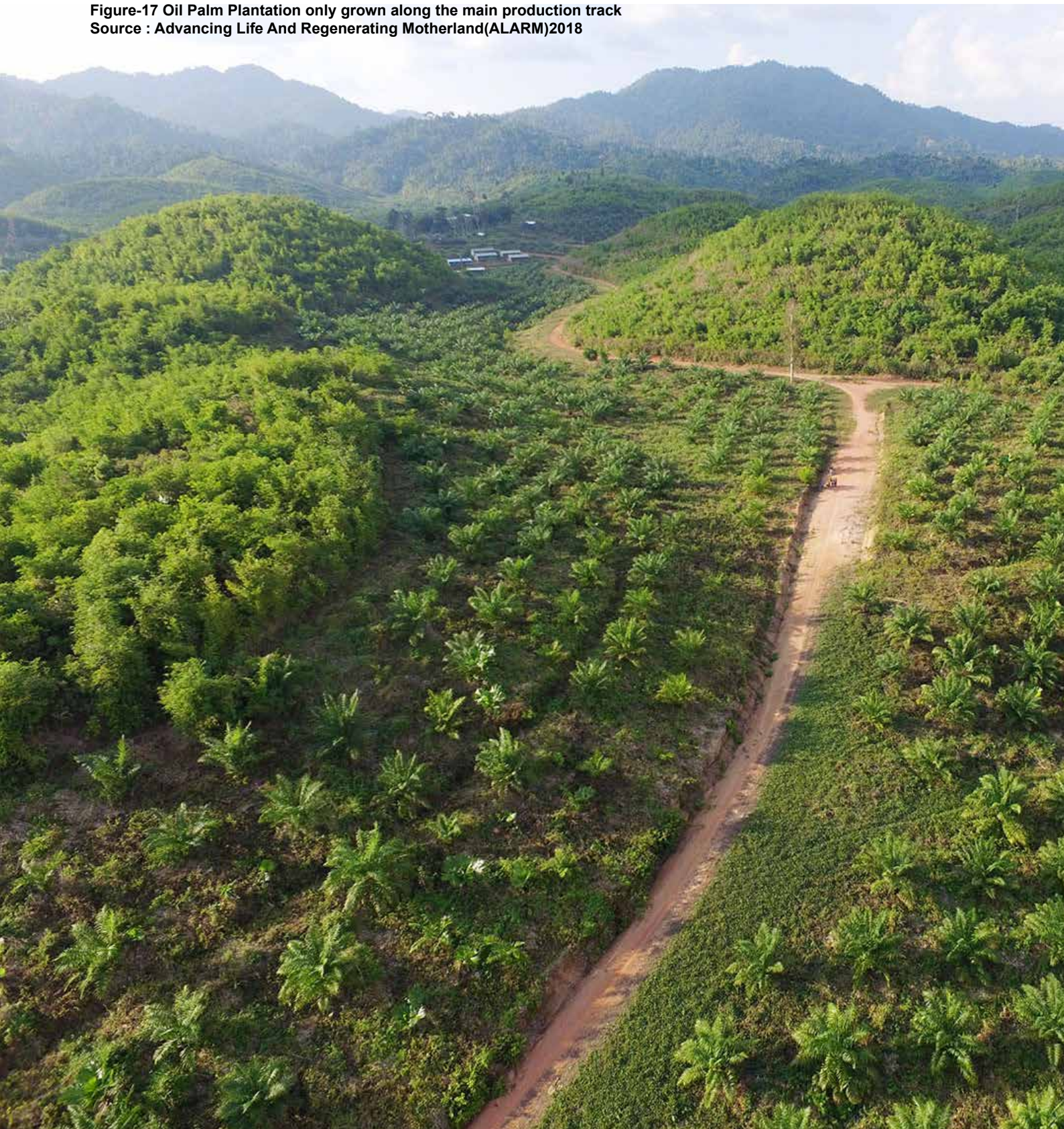
Common causes of conversion timber defined by Forest Trends are as follows:

- Clearing forest without required corresponding clearance permit and/or without permission from corresponding ministry with jurisdiction over the area;
- Clearing forest in designated protected area or forest identified, i.e., deep peat or riparian forest;
- Permit for conducting clearance was issued/obtained illegally, not following due legal process, i.e., through bribery or coercion;
- Permit for conducting clearance was issued/obtained without meeting pre-requisite conditions, i.e., approved EIA, forest inventory or community consent;
- Failing to pay corresponding taxes for timber resources and/or for land acquisition;
- Failure to enforce/implement required environmental mitigation measures during forest clearance activities;
- Failing to comply with provisions stated in contract

Source : Forest Trends 2013²¹.



Figure-17 Oil Palm Plantation only grown along the main production track
Source : Advancing Life And Regenerating Motherland(ALARM)2018



MAC is confirmed. Though MAC was granted permission for oil palm plantation, the Company clear-cut the forests and transformed illegal logging to legal. The extraction of timber by MAC affected ethnic groups' tenure or use rights to forests, environment, and socioeconomic conditions (See detail in impacts on social and environment).

7.b) Land confiscation for agricultural development?

Tanintharyi Region is the area in which the Military government allocated large areas of land to national and foreign investors for self-sufficiency of edible oil industry in Myanmar. Though about 35% (over 1.9 million acres) out of the total areas allocated all over Myanmar was intended for oil palm plantation, a total of 535,000 acres were planted²². It is possible that most of these companies may have been more interested in timber production rather than oil palm plantations as allocated lands in Tanintharyi were covered by highly valuable forests.

From 2011 to 2017, MAC has planted less than 3% of the total land allocated to oil palm plantation, resulting in only 3,000 acres of oil palm plantation being established over a 6-year period. The existing Vacant, Fallow, and Virgin Land Law (2012) describes the terms and conditions in which to be complied by the permit holders to “reclaim and carry out the permitted land until the completion of business to the stipulation within 4 years starting from the day of permission”, MAC has not complied with the existing laws and confiscated the lands.

22 Woods, K. (2015). Commercial agricultural expansion in Myanmar: links to deforestation, conversion timber, and land conflicts. Forest Trends Report Series, Forest Trends.

Figure-18 Oil Palm Plantation only grown along the main production track
Source : Advancing Life And Regenerating Motherland(ALARM)2018



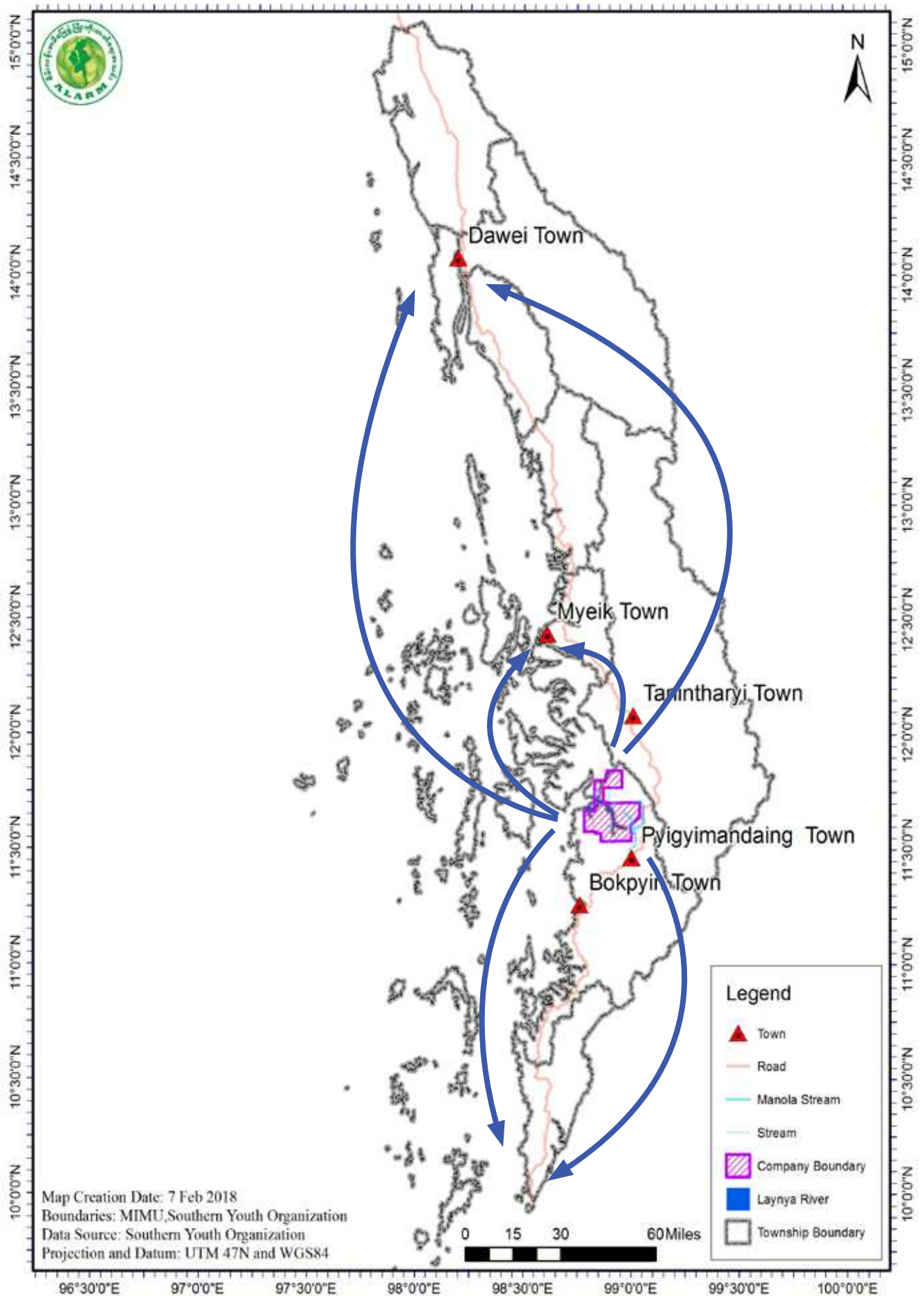


Figure-19 Map Showing the Strategic location of MAC Concession area

In addition, MAC has planned to refine raw palm oil in the other refinery plants as there is no information available about a long-term plan to build a refinery plant. It will take 3-4 driving hours to get to the closest refinery plants from MAC project area. As MAC oil palm plantation project cannot bring necessary economic benefits, there is no evidence that MAC has focused on oil palm plantation establishment.

Tanintharyi and Dawei Region are located in the center of one of Southeast Asia's largest industrial and trade zones including Dawei deep-sea port project and special economic zone. There is potential for economic development in Tanintharyi and Dawei Region as foreign investment companies are interested to invest in the area.

The area allocated to MAC is located at the key area on the Myeik-Kauthaung Road, about 240 miles away from Dawei based infrastructure projects and about 92 miles and 100 miles apart from Myeik and Kawthaung being easily accessible to the 3 sea-port cities. In addition, part of Lenya River's watershed fall within the MAC project area providing easy access to these cities by road and water route (Figure 19). Due to the possibility of economic development in the region, there is a suspicion whether land was confiscated with the intention of keeping one jump ahead of others.

7.c) Whether MAC complies with the existing laws & regulations?

MAC is a South Korean investment company that was granted the largest area to establish oil palm plantation among other national and foreign companies. It is important to examine whether foreign investment companies comply with existing laws and legal procedures of the country they invested, comply with international rules and regulations, and comply with the requirements to respect human rights, ethnic groups' rights and tenure in land confiscation and implementation of the projects.

In 2011, MIC granted MAC a permit for oil palm plantation project in Tanintharyi Region. Due to the allocation of land to MAC, home gardens, paddy fields, and taungya originally belonging to the local ethnic groups were confiscated. In the Vacant, Fallow, and Virgin Land Management Law (2012), article 25 (b), the terms and conditions to be complied by the company are described as "if the land previously have been being cultivated by local cultivators are included in the area of permitted vacant, fallow and virgin lands even if they do not have the legal right to cultivate, negotiate and carry out on their violation so as not to suffer." However, MAC did not consult and cooperate with the local communities or provide just and fair



Figure-20 MAC Company Sign Board

Source : Advancing Life And Regenerating Motherland(ALARM)2018

compensation to the affected land owners. Though local residents who lost their lands have tried to receive compensation and to get back their lands, they lost the lands without bi-lateral agreement on land confiscation.

"I did not receive any compensation to my land confiscated by MAC. I just realized that my farm was included within the project area when they cleared the land with bulldozers."

A villager from Ma Noe Yone

"We cannot say anything as they have strong relationship with the political powerful"

A villager from Ma Noe Yone

"They did not inform or consult with us prior to the project implementation. I knew that my land was included within the project area when they cleared the land with bulldozers."

A villager from Ma Noe Yone

"I didn't know when they started land clearing with bulldozers. When I saw and asked the bulldozers clearing on a piece of my land, they turned back by saying a wrong field they have been cleaned."

A villager from Ma Noe Yone

"I dared not to go and work there as the military government announced Martial Law and will be shot and killed if we go there. In addition, we don't dare to complain to the MAC Company because of the government official permission."

A villager from Ma Noe Yone

In addition to this, according to the Vacant, Fallow and Virgin Land Management Rules (2012), the article 38 (a) 2, it was stated that the person who has rights to cultivate or utilize the permitted land for commercial purposes shall deposit security fees of about 10000 MMK per acre. According to the articles 39 (a) and 40 (a) 1, the person who has rights to cultivate or utilize the land shall pay up the revenue for permitted land, it is interesting to learn about taxes and revenue. As exemption for commercial tax for agribusiness investments is from 2 to 5 years, MAC has responsibility to pay the revenue of about 3000 MMK per acre for the established oil palm plantation area for 2017 fiscal year. The reliable facts and figures were not provided by MAC, when the Company was contacted to get information on whether MAC deposited security fees and paid land tax regularly,

According to the Vacant, Fallow and Virgin Land

Management Rules (2012), the article 45 (a), the company that has the rights to cultivate and utilize the permitted shall comply the terms and conditions to "carry out their project on the vacant, fallow and virgin lands within four years from the date rights are granted, with 15% completed in the first year, 30% in the second year, another 30% in the third year, and 25% in the fourth year, completing 100 percent of the project within that year." Nonetheless, MAC established oil palm plantation in a few acres; as an evidence of non-compliance with legal procedures, as well as, existing laws, rules and regulations (See detail in land use chances).

In the Fallow and Virgin Land Management Rules (2012), in the article 50, it is also stated that the government and representatives designated to project monitoring have responsibility to inspect and monitor the actual progress of the permitted project on the granted land. However, the responsible persons rarely inspect the actual condition of the project in the field due to weakness in law enforcement. In January, 2018, in the Vice President's field trip to inspect the regional development of Tanintharyi Region, he inspected the status of agriculture, livestock, and tourism development activities. Instead of instructing the companies to ensure compliance with legal procedures and social requirements, the Vice President has stressed the relevant companies and government organizations to take an action in accordance with the existing laws when local residents have returned to the project areas (Figure 21).

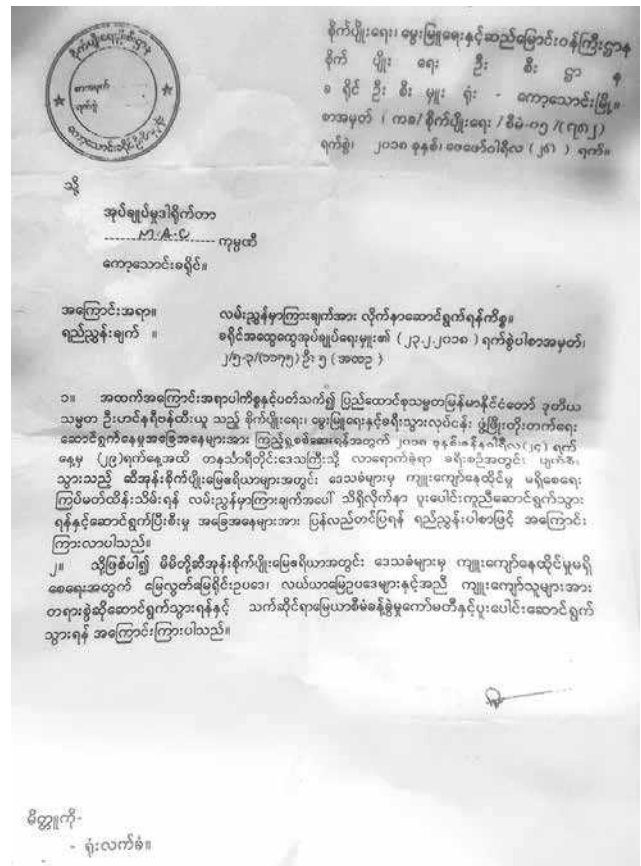


Figure-21 Letter from the Department of Agriculture Ordering MAC to take action for local community



Figure-22 A Decayed log pile in MAC area
Source : Southern Youth Organization (2018)

MAC has not fully implemented the planned activities over a 6-year period from 2011 to 2017. Although in the Vacant, Fallow and Virgin Land Management Rules (2012), the article 47 (d), it was stated that the company that has the rights to cultivate and utilize the permitted shall comply the terms and conditions to “return the vacant, fallow and virgin lands to the Central Committee upon failure to continue or complete projects after being granted rights to utilize the land”, MAC has violated the existing laws and rules to return the land to the Central Committee. In addition to this, it can be concluded that MAC do not respect the existing laws and regulations to be complied by the granted company as MAC has not actively attempted to finish the planned activities in accordance with the work plan.

The Government stated that “if the Central Committee finds that the person granted the rights to work on and utilize the vacant, fallow and virgin lands has violated any of the rules in the Vacant, Fallow and Virgin Lands Management Law, the originally deposited guarantee fees will be confiscated as state funds and in addition, the rights to work on and utilize the vacant, fallow and virgin lands will be revoked” in the Vacant, Fallow

and Virgin Land Management rules (2012), the article 57 and 51 (b). Therefore, it is possible to revoke the rights granted to MAC.

In the environmental impact assessment procedures (2015), as it is stated that the agricultural projects that has been permitted over 1,235 acres (500 ha) must submit environmental impact assessment (EIA) report, MAC needs to submit environmental impact assessment (EIA) report and to draw environmental management plan with the participation of local communities.

In the environmental impact assessment procedures (2015), article 8 (a), it is stated that each project which has been started or being in operation before this procedures is enacted, shall conduct Environmental Impact Assessment including working area assessment in order to know environmental impacts which have been caused by the project and draw and implement the environmental management plan. However, it was not known whether MAC has a plan to draw environmental management plan (or) to conduct environmental impact assessment (EIA), as well as, to consult with local communities about these activities.

It has been concluded that MAC has not informed the local communities as to the proposed project activities.

International investors have failed to comply with the existing laws and to exercise due diligence to avoid the consequences. Implementation of projects by taking advantage of weak law enforcement has reduced local community's trust in the international investments and it is the main cause of conflicts between local communities and foreign investment projects.

In addition, as Myanmar has signed and joined the international community in adopting the United Declaration on the Rights of Indigenous Peoples (UNDRIP)^{23,24} to stop violations of indigenous peoples rights, as well as, to help stop discrimination against indigenous people, the government need to strongly encourage the development of agribusiness projects to follow the terms of this agreements. However, it was found that MAC has failed to comply with the existing laws and international agreements.

The principles of Free, Prior and Informed Consent (FPIC) recognized by the United Declaration on the Rights of Indigenous Peoples (UNDRIP) were shown in table (3). The government and MAC has failed to respect the indigenous people right to free, prior and informed consent (FPIC) in communication with ethnic minority at the areas granted for oil palm plantation.

Article 8 *States shall provide effective mechanisms for prevention of any action that has the aim or effect of violating or undermining any of their rights; including dispossessing indigenous peoples of their lands, territories, and resources.*

Article 10 *Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.*

Article 11 *States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.*

Article 19 *States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*

Article 28 *Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.*

Article 32 *Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.*

During the decade, a total of 95.8 million acres have been reallocated to the original land rights holders while the negotiation process has been carried out for reallocation of about 39.5 million acres^{25,26}. Most of the land areas belonged to local communities who practiced traditional farming on which, they have been seriously affected. The government responsible persons must take into account the loss of forest dependent ethnic minorities' rights and tenure due to weak law enforcement. In addition consideration should be given to the confiscation of land from companies that have monopolized business through the use of money and power as weapons²⁷.

23 UNDRIP is an international instrument adopted by the United Nations on September 13, 2007, to enshrine the rights that "Constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world." The UNDRIP protects collective rights that may not be addressed in other human right charters that emphasize individual right, and it also safeguards the individual rights of indigenous people

24 www.landmatrix.org/en/ (Accessed 3rd March 2015)

25 ALARM (2015). FLEGT and VPA Basic Knowledge, Yangon, Myanmar.

26 Focused Group Discussion with the affected community (October, 2017)

27 Focused Group Discussion with the affected community (October, 2017)

On the other hand, land-related conflict has not been resolved by the successive governments as they have confiscated land for their own benefits and so far the land confiscation has been further complicated under high levels of corruption. Though MAC oil palm plantation project was granted a permit by the new civilian government, there are weakness and much improvement still needs to be made. If MAC has intention of becoming a responsible investment company, the company needs to comply with the existing laws and international standards by exercising due diligence to avoid the consequences as a responsible investment company. However, evidence presentes in this report suggests that MAC has failed to meet their obligations of due diligence as stated above.

8 . Impacts on Socioeconomic Conditions of Local Communities due to MAC Oil Palm Plantations

Local labors have received increased salary as MAC has paid higher daily wages. Though they have been paid about 3000 MMK as daily wages in the past, MAC has increased daily wages to 10000 MMK; resulting in higher daily wages for other businesses to pay and labors to earn within the region. Although local businesses had faced difficulties as they paid higher salaries, local employees earned higher income. In addition, there were also positive impacts such as better job opportunity to work as MAC employee and accessibility. Nonetheless, socioeconomic conditions of local communities and environment have been affected by the implementation of oil palm plantation project.

8.a) Economic impacts

Some total of 2000 acres belonging to the 53 households have been confiscated for MAC oil palm plantation²⁸. In addition to this, local residents have lost their home gardens, areca nut, cashew nut, mango, durian plantations, taungya, and lands that have been cleared for cultivation of crops including the land of their abandoned village. Local residents became workers in collection and plucking of areca nuts, in weeding on daily wages and started growing tree crops in home garden in the areas

that were owned by other villages. In addition, local communities have faced poor livelihood opportunities due to decreasing number of wild animals, longer distance and time for collecting firewood, rattan, bamboos, and vegetables as consequences of Company's activities such as clearance of forests and timber extraction; leading to deforestation²⁹. Before the Company came in, there were a number of medicinal plants such as Kla-met (*Mansonia gagei*) and Taung-tangyi (*Premna integrifolia*), they became rare in the present days. Community members have reported that the number of fish in rivers and streams have reduced due to the use of poison and electric shock fishing techniques by MAC employees. Bamboos, rattans and leaves of the larger trees have been destroyed due to the clearing of forests and burning of felled trees for oil palm plantation establishment³⁰. In addition, as the areas cleared by the Company were habitat of elephants, they destroyed areca nut plantations and taungya of the local people³¹. As a consequence, local residents' livelihoods have been significantly disrupted and they have faced difficulties to earn their living³².

“MAC project provided job opportunities... but it lasted one year... the forest from which we harvested rattans was cleared.”

A villager from an affected village

“Before the Company came in, we could harvest about 1000 rattan stems in a week and sell with a price of 250 MMK for larger stem and 50 MMK for the smaller one. Now-a-days, the Company comes in, forests are destroyed, number of rattan reduces, and we can't earn our livelihood by rattan collection.”

A villager from an affected village

“In the past, we could catch about 10 Viss of fishes from a stream in a night. Today, about 3 fishes (approximately 10 ticals) can be caught. Number of fishes has reduced because of employees from the Company used poison and electric shock for fishing.”

A villager from an affected village

28 Histogram Mapping with the affected community (October, 2017)

29 Histogram Mapping with the affected community (October, 2017)

30 Histogram Mapping with the affected community (October, 2017)

31 Interview with the affected community (October, 2017)

32 Interview with the affected community (October, 2017)

“Before the Company came in, there were plenty of Taung-htan (Livistona palm) leaves for roofing. After the Company’s investment in the area, there were no leaves for roofing as they cleared and burned the trees.”

A villager from affected Ma Noe Lar village

“After the Company came in, timbers become rare. Vegetables cannot be collected from the forest. Numbers of wild animals and fishes have reduced. Medicinal plants such as Min-go-ga (*Argyreia* spp.) and Phyu-Nge cannot be found.”

A villager from affected Ma Noe Yone village

“In the past, local people could clear the lands for taungya and home gardens. In the present days, local residents cleared land far away from the village to avoid the project area as the company confiscated the land.”

A villager from affected Ma Noe Yone village

“As a landless, I earn a living by taking up any jobs that come by. Up to present, I am a worker on daily wages.”

A villager from affected Ma Noe Yone village

“Our family migrated due to fighting between government forces and the Karen National Union (KNU). My wife and I earn a living by taking up any jobs that come by.”

An affected villager

Htaung Kha Met village was affected due to the Company activities. Before, Htaung Kha Met village included in Ma Noe Yone village tract and so far the villagers practice traditional home garden and taungya, they migrated to the roadside of Myeik-Kawthaung Road due to civil wars. Prior to MAC project implementation, the villagers from Htaung Kha Met village continued growing crops on their lands. After land confiscation by MAC, the villagers have faced difficulties to earn livelihoods and as a consequence have had to move to other villages, refugee camps or work for MAC on daily wages. Presently there

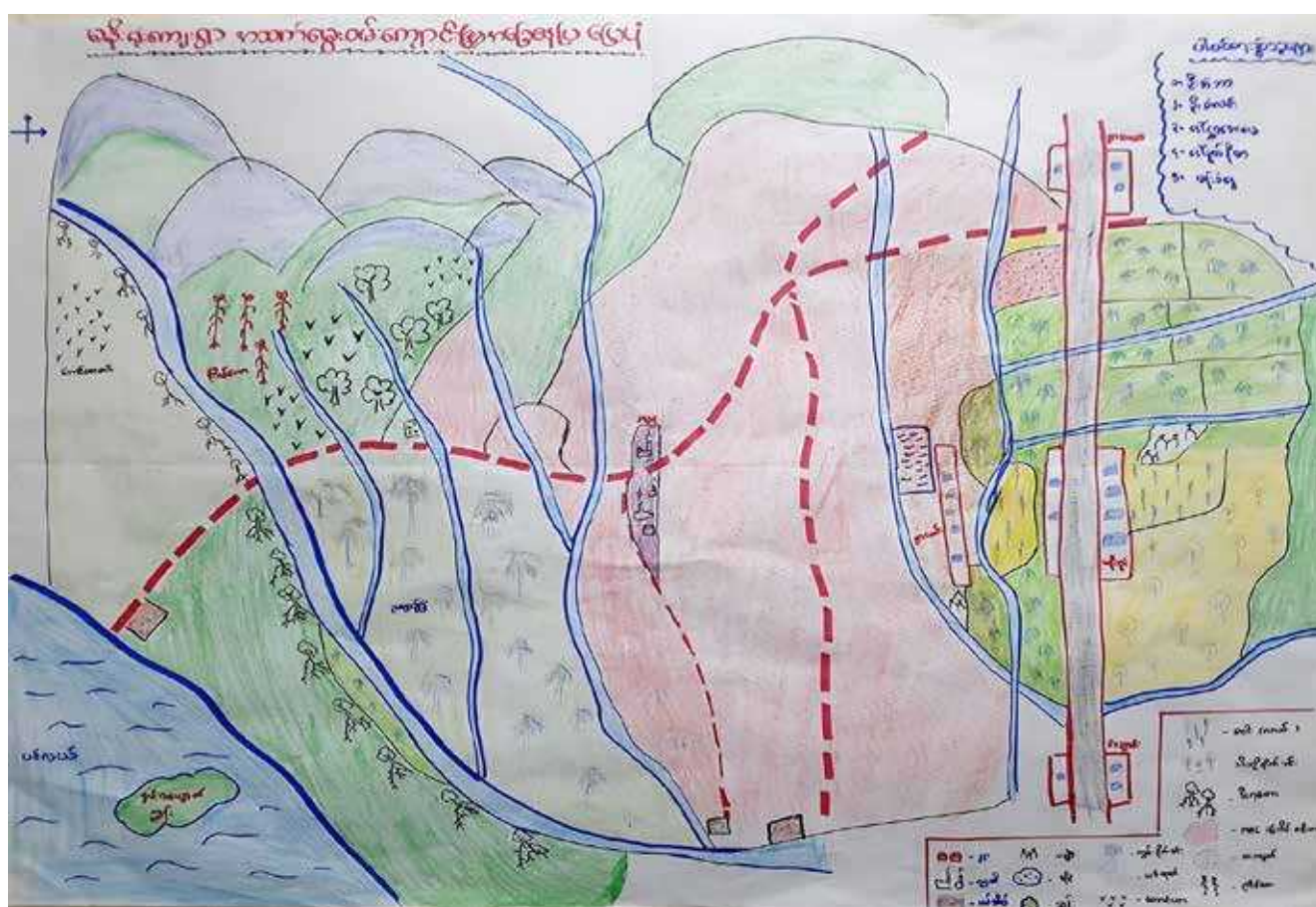


Figure-23 Livelihood Map of Ma Noe Yone Village
Source : Participatory Action Research Results(2018)

Figure-24 The Deterioated Housing of Labours
Source : Advancing Life And Regenerating Motherland(ALARM)201



is only one household from Htaung Kha Met village left and they live in Ma Noe Yone as Htaung Kha Met village was displaced.

Before the implementation of the MAC project, villagers from Ma Noe Yone village worked in home gardens (growing areca nut, cashew nut), cultivated paddy taungya, collected rattans and worked as hunters. After MAC came in, local residents have faced difficulties to earn their livelihoods due to a decrease in the number of wild animals, an apparent impossibility of collecting rattan, and shortage of timbers, bamboos, and vegetables as a consequence of timber extraction and deforestation. Therefore, local communities have collected forest products and cultivated taungya far away from the village. As wild elephants have destroyed areca nut plantations and paddy field in taungya, local communities' livelihoods have been disrupted.

In the beginning of the project implementation from 2012 to 2013, MAC provided better livelihoods to the employees by paying better salary. Later, weakness in MAC oil palm project implementation has unsecured sustainable livelihood of the employees.

“Even though the Company cannot provide better livelihood, I have to work at the company for living.”

An employee from MAC

“Employees stay in improper barracks. In the beginning, MAC supported travel costs and bonus to the employees who visited their home twice a year. Present days, Company cannot support the employees when they return home.”

An employee from MAC

Although MAC has claimed that labor shortage is the major reason for the delay in project implementation, they did hire a few number of labors from nearby villages for clearing of land, raising seedlings, and planting of oil palm. MAC did not hire enough labors for the establishment of oil palm plantation in the entire project area that has been confiscated by MAC. In addition, local residents are being discriminated against labors from other areas in the payment of salary. Therefore, it can be said that local communities did not received proper job opportunities.

8.b) Social impacts

The settlements of the local people were not only threatened by the civil war between ethnic armed organizations

Figure-25 The Church of Old Village**Source : Advancing Life And Regenerating Motherland(ALARM)201**

and Myanmar troops but also, they ended up abandoning the farmland due to land confiscation by the companies.

“Due to the armed conflict between government and KNU that has been started since 1996, we have left the village, determining not to go back to the village again because our villagers have been killed by the armed people without any word. The village has been destroyed except church and temple.”³³

Affected villager

Though there was no major conflicts among ethnic minorities in the past, the local residents are not willing to help each other on longer, doing morally wrong deeds after the intrusion of the Company. The local residents have no longer abided by what the village head said³⁴.

Traditional religious sites were within the project area of MAC. In 1996, the village school and church was destroyed due to the armed conflict between the government and the KNU. Now the communal land was converted to the commercial oil palm plantation by the company. There were dominant religious buildings where religious ceremony were organized in the past but such religious sites are not still yet seen in the area.

“The local communities go and clean the religious compound located in the old village area once a year so that they can pray and make good wishes. It would be great if we can pray in the church again.”

An affected villager from Ma Noe Yone village

The villager, who has suffered from land confiscation, has mentioned that restricted farming activities on his customarily owned farmland as follow.

“I wish I could do farming on my land! But I need to be compensate for the palm oil tree if I want to cut them down and plant crops. ”

A villager who lost the land

According to the aforementioned results from interviews with local residents, though the Company has not complied with legal procedures, local communities have taken into account their accountability and responsibility concerning land disputes.

MAC Company had done nothing about the development programs for the benefits of the local people. The affected villages are not provided with basic infrastructure such as clinic, electricity while it barely fulfills the basic needs of the community.

“We were told that the responsible people do something for the local people in Byoke-pyin. So were went there. It turns out they did not do anything ”

A villager from Ma Noe Yone village

“Nothing was done for the development of the area except the small football playing field which is not finished yet.”

An affected villager from Ma Noe Yone village

8.c) Environmental impacts

Land use changes

In 2012 when MAC started the oil palm plantation project, a total of 90% of project area was covered by lowland rainforests and most (54%) of the areas occupied by In (Dipterocarpus tuberculatus), Kanyin (Dipterocarpus alatus), Thingyan (Hopea odorata). In addition, about 8% of the area confiscated by MAC was covered by mangroves, 26% was degraded forests. About 4% of land customarily owned by the local ethnic minorities was included within the project area.(Figure-26)

Significant land use changes have been observed from the lowland evergreen forest to fallow land and palm oil plantation after intrusion of the Company. Due to the establishment of oil palm plantation and clear cutting of forest for timber extraction, about 12% of forest area has been cleared as closed forest covered 54% of the area at the beginning and so far closed forest area has been reduced to 42%. Up to early 2018, a total of 16,000 acres of the forest areas has been decreased due to the timber extraction and establishment of oil palm plantation. As 64% of forest areas (11,393 acres out of 16,000 acres) has degraded into fallow land area, it can be concluded that these 11,393 acres were not solely cut for growing palm oil, but mainly for timber extraction. Major land use change occurred in the eastern part of the project area. Over 3000 acres of oil palm plantation were established, most of which were found along

the roadside to front station of the Company. Mangrove forest cover has increased in the area because of decrease in clearance of mangroves for various purposes in late 2012 (Table 4). Based on the interviews with local communities, it was found that deforestation occurred due to intensive exploitation of timber by the Company (Figure 28).

Loss of tree species and herbal plants

The species are diverse in the evergreen forests and the dominant species are Thingyan (Hopea odorata), Kanyin (Dipterocarpus alatus), and Pyinma (Lagerstroemia speciosa). Though there was no logging activities in the midst of civil war between KNU and the government, after the implementation of agribusiness companies including MAC there was extensive timber extraction for the apparent establishment of oil palm plantation resulting evergreen forest deforestation.

Due to the production of timbers to produce plywood by MAC Company, the most commonly extracted timbers species such as Thingyan (Hopea odorata), Pyinma (Lagerstroemia speciosa), Kanyin-Phyu (Dipterocarpus alatus) Kanyin-ni (Dipterocarpus retusus), Kanyin-si (Dipterocarpus turbinatus), and Pyinma (Lagerstroemia speciosa) became threatened. According to local claims, one third of tree species are left due to intensive logging and land clearing by MAC Company. The species diversity of the area is gradually reduced (Table-5).

Over 3000 acres of oil palm plantation were established, most of which were found along the roadside to front station of the company. Mangrove forest cover has increased in the area because of decrease in clearance of mangroves for various purposes in late 2012...

Table 4. Land use changes from 2013 to 2018

Land use	area (acre/%)			Conversion to other land (%)
	2013	2018	Conversion	
Dense forest	72446 (54%)	56371 (42%)	(16075)	
Fallow land	1017 (1%)	12410 (9%)	11393	64%
bare land/ plantation	1769 (1%)	5084 (4%)	3315	19%
Tidal forest (Mangrove)	10863 (8%)	13540(10%)	2677	15%
Customary farmland	5296 (4%)	4497 (3%)	(798)	-
Water	6958 (5%)	7256 (5%)	298	2%
Degraded forest	35198 (26%)	32389 (26%)	(809)	-

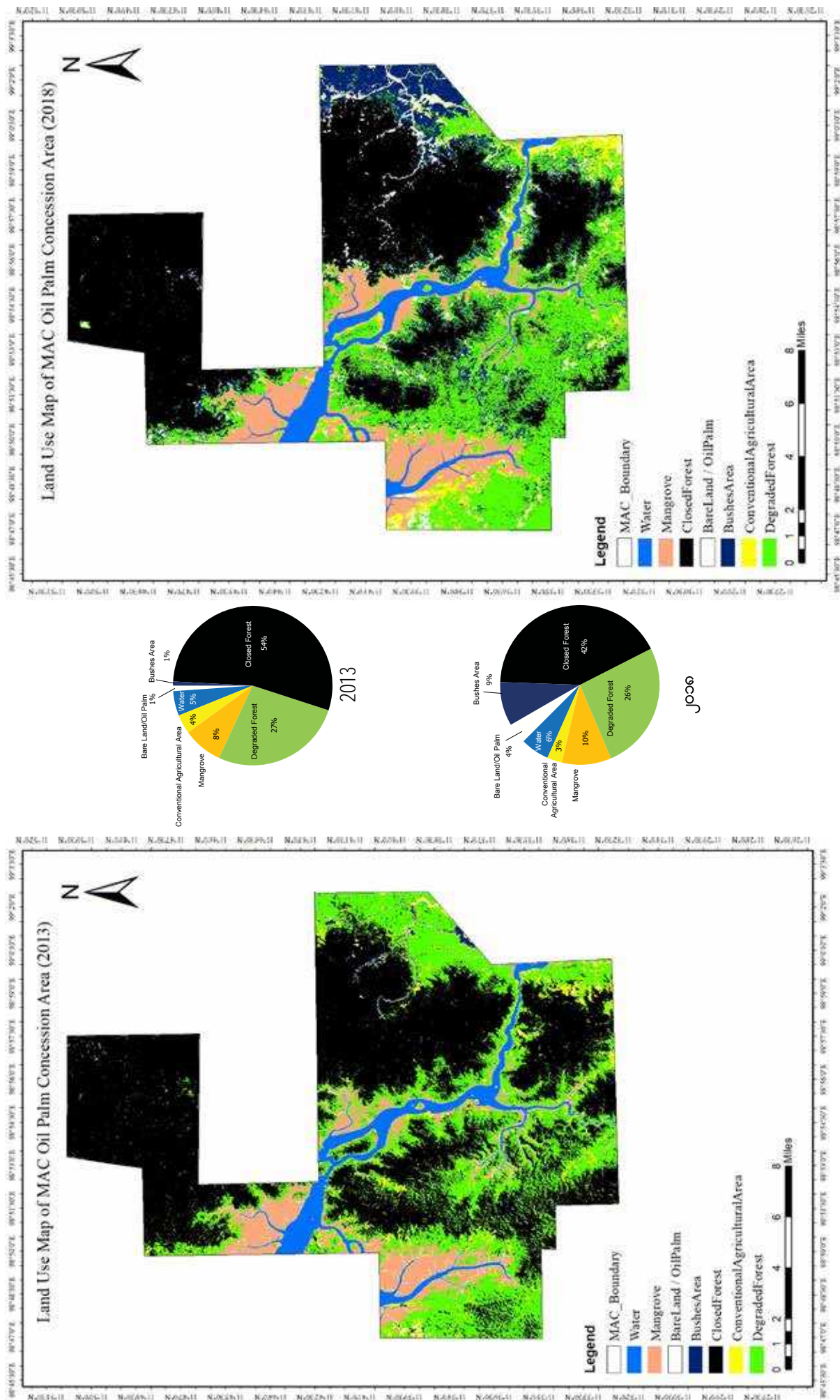


Figure-26 Map Showing the Land Use Change in the MAC Concession Area (from 2013 to 2018)



Based on figure (27), conclusions are provided as follows:

- ◆ Forest cover has decreased over time,
- ◆ Destruction of endangered wild animals, medicinal plants, terrestrial and aquatic animals due to destruction of grazing lands,
- ◆ Water scarcity due to destruction of fresh water resources,
- ◆ Destruction of livelihood and moving to new places to earn livelihood although local communities earned higher salaries at the beginning.

Tree species found in nearby forest of Ma Noe Yone village

In the past, the local people were heavily dependent on vegetables and herbs that are harvested from the forest. As the variety of vegetable and medicinal plants grows within the land confiscated by MAC, plant diversity will be reduced if conservation measures are not taken in time (Figure 29 and 30). After a time when MAC started working in the area, the number of rattan, bamboos, vegetables and medicinal plants such as Min-go-ga (*Argyrea* spp.) and Phyu-Nge has been reduced as a consequence of timber extraction and deforestation consequently affecting local peoples' livelihoods.

Figure-27 Environmental and Socio Impacts of local communities before and after project implementation by MAC
Source : Participatory Action Research Results(2018)

Table 5. Tree species found in nearby forest of Ma Noe Yone village

No	Species Name (Common Name)	Scientific Name	Usefulness	Current Status	Remark
1	Thingyan	<i>Hopea odorata</i>	Post for housing, boat, furniture, cart, agricultural materials, fencing, sleepers (first class)	low	They are marketable species and over-exploitation by MAC company reduces their distributions. Only one third of them are left.
2	Kanyin-ni	<i>Dipterocarpus retusus</i>	Construction, decoration, plywood, plank, shelter, boat	low	
3	Kanyin-phyu	<i>Dipterocarpus Alatus</i>	construction, wardrobe, resin for boat, plank, shelter, boat, supporting frame	low	
4	Kanyin (Oil)	<i>Dipterocarpus dyeri pieerre</i>	plywood, lamp oil, supporting frame	low	
5	Pyinma-phyu	<i>Lagerstroemia floribunda</i>	post, boat, furniture, plank, shelter	low	
6	Pyinma-ni	<i>Lagerstroemia speciosa</i>	shelter, plank, post	low	
7	Sagar-shwe-wah		plank, door, furniture	low	it is low in number because commercial production by private company in collaboration with forest department (2013)
8	Sagar-kywe- che		plank, cantilever	low	
9	U-ban-te		plank, cantilever, boat	low	
10	U-ban-phaw		plank, cantilever, boat	low	
11	U-ban-chauk		plank, cantilever, boat	low	
12	Phet-than	<i>Heterophragma adenophylla</i>	ladder, housing post	low	only small trees are found. Due to clear-cutting for planation, it can be found in valley and inaccessible area.
13	Thapyay-ni	<i>Eugenia oblata</i>	plank, housing post	low	
14	Thapyay-phyu	-	plank, housing post	low	Over-exploitation of local people
15	Pan-danyin	-	housing post (termit resistant)	low	
16	Thit-kauk	<i>Aporosa roxburghii</i>	housing post (termit resistant)	low	
17	Thit-kauk me	-	housing post (termit resistant)	low	
18	Shaw	<i>Scaphium scaphigerum</i>	thin strips used in weaving mats, baskets, etc.	low	
19	Taung-kala	<i>Sapium insigne</i>	Roof and shelter	low	
20	Kadauk	<i>Aporosa wallichii</i>	boat	low	
21	Kywe-thwe	<i>Premna integrifolia</i>	decoration	low	low as usual, while planted one are common
22	Pyinkado	<i>Xylia Xylocarpa</i>	nil	low	
23	Thitto	<i>Sandoricum koetjape</i>	furniture, decoration	low	low due to over exploitation by local people
24	Kokko	<i>Albizia lebbek</i>	nil	low	
25	Aukchinsa	<i>Diospyros Kurzii</i>	ladder, door	low	
26	Gangaw	<i>Mesua ferrea</i>	post, bridge	low	it' going to be rare due to local use, poor regeneration, and lack of planting
27	Leik-the	-	nil	low	rare as usual
28	Lay Theyet	-	nest for bird	common	common as usual
29	Taung-kaye	<i>Dialium indum</i>	decoration for boat	common	
30	Pauk-pet	-	fruit, charcoal, fuelwood	common	
31	Kyaung-sha	-	fruit, fencing, pole for betel leaf	common	
32	Thitmin	<i>Podocarpus neriifolius</i>	construction	rare	

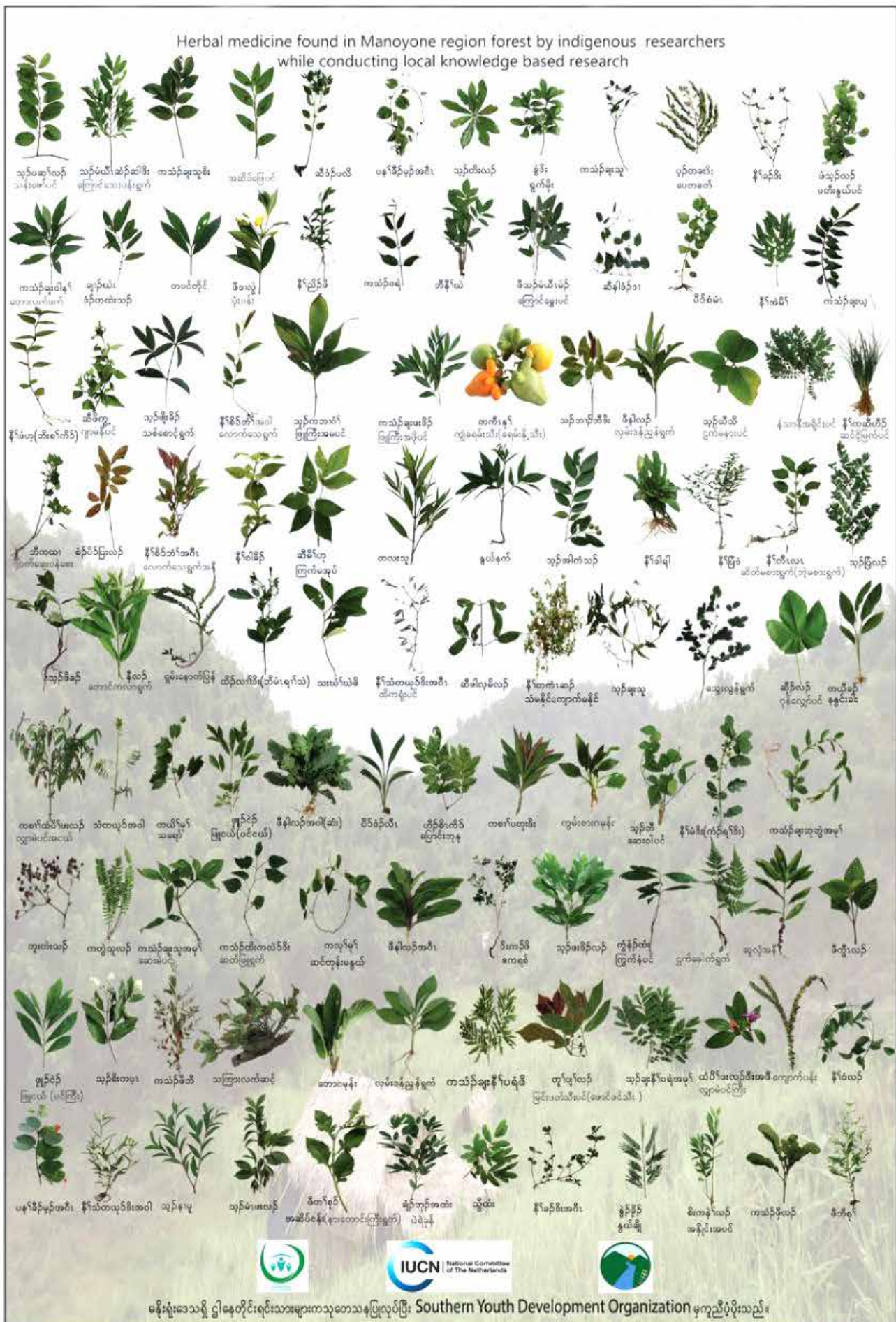


Figure-28 Lists of the medicinal plants well grown at the Ma Noe Yone Forest Area
Source : Southern Youth Organization



Loss of wild animals and Destruction of plantations by wild elephants

As the upstream and downstream of Lenya River is located in MAC oil palm plantation project area, the area falls under the priority biodiversity conservation area of Tanintharyi Sundiac subregion and key biodiversity conservation according to the government adopted National Biodiversity Strategic Action Plan's (NBSAP) terms and conditions (Figure 30). Therefore, it can be assumed that Tapir (*Tapirus indicus*) and oriental pied hornbill (*Anthracoceros albirostris*) including endangered and other wild animals are seriously affected by MAC oil palm plantation. In addition, according to NBSAP, the priority area and biodiversity have been destroyed by hunting, mining, and logging, etc.

Based on the result of focus group meetings with local people from Ma Noe Yone village, wild animals such as pangolin, jungle fowl, tiger, bear, rabbit, and deer species called “red muntjac” and “sambaur”, gaur, gibbon, porcupine, peacock and wild boar were found before the project’s implementation. Currently, these wild animals are becoming threatened due to deforestation. Wild animals such as gibbon, peacock, tiger, bear and

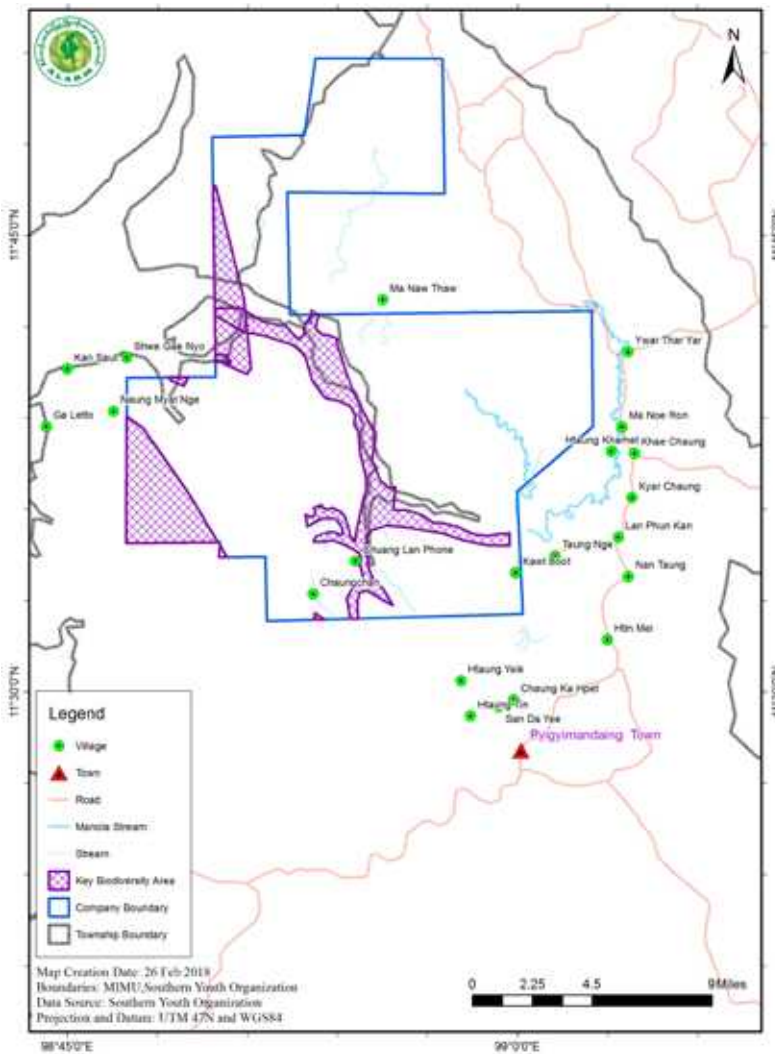


Figure-30 Map Showing the Key Biodiversity Area fallen in the MAC Concession Area



Figure-31 The Footprint of Wild Elephant in the MAC Concession Area



Figure-32 The Oil Palm Plantation destroyed by Wild Elephants



Figure-33 Mining works near the streams of MAC Neighbourhood Villages
Source : Advancing Life And Regenerating Motherland(ALARM)201

pangolin have locally disappeared. The Company has extracted timbers and extended the oil palm plantations, water resources are becoming scarce, and thus, aquatic species such as turtle, barbus fish, banded snake head, spiny eel, prawn and frog are rarely caught by local villagers.

Due to deforestation, elephant grazing lands are disappearing and consequently they are extending their habitat range into local farmland destroy local communities' crops (Figure 31 and 32).

“In the past, forest was dense with large trees and wild animals are everywhere. But now, closed forest has been cleared and animals are gone.”

A local villager

Depletion of Freshwater Resources

Due to deforestation there is considerable impact to the watershed, including the drying up of stream water in summer. As a consequence, local communities now have to rely mainly on tube-well to access water for household use³⁵. In addition, construction of road infrastructure and construction of a small dam to supply water to oil palm plantation resulted in increased water turbidity that affects drinking water scarcity in summer. Moreover, widespread mining within the project area, closing the streams, utilization of poison and electric shock to catch fishes has impacted levels of water pollution, the death of aquatic animals and security of clean drinking water.(Figure 33,34)



³⁵ Histogram Mapping and testimony by the affected community (October, 2017)

9 Local People's Attitudes and Perceptions towards MAC Project

The households whose land has been confiscated revealed that they would like to have their lost lands returned. Some villagers would like to get not only the land but also compensation for losing their fruits and crops.

"I don't want compensation for losing the land. I only want my land back."

An affected villager"

"I want my land back as compensation, land is limitless to use but money is limited thing"

An affected villager

"We want back the value of land, the lost fruit trees and crops, and the natural regeneration instead of compensation."

An affected villager from Ma Noe Yone village

"I don't understand the compensation, the only thing what I want is to get back my land which was confiscated from us."

An affected villager from Ma Noe Yone village

"We want the provisions for all sectors of village development and also it would be the best if they build a road in the old village. The company built the stadium but still left to finish it and the villagers do not get any other provision."

An affected villager from Ma Noe Yone village

"If you have been took the money, the government have the responsibility to repay back."

A villager from Ma Noe Yone village

In June, 2017 a meeting was held at Tanintharyi Township between villagers and MAC representatives in the office of KNU organization to discuss the returning of villages traditional lands and compensation for loss of livelihoods but there was no commitment given by MAC to return lands or provide compensation.

36 Information compiled from the 14 interviews with the affected community (October, 2017)

37 The Myanmar Herald Journal. (2017). Volume 6, No.37



Figure-34 Mining works near the streams of MAC Neighbourhood Villages
Source : Advancing Life And Regenerating Motherland(ALARM)201



10 Conclusions and Recommendations

The Myanmar Government has been working towards the improvement of agricultural-based economic development through the transition process. For agricultural plantation development, large areas of land have been granted to rubber and oil palm plantations. From 2011 to 2016, a total of 1.9 million acres were granted to oil palm companies and most of the percentages have been allocated in the Tanintharyi Region. There is weakness of monitoring and evaluation in the implementation of projects and questions remain as to if foreign investment projects like MAC have complied with the existing laws and regulations, terms and conditions stated in the permit. It is important that monitoring systems through community engagement are implemented to ensure law enforcement and helping is establishing regional security and stability in the project area. This is an imperative case study of how to implement economic development projects in conflict areas across Myanmar. When the projects have not been implemented in accordance with the terms and conditions stated in the permit; they have not supported the original purpose of promoting socio-economic development of local communities and caused losses of appropriate government revenue and economic opportunities. As a consequence, lack of regular checks on

project actual progress and guidance provision has increased unnecessary corruption, social deterioration and environmental degradation. This has led to breaking of local peoples' trust on ceasefire and peacebuilding processes, as well as, increasing negative impacts on relationship between local residents and development projects, thus, intensifying conflicts over land use. If this situation continues to be ignored, there is a possibility of reduced benefits to all stakeholders with increased possibility of impacts to the current democratic reforms towards a federal union.

Based on the results of this collaborative research project conducted by local communities and civil society organizations (CSOs) concerning the MAC oil palm plantation, the following conclusions can be made.

a) It is obvious that MAC has undertaken timber extraction and export for short-term benefits rather than the establishment of oil palm plantations as described in their permit. It was found that a total of 16,000 acres of low land rain forests has been cleared and approximately a million tons of timber may have been exported. Based on literature review, composition and tree density of Kanyin (*Dipterocarpus alatus*) in a lowland rainforest is over 30% of total species occurrence and so far

about 12 tons per acre can be harvested from natural forest. As a total of 190,000 tons of timbers can be produced from the forested area within the MAC oil palm plantation project according to the findings in the international research papers, MAC has extracted large amount of timbers even though the actual amount of harvested timbers is considered to be half of the estimated volume of 190,000 tons. According to local communities, it cannot be said that MAC's extraction of a million ton of timbers is impossible as over 10,000 tons of timbers have been stacked in a pile in a shorter period of time.

b) There is concern to the legality of timbers extracted by MAC. Generally, the Forest Department did not grant a permit to export timbers produced from clearing of lands for agribusiness development projects and they are permitted for domestic use only. It is assumed that MAC has exported timbers as per their posted advertisement on Alibaba internet web page. If this is the case it can be concluded that MAC's timber export is illegal. It is concluded that there is major concern about the extent to which the Company has complied with relevant procedures, terms and conditions even if these timbers have been exported with special permits issued by the Forest Department. If the Company, as described above, has extracted million tons of timber and exported without the relevant legal permission, the country is likely to be losing over million dollars a year.

c) Over a 6-year period, MAC has established oil palm plantation of about 6,500 acres, i.e. based on the results of interview with local communities, and a total of 3,000 (3%) acres, i.e. according to the satellite imagery. Therefore, it can clearly be seen that MAC has not fully carried out in accord with the annual plan stated in the terms and conditions under the Vacant, Fallow and Virgin Land Management Law (2012). As MAC has established about 500 acres of oil palm plantation annually, it will take over 267 year to fully carry out their allocated oil palm development in the permitted areas of about 133,600 acres. The condition of oil palm plantation establishment is said to be in bad state as a total of 120 acres has been planted in 2017 instead of increasing the areas of oil palm plantation along with the investment period. It is evident that MAC is a company without capacity to fully implement the planned activities proposed in the investment proposal.

d) MAC oil palm plantations are an obstacle to the sustainable development activities in Myanmar. As Myanmar is a signatory country to the United Nations Convention on Biological Diversity, Myanmar has developed and adopted National Biodiversity Strategic Action Plan (NBSAP). In NBSAP, critical key biodiversity area, biodiversity hotspot, and biodiversity corridors are categorized and designated as measures for reducing adverse effects to biodiversity conservation, as well as, for environmental sustainability. Unfortunately, it was found that

the aforementioned biodiversity conservation area overlapped with MAC oil palm plantation project area. Forested land, which has not been gazette as Biosphere Reserve in accord with existing procedures, falls under the land category of vacant and virgin land that can be managed by the government for economic development of the country. By taking advantage of weakness in governmental bureaucracy, the agribusiness concessions that have helped grant permits to utilize and cultivate on vacant, fallow and virgin land have not effectively established oil palm plantations and produced a palm oil product. As it is stated in Myanmar proverb "on top of not getting the lizard, chopper is lost", land use rights for agribusiness development cannot support the countries economic development, as well as, biodiversity conservation crucial to building resilience for and adapting to climate change; resulting in the loss of biodiversity, a national and global treasure. Based on the field inspection results, the land granted to MAC oil palm plantation project is a high biodiversity area, and thus, it is vitally important to take action by giving special consideration on the prevention of any further loss of biodiversity values.

e) Land confiscation in the form of agribusiness projects and deforestation have not only affected the customary tenures and rights of ethnic minorities, but also become driving factor of livelihood insecurity day after day. As lands depended and cultivated by local communities are under threat of confiscation, the country's priority development activities to reduce poverty has turned out to no purpose.

Based on the abovementioned conclusions in relation to MAC oil palm plantation investment, the following recommendations are provided to take into account in order to reduce relevant stakeholders' losses as well as to get better results for the future.

Recommendations for Myanmar Investment Commission

- ◆ To investigate further whether MAC has complied with the terms and conditions stated in the permit and to punish in accord with the existing laws if there is non-compliance with legal procedures,
- ◆ To revoke the Company rights to utilize and cultivate the lands if there is serious violation of existing laws and regulations, as well as, terms and conditions stated in the permit,
- ◆ If there is possibility of granting a permit for continuous investment, to reduce the area of land granted to the company by revising the MAC investment capacity and to permit oil palm plantation project in open forests of less valuable timber species and degraded forests due to over exploitation of timber,

- ◆ To release timely information through regular checks on the project progresses by forming special unit of civil society organizations (CSOs) in order to monitor the investment projects implemented in areas susceptible to environmental impacts and political oversensitivity, as well as, to help local communities access the timely and relevant information they need,
- ◆ To avoid wasting time, money, and human energy in step-by-step process of addressing lawsuit complaints (or) written letter of complaints and anonymous grievance letters by developing and adopting grievance mechanisms to timely resolve the investment-related disputes.

Recommendations for relevant government institutions

For Forest Department

- ◆ To include as lesson-learned and consultation case study in Forest Law Enforcement Governance and Trade (FLEGT) through the field inspection to determine the legality of timber extracted by company,
- ◆ To conserve as Biosphere Reserve through reservation in accordance with National Biodiversity Strategic Action Plan (NBSAP) with the cooperation of relevant government institutions and regional authorities to revoke area granted to MAC as 40% of the area permitted to MAC is still covered by closed forests and so far Forest Department has responsibility to protect and conserve closed forests with higher canopy cover according to existing forest law.

For Department of Agriculture Land Management and Statistics

- ◆ To conduct field inspection as to whether MAC has complied with terms and conditions stated in the permit, as well as, to provide guidance and control the project activities in accordance with project schedule and work plan to be systematically implemented.

For regional and local authorities

- ◆ To help local communities to receive fair and justice compensation for their losses, as well as, to secure access to development finance through systematic recording of losses of local communities.

Recommendations for Karen National Union (KNU)

- ◆ To help ethnic minority groups to obtain customary land tenure and rights for the customary use and ownership of the lands belonged to the ethnic minorities who are inhabited in KNU controlled area including MAC project area,
- ◆ To conduct natural resources exploitation in areas controlled by government army and ethnic armed group in a transparent, responsible, accountable manner in accord with the Extractive Industries Transparency Initiative (EITI) standards

Recommendations for Myanmar Auto Corporation

- ◆ To provide fair and just compensation to the local communities for confiscation of their home gardens and lands, which fall under MAC project implementation areas,
- ◆ To reallocate the lands, on which oil palm plantation has not been established, to the original owners with the provision of fair compensation,
- ◆ To conduct environmental impact assessment (EIA) and to draw and implement environmental management plan,
- ◆ To implement project activities after disseminating information about project activities and applying the principles of free, prior and informed consent (FPIC)
- ◆ To establish and implement a revolving fund for the development of villages through the consultation and cooperation with experienced civil society organizations (CSOs) by virtue of moral responsibility by MAC.

Finally, it is necessary to revise and modify the project activities in land confiscation and project implementation according to the abovementioned recommendations in time as MAC investment in oil palm plantation establishment and production project is large scale state-granted land concession and so far the relevant stakeholders can suffer, if not carefully implemented, from enormous losses.