

In Search of Social Justice along the Myanmar-China Oil and Gas Pipeline

A Follow-up Report

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Forwards

One year after Myanmar-China Pipeline Watch Committee (MCPWC) has published a research report entitled “In Search of Social Justice along the Myanmar-China oil and gas pipeline,” the organization has published a follow-up report on the 18th of January 2017. The purposes of releasing this follow-up report are to inform all the concerned stakeholders on how MCPWC has been applying the research findings into the practical work within one year as well as the responses of the Myanmar government, parliaments, and the project companies. MCPWC regards that the aim of publishing this follow-up report would be achieved if it served to promote better social justice among the affected population living along the pipeline.

It is not possible to publish this report if MCPWC’s network members would not have systematically documented the case studies with photos and video documents throughout 2016. Thus, MCPWC would like to express its sincerest appreciation to all the network members.

Moreover, MCPWC research members who wrote this follow-up report deserve a great appreciation. They have actively participated in MCPWC’s research-based policy advocacy throughout the year of 2016. MCPWC recognized and valued their concerted efforts to be able to write this report.

Last, but not the least, MCPWC would like to express a special thank to the research consultant for his guidance and supervision.

Myanmar China Pipeline Watch Committee (MCPWC)

Introduction

Myanmar is currently in a transition towards democracy and the State's policies and practices has been undergoing many changes in every sector. When doing such changes, though the economic sector of the country is important, environmental protection is so crucial that it should not be neglected as well. Moreover, it is also important to improve the policies for the socio-economic condition for the citizens of the country. Myanmar-China oil and gas pipeline is the biggest foreign direct investment between China and Myanmar, crossing the country from the West to the Northeast. Since it was a long-term investment, MCPWC has formed a network within the civil society organizations in 21 townships along the pipeline to monitor the pipeline project. Land confiscation and environmental destruction are the two major issues happened along the pipeline. In 2015, MCPWC has done the field research project in 100 villages within 6 townships along the pipeline and wrote an exclusive research report titled "In Search of the socio-economic situation along Myanmar-China Oil and Gas pipeline" which was published on the 18th of January 2016.

After publishing the report, MCPWC has informed the research findings to the public broadly so that the local would be aware of the pipeline project. On the other hand, MCPWC has continued observing the cases that have been occurring along the pipeline. In 2016, MCPWC has organized the meetings to present the researching findings to the relevant committees both in Pyithu and Amyotha Hluttaws, Ministry of Electricity and Energy (MOEE) and the regional governments headed by Chief Ministers. Also, MCPWC has organized the meetings with the officials from CNPC and SEAOP/GP companies and discussed the research findings. Moreover, MCPWC consistently encouraged the members of parliament to discuss the project during the parliamentary sessions.

This follow-up report was structured into 5 sectors. The first chapter is about the discussion with the parliamentary committees. The second chapter is about the meetings with MOEE and the state and region's governments. In the third chapter, MCPWC has visited Beijing, the capital city of China, to present and discuss the research findings with the officials from China National Petroleum Cooperation, Southeast Asia Oil Pipeline Co.Ltd (SEAOP) and Southeast Asia Gas Pipeline Co.Ltd (SEAGP). The fourth chapter is about the case studies along the pipeline route in 2016.

MCPWC is a civil society organization committed to carrying out the research-based policy advocacy. MCPWC is an organization that informs and encourages all the relevant stakeholders about the weakness and challenges that were found out. MCPWC also provided with the evidence-based recommendations that deserve their attention and action. As a civil society organization, MCPWC has been working for the best interest of the Myanmar citizens. At the same time, MCPWC recognized that the foreign direct investments are playing an important role in shaping the local development. Therefore, MCPWC will observe and pay attention to the fair share of benefits and a good relation between the local people and the foreign investors. This follow-up report has been conducted in line with the above-mentioned commitments of MCPWC. It is also an attempt to improve oil and gas sector to become a more transparent and accountable environment in Myanmar.

Chapter (1)

Presenting Research Findings to the Union Parliamentary Committees

After MCPWC has done the research on the oil and natural gas pipeline project for one year in 2015. On the 18th of January 2016, a research report was published to inform the public and the pipeline companies. After that, MCPWC has held series of meetings with the officials from the MOEE, the parliamentary committees from Pyithu and Amyotha Hluttaws, the regional governments in Magwe Region and Rakhine State. In this section, MCPWC presents the organizations' policy advocacy experience by engaging with the different stakeholders.

1.1. Meeting with Natural Resource and Environmental Conservation Committee at Pyithu Hluttaw (Lower House)

On the 12nd of May 2016, MCPWC sent a letter to the Committee on Natural Resource and Environmental Conservation at Pyithu Hluttaw, requesting to meet and present the research findings of the report titled "In search of Social Justice along the Myanmar-China Oil and Gas Pipeline". On the 25th of May 2016, MCPWC have met the committee's chairperson U Soe Thura Tun and his members, to deliver the research report and the related documents officially. MCPWC also discussed with the committee for nearly two hours. MCPWC team has given a research report and its related documents and discussed above matters. MCPWC explained in details about the research findings such as the problems associated with the land use policy of the project, corruptions, the damaged farmlands and the problems related to the land and crop compensation agreements between the project and the farmers.

The committee responded that MCPWC's research findings were strong and packed with the reliable evidences, and these facts are very supportive to the committee. The new government has carried out a 100-day plan. Therefore, MCPWC should also present these findings to the relevant ministry. If necessary, the committee will urge the concerned ministry to meet the organization.

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On the 8th of June 2016, MCPWC has met and discussed with the Natural Resource and Environmental Conservation Committee at Amyotha Hluttaw. The committee's chairperson U Kyaw Thiha and the committee members welcomed the MCPWC research team to discuss about the research findings. Like the meeting with the previous committee at Pyithu Hluttaw, MCPWC handed over the research report and the related documents to the committee. After that, MCPWC presented the research findings in details as it did at Pyithu Hluttaw..

The parliamentary committee responded that Myanmar-China oil and gas pipeline has been constructed dividing the country. Therefore, it is an important project which should be monitored. A question on the use of farmlands for the project will be questioned at the parliamentary session and the research findings on the land confiscation in this report are very useful for submitting the question to the parliament. The committee members expressed to welcome MCPWC to come and present at the committee the future research works.

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When the second round of the parliamentary sessions began in December, Dr. Tun Naing, Deputy Minister of MOEE, came to Amyotha Hluttaw to answer the question asked by MP U Htun Htun Oo on the 8th of December. The detailed questions and answers can be seen in the section 1.4 of this report.

1.3. Question and answer sessions at Amyotha Hluttaw with the response of MOEE

This report has described about its meeting with the Committee of Natural Resource and Environmental Conservation at Amyotha Hluttaw on June 8, 2016 and about the question submitted by MP U Htun Htun Oo to the parliament in August. After 6 months, U Htun Htun Oo's question has been discussed at on the 13rd day of the third round of the parliamentary session at Amyotha Hluttaw on December 8. Deputy Minister Dr. Tun Naing from the MOEE came to answer the question. The detailed question and answer are described as follows.

The Transcript on the Question and Answer on Myanmar-China Oil and Gas Pipeline at the Third Round of Amyotha Hluttawordinary, the 13rd day of regular session¹

Amyotha Hluttaw Chairperson: MP U Tun Tun Oo, from the constituency No.(2) of Mandalay Region will ask the question on whether the signed agreements between the project operator China National Petroleum Company- Southeast Asia Pipeline Co.Ltd (CNPC-SEAP) and the local farmers to confiscate the farmlands for Myanmar-China Kyauk Phyu-Kuming oil and gas construction are in compliance with the existing laws of the country, and whether the MOEE had a plan to amend the agreements or to use an alternative means to fix it in line with the existing laws.

U Tun Tun Oo: Mingalabar! I am U Tun Tun Oo, from the constituency No. 2 of Mandalay Region. I am going to ask a question related to Myanmar-China oil and natural gas pipeline project. Please allow me to use a power point presentation.

Among the other 4 companies, CNPC-SEAP is the operator of “Myanmar-China Kyauk Phyu oil and gas pipeline project” as the company owned the majority share of the project, though Myanmar Oil and Gas Enterprise (MOGE) and other four companies also owned shares in this project.

This pipeline was constructed by passing through 21 townships from Kyauk Phyu Township of Rakhine State to Nan Kham Township, a Northeast border town with China. It has 793 kilometer at length and 30 meter at width. The pipeline project has used agriculture lands not only for the pipeline route but also for building 11 control stations and 59 valve stations.

The confiscated lands are mostly owned by Myanmar farmers. MOGE or the Chinese company has directly made an agreement with each farmland owner and bought their lands. In some township, MOGE signed the agreement, but in other township the Chinese company signed it. In the case that a foreign company directly made an agreement with each farmer and signed it, it is totally against the laws such as Immovable Property Act, Foreign Investment Law and the 2012 Farmland Law.

His Excellency Chairperson,

In the agreement, the text described that all the benefits of the land has to be transferred to the China-owned company on behalf of MOGE. It is an action that has been beyond the limitation of the existing laws. In this case, it is found that although MOGE is

¹ This is the unofficial English translation from the original Burmese transcript.

entitled to sign in the agreement in compliance with the laws, it took a role of witness and the China-owned company directly signed and bought the land. Any foreign owned company is not entitled to directly engage in the transfer of any land within the territory of Myanmar.

Therefore, through His Excellency Chairperson, I would like to ask the question on “whether the signed agreements between the project operator China National Petroleum Company- Southeast Asia Pipeline Co.Ltd (CNPC-SEAP) and the local farmers to confiscate the farmlands for Myanmar-China Kyauk Phyu-Kuming oil and gas construction are in compliance with the existing laws of the country, and whether the MOEE had a plan to amend the agreements or to use an alternative means to fix it in line with the existing laws.” I am asking this question because a powerful company from the neighboring country bought a strip of land which divided Myanmar into two pieces and it is not in compliance with the existing law of Myanmar. Moreover, it could lead to the unnecessary problems in the future and it is a concern on the national security and national interest.

Dr. Tun Naing, Deputy Minister of MOEE: I will answer the question raised by Amyotha Hluttaw Representative U Htun Htun Oo.

Myanmar-China oil and gas pipeline project included Southeast Asia Oil and Gas Pipelines. When investing in the Southeast Asia Oil Pipeline, MOGE owned 49% of the investment while CNPC owned 51%. While investing in the natural gas pipeline, MOGE owned 7.36%, while 50.9% came from CNPC, 25.04 % from Daewoo Company, 8.34% from ONGC, 4.17% from GAIL, and 4.17% from KOGAS.

While constructing Myanmar-China oil and gas pipeline project, the project used the farmlands, the orchards and other lands according to the requirements of the project and there have been two types of land use such as permanent and temporary land uses. Let me explain a bit more about it.

The temporary land acquisition means that the lands were used temporarily for piling up the pipelines and storing machineries. The compensations are given for those lands. After constructing the project, those temporarily confiscated land were returned to the related owners. The permanent land acquisition means that the lands were taken for the pipeline routes and we have given the land compensation for that. The owners of the farmland could revegetate on the land after the pipelines are buried although they do not own the land. But they cannot construct buildings and grow big trees. However, the lands are permanently taken.

On the 12nd of February 2010, State Peace and Development Council formed a committee for the land acquisition and compensation with the Letter No. 425-1/3-2/Nayaka. The committee members included the representatives from this ministry, MOGE, Township General Administrative Department, Township Land Register Department, Township Agriculture Department, Village Tract Administrator, community leaders and the farmers themselves. They together did a field study which includes measuring the land, collecting a list of crops, etc. Regarding the price for the land and crop compensations as well as deciding the size of the land acquired, the committee held meetings in the township administration

office systematically calculated the amount of compensations, and submitted them to the ministry for the approval. After getting the approval from the ministry, land and crop compensation agreements were signed between the farmers and the concerned company on behalf of MOGE.

While making the land and crop compensation agreements, the money was paid by the project company according to the nature of the project. By allowing the company to spend money for these compensations, MOGE could avoid requesting the government to spend a large amount of compensations from the government budget. However, the compensation money spent by the company had to be on behalf of MOGE. This compensation is not the same as the type of buying a land from one person to another. As the lands have been transferred from one person to an organization, MOGE and SEAP have to sign in the agreements in their respective roles. As SEAP is doing business as a joint venture with MOGE and it is also the operator of the project, the company has to sign in the agreements. They had to do so because they also have the responsibility to keep these agreements as the evidence for their accounting purpose.

Therefore, when acquiring the lands for the pipeline project, the lands were acquired only as the lands owned by this ministry and MOGE. Regarding the fact, I would like to present evidence. Please allow me to use the power point presentation. That evidence is the one that the Ministry of Home Affairs transferred the lands only with the name of MOGE. Therefore, I would like to make clear that it is not true the land ownership was handed over to the China-owned company, as discussed by the MP. As the land register official transferred the lands only with the name of MOGE, the process was in compliance with the existing law. Therefore, through His Excellency Chairperson, I would like to answer that it is not necessary to amend the land acquisition agreements.

U Htun Htun Oo: The agreement of the oil and gas pipeline project was signed in China in 2009 during the previous government. In 2010, it was signed in Myanmar and the project was implemented in 2011-2014. It was operated in 2014. Between 2011 and 2014, the lands were confiscated. The letter that you presented as evidence showed as March 7, 2016. I just pointed out that the process was not in consistent with the time frame.

Dr. Tun Naing: I am going to explain about a further question related to the question on whether the lands used by Myanmar-China oil and gas pipeline project were owned by the Chinese company or Myanmar government. The question is about the date. When working on the farmland acquisition, it had to be done section by section. It had also done at different levels such as township, district and state/region levels. The document that I brought as a sample is not the one that represents the lands for the whole pipeline route because the land acquisition had to be done section by section along the pipeline route. As said by the MP, it is true that the date is different. But as it had been done section by section, the dates would be different. However, the point that I would like to explain is all the lands along the pipeline project are owned by MOGE. I showed that point by bringing this document as a sample. It is not easy to bring all the documents related to the lands along the pipeline route. I would like

to answer that the sample document does not represent one hundred percent of the whole pipeline. Thank you.

1.4. Analysis on the response of Deputy Minister Dr. Tun Naing

When analysing the answer of Deputy Minister Dr. Tun Naing in response to the question raised by Amyotha Hluttaw MP U Htun Htun Oo, MCPWC found that the MOEE has weaknesses in its policies and practices the existing laws regarding the ownership of the land use right.

The first policy weakness found in the explanation of Deputy Minister Dr. Tun Naing is that he said that being avoiding the huge costs of compensation from the government, the ministry allowed CNPC-SEAP Company to give the crop and land compensations to the farmers because. He said: *“In order for MOGE to avoid requesting a large amount of money for the land compensation from the government budget, we let the company to invest in these compensation.”* Analysing this statement, MCPWC found out that the MOEE gave CNPC-SEAP the legal right to defend on the rights of the land if problems associated with these lands might occur. Thus, CNPC-SEAP use that opportunity by putting the following paragraph into the agreements which the company directly signed with the farmers to own the land use right along the nearly 800-km pipeline for a long term.

“...hereby consents, agrees, accepts the transfer to the Operator... on behalf of MOGE of the entirety of transferrers’ interest, rights, and privileges pertaining to the plot thereof.” – Agreement Bond relating to Transfer and Relinquishment of the Right to Use the Land and/or the Crops, p. 1)

Moreover, MOGE is the main shareholder from the government of Myanmar in investing billions of dollars in the Myanmar-China oil and gas pipeline project. It owns 49.1 % in the oil pipeline and 7.3650% in the natural gas pipeline. Thus, the ministry has made a lot of financial investment in this long-term project from which the ministry would gain a lot of profits project for many years. In this situation, the major weakness was the policy that the ministry let the CNPC-SEAP compensate the Myanmar farmers for the acquisition of their farmlands due to the reason that Myanmar government does not want to spend its own budget.

Regarding the law, it is not clear in the response of Deputy Minister Dr. Tun Naing. He said: *“Giving compensations does not look like an individual person buying the land from another person. It is like a type of transfer from an individual person to an organization”* and insisted that it was not against any existing law. However, he did not refer to any particular law as a reference. It seemed that he did not study the agreements between the farmers and CNPC-SEAP well. In his analysis, the deputy minister did not refer to Myanmar’s existing: the Transfer of Immoveable Property Restriction Act 1987; Foreign Investment Law (2012), and Farmland Law (2012). If the laws would be studied thoroughly, MCPWC found that the land acquisition for the pipeline project had to be done step by step as follows:

- (1) According to the foreign investment law, Myanmar-China pipeline project has the right to lease the land for the pipeline route from the Myanmar government through the long-term land lease agreement.
- (2) If the lands along the pipeline route are the agriculture lands owned by the Myanmar citizen farmers, according to the 1894 land confiscation law or Article 29 of the 2012 farmland law, the concerned ministry of the Myanmar government (at that time, Ministry of Energy) was the only government entity that was entitled to conduct land acquisition from the farmers.
- (3) After taking the necessary lands from the farmers, the ministry had to enter into a legal process to change the land title from the farmlands to the other lands, according to Article 30 of the 2012 Farmland Law, or the old law's Article 39 (*La Na - 39*).
- (4) Only after the title of the lands have been changed, the ministry and the project operator CNPC-SEAP Company had to make a land lease agreement according to the foreign investment law and bylaw.

Without implementing these steps systematically according to the existing laws, the MOEE allowed CNPC-SEAP to directly make an agreement with the Myanmar farmers, giving an excuse that it was because the company invested their money in the compensation. And when signing these agreements, it used the term “on behalf of MOGE.” Therefore, MCPWC analyzed that the agreements actually violated the above-mentioned existing laws.

Moreover, Deputy Minister Dr. Tun Naing gave the reason that the company signed in the agreement because “they had to do auditing within the company, they needs to sign in it as evidence.” Thus, it led to the situation that the foreign-owned company bought these lands from the citizen farmers permanently (the term “permanently give up and transfer” in the agreement are used). MCPWC analysed that only if the previous government leaders would allow doing so, did the company dare to do it beyond the permission of the existing laws.

In this context, MCPWC would like to point out a similar case as an example. As part of the efforts to implement “One Belt, One Road” economic strategy, China invested in two multibillion high-speed railway construction projects in the neighboring Thailand. In these projects, China demanded Thailand to give the land use right of the railway route from Thailand. Given that point, it could be possible that China demanded the government of Myanmar to give the ownership of the land use right along Myanmar-China oil and gas pipelines and the former government gave that right to China. If it was like that, the answer of Deputy Minister Dr. Tun Naing was incomplete and it had loopholes.

Chapter (2)

After publishing the research report titled “In Search of Social Justice along the Myanmar-China Oil and Gas Pipeline” on the 18th of January 2016, MCPWC presented the research findings to the Union and Regional Governments. In this Section II, MCPWC analyzed and reflected the experiences gained from these meetings and discussions.

Although MCPWC has requested three times to meet the Ministry of Energy in the previous government, they denied meeting us every time. MCPWC again sent a letter on the last week of May 2016 to meet Minister U Pe Zin Tun (now he is an ex-minister already.) from the MOEE under the new government. Then, the Permanent Secretary of the MOEE responded to the letter on the 15th of June, saying that they accepted MCPWC's request to meet the ministry and gave the meeting appointment to be on the 23rd of June. When MCPWC research team came to Naypyidaw to meet the permanent secretary on that day, the team met only with MOGE led by U Myo Myint Oo, Managing Director of MOGE at Building No. 44.

The left photograph shows a group of people seated around a large conference table in a meeting room. The right photograph shows two men standing and exchanging documents.

When MCPWC presented the research findings, it based on three objectives. MCPWC also asked the MOGE about the eight questions that are related to the research findings. During the discussion, MCPWC gave the printed copy of the research report officially to the MOEE through MOGE. The key questions asked and discussed during the meeting were: (1) the issue of the soil quality damaged by the project (2) the policy that confiscated the agriculture land permanently (3) the agreement of transferring farmlands to the company permanently (4) the land acquisition that is not complying with the existing laws (5) the revegetation within the pipeline route (6) the corruption cases during the land

and crop compensation (7) the lack of Environmental Management Plan (8) the relation between the pipeline project and the civil society organizations.

When discussing the damage of the soil quality, MCPWC asked the MOEE about whether or not having a plan to remedy the damaged soil quality that occurred along the pipeline due not to comply with the international standard to excavate the top and sub soils in layers and filling back in order. The MOGE answered that they will urge the CNPC-SEAP to conserve the soil and also to improve EMP (Environmental Management Plan)

When MCPWC team has suggested that the MOEE should reconsider and return the confiscated farmlands to the farmers, they said that it was done according to the land acquisition policy and the lands within the pipeline route are usually confiscated in other countries as well. It was confiscated because of the safety of the pipelines.

When conducting the land acquisition, it must be the government that has to confiscate the necessary land for the pipeline route and compensate for that in accordance with the law. According to the foreign investment law, only the government has the right to make a land lease agreement with the foreign company. However, the agreements of the land acquisition for the pipeline route were done between an individual citizen farmer and a foreign-owned CNPC-SEAP. MCPWC pointed out that the agreements do not comply with the existing law. In response to this question, MOGE said that regarding the land and crop compensation agreements, MOGE signed in it sometimes while CNPC-SEAP also did so in other times. CNPC-SEAP is working as operator of the project, not the owner. MOGE's Managing Director said that there are some mistakes in the agreements and it happened due to the over workloads in the process. The lawyer of MOGE, who is in the position of Deputy Director, also explained that it was correct that a foreigner could not buy the land and the mistakes in the agreements happened because they want to move the project forwards.

Asked the question of "whether there was a fund for Environmental Management Plan (EMP) or not to treat the damaged environment due to the pipeline construction and how the EMP fund were used," the Ministry replied that there was an EMP fund but could not answer how it was being used. The ministry will urge the concerned parties regarding EMP.

MCPWC suggested that a certain percentage of the project's benefits should be used for the local development projects in the future and the fund should be managed by establishing a new foundation in which the government, the company, and local CSOs could cooperate and do together transparently. When implementing the local development projects, it should be carried out through the participation of the local communities, not leaving the tasks into the hands of the local authorities and the company themselves. The Ministry noted this suggestion and replied that they will discuss with the concerned parties.

After analyzing the findings of the above discussion with MOGE, MCPWC was surprised to know that in the case of the land confiscation agreements directly conducted between the CNPC-SEAP and the farmers, the MOGE's lawyer said: "That mistake happened because we wanted to make the project possibly move forward." It is the responsibility of CNPC-SEAP as the project operator to repair the damaged soils along the

2013, the damages along the pipeline have continued to happen and it is necessary to cooperate and coordinate among the MOEE, the company and the respective regional governments to take a quick remedial measurement on the damages. Moreover, there should be an accountable and transparent mechanism among the concerned parties. Based on the experience of having discussion with the Magwe Regional Government, MCPWC found out that in this juncture of transition in Myanmar, there are a lot of changes within the government mechanisms and it is very important that all the stakeholders should cooperate each other in an accountable manner.

2.3. Presenting research findings to Rakhine State Government

On the 25th of July 2016, MCPWC research team met and presented the research findings to the Rakhine State Government headed by the Chief Minister U Nyi Pu at the state government office in Sittwe. Chief Minister said: *“The research findings are evidence-based and valueable, and the discussions are very positive. We are proud of having an organization like MCPWC doing the data collection systematically. The approach is not constructive, rather than blaming and the report must be a lesson learnt for the future projects as well.”*

During the discussion, MCPWC also discussed about the case studies currently founded in Ann Township, Chief Minister responded: *“I heard of these cases when I visited to Ann Township as said by Ko Myo Lwin [MCPWC’s township leader], and given the time constraint, he wanted to know the difficulty of the tripartite group to solve these problems.”* According to MCPWC’s observation, the problems in Ann Township are that there are the farmers who did not get compensation for their farmlands, and the damaged dikes that have not yet been repaired by the company.

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Moreover, when the pipelines passed through Myo Chaung Island, the company destroyed the dike that protected salt water from coming into the farmlands. But the company did not rebuilt it again, affecting hundred acres of the paddy fields. MCPWC urged the Chief Minister to take action on that case. MCPWC also pointed out a number of issues such as constructing the new buildings, the oil-related waste disposal tank, and the need to do a

regular checkup on the numbers of Chinese workers in Maday Island. The minister for the border affairs replied that he would check it out when he visits the island and the petroleum police were taking responsibility of the security.

MCPWC has been watching any incidents happening along the pipeline and was able to meet the concerned officials from MOGE, the company, and the state and regional governments. MCPWC was able to discover not only the weaknesses of the project but also the social impacts affecting the citizen farmers. For instance, after MCPWC published its research report, the the farmers in Myo Chaung Island strongly demanded compensations for what they lost due to the pipeline construction. They again received more than 1040 million kyat as the compensation. The cases in Ann Township were being solved by forming the tripartite group, including the representatives from the government, the company and the affected farmers.

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Source : MCPWC

Chapter (3)

Meeting with Myanmar-China Pipeline Company at Beijing, China

With the assistance of American Friendship Service Committee (AFSC) which is a Beijing-based international non-governmental organization and Beijing New-Century Academy on Transnational Corporations CAITEC, a Chinese think tank that is affiliated under the Ministry of Commerce of the Chinese government, MCPWC together with other civil society organizations' representatives visited Beijing on September 25–29, 2016. During the visit, MCPWC held a meeting with Vice President Mr. Li Zilin and his team from SEAOP/GP and the representatives from CNPC's Beijing Headquarters. In the meeting that lasted for about 6 hours, SEAOP/GP first discussed the Myanmar-China oil and gas pipeline project from their side and then MCPWC presented the research findings.

During the meeting with SEAOP/GP representatives, MCPWC discussed the key points of the research findings that were presented briefly as follows:

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confiscation. Thus, they admitted that the project implementation was below the standards and it had weaknesses. Moreover, Myanmar enacted a new farmland law during the land acquisition process in 2012. That made the process even more complicated. Therefore, they said that they could not guarantee these agreements had the same standard throughout the four states and regions. For instance, Form (105) that was issued from the government of Myanmar to show the pipeline route was changed at least for three times and the process cost a lot of money for us. Moreover, more than 70 vehicles that SEAOP/GP imported and used in the project were owned by MOGE under its name. Other machineries including Back Hoe excavators were also controlled by MOGE.

- **Discussion on the research findings related to land and crop compensation:** Although the company claimed that the compensation was giving transparently during the official ceremony, the corruption among the local officials was found and provided the details in the research report. Although the main responsible party for these corruption cases is the Myanmar government, the Chinese company's representatives included in the compensation committee and attended every ceremony. Therefore, they were also responsible for that. The special cases in Kyaukpadaung and Ngaphe townships among the six townships where the research was conducted, the farmers do not receive any copies of the compensation agreement. Thus, the farmers did not know whether the amount of compensation that they received was the same amount as it was shown in the agreements. In response, SEAOP/GP said that the compensation was given in public and the company kept all the records electronically. They did not know the fact that the local authorities extorted from the farmers' compensation and if there was evidence for that and shared with them, they will send it to the MOGE.
- When MCPWC research team met with MOGE, they received the similar response. In fact, the research report described in details of the corruption cases with the first-hand accounts of the farmers. MCPWC is just a CSO and has no authority to investigate the corruption cases and seized the evidence. What MCPWC could do is only to inform both Myanmar government and Chinese company's representatives on the research findings and to demand the government to form an investigation committee to investigate these issues. If the concerned parties paid serious attention to the good image of Myanmar-China oil and gas pipeline project, Myanmar government and the company should take the research findings seriously and if necessary, MCPWC is ready to cooperate with them. Otherwise, it was just to ignore the research findings if they behaved as if they could take action only after someone made a complaint with evidence.
- **Lack of EIA and SIA during the post-construction era:** During the discussion with the representatives of CNPC and SEAOP/GP, MCPWC highlighted the need to conduct both pre-construction and post-construction Environmental and Social Impacts Assessments along Myanmar-China oil and gas pipelines as it could be categorized as a large-scale infrastructure development project.

MCPWC also discussed that although the company described in its project information pamphlet that it used the method of excavation and backfilling in layers during the pipeline construction, that method was not used on the ground. Moreover, MCPWC pointed out that as the company did not conduct post-construction EIA, nobody knew the extent of the soil damage in the farmlands. When discussing this issue, MCPWC also referred to China Academy of Sciences, which discovered the damages of the soil quality along the constructions of oil and gas pipelines within China.

In response, SEAOP/GP said that they paid serious attention equally to both using farmlands for pipeline construction and conducting EIA and SIA. When Myanmar-China oil and gas pipeline project started in 2009, the discussion on the share holding of the project has not finished yet, but CNPC proposed to do EIA before the project has started. At that time, Myanmar did not even have the environmental law. Only in 2012, the law was introduced. Other shareholders said that the project did not have to do EIA because there was no law that demanded the company to do so. However, CNPC responded to them that the company wanted to follow its own standards and the international standards. Regarding the major point of the necessity to do the post-construction EIA and SIA, CNPC replied that they were planning to do it. As MCPWC is an organization having an extended network of member organizations from the 21 townships along the pipeline, if the company was really doing the post-construction EIA and SIA, the organization must know about it. But MCPWC has never seen or heard about it at all.

- **Lack of Environmental Management Plan (EMP):** The main responsibility of the company is to measure and repair the environmental damages during the post construction period. MCPWC suggested that the company should have an Environmental Management Plan (EMP) and allocate a certain amount of budget to implement the EMP. If the company would have a transparent environmental management system along the pipeline route, the affected local community would understand and accept the company gradually. MCPWC gave that suggestion because the organization witnessed that the company built schools or clinics to make its image better in public while neglecting its main responsibility to repair the environmental damages along the pipeline. Secondly, it is important that the company should improve transparency and accountability in implementing this project by openly releasing its EIA report for the public study and informing its EMP to the local communities. Thirdly, the organization pointed out that the research report provided a lot of photos that revealed the weakness of the project's waste management.
- In response, SEAOP/GP did not explicitly mention that they had EMP. However, they had a department called "Health, Safety and Environment (HSE)" and they also care about the environmental protection. They claimed that the company is on top of spending the largest amount of money for CSR, compared to other companies investing in Myanmar. Whenever MCPWC pointed out the weakness of the project

with strong evidence, SEAOP/GP denied that they did not do it, instead other sub-contractors did those irresponsible actions.

- **Company's Corporate Social Responsibility (CSR):** According to the company's CSR policy, SEAOP/GP donated mainly in building schools, clinics, and digging wells to improve the company's image along the project routes. As Kyauk Phyu Township and Madaya Islands are the strategic locations of the project, the company invested in the electrification of these areas and it cost millions of US dollars, according to the CSR report issued by the company. MCPWC suggested that although this kind of donation is positive, the company should focus on assisting the improvement of the affected farmers' socio-economic life, by introducing vocational training programs for income generation. In doing so, their CSR policy would be more effective. Secondly, the company used to discuss with the local authorities regarding its CSR programs. Actually, it would be better if the company directly communicate with the local communities, find out their real needs and support for them. Moreover, the company could also seek the suggestions from the civil society organizations that are working for the communities and know the need of the locals better.

Chapter (4)

Case studies along the pipeline route in 2016

The construction of Myanmar-China oil and gas pipeline project was finished in 2013 and started exporting the natural gas. Although the project construction had finished, MCPWC has witnessed the fact that many environmental and soil destructions are yet to be repaired along the pipeline route. As CNPC-SEAP is a company which is responsible during the pipeline construction, MCPWC continuously observed whether the company takes any responsibilities for the post-construction measurements. MCPWC has studied the potential dangerous conditions that the local communities are likely to face and recorded the soil erosion along the pipeline because of the bad weather conditions, the consequences of mud and stones spilling over the agricultural lands, and the damages of water resources and

and a letter for the formation of the group was officially issued and signed by the township administrator. The tripartite group included six representatives from the concerned government departments, one representative from SEAGP/OP, and twelve representatives from the affected farmers. The chairperson of that group was the township officer from the Land Management and Record Department and a lawyer as the representative of the affected farmers took the position of Secretary. To solve the compensation problem, the representatives of the farmers asked the government and the company to show the original documents of the confiscated farmland and the amount of compensation during the project construction. However, the project representatives did not show any documents and it made the field investigation more difficult. Moreover, MCPWC found out that the SEAOP/GP representative was not even cooperating with the group during the field investigation works.

MCPWC made a recommendation in the research report “In Search of Social Justice along the Myanmar-China oil and gas pipeline” that this kind of tripartite group with the representatives of the government, the company and the affected farmers should be formed to address the problems along the pipeline. MCPWC analysed that although the tripartite group formed in Ann Township with the guidance of the Chief Minister of Rakhine government was a sign of improvement, it need to do more efforts to bring the meaningful cooperation between the local communities and the authority of the project.

4.2. Weakness in coordination between the ministries on the maintenance of the pipeline route

Due to the heavy monsoon rain in May and June 2016, the landslide between Gokkyi and Goksiyo village tracks in Ngaphe Township occurred, causing a road blockage of Minbu – Ann highway for two days. The location of landslides occurred in Lintal Village is a mountainous region with very deep slopes in which the pipelines were constructed and MCPWC research team witnessed and documented the company’s repairment works during the field data collection in April 2015. Although the company built concrete walls to prevent the landslides, they used cheap local laborers and the quality of the walls are below the standards. The local people said that these walls cracked soon after finishing the construction.

When MCPWC met Magwe Regional Government and presented the research findings, The Minister for the Ministry of Construction for the regional government explained to MCPWC: “The landslides on Minbu-Ann highway happened because of the pipeline construction, but the pipeline company did not take any responsibility for clearing the road blockage. Therefore, the ministry of construction had to repair the road, by clearing the mud and rocks blocking the road. Now, we are preparing for the cost of this road repairment and requesting the budget from the MOEE.”

When the pipeline was built along the steep slopes of Rakhine Yoma, the company cut down the forest. After the pipeline was buried, the upper soil were filled back, transforming the geography permanently and having a direct exposure to the rain water. Thus, the company that constructed the pipeline can anticipate that the issue of landslides will

happen every rainy season. The pipeline company must take the responsibility for these landslides. If they would have done Environmental Management Plan (EMP) systematically since the beginning of the pipeline construction, then a ministry from Myanmar government would not need to take the responsibility on this case. However, as the main road that the local communities uses for everyday life was blocked by the landslides, the regional government had to address this issue. Given the points discussed by the regional government's Minister for the Ministry of Construction, MCPWC found out that there is no clear mechanism of accountability and communication between the ministries and between the concerned ministry and the company, regarding who will pay the cost of maintaining the public infrastructure damaged by the pipeline project. In the long run, the company that implemented a mega project like that should systematically plan and implement the EMP. Moreover, if there is a better communication mechanism, then there would be less confusion on who is responsible for what and the problems can be solved quickly and effectively.

4.3. More compensation paid to affected farmers in Kyauk Phyu Township

The affected farmers from in Kapaing Chaung Village, Kyauk Phyu Township, Rakhine State demanded the company to repair their farmlands damaged during the pipeline construction and give compensation in the second week of April 2016. On the 11st of April, the farmers got the permission to stage a demonstration against the company. When the farmers were about to demonstrate, the officials from MOGE, the township administration and SEAOP/GP came to meet them and negotiate to give the compensations on the last week of May. On the 25th of May 2016, the farmers received additional compensations in amount of 104,000,000 MMK were given to the farmers.

MCPWC analysed the above case and found out that due to the wider distribution of MCPWC's research report to the villages located along the pipeline, the villagers got the right to know what happened along the pipeline. Then, the farmers from Kapaing Chaung Village felt confident and determined to prepare for the first-ever public demonstration for their loss. Therefore, it could be seen that the case study of the village was one of the outcomes of the research report that helped the villagers being firmly united to demand for their loss. They finally received the additional compensation that they deserved.

During the compensation ceremony, the officials from SEAOP/GP promised that they would rebuild a saltwater protection dike (locally known as *kari*) which is 400ft in length, but they have never done it so far. However, they repaired the sludge gate in a creek which has passed through within the dike.

4.4. Building electricity line paralleling with the pipelines in Taungtha

In parallel with the pipeline route, a Taungtha-Waelong electricity line was built within the Right of Way (ROW) in Taungtha Township. MOGE issued an instruction that any construction activity needed to get the permission of the project if it felt within 20 meters adjacent to the ROW. As MCPWC found that the electricity line was built within 8ft adjacent

Source ; MCPWC (Hsipaw)

4.6. Damaged water channel in Pyin Oo Lwin

MCPWC's township committee in Pyin Oo Lwin Township, Mandalay Region informed the MCPWC office that the pipeline company repaired the pipeline by digging in the soil near *Lakpankone* village in *Kywe Narr Htauk* village track. MCPWC informed the situation to the Ministry of Electricity and Energy and CNPC-SEAP together with the photo documents. The company replied that they just checked the communication cable at that area.

When the company filled back the soil after their work, the water channel that a farmer used for his farmland was blocked with the soil. The farmer wanted to repair the water channel to get access to water for his farmland and informed MCPWC about his problem. MCPWC also sent a letter to MOGE and CNPC-SEAP by explaining the problem together with the name of farmer and his mobile number. Then, MOGE and the company negotiated with the farmer and allowed him to repair the water channel no more than one foot in depth.

4.7. Soil erosion along the pipeline during the rainy season

In the rainy season in 2016, the erosion occurred along the pipeline due to the heavy rain that even damaged the concrete walls that were built for the protection of the erosion. MCPWC regularly observed the situation and sent the photo documents of the damages to MOEE and CNPC-SEAP.

Erosion in Ann Township: At *Lupyochaung* village, Ann Township, the pipeline re-appeared on the surface because the soil that covered the pipeline were eroded due to the torrencial rain. Moreover, the same erosion occurred in *Autkyun* village, *Taungphelar* village track. MCPWC sent the photo documents of these erosions to the MOEE and CNPC-SEAP. A few days later, the company replied that they have well received the documents and finished repairing the damages. However, the same damage that CNPC have allegedly repaired and occurred in the same place and MCPWC again informed the company together with the photo documents.

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Landslides blocking the road in Ngaphe township: In May and June 2016, the Minbu-Ann highway was blocked for two days by the landslide in between *Gyokegyi* and *Gyokesiyoe* villages where the pipeline was constructed in the steep mountain slopes. Also, another landslide occurred near *Lintae* village. The local communities said that the company built the concrete shields to protect the landslide before, but it was soon cracked and destroyed again due to the poor quality.

The dike to prevent the river-crossing pipeline from erosion collapsed in Yenanchaung Township: Myanmar-China oil and gas pipelines were constructed crossing under the bed of Irrawaddy River near *Ngalandar* village, Yenanchaung Township. The company also built a dike in the river bank to prevent the pipelines from erosion. While MCPWC did the field research data collection in February 2015, the lower part of the dike began eroded. During the rainy season in 2016, when the water level rose in Irrawaddy River, the damage was in the worst condition. Since 2014, the villagers were worried about eroding their farmlands near the river bank due to the changing direction of the water flow in the river. However, the company neglected the situation and did not start the necessary repairs, thinking that these erosion will not affect the pipelines themselves. In 2016, when the dike was totally collapsed, the company started negotiating with the local people and repaired it.

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and then crossed Shwe Li River and entered into China. Thus, peace and stability in Northern Shan State much is not only important for the development of the region but also for both Myanmar and China.

Myanmar has the longest ethnic conflicts for more than 60 years. Northern Shan State is the region where some ethnic armed organizations such as KIA, MNDAA, TNLA and RCSS/SSA have had their bases and have been very active for decades. Kyaukme, Namatu, and Nam Kham are particularly the townships where RCSS/SSA and TNLA are very active, and sometimes they are fighting each other. In 2016, there were armed conflicts between the government's armed forces and TNLA as well as between RCSS/SSA and TNLA. The conflicts sometimes happened even near the pipeline route.

Although there has not yet been any direct impact on Myanmar-China pipelines because of those ethnic conflicts, it is a worrying situation for the safety of the pipeline because the oil and gas pipeline is only 2 meters in depth. It is really a worrying situation that the artillery shells spilling over the pipeline route could cause huge pipeline explosion. The civil society organizations like MCPWC is very hard to make the field direct observation to measure how far these conflicts are from the pipeline and to assess the level of pipeline security and the safety of the local communities.

In conclusion, once a Chinese staff from SEAOP/GP asked: Why was MCPWC still needed to exist after the project had already been constructed as it said it was a watchdog organization? The case studies in Chapter 4 of this follow-up report is the answer to the above question. If nothing directly affects the pipeline, a foreign company will not actively participate in the protection of the environment of the country where they invested in. Thus, the watchdog organizations like MCPWC needs to exist to observe the situation of the environment along the pipeline route. The ethnic arm conflicts that often happen along the pipeline are a worrying situation for the safety of local communities and MCPWC is also continuously observing the situation. As MCPWC informed the damages along the pipeline route to SEAOP/GP and MOGE in a timely manner, they could know what happened on the ground and was able to respond to them.

Chapter (5)

Conclusion

In this conclusion section, the follow-up report has analyzed the research findings that MCPWC collected within 2016. Firstly, there are two important matters regarding the lands used for the pipeline construction: Land ownership right and land use right. According to the 2008 Constitution, the State owns every part of all the lands within the territory of the

country. Therefore, there is no doubt that the ownership of the lands used for the pipeline route belongs to MOGE, an state-owned enterprise under the Ministry of Electricity and Energy. However, when a foreign company investing in Myanmar needs to implement its project, it has the land lease right according to the foreign investment law, and in this case the company must directly get the necessary lands from the government through the land lease agreement in a short term or long term grant.

At this point, no single existing law allowed a foreigner or a foreign company to permanently obtain the land use right from the Myanmar farmers to use their farmlands for other purposes. However, CNPC-SEAP did exactly like this. Although Dr. Htun Naing, Deputy Minister of the MOEE explained that this action is in line with the existing laws in parliament, he did not provide any legal references to prove it.

Secondly, although the China-owned CNPC-SEAP said that they only have the right to use the lands for the pipeline route, this is a long-term project which will get that right for 50 years according to the investment law. Moreover, the land use right could be extended for 10 years for two times. Therefore, the lands of pipeline route which divides the country into two parts was given into the hands of the powerful neighbor at least for 70 years. Although according to the foreign investment law, the foreign investors are entitled to rent the lands, Myanmar-China oil and gas pipeline is the transboundary project and leasing the lands in this project is not like leasing the lands to a company which will set up a factory in an industrial zone. As it is a transboundary project jointly implemented with a neighboring country, it is not enough to consider the land use rights based on the foreign direct investment law alone, the project should be carefully considered from the points of views of the national interest and security.

2016 was the year that Myanmar experienced heavy torrential rain and its effects. As the soils along the pipeline route were filled back after the construction, it is very easy to be eroded. As a result, there were landslides, covering nearby farmlands with tons of spill-over mud and stones as well as leaving big holes on the ground. Moreover, the cases of burning waste materials within the pipeline route and building the electricity lines were found along the pipeline. When the farmers protested against the company for their damaged farmlands, some farmers received compensation for the second round and some did not get anything at all. MCPWC informed the above case studies to the concerned officials of the project and helped the farmers to relieve their hardships on the ground.

MCPWC would like to again suggest that there should be a certain fund for Environmental Management Plan (EMP) to remedy the damaged environment and to conserve soil quality along the pipeline as the organization did in the previous research report. Moreover, MCPWC would like to suggest that the tripartite group composed of the government, the company, and the representatives of local communities should form an independent foundation to share the benefits of the projects to the local communities transparently.

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