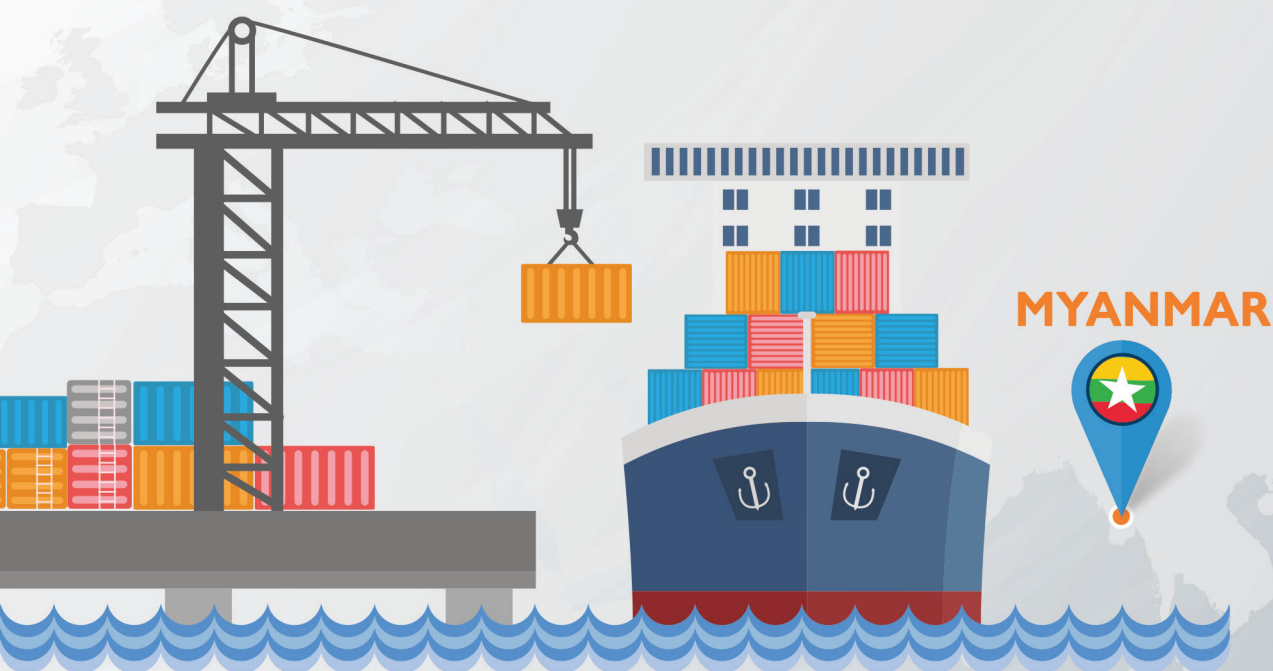




KYAUKPHYU SPECIAL ECONOMIC ZONE

Prepared by:
Sandhi Governance Institute, Myanmar





Sandhi Governance Institute is a Myanmar Policy Research Institute with the focus on enhancing capacity of political parties and civil society organizations, increasing transparency and accountability in public sector and strengthening participation of all key stakeholders in public affairs and major investments to promote democratic governance in Myanmar.

I. Project Introduction

The Kyaukphyu Special Economic Zone (KP SEZ) in Myanmar is one of the most controversial multi-billion-dollar Chinese investment projects under Chinese President Xi Jinping's "project of the century," the Belt and Road Initiative (BRI). It is often compared to Sri Lanka's Hambantota Port in media reports and portrayed as likely to fall into Chinese debt-trap diplomacy. The KP SEZ consists of two separate projects: a deep seaport and the special economic zone (SEZ). This article focuses on the Kyaukphyu deep seaport, for which the concession agreement and shareholders' agreement were signed during President Xi Jinping's visit to Naypyitaw in January 2020.¹

The KP SEZ projects are supported by the Chinese and Myanmar governments. Paired with the planned 1,400 km high-speed Kunming–Muse–Mandalay–Kyaukphyu railroad originating in China's landlocked Yunnan Province, the deepwater port will allow China to access the Indian Ocean through Myanmar, becoming the "shortest and most economical" path for trading goods between China and India.²

Although many view these developments through the lens of a Chinese grand strategy of westward expansion and geostrategic ambition with the ultimate goal of controlling the vital sea-lane to the Indian Ocean and bypassing the Malacca Straits, some believe that most Chinese BRI projects are initiated by profit-hungry Chinese state-owned enterprises (SOEs) and provincial governments taking advantage of the general BRI framework to enrich themselves, and that BRI projects in Myanmar are no exception to this rule.³ The KP SEZ predates the launch of the BRI and the China–Myanmar Economic Corridor (CMEC), which became the blanket category for BRI projects in Myanmar, but like other Chinese SOE investments, it has now been moved under the BRI umbrella to increase its access to the financial resources of China's state-owned banks and central government support. Hence, this project sheds light on the political economy of Chinese SOEs, provincial governments, and the central government in Beijing.

At the same time, the development of the KP SEZ also reflects the political economy and governance of the quasi-civilian, military-backed government of Myanmar led by President U Thein Sein because, unlike projects initiated under the military regime that ruled the country from 1988 to 2010 (during which time agreements with Chinese SOEs were signed without transparency or public consultation), this project had to follow some of the standard governance procedures that apply to public-private partnerships and joint ventures. Despite its increased adherence to standard governance procedures, the project has faced skepticism, especially given its massive financing need and large scale, the primary factors driving accusations that it is a debt trap. The initial estimated cost of the Kyaukphyu deep seaport was calculated to exceed USD7 billion; the National League for Democracy (NLD) government renegotiated to scale down the project size and shareholding balance to USD1.3 billion and a 70:30 share ratio,⁴ giving Chinese SOE China International Trust and Investment Corporation (CITIC) 70 percent and the Myanmar government's KP SEZ Management Committee and Government Designated Enterprises 30 percent (from the original 85:15 percent ratio). Still, it is considered a high-risk investment and there are allegations that the Chinese side has inflated the cost and concerns that the project may impose a financial burden on Myanmar.

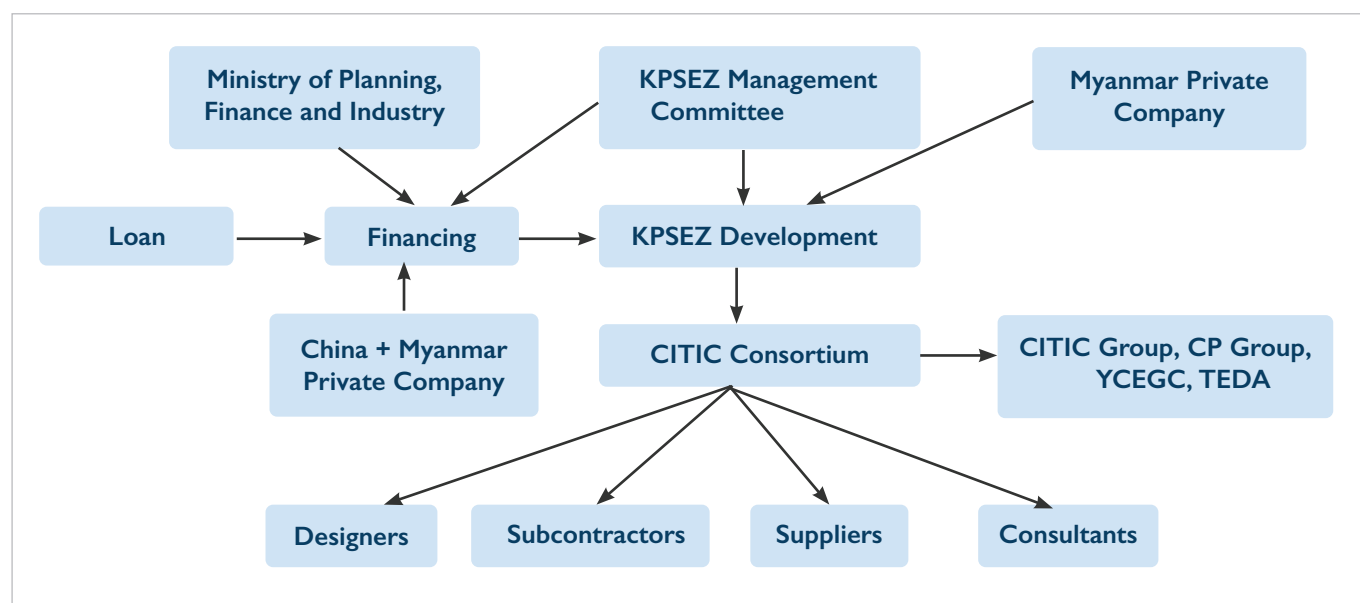
¹ Nan Lwin, "Myanmar–China Relations: 2020 Review," *The Irrawaddy*, December 29, 2020, <https://www.irrawaddy.com/specials/myanmar-china-relations-2020-review.html>

² Xinhua, "Myanmar Plans Special Economic Zone in Western State," *Global Times*, December 4, 2015, <https://www.globaltimes.cn/content/956565.shtml>

³ Transnational Institute (TNI), "Selling the Silk Road Spirit: China's Belt and Road Initiative in Myanmar," November 2019 (22), https://www.tni.org/files/publication-downloads/bri_myanmar_web_18-11-19.pdf

⁴ Chan Mya Htwe, "Myanmar Successfully Renegotiates Debt, Ownership Terms for Kyaukphyu," *Myanmar Times*, October 1, 2018, https://www.tni.org/files/publication-downloads/bri_myanmar_web_18-11-19.pdf

2. Project Structure Mapping



3. Project Background

The **Kyaukphyu Special Economic Zone (KP SEZ)** is one of three special economic zones in development in Myanmar. Located on the Bay of Bengal in Kyaukphyu, Ramree Island, Rakhine State, it is planned to contain a deepwater port facility, an industrial zone, and a high-end housing project across a total of 4,300 acres.⁵ A major goal of the special economic zone is to create employment opportunities for native Rakhine people in the area through drawing foreign direct investment to the western state and generating tax revenues that could improve the local standard of living.⁶

Plans for the SEZ were first announced in 2013.⁷ Its development follows the enactment of the legal framework for special economic zones, the Myanmar Special Economic Zone Law, in 2014, and the publication of the law's implementing rules in 2015.⁸ The law provides tax exemptions and other economic incentives to attract investment and encourage production targeting both export and domestic markets.

Kyaukphyu township also has oil and gas pipelines that run to Yunnan Province, offering an alternative to the Malacca Strait pipeline for energy imports from the Middle East. The gas pipeline, which entered operation in 2013, is capable of delivering 12 billion cubic meters of gas to China annually, while the oil pipeline, which began operating in 2017, has a capacity of 22 million barrels of oil annually.⁹ Thus, the KP SEZ project, and specifically the deep seaport, is strategically and economically important for the CMEC, a key component of China's international infrastructure-focused BRI.

⁵ Chan Mya Htwe, "Industrial Zone in Kyaukphyu SEZ to be Built at \$30B," *Myanmar Times*, February 20, 2020, <https://www.mmmtimes.com/news/industrial-zone-kyaukphyu-sez-be-built-30b.html>

⁶ Chan Mya Htwe, "Myanmar Bets on Industrial Zones to Draw Investments, Create Jobs," *Myanmar Times*, January 26, 2021, <https://www.mmmtimes.com/news/myanmar-bets-industrial-zones-draw-investments-create-jobs.html>

⁷ Nyan Lin Aung "Winner Postponed for Kyaukphyu," *Myanmar Times*, January 19, 2015 <https://www.mmmtimes.com/business/property-news/12840-winner-postponed-for-kyaukphyu.html>

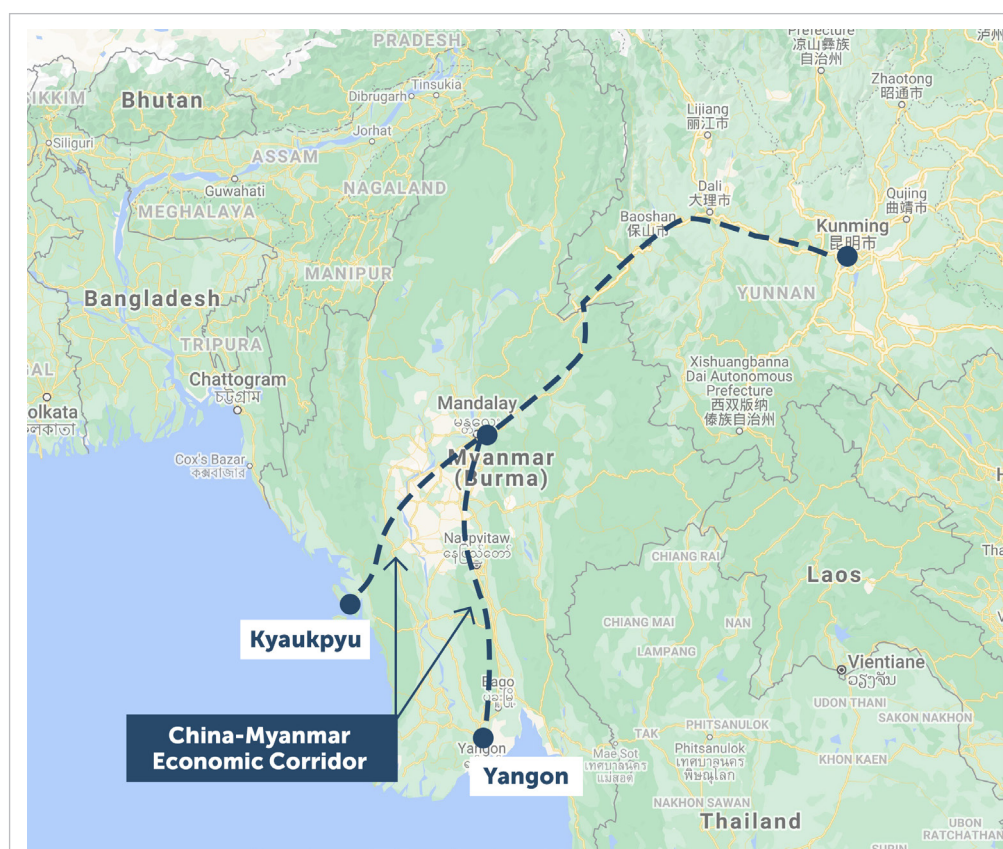
⁸ Directorate of Investment and Company Administration, Ministry of Investment and Foreign Economic Relations of the Republic of the Union of Myanmar, "Special Economic Zones" <https://www.dica.gov.mm/en/special-economic-zones>

⁹ Megha Gupta, "Environmental Effects of Chinese Projects in Myanmar," *Observer Research Foundation*, April 15, 2020, <https://www.orfonline.org/expert-speak/environmental-effects-chinese-projects-myanmar-64588/>

CITIC Consortium is leading project development on the deep seaport and the industrial zone, both of which are scheduled to be completed in phases. The company holds a 70 percent stake in the deep seaport along with 51 percent of the industrial zone; Myanmar owns the remaining shares. In August 2020, a joint venture company, the Kyaukphyu Special Economic Zone Deep Seaport Co. Limited, was approved to implement the port project with 70–30 percent ownership split between CITIC Myanmar Port Investment Limited (a CITIC subsidiary) and the state-backed Kyaukphyu Special Economic Zone Management Committee.¹⁰

The first phase is scheduled to begin construction following the signing of the deep seaport concession agreement and shareholders' agreement between China and Myanmar in 2020.

Figure 1: China–Myanmar Economic Corridor



Two of the three special economic zones in Myanmar, the Thilawa SEZ (located near Yangon) and the Dawei SEZ (in the southeastern Tanintharyi Region), are government-to-government (G2G) projects, with the former jointly developed with Japan and the latter with both Thailand and Japan.¹¹ The KP SEZ was initiated during the U Thein Sein administration (2010–2015) under a business-to-business (B2B) model, but it can now also be considered a G2G framework agreement as Myanmar authorities and CITIC signed the subsequent concession agreement in the presence of two countries' leaders. The KP SEZ was the first of Myanmar's SEZs to open its call for tenders to international investors.

¹⁰. "China Moves Closer to Control of Deep-Water Port Project at Kyaukphyu, Myanmar," RWR Advisory, August 12, 2020, <https://www.rwradvisory.com/china-moves-closer-to-control-of-deep-water-port-project-at-kyaukphyu-myanmar/>

¹¹. "The Inside Story of Thailand and Myanmar's Troubled Dawei Mega-project," Thai PBS, January 25, 2021, <https://www.thaipbsworld.com/the-inside-story-of-thailand-and-myanmars-troubled-dawei-mega-project/>

4. Initial Planning of the KP SEZ (2011–2015)

In line with his mantra of “clean government, good governance,” President U Thein Sein aimed to prove that his administration, unlike the previous military regime, was focusing on reforms that would promote good and clean governance.¹² In addition, when he came to power in 2011, anti-Chinese sentiment was rising and public protests against Chinese hydropower, oil and gas, and mining projects were testing his commitment to good governance; he also needed international legitimacy to gain access to development aid (including debt relief) and to convince Western governments to lift their sanctions. At the same time, President U Thein Sein’s administration and military wanted to reduce their dependence on China and diversify risks, attract foreign direct investment, and trade with other countries.

Therefore, both in the interest of the domestic political aim of being perceived as a reform-oriented government and to gain international legitimacy, his administration suspended the Myitsone Dam project amid public protest that took Chinese leaders by surprise in 2013, dealing a blow to China.¹³ The contract for another major Chinese project, the Letpadaung Mine, was also amended in accordance with the recommendations of an investigative commission chaired by then-Member of Parliament Daw Aung San Suu Kyi.¹⁴ In 2014, the Special Economic Zone Law was enacted and approved by the union parliament to implement special economic zones in Myanmar.

The political economy of the ruling regime and its relationship with China meant that the KP SEZ had to pass through a B2B model, and its initial phases contained semblances of systematic risk analysis processes, public consultation, and a tendering process to select the winning bidder to implement the gigantic undertaking. Still, it has faced the same challenges as other Chinese investments and to date has not reached the implementation phase.

The Kyaukphyu Special Economic Zone Management Committee was formed under the U Thein Sein government in December 2011. The management committee proudly claimed to have adhered to international standards in conducting the SEZ tender process, following five tender procedures recommended in the book *To Serve and To Preserve: Prebid, Public Notice and Invitation of Bids, Bid Opening and Evaluation, Complaints Resolution, and Contract Award and Conclusion*.¹⁵ The conceptual plan was developed in consultation with Japan Development Institute and an advisory board was formed from January 2012 to July 2013 with mostly native Rakhine members. Government officials visited the Kyaukphyu area several times and held meetings with key stakeholders to minimize the social, economic, and environmental problems in developing the conceptual plan.

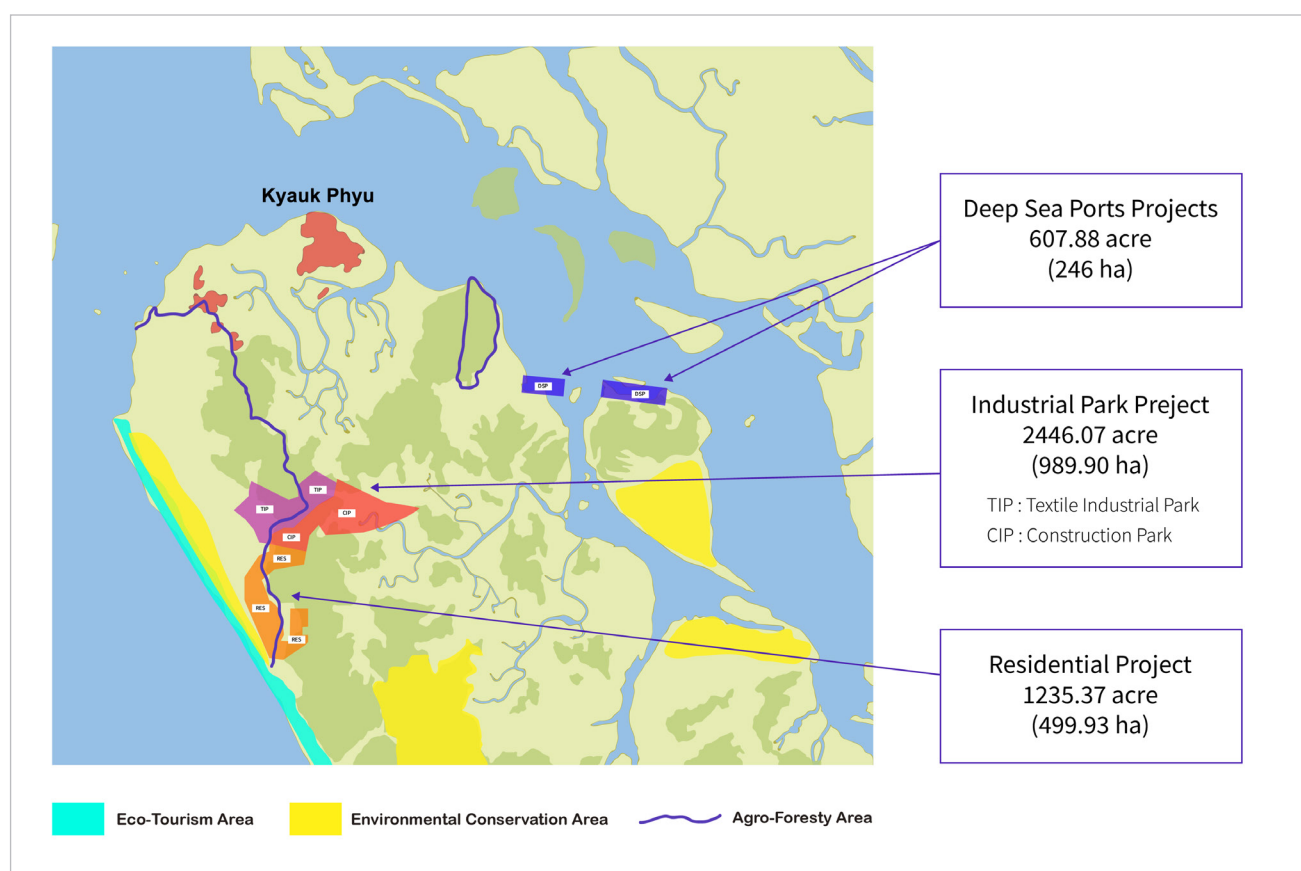
¹² Ko Htwe, “Thein Sein Calls for Clean Government,” *The Irrawaddy*, April 1, 2011, https://www2.irrawaddy.com/article.php?art_id=21062

¹³ Thomas Fuller, “Myanmar Backs Down, Suspending Dam Project,” *New York Times*, September 30, 2011 <https://www.nytimes.com/2011/10/01/world/asia/myanmar-suspends-construction-of-controversial-dam.html>

¹⁴ Win Ko Ko Lat and Soe Than Lynn, “Copper Project to Resume in September after New Contract Signed,” *Myanmar Times*, July 29, 2013 <https://www.mmmtimes.com/national-news/7644-copper-project-to-resume-in-september-after-new-contract-signed.html>

¹⁵ Salvatore Schiavo-Campo and Pachampet Sundaram, *To Serve and to Preserve: Improving Public Administration in a Competitive World* (Manila: Asian Development Bank, January 2000) <https://www.adb.org/sites/default/files/publication/28984/improving-public-administration.pdf>

Figure 2: Initial Conceptual Plan Map



The Bid Evaluation and Awarding Committee (BEAC) for the Kyaukphyu deep seaport was formed with 16 members, including government officials; the government adviser to the president under U Thein Sein's government; experts in the environmental, legal, and engineering fields; and civil society actors mostly from Rakhine in accordance with the President's Office Directive issued on August 17, 2013.¹⁶ The Committee called for Expressions of Interest (EOI) for consulting firms in September 2013¹⁷ and selected Singapore-based consortium Creative Professional Group Ltd. (CPG) and its USD2.4 million bid after a negotiation process in March 2014.¹⁸ The committee together with the consulting firm prepared to call for tenders for international investors. Preparation for requests for proposal (RFP) included three major functions: conducting a market study and developing a regional master plan, preparing documents for the EOI and RFP, and marketing to attract investors. The committee claimed that they used a business model. All necessary information, including tender procedures and documents, is accessible on the official KP SEZ website.¹⁹

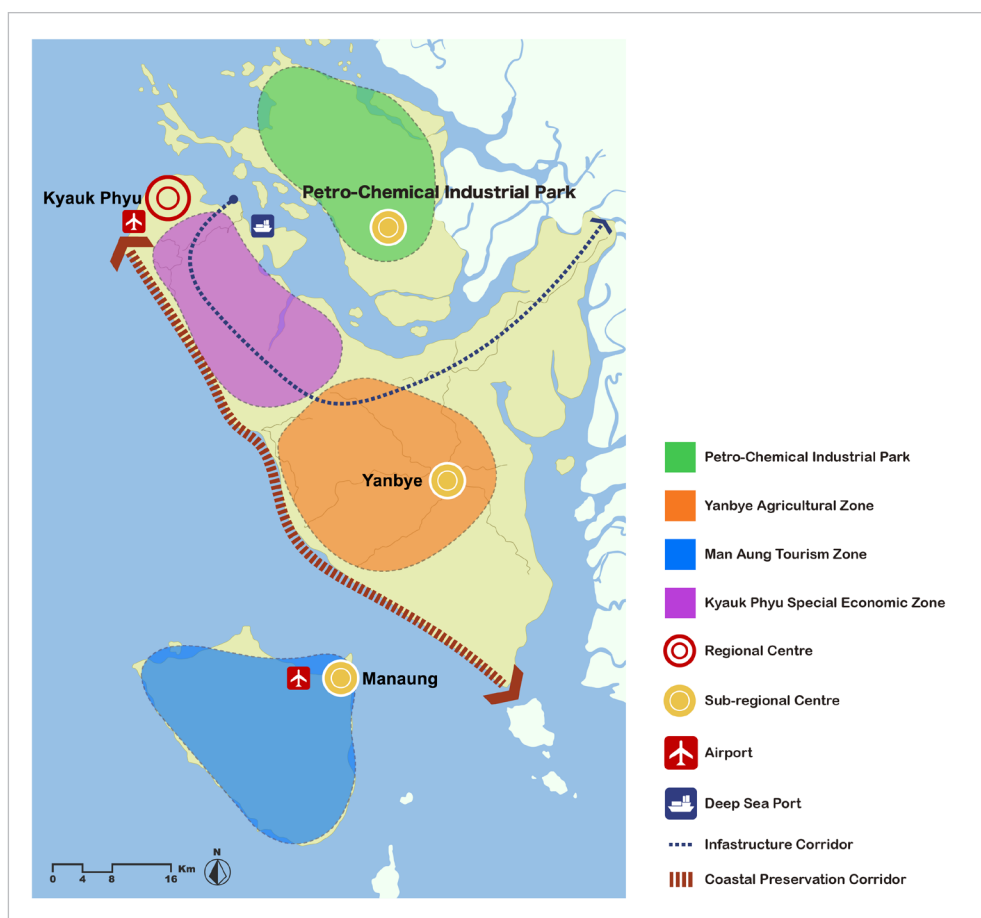
¹⁶ Konosuke Odaka, ed., *The Myanmar Economy: Its Past, Present and Prospects* (Tokyo: Springer, 2016), 217

¹⁷ "Invitation to Submit Expression of Interest from Consulting Firms," *The New Light of Myanmar*, September 8, 2013
<https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs/16/NLM-2013-09-08-red.pdf>

¹⁸ Nyan Lin Aung, "Singapore Firm Win Kyaukphyu Consultancy," *MyanmarTimes*, March 17, 2014
<https://www.mmmtimes.com/business/property-news/9877-singapore-firm-wins-kyaukpyu-consultancy.html>

¹⁹ Kyaukphyu Special Economic Zone, www.kpsez.org

Figure 3: Kyauk Phyu Region Strategic Development Plan Map



The market study was published in July 2014.²⁰ Road shows were organized in Singapore and Yangon, Myanmar at the same time to attract international investors. The regional master plan was developed and a call for EOI was advertised online and in media networks in August 2014. Qualified applicants were notified in September 2014. There were three projects under the RFP: the Deep Seaport Project, the Industrial Park Project, and the Residence Project. Out of 44 registered companies to submit an EOI, 13 were from Myanmar and 10 from China. The consortium led by the Chinese government-owned CITIC Group, the largest state-run conglomerate in China,²¹ won the bid to develop the deep seaport and industrial park projects, with a price tag totaling almost USD10 billion. CITIC's consortium partners are Tianjin Economic-Technological Development Area (TEDA), Yunnan China Economic Group Corporation (YCEGC), China Merchants Holdings (International) Co., Ltd., China Harbour Engineering Company Ltd., and Charoen Pokphand Group Company Limited of Thailand.²²

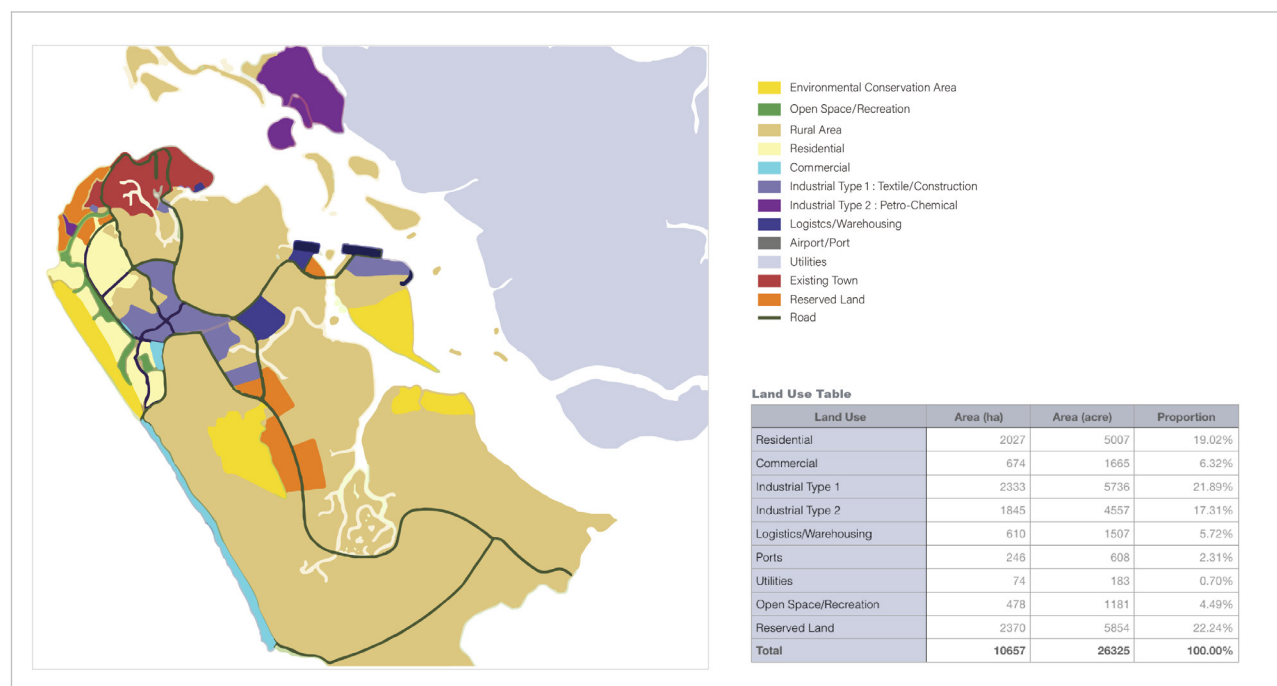
²⁰ "Kyauk Phyu Special Economic Zone Development Roadshow: Yangon, Myanmar," Kyaukphyu Special Economic Zone, July 3, 2014 <https://www.bandapost.org/wp-content/uploads/2018/08/KPSEZ-Road-Show-1.pdf>

²¹ "CITIC Ltd.: Company Background," Nikkei Asia <https://asia.nikkei.com/Companies/CITIC-Ltd>

²² Aung Hla Htun and Timothy McLaughlin, "China's CITIC Wins Projects to Develop Myanmar Economic Zone," Reuters, December 31, 2015 <https://www.reuters.com/article/myanmar-citic-project-idUSL3N14K1D720151231>

Based on sources from the former Kyaukphyu Special Economic Zone Management Committee and website information,²³ the project followed the appropriate governance process for PPP projects, operating according to international standards for tendering, assessing bids, and awarding contracts. The project was initiated through the proper tender process and a market study was completed. It also complied with requirements for foreign participation. All tender documents under this project were published online and bids were open for online submission.²⁴ Documents related to the project's tender process can be downloaded after a payment of US\$1,000.

Figure 4: Regional Master Plan with Project Types and Locations



The tender process in the selection of both the consulting firm and international investors was transparent, and an economic feasibility and impact assessment was conducted. However, when the tender was run, an environment and social impact assessment was not yet completed and there is no available information concerning whether the technical specifications included environmental standards. For their part, local people in the area have had complaints about the environmental and social impacts of the SEZ since learning of the project plan.

Following the announcement of the selection of China's CITIC Group as the bid winner in December 2015, construction was scheduled to commence in February 2016 before the new government took power.²⁵ However, the project could not be started as planned and was delayed under the new government, which took power in 2016.

A milestone posted on the CITIC Group (Myanmar)'s website indicates that CITIC Group signed an MoU on the Kyaukphyu Deep Seaport Project as far back as December 2009 under the witness of then-Chinese Vice President Xi Jinping.²⁶

²³ Kyaukphyu Special Economic Zone, kpsez.org

²⁴ "Expressions of Interest Invited for Kyaukphyu SEZ Development," Myanmar Business Today, July 16, 2014, <https://mmbiztoday.com/expressions-of-interest-invited-for-kyaukphyu-sez-development/>

²⁵ Aung Hla Htun and Timothy McLaughlin, "China's CITIC Wins Projects to Develop Myanmar Economic Zone"

²⁶ Milestone," CITIC Group (Myanmar) Company Limited

<http://www.citicmyanmar.com/index.php?m=content&c=index&a=lists&catid=500>

5. China International Trust and Investment Corporation (CITIC) Group Myanmar

CITIC Group won bids to develop the KP SEZ industrial park and deep seaport projects in western Myanmar in December 2015. The CITIC-led consortium includes China Harbour Engineering Company Ltd., China Merchants Holdings, TEDA Investment Holding, and Yunnan Construction Engineering Group along with Thailand's Charoen Pokphand Group. CITIC Group registered as CITIC Group (Myanmar) Company Limited in Myanmar in January 2017 according to the new Myanmar Investment Law (2016). Investment in the initial phase will be USD1.3 billion with CITIC taking a 70 percent stake and the remaining 30 percent allotted to the Myanmar government.²⁷ The concession period is 50 years. It is estimated that the Myanmar government will earn USD7.8 billion in revenue from the SEZ and USD6.5 billion from the deep seaport.²⁸

6. Stagnation and Renegotiation of the Kyaukphyu Special Economic Zone (2016–2020)

Originally, the industrial park project was to be implemented in three phases from 2015 to 2038. As for the deep seaport project, it was planned for development in four phases starting in 2017 and lasting until 2035. Although the KP SEZ tender process reached the step of selecting the CITIC-led consortium and awarding it the contracts, the process stagnated when the civilian government took power in 2016. Concerns raised by the new ruling government, public opposition from local residents and civil society actors, and ongoing tensions in Kyaukphyu delayed the planned timeline.

The main apprehension of the NLD government concerned debt sustainability and the need to prove the project's compliance with good governance processes for PPP projects. State Counselor Daw Aung San Suu Kyi, who also served as chair of the BRI Steering Committee, stated that all BRI projects, like other investments, must pass through a competitive bidding process, their financing must be multilateralized for debt sustainability, and they must be national priorities. Therefore, the Ministry of Planning, Finance and Industry (MOPFI) in 2018 issued a project bank notification to implement PPP projects in a transparent and accountable manner. In parallel, the Kyaukphyu Special Economic Zone Management Committee joint chairman led the renegotiation of the project with CITIC and downsized it to an investment of USD1.3 billion to construct two berths in the initial phase from the original cost of US\$7.3 billion to construct ten berths.²⁹

The initial USD7.3 billion proposed cost for the deep seaport project had concerned the ruling government given the high cost and example of Chinese debt traps in the BRI, as was the case in Sri Lanka, which struggled to pay down the debt incurred in developing its own Chinese-constructed Hambantota Port and ultimately transferred control of the port and the surrounding area to China.³⁰ Although the CITIC consortium was still accepted to lead the development of the Kyaukphyu deep seaport and industrial park projects, it needed to renegotiate with local companies.

²⁷ Yimou Lee and Thu Thu Aung, "China to Take 70 Percent Stake in Strategic Port in Myanmar - Official," Reuters, October 17, 2017 <https://www.reuters.com/article/china-silkroad-myanmar-port-idUSL4N1MS3UB>

²⁸ "Gov't Inks Agreement with Chinese Firm to Develop Kyaukphyu SEZ," The Irrawaddy, November 8, 2018 <https://www.irrawaddy.com/news/burma/govt-inks-agreement-chinese-firm-develop-kyaukphyu-sez.html>

²⁹ Thompson Chau and Htoo Thant, "Kyaukphyu Port: What Happens Next?" Myanmar Times, November 9, 2018 <https://www.mmtimes.com/news/kyaukphyu-port-what-happens-next.html>

³⁰ Maria Abi-Habib, "How China Got Sri Lanka to Cough Up a Port," New York Times, June 25, 2018 <https://www.nytimes.com/2018/06/25/world/asia/china-sri-lanka-port.html>

Under the NLD government, U Set Aung, deputy minister of the Ministry of Planning and Finance (MOPF), who had been a member of the BEAC under the previous government, became the joint chairperson of the Kyaukphyu Special Economic Zone Management Committee. In an interview with the digital media platform *The Irrawaddy* before signing the renegotiated agreement, he shared his negotiation experience.³¹ He noted that the two sides first agreed to five principles before renegotiating the framework agreement: 1) the renegotiation must be flexible and not put any burden on the Myanmar government; 2) the renegotiation process must be based on international standards; 3) if Myanmar needs to alter the previous agreement, China must agree to the changes; 4) the project must follow rules and regulations for tender requests for proposals, and 5) it must also follow the laws in Myanmar. Furthermore, the Myanmar government would not provide sovereign guarantees on loans, eliminating concerns about the loss of national assets in a debt trap. CITIC would lease the land to implement the project on a land tenure of 50 years extendable by another 25 years in accordance with the Myanmar Investment Law (2017) at the cost of USD210 million. That amount would become 70 percent equity for CITIC in the newly-formed special purpose vehicle (SPV) project company; the KP SEZ Management Committee would own the remaining 30 percent equity at the cost of USD90 million.³²

In November 2018, U Set Aung and CITIC Group President Chang Zhenming signed a new framework agreement.³³ The new agreement divided development of the deep seaport project into four phases and reduced the cost of the first phase to USD1.3 billion.³⁴ The agreement covers the construction of two deepwater berths on Madae (Made or Maday) island and Ramree (Yanbye) island. While the original agreement stipulated that the CITIC Group share would be 85 percent with the remaining 15 percent held by Myanmar, the new framework agreement reduced the CITIC Group share to 70 percent and stipulated that the remaining 30 percent would be held 15 percent by the Myanmar government and 15 percent by Myanmar Kyaukphyu SEZ Public Holding Company Ltd. (MKSH), a consortium of 17 companies that functions as a Government Designated Enterprise (GDE). Both sides agreed to start small with development and expand based on demand.

In December 2018, Myanmar formed the Steering Committee for the Implementation of BRI chaired by the State Counselor, focusing especially on the establishment of the China–Myanmar Economic Corridor and China–Myanmar Border Economic Cooperation Zone.³⁵ The State Counselor stressed the Five Principles of Peaceful Coexistence³⁶ in the implementation of the BRI in the first meeting of the steering committee in February. She also called for scrutinizing BRI-proposed projects thoroughly from different perspectives considering the short- and long-term benefits for the people and country and to make sure that the selected projects are in conformity with national plans, policies, and domestic procedures.³⁷

³¹ Nan Lwin, "New, Improved Deal on China-Backed Kyaukphyu SEZ Due Soon: Deputy Minister," *The Irrawaddy*, July 23, 2018 <https://www.irrawaddy.com/in-person/new-improved-deal-on-china-backed-kyaukphyu-sez-due-soon-deputy-minister.html>

³² Sandhi Governance Institute, "Monitoring Report of Selected PPPs in Myanmar," August 2019 http://www.mediafire.com/file/l9q6qklc7o024q/Monitoring_Report_of_Selected_PPPs_by_Sandhi_%2528First_Quarter%2529.pdf/file

³³ "China, Myanmar Sign Framework Agreement on Kyauk Phyu SEZ Deep-Sea Port Project," *Xinhua*, November 8, 2018 http://www.xinhuanet.com/english/2018-11/08/c_137592850.htm

³⁴ Chan Mya Htwe, "Myanmar Successfully Renegotiates Debt, Ownership Terms for Kyaukphyu,"

³⁵ "Myanmar Forms Steering Committee for Implementation of Belt and Road Projects," *Xinhua*, December 7, 2018 http://www.xinhuanet.com/english/2018-12/07/c_137657781.htm

³⁶ The Five Principles are: mutual respect for each other's territorial integrity and sovereignty (changed to mutual respect for each other's sovereignty and territorial integrity at the Asian–African Conference), mutual non-aggression, non-interference in each other's internal affairs, equality, and mutual benefit. "China's Initiation of the Five Principles of Peaceful Co-Existence," Ministry of Foreign Affairs of the People's Republic of China https://www.fmprc.gov.cn/mfa_eng/ziliao_665539/3602_665543/3604_665547/t18053.shtml

³⁷ Myanmar News Agency, "State Counsellor Attends 1st Meeting of Steering Committee for Implementation of BRI," *The Global New Light of Myanmar*, February 19, 2019 <https://www.globalnewlightofmyanmar.com/state-counsellor-attends-1st-meeting-of-steering-committee-for-implementation-of-bri/>

In November 2019, the CITIC-led consortium hired Canadian company HATCH to oversee the EIA/SIA assessment process and the preliminary geological survey for the project. According to the Myanmar Special Economic Zone Law (2014), investors are required to abide by the Myanmar Environmental Conservation Law and international standards. The Ministry of Natural Resources and Environmental Protection (MONREC) designated the Kyaukphyu Deep Seaport Project as an EIA-type project in February 2020.³⁸ In early 2021, CITIC issued a call for bids for the deep seaport environmental and social impact assessment in order to obtain an environmental compliance certificate from MONREC.³⁹

During President Xi Jinping's visit to Myanmar in January 2020, the concession agreement and shareholders' agreement for the KP SEZ were included in the 33 agreements and memoranda of understanding inked between Myanmar and China.⁴⁰ While Myanmar has been struggling to fight the COVID-19 pandemic since early 2020, resulting in project delays, China has not forgotten CMEC projects in Myanmar. Chinese Ambassador to Myanmar Chen Hai and Myanmar's Deputy Minister for Planning, Finance, and Industry U Set Aung met for an "in-depth discussion" on the implementation of CMEC projects in early May 2020.⁴¹ They also discussed how to move their projects forward in parallel with the Myanmar government's COVID-19 Economic Relief Plan (CERP) launched in late April 2020 to mitigate the economic damage posed by the pandemic. Furthermore, Chinese President Xi Jinping made a phone call to Myanmar President U Win Myint on May 20, 2020. According to the website of Ministry of Foreign Affairs of China:

He [President Xi] expressed hope that the two countries, while ensuring good prevention and control of COVID-19, steadily advance exchanges and cooperation in various areas and work for greater progress in the China–Myanmar Economic Corridor projects. He pointed out the need to make good use of the joint prevention and control mechanism for border areas, and continue to maintain peace and tranquility along the border, while containing COVID-19 and restarting economic activities.⁴²

President Xi expected the two sides to cooperate closely and speed up the implementation of projects under the BRI, indicating China's push for the Myanmar government to move forward with CMEC projects alongside Myanmar's CERP in the near future.

³⁸ "EIA Process for Kyaukphyu Port to Start," *Myanmar Times*, March 11, 2020 <https://www.mmtimes.com/news/eia-process-kyaukphyu-port-start.html>

³⁹ Nan Lwin, "Chinese Firm Opens Assessment Tender for Strategic Deep-Sea Port in Western Myanmar," *The Irrawaddy*, January 25, 2021, <https://www.irrawaddy.com/news/burma/chinese-firm-opens-assessment-tender-strategic-deep-sea-port-western-myanmar.html>

⁴⁰ Kang Wan Chern and John Grafilo, "Myanmar, China Sign Agreements on Kyaukphyu, No Mention of Myitsone, Peace Talks," *Myanmar Times*, January 18, 2020 <https://www.mmtimes.com/news/myanmar-china-sign-agreements-kyaukphyu-no-mention-myitsone-peace-talks.html>

⁴¹ Nan Lwin, "Xi Hopeful on Belt and Road Projects in Myanmar During COVID-19," *The Irrawaddy*, May 21, 2020 <https://www.irrawaddy.com/news/burma/xi-hopeful-belt-road-projects-myanmar-covid-19.html>

⁴² "President Xi Jinping Speaks by Phone with President U Win Myint of Myanmar," Ministry of Foreign Affairs of the People's Republic of China, May 20, 2020 https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1781243.shtml

7. Civil Society Groups and Local Residents

Local residents in the Kyaukphyu area had negative experiences with land confiscation and livelihood loss when the Shwe gas project, a China–Myanmar pipeline, was implemented under the military government.⁴³ Thus, however much this SEZ project claimed to have conducted proper consultation with local communities since the initial development of the conceptual plan, local communities remain resistant to Chinese investment in the area. To make matters worse, Kyaukphyu is situated in the Rakhine state, which has been one of the areas in Myanmar most severely affected by conflict over the last decade with the sectarian violence and fighting between the military and the ethnic armed group Arakan Army (AA). Nonetheless, independent analyst David Scott Mathieson has pointed out that with China's sway over the AA, the armed organization has avoided threatening Chinese economic interests and even welcomed the Kyaukphyu project.⁴⁴ An advisory commission led by the late former UN Secretary General, Kofi Annan, that was tasked with finding solutions for ethnic tensions in Rakhine State recommended that the government conduct a strategic environmental assessment and labor market assessment for the KP SEZ.⁴⁵

In late 2016, more than a hundred civil society groups called for the suspension of project construction until the new government could assume power in view of the adverse societal impacts from the project.⁴⁶ The management committee argued that they had followed international standards in the PPP governance process and consulted with local people properly. However, in reality, Reuters reporting revealed that work on contracts and land acquisition had begun before the completion of the environmental and social impact assessment. Meanwhile, civil society groups and local communities have remained unconvinced of the project's potential benefits to date, including creating job opportunities.⁴⁷ Many local residents have also repeatedly urged the suspension of the project and raised concerns over land confiscation, proper compensation, job uncertainty, environmental impacts, and other issues.⁴⁸ In February 2020, the deputy minister of commerce told the parliament that the government would compensate residents for the China-backed project in Rakhine as had been done with the Thilawa SEZ. However, the amount of compensation has not been publicly announced.⁴⁹ To date, local communities have continued to perceive the project as lacking transparency and demand decent compensation. Some Rakhine civil society groups called for local autonomy and self-determination to be able to take control of their own resources.⁵⁰

⁴³ U Hayman Oo, "Will the Kyauk Phyu Special Economic Zone Become A Responsible and Accountable Project?" *International Commission of Jurists*, July 1, 2016 <https://www.icj.org/will-the-kyauk-phyu-special-economic-zone-become-a-responsible-and-accountable-project/>

⁴⁴ United States Institute of Peace, "The Arakan Army in Myanmar: Deadly Conflict Rises in Rakhine State," David Scott Mathieson, Special Report 486, November 2020 https://www.usip.org/sites/default/files/2021-02/sr_486-the_arakan_army_in_myanmar_deadly_conflict_rises_in_rakhine_state.pdf 18–19

⁴⁵ Thompson Chau, "Annan Commission Repeats Call for Kyaukphyu SEZ Assessment," *Myanmar Times*, September 4, 2017, <https://www.mmtimes.com/news/annan-commission-repeats-call-kyaukphyu-sez-assessment.html>

⁴⁶ Moe Myint, "NGOs Seek Kyaukphyu SEZ Delay as President Pushes Implementation," *The Irrawaddy*, December 22, 2015, <https://www.irrawaddy.com/business/ngos-seek-kyaukphyu-sez-delay-as-president-pushes-implementation.html>

⁴⁷ Yimou Lee and Wa Long, "China's \$10 Billion Strategic Project in Myanmar Sparks Local Ire," *Reuters*, June 9, 2017 <https://www.reuters.com/article/us-china-silkroad-myanmar-sez-idUSKBN18Z327>

⁴⁸ Moe Myint, "Arakanese Villagers Call for Suspension of Kyaukphyu SEZ Project," *The Irrawaddy*, January 27, 2017 <https://www.irrawaddy.com/news/arakanese-villagers-call-for-suspension-of-kyaukphyu-sez-project.html>; Min Thein Aung, "Myanmar Fishermen, Farmers Fear Losses from Kyaukphyu Sea-Port Project," *Radio Free Asia*, August 23, 2019 <https://www.reuters.com/article/us-china-silkroad-myanmar-sez-idUSKBN18Z327>

⁴⁹ "Myanmar Govt to Compensate Villagers for Loss of Land over Kyaukphyu SEZ," *Mizzima*, February 16, 2020 <https://www.mizzima.com/article/myanmar-govt-compensate-villagers-loss-land-over-kyaukphyu-sez>

⁵⁰ Skylar Lindsay, "A Chinese Special Economic Zone is Deepening Conflict in Myanmar's Rakhine State," *ASEAN Today*, May 17, 2019 <https://www.aseantoday.com/2019/05/a-chinese-special-economic-zone-is-deepening-conflict-in-myanmars-rakhine-state/>

8. Conclusion and Recommendations

The KP SEZ project is said to be the most complex and controversial PPP project in Myanmar in the sense that it intertwines with global geopolitics and domestic ethnic conflicts. Economically, the KP SEZ is not viable for many international investors, but its location is strategically important for China as an exit from China's landlocked Yunnan Province, which shares a border with Myanmar. To develop this pathway, the China–Myanmar Economic Corridor is planned to pass by Myanmar's second-largest city, Mandalay, with one route connecting Kyaukphyu and another linked to the country's commercial capital, Yangon. The MoU to develop the Kyaukphyu deep seaport was first signed between the Myanmar government and then-Vice President Xi Jinping in 2009.

When the KP SEZ project started under President U Thein Sein's government, the government claimed it as a B2B project. The management committee and its governance structure were formed using a business model. Despite this claim, the project ended up as a G2G project between the Chinese state-owned CITIC consortium and the Myanmar government. Although the KP SEZ project management committee held a series of consultations with local communities and provided community development funds to them, local people said that they were left clueless about plans for their resettlement and compensation.

Moreover, local Rakhine people previously lost their livelihoods and land in an earlier gas pipeline project without receiving proper compensation. Therefore, they are concerned about new Chinese investment. Civil society leaders from Rakhine State claim that ordinary people stand to gain little although they have a lot to lose from the project. For them, peace and security should be the first priority for Rakhine State before large-scale investment. When a framework agreement was signed in November 2018, local civil society groups criticized it as an agreement made only between the central government and CITIC Group. They staged protests demanding local control of their own natural resources, arguing that local people should benefit more from the extraction of local natural resources.⁵¹ This sentiment of local people being left in the dark and excluded from the project's dividends has persisted, with the Rakhine-based Arakan National Party claiming in the run-up to the 2020 election that benefits yielded from the project only flow to the central government.⁵²

The information available and the situational context in Myanmar suggest the following observations:

- The Chinese government's frequent pushes to develop CMEC projects in Myanmar focus on their potential to create employment opportunities and foster economic development in the country. To ensure that this potential is realized, the Myanmar government should closely monitor all foreign investment projects, including the KP SEZ project and other CMEC projects, and confirm that they are implemented based on international good practices and standards to capture these intended benefits and maximize gains for local communities.
- Regarding the KP SEZ project, contracts and agreements made between CITIC Group and the Myanmar government have not been made accessible to the public, although the government informed the public that they had been signed.

⁵¹ Min Thein Aung, "Activists Stage Protest to Demand Right to Control Resources in Myanmar's Rakhine," Radio Free Asia, November 27, 2019 <https://www.rfa.org/english/news/myanmar/activists-stage-protest-to-demand-right-11272018165100.html>

⁵² John Liu and Kyaw Soe Htet, "China Projects to Hurt NLD Chances in Ethnic Areas," Myanmar Times, October 25, 2020 <https://www.mmmtimes.com/news/china-projects-hurt-nld-chances-ethnic-areas.html>

- Local people and civil society leaders feel that they lack sufficient information about the project and that they were not properly consulted about resettlement and compensation. They faced the consequences of environmental degradation and the destruction of natural resources from previous oil and gas pipeline projects. Therefore, they want the ruling government to allow them to exercise a greater degree of control over their natural resources for their own benefit.
- Although the ruling NLD government's economic policies did not give special favor to China and the government has in some cases seemed to diversify its investment sources, Myanmar has been facing international pressure regarding accusations of genocide against the Rohingya people since 2017, and China has shown unwavering support for Myanmar on the international stage as well as at the International Court of Justice (ICJ) trial that kicked off in 2019.⁵³ This dynamic may have changed the bargaining power of the Myanmar government in terms of investment and trade relations with China, while Western investment retreated or became less enthusiastic about Myanmar following the humanitarian crisis.⁵⁴ The ruling NLD government has tried its best to maintain a good relationship with China, but it is nonetheless wary of Chinese investment in Myanmar. It has also shown concern about Chinese debt traps since assuming power, leading it to scale down and plan to implement mega-projects in phases along with renegotiating to start small and expand the KP SEZ project based on demand.
- The general public also has concerns over Chinese investment in Myanmar stemming from China's affiliation with the military dictatorship in power prior to 2010, corrosive capital flows from Chinese companies, and the poor quality of past projects. Beyond this, cautionary tales of Chinese investments in other countries that have not gone according to plan, such as in Sri Lanka, have created a negative image in Myanmar, causing concern among citizens as well as political leaders about Chinese debt traps.

⁵³ Elena Pavlovskaya, "China Supports Myanmar Despite Rohingya Genocide Accusations," *New Europe*, January 20, 2020 <https://www.neweurope.eu/article/china-supports-myanmar-despite-rohingya-genocide-accusations/>

⁵⁴ United States Institute of Peace, "China's Role in Myanmar's Internal Conflict," *Senior Study Group Report 1*, September 2018 <https://www.usip.org/sites/default/files/2018-09/ssg-report-chinas-role-in-myanmars-internal-conflicts.pdf>

Therefore, based on these observations, the report concludes with the following recommendations:



- **To satisfy the needs of local communities first**

Many locals in Rakhine State are dissatisfied with the project and their perceived lack of control over local resources. CITIC Group and domestic project participants should consult well with local communities in assessing the environmental and social impacts of the project and find ways to negotiate with them to satisfy their needs. The subnational government as well as the central government must ensure that the CITIC-led consortium and all implementing partners make proper consultations and share all necessary information transparently. As Rakhine State is one of the poorest and most conflict-torn regions in the country, it is essential that this project not deepen the social and economic problems local people face there.



- **To stick to a slow and steady approach**

As the State Counselor said in her speech at the first meeting of the steering committee responsible for the implementation of China's proposed Belt and Road Initiative in Myanmar, the Myanmar government must scrutinize the Kyaukphyu project thoroughly to assess the short- and long-term benefits to the people and country. In addition, as chairperson of the KP SEZ management committee U Set Aung highlighted in his interview, the project should be implemented based on demand. Namely, the Myanmar government should stick to its own policy of pursuing slow and steady development no matter how much China pushes to speed up the project activities.



- **To promote good governance in public-private partnership**

Last but not least, it is important to promote good governance in the KP SEZ project. All project stakeholders should be able to participate actively. It is important to create a legal framework without harming and causing grievance to people. As mentioned in the Sandhi Governance Institute's first monitoring report, transparency is essential when investing in such a controversial project. All government officials and key actors are accountable to local communities and the general public for their actions and words. Currently, local people feel that their losses are much higher than their gains. It is necessary to design policies that can create more incentives and benefits for local residents and Rakhine State in general. Finally, it is necessary to predict the environmental and social impacts of investment and to mitigate the negative consequences as much as possible.



BRI Monitor is a collaborative effort by five civil society organizations in Southeast Asia and the Pacific: the Institute for Democracy and Economic Affairs (IDEAS) of Malaysia, Stratbase Albert Del Rosario Institute (ADRI) of the Philippines, Sandhi Governance Institute (SGI) of Myanmar, the Institute of National Affairs (INA) of Papua New Guinea and the Future Forum of Cambodia to promote transparency and accountability in major infrastructure projects funded through the Belt and Road Initiative (BRI) in the region.

These organizations have studied the regulatory environments governing these large infrastructure projects in respective countries, including public procurement, official development assistance, public private partnership (PPP), and more, to identify regulatory gaps. They have each researched a set of case studies to identify implementation gaps and governance gaps. Each case study assesses the level of transparency based on almost 40 data points, from basic project information to the tendering process to project completion. Last but not least, each organization maps out the structure of the projects in question in order to identify domestic and international entities involved in the project and to understand the degree of public financial exposure resulting from each project.

This website is intended to be a platform for the publication of our research outputs and as a knowledge repository. We also hope that the website can be used as a platform for knowledge sharing and a tool to advocate better governance of major infrastructure projects in the region.

BRI Monitor is supported by the Center for International Private Enterprise (CIPE).

BRI **MONITOR**  **R**