



Specific Instance Request to the National Contact Point of Canada under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

National Contact Point

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Respondent

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Subject

Non-compliance with the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct by Hatch Associates Ltd. in relation to the Kyauk Phyu Special Economic Zone Deep Sea Port Project in Myanmar

June 2, 2026

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List of Acronyms

AA	Arakan Army
ADB	Asian Development Bank
EIA	Environmental Impact Assessment
EAO	Ethnic Armed Organisation
ELAW	Environmental Law Alliance Worldwide
GHG	Greenhouse Gas
ICJ	International Commission of Jurists
IFC	International Finance Corporation
IHRP	International Human Rights Program at the University of Toronto Henry N.R. Jackman Faculty of Law

IIMM	UN Independent Investigative Mechanism for Myanmar
ILO	International Labour Organization
KPSEZ	Kyauk Phyu Special Economic Zone
KPSEZ DSP	Kyauk Phyu Special Economic Zone Deep Sea Port
MONREC	Ministry of Natural Resources and Environmental Conservation
MSR	Myanmar Survey Research
NCP	National Contact Point
NUG	National Unity Government
SEZ	Special Economic Zone
SAC	State Administration Council
SPPC	State Security and Peace Commission
ULA	United League of Arakan

1. Executive Summary

The International Human Rights Program at the University of Toronto Henry N.R. Jackman Faculty of Law, EarthRights International, the International Commission of Jurists, and a community member from Kyauk Phyu (together, the “Notifiers”) submit this specific instance request (“the Complaint”) to the National Contact Point (NCP) of Canada concerning the activities of the Canadian company Hatch Associates Ltd. (“the Respondent”) in Myanmar (Burma), in accordance with the 2011 and 2023 versions of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (the “Guidelines”). The Respondent is a multi-national enterprise, registered in Canada, that is conducting business operations in Myanmar, a non-OECD member country. The Complaint thus complies with s 3.2 (b) of the NCP admissibility criteria, which specifies that “a request for review can be made” where there is “a Canadian multinational enterprise operating overseas, even in a country that is not adherent to the Guidelines.”¹

This Complaint relates to the Respondent’s involvement in the Kyauk Phyu Special Economic Zone Deep Sea Port (KPSEZ DSP) Project, located in Myanmar’s Rakhine State, which the Notifiers allege violates the Guidelines. The KPSEZ DSP Project will include the construction of a deep sea port (comprising the Made Island and Yanbye Island Port Terminals) and a 15-kilometre road connecting the industrial park to the port.

CITIC Group Corporation Ltd. (“CITIC Group,” formerly China International Trust and Investment Corporation), is a Chinese state-owned conglomerate that is leading a consortium of companies to develop the KPSEZ DSP. In November 2019, CITIC Consortium Myanmar Port Investment Ltd. (“CITIC Consortium”) retained the Respondent to serve as project management consultant and technical advisor to the environmental impact assessment (EIA) and preliminary geological surveys for this project. In February 2022, CITIC Consortium hired a market research agency, Myanmar Survey Research (MSR), to carry out the EIA.

The KPSEZ DSP Project is located within an active conflict zone contested by the Myanmar junta, which is not recognized by the United Nations (UN) as the legitimate government of Myanmar, and the Arakan Army (AA), one of several ethnically-based groups engaged in armed conflict with the junta. The AA has seized control of 14 out of the 17 townships in Rakhine State since late 2023.² The conflict has caused a severe humanitarian crisis, including widespread displacement and extreme food shortages. Several villages in the areas designated for the Yanbye Island Port

¹ Government of Canada, *Canada’s National Contact Point – Specific Instance Procedures – 2022* (last modified June 6, 2024), available at: <https://www.international.gc.ca/transparency-transparence/national-contact-point-contact-national/procedures.aspx?lang=eng>.

² Lorcan Lovett, “China, India Watch as Arakan Army Advances on Key Western Frontier,” *Al Jazeera* (August 23, 2025), available at: <https://www.aljazeera.com/features/2025/8/23/china-india-watch-as-myanmar-rebels-advance-on-strategic-western-frontier>.

Terminal and the access road have been destroyed. The rule of law and administrative mechanisms in Kyauk Phyu have collapsed.

To date, the Respondent has overseen the completion of three composite Scoping Reports and Terms of Reference (ToR) for the EIA (Made Island Port Terminal, Yanbye Island Port Terminal, and the Access Road and Bridge), approved by the Myanmar junta's Ministry of Natural Resources and Environmental Conservation (MONREC) on November 30, 2023, and released publicly on January 9, 2024. For the purposes of this Complaint, all references (including page references) are made to the Made Island Port Terminal Scoping Report and ToR ("Scoping Report") unless noted otherwise.

Adverse impacts have already occurred during the initial preparations for the development of the KPSEZ Project and by inadequacies of the EIA process. Further adverse human rights and environmental impacts are likely to result if the EIA process proceeds in its current form. The Scoping Report and ToR indicate that the EIA is unlikely to adequately identify and assess the project's potential adverse impacts, or to set out plans to prevent, mitigate, or remediate them.

Moreover, the EIA cannot be conducted legitimately under the present circumstances. Consultation and data collection are impossible due to the conflict. In the absence of a legitimate EIA process, which entails, *inter alia*, informed and meaningful participation of affected communities, the KPSEZ DSP Project risks causing severe adverse human rights and environmental impacts.

Accordingly, the Notifiers allege the Respondent has breached the Guidelines in the following ways:

- 1) The Respondent is directly linked to and appears to be contributing to adverse impacts associated with the KPSEZ DSP Project (Chapters II, IV, VI of the Guidelines):
 - a) Adverse human rights and environmental impacts have been and will be caused by the project generally and by inadequacies of the EIA process specifically.
 - b) The Respondent, as project manager and technical advisor for the EIA process, is at minimum directly linked to these impacts. If the Respondent is overseeing the EIA process, it is likely contributing to them.
 - c) The Respondent is required to cease contributing to adverse impacts and to use whatever leverage it has to prevent and mitigate them. If the Respondent cannot either increase its leverage or use its existing leverage, it should responsibly disengage.

- 2) The Respondent has failed to carry out ongoing and enhanced due diligence regarding human rights risks of the KPSEZ DSP Project (Chapters II and IV of the Guidelines).
- 3) The Respondent has failed to consult with relevant stakeholders, including the National Unity Government (NUG), the United League of Arakan (ULA), and civil society stakeholders (Chapter II of the Guidelines); and
- 4) The Respondent has failed to disclose information about its role in the KPSEZ DSP Project as well as relevant information about its due diligence policy and processes, including any information on the due diligence it has conducted in relation to the KPSEZ DSP (Chapter III of the Guidelines).

Annexed to this Complaint are three unpublished reports that outline the extent of actual and potential adverse impacts of the project by: (1) Traverse Research and Scholar Institute; (2) [REDACTED]; and (3) [REDACTED].

The Notifiers request the NCP to undertake an expedited Initial Assessment to bring the Respondent to the negotiating table and facilitate an equitable resolution. An urgent response is needed in light of the worsening human rights situation in Myanmar, particularly in Kyauk Phyu, and the potentially serious and irreparable damage to the environment and local communities that are likely to result if the EIA process continues under the current conditions.

The scoping phase of the EIA should establish the key environmental and social issues that are investigated in the full EIA investigation. As such, risk identification at this initial stage is crucial. The KPSEZ DSP is one of the few projects in Myanmar that is backed by international investors and appears to be moving ahead despite being situated within an armed conflict zone. Moreover, previous projects in Myanmar that have failed to follow the Guidelines have resulted in grave human rights and environmental violations, including the Thilawa and Dawei Special Economic Zones and the Shwe Gas project. Even prior to the coup launched in February 2021, systematic failings had been identified in the implementation of EIAs in Myanmar.³ These past violations and EIA failings that occurred on similar projects prior to the almost total breakdown in the rule of law since 2021, underscore the need for a robust and comprehensive due diligence process and for the NCP's intervention and access to its good offices.

The Notifiers have alerted the Respondent, in a thorough and comprehensive manner, to the risks of human rights abuses and environmental harms associated with the

³ World Bank Group, *Myanmar Country Environmental Analysis: Environmental Impact Assessment (EIA) Systems Diagnostic* (2019), available at: <https://documents1.worldbank.org/curated/en/296791560179425744/pdf/Myanmar-Country-Environmental-Analysis-Environmental-Impact-Assessment-Systems-Diagnostic.pdf>.

KPSEZ DSP and EIA process, and have requested to meet to discuss the issue, without a substantive response.

The Notifiers believe that effective and timely action now by the NCP may help achieve an equitable solution to the issues raised, in addition to furthering the purposes of the Guidelines. This Complaint has been submitted at a critical time in the KPSEZ DSP Project as the EIA does not appear to have been completed. As a result, it is a fitting juncture to address the deficiencies in the EIA and prevent further adverse impacts on human rights and the environment.

If the good offices do not produce a mutually acceptable solution, the Notifiers request that the NCP:

- Facilitate the parties to reach an agreement on an independent fact-finding process of the issues raised; and
- Make recommendations to the Respondent to amend their actions to comply with the Guidelines and to prevent contributing further to human rights and environmental abuses.

To that end, the Notifiers believe the following steps are necessary to bring the Respondent's conduct in alignment with the Guidelines:

- The Respondent should conduct ongoing and enhanced human rights due diligence and publicly disclose the process and findings of its due diligence.
- The Respondent should engage with relevant stakeholders, including Myanmar civil society organizations, and, when the security situation allows, affected communities. The Respondent should implement open channels of communication to overcome the fear of reprisals.
- The Respondent should use its leverage with the Project Proponent and EIA Consultants to seek to suspend the EIA process and to address the inadequacies in the Scoping Reports and ToR. The EIA must not resume until conditions exist for meaningful participation of all affected communities in the EIA process and FPIC. The Respondent should use its leverage to ensure improvements in the EIA process if and when it can restart.
- If the Respondent does not have sufficient leverage over the Project Proponent and EIA Consultants and is unable to carry out the steps above, it should responsibly disengage from the project.

Should the Respondent refuse to participate in the NCP process, or does so in bad faith, the Notifiers request that the NCP:

- Inform relevant government departments, including those responsible for policies on sanctions, such as Export Development Canada; and

- Report publicly on the Respondent’s response to the outcomes of the process.

2. Background

2.1. Situation in Myanmar

The Notifiers’ allegations with respect to the Respondent’s breaches of the Guidelines must be understood within the context of the ongoing situation in Myanmar.

On February 1, 2021, the military junta launched a coup against the elected government of Myanmar, triggering mass protests and a violent crackdown by the military.⁴ Since then, the country has experienced a growing humanitarian crisis. Armed conflict involving the junta and a variety of armed groups, including pro-democracy forces, is widespread across the country, and civilians continue to be directly targeted by the junta.⁵ In 2025 alone, there were 2,602 air and drone strikes and approximately 14,000 conflict-related deaths.⁶ Approximately 5.2 million people have been displaced since the start of the coup attempt,⁷ while 16 million people require humanitarian assistance.⁸

The junta and its State Security and Peace Commission (formerly State Administration Council) remain largely unrecognised as the legitimate government of Myanmar, as described by the UN Special Rapporteur on the Situation in Myanmar.⁹ The junta has only gained full control of about 21 percent of the country’s territory as of December 2024, with many areas under the control of ethnic armed organizations (EAOs).¹⁰ Many EAOs are cooperating with Myanmar’s NUG, which was established by elected lawmakers shortly after the coup began and maintains a rival claim to be recognized as the legitimate government of Myanmar.¹¹

⁴ Council on Foreign Relations, *Civil War in Myanmar* (last updated January 29, 2026), available at: <https://www.cfr.org/global-conflict-tracker/conflict/rohingya-crisis-myanmar>.

⁵ *Ibid.*

⁶ Su Mon, “Ahead of Elections, Myanmar’s Military Capitalizes on Foreign Support to Divide the Resistance,” *ACLEDD* (December 11, 2025), available at: <https://acleddata.com/report/ahead-elections-myanmars-military-capitalizes-foreign-support-divide-resistance>.

⁷ OHCHR, *Situation of Human Rights in Myanmar*, UN Human Rights Council, UN Doc A/HRC/59/57 (June 16, 2025), available at: <https://docs.un.org/en/A/HRC/59/57>.

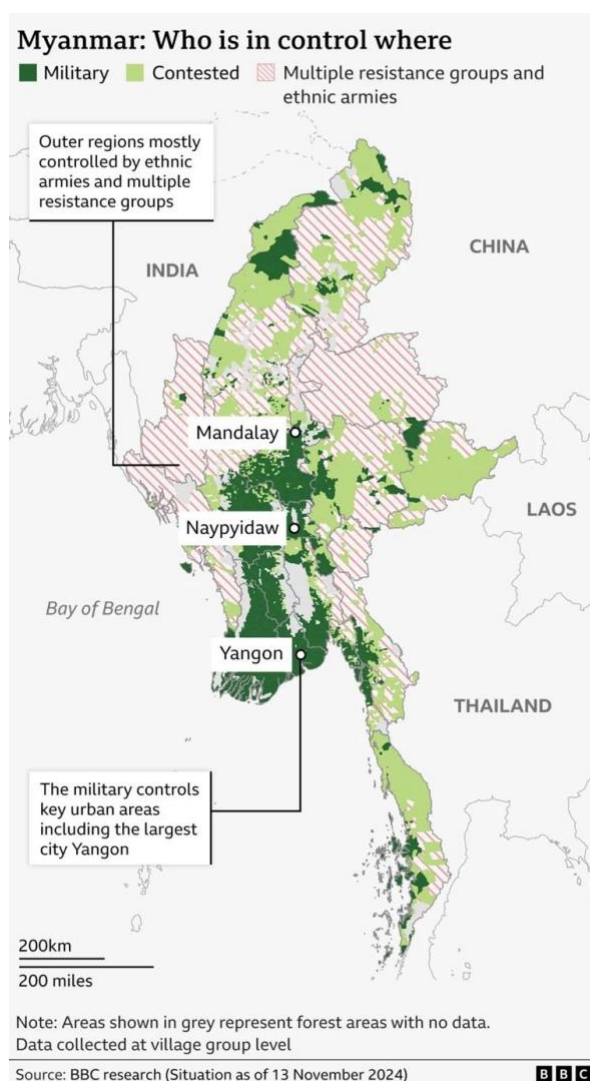
⁸ Vibhu Mishra, “‘Almost Invisible Crisis’: UN Urges World Not to Look Away from Myanmar,” *UN News* (December 14, 2025), available at: <https://news.un.org/en/story/2025/12/1166618>.

⁹ Vibhu Mishra, “Myanmar Vote a ‘Façade’ to Entrench Military Rule, Independent Rights Expert Says,” *UN News* (January 8, 2026), available at: <https://news.un.org/en/story/2026/01/1166729>.

¹⁰ Su Mon, “Between Cooperation and Competition: The Struggle of Resistance Groups in Myanmar,” *ACLEDD* (November 26, 2024), available at: <https://acleddata.com/report/between-cooperation-and-competition-struggle-resistance-groups-myanmar>.

¹¹ UN Special Rapporteur on the Situation of Human Rights in Myanmar, *Illegal and Illegitimate: Examining the Myanmar Military’s Claim as the Government of Myanmar and the International Response*, UN Human Rights Council, UN Doc A/HRC/52/CRP.1 (January 31, 2023), available at: <https://www.ohchr.org/sites/default/files/documents/countries/mm/2023-01-27/crp-sr-myanmar-2023-01-31.pdf>.

This graphic illustrates the contested areas of Myanmar as of November 13, 2024:¹²



To underscore the severity of the situation, the UN Human Rights Council established the Independent Investigative Mechanism for Myanmar (IIMM) to investigate the serious crimes committed in Myanmar.¹³ As outlined by the IIMM, members of the junta have committed crimes against humanity, war crimes, and other grave human rights abuses.¹⁴

¹² Rebecca Henschke, Ko Ko Aung, Jack Aung, and Data Journalism Team, “Soldier-Spies in Myanmar Help Pro-Democracy Rebels Make Crucial Gains,” *BBC News* (December 19, 2024), available at: <https://www.bbc.com/news/articles/c390ndrny17o>.

¹³ The UN’s Independent Investigative Mechanism for Myanmar (IIMM) collects evidence of war crimes and crimes against humanity, including in the cited 2024 Annual Report. For more details, see their annual reports (UN Independent Investigative Mechanism for Myanmar, “Annual Reports” (last accessed 24 March 2026), available at: <https://iimm.un.org/en/annual-reports>.)

¹⁴ IIMM, *Report of the Independent Investigative Mechanism for Myanmar*, UN Human Rights Council, UN Doc A/HRC/60/18 (July 14, 2025), available at: <https://iimm.un.org/sites/default/files/2025/08/IIMM%20Annual%20Report%202025%20EN.pdf>.

There is very limited rule of law in Myanmar, and international organizations have called on countries and other international actors to reject the junta's claims of legitimacy. The UN High Commissioner for Human Rights stated in 2023 that the junta has shown "consistent disregard for the related rules of international law."¹⁵ Furthermore, the UN Special Rapporteur on the Situation in Myanmar emphasized that the election held in December 2025 and January 2026 was "not a free, fair nor legitimate election."¹⁶

Canada has implemented strict sanctions against the junta. Key Canadian measures include an arms embargo, asset freezes on listed Myanmar individuals and entities, and specific prohibitions on the export of aviation fuel to Myanmar.¹⁷ Canada has also provided humanitarian assistance, including an allocation for earthquake relief.¹⁸

In 2025, the International Labour Organization (ILO) invoked its gravest sanction for only the third time in history to target the Myanmar junta. The measure "urges ILO governments, companies and unions worldwide to ensure that their actions do not enable the junta's continued repression," including "by reviewing investments, supply chains and cooperation that may indirectly support the regime, as well as supply of weapons, jet fuel and financial flow to the junta."¹⁹

Specifically, in Kyauk Phyu, the conflict is worsening. Since December 2022, the junta has blocked all entry and exit points to and from Kyauk Phyu Town.²⁰ On November 13, 2023, the AA launched a military offensive against the junta in Rakhine and southern Chin State.²¹ Since then, the AA has gained control of 14 of Rakhine State's 17 townships and expanded into neighbouring regions.²² Kyauk Phyu is one of three

¹⁵ OHCHR, *Two Years After Coup, Myanmar Faces Unimaginable Regression, Says UN Human Rights Chief* (January 27, 2023), available at: <https://www.ohchr.org/en/press-releases/2023/01/two-years-after-coup-myanmar-faces-unimaginable-regression-says-un-human>.

¹⁶ OHCHR, *UN Expert: First Round of Voting in Myanmar Exposes Junta-Orchestrated Election as Illegitimate* (January 8, 2026), available at: <https://www.ohchr.org/en/press-releases/2026/01/un-expert-first-round-voting-myanmar-exposes-junta-orchestrated-election>.

¹⁷ Government of Canada, *Canadian Sanctions Related to Myanmar* (last updated October 2, 2025), available at: https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/myanmar.aspx?lang=eng.

¹⁸ Government of Canada, *Canada Providing Assistance in Response to Earthquake's Devastation in Myanmar* (April 4, 2025), available at: <https://www.canada.ca/en/global-affairs/news/2025/04/canada-providing-assistance-in-response-to-earthquakes-devastation-in-myanmar.html>.

¹⁹ International Trade Union Confederation, *Myanmar: Historic Decision to Hold Junta Accountable a 'Victory for Justice, Workers' Rights and International Solidarity* (June 5, 2025), available at: <https://www.ituc-csi.org/Myanmar-Historic-decision-to-hold-junta-accountable>.

²⁰ Written correspondence between EarthRights and anonymous Notifier (March 8, 2026).

²¹ Khaing Lu Hla (Roma Mray), "Arakan Army (AA) Seizes 15 Townships During 2-Year War; Fighting Continues," *Narinjara* (November 13, 2025), available at: <https://www.narinjara.com/news/detail/69168a0b6121f188fb91047b>.

²² Lin Thit, "Myanmar Junta 'Firing Nonstop' as AA Tightens Noose on Rakhine Naval HQ," *The Irrawaddy* (January 22, 2026), available at: <https://www.irrawaddy.com/news/war-against-the-junta/myanmar-junta-firing-nonstop-as-aa-tightens-noose-on-rakhine-naval-hq.html>.

townships in Rakhine that remains under junta control.²³ The junta has also imposed a long-term internet blackout across Rakhine State.

In February 2025, the AA launched an offensive to capture the Kyauk Phyu District, with clashes starting near the Danyawaddy naval base.²⁴ In response, the junta increased military presence and enforced extra security measures against Kyauk Phyu residents.²⁵ In November 2025, intense conflict broke out between the junta and the AA again.²⁶ As of January 2026, an AA spokesperson noted that “fighting was escalating” in Kyauk Phyu “amid barrages from regime jets, drones and heavy artillery.”²⁷ It is also reported that there is fighting near Police Battalion 32, which is approximately 8 kilometres from Kyauk Phyu Town.²⁸ It is estimated that there are more than 35,000 people displaced by fighting in Kyauk Phyu.²⁹ Moreover, the junta is reported to be blocking the transport of goods and medicine in Kyauk Phyu, aggravating shortages of food and basic supplies both in Kyauk Phyu Town and in villages.³⁰

The ongoing conflict has forced residents of 76 villages within Kyauk Phyu Township to flee their homes. Fifty-seven villages have been destroyed as a result of air strikes, incendiary bombs, naval artillery shelling, and arson attacks, with more than 100 civilians killed.³¹ Among the destroyed villages are four located in the planned construction area for the Yanbye Island Port Terminal, and six along the planned route for the access road and bridge.³² On Made Island, all movement, including access to sea routes for fishing, has been prohibited.

²³ *Ibid.*

²⁴ “Junta Increases Security in Kyaukphyu Town as Fighting Nears,” *Burma News International* (June 14, 2025), available at: <https://www.bnionline.net/en/news/junta-increases-security-kyaukphyu-town-fighting-nears>.

²⁵ *Ibid.*

²⁶ Khaing Lu Hla (Roma Mray), “Junta Lobbies Claim Seizure of Thaing Chaung Village, Thaing Chaung Dam in Kyaukphyu Township,” *Narinjara* (November 11, 2025), available at: <https://www.narinjara.com/news/detail/69142c06f45e894f7cf48157>; Lin Thit, “30 Junta Soldiers Reported Dead in AA Ambush in Rakhine,” *The Irrawaddy* (November 17, 2025), available at: <https://www.irrawaddy.com/news/war-against-the-junta/30-junta-soldiers-reported-dead-in-aa-ambush-in-rakhine.html>.

²⁷ Lin Thit, “Myanmar Junta ‘Firing Nonstop’ as AA Tightens Noose on Rakhine Naval HQ,” *The Irrawaddy* (January 22, 2026), available at: <https://www.irrawaddy.com/news/war-against-the-junta/myanmar-junta-firing-nonstop-as-aa-tightens-noose-on-rakhine-naval-hq.html>.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Lin Thit, “30 Junta Soldiers Reported Dead in AA Ambush in Rakhine,” *The Irrawaddy* (November 17, 2025), available at: <https://www.irrawaddy.com/news/war-against-the-junta/30-junta-soldiers-reported-dead-in-aa-ambush-in-rakhine.html>.

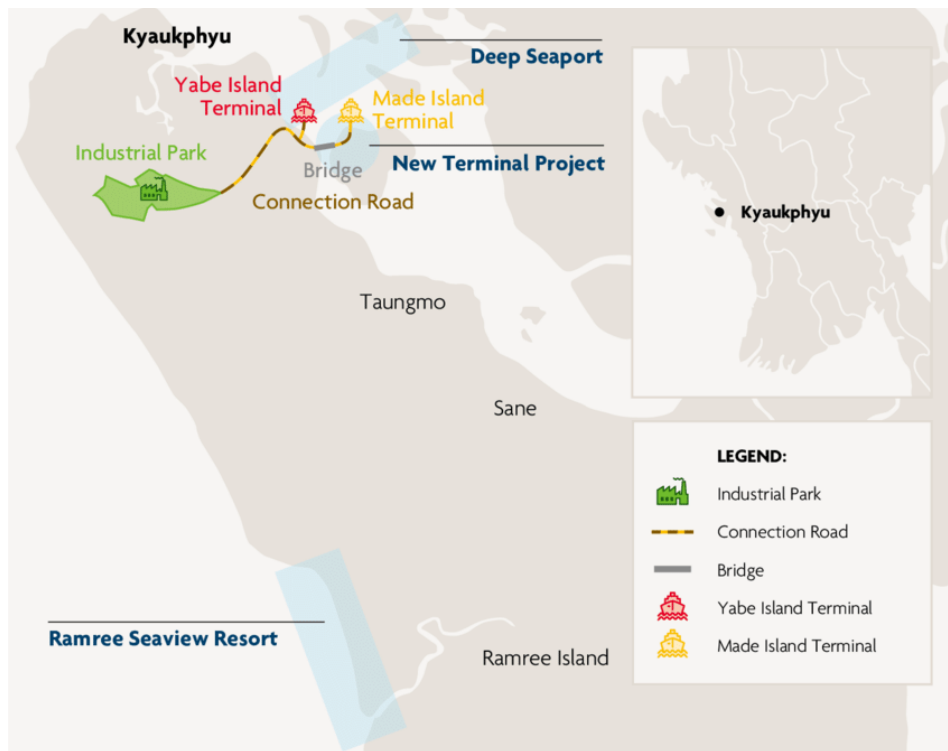
³¹ Written correspondence between EarthRights International and anonymous Notifier (March 8, 2026) See: Annexure “A”.

³² *Ibid.*

2.2. The Respondent's Involvement in the KPSEZ DSP Project

2.2.1. Project History

The KPSEZ DSP Project, which is part of the broader KPSEZ Project, is intended to include the construction of a deep sea port (comprising the Made Island and Yanbye Island Port Terminals) and a 15-kilometre road connecting the industrial zone to the port.



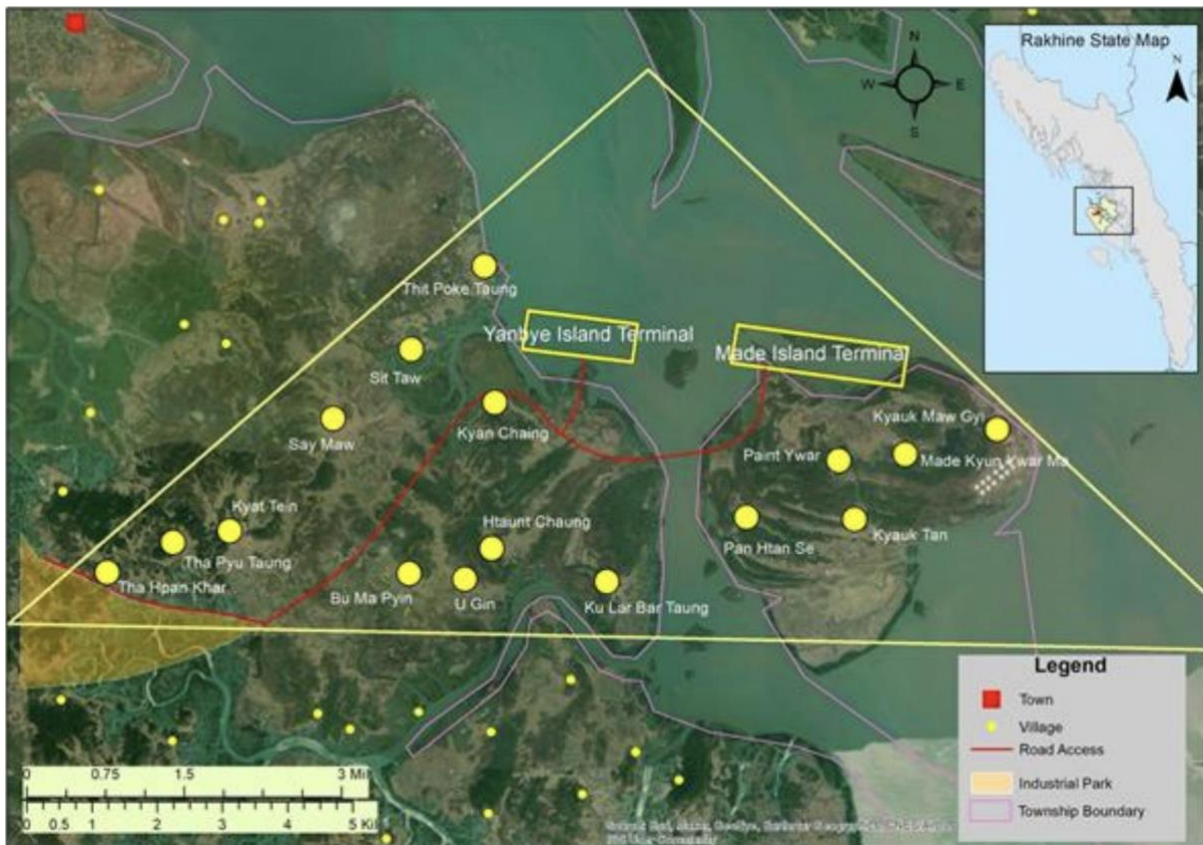
Map of the Kyauk Phyu Area³³

The KPSEZ DSP Project is located in Kyauk Phyu Township in Rakhine State. Kyauk Phyu Township has a total of 35 villages, with an estimated population of 173, 275 people.³⁴ According to the Scoping Report, five villages on Made Island and 11 on Yanbye Island are identified to be within the “Direct Impact Zone” of the project.³⁵

³³ Angela Tritto and Albert Park, *The Belt and Road Initiative in Myanmar* (December 2020) available at: https://www.researchgate.net/publication/348233766_The_Belt_and_Road_Initiative_in_Myanmar.

³⁴ Traverse Research and Scholar Institute, *Kyauk Phyu SEZ Rapid Land Tenure and Land Conflict Assessment* (September 2017), p. 4: “[t]he household survey focused on 14 (out of 35 total) villages in Kyauk Phyu Township that will be affected by the SEZ.” See: Annexure “B”.

³⁵ CITIC Consortium Myanmar Port Investment Limited (“CITIC Consortium”), *Scoping Report and Terms of Reference (TOR) for ESIA Report for Kyauk Phyu Special Economic Zone Deep Sea Port Project: Made Island Port Terminal* (October 4, 2023) p. 493, available at: <https://web.archive.org/web/20250327201015/https://www.citicmyanmar.com/uploadfile/2024/0109/20240109083001112.pdf> (“Scoping Report”).



Map of villages located in the Direct Impact Zone³⁶

On January 13, 2014, the Government of Myanmar established the Kyaukphyu Special Economic Zone Management Committee (“KPSEZ Management Committee”) to oversee the development of KPSEZ.³⁷ In 2015, Myanmar’s Parliament approved the development of KPSEZ and consortia led by CITIC Group won the bids to develop the deep sea port and industrial park.³⁸

In 2020, CITIC Consortium³⁹ and the KPSEZ Management Committee established a joint venture, Kyaukphyu Special Economic Zone Deep Seaport Co., Ltd. (the “Project Proponent”) for the “conceptualization, design, build, finance, operation, maintenance and transfer of Kyaukphyu Special Economic Zone Deep Sea Port.”⁴⁰

³⁶ *Ibid.*

³⁷ Myanma Port Authority, *Ports in Myanmar* (last accessed 23 March 2026), available at: <https://www.mpa.gov.mm/ports/kyaukphyu-deep-sea-port/>.

³⁸ *Ibid.* The consortium includes China Merchants Holdings, TEDA Investment Holdings, China Harbour Engineering Company Ltd., and Yunnan Construction Engineering Group.

³⁹ CITIC Consortium is a subsidiary of CITIC Myanmar (Hong Kong) Holding Limited, which is owned by CITIC Limited, a public company listed on the Hong Kong Stock Exchange and majority owned by the Chinese state-owned CITIC Group.

⁴⁰ MSR Research, *Kyaukphyu SEZ Deep Sea Port Project - ESIA Scoping - Public Consultation Meetings and Workshops* (August 25, 2022), available at: <https://www.msr->

2.2.2. The Role of the Respondent

CITIC Consortium was authorised to conduct the EIA on behalf of the Project Proponent, allowing the process to begin before the joint venture was formally established.⁴¹ On May 15, 2019, CITIC Consortium and the Respondent signed the Project Management Consultant agreement, retaining the Respondent in a supervisory role.⁴² On January 25, 2021, days before the attempted coup, CITIC Consortium launched an international public tender for the EIA. In May 2021, following the coup attempt, the KPSEZ Management Committee was reconstituted with the junta’s officials.⁴³

In October 2021, CITIC Consortium re-opened the EIA tendering process through “invited tendering,” inviting “34 qualified international and Myanmar ESIA consultancy companies” to apply, which resulted in three bids.⁴⁴ The Respondent and CITIC Consortium “jointly carried out the evaluation of the bidding documents” and selected Myanmar Survey Research (MSR) on February 10, 2022.⁴⁵



Flowchart showing KPSEZ DSP Project stakeholders

research.com/en/knowledge-events/kyaukphyu-sez-deep-sea-port-project-esia-scoping-public-consultation-meetings-and.

⁴¹ CITIC Consortium, *Scoping Report* (October 4, 2023), p. 125.

⁴² CITIC Group (Myanmar Company Limited) (“CITIC Myanmar”), “ESIA and Pre-GeoSurvey for Kyauk Phyu Deep Sea Port Officially Launched” (July 6, 2019), available at: <https://www.citicmyanmar.com/index.php?m=content&c=index&a=show&catid=299&id=172>: “CITIC Consortium has selected the world-reputed HATCH as the PMC through international tender to supervise the whole process of ESIA and Pre-Geo Survey ... HATCH will provide services like...supervising the construction of the project.”

⁴³ “Myanmar Junta Implementing China’s BRI Projects by Stealth,” *The Irrawaddy* (July 23, 2021), available at: <https://www.irrawaddy.com/opinion/analysis/myanmar-junta-implementing-chinas-bri-projects-by-stealth.html>.

⁴⁴ CITIC Myanmar, *ESIA Service Consultant for KPSEZ DSP Project Selected via International Tendering* (February 10, 2022), available at:

<https://www.citicmyanmar.com/index.php?m=content&c=index&a=show&catid=298&id=205>.

⁴⁵ *Ibid.*

The Respondent was involved in the preparation of the Project Proposal Report,⁴⁶ as well as reviewing the EIA Scoping Reports and ToR.⁴⁷ As of March 2025, the Respondent was reportedly still active with the KPSEZ, with sources noting that “the company’s personnel have continued to work on the development project as consultants, giving advice on contractor selection and project site management.”⁴⁸

Both CITIC Group and the Respondent claim to abide by high ethical standards. The project website states that “CITIC Consortium will adhere to the guideline of 3Ps, namely ‘People, Prosperity, Planet; to ensure the project will be socially responsible and environmentally friendly.”⁴⁹ It further states, “[i]n accordance with BRI [Belt and Road Initiative]’s principle of ‘extensive consultation, joint contribution and shared benefits,’ CITIC Consortium will work closely with its Myanmar counterpart during the whole life cycle of the project to improve Myanmar’s infrastructure, promote sustainable growth of local economy and create job opportunities and improve livelihood for local people.”⁵⁰

CITIC Limited, which owns CITIC Consortium, claims to “conduct business with integrity and to the highest ethical standards.”⁵¹ Likewise, the Respondent identifies that their corporate values include “achieving no harm,” “thinking globally, acting locally,” “living [their] commitments with integrity,” and “being unconditionally honest.”⁵²

The Respondent’s Code of Conduct also asserts that they “comply with all laws and respect the customs... of the countries” in which they work, building relationships based on “trust, honesty, integrity, and respect.”⁵³

2.2.3. Overview of the EIA Process

The EIA process has led to three Scoping Reports for: (1) the Made Island Port, (2) the Yanbye Island Port, and (3) the 15-kilometer access road and bridge.⁵⁴ The

⁴⁶ CITIC Consortium, *Scoping Report* (October 4, 2023), p. 225.

⁴⁷ [REDACTED], *A Study of the Livelihoods of Than Zit River Fisherfolk in Kyauk Phyu Township* (2023), p. 7 (“Livelihood Study”). See: Annexure “C”.

⁴⁸ “Despite Sanctions, Canadians Stay on as Consultants for Myanmar Development Project,” *Myanmar Now* (March 29, 2025), available at: <https://myanmar-now.org/en/news/despite-sanctions-canadians-stay-on-as-consultants-for-myanmar-development-project/>.

⁴⁹ CITIC Myanmar, *Exchange of Documents of Agreements on KPSEZ DSP Project Witnessed by Leaders of Myanmar and China* (January 18, 2020), available at: <https://web.archive.org/web/20230519193108/https://www.citicmyanmar.com/index.php?m=content&c=index&a=show&catid=41&id=182>.

⁵⁰ *Ibid.*

⁵¹ CITIC Limited, *2024 Environmental, Social, Governance (ESG) Report* (2025) p. 6, available at: <https://www.citic.com/uploadfile/2025/04/17/20250417613840.pdf>.

⁵² Hatch, *Ethics and Integrity*, available at: <https://www.hatch.com/About-Us/Ethics-And-Sustainability>.

⁵³ Hatch, *Our Code of Conduct* (2025), available at: [https://edge.sitecorecloud.io/hatchltd1-hatchcorpsi44ab-prod-552d/media/Hatch-](https://edge.sitecorecloud.io/hatchltd1-hatchcorpsi44ab-prod-552d/media/Hatch-Corporate/PDF/2024/20220161_CodeOfConduct_2025_EN.pdf)

[Corporate/PDF/2024/20220161_CodeOfConduct_2025_EN.pdf](https://edge.sitecorecloud.io/hatchltd1-hatchcorpsi44ab-prod-552d/media/Hatch-Corporate/PDF/2024/20220161_CodeOfConduct_2025_EN.pdf).

⁵⁴ CITIC Consortium, *Scoping Report* (October 4, 2023), p. 88.

Scoping Reports were submitted to MONREC on November 20, 2023, and approved ten days later on November 30, 2023.⁵⁵

The current status of the EIA remains unclear, and the latest update on the project website, dated January 9, 2024, announces the publication of the Scoping Reports. No further updates on the EIA or the status of the project have since been published.⁵⁶

Below is a timeline outlining the human rights and conflict situation in Myanmar and Kyauk Phyu, as well as key developments of the KPSEZ DSP Project.

Date	Activity
January 13, 2014	Myanmar government establishes the KPSEZ Management Committee
August – November 2015	Bid Evaluation and Awarding Committee forms and invites international tenders
December 29, 2015	Myanmar’s Parliament approves the development of the KPSEZ
December 30, 2015	Consortium led by CITIC Group wins bid as developer
April 4, 2019	KPSEZ Management Committee, Myanma Port Authority and CITIC Consortium sign concession agreement
May 15, 2019	CITIC Consortium and the Respondent sign Project Management Consultant agreement
January 25, 2021	CITIC Consortium launches tender for EIA process
February 1, 2021	Myanmar military launches coup
May 2021	KPSEZ Management Committee reconstituted with junta’s officials

⁵⁵ [REDACTED], *Livelihood Study* (2023) p. 7. MONREC’s capacity to review and approve EIAs is likely affected by staffing shortages, as many government workers have joined the Civil Disobedience Movement since the start of the coup, and by the diversion of financial resources toward the military, resulting in funding cuts to civilian ministries such as MONREC. Even before the coup attempt, MONREC faced significant challenges in implementing the *EIA Procedure* (2015). A report published by the World Bank Group identified key systemic issues that undermined the ability of MONREC to properly engage with ESIA and enforce environmental protections. See: World Bank Group, *Myanmar Country Environmental Analysis: Environmental Impact Assessment (EIA) Systems Diagnostic* (2019), available at:

<https://documents1.worldbank.org/curated/en/296791560179425744/pdf/Myanmar-Country-Environmental-Analysis-Environmental-Impact-Assessment-Systems-Diagnostic.pdf>.

⁵⁶ CITIC Myanmar, *Release of Approved Scoping Reports on Environmental and Social Impact Assessments of Kyauk Phyu Special Economic Zone Deep Sea Port Project* (January 9, 2024), available at:

<https://www.citicmyanmar.com/index.php?m=content&c=index&a=show&catid=299&id=219>.

October 2021	CITIC Consortium re-opens EIA tendering process
February 10, 2022	CITIC Consortium and the Respondent select MSR to conduct EIA
August 13, 2022	EIA process commences
December 2022	Junta blocks all entry and exit points to and from Kyauk Phyu
November 14, 2023	Widespread conflict in Rakhine begins as ceasefire between AA and junta breaks down
November 20, 2023	Scoping Reports submitted to junta-controlled MONREC for approval
November 30, 2023	MONREC approves the Scoping Reports
December 20, 2023	ICJ and EarthRights write to the Respondent outlining concerns about EIA process
January 9, 2024	The Project Proponent publishes EIA Scoping Reports
March 2024	The Respondent replies that it will carry out an “internal review of the risk” raised by the ICJ and EarthRights
March 2025	CITIC Group executives meet with the junta to discuss expediting development of KPSEZ

3. The Notifiers Have an Interest in the Matter

There are four notifiers in this Complaint:

The first notifier is a community member from Kyauk Phyu, whose name and contact details are withheld due to security concerns.

The International Human Rights Program (IHRP) at the University of Toronto Henry N.R. Jackman Faculty of Law serves as a centre for international human rights work, through which experienced lawyers, faculty, and law students engage in meaningful social change. The IHRP’s work aims to encourage the country’s adherence to its own international human rights commitments by ensuring accountability of its harms across the globe and those of third parties to which it is meant to regulate. The IHRP’s focus areas are corporate accountability, Indigenous rights, and climate justice. As such, the IHRP has a particular expertise in the issues and law concerning this Complaint, particularly regarding corporate accountability of Canadian companies for human rights abuses committed abroad.

EarthRights International (“EarthRights”) is a non-governmental, non-profit organization that specializes in fact-finding, legal actions against perpetrators of environmental and human rights abuses, training of grassroots and community leaders, and advocacy campaigns. Through these strategies, EarthRights seeks to promote and protect human rights and the environment in the communities where EarthRights works. EarthRights has been working in Myanmar since its founding in 1995, investigating human rights abuses related to the Yadana pipeline. EarthRights has supported communities affected by the KPSEZ since at least 2016, building on earlier work with communities impacted by the Shwe gas pipeline that comes ashore near Kyauk Phyu. The organization facilitated natural resource mapping for nine villages, published a Myanmar-language report, and provided training on land rights and engagement with the EIA process.

The International Commission of Jurists (ICJ) is a non-governmental organization comprising eminent judges, lawyers, and legal academics working to build a world based on human rights standards and the rule of law.

4. The Respondent is Covered by the Guidelines

The Respondent is Hatch Associates Ltd., a multinational enterprise with responsibilities under the Guidelines. The Respondent is a federally registered Canadian company headquartered in Ontario.⁵⁷ The Hatch Group of Companies is 100 percent employee owned.⁵⁸ The Respondent provides professional engineering, technology, and consulting services to the metals, energy, and infrastructure market sectors.⁵⁹

5. There is a Link Between the Respondent’s Activities and the Issues Raised in the Specific Instance

The Notifiers submit that there is a clear link between the Respondent’s activities and the alleged contraventions of the Guidelines. Under the OECD Due Diligence Guidance for Responsible Business Conduct (“OECD Due Diligence Guidance”), linkage is “defined by the relationship between the adverse impact and the enterprise’s products, services or operations through another entity (i.e. business relationship).”⁶⁰

On May 15, 2019, the Respondent was appointed by CITIC Consortium to serve as project management consultant and technical advisor, supervising the process of the

⁵⁷ Government of Canada, *Federal Corporation Information – Hatch Ltd*, available at: <https://ised-isde.canada.ca/cc/lgcy/fdrlCrpDtIs.html?corpId=12984547>.

⁵⁸ Hatch, *About the Company*, available at: <https://www.hatch.com/About-Us/About-the-Company>.

⁵⁹ Hatch, *What We Do*, available at: <https://www.hatch.com/Projects>.

⁶⁰ Organisation for Economic Co-operation and Development (OECD), *OECD Due Diligence Guidance for Responsible Business Conduct* (2018), p. 71, available at: https://www.oecd.org/en/publications/2018/02/oecd-due-diligence-guidance-for-responsible-business-conduct_c669bd57.html (“*OECD Due Diligence Guidance*”).

“ESIA and Pre-Geo Survey” for the KPSEZ DSP.⁶¹ According to the announcement on the project website, the Respondent is tasked with providing services including “project coordination and consultation, managing the solicitation and evaluation of bids, supervising the construction of the project, assisting CITIC Consortium and the project’s JV to manage ESIA consultants/contractors.”⁶²

The Respondent, together with CITIC Consortium, evaluated the bids for the EIA tender and selected MSR. MSR, together with Sustainable Solutions Global Pty Ltd (Australia), Peplow Warren Management (Brunei), and two independent consultant engineers (Republic of Korea) (together, the “EIA Consultants”), conducted the EIA scoping investigation and prepared the Scoping Reports and ToR.⁶³

Through its role as project management consultant and technical advisor to the Project Proponent (through CITIC Consortium), the Notifiers submit that the Respondent is, at the very least, directly linked to abuses that are a result of the project and the poor implementation of the EIA process. The Respondent’s direct links to adverse impacts suggests a failure to carry out enhanced and ongoing due diligence and necessitates using its leverage to prevent and mitigate adverse impacts from the project.⁶⁴ If the Respondent does not have sufficient leverage and cannot increase its leverage to do so, it should responsibly disengage.

Further, the Guidelines specify that “an enterprise ‘contributes to’ an adverse environmental impact if its activities, in combination with the activities of other entities cause the impact, or if the activities of the enterprise cause, facilitate or incentivise another entity to cause an adverse impact.”⁶⁵ If the Respondent is overseeing and approving the actions of the EIA Consultants, it is facilitating the adverse impacts caused, or likely to be caused, by the inadequacies of the EIA process, and therefore appears to be contributing to those impacts.

The Scoping Reports are critical for the overall EIA process as they establish the issues that will be investigated in the subsequent analysis. Failure to identify key risks at this stage is likely to lead to serious adverse impacts. Even prior to the coup, development projects in Myanmar consistently failed to respect procedural rights and led to land grabs and human rights and environmental harms. This risk has been amplified by armed conflict and weak rule of law in the country and the project area

⁶¹ CITIC Consortium, *Scoping Report* (October 4, 2023), p. 120.

⁶² CITIC Myanmar, *ESIA and Pre-GeoSurvey for Kyauk Phyu Deep Sea Port Officially Launched* (July 6, 2019), available at:

<https://web.archive.org/web/20250327172317/https://www.citicmyanmar.com/index.php?m=content&c=index&a=show&catid=41&id=173>.

⁶³ CITIC Consortium, *Scoping Report* (October 4, 2023), p. 120.

⁶⁴ OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (2023), available at: https://www.oecd.org/en/publications/2023/06/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_a0b49990.html (“*Guidelines*”). See Commentary on Chapter II: General Policies, para. 15: “enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts.”

⁶⁵ *Ibid*, Commentary on Chapter VI: Environment, para. 68.

specifically. Given that failures to follow the Guidelines can result in significant adverse effects on communities and the environment, it is critical that parties involved in the KPSEZ DSP exercise leverage where possible to mitigate these issues and ensure due diligence processes are robust and comprehensive.

The Notifiers contacted the Respondent numerous times to attempt to engage in a dialogue in relation to the KPSEZ DSP and the EIA and to inform the Respondent of the potential risks that should be reflected in its due diligence process. The Notifiers first alerted the Respondent on December 20, 2023, to the “severe risk of human rights abuses resulting, in part, from the potential failure by the Respondent to exercise adequate due diligence” and requested the Respondent to “leverage its influence in mitigating risks associated with the ESIA process.” On March 20, 2024, the Respondent briefly replied but did not commit to any meaningful review of the issues raised.

On September 17, 2025, EarthRights wrote to the Respondent to request an update, detailing the urgency of the situation and escalation of conflict. In the same email, EarthRights asked, in good faith, for a meeting with the Respondent. Emails from EarthRights to several employees of the Respondent were unable to be delivered. On October 15, 2025, EarthRights sent a further email to the contact persons for the Respondent listed in the Scoping Report. The Respondent did not respond to this email and effectively declined any good faith negotiations. Accordingly, the Notifiers have turned to the NCP to resolve this dispute.

6. The Issues Raised are Material and Substantiated

6.1.1. The Respondent is Directly Linked and Appears to be Contributing to Adverse Impacts of the KPSEZ DSP Project

This Complaint submits that the KPSEZ DSP Project has already resulted in adverse human rights impacts, specifically in relation to land grabbing in the project area, legitimizing the junta, and failures to uphold procedural rights, including access to information and public participation. It further submits that the KPSEZ DSP Project is likely to cause additional environmental and human rights impacts for two reasons: first, the Scoping Report and ToR do not adequately identify the potential environmental and human rights impacts of the project and how those impacts will be assessed during the investigation phase; and second, procedural rights (which have already been compromised) cannot be guaranteed under the current circumstances. The Notifiers submit that the Respondent is directly linked to these adverse impacts and may be contributing to them.

6.1.1.1. Actual Adverse Impacts of the KPSEZ DSP Project

I. Land Grabbing

Land grabbing, in contravention of Myanmar's international human rights obligations,⁶⁶ in the project area is a significant and ongoing issue. Eighty-seven per cent of all residents in Kyauk Phyu live in rural areas, with farming and fisheries being the primary means of livelihood for around 70 per cent of residents. Approximately half of Kyauk Phyu's rural population lacks land tenure rights under the *Farmland Law* (2012). Many use land that has not been registered but has nonetheless been used by their families for generations under informal or customary tenure arrangements. Insecure land tenure affects land under both individual and communal use.

Speculators are actively purchasing farmlands within the project area. Despite the intense conflict, land sales and land grabs have continued unabated. Farmers in Kyauk Phyu, many who lack formal land registration, risk losing their right to compensation as a result of this land grabbing. Research by the ICJ shows that administrative barriers have prevented farmers in Kyauk Phyu from registering their land under the *Farmland Law* (2012).⁶⁷

Furthermore, there is no viable mechanism to dispute land transactions. Prior to the conflict escalating in Kyauk Phyu, land disputes arising from development projects were typically resolved through both the junta's court and the ULA's court. However, the collapse of the rule of law and administrative mechanisms in Kyauk Phyu means that no land dispute has been resolved in over two years.

Development projects inflate land values and incentivize land speculation and elite capture. EIAs, by publicizing the project and the land that may be acquired, inevitably exacerbate this process, particularly in places such as Myanmar with weak rule of law and a history of unlawful land grabs associated with development projects. Assuming it has conducted the required enhanced human rights due diligence, the Respondent will have been aware of this and that by taking on the role of supervising the EIA process, it would be directly linked to these impacts.

II. Legitimizing the Junta

More than five years after the attempted coup on February 1, 2021, it is reported that the junta continues to commit widespread atrocities, including war crimes, crimes

⁶⁶ Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 26: Land and Economic, Social and Cultural Rights*, UN Doc E/C.12/GC/26 (December 22, 2022), available at: <https://docs.un.org/en/E/C.12/GC/26>.

⁶⁷ International Commission of Jurists (ICJ), *Special Economic Zones in Myanmar and the State Duty to Protect Human Rights* (February 2017) pp. 62-63, available at: <https://www.icj.org/wp-content/uploads/2017/02/Myanmar-SEZ-assessment-Publications-Reports-Thematic-reports-2017-ENG.pdf> ("*Special Economic Zones in Myanmar*").

against humanity, and other gross and systematic human rights abuses with impunity.⁶⁸

UN human rights experts have stated “Given the military regime’s illegal coup and involvement in probable crimes against humanity and war crimes, international businesses...have an obligation to conduct business responsibly and avoid engaging in activities that legitimize the junta or contribute to its human rights abuses, in accordance with the UN Guiding Principles on Business and Human Rights (UNGPs).”⁶⁹

By continuing as a project management consultant for the KPSEZ DSP and engaging with the junta-controlled KPSEZ Management Committee while failing to engage with the democratically elected representatives of the NUG, the Notifiers submit that the Respondent is effectively legitimizing the junta as the government of Myanmar. This action amounts to an endorsement of the junta’s claim to governmental authority and is inconsistent with the positions of the UN and Canada, neither of which recognizes the junta.

By treating the junta as a legitimate government, the Respondent is contributing to its struggle for international recognition, which is central to the junta’s longevity and its ability to continue committing atrocities. Further, legitimizing the junta fosters a climate of impunity, as it signals to the junta that it can continue its egregious conduct and that international companies will continue to do business with it.

III. Procedural Failures of the EIA Process

A significant body of international law establishes the rights of people affected by development projects to access timely and transparent information, participate in meaningful consultations, and be involved in decision-making related to project developments.

Effective participation means that those likely to be impacted by a decision have the right to be involved and influence that decision. Access to timely and relevant information and opportunities for meaningful consultations are essential for enabling people to participate as informed stakeholders in decision-making processes.⁷⁰

⁶⁸ IIMM, *Report of the Independent Investigative Mechanism for Myanmar*, UN Human Rights Council, UN Doc A/HRC/60/18 (July 14, 2025), available at:

<https://iimm.un.org/sites/default/files/2025/08/IIMM%20Annual%20Report%202025%20EN.pdf>.

⁶⁹ UN Special Rapporteur on the Situation of Human Rights in Myanmar and Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Joint Communication to Australia Regarding Canadian Foresight Group and Myanmar Offshore Gas Block M15*, Ref. AL AUS 5/2025 (26 June 2025), p. 5, available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=30088>.

⁷⁰ See for e.g., Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters [Aarhus Convention], 2161 UNTS 447; 38 ILM 517 (1999), (while Myanmar is not a party, the Aarhus Convention sets out international best practices for

For decisions affecting communities and their environment, the established international best practice requires a process of meaningful consultation, which includes: providing the public with timely access to relevant information (e.g., proposed plans, alternatives, impact assessments, proposed eviction and resettlement plans); and providing the public with an opportunity to present comments, objections, and propose alternatives. Opportunities for dialogue and consultation must be extended to all affected persons, including women and marginalized groups, through the adoption of special measures when necessary.⁷¹

These procedural rights are also mandated by Myanmar law as part of the EIA process. The *Environmental Impact Assessment Procedure (2015)* (“*EIA Procedure*”) requires Project Proponents to disclose timely project information to communities and civil society,⁷² ensure that affected parties have opportunities to express their views and concerns before an EIA starts, as well as during and after the process,⁷³ and conduct consultations that include “local communities, potential project affected persons, local authorities, community based organisations, and civil society.”⁷⁴

The EIA for the KPSEZ DSP is being conducted by the EIA Consultants and overseen by the Respondent, on behalf of the Project Proponent. The scoping phase of the EIA is complete, and the process is assumed to have moved into the investigation phase, although no information on its status has been published since the Scoping Reports were released in January 2024. Thus far, the public participation and information disclosure of the EIA process for the KPSEZ DSP have failed to comply with international standards and, by extension, Myanmar law.

A. Access to Information

Communities affected by the KPSEZ DSP have so far not had access to timely and relevant information about the project, its potential impacts, and the measures proposed to mitigate these effects. During public consultations conducted by MSR in 2022, community members reported that:⁷⁵

- MSR only provided basic information. MSR stated to the participants that it did not know the details of the project, such as the project design or who would take responsibility for impacts.

procedural obligations and public participation in environmental decision-making and calls for transparency and participation in decision-making).

⁷¹ UN Special Rapporteur on Adequate Housing, *Basic Principles and Guidelines on Development-Based Evictions and Displacement*, Annex 1 to UN Doc A/HRC/4/18 (February 5, 2007) para. 39, available at: https://www.ohchr.org/sites/default/files/Guidelines_en.pdf.

⁷² *Environmental Impact Assessment Procedure (2015)*, s 13 (“*EIA Procedure*”).

⁷³ Section 49(e) of the *EIA Procedure (2015)* requires that the Scoping Report “provide an opportunity for consultants, relevant authorities, project developers, and interested and affected parties to express their views and concerns regarding the proposal before an EIA proceeds.”

⁷⁴ *EIA Procedure (2015)*, s. 50(b).

⁷⁵ Written correspondence between EarthRights International and the Respondent (December 20, 2023).

- MSR did not provide information on which communities are at risk of involuntary resettlement.
- MSR did not set out how the project will ensure that livelihoods will be restored.⁷⁶

When community members and civil society organizations raised questions about compensation for loss of livelihoods and land confiscation during these consultations, MSR was unable to provide responses. Instead, MSR stated that it would address these concerns at an unspecified later time, but as of October 2023, it has still failed to do so.⁷⁷

The EIA process has also failed to ensure meaningful access to information. For example, in November 2022, at a consultation in Yangon, participants were shown a copy of the draft Scoping Report in English (neither a summary nor the ToR were provided in Myanmar language).⁷⁸ They had no opportunity to read the report and were not allowed to retain a copy.⁷⁹

B. Meaningful Consultation with Affected Communities

The EIA process for the KPSEZ DSP has lacked meaningful consultation with affected persons and communities. According to community leaders and members of civil society groups that EarthRights spoke with in 2023, MSR carried out consultations with communities in the rainy season of 2022, explaining the EIA process to communities and giving basic information about the project.

The consultation process has been further compromised due to limited civic space in the project area. Communities affected by the KPSEZ DSP are unable to effectively participate in the EIA process due to fear of reprisals. Many organizations report that civil society in Myanmar has lost its ability to operate independently and access resources since the junta's imposition of the *Organization Registration Law (2022)*. The law implements a strict regulatory framework that imposes “a mandatory, complex, and expensive registration process for both domestic and international NGOs.”⁸⁰ This significantly hinders the work of many civil society organizations. Community leaders and activists in Myanmar who are not in hiding are regularly detained.⁸¹

Community members affected by the KPSEZ DSP report feeling caught in a competition for power between the junta and the AA, making it impossible for them to

⁷⁶ *EIA Procedure (2015)*, s. 50(b).

⁷⁷ Written correspondence between EarthRights International and the Respondent (December 20, 2023).

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ International Centre for Not-for-Profit Law, *Myanmar (Burma)* (last updated 21 January 2026), available at: <https://www.icnl.org/resources/civic-freedom-monitor/myanmar>.

⁸¹ Written correspondence between EarthRights International and the Respondent (December 20, 2023).

share their concerns or meet openly.⁸² Since the escalation of conflict in Kyauk Phyu, community leaders who have been in contact with EarthRights report intensified surveillance by both the AA and the junta.

Additionally, communication and access to information are severely restricted, with most community members unable to access the internet or phone networks. Travel between Kyauk Phyu Township and other villages has been restricted since December 2022. Made Island is surrounded by the junta's navy and is occupied with the junta's forces, with all movement on and off the island prohibited. Under these circumstances, no civic space currently exists for individuals or communities to meaningfully engage with the EIA process.

The consultation process for the broader KPSEZ has also been inadequate. In several workshops and meetings convened by the ICJ on the KPSEZ, the overwhelming consensus of participants was that there has been no genuine consultation regarding the SEZ.⁸³ Likewise, a report by a Myanmar civil society organization highlighted that affected communities have not had adequate opportunities to voice their concerns in a meaningful way at each stage of project planning.⁸⁴

C. Participation of Affected Communities in Decision-Making

The Notifiers submit that persons affected by the KPSEZ DSP have not been afforded genuine opportunities to participate in decision-making regarding project plans or future livelihood and living arrangements. The limited access to information and lack of meaningful consultation also indicate that there have not been opportunities for affected communities to participate in decision-making.

There is no evidence of decisions or plans being altered in response to community inputs or proposals. Conversely, the Project Proponent appears to have disregarded community views. This is illustrated by the decision regarding the location of one of the port terminals on Made Island.

In October 2023, community leaders informed EarthRights that they had requested SEZ officials to relocate the terminal to another island to avoid impacts on crucial fishing grounds. Even though the EIA, which is intended to explore alternatives, is not yet complete, they were told that the decision to build the terminal on Made Island was already final.

The Scoping Report states that the KPSEZ Master Plan identified Made Island as the preferred location for the port terminal.⁸⁵ The site was chosen primarily because it is accessible and offers practical advantages for port development. However, the

⁸² *Ibid.*

⁸³ ICJ, *Special Economic Zones in Myanmar* (February 2017), p. 60.

⁸⁴ [REDACTED], *Community's Voices on the Kyauk Phyu Special Economic Zone* (January 5, 2022), p. 9 ("Community's Voices"). See: Annexure "D".

⁸⁵ CITIC Consortium, *Scoping Report* (October 4, 2023), p. 219.

Scoping Report acknowledges that locating the port terminal on Made Island will irreversibly transform the local ecosystem, which could cause environmental damage and lead to conflict within local communities.⁸⁶ It also notes that this will require the acquisition of multiple parcels of land on Made Island.⁸⁷ An alternative location on the western coast of Yanbye Island was considered.⁸⁸ While this location would have fewer environmental impacts, it was ruled out due to significantly higher construction costs and the risk of weather-related disruptions to port operations.⁸⁹

The decision to locate the port terminal on Made Island, despite the existence of alternatives, appears to have disregarded the views of affected communities. It also appears to contravene international standards regarding involuntary resettlement, which require Project Proponents to avoid and minimize involuntary resettlement, including through project design changes.

6.1.1.2. Potential Adverse Impacts Resulting from the KPSEZ DSP Project

I. Potential Human Rights Impacts

The KPSEZ DSP Project risks causing serious adverse human rights impacts, including, *inter alia*, violations of rights recognized in the International Covenant on Economic Social and Cultural Rights (ICESCR), the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP).

A. Right to an Adequate Standard of Living

The Notifiers submit that the development of the KPSEZ DSP will cause involuntary resettlement, with many households expected to lose farmland, threatening both their access to food and their livelihoods. Moreover, the project will cut off access to waterways, harming the livelihoods of fisherfolk, and will result in the loss of communal land, forest land, and mangroves that communities depend on. These impacts pose a serious obstacle to the realization of the right to an adequate standard of living.⁹⁰ This right includes multiple components including, among others, the right to adequate food, the right to water and sanitation, and the right to earn a decent living.⁹¹

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*, p. 220.

⁸⁹ *Ibid.*

⁹⁰ UN General Assembly, *Universal Declaration of Human Rights*, Resolution 217 A (III) (1948), art. 25; *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3; 6 ILM 368 (1966), art. 11 (ICESCR).

⁹¹ CESCR, *General Comment No. 12: The Right to Adequate Food*, UN Doc E/C.12/1999/5 (May 12, 1999) para. 26, available at: <https://docs.un.org/en/E/C.12/1999/5>; CESCR, *General Comment No. 15: The Right to Water*, UN Doc E/C.12/2002/11 (20 January 2003), available at: <https://digitallibrary.un.org/record/486454?ln=en>.

Any involuntary resettlement arising from the KPSEZ DSP will affect Indigenous groups, including the Rakhine, Chin, Kaman, and Maramagyi peoples.⁵⁷ The *EIA Procedure* requires that any project that involves involuntary resettlement or impacts on Indigenous Peoples must follow specific procedures issued by the responsible ministries, and that in the absence of such procedures, the projects should adhere to international standards, such as those international best practices accepted by international financial institutions including the World Bank Group and Asian Development Bank.⁹²

As Myanmar does not appear to have any specific procedures relating to involuntary resettlement of Indigenous Peoples, it follows that the resettlement process for KPSEZ DSP must comply with international good practices and standards, including the Guiding Principles on Resettlement of the UN Special Rapporteur on the Right to Adequate Housing, the International Finance Corporation (IFC)'s Performance Standards on Environmental and Social Sustainability, and the World Bank's Environmental and Social Framework.

These standards share the objectives of avoiding involuntary resettlement and minimizing its adverse impacts.⁹³ They provide, *inter alia*:

- Where livelihoods of displaced persons are land-based, or where land is collectively owned, suitable replacement land should be provided.⁹⁴
- Displaced persons must be provided with secure tenure for replacement land, regardless of whether they previously possessed or did not possess formal land tenure rights.⁹⁵
- The livelihoods of displaced persons should improve or at least be restored.⁹⁶
- Land acquisition should occur only after compensation, resettlement sites, and moving allowances (where applicable), have been made available to displaced persons.⁹⁷

⁹² *EIA Procedure* (2015), s 7.

⁹³ See for e.g., UN Special Rapporteur on Adequate Housing, *Guiding Principles on Resettlement*, Annex 1 to UN Doc A/HRC/61/43 (February 26, 2026), para. 2, available at: <https://www.ohchr.org/sites/default/files/documents/form/guiding-principles-resettlement-1-en.pdf> ("*Guiding Principles on Resettlement*").

⁹⁴ International Finance Corporation (IFC), *Performance Standard 5: Land Acquisition and Involuntary Resettlement* (January 1, 2012), para. 9, available at: <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-5-en.pdf> ("*Performance Standard 5*"). See also: UN Special Rapporteur on Adequate Housing, *Guiding Principles on Resettlement* (February 26, 2026), Chapter I, para. 7.

⁹⁵ IFC, *Performance Standard 5* (January 1, 2012), para. 22.

⁹⁶ *Ibid*, para. 9. See also: UN Special Rapporteur on Adequate Housing, *Guiding Principles on Resettlement* (February 26, 2026), Chapter III, para. 7.

⁹⁷ IFC, *Performance Standard 5* (January 1, 2012), para. 9. See also: UN Special Rapporteur on Adequate Housing, *Guiding Principles on Resettlement* (February 26, 2026), Chapter IV, para. 4.

- FPIC must be provided for projects that impact the lands, territories, resources, or rights of Indigenous Peoples.⁹⁸
- There must be ongoing disclosure of relevant information and the participation of affected communities and individuals throughout the process.⁹⁹

1. Impacts of Past Displacement on Livelihoods

The Notifiers submit that the land acquisition for the broader KPSEZ has so far been carried out in a manner inconsistent with international standards. In 2014, land was acquired for two reservoirs, affecting around 26 families.¹⁰⁰ Displaced families did not receive the replacement land they were promised.¹⁰¹ They reported feeling pressured to accept insufficient compensation and that their living standards deteriorated as a result.¹⁰²

Further, in 2016, the Ministry of Home Affairs initiated the acquisition of 250 acres for the Phase 1 area of the KPSEZ industrial park.¹⁰³ According to ICJ's research, the government survey team demarcating land for the acquisition classified villagers' grazing land and seasonally cultivated farmland as "unutilized," and local residents had no means to dispute these classifications.⁵⁹ This raises serious concerns that the land acquisition process will fail to accurately reflect local land use and ownership, resulting in unfair compensation.¹⁰⁴

2. Impacts of the Shwe Gas Project on Livelihoods

The Shwe Gas Project, which is located in the vicinity of the proposed KPSEZ DSP, destroyed similar livelihoods without compensation. EarthRights' research shows that the Shwe Gas Project "damaged coastal ecosystems, polluted fishing areas, and destroyed farmland. In Kyaukphyu Township, industrial waste has washed into farmlands during monsoon seasons."¹⁰⁵ EarthRights has documented numerous instances in which farmers and fisherfolk sustained significant economic losses due

⁹⁸ IFC, *Performance Standard 7: Indigenous Peoples* (January 1, 2012), para. 14, available at: <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-7-en.pdf> ("*Performance Standard 7*"). See also: UN Special Rapporteur on Adequate Housing, *Guiding Principles on Resettlement* (February 26, 2026) Chapter III, para. 11.

⁹⁹ IFC, *Performance Standard 5*, para. 10; see also, IFC, *Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts* (January 1, 2012) available at: <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-1-en.pdf> ("*Performance Standard 1*").

¹⁰⁰ ICJ, *Special Economic Zones in Myanmar* (February 2017), p. 55.

¹⁰¹ *Ibid*, p. 56.

¹⁰² *Ibid*, p. ix.

¹⁰³ *Ibid*, p. 57.

¹⁰⁴ *Ibid*, p. 62.

¹⁰⁵ EarthRights International, *Shwe Gas Project*, available at: <https://earthrights.org/what-we-do/extractive-industries/shwe-gas-project/>.

to damage to their farmland and fisheries yet received insufficient or no compensation.¹⁰⁶

Interviews conducted by a Myanmar civil society organization with local fisherfolk further highlight the adverse impacts caused by the operation of the Shwe Gas Project. Fisherfolk report that certain waterways leading to the oil terminal on Made Island have been designated as no-fishing zones, that large oil tankers leave no space for fishing boats, that fishing nets get stuck or are damaged by tankers, and that fisherfolk struggle to find space onshore to store their nets and equipment.¹⁰⁷

3. Potential Impacts of Future Displacement on Livelihoods

The land acquisition for the KPSEZ DSP will mostly affect farmers, causing them to lose their farmland, and leaving them without a livelihood.¹⁰⁸ In a focus group discussion conducted in July 2017 by Scholar Institute and Traverse, farmers expressed that “losing land is not just losing paddy plantation, but also losing every food sources (sic) they are counting on now.”¹⁰⁹

In addition, the KPSEZ DSP risks the loss of access to waterways and fishing grounds. It is reported that fishing “is the source of livelihood for 55% of the 1,207 households surveyed from the eight villages around Kyaukphyu’s deep seaport.”¹¹⁰ In some cases, the KPSEZ DSP will cut off access to waterways for fishing because the place where ships cross “has been designated as non-fishing areas.”¹¹¹ As such, fisherfolk have expressed that they “want to know how the project developers will be held accountable for their livelihoods.”¹¹²

As farmers and fisherfolk make up the majority of the population of Kyauk Phyu Township, the potential impacts will be widespread. Outside these sectors, residents have limited income generation, which is a problem that is unlikely to be addressed by jobs created through the KPSEZ as “there are no legal obligations on SEZ employers to hire local residents.”¹¹³

Affected communities are currently in a precarious position. While formal land acquisition has not yet commenced,¹¹⁴ large tracts of land within the project area are being purchased by speculators. At the same time, communities on Yanbye Island

¹⁰⁶ EarthRights International, *There Is No Benefit, They Destroyed Our Farmland* (June 6, 2013), available at: <https://earthrights.org/publication/there-is-no-benefit-they-destroyed-our-farmland-2/>.

¹⁰⁷ [REDACTED], *Community’s Voices* (January 5, 2022), p. 24.

¹⁰⁸ *Ibid*, p. 22.

¹⁰⁹ Scholar Institute and Traverse, *Kyauk Phyu SEZ Rapid Land Tenure and Land Conflict Assessment* (September 2017), p. 6.

¹¹⁰ *Ibid*, p. 17.

¹¹¹ Written correspondence between EarthRights International and the Respondent (December 20, 2023), p. 18.

¹¹² [REDACTED], *Livelihood Study* (2023), p. 20.

¹¹³ ICJ, *Special Economic Zones in Myanmar* (February 2017), p. x.

¹¹⁴ As of October 2023, a land survey was being planned. It is highly unlikely that any land survey would have taken place due to the escalation of conflict in Kyauk Phyu.

that are affected by the project have been displaced by conflict between the junta and the AA and are now residing in internally displaced persons camps.

In light of the adverse impacts caused by the land acquisition for the broader KPSEZ as well as previous projects such as the Shwe Gas Project, and the current conditions in Kyauk Phyu, the Notifiers submit that the land acquisition for the KPSEZ DSP will likely result in unlawful forced evictions and a deterioration of living conditions for affected communities.

a. Inadequate Compensation

The land acquisition process for the KPSEZ DSP could result in unfair and insufficient compensation where displacement occurs. Replacement land should be provided when the livelihoods of displaced persons are land-based, or where land is communally owned, both of which apply in the KPSEZ DSP. However, as of 2023, replacement land has neither been offered to nor discussed with affected communities, to the Notifiers' knowledge.¹¹⁵ Virtually all land in Kyauk Phyu is already owned, making resettlement elsewhere impractical. Community members are therefore seeking alternative livelihoods at least equivalent to their current ones. Community members, however, have broadly considered the compensation proposed to date as insufficient. In particular, business losses and loss of income do not appear to have been taken into account, as required under international standards.¹¹⁶ When communities raised concerns with MSR, it stated it was not responsible for assessing reparation, including restitution and compensation.¹¹⁷

b. Lack of Recognition of Customary Rights

A survey conducted in the villages of Kyauk Phyu Township in 2017 noted "households use a variety of customary and formal land to sustain their livelihoods and nutrition base."¹¹⁸ Moreover, the survey found "the majority of land reported as used for livelihoods in the SEZ area is undocumented by Form 7 Land Use Certificates."⁶⁵

Under international law and standards, displaced persons must be supported to restore their livelihoods regardless of whether they hold formal tenure.⁶⁶ Myanmar's National Land Use Policy also recognises the customary land use tenure system.⁶⁷ Despite this, at a meeting with the then KPSEZ Management Committee and CITIC Consortium in January 2016, authorities reportedly told local leaders that compensation for land would only be paid to those with land titles – a "Form 7" Land Use Certificate.¹¹⁹

¹¹⁵ Written correspondence between EarthRights International and the Respondent (December 20, 2023).

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ Traverse Research and Scholar Institute, *Kyauk Phyu SEZ Rapid Land Tenure and Land Conflict Assessment* (September 2017), p.

¹¹⁹ ICJ, *Special Economic Zones in Myanmar* (February 2017) p. 62.

c. *Lack of Procedural Protections*

Whilst the EIA and the land acquisition have not been completed, the Notifiers submit that procedural protections against forced eviction, mandated by UNDRIP and ICESCR, have not been followed and are at high risk of being disregarded.¹²⁰

Land acquisition must be implemented with appropriate disclosure of information, consultation, and the informed participation of those affected. These procedural rights are particularly critical during the planning and implementation of development projects and serve to avoid human rights abuses.

Communities have reported a lack of information regarding which households would be affected by the land acquisition, and an absence of meaningful consultation throughout the process.¹²¹

4. Failure of EIA to Assess Impacts of Displacement

The Scoping Report states that “[t]he Government of Myanmar will manage land acquisition and resettlement for the Project in accordance with applicable legislation and standards.”¹²² The Scoping Report further states that “[c]ustomary lands of ethnic groups that fall under current forest or farmland or vacant, fallow, and virgin land classifications will be reviewed, registered, and protected as ‘customary land.’ Leaders of ethnic groups with knowledge of customary land use practices will be consulted, and ethnic leaders, elders, and women will be involved in decision-making processes related to land tenure rights.”¹²³

Although the land acquisition process will be carried out by the KPSEZ Management Committee, the *EIA Procedure* requires that the EIA assess and propose mitigation measures for all adverse impacts related to the project, including those caused by land acquisition.¹²⁴ Furthermore, the *EIA Procedure* provides that the Project Proponent must ensure that project affected persons “have achieved socio-economic stability at a level not lower than that in effect prior to the commencement of the Project, and shall support programs for livelihood restoration and resettlement in consultation with the PAPs [Project Affected Persons], related government agencies, and organizations and other concerned persons for all Adverse Impacts.”¹²⁵

As such, it is essential that the EIA assess the impacts of the land acquisition for KPSEZ DSP. This requires identifying affected persons; documenting land use and

¹²⁰ Article 10 of the UNDRIP requires that relocation shall take place only with the FPIC of the Indigenous peoples concerned, and after an agreement on just and fair compensation, and where possible, with the option of return; see also: ICESCR, UNGA, (1966) Res 2200A (XXI), art. 11; CESCR, *General Comment No. 7*, UN Doc E/C.12/1997/4 (May 20, 1997) and CESCR, *General Comment No. 26*, UN Doc E/C.12/GC/26 (December 22, 2022)..

¹²¹ *Ibid.*

¹²² CITIC Consortium, *Scoping Report* (October 4, 2023), p. 351.

¹²³ *Ibid.*

¹²⁴ *EIA Procedure* (2015), s. 2(g).

¹²⁵ *EIA Procedure* (2015), s. 95.

tenure arrangements, including customary lands; assessing livelihood impacts; and proposing measures to prevent, mitigate, and compensate for those impacts. The Scoping Report, however, fails to provide even basic information on the land acquisition, including projections of the number of people subject to involuntary resettlement. The ToR likewise does not mandate data collection on land use and tenure, nor does it indicate whether the EIA will assess displacement impacts or outline measures for compensation, resettlement, or livelihood restoration. These omissions represent a major gap in the EIA,¹²⁶ and effectively signal that the EIA does not intend to assess the adverse impacts from land acquisition on affected communities.

Moreover, adequately assessing the project's impacts necessitates collecting data on existing livelihoods, land use, and socio-economic conditions, as well as conducting meaningful consultation with potentially affected communities. Neither is possible in the current circumstances in Kyauk Phyu. MSR also faces an additional constraint: operating inside the country, it cannot openly criticize the junta or the AA and is therefore unable to safely raise communities' human rights concerns. Accordingly, the Notifiers submit that if the EIA proceeds in the current context, it will be fundamentally inadequate, and adverse impacts affecting local communities will result.

B. Right of Indigenous Peoples to Free, Prior, and Informed Consent

UNDRIP provides for the duty to engage in consultation with the objective of obtaining free, prior and informed consent (FPIC) to be undertaken prior to the development of projects that affect Indigenous Peoples' rights to land, territory and resources.¹²⁷ IFC Performance Standard 7 recognises the principle of FPIC alongside the engagement of Indigenous communities in a culturally appropriate manner.¹²⁸ It provides that projects must facilitate FPIC with affected communities of Indigenous Peoples where *inter alia* there are potentially adverse impacts on lands and natural resources subject to traditional ownership or under customary use.¹²⁹

The KPSEZ DSP will affect land and natural resources traditionally owned by, or under the customary use of, Indigenous Peoples, including the Rakhine, Chin, Kaman, and Maramagyi peoples, as well as their livelihoods and economic well-being. Accordingly, the development of the KPSEZ DSP requires the FPIC of these Indigenous communities. Additionally, in line with IFC Performance Standard 7, the Notifiers submit that the Project Proponent must take additional measures including documenting efforts to minimize the land and natural resources affected by the project; identifying all property interests and traditional resource uses prior to acquiring land; assessing community resource use in a gender-inclusive manner without prejudicing

¹²⁶ *EIA Procedure* (2015), s 102(b).

¹²⁷ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, UN Doc A/RES/61/295 (September 13, 2007), art. 10, available at: <https://docs.un.org/en/A/RES/61/295>.

¹²⁸ IFC, *Performance Standard 7* (2012), p. 1.

¹²⁹ *Ibid*, para. 15.

any land claims; ensuring affected Indigenous communities are informed of their land rights under national law, including customary use rights; and offering affected communities compensation, due process, and culturally appropriate development opportunities.¹³⁰

While the Scoping Report identifies potential impacts on land and natural resources under customary ownership and identifies Indigenous Peoples are potentially affected by the project, it does not mention or discuss whether it will seek the FPIC of impacted Indigenous communities. Moreover, the Scoping Report does not detail specific measures to be utilized to ensure Indigenous Peoples' participation in the EIA investigation stage.

As mentioned above, meaningful consultation is currently not possible given the situation of armed conflict and human rights situation in Kyauk Phyu. In these circumstances, FPIC, which requires even more concerted efforts to engage with affected communities, cannot be guaranteed.

C. Access to Justice

The right to access to justice, including for purposes of effective remedies and reparation, is recognized in a number of international human rights law instruments. Principle 10 of the Rio Declaration on Environment and Development declares “[e]ffective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”¹³¹

Communities and individuals who experience unlawful violations related to the KPSEZ DSP Project will have no legal recourse or ability to appeal adverse decisions. Currently, there is no authority willing or able to enforce Myanmar law or Myanmar's international obligations. Following the coup attempt, the Myanmar legal system has been co-opted by the junta.¹³²

It is unclear which entity would take responsibility for adverse impacts from the project. MSR has stated that it is not its responsibility to assess arrangements for access to effective remedies and reparations, and that this is an issue for the Project Proponent.¹³³ While the Scoping Report proposes a grievance redress mechanism, it has provided no details on how such a mechanism will operate besides vague notions of having a drop box or office location for suggestions.¹³⁴ Moreover, to the Notifiers'

¹³⁰ IFC, *Performance Standard 7* (2012), p. 4.

¹³¹ *Rio Declaration on Environment and Development*, UN Doc. A/CONF.151/26 (vol. I); 31 ILM 874 (1992), principle 10. See also: *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* [Aarhus Convention], 2161 UNTS 447; 38 ILM 517 (1999); CESCR, *General Comment No. 24: State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, UN Doc E/C.12/GC/24 (August 10, 2017), paras 38–57, available at: <https://docs.un.org/en/E/C.12/GC/24>.

¹³² International Bar Association, *Rule of Law: Myanmar's Junta Uses Legislation to Quash Civil Society* (April 25, 2026), available at: <https://www.ibanet.org/myanmar-junta-civil-society>.

¹³³ *Ibid.*

¹³⁴ CITIC Consortium, *Scoping Report* (October 4, 2023), pp. 110, 118.

knowledge, the Respondent does not have an independent complaint mechanism to address rights violations.

II. Potential Environmental Impacts

Dr. Bree Yadnock and Dr. Johnnie Chamberlain of Environmental Law Alliance Worldwide (ELAW) reviewed the Scoping Report and found that the requirements in the ToR would not result in an EIA that would be sufficient to assess and mitigate the potential environmental and climate adverse impacts of the project.¹³⁵

A. Marine Impacts

The Notifiers submit that there are six key areas in which the Scoping Report insufficiently details marine impacts from the project. Marine impacts refer to adverse effects on ocean ecosystems, water quality, and marine life.

Marine Impacts		
	Expected Standards	Deficiencies in the Scoping Report
1	The IFC's General Environmental, Health, and Safety Guidelines ("EHS Guidelines") state "the potential effect of groundwater or surface water abstraction for project activities should be properly assessed through a combination of field testing and modeling techniques, accounting for seasonal variability and projected changes in demand in the project area." ¹³⁶	<u>A detailed water use assessment is needed to evaluate the project's impacts on existing water resources.</u> There is no breakdown or analysis justifying the calculation of water usage for the various uses (port operation, firefighting, drilling platform, etc.). ¹³⁷ Moreover, while four potential freshwater reservoirs (Doe Tan Dam, Pya De Dam, Thaing Chaung Dam, and the CNOPC reservoir) are identified, there is no information on their capacity or the

¹³⁵ See: CESCR, *General Comment No. 27: Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development*, UN Doc E/C.12/GC/27 (November 6, 2025), para. 28, available at: <https://docs.un.org/en/E/C.12/GC/27> ("General Comment No. 27"). CESCR states: "Furthermore, States Parties have a core obligation to safeguard the environmental conditions necessary for realizing essential levels of Covenant rights in the short, medium and long term, including protecting sources of water for domestic use, reducing pollutants and preserving critical ecosystems such as forests and wetlands. As a matter of priority, States Parties must make every effort, using all available resources, to prevent – and where prevention is not possible, to mitigate – environmental harm that threatens the realization of essential levels of Covenant rights. Where harm occurs, States Parties must ensure access to effective remedies and reparations.:"

¹³⁶ IFC, *Environmental, Health, and Safety Guidelines* (2007), p. 77, available at: <https://www.ifc.org/content/dam/ifc/doc/2000/2007-general-ehs-guidelines-en.pdf> ("EHS Guidelines").

¹³⁷ CITIC Consortium, *Scoping Report* (October 4, 2023), p. 465.

		potential impact of water extraction on existing resources. A requirement for these details should be included in the ToR.
2	<p>Samples should be taken from areas where dredging, sediment transport, and deposition would occur. The IFC’s Environmental, Health, and Safety Guidelines for Ports, Harbors and Terminals (“EHS Guidelines for Ports, Harbors and Terminals”) state “the number, distribution, frequency, and depth of sampling stations should be representative of the area to be dredged, the amount of material to be dredged, and the variability in horizontal and vertical distribution of potential contaminants.”¹³⁸</p>	<p><u>The sediment sampling plan is not sufficient for assessing the baseline conditions of sediment in the project area and wider area of influence.</u></p> <p>Only three marine samples are proposed to be collected for an area of 150 hectares. Furthermore, Figure ToR 4 shows the three sediment sampling sites are located in the area where the land will be reclaimed to build the port terminal, meaning this area would be permanently buried under the dumped sediment. To assess the potential for contaminants to be released and resuspended from the dredged sediment, the sampling should be conducted in the areas where dredging and sediment transportation and deposition would occur.</p>
3	<p>The IFC’s EHS Guidelines for Ports, Harbors and Terminals recommend that details be provided on:</p> <ul style="list-style-type: none"> - the quantity of dredged material for the shipping berths; - the amount and frequency of maintenance dredging needed throughout the operational life of the berth; - the disposal sites of the dredged material; and 	<p><u>A detailed dredging plan is needed and should be based on accurate bathymetry.</u></p> <p>The ToR lacks specifications for a dredging plan, and while currently unclear, the required amount of dredging is likely to be significant based on the information in the Scoping Report. The ToR should therefore specify the requirements of a dredging plan, as outlined in the EHS Guidelines for Ports, Harbors and Terminals. These specifications should include the quantity of</p>

¹³⁸ IFC, *Environmental, Health, and Safety Guidelines for Ports, Harbors, and Terminals* (2017), p. 7, available at: <https://www.ifc.org/en/insights-reports/2017/publications-policy-ehs-portsharborsterminals> (“EHS Guidelines or Ports, Harbors, and Terminals”).

	<p>- models of sediment dispersion post-disposal.¹³⁹</p>	<p>dredged material to be removed for the shipping berths, as well as the amount and frequency of maintenance dredging required throughout the project's operational life. Additionally, Figure 4-33 on page 252 shows modelled bathymetry for the project area that does not correspond to the navigation chart.¹⁴⁰</p>
4	<p>The Inter-American Development Bank's Good Practices for the Collection of Biodiversity Baseline Data states, "it is good practice for baseline surveys to be structured in such a way as to help understand regular large changes in detectability and abundance of biodiversity values that may occur in the baseline study area over time (e.g., wet and dry seasons at tropical sites; some combination of spring/summer/autumn/winter at temperate sites)."¹⁴¹ This is because "the detectability and abundance of biodiversity values may vary temporally, including time of day, time of month (e.g., in relation to phase of moon), time of year (e.g., local or large scale movements or migration), seasonally, annually, and over periods of multiple years."¹⁴²</p>	<p><u>The ToR does not require sufficient surveys necessary for a biological baseline assessment.</u></p> <p>Table ToR 12 states only one sampling period (post-monsoon) would be used to survey molluscs and gastropods, seagrasses, corals, and mangroves.¹⁴³ Additionally, fish surveys described on page 492 of the Scoping Report rely on collections from fishers while they are fishing in the survey area and at markets and landing sites. This approach excludes an assessment of non-fishery fish species and does not follow internationally accepted guidelines for biological baseline assessments, which (among other things) includes field surveys that assess variation in biodiversity values over time and methods (e.g. a power analysis) to determine whether the sampling effort is sufficient.</p>
5	<p>Chapter V. 49.(d) of the <i>EIA Procedure</i> states that "the Scoping Report of the proposed Project shall</p>	<p><u>The ToR is lacking detailed information and requirements for the</u></p>

¹³⁹ *Ibid*, pp. 6-9.

¹⁴⁰ The 22.8 m navigation channel is not present, nor do the depths correspond to the nautical chart shown in Figure 4-32: CITIC Consortium, *Scoping Report* (October 4, 2023), p. 252.

¹⁴¹ Inter-American Development Bank, *Good Practices for the Collection of Biodiversity Baseline Data* (2015), p. 35, available at: <https://publications.iadb.org/en/good-practices-collection-biodiversity-baseline-data>.

¹⁴² *Ibid*.

¹⁴³ CITIC Consortium, *Scoping Report* (October 4, 2023), p. 492.

	<p>...provide an indication of the depth and breadth of the subsequent EIA investigations including what baseline data and information are required, what further studies and investigations must be carried out, and how such data collection, studies and investigations shall be undertaken.”¹⁴⁴</p>	<p><u>scientific modelling that must be included in the EIA.</u></p> <p>The Scoping Report states on page 95 that “scientific modelling (i.e., air pollutants dispersion, sediment transport, underwater acoustic, and wave modelling) will also be included in the scope of physical environment studies. The detailed scope and methodologies are comprehensively described in the Terms of Reference section of this scoping report.” However, the ToR does not provide any details or requirements on the scope or modelling methods that must be completed for the production of the EIA. As a result, it is not clear that the resulting EIA will include suitable modelling that would be necessary for evaluating potential changes the project could have on the environment, such as changes to the water currents, sedimentation, erosion, and shoreline configuration.</p>
6	<p>The IFC’s EHS Guidelines state that “noise impacts should not exceed the levels presented in Table 1.7.1, or result in a maximum increase in background levels of 3 dB at the nearest receptor location off-site.”¹⁴⁵ This establishes the need to have data on the ambient noise level at the proposed project site in order to assess how much an activity might exceed baseline levels.</p>	<p><u>An underwater noise study is needed to evaluate the noise impacts from dredging, pile driving, and port construction would have on marine fauna.</u></p> <p>There is no mention of assessing baseline underwater ambient noise conditions and there is no requirement in the ToR for the completion of an underwater noise study to assess the impacts of noise-generating activities on marine fauna in the area. This is a significant failure of the ToR given the well-documented impacts to marine</p>

¹⁴⁴ EIA Procedure (2015), s 49.

¹⁴⁵ IFC, EHS Guidelines (2007), p. 52.

		mammals, fish, and turtles from noise generated by dredging and pile driving and the availability of internationally accepted guidance for noise modelling.
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B. Climate Impacts

The *EIA Procedure* imposes a duty on Project Proponents of “identification and assessment of the potential impacts of a proposed project on climate change such as greenhouse gas emissions and loss of carbon sinks or stocks.”¹⁴⁶ Project Proponents must determine the “impacts of climate change on the Project based on available climate change predictions from designated national authorities or international scientific research bodies.”¹⁴⁷ The Scoping Report, including the ToR, does not provide the required information on how the project’s greenhouse gas (GHG) emissions will be quantified and how the impact of those emissions on climate change will be assessed.

Climate Impacts		
	Expected Standards	Deficiencies in the Scoping Report
1	The International Association for Impact Assessment’s Climate Change in Impact Assessment states, “the IA [Impact Assessment] should estimate the composition, magnitude, and intensity of GHG emissions for each relevant element and phase of the proposal. This should be estimated by using a life-cycle approach and should include any effects of the proposal on carbon sinks. The estimate of the proposal’s net emissions requires careful examination of estimated emissions with and without the proposal.” ¹⁴⁸	Section 5.4.8 of the Scoping Report titled “Climate Change Impact”, broadly describes climate change and major sources of GHGs, but contains no information on how the project’s GHG emissions will be quantified or how its climate impacts will be assessed. Likewise, the ToR contains no information on how the project’s climate impacts should be assessed. The ToR should specify that all GHG emissions from project construction and operations should be estimated and their impact on climate should be assessed in a meaningful way.

¹⁴⁶ *EIA Procedure* (2015), s 63.

¹⁴⁷ *EIA Procedure* (2015), s 63.

¹⁴⁸ International Association for Impact Assessment, *Climate Change in Impact Assessment* (2018), p. 2, available at: <https://iaia.org/wp-content/uploads/2025/02/BEST-PRACTICE-Climate-Change.pdf>.

2	<p>Mitigation measures in the climate impact assessment should be detailed and substantive. The International Association for Impact Assessment’s Climate Change in Impact Assessment states, “alternative measures should be identified to avoid or reduce GHG emissions directly or indirectly, for example, by explicitly identifying and evaluating different technologies or designs to reduce GHG emissions for all elements and phases of the proposal.”¹⁴⁹</p>	<p>Section 5.4.2.1 of the Scoping Report offers minimal mitigation measures for GHG emissions during construction. Section 5.4.3.1 which addresses operations, also provides minimal mitigation measures. It fails to include potent measures for reducing GHG emissions and protecting local air quality, such as the electrification of onshore equipment and shore power connections for ships.</p> <p>In section 5.4.3.2.5, the mitigation measures for ocean acidification are worded vaguely. The wording does not clearly indicate whether the identified measures, for example, adopting cleaner fuels, improving energy efficiency in shipping vessels, and implementing carbon capture and storage technologies, will be required at this port. Crucially, these specific measures are largely absent from section 5.4.3.1, which outlines GHG-related mitigation measures for project operations.</p>

C. Cumulative Impacts

The IFC’s Good Practice Handbook on Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets states that “[m]ultiple and successive environmental and social impacts from existing developments, combined with the potential incremental impacts resulting from proposed and/or anticipated future developments, may result in significant cumulative impacts that would not be expected in the case of a stand-alone development.”¹⁵⁰

¹⁴⁹ *Ibid.*

¹⁵⁰ IFC, *Good Practice Handbook: Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets* (2013), p. 19, available at: <https://www.ifc.org/content/dam/ifc/doc/mgrt/ifc-goodpracticehandbook-cumulativeimpactassessment.pdf> (“*Good Practice Handbook: Cumulative Impact Assessment*”).

According to the IFC's Performance Standard 1, enterprises are expected to ensure that their own assessment determines the degree to which each project under review is contributing to the cumulative effects.¹⁵¹ Similarly, the *EIA Procedure* specifies that the EIA report must include a cumulative impacts assessment.¹⁵²

While the ToR does recognize the need for a cumulative impacts assessment, in order for the assessment to reflect the cumulative impacts of the project, it should include other infrastructure projects that need to be connected to the port terminal to make it functional. Because the port project is likely to lead to significant successive projects (such as the nine China-Myanmar Economic Corridor projects), the ToR should require the cumulative impact assessment to include those connected projects. Doing so would ensure consistency with internationally accepted good practices such as those prescribed by the IFC,¹⁵³ and the World Bank Group.¹⁵⁴

Additionally, given the size and cumulative nature of the existing and planned investments in the Kyauk Phyu area, a Strategic Environmental Assessment, as contemplated by Chapter IX of the *EIA Procedure*, should have been conducted to situate the KPSEZ development in the wider economic, social and environmental context, before conducting the EIA.

6.1.2. Contribution to Adverse Impacts of the KPSEZ DSP Project

The Guidelines specify that enterprises should avoid causing or contributing to adverse impacts, including human rights and environmental impacts, and to address such impacts where they occur.¹⁵⁵ The Commentary to the Guidelines provides that “‘contributing to’ an adverse impact should be interpreted as a substantial contribution, meaning an activity that causes, facilitates or incentivises another entity to cause an adverse impact and does not include minor or trivial contributions.”¹⁵⁶

The Notifiers submit that through its role overseeing the EIA process, the Respondent is contributing to environmental and human rights impacts that have resulted and may result from the KPSEZ DSP Project.

As project management consultant, the Respondent is overseeing the EIA process, including managing the EIA Consultants who are responsible for producing the assessment, and reviewing the Scoping Reports and ToR. In this capacity, the Respondent has some leverage over the EIA process and its outputs.

¹⁵¹ IFC, *Performance Standard 1* (2012), para. 8.

¹⁵² *EIA Procedure* (2015), s. 63. See also: CESCR, *General Comment No. 27*, UN Doc E/C.12/GC/27 (November 6, 2025), para. 14.

¹⁵³ IFC, *Good Practice Handbook: Cumulative Impact Assessment* (2013).

¹⁵⁴ World Bank Group, *Introduction to Cumulative Impact Assessment and Management* (August 2021) available at: <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099151108092421912>.

¹⁵⁵ OECD, *Guidelines* (2023), Chapter II. General Policies, para. A12; Chapter IV. Human Rights, para 2.

¹⁵⁶ *Ibid*, pp. 17-18.

It is not clear from the information disclosed about the Respondent's role what level of decision-making authority it has over the EIA. That being said, the announcement of the Respondent's appointment indicates that CITIC Consortium is relying on the Respondent's expertise in EIAs to ensure that the process complies with Myanmar law and international standards.¹⁵⁷ Insofar as the Respondent has ensured "the preparation of the project meets the requirement of laws of Myanmar and international practice" and is supervising "the whole process of ESIA," it follows that the Respondent should be considered as facilitating to a non-trivial degree the adverse impacts which have already resulted and are likely to result from the project and the EIA process.¹⁵⁸

Where the Respondent appears to be contributing to adverse impacts, the Guidelines provide that it must cease its contribution as well as exercise its leverage to prevent and mitigate remaining impacts to the greatest extent possible.¹⁵⁹ The Commentary to the Guidelines notes that leverage is considered to exist where the enterprise can effect change in the wrongful practices of the entity that causes the harm.¹⁶⁰ The Commentary further notes that "[e]nterprises can use or increase leverage in a number of ways to influence entities with which it has business relationships, for example, through support, training and capacity building; engagement to urge them to prevent and/or mitigate impacts; building expectations around responsible business conduct and due diligence specifically into commercial contracts."¹⁶¹

In this case, the Respondent must take steps to rectify the deficiencies of the Scoping Reports and ToR.¹⁶² In particular, the Respondent must ensure that the EIA comprehensively evaluates the project's potential impacts and proposes mitigation and remediation measures, including where possible, avoiding impacts through project design changes. The Scoping Reports and the ToR, in their current form, suggest that the EIA will not assess the adverse impacts related to land acquisition, asserting that the Government of Myanmar will deal with the land acquisition and all associated impacts. Moreover, the EIA appears to have failed to adequately consider project design changes and the inputs of affected communities, including for example, with respect to relocating the port terminal to avoid impacts on fishing grounds. The Scoping Reports and ToR also fail to establish adequate parameters and methodologies for the EIA with respect to marine, climate, and cumulative impacts. Consequently, if the EIA were to proceed under the current conditions of conflict and absence of rule of law, and based on the ToR outlined in the Scoping Reports, the

¹⁵⁷ CITIC Myanmar, *Pre-GeoSurvey for Kyauk Phyu Deep Sea Port Officially Launched* (July 10, 2019), available at:

<https://www.citicmyanmar.com/index.php?m=content&c=index&a=show&catid=41&id=173>. The announcement states: "To deliver better start-up works and make sure the preparation of the project meets the requirement of laws of Myanmar and international practice, CITIC Consortium has selected the world-reputed HATCH as the PMC through international tender to supervise the whole process of ESIA and Pre-Geo Survey."

¹⁵⁸ OECD, *Guidelines* (2023), Commentary on Chapter II: General Policies, para. 16.

¹⁵⁹ *Ibid*, Commentary on Chapter II: General Policies, para. 22.

¹⁶⁰ *Ibid*.

¹⁶¹ *Ibid*, para. 23.

¹⁶² *EIA Procedure* (2015), s 7.

Notifiers submit that the KPSEZ DSP Project will inevitably cause further human rights and environmental harms.

The Respondent must urge the Project Proponent and the EIA Consultants to comply with Myanmar and international law and standards. This includes conducting the EIA process in accordance with applicable procedural protections;¹⁶³ providing affected persons fair reparation, including compensation that accounts for business losses and income, and the offer of replacement land;¹⁶⁴ and implementing a comprehensive Livelihood Restoration Plan.¹⁶⁵ The Plan must ensure that those who lose farmland, access to fisheries, or other communal natural resources are able to achieve socio-economic stability at least equivalent to their current situation.¹⁶⁶ This requires meaningful consultation with affected communities, transparency, and adherence to the principle of FPIC. The Respondent must exercise its leverage over the Project Proponent to suspend the EIA process until sufficient civic space exists for affected communities to meaningfully participate.

The Respondent should also be required to conduct its own assessments of whether the EIA process is compliant with Myanmar law and international law and standards. Considering the near wholesale collapse of the rule of law and judicial independence in the country, as well as the absence of a safe channel for communities to effectively challenge any shortcomings in the EIA process, the Respondent cannot only rely on assurances from the Project Proponent, the EIA Consultants or the junta regarding the assessment of facts and law. Instead, the Respondent must conduct its own assessments, respecting principles of participation and consultation, to determine whether the EIA process contributes to the violations of laws and standards.

If the Respondent cannot either use its existing leverage or increase its leverage, it should responsibly disengage from the project.¹⁶⁷ Responsible disengagement requires carrying out due diligence on the potential adverse impacts of disengagement, conducting meaningful consultation with relevant stakeholders, and taking reasonable and appropriate measures to prevent or mitigate adverse impacts related to the disengagement.¹⁶⁸

The OECD Due Diligence Guidance provides that an enterprise's relationship to adverse impacts is not static, noting that "[i]t may change, for example as situations evolve and depending upon the degree to which due diligence and steps taken to address identified risks and impacts decrease the risk of the impacts occurring' adding that "contribution can occur through a business relationship."¹⁶⁹ If the Respondent continues to endorse the EIA process without addressing the concerns raised in this

¹⁶³ IFC, *Performance Standard 5* (2012), para. 10; IFC, *Performance Standard 7* (2012).

¹⁶⁴ IFC, *Performance Standard 5* (2012), para. 9.

¹⁶⁵ *EIA Procedure* (2015), s. 95.

¹⁶⁶ *EIA Procedure* (2015), s. 95.

¹⁶⁷ OECD, *Guidelines* (2023), Commentary on Chapter II: General Policies, para. 25.

¹⁶⁸ *Ibid.*

¹⁶⁹ OECD, *OECD Due Diligence Guidance* (2018), p. 71.

Complaint, its responsibility for adverse impacts related to the KPSEZ DSP Project will increase.

6.1.3. Direct Links to Adverse Impacts of the KPSEZ DSP Project

According to the Guidelines, enterprises should “seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products, or services by a business relationship.”¹⁷⁰ The Commentary adds that meeting the requirement to prevent or mitigate adverse human rights impacts that are directly linked to their business operations “would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact.”¹⁷¹

As noted above, the Respondent is directly linked to the adverse impacts of the KPSEZ DSP Project through its business relationships with CITIC Consortium (which has been authorized by the Project Proponent to undertake the EIA) and the EIA Consultants. The Respondent therefore has a responsibility to conduct ongoing due diligence on adverse impacts arising from its own activities, as well as those directly linked to its operations, products, or services through those business relationships, and to exercise its leverage to prevent or mitigate such impacts.¹⁷²

To align its conduct with the Guidelines, the Respondent must take action to ensure that the EIA process and the KPSEZ DSP adheres to Myanmar law, Myanmar’s international obligations, and international standards. In particular, the Respondent must use its leverage to ensure that the EIA process is suspended until meaningful community consultation and participation is possible. It must also ensure the EIA adequately assesses impacts, considers alternatives to avoid them, and proposes appropriate mitigation and remediation measures.

6.2. The Respondent Has Failed to Conduct Adequate Due Diligence

According to the Guidelines, enterprises should carry out risk-based due diligence to identify, prevent, and mitigate actual and potential adverse impacts associated with their operations.¹⁷³ Due diligence should not only cover adverse impacts that the business enterprise may cause or contribute to through its own activities, but it should also cover impacts which may be directly linked to the business enterprise’s operations, products, or services by its business relationships.¹⁷⁴

As submitted previously by the Notifiers, the Respondent is directly linked to and may be contributing to material and substantial adverse impacts that have and will be

¹⁷⁰ OECD, *Guidelines* (2023), Chapter II. General Policies, para. A13.

¹⁷¹ *Ibid*, Commentary on Chapter II: General Policies, para. 23.

¹⁷² *Ibid*, Chapter II. General Policies, para. A13.

¹⁷³ *Ibid*, Chapter II. General Policies, para. A11.

¹⁷⁴ *Ibid*, Chapter II. General Policies, para. A13.

caused by the KPSEZ DSP Project, generally, and by inadequacies of the EIA process, in particular. This suggests that the Respondent has failed to conduct appropriate risk-based due diligence to identify, prevent, and mitigate adverse human rights and environmental impacts arising from the KPSEZ DSP.¹⁷⁵

6.2.1. Conflict-affected Areas Require Enhanced Due Diligence

The Notifiers submit that the Respondent's direct links and apparent contribution to adverse impacts arising from the KPSEZ DSP indicates that it has not met the enhanced due diligence obligations required for business activities in conflict-affected areas.¹⁷⁶

As noted above, Myanmar is experiencing protracted armed conflict and it has been widely documented that the junta is committing systematic human rights abuses that include war crimes, crimes against humanity and, according to the IIMM and the Canadian government, genocide against the Rohingya beginning in 2017.¹⁷⁷ Operating in conflict-affected areas demands that enhanced due diligence is carried out in line with the Guidelines.

In a recent NCP initial assessment relating to the operations of an enterprise in Myanmar, the NCP noted that its good offices “[take] note of the following excerpt from the commercial advisory issued by the Government of Canada on doing business with Myanmar-related entities:

The Government of Canada recommends that persons engaging in activities involving Myanmar conduct robust due diligence, including by consulting private legal counsel if appropriate, to ensure their activities comply with Canadian legislation and regulations. The government also advises companies to increase their awareness of the implications of the coup in Myanmar and the potential reputational risks associated with doing business with any affiliate of the Tatmadaw.”¹⁷⁸

Moreover, the Government of Canada previously emphasized in September 2021 “that Canadian companies active in Myanmar may face heightened commercial and

¹⁷⁵ *Ibid*, Chapter II. General Policies, para. A11.

¹⁷⁶ *Ibid*, *Commentary on Chapter IV: Human Rights*, para. 45. See also: OECD, *Guidelines* (2023), Chapter I: Concepts and Principles, para. 10 and Commentary to Chapter II. General Policies, para. 15.

¹⁷⁷ House of Commons, *Journals No. 322*, 42nd Parliament, 1st Session (20 September 2018), available at: <https://www.ourcommons.ca/documentviewer/en/42-1/house/sitting-322/journals>; “Myanmar Military Leaders Must Face Genocide Charges — UN Report,” *UN News* (August 27, 2018), available at: <https://news.un.org/en/story/2018/08/1017802>. Myanmar is presently before the International Court of Justice on accusations of genocide in a case brought by the Gambia.

¹⁷⁸ Government of Canada, *Initial Assessment: EarthRights International & a Myanmar-based CSO and MTI Energy Inc.* (last modified September 26, 2025), available at: <https://www.international.gc.ca/trade-commerce/ncp-pcn/2025-09-25-earthrights.aspx?lang=eng> (“*Initial Assessment: EarthRights International*”).

reputational risks and should take appropriate action to mitigate risks, particularly in cases that might have ties to *Tatmadaw* [junta] owned or connected entities.”¹⁷⁹

Several NCPs have acknowledged the dire situation in Myanmar and emphasized the need for enterprises to act with enhanced due diligence. The NCP in Denmark asserted in a public statement in February 2026 that an enterprise “did not sufficiently react to contextual developments when operating in an area of armed conflict such as Myanmar,” and found that the enterprise in question “did not observe the expectations in the Guidelines to carry out human rights due diligence as appropriate to the severity of the risks of adverse human rights impacts in Myanmar.”¹⁸⁰

The NCP in Norway noted that “the escalation of the conflict in Myanmar constitutes a context where the risks of adverse impacts on human rights were severe. Enhanced due diligence in such contexts calls for identifying the risk of complicity with human rights violations and due diligence with respect to the risk of doing business with... entities linked to the [junta]. It calls for stakeholder engagement where the most vulnerable and severely impacted groups are given particular attention and prioritized for engagement.”¹⁸¹

Prior to entering an agreement with CITIC Consortium to serve as project management consultant for the KPSEZ DSP, the Notifiers submit that the Respondent should have carried out enhanced due diligence. This would have included, at the very minimum, identifying and assessing the adverse human rights impacts that could result from the project, to devise measures that could realistically prevent or mitigate the risks that harms materialize, and to address those harms when they occur.

The OECD Due Diligence Guidance highlights that effective due diligence is an ongoing, dynamic, and iterative process.¹⁸² Ongoing due diligence would require the Respondent to assess risks while the armed conflict situation progresses. There is no evidence, in the Notifiers’ view, that the Respondent has exercised due diligence on an ongoing basis following serious events, such as the junta’s illegal coup in February 2021 and the escalation of conflict in Rakhine in November 2023.

The EIA does not appear to take into account the conflict marked by widespread atrocities in Myanmar or that the project is located in an area with two *de facto*

¹⁷⁹ *Ibid.*

¹⁸⁰ NCP Denmark, *Final Statement: Complaint Submitted by Justice for Myanmar Against Nordic Aviation Capital* (2026), available at: https://ncp-danmark.dk/sites/default/files/2026-02/Final-statement-on-Nordic-Aviation-Capital-a_WA.pdf; Justice for Myanmar, *Danish National Contact Point Finds Aircraft Leasing Company Nordic Aviation Capital Failed to Meet OECD Human Rights Expectations in its Business in Myanmar* (February 13, 2026), available at: <https://www.justiceformyanmar.org/press-releases/danish-national-contact-point-finds-aircraft-leasing-company-nordic-aviation-capital-failed-to-meet-oecd-human-rights-expectations-in-its-business-in-myanmar>.

¹⁸¹ Norway NCP, *Final Statement: Committee Seeking Justice for Alethankyaw vs. Telenor ASA* (2022), available at: https://files.nettsteder.regjeringen.no/wpuploads01/sites/263/2022/08/Final-statement_CSJA_Telenor_FNL_NCP.pdf.

¹⁸² OECD, *OECD Due Diligence Guidance* (2018), p. 10.

authorities: the ULA and its armed wing, the AA, and the junta.¹⁸³ The NUG has also claimed to be the legitimate government of Myanmar and has set up governing institutions relevant to the EIA process, including a Ministry of Environmental Resources and Environmental Conservation. The UN Special Rapporteur on the Situation of Myanmar considers that the NUG has a better claim than the junta to be recognised as the Government of Myanmar.¹⁸⁴

While the Scoping Report acknowledges that “improper planning and unscrupulous activities could create or exacerbate existing conflicts,” and “the risk that the Project could intensify the already sensitive local situation should not be overlooked as it may lead to further conflict,”¹⁸⁵ it neither includes a conflict analysis nor assesses how the KPSEZ DSP may affect conflict dynamics or how those dynamics may affect the project. For example, civil society partners reported to EarthRights in April 2023 that the AA had prevented MSR staff from continuing field data collection because it had not granted permission to do so. The ToR does not remedy this, providing no guidance on how a conflict assessment might be carried out at a later stage.

Given that the EIA, which the Respondent is overseeing, fails to assess the interaction between the conflict and the project, and engages only with the junta (through the KPSEZ Management Committee) despite multiple stakeholders contesting control over the project area, the Notifiers submit that the Respondent has failed to conduct enhanced and ongoing due diligence as required under the Guidelines.

6.2.2. Failure to Conduct Adequate Due Diligence

The Notifiers submit that the Respondent appears to not have adequately assessed potential human rights and environmental impacts arising from the KPSEZ DSP, nor has the Respondent responded in a manner that would prevent or mitigate those impacts.¹⁸⁶

As noted above, the project has already been associated with actual human rights impacts, including violations of procedural rights, such as the rights to access information and to participate in decision-making, as well as land grabbing in the project area. Further, the EIA process has so far failed to adequately assess the project’s potential human rights and environmental impacts, making it unlikely that the

¹⁸³ Lin Thit, “Myanmar Junta ‘Firing Nonstop’ as AA Tightens Noose on Rakhine Naval HQ,” *The Irrawaddy* (January 26, 2026), available at: <https://www.irrawaddy.com/news/war-against-the-junta/myanmar-junta-firing-nonstop-as-aa-tightens-noose-on-rakhine-naval-hq.html>.

¹⁸⁴ UN Special Rapporteur on the Situation of Human Rights in Myanmar, “Myanmar: UN Expert’s Report Highlights Junta’s Fraudulent Claim to Legitimacy, Urges States to Denounce 2023 ‘Sham’ Elections,” *OHCHR* (January 31, 2023), available at: <https://www.ohchr.org/en/press-releases/2023/01/myanmar-un-experts-report-highlights-juntas-fraudulent-claim-legitimacy>.

¹⁸⁵ CITIC Consortium, Scoping Report (October 4, 2023), p. 117.

¹⁸⁶ OECD, *Guidelines* (2023), Commentary on Chapter IV: Human Rights, para. 50: “The process entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed.”

project can or will effectively prevent, mitigate, or compensate for those impacts and therefore will likely result in harms to local communities and the environment.

In light of the human rights and environmental violations associated with similar projects in Myanmar, including other SEZ projects, of which the Respondent has been made aware by the Notifiers, such impacts are foreseeable and should have been identified through the Respondent's due diligence process.

The KPSEZ project is the third SEZ project in Myanmar, following projects in Thilawa and Dawei. The Thilawa SEZ and Dawei SEZ, like the KPSEZ, are international development projects undertaken by the Myanmar government in consortium with governments of other countries. The Thilawa SEZ consists of factory sites developed from nearly 2,400 hectares of farmland in cooperation with Japan.¹⁸⁷ The Dawei SEZ, developed in cooperation with Thailand, consists of a deep sea port and dockyards.¹⁸⁸

Both the Thilawa and Dawei SEZs resulted in widespread human rights violations, including land dispossession, forced displacement, and loss of livelihoods, similar to the impacts expected for the KPSEZ. For example, in the Thilawa SEZ, residents were forcibly evicted at the risk of facing imprisonment if they refused to move.¹⁸⁹ Phase 1 and 2 of the Thilawa SEZ development project is estimated to have displaced approximately 900 households.¹⁹⁰ Similar land dispossessions occurred in Dawei. The Dawei Development Association, together with community representatives, produced a report surveying the effects of the Dawei SEZ.¹⁹¹ The report concluded that "of all households surveyed, 71 percent expect to lose all or some of their land to the [Dawei Special Economic Zone]. Many have already lost their property due to land confiscation. Other land has been rendered unusable by landslides or water blockages due to the SEZ construction."¹⁹²

¹⁸⁷ Jared Ferrie, "After Decades of Decay, Myanmar Bets on Thilawa to Lead Industry Boom," *Reuters* (May 8, 2015), available at: <https://www.reuters.com/article/business/after-decades-of-decay-myanmar-bets-on-thilawa-to-lead-industry-boom-idUSKBN0NT050/>.

¹⁸⁸ Dawei Development Association, *Voices from the Ground: Concerns Over the Dawei Special Economic Zone and Related Projects* (September 2014), available at: https://earthrights.org/wp-content/uploads/voice_from_the_ground_eng_online.compressed.pdf ("Voices from the Ground").

¹⁸⁹ EarthRights International, *Analysis of the Affected Communities' Rights and Remedies Under Myanmar Law and JICA's Guidelines* (June 2015), available at: https://earthrights.org/wp-content/uploads/thilawa_briefer_-_earthrights_international_0.pdf. It states: "it said we have to leave our house during (sic) 14 days. If we do not move to another place, we will be sentenced to one month in prison."

¹⁹⁰ Physicians for Human Rights, *A Foreseeable Disaster in Burma: Forced Displacement in the Thilawa Special Economic Zone* (November 2014), p. 3, available at: <https://phr.org/wp-content/uploads/2014/11/Burma-Thilawa-Executive-Summary-Nov2014.pdf>.

¹⁹¹ Dawei Development Association, *Voices from the Ground* (September 2014).

¹⁹² *Ibid*, p. 6.

EarthRights and the ICJ highlighted these past violations and concerns over KPSEZ to the Respondent in 2023.¹⁹³ However, the Respondent has not indicated that its due diligence has taken steps to avoid such harms from materializing.

In the absence of disclosure of the Respondent's due diligence process, including any risk assessment and information about what measures it has taken to respond to such risks, the Notifiers submit that the Respondent has failed to carry out due diligence in line with Chapters I and IV of the Guidelines.

6.3. The Respondent has Failed to Meaningfully Engage with Relevant Stakeholders

The Guidelines state that enterprises should “[e]ngage meaningfully with relevant stakeholders ... as part of carrying out due diligence and in order to provide opportunities for their views to be taken into account” for activities that may significantly impact them.¹⁹⁴ The OECD Due Diligence Guidance recognizes meaningful stakeholder engagement as a necessary component of an effective due diligence process by businesses.¹⁹⁵ To the Notifiers' knowledge, the Respondent has not meaningfully engaged with relevant stakeholders.

6.3.1.1. The Respondent Has Failed to Engage with Civil Society

According to this NCP, where and when possible, an enterprise should “improve its efforts to engage transparently with stakeholders, including its workers and local communities, about its policies and practices and their implementation” and share the results of its engagement with stakeholders openly.¹⁹⁶

The Respondent has not, to the Notifiers' knowledge, engaged with any community representatives in the project area or project area of influence. Moreover, the Respondent has failed to engage meaningfully with EarthRights and the ICJ who have previously notified the Respondent of the issues raised in this Complaint in a letter dated 20 December 2023. In an email dated 20 March 2024, the Respondent stated it would conduct an internal review of the risks outlined in the letter from EarthRights and the ICJ and that the project team would provide a response shortly. Since then, EarthRights and ICJ have not received any further response despite following up via email on 17 September 2025, and again on 15 October 2025.

EarthRights and the ICJ have supported affected communities in Kyauk Phyu to document the project's potential impacts on land and livelihoods, and engaged in

¹⁹³ Written correspondence between EarthRights International and the Respondent (December 20, 2023).

¹⁹⁴ OECD, *Guidelines* (2023), Chapter II. General Policies, para. A15.

¹⁹⁵ OECD, *OECD Due Diligence Guidance* (2018).

¹⁹⁶ Global Affairs Canada, *Final Statement on the Request for Review Regarding the Operations of China Gold International Resources Corp. Ltd., at the Copper Polymetallic Mine at the Gyama Valley, Tibet Autonomous Region* (last modified June 6, 2024), available at: <https://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-gyama-valley.aspx?lang=eng>.

advocacy to address the shortcomings of the EIA process and the KPSEZ, making them relevant stakeholders.¹⁹⁷

6.3.1.2. The Respondent Has Failed to Engage with the ULA/AA and NUG

Despite the junta's lack of legal authority and international recognition,¹⁹⁸ the Notifiers submit that the Respondent is treating it as both a legitimate business partner (the KPSEZ Management Committee holds a 30 percent interest in the project) and the legitimate government of Myanmar.

The Respondent, in its role overseeing the EIA – which is fundamentally a government decision-making tool – appears to have failed to engage with all relevant stakeholders. It has failed to engage with two critical stakeholders: the ULA/AA, an EAO controlling territory in the vicinity of the project area and over 80 percent of Rakhine State, and democratically elected representatives of Myanmar's NUG. This failure has already undermined the EIA process. In April 2023, the AA prevented MSR staff from operating in the area because MSR had not informed it of its activities.¹⁹⁹ Moreover, while armed conflict presents a significant risk in itself, a change of *de facto* government would have major implications for the project, not least regarding compensation for seized land.

6.4. The Respondent Has Failed to Disclose Relevant Information

The Guidelines state that “[e]nterprises should disclose regular, timely, reliable, clear, complete, accurate and comparable information in sufficient detail on all material matters.”²⁰⁰ The Guidelines further provide that enterprises should “communicate responsible business conduct information including as part of their responsibility to carry out due diligence.”²⁰¹ Responsible business conduct information includes *inter alia*:

¹⁹⁷ EarthRights has supported communities affected by the KPSEZ since at least 2016, building on earlier work with communities impacted by the Shwe gas pipeline. EarthRights facilitated community natural resource mapping for nine villages, and published a Myanmar-language report. ICJ has conducted extensive research and advocacy on the human rights impacts of Special Economic Zones in Myanmar, and the region, more broadly. ICJ has organised workshops on legal frameworks relevant to the KPSEZ, including those governing land acquisition, involuntary resettlement, and the EIA process.

¹⁹⁸ UN Special Rapporteur on the Situation of Human Rights in Myanmar, *Illegal and Illegitimate: Examining the Myanmar Military's Claim as the Government of Myanmar and the International Response*, UN Human Rights Council, UN Doc A/HRC/52/CRP.1 (January 31, 2023), available at: <https://www.ohchr.org/sites/default/files/documents/countries/mm/2023-01-27/crp-sr-myanmar-2023-01-31.pdf>.

¹⁹⁹ Written correspondence between EarthRights International and the Respondent (December 20, 2023).

²⁰⁰ OECD, *Guidelines* (2023), Chapter III. Disclosure, para. 1.

²⁰¹ *Ibid*, Chapter III. Disclosure, para. 3.

- information on measures taken to embed policies on responsible business conduct issues into the enterprise’s management and oversight bodies;
- the enterprise’s identified areas of significant impacts or risks, the adverse impacts or risks identified, prioritised and assessed, as well as the prioritisation criteria and;
- its performance in relation to the statements in paragraph 3(a) and the codes in paragraph (b) including the actions taken to prevent or mitigate risks or impacts identified in paragraph 3(c) and (d), including where possible estimated timelines and benchmarks for improvement and their outcomes, including the enterprise’s provision of or co-operation in any remediation.²⁰²

In deciding whether to disclose information, enterprises should:

- adopt a “presumption in favour of disclosure” by being forthcoming with information whenever possible;²⁰³
- consider the need for communities and other stakeholder groups to have adequate information in order to protect their interests. A “lack of information can lead to the spread of misinformation about a project that can be damaging to a company’s reputation... and undermine efforts to engage in an informed dialogue with stakeholders.”²⁰⁴
- where information is withheld, provide valid explanations or justifications for why information has not been shared.²⁰⁵

The Respondent has not disclosed information regarding its role in the KPSEZ DSP Project nor information about its due diligence policies or processes including any information about the due diligence it has conducted in relation to the KPSEZ DSP Project. There has been no disclosure by the Respondent of its overall assessment of the foreseeable risks to which it is directly linked and potentially contributing to, let alone how it will avoid impacts or seek to prevent or mitigate them. This lack of transparency is compounded by its failure to engage with affected communities, civil society, and other relevant stakeholders, as detailed above.

²⁰² *Ibid.*

²⁰³ IFC, *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets* (April 30, 2007), p. 28, available at: <https://www.ifc.org/en/insights-reports/2000/publications-handbook-stakeholderengagement--wci--1319577185063>.

²⁰⁴ *Ibid.*

²⁰⁵ OECD, *OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector* (February 2, 2017), p. 40, available at: https://www.oecd.org/en/publications/oecd-due-diligence-guidance-for-meaningful-stakeholder-engagement-in-the-extractive-sector_9789264252462-en.html.

7. Relevance of Applicable Law and Procedures

The lack of rule of law in Myanmar renders domestic laws inadequate to protect human rights and the environment. The Scoping Report states “where gaps in local legislation exist, the Project will be implemented according to international best industry practice, including, IFC’s Environmental, Health and Safety (EHS) guidelines for Ports, Harbours and Terminals.”²⁰⁶ Thus, the Respondent has acknowledged that Myanmar laws and at least some international standards apply. However, as noted previously, there are numerous instances in which the process shown in the Scoping Report does not comply with Myanmar law or international law or best practices.

7.1. Myanmar Law

While the rule of law in Myanmar is effectively inoperative, domestic laws may nevertheless be relevant in aiding the NCP assess the “implementation of the Guidelines.”²⁰⁷ The NCP has previously taken note of provisions of Myanmar law “to illustrate local legal expectations and standards” which are “relevant to understanding an enterprise’s observance of the Guidelines.”²⁰⁸ Where there may be conflict between domestic law and the Guidelines, NCPs have reiterated that “enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.”²⁰⁹

The *Special Economic Zone Law (2014)* (“*SEZ Law*”) establishes the legal framework for developing and governing SEZs in Myanmar. Primarily designed to attract investment by providing favourable arrangements to investors, the *SEZ Law* does not establish clear procedures or lines of responsibility and accountability, which has contributed to human rights violations at Myanmar’s three SEZs.²¹⁰ As the ICJ has explained, Myanmar’s legal framework for SEZs does not conform with its obligations under international human rights law, and must be read in connection with international law and standards, but also with other national laws, including laws governing environmental protection and land.²¹¹

The *SEZ Law* reaffirms the applicability of environmental laws within SEZs, including the *EIA Procedure* and the *Environmental Conservation Rules (2014)*, which together govern the conduct of EIAs in SEZs.²¹² These laws establish specific requirements for public consultation and information disclosure for projects impacting Indigenous

²⁰⁶ CITIC Consortium, Scoping Report (October 4, 2023), p. 89.

²⁰⁷ Government of Canada, *Initial Assessment: EarthRights International* (last modified 26 September 2025), para. 60.

²⁰⁸ *Ibid*, paras. 58-60.

²⁰⁹ OECD, *Guidelines* (2023), Chapter I. Concepts and Principles, para. 2. See: OECD Watch, *SOMO Representing 474 Myanmar CSOs vs. Telenor ASA* (July 27, 2021), available at: <https://www.oecdwatch.org/complaint/somo-representing-474-myanmar-csos-vs-telenor-asa>.

²¹⁰ ICJ, *Special Economic Zones in Myanmar* (February 2017) p. i.

²¹¹ *Ibid*, p. iii.

²¹² *EIA Procedure* (2015); *Environmental Conservation Rules* (2014).

Peoples and general requirements applicable to all public participation processes.²¹³ These laws correspond to the Guidelines by reinforcing duties of human rights and environmental due diligence, consultation with stakeholders, prevention and mitigation of harms, and acting with transparency.

With respect to land, the *SEZ Law* assigns responsibility for land acquisition and transfer to the Ministry of Home Affairs “in accordance with existing laws.”²¹⁴ The *Land Acquisition Act* (1894) remains the primary instrument for acquiring land, but compensation rights and disputes are also governed by the *Farmland Law* (2012) and the *Vacant, Virgin and Fallow Land Law* (2012). Additionally, the *Protection and Preservation of Cultural Heritage Regions Law* (1998) provides protections against the destruction of cultural heritage sites and settlements.

7.2. Canadian Law

The Respondent is a Canadian company and is bound by Canadian law. Canada has repeatedly condemned the Myanmar junta’s attempted coup and its subsequent actions and has not recognized the junta as a legitimate authority. Canada has announced regular sanctions packages targeting Myanmar’s military and its leadership, acting in coordination with the EU and the U.S.

Since Canada is an OECD Member State, the Respondent is required to operate in compliance with the Guidelines. This NCP has noted that the Government of Canada expects Canadian companies to abide by internationally recognised standards in all cases, “even where a host country fails to enforce domestic laws or implement international standards or in challenging environments such as a weak governance zone, zones of conflict or an unstable political environment.”²¹⁵

7.3. International Law and Standards

The Guidelines provide that enterprises must “fulfil their responsibilities...in accordance with international law.”²¹⁶ The Government of Canada equally expects that Canadian companies are “to respect human rights and all applicable laws, and to meet or exceed widely recognized international standards for responsible business conduct.”²¹⁷

²¹³ *EIA Procedure* (2015), ss 49(e), 49(g), 50(a), 50(b), and 51).

²¹⁴ *SEZ Law* (2014), s. 82.

²¹⁵ Global Affairs Canada, *Final Statement of Canada’s National Contact Point: Banro Corporation and a Group of Former Employees* (May 25, 2017), available at: <https://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-banro.aspx?lang=eng>.

²¹⁶ OECD, *Guidelines* (2023), Chapter I. Concepts and Principles, para. 9.

²¹⁷ Global Affairs Canada, *Final Statement on the Request for Review regarding the Operations of China Gold International Resources Corp. Ltd., at the Copper Polymetallic Mine at the Gyama Valley, Tibet Autonomous Region* (last modified June 6, 2026), available at: <https://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-gyama-valley.aspx?lang=eng>.

The Guidelines, together with the jurisprudence of UN human rights treaty bodies²¹⁸ and the UN Guiding Principles on Business and Human Rights, are the most authoritative international standards on responsible business conduct. The guidance of UN Human Rights Bodies is also relevant, particularly the reports and recommendations of the UN Special Rapporteur on the Situation of Myanmar, and the Office of the UN High Commissioner for Human Rights.

International standards regarding involuntary resettlement are also relevant. In recognition that involuntary resettlement can cause severe and long-term hardship and impoverishment, international financial institutions have developed widely cited standards on this issue. Myanmar law requires that projects involving involuntary resettlement of Indigenous Peoples conform to these standards.²¹⁹

The safeguard policies of the IFC, the Asian Development Bank, and the World Bank Group provide commonly accepted standards in this area. Each safeguard policy shares specified policy objectives: first, to avoid involuntary resettlement where possible; and second, where involuntary resettlement does occur, to minimize adverse impacts including by exploring alternatives.²²⁰ All three policies state that the livelihoods of persons affected by displacement should improve, or at a minimum, be restored to pre-project levels.²²¹ As part of this policy principle, persons who experience relocation must be provided with secure tenure for replacement land, regardless of whether they previously held secure tenure.²²²

Specific international best practices have also been established with respect to environmental protection. For example, IFC Performance Standard 3 addresses pollution prevention, and IFC Performance Standard 6 provides guidance for biodiversity conservation and sustainable management of living natural resources. The IFC's EHS Guidelines for Ports, Harbors, and Terminals further establish

²¹⁸ See for e.g., Committee on the Rights of the Child, *General Comment No. 16: State Obligations Regarding the Impact of the Business Sector on Children's Rights*, UN Doc CRC/C/GC/16 (April 17, 2013), available at: <https://docs.un.org/en/CRC/C/GC/16>; CESCR, *General Comment No. 24: State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, UN Doc E/C.12/GC/24 (August 10, 2017), available at: <https://docs.un.org/en/E/C.12/GC/24>.

²¹⁹ *EIA Procedure* (2015), s. 7.

²²⁰ See, for e.g., IFC, Performance Standard 5, para 2: "Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for the Affected Communities and persons, as well as environmental damage and adverse socio-economic impacts in areas to which they have been displaced. For these reasons, involuntary resettlement should be avoided. However, where involuntary resettlement is unavoidable, it should be minimized and appropriate measures to mitigate adverse impacts on displaced persons and host communities should be carefully planned and implemented."

²²¹ See, for e.g., World Bank, *OP 4.12 - Involuntary Resettlement* (April 2013) art. 2(c): "Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher."

²²² See, for e.g., ADB, *Safeguard Policy Statement* (June 2009), pp. 17, 44, available at: <https://www.adb.org/sites/default/files/institutional-document/32056/safeguard-policy-statement-june2009.pdf>.

international good practice for port developments. The Port of Seattle's Ocean Acidification Action Plan is also instructive, setting out good practice for mitigating ocean acidification from port operations through measures to reduce GHG emissions and restore marine habitats.²²³

8. How Similar Issues Have Been or Are Being Treated in Other Proceedings

This Complaint is not prejudiced by other similar issues in domestic and international proceedings. The issues within this Complaint are not currently being considered in other fora.

9. Consideration of the Specific Instance Would Contribute to the Purposes and Effectiveness of the Guidelines

Holding the Respondent accountable upholds the letter and spirit of the Guidelines. Conversely, failing to consider human rights and environmental issues raised in this Complaint would severely undermine the purpose and effectiveness of the Guidelines. Accountability also has wide-ranging policy impacts, which encourage other enterprises to comply with the rules, lest the rules be disregarded.

The Notifiers have submitted this Complaint at this relatively early stage in the project's development to avoid further human rights and environmental harms. In the past, shortcomings in the EIA process, including Scoping Reports, have been correlated with actual adverse impacts in other areas in Myanmar, such as the Thilawa SEZ, Dawei SEZ, and the Shwe Gas project (as documented above in Section [6.2.2](#)).

The timing of this Complaint would allow the Respondent to use its leverage vis-à-vis the EIA Consultants and Project Proponent to prevent further harms from materializing. It is currently an opportune time to intervene in the process, given that the Scoping Reports have been published, but the full EIA has not been finalized and construction has not yet begun. The implementation of one or several recommendations in this Complaint, particularly the suspension of the EIA process, could significantly improve the EIA process in the long term and ensure that the project is developed in line with Myanmar laws, Myanmar's international obligations, and international standards, including with adequate due diligence and meaningful engagement with community members and other stakeholders.

Although the Notifiers have alerted the Respondent to the issues within this Complaint and have requested compliance with the Guidelines, no response has been received from the Respondent indicating that corrective measures are being taken. Therefore, the Notifiers request the good offices of the NCP mechanism to provide a forum for dialogue to prevent future harm.

²²³ World Ports Sustainability Program, *Port of Seattle – Ocean Acidification Action Plan*, available at: <https://sustainableworldports.org/project/port-of-seattle-ocean-acidification-action-plan/>.

10. Conclusion

In light of the foregoing, the Notifiers request that the NCP conduct an Initial Assessment on an expedited basis. If the NCP determines that the issues raised deserve further examination, the Notifiers urge the NCP to offer its good offices to the parties with a view to resolving the issues raised in this Complaint.

If the good offices fail to produce a mutually acceptable solution, the Notifiers request that the NCP:

- Facilitate the parties to reach an agreement on an independent fact-finding process of the issues raised; and
- Make recommendations to the Respondent to amend their actions to comply with the Guidelines and to prevent contributing further to human rights and environmental abuses.

To that end, the Notifiers believe the following steps are necessary to bring the Respondent's conduct in alignment with the Guidelines:

- The Respondent should conduct ongoing and enhanced human rights due diligence and publicly disclose the process and findings of its due diligence.
- The Respondent should engage with relevant stakeholders, including Myanmar civil society organizations, and, when the security situation allows, affected communities. The Respondent should implement open channels of communication to overcome the fear of reprisals.
- The Respondent should use its leverage with the Project Proponent and EIA Consultants to seek to suspend the EIA process and to address the inadequacies in the Scoping Reports and ToR. The EIA must not resume until conditions exist for meaningful participation of all affected communities in the EIA process and FPIC. The Respondent should use its leverage to ensure improvements in the EIA process if and when it can restart.
- If the Respondent does not have sufficient leverage over the Project Proponent and EIA Consultants and is unable to carry out the steps above, it should responsibly disengage from the project.

Should the Respondent refuse to participate in the NCP process, or do so in bad faith, the Notifiers request that the NCP:

- Inform relevant government departments, including those responsible for policies on sanctions, such as Export Development Canada; and
- Report publicly on the Respondent's actions to the outcomes of the process.