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Public Private Partnership  
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## Secrecy and the Myingyan Public Private Partnership gas power plant in Myanmar

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Photo credit: Wunna Htun

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## Introduction

Cash-strapped governments are promoting public-private partnerships (PPPs) as the panacea to delivering infrastructure in a time of limited public funds. In both developed and developing countries, PPPs have leveraged the role of the private sector in sectors such as health, education, energy and transport. Donors and international financial institutions (IFIs), like the World Bank are actively encouraging governments in developing countries to use PPPs as a way of addressing their budget constraints. The World Bank's 2017 'Maximising Finance for Development' approach, for example, prioritises "leveraging the private sector in ways that optimize the use of scarce public resources"<sup>1</sup> to enable countries to meet the commitments of the 2015 Sustainable Development Goals.

While some governments and IFIs continue to extol the benefits of PPPs and promote their use, many are beginning to question the risks and impacts of this model. For example, drawing on 10 case studies in diverse sectors around the world, civil society groups coordinated by the European Network on Debt and Development (Eurodad) identified a number of common problems associated with PPPs, including high costs to the public purse; a higher burden of risk on the public versus the private sector; harmful impacts on the poorest and exacerbation of inequality; a lack of transparency and accountability to the public; and overly-complex forms of negotiation and implementation.<sup>2</sup> Even the winning argument for PPPs—that it helps to mobilise private investment – is now being questioned by research from the Overseas Development Institute. The ODI's comprehensive data review of 'blended' public-private finance demonstrates that the high expectations of development finance being a magnet for vast sums of private investment have simply not been realised; each \$1 of development assistance has mobilised a mere \$0.37 of private investment in Low Income Countries.<sup>3</sup> The report concludes, "Expectations that blended finance can bridge the SDG financing gap are unrealistic: 'billions to billions' is more plausible than 'billions to trillions.'"

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*Overseas Development Institute*

Even developed countries with their sophisticated legal and democratic systems can find PPPs costly, risky and controversial. In the United Kingdom, experience with the 700 projects of the Private Finance Initiative over three decades led to the government abandoning the model in 2019, citing significant fiscal risk to the government, inflexibility and complexity.<sup>4</sup>

So how would a country just emerging from years of dictatorship, still suffering many internal armed conflicts, and yet to build robust democratic systems, cope with the complexity and risk of PPPs? This paper looks at the case of the first energy sector PPP in Myanmar: the Myingyan Combined Cycle Gas Turbine project, built between 2015 and 2019. This power plant was constructed with substantial support from IFIs, including from the Asian Development Bank (ADB), the World Bank's private sector lending arm - the International Finance Corporation (IFC) - and the Asian Infrastructure Investment Bank (AIIB), and with technical and advisory support from the UK's Private Infrastructure Development Group (PIDG).<sup>5</sup> The IFC and the ADB also provided technical and advisory support, and the ADB and the World Bank's Multilateral Investment Guarantee Agency (MIGA) provided guarantees.

There are a number of reasons why it is important to look more deeply into this PPP project, not least because of its location in a fragile and conflict state and its significant support from publicly-backed IFIs. But there is also another crucial reason: the IFC, which played a more influential role than any other backer, features Myingyan as a PPP success story.<sup>6</sup> And it goes even further: it claims that the Power Purchase Agreement (PPA) for Myingyan will serve as a blueprint for all future energy PPPs in the country. The risks and costs of the Myingyan project deserve deep public scrutiny.

### **The Myingyan PPP gas power project: investors and advisors**

Situated in Mandalay Region, near the Ayeyarwady River, the red and white towers of the 225 MW Myingyan gas power plant rise from the haze and dust of the surrounding fields. Construction of the combined cycle gas turbine (CCGT) project started in 2015 and today the plant is operational, generating power for the national grid. It is Myanmar's first PPP in the power sector.

To get the project off the ground, technical assistance and advisory services from the IFIs were vital. The ADB, through public sector technical assistance, helped to prepare the template tender documents and power purchase agreement for Myingyan. The ADB's private sector department engaged early on in the bidding process, giving shortlisted bidders "the opportunity to optimize their proposals and has resulted in the competitive tariff which benefits the country."<sup>7</sup>

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However, it was the IFC which played the lead role in providing technical assistance to the project at a cost of \$1.9 million,<sup>8</sup> signing a Financial Advisory Services Agreement with Myanmar's Ministry of Electric Power (MOEP) in 2014 appointing it as the lead transaction advisor for the project tender. The IFC and its legal and technical advisors, UK firms Allen & Overy and Mott MacDonald, drafted the project's power purchase agreement (PPA), using the initial format developed by the ADB and based on precedents from Thailand, Indonesia and the Middle East. Myanmar has no framework for its Ministry of Finance to provide guarantees, therefore a Build, Operate, and Transfer (BOT) Agreement provided a guarantee on behalf of the MOEP to the private sector partners.

The IFC helped the MOEP to shortlist five bidders and to structure a tender process. The IFC says this resulted in "the selection of a winning bidder based on lowest levelised cost of electricity generated (taking into account plant efficiency and cost of gas)." The winner was a consortium comprising the Singaporean firm Sembcorp Utilities Pte Ltd, which is 49% owned by the Singapore government, and MMID Utilities Pte, a Singapore-incorporated company with Myanmar and Singaporean investors. The PPA between the project Special Purpose Vehicle and the Myanmar Electric Power Enterprise was signed in 2016 and the BOT Agreement in January 2017.

Under the PPA, Sembcorp Myingyan Power will supply power to the MOEP for 22 years after which time the plant will transfer to government control. Sembcorp initially had an 80 percent stake in the project. MMID Utilities held the remaining 20 percent.<sup>9</sup>

The ADB has provided more financial support to the \$304 million project than any other investor, committing \$143 million in loans and a \$110 million guarantee. The IFC provided a \$75 million loan and the AIIB a further \$20 million. This means a significant proportion of the total project cost came from IFI loans. Other investors

include Clifford Capital, DBS Bank, DZ Bank, and Overseas-Chinese Banking Corporation. The debt and equity political risk coverage is provided by MIGA and the ADB.<sup>10</sup>

### **A good deal? Tariffs and the power purchase agreement**

To determine whether the Myingyan gas power project is good value for money for both the government and the people of Myanmar, it is necessary to know the terms of the PPA including the tariff paid by the Ministry to Sembcorp for the electricity it supplies to the grid.

However, this information is not publicly available. It is therefore impossible to determine the true cost of the project.

Other than the unit rate, the government may be compelled under the terms of the PPA to buy a minimum amount of power from the plant regardless of demand (i.e. whether it is actually used or not). This is a standard clause in many PPAs, for example in Ghana where under a recent gas PPP contract contained a 'Take or Pay' clause that obliges the Ghana National Petroleum Corporation to pay for 90 percent of the agreed quantity of gas – whether it is able to take it or not. In part due to these obligations, in 2019 the Ghanaian government's bill for unused gas came to \$250 million.<sup>11</sup> Without access to the Myingyan PPA, potentially onerous terms such as these cannot be publicly debated and challenged.

The year after the Myingyan plant came online, electricity tariffs to consumers rose for the first time in five years. In July 2019, under these new rates, residential households and religious buildings continued to pay the previous rate of K35 per unit up to 30 units (just over 2 US cents) but would be charged rising amounts for consumption over 30 units. This means that consumers who used to pay K3500 for 100 units (\$2.43) will now pay K6050 (\$4.19): a 72.9 percent increase.

This increase came into effect to address the huge losses made by the government, since it incurs costs of K178 per unit (12 US cents) for electricity produced from natural gas, according to the Ministry of Electricity and Energy (MOEE – now re-named MOEP).<sup>12</sup> Paying five times as much for each unit of electricity than household consumers means that the government made a loss of K507 billion (\$350 million) supplying electricity to the public in fiscal year 2017-18 and losses rose to K630 billion (\$437 million) in 2018-19, according to data from the Ministry of Planning and Finance.<sup>13</sup>

Without specific data on the Myingyan PPP, however, it is impossible to know whether and how the plant has had an impact on prices to consumers or on government losses. Given the parlous state of MOEE's finances and the desperate need for further investment in the country's energy sector, where less than half of the population has access to grid electricity, such information is vital.<sup>14</sup>

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## Public-Private Partnerships: panacea or problem?

In its examination of 10 PPP projects, Eurodad uncovered a number of common problems. These included<sup>15</sup>:

- high costs to the public purse and excessive risk to the public sector;
- a higher burden of risk on the public versus the private sector;
- impacts on the poorest and exacerbation of inequality;
- a lack of transparency and accountability to the public;
- a high degree of complexity in terms of negotiation and implementation

Another review of PPP research and case studies, carried out by Public Services International Research Unit (PSIRU)<sup>16</sup>, uncovered further concerns:

- PPPs add to the long-term debt of developing countries, given the higher costs of developing PPP projects.
- Private finance and PPPs focus on profitable projects at the expense of the needs of the poor. Citing examples from Ghana, Italy, Egypt and the USA, PSIRU notes that because private companies require PPPs to be commercially viable, this can distort policy decisions in favour of more profitable projects, rather than those that will be of most public benefit.
- PPPs are a comparatively expensive way of raising money, since loans to the private sector attract higher interest rates than those to governments.
- Countries have poor capacity to negotiate PPP contracts, expected impacts are unclear and monitoring weak. This can be especially true in developing countries, where ministries can lack the complex legal and financial knowledge to secure a good deal
- Many PPPs result in expensive failures to deliver the expected investments. The study finds this is the case not only in developing but also developed countries – for example, projects in France and Sweden which have ended up costing nearly twice the estimated budgets, resulting in cuts to services.

PSIRU concludes, based on evidence from international experience and studies of PPPs:

- The cost of capital is always cheaper without a PPP, for high income and developing countries alike. This is because governments can borrow more cheaply than the private sector, given the lower risks involved.
- The cost of construction is higher under a PPP, because the financiers require a turnkey contract, which is about 25 per cent more expensive. A study by the European Investment Bank, for example, compared the cost of PPP road projects across Europe with conventionally procured road projects, and found that the PPPs were on average 24 per cent more expensive than the public sector roads.<sup>17</sup>
- The transaction costs of tendering and monitoring PPPs add 10-20 per cent to their costs. Because PPPs are so complex, very high legal and accountancy costs can be incurred, adding to the final project bill.
- The public sector faces real risks from PPPs, including incomplete contracts, the likelihood of renegotiations, and the potential public liabilities in case of bankruptcy or default by the private company. PSIRU cites the examples of Chile and Colombia, where more than three quarters of road PPP projects were renegotiated, resulting in cost increases of between 20% and 140%.

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**Falling out: The Myingyan consortium in legal dispute**

The consortium that was building Myingyan – the Sembcorp and MMID Utilities partnership – fell apart just two years into the project’s construction. In June 2017, MMID director Kyaw Paing filed a civil suit seeking an injunction to stop Sembcorp Myingyan Power removing MMID’s name from agreements with the government, including the PPA.<sup>18</sup>

The complaint alleged that Kyaw Paing’s “rights, reputation and business is in danger of being negatively affected” by the defendant’s actions and sought K10 billion (\$6.9 million) in damages. A spokesperson for Sembcorp told local newspaper *Frontier* that the dispute arose because MMID had not contributed its share of equity to the Myingyan project, and that the allegations against Sembcorp were “false and wholly without merit”.

When questioned about what had happened to the project consortium, the AIIB confirmed that “Sembcorp currently owns 100% of Sembcorp Myingyan Power Co. Ltd. (SMPC). However, we cannot comment on an ongoing case.”<sup>19</sup> This appears now to be a violation of Myanmar law on foreign investment which requires energy generation projects to be carried out with Myanmar nationals. Notification 49/2014 stipulates a list of activities prohibited to a foreign investor or permitted only in a joint venture with a local partner. In case a local partner is required, in theory, the foreign party may own up to 80% shareholding, as was the case in the original Myingyan consortium.<sup>20</sup>

This crisis within the consortium is of public interest. Is Sembcorp’s current 100% ownership of the Myingyan power company in breach of national law? How much did Sembcorp pay to buy out MMID? Has this added to the project’s cost and therefore the country’s debt burden? Have penalties for breaking the PPA contract and legal costs added to the bill? If so, who will pay that? Will additional costs be borne by the government, by Sembcorp ... or by consumers?

None of this information is publicly available and, as will be seen, merely asking these types of questions is a dangerous business.



## Why information disclosure matters in PPPs

Given the importance of the Myingyan project, both as the country's first energy sector PPP and since its PPA sets the blueprint for future PPPs, we should expect a high degree of transparency and public accountability. In addition, as the majority of the project's investment was provided by publicly-financed development banks, taxpayers in donor countries also have an interest in whether their aid money is achieving its development aims.

The project's main architect, the World Bank, puts great emphasis on the need for transparency in PPPs. In its 2016 Framework for Disclosure in Public Private Partnerships<sup>21</sup>, the bank notes the drivers for information disclosure include "increasing public confidence in PPP projects, achieving better value for money, and reducing the risk of corruption. Key issues underlying these are the extent of alignment of private investments with public interest, standards in the delivery of services, predictability around pipelines, a level playing field for bidders, and objective criteria for evaluating bids, among others."

Disclosure, concludes the World Bank, improves public trust in PPPs and can improve their performance: "Disclosure has longer-term and distinct benefits, such as greater accountability in expenditure, higher level of confidence in the fairness of the process, better understanding by the private sector of the public sector's requirements and expectations, and the potential for the formulation of improved policies and practice relating to PPP in the long run."

However, in looking at disclosure practices globally, the World Bank found that there was wide divergence between what types of information were made public: while 94% of the 80 governments studied did disclose information about tenders and 75% published details about contract awards, fewer than a third published the actual PPP contracts themselves.

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*World Bank*

## In the public interest: What types of information disclosure are needed?

While it is important that bidding processes and contract awards are made public, disclosure of the actual terms of agreement and performance of PPPs is vital. This breakdown of types of post-procurement information listed by the World Bank reveals why this data is of such critical public interest<sup>22</sup>:

- **Service and price:** service levels agreed, service levels achieved, non-performance instances, penalties provided and imposed, tariff methodology, tariff levels and variations; "Explains to users why they are paying what they are paying. Demonstrates whether services agreed to and at the level agreed to are being provided."
- **Financial performance:** forecast revenues, actual and shared revenues, equity Internal Rate of Return and actuals. "Provides evidence that government support is justified and required at the level and for the period for which it is being paid... It is important to demonstrate to stakeholders the continued relevance of payments between the parties to the contract. Where government has equity stake in a project, it is important to provide information on the financial health of the project, including the returns."
- **Government exposure:** Key risks, actual risk events, estimated government payments – commitments and contingent, actual government payments – commitments and contingent. "Risk allocation is an important determinant of cost to government and to the paying public/user. Inadequate or excessive transfer of risk is undesirable. Disclosure will provide evidence of proper or improper risk allocation and its effect on costs."

### In the dark: lack of transparency at the Myingyan plant

From the local village level, to national media, to international NGOs, many people interested in the Myingyan power plant have attempted to gain information about the project. While IFIs and Sembcorp have disclosed social and environmental information about the project to some degree,<sup>23</sup> requests for information about the PPP contract itself have been met with deafening silence.

In April 2019, journalists who attended Myingyan's opening ceremony, held six months after the plant went into full operation, were left disappointed as government and company representatives refused to answer basic questions. In particular, they deflected journalists' efforts to learn more about the 22-year PPA. Journalists from national newspaper *Frontier* complained, "The only information Sembcorp would give is that the plan uses 37 percent of the gas available to Mandalay Region from the Shwe gas pipeline. Company officials referred questions on the tariff and other matters related to the PPA to the government, but Ministry of Electricity and Energy officials at the event declined to comment."<sup>24</sup>

Disturbingly, when trying to cover the details of the 2017 legal dispute which saw the Myingyan consortium disintegrate, a local journalist not only failed to get a response from the government<sup>25</sup> but was threatened with contempt of court by Sembcorp for even trying to cover the issue.<sup>26</sup>

In support of Myanmar NGOs who had also sought information about the PPP contract<sup>27</sup>, NGOs based outside the country approached the publicly-funded IFIs that had invested in Myingyan. UK-based Bretton Woods Project sent a Freedom of Information request to the UK's Department for International Development (DFID), asking that the contracts and all associated information be disclosed.

DFID responded: *“This is a project which IFC advisory inputs were supported by DevCo – a vehicle funded by DFID through the Private Infrastructure Development Group (PIDG). ... Access to Contracts: The PPA and other project agreements are the property of the Myanmar Ministry of Electricity and Energy. Like most ministries and state owned enterprises in the region (e.g. Vietnam and Indonesia), these documents are not in the public domain. Concerns about the PPP model – IFC was hired by the Government of Myanmar to advise on the design, structure, and assist with the implementation of the competitive tender ... please feel free reach out to IFC directly.”*<sup>28</sup>

NGOs then approached the IFC, as the main adviser for the PPP, under its Access to Information Policy, arguing *“There is clear public interest in assessing the development impact of the project, which is impossible without knowing the terms of the PPP contract and the Power Purchase Agreement. Information relating to benefit sharing and electricity tariffs have significant bearing on issues such as the economic viability of the project, its impact on the wider economy in Myanmar, and its success in delivering energy access to five million people, as project documents claim. Local affected communities have expressed interest in knowing the tariffs agreed in the PPA, given the high costs they are facing to be connected to the grid.”*<sup>29</sup>

The IFC responded: *“In response to your question related to the PPP contract and the project PPA, these documents are property of the Myanmar Ministry of Electricity and Energy. In line with IFCs Access to Information Policy, we cannot disclose them without permission from our client. We encourage you to reach out to the Ministry to request these documents.”*<sup>30</sup>

In a meeting with the IFC in Washington DC in October 2019, Myanmar civil society representatives explained that merely asking questions of the Myanmar government could put them in danger and that there was no law in the country that would protect their right to request information.<sup>31</sup>

The world’s newest multilateral development bank, the AIIB, insists that *“transparency in our operations is very important to us”*<sup>32</sup> but argued that information surrounding the Myingyan plant was *“strictly confidential.”* Its response to an information request by BIC Europe<sup>33</sup> states, *“The project has been structured as a PPP, of which the Power Purchase Agreement (PPA) is a contract. The terms of the PPA cannot be disclosed because the information is covered by the non-disclosure obligations under the financing documents between the borrower and participating lenders, including the AIIB. Thus, this information is classified as “strictly confidential” and cannot be disclosed.”*<sup>34</sup>

In conclusion, although taxpayers’ money is the largest source of funding for the Myingyan project, and despite the substantial debt incurred by Myanmar’s government and citizens, the public both in donor countries and in Myanmar have no access to information that would demonstrate whether the project is of public benefit, fulfils its development impact aims, or represents good value for money.

***There is clear public interest in assessing the development impact of the project, which is impossible without knowing the terms of the PPP contract and the Power Purchase Agreement.***

## Enabling PPPs in Myanmar

The Myanmar government is committed to creating an enabling environment for the private sector to engage in PPPs and to use PPPs to deliver infrastructure and services in the future. The government is currently implementing PPPs in three main sectors: energy, telecommunications and transport.<sup>35</sup>

No single PPP law or framework exists as yet in Myanmar, though both the ADB and Japan International Cooperation Agency (JICA) have given technical assistance to support PPP policy development.<sup>36</sup> In November 2018, the government issued a notification creating a PPP 'Project Bank', with the objective of "ensuring that Government plans for Project development and implementation are predictable and transparent, and are employed as effectively as possible to achieve national development objectives."<sup>37</sup> The notification also mandated the creation of a centralised government unit for supervising PPP projects.

The Project Bank is an official database of prioritised projects, including PPPs, that would contribute to the Myanmar Sustainable Development Plan.<sup>38</sup> This transparency around which projects are being considered by the government and under which financing arrangements is welcome. However, it is clear that the Project Bank is aimed mainly at private investors and government agencies with a view to facilitating PPP investments, rather than to provide information to Myanmar citizens. So, for example, while the database includes information about the name, location, cost, schedule and contact details, vital information such as tariffs, PPAs and PPP contracts will not be publicly available.<sup>39</sup>

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## Recommendations

The investors who backed the Myingyan gas power plant claim that the project provides a good deal for the public.<sup>40</sup> If this is the case, then what would be the harm in allowing public scrutiny of the PPP contract and the PPA? The public – in both Myanmar and in donor countries – have the right to know, and IFIs themselves admit that transparency around PPPs is essential to creating good value and accountability.

- Donors and IFIs should use their substantial leverage to push for rigorous transparency, ensuring that all contracts detailing risks and costs of infrastructure projects are available for public scrutiny. The IFIs that provided support for Myingyan should insist that the PPP contracts, including the PPA, be published.

In addition, donors and IFIs should have a duty, when they are using public funds, to ensure the public has the right to know whether the projects they back:

- are of public benefit;
- are sustainable in terms of their impact on debt;
- balance the relative costs/risks and benefits/profits borne by the private sector versus the public;
- are sustainable in the long term.

In determining whether PPPs indeed provide value for money, governments should assess how a PPP measures up compared to a publicly-financed option. The IMF itself recommends, “When considering the PPP option, the government has to compare the cost of public investment and government provision of services with the cost of services provided by a PPP.”<sup>41</sup>

- Donors and IFIs should support developing country governments in finding the best options to finance public services and infrastructure, rather than aggressively promoting and incentivising the PPP model.
- Rather than focusing on developing a framework for PPPs, the Myanmar government could usefully address the challenge of providing socially, economically and environmentally sustainable infrastructure by developing a Framework for the Provision of Public Services and Infrastructure. Such a Framework, which should be widely consulted upon, could help to deliver high quality, publicly-funded, democratically-controlled, and accountable public services.

## Endnotes

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- 23 For an examination of the social and environmental impacts of the Myingyan project, please see BIC Europe, Natural Green Alliance and NGO Forum (2018) Briefing Note: AIB and the Myingyan Gas Power Plant in Myanmar. <https://www.re-course.org/reports/briefing-note-aib-and-the-myingyan-gas-power-plant-in-myanmar/>
- 24 <https://frontiermyanmar.net/en/sembcorp-gas-fired-power-plant-wins-praise-and-flak-at-opening>
- 25 When Frontier approached the Ministry of Electricity and Energy for comment, deputy permanent secretary U Htay Aung said: "That issue should not be asked about at the moment. No one will answer your questions." See <https://frontiermyanmar.net/en/legal-dispute-ensnares-backers-of-myingyan-gas-power-project>
- 26 See <https://frontiermyanmar.net/en/legal-dispute-ensnares-backers-of-myingyan-gas-power-project> 'When Frontier initially contacted Sembcorp for comment by email, Sembcorp Myingyan Power Company responded by threatening contempt of court charges or other legal action if Frontier published "any articles on the subject matter of the Email Query, including but not limited to the comments made by Mr Frankie Tan to your magazine and/or in the course of his press conference". It also demanded that Frontier confirm in writing within three days that it would agree not to publish any articles "on the subject matter of the Email Query". "Take notice that in the event that we do not receive such confirmation, we will take such steps as we deem necessary to protect our rights, prosecute any contempt of court and/or restrain any breach of Myanmar law." Frontier refused to accede to the demand and the company later agreed to comment on the record.'

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- 36 [https://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/20160407\\_final\\_summary\\_financing\\_infra\\_dev\\_ppp\\_myanmar.pdf](https://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/20160407_final_summary_financing_infra_dev_ppp_myanmar.pdf)
- 37 Office of the President, Republic of the Union of Myanmar, Notification No. 2/2018 Project Bank Notification, November 2018.
- 38 <https://www.mmtimes.com/news/are-ppps-answer-myanmars-financial-constraints.html>
- 39 Office of the President, Republic of the Union of Myanmar, Notification No. 2/2018 Project Bank Notification, November 2018.
- 40 See for example the ADB's claim that its support "has resulted in the competitive tariff which benefits the country". <https://www.adb.org/projects/48368-001/main#project-pds>
- 41 <https://www.imf.org/external/np/fad/2004/pifp/eng/031204.pdf>



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