



A SURVEY OF THE STATE OF DISCLOSURE OF ENVIRONMENTAL IMPACT ASSESSMENTS IN MYANMAR'S OIL AND GAS SECTOR

Myanmar Centre for Responsible Business

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The Myanmar Centre for Responsible Business (MCRB) was set up in 2013 by the Institute for Human Rights and Business (IHRB) and the Danish Institute for Human Rights (DIHR) with funding from several donor governments. Based in Yangon, it aims to provide a trusted and impartial platform for the creation of knowledge, capacity, and dialogue amongst businesses, civil society organisations and governments to encourage responsible business conduct throughout Myanmar. Responsible business means business conduct that works for the long-term interests of Myanmar and its people, based on responsible social and environmental performance within the context of international standards.

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Executive Summary

This survey examines the state of disclosure of Environmental Impact Assessments (EIA) and Initial Environmental Examinations (IEE) conducted by oil and gas companies in Myanmar who were awarded blocks after 2013.

The survey reveals that 11 out of 19 offshore blocks (58%) have disclosed IEEs and 4 out of 15 onshore blocks (26%) have disclosed EIAs. It identifies the companies who have disclosed, and those who have not. It provides links to the IEE/EIA reports, and associated Environmental Management Plans (EMPs). The Executive Summaries of most disclosed IEE/EIA are available in Burmese as well as English, in line with the emerging guidance from MOECF.

The overall level of disclosure in the oil and gas sector is superior to other sectors in Myanmar where the IEE/EIA process has yet to be consistently applied, such as mining and construction. However some oil and gas companies have not disclosed their IEE or EIA reports. These are predominantly those with onshore blocks, who are mostly smaller companies and with fewer public commitments to operating to global standards than the offshore operators. They signed contracts 6-12 months earlier and may have undertaken their EIA/IEE in 2014.

The survey does not attempt to comment on the quality of these IEE/EIA. However a quick review and anecdotal evidence suggests that the IEE/EIA reports disclosed by international oil/gas companies, who have used experienced international EIA consultancy firms partnering with Myanmar EIA consultancies, are generally of a higher quality – and cost - than those seen by MCRB for projects in other sectors in Myanmar. It is hoped that their example will lead to a raising of standards for EIA and disclosure across all sectors.

The survey also analyses the challenges faced by companies in complying with the new requirement for IEE/EIA and disclosure, and makes recommendations for how these can be addressed. The issue of pre-existing projects is highlighted, which, under Article 8 of the new EIA Procedures, need to take steps to obtain an Environmental Compliance Certificate.

The rationale for undertaking this research assumes that website disclosure, in addition to being a legal requirement under the new EIA procedures, will allow stakeholders to access and read the reports. These stakeholders – who may include national and regional government officials and parliamentarians, civil society organisations, local communities and the media – will therefore have the opportunity to study the assessments and engage critically with companies over the contractual commitments included in them, and hold companies to account for their environmental and social performance.

However this requires those stakeholders to ‘do their homework’ and read the IEE/EIA. This survey is therefore also intended to raise awareness of the availability of these assessments; encourage stakeholders to read and engage with the EIA process; and encourage development partners to build their capacity to do so.

Introduction

The Oil and Gas Sector-Wide Impact Assessment (SWIA)¹ published in September 2014 by Myanmar Centre for Responsible Business (MCRB) identified Myanmar's emerging requirements for Environmental (and Social) Impact Assessment (EIA) as an opportunity to identify and address adverse impacts of the oil and gas sector, and to improve disclosure. Since 2014, MCRB has organised workshops with companies, government and civil society organisations to support the development of an EIA process which is fit for purpose and results in better environmental and social outcomes and increased trust and transparency.

In August 2014 MCRB hosted a government-business dialogue on environmental and social impacts of shooting seismic offshore². Subsequently it facilitated the provision of follow up comments³ by a number of oil and gas companies on the draft EIA Procedures with the intention of supporting the Government of Myanmar in bringing the Procedures into line with international standards. The Director of MCRB has also participated in the Natural Resources Working Group of the Myanmar Business Forum and led the analysis of how the interface between Ministries and the EIA Procedures and Investment Law needs to be streamlined⁴.

On 26 January 2015, on the margins of a wider MCRB-hosted multistakeholder discussion on community engagement in the extractives industries, MCRB hosted a workshop between companies and civil society participants on ESIA in the oil and gas sector⁵. On 24 February 2016, MCRB and PACT's Mekong Partnership for Environment co-organized a workshop on 'Developing Guidelines for Public Participation in EIA' to obtain feedback from EIA consultants and project proponents, including oil and gas companies, on their experience of carrying out IEE/EIA consultations with the local communities; also present were representatives of the Ministry of Environmental Conservation and Forests (MOECF)⁶ and Myanmar civil society participants in PACT's MPE Regional Technical Working group⁷.

¹ Sector Wide Impact Assessment of the Oil and Gas sector in Myanmar, Myanmar Centre for Responsible Business, September 2014 <http://www.myanmar-responsiblebusiness.org/swia/oil-and-gas.html>

² <http://www.myanmar-responsiblebusiness.org/news/mcrb-hosts-government-business-dialogue.html>

³ <http://www.myanmar-responsiblebusiness.org/pdf/2014-09-29-Final-Comments-ESIA-Offshore-Oil-and-Gas.pdf>

⁴ Myanmar Business Forum is a platform for dialogue between the private sector and government. Its goal is improve the business environment by promoting regulatory reforms. The MBF has been established between the Government of Myanmar and the UMFCCI, with the support of the IFC, a member of the World Bank Group. The goal of the MBF is to help to develop a favourable business environment that can attract domestic and foreign investment and support sustainable economic development for Myanmar. See <http://www.myanmarbusinessforum.org/en/natural-resources/>

⁵ <http://www.myanmar-responsiblebusiness.org/news/workshop-esia-oil-and-gas-sector-myanmar.html>

⁶ The new Myanmar government announced in March 2016 the appointment a new Minister of Natural Resources and the Environment which suggests a restructuring of the existing Ministry.

⁷ <http://www.myanmar-responsiblebusiness.org/news/pointers-for-public-participation-environmental-impact-assessment.html>

Myanmar's Legal Framework for EIA

A constant refrain in MCRB's engagement with companies has been the challenges they have faced in undertaking an EIA in Myanmar. This is partly due to parallel and inconsistent legal requirements for EIAs, and the fact that the EIA procedures were not finalised for three years after the adoption of the Environmental Conservation Law in 2012, and that government agencies intended to manage them – particularly MOECF - were not properly resourced. Although the Procedures have now been published, many of these problems remain.

The requirement to undertake EIAs was contained in Environmental Conservation Rules (2014)⁸, according to which all projects undertaken in Myanmar which have the potential to cause significant environmental and social impacts are required *"carry out a system of environment impact assessment and social impact assessment"*. However the final procedural rules were only published 18 months later on 29 December 2015, MOECF Notification 616/2015⁹. Earlier consultation drafts of these Procedures had been circulating since 2013, and many companies referred to them as a basis from which to design their EIA process.

Companies also had to navigate a separate, parallel legal requirement to undertake EIA, flowing from the Foreign Investment Law (2012)¹⁰ and Citizen's Investment Law (2013). MIC Notification 1/2013, subsequently replaced by Notification 50/2014 of 14 August 2014, listed a number of sectors in which investments were required to conduct EIAs prior to obtaining a permit from the Myanmar Investment Commission. Sectors required to undertake EIAs included *'Exploration and production of oil and gas, establishment of oil refinery or petrochemical plants'* and *'Construction of oil and gas pipeline projects'*.

However there was no recognition in Notification 1/2013 or 50/2014 that the oil and gas project cycle has different stages (seismic, exploration drilling, development drilling, production, decommissioning etc) and that these stages have different impacts which also cannot be predicted at the start of the project. There was no recognition of the possibility of requiring an Initial Environmental Examination (IEE), a less onerous and shorter assessment for projects with fewer lower potential adverse impacts, rather than a full EIA. Nor did the Notifications detail the scope or process for EIAs or outline MOECF's role in approval (MOECF at that stage did not have its EIA Procedures formally in place).

The 2013 Foreign Investment Rules require companies (not just in the oil and gas sector) to complete an EIA before getting a Myanmar Investment Commission (MIC) permit. However

⁸ The 2012 Environmental Conservation Law (2012) states that 'No one shall, without the prior permission, operate business, work-site or factory, workshop which is required to obtain the prior permission under this Law' (Article 28), and the only reference to Environmental Impact Assessment is in relation to the duties and powers related to the Environmental Conservation of the Ministry (Chapter 4) which has it that 'causing to lay down and carry out a system of environmental impact assessment and social impact assessment as to whether or not a project or activity to be undertaken by any Government department, organization or person may cause a significant impact on the environment'.

⁹ Available at http://www.myanmar-responsiblebusiness.org/pdf/resources/EIA-Procedures_en.pdf

¹⁰ http://www.burmalibrary.org/docs15/Foreign_Investment_Law-21-2012-en.pdf

requiring a company to conduct an EIA before receiving an MIC permit creates significant operational difficulties, including for the conduct of the EIA itself, and encourages companies to fast track the process to enable submission of a proposal to MIC. This requirement has resulted in some investors undertaking and submitting so-called 'EIAs' to the Myanmar Investment Commission which are not fit for purpose, but were intended to tick the box to get the project an MIC Permit.

However oil and gas companies, who generally have a better understanding of the purpose of an EIA, mostly worked with experienced consultants on the basis of the draft MOECAP Procedures to produce EIAs intended to be in line with future MOECAP requirements. Even so, they, like all other project proponents with the exception of Wanbao Myanmar, have yet to the Environmental Clearance Certificate (ECC) now required from MOECAP under the EIA Procedures. They therefore continue to operate in a legal grey areas.

A further complication for oil and gas companies was introduced by the inclusion of a requirement for an EIA in the Production Sharing Contracts signed after 2013: *"The Preparation Period shall begin on the Effective Date (date of signing of contract) and shall continue for a period of six (6) months and may be extended to a certain period by sole discretion of MOGE based on issuance of Myanmar Investment Commission's approval on Environmental Impact Assessment (EIA), Social Impact Assessment (SIA) and Environmental Management Plan (EMP) reports"*. In addition to the unclear meaning of 'based on issuance of Myanmar Investment Commission's approval', this PSC requirement also fails to recognise different stages of the project cycle and contains an unrealistically short timetable for completing an EIA (six months from signing).

In mid-2014, after it became clear that the various Myanmar legal requirements included an impractical sequencing and timing of approvals for oil and gas companies, the MIC started issuing permits to oil and gas companies in advance of their undertaking an EIA/IEE. The text of the MIC permit, although not public, is believed to include a requirement for companies to obtain necessary environmental permits.

This order of events (i.e. conditional MIC permit to be followed by approval of EIA and issuing of ECC) is a more appropriate approach. Indeed, it needs to be extended more generally to investments in all sectors which need to receive MIC approval, as well as incorporated in the revised Myanmar Investment Law.

Some of the problems faced by oil/gas companies and raised in the Myanmar Business Forum's Natural Resources Working Group have been addressed by the publication in December 2015 of the EIA Procedures. The Procedures include an Annex 1 which lists which types of projects that require an EIA or IEE (See Table 1 for Annex 1 treatment of oil and gas activities). However it remains for the Myanmar Investment Commission to formally withdraw Notification 50/2014 or replace it with a simple reference to the need for companies to comply with the EIA Procedures and Annex 1.

The EIA Procedures lay out specific content which EIA/IEE must cover; when an Environment Management Plan (EMP) is required and the conditions companies must meet in order to

obtain the Environmental Compliance Certificate (ECC). They also address disclosure requirements. Article 13 of the EIA Procedures makes clear that *“The Project Proponent shall: a) arrange for appropriate **public consultation** through all phases of the IEE and EIA process as required by Articles 34, 50, and 61, and b) **disclose to the public** in a timely manner all relevant Project-related information in accordance with this Procedure except that which may relate to National Security concerns as informed by the Ministry”*.

Under Article 34, disclosure is required upon commencing an IEE: *“The Project Proponent shall undertake the following public consultation process in regard to an IEE Type Project:*

- a) Immediately upon commencement of the IEE, disclose relevant information about the proposed Project to the public and civil society through the Project Proponent’s website(s) and local media, including by means of the prominent posting of legible sign boards at the Project site which are visible to the public, and comply with technical guidelines issued by the Ministry; and*
- b) arrange the required complement of consultation meetings as advised by the Ministry, with local communities, potential PAPs, local authorities, community based organizations, and civil society, and provide appropriate and timely explanations in press conferences and media interviews”*.

Under Article 38 of the Procedures, it is now a legal requirement for the project proponent to disclose information after submission of the IEE Report to MOECAP: *“Not later than fifteen (15) days after submission of the IEE Report to the Department, the Project Proponent shall disclose the IEE Report to civil society, PAPs, local communities and other concerned stakeholders: (i) posting on the Project or Project Proponent’s website(s), (ii) by means of local media (i.e. newspapers); (iii) at public meeting places (e.g. libraries, community halls); and (iv) at the offices of the Project Proponent”*.

The government’s responsibility for disclosure as part of the “Review and Approval Process for IEEs”) is outlined under Article 39: *“Upon receipt of the IEE Report from the Project Proponent, the Department shall:*

- a) disclose the IEE Report to the public on the Ministry and/or Department website(s), and/or through other appropriate media;*
- b) invite comments and suggestions on the IEE Report from all relevant parties including relevant government organizations, institutions, civil society organizations, and PAPs¹¹, as appropriate;*
- c) arrange public consultation meetings at the local level, at which the Project Proponent shall present the IEE Report; and*
- d) collect and review all comments and recommendations received, and forward the same to the Ministry to enable it to make a final decision on approval of the IEE Report.*

Similar provisions are included in later Articles concerning disclosure of EIAs.

¹¹ Project Affected Persons

Table 1: Extract from ANNEX 1 of the EIA Procedures (MOECAP Notification 616/2015)

Type of Economic Activity	Criteria for IEE s	Criteria for EIA
Onshore Oil and Gas Seismic Surveys	All sizes	
Onshore Oil and Gas Exploration Drillings	-	All sizes
Onshore Oil and Gas Production drilling and production activities; transportation activities including pipelines; pump stations, compressor stations and storage facilities; ancillary and support operations; and decommissioning	-	All sizes
Offshore Oil and Gas Seismic Surveys	All sizes	-
Offshore Oil and Gas Exploration Drillings	-	All sizes
Offshore Oil and Gas Production drilling and production activities; offshore pipeline operations, offshore transportation, compressor stations and storage facilities; ancillary and support operations; and decommissioning	-	All sizes
Petroleum Refineries or Natural Gas Refineries (including manufacturing of liquefied petroleum gas, motor gasoline, kerosene, diesel oil, heating oil, fuel oil, bitumen, asphalt, sulphur, and intermediate products e.g. propane/propylene mixtures, virgin naphtha, middle distillate and vacuum distillate for the petrochemical industry)	-	All sizes
Natural Gas Processing Plants; Production of liquid products from natural gas (this may include methanol and petroleum liquid products such as naphtha, gasoline, kerosene, diesel fuel, waxes, and lubes)	-	All sizes
Natural Gas Liquefaction Plants	-	All sizes
Oil or Natural Gas Terminals	-	All sizes
Petroleum Depots or Liquid Gas Depots	Storage capacity Petroleum < 10,000 t; Liquid gas < 2,500 t	Storage capacity Petroleum ≥ 10,000 t; Liquid gas ≥ 2,500 t
Oil or Gas Transmission or Distribution Systems	< 10 km	≥ 10 km
Filling Stations (including liquefied petroleum gas and compressed natural gas)	≥ 10 m ³ (10,000 l) fuel storage capacity	All activities where the Ministry requires that the Project shall undergo EIA

The completion of the disclosure and consultation requirements in the EIA Procedures is a prerequisite for obtaining an Environmental Compliance Certificate to permit the project to

proceed. The EIA Procedures provided for two routes for internet disclosure of EIAs, government website and company website. While it would be more efficient for this to be done in only one place, in the current transitional period, using both options seems a sensible transitional arrangement.

Our survey of oil and gas companies showed that those companies which have disclosed have done so on their company website, generally at HQ level. MOECAP has not disclosed any EIAs on its website (other than in 2014, when they posted the draft ESIA for the Letpadaung copper mine). Given limitations for government websites hosted inside Myanmar, the ADB/GMS Environmental portal (set up as a portal for all Myanmar environmental information, policies etc and based in Bangkok) might be the best site for government to disclose EIAs.

Survey of IEE/EIA disclosure by oil/gas companies

Rationale

MCRB believes that the regulatory requirement for IEE/EIA and Environmental Management Plans needs to deliver value for government, companies, and communities. The main way in which this takes place is through effective identification and management of adverse impacts consistent with the 'mitigation hierarchy' (Avoid, Prevent, Reduce, Mitigate or Compensate).

MCRB believes that an element of the value of an EIA for stakeholders arises from consultation and disclosure. This:

- **strengthens accountability.** The disclosed data permits more effective engagement with stakeholders on the impacts of operations and how to reduce them. It also contributes to better enforcement of contractual commitments made by the company in the form of the Environmental Management Plan, if these are publicly known.
- **increases consistency of approach, and improves efficiency** by sharing baseline and monitoring information and data with other government agencies, companies, and stakeholders such as academic institutions
- **increases trust and reduces the potential for conflict**
- **improves public understanding of the project,** fosters genuine public consultation, and leads to more accurate media reporting which can be based on IEE and EIA reports.

However such benefits will only occur if stakeholders are aware of and able to access EIAs and have the capacity to derive useful information from them. This requires IEE/EIA to be readily available and searchable on the internet (including historical reports).

EIA and IEEs, conducted to international standards, are a significant cost for companies which can run into hundreds of thousands or even over a million dollars for major projects. In the oil and gas sector, this cost will ultimately be deductible from production income – where the field results in commercial development - and therefore the costs constitute foregone income for Myanmar's national budget. It is in everyone's interests that they are commissioned only when necessary, and conducted efficiently, and are useful to all stakeholders.

Following the adoption of the EIA Procedures which introduced the legal requirement for disclosure, MCRB decided to undertake a desk-based survey of internet disclosure of IEEs and EIAs submitted to government, as part of the Centre's efforts to promote greater transparency by business, and greater public awareness and participation in the EIA process.

Since a list of all companies who had undertaken EIAs or IEEs was not publicly available, MCRB decided to focus in the initial phase on recent investment in the oil and gas sector where the identity of the companies awarded onshore and offshore blocks since 2013 was known. Any oil/gas company investing after 2013 would have been required under the Foreign Investment Law to undertake an EIA.

Methodology

In February 2016 MCRB contacted the country managers of the companies concerned (if MCRB had their contact details) to alert them to the survey. MCRB encouraged them to disclose their IEEs/EIAs if they had not already done so and send us relevant weblinks by a mid-March deadline. MCRB noted that, under the Procedures, disclosure was a required step to obtain an Environmental Compliance Certificate from MOECAF.

Results

Table 2 shows disclosed IEE/EIAs for blocks allocated after 2013. Table 3 shows companies which have not disclosed, as of 14 March 2016. These tables will be updated in the event further disclosures take place.

While many companies had already disclosed their assessments, or did so following MCRB's approach, some companies responded saying that they did not believe that they were required to disclose any IEE/EIA submitted before 29 December 2015 and therefore did not intend to do so; or that they were unwilling to do so in the absence of feedback from MOECAF.

ENI informed MCRB that their assessments would be disclosed once internal company procedures currently in process had been completed.

In total, 11 out of 19 offshore blocks (58%) have disclosed and 4 out of 15 onshore blocks have disclosed (26%). This higher rate of disclosure for offshore blocks is attributable to the presence of more experienced international operators with more extensive environmental health and safety approaches, compared to smaller less experienced players who received onshore blocks.

One caveat is that as MCRB has been unable to establish contact with some of the companies concerned (who have not disclosed, it cannot be guaranteed that they have even undertaken an IEE, although a requirement to undertake one within six months is included in the PSC. PSCs for onshore blocks J (Mawlamyine) and O (Pathein) awarded to Petroleum Exploration (PVT) Ltd. have not been signed yet.

Table 2: Oil/gas companies receiving blocks since 2013 which have disclosed their IEE/EIA

Company	Block	IEE or E(S)IA	Date submitted to government
Offshore Blocks			
Woodside	A-7	IEE	Sep-15
Woodside	AD-5	IEE	Sep-15
BG	A-4	IEE	20/11/2015
BG	AD-2	IEE	13/11/2015
Chevron (Exec Summary only)	A-5	IEE	09/07/2015
Shell Myanmar	AD-9	IEE	Jul-15
Shell Myanmar	AD-11	IEE	Jul-15
Shell Myanmar	MD-5	IEE	Jul-15
Ophir	AD-03	IEE	Feb-2015
StatOil	AD-10	IEE	09/10/2015
TOTAL	YMB	IEE	Mar-16
Onshore Blocks			
MPRL E&P Pte. Ltd	IOR-6 Myanaung	ESIA	15/05/2015
MPRL E&P Pte. Ltd	IOR-4 Prome	ESIA	15/05/2015
Pacific Hunt Energy Corp.	C1 Indaw - Yenan	ESIA	27/02/2016
Pacific Hunt Energy Corp.	H Taungoo-Pyinmana	ESIA	27/02/2016

Relevant weblinks for disclosed IEE/EIA in Table 2 are listed in Annex to this report.

Table 3: Oil/gas companies receiving blocks since 2013 which have not yet disclosed their IEE/EIA

Company name	Block	IEE or E(S)IA	Date submitted to government
Offshore Blocks			
Oil India	M-04, YEP	N/K	N/K
TAP Oil	M-07	N/K	N/K
Berlanga Holding	M-08	IEE	Jun-15
Transcontinental Group	M-15	N/K	N/K
Reliance Industries	M-17, M-18	N/K	N/K
ENI	MD-02	IEE	28/09/2015
ENI	MD-04	IEE	28/09/2015
Onshore Blocks			
PTTEP	MOGE 3 (Padaukpin-Natmi)	N/K	N/K
Pt Istech Resources Asia	EP-5 (Inbin-Teggyigone)	N/K	N/K
Petronas Carigali	IOR 5 (Htantabin)	N/K	N/K
Petronas Carigali	IOR 7 (Shwepyitha)	N/K	N/K
ONGC Videsh Limited	B2 (Zebyutaung - Nandaw)	N/K	N/K
ONGC Videsh Limited	EP 3 (Thegon-Shwegu)	N/K	N/K
ENI	K (Yamethin)	ES(H)IA	29/01/2015
ENI	RSF 5 (Ondwe)	ES(H)IA	29/01/2015
Brunei National Petroleum Company	EP 1 (Kyaukkyi-Mindon)	N/K	N/K
JSOC Bashneft	EP-4 (Mayaman – Pyay West)	N/K	N/K
CAOG S.a r.l	MOGE 4 (Myintha)	ESIA	March 2015

EIA compliance challenges for current oil and gas operators

In MCRB's discussions with oil and gas companies, they have identified a number of challenges which they face in complying with the emerging Myanmar requirements for EIA/IEE, touched upon above. These include:

- The lack of a single consistent legal requirement for EIA (MIC Notification 50/2014 vs MOECF Procedures vs Production Sharing Contracts. Relevant government departments (DICA, MOECF, MOGE) have designed their requirements without consultation with one another; timelines for approvals are inconsistent.
- Lack of standards for undertaking EIA both generally and specifically for the oil and gas sector. (To address this, since 2015, the Norwegian government has provided technical assistance to MOECF and MOGE to develop guidelines, and has consulted with companies).
- Lack of clarity about the degree to which social impacts should be included (although MOECF has informally advised that social and human rights impacts are included in EIAs);
- Under-resourced government interlocutors who lack knowledge of the sector and/or EIA.
- An unclear role for subnational governments in EIAs and project approvals
- Lack of MOECF guidelines on public participation. Challenges around achieving effective public participation in the EIA process were discussed in the February 2016 MCRB-PACT MPE workshop on 'Developing Guidelines for Public Participation in EIA' (see above). They included a recognition that one-off town hall meetings were not effective in generating feedback or trust, and that there was an absence of public understanding about the EIA process. To address these issues, MOECF plans to issue guidelines to companies on public participation, and regional Environmental Conservation Department representatives have embarked on a programme of EIA public awareness, but with limited resources.
- Complex lines of communication with government, which currently involve submission to Myanmar Investment Commission (MIC), as well as MOGE which forwards the report to MOECF. This makes tracking the submission of the assessment difficult.
- Absence of feedback, particular from MOECF. This includes lack of confirmation of whether reports had been received by MOECF, and lack of feedback on the substance of the report.
- Failure by MOECF to issue an Environmental Compliance Certificate (ECC) in line with the deadlines in the draft, and now published EIA procedures, leading to a legal grey area for the undertaking of seismic surveys, which need to be undertaken in a 'weather window'.

Oil and gas legacy projects and EIA

This survey has only examined disclosure for oil and gas blocks which have been awarded since 2013. In most cases, activities are still at the exploration/seismic phase. However, there are oil/gas projects which pre-date the issuance of the EIA Procedures, a number of which are producing. This includes the offshore platforms of TOTAL, Petronas, PTTEP, Daewoo as well as a number of smaller onshore operations. There are also onshore and offshore blocks awarded earlier whose status concerning relinquishment or ongoing activity is unclear.

Of those blocks awarded before 2013, only Blocks A-6 and AD-7 have published IEEs. These were submitted to government in late 2015. These blocks both involve Woodside, which farmed in to blocks held by MPRL and Daewoo respectively.

One company, Geopetrol, which was awarded a block prior to 2013 and had begun operations was subsequently instructed by the Ministry of Energy to perform an EIA. This was submitted on 30/7/2013 but has not been disclosed. In the category of oil and gas infrastructure, the South-East Asia Oil and Gas Pipelines (from Kyaukphyu to China) are believed to have undertaken EIAs but these were never disclosed. MCRB was unable to find disclosed EIAs for any other projects awarded prior to 2013.

The EIA Procedures address the question of legacy projects. Article 8 states: *“Any Project already in existence prior to the issuance of the Rules, or the construction of which has already commenced prior to the issuance of the Rules, and which, in either case, shall be required to undertake, within the timeframe prescribed by the Department, an environmental compliance audit, including on-site assessment, to identify past and/or present concerns related to that Project's Environmental Impacts, and to:*

a) develop an EIA or IEE or EMP;

b) obtain an ECC; and

c) take appropriate actions to mitigate Adverse Impacts in accordance with the Law, the Rules, and other applicable laws.”

Some oil and gas companies whose existing operations are caught by Article 8 are currently in discussion with government about what this means for their operations.

The problem of how to deal with projects which pre-date the Environmental Conservation Law and EIA Procedures is not unique to the oil and gas sector. Indeed there are more acute problems and high-risk legacy projects to be addressed in some other sectors in Myanmar, particularly mining.

There is therefore a need for the Myanmar government to establish a realistic and prioritised strategy for implementing Article 8. The process by which their projects need to be brought into compliance with Article 8 of the EIA Procedures needs to be communicated to companies. There also needs to be an explicit requirement for the same level of consultation and

disclosure on whatever Environmental Management Plans are ultimately put in place as would be the case for non-legacy projects.

Prioritisation is important for workflow management by MOECAAF, who already have a significant backlog of EIA/IEEs which have not yet been reviewed. It is also necessary to ensure that there is not a shortage of qualified EIA consultants able to undertake valid EIAs.

Prioritisation could be based on an assessment of which projects are highest risk, known problems (on which views of civil society organisations could be sought), and the presence of adequate internal environmental management plans which companies should be invited to provide to MOECAAF¹². There should be equal and transparent treatment of projects in a similar position to ensure a level playing field. Assistance to MOECAAF from development partners will be needed.

Disclosure in other Sectors

The status of EIA disclosure in other sectors is unclear in the absence of published information from either DICA or MOECAAF about which EIAs have been undertaken. One local EIA consultant who participated in the MCRB/PACT workshop noted that his company had been involved in around eighty EIAs. MCRB has been informed by DICA of 32 foreign and 112 Myanmar projects where DICA has considered the need for an EIA, many of them hotel and real estate projects. In some cases IEE/EIA have subsequently been submitted to DICA.

However, with arrangements for EIA now in transition following the adoption of the EIA Procedures, DICA's figures are unlikely to reflect the complete picture for all projects which have undertaken an IEE or EIA. The figure DICA shared with MCRB also does not include oil and gas projects. Furthermore, not all activities which require an EIA under Annex 1 of the EIA Procedures require an application to the Myanmar Investment Commission, so they may not be included in DICA's figures.

Some Myanmar companies, including Max, Shwetaung, Serge Pun Associates and Dagon, have disclosed EIAs possibly as a result of prompting by MCRB's Transparency in Myanmar Enterprises/Pwint Thit Sa report¹³ or because they have the International Finance Corporation (IFC) as a partner. The projects include cement factories, coal mines, oil depots and hydropower dams.

The ESIA for the Letpadaung copper mine developed by Myanmar Wanbao, undertaken by consultants Knight Piesold, has been fully disclosed both in draft and now final form, and was the subject of extensive intradepartmental discussion and cabinet approval¹⁴. However this is exceptional and similar approaches have not been seen for other mines in Myanmar.

¹² The issue of pre-existing projects was covered in Point 3.5 of the position paper from the Myanmar Business Forum's Natural Resources Working Group

¹³ <http://www.myanmar-responsiblebusiness.org/pwint-thit-sa/report.html>

¹⁴ www.myanmarwanbao.com.mm/en/our-latest-news/53-june-2015/135-final-version-of-esia-report.html

While an initial search suggests that undertaking EIAs and disclosing them is significantly less prevalent in other sectors compared to oil and gas, MCRB will undertake further desk research.

Conclusion

Although not all oil and gas companies have disclosed their IEEs/EIAs, it is clear that the sector, and in particular, some companies within it, lead the way in Myanmar for EIA disclosure. Moreover those IEE/EIAs which have been published in the oil and gas sector have generally been conducted to higher standards than EIAs for other projects. Some oil and gas companies have broken new ground in Myanmar for public consultation, participation and disclosure.

All companies have suffered from a lack of government feedback on their submitted draft reports. However, while a significant number have not let this prevent them from publishing their submitted report, some companies have declined to be as proactively transparent as their peers. Some companies have argued that as they submitted their reports prior to 29 December 2015, they are not legally bound to disclose unless told by government to do so. MCRB finds it puzzling that some companies take this view, in particular where they claim a commitment to operate to high standards of environmental and social protection and transparency.

Significant time and financial and human resource has been spent by companies on the production of individual IEEs for each offshore seismic block, the content of most of which is very similar. The government needs to review whether such an approach is efficient. For example in future they could take the lead on developing an approach which reduces duplication and provides companies with baseline data and standard requirements e.g. on Marine Mammal Observers (MMOs).

To improve the EIA process, particularly as it concerns disclosure, MCRB offers the following recommendations.

Recommendations

To companies:

- Publish on the company website any draft IEE/EIA/EMP which has been submitted to the Myanmar government
- Maintain IEE/EIA reports on company websites even after the relevant project activities are completed, so that a complete picture of the project's environmental and social governance is available, and similar projects can benefit from the information
- Undertake genuine and sustained consultation with stakeholders at all stages of the process, as a part of the necessary human rights due diligence for the IEE/EIA/EMP. This should go beyond tick-box town hall meetings and include targetted discussions, particularly with impacted vulnerable groups whose voices are not otherwise heard.

- Put in place accessible company contact/enquiry points, and ensure that EMPs contain appropriate operational grievance mechanisms which are consistent with the UN Guiding Principles on Business and Human Rights
- Build capacity of local stakeholders, including communities and the media, to understand the IEE/EIA/EMP, and respond constructively to enquiries concerning implementation of commitments in the EMP

To MOECF/ECD:

- Send an acknowledgement to the project proponent of all EIA/IEEs as soon as they are received, confirming that the document should be disclosed on company websites and elsewhere in accordance with Articles 38 and 65
- Disclose all IEE / EIAs which have been submitted on a MOECF website or the Myanmar Environmental Portal in a searchable format
- Seek public comments in accordance with Articles 39b and 67b
- Prioritise and accelerate the review by the EIA Report Review Body of EIAs which have already been submitted, ensuring that the Review pays attention to evidence of disclosure and public consultation
- Establish a strategy to implement Article 8 of the EIA procedures which prioritises the bringing into compliance of high-risk and poorly managed legacy projects, ensuring the same degree of transparency and disclosure as for new projects
- Continue to raise awareness of what IEE/EIA is, and role of public participation
- Review lessons learned from the 2014/2015 experience of oil and gas EIA with MOGE, DICA and companies and consider how the process can be made more efficient and effective

To Myanmar Investment Commission/DICA:

- Ensure a single source of rules governing which projects must undertake IEE/EIA by withdrawing or replacing DICA Notification 50/2014 with a Notification which says that *'Economic activities which require an IEE or EIA are listed in Annex 1 of the EIA Procedures of 29.12.2015. This Notification replaces MIC Notification 50/2014'*.
- Clarify the ordering of the requirement to obtain an MIC Permit, and to undertake an IEE/EIA so that it is clear that the EIA comes after the MIC Permit (as eventually occurred in the case of the O&G blocks)
- Reflect this in Chapter 10 of the draft Myanmar Investment Law. [Suggested text: *Projects subject to the requirements of Section 45 which are also required to obtain Prior Permission in accordance with the Environmental Conservation Law, should seek MIC Approval in accordance with section 4xx prior to the undertaking of any assessment. The Commission will consider the application in accordance with section 4xx. However where the Commission grants a Permit, it shall be conditional on the project undertaking all necessary assessments and obtaining all necessary permits and approvals throughout the life of the project.*
- Publish MIC Permits, to enhance accountability and public scrutiny.

To Ministry of Energy/MOGE:

- Clarify language concerning EIA in the Production Sharing Contracts to make it consistent with the EIA Procedures and MIC consideration, and to allow for IEE/EIA at each stage of the project cycle, with companies able to determine their own timeframe to conduct these (subject to the overall time limits in the PSC).

To media and civil society:

- Engage actively in public consultations and disclosure processes, analyse and comment on the documents and gather information to hold companies to account on the commitments in their EMPs

To development partners:

- Support ECD to build its capacity to review and monitor IEE/EIA/EMP, including specialist capacity for specific sectors, and for the implementation of Article 8 concerning legacy projects.
- Support the media and civil society organisations to build their capacity to engage with the EIA process.

ANNEX: Weblinks for Disclosed IEEs/EIAs

OFFSHORE

WOODSIDE: Blocks A7, AD5, A6 and AD7

[http://www.woodside.com.au/Working-Sustainably/Consultation%20Activities/Myanmar%20Exploration%20A-7%20Initial%20Environmental%20Examination%20Full%20Text%20\(English\).pdf](http://www.woodside.com.au/Working-Sustainably/Consultation%20Activities/Myanmar%20Exploration%20A-7%20Initial%20Environmental%20Examination%20Full%20Text%20(English).pdf)

[http://www.woodside.com.au/Working-Sustainably/Consultation%20Activities/Myanmar%20Exploration%20AD-5%20Initial%20Environmental%20Examination%20Full%20Text%20\(English\).pdf](http://www.woodside.com.au/Working-Sustainably/Consultation%20Activities/Myanmar%20Exploration%20AD-5%20Initial%20Environmental%20Examination%20Full%20Text%20(English).pdf)

[http://www.woodside.com.au/Working-Sustainably/Consultation%20Activities/Myanmar%20Exploration%20A-6%20Initial%20Environmental%20Examination%20-%20Full%20Report%20\(English\).PDF](http://www.woodside.com.au/Working-Sustainably/Consultation%20Activities/Myanmar%20Exploration%20A-6%20Initial%20Environmental%20Examination%20-%20Full%20Report%20(English).PDF)

[http://www.woodside.com.au/Working-Sustainably/Consultation%20Activities/Myanmar%20Exploration%20AD-7%20Initial%20Environmental%20Examination%20-%20Full%20Report%20\(English\).PDF](http://www.woodside.com.au/Working-Sustainably/Consultation%20Activities/Myanmar%20Exploration%20AD-7%20Initial%20Environmental%20Examination%20-%20Full%20Report%20(English).PDF)

BG (now a part of Shell): Blocks A4, AD02

http://www.bg-group.com/assets/files/cms/Myanmar/IEE_Block_A4_FullReport_Eng_Dec15.pdf

http://www.bg-group.com/assets/files/cms/Myanmar/IEE_Block_AD_02_FullReport_Eng_Dec15.pdf

CHEVRON: Block A5 (Exec Summary only)

<https://beta.chevron.com/-/media/chevron/worldwide/documents/initial-environmental-examination.pdf>

SHELL: Blocks AD9, AD11, MD-05, A4, AD-02

<http://www.shell.com/about-us/contact-us/contact-myanmar.html>

OPHIR: Block AD-03

<https://www.ophir-energy.com/corporate-responsibility/environment/>

STATOIL: Block AD10

<http://www.statoil.com/no/EnvironmentSociety/Environment/impactassessments/international/Downloads/InitialEnvironmentalExamination.pdf>

TOTAL: Block YWB

http://www.total.com/sites/default/files/atoms/files/8541128-iee_myanmar_ywb_block_-_rev4_final.pdf

ONSHORE

MYANMAR PETROLEUM RESOURCES LTD (MPRL)

http://www.mprlexp.com/images/ESIA_Summary_IOR_4_Final.pdf

http://www.mprlexp.com/images/ESIA_Summary_IOR_6_Final.pdf

PACIFIC HUNT ENERGY, C1, H

<http://pacifichuntenergy.com/operations/myanmar-psc-c-1-oil-gas-block.html>

<http://pacifichuntenergy.com/operations/myanmar-psc-h-oil-gas-block.html>