



SURVEY UPDATE: DISCLOSURE OF ENVIRONMENTAL IMPACT ASSESSMENTS IN MYANMAR'S OIL AND GAS SECTOR

Myanmar Centre for Responsible Business

Updated October 2016

Acknowledgements

Research for the first edition of this report was undertaken in March 2016; this edition of the survey was revised based on information available as of 11 October 2016. The text was also updated to reflect developments in EIA, and MCRB's work in this area between March and October 2016.

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 October 2016 update 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. It updates an initial survey conducted in March 2016.

In total, 14 out of 20 offshore blocks (70%) have disclosed (up from 58% six months ago) and 7 out of 15 onshore blocks (47%, up from 26%) have now disclosed. The survey identifies those 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 MOECAP.

The overall level of disclosure in the oil and gas sector has improved and remains 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 Procedure, 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 Procedure, 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, both for oil and gas, and more widely.

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 Procedure with the intention of supporting the Government of Myanmar in bringing the Procedure into line with international standards. A follow-up meeting was held in July 2016. 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 sector⁴.

In August and September 2016 MCRB partnered with Vermont Law School and the Ministry of Natural Resources and Environmental Conservation (MONREC) on two training workshops for local EIA consultancies⁵. In September 2016, MCRB held a roundtable with international EIA consultants ERM, and local civil society organisations and international NGOs, to discuss experiences and challenges of conducting EIA in Myanmar⁶.

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)⁷ and Myanmar civil society participants in PACT's MPE Regional Technical Working group⁸.

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

⁵ <http://www.myanmar-responsiblebusiness.org/news/second-training-workshop-local-eia-consultants.html>

⁶ <http://www.myanmar-responsiblebusiness.org/news/eia-assessments-in-myanmar-workshop.html>

⁷ 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.

⁸ <http://www.myanmar-responsiblebusiness.org/news/pointers-for-public-participation-environmental-impact-assessment.html>

Director MCRB gave a keynote speech at a regional workshop for this process in Yangon in September 2016⁹.

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 Procedure and planned Myanmar Investment Law needed to be streamlined¹⁰. MCRB has submitted several sets of comments on the draft Myanmar Investment Law to government, most recently during the draft Law's final reading in Parliament in September 2016¹¹.

In all of these activities, MCRB has underlined the importance of public participation, transparency and disclosure, to make the EIA process more effective and promote accountability. Additionally through its engagement with foreign and Myanmar companies, including through the annual Pwint Thit Sa/Transparency in Myanmar Enterprises report¹² and through work on the Thilawa SEZ, MCRB has pressed individual companies to meet what is now a legal obligation for website disclosure under the December 2015 EIA Procedure.

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 Procedure 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 MOECA – now MONREC - were not properly resourced. Although the Procedure have now been published, many of these problems remain.

The requirement to undertake EIAs was contained in Environmental Conservation Rules (2014)¹³, according to which all projects undertaken in Myanmar which have the potential to

⁹ <http://www.myanmar-responsiblebusiness.org/news/community-engagement-private-sector.html>

¹⁰ The 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 UMFCI, 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/>

¹¹ <http://www.myanmar-responsiblebusiness.org/news/draft-myanmar-investment-law.html>

¹² <http://www.myanmar-responsiblebusiness.org/pwint-thit-sa/2016.html>

¹³ 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'.

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 as MOECF Notification 616/2015¹⁴. Earlier consultation drafts of this Procedure had been circulating since 2013, and many companies referred to it as a basis for their EIA process and report.

Companies also had to navigate a separate, parallel legal requirement to undertake EIA, flowing from the Foreign Investment Law (2012)¹⁵ 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 (or earlier drafts of the EIA Procedure) 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 Procedure 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 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 in other sectors 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. Many of these are believed to be part of a significant backlog in MONREC.

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 EIA Procedure to produce EIAs intended to be in line with future requirements. Even so, they have yet to the Environmental Clearance Certificate (ECC) now required from MOECF under the EIA Procedure, since MONREC has yet to issue an ECC. While some have received some form of ‘comfort letter’, this legal grey area is of concern to companies and other stakeholders and was raised in MCRB’s July 2016 workshop between companies and government.

¹⁴ Available at http://www.myanmar-responsiblebusiness.org/pdf/resources/EIA-Procedure_en.pdf

¹⁵ http://www.burmalibrary.org/docs15/Foreign_Investment_Law-21-2012-en.pdf

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 regulations and notifications which underpin the revised Myanmar Investment Law, adopted in October 2016.

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 Procedure. The Procedure 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). DICA Notification 80/2016 of 29 March 2016 withdrew Notification 50/2014, the DICA’s list of sectors requiring EIA (as suggested by MCRB). DICA now refers investors to the EIA Procedure to determine whether or not an EIA is necessary. This is a welcome step to promote regulatory consistency.

The EIA Procedure 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 Procedure 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 Procedure, 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 PAPs¹⁶, 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.

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

¹⁶ Project Affected Persons

Table 1: Extract from ANNEX 1 of the EIA Procedure (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

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. MOECAAF 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 cost > \$100,000 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 stakeholders.

Following the adoption of the EIA Procedure 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 Procedure, disclosure was a required step to obtain an Environmental Compliance Certificate.

After publication of the first report, for those companies which had not disclosed, a chaser email was sent in August 2016.

Table 2: Oil/gas companies receiving blocks since 2013 with disclosed 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
Woodside	A-6	IEE	
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
Canadian Foresight	M-15	IEE	Jun-15
ENI	MD-02	IEE	28/09/2015
ENI	MD-04	IEE	28/09/2015
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.	H Taungoo-Pyinmana	ESIA	27/02/2016
Pacific Hunt Energy Corp.	C1 Indaw - Yenan	ESIA	27/02/2016
PTTEP	MOGE 3 (Padaukpin-Natmi)	ESHIA	Feb-2015
ENI	K (Yamethin)	ESHIA	29/01/2015
ENI	RSF 5 (Ondwe)	ESHIA	29/01/2015

Results

Table 2 shows disclosed IEE/EIAs for blocks allocated after 2013. Table 3 shows companies which have not disclosed, as of 10 October 2016. 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 the Ministry.

In total, 14 out of 20 offshore blocks (70%) have disclosed and 7 out of 15 onshore blocks (47%) have disclosed. 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. ENI which had not disclosed in March 2016 now has full disclosure including webpages on the background to their ESHIA process in Myanmar¹⁷.

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 (Patheingyi) awarded to Petroleum Exploration (PVT) Ltd. have not been signed and are therefore not included. 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 not yet disclosing their IEE/EIA

Company name	Block	IEE or E(S)IA	Date submitted to government
Offshore Blocks			
Oil India	M-04	N/K	N/K
Oil India	YEP	N/K	N/K
TAP Oil	M-07	N/K	N/K
Berlanga Holding CAOG	M-08	IEE	Jun-15
Reliance Industries	M-17	N/K	N/K
Reliance Industries	M-18	N/K	N/K
Onshore Blocks			
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
Brunei National Petroleum	EP 1 (Kyaukkyi-Mindon)	N/K	N/K
JSOC Bashneft	EP-4 (Mayaman – Pyay West)	N/K	N/K
Berlanga Holding CAOG	MOGE 4 (Myintha)	ESIA	March 2015

¹⁷ <https://www.eni.com/en-IT/media/focus-on/eni-myanmar/management-environmental-social-health-impacts.page>

EIA compliance challenges for oil and gas companies

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. Relevant government departments (DICA, MOECAP/MONREC, 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 MONREC and MOGE to develop guidelines, and has consulted with companies).
- Lack of clarity about the degree to which social impacts should be included (although MONREC has advised that social, socio-economic, health impacts are included in EIAs and are explicitly part of the definition of 'Environmental Impact' in the EIA Procedure;
- 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 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, MONREC 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 MONREC. This makes tracking the submission of the EIA difficult.
 - In the July 2016 workshop it was clarified by Government that the Project Proponent was the Operator and that they could submit direct to MONREC
- Absence of feedback, particular from MONREC. This includes lack of confirmation of whether reports had been received by MONREC, and lack of feedback on the substance of the report.
- Lack of clarity concerning disclosure and consultation by MONREC after submission of the EIA, in line with the EIA Procedure.
- Failure by MONREC to issue an Environmental Compliance Certificate (ECC) in line with the deadlines in the EIA Procedure, 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 Procedure, 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 Procedure addresses 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 Procedure 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 Procedure 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 MONREC, who already have a significant backlog of EIA/IEEs which have not yet been reviewed. Prioritisation is also necessary to ensure that a sudden peak in demand for EIAs does not create 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 MONREC¹⁸. There should be equal and transparent treatment of projects in a similar position to ensure a level playing field. Assistance to MONREC from development partners will be needed, particularly in the early days to pay for international experts who can help MONREC review IEE/EIA.

The EIA Procedure allows for a 'Review Fee' system whereby the Project Proponent pays for the cost of the Review. This should be put in place as soon as possible to enable a sustainable and transparent system for the government to hire qualified external reviewers where necessary.

Disclosure in other Sectors

The status of EIA disclosure in other sectors is unclear in the absence of published information from either DICA or MONREC 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.

In February 2016, MCRB was 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, following the adoption of the EIA Procedure, 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 Procedure require an application to the Myanmar Investment Commission, so they may not be included in DICA's figures.

Table 4 shows figures for the number of projects on which a **screening opinion** (EIA/IEE/EMP) had been given between December 2015 and August 2016, based on figures shared by ECD at the 12 September 2016 workshop. This is an indication of forthcoming IEE/EIA to be considered by ECD.

¹⁸ 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

Table 4: Screening Opinions given by ECD between December 2015 and August 2016

Region/state	EIA/EMP	IEE/EMP	EMP	Waste	Total
Yangon	27	39	58	7	131
Mandalay	11	11	0	1	24
Bago	5	1	5	0	11
Tanintharyi	6	0	1	0	7
Ayeyarwady	1	1	2	0	4
Sagaing	0	2	0	0	2
Magwe	0	0	1	0	1
Kayin	0	1	0	0	1
Mon	4	3	0	0	7
Rakhine	0	3	3	0	6
Shan	3	4	0	0	7
Domestic (?)	0	0	1	0	1
TOTAL	57	65	71	8	201

Searches to date suggest that undertaking EIAs and disclosing them is significantly less prevalent in other sectors compared to oil and gas. 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 approval¹⁹. However this is exceptional and similar approaches have not been seen for other mines in Myanmar.

¹⁹ www.myanmarwanbao.com.mm/en/our-latest-news/53-june-2015/135-final-version-of-esia-report.html

Other significant disclosed EIAs include certain EIAs related to the Thilawa Special Economic Zone²⁰.

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 report²¹ or because they have the International Finance Corporation (IFC) as a partner. The projects include cement factories, coal mines, oil depots and hydropower dams.

MCRB will undertake further desk research and continue to encourage companies to disclose any IEE/EIAs submitted, even if this was before December 2015.

Conclusion

Although not every oil and gas company has disclosed its IEE/EIA, 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. 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). This could be included in the draft Oil and Gas ESIA Guidelines.

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

²⁰ The EIA documents for Phase B of the Zone can be found at <http://www.myanmarthilawa.gov.mm/public-disclosure-draft-environmental-impact-assessment-eia-report-thilawa-special-economic-zone> and the EIA for the Golden Dowa Eco-System Hazardous Waste Management Facility can be found at http://www.dowa-eco.co.jp/content/images/business/global/myanmar/DOWA_Final_EIA_June_2015.pdf

²¹ <http://www.myanmar-responsiblebusiness.org/pwint-thit-sa/report.html>

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 targeted 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 the Environmental Conservation Dept, MONREC:

- 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 MONREC 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 system of Review Fees to pay for expert review of submitted IEE/EIA, and use this to build MONREC capability
- Establish a strategy to implement Article 8 of the EIA Procedure 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:

- Use the occasion of the new Myanmar Investment Law to 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 issuance of a conditional MIC Permit (as eventually occurred in the case of the O&G blocks)
- 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 Procedure 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 a Review Fee system, specialist capacity for specific sectors, and for the implementation of Article 8 concerning legacy projects.
- Support the development of sector specific guidelines and standard templates.
- 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

NB since AD7 was awarded to Daewoo prior to 2013 and Woodside farmed in, it has not been included in the statistics of the report, for consistency.

- [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)
- <http://www.woodside.com.au/Working-Sustainably/Consultation%20Activities/Myanmar%20AD-7%202017%20Drilling%20Program%20Environmental%20Impact%20Assessment%20Report.pdf>

CHEVRON: Block A5 (Exec Summary only)

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

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

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

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

OPHIR: Block AD-03

https://www.ophir-energy.com/wp-content/uploads/2015/09/Ophir-Myanmar-AD-03-Block-3D-MSS-IEE-Report-Final-February-2015_.pdf

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

CANADIAN FORESIGHT: Block M15

http://canadianforesight.com/wp-content/uploads/2016/07/8541172-M15BlockSeismicCampaign-IEE-Final_Rev3.pdf

ENI: Blocks MD-2, MD-4

https://www.eni.com/docs/en_IT/enipedia/international-presence/myanmar/myanmar-offshore-block-md-2-iee.pdf

https://www.eni.com/docs/en_IT/enipedia/international-presence/myanmar/myanmar-offshore-block-md-4-iee-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: Blocks 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>

PTTEP: Block MOGE 3 (Padaukpin-Natmi)

<http://www.pttep.com/en/SustainableDevelopment/Business/Capitalprojectmanagement/download.aspx?Content=2303>

ENI: Blocks RSF-5, PSC-K

https://www.eni.com/docs/en_IT/enicom/media/dossier/eni-myanmar/eshia-rsf-5-r01.pdf

https://www.eni.com/docs/en_IT/enipedia/international-presence/myanmar/eshia-psc-k-r01.pdf