



OIL AND GAS SECTOR-WIDE IMPACT ASSESSMENT (SWIA)

Summary Of Consultation Meetings

Yangon, Myanmar – 24th/25th/26th March 2014

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I. Background to the Consultation Meetings

A. Approach of a Sector Wide Impact Assessment (SWIA)

The idea behind the Oil & Gas (O&G) SWIA is to provide an overall picture of potential positive and negative impacts of the O&G sector on society in Myanmar for a wide range of audiences: government, parliamentarians, business, civil society, communities, trade unions and media. To do so, the SWIA looks at existing projects to identify potential key risks, particularly human rights risks, for new projects. The SWIA is not a “name and shame” document but instead anonymised research intended to draw lessons learned to help shape better policy and practice in the O&G sector in Myanmar. The expectation is that the document may help inform forthcoming environmental and social impact assessments (ESIAs) for new O&G projects, inform government law and policy relevant to the sector, and provide relevant information for community/civil society interaction with O&G companies.

B. March 2014 Stakeholder Consultations

MCRB held three consultation meetings on 24-26 March 2014 with a total of 86 stakeholders, under the Chatham House rule (i.e. no attribution of comments):

- Day 1 with businesses and service providers (consultancies and law firms): 22 participants
- Day 2 with Myanmar civil society and community based organisations: 32 participants
- Day 3 with international organisations, embassies and international NGOs: 32 participants.

The consultations focussed on the findings and assessment from field work in the country, and actions that could flow from them. A summary of these findings was published in advance of the consultations, and is available on the MCRB website.¹ This summary consultation document is only a part of the final SWIA report (an indicative table of contents for the final O&G SWIA is included in the consultation draft).

Participants were asked to address the following questions:

1. On a sector-wide basis (rather than a project-specific basis) – Do these findings sound appropriate? Have we missed key issues? Have we misdiagnosed?
2. What are the key recommendations and actions you would suggest – for the Government and for companies operating in the sector and other stakeholders? Who needs to act on them? What are the linked initiatives within government, by development partners, NGOs and other actors?

The discussions, and this report of the meetings, are organised into the three levels which the SWIA will address: (i) aggregate/sector (ii) cumulative; (iii) project level.

¹ <http://www.myanmar-responsiblebusiness.org/news/assessing-impacts-of-business-sectors-on-myanmar-society.html>

II. Day 1 – Consultation with Oil and Gas Companies and Related Service Providers

A. Sector-Level Impacts

1. General Comments

- Participants noted that the draft lacks a discussion on context and on the positive contributions of the sector to national development. MCRB highlighted that the draft sent for discussion was only part of the final SWIA report. It focussed on the field assessment dimension of the SWIA. The final SWIA report will have an analysis of the national context relevant to the O&G sector, including its potential positive contribution to national development and positive impacts at the project-level.
- Participants suggested it would be useful to highlight the different phases of a typical operation and their implications for human rights and environmental and social impacts.
- Participants also suggested including lessons learned from the region; Thailand, Cambodia, Laos, Vietnam provide the most relevant comparators.

2. Recommendations from Participants at the Sector-Level

a) Changes in Government Approval Processes and Frameworks

Bidding, Tendering and Procurement Process:

- The recent bidding process run by the Ministries of Telecoms provide good lessons learned on more transparent bidding and tendering processes for the Ministry of Energy (MoE) and MOGE.
- There needs to be transparency on the evaluation criteria and scoring that MOGE is using, together with a brief justification for the selection of the chosen operators.
- Several participants noted that MOGE could benefit from engaging international experts to assist with the evaluation process for new bids and then in subsequent negotiations with companies.
- MOGE should set out the standards it expects of operators.
- MOGE should be encouraged to liberalise current restrictions on local procurement, e.g. its approved list of food and beverage providers, as this would stimulate new Myanmar companies to enter the market and will promote transparent competition.
- The conflict of interest between MOGE's roles as operator and regulator needs to be addressed in the long-term. Limiting its role to either regulator or operator would allow it to focus on its role and improve its performance.

Suggested changes to the Production Sharing Contracts (PSC) to incorporate references to IFC Performance Standards:

- One participant commented that incorporating specific standards in PSCs can lead to unequal treatment between sectors, and set particular standards in stone for 30 years. An alternative approach is to focus on incorporating changes into national law or, as a second best option, to address requirements through the MIC permission process.
- Another company noted that they intend to commit to specific environmental and social standards in a side-letter to the PSC.

Government Coordination

- Many of the participants noted that better coordination between government ministries would be very useful for investors.

b) Sector Wide Collective Action on Specific Points

- Some participants suggested a sector-wide working group with the government to develop rules on abandonment of wells; others thought this could only be achieved by changes in the law.
- There was near unanimous opinion that there is a need for a sector-wide oil spill response plan.
- A sector-wide approach to combining and programming the training budget currently allocated exclusively for MOGE training was seen as useful, to allow for a coordinated, longer-term approach whereby it could be used to train human resources beyond MOGE.
- Companies want to invest in support for higher education, but the government needs to facilitate direct company-university communication, rather than have channeled via the Ministry of Education.
- Participants highlighted good examples of sector-wide approaches to developing human resources for employment in the sector: the Petroleum Institute of Thailand,² Thai Petroleum University at Chulalongkorn, Australian TVET programmes, DFID funded Western Region Coastal Foundation programme in Ghana³.
- There is a need to invest in SME training for farmers to support them in developing longer term livelihood options, particularly where their land is lost to O&G operations.
- Generally companies will achieve training needs through private sector providers and need to have a plan to employ those trained afterwards.
- There should be transparency and effective communications between companies and the media.

B. Cumulative-Level Impacts

1. General Comments

- The challenge with cumulative impact assessment (CIA) is that project proponents tend to claim that information on other projects is not available. However given that other projects will be required to disclose information in their ESIA's, including scoping studies, this should help ensure that information is available.
- Hong Kong was mentioned as a jurisdiction with good practice on CIA.
- There is no current data on fish stocks so it will be very difficult to understand any cumulative effect of the O&G sector. But this will be important because offshore O&G areas overlap with fishing areas.
- Ports and the roads leading to them (Ministry of Transport responsibility) will be a constraint for offshore operations. They should be a focal point for cumulative impact assessment: Sittwe, Kyaukphyu, Made Kyun/Island.

2. Recommendations from Participants at the Cumulative-Level

- Given similar starting points, it should be possible to get consistent practice and transparency by all companies at the initial stages of offshore and onshore exploration. This could be facilitated by companies sharing the TORs for their ESIA's in the same area.

² <http://www.ptit.org/index.php/About>

³ The Ghana programme aims to build a Coastal Foundation and Community Dialogue, through which CSR funding will be channeled to build trust between communities and the expanding private sector in the region, while enabling economic development through supporting job creation and improving livelihoods incomes. The 5 year project aims to establish a sustainable foundation through which CSR funding will be raised and coordinated throughout the 6 coastal districts. In addition to the important dialogue platform, the programme will focus on supporting the following three sectors: promote alternative livelihoods; enable better business support services, and; develop relevant education and skills development training in the region.

- Since the current six month time frame for O&G ESIA's is not long enough to get baseline data on cumulative impacts, this timeline should be revised to allow for consideration of cumulative impacts.
- There are links between the planned Special Economic Zones (SEZs) and O&G that should be explored. For example Kyaukphyu SEZ expects offtake from Shwe Gas in 2016. Currently the Kyaukphyu SEZ team is not talking to O&G companies, but it should do so.
- Regional governments should lead the process of addressing cumulative impacts but will need prompting and capacity building to do so. There are lessons to be learned from how the cumulative impacts of Map Ta Phut industrial estate in Rayong were/were not managed, including for Myanmar regional governments.

C. Project-Level Impacts

1. Stakeholder Engagement/Livelihoods/Grievance Mechanisms/Social Investment

a) Recommendations from Participants

- Operational-level grievance mechanisms companies provide need to be accessible in several different ways, documented, with a longer-term follow up with communities.
- MOGE representatives should be posted in companies for longer periods to enable them to fulfil their problem-solving role with communities.
- There is a need for detailed baselines to be able to understand potential impacts on local communities, as such information does not exist.
- Many local suppliers cannot meet company health, safety, environment (HSE).
- For community development, providing loans and market development training is not enough. There should be capacity building, bringing external expertise when to improve the local supply chain to increase productivity and quality.
- Companies should not compromise on the standards (when procuring from local businesses/communities). Instead they should support local businesses to improve the quality of their produce, thus focusing on good practice for the longer term.
- There is a need for employment training programmes and job creation for local “ local “ communities.
- Companies should link up with Myanmar SME banks to help support local communities who are receiving cash payments for land acquisition or damages.
- Some participants indicated that some issues, like cooperation on social investment, should be driven by mutual interest rather than regulation.

2. Land

a) General Comments

- For expropriation: MOGE is in charge of land acquisition process, but there is a land acquisition team that also involves the Settlement and Land Records Department. MOGE holds the title to any land acquired. Operators must obtain the certificate from land owners and pay compensation for permanent and temporary acquisitions as well as damages.
- Voluntary land acquisition by companies needs MOGE approval. Companies must consult with regional authorities. As there are few registries, local authorities are relied upon to provide the information identifying who is the customary owner of land.
- Land should be compensated at market value, as established by local authorities.
- One company provided its land acquisition manual to MOGE but this was not shared with villagers.

- Compensation with replacement land is rare but does happen; communities sometimes prefer cash but may not know how to invest well.

b) Recommendations from Participants

- Need common, transparent guidelines on land acquisition process and compensation that are clear for companies and communities.

3. Environment

a) Recommendations from Participants

- Environmental laws and controls need to apply to all sectors, not just O&G.
- On ESIA, MOECAAF needs to clarify:
 - to what standards EIAs must be conducted. At the moment there is a variety. Some are using Thai or Vietnamese standards. There is doubt that MOECAAF has the capacity to determine whether these are adequate.
 - how the “S” (social) in ESIA is to be handled. Otherwise there is a potential for inconsistency.
 - whether ESIA must be conducted/updated throughout the O&G project cycle.
 - timeframe. Most participants thought that the authorities would require the completion of an ESIA within the 6-month deadline, as set out in the PSC, but it seems this is for a basic initial assessment and does not include MOECAAF processing time.
- There is a need to build capacity of MOECAAF and local EIA companies and update them on international practice in the O&G sector.
- MOECAAF needs to reject sub-standard ESIA. This might be supported by an independent review panel or advisory panel for EIAs.
- MOECAAF’s new EIA Committee will have subgroups to review ESIA on a sectoral basis, which should help promote sectoral expertise.
- Ex-Forestry Department/MOECAAF should release all previous EIAs, since these include baseline data that would benefit government, companies, universities and the public.
- ESIA need to be genuinely accessible via the internet; currently the few documents that are posted can be too large to download.
- MOECAAF should promote joint environmental monitoring between companies and communities.

b) Linked Initiatives / Other Good Practice

- There are explicit requirements in Laos for companies to have a specific website/webpage on environmental information and commitments to disseminate information on incidents within a certain time.
- ADB on-going work on reforming the environmental laws.
- Norad’s Oil for Development Programme includes environmental protection.

4. Labour

a) General Comments

- Some companies have been told that the local employment rules in the FDI law do not apply during exploration. However, it will create tensions if local communities see companies operating in their area for 3 years with very little local employment.
- It is difficult to train construction workers who may be transitory and do not like to wear personal protective equipment (PPE).
- There is strong competition for skilled workers including in Yangon but there is no standard package (eg. entitled specific benefits, salary, allowance) for skilled labours.

- Companies are seeing little benefit from MOGE training or from social security.
- Companies are hearing complaints about long delays in payments to workers (2-3 months) by sub-contractors during the construction period.
- MOGE staff upon receiving training at an oil company, may leave MOGE to join this company. Thus the training investment goes to the company rather than back to MOGE.

b) Recommendations from Participants

- There is a need for the government to put internationally recognized certification programmes in place as currently no such programmes exist even for low skilled jobs such as scaffolding.

III. Day 2 – Consultation with Myanmar Civil Society Organisations

A. Sector-Level Impacts

1. General Comments

- There was scepticism that there can be positive impacts from O&G projects.

2. Recommendation from Civil Society Organisations (CSO) Participants for CSOs working in the O&G Sector

Civil society participants were invited to consider recommendations to CSOs. Civil society participants highlighted the need for government to give more recognition to CSOs, and pass laws that protect them and human rights defenders. They also noted that:

- There should be mutual respect from both sides (Government and CSO).
- CSOs need to evolve from activism to advocacy. They need to communicate more with local authorities and shift from attacking companies to attempting constructive dialogue.
- CSOs need to be more proactive about future investment projects and issues, and less reactive. They should work on policy discussions.
- CSO should work together with the media to raise awareness and promote freedom of expression.
- There is a need to strengthen CSO work through:
 - a CSO platform at every level: national, regional and project. This can also help promote “one voice” collaboration.
 - human resource development.
 - capacity development and awareness raising, especially around land issues/policies/laws.
 - skills and information exchange and helping small CSOs/CBOs.
- CSOs are sometimes caught between their focus on community needs versus donor funding and objectives; their focus should be on the welfare of their communities.

B. Cumulative-Level Impacts

1. General Comments

- There are concerns from communities about the influx of workers when new projects arrive. Communities often do not get the jobs but must share their local resources with the newcomers.

C. Project-Level Impacts

1. Stakeholder Engagement/Livelihoods/Grievance Mechanisms/Social Investment

a) General Comments

- Most artisanal businesses are in a precarious situation as they do not have an official permit: if exploration fails, they lose their investment but if exploration is successful, there is the risk that the government authorities take over the business.
- There are concerns about the increase in the buying and selling of drugs in local markets where there has been an influx of workers.

b) Recommendations from Participants

- There should be laws, rules and regulations that guarantee community consultation and encourage community participation.
- There should be specific guidelines on social investment programmes for companies to follow and a body to monitor social investment programmes to ensure their effectiveness. This should include CSO groups.
- Solutions are needed for local companies who will be unable to compete with bigger companies coming in their areas.
- As to grievance mechanisms, these should be accessible in local languages.
- There should also be clear warning signs along pipeline areas written in local language.
- HSE awareness trainings should be provided more widely including in the communities

2. Labour

a) General Comments

- In general, workers do not dare to complain about working conditions as they are worried about losing their jobs or other reprisals.
- There was a general feeling that companies were not meeting the targets in the FDI laws on local employment and were instead bringing in unskilled foreign labour.
- There is discrimination between male and female workers, with male workers being paid a higher salary for the same job.
- Participants highlighted cases of lack of compensation for deaths due to explosions linked to exploration.

b) Recommendations from Participants

- O&G operators should be monitoring their sub-contractors more closely, particularly on wages paid and on written contracts (which often are not provided), as currently there is no labour inspection in the O&G sector.
- Labour contracts should be presented in the local language *and* in the local dialect.
- There is a need to build really local “local” capacity to meet the local labour force requirement and skills.
- Labour unions and companies should provide safety training and labour rights training for various stakeholders.
- When workers are hired by a sub-contractor to work on an O&G project, they should have access to the grievance mechanism at the O&G operator, not just the labour broker.
- There is a need for farmer unions for farmers living in O&G project areas.
- There should be transparency about wages, conditions of work and reasons for termination. There were some stories of termination on the basis of illness which were considered unjustified.

3. Land

a) General Comments

- Cash compensation is not the solution to the land acquisition problems; communities instead want options for longer-term livelihoods.
- Companies are not respecting current land laws, and the current laws do not protect land owners.
- There are no land registration documents in areas where shifting cultivation systems are still practiced.
- The level of compensation for land acquisition and damage is not clear; there is wide variation in compensation.
- In Ann Township, there are still areas where land compensation has not taken place.

b) Recommendations from Participants

- More transparency is needed for the land registration process. The registration process should also be done within a reasonable timeframe.
- More transparency is also needed in the compensation process, as often no documentation is provided to the landowner.
- More effort is needed to find the rightful owner of the land before compensation is made.
- For O&G projects there should be a focal point that coordinates the responses of different ministries to complaints about land acquisition and other damages or other grievances about projects.

4. Environment

a) General Comments

- No EIA reports have been shared to date.
- EIA should not be regulated by just one Ministry alone.
- Participants would like MOECAAF to announce when it has not approved projects as a result of the EIA findings.
- There is concern that EIAs are being conducted by unqualified consultants.
- In Magway Division, where the pipelines pass through the community forest plantation area, communities asked for compensation for these plantation areas but the current community Forestry Instructions (CFI) do not provide for this. Some CSOs are trying to change the CFI into CFL (community forestry law) to improve the rights of communities.

b) Recommendations from Participants

- EIAs should be done properly and systematically by professionals covering the full range of potential impacts, i.e. assessing biological conditions, noise levels, soil tests, etc.
- EIAs should also cover areas indirectly affected by a project.
- When there is environmental damage, it is important to identify the responsible entity (Gov, company, etc.) in order to identify who is responsible for remediation.
- Communities are concerned that pipeline routes going uphill maybe dangerous; there should be explanations from companies about the effect of different topographies on the flow of gas in the pipelines.
- Communities are also concerned about pipeline leaks, but no information is provided.

5. Security Issues

a) General Comments

- Communities do not receive the same security as the investors/ companies.
- There has been a significant increase in the navy force in one area since the beginning of an SEZ project. Participants noted that where more military are present, there is more land acquisition and other impacts.

b) Recommendations from Participants

- Security arrangements for companies should be clear and systematic. It is reported that in some areas, police have been hired informally as guards.
- Communities want the military and police to receive training on protecting (rather than disturbing) local communities, in accordance with international best practice and accountability to the local population.
- In addition to the CSO pipeline watch groups, companies should also form pipeline watch groups to regularly monitor the pipeline situation.

IV. Day 3 – Consultation with International Organisations (IOs), International NGOs and Embassies

A. Sector-Level Impacts

1. Recommendations from Participants

- The final report needs to be clearer about distribution of economic benefits being a driver for conflict; O&G projects create local impacts but no local benefit sharing. The final report should include a clear recommendation on equitable benefit sharing with local populations. It should also clearly identify negative impacts on livelihoods as a driver of conflict.
- Donors/IOs have commissioned a lot of useful studies in Myanmar. These should be put into the public domain to contribute to general knowledge and the development of baselines across the country. UNDP should put its governance study of the country into the public domain.
- Embassies of the home state of operators should use their influence to persuade companies domiciled in their country to apply international environmental, social and human rights standards throughout their operations in Myanmar.
- The final report should reinforce EITI recommendations on contract transparency and transparency around beneficial ownership.
- The recommendation on revenue transparency under EITI should be linked to recommendations on transparency about how the revenue is budgeted and spent; there should be transparency along the whole chain of revenue and expenditure.
- The final SWIA should make suggestions on how to strengthen the PSC provisions on anti-corruption.
- The government has expressed an interest in establishing a Sovereign Wealth Fund to set aside revenue funds for long-term plans. It should build on lessons learned from other Sovereign Wealth Funds including those in the region, such as Timor-Leste.
- The final SWIA should draw attention to the possibility of companies jointly lobbying the government in a manner that is not aligned with protection of human rights or the environment.

2. Linked Initiatives

- JICA/World Bank led sector working group on public financial management (PFM) and

the World Bank/DFID/AusAID co-financed PFM project.

B. Cumulative-Level Impacts

1. General Comments

- MOECAAF is moving towards setting up regional offices; this should provide some kind of ability to enforce and implement regionally which may help in addressing cumulative impacts.
- O&G will contribute to a growing number of cumulative impacts happening at an unstable and dynamic time. This increases the challenge in managing them and makes it all the more important to have an overview of the potential for cumulative impacts at the earliest possible stage of reviewing and authorising projects.
- There are many ways that fishermen are being impacted, i.e. having less access to jetties, the use of some exclusion zones around O&G operations, variable and unpredictable approaches to patrolling, and control of exclusion zones.

2. Recommendations from Participants

- As the peace process develops, non-state actors in ethnic states will also need capacity building on the environmental and social management of O&G operations in their areas.
- There is a need for economic and social baselines at the regional level to understand potential impact of inflation at the regional level, particularly on at risk groups.
- MCRB could play a role in working with regional authorities.
- Monitoring arrangements for cumulative impacts should involve those who are affected.

3. Linked Initiatives

- ActionAid/LIFT is helping local communities develop “Village Books”, developed through participatory village mapping that set out village priorities. These could be given to companies as a basis for negotiating social development programmes in the region, rather than having each company negotiate a social investment programme bilaterally.
- UNDP is doing a governance assessment for Mon and Chin states.

C. Project-Level Impacts

1. Stakeholder Engagement/Livelihoods/Grievance Mechanisms/Social Investment

a) Recommendations from Participants

- There is a need for health, education and public services baseline studies.
- Sub-national governments should also get involved in community engagement.
- The final SWIA should provide more specific guidance for companies on free, prior and informed consent (FPIC).
- Grievance mechanism should also reference the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.
- Companies should provide more detailed information to communities as the phases of the projects change and should provide information in local languages.
- Companies will need to sort out whether it is better to work directly with local communities, through CBOs or other 3rd parties. Local people do not want to talk through MOGE or others; they want to talk with the companies face to face. Companies might instead try to use a multi-party approach. Entering a local community with a large team will not work.

- CSOs should aim to “speak with one voice” -- i.e. with a unified view on projects or issues in order to provide a stronger and clearer position to the government and companies.

2. Security

a) General Comments

- The final report needs to reflect linkages between the extractive sector and violence.
- At the moment, neither the military or police are suited to providing appropriate security to local communities; both need reform and training.
- There was a brief discussion about including references to the human security approach, but this was considered too general for the final report.
- There are currently more than 16 different kinds of police forces in the country, which makes it very challenging to establish a harmonised approach and training.

b) Recommendations from Participants

- There is a need for wider security sector reform, building on the programme started by the European Union.

c) Linked Initiatives

- The Hans Seidel Foundation is supporting training of the tourist police.
- The EU is supporting training on crowd control.

3. Land

a) General comments

- There is a new national land policy that is being developed that is expected to cover extractive concessions as well.

b) Recommendations from Participants

- There is a need to create access to judicial review for land claims, but there is also a need for formal and informal alternative dispute resolution.
- There is a need to develop laws on expropriation and involuntary resettlement in line with UN standards.
- As the internally displaced continue to return to their old villages, the government will need to consider how it will address their land claims.

4. Environment

a) General Comments

- ADB – and possibly JICA – are the only donors providing technical assistance on environmental laws. It will be quite some time before any additional environmental laws are issued, including on environmental quality standards.
- There has not to date been a lot of deforestation in connection with O&G operations or pipelines, in part because a lot of activities have been in the dry zone which has little forest cover.

b) Linked Initiatives

- A Norwegian-funded coastal survey of the fish population has been undertaken that should provide useful information for offshore surveys.