

Environmental Impact Assessment System and Its Improvement in Myanmar

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Abstract

The latest legislation and institutional frameworks of Myanmar's environmental impact assessment (EIA) system are briefed. The EIA Procedure (EIAP) was approved by the parliament in December, 2015 and became effective as the legal binding for EIA system in Myanmar. The environmental clearance requirements of the Myanmar Investment Commission (MIC) investment permit application process became consistent with that of EIAP by the issuance of the MIC Notification No. 80/2016 dated 29 March, 2016.

Since the EIA system is a relatively new to Myanmar, a brief on major on-going capacity development activities in relation to improvement of the EIA System are covered. Also, some of key gaps/ flaws in terms of practicability as well as effectivity of the current EIA system observed by the author are described.

Main Paper

(1) Regulatory Framework related to Environmental Impact Assessment in Myanmar

The fundamental environmental laws for the environmental impact assessment (EIA) in Myanmar are the Environmental Conservation Law enacted in March 2012 and the Environmental Conservation Rules, detailed enforcement regulations of the law, enacted in June 2014.

The EIA Procedure (EIAP) which will serve as the basis of EIA system in Myanmar and subordinate of the Environmental Conservation Law/ rules was approved by the parliament on 29 December, 2015, after few years of consultations/ discussions with concerned stakeholders. Basically, the EIAP covers contents such as screening of projects, qualification for conducting EIA/IEE (Initial Environmental Examination), preparation of EIA/IEE report, environmental management plan (EMP), public involvement, approval of EIA/IEE reports by the Ministry of Natural Resources and Environmental Conservation (MONREC), and monitoring process after approval of EIA/IEE reports, etc.

The leading department/ ministry in charge of EIA is the Environmental Conservation Department of MONREC which was reorganized in April 2016 from the former Ministry of Environmental Conservation and Forestry (MOECAF). In principle, the MONREC approves EIA processes in Myanmar except for cases in the special economic zone (SEZ). In Thilawa SEZ, the Thilawa SEZ

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Management Committee (TSMC) applies standard operation procedures (SOPs) including environmental protection and EIA/IEE administrative procedures approved in the cabinet meeting in 2015. The EIA system in Thilawa SEZ is established as a subset of national EIA System based on the EIAP and has been updated occasionally as the results of dialogs between MONREC and TSMC.

After the approval of EIAP, in principle, environment impact assessments complying with EIAP are required in Myanmar. As an EIA screening, the current EIAP determines 141 types of projects from 9 sectors as project categories which require EIA or IEE. The screening will categorize projects into i) EIA Type Project, ii) IEE Type Project, iii) Projects which require to submit EMP, and iv) Projects which do not require environmental assessment. Approval of these reports and obtaining the Environmental Compliance Certificate (ECC) will be prerequisite for project investment licenses.

Before enforcing the national environmental quality standards which is determined in the Environmental Conservation Law, the MOECF prepared the National Environmental Quality (Emission) Guidelines (NEQG) which was approved on December 29, 2015 together with the EIAP. For time being, the NEQG will be referred as environmental quality guideline values to be utilized during the environmental impact assessment for new projects.

(2) Linkage of EIA with Investment Permit

The Myanmar Investment Commission (MIC) is responsible for approving investment proposals and issuing investment permits (MIC permit) in Myanmar except for investments in SEZ. The Directorate of Investment and Company Administration (DICA) serves as the secretariat of the MIC. Currently, DICA has a webpage describing extensive information about environmental regulations in Myanmar (<http://www.dica.gov.mm/en/environmental-regulation>).

From the legislation point of view, environmental clearance requirements in EIAP and the MIC permit application process were not fully consistent up until the issuance of the MIC Notification No. 80/2016 dated 29 March, 2016. This notification abolished the MIC Notification No. 50/2014 (14 August, 2014) which determined 30 sectors requiring EIA prior to business license, and determined the investors to comply with the EIAP. As stated in the section below, there are still gaps and flaws upon implementation/application of determined EIA legislation system. However, having the environmental clearance requirements in the line with the development/ investment application process is one of the bench mark improvement for the EIA system in Myanmar.

(3) On-going Capacity Development in relation to Improvement of EIA System in Myanmar

Since the EIA system is a relatively new to Myanmar, various organizations as well as individuals have been supporting the MOECF (MONREC) to streamline and strengthen EIA system in Myanmar. Currently major roles are played by international organizations and bilateral donors such as the Asian Development Bank (ADB), the Japan International Cooperation Agency (JICA), and the US Agency for International Development (USAID). However, non-profit organizations as well as private

organizations are also playing active roles for the capacity development of EIA system and procedures in Myanmar. Hereunder described major capacity development programs/activities currently implemented in relation to improvement of EIA system in Myanmar.

Asian Development Bank (ADB):

ADB was the main supporter for finalization of the EIAP. Currently through “TA-8786 MYA: Environmental Safeguard Institutional Strengthening” and other programs/projects supporting MONREC in the following aspects.

EIA General Technical Guideline

EIA related trainings

As technical reference documents, the EIA General Technical Guideline intends to provide details on how to prepare EIA reports and an EIA review manual which intended to be used during review/approval of EIA report.

Japan International Cooperation Agency (JICA):

Since 2015, JICA is implementing the Project for Capacity Development in Basic Water Environment Management and EIA System. Through the project, JICA is supporting the MONREC for preparation of the following subordinate legal documents to EIAP. In a form of ministerial/ department instructions

- Administrative Instruction of EIA Procedure
- Consultant Registration Scheme.

The Administrative Instruction of EIA Procedure aims to provide common technical as well as administrative frameworks for implementation of environmental impact assessment in accordance with EIAP. The Consultant Registration Scheme aims to determine consultant registration processes for concerning organizations or persons undertaking EIA or IEE study. Furthermore, the JICA Project is supporting MONREC to assemble e-Manual, an internal EIA review system to be used by MONREC).

United States Agency for International Development (USAID):

Since 2015, USAID, through the Mekong Partnership for the Environment, is supporting formulation of the “Regional Guidelines on Public Participation in Environmental Impact Assessment” a working group consists of civil societies and government representatives from across the five lower Mekong countries (Cambodia, Lao PDR, Vietnam, Thailand and Myanmar) along with national/ international advisors and experts. Consultation meetings for the public participation were held in October 2016 to get feedbacks to the drafted regional guidelines.

The World Bank Group:

International Financial Corporation (IFC) is currently initiating the project “Developing a Strategic Environmental Assessment (SEA) of the Hydropower Sector in Myanmar”.

The aim of the SEA is to identify and achieve broad consensus on a balanced, equitable and sustainable development pathway for hydropower in Myanmar based on environmental, social and economic considerations. The project will cover baseline assessment, sustainability analysis, and mitigations & recommendations, in order to develop sustainable hydropower development pathway that optimizes environmental, social and economic outcomes.

Myanmar Centre for Responsible Business (MCRB):

The Myanmar Centre for Responsible Business (MCRB) is an initiative to encourage responsible business activities in Myanmar. MCRB facilitates to encourage responsible social and environmental performance within the context of international standards. Also MCRB undertakes surveys and research of sector-wide impact assessments. The latest survey in relation to EIA is the “Survey Update: Disclosure of Environmental Impact Assessments in Myanmar’s Oil and Gas Sector”².

(4) Remaining Gaps

Though the EIAP has been approved and became effective as the legal binding for EIA system in Myanmar, its actual application as well as effectivity are still in a preliminary and transitional stage.

There are still gaps between EIA requirements determined in the EIAP and their applications. For example, obtaining an Environmental Compliance Certificate (ECC) prior to an investment application is described in EIAP. However, such is not prerequisite in the actual MIC investment application process yet as of March 2017.

In addition, when conducting the actual EIA/IEE studies in accordance with EIAP, concrete study requirements as well assessment methodologies are not fully determined in EIAP. There is still not enough consensus among concerned authorities, project proponents and consultants on how to interpret the EIAP and then implement EIA based on the EIAP. Also there are tendencies to simply follow the requirement in procedures rather than examining to ensure avoiding or mitigating adverse impacts in order to have improved project implementation.

Furthermore, effective public participation/ consultation in the EIA process is yet to be implemented.

(5) Way Forward

The EIA system in Myanmar is still in a transitional stage and further institutional as well as legislation development are required. It is appreciated that on-going and further strengthening programs and activities to emphasize improving practicability as well as effectivity of the EIA system in order to

² <http://www.myanmar-responsiblebusiness.org/news/eia-survey-update.html>

achieve better project design/implementation from the environmental and social safeguard aspects.

From the project proponents' point of view, details of environmental and social clearance requirements and timing for such requirements in the investment application process may change based on the further development of the EIA system. Therefore, it is important that the project proponent to confirm and understand the latest requirements in timely manners during the process of project development.