

# **Strengthening Monitoring, Enforcement and Compliance Mechanisms in EIA - Lessons from Myanmar**

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## **Abstract**

Since the introduction of the EIA Procedure in December 2015 the Ministry of Natural Resources and Environmental Conservation (MONREC), supported by development partners such as JICA, ADB, IFC, the Norwegian Environment Agency and the Netherlands EA, has spent significant time and resources in developing and implementing the Environmental Impact Assessment (EIA) process in Myanmar.

After two years there has been considerable advancement in the implementation of the system of EIA in Myanmar. However challenges remain. In particular there are significant challenges with the process of approvals for EIA, Initial Environmental Evaluation (IEE) and Environmental Management Plans (EMP). Following the EIA review and assessment

Monitoring, compliance and enforcement are the next steps in the implementation of the EIA process.

## **Introduction**

Under the Environmental Conservation Law 2012, the Ministry of Natural Resources and Environmental Conservation (MONREC), is given the mandate to establish an EIA procedure to ensure that prior environmental and social assessment of potential impacts of projects that are likely to significantly affect the environment. The Myanmar Environmental Impact Assessment (EIA) Procedure was enacted in December 2015. There are also specific laws governing investment approval (Investment Law 2016) and the establishment of special economic zones (Special Economic Zone Law 2014)

However the process is still new and suffering from many capacity weaknesses. These weaknesses are both in the capacity of the responsible government entities in Myanmar to be able to effectively discharge their obligations under the EIA Procedures as well as in the ability of the private sector EIA consultants to managed complex and difficult projects.

In addition Myanmar is developing a number of EIA Guidelines for specific sectors to assist in the preparation and assessment of projects. A draft Guideline on Public Participation and Access to Information is under consideration by MONREC. Draft Guidelines have been prepared on the following:

- Hydropower Development,
- Mining, and
- Oil and Gas Exploration.

There is still no dedicated web site listing the documents submitted under the EIA Procedure, including all documents necessary for effective public participation.

Although there are many opportunities for the community and civil society to active participate in the EIA system in Myanmar, it is still a new system and only slowly being implemented. This means that there is limited capacity for project-affected people (PAP) to exercise their rights under the EIA Procedure. In order for there to be effective public participation, support and capacity development for PAP and civil society is required to ensure meaningful public participation. MONREC has developed a Draft Guideline on Public Participation in EIA Matters.

### **Myanmar's National Environment Policy 1994**

This policy was developed in 1994 and is currently under revision. The Draft National Environment Policy is more comprehensive and includes a strategy and action plan. At present the current policy is still applicable.

*The wealth of the nation is its people, its cultural heritage, its environment and its natural resources. The objective of Myanmar's environmental policy is aimed at achieving harmony and balance between these through the integration of environmental considerations into the development process to enhance the quality of the life of all its citizens. Every nation has the sovereign right to utilize its natural resources in accordance with its environmental polices; but great care must be taken not to exceed its jurisdiction or infringe upon the interests of other nations. It is the responsibility of the State and every citizen to preserve its natural resources in the interests of present and future generations. Environmental protection should always be the primary objective in seeking development.*

Myanmar has also recently adopted a Myanmar Sustainable Development Plan 2018 – 2030 (MSDP). This is aimed at promoting the achievement of sustainable development objectives and the sustainable development goals (SDGs).

### **EIA System in Myanmar**

The EIA Procedure 2015 establishes the procedures for EIA and IEE in Myanmar (see Figure 1). The EIA Procedure 2015 provides a standard process for EIA.

- Screening
- Selection and check of the EIA expert
- Scoping
- EIA Investigation
- EIA Report
- EIA Review process

- ECC Issuing
- Appeal Process

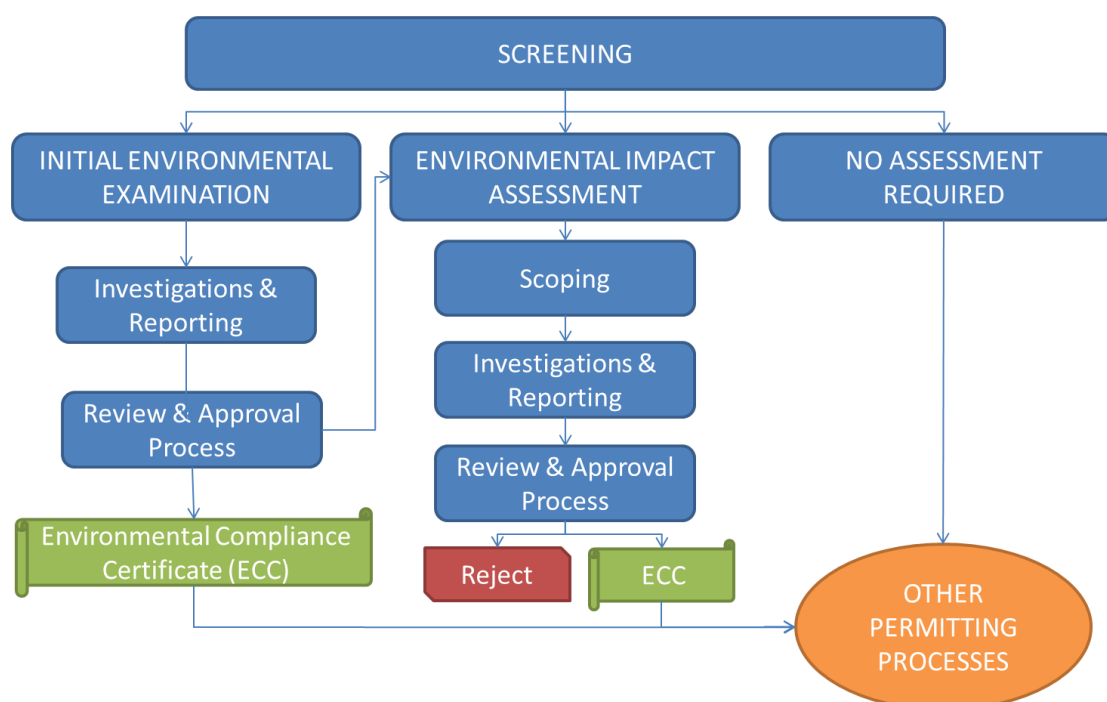


Figure 1: Myanmar EIA procedure developed by Cosier and Baird (2015)

Since the enacted of the EIA Procedure, over 2700 reports have been submitted to MONREC. The bulk of these are Environmental Management Plan that have been required for projects such as mining and manufacturing. Usually for smaller scale projects that do not have to submit a formal EIA or IEE. The figures still show that there are a number of problems within the EIA system.

Table 1: EIA/IEE/EMP received as 31-Dec-2018

Type	Total Received	Replied	% Replied	Approved	% Approved	To reply	Awaiting approval
EIA	280	185	66.1%	35	12.5%	95	245
IEE	518	461	89.0%	39	7.5%	57	479
EMP	1962	1849	94.2%	110	5.6%	113	1852
Total	2760	2495	90.4%	184	6.7%	265	2576

By sector it can be seen that over 90% of the EMPs that have been submitted to MONREC are from the mining and industrial sector. These are mostly EMP for existing projects. This has created a problem for MONREC and ECD in that the assessment of management plans for individual facilities or mines lacks good

baseline data and information about what waste and pollution are being produced and air and water quality.

One of the key concerns that have been expressed in relation to the adequacy of EMP is that this lack of good baseline data prevents the regulatory authority from being able to assess the real impact on the ground from existing activities. This in turn makes it more difficult to fully assess the impacts of future activities.

Table 2: Status of EIA/IEE/EMP by sector

Sector	Received			Replied			Approved		
	EIA	IEE	EMP	EIA	IEE	EMP	EIA	IEE	EMP
<i>Industries</i>	60	97	171	55	96	168	2	1	2
<i>Energy, agriculture, livestock and fishery</i>	86	44	46	48	18	7	18	16	34
<i>Special Investment, Infrastructure, Hotel and Tourism</i>	78	96	83	55	82	58	13	14	24
<i>Mining</i>	56	281	1662	27	265	1612	2	8	50
<b>TOTAL</b>	<b>280</b>	<b>518</b>	<b>1962</b>	<b>185</b>	<b>461</b>	<b>1845</b>	<b>35</b>	<b>39</b>	<b>110</b>

In terms of the issues that have arisen within EIA in Myanmar one of the most difficult has been the issuing of Environmental Compliance Certificates (ECCs). There are the formal EIA approval documents that are issued by MONREC following the completion of the EIA process.

The EIA Procedure establishes EIA Report Review Body. The Body is responsible for the review and assessment of EIA and making recommendations as to whether to recommend that the EIA should be approved. The EIA Report review body is also given specific responsibilities under Article 16 of the EIA Procedure. The EIA Report Review Body is composed of 36 members from different Ministries. These are divided into a number of working groups dealing with different sectors.

The EIA Report Review Committee undertakes the review of the EIA Report and considers the following matters before making its recommendations. The EIA Report Review Body may also recommend conditions to be attached to the Environmental Compliance Certificate (ECC) that is issued by the Ministry.

Following the review of the EIA by the EIA Report Review Body, the Ministry is to consider a report by the ECD and determine whether to approve or reject the EIA (Article 70). The process is similar in the case of EMPs and IEE Reports

except that there is no requirement for the EIA Report Review Body to consider the EMP or IEE. This is carried out by ECD in accordance with Articles 39 and 40.

The Ministry will issue an Environmental Compliance Certificate together with attached conditions. The Ministry may prescribe conditions to be attached to the ECC. Such conditions can address (Article 91):

- a) General management of adverse environmental impacts
- b) Emissions, contribution to Environmental Quality Standards and statistical methods for determining compliance.
- c) Use of energy and natural resources
- d) Pollution prevention
- e) Nature conservation and management
- f) Protection of cultural resources
- g) Managing hazardous waste or toxic materials
- h) Transport and access
- i) Rehabilitation and decommissioning the site
- j) Monitoring including documentation and reporting
- k) Financial guarantees
- l) Funding of inspection by Ministry
- m) Contributions to the Environmental Management Fund (EMF)

The EMF is a fund established under the Environmental Conservation Law 2012. The EMF is not as yet operational. Regulations are currently being drafted to make the EMF operational by the end of 2019.

## Compliance and Enforcement

Under Article 87, the proponent is required to commence the implementation of the project strictly in accordance with the conditions attached to the ECC, including the EMP.

In addition, the EIA Procedure places a heavy reliance on self-reporting. Articles 106-108 provide that the proponent is to conduct self monitoring during all stages of the project in accordance with applicable laws, the EIA Rules, the EIA Procedures 2015, standards, the ECC and the EMP, and that the proponent is to notify MONREC of any breaches of its obligations. Within 10 days of a monitoring report being completed, it is required to be made publically available on the Project's website, at public meeting places and Project offices, and any person is able to request a digital copy of the report (Article 11). The reporting requirements are enforceable conditions of the ECC and the EMP.

MONREC also has the right to conduct monitoring and inspections of a project and activities to determine compliance as well as prevent violations (Article 115). Proponents are required to grant MONREC full and immediate access in an event of an emergency or where MONREC believes there has been a violation (Article 108) If non-compliance is found upon inspection, MONREC may require the proponent to

undertake remedial measures or impose penalties (Article 113). Such penalties can include suspension of the project (Article 114).

All the costs of inspection borne by MONREC are to be paid by the project proponent and that such costs are not to exceed “that which is necessary to ensure the Project’s compliance with the Project commitments as set out in the EMP and in the ECC” (Article 115).

At present MONREC and ECD have not established a system of monitoring and compliance with conditions of the ECC. Myanmar has not yet established a system of pollution control licences or a permitting system for pollution. So no enforcement actions have been currently undertaken by MONREC to enforce compliance with the conditions in the ECC.

### **Conclusions**

Since the enacted on the EIA Procedure in December 2015, the ECD and MONREC have taken significant steps in the establishment of the EIA process in Myanmar. Project proponents and EIA consultants are complying with the EIA Procedures and MONREC is currently reviewing, assessing and approving projects and issuing ECCs.

However limited steps have been taken to establish the monitoring, enforcement and compliance with the conditions attaching to the ECC. It is hoped that this will soon take place.