

Country Safeguards Strengthening Knowledge Sharing Event 29-30 November 2012

Myat Taw Win Hotel, Nay Pyi Taw, Myanmar

Meeting Minutes

These minutes intend to capture the main discussion points of the Country Safeguards Strengthening Knowledge Sharing Event. All presentations and speeches are listed only and can be accessed directly via the hyperlinks in this document or by visiting the GMS Environment Operations Center (EOC) website at www.gms-eoc.org.

Day 1: 29 November 2012

Session I: Welcome and Opening Remarks

His Excellency Win Tun, Union Minister, Ministry of Environmental Conservation and Forestry (MOECAAF) [welcomed participants](#). Javed Mir, Director, ADB's Southeast Asia Department, then gave [opening remarks](#). A group photo followed.

Session II: Myanmar's Natural Resources and State of Environment

Co-chairs: Javed Mir, ADB and Maung Maung Than, MOECAF

The two presentations during this session set the context for country safeguards by overviewing the economic, development, and environment situation and trends in Myanmar.

[Myanmar country background, economic assessment and outlook, and development trends and issues](#)

Sharad Bhandari, Principal Country Specialist, ADB Extended Mission in Myanmar

[State of environment and environmental performance in Myanmar](#)

Iain Watson, Senior Environmental Safeguards Specialist, GMS Environment Operations Center

During the discussion that followed, co-chair Maung Maung Than said that Myanmar's pursuit of economic growth had to date, not factored in environmental damage. He said the country needed support with natural capital accounting as that was a new area for the government. Than agreed the country had some positive geographic advantages, but that it also has trans-boundary political and environmental challenges. In regard to the rapid economic growth enjoyed in other parts of the region, Than said that the economic expansion of 'Asian Tiger' countries was based on Foreign Direct Investment (FDI), especially in intensive extractive industries. With FDI increasing for Myanmar, he said it is essential Myanmar ensures transparency and adequate safeguards. On the country's weak infrastructure, Than suggested it was because infrastructure development had been based on GDP potential rather than servicing consumers, and that this thinking needed to change.

Following a request for further elaboration on the event's intended outcomes, Javed Mir clarified that the aim was to develop a common understanding of the environmental context in Myanmar and work towards developing a roadmap to develop a country

safeguard system. He said it was essential to hear Myanmar's perspective on what the key elements of this system would be and how development partners could assist.

Hla Maung Thein, MOECAF, agreed that Myanmar lags behind other countries, however, that it has many opportunities for investment. He said the Government was intent on speeding up economic growth while at the same time conserving the environment. He asked how these two aims could be integrated and coordinated, particularly considering that ministries and sectors are quite fragmented. Thein thanked ADB and EOC for their support with national environmental performance assessment which he said had been excellent for Myanmar, and added that the challenge now is how to integrate key sectors such as mining, forestry, biodiversity.

Sharad Bhandari commented that balancing environment and economy is a challenge facing all countries, but that new thinking suggested they did not have to be opposing forces. He said in the long-term, sustainable growth requires a sustainable environment. Bhandari suggested countries need to focus less on GDP growth and have a broader definition of investment, one which considers natural capital.

Iain Watson said that during the next day and a half's presentations and discussions, participants would hear how other countries are responding to these challenges, largely by putting in place safeguards. He said there were many positive instances from the GMS relating to safeguards in sector planning and project approval processes, and cited strategic environmental assessments and environmental impact assessments as examples.

Javed Mir said that a key question being raised was how to decouple economic growth from environmental degradation and the role of safeguards in this, including what to do and how to mainstream. He said that methodologies for cost-benefit analyses need to be upgraded to help green the development process, including incorporating climate change risks, although this would be challenging. Mir reflected on recent research which indicated that poor sanitation reduces GDP by around 2%. Even using standard GDP rather than green accounting, he pointed out that some environmental costs can still be internalized.

Session III: Legislative, Regulatory, and Institutional Framework for Environmental Protection

Co-chairs: Maung Maung Than, MOECAF, Javed Mir, ADB and Alex Sandford, EMSP

In this session, the three presentations covered the status and appraisal of Myanmar's new environment law and related rules and guidelines, as well as introduced regional innovations in national environmental legislation. The

[Myanmar's new Environmental Conservation Law and status of rules and guidelines preparation](#)

Hla Maung Thein, Deputy Director General, Environmental Conservation Department, MOECAF

[Appraisal of Myanmar's legal framework for country environmental safeguards application](#)

Kala Mulqueeny, Principal Counsel, Office of the General Counsel, ADB

[Regional innovations in national environmental legislation, promoting resource efficiency, sustainable consumption and production, and green growth](#)

Wanhua Yang, Legal Officer, United Nations' Environment Programme

In the discussion, Nwe Nwe Khin, Ministry of Rail Transportation, requested a clarification from MOECAF on whether MOECAF would be responsible for the implementation of every environment plan. Hla Maung Thein replied that MOECAF would be the focal point for coordination, but the main implementer would be the relevant sector ministry. He said that issues such as the need to reduce emissions and increase efficiency will require cross-sector coordination.

Javed Mir, asked if the National Environmental Conservation Committee has the capacity to execute its mandate, and if not, what support would it require. Thein clarified that there are four divisions, with 40 staff, but gaps in technical expertise exist and capacity building support would be required. He said there is a lack of environmental scientists in Myanmar, and the country has a long-term need for Masters and PhD courses in this field.

Alex Sandford, Environment Management Support Program (EMSP), pointed out that the provision in the environment law for exemptions is an issue. In his experience, investors will always ask for exemptions and that further information on what exemptions can or cannot be made, sector by sector, would be useful.

Kala Mulqueeny said that exemptions are not a feature in either Philippine or Indonesian environment law and ideally would not be in Myanmar's either. Considering exemptions are included, she said, then the question is how can the range be narrowed and specified to avoid unlimited discretion?

Peter King, Asian Environmental Compliance and Enforcement Network, asked what provisions exist to revise other environment related laws in the context of Myanmar's new law. Hla Maung Thein replied that the forest law, as well as the foreign investment law, have been amended.

Kala Mulqueeny said that under Agenda 21, 1997, once the law is adopted, an approval process will be needed. She pointed out that land and forest laws have been revised in Myanmar, but it has not been an integrated process as it has happened sector by sector. In response, Hla Maung Thein gave an example of integration being the submission of all foreign projects to the Myanmar Investment Commission for approval, including an environment assessment.

Session IV: Environmental and Social Safeguards – International Best Practice

Co-chairs Nessim Ahmad, ADB, and Dr. San Oo, MOECAF

During this session the Japanese International Cooperation Agency (JICA) presented on its new guidelines for environmental and social considerations. ADB then presented on its safeguards policy. This was followed by an AECEN presentation overviewing the status of EIA in Asia. Nessim Ahmad opened the session with an overview of multi-lateral development bank and bilateral safeguard policy harmonization and alignment with safeguard practices in developing countries. He said that it is widely recognized that the shared and common safeguard policy principles of the ADB and the World Bank represent international best practice around which safeguard policies and country systems need to converge. Ahmad added that the policies have been developed through an extensive consultative processes involving consensus building among a wide range of stakeholders internationally, and have been adopted by shareholders who represent

constituencies from developed and developed countries. He pointed out that it is these policies are instructive as a basis for building Myanmar's country safeguards system.

JICA's new guidelines for environmental and social considerations

Takaaki Kawano, Director, Environmental and Social Considerations Review Division, Credit Risk Analysis and Environmental Review Department, JICA

JICA's requirements for resettlement action plan

Takaaki Kawano, Director, Environmental and Social Considerations Review Division, Credit Risk Analysis and Environmental Review Department, JICA

ADB's safeguard policy objectives: principles and requirements

Sanath Ranawana, Senior Natural Resources Management Specialist, ADB Thailand Resident Mission

During the discussion, Richard Frankel, Mae Fah Luang University, said that compensation as a last resort does not reflect what is happening in the field. He pointed out that compensation is a difficult, but necessary mitigation measure.

Yi Yi Htwe, MOECA, asked whether JICA and ADB's categorization of projects is determined by type of project, size or magnitude of impacts. In response, Takaaki Kawano said JICA does not have public guidelines for this, but does have internal processes. Nessim Ahmad said ADB look at the nature, scope, location, scale of projects as well as the magnitude of risk. He said that categorization should not be too prescriptive as flexibility is required to align with different countries and their respective legislations. Also that ADB needed to retain the right to classify as determined with the input of experts.

Peter King said that some countries have used a quantitative process for determining A and B categories, but that this can lead to moral hazards. He said loopholes can be exploited which enable projects to avoid undertaking EIA. The lesson learnt, King said, was not to be too prescriptive.

Nessim Ahmad pointed out that the strengthening of country safeguard systems was a key objective of ADB's safeguard policy statement, and that the ADB and other partners would be working collectively to support countries in the region build their safeguard systems so that they approximate international good practice.

Status of EIA in Asia: A practitioner's network perspective

Peter King, Head of Secretariat, AECEN

Richard Frankel, Mae Fah Luang University, commented that the EIA regional survey conducted by AECEN is very useful and does reveal weaknesses in the programs. However, he said it could potentially misrepresent the actual situation and that more critical analysis is required. Frankel emphasized the need to educate project proponents to include social and environmental considerations in project development and that laws need to have adequate requirements for project proponents.

Peter King said the survey gained genuine responses as the level of English was good and was based on anonymity which helped honest assessments. He said the key message was that having a good law is only part of the exercise. Good laws, operational procedures, institutional capacity, and follow up to the EIA once the project is given the go ahead are all necessary and that each of these elements needs to be strengthened.

In response to a question about which government body should be the project approving agency in Myanmar, King said that it where environment expertise resides in government is very important. He said sector staff need to be very aware of EIA requirements and all relevant sectors, not just environment agencies, need to fully partake in the process. Regarding approval, King said it requires an agency sitting at 'arm's length' from the project and that the environment ministry would be appropriate, but should not be the sole decision maker.

Sann Lwin, Director (retired), Union Attorney General of Myanmar, said it is MOECAF's responsibility to lead and carry out EIA and SIA to determine whether any organization, government or private sector project can be carried out. He said that EIA is mentioned in the draft environment conservation rules and that MOECAF would be responsible to establish EIA systems and notify which projects or businesses need to undergo an EIA. Lwin clarified that there would be an independent EIA review committee.

Wanhua Yang, United Nations Environment Programme (UNEP), said there was currently a big debate in Viet Nam on whether EIA approval should reside with environmental agencies, line ministries, or local governments who approve the project.

Javed Mir said that environmental regulations are difficult to enforce even in developed countries, where in some cases only around 50% to 60% of EIA regulations are enforced. He asked whether a search for perfection in EIA procedures and practice is hampering practice, making it a procedural rather than practical tool. Peter King agreed, and said that requirements to prepare 'perfect' EIA reports have increased over time, sometimes to the detriment of project design and practical, legally binding implementation measures. He said more focus is needed on the design of projects so they properly incorporate and implement environment considerations as this would enable EIA to become more of a planning rather than compliance tool.

On agency responsibility, Sanath Ranawana cited the example of Sri Lanka where line agencies are the project proponents and are not involved in EIA approval. He also said that as EIA is a means of designing better projects, it is important to have environment staff integrated into project proponent teams.

Richard Frankel commented on the challenges of implementing EIAs, and said that as an auditor visiting the same projects year after year, he often sees ongoing environmental issues despite explicit mitigation measures. Naseem Ahmad responded that rather than overly prescriptive adaptive measures, outcomes and performance standards are perhaps more important.

Iain Watson said there were a lot of lessons to learn from these presentations and with further presentations on EIA and monitoring compliance earmarked for Day 2, Myanmar will be well-placed to see what has and has not worked.

Day 2: 30 November 2012

Session IV: Regional Experiences in Environmental Performance Monitoring, Environmental Safeguards Application, and Monitoring and Compliance

Co-chairs: Javed Mir, ADB, Maung Maung Than, MOECAF, and Iain Watson, EOC

In this session, presentations focused on lessons from the GMS on environmental assessment and reporting, as well as EIA and SIA, including from Lao PDR. A regional environment compliance network was also introduced. A presentation from MOECAAF was added to the agenda to overview Myanmar's draft environmental rules, which will stipulate regulations and guidelines for implementing the new environment law.

Environmental assessment and reporting in the Greater Mekong Subregion

Anna Stabrawa, Regional Coordinator for Early Warning and Assessment, UNEP

An analysis of environmental and social impact assessment in the GMS

Richard Frankel, Adjunct Professor, Institute for the Study of Natural resources and Environmental Management, Mae Fah Luang University, Thailand

Asian Environmental Compliance and Enforcement Network

Peter King, Head of Secretariat, AECEN

Capacity development in Lao PDR for environmental and social impact assessment, environmental standards, inspection and enforcement

Peter Jensen, Technical Assistance Team Leader, Environmental Management Support Program, Lao PDR

Standard environmental and social obligations in concession agreements – experiences from Lao PDR

Alex Sanford, Legal Advisor, EMSP

Richard Frankel opened the discussion and said it is very important to add social and environment conditions into concession agreements. He did not agree that it is always project proponents who violate laws and avoid obligations, as it happens on both sides, including with government to government deals. He said that corruption is a considerable problem in development.

Hla Maung Thein asked whether the International Finance Corporation, World Bank and ADB guidelines and standards are used when EIA reports in Lao PDR are reviewed. Peter Jensen replied that all relevant guidelines and standards are attached as Annexes, and may include sector-specific best practice documents, such as mining guidelines from Australia. Thein added that Myanmar is looking at World Bank, ADB etc., guidelines, but because of their wide scope, his country needs to develop their own country specific guidelines.

Maung Maung Than agreed that controlling corruption from the government side is most important, as well as ensuring project proponent compliance. He said that safeguards are not just about compensation, but about peoples' lives and that MOECAAF must be very strong in ensuring the rule of law in environmental cases.

Hla Khaing, Ministry of Border Affairs, asked how Myanmar would synchronize their investor standards with those of other countries. Alex Sanford replied that if there is an agreement to use a foreign standard and then in the future Myanmar introduces a stricter standard, then the investor would likely argue against using the Myanmar standard unless compensated.

Nessim Ahmad said ADB's policy is to ensure harmonization among financial institutions as well as alignment with country standards and that working towards this is an ongoing journey. He pointed out that it will take Myanmar time, but sooner or later the country will develop standards suited to its requirements. He added that ADB's

policy stipulates that national standards can be applied if a strong rationale exists for doing so.

Environment considerations into the projects

Hla Maung Thein, Deputy Director General, Environmental Conservation Department, MOECAF

Richard Frankel opened the discussion and said that provisions, including appropriate timelines and strict instructions, will be needed to ensure improved environmental management from significant polluter projects established prior to the environment law and regulations.

Zaw Lwin, Ministry of Transport, said that Myanmar's topography meant many cities are located alongside rivers and that more than 30% of domestic water use is from rivers. All waste water is discharged to rivers or lakes and few water treatment plants exist. He added that solid waste management was also weak and requested ADB and JICA to assist Myanmar with addressing these issues.

Session VI: Development of a Roadmap for Environmental Reporting and Myanmar Safeguards System Strengthening

Co-chairs: Javed Mir, ADB and Maung Maung Than, MOECAF.

Hla Maung Thein, MOECAF, requested that participants work in breakout groups during this session to provide feedback on Myanmar's draft EIA rules document. He gave some additional background on the document, that it had been drafted along with the environment law in 1997 and 1998 by the then National Commission for Environmental Affairs with support from UNEP and UNESCAP. He said the priority at the time was the environment law, which although finalized in 2000, was not adopted until March 2012. Thein reiterated the importance of EIA as an instrument for environmental safeguards and said that although the rules were drafted more than 13 years ago, they provide a good framework and just require some fine-tuning. Thein highlighted the key elements of the draft rules such as initial environmental examination (IEE). Thein said that the international experts at the event had been provided the draft earlier in the day and he requested their feedback and comments before the group work began.

Nessim Ahmad said although drafted 13 years ago, the EIA rules provided a sound basis from which to proceed. He said that the correct elements had been broadly included but that some areas required further refinement. Among these, Ahmad identified the need for EIA public disclosure, as well as clear consultation and participation from early in the EIA process. In addition, he mentioned the need to review alternatives, including the 'no project' option, as well as the inclusion of provisions on grievance redress mechanisms for complaints that may arise from EIA process.

At the strategic level, Ahmad said the government need to look at the extent to which social safeguards are included, including involuntary resettlement, and the linkages between EIA and SIA. He also said that strategic environmental assessment (SEA) should at least be mentioned as well as issues such as climate change, biodiversity, and cultural resources.

In terms of the project 'schedules' (categories), Ahmad pointed out that the requirements may be too fine, that for example, too many energy projects would require EIAs. He suggested that IEE could be used as a screening instrument, and if that reveals significant impacts then projects could be 'scheduled up' to require full EIA.

On roles and responsibilities, Ahmad said careful consideration is needed and that it would be appropriate if MOECAF cleared EIAs but not approve the projects. Overall, Ahmad concluded that the draft rules provide a very good basis, which with a little enhancement, would likely be well received by the World Bank, ADB, JICA and others.

Kala Mulqueeny added that the draft rules, like the law, contained an 'exemption' clause and said that the government should be very specific about what this entails. Mulqueeny said that the draft also establishes another committee to have final authority on approving EIAs, whereby it may be less bureaucratic to have approval responsibility sitting with MOECAF. Mulqueeny said that there is scope for further rules and regulations, and that with some cleaning up, the draft document should provide the operation guidance for investments to follow.

Peter King described the draft as a very good start and captured the necessary key elements. However, he said it did not explain what the EIA role would be of the project supervising ministry. King pointed out that it is common practice for EIA authorized experts to have certification, and that Myanmar would need to consider whether this would be a requirement and if so, develop appropriate rules and procedures. He also said that within MOECAF, the appropriate levels and roles for approval need to be stipulated. King agreed that the document could provide operational guidance, but said that is likely an EIA manual will need to be developed to outline the various EIA steps.

Takaaki Kawano, said that in terms of EIA disclosure, JICA requests the project proponent to undertake consultation with people during the project scoping stage and EIA drafting stage. He added that JICA guidelines require the proponent to conduct SEA when developing master-plans.

Peter King said EIAs are often begun too late, with the decision to progress with the project already taken and that in such circumstances it is very hard to make changes based on EIAs. He said EIAs must occur at the same time as project feasibility studies.

Maung Maung Than said capacity building will be very important to improve the quality of EIA rules and regulations.

Break-out session – facilitated group work

Participants were formed into five sector-based groups to discuss the draft EIA rules and provide feedback and comments. The five groups were:

1. Urban
2. Agriculture and Forestry
3. Mining and Industry
4. Energy and Transport
5. Legal and MOECAF

Below is a summary of feedback from each group.

Group 1: Urban

Existing problems

- Population growth both rural and urban
- Weak EIA and SIA in planning of urban projects
- Need Free Prior Informed Consent (FPIC)

- Squatter problems arising from urban industrial development (urban pool)
- Various infrastructure weaknesses
- Technology weaknesses for infrastructure management
- Financial weaknesses for infrastructure management
- Weak natural disaster preparedness

Proposed mitigation measures

- Population growth and managing in-migration to urban areas
- Compliance with law for EIA and SIA regulations
- In planning and implementation of projects, FPIC for social consultation
- Encourage urban push by developing urban centers and various socio-economic measures
- Infrastructure development, both physical and social, and soft and hard development (e.g. transportation problems should be solved immediately by introducing mass transport)
- Cooperation and inter-agency collaboration and with NGOs, INGOs as well foreign investment for technology and finance
- All urban plans and projects should include disaster preparedness such as housing development, etc.
- Should introduce labor intensive investment

How to

- Local committees should follow the EIA/ SIA rules and regulations
- Advice of national committee

Group 2: Agriculture/Forest

- Conduct needs assessment on current status of agriculture and forestry
- Seeking international cooperation and coordination regarding EIA process
- Capacity building for landscape management and monitoring
- Develop proper land use policy and plan (Protected Areas must not change into other land use practices)
- Awareness raising programs for all stakeholders
- Lesson learnt from indigenous peoples' knowledge/experience
- Political will for effective natural resource management
- Sectorial coordination with line ministries and NGOs
- Comprehensive guidelines and principles for a monitoring and reporting system
- Law enforcement
- Use adequate tools and techniques for monitoring and investigation
- Develop appropriate mitigation measures for natural resource depletion and environmental deterioration
- Follow up action on National Biodiversity Strategic Action Plan.

Group 3: Mining and Industry

Roadmap

- Review and formulate existing laws and standards for mining and industrial fields
- Develop institutions
- Capacity building
- Implementation according to environmental laws and regulations

How to implement

- Initial environmental examination – collection of existing environmental conditions
- EHIA and SIA
- Preparation for mitigation (standards)
- Monitoring and regular assessment
- Reporting

Group 4: Energy and Transport

For energy, Group 4 presented a matrix with seven types of energy projects and compared IEE and EIA requirements with those of Lao PDR.

For EIA in Myanmar:

1. Energy generating - 5 MW and above
2. Hydroelectric generating schemes except mini-hydro and electric current type – TBD
3. Geothermal electricity generating stations – 55MW and above
4. Other types of electricity generating stations – 5MW and above
5. Transmission lines – 150KV and above
6. Oil and gas exploitation – TBD
7. High voltage transformer substation – not mentioned

For transport, the following additions/clarifications for the draft rules were suggested:

- To add car manufacturing company/ies responsibility to do EIA or IEE according to the manufacturer size
- To add the specific length of railways
- To add the responsibilities of road construction company/ies to do IEE or EIA according to road length
- River laws already submitted to Parliament
 - River training works (not mentioned for EIA and IEE)
 - River water quality control (need technicians, modern equipment for water quality test, and adequate funds)

Group 5: Legal and MOECAF

- Formulation and implementation of ESIA rules and regulations
- Regulation of environment quality standards
- Development of pollution control rules
- Regulation for solid waste and hazardous waste
- Establishment of environmental monitoring system
- Development of national environmental management plan framework
- Institutions and capacity building for implementation of environmental regulatory formulation

A brief discussion followed the group presentation. Nessim Ahmad asked whether MOECAF has the mandate to address involuntary land resettlement issues, and if not, said it could pose a problem. In response, Hla Maung Thein said he had the same question and that it would need to be clarified.

Peter King pointed out a number of areas which would require further elaboration for the rules to become operationalized. These included the timing of project screening, requirements for Category C projects, types of permits and which agency issues them.

Session VII: Closing

[Closing remarks from Javed Mir](#), ADB, were followed by [closing remarks from Nay Aye](#), Director General, Environment Conservation Department, MOECAP.

Mir reflected on the key messages arising from the discussions and pledged continued ADB support for the country in its work on safeguards. For 2013, he said ADB support towards this would include:

- Updating and upgrading the EIA rules
- Identifying and developing sector-specific environmental performance indicators
- Capacity building for relevant agencies, including for the mainstreaming of safeguard systems in key sector strategies and investment plans such as for tourism, agriculture and irrigation, transport and energy.
- Input into environmental safeguards for consideration and possible inclusion in the draft FDI rules

In his remarks, Aye thanked all participants for their contributions, and also ADB and EOC as co-organizers. Aye described the event as the first of its kind in Myanmar and said that strengthening Myanmar's legal framework and implementation capacity for EIA and SIA is a high priority for the country. He said the workshop was an important stepping stone toward this. Aye pointed out that Myanmar has the advantage of learning from what other countries have had success with, and where they have failed. He said one of the key lessons is that legal frameworks are often well established but that implementation remains weak due to inadequate implementation capacity, financial shortfalls, and/or a lack of meaningful public participation and transparency. Aye said that a strengthened country safeguards system would benefit all projects, regardless of funding sources, including those undertaken without international agency support or supervision. Aye said he looked forward to increased collaboration with neighboring countries and regional partners and again thanked participants.

International participants were then presented with a parting gift. With that the event closed.