The Private Sector’s Experience and Expectations of Environmental and Social Safeguards

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Sector-Wide Impact Assessments
Oil and Gas – Aung Kyaw Soe + 6 researchers
Tourism – Khaing Oo Swe + 6 researchers

Current core funders
• UK Department for International Development
• DANIDA (Danish development aid)
• Norway
• Switzerland
• Netherlands
• Ireland

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MCRB Objective
ဗုဒ္ဓအောက်မှာ

To provide an effective and legitimate platform for the creation of knowledge, capacity and dialogue concerning responsible business in Myanmar, based on local needs and international standards, that results in more responsible business practices.

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Responsible businesses support effective safeguards because they:

Create a level playing field between companies:
- all companies follow the same laws;
- consistent enforcement

Promote transparency

Reduce uncertainty, including for international companies considering whether to invest in Myanmar
and because they:

Reduce conflict with communities:
- e.g. effective and genuine consultation during the process of impact assessment and developing an Environmental Management Plan allows for community to raise concerns and company to adapt its approach

...and therefore support a company’s ‘social licence to operate’
Companies want...

Clarity: clear laws and procedures governing all relevant issues, available in English as well as Myanmar language

Simplicity: e.g. one set of law/standards on working hours, not different laws for different sectors/occupations

Consistency: with other Myanmar laws, and with contract or investment agreement between government and company

Familiarity: international approaches and standards (e.g. ADB, IFC, EBRD, JICA)
Companies also want...

Freedom to hire appropriate experts who have passed the company’s usual integrity and due diligence checks. They also want freedom to choose the right mix of international and Myanmar experts.

Flexibility to undertake assessments at appropriate stages in the project cycle when there is enough information available on which they can consult.

Advance notice, and enough time to complete impact assessments to allow for:
- tendering for consultants
- effective public consultation
- translation into local languages

Cost-effective risk-based approaches: not every project requires a lengthy and expensive ESIA. For lower risk projects, effective stakeholder engagement and respect for relevant laws is sufficient.
Current company concerns around Myanmar E&S safeguards:

Missing or outdated Myanmar social and environmental laws and standards

‘Responsible’ companies may choose to refer to international standards e.g. International Finance Corporation (IFC) Environment, Health and Safety (EHS) guidelines.

Myanmar government should encourage, or even require this.
Lack of clarity on land rights
Land registers out of date
Companies very aware of civil society concern about:
  - land grabs and lack of genuine consultation
  - compensation practices and corruption
How to deal with legacy issues?
FPIC included in IFC, WB, Equator Principles and ADB standards.

Some companies commit globally to ‘strive to achieve Free Prior and Informed Consent’ (FPIC) of IPs in accordance with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Others are committed to Free Prior and Informed Consultation with indigenous people.

But who are Myanmar’s Indigenous Peoples?
..Environmental Impact Assessment (EIA) Process..

**EIA procedures** not finalised yet

**Social impacts:**
- does EIA includes social (including human rights) impacts?
- which ministries are involved?
- role of regional governments?
- public consultation process (who, how, how long for)?
- two separate impact assessments or one integrated report?
Timeframe

E.g. oil companies have been told they need to complete an ESIA within six months of signing their PSC to obtain their Myanmar Investment Commission permit.

This risks:

• impact assessment ‘overload’ (>20? companies, consulting many of the same people at the same time)

• rushed assessments with inadequate public consultation and lack of transparency
ESIA: Uncertainty about roles and capacity of MOECAF, other Naypyidaw Ministries and regional government, particularly to consider social impacts

Regulation and enforcement:
Lack of trained inspectors and government capacity (at national and state level) to ensure companies:
• hold effective consultation with stakeholders
• meet their commitments on mitigating negative impacts
• Do not break the laws (where they exist)

Lack of Myanmar ESIA consultants
Some local companies conduct ESIA but stronger on environment than social

ESIA: အာရှဒီမိုကရေစီ MOECAF ဘဲ အဖွဲ့ဝင် ခရစ်ယာန်သူ အဖွဲ့ကို တိုက်ခိုက်နေပါသည် (အာရှဒီမိုကရေစီ အဖွဲ့ကို အဖွဲ့ကိုက်ဆိုသူ အဖွဲ့ဝင်သူများ) ပြောင်ရန် အဖွဲ့ဝင်သူများ

• သက်ဆိုင်သူ ပါဝင်ပြီးသားများအားလုံး ထိုင်စာအရင် ထိုင်စာအရင် ကလေးများအတွက်လည်း
• ဆိုးက်ိဳးသက်ရာများဗျူးရန် များအတွက်လည်း
• ဗုဒ္ဓအရာရှ်လူမျိုးများ မှန်သာမှန်သာများအတွက်လည်း
• ဗုဒ္ဓအရာရှ် လူမျိုးများ မှန်သာမှန်သာများအတွက်လည်း
• ဗုဒ္ဓအရာရှ်လူမျိုးများ မှန်သာမှန်သာများအတွက်လည်း

များဗျူးသွင်းမှု အဖွဲ့ဝင်သူများ အဖွဲ့ဝင်သူများ သူများ သူများ သူများ

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