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TA 7566-REG: Strengthening and Use of Country Safeguard Systems

Subproject: Capacity Building for Implementing
Environmental and Social Safeguard Systems
(Myanmar)

REPORT ON TA 7566 - STRENGTHENING MYANMAR COUNTRY SAFEGUARD SYSTEMS NATIONAL SEMINAR

Prepared by ADB Consultant Team

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Asian Development Bank

Report on TA7566-Strengthening Myanmar Country Safeguard System (CSS) National Seminar, Nay Pyi Taw, Myanmar, 10-11 February, 2014

The national seminar hosted by the Ministry of Environmental Conservation and Forestry (MOECAF) was held on February 10, 2014, followed by a regional safeguard awareness raising event on February 11, 2014. The seminar was aimed to share a common appreciation among participants on the nascent initiatives of developing a country safeguard system (CSS). In view of the participation of representatives across different line ministries, regional government officials, representatives from civil society, and development partners, the seminar was able to provide a forum for discussion on gaps that pertain to environmental and social safeguards regulatory frameworks, institutional strengthening and coordination, civil society and community engagement, and overall implementation and monitoring. Through interactive panel discussions, participants were able to raise questions and provide diverse insights on moving forward to develop an environmental and social safeguard system for Myanmar.

The following is the summary of each of the presentations during the national seminar:

Environmental Governance with Emphasis on Environmental Safeguards in Myanmar U Hla Maung Thein, Deputy Director General, MOECAF

The presentation covers the country's strategic framework for environmental safeguards which supports the overall vision of the Government of Myanmar (GoM) towards the "wellbeing and happiness for Myanmar People". The strategy for environmental safeguards is captured through the three (3) concentric circles of environmental protection, social development, and economic development. Pertinent laws and institutions on environmental safeguards were presented to support such sustainable development agenda. The overarching structure starts with the National Environmental Conservation Committee (NECC), the various technical working groups under it, the sub-national government agencies and MOECAF through its Environmental Conservation Department. The Deputy Director General of MOECAF also talked about the need of mainstreaming environmental safeguards into national and sectoral planning through a sustainable development approach. This is achieved by ensuring three enabling conditions: political willingness, public awareness and mainstreaming Environmental Impact Assessments (EIA) and Social Impact Assessments (SIA). He ended the presentation by acknowledging the challenges and gaps in the areas of regulatory framework especially for social safeguards and the need to cascade environmental and social safeguards frameworks to the different sectors down to the project level. In view of this, he believes that the way forward is to have a proper regulatory framework for social and environmental safeguards, capacity building and institutional strengthening, and developing the necessary expertise for implementation and monitoring. He ended the presentation by emphasizing the need for collaboration with stakeholders such as relevant UN agencies, civil society organizations, Parliament, academe, MOECAF, and various line ministries. The strategic framework also provided a basis on how environmental and social safeguards can be cascaded down to the project level. The presentation also showed the intention of MOECAF to accommodate the social safeguards function within the ministry.

International Experiences and Lessons Learnt on CSS

Ms. Genandrialine Peralta, Senior Environmental Safeguards Specialist (ADB)

The presentation covered the evolution of Country Safeguard Systems (CSS) on environmental assessment in Asia and the Pacific, ADB's experience in strengthening of CSS on environmental assessment, and initiatives in improving the Myanmar EIS System. Ms. Peralta also talked about the partnerships on CSS. Initial outcomes and observations based on ADB's experience include a strong demand from DMCs in all sub-regions to strengthen its country safeguard system. According to her, there is also an emerging focus on Involuntary Resettlement and environmental assessment. She also highlighted the importance of South-South cooperation and of the collaboration with other MFIs. Pertinent laws/guidelines were also drafted in Mongolia, Vietnam and Philippines. Throughout this undertaking, capacity development plans and implementations were carried out where she cited the examples of Laos and Vietnam. Lessons learned from ADB's experience include the need for tailored approaches to meet different DMC's needs, long term support required for deepening results, CSS partnership and structured support to strengthen CSS.

The Development of Myanmar's Environmental Impact Assessment Guidelines

Mr. Iain Watson, Senior Environmental Safeguards Specialist GMS Environmental Operations Center, ADB

Mr. Iain Watson presented the development of Myanmar's Environmental Impact Assessment Guidelines. According to him, the undertaking required an in-depth review of Myanmar's environmental and natural resources legal and regulatory framework and gap analysis of existing draft EIA rules. Through those reviews and assessments, recommendations were made on the updated EIA Procedure reflecting ADB's Safeguard Policy Statement and ASEAN regional best practice. The presentation also covered key features of Myanmar's EIA procedures which include MOECA's power and exclusive authority to oversee EIA process, the requirements for organizations or persons undertaking IEE or EIA, including registration and suspension/termination. The EIA procedures also provide for clear IEE/EIA screening criteria which are referenced to international project types and standard size thresholds. According to him, there is also a provision for multiple projects or project phases if logically or economically linked to be treated as a single project for EIA purposes. Lastly, the recommended EIA procedures give clear timeframes for both IEE and EIA application, review, and approval processes.

Private Sector Experience and Expectations on Country Safeguards

Ms. Vicky Bowman, Director, Myanmar Centre for Responsible Business (MCRB)

MCRB's objective is to provide a legitimate platform for the creation of knowledge, capacity and dialogue concerning responsible business in Myanmar, based on local needs and international standards, that leads to responsible business practices. It is funded by the United Kingdom Department for International Development, Danish Development Aid (DANIDA), and the governments of Norway, Switzerland, Netherlands, and Ireland. Ms. Bowman stressed that companies (both multinational and local) want clarity i.e. clear laws and procedures governing all relevant issues, should be available in English as well as in Myanmar language; simplicity - e.g. one set of laws/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 with international approaches and standards (e.g. Asian Development Bank (ADB), International Finance Corporation (IFC), European Bank for Reconstruction and Development (EBRD), Japan International Cooperation Agency (JICA)); freedom to hire appropriate experts who have passed the company's usual integrity and due diligence checks. She cited that private

sector also wants freedom to choose the right mix of international and Myanmar experts specially that there is lack of EIA and SIA preparers in Myanmar ; 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, and translation into local languages; cost-effective risk-based approaches: not every project requires a lengthy and expensive Environmental and Social Impact Assessments (ESIA). For lower risk projects, effective stakeholder engagement and respect for relevant laws is sufficient. She also cited the lack of clarity on land rights where land registers are out of date. According to her, companies are very aware of civil society concern about land grabs, lack of genuine consultation, compensation practices and corruption.

She noted that companies commit globally to 'strive to achieve Free Prior and Informed Consent' (FPIC) of Indigenous Peoples (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 according to her it is not so clear among companies as to who will be considered as IPs. Likewise, EIA and SIA procedures are not clear especially the ministries involved, the role of MOECAP, and regional governments. For instance, oil companies have been told they need to complete an ESIA within six months of signing their Production Sharing Contract (PSC) to obtain their Myanmar Investment Commission permit which consequently leads to rushed assessments with inadequate public consultation and lack of transparency. According to her, there is lack of trained inspectors and government capacity (at national and state level) to hold effective consultations with stakeholders and meet their commitments on mitigating negative impacts.

Social Safeguards: Issues and Challenges in Myanmar

Ms. Noriko Sakurai, Project Formulation Adviser, JICA

The presentation started with overview of Japan's support to Myanmar such as improvement of people's livelihoods, capacity building and institutional development to sustain economy and society, and development of infrastructure and related systems for sustainable economic development. Environmental and social safeguards principles and requirements of JICA were presented which are more or less similar to ADB's SPS (2009). The presenter recommended that a capacity development system will have to be developed and that efforts to raise awareness on environmental and social safeguards be held not only to various project proponents but also to the general public. She also stressed the need to establish national environmental and effluent/emission standards and to secure sufficient budget for EMMP. She cited various difficulties in the area of social safeguards: difficulty of understanding of various land-related laws and regulations as well as the proper jurisdiction of the land; difficulties in confirmation of land records; difficulties in the determination of reasonable market value of land; and lack of regulation/guidelines for involuntary resettlement. In view of these difficulties, she recommended consolidation of land-related laws and assignment of responsible ministry/Department for land acquisition and resettlement and establish appropriate guidelines/procedures not only for EIA but also for SIA.

Resettlement in Thilawa SEZ

U Set Aung, Chairman of Thilawa SEZ Management Committee and Vice Governor of the Central Bank of Myanmar

According to U Set Aung, the Thilawa SEZ is the first project that has conducted proper RWP systematically according to international practice. He considers it an achievement and that many aspects of the process can be emulated in the implementation of other government projects. He emphasized that the project may not necessarily be perfect, but

there are lessons to be learned based on their experience. Success factors he cited include: consultative meetings/ Person-to-Person contact, data adequacy and registration, use of aerial photos and GPS for measuring farm size, detailed map surveys/ socio-economic surveys, and analyses on secondary data comparison. The presentation illustrates the fact that it is possible for a government agency in Myanmar with proper support with an international organization (in this case JICA) can actually manage and implement a project that conforms to acceptable environmental and social safeguards standards.

A framework for consultation; community engagement and acceptance

Kyaw Thu, Director of Paung Ku

The Director of Paung Ku was not able to attend the seminar but provided a written statement titled “Civil Society and Ethnic Community Comments” which was presented, in lieu, by a representative from Promotion of Indigenous and Nature Together (POINT). The presentation summarized the comments which were developed as an independent input to the national seminar. Copies of the document were circulated to all participants of the national seminar.

World Bank Safeguard Standards

Ms. Ruxandra Floroiu, Senior Environmental Engineer, WB

The presentation focused on safeguards and risk management, World Bank safeguard policies, and the importance of public consultation and access to information during the course of the project cycle. Ms. Floroiu then shared WB Group’s Country Program in Myanmar which includes:

- World Bank Group Strategy - An Interim Strategy Note (FY13-14) with IFC; Preparations are now beginning for a Country Partnership Framework to succeed the Interim Strategy Note (ISN)

- International Development Association (IDA) Portfolio – Community Driven Development (CDD), Electric Power and Telecom projects; Education project under preparation

- Non lending Technical Assistance – Extractive Industries Transparency Initiative (EITI) and Peace Process

- Ongoing Analytical Work - Qualitative Social and Economic Monitoring of Livelihoods in Myanmar;

- Irrigation and Ayeyarwady Integrated River basin management investments under preparation

- Country Safeguard Capacity Assessment

She concluded the presentation with some recommendations on the next steps from WB’s point of view. She stressed the importance of coordination with other donors, the need for strengthening Myanmar’s legal and institutional framework, development of implementation capacity for environmental and social management aspects, and strategic assessment of current environmental degradation situation and relevant sectoral needs. According to her, the need for sustainable environmental and social considerations will have to be integrated into the national development planning and ultimately, to develop an effective safeguards

system to prevent the social and environmental impacts associated with rapid economic growth

IFC Safeguards Standards

Mr. Reidar Kvam, Senior Manager, Environment, Social and Governance Department, IFC

Mr. Kvam highlighted IFC's eight performance standards relating to safeguards namely: Assessment and Management of E&S Risks and Impacts, Labor and Working Conditions, Resource Efficiency and Pollution Prevention, Community Health, Safety and Security, Land Acquisition and Involuntary Resettlement, Biodiversity Conservation and Sustainable Management of Living Natural Resources, Indigenous Peoples, and Cultural Heritage. He stressed that as the private sector arm of the World Bank, IFC wants to ensure that the client company's management system captures those performance standards. According to him, implementation of projects is carried out through a management approach that highlights the importance of management system, analysis, and stakeholder engagement.

Major Outcome/s:

The national seminar was able to illustrate how environmental and social safeguards can be integrated in the GoM's overall development planning. This was highlighted in the presentation of World Bank and was resonated in the presentation of U Hla Maung Thein, Deputy Director General of MOECAF where he clearly pointed out how environmental and social safeguards are aligned to government's objectives for national development: sustainable management of natural resources, sustainable social development, and integrated economic development. Moreover, through his presentation, the participants were able to have a better appreciation of the top-down cascade of environmental and social safeguards down to the project level.

As the Seminar progressed and the subsequent regional awareness seminar on the following day, MOECAF acknowledged that in line with good practices, it now accepts it has responsibility for reviewing instruments that address the social safeguards (Involuntary Resettlement and Indigenous Peoples). MOECAF also clearly stated it did not realize how complex and detailed is ADB (and WB and IFC) policy principles and also stated that at present it has very limited human resources and financial capacity to review instruments that include these two safeguards. It has as a result requested concrete recommendations as to how it could develop this capacity. In particular, MOECAF stressed the need for SIA procedures which they believe would help them in view of the on-going efforts to have those in place.

Other major IFIs (WB and IFC) were also very interested to assess whether there could be synergies between their own safeguard policy and that of the ADB. Differences between for instance how IFC does less front-end loading than either WB or ADB were emphasized although it is unclear whether seminar participants (exception was the Deputy Governor of the Bank of Myanmar) were able to grasp these subtle differences. Nevertheless, an exchange of ideas between the IFIs enabled the participants to understand that generically there are similarities in safeguard principles.

Civil society groups were represented at the Seminar. The overall impression is that civil society groups realize that ADB's SPS (2009) seeks to mitigate investments that lead to unsatisfactory developmental outcomes and to have a robust system of checks-and-

balances to ensure safeguard compliance. The importance of civil society and community engagement was also highlighted as the GoM moves forward to developing its own safeguard system.

Although the private sector was under-represented at the seminar, an umbrella organization representing companies with a greater degree of corporate social responsibility was able to demonstrate to the seminar participants that it is in the interest of responsible private sector investors to be proactive when investing in Myanmar. Private sector companies with a commitment to “social license” want a safeguards system that is both transparent and cost-effective. They also argued that not every investment project should require an ESIA.

Recommendations raised during the seminar:

MOECAAF stated it has guidelines on environmental safeguards but does not yet have social safeguard guidelines. MOECAAF requested ADB for assistance in the development of social safeguard guidelines as well as corresponding capacity development within the ministry. It was also recognized that ministries and agencies responsible for specific investment projects – public or private – need to be responsible for the incorporation of safeguards but especially resettlement and where relevant Indigenous People’s planning processes.

Based on the wide-ranging discussions during the National Seminar and Awareness Seminar, MOECAAF is counting on the ultimate output of the TA which is a capacity development roadmap. By the end of the two day event there is good reason to expect that there is considerably more understanding of ADB policy principles than prior to the National Seminar and Awareness Seminar.