

**Terms of Reference
for
a national consultant to carry out a gap analysis of the legal framework for
environmental governance in Myanmar with a particular focus on the needs arising from
petroleum exploration and production activities.**

Background

The Norwegian Government is offering assistance to Myanmar through the Oil for Development (OfD) Programme. The programme covers management of petroleum resources, the environment, revenues from the sector and safety issues.

The Norwegian Environment Agency (NEA) is cooperating with the Environmental Conservation Department (ECD), the Ministry of Natural Resources and Environmental Conservation (MONREC) on environmental management related to oil and gas activities. One of the outcomes of environment management component is *“MONREC ensures that a consistent legal framework for managing environmental issues related to the oil and gas sector is in place (laws, regulations, procedures, guidelines)”*

ECD was established in 2012 as a department under the Ministry of Environmental Conservation and Forestry (MOECAF). MOECAF was merged with the Ministry of Mines earlier in 2016 to become Ministry of Natural Resources and Environmental Conservation (MONREC). ECD was set up to ensure effective implementation of environmental conservation and management in Myanmar and is given responsibilities for the newly introduced EIA-regime.

Myanmar main legal framework for environmental conservation is Environmental Conservation Law (ECL) (2012). The ECL is a framework law that stipulates the powers and duties of MONREC. The implementation of the ECL is elaborated in the Environmental Conservation Rules (ECRs). In the ER the mandate for implementing the ECL is delegated to the Environmental Conservation Department (ECD) under MONREC. ECD is given the mandate to establish and implement the EIA (Environmental Impact Assessment) system, dissemination of information and raise awareness, prepare emission norms, issuing environmental permits and perform compliance monitoring.

Several governmental institutions are responsible for environmental regulation of the petroleum sector. The involvement of MONREC/ECD (central, regional and local), Ministry of Industry (MoI) (now Ministry of Planning, Finance and Industry-MoPFI) and Ministry of Electricity and Energy (MOEE) may lead to confusion concerning environmental regulation and follow up. There is a need to align the regulatory framework and to clarify the responsibilities between the various departments and ministries.

Today, no environmental requirements are given to the oil and gas sector in Myanmar. However, through recently approved legislation there are overlapping regulations and mandates for follow up in the future. The Chemical law will be implemented by a Central Supervisory Board (CSB) under the MoI. Any business that is storing, using, importing and/or disposing of prescribed chemicals has to apply to the CSB for a license. Through the ECL, MONREC/ECD has been given the mandate to control hazardous substances (some of the chemicals used in the oil and gas sector is hazardous). In the ECC, ECD plan to issue requirements on several environmental issues, e.g. related to chemicals and waste. According to MOGE, they are responsible for following up the use and disposal of chemicals and waste for the oil and gas installations.

In 2016 UNDP published the report *Needs assessment for effective implementation of the Environmental Conservation Law*. One of the main conclusions/recommendations(not sector specific) from the report was:

"The most urgent task is to complete the currently unfinished development of the legal base, including detailed regulations and standards, licensing procedures, EIA and environmental permitting regulations and environmental standards."(page 80-81)

Objective

The objective of the procurement of this consultancy is to provide baseline/overview on current governance regime and regulations in the oil and gas sector, building amongst others on the recommendations in the above referred to UNDP report.

- Provide an overview of the existing environmental legal framework in Myanmar related to oil and gas, including legislation planned and/or currently being developed.
- Assess if the current legal regime in Myanmar is fit for regulating the environmental impacts of the oil and gas activities.
- Identify the gaps and inconsistencies in the legal framework that are necessary to ensure good environmental governance in the oil and gas sector in Myanmar.
- Identify opportunities for and limitations to effective enforcement.
- Present the findings as an independent report to Government and key stakeholders.

Identify needed regulations, procedures and/or guidelines and/or standards and clarify roles and responsibilities regarding environmental management of the oil and gas sector and in identify inconsistencies in the legal framework with a comparison matrix of key positions of international best practices and structures

Scope of work

In carrying out the consultancy, the consultant will work closely with a project group chaired by the Director General of ECD, or an official appointed by him, and a representative from the Section for Legal Affairs at the Norwegian Environment Agency.

In addition to performing expert tasks, such as reviewing the existing environmental legal framework related to oil and gas, the consultancy will involve organizing and facilitating workshops for assessing the current legal framework baseline. ECD will make available relevant documents, including legal texts, draft amended texts, reports etc. as input to the work of the national consultant.

The consultant should keep in close dialog with the Norwegian Environment Agency regarding timing and assignments, including also by way of monthly reporting on achievements and plans

The extent and definition of the scope may be further refined in cooperation with NEA during the work process and the scope and budget may possibly be adjusted. Any change in the scope or allocation of consultancy staff resources is to be approved by the Norwegian Environment Agency.

Time frame for delivery

The assignment commences in 15 May 2020. The end date will be in the end of September 2020.

- A draft report will be submitted to NEA and ECD on 1 August 2020.
- The final report will be submitted beginning of September (or two weeks after receiving comments to the report from ECD and NEA).
- The findings of the report will be presented to ECD in a seminar in the end of September 2020.

Required qualifications

- University degree at Master of Law level or higher.
- General experience in constitutional, administrative and HSE legislation in the petroleum industry.
- Knowledge of environmental issues related to onshore and offshore oil and gas activities.
- Knowledge of responsibilities of different ministries in the area of environmental management of oil and gas activities in Myanmar and their respective roles.

Personal skills required

- Fluency in written and oral English.
- Strong relational and communication skills.

Work Site

Nay Pyi Taw, Myanmar

Language

Draft reports and final report should be prepared and submitted in hard and soft copy in English.

Financial ceiling and selection process

The budgetary ceiling for the consultancy is USD 10,000.

The procurement of the services in question will be made based on competitive selection. The final selection of candidate will be made by the Norwegian Environment Agency (NEA) in consultation with the Environmental Conservation Department (ECD). The selection will be based on criteria such as relevant qualifications, experiences, skills and contribution on environmental management related to oil and gas sector, legislations and regulations related to environment, oil and gas sector and other relevant sectors. In addition, the National Consultant needs to have good understanding of local context and well established networks in the country.

Contact persons

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