

A Process Framework for Mitigating Potential Social Impacts on Indigenous People and Local Communities

1. Project Rationale

Myanmar possesses a great diversity of species and ecosystems, stretching from the Himalaya to Sundaland and linking the forests of Southeast Asia to India. Myanmar's recent opening up to the global community is an opportunity to access both significant natural resources and one of the world's largest untapped markets. This can also escalate the two greatest threats to the country's biological diversity - habitat loss and direct resource exploitation. Habitat loss has been mainly driven by human settlement encroachment, concession for commercial scale agriculture, commercial logging, and unregulated mining. The main causes of direct exploitation of wildlife and wild plant species are high demand from international markets for luxury foods, medicines, and pets, as well as for more local bush meat consumption. This is a particular issue for targeted species such as big cats, elephants, tortoises, and freshwater turtles particularly for markets in China. Local hunting for subsistence impacts a large range of species but is of greatest concern for many of the country's ungulates.

The Myanmar government has tackled these issues by launching field interventions and developing policy measures. The government is keenly aware that they must use their natural resources to transition to a more developed country and are equally aware that this must be done in a sustainable manner for the long-term benefits of development to be achieved. There is also an appreciation within the relevant government agencies of the importance of a national protected area network, with a commitment under the National Forestry Master Plan to increase the size of the network as a %of land area from <6% to 10%. There is also a growing understanding of the key role of local communities in protected area management. However, there is a broad lack of awareness in country and amongst wider civil society of the unique biodiversity of Myanmar and the values of protected areas, and also a lack of technical capacity to develop and implement conservation solutions. As the speed of development activities in Myanmar grows rapidly, more detailed and accurate information on biodiversity, habitats, community use and threats are urgently needed to inform decision makers and strategically increase the national protected area network in collaboration with local communities, particularly those from ethnic groups. Without this project, important Key Biodiversity Areas in these three conservation corridors risk being lost forever.

2. Project Approach

The project will be implemented in three strategies. Under these strategies, there will be a series of actions and expected outputs as below:

Strategy 1: Assemble all available information on species, ecosystems, threats, management and socioeconomic situations in targeted CEPF KBAs and Corridors

Action 1.1 Key informant interviews with resource persons from NGOs, academic institutions and communities

Action 1.2 Secondary information collection and desktop studies

Action 1.3 Conduct three multi-stakeholder workshops and verify the collated information – (1) Loikaw for Western Shan Yoma Range, (2) Hakha for Chin Hills Complex, and (3) Thandwe for Rakhine Yoma Range.

These three actions will result in the following outputs:

Output 1.1 Information on species, habitats and threats of the three corridors and KBAs, and

Output 1.2 Spatial and thematic gaps for further research and survey in the three corridors.

Strategy 2: Conduct a KBA gap analysis in collaboration with relevant stakeholders in the target corridors to compliment similar ongoing activities in the north and south of Myanmar.

Action 2.1 Identifying ecological representation gaps by conducting analyses using GIS and written references

Action 2.2 Identifying Species presence/absence through literature search, stakeholder interviews and opportunistic field surveys

Action 2.3 Identifying management gaps through stakeholder interviews and consultation with government and nongovernment agencies

These three actions will result in the following outputs:

Output 2.1 Representation gaps within the target corridors

Output 2.2 Ecological gaps within the target corridors

Output 2.3 Management gaps within the target corridors

Strategy 3: Work with Government and local stakeholders to expand the PA network using community management approaches

Action 3.1 Verifying all gaps identified and prioritizing gaps through multi-stakeholder workshop

Action 3.2 Developing (1) participatory conservation strategy, and (2) communication and participation plans

Action 3.3 Informing the results to policy review through multi-stakeholder workshop in Nay Pyi Taw

These three actions will result in the following outputs:

Output 3.1 Verified gaps and prioritized gaps

Output 3.2 Conservation strategy

Output 3.3 Communication and participation plans

Output 3.4 Documentation of model KBA management

Output 3.5 Proposed policy revisions reflecting the findings of model KBA management

3. The Socioeconomic Status of Indigenous peoples in three conservation corridors

The three little known conservation corridors - Chin Hills Complex (CHC), Rakhine Yoma Range (RYR) and Western Shan Yoma Range (WSYR) – support a great diversity of indigenous people. A list of sub-ethnicities or sub-tribes of indigenous people in the three corridors is shown in Table 1. All indigenous people have a strong attachment to their traditional lands and most are smallholder farmers practicing shifting cultivation as their traditional agricultural practice. Smallholder farmers in Myanmar can be defined as cultivating no more than 10 acres with 5 being the minimum average needed to feed a household of five in a year with no disruptive pressures such as unfavorable weather or loss from rodents. Many smallholder shifting cultivators in the uplands are dependent on larger land areas and commonly head land resources. The different land management systems have made land tenure and the rights of smallholder farmers quite complicated. The government has recently promulgated a new land law. Although indigenous people have historically exercised customary laws the recent land law does not recognize these rights. There is no legal registration system for shifting cultivation and upland farms. Therefore upland agricultural lands have been prone to land confiscation and acquisition by government, or private concessions in the past.

Table 1: The Main Indigenous Peoples in Three Little Known Conservation Corridors

| Conservation Corridors | Chin Hills Complex (CHC) | Rakhine Yoma Range (RYR) | Western Shan Yoma Range (WSYR) |
|--|--|---|---|
| Main Indigenous people | Zomi Laimi Khumi Cho Zophei Zotung Senthang Lusei Thado Asho Lushai Matupi Paite Ngawn Vaiphei Simte Sizaang Thadou Teizaang Mara Chin Others | Rakhine Chin Mro Chakma Khami Dainet Others | Karenni/Kayah Kayan Bwe Geba Manumanaw Yantale Zayein (Lahta) Geko Yinbaw Paku (Karen) Lahu Shan Lisu Taungyo Danu Ta'ang Ahka Karen Pa-O Others |
| Population density in main States | Chin State: 13/km ² | Rakhine State: 85/km ² | Karen State: 52/km ² Shan State: 37/km ² Kayah State: 25/km ² |
| Religions | Buddhism, Christian, Islam, Hinduism, Animism | Buddhism, Christian, Islam, Hinduism, Animism | Buddhism, Christian, Islam, Hinduism, Animism |
| Main land use and agricultural practices by Indigenous peoples | Shifting cultivation, rain fed paddy, subsistence fruit orchards, Home gardens | Shifting cultivation, rain fed paddy, subsistence fruit orchards, Home gardens | Shifting cultivation, rain fed paddy, subsistence fruit orchards, Home gardens |
| Area | 36,272 km ² (Chin State 100%) | 47,914 km ² (Rakhine State 73%, Ayeyawady Region 14%, Magway Region 10%, and Bago Region 3%) | 27,742 km ² (Kayah 45%, Shan State 13%, Bago Region 13%, Mandalay Region 12%, Mon State 8%, and Kayah State 7%) |

4. Legal Framework for Rights of Indigenous People

Article 37 (a) from the 2008 Constitution of the Union of the Republic of Myanmar clearly states that the ultimate owner of all lands is the Union or government as below. There are no explicit policies or legal frameworks related to rights of Indigenous People in Myanmar.

37. The Union:

(a) is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union;

The Government of Myanmar has signed the UN Declaration on the Rights of Indigenous People (UNDRIP) and the following articles from UNDRIP are important to highlight land and natural resource management for indigenous people:

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

- a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- d) Any form of forced assimilation or integration;
- e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

5. Potential Impacts on Indigenous People and Proposed Mitigation Measures

a) Nomination as government protected areas

After gap analysis of KBAs by this project, some KBAs could be nominated as potential government protected areas. This could trigger different kinds of restrictions on land use and resource use for indigenous peoples and local community.

WCS will collaborate closely with Forest Department to minimize potential impacts and if deemed necessary by the Union Government insure proper mitigation measure for potential impacts.

- 1) The following steps will be recommended as mitigation measures
 - Free, Prior and Informed Consent (FPIC) must be applied before any nomination
 - Natural resource use and land use of indigenous peoples and local community must be assessed and documented
 - The boundary of proposed protected area has to be drawn with the consensus of indigenous people and local community in accordance with their land use and resource use.

- 2) Different management alternative recommendations for important KBAs
 - Beyond government established protected areas, community managed conservation areas should be allowed by expanding existing Community Forestry Instruction to Community Natural Resource Management Law
 - Explore possibility of getting Community Forest Certificate for community conservation areas such as watershed areas, medicinal plant areas, grazing areas, cemetery areas, religious areas and other special protected areas.

- 3) Finding necessary technical and financial supports
 - To conduct the FPIC process, participatory land use planning for indigenous peoples and local community, WCS will raise additional technical and financial support and recognize that these are not included within the current grant from CEPF.

b) Undermining existing customary rights on land use and resource use of indigenous peoples

Existing policies, laws and rules have not yet captured the customary rights on land use and resource use of indigenous peoples and local communities.

WCS will help to facilitate all stakeholders and partners to identify existing land use and resource use by using our standard methodologies for village consultation and village use zonation.

c) Inequitable representation of indigenous peoples and marginalized peoples

Culturally or naturally, some tribes or sub-tribes are dominant in representing certain communities and leading in decision-making. Sometimes, some marginalized peoples are under represented in meetings and consultation events.

WCS will collaborate with all stakeholders and partners to have equal representation of indigenous people and marginalized populations within these groups.

6. Policy recommendations

The following frameworks will inform the existing policies of land use and rights of indigenous peoples. These will be integrating with the results of the gap analysis of Key Biodiversity Areas (KBA) conducted by the project.

1. *Recognition of existing land use and resource use patterns of indigenous peoples*
2. *Recognition of Customary Law*
3. *Recognition of shifting cultivation as a part of existing highland ecosystems*
4. *Importance of protecting Land Use Rights*
5. *Recognition of the equal rights of women on land and natural resources*

6. *Recognition of the importance of Free Prior and Informed Consent (FPIC)*
7. *Recognition of the rights to Information*
8. *Adapting the existing Forest Departmental procedures for land settlement procedures for the establishment of protected areas to mitigate any impacts on indigenous peoples*
9. *Each workshop will provide a clear system for contacting WCS directly in case of any subsequent grievances related to project activities.*