

Legal Control of Protected Areas for Nature Conservation in Myanmar

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Abstract

Protected areas (PAs) are the main, most widely used conservation tools for addressing the loss of biodiversity worldwide. Myanmar, in recent years, increasing in population, unsustainable overexploitation of natural resources had led to the loss of natural resources. To effectively prevent such situations, Myanmar enacted the new national Conservation of Biodiversity and Protected Areas Law, 2018 and established protected areas to conserve precious natural resources and biodiversity in the region in line with the Convention on biodiversity Diversity. However, in some protected areas, some threats such as illegal logging, pollution, human intrusions and disturbance have occurred. This study reviews the existing national laws and standards, and international standards relevant to preservation and protection of protected areas for nature conservation and provides some recommendations on possible approaches to effectively implement and monitor it.

Keywords: Protected Areas, Natural Resources, Loss of Biodiversity, Threats, Preservation, Protection

Material and Methods

This study conducts analytical research. It reviewed and examined existing national laws particularly the Conservation of Biodiversity and Protected Areas Law of 2018, and international convention, the Biological Diversity, 1992. Secondary sources such as literature and relevant information concerning the conservation of protected areas were collected and examined.

Introduction

The International Union for Conservation of Nature (IUCN) defines a protected area as ‘a clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values’.

Myanmar has a long history of legal background on the establishment of protected areas for conservation of natural resources such as forests, wetlands and wildlife. Traditionally, protected areas started since the time of Myanmar Kingdom and the first gazette Protected Area was established in 1920.²

Modern conservation efforts are rooted in the early 1980s. Between 1981 and 1984, the Nature Conservation National Park Project (NCNPP) was launched and jointly implemented by the United Nations Development Programme and the government. The Ministry of Environmental Conservation and Forestry also established the Nature and Wildlife Conservation Division, which is responsible for nature conservation and protected areas. Since then, several additional protected areas have been established and expanded.³As of 2019, 45 protected areas are already established.⁴

Status of Protected Areas

Protected areas play an important role in conserving biodiversity, and in delivering vital ecosystem services, such as protecting watersheds and soils and shielding human

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² Win Naing Thaw, Protected Areas Management in Myanmar: Policy, status and strategies for Biodiversity Conservation, Forest Department, 2013.

³ National Biodiversity Strategy and Action Plan 2015-2020, Republic of the Union of Myanmar, October, 2015, p.2.

⁴ Lara Beffasti and other, Myanmar Protected Areas: Context, Current Status and Challenges, 2011,

communities from natural disasters. Empirical evidence has shown that protected areas contribute significant reduction in deforestation, habitat destruction, and loss of wildlife species compared to other land management options.⁵ The establishment of protected areas where nature would be allowed to take its course without human intervention has been advocated in many countries.⁶

Therefore, as protected areas are obvious sites for conserving biodiversity, many countries in the region have made substantial efforts over the last two decades in order to improve their protected area systems. However, many of the areas in the region designated as protected areas are not adequately managed. A large number are paper parks which although protected by law, are unprotected, unmanaged and lacking in park infrastructure and on-site staff.⁷

International Framework on Protected Areas

Protected areas are land and sea uses of great importance for life and a healthy environment on earth, for the protection of heritage and for the direct and indirect benefits they provide for most people on earth. They are inspirational and transformative destinations for millions of people worldwide every year. They have been established over 15.4 per cent of the earth's terrestrial area (outside Antarctica) and 3.4 per cent of its marine area (ICUN and UNEP-CMC 2014) and are supported by 193 parties to the Convention on Biodiversity as well as other nations.⁸ The Convention on Biological Diversity is the first attempt to deal internationally with the protection of biodiversity loss and the equitable sharing of the benefits derived from the use of genetic resources.

At the international level, different regulatory techniques have been used to promote nature conservation. They are as such:

- management of habitats
- management of the ecosystem
- the establishment of protected areas
- prohibitions and/or regulation of international trade in species;
- the establishment of quotas for the taking of species.

Of these, the most widely and long-used is the establishment of protected areas, together with botanic gardens, gene banks, *ex situ* conservation in zoos and scientific aquaria.

Actually, the Convention on Biological Diversity recognizes protected areas as a fundamental tool for preserving and protecting biodiversity. The term "protected area" is defined in Article 2 of the Convention as "a geographically defined area, which is designated or regulated and managed to achieve specific conservation objectives". Article 8 of the Convention contains specific references to protected areas by encouraging Parties to:

- Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;

⁵ Pyi Soe Aung, Social-Ecological Coevolution and its Implications for Protected Area Management: Case Study in NatmaTaung National Park, Myanmar, 2019, p.1.

⁶ Elli Louka, International Environmental Law: Fairness, effectiveness, and World order, Cambridge University Press, 2006, p.289.

⁷ Susan M. Braatz, Conserving Biological Diversity: A Strategy for Protected Areas in the Asia-Pacific Region, 1992.

⁸ Graeme L Worboys, Michael Lockwood, Protected Area Governance and Management, NUA Press, 2015.

- Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;
- Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;
- Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas.⁹

Between 1950 and 1994 the total number and extent of protected areas increased by a factor of more than five, and by 1997 there were 30,350 protected areas around the planet, extending over a total of more than 13 million square kilometres. Of this total, nearly 6 million square kilometers were totally protected areas which are maintained in a natural state and closed to all extractive uses according to the IUCN management categories.¹⁰

Protected Area of Myanmar and its Significance

Since the late 1990s, the destruction and degradation of Myanmar's natural habitat has increased, mainly due to logging and agricultural conversion as the country increasingly engaged with the outside world for economic development.¹¹ Therefore, Myanmar has made substantial efforts in order to improve the conservation.

Like other countries, Myanmar also established protected areas to promote sustainable livelihoods and biodiversity conservation in the region. Among 45 established protected areas in the country, eight are ASEAN Heritage Parks recognized for their biodiversity value within ASEAN countries and six are that have been designated as Ramsar Sites. Moreover, Inlay Lake Wildlife Sanctuary and Indawgyi Wildlife Sanctuary have been designated as Man and Biosphere Reserve-MAB by UNESCO.¹²

Myanmar's protected areas range in size from 0.5km² (the Lawkananda Wildlife) to 22,000 km² (Hukaung Vally Wildlife Sanctuary). Older protected areas tend to be smaller, but the more recent ones aim to protect entire landscape for preserving species with large home ranges such as tiger and the Asian elephant that require large areas of contiguous habitat for long-term survival.¹³

Categories of Protected Areas

Protected area means areas designated by the Conservation of Biodiversity and Protected Areas Law for the conservation of wild fauna and wild flora, ecosystems or significant geographical areas.¹⁴ According to Section 8 of Conservation of Biodiversity and Protected Areas Law of 2018, it categorized protected areas as such;

- (1) Scientific Reserve
- (2) National Park
- (3) Marine National Park

⁹ <https://www.cbd.int/protected/>

¹⁰ Philippe Sands, Principles of International Environmental Law, Cambridge University Press, 2nd Edition, 2003, p.504.

¹¹ <https://www.undp.org/myanmar/projects/sustainability-protected-area-management-myanmar>

¹² http://www.myanmarchm.gov.mm/en_US/protected_areas_information/protected-area-system-development-in-myanmar/

¹³ www.mcrb.org.mm

¹⁴ Section 2(d) of the Conservation of Biodiversity and Protected Areas Law, 2018.

- (4) Nature Reserve
- (5) Wildlife Sanctuary
- (6) Geo-features
- (7) Significant Area
- (8) Community Conserved Protected Area.¹⁵

Threats to Protected Areas

Protected areas are preserved and protected with the national law and policies. However, the following threats are occurring in some protected areas;

- Hunting and logging
- Agriculture and aquaculture
- Energy production and mining
- Pollution
- Human intrusion and disturbance
- Geological events
- Natural system modification.

Among these threats, hunting, logging, agriculture and human settlements are the most common threats occurring in some protected areas.¹⁶ These threats are mainly due to the subsistence needs of local communities, rather than large-scale incompatibilities. “Biological resource use” is the most common threat both inside and outside of all PAs. In this category, the extraction of non-timber forest products is ranked the highest and is found in 85% of all PAs. Other threats including fuel wood collection, hunting, grazing and human settlements are observed in more than 50% of them. Such kinds of threats are unlikely to be reduced in the absence of local community support because 70% of the country’s population who lives in rural areas is heavily dependent on natural resources for livelihoods.¹⁷

Legislation and Policies for Conservation of Protected Areas

Being one of state parties to Convention on Biological Diversity (CBD), Myanmar passed the new Conservation of Biodiversity and Protected Areas Law of 2018, which replaced the Protection of Wildlife and Conservation of Natural Areas Law of 1994, in order to effectively protect and preserve biodiversity. Myanmar has committed to establish protected areas up to 10% of the country’s area by 2020. To achieve this target, the forest department laid down the Master Plan for (2001-2030).

Moreover, the new national biodiversity strategy and action plan (2015-2020) was also developed in line with the strategic plan for biodiversity 2011-2020 adopted by the Convention. This plan is a national level framework for guiding effective management and utilization.

The new Conservation of Biodiversity and Protected Areas law provides many more opportunities for recognizing the rights and roles of local communities while creating a

¹⁵ Strengthening Sustainability of Protected Area Management in Myanmar, The 4th Project Board Meeting, Tuesday, 29th January 2019

¹⁶ Lara Beffasti and other, Myanmar Protected Areas: Context, Current Status and Challenges, 2011,

¹⁷ Thazin Htay & Eivin Røskaft, Community Dependency and Perceptions of a Protected Area in a Threatened Ecoregion of Myanmar, Academic Journal, Vol. 12(4), pp. 240-252, October-December 2020.

new category of Community Protected Areas. Penalties for legal infringement are more intense in this law.

In Section 34 of the 2018 law, in order to preserve a protected area, the following acts are prohibited within it;

- (a) entering a place where the public is permitted for recreation by violating stipulated conditions;
- (b) trespassing on a prohibited place without permission, except for a place where the public is permitted for recreation;
- (c) grazing or free grazing or causing domestic animals to trespass;
- (d) frightening or willfully disturbing protected wild fauna;
- (e) destroying by anyway, plucking, breaking or possessing any wild flora and cultivated plants without permission. In the case of the commission of these actions within a protected area, a park warden may pass an administrative order against any person to pay a fine from a minimum kyats 10,000 to a maximum kyats 30,000.

In addition, if a person commits entering a prohibited area without permission, filming or video recording commercially without permission, digging on the land, cultivating or carrying out any activity and extracting, collecting or destroying in any manner, any kind of wild flora or cultivated plant, he shall be passed an administrative order to pay a fine from a minimum kyats 30,000 to a maximum kyats 100,000.¹⁸

When passing an administrative order, a park warden shall confiscate the products produced from a protected area or a zoological garden or botanical garden administered by the Government or in which the Government has subscribed share capital.¹⁹

If a person commits commercially breeding protected endangered wild fauna without permission and intentionally polluting soil, water or air, damaging a water-course or poisoning water or electrifying water, or using chemical or explosive materials in the water within the protected area, he shall be punished with imprisonment for a term not exceeding 3 years or with a fine from a minimum of kyats 200,000 to a maximum of kyats 500,000, or with both.²⁰

In the case of trespassing within the protected area or destroying ecosystem or any natural condition and altering, removing, destroying or obliterating, without permission, any boundary marking of a protected area, it will be punished with imprisonment for a term not exceeding 5 years or with a fine from a minimum of kyats 300,000 to a maximum of kyats 1,000,000 or with both.²¹

Apart from preventive measure, the government have to perform patrolling and law enforcement, monitoring priority species for conservation, conducting community outreach programs, promoting ecotourism within PAs and collaboration with foreign countries and international and regional organizations, under this new law.

Enforcement on Preserving Protected Areas

According to the Conservation of Biodiversity and Protected Areas Law, the Ministry of Natural Resources and Environmental Conservation is mainly responsible for the overall management and PAs administration. Especially, forest department is responsible for

¹⁸ Section 35 of the Conservation of Biodiversity and Protected Areas Law, 2018.

¹⁹ Section 37(a), Ibid.

²⁰ Section 39, of the Conservation of Biodiversity and Protected Areas Law, 2018.

²¹ Section 40, Ibid.

monitoring nature conservation of ecosystems and species, biodiversity and natural habitats and protected areas. This department also requires providing technical coordination and support for the management of Community Protected Areas. Community participation in the protected area management is also one of the National biodiversity strategy and action plan's targets.

In accordance with the law, community- based biodiversity conservation trainings have also convened to increase capacity and participation of the local communities in conservation activities. It was a wise and successful move, the local communities enthusiastically participated in the process.²²

However, many protected areas lack staff, management plans and basic infrastructure. They consequently suffer from threats of encroachment, poaching and over-harvesting of non-timber forest products. There is a strong correlation between the threat status of protected areas and the prevalence of well-paid and trained staff who have access to resources to adequately patrol protected areas and to develop community projects to minimize existing threats.²³

Definitely, a report concluded that although 20 protected areas had some kind of planning document, it was not comprehensive management plans. Staff at 70% of the surveyed protected area stated that lack of budget and staff (both in numbers and quality) were the main constraints to the implementation of management actions.²⁴

Although the strategic and management plans were developed for some protected areas in the past, these are necessary to be updated and some protected areas still do not have the plans yet.²⁵ Furthermore, traditional PA management strategies using 'fences and fines principle' without considering the needs and aspirations of the local community has demonstrated very limited success.²⁶

Conclusion

It is observed that, generally, one of the most frequently used methods to protect biodiversity loss is the creation of protected areas. As protected areas are important sites for conserving biodiversity, Myanmar has made substantial efforts in order to improve its protected area systems. It is concluded that protected areas conservation and law enforcement activities were conducted in accordance with the law and management plans. However, some threats such as hunting, agriculture, illegal logging, pollution, and human settlement within protected areas are needed to be effectively prevented in line with the law and policies.

Some management plans in some protected areas are not comprehensive plans and thus it is needed to be updated plan. The successful implementation of strategic and effective management plans for protected areas would be effective enforcement for biodiversity and natural resources conservation.

According to the 2018 law, the conservation and management of PAs rest with not only forest officers but also local community. Therefore, adequate and qualified staff should be appointed to do effective patrolling and monitoring in conserving the protected areas. On the one hand, the relevant officers should work efforts collaborative with local communities.

²² <https://myanmar.wcs.org/News/articleType/ArticleView/articleId/11293.aspx>.

²³ www.mcrb.org.mm

²⁴ Ibid.

²⁵ <https://myanmar.wcs.org/News/articleType/ArticleView/articleId/11293.aspx>

²⁶ Thazin Htay & Eivin Røskoft, Community Dependency and Perceptions of a Protected Area in a Threatened Ecoregion of Myanmar, *Academic Journal*, Vol. 12(4), pp. 240-252, October-December 2020.

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References

Law & Polices

The Conservation of Biodiversity and Protected Areas Law, 2018

National Biodiversity Strategy and Action Plan 2015-2020

Convention

Convention on Biological Diversity, 1992.

Books & Articles

Elli Louka, International Environmental Law: Fairness, effectiveness, and World order, Cambridge University Press, 2006.

Lara Beffasti and other, Myanmar Protected Areas: Context, Current Status and Challenges, 2011,

National Biodiversity Strategy and Action Plan 2015-2020, Republic of the Union of Myanmar, October, 2015.

PyiSoeAung, Social-Ecological Coevolution and its Implications for Protected Area Management: Case Study in NatmaTaung National Park, Myanmar, 2019.

Philippe Sands, Principles of International Environmental Law, Cambridge University Press, 2nd Edition, 2003.

Susan M. Braatz, Conserving Biological Diversity: A Strategy for Protected Areas in the Asia-Pacific Region, 1992.

Strengthening Sustainability of Protected Area Management in Myanmar, The 4th Project Board Meeting, Tuesday, 29th January 2019.

Thazin Htay & Eivin Røskoft, Community Dependency and Perceptions of a Protected Area in a Threatened Ecoregion of Myanmar, Academic Journal, Vol. 12(4), pp. 240-252, October-December 2020.

Win Naing Thaw, Protected Areas Management in Myanmar: Policy, status and strategies for Biodiversity Conservation, Forest Department, 2013.

Websites

www.mcrb.org.mm

<https://myanmar.wcs.org/News/articleType/ArticleView/articleId/11293.aspx>

<https://www.undp.org/myanmar/projects/sustainability-protected-area-management-myanmar>

http://www.myanmarchm.gov.mm/en_US/protected_areas_information/protected-area-system-development-in-myanmar/

