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in Asia and the Pacific



A comparative analysis of Environmental Impact Assessment in ASEAN

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Guidelines

on Public Participation in Environmental Impact Assessment in the Mekong Region

First Edition

Mekong Partnership
For the Environment

The Mekong Partnership on environment, funded by USAID, convened a workshop in 2014 of 50 government and non-government participants. Following this meeting a 25-member Regional Technical Working Group was formed in August 2015 to develop draft guidelines on public participation in EIA in the Mekong Region.

The final Guidelines on Public Participation were adopted by consensus in January 2017.

Since 2015, the ASEAN Intergovernmental Commission on Human Rights has been looking at the role of EIA to promote a greater strengthening of procedural rights.

Environmental Impact Assessment in the Mekong Region

MATERIALS AND COMMENTARY (FIRST EDITION)
OCTOBER 2016



The Mekong Partnership on environment, funded by USAID, also funded the publication of the first book on EIA in the Mekong. This examined six countries in the Great Mekong Area – Cambodia, Laos PDR, Myanmar, Thailand, Viet Nam and China.

It was prepared by Earthrights International, the Mekong Legal Network and Matthew Baird.

The first edition of the Materials and Commentary was published in October 2016.

Table 1: Common elements of EIA systems.

	IND	MAL	THA	VIE	MYA	CAM	LAO	PHI	SIN	BRN	ECE	ECLAC
Screening List												
Public Participation												
Access to information												
Access to Remedies												
Tb EIA												
SEA												
EMP												
Registration of Consultants												

IND: Indonesia - MAL:Malaysia - THA: Thailand - VIE: Vietnam - MYA: Myanmar - CAM: Cambodia - LAO: Lao PDR - PHI: The Philippines - SIN: Singapore - BRN: Brunei Darussalam - ECE: Economic Commission for Europe - ECLAC: Economic Commission for Latin American and Caribbean



International Principles of EIA



What is Environmental Impact Assessment?

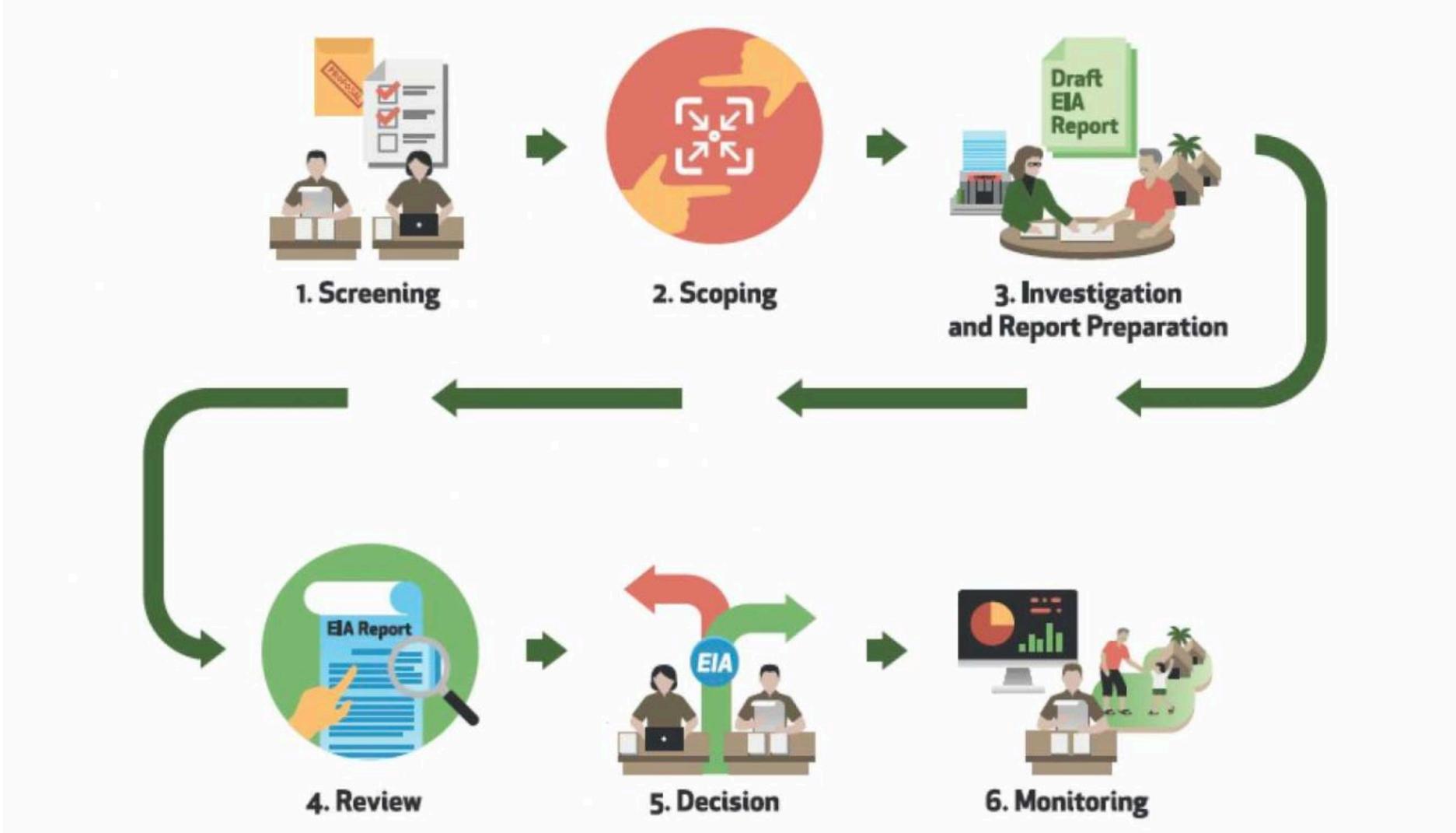


EIA can be defined as:

- *The process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals (and other activities) **prior** to decisions being taken and commitments made.*

Objectives of EIA

- To ensure that environmental considerations are explicitly addressed and incorporated into the development decision making process;
- To anticipate and avoid, minimize or offset the adverse significant biophysical, social and other relevant effects of development proposals;
- To protect the productivity and capacity of natural systems and the ecological processes which maintain their functions; and
- To promote development that is sustainable and optimizes resource use and management opportunities.



Is EIA a customary norm of international environmental law?

The requirement that EIA be undertaken prior to any decision to approve a project has been recognised as a principle of international law by the International Court of Justice (ICJ):

- *Argentina v Uruguay* (2010)
- *Costa Rica v Argentina* (2015) – reaffirmed the need for TbEIA

In both of these court cases the ICJ held that EIA in transboundary cases was a binding norm of international law.

Prof. Tseming Yang reviewed 197 jurisdictions with over 183 jurisdictions containing specific requirements for EIA.



1992 Rio Declaration on Environment and Development

Principle 3: “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”

Principle 4: “In order to achieve sustainable development, environment protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”

Principle 10: Public Participation, Access to Information, Access to Remedies

1992 Rio Declaration on Environment and Development

Principle 14: Precautionary Principle

Principle 16: Polluter Pays and Improved valuation, pricing and incentives.

Principle 17:

Environmental Impact Assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority



International and Regional Agreements on EIA



UN Economic Commission for Europe (UNECE)



- The Convention of Environmental Impact Assessment in a Transboundary Context (Espoo Convention) (1997);
- The Protocol on Strategic Environmental Assessment (the SEA Protocol) (2010); and
- The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) (2001).



The Convention of Environmental Impact Assessment in a Transboundary Context (Espoo Convention) (1997)



- Includes obligations to require:
 - National project level EIA.
 - Notify potentially affected countries.
 - Provide access to information to potentially affected parties.
 - Allow comments from these parties.
 - Countries and parties to be informed on the final decision with respect to the project



The Protocol on Strategic Environmental Assessment (the SEA Protocol) (2010)



- The SEA Protocol refers to “early, timely and effective opportunities for public participation.”
- It also requires that the public, including relevant NGOs, be provided with the necessary information to allow them to comment “within a reasonable time frame.”
- Applies to policies or programmes.



Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazu Agreement)



- Key Principles in Article 3
- Embodies Principle 10 of the Rio Declaration
- Capacity strengthening
- Pollutant Release and Transfer System
- Human Rights in environmental matters and protection of environmental and human rights defenders.
- Sustainable Development Goals



ASEAN Agreement on Conservation of Nature and Natural Resources 1985 (only ratified by Thailand, Indonesia and the Philippines)



ARTICLE 14 Impact Assessment

- (1) The Contracting Parties undertake that proposals for any activity which may significantly affect the natural environment shall as far as possible be subjected to an assessment of their consequences before they are adopted, and they shall take into consideration the results of this assessment in their decision-making process.

ARTICLE 20 Transfrontier Environmental Effects

- (1) Contracting Parties have in accordance with generally accepted principles of international law the responsibility of ensuring that activities under their jurisdiction or control do not cause damage to the environment or natural resources.....

Mekong River Agreement 1995

Article 3. Protection of the Environment and Ecological Balance

- To protect the environment, natural resources, aquatic life and conditions, and ecological balance of the Mekong River Basin from pollution or other harmful effects resulting from any development plans and uses of water and related resources in the Basin.

Article 4. Sovereign Equality and Territorial Integrity

- To cooperate on the basis of sovereign equality and territorial integrity in the utilization and protection of the water resources of the Mekong River Basin.

• Prior Notification, Prior Consultation and Agreement (PNPCA) (2003)

- **MRC** has also developed a draft Policy to enhance regional EIA assessments.

**Mekong River
Commission,
draft 2002,
revised 2009,
released 2017.**

The Proposed System also had a number of elements:

- **Proposed Policy on EIA in a transboundary context;**
- **Guidelines on SEA;**
- **Guidelines on Cumulative Impact Assessment;**
- **Guidelines on Public Participation in Environmental Assessment;**
- **Environmental Impact Statement Review Criteria;**
- **Sector Guidelines;**
- **Training Program to support the implementation of the EIA/SEA System**

International Finance Institutions also have environmental and social safeguards policies



- Asian Development Bank
- World Bank Group, including IFC
- Asian Infrastructure and Investment Bank



Regional Snapshot for EIA in ASEAN

ASEAN Charter December 2008

- The ASEAN Charter included one of its purposes:
 - To promote **sustainable development** so as to ensure the protection of the region's environment the **sustainability of its natural resources**, the presentation of its cultural heritage and the high quality of life of its people. (Emphasis added.)

ASEAN Charter Article 1(9)

- To achieve ASEAN vision of sustainable development, EIA can be used to promote social inclusion, environmental protection and economic growth.

ASEAN Member Country	Year of Adoption	Level of implementation
Singapore	1972	Policy
Thailand	1975	Legislation
Philippines	1977	Presidential Decree
Malaysia	1987	Order
Viet Nam	1993	Legislation
Indonesia	1997	Legislation
Cambodia	1999	Sub-Decree
Laos PDR	1999	Legislation
Myanmar	2014	Rules and Procedure
Brunei	2016	Order

¹¹ Many of these have now changed. The table only reflects the introduction of EIA into the domestic context.

ASEAN Human Rights Declaration 2012

The ASEAN HRD included:

5: Every person has the right to an effective and enforceable remedy....

28. Every person has the right to an adequate standard of living for himself or herself and his or her family including:

.....;

e. The right to safe drinking water and sanitation;

f. The right to a safe, clean and sustainable environment.

Analysis on ASEAN EIA Systems

Examined the
following areas:

- Screening Categories for Project Assessment
- Public Participation
- Access to Information
- Access to Grievance Mechanisms
- Transboundary EIA Assessment
- Strategic Environmental Assessment
- Environmental Management Plans
- Registration of EIA Consultants

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