



# Developing Environmental Law Champions

Strengthening the Capacity For Environmental and Climate Change Laws in Asia and the Pacific



# Environmental Impact Assessment Law

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# History of Development of Planning Laws

- Origins of planning law: Early 20th century in the UK, Europe, and US
- In developed countries, planning law is the foundation of environmental law and provides the basic mechanism for the regulation of development activity
- In developing countries, especially those experiencing rapid population and urban growth, “spatial” planning laws exist but may have less impact in regulating development activity



# Planning Policy Instruments

- “Development Plans” that identify the types of land uses that may be possible (or not allowed) within specific locations
- Zoning via maps of regions for particular types of uses (residential, commercial, industrial, rural, recreational)
- Modern planning laws allow for more strategic approaches, e.g. to allow for redevelopment of land for different purposes (urban renewal) or to encourage higher density residential living in inner city areas
- Consent procedure/ Development Approval
- Appeals (administrative/judicial)
- USEPA/ Land and Environment Court in New South Wales
- Planning Laws and Natural Resource Management Laws



# UN Rio Declaration on Environment and Development (1992)

- **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.

- **Principle 19**

States shall provide prior and timely notification and relevant information to potentially affected states on activities that may have a significant adverse transboundary environmental effect and shall consult with those states at an early state and in good faith



# EIA

- EIA is a systematic process to identify, predict and evaluate the environmental effects of proposed actions and projects.
- A broad definition of environment is adopted. Whenever appropriate social, cultural and health effects are also considered as an integral part of EIA.
- Finally, particular attention is given in EIA for preventing, mitigating and offsetting the significant adverse effects of proposed undertakings



# Definition

It is a planning and management tool for sustainable development that seeks to identify the type, magnitude and probability of environmental and social changes likely to occur as direct or indirect result of a project or policy and to design the possible mitigation procedure (Vanclay and Bronstein, 1995; Harvey 1998; Momtaz et al., 1998; Thomas, 1998)



# EIA is a tool that is applied...

- Before major decisions are taken and when all alternatives are still open;
- To inform all stages of decision making, including final approval and the establishment of conditions for project implementation;
- With public participation and implementation;
- To integrate environmental considerations and safeguards into all phases of project design, construction and operation



# Necessity of EIA

- To examine the environmental consequences of proposed development projects, programmes, policies & suggest relevant management actions;
- To establish the measures necessary to avoid, minimize or offset predicted adverse impacts and, where appropriate, to incorporate these into an environmental management plan or system;
- To ensure that environmental considerations are explicitly addressed and incorporated into the development decision making process;



# Necessity...

- 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 optimize resource use and management opportunities.



# History

- The National Environmental Policy Act 1969 of USA is the legislative basis for EIA. The policy was the result of wide spread recognition in the 1960s that some major environmental problems were created by the government's projects (power stations, dams and reservoirs, industrial complexes).
- The legislation made mandatory to assess the environmental consequences of all projects by federal agencies.
- In 1990s, many developed and some developing countries designed their EIA legislation.
- Today, EIA is firmly established in planning process in many of about 100 countries.



# Treaties and binding instruments

- The first international instrument with EIAs at the centre of business was the 1991 Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention; Europe, USA, Canada)
- Notable because it constitutes a clear leap forward in international law in calling for EIAs within a transboundary, and not merely a domestic context
- The second international instrument –Strategic Environmental Assessment (SEA) Protocol (2003; Kiev Protocol)
- Parties to integrate environmental assessments into environmental plans and programs; extensive public participation in the governmental decision making process
- CBD, 1992 (Article 14.1) Article 12 of the Un Convention on Non-navigational Uses of International Water Course, 1997



# Treaties and binding instruments (continued)

- There is also an obligatory and detailed scheme of EIA in the 1991 Antarctic Protocol
- The convoluted language of the 1992 Climate Change Convention appears to require an impact assessment of the measures taken to mitigate or adapt to a climate change on a range of factors including the environment
- EIA-Customary International Law Obligation?
- Nuclear Tests II Case (New Zealand v France)
- Case concerning Gabčíkovo Nagymaros Project (1996)



# Purposes/Aims and Objectives

The immediate aim of EIA is to inform the process of decision-making by identifying the potentially significant environmental effects and risks of development proposals.

Objectives related to this aim are to:

- improve the environmental design of the proposal;
- ensure that resources are used appropriately and efficiently;
- identify appropriate measures for mitigating the potential impacts of the proposal; and
- facilitate informed decision making, including setting the environmental terms and conditions for implementing the proposal.



# Purposes/Aims and Objectives (continued)

The ultimate (long term) aim of EIA is to promote sustainable development by ensuring that development proposals do not undermine critical resource and ecological functions or the well being, lifestyle and livelihood of the communities and peoples who depend on them.

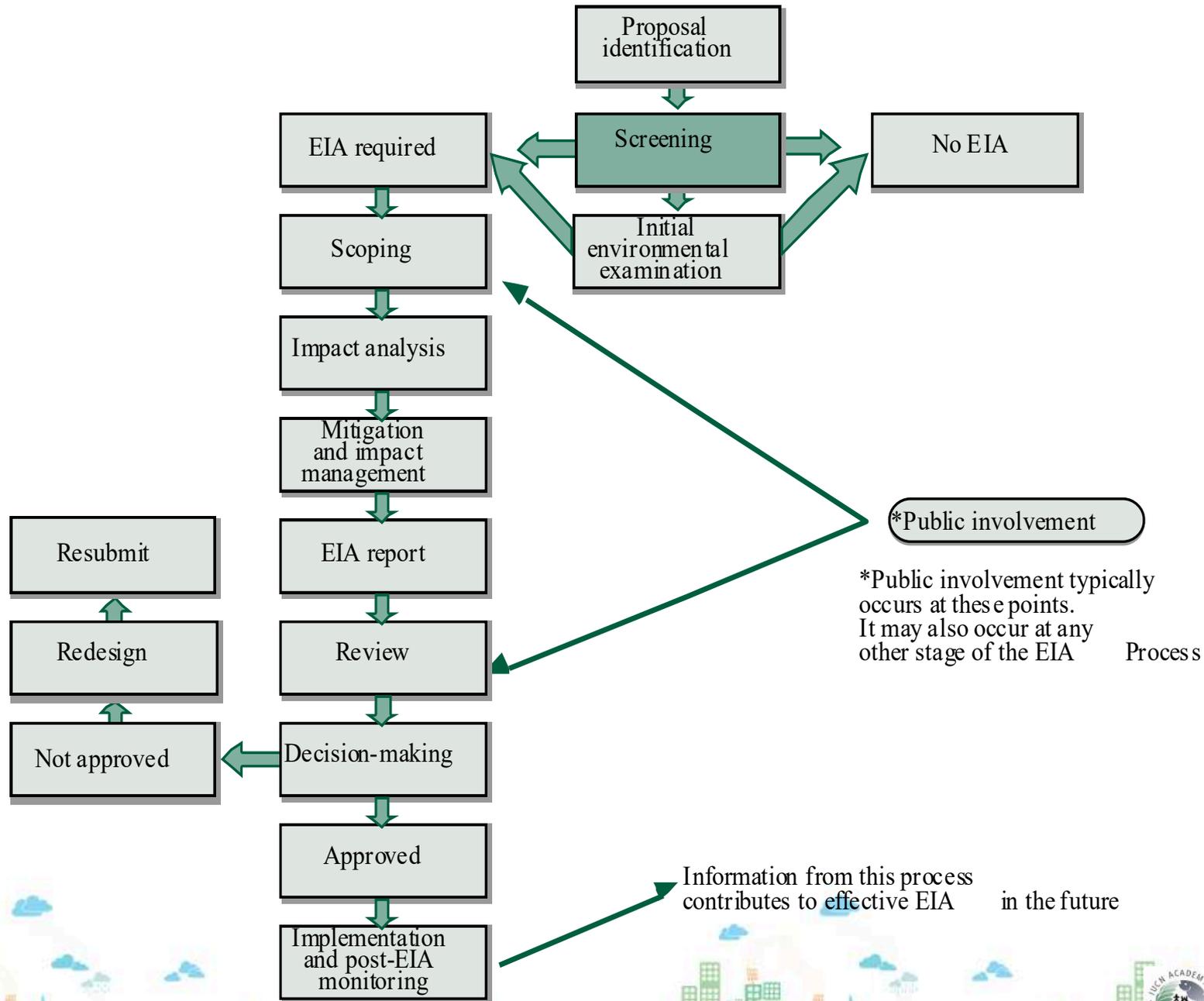
Objectives related to this aim are to:

- protect human health and safety;
- avoid irreversible changes and serious damage to the environment;
- safeguard valued resources, natural areas and ecosystem components; and
- enhance the social aspects of the proposal.



# Steps in EIA





\*Public involvement

\*Public involvement typically occurs at these points. It may also occur at any other stage of the EIA Process

Information from this process contributes to effective EIA in the future



# Step 5: Reporting

## Different name of EIA reports

- Environmental Impact Assessment Report (EIA Report)
- Environmental Impact Statement (EIS)
- Environmental Statement (ES)
- Environmental Assessment Report (EA Report)
- Environmental Effects Statement (EES)



# Contents of the Report

- a description of the project;
- an outline of the main alternatives studied by the developer, and an indication of the main reasons for this choice,
- a description of the aspects of the environment likely to be significantly affected by the proposed project;
- a description of the likely significant environmental effects of the proposed project;
- measures to prevent, reduce and possibly offset adverse environmental effects;
- a non-technical summary;
- an indication of any difficulties (technical deficiencies or lack of know-how) encountered while compiling the required information.



# Step 6: Review

- Review the quality of the EIA report.
- Take public comments into account.
- Determine if the information is sufficient.
- Identify any deficiencies to be corrected.

## Who performs the review?

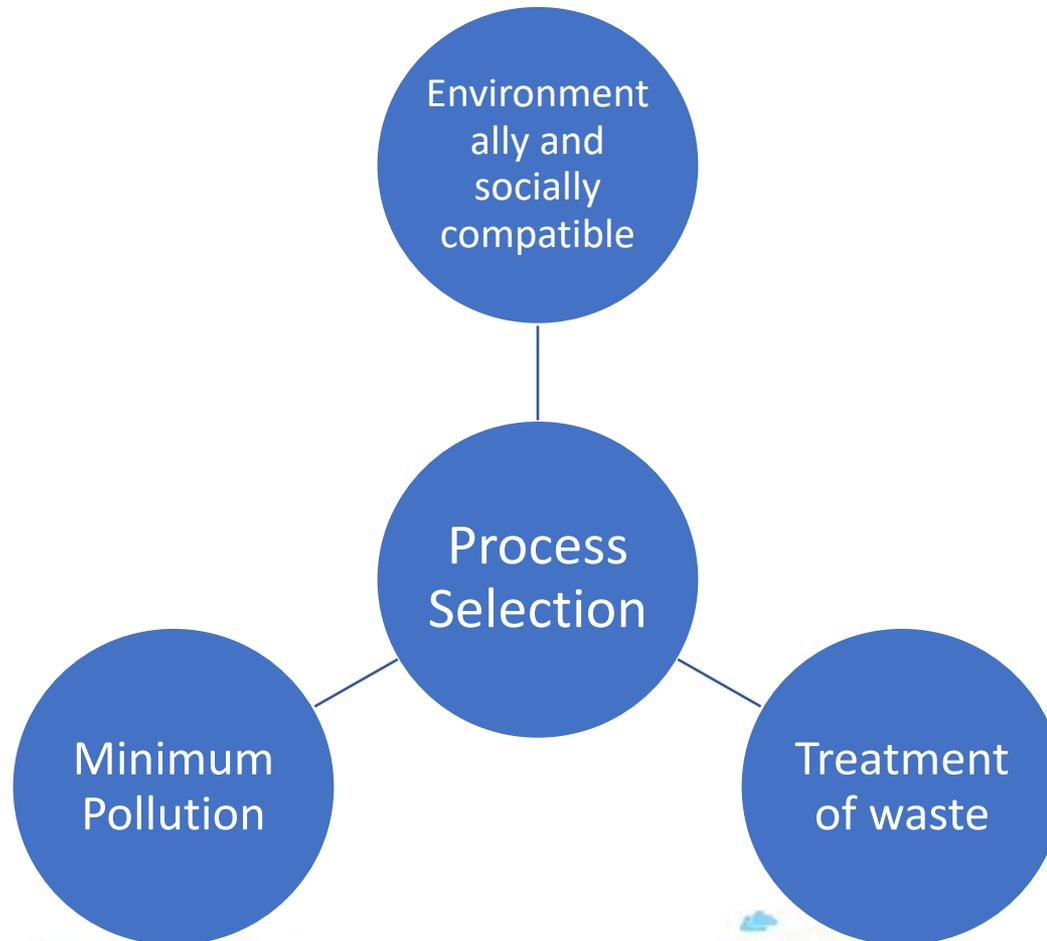
- environmental agency — Canada (comprehensive studies), standing commission — Netherlands, inter-agency committee — USA, planning authority — UK
- independent panel — Canada (public inquiries)
- Public comment and input



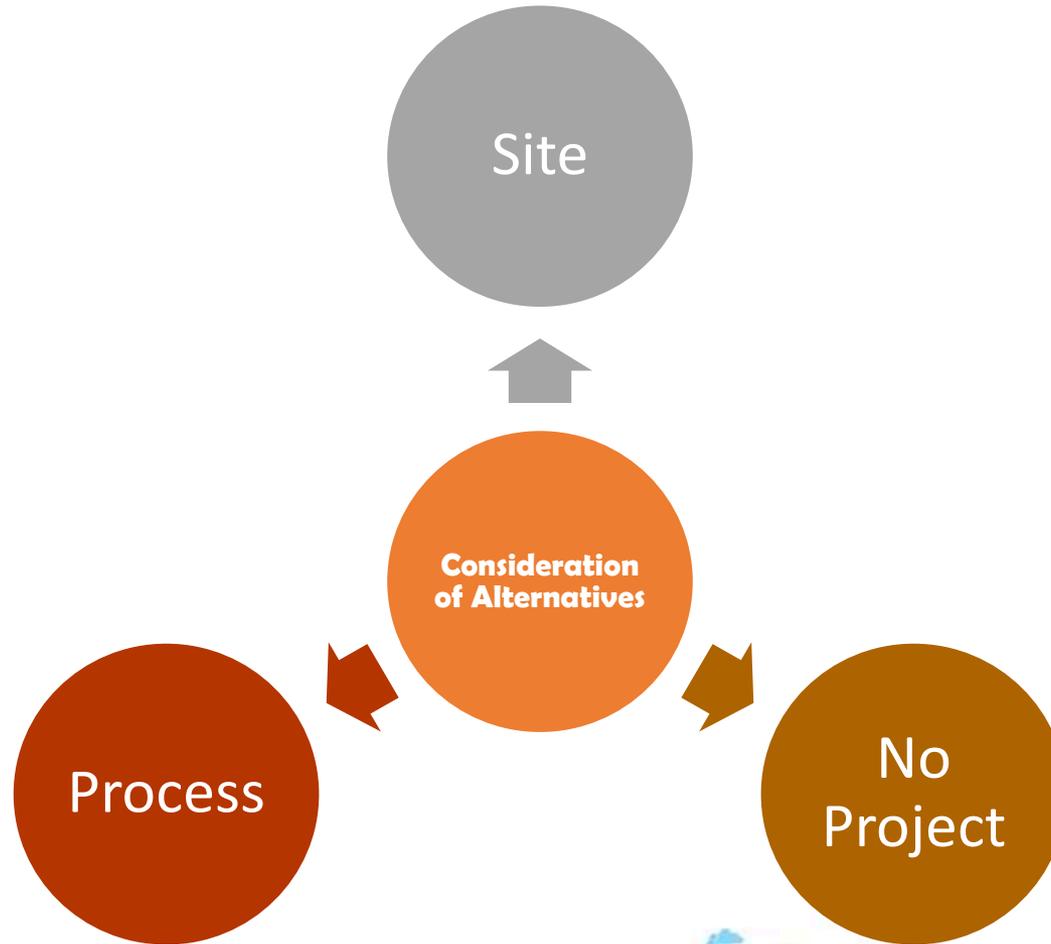
# Key Elements



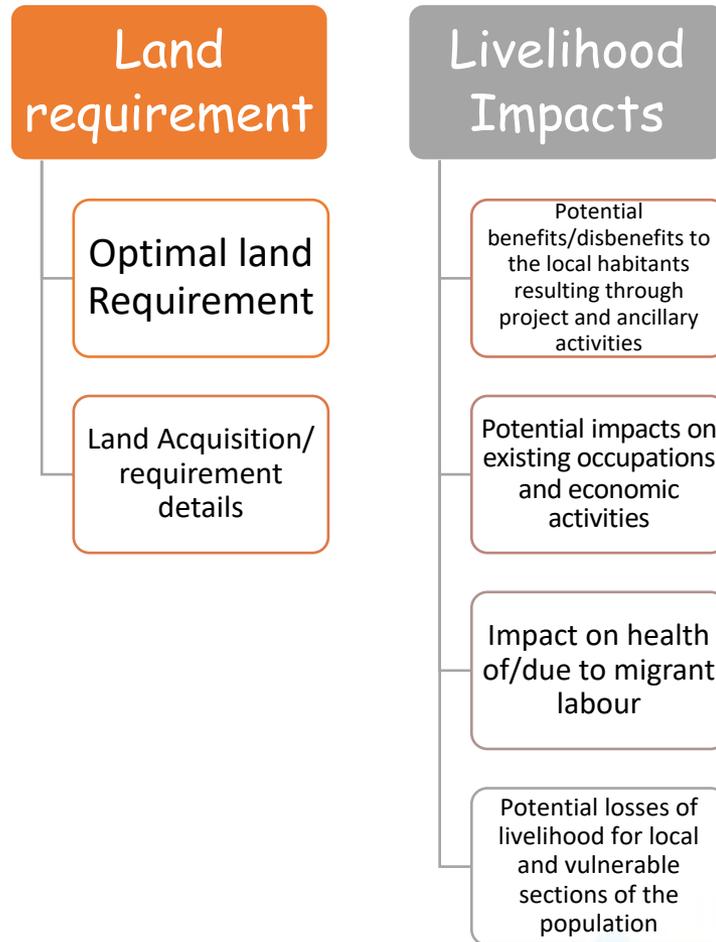
# Process-related Decisions



# Alternatives



# Socio-Economic Impact



- Cumulative Impacts
- Downstream Impacts



# Strategic EIA

- Beyond the project level, EIA is steadily evolving as a tool for evaluation of government strategies, policies and plans, or for dealing with circumstances where the cumulative impacts of a series of connected projects needs to be examined;
- E.g. where multiple port developments are proposed for a particular coastal region.
- EIA legislation varies considerably in its recognition of the possibility of “strategic” EIA
- Accompanying expansion of EIA to include Social Factors (Social Impact Assessment)



# What to look out for

Is it a 'cut and paste' ?

Inconsistency of Data

Wrong information and concealment of fact

Incomplete Information

Misleading Information



# Key Issues in Thermal

Locational

Land  
Requirement

Water Use

Emission

Radiation



# Locational Issues

*Are there location criteria for thermal power plants ?*

India: 1987 Guidelines for TPP

‘Prime Agricultural Land should not be used.  
25 Kms from Eco sensitive areas’

Nothing in Bangladesh



- Increased pollution levels in the air and water (including nearby rivers) due to generation of fly ash.
- The exhaust gases generated by these plants contain primary particulates including heavy metals, sulphur and nitrogen oxides and Volatile Oxide Compounds (VOCs).
- The steam turbines and other equipment require large quantities of water for cooling. Therefore, water maybe diverted from rivers, streams, etc. or the construction of a dam maybe required
- Generation of waste water and contamination of streams and rivers.

