



# Technical Report and Recommendations to Strengthen Environmental Impact Assessment Procedures in ASEAN

**"Human rights and the environment are intertwined; human rights cannot be enjoyed without a safe, clean, healthy and sustainable environment; and sustainable environmental governance cannot exist without the establishment of and respect for human rights."**

**- Professor John Knox**



This report is a collaboration between the UN Economic and Social Commission for Asia and the Pacific (UNESCAP) and the United Nations Environment Programme (UNEP). The development of this report was led by Matthew Baird. This report was finalized in December 2021. The report benefited from review undertaken by staff at UNESCAP and UNEP.

Manuel Castillo provided overall direction and guidance while Georgina Lloyd and Katinka Weinberger provided further technical review.

## Disclaimer

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory or city or its authorities, or concerning the delimitation of its frontiers or boundaries. For general guidance on matters relating to the use of maps in publications please go to <https://www.un.org/Depts/Cartographic/english/htmain.htm>. Mention of a commercial company or product in this document does not imply endorsement by the United Nations or the authors.

The use of information from this document for publicity or advertising is not permitted. Trademark names and symbols are used in an editorial fashion with no intention on infringement of trademark or copyright laws. The views expressed in this publication are those of the authors and do not necessarily reflect the views of the United Nations. We regret any errors or omissions that may have been unwittingly made.

© Maps, photos, and illustrations as specified.

ST/ESCAP/3023

# Table of Contents

<b>Executive Summary .....</b>	i
<b>Introduction .....</b>	6
<b>Background</b>	
<b>Scope and Methodology</b>	
<b>ASEAN and the Environment</b>	
<b>ASEAN Intergovernmental Commission on Human Rights (AICHR)</b>	
<b>Legal and Policy Framework on Environmental Impact Assessments (EIA).....</b>	10
<b>Overview of EIA</b>	
<b>Principle 10 of the 1992 Rio Declaration</b>	
<b>Environment and Development</b>	
<b>Framework Principles on Human Rights and the Environment</b>	
<b>SDG 16 and the 2030 Agenda</b>	
<b>Review of Regional Instruments.....</b>	13
<b>Developments in the UN Economic Commission for Europe</b>	
<b>EU EIA Directive</b>	
<b>Developments in Latin America and the Caribbean</b>	
<b>Overview of EIA in ASEAN .....</b>	17
<b>Summary of commonalities in ASEAN</b>	
<b>Key Elements of a ASEAN Framework% Agreement on EIA .....</b>	19
<b>Access to Information</b>	
<b>Supporting Public Participation in EIA</b>	
<b>Giving special attention to women and vulnerable groups</b>	
<b>Access to Remedies</b>	
<b>Protection of the Rights of Environmental Human Rights Defenders (EHRDs)</b>	
<b>Trans-boundary EIA</b>	
<b>Strategic Environmental Assessment</b>	
<b>ASEAN Environmental Quality Standards</b>	
<b>Effective Monitoring and Enforcement.</b>	
<b>Recommendations.....</b>	27
<b>Resources .....</b>	30





# EXECUTIVE SUMMARY

This technical report examines the practical ways to strengthen environmental impact assessment (EIA) procedures in ASEAN to address critical environmental and human rights issues. Climate change, biodiversity loss, and the destruction and degradation of ecosystems significantly impact people's lives, affecting our ability to work, have leisure activities, and enjoy good health. Human rights and environmental protection are interdependent, and a healthy environment enables people to enjoy their human rights entirely. At the same time, the exercise of human rights helps promote environmental protection.

The first section of this technical report reviews the existing materials for EIA in ASEAN. Drawing on the previous work of AICHR and the UN, reference is made to the Compendium on Environmental Impact Assessment systems in the Association of Southeast Asian Nations (ASEAN) Member States. The Compendium was presented to the AICHR convened Regional Consultation on Commonalities of EIA in ASEAN Member States and Advancing a Harmonised and Right-Based Approach on 2-3 October 2019 in Yangon, Myanmar. The 2019 consultation was a continuation of previous efforts by AICHR since 2014 on human rights, climate change and the environment.

The vital work done by the Mekong Partnership for the Environment (MPE) between 2014 and 2017 is also acknowledged. MPE development of the 2017 Regional Guidelines on Public Participation in EIA<sup>15</sup> highlighted the commonalities of EIA systems in the Mekong countries. It introduced a discussion about the importance of public participation and access to information in the EIA process. During several events and conferences organised by MPE, the idea of an ASEAN regional framework for EIA was first raised and discussed.

The technical report reviewed the role of ASEAN in environmental matters and the work done by AICHR on including human rights consideration in the EIA system in ASEAN.

The second section of the report reviews many regional and international instruments that support and promote the role of EIA and Strategic Environmental Assessment (SEA). These include the Arhus Convention, the Espoo Convention and SEA Protocol, and the EU EIA Directive on EIA. The final part of the section reviews the recent entry into force of the Escazu Agreement in Latin America and the Caribbean in 2021.

The final section of the technical paper examines the key elements included in an ASEAN Framework Agreement on EIA. These fundamental issues were identified by the AICHR in the regional consultation in 2019. The topics examined in this section are:

1. Access to information
2. Supporting Public Participation in EIA
3. Giving special attention to Women and Vulnerable Groups
4. Access to Remedies
5. Protection of the Rights of Environmental and Human Rights Defenders
6. Transboundary EIA
7. Strategic Environmental Assessment
8. ASEAN Environmental Quality Standards
9. Effective Monitoring and Enforcement

The technical report concludes with a recommendation on creating an ASEAN legal instrument on EIA. Any framework will rest on the foundations of domestic EIA legislation and procedures. As most ASEAN member States (AMS) have adopted EIA legislation or procedures that accord with international environmental law norms, some solid foundations exist. The commonalities identified in the report are proposed as the basis for exploring an ASEAN legal instrument on EIA.

The most significant existing gaps are in the enforcement of monitoring and compliance of EIA Approvals, Transboundary EIA and SEA. The common elements of EIA in the AMS form a solid basis for developing a framework agreement on EIA that would also assist in ASEAN responding to the challenges of large-scale infrastructure development, including the Belt and Road Initiative and current national infrastructure spending. An ASEAN legal framework on EIA may promote sustainable development through consistent policies that promote environment-friendly investment across the region, which is necessary for building back better in the post-pandemic context.



# Abbreviations

<b>ADB</b>	Asian Development Bank
<b>AEC</b>	ASEAN Economic Community
<b>AHRD</b>	ASEAN Human Rights Declaration
<b>AICHR</b>	ASEAN Intergovernmental Commission on Human Rights
<b>AMME</b>	ASEAN Ministerial Meeting on the Environment
<b>AMS</b>	ASEAN Member States
<b>ASEAN</b>	Association of South East Asian Nations
<b>ASOEN</b>	ASEAN Senior Officials on the Environment
<b>APSC</b>	ASEAN Political-Security Community
<b>ASCC</b>	ASEAN Socio-Cultural Community
<b>ASEP</b>	ASEAN Environment Programme
<b>CSO</b>	Civil Society Organisation
<b>EA</b>	Environmental Assessment
<b>EIA</b>	Environmental Impact Assessment
<b>EMMP</b>	Environmental Management and Monitoring Plan
<b>EMP</b>	Environmental Management Plan
<b>ESIA</b>	Environmental and Social Impact Assessment
<b>GMS</b>	Greater Mekong Subregion
<b>HRC</b>	United Nations Human Rights Council
<b>IAIA</b>	International Association for Impact Assessment
<b>IFC</b>	International Finance Corporation
<b>MPE</b>	Mekong Partnership for the Environment
<b>MRC</b>	Mekong River Commission
<b>NGO</b>	Non-Government Organisation
<b>PAP</b>	Project Affected Persons
<b>PNPCA</b>	Prior Notification, Prior Consultation and Agreement
<b>SDG</b>	Sustainable Development Goals
<b>SEA</b>	Strategic Environmental Assessment
<b>Tb EIA</b>	Transboundary EIA
<b>UN</b>	United Nations
<b>UNCED</b>	United Nations Conference on Environment and Development
<b>UNECE</b>	United Nations Economic Commission for Europe
<b>UNECLAC</b>	United Nations Economic Commission for Latin America and the Caribbean
<b>UNEP</b>	United Nations Environment Programme
<b>WB</b>	World Bank



# INTRODUCTION

## A. Background

Climate change, biodiversity loss, and the destruction and degradation of ecosystems have significant impacts on people's lives, affecting our ability to work, have leisure activities, and enjoy good health. Human rights and environmental protection are interdependent. A healthy environment enables people to fully enjoy their human rights. At the same time, the exercise of human rights helps promote environmental protection.<sup>1</sup>

Many countries—more than 80 percent of UN Member States—already recognise the right to a healthy environment in their constitutions, laws, and policies.<sup>2</sup> Regional instruments also recognise this right in various ways. The Association of Southeast Asian Nations (ASEAN) Human Rights Declaration affirms that everyone has the right to a safe, clean, and sustainable environment (Art. 28f). The substantive elements of the right to a healthy environment include: a safe climate; clean air; clean water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystems. The procedural elements of this right include: access to information, public participation in environmental decision making, and access to justice and effective remedies.<sup>3</sup>

Over the last 20 years, the international community has increasingly recognised human rights obligations concerning a healthy environment. This recognition includes environmental treaties such as the Aarhus Convention, and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement).<sup>4</sup>

There have been significant developments in the approach to human rights and the environment in 2021, including the United Nations Human Rights Council (HRC) resolution on the right to a safe, clean, healthy and sustainable environment and entry into force of the Escazú Agreement.<sup>5</sup>

These developments mirror the significant work undertaken by the ASEAN Intergovernmental Commission on Human Rights (AICHR) over the past 8 years. Most recently this included the AICHR Workshop on Human Rights, Environment and Climate Change: Advancing rights-based approaches to environmental decision-making including through environmental impact assessment mechanism in June 2021.

On 8 October 2021, the United Nations Human Rights Council (HRC) approved a resolution (A/HRC/48/L.23/Rev.1) on the right to a safe, clean, healthy and sustainable environment. The resolution recognised the right to a safe, clean, healthy and sustainable environment as a human right that is important for the enjoyment of all other human rights, and noted that the right to a safe, clean, healthy and sustainable environment is related to other rights that are in accordance with existing international law.<sup>6</sup> The United Nations (UN) High Commissioner for Human Rights, Michelle Bachelet, highlighted that this resolution is about decisive action to protect people and planet, as well as the natural systems which are basic preconditions to the lives and livelihoods of all people.<sup>7</sup>

Many countries have recognised the mutually reinforcing relationship between human rights and the environmental rule of law.<sup>8</sup> In ASEAN, four ASEAN Member States (AMS) constitutions explicitly mention the right to a healthy environment (Indonesia, Philippines, Thailand and Vietnam).<sup>9</sup> The constitutions of Cambodia, Lao PDR and Myanmar contain explicit references to the protection of the environment and natural resources by the State and/or its citizens. Brunei Darussalam, Malaysia and Singapore all have laws in place that provide for environmental protection, biodiversity conservation and control of pollution and waste. A number of AMS also have established specialised courts or tribunals to deal with environmental matters.

1 Knox, John H. and Pejan, Ramin, 'Introduction' in *The Human Right to a Healthy Environment* (Cambridge University Press, 2018)

2 HRC, 'Right to a healthy environment: good practices: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (30 December (2019) A/HRC/43/53, page 4. <https://digitallibrary.un.org/record/3864899?ln=en> Accessed 30 July 2021.

3 UN General Assembly, 'Report of the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (19 July (2018) A/73/188, paragraph 2. <https://undocs.org/A/73/188> Accessed 7 September 2021.

4 Ituarte-Lima, C; Bernard, V; Paul, D; San, S; Aung, MM; Dany, C; Chavisschindha, T; Paramita, D; Aung, MT and Saenphit, N, *Prosperous and green in the Anthropocene: The human right to a healthy environment in Southeast Asia*, page 27, (RWI, Lund, 2020), p.110 ff

5 Ituarte-Lima, C; Bernard, V; Paul, D; San, S; Aung, MM; Dany, C; Chavisschindha, T; Paramita, D; Aung,

6 HRC, 'Human Rights Council adopts four resolutions on the right to development, human rights and indigenous peoples, the human rights implications of the COVID-19 pandemic on young people, and the human right to a safe, clean, healthy and sustainable environment' (8 October 2021) <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27634&LangID=E> viewed 12 October 2021

In particular, national courts and national environmental agencies have an important role to play in the application and enforcement of laws, regulations and procedures for environmental impact assessment (EIA) in national jurisdictions. It is important to recognise that the courts and national environmental agencies are key stakeholders in promoting strengthen EIA procedures in ASEAN to incorporate key procedure rights, protection of EHRD and supporting an enabling environment for the exercise of those rights. Likewise, legislative bodies are crucial to the design and enactment of effective legislations that protect such rights.



Image Source: <https://asia.oxfam.org/file/oxfam-asia-laos-citizen-participation-and-civil-society-development.jpg>

## B. Scope and Methodology

This technical report reviews the existing materials for EIA in ASEAN. In examining the commonalities in the AMS it is also possible to provide recommendations to strengthen EIA procedures in ASEAN.

Reference is often made to a technical report prepared by UNEP in 2019 entitled Compendium on Environmental Impact Assessment systems in the Association of Southeast Asian Nations (ASEAN) Member States. This report was presented to the AICHR convened Regional Consultation on Commonalities of EIA in ASEAN Member States and Advancing a Harmonised and Right-Based Approach on 2-3 October 2019 in Yangon, Myanmar.

The 2019 consultation is a continuation of previous efforts by AICHR Myanmar which were initiated in 2014, 2015 and 2017 on human rights, environment and climate change.<sup>10</sup>

The important work done by the Mekong Partnership for the Environment (MPE) between 2014 and 2017 is also heavily referenced. MPE development of the 2017 Regional Guidelines on Public Participation in EIA<sup>11</sup> highlighted the commonalities of EIA systems in the Mekong countries and introduced a discussion about the importance of public participation and access to information in the EIA process. It was during a number of events and conferences organized by MPE that the idea of an ASEAN regional framework for EIA was first raised and discussed.<sup>12</sup>

## C. ASEAN and the Environment

Unlike the European Union, ASEAN is not a supranational organisation. The ASEAN Member States (AMS) have not provided ASEAN with any direct mandate to enforce obligations within ASEAN. ASEAN instead provides a forum for multi-lateral agreements on issues that concern the AMS. AMS are committed to the "ASEAN Way", which encompass three fundamental standards:

- Non-interference in other AMS domestic affairs;
- Consensus building over legally binding treaties; and
- A preference for national implementation of programs.<sup>13</sup>

The ASEAN Charter, which came into force in December 2008, commits the ASEAN community to "Ensure sustainable development for the benefits of present and future generations and to place the well-being, livelihood and welfare of the peoples at the centre of the ASEAN community building process."<sup>14</sup>

7 UN Office of the High Commissioner for Human Rights (OHCHR) 'Bachelet hails landmark recognition that having a healthy environment is a human right' (8 October 2021)

8 UNEP, Environmental Rule of Law: First Global Report (UNEP, Nairobi, 2019) page 25. <https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report> Accessed 17 July 2021.

9 Ituarte-Lima, C; Bernard, V; Paul, D; San, S; Aung, MM; Dany, C; Chavissindha, T; Paramita, D; Aung, MT and Saenphit, N, Prosperous and green in the Anthropocene: The human right to a healthy environment in Southeast Asia, (RWI, Lund, 2020) page 27

10 <https://aichr.org/news/regional-consultation-on-commonalities-of-environmental-impact-assessment-eia-in-asean-member-states-and-advancing-a-harmonised-and-right-based-approach-2-3-october-2019-yangon-myanmar/>

11 <https://www.pactworld.org/library/guidelines-public-participation-eia-mekong-region>, USAID funded project.

12 K. L. KOH and N. Robinson, 'Regional Environmental Governance: Examining the Association of Southeast Asian Nations (ASEAN) Model', Global environmental governance - Options and opportunities, Harvard, 2004.

13 Charter of the Associations of Southeast Asian Nations, Singapore 20 November 2007, *ibid*, p.179.

## **Article 1 of the Charter states:**

*To promote sustainable development so as to ensure the protection of the region's environment, the sustainability of its natural resources, the preservation of its natural resources, the preservation of its cultural heritage and the high quality of life of its peoples.<sup>14</sup>*

## **ASEAN's goals include:**

- To enhance good governance and the rule of law;
- To create a single market and production base;
- The promotion and protection of human rights and fundamental freedoms, and;
- To promote a people-oriented ASEAN.<sup>15</sup>

ASEAN cooperation on environment is currently guided by the ASEAN Socio-Cultural Community (ASCC) Blueprint 2025, which envisions "an ASEAN Community that engages and benefits the peoples and is inclusive, sustainable, resilient, and dynamic". Guided by the Vision 2025, the ASEAN cooperation on environment particularly focuses on the following key result areas under the 'Sustainable' characteristic of the ASCC Blueprint 2025.<sup>16</sup>

- Conservation and Sustainable Management of Biodiversity and Natural Resources
- Environmentally Sustainable Cities
- Sustainable Climate
- Sustainable Consumption and Production

An ASEAN strategic plan on environment is currently being developed to translate the ASCC Blueprint 2025 into a more detailed plan of actions which shall serve as a guiding document for ASEAN cooperation on environment until 2025.<sup>17</sup> Seven strategic priorities have been identified under the strategic plan:

1. Nature conservation and biodiversity
2. Coastal and marine environment
3. Water resources management
4. Environmentally sustainable cities
5. Climate change
6. Chemicals and waste
7. Environmental education and sustainable consumption and production

Vision 2025 also underlines the complementarity of the UN 2030 Agenda for Sustainable Development and the SDGs adopted in 2015.<sup>18</sup> There are 17 major Goals and 169 detailed Targets. Key SDG relevant to the application of EIA and Strategic Environmental Assessment (SEA) include the following:

- SDG 7 Affordable and Clean Energy
- SDG 9 Industry
- Innovation and Infrastructure
- SDG 11 Sustainable Cities and Communities,

- SDG 13 Climate Action
- SDG 14 Life Below Water
- SDG 15 Life on Land, and SDG 16 Peace
- Justice and Strong Institutions
- SDG 17 Partnership for the Goals.

Of the 10 AMS, nine countries have legislated provisions regarding EIA (with the sole exception of Singapore). These countries have also created key principles and common processes to identify, assess and mitigate potential environmental and social impacts, as EIA is also a significant risk management tool to avoid, minimise or mitigate potential adverse environment and social impacts.

## **D. ASEAN Intergovernmental Commission on Human Rights (AICHR)**

The ASEAN Human Rights Declaration (AHRD), an established framework for ASEAN human rights cooperation, specifically prescribes the right to a safe, clean and sustainable environment.<sup>19</sup> In the second adopted ASEAN-UN Plan of Action (2021-2025) reference is made to collaboration on human rights and the environment. These opportunities for collaboration are further elaborated within the AICHR Five-Year Work Plan 2021-2025 including within Priority Areas 2.1, 2.5, 2.6, and 3.2 which provide for promoting mechanisms for coordinating to undertake consultations on linkages between human rights and the environment generally, and to explore initiatives to further integrate human rights-based approaches to environmental policy-making and protection.

The AICHR has raised awareness about the role of EIA in the protection and promotion of human rights.<sup>20</sup> Over the past eight years, AICHR has held four workshops to address the linkages between human rights and environment/climate change.<sup>21</sup> The First Workshop, "AICHR Workshop on Human Rights, Environment and Climate Change", was held in Yangon, Myanmar, from 13 to 15 September 2014. The Workshop aimed to map human rights obligations to a safe, clean and sustainable environment in ASEAN and the development of regional responses to establish a relationship between human rights, environment and climate change.

The Second Workshop, "AICHR Workshop on the Implementation of Human Rights Obligations Relating to the Environment and Climate Change" was held in Mandalay, Myanmar, from 26 to 27 September 2015. The Workshop focused on the implementation of human rights obligations relating to the environment and climate change.

14 ASEAN Charter Article 1(9) (Emphasis added)

15 ASEAN Charter Article 1(5), Article 1(7) and Article 1(13)

16 ASEAN Socio-Cultural Community Blueprint 2025, p.10 to 13

17 "About ASEAN Cooperation on Environment." ASEAN Cooperation on Environment, environment.asean.org/about-asean-cooperation-on-environment

18 Transforming Our World: The 2030 Agenda for Sustainable Development UN General Assembly A/RES/70/1 2015. United Nations, "The Sustainable Development Agenda," 2016. Available at: <http://www.un.org/sustainabledevelopment/development-agenda/>

19 General Principle 28(f). ASEAN Human Right s Declaration. [https://www.asean.org/storage/images/ASEAN\\_RTK\\_2014/6\\_AHRD\\_Booklet.pdf](https://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf)

20 Report of the Workshop on Human Rights, Environment and Climate Change organized by AICHR

21 Report of the Workshop on the Implementation of Human Rights Obligations Relating to the Environment and Climate Change

One of the recommendations made by the Workshop was to consider an ASEAN Regional Environmental Impact Assessment (EIA) as a planning tool to improve quality of development and large infrastructure projects and minimize their negative impacts. The planning tool should also incorporate a mechanism which will protect human rights and ensure that development projects take into consideration issues such as women rights, children rights, including biodiversity and climate change.

Based on the recommendation of the Second Workshop, the Third Workshop, "AICHR Workshop on Rights-based Approach to Regional Management Strategy for an Effective Environmental Impact Assessment (EIA)", was held in Yangon, Myanmar, from 29 to 30 October 2017. The Workshop focused on the feasibility of developing a regional approach (e.g. guidelines or other instrument such as a Framework Agreement or Declaration) for environmental assessment that could address environmental, social, economic and human rights issues as part of ASEAN's management of environmental impacts.

The participants reached general consensus on the benefit of and the need for a regional approach on effective EIA, recognized the value of preparing such an instrument for effective EIA and acknowledged that the scope and form of such an approach will need further consultation.<sup>20</sup>

The Fourth Workshop, "Regional Consultation on Commonalities of Environmental Impact Assessment (EIA) in ASEAN Member States and Advancing a Harmonized and Rights-Based Approach to Environmental Impact Assessment (EIA) in ASEAN", was held in Yangon, Myanmar, from 2 to 3 October 2019. The Workshop was co-organized by AICHR and the Ministry of Natural Resources and Environmental Conservation of Myanmar in collaboration with the United Nations Environment Programme (UNEP).

The Workshop recommended the establishment of a Working Group or a Task Force to develop a Regional Framework for an effective Environmental Impact Assessment (EIA) in ASEAN Member States.



The regional workshops recommended the following ten points to be the integral part of any regional framework on rights-based approaches:

1. Supporting Public Participation in EIA.
2. Protection of the Rights of Environmental Defenders and Enforcers.
3. Rights to access information:
  - a. Identification of documents that are available and those exempt from disclosure;
  - b. Using technology better;
  - c. Pre-EIA Approval and post-EIA Approval and;
  - d. Effective Monitoring and Enforcement.
4. Specific references for consultation and inclusion of women and children, and marginalized or vulnerable groups within the EIA Process.
5. Operational Grievance Mechanisms (OGM) and dispute resolution.
6. Defining the Role of EIA Consultants.
7. Trans-boundary EIA, including impact assessment and emergency planning.
8. Strategic Environmental Assessment.
9. ASEAN Environmental Quality Standards.
10. Indicators and Statistics to assist in strengthening capacity of EIA Agencies.





# I LEGAL & POLICY FRAMEWORK ON EIA

## A. Overview of Environmental Impact Assessment (EIA)

**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."<sup>22</sup>

The objectives of EIA are:

- **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.<sup>23</sup>

Effective EIA is achieved through the adoption and application of key principles. These include:

- A legally established, clear and effective process;
- Proponent bears the cost of the application and assessment process;
- Meaningful public participation at all stages of the process;
- Access to information by project affected persons and other stakeholders;
- All relevant information is available;
- Open and evidence-based decision-making; &
- Effective monitoring, compliance and enforcement.<sup>24</sup>

In 2018, United Nations Environment Programme (UNEP) undertook a global review of environmental assessment legislation<sup>25</sup> which highlighted the need for significant improvements in environmental assessment legislation to take into account changing demands and new methods for improving environmental assessment. This could include consideration of cumulative impact, enhancing the role of SEA, greater clarity for public participation, stronger support for indigenous peoples, better access to EIA documentation, including approval conditions and Environmental Management Plan (EMP), and the inclusion of the mitigation hierarchy, i.e. the avoidance, minimization, and compensation of environmental impacts in the EIA process.

The Rio Declaration on Environment and Development 1992 (the Rio Declaration),<sup>26</sup> also provides for key principles on EIA and environmental law that are applicable to ASEAN. Principle 17 of the Rio Declaration provides that signatory nations must undertake an EIA "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."

Over the years since the Rio Declaration<sup>27</sup>, a number of key environmental law principles have developed that relate quite well to the application of the EIA system. These principles, which were codified in the Rio Declaration can provide guidance to the application of the laws on EIA. Over the past 20 years they have become key features of sustainable development. These environmental law principles are:

1. The principle of public participation;<sup>28</sup>
2. The precautionary principle;<sup>29</sup>
3. The principle of intergenerational equity;<sup>30</sup>
4. The principle of conservation of biological diversity and ecological integrity as a primary consideration;<sup>31</sup>
5. The polluter pays principle.<sup>32</sup>

22 <https://www.iaia.org/uploads/pdf/Principles%20of%20EIA%2019.pdf> accessed 1 September 2019

23 <https://www.iaia.org/uploads/pdf/Principles%20of%20EIA%2019.pdf> accessed 1 September 2019

24 Baird and ERI (2016). EIA in the Mekong Region, Materials and Commentary, Edited Matthew Baird and EarthRights International, 2016 as modified and adapted by MPE (2017) Regional Guidelines on Public Participation in EIA, Mekong Partnership for the Environment, PACT, 2017, p.5.

25 UNEP (2018). Assessing Environmental Impacts- A Global Review of Legislation, Nairobi, Kenya

28 Rio Declaration, Principle 10

29 Rio Declaration, Principle 15

30 Rio Declaration, Principle 3

31 Rio Declaration, Principle 4

32 Rio Declaration, Principle 8, Principle 12, Principle 13, Principle 16.

## B. Principle 10 of the 1992 Rio Declaration Environment and Development

Principle 10 of the 1992 Rio Declaration on Environment and Development (the Rio Declaration) recognized "access rights", which are the critical procedural rights of access to environmental information, right to participate and access to remedies in environmental matters.

Part of Principle 10 reads:

"Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."<sup>33</sup>

These rights are identified as key pillars of a rights-based approach to environmental governance. Importantly, access to information is essential to participate in decision and policy making processes in an informed manner, while public participation is critical for the adoption of policies which consider the needs of communities and local conditions. Access to justice is also instrumental to ensure that the public can enforce rights and enhance accountability. Accordingly, procedural rights improve the ability of governments to ensure a clean and healthy environment.

In 2010, the UNEP Governing Council,<sup>34</sup> unanimously adopted the "Guidelines for the Development of National Legislation on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters' Matters" (Bali Guidelines) which set 26 non-binding voluntary guidelines that provide general guidance on the effective implementation of Rio Principle. In 2015, the UNEP developed an interpretation implementation guide for Rio Principle 10.<sup>35</sup>

## C. Framework Principles on Human Rights and the Environment

The former UN Special Rapporteur on human rights and the environment, John Knox, developed 16 fundamental principles that encompass the relationships between human rights and the environment.<sup>36</sup>

These Framework Principles on Human Rights and the Environment focus on the obligations of States to ensure that human rights obligations, in the context of the environment, are protected and enhanced. Importantly, the Framework Principles identify some of the procedural rights that underpin the relationship between environment and sustainable development. These include access to environmental information (Framework Principle 7), public participation (Framework Principle 9), access to effective remedies (Framework Principle 10), special measure for vulnerable peoples (Framework Principle 14), compliance with obligations for indigenous peoples (Framework Principle 15), protection of environmental defenders (Framework Principle 4) and provisions to allow for the exercise of these rights (Framework Principle 5).

**Framework principle 7:** States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.

**Framework principle 9:** States should provide for and facilitate public participation in decision-making related to the environment, and take the views of the public into account in the decision-making process.

**Framework principle 10:** States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.

The role of prior impact assessment, including EIA and SEA, is crucial to allow consideration of potential impacts on "All relevant rights, including the right to life, health, food, water, housing and culture". This assessment also integrates with other relevant principles including obligations of non-discrimination (Framework Principle 3), applicable domestic laws and international agreements (Framework Principles 11 and 13), and the obligations owed to those who are particularly vulnerable to environmental harm (Framework Principles 14 and 15). The need for clear substantive environmental standards, which can also be used as a basis to assess and review project-based EIA, is recognised in Framework Principle 11.

The Framework Principles also recognise that potential transboundary environmental impacts can have a significant effect on the enjoyment of human rights. To this end Framework Principle 13 states:

<sup>33</sup> Principle 10, 1992 Rio Declaration on Environment and Development

<sup>34</sup> The governing council of UNEP is the United Nations Environment Assembly (UNEA). It was previously known as the Global Ministerial Environment Forum.

<sup>35</sup> See <https://www.unenvironment.org/news-and-stories/story/unep-implementing-principle-10-rio-declaration>

<sup>36</sup> Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/59 (24 January 2018), p3, available at <https://digitallibrary.un.org/record/1474985?ln=en>.

States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights.

To a significant extent, these Framework Principles reflect aspects of other regional approaches to the assessment of possible transboundary harm, such as the various EU EIA Directives, the Aarhus Convention, the Convention of Environmental Impact Assessment in a Transboundary Context (Espoo Convention); and the SEA Protocol to the Espoo Convention.

## D. SDG 16 and the 2030 Agenda

Within the 2030 Agenda, Goal 16 is devoted to the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all and to the establishment of effective, accountable and inclusive institutions at all levels.<sup>37</sup> Environmental rule of law and access to environmental justice are vital components of realising this SDG.<sup>38</sup> Therefore, the strengthening of legislation, establishment of Environmental Courts and Tribunals, and access to information and public participation are instrumental aspects of achieving this Sustainable Development Goal (SDG).

The Sustainable Development Goals Report 2020<sup>39</sup> highlighted that from 2015 to 2019, the United Nations recorded at least 1,940 killings and 106 enforced disappearances of human rights defenders, journalists and trade unionists across 81 countries, with over half of killings occurring in Latin America and the Caribbean. In 2019, 357 killings and 30 enforced disappearances were reported in 47 countries. Last year, 41 land and environmental defenders were killed in Asia and the Pacific, notably from the Philippines, India, and Indonesia. Widespread harassment of women journalists and other gender-specific threats have also been reported. The 2019 Report noted that the pace of progress in establishing national human rights institutions (NHRIs) that are in compliance with the principles relating to the status of national institutions (the Paris Principles) must be accelerated. In 2018, only 39 per cent of all countries had successfully achieved compliance; an increase of 3 per cent (7 countries) from 2015.

In the UNESCAP Asia and the Pacific SDG Progress Report 2020, the greatest progress in peace, justice and strong institutions (Goal 16) had been made by North and Central Asia while the Pacific along with South-East Asia and South and South-West Asia were regressing and moving further from achieving the goal.



37 <https://sdgs.un.org/topics/institutional-frameworks-and-inter-national-cooperation-sustainable-development>  
38 <https://www.unenvironment.org/explore-topics/sustainable-development-goals/why-do-sustainable-development-goals-matter/goal-16>  
39 Sustainable Development Goals Report, United Nations, 2020 <https://unstats.un.org/sdgs/report/2020/goal-16/>



# REVIEW OF REGIONAL INSTRUMENTS

## A. Developments in the UN Economic Commission for Europe

The UN Economic Commission for Europe (UN ECE) has been at the forefront in developing mechanisms that both support and enhance the role of domestic EIA law and environmental decision making as well as examining ways that EIA can assist in the transboundary context. The three most internationally recognised instruments relating to environmental assessment are the following:

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

Each of these international instruments draws from the existing environmental laws norms and reflects the procedural nature of EIA. The Economic Commission for Europe has adopted

*A Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context* (the ECE Guidance)<sup>40</sup> to support the two key European intergovernmental agreements on EIA and public participation – the *1991 Convention on Environmental Impact Assessment in a Transboundary Context* (the Espoo Convention)<sup>41</sup> and the *1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (the Aarhus Convention).<sup>42</sup>

## A. Developments in the UN Economic Commission for Europe

The Espoo Convention is a preventative mechanism to avoid, reduce and mitigate significant environmental impacts intended to help make development sustainable by promoting international cooperation in assessing the likely impact of a proposed activity on the environment. It applies, in particular, to activities that could impact the environment in other countries. It is important to note that the Espoo Convention is a process-oriented convention. Under the Espoo Convention the Parties shall take "all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities."<sup>43</sup>

The obligations under the Espoo Convention extend to an obligation to require project level EIA, notify potentially affected countries, provide access to information to potentially affected parties and to allow comments and be informed on the final decision with respect to the project.<sup>44</sup> The Espoo Convention provides a list of activities in Appendix I that are covered by the Convention and a minimum list of information that should be included in the EIA in Appendix II. The Espoo Convention is important as it is based on international environmental law norms and provides access to information and the right to participate and be informed of potential adverse impacts from activities having a transboundary impact.

## Protocol on Strategic Environmental Assessment (the SEA Protocol)

In addition to the Convention on EIA in a Transboundary Context, the Parties negotiated the SEA Protocol. This SEA Protocol entered into effect on 11 July 2010.

<sup>40</sup> <https://unece.org/environment-policy/publications/guidance-public-participation-eia-transboundary-context>

<sup>41</sup> <https://unece.org/fileadmin/DAM/env/eia/eia.htm>

<sup>42</sup> <https://ec.europa.eu/environment/aarhus/>

<sup>43</sup> Espoo Convention, Article 2

<sup>44</sup> These are contained in Articles 3 to 6 of the Espoo Convention

The SEA covers the environmental assessment of policies or programmes by member governments which are likely to have significant environmental, including health, effects.<sup>45</sup>

Under the SEA Protocol, Strategic Environmental Assessment is defined to mean:

The evaluation of the likely environmental, including health effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.<sup>46</sup>

Unlike EIA, which is project-specific, the SEA is the impact assessment process for plans and policies. Public participation and consultation are required by the member Parties.<sup>47</sup> 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. There is also a requirement from transboundary consultation, if it is likely that the implementation of the plan or policy will have a transboundary impact.<sup>48</sup>

#### [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters \(Aarhus Convention\)](#)

One of the most important elements of environmental governance is the need for effective public participation.<sup>49</sup> In order to achieve effective public participation, there is a need for the community to have access to the information prepared by the project proponent and by government concerning the project and its potential impact. The Aarhus Convention was concluded as part of the UN ECE "Environment for Europe" process and entered into force on 30 October 2001. As of 2021, there are 47 Parties to the Convention, 38 Parties to the Protocol on Pollutant Release and Transfer Registers (PRTRs) and 32 Parties to the amendment on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms (GMOs).

It is now open for accession by all members of the UN.

The Aarhus Convention contains three main pillars:

- The rights of the public to access information about the environment and development;
- The requirement for public participation in environmental assessment of specific development projects; and
- The rights for the public's access to courts and tribunals for justice in environmental matters.

Each of these elements are further discussed below but all form part of the procedural rights, also referred to in the Framework Declaration on Human Rights and the Environment. The three pillars of the Aarhus Convention form the basis of effective EIA.



## B. EU EIA Directive

#### [European Union Directive 2011/92/EU on Environmental Impact Assessment](#)

The European Union, through the EIA Directive 2011/92/EU as amended by Directive 2014/52/EU (the EIA Directive), has sought to promote the national implementation of the Aarhus Convention, which was ratified by the EU in 2005, and strengthen access to relevant information and public participation in EIA.

45 SEA Protocol, Article 4

46 SEA Protocol, Article 2

47 SEA Protocol, Article 8.

48 SEA Protocol, Article 10.

49 Jona Razzaque, in Routledge Handbook of International Environmental Law, p.65

Article 3 of the EIA Directive clarifies the type of environmental information that should be provided in an EIA. Article 6 details the requirements on informing the public and what type of information should be provided. Article 7 provides for the process to be followed between Member States in the event of a project likely to have a transboundary impact. Article 9 requires the prompt notification of the decision to either approve or reject a project. Article 11 of the EIA Directive also requires countries to make provision for access to a review procedure before a court of law or another independent and impartial body. The review process is to be "fair, equitable, timely and not prohibitively expensive"

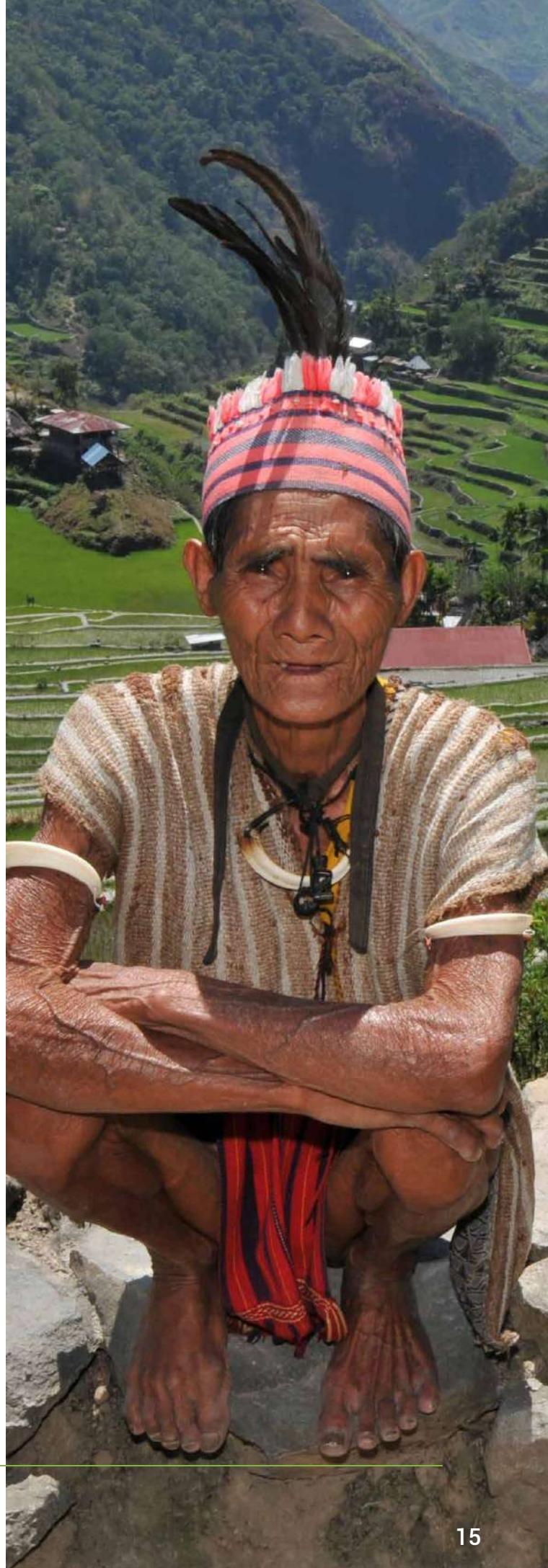
The primary aim of the EIA Directive is to promote efficiency in the EIA process and to ensure a level of harmonization across the EU member states. The EIA Directive provides for a screening list of projects. Annex 1 are projects required to undertake EIA and Annex 2 are projects that require either a case-by-case determination or thresholds set by each Member State.<sup>50</sup>

The EIA Directive includes requirements for minimum information for EIA<sup>51</sup>, right to participation by authorities and the concerned public<sup>52</sup>, notification and assessment for possible transboundary impact<sup>53</sup>, contents of approval decisions<sup>54</sup>, and the information that should be made available to the public.<sup>55</sup>

### C. Developments in Latin America and the Caribbean

The most significant recent development is the Regional Agreement on Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement). It provides a framework for the provision of environmental and procedural rights, including the requirement that States provide for a "Safe and enabling" environment for environmental and human rights defenders.<sup>56</sup> The negotiations began in 2014 and concluded in March 2018, after nine meetings of the negotiating committee.<sup>57</sup> The Escazú Agreement entered into force on 22 April 2021.

The most significant recent development is the Regional Agreement on Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement). It provides a framework for the provision of environmental and procedural rights, including the requirement that States provide for a "Safe and enabling" environment for environmental and human rights defenders.<sup>56</sup>



50 Directive 2014/52/EU Article 4

51 Article 5

52 Article 6

53 Article 7

54 Article 8a

55 Articles 2, 6 and 9

56 [https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf)

The negotiations began in 2014 and concluded in March 2018, after nine meetings of the negotiating committee.<sup>57</sup> The Escazú Agreement entered into force on 22 April 2021.

The Escazú Agreement links procedural rights already recognized under Principle 10 of the Rio Declaration, the Aarhus Convention and the Espoo Convention, and the attainment of the human right to a safe and healthy environment. Furthermore, it also extends the conceptual idea that the human right to a safe and healthy environment applies not only to the current generation but also extends to future generations. The terms of the Escazú Agreement focus on the implementation of Principle 10 of the Rio Declaration in treaty-based law. Additionally, the terms of the treaty also reflect the need to provide for the protection of human rights defenders in environmental matters.

The Agreement includes implementing principles to be used in applying the terms of the Agreement (Article 3) including:

- The Preventive Principle;
- The Precautionary Principle;
- The Principle of intergenerational equity; and
- The Principle of permanent sovereignty of States over their natural resources.

Article 4 outlines the general provisions of the Agreement. Substantively this includes:

4.1 Each Party shall guarantee the right of every person to live in a healthy environment and any other universally recognized human right related to the present Agreement.

Access to information is dealt with in Articles 5 and 6.

Article 5. 1. Each Party shall ensure the public's right of access to environmental information in its possession, control or custody, in accordance with the Principle of maximum disclosure

Public participation is dealt with in Article 7:

Article 7.1. Each Party shall ensure the public's right to participation and, for that purpose, commits to implement open and inclusive participation in environmental decision-making processes based on domestic and international normative frameworks.



Article 8 includes provisions for access to remedies in environmental matters "in the framework of its domestic legislation." Article 9 relates to the obligation of the member states to "guarantee a safe and enabling environment for persons, groups and organisations that promote and defend human rights in environmental matters so that they are able to act free from threat, restriction and insecurity."

Environmental impact assessment is also referred to in the Agreement in the access to information and public participation. The Agreement recognised the importance of these two mechanisms for effective EIA (Article 11(4)).

The Escazú Agreement reflects the needs and aspirations of Latin America and the Caribbean and provides a useful point of reference for ASEAN.

<sup>57</sup> Lalanath DE SILVA, Escazú Agreement 2018: A Landmark for the LAC Region, CJIE 2 (2018) 90-95.



# OVERVIEW OF EIA IN ASEAN

## A. Summary of Commonalities in ASEAN

EIA is a process that can be divided into a number of steps. Each step is part of the process. All of the steps must be followed to achieve compliance with the EIA procedures. Although each country does have its own system of EIA, there are a number of similarities. EIA systems in ASEAN and throughout much of the world generally have most or all of the following steps. This process is depicted in Figure 1 (See Appendix 1):

1. Screening
2. Scoping/Defining Terms of Reference
3. Collection of Data by EIA Consultants
4. Preparation of draft EIA Report
5. Preparation of environmental management plans (EMP)
6. Submission of EIA Report
7. Assessment of EIA Report and EMP
8. Decision on whether to approve EIA Report and EMP
9. Issuing of Environmental Compliance Certificates
10. Approval of other Licenses or Permits
11. Commencement of Project Construction
12. Commencement of Project Operations
13. Monitoring and Compliance with approval conditions and EMP
14. Closure or Completion of Project

These steps are common across the EIA laws in ASEAN. The Screening step is when the relevant government department determines whether or not the EIA process is triggered. Usually there is a list of projects categorised by size and scale that will guide the government department as to the need for an EIA or some form of environmental assessment. This Screening List is often complemented by the requirement that all projects 'likely to have a significant impact on the environment' are subject to the EIA process.

The EMP can also include references to Environmental Management and Monitoring Plans and Environmental and Social Management Plans.

The UNECE includes 56 nations in Europe and Central Asia and UNECLAC includes 33 nations of Latin America and the Caribbean and 13 outside of Latin America and the Caribbean (including the USA, Canada, Japan and a number of European countries).

The following table (Table 1) is a compilation from the existing EIA laws and policies in the AMS member states and also includes references to the UNECE and UNECLAC. The chart reflects current laws and policies where the colour green reflects a clear requirement in the laws and policies, the colour yellow reflects a partial requirement (perhaps in laws not related to EIA), and the colour grey reflects the absence in the laws or policies. More detailed explanation of these laws and the operation of EIA in ASEAN can be found in the Reference section.<sup>58</sup>

There are clear commonalities in the EIA processes in ASEAN. These can form the basis to advance a more harmonized and rights-based approach to EIA. The six main areas to consider are:

1. Screening Lists of Projects requiring EIA;
2. Public Participation including Access to information and access to remedies;
3. Application of transboundary EIA;
4. Strategic Environmental Assessment;
5. Monitoring, compliance and enforcement and EMP;<sup>59</sup>
6. Registration of EIA Consultants.

<sup>58</sup> See EIA Guidelines for Business Project Development in ASEAN Economic Community, Office of Natural Resources and Environmental Policy and Planning, Ministry of Natural Resources and Environment, Thailand, 2018, EIA in the Mekong Region, Materials and Commentary, Edited Matthew Baird and EarthRights International, 2016

<sup>59</sup> The EMP can also include references to Environmental Management and Monitoring Plans and Environmental and Social Management Plans.

**Table 1:**

	IND	MAL	THA	VIE	MYA	CAM	LAO	PHL	SIN	BRN	ECE	ECLAC
Screening List												
Public Participation												
Access to information												
Access to remedies												
Transboundary EIA			MRC <sup>60</sup>	MRC		MRC	MRC					
Strategic Environmental Assessment												
Environmental Management Plan												
Registration of Consultants												

[Green] Green reflects a clear requirement in the laws and policies.

[Yellow] Yellow reflects a partial requirement.

[Grey] Grey reflects the absence in the laws or policies.

**MRC** refers to the Mekong River Commission,

**ECE** is the Economic Commission for Europe and

**ECLAC** is the Economic Commission for Latin American and the Caribbean.

<sup>60</sup> The MRC applies the PNPCA process for major projects that will impact the Mekong River Basin. This includes Transboundary environmental assessment and public consultation.



# KEY ELEMENTS OF AN ASEAN FRAMEWORK AGREEMENT ON EIA<sup>61</sup>

## A. Access to Information

Access to information is one of three inter-related procedural rights, along with public participation and access to justice, that are critical for effective environmental governance—and that therefore support improved environmental outcomes.<sup>62</sup>

These procedural rights are also intimately linked to substantive human rights, including the basic obligation of States to provide safe, clean, healthy and sustainable environments.<sup>63</sup>

The right to access information is a procedural human right.<sup>64</sup> That is inherently linked to the right to public participation in decision-making and the right to access justice. Together, these rights are essential for effective environmental management and natural resource governance, and for achieving the fundamental human right to safe, clean, healthy and sustainable environments. The right to access information is central to these other procedural rights, and has been enshrined in international human rights agreements, multilateral environment treaties and the Sustainable Development Goals.

Access to information is important for effective environmental governance because it:

- Is essential to enable meaningful public participation in decision-making that affects the environment and communities;
- Strengthens decisions by increasing opportunities for communities to understand the basis for decisions and by enabling them to respond with additional relevant information;
- Strengthens decision-making and builds trust between decision-makers and communities;
- Supports transparency and accountability amongst decision-makers, which in turn reduces corruption and mismanagement of resources and thus increases opportunities for sustainable natural resource management;

- Can help ensure compliance with environmental regulations;
- Can help communities understand the legal obligations of private companies and build trust between communities and companies; and
- Supports the watchdog function played by many civil society organizations.

Access to information principles apply more broadly than just to environmental matters. While the phrase “access to environmental information” is sometimes used to clarify the scope of what is being considered, this report instead refers to “access to information in environmental matters” because often the type of information that is relevant is not “environmental information” as it is commonly understood. For example, information about foreign investment decisions may be relevant to environmental risks in a country but not automatically considered environmental in nature, as opposed to, for example, pollution data.

Access to information also underpins the ability of Project Affected Persons (PAP) to effectively participate in the EIA process. In 2017 the Mekong Partnership on the Environment developed Regional Guidelines on Public Participation in EIA.<sup>65</sup> One of the needs identified during the consultation process was to provide greater clarity on what information needed to be provided and at what stage in the EIA process. It was clear that in order for PAP to be able to effectively and meaningfully participate in the EIA process, all relevant information needed to be provided to the PAP and other stakeholders in a timely manner and in a way that the information could be used by the PAP and other stakeholders.

The identification of relevant documents for public disclosure is an important first step to improving access to environment information in the EIA process.

61 As identified by Report of the Regional Consultation on Commonalities of Environmental Impact Assessment (EIA) in ASEAN Member States and Advancing a Harmonized and Rights-based Approach to EIA in ASEAN

62 UNEP and ESCAP (2021) An Assessment of Access to Information, Public Participation and Access to Justice in Environmental Decision-Making in Asia-Pacific.

63 Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/59 (24 January 2018), available at <https://digitallibrary.un.org/record/1474985?ln=en>.

64 Article 19 of the Universal Declaration of Human Rights

65 <https://www.pactworld.org/library/guidelines-public-participation-eia-mekong-region>

## B. Supporting Public Participation in EIA

There are several key elements of meaningful public participation, including:

1. Public participation in the EIA process must be planned: a plan must be developed for even the most simple and straightforward EIAs.
2. Public participation is not something that happens towards the end of the EIA procedure; it needs to be part of the whole process from onset to conclusion.
3. Public participation involves conducting the EIA process in a way that ensures all relevant information is captured accurately and is not distorted.
4. There is a need to tailor methods for public participation. This means accommodating and adjusting to different stakeholder roles and interests, demographic representation, types of knowledge, and cultural differences.

Four key principles are central to achieving meaningful public participation:

1. Properly planning public participation processes;
2. Identifying PAP and other stakeholders;
3. Giving special attention to vulnerable groups; &
4. Allowing sufficient time for meaningful public participation and engagement throughout the process.

Across the region, there are a number of gaps and weaknesses in public participation in the EIA process. The following points reflect the most common areas of weakness in the current EIA regimes in the region.

- Under existing laws and regulations, public participation is mostly encouraged but not mandatory, thus in practice public participation is determined by the project proponent.
- Public participation provisions do not mention how the public should be informed about the EIA process, the venue at which the public should gain access to EIA reports, and at which stages of the EIA process the project developers should involve public participation. Guidelines on public consultation are too general concerning what type of methodology and approach shall be used during consultations.
- Legal requirements for the incorporation of public comments and inputs into the EIA reports are not stated (and thus most probably not taken into consideration in the selection of mitigation measures). There is no legal requirement for EIA reports to provide reasons for approval or rejection of public comments (only to list comments as part of a public participation annex to the EIA report).
- Access to project information and EIA reports can be limited. Without clear laws and guidelines for public access to environmental information it is difficult to have effective public consultation.
- Current regulations and guidelines for public consultation and participation in the EIA process generally end when the environmental compliance certificate (ECC) is approved. The lack of attention and follow-up to the involvement of the public and the role of civil society after EIA report approval when project activities have been authorized to begin in the implementation stage is an outstanding weakness in EIA legislation and policy.



Public participation plays an important role not only in project design, impact assessment, and development of alternative mitigation measures, but also in the implementation of the mitigation measures and ongoing project monitoring as identified in the EMP. Public involvement in the EIA process should go further to include stakeholder input and consultation during the post-approval monitoring, compliance, and enforcement stage of project implementation as well.<sup>66</sup>

### C. Giving Special Attention to Women and Vulnerable Groups

The identification of stakeholders also needs special consideration of vulnerable groups, particularly within the local community, and any particular needs they may have to maximize their ability to participate effectively. This includes consideration for facilitating the participation of indigenous peoples and/or ethnic groups that use other languages or dialects, women, people with disabilities, those below the poverty line, the landless, and representatives of children, youth and the elderly. Additional support may be needed to ensure the participation of these groups.<sup>67</sup>

Public participation should include specific approaches and strategies for engaging women and other vulnerable groups. One specific example is providing for a specific gender impact assessment. Gender impact assessment aims to help ensure that power relations between men and women – many aspects of which may be exacerbated by the project – are understood so that more equitable outcomes can be realized, and so that women in particular, given their greater vulnerability to project impacts, can be better off than before the project. The use of gender impact assessment, as a part of the EIA process, by qualified EIA consultants can provide a better understanding on the impact of particular projects on women.

The principle of “free, prior and informed consent” (FPIC) is intended to apply primarily to indigenous peoples’ rights and interests in land and resources and is articulated in the United Nations Declaration on the Rights of Indigenous Peoples.<sup>68</sup> It provides indigenous peoples with self-determination over their lives, lands and resources, including regarding decisions on development projects that might affect them. The application of FPIC is most often raised in the context of project proposals that, without consent, would involve the involuntary displacement and resettlement of indigenous PAP and/or loss of productive, income-generating, or subsistence assets by indigenous PAP. The application of FPIC is one clear way that indigenous PAP are given voice in EIA. The FPIC principle recognizes that indigenous peoples have specific rights that should be respected.

### D. Access to Remedies

Access to remedies is being seen as being of greater importance to ensure that disputes are resolved, and concerns addressed before they can impact on the construction or operation of projects. The development of operational grievance mechanisms and other forms of grievance redress mechanisms are also a response to growing community concerns about the impacts of large-scale development that can have a long-term impact on the community and the environment.

Access to remedies can also include protect based operational grievance mechanisms (OGM). These are mechanisms that are established at the project level, by the project proponent and can be used during construction and operational phases to address environmental and social concerns.



<sup>66</sup> See Baird and ERI 2016, EIA in the Mekong Region, Materials and Commentary, Edited

Matthew Baird and EarthRights International, 2016.

<sup>67</sup> MPE (2017) Regional Guidelines on Public Participation in EIA, Mekong Partnership for the Environment, PACT, 2017, p.16

<sup>68</sup> UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295. [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

In providing effective opportunities to review compliance with the EIA procedures and to guarantee these procedural rights, and to protect the substantive rights of those PAP who are engaging in the EIA process, there are other recommendations that can be considered, these include:

- Environmental courts and tribunals are instrumental to expedite the delivery of justice relating to the redress of violations of environmental rights and the enforcement of environmental law. 'Green benches' or environment-specific courts and tribunals serve to strengthen the capacity of national governments to protect the right to a healthy environment.
- Judicial proceedings must abide by fair trial standards. Legal systems should evolve with environmental courts and tribunals, alongside corresponding environmental remedies that provide redress for violations of environmental rights.
- Rules of Procedure for environmental cases must be adopted, including injunctions and protective writs to prevent further environmental harm during the court case. Accordingly, remedies that prevent activities which threaten to damage or are already damaging the environment should be enacted.
- Environmental defenders should be given appropriate legal remedies for the redress of the violation of their rights and should not be prevented from filing legal action. Central to this is the right to be protected from Strategic Legal Actions against Public Participation (SLAPP), not only for those who engage in litigation but also for individuals who are working on advocacy, outreach or campaigning.
- Affected stakeholders may be given a right to seek compensation for environmental damage because of environmentally destructive activities and projects which may have adversely impacted them.

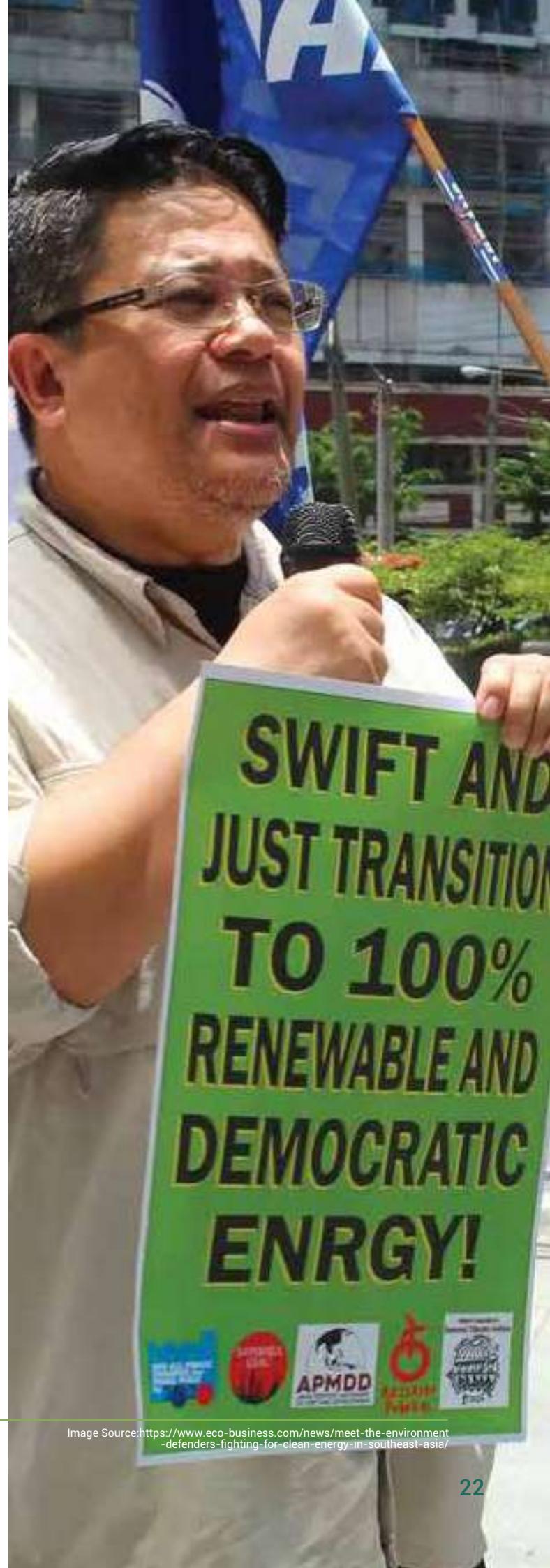


Image Source:<https://www.eco-business.com/news/meet-the-environment-defenders-fighting-for-clean-energy-in-southeast-asia/>

## **E. Protection of the Rights of Environmental Human Rights Defenders (EHRDs) and Promoting an Enabling Environment.**

The protection of EHRDs has been accepted as being necessary to ensure there is an enabling environment to ensure that the EIA procedures can operate in accordance with best practice. The AHRD recognises a number of rights that need also to be guaranteed through an ASEAN Framework Agreement on EIA.

**Article 23.** *Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice.*

**Article 24.** *Every person has the right to freedom of peaceful assembly.*

These rights also align with UN General Assembly Resolution 53/144 on the Declaration on Human Rights Defenders and in particular Article 9 and Article 12 on the obligations of States to provide an enabling environment for the exercise and enforcement of human rights.

- Recognised the role of EHRD and recognizing their role in environmental impact assessment.
- Provide clear guidance to provide clarity that laws that could restrict participation, such as defamation laws and trespass laws, cannot be used to limit participation in the EIA process.
- Peaceful protests must be protected as a part of the EIA process.
- Protective measures must be taken to guarantee the safety and security of environmental advocates.
- Address systemic barriers leading to conflicts and human rights violations in the EIA process. Inequality and obstacles for inclusive and participatory sustainable development that promote environmental rights should be taken down and addressed at a wider level.

- Ensure accountability and access to the justice system. Environmental defenders should be given appropriate legal remedies for the redress of the violation of their rights. Violators must be effectively sanctioned, prosecuted and held accountable.

- Strengthen judicial systems to ensure accountability. Judicial proceedings must abide by fair trial standards. Legal systems should evolve with environmental courts and tribunals, alongside corresponding environmental rules of procedures that provide redress for violations of environmental rights. Legal remedies such as anti-strategic lawsuits against public participation and citizens' suits should be promoted, as well as effective grievance and dispute resolution mechanisms.

Strengthening the legal regime for the protection of environmental defenders through an ASEAN framework Agreement on EIA can also promote national law reform by facilitating compliance through appropriate implementing mechanisms. This can bring about the introduction of national legislation specifically protecting the rights of environmental defenders and recognizing their role in environmental protection.

## **F. Transboundary EIA**

There are advantages to harmonising the list of projects or activities that will trigger the EIA process. Ensuring that all investors and projects proponents are aware that the project will require an EIA will provide a greater level of investor certainty. The requirement for a transboundary EIA should be based on the potential for the particular project to have a significant impact on the environment or society in another country or across jurisdictions.

Under international law, countries have an obligation to "undertake an environmental impact assessment where there is a risk that the proposed [project] may have a significant adverse impact in a transboundary context, in particular, on a shared resource."<sup>69</sup>

This was recognised in the ASEAN Agreement on the Conservation of Nature and Natural Resources 1985, under Article 20 that addressed "Transfrontier Environmental Effects" (now referred to as transboundary environmental effects).

<sup>69</sup> Pulp Mills Case (Provisional Measures) (Argentina v. Uruguay) ICJ Reports 2006, p.204

The Article referred to the "Generally accepted principles of international law" and agreed to "Avoid to the maximum extent possible and reduce to the minimum extent possible adverse environmental effects of activities" within their jurisdiction. Under Article 20(3) the Agreement provided for the carrying out of an EIA for any projects likely to have a significant transboundary effect and to conduct a process of notification and consultation prior to approval of those projects.

Internationally, the application of Transboundary EIA was also recognised in Espoo Convention and the Rio Declaration. According to Principle 19 of the Rio Declaration, 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 stage and in good faith.

Under the Espoo Convention the Parties shall take "All appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities." <sup>70</sup> The obligations under the Espoo Convention extend to an obligation to require project level EIA, notify potentially affected countries, provide access to information to potentially affected parties and to allow comments and be informed on the final decision with respect to the project. <sup>71</sup> The Espoo Convention provides a list of activities in Appendix I that are covered by the Convention and a minimum list of information that should be included in the EIA in Appendix II.

Within the ASEAN region, there is already a mechanism for transboundary EIA that applies to projects impacting on the Mekong River. The Mekong River Agreement requires member countries to provide notification and have prior consultations to discuss transboundary impacts for water projects in the Mekong River Region that may have an impact on neighbouring countries, before any commitment is made to proceed.<sup>72</sup>

One of the key features of the Mekong Agreement, as mentioned above, is the requirement of prior consultation. This was further enhanced by the Prior Notification, Prior Consultation and Agreement (PNPCA) procedures that were adopted in 2003. The PNCPA procedures were adopted to promote better understanding and cooperation among the MRC member countries. The guiding principles of the PNPCA are:

- Sovereign equality and territorial integrity;
- Equitable and reasonable utilization;
- Respect for rights and legitimate interests;
- Good faith; and
- Transparency. <sup>73</sup>

The aim of PNPCA procedures, similar in substance to the notification requirements under the Espoo Convention, is to provide other member countries with prior notification of development that is likely have a transboundary impact. The PNPCA also allows the impacted party an opportunity to consider the information contained in the Notification and to request further information or clarification. The time for Prior Consultation is set at six months with the possibility of extension.<sup>74</sup> Approval is considered on a case-by-case basis.<sup>75</sup>

These can form the basis for development of an ASEAN approach to transboundary EIA consultation.



Image Source: [https://www.bulatlat.com/wp-content/uploads/2018/04/scrap\\_DOJ\\_LIST\\_defend\\_envi-byCEC.jpg](https://www.bulatlat.com/wp-content/uploads/2018/04/scrap_DOJ_LIST_defend_envi-byCEC.jpg)

<sup>69</sup> Pulp Mills Case (Provisional Measures) (Argentina v. Uruguay) ICJ Reports 2006, p.204

<sup>70</sup> Espoo Convention, Article 2

<sup>71</sup> These are contained in Articles 3 to 6 of the Espoo Convention.

<sup>72</sup> Mekong River Commission, Transboundary EIA, <http://www.mrcmekong.org/about-mrc/programmes/environment-programme/transboundary-eia/>

<sup>73</sup> PNPCA, Article 3.

<sup>74</sup> See PNPCA, Art 5.5

<sup>75</sup> PNPCA, Art 6.

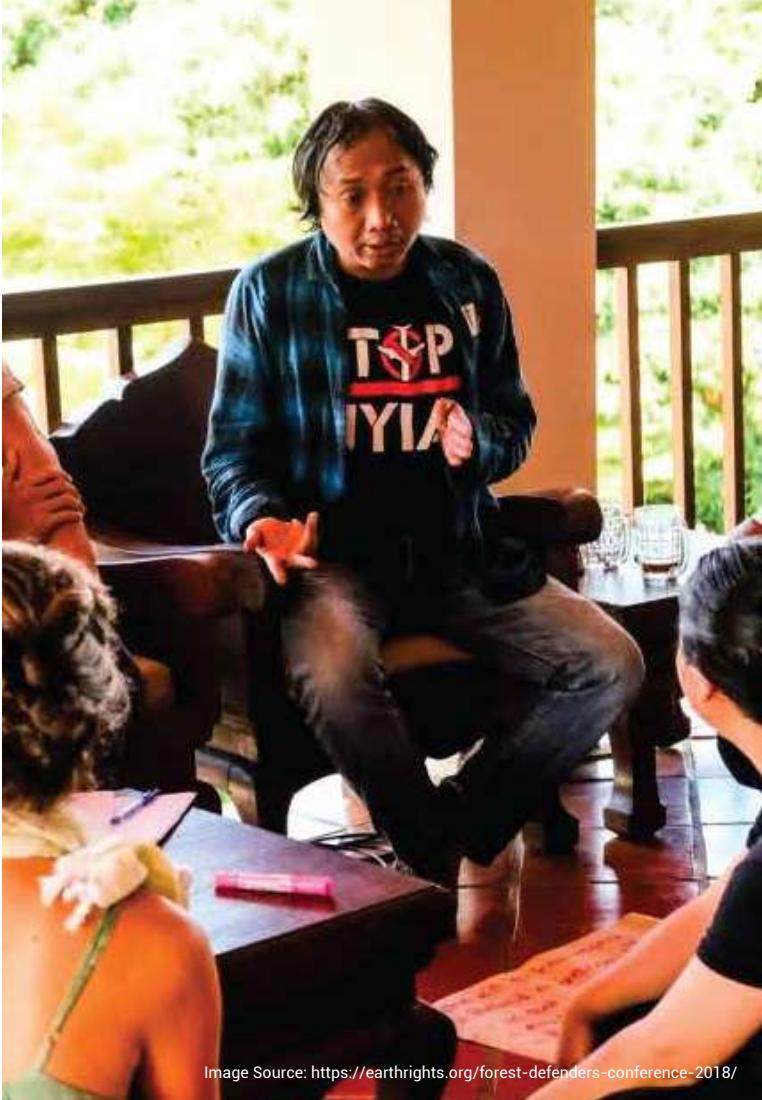


Image Source: <https://earthrights.org/forest-defenders-conference-2018/>

## G. Strategic Environmental Assessment

SEA is seen as a mechanism to provide for the environmental and social assessment of proposed Government policies or programs or as part of an assessment of sectors or regional development planning. The Kyiv Protocol covers the environmental assessment of policies or programmes by UNECE member governments which are likely to have significant environmental effects. SEA is a process of prior examination and appraisal of policies, plans, and programmes and other higher level or pre-project initiatives.

Under the Kyiv Protocol, SEA is defined to mean:

The evaluation of the likely environmental, including health effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.<sup>76</sup>

The Kyiv Protocol requires the preparation of a SEA for plans and policies by ECE governments within their jurisdiction. Public participation and consultation are required by the member Parties.<sup>77</sup> The Kyiv Protocol refers to "Early, timely and effective opportunities for public participation."<sup>78</sup> It also requires that the public, including relevant non-government organisations (NGO), be provided with the necessary information to allow them to comment "Within a reasonable time frame."<sup>79</sup> There is also a requirement from transboundary consultation, if it is likely that the implementation of the plan or policy will have a transboundary impact.<sup>80</sup>

Viet Nam and Indonesia have the most experience with SEA with detailed provisions regarding the processes involved. Myanmar has recently conducted a SEA on hydropower development with assistance from the International Finance Corporation (IFC).<sup>81</sup> A key element for an effective SEA is for the recommendations to be able to influence the development of the proposed policy or programme and to be applied to future project level decisions.<sup>82</sup>

Recognition of SEA at the ASEAN level would also allow the opportunity for governments to adopt SEA in the national EIA system.

SEA is recognised as making a fundamentally important contribution to sustainable development as a way of increasing "The possibility of analysing and proposing alternatives solutions and incorporating sustainability criteria through the planning process, as they carry the principles of sustainability down from policies to individual projects."<sup>83</sup>

## H. ASEAN Environmental Quality Standards.

The development and adoption of environmental quality standards, including IFC or ASEAN standards, would assist in the assessment of EIAs as well as Transboundary EIAs. It would also assist in developing ASEAN-wide acceptable standards for best applicable practice. In addition, the adoption of ASEAN-wide environmental quality standards would also assist in monitoring, enforcement and compliance.

76 Kyiv Protocol, Article 2.

77 Kyiv Protocol, Article 8.

78 Kyiv Protocol, Article 8 and 9

79 Kyiv Protocol, Article 8

80 Kyiv Protocol, Article 10.

81 [https://www.ifc.org/wps/wcm/connect/industry\\_ext\\_content/ifc\\_external\\_corporate\\_site/hydro+advisory/resources/sea+of+the+hydropower+sector+in+myanmar+resources+page](https://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/hydro+advisory/resources/sea+of+the+hydropower+sector+in+myanmar+resources+page)

82 UNEP 2018, page 84ff.

83 Elliot and Thomas (2005), Environmental Impact Assessment in Australian, Theory and Practice, Mandy Elliot and Ian Thomas, 5th Edition. The Federation Press, 2005, p.67

## I. Effective Monitoring and Enforcement

Traditionally, EIA ended with the approval of the Environmental Compliance Certificate or the issuing of the approval permit by the relevant government agency or the relevant Minister. Usually, one of the conditions imposed on the project approval would be the requirement to comply with an EMP or Environmental Management and Monitoring Plan (EMMP). Over the years it has become clear that great emphasis is required on the post-EIA approval process. Strengthening compliance and enforcement can provide significant environmental and social benefits and is an area that has been recognised as being in need of strengthening.<sup>84</sup>

For projects that have an EIA approved and proceed to implementation, it is vital both for the environmental and social outcomes and for the integrity of the EIA system that the project construction, operation and eventual decommissioning comply with the EIA, EMMP and any conditions of approval. Monitoring is a continuous activity. Monitoring will help to satisfy the PAP that the project is being operated in accordance with the conditions of approval. It also helps to respond to issues and concerns before serious consequences occur.

There also needs to be a mechanism to ensure that any ongoing engagement with PAP that was agreed to in the EIA and EMP is being undertaken during the project implementation. Should the monitoring discover a lack of compliance or breaches of conditions, mechanisms to enforce compliance need to be readily available and understood by the project proponent, as well as the PAP and other stakeholders.

The EIA process formally ends with a decision, but an approved EIA report and its EMMP are critical instruments for ensuring the project's impacts are addressed in the way intended when it was approved. It is vital for the overall integrity of the EIA system that government and other external parties, including the local community, are able to monitor the performance of projects and ensure they continue to comply with all commitments and duties contained in the EIA report and EMMP. This includes having access to monitoring information as well as the opportunity to undertake monitoring activities themselves. The monitoring mechanisms and findings adopted within a project must be made publicly available for all stakeholders to have confidence in both the project at hand and all future EIAs. Monitoring is critical to ensure that any adverse residual impacts are no greater than indicated at project approval, and to identify any additional mitigation measures that might be needed.

Image Source: <https://news.un.org/en/story/2014/12/485082-paraguay-un-expert-concerned-over-indigenous-peoples-rights-land-resources>



<sup>84</sup> IGES (2016) Sano, D, Matsumoto, I, Urago, A, Takahashi, Y, and Genjida N, 2016. Strengthening EIA in Asia, Institute for Global Environmental Studies, Japan



# RECOMMENDATIONS

The creation of an ASEAN legal instrument on EIA will always rest on the foundations of domestic EIA legislation and procedures. As most AMS have adopted EIA legislation or procedures that accord with international environmental law norms, there exist some solid foundations on which to rest. The above tables identify the key areas of commonality and divergence between the AMS in EIA. The commonalities are certainly the basis for the exploration of an ASEAN legal instrument on EIA.

A comparison of the EIA regimes in the AMS leads to the conclusion that there are enough commonalities to develop an ASEAN approach to EIA. The most significant gaps are in the enforcement of monitoring and compliance of EIA Approvals, Transboundary EIA and in SEA. Bremer identifies that operational phases, monitoring and compliance is a procedural EIA principle that may not yet be considered a customary norm of international law, but which could form part of the continuing obligation to avoid transboundary harm.

It is recommended that an ASEAN framework agreement on EIA be based on the key EIA principles enumerated in this technical report. An ASEAN framework agreement on EIA and EIA Principles and Procedures would state clearly the EIA principles and procedures already adopted by Member States. The ASEAN legal instrument on EIA could then be enhanced by the development of specific Annexures or Protocols over time, including SEA. For example, some of the Protocols to be negotiated could include:

1. List of projects and activities requiring an EIA or Initial Environmental Evaluation (IEE);
2. Minimum requirements, including time frames, for access to information in EIA;
3. Procedures for public participation and consultations;
4. Appropriate Grievance Redress Mechanisms and Dispute Resolution;

5. Procedures for Transboundary EIA, including notification and consultation mechanisms;
6. Procedures for SEA;
7. Minimum standards and training requirements for EIA consultations, including registration of EIA consultants;
8. Guidelines on Resettlement and Livelihood issues;
9. Indigenous Communities and FPIC;
10. Integration of climate change considerations into EIA;
11. Development of Environmental Quality Guidelines and Standards.

Such an ASEAN legal instrument on EIA would likely cover 10-20 chapters, including chapters dealing with negotiation and adoptions of further protocols or annexures. The ASEAN framework agreement on EIA would identify the key principles and mechanisms for EIA in ASEAN, including Transboundary EIA, Strategic Environmental Assessment, Climate Change integration in EIA. It may also recommend the establishment of a Secretariat, potentially with a clearinghouse mechanism, either using an existing body or a new one. This Secretariat would be the facilitator for the future Annexures or Protocols. By recognising key principles of EIA, the ASEAN framework agreement on EIA would then become the basis of further strengthening of procedural as well as substantive rights.

Such an approach would recognise the value of establishing a platform of harmonized domestic EIA arrangements that draws on best-practice principles, from which further efforts can be undertaken to pursue enhanced regional arrangements.

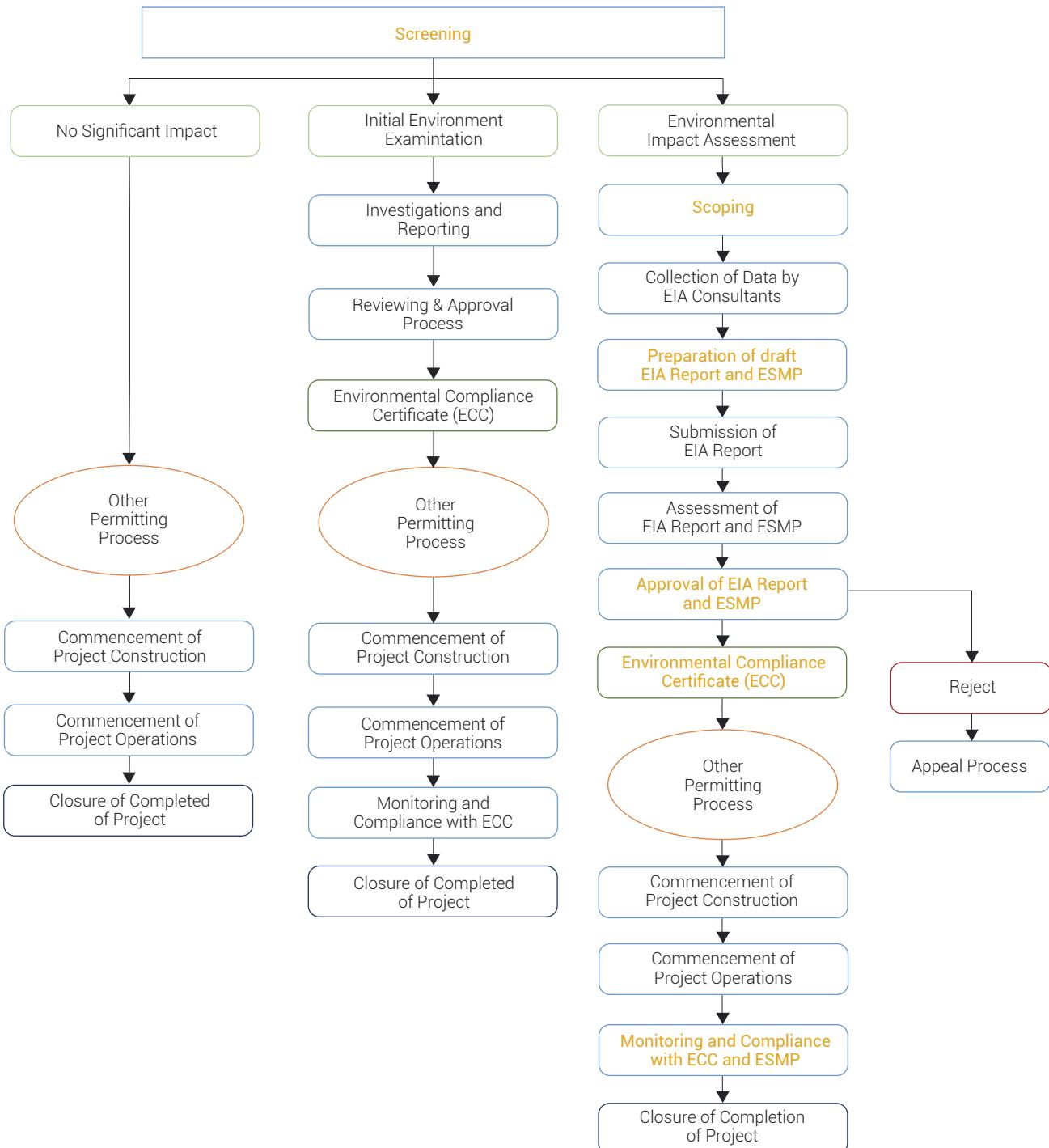
Significantly, this approach would also allow for ASEAN Member States to begin contemplating specific future Protocols to address transboundary issues without making politically sensitive commitments in the overall framework convention.

The common elements of EIA in the AMS form a strong basis for the development of a framework agreement on EIA that would also assist in ASEAN responding to the challenges of large-scale infrastructure development, including the Belt and Road Initiative and current national infrastructure spending. An ASEAN legal framework on EIA may promote sustainable development through consistent policies that promote environment-friendly investment across the region, which is necessary for building back better in the post-pandemic context.

Image source: <https://www.sei.org/events/women-environmental-human-rights-defenders-regional-online-retreat/>



## Attachment 1: Overview of Environmental Assessment Process<sup>85</sup>



**YELLOW FONT = Stage where public participation occurs**

<sup>85</sup> EIA in the Mekong Region, Materials and Commentary, Edited Matthew Baird and Earth Rights International, Published by Earth Rights International, 2016, p.29.

# RESOURCES

Baird, Matthew, ASEAN Intergovernmental Commission on Human Rights thematic study on commonalities in EIA in ASEAN Member States, Study Commissioned UNEP, 2018.

De Silva, Lalanath, Escazú Agreement 2018: A Landmark for the LAC Region, CJIE 2 (2018) 90-95.

Ituarte-Lima, C; Bernard, V; Paul, D; San, S; Aung, MM; Dany, C; Chavisschindha, T; Paramita, D; Aung, MT and Saenphit, N, *Prosperous and green in the Anthropocene: The human right to a healthy environment in Southeast Asia* (RWI, Lund, 2020) <https://rwi-lu.se/pyramid-publications/prosperous-and-green-in-the-anthropocene-the-human-right-to-a-healthy-environment-in-southeast-asia/>

Knox, John H and Pejan, Ramin, 'Introduction' in *The Human Right to a Healthy Environment*, (Cambridge University Press, 2018)

Koh, Kheng-Lian, ASEAN Environmental Law, Policy and Governance, Selected Documents, Vol. 1, World Scientific Publishing, Singapore. 2009.

MPE (2017) Regional Guidelines on Public Participation in EIA, Mekong Partnership for the Environment, PACT, 2017

Stec, Stephem and Jerzy JENDROSKA (2019) The Escazú' Agreement and the Regional Approach to Rio Principle 10: Process, Innovation, and Shortcomings. Journal of Environmental Law, 2019, 31, 533–545

UN General Assembly, 'Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' [climate change] (15 July 2019) A/74/161. <https://undocs.org/en/A/74/161>

UN General Assembly, 'Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes' (15 November 2018) A/73/567 <https://undocs.org/en/A/73/567>

UN General Assembly, 'Report of the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (19 July 2018) A/73/188. <https://undocs.org/A/73/188>

UNEP 2015, Putting Rio Principle 10 in Action: An implementation guide, UNEP 2015 and the UN Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters

HRC, 'Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' [biodiversity] (15 July 2020) A/HRC/75/161. <https://undocs.org/A/75/161>

HRC, 'Right to a healthy environment: good practices: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (30 December 2019) A/HRC/43/53. <https://digitallibrary.un.org/record/3864899?ln=en>

HRC, 'Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Report of the Special Rapporteur' (8 January 2019) A/HRC/40/55. <https://undocs.org/en/A/HRC/40/55>

HRC, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' [framework principles on human rights and the environment] (24 January 2018) A/HRC/37/59. <https://undocs.org/A/HRC/37/59>

UNEP, Environmental Rule of Law: First Global Report (UNEP, Nairobi, 2019) <https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report>