Country legislation to manage social risks of investment projects

Prepared for The World Bank
13 June 2022

CiG COMMUNITY INSIGHTS GROUP

Content

1 BACKGROUND

This report provides examples from around the world of ways in which social risks of investment projects are assessed and managed in national EIA legislation and in other legislation.

In national Environmental Impact Assessment (EIA) legislation, social risks of investment projects tend to be inadequately considered. This often leads to poor assessment and mitigation, worse-off outcomes for communities, and makes it difficult for investment projects to conform with international standards. Even if a project's legal framework extends to other laws and regulations that cover aspects of social risk that are missing from EIA law (such as labour law, mineral law, forestry law, etc.), coordination between multiple regulatory agencies is typically limited and implementation capacity is weak. This leaves risks unattended, even if the impact assessment (IA) has been prepared according to international standards and may address them.

The assignment that led to this report sought to understand how such issues are addressed in different countries. Community Insights Group (CIG) was engaged by The World Bank to identify international examples of ways in which social risks of investment projects are assessed and managed in processes prescribed in national EIA legislation and other legislation and how these processes are integrated and mutually support each other.

This report has been written primarily to support The World Bank's ongoing institutional strengthening efforts in Indonesia. Its contents are also beneficial to a broader international audience of social performance professionals.

2 APPROACH

30 examples of country legislation aimed at managing social risks in both private sector and public sector investment projects was created. From this list, five detailed country case studies were selected and prepared.

The longlist of 30 examples was compiled during December 2021-January 2022 using the following sources:

- A one-hour workshop with members of the Social Practice Forum, a professional association comprising practitioners operating internationally on applying international social performance standards;
- Informal communications with members of the International Association for Impact Assessment (IAIA);
- Review of the environmental and social impact assessment (ESIA) literature; and
- Other relevant grey literature, including recent developments in country legislation on business and human rights.

The examples are summarised in Annex A. Their purpose was to provide a basis from which to select five which were then developed as detailed country case studies during March 2022. Of particular interest were case studies that demonstrate how country systems:

- Address both substantial and procedural aspects of social risk that are often absent or weakly developed in many developing countries, such as cultural heritage of Indigenous Peoples, health and safety of local communities, labor issues, livelihood restoration, benefit sharing and stakeholder engagement (excluding land acquisition and physical displacement of legal land tenure holders);
- Ensure the adequacy of assessment (both in terms of coverage and depth of social risks) and of mitigation measures in the EIA, considering that the environmental permitting agency may not have the requisite competency;
- Mandate mitigation measures that are not otherwise clearly provided for under relevant national laws and regulations (excluding financing agreements between a financial institution and a borrowing government); and
- Monitor and audit management plans and enforce corrective actions, including who approves these corrective actions and on what basis.

The shortlisting process resulted in the selection of Colombia, India, Thailand, Australia and Canada. The justification for selecting these five was that, across them, these jurisdictions offer the broadest coverage of protections listed in the above points, as well as responding to the following:

- Typical gaps in national systems of many developing countries against international standards (as identified in discussions with World Bank staff and consultants);
- International Association for Impact Assessment (IAIA) Guidance for Social Impact Assessment (2015) (Vanclay, et al., 2015); and
- Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) Guidance for Governments: Improving legal frameworks for environmental and social impact

assessment and management (2020) (Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development IGF, 2020).

To develop the case studies, we used a mix of desk-top research and interviews/email exchanges with key individuals in or working with the respective country systems (see Annex B). Using the interview guideline (see Annex C), we were specifically looking for 'good practices' such as those listed below:

Regulatory consistency and institutional coordination

- Consistency is maintained across all legal instruments covering social issues at the national and sub-national level.
- Responsible authorities are clearly identified along with their respective roles in ESIA review, decision-making, and monitoring processes of social issues: coordinating/central agency to lead ESIA and social management plan (SMP) monitoring; and legal framework clarifies the roles of other agencies and government departments in ESIA review and monitoring process.
- Capacity is developed of national and subnational agencies and government departments to review the social aspects of ESIA, undertake monitoring and ensure compliance.

Public engagement and access to information

- Legal framework includes a process for identifying all potential issues and components of interest from all stakeholders - from government agencies to vulnerable groups, disadvantaged groups, local communities, and interest groups, e.g. NGOs.
- Requirements and guidelines (clarifying basic principles and procedures) for public engagement and consultation are provided, including ongoing requirements for public engagement throughout a project lifecycle.
- Where the interests of Indigenous Peoples are affected, the requirements and guidelines are aligned with international frameworks, such as the ILO Indigenous and Tribal Peoples Convention 169 and UNDRIP.
- Requirements and guidelines exist regarding disclosure and access to environmental and social information, including:
  - Access to ESIA studies and management plans, information on how to provide input into ESIA and SMPs, and criteria for government decision making on permits and approvals; and
  - Access to information on SMPs and benefit-sharing agreements, e.g. use of funds by beneficiaries.

Grievance management

- Guidelines for grievance mechanisms for communities and workers are provided in the legal framework.

Screening and scoping of social issues

- Legal framework requires screening procedures to determine the level of ESIA considering social impacts (beyond 'social environment') including on vulnerable people, disadvantaged groups and women.

- Requirements and procedures for scoping social issues (determining social components to be assessed in the ESIA for a project) are provided, including requirements for stakeholder input and responses to stakeholder input.

Assessment of social impacts

- Clear legal mandate exists for the assessment of social issues:
  - Community health and safety
  - OHS
  - Working conditions
  - Indigenous people
  - Resettlement and livelihood restoration
  - Cultural heritage
  - Influx and migrant workers.
- Requirement is in place to collect appropriate baseline data to assess the impact on the identified social components, including disaggregated data on vulnerable, disadvantaged groups and gender.
- Requirement is in place to assess opportunities to benefit-sharing with surrounding communities (beyond royalties and taxes).
- Requirement is in place for updated SIA where substantial changes to social impacts are anticipated, including procedures for review and clearance.

Mitigation measures

- Management plans for social issues, including differentiated measures for vulnerable, disadvantaged groups and gender, are required for ESIA review.
- Management plans to enhance benefits to local communities are mandated.
- Requirements exist for local hiring plans and local capacity building (to reduce the influx of workers from outside).
- Proactive measures to promote compliance and clear sanctions for failure to implement SMPs and meet social performance commitments or (e.g. no construction permit before resettlement is complete) are present.
- Requirements exist for emergency preparedness plans (e.g., pandemic, climate change related natural disasters, etc.) to cover surrounding communities.
- Oversight of social impacts across the project lifecycle is required through monitoring, inspections, and enforcement. Relevant authorities at the national and subnational level are sufficiently competent and resourced to undertake monitoring, and informed of social assessment in the ESIA and consulted on when the ESIA is reviewed.
- Participatory monitoring mechanisms are provided for, for the management of environmental and social (E&S) issues of greatest concern to affected communities.

Annex B provides a list of the interviewees identified through a snowballing approach, drawing on the collective networks of the CIG project team and the World Bank client. Annex C includes the interview questions used to guide a semi-structured discussion.

3 OVERVIEW

Some nuggets of gold in country systems were identified, showing regulatory consistency and institutional coordination; broad coverage of social issues; public engagement and access to information; and mitigation/enhancement measures. These are expounded in the detailed case studies of Colombia, India, Thailand, Canada and Australia that follow, as well as in the 30 examples in Annex A.

A government officer or social performance advisor looking for ways in which to strengthen their national social risk management system is likely to find inspiration in the experiences of other countries described in this report. At the same time, the complexity involved in any strengthening initiatives can seem overwhelming. A birdseye view of the systems we reviewed is that these result from an interplay of multiple factors, such as historical backgrounds often dating back to colonial days, traditions in civic engagement, past and current political systems and the current political-economy landscape (including urgent needs for economic recovery), and the extent to which the country is integrated with the international market. This complexity could explain (partially) why the development of national social risk management systems lag behind that of environmental systems in many countries.

In this overview, we highlight where we found regulatory consistency and institutional coordination; and mandatory requirements for broad coverage of social issues, public engagement and access to information, and mitigation and enhancement measures. We also conclude with questions prompted by this study that merit further examination.

Regulatory consistency and institutional coordination

Achieving consistency in regulation is made easier where there is a single agency responsible for administering the EIA system. Thailand's Office of Natural Resources and Environmental Policy and Planning manages the EIA system and inter-ministerial coordination is clearly defined in the assessment and permitting processes. The EIA legislation is supported by clear prescriptive procedures, methodologies, and processes, including stakeholder engagement. Sector-specific legislation and regulations of licensing and permitting agencies set out rules for managing specific social issues, such as resettlement, occupational and community health and safety and labor relations. Thailand's highly centralized EIA institutional framework, however, reflects a strong tradition of centralization in its territorial organization.

While a centralised system has its benefits, there are potential downsides when independence and subsidiarity are constrained. Three systems that promote the principle of subsidiarity are:

- *Canada*: While the Impact Assessment Agency of Canada is responsible for all federal IA (the term used for ESIA), it has a number of regulatory instruments to collaborate and coordinate with provincial, territorial and Indigenous jurisdictions. Indigenous rights and interests have strong recognition in the IA process, so impacts on Indigenous rights, including cultural rights, and the rights to self-determination, must be assessed (even if no environmental change occurs), as mandated by various laws at the federal level and in many provincial and territorial

jurisdictions. Indigenous governing bodies are legally recognized as partners in the assessment and Indigenous knowledge and law are incorporated into the assessment.

- *India*: Projects involving compulsory land acquisition for public purposes require a stand-alone SIA independent from applicable EIA processes. The final SIA report must be reviewed by the Multidisciplinary Expert Group, which comprises, in addition to social scientists and technical experts, representatives of local government.
- *Queensland, Australia (QLD)*: SIA covers potential cumulative impacts and the competent authority may establish cross-agency reference groups (CARGs), formed by relevant state agencies and local governments, to assess cumulative impacts - including social impacts- in concerned regions. CARGs may be a venue for proponents and stakeholders to discuss proposed impact mitigation measures.

The principle of independence is promoted in two Australian states:

- *Western Australia (WA):* The authority leading the EIA process (Environmental Protection Authority - EPA) is an independent body that exerts its statutory functions without being subject to direction by the Government.
- *New South Wales, Australia (NSW):* For projects raising public controversy, the authority to make the final decision is lifted from the Government (through the Minister for Planning and Homes) and assigned to an independent body (the Independent Planning Commission - IPC).

Institutional coordination and interagency cooperation is a challenging issue in all countries. In Canada, various government departments take part in the federal IA process by providing expertise, reviewing Impact Statements, and participating in monitoring on topics relevant to their respective mandates. However, the effectiveness of their participation is limited by their capacity and lack of experience with the IA process. In Thailand, EIA conditions are determined by the Central Agency, ONEP, but the monitoring of mitigation measures is delegated to permitting agencies. This arrangement reportedly leads to weak monitoring as permitting agencies lack capacity and motivation to monitor and enforce conditions imposed by another agency. Interesting examples in terms of mechanisms for inter-agency coordination are Western Australia (WA), where the Minister for the Environment must consult and possibly agree with other relevant key decision-making authorities if any; and Queensland (QLD), where the Coordinator-General ensures the quality of SIA as part of the EIA process overseen by the Department of Environment and Science.

Coverage of social issues

Regulatory frameworks tend to emphasize social issues that are considered to be the highest priority for affected communities and pose the highest social risk for projects in each country. We found the broadest coverage in Colombia, NSW Australia and Canada. In Colombia, recent standardization led by the Minister of the Environment has clarified and also broadened the scope of social impacts that should be considered in ESIA: demographic variables, community health and safety, occupational health and safety (OHS) issues, Indigenous communities, economic activities and livelihoods, infrastructure and public services, social well-being with a focus on vulnerable groups, cultural values and practices, visual perception of landscapes, archaeological heritage, local governance and institutions, among others.

In NSW, a new Government guideline provides a comprehensive framework for SIA, covering community and way of life, including people's sense of place, health and well-being with a focus on

vulnerable people, public safety and security, aesthetic value and amenity, livelihoods, culture, including customs, practices and shared values, for both Indigenous and non-Indigenous peoples.

In Canada, social aspects in IA include gender, cultural, health, vulnerability and economic issues. There is also a regulatory requirement to consider the project's contribution to sustainability, including social sustainability. Gender-Based Analysis Plus (GBA+) is required at the federal level, integrated in the assessment of identified factors (gender, physical and mental ability, religion, ethnicity, etc.) and how these intersect with context and people's experiences of projects. GBA+ brings a human rights perspective to the assessment by stressing the rights of the most vulnerable and helps inform mitigation measures that address differential impacts. Some aspects such as working conditions and OHS are not covered by the IA process, these are assessed and then monitored by permitting agencies as part of the licencing and permitting process.

Country systems worth highlighting for their emphasis on specific social and human rights issues include:

- *France and Germany:* Human rights risks assessment is explicitly provided for as part of respective laws on human rights due diligence.
- *India:* SIA includes differential impacts of displacement experienced by vulnerable groups, e.g. women, children, the elderly, and people with disabilities. Attention is given to addressing vulnerability and gender inequality. Women must be represented in certain bodies involved in the SIA process, e.g. SIA team and Rehabilitation and Resettlement Committee (RRC). When consent from local self-governance institutions is needed to proceed with land acquisition, a minimum number of women at meetings is required.
- *Thailand:* Health impact assessment (HIA) is mandatory for projects with the most severe potential impacts on communities, and considers potential project impacts on physical, mental and spiritual health, including of vulnerable groups.
- *QLD Australia:* SIA includes factors rarely considered elsewhere, such as impacts on local housing, accommodation and labour market due to influx and migrant workers, and conditions of the project workforce, including OHS.
- *WA Australia:* The EIA process and very recent Aboriginal Cultural Heritage legislation together have the potential to provide a high level of protection for Indigenous cultural heritage, tangible and non-tangible, as well as participatory rights in the decision making of activities potentially affecting it.
- *Finland:* There is a requirement Indigenous knowledge-based IA.

The table below compares the regulatory frameworks of the case study countries in terms of their coverage of various social risks, specifically community health and safety, OHS, working conditions; risks to Indigenous people, vulnerable people & gender, resettlement and livelihood restoration, cultural heritage, and influx and migrant workers.

Social Risk Area	India	Thailand	Colombia	Canada	Australia
Community health and safety	Covered by the LARR Act. Air and water pollution and noise are covered by EIA regulations. Under the Standardization of Environment Clearance Conditions notice 2019, some projects require emergency preparedness and disaster management plans.	Considered in the EIA. Mandatory requirements to integrate human health impacts in EHIA cover risks to human health and livelihoods, effects on people's physical and mental well-being, health impacts on the way of life, etc.	Included in the List of Specific Environmental Impacts issued by the Ministry of the Environment (including a long list of disease categories to consider and road safety).	Covered under the Impact Assessment Act (IAA), all aspects of health, differentiated impacts on vulnerable groups and Indigenous people and determinants of health.	Covered by the ESIA process in NSW; the EIS process in QLD; and partly covered in the EIA process in WA.
OHS	Not covered by the LARR Act. Under the Standardization of Environment Clearance Conditions notice 2019, for some projects, specific OHS requirements are established. Separate Labour and OHS regulations exist for four sectors (manufacturing, mining, ports, and construction).	EIA and EHIAs require a worker health and safety assessment; with more in-depth assessment in EHIA. The Occupational Safety, Health and Environment Act (2011) establishes comprehensive workforce health and safety requirements.	Included in the List of Specific Environmental Impacts issued by the Ministry of the Environment.	There is a separate Labour and OHS legislation. The issues are assessed and monitored as part of the permitting process (permits are industry specific, e.g., mine permits).	Covered by the EIS process in QLD. Not covered by the ESIA process in NSW (separate legislation); nor the EIA process in WA.
Working conditions	Not covered by the LARR Act. Under the EIA process, according to the Standardization of Environment Clearance Conditions notice 2019, some projects are required to provide working conditions information (working hours, sanitary facilities, health care management services, etc.)	Not covered in the EIA, other than OHS. All other working conditions topics (e.g., pay, hours, leave, child labor, etc.), are covered in the Labor Law.	Change in working conditions/labor market characteristics included in the List of Specific Environmental Impacts issued by the Ministry of the Environment and ANLA's General Methodology.	Covered under the Labor Code. A description of workforce and labor policies is required in Impact Statements.	Covered by the EIS process in QLD. Not covered by the ESIA process in NSW; nor the EIA process in WA.

Social Risk Area	India	Thailand	Colombia	Canada	Australia
Indigenous people	Under the LARR Act, land acquisition in areas with tribal populations can occur only as a last resort and prior consent is always needed. Further protection is provided by separate regulations such as PESA Act 1996 and FRA 2006.	No specific provision on Indigenous People impacts or FPIC exists in the EIA legislation. Thailand's Constitution and other government regulations do not recognize hill tribes and other minorities as Indigenous People.	Fully covered. A consultation process is incorporated into the environmental licensing process.	Comprehensive coverage of all aspects, including traditional knowledge, and Indigenous law; however no FPIC requirements yet.	Covered at the national level by the Native Title Act 1993. Covered by the ESIA process in NSW; not directly covered by the EIS process in QLD; nor in the EIA process in WA.
Vulnerable people & gender	The LARR Act covers differential impacts affecting vulnerable groups such as women, children, the elderly, and people with disabilities.	No specific requirements for the assessment of vulnerable groups or gender.	Impacts on the community must be assessed with a focus on vulnerable people. No comprehensive reference to gender (only specific issues such as domestic violence and prostitution rate).	Fully covered In the IA legislation and include Gender-Based Analysis + requirements.	Covered by the ESIA process in NSW; and the EIS process in QLD under community and stakeholder engagement. Not covered in the EIA process in WA.
Resettlement and livelihood restoration	Fully covered by the LARR Act.	Resettlement legislation focuses on expropriation and compensation. The emphasis is on generous monetary compensation and assistance packages over other mitigation measures. No specific livelihood restoration requirements.	Resettlement is covered. Compensation and livelihood restoration are not covered.	Resettlement is not covered. Livelihood restoration and land management are covered.	Resettlement and compensation are regulated by the SDPWO Act in QLD. Not expressly covered by the ESIA process in NSW; nor the EIA process in WA.
Cultural heritage	Impacts on sites of religious and cultural meaning and impacts on norms, beliefs,	Not included in the EIA legislation. The Act on Ancient Monuments,	Fully covered by ANLA's General Methodology and List of Specific	Covered under IAA but more stones and bones rather than intangible or natural features.	Covered by the ESIA process in NSW; by the EIS process in

Social Risk Area	India	Thailand	Colombia	Canada	Australia
	values and cultural life covered by the LARR Act.	Antiques, Objects of Art and National Museums refers to the need to protect these cultural entities. No requirements for a 'chance find' procedure exists in the regulation.	Environmental Impacts issued by the Ministry of the Environment.		QLD; and in the EIA process in WA.
Influx and migrant workers	Influx of migrant construction workforce covered by LARR Act.	EIA guidelines require the assessment of community impacts due to migration of people and workers, public area impacts, and potential conflicts.	Potentially covered through the assessment of change in demographic variables and impacts on infrastructure and services.	Covered under IAA.	Covered by the ESIA process in NSW; by the EIS process in QLD; and not covered in the EIA process in WA.

Public engagement and access to information

In all of the case studies, comprehensive public participation and information disclosure requirements are included for all phases of the IA. The following are notable:

- *Canada:* Early public engagement in screening and scoping is emphasized. The Impact Assessment Act requires that the government provides funding and capacity building to the public and Indigenous groups to enable them to participate in the IA process effectively. Disclosure and information-sharing provisions are extensive.
- *Thailand:* The EHIA requires greater public participation than EIA during critical stages of the process, including public hearings, public reviews, and an assessment by the Independent Commission on Environment and Health. All EIA and EHIA information, including monitoring reports, is disclosed on a website accessible to the public.
- *WA:* Stakeholders can object to key decisions of the competent authority - such as the decision not to assess the project proposal or the merit of the final assessment report - by lodging a special appeal with an independent body (the Office of the Appeals Convenor).
- *NSW:* During the assessment or post-approval phase, a Community Consultative Committee (CCC) may be established to foster an ongoing dialogue between the proponent/developer and community representatives.

FPIC requirements were identified in Canada, India, Colombia, Peru, Philippines and Suriname. In India, projects involving land acquisition likely to affect tribal communities (living in Scheduled Areas) require prior consent. In Colombia, the process of prior consultation with Indigenous communities is integrated into the environmental licensing process through a formal mechanism involving the Ministry of the Interior. The presence of the Minister aims at guaranteeing the effective participation of the concerned community in the decision-making.

Whilst not strictly qualifying as FPIC, Australia has federal legislation on the participation of Indigenous communities in decision-making related to development projects in their traditional lands. The Native Title Act 1993 (Cth) provides for the recognition and protection of Aboriginal native titles, commonly including rights of possession, occupation, use and enjoyment of the traditional land. Ancillary to these rights, the legislation establishes a mandatory agreement-making process for any 'future act' on land or waters that would impact native title rights and interests of affected communities. Aboriginal representative bodies are also required to be established in order to exert key responsibilities and functions relating to the protection and management of native rights and negotiations with third parties.

Other ‘good’ examples of how affected community participation are provided for in country legislation include Argentina, Bangladesh, Ecuador, European Union, New Zealand, Peru, Philippines.

Mitigation/enhancement measures

In the selected case studies, a legal requirement for adoption of mitigation measures is a common feature, either through the development of plans by the proponent or the establishment of project approval conditions by the relevant authority. On the other hand, benefit-sharing provisions are less

common and, in some instances, found to be limited to specific cases (e.g. limited to an industry in Colombia, or land acquisition processes in India). The following systems are worthy of attention:

- *QLD Australia:* Management measures identified through the SIA must be documented in a social impact management plan (SIMP). Proponents are also required to submit a workforce management plan including measures to enhance employment opportunities for local and regional communities and underrepresented groups (e.g., training) and prioritization of local employment. A local business and industry procurement plan is also required, including procurement strategies for local and regional suppliers, Aboriginal-owned businesses, and programs to build local and regional capacity.
- *Canada:* IA conducted under the federal regulatory framework require adaptive management, i.e., the requirement to adjust mitigation measures to new circumstances as the project progresses.
- *Colombia:* Social management measures are included in the Environmental Management Plan (EMP), which comprises a follow-up and monitoring plan to allow adjustments where necessary, an emergency preparedness plan, and an abandonment plan to guarantee project sustainability. In the oil & gas sector, companies are required to define community development programs (called PBCs).
- *India:* For projects involving land acquisition, preparation of the SIMP is mandatory, including a rehabilitation and resettlement scheme. India is the only country identified which legislates mitigations for loss of livelihoods that include financial assistance and employment offers.

A few country systems were identified with provisions for benefit-sharing: Burkina Faso, China, Guinea, Kenya, Malawi, Mali, Peru, Philippines, Sierra Leone, South Africa and South Sudan.

Monitoring and Enforcement

In the selected case studies, monitoring and enforcement provisions are common. Their features are however very specific to each country system, either in terms of authorities involved, monitoring and enforcement tools, or consequences in the case of non-compliance.

- *Colombia:* In case of non-compliance, the competent environmental authority at national and subnational levels has the power to enforce the conditions set by the licence and/or impose additional measures to manage impacts not identified during the ESIA process. Legislation attributes sanctioning powers to the authority, including suspension of the activities, fines, temporary or definitive closure of the establishment, and revocation of the environmental licence.
- *NSW, Australia:* Conditions of project approval may require establishing a Community Consultative Committee (CCC) formed by representatives of the community, which have a role in monitoring.
- *WA, Australia:* The proponent who does not observe the Minister's notice requiring to stop implementation of a project in order to comply with the conditions of consent commits an offence and can be prosecuted and sentenced to a monetary penalty.
- *Canada:* Monetary penalties are envisaged for non-compliance with IA approval conditions. The regulation includes provisions for participatory monitoring, as well as federal funding to enable affected communities to undertake monitoring.

- *Greenland*: Provisions for Impact-Benefits Agreements between a company, municipality and central government enable a municipality to negotiate measures for monitoring and enforcement. Agreement-making is also a feature in Guinea.

The provision for judicial remedy in *France* is also worth a mention. Private companies must submit a vigilance plan (which must be publicly available) which provides an overview of and explains the implementation of human rights risk mapping and evaluation procedures, and explains any mitigation action taken. Third parties may apply for an injunction to require a company to comply with the law and implement the vigilance plan, and to seek damages where the non-compliance has caused loss.

INDIA CASE STUDY

4 INDIA

Projects involving compulsory land acquisition for public purposes require a stand-alone SIA, covering a broad range of social issues. Livelihood losses require mitigation, through e.g., financial assistance and employment offers.

The SIA includes differential impacts experienced by vulnerable groups, e.g., women, children, the elderly, and people with disabilities. Attention is given to addressing vulnerability and gender inequality. Women must be represented in certain bodies involved in the SIA process, e.g., the SIA team and Rehabilitation and Resettlement Committee (RRC). When consent from local self-governance institutions is needed to proceed with land acquisition, a minimum number of women at meetings is required.

The final SIA report must be reviewed by the Multidisciplinary Expert Group, which comprises - in addition to social scientists and technical experts - representatives of local government.

Projects involving land acquisition that are likely to affect tribal communities (living in the Scheduled Areas) require prior consent.

4.1 PROCESS FOR ADDRESSING SOCIAL RISKS

Social risk and project impacts are addressed in two sets of regulations - Environmental Clearance of Projects, including EIA, and Land Acquisition, Rehabilitation and Resettlement.

The EIA regulation, including the Environment Protection Act (1986) and Environmental Impact Assessment notification (2006) set out the process of screening, scoping, data collection and analysis, mitigation, and monitoring of environmental impacts. The EIA process is two-tiered. At the central level, the Impact Assessment division under the Ministry of Environment, Forests and Climate Change (MoEF), regional offices of MoEF, and the Central Pollution Control Board (CPCB) are three essential institutions. State Pollution Control Boards (SPCBs) and State Departments of Environment (DoE) work at the local level. SBCBs prescribe CSR obligations be included as part of the conditions of the Consent to Operate.

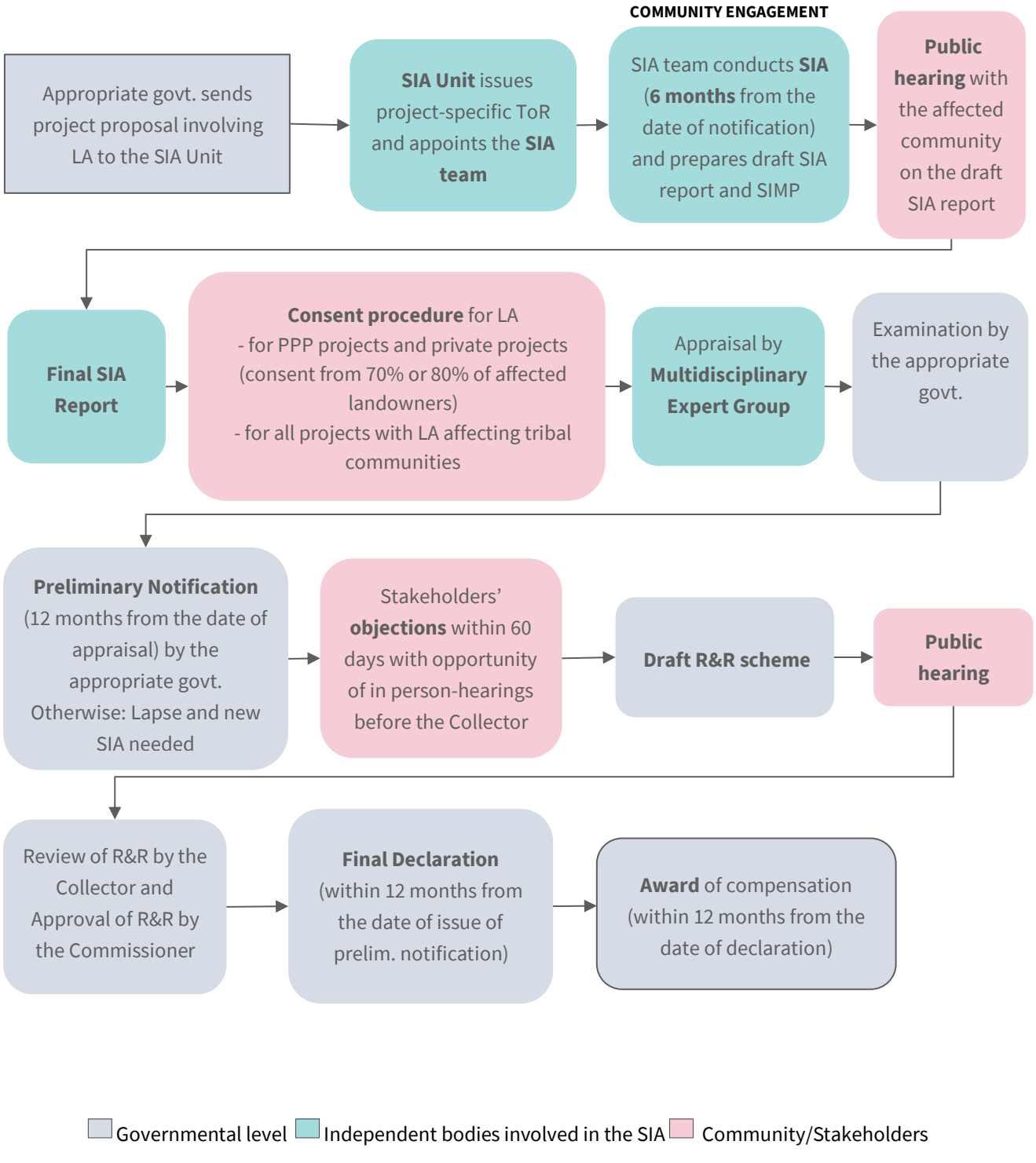
The most significant provisions for assessing and managing social risk and impacts are in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act). The LARR Act has a mandatory requirement for SIA for all development projects involving compulsory land acquisition by the government, whether they are public, public-private partnerships, or private projects serving a public purpose[1]. The main focus of the SIA is the impacts of land acquisition on displaced people. The objective is to minimize resettlement and identify measures to mitigate the adverse impacts of land acquisition. Additional SIA requirements on public engagement and consultation for projects affecting Indigenous people are contained in the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA Act) and The Forest Rights Act (FRA), 2006. No standalone SIA is required in the instances of social impacts other than displacement (physical or economic).

We focus the remainder of our analysis on the SIA requirements under the LARR Act and other laws that support the LARR Act implementation.

[1] The LARR Act does not apply where private investors buy land without the involvement of the government as in these instances Eminent Domain does not apply. SIA is not mandated for projects that do not require land acquisition, for example where the government buys land for broad-based area development and then private firms develop a specific project.

SIA PROCESS for projects involving land acquisition under Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013

Authorities involved: Appropriate Government (Central or State) / SIA Unit / SIA team (Central or State)/ Multidisciplinary Expert Group / Collector



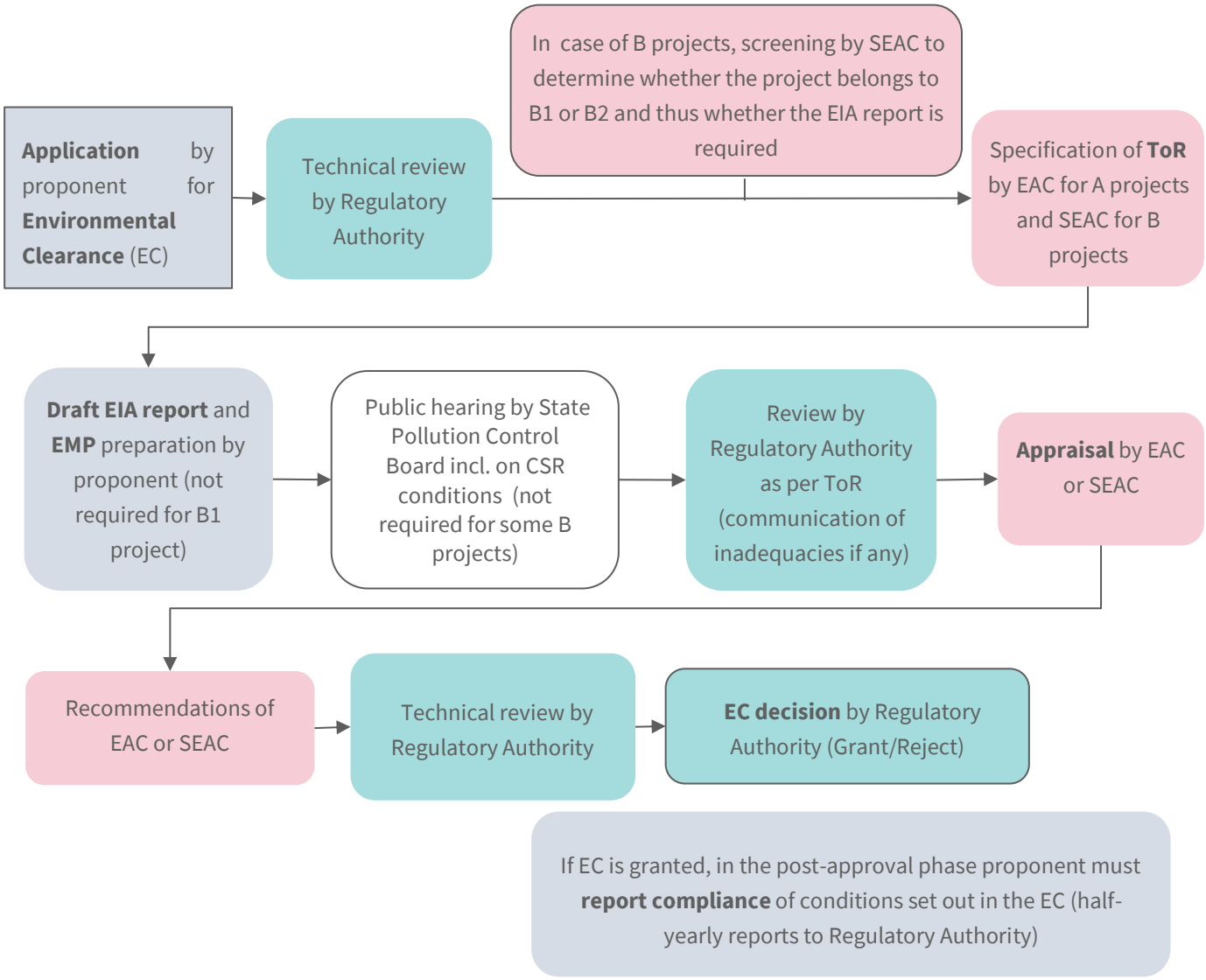
EIA PROCESS under the Environment Protection Act (1986) and Environmental Impact Assessment notification (2006)

The State-level or Central EIA process apply depending on whether the project belongs to the list of A or B projects as specified in the EIA Notification 2006

Authorities involved:

For A projects: Regulatory Authority is the Ministry of Environment and Forest (Central); Central Expert Appraisal Committee (EAC)

For B projects: Regulatory Authority is the State Environmental Impact Assessment Authority (State level)/ State level Expert Appraisal Committee (SEAC)



4.2 GOOD PRACTICES IN THE COUNTRY SYSTEM

Regulatory consistency and institutional coordination	Under the LARR Act, the SIA is independent of the EIA, with the two processes running simultaneously (s.4(4)). Wherever EIA is required, the outcomes of the SIA must be shared with the Impact Assessment Agency (IAA) in charge of the EIA (s.6(2)). The law and policy do not specify the interrelations and interdependencies between the SIA, the EIA, and the overall determination of the public purpose of the project (Singh, 2016). The LARR Act in s. 109 gives States the authority to enact sub-national rules. In some instances, this has reportedly led to to the weakening of LARR clauses such as prior consent, public hearings, or SIA process (e.g., exemptions for a range of projects, reduction of SIA timelines). Some states have passed their own state-level legislation under Article 254(2) of the Constitution of India, overriding the central law[2] (Kohli and Gupta, 2017). The LARR Act requires that the appropriate government (central and state governments) establishes an independent SIA Unit. Once the appropriate government sends a land acquisition proposal to the SIA Unit, the SIA Unit will determine the project-specific Terms of Reference (ToR) and the budget, and appoint the team tasked with conducting the SIA (SIA team), providing it ongoing support where needed.[3] A processing fee is to be paid by the Requiring Body (the company or institution - including the government itself - for whom the land is to be acquired for a public purpose). The SIA team is selected for each project by the SIA Unit from experts registered in a dedicated database. At least one member must be a woman.[4] Low capacity among SIA practitioners has been noted (Mathur, 2016). The SIA report must be reviewed by an independent multi-disciplinary Expert Group, comprising local government representatives, social scientists, and project-related subject experts. The Expert Group provides a non-binding opinion on the viability of the project based on an overall social cost-benefit analysis (i.e., whether or not the social costs and adverse social impacts of the project outweigh the potential benefits) and the assessment of whether it serves a public purpose.[5] The government could decide to proceed even if the Expert

[2] Article 254(2) of the Consititution of India provides that if a State law receives presidential assent, then it can apply in contravention to the Central law in that particular State. This has allowed the governments of Tamil Nadu, Gujarat, Maharashtra, Telangana, Rajasthan and Jharkhand to pass their own land acquisition laws, overriding the LARR Act.

[3] LARR Rules 2014, s. 4. The SIA Unit is also responsible for reviewing and strengthening the quality of SIA across the Country or the relevant state, and building the dedicated database for qualified SIA practitioners.

[4] LARR Rules 2014, s. 6

[5] LARR Act, s.7

	Group has made negative recommendations, e.g., to abandon the project due to adverse social impact outweighing potential benefits.
Public engagement and access to information	The LARR Act aims to establish "a humane, participative, informed and transparent process" (Preamble). Local government institutions of the affected area – Panchayat in rural areas or Municipality/Municipal Corporations in urban areas - must be consulted (s. 4). Conducting public hearings before the completion of the SIA is a mandatory requirement. The hearing is held to discuss the SIA findings and gather the views and objections of the potentially affected people, which must be addressed in the final SIA report (s.5).[6] However, community engagement is said to be weak in reality. Public participation reportedly comes only in the later stages and the implicit objective of the hearings is seen as providing legitimacy to the already prepared SIA report (Punetha, 2018). The SIA report, including the SIMP, the recommendations by the Expert Group, and the final determination by the relevant government, must all be made public in the affected areas in the local language/s. (s.6). Before approval, the draft Rehabilitation and Resettlement Scheme (R&RS) must be circulated, and a public hearing is to be held to allow affected people to raise claims and objections (s. 16(4)). The LARR rules require that a dedicated website for public disclosure of the entire workflow for each land-acquisition process is established (s.13). However, it is reported that many state governments have not yet established the required portal for public disclosure (TERI, 2018). The legislation requires public consent to land acquisition for specific projects. Public-Private Partnership (PPP) projects and private projects serving a public purpose require that prior consent is given respectively by at least 70% and 80% of the affected families (s.2 (2)). Government projects do not require prior consent. When prior consent applies, at least 50% of the total members, including one-third of the total women, of the Gram Sabha, which is the general assembly of all registered voters in a village, must be present in the consent meetings.[7] The procedure to obtain consent is led by the District Collector and regulated in detail in LARR Rules 2014 (Chapter 3). Land acquisition in Scheduled Areas (areas with tribal populations) can occur only as a last resort (s.41), and requires a prior consent of the concerned Gram Sabha[8] in all land acquisition cases, including in cases of urgency (s.16(5)).

[6] Further provisions regulating the process for conducting public hearings are found in LARR Rules 2014, s.8.

[7] LARR Rules 2014), s. 17 (3)

[8] LAAR does not include any consent thresholds or ratios specific to Scheduled Areas.

	Consultation must occur by the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA Act).[9] The Forest Rights Act (FRA), 2006 recognizes forest rights (individual and collective rights) to forest-dwelling scheduled tribes and other traditional communities.[10] In 2009 the MoEF provided for an authoritative interpretation of the FRA Act according to which any projects involving the diversion of forest land (thus beyond land acquisition) require prior consent by the relevant Gram Sabha(s).[11] However, the Government has been said to have a bureaucratic approach and not properly address substantial aspects, e.g., guaranteeing proper access to project-relating information before consent (Choudhury and Aga, 2020). The jurisprudence of the Supreme Court of India has strengthened the requirement of prior consent for projects affecting the rights of tribal communities (Forest Rights Act).[12]
Screening	The process established by the LARR Act, including the mandatory SIA, applies to projects (public, private or PPP) involving compulsory land acquisition by the appropriate government, on condition that they serve a public purpose as defined in s.2(1).[13] These include among others: • projects serving strategic purposes relating to national security and defense • infrastructure projects, including agro-processing projects, projects for industrial corridors, mining activities, sanitation, educational schemes and institutions, health care and transportation

[9] Under PESA, the Gram Sabhas are central to managing and preserving the traditional customs and identity of tribal communities. PESA provides for the right of the Gram Sabha to mandatory consultation in land acquisition, and resettlement (now absorbed in and strengthened by the LARR Act) (s. 4(i)). Beyond land acquisition-involving projects, mandatory recommendations by Gram Sabha are required before the grant of prospecting licenses, mining leases, concessions for minor minerals (s. 4(k)(l)).

[10] Under the FRA Act, Gram Sabhas are empowered to protect forests, biodiversity and resources and ensure that the habitat, cultural and natural heritage of the tribal community are preserved by regulating access to resources and stopping any adversely-affecting activities (s. 5).

[11] The Ministry of Environment and Forest (MoEF) 2009 order can be found at http://forestsclearance.nic.in/writereaddata/public_display/schemes/337765444$30-7-2009.pdf. This interpretation has been embedded in the guidelines issued by the Ministry of Tribal Affairs (Government of India, 2012, p. 5).

[12] In the 2013 Orissa Mining Corporation case, a mining project in the 'Niyamgiri' hills potentially impacting cultural and religious rights of a tribal group has been stopped as the prior consent from the concerned Gram Sabha was recognized by the Supreme Court to be a mandatory precondition (Chandra, 2019). The Gram Sabhas are considered as having the authority to determine whether an activity would affect individual or community rights including cultural and religious rights, and accordingly they are required to fulfil their statutory duty of protection under the FRA Act (s.5).

[13] The definition of 'public purpose' projects is quite broad. It applies also to private investments, e.g., private housing developments. One of the purposes of the SIA is to confirm the public purpose, e.g. that public benefits of the project outweigh the social costs of land acquisition.

	• projects for housing and residential purposes • projects for planned development. SIA may be exempted in cases of urgency.[14] The EIA regulation categorizes the projects into A or B depending on the magnitude of their scale and impact on natural and artificial resources. Category A projects require an EIA report and final approval from the MoEF, on the advice of an Expert Appraisal Committee (EAC), constituted by the Central Government and comprising professionals from varied disciplines together with experts in the fields of Environmental Quality, Project Management, Risk Assessment, Forestry and Wildlife, among others. No social science experts are required in the EAC composition.[15] Category A projects include construction or expansion of ports, harbours, airports, nuclear power and related projects, and primary metallurgical industries (iron, steel, copper, etc). Projects belonging to Category B fall within the state competence, with the final decision on project approval resting with the Environmental Impact Assessment Agency (SEIAA) on the advice of a State Expert Appraisal Committee (SEAC). These projects are subject to screening by SEAC to determine whether the project proposal falls into the sub-categories B1 or B2, depending on various ecological and environmental factors. While B1 projects require an EIA report, B2 only require submission of specific information, including information on raw materials, waste generation, environmental details of location along with emissions and effluents (see Form-1 in 2006 Notification).[16] The EIA process is mandatory for over 30 classes of projects. The number of projects enlisted is constantly adjusted through amendments. The screening process is criticised for not covering many projects having significant environmental impacts due to them falling below a certain threshold (Jha-Thakur & Khosravi, 2021).
Scoping of social issues	Under the LARR Act, the SIA Unit prepares the detailed project-specific ToR, specifying the level of assessment by establishing the activities to be conducted.[17] The SIA team is required to prepare a socio-economic and cultural profile of the affected area based on a range of data to be gathered, including through field visits and participatory methods (e.g., focus group discussions, informant

[14] LARR Act, s.9

[15] See EIA Notification 2006, Appendix VI.

[16] The B2 category includes offshore and onshore oil, gas and shale exploration, inland waterway projects, aerial ropeways in ecologically sensitive areas, small and medium mineral beneficiation units, specified building construction, and area development projects.

[17] LARR Rules 2014, s. 5

	interviews, consultation with key stakeholders). Social profiles for communities hosting resettled people are also required.[18] In practice, the scope of the studies is focused on those directly affected by the land acquisition whereas upstream and downstream communities affected by traffic, influx, and other impacts are rarely considered (Singh, 2016). Moreover, challenges on the quality of data have been reported, e.g., information on land use, common property resources, use of water, etc. maintained by various national and subnational agencies is not always accurate (Singh, 2016). LARR Rules 2014 (FORM-II) list the socio-economic and cultural parameters to be covered by the studies. These span demographic details of the population, poverty levels and vulnerability, political, social, and cultural organization, land use and local livelihoods, and quality of living environment of the communities. There are no requirements to consider marginalized castes and minorities, and interrelations between gender, caste and religion are overlooked. SIA teams may approach FORM II parameters in a checklist manner rather than a meaningful input in the assessment (Punetha, 2018). The SIA must include the assessment of whether the land acquisition serves a public purpose, the extent of land is the 'absolute bare-minimum' needed for the project (avoidance of involuntary resettlement wherever possible), and alternatives have been explored to minimize involuntary resettlement (s.4(4)). Because the SIA is carried out after the project design is finalized, the SIA does not contribute to the considerations of project alternatives, including a 'no-project' option. The analysis of alternatives required is limited only to land acquisition alternatives (Mathur, 2016). Based on the 2006 EIA Notification, scoping in EIA is carried out for Category A and Category B1 projects through three phases: (a) Application is filed by the proponent in Form-I along with pre-feasibility report and draft ToR, (b) MoEF/SEAC decides ToR for EIA, and (c) Intimation of final ToR to project proponent and display in website. Proponents provide information in prescribed forms, which feed into the ToR provided by the expert appraisal committees at the state and central levels. Socioeconomic indicators are absent in these forms.
Assessment of social impacts	Under the LARR act, SIA must cover the following key impact areas, among others: • land, livelihoods, and income, including food security, the standard of living, disruption of the local economy, impoverishment risks, women's access to livelihood alternatives • natural resources • private assets, public services, and utilities

[18] LARR Rules 2014, s. 7.

	• community health, including health impacts due to in-migration, and project activities with a focus on women and the elderly[19] • culture and social cohesion, including beliefs, values, and way of life, demographic changes, the stress of dislocation, shifts in the economy-ecology balance, violence against women, sites of religious and cultural meaning • private assets, public services, infrastructures, and utilities (e.g., roads and public transport, sanitation, health care and educational facilities, power supply) • impacts due to the influx of migrant construction workforce.[20] SIA must extend to indirect impacts, and cumulative impacts, and include differential impacts that are those affecting vulnerable groups such as women, children, the elderly, and people with disabilities. On this, the LARR Rules[21] invoke tools such as Gender Impact Assessment Checklists and Vulnerability and Resilience Mapping, without providing further details on these (Punetha, 2018). Labour, working conditions and OHS are not covered by the SIA process.[22] Under the EIA process, according to the Standardization of Environment Clearance Conditions notice 2019, projects in Category A (infrastructure, construction and area development projects) are required to provide working conditions information such as working hours, sanitary facilities, health care management services, etc.[23] The 2019 notice also covers conditions concerning air and water quality, noise monitoring and prevention, and some OHS issues specific to the project category and/or sector (e.g. provision of devices to prevent accumulation and inhalation of pollutants, personal protective equipment, etc.) and requirements and emergency preparedness and disaster management plans.

[19] Issues such as traffic safety, communicable diseases, contaminations due to use of pesticide, air pollution and noise are tot specifically listed in the LARR Rules (Form II) but potentially covered by the generic requirement to consider health impacts due to project activities. In any case, air and water pollution and noise are covered by the EIA process where applicable. Form II includes impacts on roads as impacts on public services and utilities but traffic safety is not mentioned.

[20] LARR Act, s.4(5); see also FORM-II annexed to LARR Rules 2014.

[21] LARR Rules (2014), Form II, B, (6)(f)

[22] These are under the control of the Ministry of Labour and Employment and regulated under the Code on Wages, 2019, the Occupational Safety, Health and Working Conditions Code, 2020, the Code on Social Security, 2020, and the Industrial Relations Code, 2020.

[23] See MoEF, Office Memorandum (4th January 2019) on Standardization of Environment Clearance Conditions, at http://www.indiaenvironmentportal.org.in/files/file/Standardization%20of%20Environment%20Clearance%20conditions.pdf.

	Comprehensive safety and health requirements for regulating OHS at workplaces mainly exist in separate legislation in respect of four sectors, which are manufacturing, mining, ports, and construction.[24] The timeline to undertake SIA is limited to six months and does not consider the contextual setting of projects which may require longer timelines. This may lead to poor quality of SIA, especially when relating to large projects (Punetha, 2018). A new SIA is required if the land acquisition process does not start within 12 months from the appraisal of the SIA report by the Expert Group (LARR, s.14).
Mitigation and management of adverse impacts	Under the LARR Act, a SIMP covering all the issues found to be of significance in SIA is required. In particular, SIMP comprises measures to avoid, mitigate and compensate for the identified impacts, the Rehabilitation and Resettlement (R&R) scheme, as well as the measures that the Requiring Body has committed to undertake (LARR Rules 2014, s.7(7)). The R&R Scheme includes entitlements for landowners and landless whose livelihoods are primarily dependent on the lands being acquired (e.g. agricultural labourers, artisans working in the affected area), and provisions for resettlement of affected families.[25] Compensation for land acquisition is calculated from the market value, according to s. 26 of the LARR Act.[26] The R&R package must include among others: • provisions of housing units in case of physical displacement • project-related employment to at least one member per family after providing suitable training and skill development - or as alternatives - monetary options • a monthly subsistence allowance for one year, plus a one-time 'resettlement' fixed-amount allowance • in case of displacement from Scheduled Areas (thus concerning tribal communities), a devoted lump-sum and relocation in an ecological zone similar to the area of origin to preserve the culture and identity of the tribal community

[24] There are four main legislations addressing OHS in the workplace: (a) Factories Act, 1948, concerning factories wherein the enforcement of safety at workplace is by the Chief Inspector of Factories in the respective states, (b) Mines Act, 1952 and Mines Rules, 1955 for mining industry where the enforcement is by the Directorate General of Mines Safety (DGMS) under Ministry of Labour & Employment of the Government of India, (c) Dock Workers (Safety, Health and Welfare) Act, 1986 followed by notification of the Dock Workers (Safety, Health and Welfare) Regulations, 1990 dealing with the major ports of India and the enforcement is by the Directorate General of Factory Advice Service & Labour Institutes (DGFASLI), under Ministry of Labour & Employment of the Government of India, and (d) Building & Other Construction Workers (Regulations of Employment and Conditions of Service) Act, 1996, concerning construction workers at construction sites wherein the enforcement is by the Directorate General Labour Welfare at the central level and by the Labour Commissioners/Factory Inspectorates in the States/UTs.

[25] LARR Act, s. 16 (4). For more details, see LARR Rules 2014, s. 7.

[26] The First Schedule annexed to LARR Act details the components forming the compensation award.

	• financial assistance to categories such as artisans, small traders, families having cattle, or owing non-agricultural land or commercial, industrial 'institutions.' The Third Schedule specifies infrastructural facilities and basic minimum amenities to be provided within the resettlement area to secure a 'reasonable' standard of community life.
Enhancement and management of positive impacts	The enhancement of the status of affected families compared to pre-project levels is a stated objective of the LARR Act (Preamble). The SIMP must include 'ameliorative measures', which are required to be at least of equal standard to government programs of similar nature (considering both the central and state level).[27] However, no guidance is provided on what such ameliorative measures should include. There is no clear distinction between mitigation measures to address adverse impacts and enhancement measures. In case of displacement of tribal communities, a specific Development Plan is required.[28] Under the Environmental Clearance process, additional provisions for enhancement measures are contained in the EIA regulation and the Companies Act 2013. Corporate Social Responsibility (CSR) requirements are prescribed by State Pollution Control Boards as conditions in the Consent to Operate. Companies over a turnover and profitability threshold defined by the regulation must spend at least 2% of average net profits made during the three preceding fiscal years on CSR initiatives per the company's CSR policy.[29] A monitoring report must be submitted to the regional office as a part of the half-yearly compliance report and to the district collector and should be posted on the website of the project proponent.[30] The Companies Act (Amendment) 2019 introduced a penalty provision for non-compliance with the CSR obligation. However, it is not clear if this is enforced.
Monitoring, inspections,	The Commissioner for Rehabilitation and Resettlement (the R&R Commissioner) supervises the formulation and implementation of R&R Schemes in consultation with the Gram Sabhas or the municipality (LARR Act, s.44).

[27] LARR Act, s. 4(6).

[28] The Plan should contain a 'program for the development of alternate fuel, fodder and non-timber forest produce resources on non-forest lands' within five years, sufficient to meet the requirements of such peoples (LARR Act, s. 41).

[29] Proposed CSR activities are to be determined based on the issues raised during the public hearing, social needs assessment, R&R plan, EMP, etc. and preference must be given to the local areas around which the company operates. These may include infrastructure development for drinking water supply, sanitation, health, education, skills development, roads, electrification including solar power, R&D, support to farmers, conservation work, etc.

[30] See MoEF Office Memorandum (1st May 2018) on Corporate Environment Responsibility (CER), at http://environmentclearance.nic.in/writereaddata/public_display/circulars/OIEBZXVJ_CER%20OM%2001052018.pdf.

and enforcement	For projects involving large-scale land acquisition, a Rehabilitation and Resettlement Committee (RRC) is to be established with monitor and review functions (LARR Act, s.45). RRC comprises the chairpersons of local governments and representatives of vulnerable groups, including women and tribal peoples residing in the affected area. There are no effective measures prescribed in the law or policy to monitor the proper implementation of a SIMP. There is also no provision that the project could be halted if the requirements laid down in the plan are not complied with (Singh, 2016).
Grievance management	Affected people may raise objections to the SIA draft report during public hearings. Every objection must be recorded and taken into account by the SIA team in the final report. Within 60 days from the preliminary notification of land acquisition (the actual start of the land acquisition process), any interested person can raise objections before the Collector. Objectors are given the opportunity of in-person hearings. Following an inquiry if needed, the Collector will report on the objections to the relevant government that will make a final decision on them (LARR Act, s. 15). According to LARR s.51.(1), appropriate governments must establish the 'Land Acquisition, Rehabilitation, and Resettlement Authority' to provide speedy disposal of disputes relating to land acquisition, compensation, rehabilitation, and resettlement.

REFERENCES

Chandra, R. (2019) 'Forest Rights Act of India: putting indigeneity in place', *Indian Law Review*, 3(2), pp. 159–179. doi:10.1080/24730580.2019.1639422.

Choudhury, C. and Aga, A. (2020) 'Manufacturing Consent: Mining, Bureaucratic Sabotage and the Forest Rights Act in India', *Capitalism Nature Socialism*, 31(2), pp. 70–90. doi:10.1080/10455752.2019.1594326.

Kohli, K. and Gupta, D. (2017) 'Mapping Dilutions in a Central Law', *Occasional Paper. Centre for Policy Research, New Delhi* [Preprint].

Mathur, H.M. (2016) 'Social Impact Assessment in India', *ASCI Journal of Management*, 45(1), p. 72.

Punetha, A. (2018) *REFLECTIONS ON THE SOCIAL IMPACT ASSESSMENT FRAMEWORK IN THE INDIAN CONTEXT*, p. 80. Available at: http://prayaspune.org/peg/images/GSM_fellowship_2018/Reflections-on-SIA_PMP.pdf.

Singh, S. (2016) 'Turning Policy into Law: A New Initiative on Social Impact Assessment in India', in Mathur, H.M. (ed.) *Assessing the Social Impact of Development Projects: Experience in India and Other Asian Countries*. Cham: Springer International Publishing, pp. 63–74. doi:10.1007/978-3-319-19117-1_4.

TERI (2018) 'Background Note on 3rd session: "Social Impact Assessment: from policy to practice"', in. *National Conference on the 'Five year journey of The RFCTLARR Act, 2013: The way forward'*, TERI. Available at: https://www.teriin.org/event/national-conference-five-year-journey-rfctlarr-act-2013-way-forward (Accessed: 6 April 2022).

THAILAND CASE STUDY

5 THAILAND

Health impact assessment is mandatory in EIA for categories of projects with the most severe potential impacts on communities. Environment and Health Impact Assessment (EHIA) requires information on health and quality of life to evaluate potential project impacts on physical, mental and spiritual health, including of vulnerable groups. EHIA requires more public participation than EIA, including public hearings, public reviews and assessment by the Independent Commission on Environment and Health.

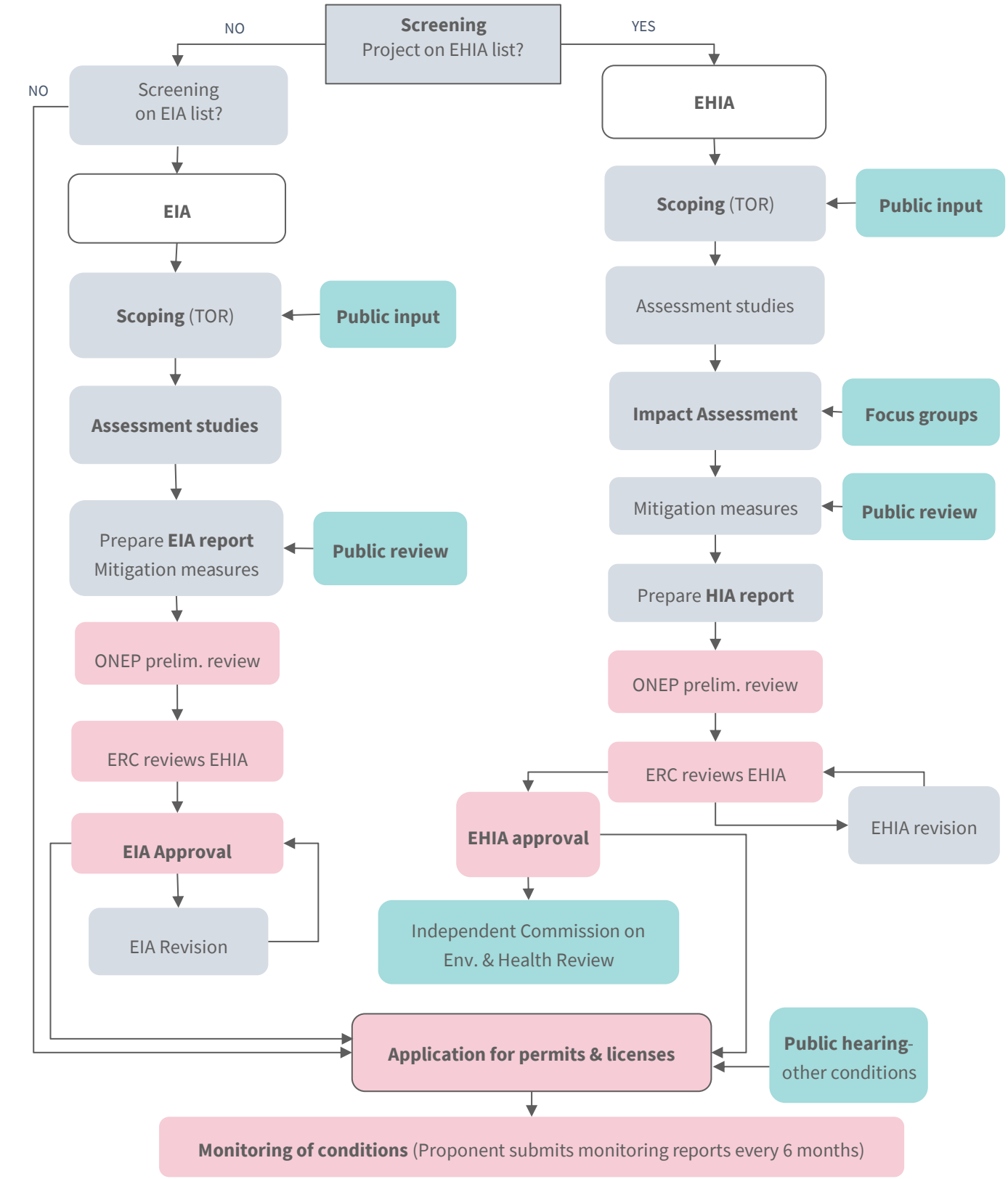
A robust and consistent regulatory framework for IA is supported by efficient and well-coordinated institutional arrangements. EIA legislation is comprehensive and supported by clear prescriptive procedures, methods, and processes, including stakeholder engagement. Public participation is mandated for all types of IA. Social risk management is required primarily in relation to human health. Sector-specific legislation and regulations of licensing and permitting agencies set out rules for managing specific social issues, e.g., resettlement, occupational and community health and safety, labor relations. The institutional framework is highly centralized, with a single agency responsible for administering the EIA system. Inter-ministerial coordination is clearly defined in assessment and permitting.

5.1 PROCESS FOR ADDRESSING SOCIAL RISKS

Social risks and impacts associated with development projects are addressed primarily through Thailand's EIA regulation. The Enhancement and Conservation of National Environmental Quality Act (NEQA, 1992) is the fundamental legislation that stipulates the EIA system. There are several types of IA studies required in the regulation:

- Initial Environmental Examination (IEE), a study used for small projects and projects that have few impacts, requires the least amount of data and only one public hearing;
- EIA, a study for forecasting negative impacts of larger projects and projects which may cause significant community impacts, involves more extensive studies and public participation in two steps of the process; and
- EHIA, a study to forecast the impacts of projects which may cause the most serious harm to the community, emphasizes social impacts (primarily health) and greater public participation, and requires the most extensive data collection, including health and social studies.

We focus our analysis on EIA and EHIA. A simplified overview of the EIA and EHIA regulatory processes is provided below.



Proponent Public/Stakeholders Governmental level: Office of Natural Resources and Environmental Policy and Planning (ONEP), the Ministry of Natural Resources and Environment (MoNRE), National Environmental Board (NEB), licensing and permitting agencies

5.2 GOOD PRACTICES IN THE COUNTRY SYSTEM

Regulatory consistency and institutional coordination	The EIA legislation is comprehensive and supported by rules, procedures, acceptable methods for report development and process guidelines. There is no separate SIA process in the legislation and social aspects are integrated into the EIA and EHIA processes. Additionally, sectoral legislation and regulation of licensing and permitting agencies set out rules for managing specific social issues, such as resettlement, occupational and community health and safety, labor relations, etc. The government developed guidelines covering social topics (consultation and public participation, HIA and SIA) to be used in preparing EIA reports. However, these are advisory, and their implementation is not mandated by law. The institutional framework is highly centralized, with a single agency Office of Natural Resources and Environmental Policy (ONEP) of the Ministry of Natural Resources and Environment (MoNRE) responsible for administering the EIA and EHIA systems (Supat Wangwongwatana and Peter King, 2015). ONEP defines the types and sizes of projects or activities subject to IA, develops rules, regulations, and guidelines for preparing IA reports, and manages the EIA processes. Permitting agencies are responsible for monitoring and enforcement of EIA conditions which are incorporated into permits and licences. There are no regional or local IA requirements (except for seven Environmental Protected Areas), so local governments and regulators play a limited role in the EIA processes (Suwanteep, Murayama and Nishikizawa, 2016). ONEP works closely with other ministries and agencies through Expert Review Committees (ERCs), responsible for evaluating EIAs. ERCs are set up for different sectors, e.g. petroleum refining, and include representatives of ministries responsible for licensing and independent experts appointed by NEB. The quality of ERC reviews reportedly varies depending on the workload and capacity of ERC members (Baird and Frankel, 2015). The duration of various elements of the EIA process is specified by law. The timelines are short, e.g., 45 days allowed for ERC review, limiting the opportunities for public input in the assessment and potentially affecting the quality of the EIA review. There is a system for the qualification and registration of EIA consultants managed by the MoNRE. While no specific requirements exist for social experts, licensed EIA consultants responsible for the EIA report must provide additional technical experts in the fields necessary for the preparation of the report, implying that social experts are to be involved if social issues are identified. [31]

[31] https://drive.google.com/file/d/1KVuRFC3lEyvG7_qiR_SIr88HnFIlv624/view

Public engagement and access to information	Thailand's Constitution establishes a general right for people to receive information and justification from a government agency before permission is given for any project which may affect the quality of the environment, health, and sanitary conditions, the quality of life, or any other material interest of persons or communities. Disclosure and public participation procedures are established in the legislation (ONEP, 2021). The regulation requires public participation at least twice in the EIA process: in determining the scope of EIA, and on the draft EIA and mitigation measures. The EHIA requires addition of: focus groups and surveys during the development of the EHIA report; EHIA review by Independent Commission on Environment and Health, which includes a representative from private environmental and health organizations and relevant higher education institutions; and a public hearing organized at the end of the EHIA process by a licensing and permitting agency to determine additional mitigation measures, i.e., conditions for licenses and permits. ONEP has developed Guidelines for Public Participation in the EIA Process[32], which details types of stakeholders to consult: affected people (typically local people within 5 km of the project area, relevant central government agencies, local government, environmental NGOs, mass media, and the general public), methods, frequency and timelines for public participation and provisions for information disclosure. No explicit mention is made of women's participation in EIA consultation processes. Mandatory EIA and EHIA information is disclosed in a public registry at https://eia.onep.go.th/site/index. Literature and interviewees indicated a lack of genuine and meaningful participation by those affected, with public hearings as 'box-ticking' rather than an opportunity for community input in the EIA process. As a result, the concerns of local communities may not be adequately addressed and lead to conflict (Supat Wangwongwatana and Peter King, 2015).
Screening	Thailand's regulation uses a prescriptive screening process that leaves little room for discretion. Regulatory lists of types of undertakings and activities requiring EIA are primary screening tools (ONEP, 2021). Projects are screened on the basis of criteria listed in the regulation - type, scale, lifecycle stage and location (for example, steel industry production with capacity of 100 tons/day or more); 35 types of projects require EIA; and 12 types of projects require EHIA. No specific social criteria are included (e.g. physical or economic displacement) in the screening process. The public does not participate in screening. As a result, a project with potentially significant social impacts which does not meet screening criteria or thresholds may be missed by the EIA/EHIA process.

[32] http://law.onep.go.th/wp-content/uploads/2021/06/law6.2.pdf

Scoping of social issues	Thematic scoping for EIA considers four main aspects: physical resources, biological resources, human-use value, and quality of life. Under quality of life, a broad range of social issues is considered: community health, occupational health, livelihoods, historical and cultural values, recreational values, etc.[33] Assessment of alternatives is an important procedure. There are two levels in considering alternatives: (1) by the total sum of damage to the environment, and (2) by analyzing the environmental impacts of various alternatives to develop the project (Suwanteep, Murayama and Nishikizawa, 2015). However, the 'no project' alternative is not required in the regulation (ADB, 2015a). Public participation is required in the EIA and EHIA processes to determine the scope of the study. In practice, meaningful public input in scoping is reportedly rare (Chanchitpricha and Bond, 2020a).
Assessment of social impacts	There is no explicit reference to identifying social risks and impacts in the legal framework. Most references to social impacts are implicit in relation to human health. MoNRE guidance documents list the human use values and quality of life values (socio-economic, health, etc.) that need to be assessed as part of the EIA report preparation. However, the guidance is not bound by legal instruments. Further, there are no specific requirements for assessment of vulnerable peoples or gender (ADB, 2015a). Mandatory requirements to integrate human health impacts into EIA exist for projects with potentially severe impacts on communities (Environmental and Health Impact Assessment, EHIA). MoNRE, in cooperation with the Ministry of Public Health, developed EHIA guidelines on health impacts, risk assessment methods, and the procedure for assessing health impacts[34]. EHIAs must cover risks to human health and livelihoods, ecosystem services, effects on people's physical and mental well-being, health consequences of projects for surrounding communities, and impacts on the way of life (BoI, 2014). While EIAs should consider the same elements as EHIA (human use values and quality of life values) EHIA has additional requirements for health impacts, public participation and the approval process. No specific provision on Indigenous People impacts or FPIC exists in the EIA legislation. Thailand's Constitution and other government regulations do not recognize hill tribes and other minorities as Indigenous People (BoI, 2014). Resettlement legislation focuses primarily on expropriation and compensation processes (ADB, 2015c). The Expropriation of Immovable Property Act of 1987 is the key document. Some sectoral regulation provides requirements for land

[33] https://www.jetro.go.jp/thailand/pdf/eia_requirement1.pdf

[34] http://www.onep.go.th/eia/wp-content/uploads/2018/07/ehia-eng-law_01.pdf

	acquisition, for example, the 1997 Procurement of Immovable Property for Public Transportation Enterprises, which covers all aspects of the process for transport projects, including compensation and resettlement assistance (ADB, 2018). The regulation and sector policies emphasize generous monetary compensation and assistance packages over other mitigation measures. No specific protection from restrictions on use or displacement exists for Indigenous Peoples. While the 2010 Regulation on Community Land Titling allows for continued collective use or occupancy of state lands on a temporary basis, most forestry and conservation legislation allows or promotes the expulsion of 'encroachers' from protected areas (ADB, 2015b). Cultural heritage requirements are not included explicitly in the EIA legislation. The Act on Ancient Monuments, Antiques, Objects of Art and National Museums refers to the need to protect these cultural entities. No requirements for a 'chance find' procedure exists in the regulation (ADB, 2015a). EHIAs require worker and community health and safety assessments. The Occupational Safety, Health and Environment Act (2011) establishes comprehensive workforce health and safety requirements. EIA guidelines include some provisions on the influx and require the assessment of community impacts due to migration of people and workers, public area impacts, and potential conflicts. The Disaster Prevention and Mitigation Act (2007) guides projects on procedures and measures to prevent and mitigate the impacts of emergencies (ADB, 2015a).
Mitigation and management of adverse impacts	EIA regulation requires details on prevention and mitigation measures and compensation measures in case of unavoidable damages to be included in the EIA report. EHIAs require specific mitigation measures to address adverse impacts on human health and the quality of life. The permitting agency has to bind EIA measures to the project licenses. Expert Review Committees consider the suitability of mitigation measures that should be practical and feasible in terms of technology and budget. Mitigation measures serve as conditions of project licenses and permits issued by project permitting authorities. Public input is required in the review of mitigation measures. In the case of EHIAs, additional public hearings are held by the permitting agency to identify any other mitigation measures, i.e., conditions that have to be attached to the license (BoI, 2014).
Enhancement and management of positive impacts	Benefit-sharing or other enhancement measures are not legislated. Some sector-specific arrangements exist, e.g. power projects offer community development funds for surrounding areas. These funds operate under the Power Development Fund established by the Energy Regulatory Commission of Thailand. Some of the supported areas include enhancing quality of life, health, and well-being; career development; development of education, religion, local cultures, and traditions;

	and environmental conservation and rehabilitation. The funds are managed by locally elected community development committees (OERC, 2016).
Monitoring, inspections, and enforcement	EIA regulation requires preparing a monitoring plan, with monitoring measures for each mitigation, including for health and social impacts. The EIA guidelines require that monitoring plans measure the impact from construction to operation and include the description of monitoring parameters, frequency, environmental standards, measuring method and period of reporting. ONEP provides guidelines for preparation of monitoring reports. Project proponents submit monitoring reports to ONEP and permitting agencies every six months. There are capacity gaps at ONEP to monitor EIAs. For example, each ONEP expert deals on average with 13–20 EIAs per year, and there is deficient staff expertise to review and monitor the EIAs (Chanchitpricha and Bond, 2020a). Weak enforcement of EIA non-compliance by permitting agencies has been attributed to permitting agencies having little motivation to enforce EIA conditions issued by ONEP, as well as monitoring capacity gaps of permitting agencies (Chanchitpricha and Bond, 2020a; Thepaksorn, Siriwong and Pongpanich, 2016). Monitoring reports are disclosed through the EIA & Monitoring database (https://eia.onep.go.th/site/monitor). The public can request monitoring data.
Grievance management	The Thai Constitution establishes a right to petition and sue government entities. The right to take environmental cases to court in Thailand is protected under many existing laws. MoNRE operates a Public Service Center with several channels for receiving public complaints on EIA, environment and natural resource related concerns.[35] However, no specific provisions require project-level mechanisms. Formal redress mechanisms exist in the case of land acquisition, regulated by sectoral legislation and policies (ADB, 2015a). Labor-related complaints can be submitted through the website of the Ministry of Labor. There are a number of other state- and non-state non-judicial mechanisms for labor and OHS related grievances, such as the Ministry of Social Development, the Social Security Office, company-based complaint mechanisms, etc.

[35] http://petition.mnre.go.th/MNRE_PETITION_59/

REFERENCES

ADB (2015a) *Comparative Analysis of Thailand Legal Framework and ADB Safeguard Policy Statement*. Draft for Discussion. Asian Development Bank.

ADB (2015b) *Comparative Analysis of Thailand's Legal Framework and ADB Safeguard Policy Statement: Indigenous Peoples*. Draft for Discussion. Asian Development Bank.

ADB (2015c) *Comparative Analysis of Thailand's Legal Framework and ADB Safeguard Policy Statement: Involuntary Resettlement*. Draft for Discussion. Asian Development Bank.

ADB (2018) *Addendum to the Environmental and Social Impact Assessment, Bangkok Mass Rapid Transit (Pink and Yellow Lines) – Policy, Legal, and Administrative Framework*. Asian Development Bank, p. 22.

Baird and Frankel (2015) *Mekong EIA Briefing: Environmental Impact Assessment Comparative Analysis In Lower Mekong Countries*. Bangkok: PACT, p. 63p.

BoI (2014) *Thailand Board of Investment Guide on Environmental Regulation*. Thailand Board of Investment. Available at: https://www.boi.go.th/upload/content/ENVIRONMENTAL%20.EGULATIONS_28083.pdf (Accessed: 30 March 2022).

Chanchitpricha, C. and Bond, A.J. (2020a) 'Evolution or revolution? Reflecting on IA effectiveness in Thailand', *Impact Assessment and Project Appraisal*, 38(2), pp. 156–166. doi:10.1080/14615517.2019.1664821.

OERC (2016) *Fact Sheet: Power Development Fund*. Office of the Energy Regulatory Commission. Available at: http://www.erc.or.th/ERCWeb2/Upload/Document/FactSheet%E0%B8%A0%E0%B8%B2%E0%B8%9E%E0%B8%A3%E0%B8%A7%E0%B8%A1%E0%B8%81%E0%B8%AD%E0%B8%87%E0%B8%97%E0%B8%B8%E0%B8%99@30Sep2016En.pdf (Accessed: 30 March 2022).

ONEP (2021) *Environmental Impact Assessment in Thailand, 4th edition*. Bangkok: Office of Natural Resources and Environmental Policy and Planning.

Supat Wangwongwatana and Peter King (2015) 'Assessing Environmental Impact Assessment (EIA) in Thailand: Implementation Challenges and Opportunities for Sustainable Development Planning', *https://www.iges.or.jp/en/pub/assessing-environmental-impact-assessment-eia/en* [Preprint]. Available at: https://www.iges.or.jp/en/pub/assessing-environmental-impact-assessment-eia/en (Accessed: 30 March 2022).

Suwanteep, K., Murayama, T. and Nishikizawa, S. (2016) 'Environmental impact assessment system in Thailand and its comparison with those in China and Japan', *Environmental Impact Assessment Review*, 58, pp. 12–24. doi:10.1016/j.eiar.2016.02.001.

Thepaksorn, P., Siriwong, W. and Pongpanich, S. (2016) 'Integrating Human Health into Environmental Impact Assessment: Review of Health Impact Assessment in Thailand', *Applied Environmental Research*, pp. 61–73. doi:10.35762/AER.2016.38.1.8.

COLOMBIA CASE STUDY

6 COLOMBIA

Prior consultation with Indigenous communities is integrated into the environmental licensing process through a formal mechanism involving the Ministry of the Interior.

Engagement with the community and relevant local institutional actors is a mandatory requirement for the proponent, whose environmental impact studies must be informed by the stakeholders' inputs. The environmental hearing with the community potentially represents an important venue for dialogue between the proponent, stakeholders, and authorities, both at the assessment and the post-approval stage.

Recent standardization led by the Minister of the Environment has led to a broadened scope of social impacts considered in ESIA, e.g. demographic variables, community health and safety, Indigenous communities, economic activities and livelihoods, infrastructure and public services, social well-being with a focus on vulnerable groups, cultural values and practices, visual perception of landscapes, archaeological heritage, local governance and institutions.

6.1 PROCESS FOR ADDRESSING SOCIAL RISKS

In Colombia, ESIA is conducted within the environmental licensing process which is mandatory for the sectors and types of projects exhaustively identified by relevant legislation. The legal framework distributes competence over the environmental licensing process between the central level (National Environmental Licensing Authority (ANLA)) and the regional and local levels (Regional Autonomous Corporations; Sustainable Development Corporations; large urban centres and the authorities created by Law 768 of 2002). The environmental licensing process is uniformly regulated by Decree No. 1076, without distinction between national and subnational processes. The competent environmental authority is responsible for both reviewing the ESIA and making the final decision on the project proposal by granting or denying the environmental license.

The environmental licensing process may cover social issues/factors such as: demographic impacts, community health and safety, change in working conditions and labour market, community well-being with a focus on vulnerable groups, OHS issues, economic activities and livelihoods, impacts on infrastructure and public services, resettlement, Indigenous communities, and tangible and intangible cultural heritage (including archaeological).

Prior consultation with Indigenous communities is integrated into the environmental licensing process through a formal mechanism involving the Ministry of the Interior.

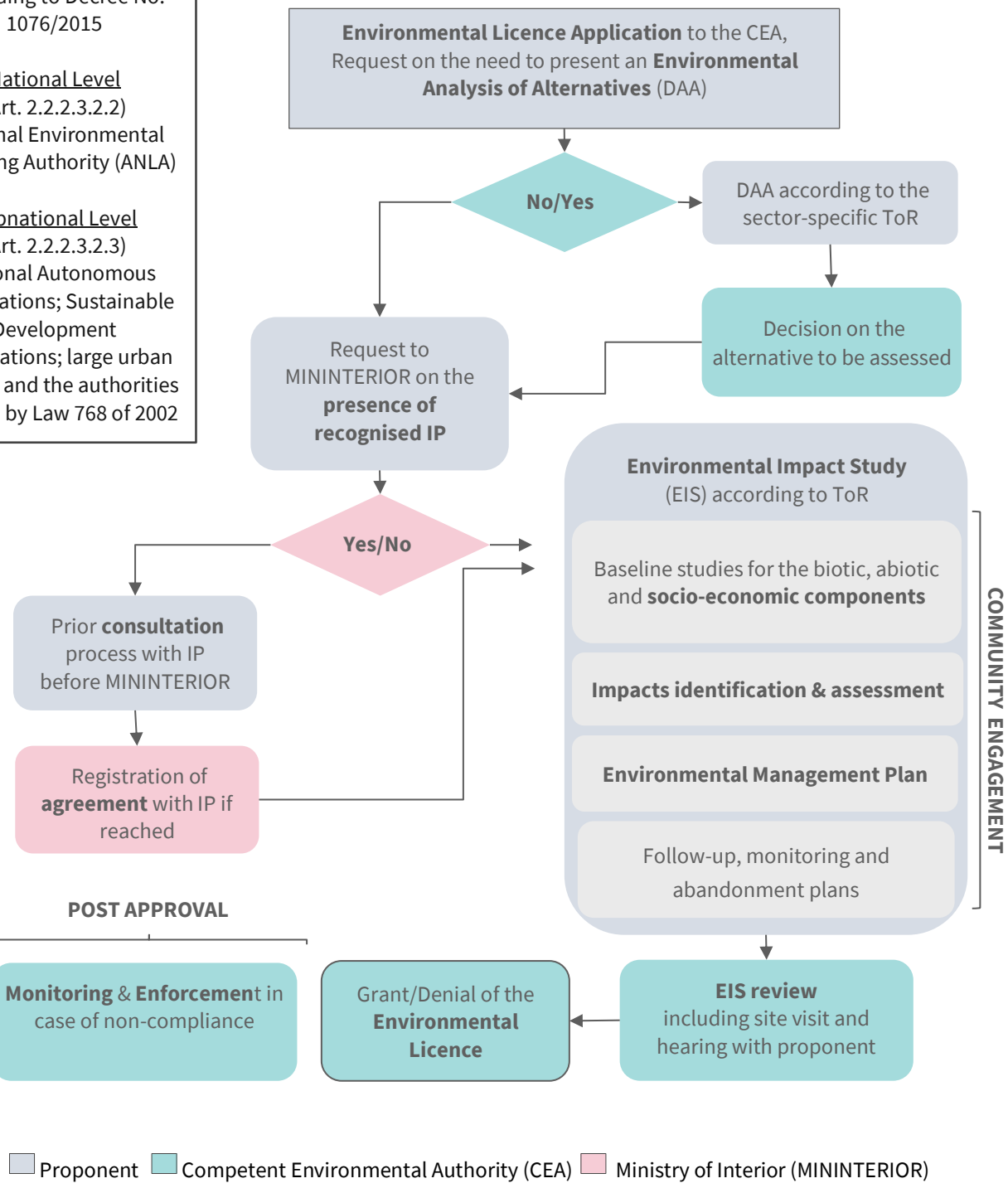
Competent Environmental Authorities (CEA)
According to Decree No. 1076/2015

National Level
(Art. 2.2.2.3.2.2)
National Environmental Licensing Authority (ANLA)

Subnational Level
(Art. 2.2.2.3.2.3)
Regional Autonomous Corporations; Sustainable Development Corporations; large urban centres and the authorities created by Law 768 of 2002

ESIA PROCESS (Law No. 99/1993 and Decree No. 1076/2015)

For projects likely to cause significant environmental impacts listed in Decree No. 1076/2015



6.2 GOOD PRACTICES IN THE COUNTRY SYSTEM

Regulatory consistency and institutional coordination	ESIA is conducted within the environmental licensing process which has its foundation in Law No. 99 of 1993 and is comprehensively regulated by Decree No. 1076 of 2015. The legal framework distributes competence over the environmental licensing process between the central and the regional or local levels by specifying which sectors and projects fall within the mandate of the National Environmental Licensing Authority (ANLA) and which rest within the competence of decentralised authorities (such as the Regional Autonomous Corporations, Corporations of Sustainable Development, or large urban centres).[36] The environmental licensing process is uniformly regulated by Decree No. 1076, without distinction between national and subnational processes. ANLA does not exert any functions within the environmental licensing process overseen by any decentralised authority. However, ANLA establishes which authority is responsible for the licensing process in cases where the project is to be developed on a territory falling under the jurisdiction of more than one authority. As the institution responsible for the environmental policy in the country, the Ministry of the Environment exercises a general role of coordination and guidance among the environmental authorities. When the proposed projects fall within the scope of Decree No. 1076 of 2015, the environmental license must be obtained before the proponent can exercise any of its rights under concession contracts signed with other authorities (e.g. concession contracts signed with the National Mining Authority ANM or National Hydrocarbon Authority ANH).[37] When granted, the environmental licence includes all permits, authorizations and/or concessions for the use of natural resources necessary for the project's life cycle (e.g. emissions permit, groundwater and surface water concession, discharge permit).[38]

[36] Article 2.2.2.3.2.2 specifies projects, works and activities within the mandate of ANLA; Art. 2.2.2.3.2.3 specifies projects, works and activities within the mandate of the decentralised authorities, such as the Regional Autonomous Corporations, Corporations of Sustainable Development, or large urban centres.

[37] Those interested in mining /oil and gas projects must provide evidence of the mining/oil or gas exploration title and/or the concession contract issued and registered by the national mining registry or the oil and gas registry.

[38] This means that when the environmental license is required, obtaining it is enough and specific permits/authorizations required by other legislation do not apply. Such specific permits/authorizations are absorbed into the comprehensive environmental license, which is global in character.

Public engagement and access to information	During the ESIA process, the proponent is required to engage with the project-affected community, including institutional and economic actors, at least in three different moments, with the objective of: 1) providing information on the project; 2) gathering information to inform the project's social baseline and the matrix of potential impacts; and 3) delivering the results of the environmental studies to the stakeholders.[39] Such engagement is requested both for the preparation of the Environmental Analysis of Alternatives (DAA) - when applicable - and the Environmental Impact Study (EIS). Decree No. 1076 of 2015 lists 16 categories of potentially highly impacting projects for which the DDA may be requested (article 2.2.2.3.4.2).[40] A public hearing with an informative purpose might be performed before the issuance of the licence at the request of citizens, NGOs, and/or several public entities (including the Ministry of the Environment, governors and mayors).[41] Opinions and information received at the public hearing are to be considered by the authority when making decisions.[42] A public hearing with the community may be also held after approval when there is a clear violation of the requirements established in the environmental licence itself or environmental regulations.[43] Environmental hearings potentially cover all the issues that fall within the scope of the licensing process, including social issues. They may represent an important venue for dialogue between the proponent, stakeholders, and authorities, both at the assessment and the post-approval stage. VITAL is the online system for the environmental licensing process where relevant information can be accessed by the general public. Any person may request the competent environmental authority information about the status of the licensing process according to the general right to petition, including request of information, which is recognised to all citizens under the Constitution of Colombia (Art. 23) (ANLA, 2018). The consultation process with Indigenous peoples (where applicable) is embedded into the environmental licensing process. If the project develops within an Indigenous territory, a consultation (*Consulta Previa*) is mandatory during the ESIA process in accordance with the Constitution (art. 7 and 330), Law 21 of 1991 and Law 70 of 1993. The process takes place following certification of the presence of Indigenous people by the Minister of the

[39] See Art. 2.2.2.3.3.3 Decree No. 1076 of 2015.

[40] These include e.g. construction of ports, airports, dams, refineries, petrochemical developments, construction of transport infrastructure, nuclear power projects, construction and operation of electric power generating stations, some seismic exploration activities for hydrocarbons, some liquid or gaseous hydrocarbon transport activities.

[41] See, Decree 1076 of 2015, Art. 2.2.2.4.1.1. and ff and Decree No. 330 of 2007

[42] Decree 330 of 2007, Article 2

[43] See, Decree 1076 of 2015, Art. 2.2.2.4.1.1. and ff and Decree No. 330 of 2007

	Interior, who is in charge of guaranteeing that *Consulta Previa* complies with the requirements for effective participation in the decision-making of the communities.[44] The process must be conducted in good faith with a view to reaching an agreement. Prior consent is required only in the cases of projects implying resettlement of the community, the management of toxic substances on their territory and significant social, cultural or environmental impacts threatening their livelihood (Gobierno de Colombia, 2021); (Autoridad Nacional de Licencias Ambientales ANLA, 2021). The requirement for *Consulta Previa* also applies to projects and activities not subject to environmental licensing when they require environmental permits, concessions or authorisations for the use of natural resources in Indigenous lands (Autoridad Nacional de Licencias Ambientales ANLA , n.d.). One limitation of the *Consulta Previa* process lies in it starting with a request to the Ministry of the Interior on the presence of registered Indigenous peoples in the prospective project's area of influence. The mandatory requirement for consultation is therefore limited to those communities indicated in the certification by the Minister. Under the Mining Code (Law 685 of 2001), the Ministry of Mines and Energy may designate 'Indigenous mining zones' within Indigenous territories where mining activities must comply with special provisions. Indigenous people have the right of pre-emption over concessions on mining deposits within those areas. When this right is not exerted, any proposal to explore and exploit minerals within such areas must be decided with the participation of representatives of the Indigenous communities (art. 122), who may identify places where mining should be restricted because of their cultural, social and economic significance under the community's beliefs, uses and customs (art.127) (Roldán Pérez, et al., 2021). The agreements that may result from engagements between proponents and Indigenous communities depend on the capacity of the community to engage with proponents; it is reported that, in practice, communities most often lack awareness of their rights and opportunities to engage with proponents (interview). No specific capacity-building scheme is provided.
Screening	The legal framework identifies exhaustively the sectors and types of projects that require an environmental licence. For projects that may generate greater impacts and belong to the categories listed in Decree No. 1076 of 2015, the licensing process may involve a higher level of assessment, with the proponent being required by the environmental authority to prepare an

[44] There is a register/census of the Indigenous communities living in the country. The register is hold by MINITERIOR. The census process has been based on a self-recognition criterion. For more details about this, see https://www.dane.gov.co/files/investigaciones/boletines/grupos-etnicos/presentacion-grupos-etnicos-2019.pdf Regulation of *Consulta Previa* can be found in the recent Directive 08 of 2020 of Presidency of the Republic.

	Environmental Analysis of Alternatives document (DAA)[45]. With DAA the proponent must provide different implementation options for the project, highlighting the potential environmental impacts (positive and negative) for each alternative. The environmental authority will select which option should proceed further and be assessed within the ESIA process for minimising adverse impacts on the environment while optimising the use of natural resources (through a cost-benefit analysis, among other criteria) (Vargas, et al., 2020). In this case, the environmental authority will exert a screening function within the scope of the individual project proposed, contributing indirectly to project design. One drawback of this process is that projects not included in one of the statutory categories[46] do not undergo ESIA, regardless of their actual environmental and socio-economic impacts. The environmental authority has no room for discretion in this respect; there is no clause allowing it to consider and assess projects that, although not falling into any of the fixed categories, may have significant socio-environmental impacts. With the screening taking place ex ante at the legislative level, the matter is ultimately subject to the political choices of the Lawmaker. Over the years there has reportedly been a reduction in activities requiring an environmental license (Toro, et al., 2010).
Scoping of social issues	Scoping of social issues is carried out through the proponent's environmental impact studies (DAA when applicable and EIS) which must comply with ANLA'S General Methodology for the presentation of environmental studies (Autoridad Nacional de Licencias Ambientales ANLA, 2018) and the sector-specific TOR.[47] While depending on the sector concerned, the ToR typically require proponents to conduct baseline studies and scope social issues within the demographic, infrastructure and services, economic, cultural, archaeological, political-organizational dimensions, and the development trends of both the projects' direct and indirect area of influence.[48] Engagement with the community is a mandatory requirement to collect primary information relevant to scoping. When no sector-specific ToR are available, the competent authority will develop specific ToR according to the specific characteristics of the project.

[45] Article 2.2.2.3.4.2. of Decree No. 1076 of 2015 lists 16 categories of potentially highly impacting projects for which the DDA may be required. These include e.g. construction of ports, airports, dams, refineries, petrochemical developments, construction of transport infrastructure, nuclear power projects, construction and operation of electric power generating stations, some seismic exploration activities for hydrocarbons, some liquid or gaseous hydrocarbon transport activities.

[46] See, Article 2.2.2.3.2.2 and Art. 2.2.2.3.2.3 of Decree No. 1076 of 2015.

[47] On their respective websites, environmental authorities present sector-specific TOR, for the national level see ANLA's website at https://www.anla.gov.co/normatividad/documentos-estrategicos/terminos-de-referencia.

[48] See e.g. Ministerio de Ambiente, Vivienda y Desarrollo Territorial, 2010.

	The proponent is not required to submit a stand-alone document on the scoping of social issues. This can be a weakness when sector-specific ToR apply as they are uniform within the relevant sector and may not capture social issues specific to the project. In this case, there is no moment of dialogue between the applicant and the authority that focuses on the identification of relevant social factors prior to the assessment of the projects' potential impacts.
Assessment of social impacts	ANLA's General Methodology and the sector-specific ToR provide guidance for the identification and assessment of socio-economic impacts. They generally focus on the demographic, 'spatial' (local infrastructure and services), economic (incl. economic activities, employment and livelihoods), cultural (including Indigenous-related matters), archaeological, political-organizational, and 'development trends' dimensions. If the proposed project involves physical displacement, the proponent is required to provide a resettlement plan. Cumulative impacts - where relevant - should normally be considered (Ministerio de Ambiente, Vivienda y Desarrollo Territorial, 2010) The General Methodology does not mention working conditions and OHS issues. Community health and safety is also not expressly considered, although impacts on the quality of air, water, and noise are factors to be taken into account. However, the Ministry of the Environment has recently issued the List of Specific Environmental Impacts in the Framework of Environmental Licensing (the List), a technical document with the objective of standardising the environmental and socio-economic impacts to be considered in practice.[49] In fact, such a standardisation process has had the effect of clarifying and at the same time broadening the impact areas identified in the General Methodology. The document is conceived as a technical reference for the process of EIA and is feasible to be updated on a periodical basis. The list is defined as non-exhaustive and dynamic. According to the List, proponents should assess positive and negative impacts on the following factors (where relevant): demographic variables, community health and safety, OHS, Indigenous communities, economic activities and livelihoods, working conditions and changes in the characteristics of the labour market, infrastructure and public services, social well-being with a focus on vulnerable groups (no comprehensive reference to gender but increase in domestic violence and prostitution rate included), cultural values and practices, visual perception of landscapes, archaeological heritage, local governance and institutions, among others (Ministerio de Ambiente y Desarrollo Sostenible, 2020). It is worth noting that

[49] While ANLA's General Methodology explains in general terms which types of impacts must be considered , the technical document aims to provide more clarity by listing detailed impacts per each impact category.

	the List includes issues relating to community health and safety (including a long list of disease categories to consider – such as viral diseases and risk of infections - and change in road safety), working conditions, and OHS, such as the incidence of accidents at work, occupational diseases and risks, while the General Methodology is silent on such impact areas. Under impacts on culture, the List specifies adverse impacts such as destruction of sacred sites, diminished sense of belonging to the land, change in customs, change/loss in traditions and customs, and loss of traditional resources. There is no express reference to impacts due to influx of workers, however, they may be considered implicitly covered by the category of impacts on demographic variables, infrastructure and services.
Mitigation and management of negative impacts	Management measures concerning socio-economic impacts are included in the Environmental Management Plan (EMP) that must be part of the EIS. The EMP must establish the management measures in line with the principle of the mitigation hierarchy.[50] Since projects must not generate residual impacts amounting to a violation of the community's fundamental rights, it is stated that EMP must not establish compensation measures for those types of impacts (Autoridad Nacional de Licencias Ambientales ANLA, 2018). Proponents must formulate a follow-up and monitoring plan for both the state of the environment (including the socio-economic dimension) and the effectiveness of the management measures to allow adjustments where necessary. The Plan must include periodic calculation and analysis of indicators. Emergency preparedness plans and dismantling and abandonment plans to guarantee the environmental and social sustainability of the project are also required. When the project has been subject to the prior consultation process with Indigenous peoples, the EMP must include those management measures agreed with the communities present in the area.
Enhancement and management of positive impacts	In the Oil & Gas sector, companies - as part of their social responsibility- are required to define community development programs (PBCs) within the framework of the hydrocarbon exploration and production contracts signed with the National Oil & Gas Agency (ANH). The PBCs aim at promoting sustainable development in projects' areas of influence and must be implemented under the terms and conditions established by the ANH (Acuerdo No. 05 de 2011). Proponents are required to ensure public participation in the development and implementation monitoring of PBCs, ensure coherence with ESIA and environmental and social management plans, guarantee transparency and respect for human rights and rights of

[50] Thus, the Plan must first aim to prevent impacts, then mitigate and minimize those that are unavoidable, and finally compensate the residual ones that cannot be internalised.

	ethnic minorities (Agencia Nacional de Hidrocarburos ANH, 2013); (Agencia Nacional de Hidrocarburos, n.d.). According to the Mining Code, the municipalities receiving royalties from mining in Indigenous territories must allocate the revenues to the benefit of the Indigenous communities settled therein.[51] When proponents obtain title to explore and exploit within the 'Indigenous mining areas', they must train the community's members and preferably involve them in their work and activities (art. 128).
Monitoring, inspections and enforcement	After the issuance of the licence, the licensee must implement the follow-up and monitoring plan included in the EIS. A modification of an environmental licence must be requested to the environmental authority when the project generates additional impacts to those initially identified in the licence. In the post-approval phase, the competent environmental authority (ANLA or relevant decentralised authorities) is responsible for monitoring and enforcement. It may conduct inspections at the project site, require information and review the monitoring conducted by the licensee. In case of non-compliance, the authority has the power to enforce the conditions set by the license. The authority may also impose additional measures to prevent, mitigate or correct impacts not initially identified during the ESIA process. There is no requirement for participatory community monitoring. Law 1333 of 2009 establishes the environmental sanctioning procedure and attributes sanctioning powers to the environmental authorities.[52] The powers given to these authorities include suspension of activities when causing damage to the environment or human health and suspension of projects when executed in breach of the terms of permits, concession, authorisation or licence (art. 36). Moreover, the authorities may apply fines, order the temporary or definitive closure of the establishment, as well as revocate the environmental licence (art. 40).
Grievance management	The decision of whether to grant or deny a licence is appealable before the same environmental authority by the applicant, government agencies, individual citizens, and public interest groups (NGOs).[53] A public hearing with the community may be held after approval when there is a clear violation of the requirements established in the environmental licence itself

[51] Art. 129, Law 685 of 2001 (Mining Code)

[52] See Maya et al., 2018.

[53] Law No. 1437 of 2011. See also Netherlands Commission for Environmental Assessmnent, 2019.

	or environmental regulations.[54] Any person can lodge an environmental complaint with a competent environmental authority.

REFERENCES

Agencia Nacional de Hidrocarburos ANH, 2013. *Línea de Base: Programa en Beneficio de las Comunidades Implementados por el Sector de Hidrocarburos en Colombia.* [Online]
Available at: https://www.anh.gov.co/Seguridad-comunidades-y-medio-ambiente/Paginas/Programa-en-Beneficio-de-las-Comunidades.aspx

Agencia Nacional de Hidrocarburos, n.d. *Anexo F Terminos y Condiciones para los Programas en Beneficio de las Comunidades -PBCs,* s.l.: s.n.

ANLA, A. N. d. L. A., 2018. *Estrategia de Participación Ciudadana,* Bogotà: s.n.

Autoridad Nacional de Licencias Ambientales ANLA , n.d. *Licencias ambientales - Concepto jurídico sobre la consulta previa en proyectos que afecten a comunidades étnicas, requieran o no de licencia ambiental.* [Online]
Available at: https://www.anla.gov.co/eureka/conceptos-juridicos/2817-licencias-ambientales-consulta-previa-en-proyectos-que-afecten-a-comunidades-etnicas-requieran-o-no-de-licencia-ambiental

Autoridad Nacional de Licencias Ambientales ANLA, 2018. *Metodología General para la Elaboración y Presentación de Estudios Ambientale,* Bogotà: s.n.

Autoridad Nacional de Licencias Ambientales ANLA, 2021. *Módulo de control social al licenciamento ambiental de proyectos, obras y actividad de competencia de la Autoridad Nacional de Licencias Ambientales,* Bogotà: Departamento Administrativo de la Función Pública.

Gobierno de Colombia, 2021. *Legal Guide to do Business in Colombia,* s.l.: s.n.

Maya et al., 2018. El procedimiento sancionatorio ambiental: análisis de una metodología que sigue en construcción. *Revista de la Facultad de Derecho y Ciencias Politicas -UPB.*

Ministerio de Ambiente y Desarrollo Sostenible de la Nación , 2021. *Manual técnico para la consulta a pueblos originarios en la gestión de bosques y cambio climático,* s.l.: Ministerio de Ambiente y Desarrollo Sostenible de la Nación.

[54] See Decree 1076 of 2015, Art. 2.2.2.4.1.1. and ff and Decree No. 330 of 2007.

Ministerio de Ambiente y Desarrollo Sostenible, 2020. *Listado de impactos ambientales específicos en el marco del licenciamiento ambiental,* s.l.: s.n.

Ministerio de Ambiente, Vivienda y Desarrollo Territorial, 2010. *Términos de Referencia - Sector Hidrocarburos,* Bogotà: s.n.

Netherlands Commission for Environmental Assessmnent, 2019. *Colombia -ESIA profile.* [Online] Available at: https://www.eia.nl/en/countries/colombia/esia-profile#decision+making+%26amp%3B+appeal
[Accessed 2022 March 02].

Roldán Pérez, C., Zarate Yepes, C. A. & López Gómez, L. F., 2021. Minería y comunidades étnicas en Colombia. *Advocatus Universidad Libre Seccional Barranquilla,* pp. 75-108.

Toro, J., Requena, I. & Zamorano, M., 2010. Environmental impact assessment in Colombia: Critical analysis and proposals. *Environmental Impact Assessment Review ,* pp. 247-261.

Vargas, A., Sarmiento Erazo, J. P. & Diaz, D. ,., 2020. Has Cost Benefit Analysis Improved Decisions in Colombia? Evidence from the Environmental Licensing Process. *Ecological Economics.*

CANADA CASE STUDY

7 CANADA

Social aspects in IA have a broad scope, including cultural, health and economic issues. There is a requirement to consider the project's contribution to sustainability, including social sustainability.

Comprehensive public participation is required for all phases of the IA, including in screening and scoping. The government provides funding and capacity building to the public and Indigenous groups to enable them to participate in the assessment process effectively. Disclosure and information-sharing provisions are extensive.

Indigenous rights and interests have strong recognition in IA. Impacts on Indigenous rights, including cultural rights, and the rights to self-determination, must be assessed (even if no environmental change occurs). Indigenous governing bodies are recognized as partners in the assessment. Indigenous knowledge and law are incorporated into the assessment.

Gender-Based Analysis Plus (GBA+) is required at the federal level, integrating into the assessment identity factors (sex, gender including LGBTQ identities, physical and mental ability, age, religion, ethnicity, etc.) and how these intersect with context and people's experiences of projects. GBA+ brings a human rights perspective to the assessment by stressing the rights of the most vulnerable and helps inform mitigation measures that address differential impacts.

7.1 PROCESS FOR ADDRESSING SOCIAL RISKS

Canada has a complex regulatory and institutional framework covering approvals of investment projects. We focus our analysis on the federal IA process, as outlined in Canada's Impact Assessment Act (the Act) adopted in 2019[55] for major projects on designated project lists established in regulation. The Impact Assessment Agency of Canada (the Agency), a federal body accountable to the Minister of Environment and Climate Change (the Minister), is responsible for conducting IA under the Act. We also consider IA practice at the provincial and territorial levels for projects under these jurisdictions.

There is no autonomous SIA process under federal, provincial, or territorial legal frameworks and social issues are integrated into the broader comprehensive IA process. The literature review and our interviewees indicated that the 2019 Act is quite progressive regarding social impacts. Ensuring respect for the rights of the Indigenous peoples is one of the stated purposes of the Act. Good practices for SIA also exist in territorial and provincial regulation.[56]

While the Act is comprehensive in the coverage of social impacts, it is limited in application. Many projects on federal lands or funded by the federal government that are not on designated projects lists are covered by a different set of provisions for IA which are weaker[57]. Most industrial projects in Canada fall under provincial or territorial regimes for IA. These regimes vary in comprehensiveness, particularly regarding social impacts. While the Agency has expressed intention to extend the good practice found in the new federal regulation to other jurisdictions[58], there is little evidence of progress toward such convergence in practice.

Another set of challenges is related to the newness of the legislation and its limited practical application to date. Critical implementation issues include the lack of experience and capacity of the Agency, other federal bodies, proponents, and their consultants to implement the new requirements, particularly on social impacts. The results of efforts to increase capacity are not evident yet.

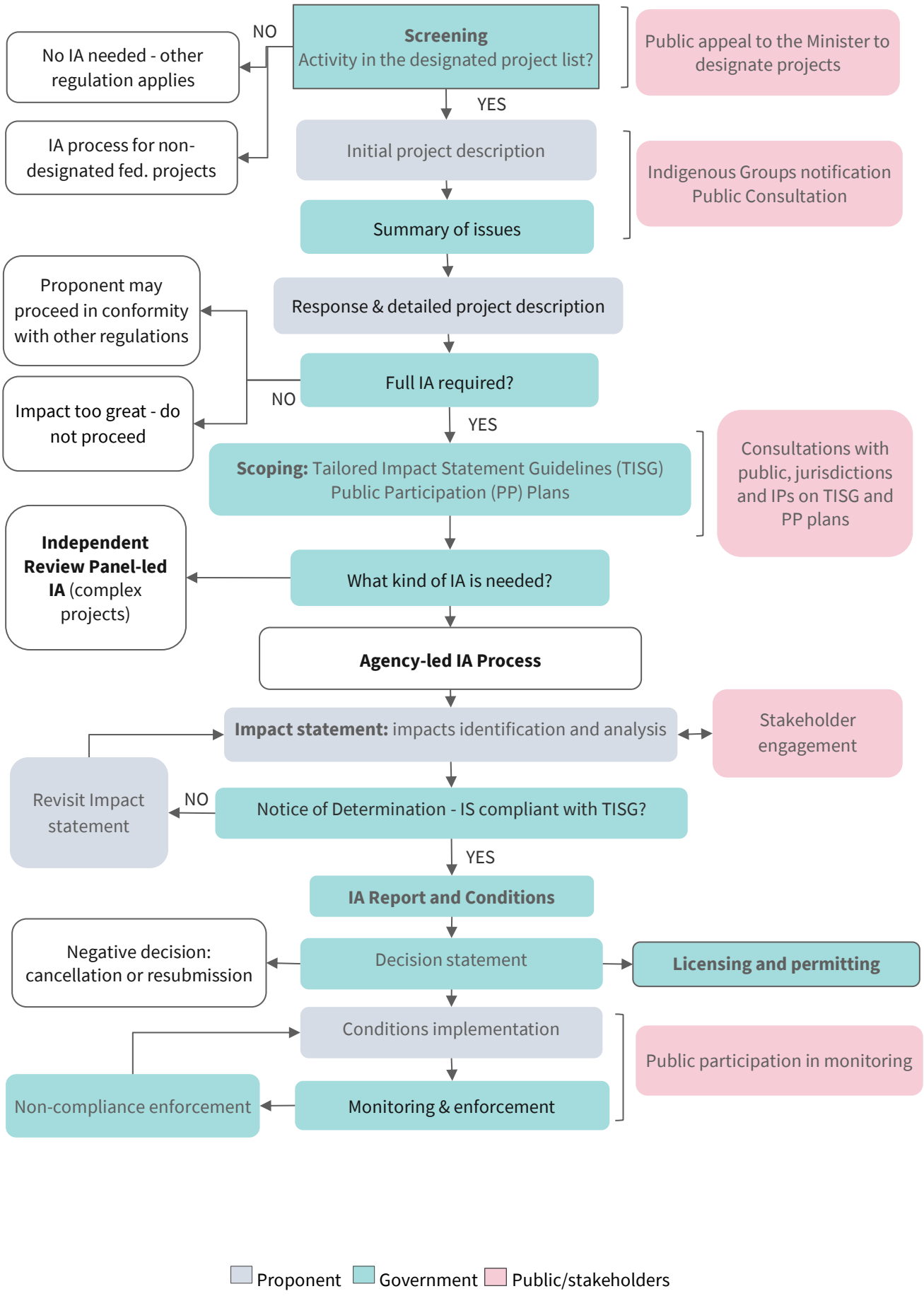
The process diagram below describes a simplified IA process in Canada for designated projects at the federal level, including requirements for public participation, and key roles and responsibilities.

[55] https://laws.justice.gc.ca/eng/acts/I-2.75/FullText.html

[56] Mackenzie Valley Resources Management Act, Nunavut Planning and Project Assessment Act, British Columbia Environmental Assessment Act, Yukon Environmental and Social Assessment Act

[57] For example, no screening and scoping phase, limited public participation requirements, shorter timelines for the assessment.

[58] https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/basics-of-impact-assessments.html


Screening
Activity in the designated project list?
NO
No IA needed - other regulation applies
IA process for non-designated fed. projects
YES
Public appeal to the Minister to designate projects
Initial project description
Summary of issues
Indigenous Groups notification
Public Consultation
Response & detailed project description
Full IA required?
NO
Proponent may proceed in conformity with other regulations
Impact too great - do not proceed
YES
Scoping: Tailored Impact Statement Guidelines (TISG)
Public Participation (PP) Plans
Consultations with public, jurisdictions and IPs on TISG and PP plans
What kind of IA is needed?
Independent Review Panel-led IA (complex projects)
Agency-led IA Process
Impact statement: impacts identification and analysis
Stakeholder engagement
Revisit Impact statement
NO
Notice of Determination - IS compliant with TISG?
YES
IA Report and Conditions
Negative decision: cancellation or resubmission
Decision statement
Licensing and permitting
Conditions implementation
Public participation in monitoring
Non-compliance enforcement
Monitoring & enforcement
Proponent
Government
Public/stakeholders

7.2 GOOD PRACTICES IN THE COUNTRY SYSTEM

Regulatory consistency and institutional coordination	The Act sets out a well-defined, phased process (Planning, Impact Statement, Assessment, Decision-making and Monitoring phases) with specific timelines, clear roles, and responsibilities, supported by guideline documents[59]. The coverage of social issues - cultural, health, economic impacts, Indigenous peoples, gender and vulnerable groups - is comprehensive. A single agency, the Impact Assessment Agency of Canada, leads all IA for major projects. Other government departments and bodies play an essential role as sources of information and expertise; they participate in public consultations and review Impact Statement topics relevant to their respective mandates and participate in monitoring review committees. Some complex projects with greater potential for adverse impacts are assessed by independent review panels whose members are technical experts and free of bias or conflicts of interest related to the project. The Act includes a possibility that Indigenous groups could take over all or part of the IA. However, large capacity deficits are likely to preclude Indigenous groups from successfully owning the IA process. There is no provision for joint decision-making with Indigenous people (Mainville and Pelletier, 2021), as the Minister of Environment and Climate Change makes the ultimate IA decision. The Minister determines whether the project and any adverse impacts (to be addressed through the identified mitigation measures)are in the public interest and whether the IA adequately fulfilled the Crown's duty to consult and accommodate Indigenous peoples. Proponents and their consultants conduct all necessary studies according to the Agency's instructions and provide predictions of impacts and information on how these will be managed through mitigations in the Impact Statement. There is no legislation on the accreditation of consultants. Specific IA requirements for social consultants, e.g. ethical standards, are also lacking. While the Agency offers training opportunities on the new Act adapted to various audiences, including Indigenous groups, the capacity of proponents and consultants on social aspects remains low (Doelle and Sinclair, 2021).

[59] https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act.html

	The Act includes provisions to avoid multiple assessments for the same project. It allows for cooperation and coordinated action between jurisdictions, including Indigenous governing bodies, such as coordinated assessments, substitution assessments, joint review panel assessments, and delegation.[60] Timelines are predetermined for each phase of the assessment (Planning 180 days, Impact Statement 3 years, Assessment 300 days for Agency-led process, Panel Review Process 600 days, Decision-making 30 days) which creates certainty for proponents but may limit meaningful participation.[61]
Public engagement and access to information	Public participation is required for all phases of the IA process. There is an emphasis on requirements for early public engagement in the planning phase, including in the screening and scoping. A public participation plan for the IA process is required (at the end of scoping). This helps encourage the use of a wide range of public engagement tools rather than defaulting to public hearings. (Sinclair and Diduck, 2021) Meaningful participation is not defined in the Act; interpretation may be left to the discretion and policy and guidance documents. Participation activity for those *directly affected* is reportedly overemphasized and potentially leaves out others who may have legitimate concerns about the project, e.g., civil society organizations (Sinclair and Diduck, 2021). The Act includes specific provisions to ensure IAs are conducted in a manner that respects the rights of Indigenous peoples, advances inter-jurisdictional cooperation, and integrates Indigenous knowledge into the decision-making process. The Agency must offer to consult with any affected Indigenous group, and the consultation should reflect the nature and potential adversity of impacts on Indigenous rights. Additional government commitments in relation to consultations and cooperation with Indigenous people are contained in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Act[62] adopted in 2021.. While the Act does not mandate FPIC, it includes provisions for the government to develop an action plan to review and align the laws of Canada with UNDRIP, including FPIC requirements. Information sharing is required for all critical steps in the IA process through the Public Registry[63], a site that is available to the public and has

[60] https://www.canada.ca/content/dam/iaac-acei/documents/acts-regulations/cooperative-impact-assessment-eng.pdf

[61] While the Agency has the ability to extend (or shorten) deadlines, a more flexible system of defining timelines for each IA depending on the circumstances (e.g. community engagement may require longer times due to low capacity) would help promote meaningful participation.

[62] https://laws-lois.justice.gc.ca/eng/acts/U-2.2/

[63] https://iaac-aeic.gc.ca/050/evaluations

	all records on designated projects; it includes requests for public participation, assessment reports, decision making, monitoring, and enforcement information. Reasons for key decisions during the assessment process must also be published. The legislation includes provisions for funding and capacity building of the public and Indigenous groups to meaningfully participate in and respond to the IA process.[64]
Screening	The initial screening process is quick and efficient, based on a designated project list established in the Physical Activities Regulation (updated regularly) and annexed to the Impact Assessment Act[65], which covers major activities and projects with the most significant potential for their adverse effects in areas of federal jurisdiction. The thresholds relate to the size of the production capacity or size of the project, not its potential environmental or social consequences. The public is provided with an opportunity to petition the Minister to assess a non-designated project. To date, the Minister reportedly has not tended to exercise discretion to designate projects based on petitions[66] (Doelle and Sinclair, 2021). Additional screening steps are required early in the planning process- the development of the Initial Project Description by the Proponent, its review by the Agency to enable preparation of a Summary of Issues which is then reviewed though public consultations. They aim to confirm whether the federal assessment is neededconsidering, among other factors, the potential for adverse effects on social, health and economic (livelihoods) aspects and impacts on the rights of Indigenous people. The decision to proceed must consider comments received from the public. The input of Indigenous groups and other jurisdictions is also incorporated. The final decision on whether to proceed to federal assessment is made by the Minister.
Scoping of social issues	During the scoping phase, the Agency develops a list of issues to include in the IA on the basis of consultation with the public, federal and local agencies (i.e., Health Canada) and experts. Project alternatives must be considered, including a 'no project alternative' and alternative means of carrying out the project. However, there is a reported lack of clarity and guidance on comparing and evaluating

[64] https://www.canada.ca/en/impact-assessment-agency/services/public-participation/funding-programs.html

[65] https://canadagazette.gc.ca/rp-pr/p2/2019/2019-08-21/html/sor-dors285-eng.html

[66] See an example of a declined petition: https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-3766.

	alternatives, particularly from the social sustainability perspective (Kwasniak and Mascher, 2021). The Agency issues Tailored Impact Assessment Guidelines for the proponent to use in its IA report. The Tailored Impact Statement Guidelines Template available on the IAA site[67] sets out a comprehensive list of potential information requirements that may be included in the TIS Guidelines. The tailoring is based on the nature, complexity and context of the project, and is informed and guided by consultations. The TIS guidelines define the scope of social, health and livelihood issues to be included and the information that needs to be gathered by the proponent. A record of public participation in scoping is required in all jurisdictions. The practice of meaningful public input in the scoping decisions is reportedly still rare in the federal IA. More opportunities for public feedback are provided in the territorial systems where community inputs are prioritized.
Assessment of social impacts	The Act has introduced a requirement to include in the IA broader social, health, and economic considerations, in addition to biophysical ones. *Health assessment* considers adverse and positive effects on human health or changes to the baseline community health profile based on changes to the environment, health, social and economic conditions. The focus is on effects on health outcomes, risks, or social determinants of health and covers elements such as: • potential effects on mental and social well-being • effects on availability, use and consumption of country foods (traditional foods) • different assessment thresholds for vulnerable populations, including by sex and age • effects on access to health facilities. *Social assessment* must use community and Indigenous knowledge and covers: • effects on the local and regional infrastructure facilities and services • changes at the community level that affect social conditions as a result of increased population, workers camps, economic activity, cost of living • in-and out-migration effects • social divisions that might be intensified as a result of a project

[67] https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/tailored-impact-statement-guidelines-projects-impact-assessment-act.html

- potential effects of changes to structures, sites or things of historical, archaeological, paleontological or architectural significance, etc.

Economic assessment covers positive impacts such as job creation, fiscal revenue, royalties for local communities, as well as potential adverse effects:

- changes in local employment and potential for worker shortages in certain sectors within the community as a result of the project
- effects of the project on the traditional Indigenous economy, including the potential loss of traditional economies and jobs
- changes to property values
- changes to the cost of living due to the project, etc.

The Act includes a requirement to undertake Gender-based Analysis Plus (GBA+) which entails the consideration of sex, gender, including LGBTQ, race, ethnicity, religion, age, socio-economic status, mental ability, physical ability, and how these lead to differentiated project impacts. GBA+ adds a vulnerability lens and human rights lens to all elements of the assessment (Majekolagbe, Seck and Simons, 2021). GBA+ guidance includes requirements to conduct consultation with diverse groups in a manner suitable to these groups, disaggregate baseline and monitoring data by sex, age, ethnicity, Indigeneity, ability, and any other community-relevant identity factor, and to address issues identified in the GBA+ through mitigation and enhancement measures.

Labor and OHS requirements are not covered in the Impact Assessment Act. Provincial and territorial labor and OHS legislation apply to most projects. (Federal Labor Code applies to federal government employees and workers on large transboundary projects, e.g. pipelines). There are sector specific OHS requirements, e.g. for mining. OHS and labor issues are reviewed as part of licensing and permitting processes which take place after the IA process.

The Act requires an assessment of impacts on Indigenous rights. There are provisions requiring Indigenous knowledge and community knowledge to be considered in assessments, in addition to scientific information.

While the Agency has developed a detailed guidance document to include social, health, and livelihood considerations and GBA+, the expertise of proponents and their consultants to implement this is insufficient (interviewee). There is also no specific requirement to involve specialist government departments in identifying and analyzing social issues.

Mitigation and management of adverse impacts	Under the Act, mitigation measures include measures to eliminate, reduce, control or offset the adverse effects of a designated project, and include restitution for any damage caused by those effects through replacement, restoration, compensation or other means. The Agency evaluates mitigation measures during the review of the Impact Statement and may modify them. Mitigation measures are then considered for inclusion as conditions in the IA Decision Statement Proponents are required to use an approach that prioritizes the avoidance and reduction of the adverse effects at the source. They need to describe mitigation measures that are specific to each health, social or economic effect identified. Mitigation measures are to be written as specific commitments, including implementation arrangements, responsible parties, KPIs, etc. Differentiated mitigation measures should be proposed so that adverse effects do not fall disproportionately on vulnerable populations, and they are not disadvantaged in sharing any development benefits and opportunities resulting from the project. These mitigation measures should be developed in collaboration with those who are vulnerable and/or disadvantaged. Proponents need to document specific suggestions raised by each Indigenous group for avoiding, mitigating, or otherwise accommodating the project's environmental, health, social and economic effects. The Act includes adaptive management provisions, i.e., the requirement to adjust mitigation measures and management plans to new circumstances as the project progresses. Impact-Benefit Agreements[68] (IBAs) are an additional tool used by companies to manage adverse impacts on Indigenous communities[69]. IBAs are not prescribed or mandated by legislation, rather, are voluntary common law contracts whose terms vary widely. IBAs are negotiated between proponents and Indigenous communities. They entail community consent to the project; in exchange, the proponent pledges to identify, mitigate, offset and monitor environmental or socio-cultural impacts. IBAs are flexible and be tailored to suit variation in context over time (Hummel, 2019). There is no regulatory link between IBAs and IAs, so IBAs may be concluded before the IA is complete. In these cases, communities may give their

[69] There are no regulatory legal barriers to apply IBAs to non-Indigenous communities. It is common business practice in Canada to put in place IBAs for Indigenous communities.

	consent to the project without having a full picture of adverse impacts. IBAs may also limit the community's ability to push back on critical issues and negatively affect the responsiveness of the proponent in the IA process after the proponent has received community consent to the project (Gibson and O'Faircheallaigh, 2010).
Enhancement and management of positive impacts	There are no federal legal requirements for benefit-sharing agreements, but the practice of signing such agreements is widespread. Some requirements for benefit-sharing agreements exist in subnational legislation, for example, in the Nunavut territory. Provisions in IBAs may include infrastructure development, local economic development initiatives, social projects, commitment to hire local people and procure local products and services, and equity participation in projects by Indigenous groups. Federal, provincial and territorial governments support, to a varying degree, the negotiation of IBAs. Confidentiality provisions in most IBAs limit the full participation of affected community members in negotiations. This leads to perceived lack of transparency surrounding the use and distribution of IBA benefits among members and communities (Gibson and O'Faircheallaigh, 2010). Community capacity challenges affect the implementation of IBAs and the transfer of long-term benefits to communities, particularly in the case of local employment and procurement provisions (Gibson and O'Faircheallaigh, 2010).
Monitoring, inspections and enforcement	The post-approval stage involves mandatory monitoring of compliance with terms and conditions, verifying the accuracy of predictions made during the assessment, and evaluating the effectiveness of mitigation measures. Enforcement of approval conditions implementation includes measures such as warnings, orders, injunctions, prosecution, and monetary penalties. The Proponent is responsible for developing and carrying out the follow-up and monitoring programs. The Agency establishes monitoring committees comprising federal agencies, the public, Indigenous people, etc., to help provide additional confidence in monitoring. The Minister may amend the Decision Statement by adding, removing and/or modifying a condition if mitigation measures are found ineffective. The results of monitoring are made available to the public through the Registry. Beyond access to information, specific details of public involvement in and accountability for the post-approval process are unclear in the legislation (Sinclair and Diduck, 2021).

	Overall, monitoring and enforcement by federal and local agencies remain weak, particularly on social issues, primarily due to capacity gaps.
Grievance management	There are no specific non-judicial grievance mechanism requirements in the legislation. Community members and Indigenous people can access the judicial system and exercise rights available to citizens generally or rights arising from any specific property or other Indigenous interests they hold. Alternative dispute resolution (ADR) mechanisms are common, particularly in the case of projects affecting Indigenous people. ADR clauses in IBAs provide for a tiered approach to dispute resolution – negotiation, mediation and arbitration – before parties can resort to litigation. Such mechanisms are co-managed by communities and companies. More recently, ADRs have evolved to integrate Indigenous customs, conventions and culturally appropriate methods of resolving disputes (Couturier, 2020). Regulation on labor grievance procedures exists for union workers and federal employees.

REFERENCES

Couturier, D. (2020) 'Walking Together - Indigenous ADR in Land and Resource Disputes', *Journal of the Canadian Collaborative for Engagement & Conflict Management*, 1, p. 54.

Doelle, M. and Sinclair, A.J. (eds) (2021) *The Next Generation of Impact Assessment: A Critical Review of the Canadian Impact Assessment Act*. Irwin Law.

Gibson, G. and O'Faircheallaigh (2010) *IBA community toolkit: Negotiation and implementation of impact and benefit agreements*. Walter & Duncan Gordon Foundation.

Hummel, C. (2019) 'Behind the Curtain, Impact Benefit Agreement Transparency in Nunavut', *Les Cahiers de droit*, 60(2), pp. 367–393. doi:10.7202/1060981ar.

Kwasniak, A. and Mascher, S. (2021) 'Purpose, Need, and Alternatives Through the Lens of Sustainability and the Public Interest', in Doelle, M. and Sinclair, A.J. (eds) *The Next Generation of Impact Assessment: A Critical Review of the Canadian Impact Assessment Act*. Irwin Law.

Mainville, S. and Pelletier, R. (2021) 'UNDRIP, Decision Making, and the Role of Indigenous Peoples', in Doelle, M. and Sinclair, A.J. (eds) *The Next Generation of Impact Assessment: A Critical Review of the Canadian Impact Assessment Act*. Irwin Law.

Majekolagbe, A., Seck, S.L. and Simons, P. (2021) 'Human Rights and the Impact Assessment Act: Proponents and Consultants as Duty Bearers', in Doelle, M. and Sinclair, A.J. (eds) *The Next Generation of Impact Assessment: A Critical Review of the Canadian Impact Assessment Act*. Irwin Law.

Olszynski, M. (2021) 'Monitoring, Follow-Up, Adaptive Management, and Compliance in the Post-decision Phase', in Doelle, M. and Sinclair, A.J. (eds) *The Next Generation of Impact Assessment: A Critical Review of the Canadian Impact Assessment Act*. Irwin Law.

Sinclair, A.J. and Diduck, A.P. (2021) 'Considering the Potential for Meaningful Public Participation Under Canada's Impact Assessment Act', in Doelle, M. and Sinclair, A.J. (eds) *The Next Generation of Impact Assessment: A Critical Review of the Canadian Impact Assessment Act*. Irwin Law.

AUSTRALIA CASE STUDY

8 NEW SOUTH WALES (NSW)

For projects raising public controversy, the competence to make the final decision on the project proposal rests with an independent body, the Independent Planning Commission (IPC), rather than the Minister for Planning and Homes.

During the assessment or post-approval phase, a Community Consultative Committee (CCC) may be established to foster an ongoing dialogue between the proponent/developer and community representatives.

A new Government guideline provides a comprehensive framework for SIA, covering community and way of life, including people's sense of place, health and well-being with a focus on vulnerable people, public safety and security, aesthetic value and amenity, livelihoods, culture, both Indigenous and non-Indigenous, including customs, practices and shared values.

8.1 PROCESS FOR ADDRESSING SOCIAL RISKS

In New South Wales, all State significant projects undergo a comprehensive ESIA process overseen by the Department of Planning and Environment (the Department). The authority responsible to grant or deny consent upon the Department's assessment is the Minister for Planning and Homes (the Minister) or, under certain circumstances, the Independent Planning Commission (IPC).

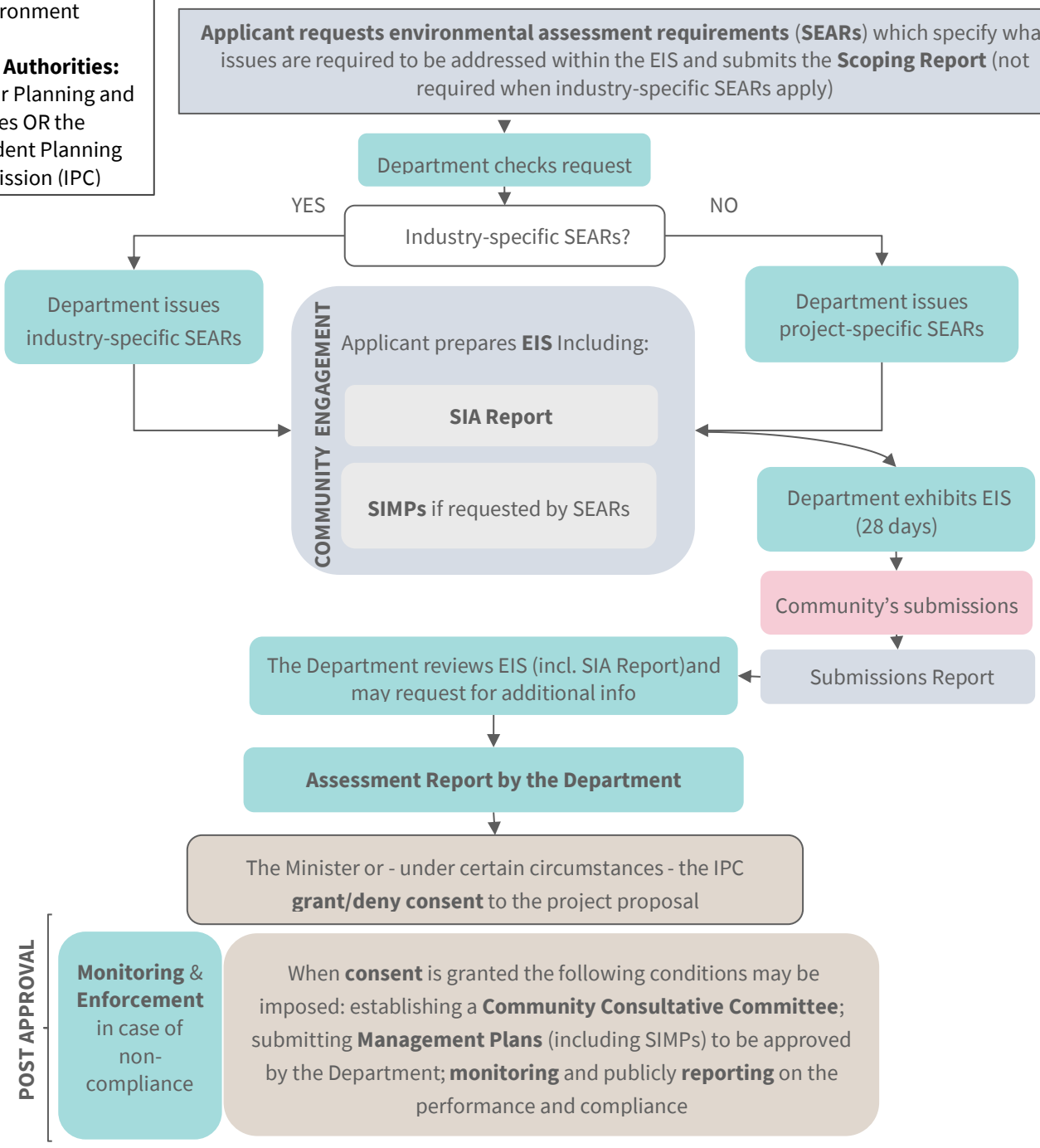
A recent non-statutory Guideline on SIA has been issued by the Department to better define the ESIA scope. The social issues/factors covered by ESIA include demographic impacts, community health and safety, community wellbeing, including a focus on vulnerable people and impacts due to influx of workforce, impacts on livelihoods and local economy, cultural heritage (both Aboriginal and non-Aboriginal), and Indigenous peoples.

OHS issues are out of the ESIA scope. Provisions to ensure the health and safety of workers are covered by the Work Health and Safety Act 2011 and the Work Health and Safety Regulation 2017. SafeWork NSW is the state OHS regulator that administers such legislation. Resettlement and livelihood restoration are not covered by the SIA Guideline.

Review Authority:
The Department of Planning and Environment

Consent Authorities:
Minister for Planning and Homes OR the Independent Planning Commission (IPC)

ESIA PROCESS for State significant projects under the Environmental Planning & Assessment Act (EP&A Act)



Proponent | The Department of Planning and Environment | The Minister for Planning and Homes (the Minister) or the Independent Planning Commission (IPC)

8.2 GOOD PRACTICES IN THE STATE SYSTEM

Regulatory consistency and institutional coordination	The NSW Government has recently promoted a comprehensive set of reforms through amendments to the Environmental Planning and Assessment Regulation 2000. This initiative (the Rapid Assessment Framework) [70] aims to ensure that State significant projects are supported by better assessment, coordination and public engagement through a set of new guidelines, including a Social Impact Assessment Guideline (SIA Guideline) (NSW Department of Planning and Environment, 2021). Under the Environmental Planning & Assessment Act (EP&A Act), a State significant project refers to development that is either declared a State significant development (SSD) or a State significant infrastructure (SSI) by a State Environmental Planning Policy (SEPP) or by an order of the Minister for Planning and Homes based on the overall evaluation of the scale, nature, location, and strategic importance of the development to the State. All State significant projects undergo a comprehensive ESIA process overseen by the Department of Planning and Environment (the Department) and require consent by the Minister for Planning and Homes (the Minister).[71] Under certain circumstances, the consent authority for SSD projects is the Independent Planning Commission (IPC) which is an independent body under the EP&A Act.[72] In particular, the IPC determines project proposals (i.e. grants or denies consent) when there are a substantial number of unique public objections to the application (50 or more) from the public or an objection by the local council, or in cases where applicants disclose a reportable political donation. The IPC operates independently of the Department of Planning and Environment and other government departments and is not subject to the direction or control of the Minister for Planning and Homes, except in relation to procedural matters. As the IPC operates independently, determination from such an authority ensures a degree of protection from political influence and is intended to play a major role in building community confidence in the decision-making processes for major development. The Department's and IPC's capacity to address projects' social impacts currently rely on only one SIA specialist respectively. However, the Department's social specialist member has

[70] See NSW Government, 2021.

[71] For more info, see NSW Government website at https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/State-Significant-Development.

[72] The IPC provides detailed information on its website about its role, policies, processes as well as the SSD applications, see https://www.ipcn.nsw.gov.au/.

	reportedly taken on the function of providing internal capacity building to support the implementation of the SIA Guideline. SIA is one input to the broader EIA which is included in the Environmental Impact Statement (EIS) by the proponent.[73] The purpose of the EIS is to assess at once the environmental, social and economic impacts of the project. While the EP&A Act requires the likely social impacts of a project to be considered, it does not provide guidance on how to conduct SIA. The SIA Guideline is intended to enable consistency, clarity and transparency on what the government expects from proponents in terms of social risk management. However, the Guideline is not a statutory instrument as it is not incorporated in any legislation or regulation. The expectation that proponents will follow the Guideline relies on the circumstance that the Guideline has been issued by the Department, which is the same authority that oversees the overall assessment process. This can lead however to uncertainty about the implementation of its non-statutory requirements. When State significant projects require approvals under other legislation, the assessment of all relevant matters relating to these approvals is fully integrated into the ESIA.[74] There is a registered environmental assessment practitioner (REAP) scheme to provide quality assurance on the EIS prepared by proponents (NSW Government, 2021). The REAP scheme has been developed by the Department to register suitably qualified persons. Accordingly, all EIS attached to State Significant Development (SSD) and State Significant Infrastructure (SSI) applications must be reviewed by a REAP, who must also sign a declaration relating to the compliance, completeness, accuracy and legibility of the EIS. With regard to the SIA report, the SIA Guideline states that it should be prepared by a person with qualifications in a relevant social science discipline and/or proven experience in social science research methods and practices.

[73] The EIS (which includes the SIA report) is the document submitted by the proponent through which the proponent presents their ESIA of the project proposal. The Department will review this document and deliver the assessment report upon the findings of the EIS review.

[74] This includes e.g. environment protection licences under the Protection of the Environment Operations Act 1997, mining leases under the Mining Act 1992, petroleum production leases under the Petroleum (Onshore) Act 1991, pipeline licences under the Pipelines Act 1967. Consequently, these projects only require a single assessment under the EP&A Act before these other approvals may be granted. See s. 4.42 of the EP&A Act

Public engagement and access to information	Access to information about the ESIA is guaranteed to the public through publication on the Major Projects website of all ESIA-related documents.[75] In addition to identifying specific environmental and social assessment requirements, the Secretary's Environmental Assessment Requirements (SEARs) - either sector-specific or project-specific - indicate the community, relevant councils and government agencies with which the proponent must engage during the preparation of the EIS. The Government has issued specific guidelines to help set out the requirements for effective engagement (NSW Department of Planning, Industry and Environment, 2021). All applications and EISs must be exhibited for at least 28 days, to allow anyone to make submissions. Following the public exhibition, the proponent will be required to provide a response.[76] The consent authority will consider all relevant issues raised in submissions and publish a notice setting out how community views were taken into consideration during decision-making. In the case of SSD projects, the Minister of Planning and Homes may ask the Independent Planning Commission to hold public hearings prior to deciding on consent.[77] These hearings allow the community to comment on the findings and recommendations of the Department's detailed assessment report. Project-specific SEARs and conditions of consent may require the proponent to establish a Community Consultative Committee (CCC), a body with advisory and consultative functions. The CCC represents a forum for ongoing dialogue between the proponent, community representatives, stakeholder groups and local institutions (councils) on proposal-related issues and concerns (NSW Government, 2019). When projects potentially affect an area inhabited by Aboriginal peoples, proponents must engage with them through culturally appropriate methodologies and techniques so as to ensure their views, insights and knowledge inform EIS. The Department has released a Practice Note[78], indicating the principles and requirements that should be followed to secure that engagement occurs as early in the project development and planning phase as possible, and continue throughout the project approval

[75] Documents such as SEARs, EIS, submissions received from the public, the proponent's response, the Department's assessment report, the decision to approve or refuse the project and any conditions of consent. See Major Projects website at https://pp.planningportal.nsw.gov.au/major-projects.

[76] EP&A Act, clause 9 of schedule 1

[77] EP&A Act, s. 2.9(d)

[78] The Practice Note on Engaging with Aboriginal Communities is available at https://www.planning.nsw.gov.au/-/media/Files/DPE/Practice-notes/Social-impact-assessment/SIA-Aboriginal-Engagement-Practice-Note.pdf?la=en

	and development lifecycle. Among other requirements, the Practice Note stresses the importance that engagement be not limited to Aboriginal institutional bodies but include interests and views of community members who may find no representation within such bodies (NSW Government, 2022). There is no reference however to the agreement-making processes under the Native Title Act 1993 (Cth) (lack of coordination).
Screening	Every State significant project is subject to an SIA as an integral part of the EIA of the project approval process. Under the EP&A Act, a project is to be considered a State significant project if it has been classified as, or declared a, State significant development (SSD) or a State significant infrastructure (SSI).[79] According to the Act, this classification/declaration is made by a State Environmental Planning Policy (SEPP) or by the order of the Minister based on the overall evaluation of the scale, nature, location, and strategic importance of the development to the State.[80] The State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP) declares certain classes of development (e.g. mining and extraction operations, chemical, energy generating facilities, hospitals, waste management facilities, etc.) and infrastructure (e.g. rail infrastructure, road infrastructure, water storage and treatment plants etc.) to be respectively SSD or SSI based on a certain size and/or location in a sensitive environmental area and/or minimum capital investment thresholds. The screening phase by the Department will thus include verifying that the proposal refers to a State significant project as per SEPP or relevant ministerial order. For certain smaller-scale and lower-impact State significant development (SSD) projects, such as schools, hospitals, warehouses, data centres, and recreational and cultural facilities that meet certain capital investment thresholds[81], the Department has prepared industry-specific environmental assessment requirements (SEARs) defining the level of assessment. These requirements are tailored to the specific industry and focus on the key

[79] See s. 4.36 and 5.12 of the EP&A Act. Under Section 5.13 of the Act a State Significant Infrastructure (SSI) may be declared to be a Critical State Significant Infrastructure (CSSI) if the Minister is of the opinion that it is a high-priority infrastructure essential for the State for economic, environmental or social reasons. CSSI projects proposals are determined by the Minister (the only consent authority), who cannot delegate this decision-making power. There are no third-party appeal rights in relation to CSSI declarations and decisions and judicial reviews in relation to CSSI decisions are limited (can only occur with the approval of the Minister).

[80] The State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP) lists the categories of development that are SSD or SSI (Schedules 1 and 3). Schedules 2, 4 and 5 of the SRD SEPP then contain a list of projects declared SSD, SSI or CSSI, mainly identified by the strategic planning significance of the site.

[81] For instance, according to the State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP) Schedule 1, for hospitals, medical centres and health research facilities, educational establishments, and cultural, recreation and tourist facilities to be considered SSD, the development must have a capital investment value of more than AUD30 million. For warehouses or distribution centres the threshold is AUD50 million.

	assessment matters common to that sector. Larger-scale and higher-impact SSD projects, such as mines, extractive industries, wind farms, hazardous waste facilities, major industrial complexes and SSI projects require project-specific SEARs. These are based on the specific circumstances of the project to ensure the level of assessment and community engagement is proportionate to the scale and likely impacts of the project.
Scoping of social issues	Scoping of social issues in the 'social locality' of the project represents SIA's first phase and proponents are required to carry it out early in project development. The SIA Guideline requires proponents to conduct social baseline studies, resorting to both secondary data and primary data from sources such as discussions with State agencies, interviews, community workshops, focus groups, or community surveys, among others. Proponents should collect disaggregated data where the area of influence is demographically, socially and/or culturally diverse, or the project is likely to affect some groups more than others, focusing specifically on any vulnerable or marginalised groups. If the project is eligible for industry-specific SEARs (e.g., small-scale, standard projects), the findings of the SIA scoping phase will be incorporated into the SIA report that will be part of the EIS. Conversely, in cases where project-specific SEARs apply, the proponent is required to prepare a stand-alone scoping report to support the request for the SEARs. In the scoping phase, applicants should also identify if the project site includes any cultural heritage according to the Heritage Act 1977, defined as including the historical evidence, artefacts, and beliefs of Aboriginal peoples (NSW Department of Planning, Industry and Environment, 2020).
Assessment of social impacts	The SIA Guideline lists eight categories of social factors that proponents should take into account when assessing projects' potential impacts, including positive and negative: 1) 'way of life'; 2) 'community', including composition, cohesion, character, how the community functions, resilience, and people's sense of place; 3) accessibility, including access and use of infrastructure, services and facilities; 4) culture, both Aboriginal and non-Aboriginal, including shared beliefs, customs, practices, values and stories, and connections to the land, waterways, places and buildings; 5) health and wellbeing, including physical and mental health, especially for people vulnerable to social exclusion or substantial change, and effects on public health; 6) surroundings, including public safety and security, access to and use of the natural and built environment, and aesthetic value and amenity; 7) livelihoods; 8) decision-making systems (NSW Department of Planning and Environment, 2021, p. 19).

	In the Guideline, the influx of workers is considered a factor able to affect both 'way of life' and 'community'.[82] Proponents are required to identify impacts on the livelihood and wellbeing of Aboriginal communities, including harm through 'cultural or spiritual loss' as distinct from the cultural heritage assessment, which focuses on the tangible impacts on Aboriginal cultural heritage and is required under the National Parks and Wildlife Act 1974.[83] Possible cumulative social impacts arising from the presence of other project activities close to the area of influence should be assessed. The Department has drafted specific guidelines on cumulative IA for State Significant Projects to help proponents adequately assess these impacts during the preparation of EIS. (NSW Department of Planning, Industry and Environment, 2021). There is no requirement within ESIA for the assessment of working conditions and OHS. OHS issues are covered by the Work Health and Safety Act 2011 and the Work Health and Safety Regulation 2017. They lay down the rules employers and businesses must comply with to ensure the health and safety of the workforce. SafeWork NSW is the State OHS regulator that administers the above-mentioned act and regulation. The NSW Work Health & Safety Management Guidelines (2019) establish that all contractors bidding for government construction contracts (valued up to AUD1 million) must provide evidence of capability to develop and implement an acceptable Work Health Safety Management Plan (WHSMP) and submit it before work begins. For contracts valued over AUD1 million in addition to preparing and implementing an acceptable WHSMP, contractors must have a certified WHS Management System (WHSMS).[84] Resettlement and livelihood restoration are not covered by the SIA Guideline.
Mitigation and management of	The SIA Guideline requires proponents to respond to negative impacts identified in the SIA report by defining preventive and, for residual impacts, mitigation measures.

[82] In relation to this, the Guideline says that "neatly categorising impacts is not as important as identifying and assessing them" and that "categories simply provide prompts to consider possible social impacts", suggesting that the impact categories listed are flexible to a certain extent.

[83] Under the SIA Guideline, the 'cultural or spiritual loss' is defined as "loss or diminution of traditional attachment to the land or connection to Country, and associated cultural obligations to care for Country, or loss of rights to gain spiritual sustenance from the land". Assessment of potential cultural and spiritual loss and cultural heritage assessment are both conducted in preparation of EIS. They are slightly different in the sense that the former focuses on intangible values whereas the latter focuses on tangible impacts.

[84] The WHS Management System (WHSMS) must be aligned with AS/NZS ISO 45001.

negative impacts	The requirement for SIMPs is not mandatory but established on a case-by-case basis by the Department, which has wide discretion. Project-specific SEARs may require a preliminary SIMP to be included early in the SIA report; the development of a SIMP may also be required as a condition of project consent. Regarding management of negative impacts, the Department reportedly prefers to rely on prescriptive conditions of consent that are outcome-focused rather than process-focused management plans. Therefore, the Department tends to incorporate the management measures into the conditions of consent, rather than requiring management plans on the part of the proponent.
Enhancement and management of positive impacts	The SIA Guideline requires applicants to identify and assess positive impacts, and to consider measures such as actions to address housing, employment or education and training, or benefit-sharing agreements. It also promotes entering into a voluntary planning agreement to provide material public benefits to the community of the area of social influence.[85] In practice, project proponents often propose voluntary planning agreements as part of mitigating the identified negative social impacts of the project. Voluntary planning agreements may also be part of the conditions of consent to the project. There is no mandatory requirement for benefit-sharing.
Monitoring, inspections and enforcement	The Department has a compliance team that is responsible for monitoring compliance with any conditions of consent and taking regulatory action where necessary to address any infractions, also based on complaints from the community. The Department has enforcement powers under the EP&A Act concerning the issues covered by the consent conditions or plans.[86] This may include: issuing warnings and official cautions, orders or directions to prevent or remedy breaches, imposing penalties on applicants such as fines, and prosecuting offences. The fines are reportedly criticised for being disproportionately low based on prescribed limits. Conditions of project consent may require applicants to monitor and publicly report on the performance and compliance of the project, as well as to establish a Community Consultative Committee (CCC) formed by representatives of the community.

[85] See also Division 7.1 of the EP&A Act for planning agreements. A planning agreement is a legal agreement between a developer and a planning authority, such as the Minister for Planning and Public Spaces, or local councils. The development contributions system operates under EP&A Act. Planning agreements can deliver or fund, among others, public amenities and services affordable housing transport or other infrastructure conservation or enhancement of the natural environment.

[86] See Part 9 of the EP&A Act.

Grievance management	The community can make complaints or raise concerns about the compliance of a project to the Department via the Major Projects website. The Department will investigate the complaints and provide feedback on the outcomes of the investigation, as well as whether any regulatory action is taken. The applicant is typically required to set up a grievance mechanism by the conditions of the project consent (accessible on the proponent's website). When established, the CCC represents an avenue for addressing community concerns about the project and the resolution of community complaints.

9 QUEENSLAND (QLD)

The scope of the SIA is broad and includes social factors rarely considered elsewhere, such as impacts on local housing, accommodation and labour market due to influx and migrant workers, and conditions of the project workforce, including OHS.

SIA extends to potential cumulative impacts. The competent authority may establish cross-agency reference groups (CARGs) - formed by relevant state agencies and local governments – to assess cumulative impacts in concerned regions. CARGs may be a venue for proponents and stakeholders to discuss proposed impact mitigation measures.

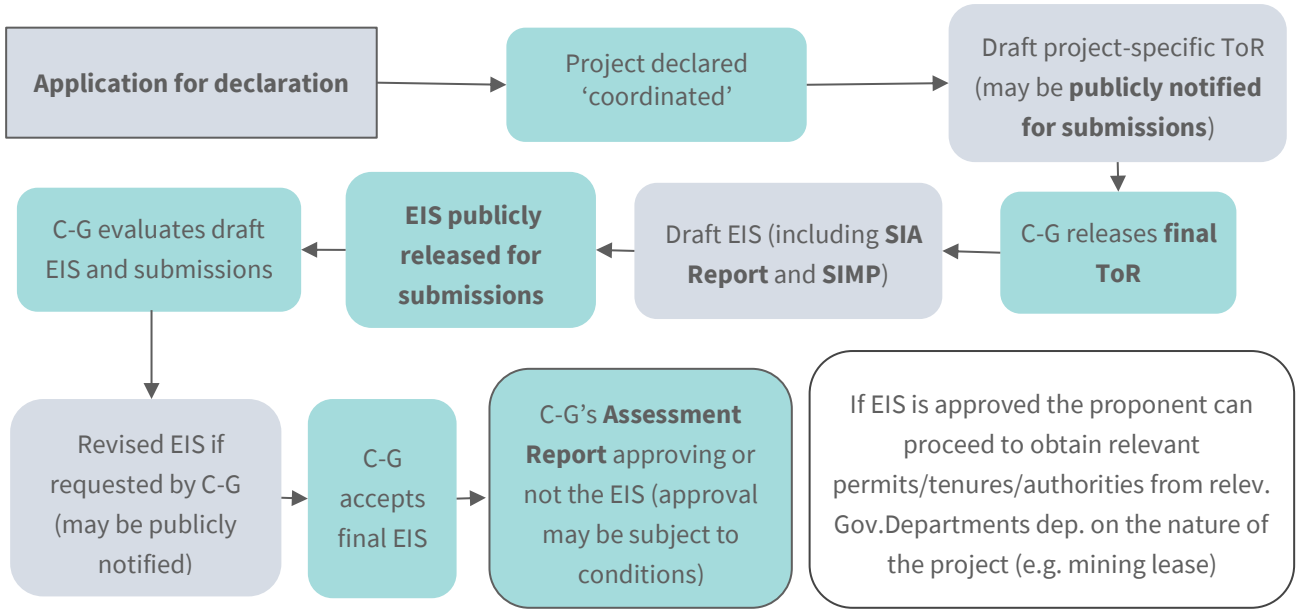
Proponents are required to submit a workforce management plan including measures to enhance employment opportunities for local and regional communities and underrepresented groups (e.g. training) and prioritization of local employment. A local business and industry procurement plan is also required, including procurement strategies for local and regional suppliers, Aboriginal-owned businesses, and programs to build local and regional capacity.

9.1 PROCESS FOR ADDRESSING SOCIAL RISKS

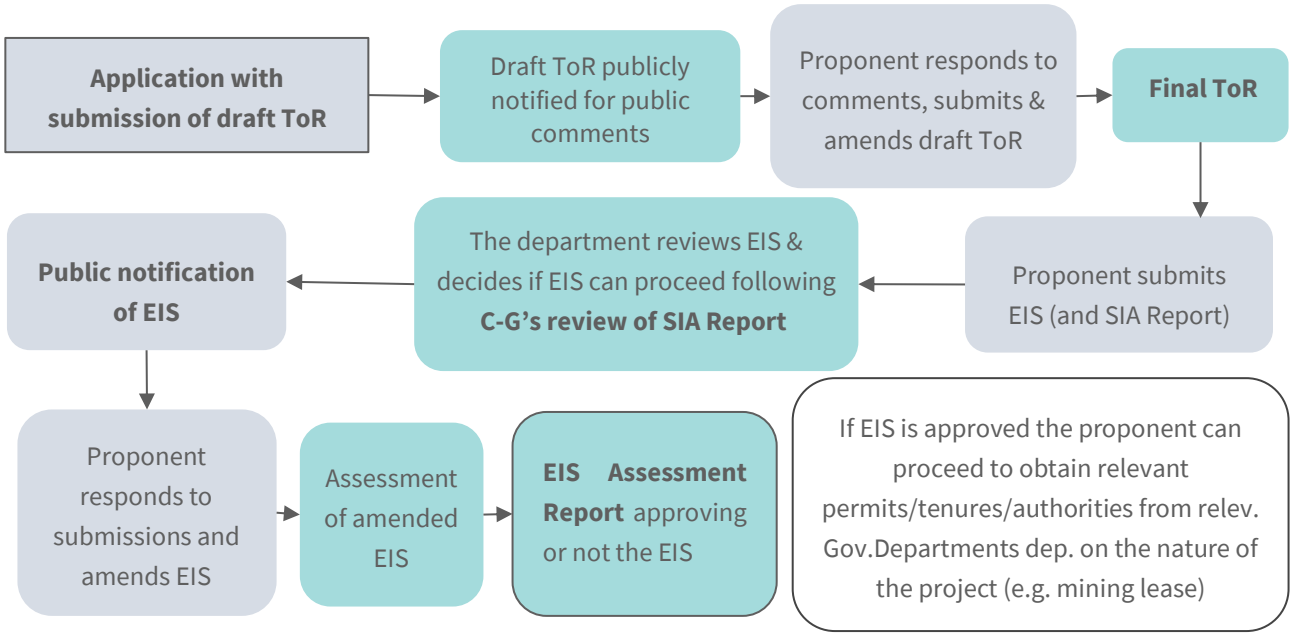
In Queensland, assessment of a project's social impacts is required for all project proposals that are subject to an EIA process (called EIS process) under the State Development and Public Works Organisation Act 1971 (SDPWO Act) or the Environmental Protection Act 1994 (EP Act). The SDPWO and EP Act define two partially different EIS processes supervised respectively by the Coordinator-General, which sits within the Department of State Development, Manufacturing, Infrastructure and Planning, and the Department of Environment and Science (the Department). However, even when the EIS process is administered by the Department, the Coordinator-General maintains a key role in reviewing the SIA report and defining conditions for managing social risks.

In 2018, the Coordinator-General defined the requirements for SIA by issuing an SIA Guideline, which represents a statutory instrument for EIS processes relating to large resource projects. The Guideline is comprehensive in the coverage of social issues, including community health and safety, workforce conditions (including OHS issues), influx and migrant workers, cultural heritage, and impacts on livelihoods and local businesses. Issues concerning Indigenous peoples are not directly addressed by the Guideline, however, the Coordinator-General holds the authority to require proponents to comply with the Native Title Act 1993 (Cth) (see section no. 7) as well as specific legislation on Aboriginal cultural heritage (the Aboriginal cultural heritage Act 2003 ACH Act). The SDPWO Act gives the Coordinator-General the power to compulsorily acquire land for various purposes. The Acquisition of Land Act 1967 sets out the acquisition process, including compensation.

EIA PROCESS under the State Development and Public Works Organisation Act 1971 (SDPWO Act)
Authority: The Coordinator-General (C-G)



EIA PROCESS under the Environmental Protection Act 1994 (EP Act)
Authority: The Department of Environment and Science (the Department)



Proponent Competent Authority

9.1 GOOD PRACTICES IN THE STATE SYSTEM

Regulatory consistency and institutional coordination	SIA is required for all project proposals subject to an EIA process called Environmental Impact Statement (EIS) according to the State Development and Public Works Organisation Act 1971 (SDPWO Act) or the Environmental Protection Act 1994 (EP Act).[87] SIA is integrated into the EIA process, with the SIA report being part of the EIS. A Social Impact Assessment Guideline defines the requirements, criteria and principles of SIA (The Department of State Development, Manufacturing, Infrastructure and Planning, 2018). The SIA Guideline is a statutory instrument for EIS processes - either under the SDPWO Act or the EP Act - relating to projects that are large resource projects according to the Strong and Sustainable Resource Communities Act 2017 (SSRC Act).[88] The Coordinator-General is the key authority for the SIA. It sits within the Department of State Development, Manufacturing, Infrastructure and Planning and holds wide-ranging power to plan, deliver and coordinate large-scale development projects while ensuring that their associated environmental and socio-economic impacts are properly addressed. The Coordinator-General administers the SDPWO Act and evaluates the EIS (including the SIA Report) for projects assessed under this legislation. The EP Act is administered by the Department of Environment and Science which is, therefore, the competent authority to evaluate the EIS under this law. Nonetheless, the Coordinator-General is tasked with reviewing the SIA report incorporated in the EIS, with the Department allowing the EIS to proceed only if the Coordinator-General has advised so.[89] The recognised positive duty of the Coordinator-General towards facilitating development may conflict with the impartiality of the IA (Pitman, 2019).

[87] The projects assessed within the SDPWO Act include major infrastructure projects, mines, ports, large scale resorts and industrial developments such as power stations and refineries. The EIA process under the EP Act mainly apply for mining or petroleum/gas and other resource projects.

[88] S. 9(4) of the Strong and Sustainable Resource Communities Act 2017 (SSRC Act) requires the Coordinator-General to issue a Guideline on SIA relating to large resource projects. Based on this, the Coordinator-General issued the SIA Guideline in March 2018. No reference to such a Guideline and/or the Coordinator-General's authority to issue such an instrument is contained in either the SDPWO or the EP Act. The consequence is that the SIA Guideline is not a statutory instrument for EIS processes under the SDPWO and the EP Act relating to non-large resource projects (as they are not within the scope of the SSRC Act). According to the SSRC Act, 'large resource project' means a project for which an EIS is required and implies resource activities under one or more resource tenures, in any combination, as a single integrated operation.

[89] According to s. 10(2) SSRC Act, the Department may allow the EIS to proceed only if the Coordinator-General has advised that the SIA for the project may proceed.

Public engagement and access to information	The ToR and the draft EIS prepared by the proponent, including the SIA report, are made available to the public, government advisory agencies and any stakeholders to review them and provide comments (Aryal, 2020). A stakeholder engagement program must be established by the proponent at an early stage in the SIA process, including for the construction and operational phases of the project. According to the SIA Guideline, the stakeholders to engage with include local residents and landholders, State agencies and local government, NGOs, Traditional Owners, unions, businesses, and traditionally underrepresented stakeholders such as Aboriginal peoples, women, youth, and vulnerable groups. The SIA process must be informed by stakeholder input, including the baseline analysis, impact assessment and development of the SIMP.
Screening	Under the State Development and Public Works Organisation Act 1971, a project will undergo an EIS process if the Coordinator-General declares the project to be a 'coordinated project'. The Coordinator-General will base this declaration on the presence of one or more of the following characteristics: complex local, state or federal government approval requirements, strategic significance to the locality, region or state, significant environmental effects, and significant infrastructure requirements.[90] Under the EP Act, the authority to decide whether an EIS is required for a project is the Department of Environment and Science. The Department has wide discretion and will make a decision based on the so-called standard criteria including the public interest, the character, resilience and values of the environment in the area.[91] Other criteria that will be applied are: the relative magnitude, scale and risk of impacts, social and economic impacts, and cumulative impacts (Queensland Government, 2020). The actual level of assessment that a proposal will undergo is established by the final ToR which are released for the EIS by either the Coordinator-General or the Department depending on which EIS process is taking place (under the SDPWO Act or the EP Act). Normally the ToR released by such authorities follow the draft ToR initially submitted by the proponent.
Scoping of social issues	According to the SIA Guideline, scoping phase activities include identifying and profiling affected communities, identifying stakeholders, identifying relevant social indicators, conducting a preliminary review of potential social impacts and benefits, and considering potential project design alternatives. These

[90] More info can be found at https://www.qld.gov.au/environment/pollution/management/impacts-approvals/impacts-sdpw

[91] More info can be found at https://www.qld.gov.au/environment/pollution/management/impacts-approvals/impacts-ep

	findings will assist in identifying any project-specific SIA requirements for the ToR. Applicants are required to conduct baseline analysis, including desktop research and fieldwork. This includes a profile of communities' demographics, community culture and values, history, well-being, land/property ownership and utilisation of natural resources, the capacity and accessibility of infrastructure and services, housing market, and local and regional labour market. Data for Aboriginal peoples must be incorporated into the social baseline.
Assessment of social impacts	While complying with the project-specific ToR for the EIS, SIA must cover: • community health, including mental health and well-being • community safety, exposure to hazards or risks, and access to and control over resources • community's quality of life (including aesthetics) and environmental conditions (such as air quality, noise levels, and access to water) • impacts on livelihoods (e.g., effects on peoples' jobs, properties or businesses) • day-to-day social interactions • community's values and culture • housing and accommodation market due to workers influx, access to and quality of infrastructure, services and facilities • project's workforce (including OHS). SIA must consider impact significance and potential cumulative impacts. The Coordinator-General may establish SIA cross-agency reference groups (CARGs) – formed by relevant state agencies and local governments - when required for the assessment of cumulative impacts in certain regions. The proponent (and other stakeholders) may be invited to a CARG meeting to discuss proposed impact mitigation and benefit enhancement measures. The Department of Health has developed specific Health Guidelines to ensure that proponents identify relevant environmental hazards that impact human health and wellbeing (Queensland Government-Department of Health, n.d.). Examples of such hazards include air pollution, noise emissions, communicable diseases arising from interactions between the workforce and local communities, contamination of soil and waters, radiation hazards, improper waste management, etc. Through the project-specific ToR, the Coordinator-General (where applicable) may require proponents to initiate a Native Title Agreement with the Aboriginal party, establish management and protection strategies for Indigenous cultural

	heritage or negotiate a cultural heritage management plan under the Aboriginal Cultural Heritage Act 2003 (ACH Act).[92] Assessment of potential impacts on Aboriginal cultural heritage and definition of corresponding management measures is required to meet the duty of care under the ACH Act (Queensland Government - Department of Aboriginal and Torres Strait Islander Partnerships, 2004). The SDPWO Act gives the Coordinator-General the power to compulsorily acquire land for various purposes. The Acquisition of Land Act 1967 sets out the acquisition process, including compensation.
Mitigation and management of negative impacts	The management measures identified through SIA must be documented in a SIMP that will be provided in the SIA report and submitted as part of the EIS. The SIMP must incorporate a monitoring programme to verify the effectiveness and track the progress of management measures throughout the project life cycle. Proponents must define a health and community well-being plan including emergency response arrangements for incidents both on and off the project site.[93] According to the SSRC Act 2017, the Coordinator-General may establish conditions to manage the social impacts of the project as part of evaluating the EIS/SIA report both for EIS processes under the SDPWO Act and EP Act(s. 11(2)). Where applicable, project-specific ToR may require the proponent to negotiate a cultural heritage management plan with the Aboriginal parties according to the ACH Act.[94] The proponent may be required to update the SIA report and SIMP when social conditions within the SIA study area have changed significantly. Regular updates to SIA and SIMP may be set as a condition of the project.
Enhancement and management of positive impacts	In line with SSRC Act 2017, the SIA Guideline requires proponents to prepare a workforce management plan which includes: measures to enhance employment opportunities for local and regional communities (incl. training and development initiatives to improve local skills and capacity, also for underrepresented groups), provisions to achieve a recruitment hierarchy that prioritises local employment; programs to support the physical, mental health and well-being of workers. A workforce housing and accommodation plan is also required. For large resources projects falling within the scope of SSRC Act

[92] See e.g. https://www.statedevelopment.qld.gov.au/data/assets/pdf_file/0025/17953/final-tor-lfrip.pdf

[93] The Guideline does not specify the conditions under which those plans must be prepared. This would suggest that they are always required.

[94] ACH Act, Part 7. For an example of ToR requiring a cultural heritage management plan, see Queensland Government, 2012.

	2017, proponents must comply with a prohibition of having a fly-in fly-out (FIFO) workforce. There is a requirement for a local business and industry procurement plan including procurement strategies for local and regional suppliers, including Aboriginal-owned businesses, and programs to build local and regional capacity.
Monitoring, inspections and enforcement	The Coordinator-General is responsible for monitoring and enforcing compliance with project conditions.[95] Actions may include: a review by the Coordinator-General of SIAs and management plans; direction to the proponent on corrective actions when needed; audits by the Coordinator-General, and third-party audits. The Coordinator-General may also require proponents to report on the implementation of the SIMP and proponent commitments, community engagement, and complaints management.
Grievance management	The SIA Guideline requires proponents to define a complaints management process within the SIA report, as one of the measures needed to secure ongoing engagement during the project implementation.

[95] See the SSRC Act, s. 11 and SDPWO Act, Part 7A.

10 WESTERN AUSTRALIA (WA)

The authority leading the EIA process, the **Environmental Protection Authority** (EPA) is an **independent** body that exerts its statutory functions without being subject to direction by the Government.

Among the screening criteria, the **public interest** may play a major role in determining the EPA to proceed with the EIA when the 'significance' of the potential impacts of a project proposal is not intrinsically clear.

Stakeholders can object to key decisions of the EPA such as the decision not to assess the project proposal or the merit of the final assessment report - by lodging a special appeal with an **independent body** (the Office of the Appeals Convenor).

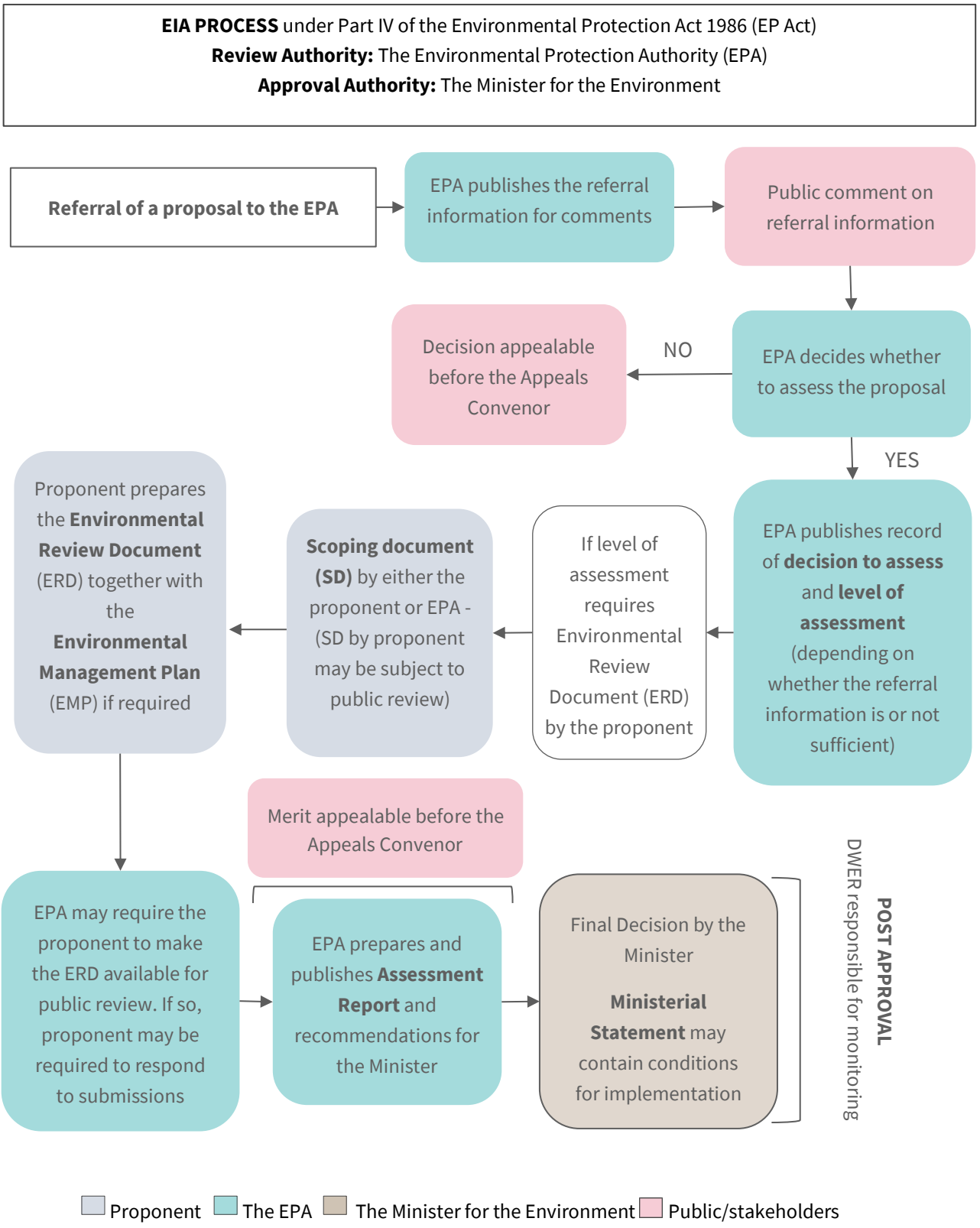
The EIA process and very recent Aboriginal Cultural Heritage legislation together have the potential to provide a **high level of protection** for **Indigenous cultural heritage**, tangible and non-tangible, as well as participatory rights in the decision making of activities potentially affecting it.

10.1 PROCESS FOR ADDRESSING SOCIAL RISKS

In Western Australia, the Environmental Protection Act 1986 (EP Act) provides the basis for consideration of potential social impacts of project proposals as part of the EIA process. The Environmental Protection Authority (EPA) is responsible to review proposals that are likely to have a significant effect on the environment (including 'social surroundings') and conduct assessment, while the final decision on whether to grant consent to the proposal rests with the Minister for the Environment (the Minister). The EPA has broad discretion in determining whether a project must be subjected to an EIA and if so, what level of assessment.

According to a non-statutory Guideline issued by EPA, EIA may cover projects' social risks such as some community health issues, some impacts on livelihood and local economy, amenity values and some cultural heritage aspects (including Indigenous cultural heritage). Among these, the social impacts that can be considered by the EPA are those stemming directly from an environmental alteration due to the project. Social issues such as projects' demographic impacts, influx and migrant workers, resettlement and livelihood restoration, pressure on infrastructures and services, or questions relating to workforce, including OHS, are out of the scope of the EIA process.

Except for consideration of Indigenous cultural heritage, the EIA does not comprehensively address issues relating to Indigenous peoples. While the Native Title Act 1993 (Cth) applies in the case of the presence of Indigenous peoples (see section no. 7), there is no coordination between this legislation and the EIA process.


EIA PROCESS under Part IV of the Environmental Protection Act 1986 (EP Act)
Review Authority: The Environmental Protection Authority (EPA)
Approval Authority: The Minister for the Environment
Referral of a proposal to the EPA
EPA publishes the referral information for comments
Public comment on referral information
EPA decides whether to assess the proposal
NO
Decision appealable before the Appeals Convenor
YES
EPA publishes record of **decision to assess** and **level of assessment** (depending on whether the referral information is or not sufficient)
If level of assessment requires Environmental Review Document (ERD) by the proponent
Scoping document (SD) by either the proponent or EPA - (SD by proponent may be subject to public review)
Proponent prepares the **Environmental Review Document** (ERD) together with the **Environmental Management Plan** (EMP) if required
EPA may require the proponent to make the ERD available for public review. If so, proponent may be required to respond to submissions
EPA prepares and publishes **Assessment Report** and recommendations for the Minister
Merit appealable before the Appeals Convenor
Final Decision by the Minister
Ministerial Statement may contain conditions for implementation
POST APPROVAL
DWER responsible for monitoring
Proponent
The EPA
The Minister for the Environment
Public/stakeholders

10.2 GOOD PRACTICES IN THE STATE SYSTEM

Regulatory consistency and institutional coordination	The EIA process regulated under Part IV of the Environmental Protection Act 1986 (EP Act) and Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures (2021) provide the basis for consideration of social impacts as part of EIA process since the statutory concept of environment includes 'social surroundings'. The Environmental Protection Authority (EPA) is responsible to review proposals that are likely to have a significant effect on the environment (including 'social surroundings') while the final decision rests with the Minister for the Environment (the Minister). The EP Act provides for a wide definition of 'proposals', which are not limited to development projects but also include operations, policies, plans or programmes, and changes in land use, which may be subject to the EIA process.[96] The EPA is an independent authority within the WA Government comprising five members appointed by the Governor on the recommendation of the Minister for the Environment.[97] The EPA exerts its statutory functions independently without being subject to any direction by the Minister. The new Department of Water and Environmental Regulation (DWER) under the Ministry for the Environment provides technical support to the EPA and is tasked with monitoring compliance by the proponent with the conditions of Ministerial Statements in the post-approval phase.[98] To improve coordination among other State decision-making agencies, amendments to the EP Act in 2020 have been passed to allow the EPA, or the Minister in the approval phase, to take into account other statutory decision-making processes to which the project proposal is subject when these can mitigate potential impacts on the environment including social surrounding (Authority, 2021).[99] According to the EP Act (s.45), the Minister for the Environment must consult and possibly agree with other relevant key decision-making authorities, if any.

[96] The Environmental Protection Act 1986, Part I, s. 3. Metropolitan, regional and town planning schemes may also be assessed by the EPA but under a different process to proposals (the EP Act Division 3 and 4). See also Environmental Defender's Office of Western Australia, 2011.

[97] The EPA was established in 1971 as an independent board providing advice to the Minister for the Environment.

[98] More information on the EPA can be found on the EPA's website, see https://www.epa.wa.gov.au/about-environmental-protection-authority.

[99] See the Environmental Protection Act 1986, Part IV, s. 38G (4) and 44(2AA).

	The EIA process begins with the referral of a proposal to the EPA.[100] Any person may refer a significant proposal to the EPA except in the case of 'strategic proposals', whose referral can be submitted only by proponents.[101] State and local decision-making authorities (e.g., the Minister for Mines competent for mining leases, or local governments who decide planning approvals) must refer a proposal to EPA whenever it appears to be likely to cause significant impacts. The EPA is also vested with a call-in power (s. 38A, EP Act). Once the EPA has recorded a decision to assess a proposal, relevant decision-making authorities are constrained from making a decision that would cause or allow the proposal to proceed with project implementation (e.g. a mining lease). However, parallel processing is allowed as long as the decision-making authority proceeds with its own review process (including gathering relevant information) without making any final determination (e.g. granting a license). This enables the relevant decision-making authority to be ready in case the Minister for the Environment will have to consult it and reach an agreement with on implementation issues according to the EP Act (s.45).
Public engagement and access to information	Before making a decision on whether or not to proceed with the assessment, the EPA publishes referral information on its website for public comment and submissions for a period of seven days. Public submissions are used to evaluate the significance of the projects' potential impacts and to estimate the level of public interest involved (WA Environmental Protection Authority, 2021). Public participation is largely limited to public submissions and comments and the level of participation is mostly left to the discretion of the EPA. When the EPA decides to assess the referral and requires the proponent to prepare the Environmental Review Document (ERD) containing the assessment of the environmental impacts (including social surroundings), it may request the proponent to make ERD and any other information available for public review.[102] The proponent may also be required to respond to any submissions received during the public comment period. Both public submissions and responses will feed into the EPA's assessment. Finally, the

[100] The 'referral' (terminology used by regulations) means to bring a project proposal likely to cause significant environmental impacts to the attention of the EPA to be assessed. The project proposal may be referred to EPA by the proponent itself, a decision-making authority or any other person interested.

[101] According to Subsection 37B of the EP Act a proposal is a 'strategic proposal' if and to the extent to which it identifies (a) a future proposal likely, if implemented, to have a significant effect on the environment; or (b) future proposals likely, if implemented in combination with each other, to have a significant effect on the environment. Similarly, only a proponent or a responsible authority may refer a proposal under an assessed scheme, which is a scheme that has been assessed under Division 3 of Part IV of the EP Act.

[102] The EP Act, s. 40.

	EPA's final assessment report and recommendations to the Minister are made publicly available on the EPA's website. EPA expects proponents to consult with all stakeholders, the community, decision-making authorities, and relevant government agencies as early as possible in the planning of their proposal, during the environmental review and assessment of their proposal, and, where necessary, during the life of the project (WA Environmental Protection Authority, 2021). There is no formal mechanism facilitating coordination between the EIA process and the agreement-making processes involving Aboriginal parties under the Cth Native Title Act, which can lead to a lack of coordination. Any interested person has the chance to object to key decisions of EPA - such as the decision not to assess a proposal or the merit of the final assessment report - by lodging a special appeal with an independent body, the Office of the Appeals Convenor (Appeals Convenor).[103]
Screening	Any project proposals that have the potential to cause significant environmental impacts (including on social surroundings) should be referred to the EPA. The Authority will base its initial decision on whether a proposal should undergo the EIA process on a case-by-case evaluation of the significance of the potential impacts on the environment. [104] The EP Act does not define the terms 'significance', 'significant impact' or 'significant effect'. However, the Statement of Environmental Principles, Factors, Objectives and Aims of EIA lists a set of criteria that the Authority will consider in the screening phase (WA Environmental Protection Authority, 2021). Those include, among others: • values, sensitivity and quality of the potentially affected environment • all stages and components of the proposal (e.g., the infrastructure required for the project implementation) • intensity, duration, magnitude of the potential impacts • resilience of the environment • further consequences of the potential impacts, including off-site impacts and indirect impacts • cumulative impacts • proposed mitigation measures and residual impacts

[103] The Appeals Convenor is established under section 107A of the Environmental Protection Act 1986.

[104] The EPA decides not to assess a proposal when determines that the potential effect on the environment is not so significant as to warrant assessment by the EPA. The EPA may give advice and make recommendations on the environmental aspects of the proposal to the proponent or any other relevant person or authority. Each project proposal will then take its own course towards implementation according to its own nature, i.e. going through review processes necessary to obtain permits or licenses if any apply (e.g. mining lease).

	• public interest about the potential effect of the project on the environment if implemented.[105] In practice, the public interest criterion reportedly plays a crucial role in this phase, leading the EPA to decide to proceed with the assessment even when the impacts on the environment could be considered not serious in themselves, or their significance is not intrinsically clear. Public interest has no statutory definition and should be understood as including widespread concern among the public about the potential effects of the project proposal on the environment.[106] If the EPA decides to assess a proposal, it will also decide on the level of assessment, that is the proposal-specific level of information, public review, and other requirements that the EPA determines are necessary to assess the proposal.
Scoping of social issues	When the information provided with the proposal referral is not sufficient for the EPA to conduct an assessment, an Environmental Scoping Document will be needed.[107] This identifies the preliminary key environmental factors (possibly including the factor of social surroundings) that the proponent needs to address and the required studies and investigations that the proponent must conduct to prepare its Environmental Review Document (ERD). Aboriginal heritage and cultural surveys, which may include anthropological and/or archaeological surveys, may be requested. The concept of social surroundings includes the social issues that may be covered by EIA. The EPA has issued a (non-statutory) Guideline to define the social surrounding, explaining how it is considered during the EIA, and indicating issues commonly encountered during the assessment (WA Environmental Protection Authority, 2016). • *Economic impacts:* the EPA may assess impacts on the economic activities of the area of influence, as long as such impacts are a consequence of the expected environmental alteration due to the project (e.g. impacts on water supply, changes in river flow and land conversion). The Guideline rules out that economic benefits, including job creation, may be part of the assessment.

[105] The list does not include the social risks of the project, however 'public interest' may be the channel through which social risks may emerge.

[106] The EPA decides at the ouset whether the project proposal is to be assessed or not (i.e., whether the EIA must be conducted or not). The public interest may push the EPA to decide that the EIA must be conducted even when the proposal seems not to involve significant impacts.

[107] The scoping document is prepared by either the proponent or the EPA. Interviewees explained that the EPA normally prepares the scoping document when the proponent lacks capacity to do so.

	• *Human health:* consideration of possible impacts on human health by the EPA is mostly confined to the evaluation of harmful emissions to air and discharges to the soil, inland waters and marine waters (WA Environmental Protection Authority, 2016). Broader considerations on potential impacts on community health rest with the Department of Health (DOH). Input from DOH, in the form of a health risk assessment, to the EIA process is at the discretion of the EPA. Assessment by the DOH may include issues such as safe food and drinking water, management of wastewater processes, control for vector-borne diseases and exposure protection from emissions to the environment such as radiation and chemicals (WA Department of Health, 2007). Traffic safety is not included. • *Amenity values:* visual amenity (e.g. natural landscape and views with scenic quality), and the ability for the community to live without any unreasonable interference with their health, welfare, convenience, and comfort (with noise, odour and dust being identified as major factors of disturbance). • *Cultural Heritage:* the Guideline includes impacts on registered natural and historic heritage sites, as well as Aboriginal heritage and culture when directly linked to the interference of physical or biological aspects of the environment (e.g. traditional hunting and gathering activities).
Assessment of social impacts	The EIA process may include assessment of social impacts as the EP Act defines the environment as encompassing 'social surroundings'.[108] However, social surroundings, defined as the "aesthetic, cultural, economic and social surroundings of man", are said to be relevant "to the extent that those surroundings directly affect or are affected by his physical or biological surroundings".[109] For social factors to be taken into account, there must be a clear link between the proposal's impacts on the physical or biological surroundings and the impacts on people's aesthetic, cultural, economic or social surroundings. In this, the EIA can be said to prioritize environmental considerations over social ones as social impacts which do not directly refer to environmental impacts are out of the scope of the EPA's assessment.[110] The assessment will not cover, for instance, social factors such as projects' demographic impacts, pressure on infrastructures and services (including

[108] The EP Act, Subsection 3(1).

[109] The EP Act, Subsection 3(2).

[110] A 1996 ruling from Western Australia Supreme Court stopped EPA from considering social factors more broadly, confirming the primacy of environmental matters in all deliberations of EPA. In Coastal Waters Alliance of Western Australia Incorporated (1996) 90(2) LGRA 136, the Supreme Court of Western Australia considered s44 of the EP Act on the scope of the EPA's consideration in the EIA process. The judgment confirmed that social factors to be assessed by the Authority must be linked to environmental considerations, with issues such as those concerning employment and workforce being pure 'commercial' considerations and therefore being out of the scope of EPA's statutory functions (Bache, et al., 1996).

	traffic), GBV issues, or questions relating to employment or the workforce (including influx of workers). As regards Aboriginal heritage and culture, EIA legislation may partly overlap with the new Aboriginal Cultural Heritage Act 2021 (ACHA), which establishes a comprehensive framework based on a holistic notion of cultural heritage overcoming the old-fashioned focus on places, sites and artefacts adopted by previous legislation.[111] Given the novelty of the law, which was passed in December 2021, it is however still unclear what the boundaries are between the scope of the EIA process and the system set out in the new ACHA (interviewee). Part 6 of the ACHA provides special protection from activities that may harm Aboriginal cultural heritage based on the level of ground disturbance. The ACHA defines a tiered land use approvals system that requires land users to undertake due diligence to determine if any Aboriginal cultural heritage will be impacted by a proposed activity. The main approval authority will be the newly established Aboriginal Cultural Heritage Council (ACH Council), which exerts its functions independently from the Government.[112] When activities are able to cause medium to high impacts, such as drilling and mining, the proponent must reach an agreement with the relevant Aboriginal party on an Aboriginal cultural heritage management plan setting out the conditions under which the activities must be conducted. When the parties agree on the Plan, the ACH Council will be responsible for granting approval. On the contrary, if the negotiations are not successful, the proponent may submit a Plan to the ACH Council, whose function will be to liaise with the parties with a view to facilitating an agreement. Should the disagreement between the parties persists, the final decision will rest with the Minister of Aboriginal Affairs.[113] If cumulative IA on values relating to noise, dust and odour is deemed to be required, the EPA expects that proponents address this in their referral and environmental review documentation (ERD).

[111] The new law on Aboriginal Cultural Heritage has made significant progress in placing the Aboriginal party at the centre of the decision-making about the protection and management of their heritage. However, the ACHA has also received criticism and been said not to live up to the international standard of free, prior, informed, consent (FPIC) in the agreement-making processes for leaving the final say on cultural sites protection with the government (de Kruijff, 2021).

[112] The Aboriginal Cultural Heritage Act set up the Aboriginal Cultural Heritage Council (ACH Council) as the State authority running the Aboriginal Cultural Heritage system. The two chairpersons and the majority of the members should be of Aboriginal origins (Part 2, s. 21).

[113] More info on the Aboriginal Cultural Heritage Act 2021 can be found on the Western Australia Government's website, https://www.wa.gov.au/government/document-collections/aboriginal-cultural-heritage-act-2021#:~:text=The%20Aboriginal%20Cultural%20Heritage%20Act%202021%20(ACH%20Act)%20provides%20a,cultural%20heritage%20to%20Aboriginal%20people.

Mitigation and management of negative impacts	The proponent is expected to define avoidance and mitigation measures for the social impacts identified, together with management and monitoring arrangements. These may be part of an Environmental Management Plan (EMP), which may be provided at referral, during the assessment before the EPA as a part of the proponent's Environmental Review Document if requested by the initial Scoping Document or required as an implementation condition under a Ministerial statement. Management of adverse impacts must respect the principle of the mitigation hierarchy to avoid or minimise impacts on the social surroundings.
Enhancement and management of positive impacts	Benefit-sharing components of project proposals are out of the scope of the EPA's review. Benefit-sharing arrangements tend to pertain to separate, voluntary making-agreement processes (e.g. mining agreements or agreements under the Native Title Act – see next section), which are not normally publicly available for being negotiated under confidentiality clauses.
Monitoring, inspections and enforcement	Based on the EPA's final assessment report, the Minister for Environment determines whether the proposal should be allowed to proceed through a Ministerial Statement.[114] The Statement establishes the conditions and procedures that the proponent must adhere to during the project implementation, including any EMP required as a condition. The Department of Water and Environmental Regulation (DWER) is responsible for monitoring compliance with the Ministerial Statement. Monitoring actions include, among others: inspections, audits, review of proponents' monitoring, and collection of information from other regulatory authorities (WA Department of Water and Environmental Regulation, 2021). If the Department finds that any of the implementation conditions are not being complied with, it must report the non-compliance to the Minister for the Environment.[115] The Minister after consulting with the proponent may issue a notice, requiring the proponent to stop the implementation of the proposal for a specified period and take the steps necessary to comply with the relevant condition and mitigate any environmental harm caused by any non-compliance. The Minister is vested with the power to enforce the actions needed.[116] According to EP Act s. 48(9), a proponent who does not comply with the Minister's notice commits an offence.

[114] EP Act, s.45. The Minister has enforcement powers only for those matters that the EPA is mandated to address.

[115] Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2021, 5.10

[116] EP Act, Part IV, s. 48(7).

Grievance management	During the EIA process, any interested person may appeal before an independent body, the Appeals Convenor, against the decisions of the EPA such as the determination not to assess the proposal or the merit of the final assessment report. After project approval, members of the public can forward a complaint to the Department of Water and Environmental Regulation (DWER) (WA Department of Water and Environmental Regulation, 2021).

11 INDIGENOUS PEOPLES (NATIONAL LEVEL)

Australia has federal legislation on the participation of Indigenous communities in decision-making related to development projects in their traditional lands.

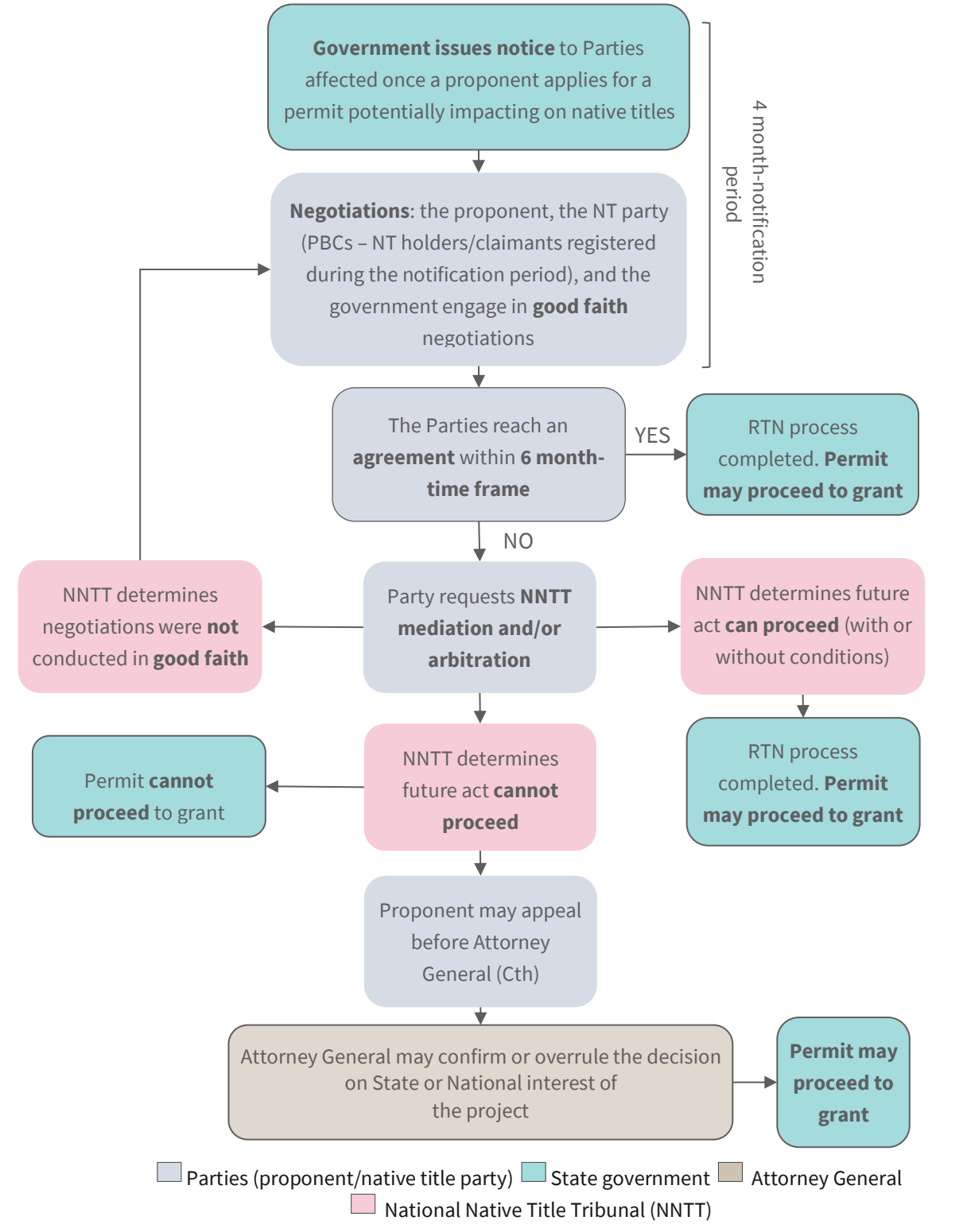
The Native Title Act 1993 (Cth) provides for the recognition and protection of Aboriginal native titles, commonly including rights of possession, occupation, use and enjoyment of the traditional land. Ancillary to these rights, the legislation establishes a mandatory agreement-making process for any 'future act' on land or waters that would impact native title rights and interests of affected communities.

Aboriginal representative bodies are also required to be established to exert key responsibilities and functions relating to the protection and management of native rights and negotiations with third parties.

11.1 PROCESS FOR ADDRESSING SOCIAL RISKS

RIGHT TO NEGOTIATE PROCESS under the Native Title Act (Cth) 1993

Authorities involved: State government**,** National Native Title Tribunal (NNTT), Attorney General (Cth)



11.2 GOOD PRACTICES IN THE COUNTRY SYSTEM

The Native Title Act 1993 (Cth) (the NT Act) recognises the rights and interests of Aboriginal and Torres Strait Islander people to land and waters according to their traditional laws and customs. The Act provides for the recognition and protection of native titles which can be defined as a 'bundle' of rights and interests whose scope is not limited by legislation but defined on a case-by-case basis under the traditional law and custom of the concerned Aboriginal communities. The Federal Court of Australia is in charge of managing and determining all the applications relating to native titles in the Country.[117]

Commonly, native titles include rights of possession, occupation, use and enjoyment of the traditional land, such as the right to use resources, conduct ceremonies and traditional practices, and visit and protect sites of cultural and spiritual significance.[118] The NT Act recognises ancillary procedural rights to native title claimants and native title holders when 'future acts' may impact their rights and interests, including the right to be notified, and the right to comment or be consulted. Any 'future act' must follow the procedures laid down in the NT Act in order to be valid. For acts such as the grant of exploration or mining and petroleum tenements and some compulsory acquisitions, the legislation provides for a mandatory agreement-making process based on the recognition of a right to negotiate of the Native Title parties (known as the right to negotiation process) (National Native Title Tribunal, 2020). Alternatively, developers may resort to a more flexible option, which is the voluntary negotiation of Indigenous Land-Use Agreements (ILUAs). A combination of both processes may also be possible, which may occur in parallel (National Native Title Tribunal, n.d.).

The table below summarises the Right to Negotiate (RTN) and ILUA processes. Key responsibilities within these processes are assigned to Aboriginal institutional representative bodies, known as prescribed body corporates (PBCs), which according to the NT Act have to be established by traditional owners when a native title determination is made by the Federal Court.[119] The NT Act framework however appears to be weak in terms of capacity-building: although there are some national and state funding opportunities, it is recognised that resourcing channels to PBCs are inadequate, undermining the actual capacity of Aboriginal groups to make the most of their participation in the decision-making concerning development in the native lands (Commonwealth of Australia, 2021, p. 171). Moreover, the widespread use of confidentiality clauses in the agreement making processes impedes the horizontal transmission of information among communities, which would allow learning from other experiences and increase communities' capacity to meaningfully

[117] More info can be found on the Federal Court of Australia website, https://www.fedcourt.gov.au/law-and-practice/national-practice-areas/native-title.

[118] Native title differs from land rights. The latter (mainly comprising freehold or perpetual lease title) are rights created by the Australian, state or territory governments, whereas native titles arise as a result of the recognition of pre-existing Indigenous rights and interests according to traditional laws and customs (not a grant by governments).

[119] According to the NT Act, PBC Regulations and the Corporations (Aboriginal and Torres Strait Islander) Act 2006, responsibilities and functions of PBCs include holding, protecting and managing determined native titles, participating in negotiations between governments and companies about future developments on the land, negotiating, implement and monitor native title agreements, consulting with native title holders and documenting evidence of consultation and consent.

interact and negotiate with developers (O'Faircheallaigh, 2021).[120] These factors lead to a disproportionate balance of power between Aboriginal parties and developers with the likely consequence that, in practice, agreements when reached favour the latter.

Right to Negotiate process (RTN process)	Indigenous Land-Use Agreements (ILUAs)
The RTN process is a negotiation process between a proponent, a native title party (NT party) and the relevant State government about a prospective intervention on the land.[121] The RTN is procedural in nature and aims at ensuring that parties negotiate in good faith, with a view to reaching an agreement. A right to veto of the NT party is not included. The process is triggered by the State government's notice in which the government proposes to grant a mining or exploration license. The negotiations and the possible agreement can only cover one 'future act', that is the one addressed in the government's notice. The government is also a mandatory party to this process and is bound to the principle of good faith. When an agreement is reached, it will comprise the conditions for implementing the project, including, in some cases, benefit-sharing elements which are normally contained in confidential ancillary agreements. Proponents are required to engage with the PBCs, as well as with any native title claimants/holders who are registered at the end of a fixed notification period following the start of the process. If an agreement cannot be reached within a 6-month time frame, any party may refer the matter to the National Native Title Tribunals (NNTT) for determination by arbitration, on a condition that good faith has been respected during negotiations.	As an alternative to the RTN process, the NT Act allows interested parties and native title parties (PBCs or registered NT claimants) to voluntarily enter agreements known as Indigenous Land Use Agreements (ILUAs). ILUAs are flexible, have no set time frames and may be broad in coverage, including: • monetary compensation (lump sum, distributed or royalties) • employment and training provisions • cultural heritage components • contracting opportunities • environmental preservation and rehabilitation In contrast to the RTN process, a single ILUA may include multiple future activities and projects, as well as set a framework and define protocols for future native title-related agreements. Therefore, it may be seen as more cost-effective than the RTN process, especially for complex projects requiring many tenement applications in one area. Differently from the RTN process, there is no possibility of referring the matter of

[120] Similar situation exists in Canada. However, a recent trend towards more transparency is reported in Nunavut (Canada). See https://www-erudit-org.nottingham.idm.oclc.org/en/journals/cd1/2019-v60-n2-cd04678/1060981ar/

[121] Native Title Act 1993, s.30. South Australia is the only state with a scheme alternative to the RTN process under the Commonwealth Native Title Act 1993, approved by the Commonwealth. Part 9B of the *Mining Act 1971* (SA) contains provisions on how mining can be undertaken on native land. Mining companies are required to comply with the provisions of Part 9B before undertaking mining operations on native land, see Government of South Australia - Department for Energy and Mining's website at https://www.energymining.sa.gov.au/minerals/communities_and_land_access/native_title_and_aboriginal_land.

In practice, developers will be able to bypass conflicting views from the communities by referring the case to the NNTT for determination. On this point, it is reported that in the overwhelming majority of instances, development approval has been given by the NNTT, suggesting that the RTN scheme favours development to occur (O'Neill, 2019).[122] As decision making is not necessarily placed in the hands of Aboriginal peoples, the NT Act is considered not to fully adhere to the principle of free, prior, informed consent (FPIC) (Commonwealth of Australia, 2021, p. 181). Another limitation of the process is that determinations by the Tribunal cannot include any royalty-type payment as a form of compensation to the NT party. This places pressure on Aboriginal communities to reach an agreement during the fixed time frame, whereas no equivalent pressure applies to project proponents who are therefore in a stronger bargaining position (O'Faircheallaigh, 2021).	the agreement to the NNTT if negotiations fail. Once registered, ILUA has the same status as a legal contract, binding all parties to the agreement terms, including native title parties who may emerge in the future, securing legal certainty between the parties. The State government will be a mandatory party to the ILUA only in cases where the agreement will have the effect of extinguishing native titles due to the nature of the project (Limerick, et al., 2012, p. 26).[123]

[122] L.M. O'Neill reports that, as of 5 May 2019, the NNTT refused only three times to allow a development to occur without an agreement with native title parties, allowing developments 115 times (50 of which with under conditions such as environmental or cultural heritage protections.

[123] Limerick M., Tomlinson K., Taufatofua R, Barnes R. and Brereton D. 2012, Agreement-making with Indigenous Groups: Oil and Gas Development in Australia. Brisbane; CSRM. University of Queensland, p. 26 ff https://www.csrm.uq.edu.au/media/docs/248/agreement_making_indigenous_groups.pdf

REFERENCES

Aryal, S. e. a., 2020. Key steps in environmental impact assessment: a comparative study of China, Queensland State of Australia and Nepal. *Environmental Monitoring and Assessment,* p. 192 ff.

Authority, E. P., 2021. *Interim Guidance- Taking decision-making processes into account in EIA,* s.l.: s.n.

Bache, S., Bailey, J. & Evans, N., 1996. Interpreting the Environmental Protection Act 1986 (WA): Social Impacts and the Environment Redefined. *Environmental and Planning Law Journal,* p. 487 ff.

Commonwealth of Australia, 2021. *A Way Forward Final Report into the Destruction of Indigenous Heritage Sites at Juukan Gorge,* Camberra: s.n.

de Kruijff, P., 2021. *New WA Aboriginal heritage act leaves final say on cultural site protection with minister.* [Online]
Available at: https://www.watoday.com.au/politics/western-australia/new-wa-aboriginal-heritage-act-leaves-final-say-on-cultural-site-protection-with-minister-20211116-p599i0.html
[Accessed Month 2022].

Environmental Defender's Office of Western Australia, 2011. *Environmental Impact Assessment in Western Australia,* s.l.: s.n.

Limerick, M. et al., 2012. *Agreement-making with Indigenous Groups: Oil and Gas Development in Australia,* Brisbane: CSRM. University of Queensland.

National Native Title Tribunal, 2020. *The Right to Negotiate Information Sheet,* s.l.: s.n.

National Native Title Tribunal, n.d. *ILUA or the right to negotiate process? A comparison for mineral tenement applications,* s.l.: s.n.

NSW Department of Planning and Environment, 2021. *Social Impact Assessment Guideline for State Significant Projects,* s.l.: s.n.

NSW Department of Planning, Industry and Environment, 2020. *Heritage Guidance for Applicants,* s.l.: s.n.

NSW Department of Planning, Industry and Environment, 2021. *Cumulative Impact Assessment Guidelines for State Significant Projects,* s.l.: s.n.

NSW Department of Planning, Industry and Environment, 2021. *Undertaking Engagement Guidelines for State Significant Project,* s.l.: s.n.

NSW Government, 2019. *Community Consultative Committee Guideline,* s.l.: s.n.

NSW Government, 2021. *Rapid Assessment Framework FAQ,* s.l.: s.n.

NSW Government, 2021. *Registered Environmental Assessment Practitioner (REAP) Scheme -FAQ,* s.l.: s.n.

NSW Government, 2022. *Practice Note - Engaging with Aboriginal Communities,* s.l.: s.n.

O'Faircheallaigh, C., 2021. Explaining outcomes from negotiated agreements in Australia and Canada. *Resources Policies .*

O'Neill, L., 2019. The bindunbur "bombshell": the true traditional owners of james price point and the politics of the anti-gas protest. *Univ. N. S. W. Law J.,* p. 599 ff.

Pitman, M. e. a., 2019. *Environmental Impact Statement (EIS) Processes (Qld): Critical Analyses,* s.l.: The University of Queensland.

Queensland Government - Department of Aboriginal and Torres Strait Islander Partnerships, 2004. *Cultural Heritage Duty of Care Guidelines,* s.l.: s.n.

Queensland Government, 2012. *Lower Fitzroy River Infrastructure Project: Terms of Reference for an Environmental Impact Statement,* s.l.: s.n.

Queensland Government, 2020. Guideline Environmental Guideline - Criteria for environmental impact statements for resource projects under the Environmental Protection Act 1994.

Queensland Government-Department of Health, n.d. *Health considerations - Environmental Impact Statement Guidelines for Proponents,* s.l.: s.n.

The Department of State Development, Manufacturing, Infrastructure and Planning, 2018. *Social Impact Assessment Guideline,* s.l.: s.n.

WA Department of Health, 2007. *Health Impact Assessment in WA Discussion Paper,* s.l.: s.n.

WA Department of Water and Environmental Regulation, 2021. *Compliance and Enforcement Policy,* s.l.: s.n.

WA Environmental Protection Authority, 2021. *Instructions on how to prepare Environmental Protection Act 1986 Part IV Environmental Management Plans,* s.l.: s.n.

WA Environmental Protection Authority, 2016. *Environmental Factor Guideline - Social Surroundings,* s.l.: s.n.

WA Environmental Protection Authority, 2016. *Environmental Factor Guideline: Human Health,* s.l.: s.n.

WA Environmental Protection Authority, 2021. *Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual,* s.l.: s.n.

WA Environmental Protection Authority, 2021. *Statement of Environmental Principles, Factors, Objectives and Aims of EPA,* s.l.: s.n.

CONCLUSION

A number of good practices were identified through this study of country legislation aimed at managing social risks in both private sector and public sector investment projects. Amongst the detailed case studies of Colombia, India, Thailand, Canada and Australia, as well as the 30 countries listed in Annex A, we found examples of regulatory consistency and institutional coordination; and provisions for broad coverage of social issues, public engagement and access to information, and mitigation/enhancement measures.

The study pointed to the complexity in national social risk management systems, which may explain why these have lagged behind environmental risk management systems. This complexity results from an interplay of multiple factors, such as the colonial past, traditions in civic engagement, political systems, the political economy, and the extent to which the country is integrated with the international market.

As a next step, we propose that the examples provided throughout this report are reviewed from the perspective of Indonesia's institutional framework and where opportunities lie for informing parallel World Bank efforts at supporting alignment with international good practice in social risk management.

In addition, we propose some questions prompted by this study that would benefit from further research and thereby enhance knowledge and contribute to ongoing efforts to strengthen country systems:

- The focus of this study was on evaluating legislative frameworks 'on paper'. How do the selected case studies perform 'in practice' and what are the lessons to be extrapolated?
- How are international conventions (e.g. human rights) incorporated into country systems?
- What would a global mapping of country systems look like, using the same dimensions of 'good' practice in social risk management that were applied to the five case studies?
- What could a model standalone SIA legislation look like?
- Institutional coordination and interagency cooperation is a challenging issue in all countries. What tools and methods exist that a policymaker and practitioner could draw on to understand the challenges and identify the opportunities?
- What are the lessons to be learnt from a temporal analysis of how country systems for social risk management have developed?

REFERENCES

Agencia Nacional de Hidrocarburos ANH, 2013. *Línea de Base: Programa en Beneficio de las Comunidades Implementados por el Sector de Hidrocarburos en Colombia.* [Online]
Available at: https://www.anh.gov.co/Seguridad-comunidades-y-medio-ambiente/Paginas/Programa-en-Beneficio-de-las-Comunidades.aspx

Arctic Council Sustainable Development Working Group (SDWG); Arctic Environmental Impact Assessment (EIA) project , 2019. *Good Practices for Environmental Impact Assessment and Meaningful Engagement in the Arctic – Including Good Practice Recommendations,* s.l.: : Karvinen, Päivi A. & Rantakallio, Seija, Ministry of the Environment of Finland assisted by the Arctic Centre, University of Lapland.

Cave, B. et al., 2020. *Human health: Ensuring a high level of protection. A reference paper on addressing Human Health in Environmental Impact Assessment. As per EU Directive 2011/92/EU,* s.l.: International Association for Impact Assessment and European Public Health Association.

Chandanachulaka, S., 2012. Health impact assessment in Thailand. In: *Health Impact Assessment: Past Achievement, Current Understanding, and Future Progress.* s.l.:Oxford University Press.

Chandra, R., 2019. Forest Rights Act of India: putting indigeneity in place. *Indian Law Review,* pp. 159-179.

Clifford Chance, Global Business Initiative on Human Rights, 2022. *Business and Human Rights: Navigating a Changing Legal Landscape.* [Online]
Available at: https://www.cliffordchance.com/briefings/2022/01/business-and-human-rights-navigating-a-changing-legal-landscape-january-2022.html

Hoda, A., 2018. Working Paper No. 361 Land use and Land Acquisition in India. *Indian Council for Research on International economic relations .*

Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development IGF, 2020. *Guidance for Governments: Improving legal frameworks for environmental and social impact assessment and management,* s.l.: Winnipeg: IISD.

Iseli, C., 2020. The Operationalization of the Principle of Free, Prior and Informed Consent: A Duty to Obtain Consent or Simply a Duty to Consult?. *Journal of Environmental Law,* pp. 259-275.

Kang, E., 2012. Health impact assessment in Korea. In: *Health Impact Assessment: Past Achievement, Current Understanding, and Future Progress.* s.l.:Oxford Word Press.

Markkula, I., Turunen, M. T. & Kantola, S., 2019. Traditional and local knowledge in land use planning: insights into the use of the Akwé: Kon Guidelines in Eanodat, Finnish Sápmi. *Ecology and Society,* p. 20.

Ministerio de Ambiente y Desarrollo Sostenible de la Nación , 2021. *Manual técnico para la consulta a pueblos originarios en la gestión de bosques y cambio climático,* s.l.: Ministerio de Ambiente y Desarrollo Sostenible de la Nación.

Momtaz, S. & Kabir, Z., 2018. *Evaluating Environmental and Social Impact Assessment in Developing Countries.* s.l.:Elsevier Inc..

National Academy of Public Administration (NAPA), 2021. *Breakthrough environmental protection policies to facilitate sustainable conservation of natural resources.* [Online]
Available at: https://www1.napa.vn/en/breakthrough-environmental-protection-policies-to-facilitate-sustainable-conservation-of-natural-resources.napa
Netherlands Commission for Environmental Assessment, 2020. *Suriname, ESIA Profile.* [Online]
Available at: https://www.eia.nl/en/countries/suriname/esia-profile
Quality Planning, 2022. *What is a Cultural Impact Assessment?.* [Online]
Available at: https://www.qualityplanning.org.nz/node/991
Schwartz, B., Bruckner, K. D. & Maiga, A., 2021. *Reversing the resource curse through legislative community development.* [Online]
Available at: https://www.pwyp.org/pwyp-resources/reversing-the-resource-curse-through-legislative-community-development/
Sherpa, 2019. *Vigilance Plans Reference Guidance,* Paris: Sherpa.
Thondoo, M. & Gupta, J., 2021. Health impact assessment legislation in developing countries: A path to sustainable development?. *Review of European, Comparative & International Environmental Law.*
Vanclay, F., Esteves, A. M., Aucamp, I. & Franks, D., 2015. *Social Impact Assessment: Guidance for assessing and managing the social impacts of projects,* s.l.: International Association for Impact Assessment.
World Wide Fund for Nature South Africa (WWF-SA), 2015. *A review of the local community development requirements in South Africa's renewable procurement ,* s.l.: WWF-SA, South Africa.
Wright, D. V., 2020. Public Interest Versus Indigenous Confidence: Indigenous Engagement, Consultation, and 'Consideration' in the Impact Assessment Act. *Journal of Environmental Law and Practice,* pp. 185-210.
Wright, D. V., 2021. The New Federal Impact Assessment Act: Implications for Canadian Energy Projects. *Alberta Law Review,* pp. 67-97.

ANNEX A: EXAMPLES OF COUNTRY LEGISLATION TO MANAGE SOCIAL RISKS OF INVESTMENT PROJECTS

COUNTRY	GOOD PRACTICE	MAIN FEATURES	SOURCE	LINKS
Argentina	SIA requirement Public participation Indigenous peoples FPIC	1. The 2002 General Environmental Protection Law ('Ley General del Ambiente' Law No. 25.675) sets out environmental policy principles, minimum standards and various tools for environmental management. These include EIA processes that must be carried out before any activity with significant impacts either on the environment or on local populations' quality of life (or both). The EIA process should also include a participatory phase where the public can discuss the proposed activity and its implications. The law requires the competent authorities to establish public consultation or hearing procedures. Detailed legal requirements on EIA are established at the provincial level. 2. According to Law No. 853 of Tierra del Fuego Province, the EIA processes for the approval of mining projects must respect the principle of prior and informed consent of the population that is potentially affected by the projects (FPIC not limited to Indigenous peoples). 3. Law No. 26.331 requires that projects impacting native forests must recognise and respect the rights of the Indigenous communities that traditionally occupy these lands, seeking to minimise negative environmental impacts. EIA process must consider among others the human environment with special reference to the situation of Indigenous peoples and rural communities living in the project's area of influence, its social, economic and cultural features.	1. The 2002 General Environmental Protection Law ('Ley General del Medio Ambiente' Law No. 25.675) Articles 11, 19, 20, 21. 2. Tierra del Fuego Province, Law No. 853 - Environmental principles established by the General Environmental Protection Law applied to mining activities, Article 12. 3. Law No. 26.331 on Minimum Environmental Standards for the Enrichment, Restoration, Conservation, Use and Sustainable Management of Native Forests, Articles 19, 24, and 26.	1.http://extwprlegs1.fao.org/docs/pdf/arg34592.pdf 2.http://www.legistdf.gob.ar/lp/leyes/Provinciales/LEYP853.pdf 3.https://www.argentina.gob.ar/normativa/nacional/ley-26331-136125/texto

		For projects involving deforestation, public consultation and hearing procedures must be conducted.[124]		
Australia	Indigenous People FPIC Cultural heritage Benefit sharing	Australia's Aboriginal Land Rights Act and Native Title Act provide protection to the traditional owners of Aboriginal land. The Land Rights Act authorizes the Land Council to negotiate agreements with mining companies that take these traditional rights into account. The Land Rights Act ensures that Aboriginal landowners receive protection of sacred sites, environmental protection, some form of compensation, and employment and training, when feasible. Projects such as mining may not proceed until an agreement is in place. Generally, such agreements must be completed before the exploration licence application may be approved.[125]	1. Australia's Aboriginal Land Rights Act 2. Native Title Act	1.https://www.legislation.gov.au/Details/C2016C00111 2.https://www.legislation.gov.au/Details/C2017C00178
Australia - New South Wales (NSW)	SIA requirement Public participation Vulnerable and marginalised people Community Health	Under Environmental Planning and Assessment Act 1979 (EP&A Act) any State significant projects are subject to requirements whose declared objectives are to facilitate sustainable development by integrating relevant economic, environmental and social considerations and increased community participation in environmental planning and assessment (s 1.3). EP&A Act defines the environment as including "all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings" (s 1.4). Accordingly, the Department of Planning, Industry and Environment's guidelines consider SIA an integral part of the broader EIA. SIA should cover among others social, cultural and demographic characteristics of the area (including Aboriginal populations), presence of vulnerable or marginalised people, tangible and intangible values, relevant social, cultural, and demographic trends, history of the place and people. The assessment should also consider impacts on community health and wellbeing, including physical and mental health especially for people vulnerable to social exclusion. The SIA report provides a	1. Environmental Planning and Assessment Act 1979 No 203 [NSW] 2. Social Impact Assessment Guideline for State Significant Projects -NSW Department of Planning, Industry and Environment (2021)	1.https://legacy.legislation.nsw.gov.au/~/pdf/view/act/1979/203/whole 2. https://shared-drupal-s3fs.s3.ap-southeast-2.amazonaws.com/master-test/fapub_pdf/SIA+Guideline+20210622v6_FINAL.pdf

[124] (Ministerio de Ambiente y Desarrollo Sostenible de la Nación , 2021)
[125] (Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development IGF, 2020)

		basis for developing a social impact management plan. Meaningful engagement is recognized as a fundamental part of SIA.		
Australia - Western Australia (WA)	SIA requirement Human rights performance	1. The definition of environment in the Environmental Protection Act 1986 (EP Act) includes social surroundings, meaning that, for the purposes of EIA, social surroundings are a part of the environment that require consideration. The EP Act defines "social surroundings of man" as "his aesthetic, cultural, economic and social surroundings to the extent that those surroundings directly affect or are affected by his physical or biological surroundings" (Subsection 3(2)). According to the Environmental Protection Authority's guidelines, EIA for the factor Social Surroundings includes among others the aesthetic, cultural, economic and/or social values which may be impacted. In this, the EP Act can, in some instances, complement the 1972 Aboriginal Heritage Act providing for the preservation of Aboriginal heritage sites. 2. The Procurement Act 2020 and Procurement (Debarment of Suppliers) Regulations 2021 establish a debarment regime to preclude suppliers who engage in unlawful and irresponsible business practices from seeking or being awarded a contract to supply goods, services, community services and works (including construction works) to the Government. The regime identifies categories of debarment conduct based on seriousness. Category A debarment conduct is the most serious, and includes contravention of specific legislation relating to (amongst others) human trafficking, unlawful employment under the Migration Act 1958 (Cth) and grave non-compliance with OHS legislation. Category B conduct includes non-compliance with the modern slavery reporting requirements of the Modern Slavery Act 2018 (Cth) and other breaches of	1. WA Environmental Protection Act 1986 - Environmental Factor Guideline - Social Surroundings 2. Procurement Act 2020 and Procurement (Debarment of Suppliers) Regulations 2021	1.https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44499.pdf/$FILE/Environmental%20Protection%20Act%201986%20-%20%5B09-l0-00%5D.pdf?OpenElement https://www.epa.wa.gov.au/sites/default/files/Policies_and_Guidance/Guideline-Social-Surroundings-131216_2.pdf 2.https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_42876.pdf/$FILE/Procurement%20Act%202020%20-%20%5B00-00-00%5D.pdf?OpenElement https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44523.pdf/$FILE/Procurement%20(Debarment%20of%20Suppliers)%20Regulations%202021%20-%20%5B00-b0-00%5D.pdf?OpenElement

		industrial legislation, awards and agreements, workers compensation and occupational safety and health legislation.[126]		
Bangladesh	SIA requirement Public participation	ECA '95 and ECR '97 govern the conduct of the EIA for development activities in Bangladesh and the review body is the Department of Environment (DOE). There is no specific mention of SIA. However, in ECA there is consideration of socioeconomic impacts and DOE's definition of the term 'environment' has been expanded to include human issues. In ECR human settlements are considered to be an ecologically critical area. SIA is therefore conducted as an integral part of EIA. Specified list of contents of EIA includes description of social, environment, and socioeconomic impacts. Environmental management plan (EMP) is a requirement and usually includes management of social issues. Community participation is not mentioned in legislation but it is well established as a requirement in the DOE guidelines. Proponents tend to include local communites in the decision-making process and in the development of management and mitigation plans. [127]	1. Environmental Conservation Act 1995 (ECA 95) and Environmental Conservation Rules 1997 (ECR 97)	1.https://bangladeshbiosafety.org/wp-content/uploads/2017/05/Bangladesh_Environmental_Conservation_Act_1995.pdf https://www.elaw.org/system/files/Bangladesh+--+Environmental+Conservation+Rules,+1997.pdf
Burkina Faso	Benefit-sharing	In 2015, Burkina Faso passed new mining legislation to replace the country's 2003 Mining Code. The new mining code created the Mining Fund for Local Development to promote development and secure benefits for local communities affected by projects. The Fund is capitalised by two sources of revenue: a contribution from the state of 20% of the taxes collected on the export of gold and a contribution of 1% of the monthly gross revenues from mining companies in production. Funds are then transferred to the communes and the regions for the benefit of local communities. [128]	2015 Mining Code (Loi n° 036-2015/CNT) Art. 26	https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101264/121922/F-259063524/BFA-101264.pdf

[126] (Clifford Chance, Global Business Initiative on Human Rights, 2022)

[127] (Momtaz & Kabir, 2018)

[128] (Schwartz, et al., 2021)

Canada	SIA requirements Community health Gender impacts Benefit-sharing FPIC Public participation Participatory monitoring	The new IAA applies to major projects within the sectors/areas of renewable energy, oil and gas, linear and transportation-related, marine and freshwater, mining, nuclear, hazardous waste, federal lands and protected areas (listed in Schedule 2 of the Physical Activities Regulation). Projects go through a planning phase where the public and Indigenous peoples are invited to provide information and contribute to planning the assessment. Proponents' Impact Statement then goes through an IA process which is conducted by the Impact Assessment Agency of Canada (the Agency), a Review Panel or an Integrated Review Panel. According to IAA, the IA process must consider among others the changes to the environment and to health, social and economic conditions, impacts on any Indigenous groups and their rights, Indigenous and community knowledge and culture, and the intersection of sex and gender with other identity factors (Art. 22). SIA, assessment of health effects and gender-based analysis (GBA) are a fundamental part of the IA. Impact Assessment Cooperation Agreements with provincial, territorial and/or Indigenous jurisdictions are recognized as a potential means to better implement the IA process. The Act also recognizes the importance of meaningful public participation and requires that opportunities be provided throughout the IA process, according to policies and guidelines established by the Agency. The IAA provides for increased opportunities for Indigenous and community participation in follow-up and monitoring programs. [129]	Impact Assessment Act (S.C. (Statutes of Canada) 2019, c. 28, s. 1) Articles 6, 22 and 27, and Government of Canada, Practitioner's Guide to Federal Impact Assessments under the Impact Assessment Act	https://laws.justice.gc.ca/PDF/I-2.75.pdf https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act.html
China	Benefit-sharing	China's Mineral Resource Law requires the State to consider the interests of the "national autonomous areas" where mining projects are implemented and "make arrangements favourable to the areas' economic development, production and well-being of the local minority nationalities" (Article 10).	China Mineral Resources Law 1986,(revised 1996), Article 10	https://113dstor001.s3-eu-west-1.amazonaws.com/Community+Development+in+Mining/China/China_Mineral_Resources_Law_1986_English.pdf

[129] (Wright, 2021) and (Wright, 2020)

Colombia	Benefit-sharing FPIC	1. In the oil and gas sector, companies - as part of their social responsibility - must define and implement community development programs (PBCs) within the framework of the hydrocarbon exploration and production contracts signed with the National Oil&Gas Agency (ANH). The PBCs aim at promoting sustainable development in projects' areas of influence and must be implemented in accordance with the terms and conditions established by the ANH Acuerdo No. 05 de 2011. Companies are required to ensure public participation in the definition and monitoring of PBCs, ensure coherence with EIA, and environmental and social management plans, guarantee transparency and respect for human rights and rights of ethnic minorities.[130] 2. The Mining code requires that any mineral exploration and exploitation proposals within Indigenous areas be decided with the participation of representatives of the Indigenous communities. The code recognizes the right of preemption of the Indigenous communities on the concession of mining rights within their territories. 3. National legislation (Law No.1530- 2012 regulating the organization and functioning of the General Royalties System) requires the government to establish and maintain national funds for community development and to share revenue from the exploitation of non-renewable natural resources with local government or local communities/affected areas. 4. With Law No. 21 - 1991, Colombia ratified ILO Convention No.169 and incorporated the fundamental right of Indigenous peoples to prior consultation into domestic law. Colombian Constitution affirms that the exploitation of natural resources in Indigenous territories must be carried out with respect to the cultural, social and economic integrity of the	1. Decreto 1760 de 2003 (Creation of the National Oil& Gas Agency ANH and its functions), Art. 5 (5.7), ANH Acuerdo No. 05 de 2011 2. Colombia Mining Code Law 685 2001, Capitulo XIV 3. Law No.1530- 2012 4. Law No. 21-1991	1.https://www.anh.gov.co/Documents/Acuerdo%2005%20de%202011.pdf 2.https://www1.upme.gov.co/simco/Archivos/Codigo_de_Minas_ley685.pdf 3.https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=47474#:~:text=Propiciar%20la%20inclusi%C3%B3n%2C%20equidad%2C%20participaci%C3%B3n,y%20planes%20de%20vida%20respectivos. 4. https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1577376

[130] (Agencia Nacional de Hidrocarburos ANH, 2013)

		communities and that the government must promote Indigenous participation in the decision-making. The Colombian Constitutional Court has confirmed this as a fundamental right of Indigenous peoples.[131]		
Ecuador	Public participation	Ecuador's Ministerial Declaration 109 of 2018 outlines several tools for public participation inenvironmental regulation, including: Public Assemblies, Environmental Education Workshops, Informative Workshops, Distribution of informative documentation, Website, Public Information Centre, etc.[132]	Article 16 -Ecuador's Ministerial Declaration 109 of 2018. Ministerio del Ambiente, Acuerdo No. 109, 02/10/2018 (Ecu.)	http://mesadeayuda.ambiente.gob.ec/Documentacion/MesaAyuda/Normativa/A.M.%20109%20DEL%2002-10-2018.pdf
European Union (EU)	Community health Cultural heritage Public participation	The EIA Directive aims to ensure a high level of environmental protection across EU Countries by requiring that environmental, social and health considerations are integrated into the preparation and authorisation of projects. The directive mandates that EIA be conducted prior to any authorisations for certain public and private projects listed in the directive's Annexes I and II, including airports, nuclear installations, railways, roads, waste disposal installations, waste water treatment plants, etc. The EIA must include impacts on the following factors: population and human health; biodiversity, land, soil, water, air and climate; material assets, cultural heritage and the landscape (Article 3). The directive also requires EU Countries to ensure effective participation of the public likely to be affected by or having an interest in the environmental decision-making (Article 6). [133]	Directive 2011/92/EU as amended by Directive 2014/52/EU	https://ec.europa.eu/environment/eia/pdf/EIA_Directive_informal.pdf
Finland	Indigenous knowledge-based impact assessment	The Act on the Sámi Parliament (974/1995), includes a provision on the authorities' duty to negotiate with the Sámi Parliament in large-scale measures which may directly affect the status of the Sámi as an Indigenous People and the Sámi homeland, including among others "the management, use, leasing and	1. The Act on the Sámi Parliament (974/1995), Section 9(1) 2. The Akwé: Kon Voluntary	1.https://www.finlex.fi/en/laki/kaannokset/1995/en19950974.pdf

[131] (Iseli, 2020)

[132] (Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development IGF, 2020)

[133] (Cave, et al., 2020)

		assignment of state lands, conservation areas and wilderness areas; applications for licences to stake mineral mine claims or file mining patents" (s. 9(1)). The voluntary Akwé: Kon Guidelines on Indigenous knowledge-based IA (developed by COP-9 of the Convention on Biological Diversity) are a recommended tool by Finland's Biodiversity Action Plan for carrying out the IA of projects affecting the Sámi homeland. The Guidelines have been applied in planning the use and maintenance of wilderness areas and nature conservation areas in the Sámi territories.[134]	Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments with Impacts on Sacred Sites and Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities	2.https://www.biodiversity.fi/actionplan/action-by-category/cross-cutting-issues/planning-and-land-use/
France	Human Rights and environmental due diligence Judicial remedy	French-registered companies that meet specific size criteria and foreign multinationals when at least one of their subsidiaries is located in France are required to establish and implement a 'vigilance' plan in relation to human rights and fundamental freedoms, health and security and protection of the environment. However, the impact of the law extends far beyond companies directly in scope as the vigilance plan is not limited to the activities of the company itself, but extends to the activities of the companies that are - directly or indirectly- exclusively controlled[135], and their subcontractors or suppliers with whom there is an established commercial relationship. According to French case law, a relationship should be considered 'established' when it is stable, regular, of a certain intensity and suggests that it will last. It does not necessarily have to be formalised by a contract. As a direct contractual relationship is not required, the vigilance duty concerns suppliers and subcontractors regardless of their	Corporate Duty of Vigilance Law (2017)	https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626?r=MhtATQVQFY

[134] (Markkula, et al., 2019) and (Arctic Council Sustainable Development Working Group (SDWG); Arctic Environmental Impact Assessment (EIA) project , 2019)

[135] According to the French Commercial Code (referred to by the Corporate Duty of Vigilance Law), 'exclusive control' results from either 1) directly or indirectly, holding a majority of voting rights; 2) appointing for a period of two consecutive financial years the majority of the members of the administration, management or supervisory bodies; 3) exercising a dominant influence by virtue of a contract, agreement or statutory clauses. On the contrary, the Law does not apply to cases of 'joint control', which is defined by the Commercial Code as "sharing of control of a company jointly operated by a limited number of partners or shareholders so that the decisions result from their common agreements".

		position in the supply chain whenever they have an established commercial relationship with the group companies, even when it goes beyond a direct or 1st tier contractual relationship. The vigilance plan (which must be publicly available) must provide an overview of and explain the implementation of risk mapping and evaluation procedures, and explain any mitigation action taken. Third parties may apply for an injunction to require a company to comply with the law and implement the vigilance plan, and to seek damages where the non-compliance has caused loss. [136]		
Germany	Human Rights and environmental due diligence Grievance mechanism	Companies that meet certain size criteria are required to conduct human rights and environmental due diligence in their supply chains. Companies must carry out a risk analysis of their own operations and direct suppliers to identify risks to people and the environment and to prevent, end or mitigate harms. Where harm occurs, affected people can make a complaint directly to the Federal Office for Economic Affairs and Export Control (BAFA), which holds regulatory powers of investigation.[137]	Corporate Due Diligence in Supply Chains Law (effective from 2023-2024)	https://www.bundestag.de/dokumente/textarchiv/2021/kw23-de-lieferkettengesetz-845608
Greenland	SIA requirement Agreement-making Benefit-sharing	Mining companies must conduct a SIA according to the provisions of Part 16 of the Mineral Resources Act and in accordance with the 'Guide to mineral projects on the process and preparation of a SIA'. Following the assessment and on the basis of the SIA report, an Impact Benefit Agreement (IBA) is negotiated between the mining company, the municipality affected by the project and the Government of Greenland. The IBA regulates the social impacts once the exploitation licence is granted.	1. 2009 Mineral Resources Act, Part 16 2. Guide to mineral projects on the process and preparation of a SIA	1.https://govmin.gl/wp-content/uploads/2020/05/Unofficial-translation-of-unofficial-consolidation-of-the-Mineral-Resources-Act.pdf.pagespeed.ce.TNSFOl70dy.pdf 2.https://www.businessingreenland.gl/~/media/Erhverv/Raastof

[136] (Clifford Chance, Global Business Initiative on Human Rights, 2022) and (Sherpa, 2019)

[137] (Clifford Chance, Global Business Initiative on Human Rights, 2022)

				fer/VSB/VSB-vejledning_ENG.pdf?la=en
Guinea	Agreement-making Benefit-sharing Community health	Mining companies must enter into a Local Development Agreement (LDA) with the local community residing on or in the immediate vicinity of their operations. The LDA must include, among others, provisions for the training of local community members, environmental protection and health measures, and processes for the development of social projects. A Local Development Fund (LDF) is created which will be funded by either 0.5% or 1% of the mining company turnover, depending on the substances extracted. The management of the Local Development Fund and any LDAs are subject to the principles of transparency and consultation.[138]	Guinea Mining Code 2011, Art. 130	https://113dstor001.s3-eu-west-1.amazonaws.com/Community+Development+in+Mining/Guinea/Guinea_Mining_Code_2011_French.pdf
India	FPIC Livelihood restoration SIA requirement Public participation Benefit-sharing	1. India's regional laws are influenced by the National Mineral Policy 2019, which aims to protect the welfare of tribal communities in accordance with other land protection legislation that requires consent from Indigenous communities, such as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.[139] 2. FRA makes provisions for recognising and giving forest rights to forest-dwelling scheduled tribes and other traditional communities. It aims to strengthen the conservation regime by recognising forest dwellers' right to sustainably use and manage forests. As interpreted by a 2009 government order, FRA gives village assemblies (gram sabha) the right to give – or withhold – their consent to projects affecting their lands.[140]	1. National Mineral Policy 2019 2. Forest Rights Act (FRA) 2006 3. Provisions of the Panchayats (Extension to the Scheduled Areas) Act, (PESA) 1996 4. Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR), sections 31(1), 38(1) and 105(3) and Schedule 2	1.https://mines.gov.in/writereaddata/Content/NMP12032019.pdf 2.https://tribal.nic.in/FRA/data/FRARulesBook.pdf 3.https://tribal.nic.in/actRules/PESA.pdf 4.https://legislative.gov.in/sites/default/files/A2013-30.pdf

[138] (Schwartz, et al., 2021)

[139] (Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development IGF, 2020)

[140] (Chandra, 2019)

		3. PESA formalises the three-tier Panchayati Raj self-governance system in the so-called fifth-schedule areas, which are tribal-dominated areas of the country. PESA gives extensive powers to gram sabhas (village councils), which are tasked -among others- with the power to safeguard and preserve the traditions and customs of the people along with their community resources. The gram sabhas are also empowered to decide about land acquisition, resettlement and rehabilitation of displaced persons, to plan and manage minor water bodies, and give mandatory recommendations on licenses or leases regarding mines and some minerals. 4. Under LARR 2013 it is obligatory for the appropriate Government that intends to acquire land for a public purpose to carry out a SIA in consultation with the concerned Panchayat or municipality in the affected area. Except for special categories of land use, LARR requires that the consent of 80% of landowners is obtained for private projects (70% for public projects). Schedule II provides for resettlement and rehabilitation package for landowners and for livelihood losers including landless and special provisions for Scheduled Tribes. Benefits are provided to families whose livelihood is primarily dependent on land acquired.[141] 5. In the state of Meghalaya, for instance, the Meghalaya Mines and Minerals Policy 2012 requires that 3% of net profits from mining activities is set aside each year for a CSR fund. The scheme must be used for the implementation of local area development plans. The Indian Supreme Court ruled in 2019 that no mining may occur in Meghalaya without the consent of the Indigenous peoples there.	5. The Meghalaya State Mines and Minerals Policy, 2012	5.http://megdmg.gov.in/pdf/Extra_Ordinary_Gazette_Mines_and_Minerals_Policy_2012.pdf

[141] (Hoda, 2018)

Kenya	Agreement-making Benefit-sharing	Kenya's Mining Act 2016 Section 47(2)(g) requires that the holder of a mineral right for largescale operations must enter into a community development agreement. Kenya's Natural Resources (Benefit Sharing) Bill (2018) requires that an applicant for a mineral right on 'community land' obtain consent from either the authority that administers community land or, on unalienated community land, from the Land Commission. The bill also provides that a mining right may be granted subject to conditions relating to community development. [142]	1. Mining Act 2016 Section 47(2)(g) -45(2)(f) 2. Kenya's Natural Resources (Benefit Sharing) Bill, (2018) Section 42(1)(c))	1.http://extwprlegs1.fao.org/docs/pdf/ken160985.pdf 2.http://www.parliament.go.ke/sites/default/files/2018-12/The%20Natural%20Resources%20%28Benefit%20Sharing%29%20Bill%2C%202018.pdf
Malawi	Agreement-making Benefit-sharing SIA requirement	Under the new mining code (Art. 169), a holder of a large-scale mining licence is requested to assist in the development of the communities affected by its operations to promote sustainable development, enhance the general welfare and the quality of life of the inhabitants as well as recognize and respect the rights, customs and traditions of local communities. To this end, mining companies must define and implement community development agreements (CDAs) with each community concerned, under the supervision of the Mineral Resources Committee. When necessary, companies must contribute to building the capacity for the community to effectively negotiate the agreement. Companies with a large-scale mining licence are requested to expend on community development no less than 0.45% of their annual gross sales revenues.	Malawi Mines and Minerals Act 2018, Art. 169	https://113dstor001.s3-eu-west-1.amazonaws.com/Community+Development+in+Mining/Malawi/Malawi_Mines_and_Minerals_Act_2018_English.pdf
Mali	Agreement-making Benefit-sharing	Mali's 2019 mining law creates a Mining Fund for Local Development which is funded by 20% of the government mining royalties and 0.25% of mining company turnover. The new Code also obliges mining companies to define and implement Community Development Plans (CDPs) in consultation with the communities and local and regional authorities indicating the economic and social projects to be carried out for the benefit of the impacted communities.[143]	2019 Mining Code (Ordinance n ° 2019-022 / P-RM of September 27, 2019 on the mining code in the Republic of Mali) Art. 83 and Art. 160	http://extwprlegs1.fao.org/docs/pdf/Mli191650.pdf

[142] (Schwartz, et al., 2021) and (Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development IGF, 2020)

[143] (Schwartz, et al., 2021)

New Zealand	SIA requirement Indigenous culture Community health & safety	The Resource Management Act 1991 requires that project applicants prepare an Assessment of Environmental Effects (AEE), which must cover among others any effect on "those in the neighbourhood and, where relevant, the wider community, including any social, economic, or cultural effects" (Schedule 4, s7(1)). SIA is therefore an integral part of the AEE process. The AEE should also consider community health and safety by addressing any discharge of contaminants into the environment, including emission of noise, as well as any risk to the community through natural hazards or hazardous installation. It is also reported increasing use of Cultural Impact Assessments (CIAs), which are not a statutory requirement for applicants, though CIAs can assist them in meeting AEE obligations. A CIA reports Māori cultural values, interests and links with an area or resources, and the potential impacts of a proposed activity on these. CIAs also allow for meaningful and effective participation of Māori in project IA.[144]	Resource Management Act (1991), Schedule 4, s.6 and 7	https://www.legislation.govt.nz/act/public/1991/0069/latest/DLM242008.html
Peru	FPIC Public participation Benefit-sharing	1. According to Ley N° 29785, Consulta Previa is a process through which the State previously consults Indigenous peoples regarding legislative or administrative measures that directly affect their collective rights, seeking to reach agreement or consent through intercultural dialogue. In the case of mining projects, the competent authority for conducting the consulta previa is the Ministry of Energy and Mines. 2. Under Law No. 27446, EIA Process (called Environmental Certification) has 3 stages. The evaluation stage is the responsibility of Senace as well as the Technical Reviewers, who conduct a technical evaluation to determine environmental viability and grant environmental certification. In these 3 stages, citizen participation mechanisms are implemented with	1. Ley N° 29785, Ley del Derecho de Consulta Previa 2. Ley N° 27446, Ley del Sistema Nacional de Evaluación de Impacto Ambiental. 3. Regulation for Public Participation for the Mining Sub Sector- Supreme Decrees No. 020-2008-EM and 028-2008-EM	1.http://extwprlegs1.fao.org/docs/pdf/per128120.pdf 2.https://www.minam.gob.pe/wp-content/uploads/2017/04/Ley-N%C2%B0-27446.pdf 3.https://www.senace.gob.pe/wp-content/uploads/2016/10/NAS-4-6-05-DS-028-2008-EM.pdf

[144] (Quality Planning, 2022)

		the objectives of disseminating information and collecting contributions from the public. 3. In 2008, the Ministry of Energy and Mines specifically regulated citizen participation in the mining sector. The mechanisms for public participation include facilitating access to information and content of the environmental studies, participatory workshops, public hearings, establishment of a permanent information office, and participatory environmental monitoring and surveillance. 4. Under Ley No. 28258 (2004), revenue from mineral royalties received by regional and municipal governments must be used for the financing or co-financing of investment projects that promote the link between the mining sector and local economic growth.	4 .Ley No.28258 (2004), Article 9	4.http://biblioteca.unmsm.edu.pe/redlieds/recursos/archivos/DescentralizaciC3%B3nRecursosEconC3%B3micos/Peru/28258.pdf
Philippines	FPIC Benefit-sharing	The Philippines Mining Act of 1995 states that "no ancestral land shall be opened for mining operations without the prior consent of the Indigenous community concerned. In case of agreement, the royalty payment, upon utilization of the minerals, shall be agreed upon by the parties. The said royalty shall form part of a trust fund for the socio-economic well-being of the Indigenous cultural community." Mining contractors must also assist in the development of the mining community, including "the promotion of the general welfare" and "the development of science and mining technology."[145]	The Philippines Mining Act of 1995 Sections 16, 17, 57	http://extwprlegs1.fao.org/docs/pdf/phi41014.pdf
Sierra Leone	Agreement-making Benefit-sharing SIA requirement	Sierra Leone's Mines and Minerals Act 2009 states that "the holder of a small-scale or large-scale mining licence shall assist in the development of mining communities affected by its operations to promote sustainable development, enhance the general welfare and the quality of life of the inhabitants, and shall recognize and respect the rights, customs, traditions and religion of local communities." Furthermore, "[t]he holder of a small-scale or large-scale mining	Sierra Leone's Mines and Minerals Act 2009, Articles 138, 139	http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/87733/100126/F499708252/SLE87733.pdf

[145] (Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development IGF, 2020)

		licence is required to have and implement a community development agreement with the primary host community" if the operation exceeds a particular size. [146]		
South Africa	Environmental health impact assessment Benefit-sharing	1. The National Environmental Management Act (NEMA) establishes the legal framework for EIA in South Africa, by requiring that impacts on the environment, socio-economic conditions, and the cultural heritage of activities that may significantly affect the environment, people and/or nearby developments must be assessed prior to any authorization (s. 24). Further EIA regulation has defined the EIA process mandating that a proposed activity/project be subjected to either a Basic Assessment (BA) process or a scoping and environmental impact reporting ((S&EIR) process before an environmental authorization is granted by the competent authority. In 2010, the Department of Health (DOH) has developed a set of guidelines for environmental health impact assessment (EHIA) with the objective of integrating health considerations into the EIA process. EHIA refers to environmental health as comprising those aspects of human health, including quality of life, that are determined by physical, biological, social and psychosocial factors in the environment. According to DOH, EHIA covers the health effects of impacting activities, epidemiology and toxicology, human interaction with natural resources as well as social factors defining the broader context of surrounding communities such as communities' levels of vulnerability. 2. The South African Renewable Energy Independent Power Producer Procurement Program (REIPPP) requires private sector renewable energy projects to engage with local community development around the project sites. Government awards projects with preferred bidder status	1. National Environmental Management (NEMA) Act, Act 107 (1998), Section 24 -- EIA Regulations 2014 (as amended) R326 of 07 April 2017-- Environmental Health Impact Assessment (EHIA) Guidelines (2010) 2. The South African Renewable Energy Independent Power Producer Procurement Program (REIPPP)	1.https://www.gov.za/sites/default/files/gcis_document/201409/a107-98.pdf https://www.dffe.gov.za/sites/default/files/gazetted_notices/nema107of1998_amendments_environmentalimpactsassessmentsregulations_gnr326_0.pdf https://www.ehrn.co.za/download/ehia_2010.pdf 2.https://www.gov.za/about-government/government-programmes/renewable-independent-power-producer-programme

[146] (Schwartz, et al., 2021) and (Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development IGF, 2020)

		partially based on commitments made by companies to contribute towards economic development. Companies are required to spend a certain amount of their revenue on Socio-Economic Development (SED) and Enterprise Development (ED) and share ownership in the project company with local communities. These criteria, as well as the creation of a specific number of jobs, are incentivised through awarding higher scoring to projects that realise such criteria within a 50km radius to the project site during the evaluation process.[147]		
South Korea	HIA requirement	The Ministry of Environment (MoE) enacted the Environmental Health Act in 2009 to implement environmental policies intended to protect population health. Article 13 requires that the relevant administration or the proponent who is planning a project that is subject to EIA assess the impact of environmental risk factors on the population's health. The steps of an HIA are project analysis, screening, scoping, appraisal, plan for mitigation measures, and monitoring. The physical determinants of health such as air, including odour, water, noise, and vibration are assessed.[148]	Environmental Health Act (2009), Article 13	https://elaw.klri.re.kr/kor_service/lawView.do?hseq=32221&lang=ENG
South Sudan	Agreement-making Benefit-sharing	South Sudan's Law on Mining (Law No. 36 of 2012) requires companies to sign CDAs to secure mining licences. Although the CDA is signed after the licence has been granted, non-compliance with the requirements of the CDA may result in licence suspension (Article 68(2)). Also, mining operations cannot commence until the titleholder has entered into an approved CDA (Article 80 (1)(c)). Development of communities must include among others provision of schools, clean drinking water, health centres, roads, police stations and other services in	South Sudan's Law on Mining (Law No. 36 of 2012), Art. 68(2), 80 (1)(e), 128 (1)	https://www.wto.org/english/thewto_e/acc_e/ssd_e/wtaccssd6_leg_28.pdf

[147] (World Wide Fund for Nature South Africa (WWF-SA), 2015)

[148] (Kang, 2012)

		accordance with "best Corporate Social Responsibility practice" (Article 128(1)).[149]		
Suriname	SIA requirement FPIC Public participation	The new Environmental Framework Act EFA (2020) establishes the legal framework for ESIA which has become a mandatory process for proposed projects that could possibly have adverse effects on the environment. The National Environmental Authority (NMA) is also tasked with ensuring that the FPIC principle is applied in decision-making processes that regard Indigenous and tribal peoples. Before, the National Institute for Environment and Development (NIMOS now transitioned to NMA) had issued guidance on ESIA, and been responsible for the review of ESIA reports. NIMOS guidelines set out requirements for public participation. These included dissemination of information and public hearings.[150]	1. Environmental Framework Act EFA (2020) 2. NIMOS Environmental Assessment Guidelines Volume I Generic (2009)	1. http://nimos.org/en/ 2.http://www.car-spaw-rac.org/IMG/pdf/Environmental_Assessment_Guidelines_-_Volume_I_Generic.pdf
Thailand	HIA requirement Public participation	1. The 2007 Thai Constitution states that an assessment of the impacts on the quality of the environment and public health must be conducted for any projects which may seriously affect the community with respect to the quality of the environment, natural resources and health. Public participation and engagement with stakeholders must be ensured through public hearings and consultation with independent organizations and experts is also required. 2. The 1992 National Environmental Quality Act requires that an EIA be conducted and approved by an expert committee for projects that may impact the environment. EIA must cover physical and biological natural resources, environment, benefit to humans, and quality of life, including health.[151]	1. Thai Constitution 2007 (section 67 paragraph 2) 2. The Enhancement and Conservation of National Environmental Quality Act (NEQ) 1992	1.https://www.constituteproject.org/constitution/Thailand_2007.pdf 2.http://thailaws.com/law/t_laws/tlaw0280.pdf

[149] (Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development IGF, 2020)

[150] (Netherlands Commission for Environmental Assessment, 2020)

[151] (Chandanachulaka, 2012)

Vietnam	Screening for cultural heritage	The new Environment Protection Law 2020 provides several criteria to classify investment projects and determine which project is subject to environmental impact preliminary assessment (EIPA), EIA and environmental permit. These criteria include (1) scale, capacity, and type of production, business or services; (2) the area of land use, of land with water surface and/or of sea area, the scale of exploitation of natural resources; and (3) sensitive environmental factors. The latter includes, among others, concentrated residential areas, sources of water used for domestic water supply, natural conservation zones, forests, physical and cultural heritage, requirements on relocation and resettlement.[152]	Environmental Protection Law 2020

[152] (National Academy of Public Administration (NAPA), 2021)

ANNEX B: KEY INFORMANTS

Name	Country	Position
Dr Sheridan Coakes	Australia	National Social Practice Lead heading a National Social team at Umwelt consultancy
Raoul Cola	Thailand	Manila-based E&S Advisory for IFI funded projects in Thailand and the Philippines; currently an E&S advisor on an airport infrastructure project in Thailand
Piers Gillespie	Australia	Principal Social and Strategy Lead for the Department for Energy and Mining in South Australia
Dr Glennis Lewis	Canada	Teaches EIA Assessment at Brandon University; served as a Commissioner with Manitoba's Clean Environment Commission from 2015 to 2018, and, currently, is a member of the Technical Advisory Committee on Science and Knowledge providing the Impact Assessment Agency of Canada with expert advice on topics related to impact assessments.
Erika Lopez	Colombia	Social Specialist with consulting experience in the Colombian environmental licensing process
Alistair MacDonald	Canada	Founding Director and Impact Assessment Team Lead at the Firelight Group; member of the federal Impact Assessment Agency of Canada's Technical Advisory Committee on Science and Knowledge
Charly Mehl	Thailand	Thailand-based retired E&S consultant; previously undertook assessment for the World Bank in Thailand; social scientist by training
Ciaran O'Faircheallaigh	Australia	Professor of Politics and Public Policy at Griffith University, Brisbane, Australia
Ruby Ojha	India	Senior Environmental Specialist, Regional Team Lead for South Asia - Environmental, Social & Governance Department, International Finance Corporation, IFC India
Prakhar Pandey	India	Qualified Environmental Lawyer with experience in areas of Environmental Impact Assessment, Climate Change, Forest and Wildlife Conservation, etc.
Dr Richard Parsons	Australia	Richard Parsons, Social Impact Assessment Specialist, Department of Planning and Environment; lead author of the New South Wales social impact assessment guidelines (2017 and 2021)
Dr Jenny Pope	Australia	Director of consulting firm Integral Sustainability; member of the Environmental Protection Authority of Western Australia

Witchaya (Tay) Pruecksamars	Thailand	Thailand national safeguards specialist; a researcher at Chulalongkorn University; E&S advisor on World Bank and ADB projects
Prof John Sinclair	Canada	Professor and Director of the Natural Resources Institute, University of Manitoba
Jorge Villegas	Thailand/ Colombia	Senior Social Specialist, IFC
Vineeta Yadav	India	Consultant working with projects on social risks assessment, risk mitigation plans, UNGP Business and Human Rights, resettlement, Indigenous peoples relations, social performance governance, strategy, and audit
Tony Zola	Thailand	Thailand-based social safeguards auditor for hydropower and infrastructure projects in Thailand and Laos, previously rural and agricultural development specialist for WB, ADB and USAID in Thailand

ANNEX C: INTERVIEW GUIDELINE

- Does the **national project approvals framework** include a provision for an autonomous SIA process, or is the evaluation of impacts on social factors integrated into a broader EIA process? In the case of an autonomous SIA, how does it relate with the EIA process? If the SIA is integrated into the EIA process, are social factors adequately addressed? What are the main gaps?
- Who is/are the competent regulatory **authority/ies** for E(S)IA in this country? In the case of a federal state, how is competence distributed between the federal and subnational levels on this matter? Are other ministries involved to support social risk management and what are their respective responsibilities? What are the mechanisms for cooperation if multiple ministries/levels of authorities are involved? How effective are they? What are the main gaps?
- What are the projects for which a SIA/EIA is required (**screening** criteria)? Are the activities subject to SIA/EIA process exhaustively listed in regulations or does the competent authority have scope to decide whether a proposal requires a SIA/EIA based on the analysis of the specific characteristics of the project and its area of influence?
- Are there requirements and procedures for **scoping** of social issues to be assessed in the ESIA? If yes, what are they? Does the scoping step include requirements for stakeholder input and responses to stakeholder input?
- What **social topics** does the SIA/EIA process cover?
    - Community health and safety
    - Occupational health and safety
    - Indigenous peoples
    - Vulnerable groups – how are these defined?
    - Resettlement and livelihood restoration
    - Cultural heritage
    - Influx/in-migration (migrant workers, pressure on services and infrastructure, etc)
    - Working conditions of direct and indirect employees
    - Others
- Are they adequately addressed in practice?
- Are there requirements for social **baselines**? If yes, what are they?
- Is **public participation** (including civils society vulnerable people, minorities, women) adequately ensured and conducted throughout the SIA/EIA process? If so, how? Is the process transparent by guaranteeing access to information? If so, how?
- Do **Indigenous peoples** and more generally land connected peoples (e.g. tribal communities) receive special consideration? If so, how? Do they participate in the assessment? Do they take part in the decision-making process?
- Are there requirements for **benefit-sharing** with the affected communities (e.g. community development programs, impact-benefit agreements, local hiring and procurement)?
- Are project proponents required to submit **Social Management Plans** (SMPs) encompassing prevention, mitigation and compensation measures for identified impacts? Do the requirements for SMPs include participatory monitoring, follow-up, and abandonment plans

according to the nature of the project? If not in SMPs, are these covered as standalone components?

- Are there proactive measures to promote **compliance** and clear **sanctions** for failure to implement SMPs and meet social performance commitments?
- Is the **capacity** of the various government agencies and ESIA consultants sufficient to assess and monitor social issues? Are there capacity building programs to improve SIA competencies in responsible government agencies? Are there professional qualification requirements for social consultants undertaking ESIA?
- Overall, what are the **strengths and weaknesses** of this framework?
- Is there any relevant **literature** on this country framework that we should be reading?
- Are there other **key informants** that we should interview for the case study?

COMMUNITY INSIGHTS GROUP

331 North Bridge Road #12-02
Odeon Towers, Singapore.
188720

@ info@communityinsights.eu
W www.communityinsights.eu