WORLD BANK GROUP

SYNTHESIS NOTE

COUNTRY SYSTEMS TO MANAGE SOCIAL RISKS OF INVESTMENT PROJECTS

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ABBREVIATIONS

CDA	Community Development Agreement
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
ESIA	Environmental and Social Impact Assessment
EU	European Union
FPIC	Free, Prior, and Informed Consent
H&S	Health and Safety
IA	Impact Assessment
IAA	Impact Assessment Agency
IP	Indigenous Peoples
LA	Land Acquisition
NSW	New South Wales
OHS	Occupational Health and Safety
PP	Public Participation
SE	Stakeholder Engagement
SIA	Social Impact Assessment
SIMP	Social Impact Management Plan

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Introduction

In national Environmental Impact Assessment (EIA) legislation, social risks of investment projects tend to be inadequately considered, causing insufficient mitigation, and poor outcomes for communities. The main challenges are gaps in coverage of social risks, combined with weak institutional coordination and oversight. Even if a project's legal framework involves other laws and regulations covering aspects of social risk missing in applicable EIA law (such as labor law, mineral law, forestry law, etc.), coordination between multiple regulatory agencies is typically limited and implementation capacity and oversight is weak. This often leaves social risks and impacts unmitigated, even if an impact assessment (IA) has been prepared according to international standards and identified them.

Objective

Take stock of social risk management and enforcement systems in national legislation around the world and develop key takeaways, including good practices illustrating how these processes are integrated and mutually support each other.

Methodology

Data for the study was collected through a workshop with members of the Social Practice Forum, a literature review, and interviews with country experts and social practitioners focusing on how country systems:

a) address substantial and procedural aspects of social risks;
b) ensure the adequacy of assessment (coverage and depth) of social risks and mitigation measures in the EIA;
c) mandate mitigation measures that are not otherwise clearly provided for under relevant national laws and regulations; and
d) monitor and audit management plans and enforce corrective actions, including who approves these corrective actions and on what basis.

From a long list of 30 countries, five countries, namely, Colombia, India, Thailand, Australia, and Canada were selected for further study because they offer the broadest coverage of social risks and impacts in terms of (i) regulatory consistency and institutional coordination; (ii) public engagement and access to information; (iii) grievance management; (iv) screening and scoping of social issues; (v) assessment of social impact; and (vi) mitigation measures. The analysis focused primarily on the legislation for EIA, Social Impact Assessment (SIA), and Environmental and Social Impact Assessment (ESIA).

The five countries have the following key features in their impact assessment legal frameworks:

INDIA	CANADA
• Stand-alone SIA in case of land acquisition • SIA units at federal and state levels • Prior consent for land acquisition on tribal lands • Gender and vulnerable groups including in Public Participation • SIA reviewed by Multidisciplinary Expert Group, including representatives of local governments	• Fully integrated EIA-SIA process • Central Agency coordinating with subnational jurisdictions • Broad scope of social issues and emphasis on Public Participation • Strong recognition of Indigenous Peoples' rights • Gender-Based+ Analysis • Participatory monitoring and federal funding for monitoring by communities

THAILAND	AUSTRALIA	COLOMBIA
• Highly centralized system • Inter-ministerial coordination clearly defined • Health Impact Assessment (HIA) in EIA for most harmful project • Range of social issues covered under HIA • Consistent and prescriptive legal framework	• Federal laws on IP participation • New South Wales: SIAs for major projects • Queensland: broad scope of social issues, cumulative impacts, community content • West Australia: EIA authority independent of government; stakeholders can object.	• Competence between the central, regional, and local levels • Prior consultation with IP part of environmental licensing • Significant Stakeholder Engagement (SE) provision for communities • Broad scope of social issues in ESIA • Competent authority has sanctioning powers, can enforce conditions and impose additional measures

The key findings from the stock-taking are presented below with examples from 'good' national frameworks. The social risks assessed comprised the following areas: Community Health and Safety (CHS), Indigenous Peoples (IP), Occupational Health, Safety (OHS) and Working Conditions, Cultural Heritage, Resettlement/ Livelihood Restoration, Vulnerable People and Gender, and Influx and Migrant workers.

Regulatory consistency and institutional coordination

The case studies reflect that achieving consistency in regulation is made easier when a single agency is responsible for administering the EIA system and coordinating with other authorities. While a centralized system has its benefits, there are potential downsides when independence and subsidiarity are constrained. In **Thailand**, EIA (including SIA) is centralized in the Office of Natural Resources and Environmental Policy Planning, but the involvement of the subnational government is limited. **Canada** follows the principle of subsidiarity, with the federal Impact Assessment Agency (IAA) leading an integrated EIA/ SIA for major projects in collaboration with provincial, territorial, and Indigenous jurisdictions.

Independent assessment and permitting processes give social issues more attention, foster impartiality and minimize political influence – as in the case of **Western Australia**, where EIA is led by an independent authority. In **New South Wales (NSW), Australia**, in case of public controversy projects, the authority to make the final impact assessment decision is removed from the government and assigned to an independent body. In India, social impact assessment reports are reviewed by multidisciplinary expert groups, which include local government representatives.

Sufficient expertise to assess social risks remains a challenge; countries use different approaches to address it. In **NSW, Australia**, the responsible authority, the Department of Planning and Environment, has a large in–house team specializing in key sectors, including social sectors, but in-house staff may not be sufficient for all projects under review. In Canada, social expertise is brought in from other federal agencies like the Ministry of Health; however, there is an issue of coordination with specialists from other agencies not fully understanding the requirements of the IA process.

Coverage of social issues

The regulatory frameworks tend to emphasize the social issues considered to be the highest priority for affected communities and pose the highest social risk for projects in each country. The depth and scope of coverage depend on specific country contexts, including history. In India, the SIA legislation focuses on resettlement and land acquisition-related issues due to the historical context of social conflict around large-scale land acquisition for infrastructure projects, displacing many and adversely impacting large numbers of agricultural livelihoods. In **Canada** and **Australia**, the emphasis is on the issues of indigenous people who were marginalized in the past.

Many countries have broad coverage of social issues. In **Colombia**, demographics, CHS, OHS, IPs, economic activities and livelihoods, infrastructure and public services, vulnerable groups, cultural values, and archaeological heritage are included. In **Canada**: gender, cultural, health, vulnerability and economic issues, and social sustainability are covered.

Statutory guidelines can help ensure comprehensive coverage of all social issues by proponents and consultants. Some countries have statutory ESIA Guidelines like **Queensland, Australia**, which mandate the range of social issues to be covered in the impact assessment. In other countries, like **Canada**, ESIA guidelines are advisory in nature and seek to ensure consistency of approach. These are flexible tools and allow regulatory agencies to focus on high-priority social issues rather than covering all of them; they are also easier to update to integrate emerging trends and good practices.

In **Bangladesh**, SIA is conducted as an integral part of EIA. The specified list of contents of EIA includes a description of social, environmental, and socioeconomic impacts. An Environmental Management Plan (EMP) is a requirement and usually includes the management of social issues.

France and Germany have human rights risk assessments as part of laws on human rights due diligence. **French-registered** companies above a certain size and foreign multinationals with at least one of their subsidiaries 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. The requirement of a vigilance plan extends to the activities of the companies that are - directly or indirectly - exclusively controlled by the primary companies, and their subcontractors or suppliers.

Public engagement and access to information

In all the case studies, comprehensive public participation and information disclosure are required for key IA phases. In the **European Union (EU)**, a directive requires member states to ensure the effective participation of the public in environmental decision-making. In India, women must be represented in the SIA process. In some jurisdictions, additional and more extensive consultation processes are mandated for larger projects, for example, in Thailand, in cases when health impact assessment is mandated.

Some jurisdictions have strong consent requirements based on participatory processes. In **India**, consent is required for land acquisition for Public-Private Partnerships (min 70%) and private (min 80%) projects; prior consent for tribal communities is required. In **Colombia**, the EIA law integrates prior consultation with IPs through a formal mechanism involving the Ministry of the Interior. In **Argentina**, public consultation or hearing procedures conducted by the competent authority are required by law. In Tierra del Fuego Province, the EIA processes for the approval of mining projects include the principle of Free, Prior and Informed Consent (FPIC) of the population that is potentially affected by the projects, i.e. FPIC is not limited to Indigenous peoples. In the **Philippines**, no ancestral lands shall be open for mining operations without the prior consent of the indigenous community concerned.

Countries have developed innovative mechanisms to partner with the public in the decision-making process. In **NSW, Australia**, Community Consultative Committee is active during assessment or post-approval to foster dialogue with developers. Australian (federal) legislation requires mandatory agreement-making with indigenous peoples by establishing aboriginal representative bodies to protectors and manage native rights and negotiate with projects. In **Canada**, the government provides funding for capacity building to prepare indigenous or indigenous bodies for effective participation in the assessment process.

Public engagement processes involve a grievance mechanism. In **Colombia**, decisions on environmental licenses are appealable and a public hearing will be arranged in case of clear violation of conditions. In **India**, in-person hearings are allowed for any interested person who raises objections. In **Thailand**, a Public

Service Centre contains several channels for public complaints on EIA. Under **Germany's** human rights due diligence regulation, affected people can make a complaint of harm directly to the Federal Office for Economic Affairs and Export Control (BAFA), which holds regulatory powers of investigation.

Mitigation and enhancement measures

A legal requirement for the 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. In **France**, the human rights vigilance plan must be publicly available and provide an overview of and explain the implementation of risk mapping, evaluation procedures, and mitigation actions taken. **Canada** has specific and differentiated mitigation measures and adaptive management requirements.

The thematic scope of mitigation measures tend to focus on social risks that are critical in the country's context. In **Thailand**, for example, legislation requires specific mitigation measures to protect the health of the affected communities. In the case of **India**, SIA legislation requires specific **livelihood** restoration measures.

Benefit-sharing provisions are less common and, in some instances, found to be limited to specific cases, for example, in contexts with past social issues due to distributive justice. In **Queensland, Australia**, a social impact management plan (SIMP) must comprise enhancement measures for local employment and procurement, including measures for disadvantaged and under-represented groups. In **India**, SIMPs require financial assistance and employment opportunities for livelihood loss; in case of displacement of tribal communities, a specific Development Plan is required. In **Canada** benefit sharing through the Impact Benefit Agreements (IBA) is common for IP-affecting projects.

Some countries have regulations for the mining sector requiring Community Development Agreements (CDAs) and consultations with the affected populations as conditions for obtaining mining licenses, such as **Kenya, Mali, Malawi,** and **South Sudan**. In **South-Sudan** non-compliance with the requirements of the CDA may result in license suspension. In **Burkina Faso**, the Mining Fund for Local Development is established by law to promote development and secure benefits for local communities affected by projects. The Fund is capitalized by the state and mining companies. **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 favorable to the areas" in terms of economic development, production and well-being of the local minority nationalities.

Monitoring and Enforcement

Monitoring and enforcement provisions are common, but their features are very specific to each country's system, either in terms of authorities involved, monitoring and enforcement tools, or consequences in the case of non-compliance. In **Colombia**, the environmental authority has sanctioning powers; it can enforce conditions and impose additional mitigations for impacts not identified during ESIA. In **Queensland, Australia**, the Coordinator-General is responsible for monitoring and enforcing compliance with project conditions, in close collaboration and under a reporting mechanism involving local governments and line ministries. In **NSW, Australia**, the department reviewing EIA is responsible for monitoring and enforcement; a Community Consultative Committee with a monitoring role can be established.

An emerging good practice in many countries is the requirement for multi-disciplinary, participatory monitoring and advisory mechanisms. In **India**, the SIA legislation requires the establishment of rehabilitation and resettlement committees in the case of large-scale projects involving land acquisition; these committees must include local stakeholders to review the implementation of mitigation measures. In **Canada**, the Impact Assessment Agency establishes monitoring committees that include various federal agencies as well as NGOs, indigenous peoples, experts, and the public; the government provides federal funding to enable indigenous communities to undertake effective monitoring.

Clear monitoring and enforcement mandates, particularly of the leading EIA agency, and coordination mechanism are crucial. In **Thailand**, the mitigation measures and monitoring requirements specified in the EIA reports are transferred as conditions to the permits, with permitting agencies being responsible for monitoring and enforcement. The practice of transferring ESIA approval conditions into permits without close coordination between the lead EIA agency and permitting agency throughout the impact assessment process may lead to ineffective monitoring and lack of enforcement.

Conclusion and Next Steps

The study found that each country's social risk management system is unique due to the interplay of multiple factors. Systems are developed to manage the social risks that are important in the national context, but other factors also play a role such as (in random order) the country's integration in the international market, traditions in civic engagement, colonial past, political system, and overall economy. While fragmentation of institutional responsibilities and availability of expertise remain a challenge, opportunities may exist to help the client develop their systems around issues that are important to them.

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:

- Where're the entry points? Which social risks matter to the country the most?
- Any interest to strengthen their management systems? Does ESG give us an entry point?
- Where is the potential champion? Who may be interested in developing the Social Risk Management system?
- What can we do immediately? Technical guidelines? Knowledge exchange? Training?
- How much do traditions, colonial past, etc. matter? Do we need to tailor the "international good practice" based on local contexts?
- How can we overcome interagency coordination challenges? Do we need an independent, or integrated, oversight agency?