

THE ROLE OF INTERNATIONAL STANDARD-SETTING BODIES IN COORDINATING ENVIRONMENTAL IMPACT ASSESSMENT AND ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT FUNCTIONS

SUMMARY

For years, environmental impact assessment (EIA) and environmental compliance and enforcement (ECE) functions have largely occupied separate spheres within the realm of environmental governance. Although international standard-setting organizations have established policies, norms and guidelines and have played a key role in developing bodies of good practices in both disciplines, many experts have observed a lack of coherence between EIA and ECE – both in practice and at a structural level.¹ The confluence of several factors has increasingly provided impetus for strengthening coordination between EIA and ECE functions. These include heightened public attention to environmental and social sustainability, demand by countries receiving development assistance for greater ownership of their development strategies, increased recognition of the right of public participation, and a growing awareness of “value and vulnerability of the global commons,”² including transboundary issues and the need to mitigate and adapt to the effects of climate change. Conditions have now matured for standard-setting bodies to build upon lessons learned thus far and to support the comprehensive strengthening of country-level EIA-ECE systems³ that can effectively manage risks and consistently deliver desirable environmental and social outcomes.

There are important reasons for standard-setting bodies to support balanced capacities for EIA and ECE functions. Without effective government institutions that ensure compliance with EIA requirements, even the most rigorously developed environmental management plans or licensing requirements may fail to be realized, resulting in damage to local ecosystems and community livelihoods. Moreover, without reliable mechanisms for managing individual project outcomes, government bodies cannot engage in realistic planning based on the anticipated cumulative impacts of multiple projects. This concern becomes particularly significant where the major development of a sub-sector or municipal service is contemplated. Despite the need for stronger coherence between EIA and ECE in many countries, only a few international standard-setting bodies have published guidelines and good practices for both EIA and ECE tasks.⁴

1 BACKGROUND

In the context of environmental governance, standard-setting bodies include, but are not limited to: (1) international and regional networks and associations, (2) intergovernmental organizations; (3) bilateral overseas development assistance (ODA) agencies; (4) international financial institutions; (5) international conventions and agreements; (6) organizations that establish and manage voluntary standards; and (7) standards resulting from collaboration between two or more organizations.

It is important to recognize that in the context of environmental governance that “standards” do not refer to guidelines and recommendations designed for uniform application. Universal prescriptions are neither possible nor appropriate, since the laws and regulations, institutional capacities, and allocation of responsibilities that comprise each system may vary significantly from country to country.⁵ Against this background, standard-setting bodies may aim to identify core principles and good practices that transcend international boundaries and which inform planning, capacity building and training efforts.

1.1 Context for EIA and ECE within environmental governance framework

A meaningful examination of EIA-ECE coordination recognizes how these functions fit within the context of environmental regulatory institutions as a whole. Although EIA and strategic environmental assessment (SEA) are important planning and risk-management tools, they are rarely the sole mechanisms governments use to safeguard the environment and do not achieve the goals of sustainable development standing on their own.⁶ Government ECE authorities must enforce compliance with a range of

environmental rules outside the context of project-specific licensing requirements, such as laws regulating hazardous waste disposal or protecting water quality, sectoral permitting systems and engineering codes, zoning ordinances, land use planning systems, and other mechanisms. ECE functions therefore encompass a broader range of responsibilities than impact assessment. In this respect, impact assessment and ECE are not usually organized as symmetric functions within a country's regulatory framework. Yet without effective coordination between EIA and ECE functions, inspectors and auditors are not alerted to project-specific risks and there is no feedback mechanism to inform government EIA practitioners concerning the enforceability and long-term effectiveness of permitting requirements.

2 SPECIFIC ROLES OF STANDARD-SETTING ORGANIZATIONS

2.1 Practitioner networks and associations

Networks and associations play an important role in advancing coherence between EIA and ECE functions because they are comprised of the people who actually carry out the tasks involved. As direct participants, their members have first-hand knowledge of how things work in practice and collectively represent a significant body of experience. These organizations act as stewards of standards, principles, and good practices within their areas of expertise.⁷ Networks and associations also provide informal channels for sharing information with practitioners in other departments, ministries, and countries who are dealing with similar circumstances and situations. IAIA, INECE,⁸ IMPEL,⁹ and other network organizations have helped to strengthen the linkage between EIA and ECE sub-systems in developing countries through their overlapping objectives and the discussions they nurture through conferences, training, publications, and online forums for discussion.¹⁰

Regional networks frequently play an important role in facilitating the promotion of good practices for EIA-ECE coordination at the national level. One of the key objectives of the East African Network for Environmental Compliance and Enforcement (EANECE) specifically addresses coordination between competent actors: strengthening relationships within each of the East African countries between government authorities with mandated responsibilities for environmental management, compliance and enforcement, in order to improve compliance with environmental requirements.¹¹ Similarly, national EIA practitioner associations have been instrumental in advocating improvements in national legal and administrative institutions relating to impact assessment.¹²

2.2 Intergovernmental organizations

Intergovernmental organizations have influenced country-level coordination of EIA and ECE functions through a number of standard-setting activities. For example, the United Nations Environment Programme (UNEP) has played a leading role among United Nations organizations in originating the development of standards for environmental governance that have been incorporated into national systems. UNEP has recognized that weak coordination between government agencies at all levels is a particular problem in many developing and middle income countries.¹³ UNEP has supported improvements in country-level environmental governance in a number of ways, including:

- sponsoring and promoting new multilateral environmental agreements (MEAs) that signatory countries ratify and incorporate into national laws;¹⁴
- developing general and regional guidelines and training materials that inform the implementation of local EIA and ECE practices;¹⁵ and
- providing methodologies for the evaluation of EIA systems.

Similarly, the Organisation for Economic Co-operation and Development (OECD) has played an important standard-setting role in establishing guidelines and good practices for both EIA and ECE that have served as models for the strengthening of institutions for regulating these functions. The OECD has drawn

attention to the problems resulting from weak inter-agency coordination and measures for avoiding conflicts of interest.¹⁶

2.3 Bilateral overseas development assistance (ODA) organizations

Government organizations such as the U.S. Agency for International Development (USAID), Danish International Development Agency (Danida), and the Australian Agency for International Development (AusAID) have contributed to shaping local environmental governance institutions in the countries where they have provided capacity building assistance by requiring EIAs and compliance with donor country laws and policies (as well as local laws) for projects they fund. These processes provide models that can inform the development of host country systems. Since ODAs tend to be dedicated in the first instance to economic development, open government and human rights, health, and food security, the integration of environmental considerations into supported programs is rarely a standalone goal. Instead, environmental objectives are often addressed in the context of “green growth.”¹⁷ Increasingly, the environmental dimension to development assistance is linked to climate issues.¹⁸

2.4 International Financial Institutions

Multilateral development banks (MDBs) such as the World Bank and Inter-American Development Bank, and development finance institutions (DFIs),¹⁹ such as International Finance Corporation (IFC), have played a significant role in promoting and supporting the development of environmental regulatory systems in countries where they have provided development assistance financing, in some cases providing a country’s first experience with EIA.²⁰ These institutions have established environmental and social safeguard policies (applicable to the lending institutions) and standards that impose upon borrowers minimum expectations for the implementation of EIA, including public participation and the use of environmental management plans (EMPs).²¹ The operating policies and performance standards adopted by MDBs and DFIs have not provided detailed procedures, but have defined critical components of an EIA sub-system within the EIA-ECE framework. Although the effectiveness of lender safeguards has been the subject of debate throughout the history of their implementation, these policies do not represent a static set of expectations and continue to undergo periodic evaluation and adjustments.²²

During the last decade, the World Bank, Asian Development Bank, and Inter-American Development Bank have experimented with approaches for selective reliance on borrowers’ own regulatory institutions or “country safeguards systems” to achieve environmentally and socially acceptable outcomes.²³ These tests are the result of several factors, including increasing demand by borrower countries for greater ownership of their national development strategies,²⁴ changing borrower profiles, the increasing role of the private sector in development assistance lending and investment, and growing awareness of the vulnerability and finite character of the world’s natural resources.²⁵

As financial institutions and borrower countries alike seek to benefit from increased harmonization between lender policies and national governance systems, an important gap remains: how the implementation of EIA requirements can be monitored and enforced by government institutions in countries where public or private actors receive development funds. Both EIA and ECE functions – and coordination between them – are necessary to achieve environmentally and socially acceptable outcomes. Although most IFIs include in their lending terms the requirement that borrowers comply with the laws of the country in which the project will be undertaken,²⁶ standards adopted by MDBs and prominent DFIs are generally silent on how compliance is to be assured. Capacity building to bridge the EIA-ECE gap will be an important component of efforts to further harmonize lender and borrower systems.

2.5 International conventions and agreements

International conventions and agreements have provided obligations that must be incorporated into national laws and regulations, including the development of local procedures and arrangements for coordination

between EIA and ECE staff, as well as with the public. Examples include:

2.5.1 Århus Convention

The Århus Convention establishes a set of rights for members of the public (both individuals and their associations) with respect to access to information, public participation, and access to justice.²⁷ Although ratified only by European and Central Asian countries, the Convention has informally set the standard and provided impetus for laws granting a right of public participation in countries around the world. Increasingly, public participation has been interpreted to include post-licensing issues relating to EIA, including citizen monitoring. As public participation increasingly encompasses the entire EIA-ECE process, EIA and ECE practitioners will need better collaboration to coordinate public involvement.

2.5.2 Espoo Convention

The Espoo Convention of the United Nations Economic Commission for Europe (UNECE) calls for the state of origin of environmental impacts to conduct post-project analysis in consultation with states that are affected by the transboundary impacts.²⁸ Post-project surveillance must be conducted with the goal of achieving objectives listed in Appendix V of the Convention, including monitoring compliance with the conditions established in the project approval and the effectiveness of mitigation measures, review of project management's ability to cope with uncertainties, and verification of predictions made during the EIA process to inform future similar activities.²⁹ In short, establishing an effective feedback loop that permits EIA and ECE authorities to learn from each other is an important goal for the post-project analysis contemplated by the Convention.³⁰

2.6 Voluntary standards and Environmental Management Systems

Voluntary standards include certification systems such as ISO 14001 (by the International Organization for Standardization or the Eco-Management and Audit Scheme (EMAS), developed by the European Commission. In the context of environmental regulation, voluntary standards are most significantly associated with efforts to demonstrate performance consistent with Environmental Management Systems (EMSs) that are implemented by project developers and facility owners. An EMS is typically an organization-wide plan that establishes a framework for environmental management that covers activities ranging from specific tasks to corporate policies. It differs from an Environmental Management Plan in that it does not pertain to a specific project or licensed set of activities. Certified compliance with an EMS by an accredited certification body does not necessarily closely align with legal compliance with a regulation or project licensing terms, although legal compliance is required by EMAS. Nevertheless, because adherence to voluntary standards is substantiated through audits, voluntary standards help contribute to the standardization of requirements and evaluation procedures that are clear, auditable, and relevant, which may serve as models for national systems.

2.7 Synergies between standard-setting bodies

In some cases, collaborative efforts between two or more standard-setting bodies have resulted in valuable guidance for strengthening EIA-ECE coordination and standards that can be applied to carrying out these functions in practice. A few examples of this collaboration are instructive:

2.7.1 Advancing the effectiveness of EIA and ECE in Asia

The Asian Environmental Compliance and Enforcement Network (AECEN) has partnered with the Asian Development Bank (ADB), the United States Agency for International Development (USAID), and the United States Environmental Protection Agency (EPA), as well as environmental agencies that are AECEN members, to assess the status of EIA-ECE effectiveness in Asian countries, to engage in country-specific capacity building programs, and to facilitate the development of national and regional good practices.³¹ The

results of these partnerships include regional workshops, Rapid Assessment procedures, and South-South “twinning” partnerships.³²

2.7.2 Developing technical review standards in Central America and the Dominican Republic

Experts from the U.S. Environmental Protection Agency, the U.S. Department of State, and the Central American Commission on Environment and Development (CCAD) collaborated in producing a series of Technical Review Guidelines and model terms of reference for projects in the energy, mining, and tourism sectors.³³ The guidelines aim to address challenges in EIA-ECE coordination, including providing sufficient detail on the proposed projects and mitigation plans to support follow up, drafting auditable commitment language, linking mitigation commitments to monitoring, and the development of contingency plans.³⁴

4 CONCLUSION

Impact assessment associations, environmental compliance and enforcement networks, international financial institutions, intergovernmental organizations, and other standard-setting bodies already have already demonstrated the ability to collaborate in strengthening safeguards and capacities for protecting the environment. The imperative of further collaboration is increasingly apparent as the world recognizes that the link between economic and social prosperity and protection of the global commons is a near-term concern. In order to be meaningful, the outcomes of natural resource and stakeholder protection through the EIA-ECE process must be measurable, verifiable, and permit the continuous, cumulative learning through the two-way exchange of information between EIA and ECE practitioners. Standard-setting bodies play a critical role in establishing the benchmarks, procedures, and performance indicators that make the difference between effective environmental management plans and purely aspirational goals. Meaningful assessments of aggregate impacts can only be based on justifiable confidence that EIA-ECE systems consistently perform effectively on a project-by-project basis.

The collective insights by observers of national EIA and ECE institutions have shown that particular attention must be paid to links between actors involved in different parts of EIA-ECE systems to allow the effective two-way sharing of essential information. Yet good information is ubiquitously lacking with respect to interactions between EIA and ECE practitioners in practice. The public, including both individuals and organizations, also plays a critical role in ensuring that the execution of EIA and ECE functions are informed by all relevant considerations and serves as a check on the integrity of the system. It is important, therefore, that standard-setting bodies establish verifiable benchmarks for public participation throughout the EIA-ECE process. The search for success factors and evaluation criteria requires cooperation between all essential stakeholders as an important next step. In order to address differences in regional and national contexts, standard-setting bodies should work together to plan and carry out regional programs that engage core actors in working out and documenting effective practices for collaboration.³⁵

5 REFERENCES

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- ³ The term "EIA- ECE system" will be used in this document to refer to this chain of interrelated processes that include EIA, permitting, monitoring, and enforcement.
- ⁴ A notable exception is the Organisation for Economic Co-operation and Development (OECD) see, e.g., OECD, *Conference in Environmental Impact Assessment, Guidelines for Managing Environmental Assessment of Development Projects* (1999); OECD, *Ensuring Environmental Compliance: Trends and Good Practices* (2009).
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- ⁷ Principles of Environmental Impact Assessment Best Practice, http://www.iaia.org/publicdocuments/special-publications/Principles%20of%20IA_web.pdf; INECE Principles of environmental enforcement,
- ⁸ International Network for Environmental Compliance and Enforcement (INECE), <http://inece.org>.
- ⁹ European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), <http://impel.eu/>.
- ¹⁰ For example, the EIA-ECE relationship is explicitly part of the program in IAIA conferences and is included in INECE conference paper submissions and workshops; the INECE Roundtable Discussion on the Enforcement of EIA Requirements was dedicated to this topic. Available at inece.org/eia/EIARoundtableSummary.pdf.
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- ¹² For example, the national EIA associations that are members of the Secretariat for Environmental Assessment in Central Africa (SEACA) serve as professional forums of exchange that contribute to promoting the use of best practices and the robust enforcement of rules and regulations in the process of environmental assessment. These efforts include addressing ineffective laws and gaps in administrative coordination.. http://www.seeaonline.org/wp-content/uploads/2013/09/EN_SEEAC-bulletin-dinformation_SEEAC_Juin-20131.pdf.
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- ¹⁷ DANIDA, Green Growth, <http://um.dk/en/danida-en/activities/strategic/green-growth/>.
- ¹⁸ See e.g., USAID, Environment and Climate Change, <http://www.usaid.gov/what-we-do/environment-and-global-climate-change>.
- ¹⁹ Development Finance Institutions provide financing for private sector investments in developing countries that promote development in cases where other sources of private sector funding are limited.
- ²⁰ Bilateral overseas development assistance agencies have in many cases also played this role.
- ²¹ "Safeguards" refer to national legal, organizations, and administrative institutions that provide protections against environmental and social harms resulting from project activities.
- ²² See e.g., World Bank, *Review and Update of the World Bank Environmental and Social Safeguard Policies: Consultation Plan* (December 2012) <http://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies>.
- ²³ These include the World Bank's pilot of the Use of Country Systems (UCS), Program for Results (PforR), and Development Policy Loans (DPL) programs.
- ²⁴ Three international agreements – the Paris Declaration (2005), the Accra Agenda for Action (2008), and the High Level Forum on Aid Effectiveness in Busan (2011) – have aimed to shift the paradigm of aid recipients as reluctant subjects to partners in pursuing national economic development priorities.
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- ²⁷ <http://ec.europa.eu/environment/aarhus/>
- ²⁸ The Convention on Environmental Impact Assessment in a Transboundary Context Espoo Convention, Art. 7(1). <http://www.unep.org/env/eia/eia.html>.
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- ³⁵ Such programs would engage government and non-government actors actively involved in EIA and ECE functions and focus on strengthening communication and mutual reinforcement of capabilities under actual project conditions.