

**DRAFT GUIDELINE ON PUBLIC PARTICIPATION IN  
MYANMAR'S EIA PROCESSES**

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## **CHAPTER 1: General Provisions**

### 1.1. Legal framework

- a) Environmental impact assessment (EIA) processes in Myanmar are required and governed by Sections 7(m) and 21 of the Environmental Conservation Law 2012<sup>1</sup>, Articles 51-61 of the Environmental Conservation Rules 2014<sup>2</sup> and the Environmental Impact Assessment Procedure 2015<sup>3</sup> (hereafter referred to as “EIA Procedure”).
- b) This Guideline on Public Participation in EIA Processes (hereafter referred to as the “Guideline”) is issued under the authority granted to the Ministry of Natural Resources and Environmental Conservation (MONREC) pursuant to Article 15 of the EIA Procedure, and is to be read in accordance with this legal framework.
- c) Implementation of this Guideline must always comply with all other laws in Myanmar, and adherence to this Guideline in relation to EIA processes does not alleviate the obligation to comply with other regulatory requirements.
- d) A number of laws and policies are particularly relevant to the conduct of public participation both in EIA processes and other areas, including but not limited to the following:
  - (i) The Protection of the Rights of National Races Law 2015, especially regarding the identification of, and public participation with, project affected persons (PAP) and other stakeholders who are indigenous people.
  - (ii) The Rights of Persons with Disabilities Law 2015, especially regarding measures to facilitate opportunities for people with disabilities to participate in public participation processes.
  - (iii) The Investment Law and Investment Rules, particularly regarding the sequencing of processes for Project Proposals that require both Myanmar Investment Commission and EIA approvals.
  - (iv) The National Land Use Policy, which aims to “promote inclusive public participation and consultation in decision making processes related to land use and land resource management” and which outlines detailed public participation processes that are complementary to this Guideline and EIA requirements that align with the EIA Procedure.

### 1.2. Objectives and application

- a) This Guideline provides an indication of the type, level and approach to public participation expected to give effect to the requirements for meaningful public participation in the EIA Procedure.

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<sup>1</sup> The Pyidaungsu Hluttaw Law No. 9 / 2012, the 8th Waxing Day of Tagu, 1373 M. E. (30th March, 2012).

<sup>2</sup> The Republic of the Union of Myanmar Ministry of Environmental Conservation and Forestry Notification No. 50 / 2014, the 8th Waxing Day of Nayon 1374 M.E. ( 5th June, 2014).

<sup>3</sup> The Republic of the Union of Myanmar Ministry of Environmental Conservation and Forestry Notification No. 616 / 2015, the 3rd Waning Day of Nadaw, 1377 M.E. (29 December, 2015).

- b) For the purposes of this Guideline, the term public participation is used to encompass the minimum requirements in the EIA Procedure, and recommendations on good practice that go beyond these minimum requirements, relating to:
  - (i) information disclosure;
  - (ii) consultation, including through meetings; and
  - (iii) the consideration of public views, concerns and inputs at all stages of the EIA process, including the decision-making stages.
- c) Parties implementing this Guideline should be open to going beyond the minimum requirements, based on the expressed needs of PAP and other stakeholders.
  - (i) The requirements for meaningful public participation vary immensely according to the nature of the Project Proposal and its potential impacts.
  - (ii) Complex or large-scale projects will often require public participation processes that far exceed the minimum requirements in this Guideline.
- d) In accordance with the EIA Procedure, this Guideline applies to the preparation, review, implementation and monitoring of the EIA process, which comprises:
  - (i) Initial Environmental Examination (IEE) Type Projects;
  - (ii) Environmental Impact Assessment (EIA) Type Projects; and
  - (iii) Stand-alone Environmental Management Plans (EMPs).
- e) The Guideline has been structured in line with the EIA Procedure and in the following way to enable users to focus on the parts of the EIA process relevant to a particular Project Proposal:
  - (i) Chapter 1 provides general provisions about the Guideline and its application
  - (ii) Chapter 2 provides information about planning public participation that should apply to all types of Project Proposals under the EIA Procedure
  - (iii) Chapter 3 applies to IEE Type Projects
  - (iv) Chapter 4 applies to EIA Type Projects
  - (v) Chapter 5 applies to Project Proposals requiring a stand-alone EMP
  - (vi) Chapter 6 applies to the implementation of all projects that are approved following the EIA process.
- f) In accordance with Article 8 of the EIA Procedure, some existing projects will be subject to an environmental compliance audit to identify past and/or present concerns over their environmental impacts and to determine whether the project requires an EIA, IEE or stand-alone EMP before obtaining an environmental compliance certificate (ECC).

- (i) The conduct of an environmental compliance audit will require public participation, including to identify PAP and the existing impacts of the project.
  - (ii) Subject to the preparation of specific guidance, public participation processes in the conduct of an environmental compliance audit should follow the principles and general approaches provided in this Guideline.
  - (iii) If an environmental compliance audit result in a requirement to prepare an EIA, IEE or stand-alone EMP for the project, then this Guideline applies as if the existing project was a new Project Proposal and the relevant chapters of this Guideline must be followed.
- g) This Guideline promotes public participation as early as possible in the development of project proposals and undertaking of EIA processes, including to maximise the benefits of relationship-building between Project Proponents and local communities and to maximise the opportunities for public input to contribute to optimal project design.
- (i) In this context, while the EIA Procedure does not mandate public participation at the screening stage,<sup>4</sup> Project Proponents are encouraged to undertake public participation before and during screening in accordance with the principles and approaches in this Guideline.
  - (ii) Public participation is also important at this stage because the screening decision may result in no further formal EIA process and therefore this may be the only opportunity for communities to contribute to a government decision in the EIA process.
- h) This Guideline is to be adapted by Project Proponents, EIA Consultants and government agencies to the particular circumstances when implementing the public participation requirements under the EIA Procedure.
- i) The Guideline is also intended to provide all stakeholders, including project affected people (PAP), with an understanding of the type of public participation that can be expected, subject to adaptation to fit the particular circumstances.
- j) Throughout this Guideline, a reference to a task or responsibility of the EIA Consultant should be understood as applying ultimately to the Project Proponent as the responsible and accountable party.
- k) Throughout this Guideline, a reference to a Project Proponent includes any government agency required to undertake an IEE or EIA in accordance with Article 10 of the EIA Procedure.

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<sup>4</sup> Screening is the initial stage under the EIA Procedure at which a determination is made as to whether a project proposal requires an IEE, EIA, stand-alone EMP or no formal assessment under the EIA Procedure.

### 1.3. Definitions

- a) The terms used in this Guideline have the meanings provided in the EIA Procedure, Environmental Conservation Rules and Environmental Conservation Law, as indicated as follows:
- (i) **Adverse Impact** means any adverse environmental, social, socio-economic, health, cultural, occupational safety or health, and community health and safety effect suffered or borne by any entity, natural person, ecosystem, or natural resource, including, but not limited to, the environment, flora and fauna, where such effect is attributable in any degree or extent to, or arises in any manner from, any action or omission on the part of the Project Proponent, or from the design, development, construction, implementation, maintenance, operation, or decommissioning of the Project or any activities related thereto (EIA Procedure, Article 2(g)).
  - (ii) **Environmental Impact** means the probable effects or consequence on the natural and built environment, and people and communities of a proposed Project or businesses or activities or undertaking. Impacts can be direct or indirect, cumulative, and positive or adverse or both. For purposes of this Procedure, Environmental Impacts include occupational, social, cultural, socio-economical, public and community health, and safety issues. Moreover, social impacts include Involuntary Resettlement and relating to Indigenous People (EIA Procedure, Article 2(h)).
  - (iii) **Project** means any commercial, economic, agricultural, social, academic, scientific, political or other project, activity, program, business, service or undertaking, whether regarded individually or in the aggregate, the performance of which requires any approval or is licensed, restricted, or otherwise regulated to any extent by any part of the Union Government and which may have an Adverse Impact (EIA Procedure, Article 2(a)).
  - (iv) **Project Proposal** means a written document, in form, content and structure in accordance with the Ministry's requirements and guidance, accurately setting forth the key aspects and relevant details (including, inter alia, the nature and size of all known or foreseeable Adverse Impacts) of a Project or Project expansion, as the case may be, which a Project Proponent wishes to undertake, or having commenced to undertake (EIA Procedure, Article 2(aa)).
  - (v) **Project Affected Person** or **PAP** means a natural person, legal entity, or organization that is, or is likely to be, directly or indirectly affected by a Project or a proposed Project, including without limitation effects in the nature of legal expropriation of land or real property, changes of land category, and impacts on the ecological and environmental systems in the settlement areas of such person, entity or organization (EIA Procedure, Article 2(f)).
  - (vi) **Indigenous People** means people with a social or cultural identity distinct from the dominant or mainstream society, which makes them



vulnerable to being disadvantaged in the processes of development (EIA Procedure, Article 2(v)).<sup>5</sup>

- (vii) **Involuntary Resettlement** means the mandatory physical displacement of a PAP from their home arising from a Project, or the unavoidable loss by a PAP of productive or income-generating assets occasioned by a Project (EIA Procedure, Article 2(w)).
  - (viii) **Ministry** means the Ministry of Natural Resources and Environmental Conservation (formerly the Ministry of Environmental Conservation and Forestry) (EIA Procedure, Article 2(x)).
  - (ix) **Department or ECD** means the Environmental Conservation Department (EIA Procedure, Article 2(y)).
  - (x) **Project Proponent** means any natural person, legal entity, or organization, from the public or private sector, intending to undertake, or having commenced to undertake, as relevant, a Project or any aspect of a Project (including study, survey, design, development, pre-construction, construction, operation, decommissioning, closure, and post-closure) within the territorial borders of the Republic of the Union of Myanmar, and during the period of such undertaking which has an ownership interest (legal or equitable) in the Project, or which intends (or could reasonably be expected to intend) to derive financial or other benefits from the Project of the sort which an owner would ordinarily derive (EIA Procedure, Article 2(z)).
  - (xi) **Environmental Compliance Certificate or ECC** is a document having legal effect, through which the Ministry approves an IEE Report, an EIA Report, or an EMP (EIA Procedure, Article 2(u)).
- b) Additional terms used in this Guideline have the following meanings:
- (i) *Civil Society Organizations (CSOs)* means the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations, including community groups, non-governmental organizations (NGOs), labour unions, disadvantaged groups, charitable organizations, faith-based organizations, professional associations, and foundations.

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<sup>5</sup> The unofficial English version of the EIA Procedure uses the term “**indigenous people**,” which usually translates as “**hta-nay tain-yin tha**,” whereas the Myanmar version uses the term “**tain-yin-tha myo-nweh-su**.” However, the definition in the EIA Procedure for this term is similar to that in the International Labour Organisation (ILO) Indigenous and Tribal Peoples Convention 1989 (No. 169). So the term “**tain-yin-tha myo-nweh-su**” essentially bears the same meaning as “**hta-nay tain-yin tha**”. Article 5 of the Myanmar language version of the Protection of the Rights of National Races Law 2015 uses the term “**hta-nay tain-yin-tha**” for the English equivalent of “**indigenous people**” but there is no definition of the term included in the law itself. Article 5 of the English version reads: **hta-nay tain-yin-tha** [usual phrase for Indigenous People] “should receive complete and precise information about extractive industry projects and other business activities in their areas before project implementation so that negotiations between the groups and the Government/companies can take place.”

- (ii) *EIA Consultant* means a third person or organization appointed by a Project Proponent to prepare an IEE or EIA that has been duly registered in accordance with Articles 17-22 of the EIA Procedure.
- (iii) *Grievance mechanism* means a formalised process by which people can raise concerns with a company about any impact they believe the company or project has had on them in order to seek a remedy to the impact. The mechanism should help to identify problems early, before they escalate and provide solutions that include remedy. A grievance mechanism should be just one part of a broader effort by the company to provide for a regular avenue of information and consultation about the project.
- (iv) *Public participation* means the process of involving those who are directly and indirectly affected by a decision (regardless of citizenship, residence, or other form of legal registration) in the decision-making process, promoting sustainable decisions by providing participants with the information they need to be involved in a meaningful way, and communicating to participants about how their input affects the decision – in this way, it encompasses both information disclosure and consultation processes.
- (v) *Public participation meeting* means any type of public participation method, which may include formal meetings, workshops, focus group meetings, one-on-one interviews, etc.
- (vi) *Stakeholder* means persons, groups, or communities external to the core operations of a project who may be affected by the project proposal, or have interest in it, at any stage in the project cycle (whether planning and construction, operation, or closure and decommissioning); this includes individuals, vulnerable and disadvantaged groups and individuals, businesses, communities, other government ministries, local government authorities, academia, national and international NGOs, the media, and people who are concerned about the project proposal that may not live in the area directly impacted by the project.
- (vii) *Terms of Reference (ToR)* means the description of all technical requirements and issues to be addressed when carrying out an EIA, including data gathering and analysis and public participation processes, in accordance with the Scoping Report prepared for the EIA. This does not refer to a terms of reference or other document outlining the duties of the EIA Consultant under a contract with the Project Proponent.
- (viii) *Vulnerable and disadvantaged individuals and group* means any group of persons, and the individuals within those groups, who are disadvantaged in social, economic, cultural, religious, or political arenas, such that they are blocked from or denied full access to various rights, opportunities, or resources that are normally available to others and are thereby prevented from participating fully in the economic, social, and political life of the society in which they live (including, but not limited to, ethnic minorities, indigenous peoples, women, people

with disabilities, children, and the elderly). It also includes individuals or groups who are likely to experience adverse impacts from a proposed project more severely than others – because of their own characteristics (for example, children or the elderly or persons with disabilities who may be more severely impacted by pollution than healthy adults) or because of their circumstances (for example single-headed female households subject to resettlement are likely to experience more severe impacts than families with two or more heads of household or migrant or transitory workers have less resilience because they are not part of the social or physical fabric of local communities)

#### 1.4. Meaningful public participation for the purposes of this Guideline

##### 1.4.1. Concept of public participation

- a) Internationally, public participation has been specifically identified in Principle 10 of the 1992 Rio Declaration on Environment and Development as a central principle of sustainable development and has been accepted as a core part of EIA processes since they emerged in the 1970s (see Box 1).
- b) A key goal of EIA is to implement the objectives of Myanmar's Environmental Conservation Law 2012 (Chapter II) and improve decisions on Project Proposals by ensuring that potential environmental impacts are explicitly evaluated and considered in government decision-making processes. Public participation in the EIA process, as required by the EIA Procedure and by this Guideline, is an indispensable prerequisite to achieving this goal.
- c) A key benefit of public participation in EIA is to reduce the risk of social conflict arising from projects by ensuring that all PAP and other stakeholders are involved, valued, and respected in the decision-making on Project Proposals.
- d) Public participation can support these goals when it:
  - (i) occurs in a structured and planned way early and throughout the EIA processes (and throughout project implementation and operations), as required and recommended by this Guideline;
  - (ii) involves meaningful efforts to engage with PAP and other stakeholders in a substantive way and ensure that their concerns and comments are incorporated into a proposed project's design and operation to the maximum extent practicable; and
  - (iii) is tailored to the particular needs and circumstances of the PAP and other stakeholders interested in the particular Project Proposal, with special attention to assure gender equality as well as particular interests and needs of women and vulnerable and disadvantaged groups and individuals.
- e) Public participation is a process of engagement with PAP and other stakeholders that involves, at a minimum:

- (i) timely and thorough notice of public participation processes to PAP and other stakeholders; and
  - (ii) providing comprehensive information about the proposed project and its impacts that is understandable and readily accessible;
  - (iii) opportunities for PAP and other stakeholders to provide comments and submissions prior to any decision being made about whether the Project Proposal is approved or not;
  - (iv) thorough consideration of comments and input from PAP and other stakeholders in all aspects of the EIA process, including the decision-making stages;
  - (v) documentation and feedback to PAP and other stakeholders on the outcomes of the public participation process and its impacts on project design and mitigation measures; and
  - (vi) a right to participate that is protected and free from coercion or threat of intimidation.
- f) For the purposes of this Guideline and implementation of the EIA Procedure, public participation is not, and should not be confused with, the following:
- (i) “Corporate social responsibility” (CSR) or other forms or concepts of behaviour (whether involving donations or profit allocation) intended to benefit the community. Any such efforts or contributions are voluntary, separate from and in addition to the legal requirements for public participation in EIA processes and compliance with project approval conditions.
  - (ii) Socio-economic surveys or other studies intended to support an assessment of the social impacts of a project proposal in an EIA process. These are critical elements of EIA processes and are likely to be informed by public participation processes, but public participation should not be limited by process (e.g. answering questions as part of a social or economic survey) or by issues (e.g. social or economic issues, as may be defined by Project Proponents or EIA Consultants).

**Box 1: Public participation in the Rio Declaration**

**Principle 10 of the Rio Declaration**

*Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.<sup>6</sup>*

<sup>6</sup> United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), Annex I (Aug. 12, 1992), Principle 10.

#### 1.4.2. Key principles for meaningful public participation

- a) To be meaningful, public participation should be undertaken in accordance with the following principles:
  - (i) *Integrity*: public participation should be open, truthful and transparent to enable stakeholders to participate in a meaningful way.
  - (ii) *Inclusiveness*: public participation should be accessible and balanced, reasonable attempts should be made to include stakeholders that may be harder to reach, and special attention should be given to the needs of women and of vulnerable and disadvantaged groups and individuals.
  - (iii) *Informed*: all information relevant to the Project Proposal and EIA process should be up to date, understandable and readily accessible to stakeholders in culturally appropriate ways, to ensure a full range of values and perspectives are included.
  - (iv) *Responsive and reciprocal*: public participation should promote dialogue, lead to the informed consideration of stakeholder views, concerns and ideas in all aspects of the EIA process, including the decision on the Project Proposal, and include feedback to stakeholders on how their contributions were considered.
  - (v) *Respect*: all stakeholders should be valued and Project Proponents should seek to improve outcomes by actively listening to, and attempting to understand, stakeholder needs and by seeking to understand how they wish to be engaged.

#### 1.4.3. Proper planning for meaningful public participation

- a) For public participation to be meaningful, it needs to be properly planned so that:
  - (i) it is conducted in a manner commensurate with the risks of the proposed project and the potential impacts on those affected by the project;
  - (ii) adequate time and resourcing is provided;
  - (iii) it provides opportunities for all PAP and other stakeholders to participate; and
  - (iv) it targets the key issues involved in the Project Proposal.
- b) The Project Proponent and the EIA Consultant should develop, in consultation with the PAP, a plan for the public participation that will occur during the EIA process.
- c) This plan needs to be tailored to fit the particular project proposal, local environment, and communities involved, including the capacity of the participants.
- d) Guidance on planning for public participation is provided in Chapter 2.

#### 1.4.4. Identifying PAP and other stakeholders

- a) It is critically important to identify the PAP and other stakeholders specific to the project proposal in question, and to then identify and document their various interests and information needs, because:
  - (i) each project proposal will involve a different set of PAP and other stakeholders;
  - (ii) different PAP and other stakeholders will be impacted in different ways (i.e. women may be impacted differently than men);
  - (iii) different sets of PAP and stakeholders may be relevant at different stages of an EIA process; and
  - (iv) the same stakeholders may also be impacted in different ways as a result of different projects in similar locations.
- b) Stakeholder identification must be done as early as possible in the EIA process in order to:
  - (i) ensure successful contact;
  - (ii) allow for the ongoing identification of additional stakeholders;
  - (iii) build respect and trust;
  - (iv) ensure sufficient budget is allocated for public participation; and
  - (v) maximise time available for explanation and consideration of stakeholder-specific issues, and for data gathering.
- c) Despite stakeholder identification commencing as early as possible, it should be seen as an on-going task with a recognition that additional stakeholders are likely to be identified as the EIA process progresses.
- d) Part of the stakeholder identification process is to establish lines of communication between different stakeholder groups and the Project Proponent and EIA Consultant. This should include recognising spokespeople genuinely appointed by stakeholder groups.
- e) Table 2 (see Chapter 2) provides a list of possible PAP and other stakeholders.

#### 1.4.5. Information requirements

- a) To effectively participate in EIA processes and form informed views on a proposed project's impacts, PAP and other stakeholders must have access to all relevant information regarding the Project Proposal. This includes access to technical information about the Proposal.
- b) Similarly, for an EIA process to be a useful decision-support tool, the Project Proponent and decision-makers also need to base their analyses on all relevant and up-to-date information. This includes local and indigenous knowledge, which is often best obtained through meaningful public participation.

- c) Accordingly, public participation processes need to enable information to flow both ways between Project Proponents, PAP and other stakeholders, and decision-makers.
- d) As a general rule, and consistent with Article 13(b) of the EIA Procedure, the Project Proponent must publicly disclose all information relevant to the Project in a timely manner. The subsequent chapters of this Guideline provide details on required timeframes and mechanisms for information disclosure at different stages in the EIA process.
- e) Very rarely will there be information relevant to the Project proposal or the IEE/EIA that is commercial in confidence or of a national security nature.
  - (i) In these cases, though, as much information as possible should be disclosed, with clear indications that some information has not been disclosed and reasoning provided.
  - (ii) Any such confidential information should be in a separate document when submitted to ECD.
- f) Meaningful public participation requires that PAP and other stakeholders are provided access to project-related information with sufficient time to review such information and prepare their responses and reactions to it.
- g) Information relevant to the Project Proposal will increase over time as the IEE or EIA investigation progresses, and should be made progressively available. Accordingly, Project Proponents must take an approach to information disclosure that is based on the following:
  - (i) The earlier a Project Proponent notifies the public of its proposal and provides available information about both the proposal and EIA process (including where and how they can obtain more information about the project, and how they can get involved in the process), the better.
  - (ii) New or updated information about the Project Proposal and its potential impacts should be publicly disclosed as soon as possible after it becomes available.
  - (iii) A lack of complete information is not a reason for withholding the information that is available.
- h) Identifying all relevant information involves a balance between relying on the most up-to-date and comprehensive knowledge and what can feasibly be obtained.
- i) Information that is relevant will vary depending on the particular Project Proposal, but generally the information that can be expected as a minimum at each stage of the IEE or EIA process is summarised in Table 1.
- j) Information needs to be provided in a form and language that is easily accessible and can be used by the target audience, and with sufficient time for it to be understood, considered and responded to.
- k) Project Proposals that will impact indigenous peoples or other vulnerable groups will usually require the utilization of additional methods for

information disclosure to ensure they have the opportunity for full and meaningful participation.

- l) The risk of information overload for PAP and other stakeholders, especially for large or complex Project Proposals, also needs to be recognised by Project Proponents. To manage such risks, Project Proponents may need to consider appropriate ways to supplement detailed information with:
- (i) technical and non-technical summaries; and
  - (ii) oral (or other visual) methods of explaining long and detailed documentation.

**Table 1: Minimum information generally expected for disclosure at each stage of the EIA process**

<b>IEE/EIA stage</b>	<b>Minimum information generally expected to be disclosed</b>
Screening	<ul style="list-style-type: none"> <li>• Project proposal description, including:                             <ul style="list-style-type: none"> <li>– Maps and diagrams</li> <li>– Summary of project type, size, location and timeframes</li> <li>– Proposal history and context</li> <li>– Project justification, including expected benefits</li> </ul> </li> <li>• Details of Project Proponent, including:                             <ul style="list-style-type: none"> <li>– Contact information</li> <li>– Past experience</li> <li>– Project funders</li> </ul> </li> </ul>
Scoping (for EIA Type Projects) <sup>7</sup>	<ul style="list-style-type: none"> <li>• All information above</li> <li>• Screening decision</li> <li>• More detailed project description, including:                             <ul style="list-style-type: none"> <li>– Project proposal alternatives (e.g. alternative locations, size, technologies or operational arrangements)</li> <li>– Proposed project phases (including pre-construction activities and anticipated construction and operation timeframes)</li> <li>– Required land and possible resettlement</li> </ul> </li> <li>• Summary of initial identification of impacts including:                             <ul style="list-style-type: none"> <li>– Direct and indirect impacts</li> <li>– Sensitive or important locations</li> <li>– Past experience with similar projects or other projects in the area</li> </ul> </li> <li>• Summary of initial identification of PAP and other stakeholders</li> <li>• Summary of EIA process, including anticipated timeframes</li> <li>• Outline of planned public participation processes</li> <li>• Draft Scoping Report, Terms of Reference and Public Participation Plan</li> </ul>

<sup>7</sup> Under the EIA Procedure, only EIA Type Projects are required to go through a formal scoping stage.



<p>IEE/EIA Investigation &amp; Report Preparation</p>	<ul style="list-style-type: none"> <li>• All information above</li> <li>• Approved Scoping Report and Terms of Reference (if an EIA type project) and Public Participation Plan</li> <li>• Any updates to the Public Participation Plan</li> <li>• Detailed technical and scientific information about the project proposal and possible impacts, including:             <ul style="list-style-type: none"> <li>– Details on project alternatives</li> <li>– Impact assessment methodology</li> <li>– Risk assessment of identified impacts</li> <li>– Mitigation measures (including details on why the particular measures are being considered and on any particular reasons for not considering other measures)</li> <li>– Supplementary summary information in plain language (i.e. with limited use of technical terms) that can be easily understood by the general public</li> </ul> </li> <li>• Summary information about feedback already received from PAP and other stakeholders</li> <li>• Summary of how feedback from public participation processes was considered in the investigation and report</li> <li>• Draft IEE or EIA Report, including:             <ul style="list-style-type: none"> <li>– EMP (including budget requirements)</li> <li>– Any Resettlement Action Plan, Livelihood Restoration Plan and/or compensation proposed</li> </ul> </li> </ul>
<p>Review &amp; Decision</p>	<ul style="list-style-type: none"> <li>• All information above</li> <li>• Submitted IEE or EIA Report</li> <li>• Final decision on the IEE or EIA, including:             <ul style="list-style-type: none"> <li>– the Environmental Compliance Certificate and any conditions imposed if the IEE or EIA is approved</li> <li>– a summary of how feedback from public participation processes was considered in the decision</li> </ul> </li> </ul>
<p>Monitoring &amp; Compliance</p>	<ul style="list-style-type: none"> <li>• All information above</li> <li>• Project implementation updates</li> <li>• Project monitoring reports</li> <li>• Details of expenditure on:             <ul style="list-style-type: none"> <li>– Mitigation and management measures</li> <li>– Monitoring systems</li> <li>– Project commitments</li> </ul> </li> <li>• Any updates to the EMP</li> <li>• Details of any compliance breaches and response measures</li> <li>• Community engagement mechanism records</li> </ul>

#### 1.4.6. Language

- a) The effectiveness of the public participation for a Project Proposal will depend in large part on the way in which project-related information is communicated to PAP and other stakeholders.

- b) Project Proponents and EIA Consultants should be prepared to communicate project-related information to PAP and other stakeholders in plain language (i.e. with limited use of technical terms) and in a manner that is designed to be easily understandable.
  - (i) For example, Scoping Reports, IEE Reports, EIA Reports and other documents should be accompanied by Executive Summaries that are written in a non-technical style using plain language that would be understandable to the general public.
- c) In considering appropriate communication approaches, Project Proponents and EIA Consultants should also:
  - (i) consider tailoring the use of language for different audience needs (including using age and ability-sensitive language and delivery methods); and
  - (ii) be responsive to any requests from stakeholders for project-related information to be clarified.
- d) For public participation meetings, Project Proponents and EIA Consultants should be prepared to:
  - (i) make oral presentations to meeting participants in a non-technical style using plain language (i.e. with limited use of technical terms) that would be understandable to the general public;
  - (ii) be represented by specialists in implementing public participation processes and facilitating public meetings; and
  - (iii) use alternative communication tools, such as models, maps, videos, interactive websites, etc.
- e) In addition, if a proposed project will potentially impact PAP for whom Myanmar language is not their primary language, the Project Proponent and EIA Consultant should be prepared to translate certain project-related information into the PAP's primary language.
- f) This should include information presented in written form and through oral presentations.
- g) Similarly, translators should be made available at all public participation events to ensure that the EIA Consultant properly understands the feedback from the PAP and other stakeholders.

#### 1.5. Budgeting public participation processes

- a) The EIA process is an investment of the Project Proponent in the design, planning, and management of the project, especially for major development proposals that involve many aspects and phases.
- b) Consistent with the EIA Procedure (Articles 43, 69, 82 and 122), the Project Proponent must bear all costs associated with the EIA process, including for the provision and implementation of public participation.
- c) Public participation is a required element of the EIA process and the Project Proponent and EIA Consultant must ensure that the budget (including in any

contract or agreement between the Proponent and Consultant) is sufficient to cover the public participation.

- d) The general public should not have to bear the costs of participating in EIA processes, or for government assessments of EIAs. All of these costs need to be included in the overall EIA budget covered by the Project Proponent.
- e) If the project proposal is approved and proceeds to implementation, the EIA process will result in a range of monitoring and management duties for inclusion in the EMP and ECC. Some of these arrangements may involve participation by affected communities and/or CSOs.
- f) The project budget should provide enough funding for all of these implementation-stage monitoring, management and public participation activities – whether they are undertaken internally, by an external third party or by community representatives.
- g) All of these expenses associated with undertaking an EIA process and implementing the EMP (if the project proposal is approved) are part of the normal costs of doing business.

## **CHAPTER 2: Planning Public Participation**

### 2.1. Purpose and benefits of Public Participation Plans

- a) Without undertaking meaningful public participation, there is a risk that Project Proponents will face potential negative reactions from the PAP and other stakeholders. There is also a real risk that the EIA process will not identify and address the key impacts of the Project Proposal. This could lead to:
  - (i) a rejection of the Project Proposal;
  - (ii) significant delays if the IEE Report or EIA Report must be re-drafted; or
  - (iii) serious and irreversible impacts during implementation of approved projects.
- b) To be meaningful public participation needs to occur in a structured and planned way throughout the EIA process (and continue in a planned way throughout the implementation of approved projects).
- c) It is also important that an appropriate Public Participation Plan is established and followed to help Project Proponents:
  - (i) build community trust and support;
  - (ii) understand and respond to local knowledge and genuine community concerns;
  - (iii) minimise delay and cost impacts due to delays in completing the IEE or EIA, and in implementing the EMP;
  - (iv) avoid potential legal challenges to projects or activities;
  - (v) follow-up effectively on project commitments or respond to complaints; and
  - (vi) comply with the reporting requirements relating to public participation and compliance with the EMP.
- d) The Public Participation Plan should also account for the particular circumstances of the particular Project Proposal (including its type, location, potential impacts, etc.) and tailor the application of the requirements and recommendations in this Guideline to those circumstances.
- e) Project Proponents must develop a Public Participation Plan for all EIAs, to be approved by ECD, as part of the ToR that is considered during the scoping stage (in accordance with Article 52 of the EIA Procedure).
- f) In all other cases, Project Proponents are strongly recommended to develop a Public Participation Plan for Project Proposals, even relatively simple and straightforward IEEs.

### 2.2. Identification of PAP and other stakeholders

- a) An early task in the IEE or EIA process is to identify the PAP and other stakeholders who are likely to be impacted by the proposed project.

- b) This identification of PAP should be done as early as possible in the EIA process – either at the Screening Stage or after ECD has made a Screening determination, or determined that an EMP is required.
- c) This task includes a detailed analysis of potential PAP and stakeholders that identifies:
  - (i) the PAP and other stakeholders likely to be directly impacted by the proposed project
  - (ii) the PAP and other stakeholders likely to be indirectly impacted by the proposed activity
  - (iii) the potential impact that the proposed project will have on the PAP or other stakeholders
- d) This identification should be based on potential impacts of the Project Proposal, rather than using a simple radius around the project site (e.g. 5 or 10km). Such an approach can be a useful starting point to identify people and environments close to the proposed project site, but the area of project impact should be expanded to take into account all the potential impacts (both direct and indirect) of the project.
  - (i) For example, any communities near roads used to transport products from a mine, or downstream from potential pollution sources, should be considered stakeholders.
  - (ii) For example, the PAP for an offshore oil development project may not be located close (geographically) to the Project Proposal site (such as fishers or tourism operators that navigate the area).
- e) In addition to identifying the locations of communities that may be impacted, the Project Proponent should utilize any existing information such as community resource mapping in order to identify impacts on resources upon which communities depend.
- f) See Table 2 for examples of PAP and other stakeholders.

**Table 2: List of possible PAP and other stakeholders<sup>8</sup>**

<b>PAP</b>	<ul style="list-style-type: none"> <li>● Land owners and residents in the area (including those with communal or customary title).</li> <li>● Indigenous peoples<sup>9</sup> and ethnic groups in and around the area.</li> <li>● Those people who rely of water, land and other resources potentially impacted by the Project Proposal.</li> <li>● People who may use resources in the local area (e.g. fishers, farmers, tourism operators), even on a seasonable basis.</li> </ul>
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<sup>8</sup> Adapted from the *Guidelines on Public Participation in Environmental Impact Assessment in the Mekong Region, First Edition*.

<sup>9</sup> The unofficial English version of the EIA Procedure uses the term “**indigenous people**,” which usually translates as “**hta-nay tain-yin tha**,” whereas the Myanmar version uses the term “**tain-yin-tha myo-nweh-su**.” However, the definition in the EIA Procedure for this term is similar to that in the International Labour Organisation (ILO) Indigenous and Tribal Peoples Convention 1989 (No. 169). So the term “**tain-yin-tha myo-nweh-su**” essentially bears the same meaning as “**hta-nay tain-yin tha**”.

	<ul style="list-style-type: none"> <li>● Vulnerable and disadvantaged groups and individuals including women, children, elderly people, people with disabilities, resource dependent groups, and economically marginalised people.</li> <li>● Workers</li> <li>● Management committees and other businesses in industrial zones</li> <li>● Other individuals, organizations, businesses, etc. that may experience environmental or social impacts due to the project.</li> </ul>
<p><b>Government Authorities</b></p>	<ul style="list-style-type: none"> <li>● Ministries and other government organisations at the Union, State and Region, District, Township, and Ward and Village Tract levels</li> <li>● Local level household heads and other local authorities.</li> <li>● Specific government organisations responsible for matters potentially relevant to the particular Project Proposal such as: <ul style="list-style-type: none"> <li>• pollution control in the area (including water, waste, soil, noise and air pollution).</li> <li>• protection of nature, cultural heritage and the landscape.</li> <li>• public health and safety</li> <li>• occupational health and safety</li> <li>• emergency management</li> <li>• land use control, spatial planning and zoning</li> <li>• agriculture, energy, forestry, fisheries or other sectors whose interests may be affected.</li> </ul> </li> <li>● Authorities in neighbouring countries where transboundary impacts may be an issue.</li> </ul>
<p><b>Other Stakeholders</b></p>	<ul style="list-style-type: none"> <li>● Local, national and international environmental, social and development interest groups.</li> <li>● International agencies, including United Nations organisations.</li> <li>● Local employers' and business associations such as Chambers of Commerce, trade associations, etc.</li> <li>● Civil Society Organizations, including NGOs (such as women's groups, youth groups, local community groups, resident groups etc.)</li> <li>● Groups representing environment and natural resources users, e.g. farmers, fishers, women using local resources for own consumption and trade, tourism operators.</li> <li>● Research institutes, universities and other centres of expertise.</li> <li>● The local and national media.</li> <li>● Elected representatives and community figures such as religious leaders or teachers.</li> </ul>

	<ul style="list-style-type: none"> <li>● Scientific community, researchers and academics.</li> <li>● Ethnic armed organisations</li> <li>● Representatives of self-administered areas</li> <li>● General members of the local and wider public.</li> </ul>
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2.3. Identification of issues and initial assessment of potential impacts

- a) The development of the Public Participation Plan needs to include an identification of possible issues and an initial assessment of the potential impacts of the Project Proposal.
- b) This will only be an initial identification and assessment, but is necessary to help frame the drafting of the Public Participation Plan. This process will be more extensive during the preparation of the IEE or EIA. It should also contribute to the Scoping Report for EIA Type Projects.
- c) As part of the EIA process, the Project Proponent will be required to undertake and provide evidence of the following in the IEE or EIA Report:
  - (i) analysis of the key issues of concern to the PAP and identified stakeholders;
  - (ii) how the public participation that was undertaken responded to these issues;
  - (iii) the outcomes of the public participation in response to these issues;
  - (iv) any changes to a Public Participation Plan or strategy required as a result of the issues raised;
  - (v) whether the issues are likely to continue to be of concern during the construction, management, operation or closure of the project; and
  - (vi) how future public participation will respond to the issues, or any new issues likely to be raised during the IEE or EIA process.
- d) Issues of concern may change as the project progresses. The Public Participation Plan, including the identification of PAPs and other stakeholders, should be updated accordingly.
  - (i) For example in the case of mining, when on-ground exploration activities commence, or when more intensive drilling is undertaken.

2.4. Contents of the Public Participation Plan

- a) The Public Participation Plan is a public document and should be prepared in such a way that it:
  - (i) establishes the objectives of the plan for the specific Project Proposal
  - (ii) includes a detailed description and analysis of potential PAP and stakeholders that identifies:
    - the PAP and other stakeholders likely to be impacted by the Project Proposal;

- the likely impact that the Project Proposal will have on the potential PAP and other stakeholders; and
- the likely concerns and interests of the different potential PAP and other stakeholders;
- (iii) describes how public participation will be undertaken to ensure that:
  - individuals, communities and stakeholder groups are provided with the information to understand the nature of the Project Proposal, and the likely impacts and benefits that may be derived from the project;
  - the Project Proponent can identify and address community concerns early in the IEE or EIA preparation stage;
  - PAP and other stakeholders are informed of the proposed schedule for the preparation of the IEE Report or EIA Report and notified prior to the commencement of relevant activities under the EIA Procedure; and
  - issues raised by the public participation process will be responded to during the EIA process;
- (iv) sets out mechanisms for revising the Public Participation Plan to ensure it continues to meet the requirements of this Guideline throughout the entire EIA process. This must include ensuring that the Public Participation Plan:
  - continues to meet the objectives of this Guideline;
  - includes any additional issues or stakeholders identified during the public participation process;
  - maintains a public participation process that is adequate, inclusive and appropriate to the circumstances; and
  - responds to issues raised through public participation processes within the preparation and submission of the IEE Report or EIA Report.
- b) The Public Participation Plan should be in plain language (i.e. with limited use of technical terms).
- c) The Public Participation Plan should include, as a minimum, the following contents:
  - (i) Objectives of the public participation process.
  - (ii) Roles and responsibilities for the project team.
  - (iii) Identification and analysis of PAP and other stakeholders.
  - (iv) Initial identification of likely stakeholder concerns and interests.
  - (v) The tools and methods that will be used to communicate with PAP and other stakeholders, including methods to disseminate information about the Project Proposal and EIA process.
  - (vi) The frequency and format of public participation activities.



- (vii) The process for responding to issues raised during public participation.
  - (viii) Complaints management and grievance redress mechanisms during the EIA process.
  - (ix) Timeframes for public participation meetings.
  - (x) Information to be provided for the public participation meetings.
  - (xi) Monitoring, review and reporting of the public participation processes.
- d) The Public Participation Plan title page should include the following information:
- (i) document title;
  - (ii) proposed project name and location;
  - (iii) Project Proponent;
  - (iv) EIA Consultant (if there is one);
  - (v) date of document; and
  - (vi) contact details for the Project Proponent and EIA Consultant.
- e) The Project Proponent should consult with the PAP to seek comments on the draft Public Participation Plan.
- f) The Public Participation Plan should be regularly reviewed, and updated where necessary, during the preparation of the IEE Report or EIA Report.

#### 2.5. Resourcing the Public Participation Plan

- a) For the Public Participation Plan to be effectively implemented, it needs to be properly resourced.
- b) The Project Proponent must bear all the costs of public participation at all stages in the EIA process.
  - (i) This includes costs incurred by the Project Proponent's EIA Consultant and those incurred by the EIA authority in undertaking public participation during the review and decision-making stages and in monitoring approved projects (in accordance with Articles 43, 69 and 122 of the EIA Procedure).
  - (ii) Therefore, the Public Participation Plan must clearly identify the costs of its implementation and be budgeted accordingly.
  - (iii) Irrespective of the budget, the priority is on meaningful public participation with quality outcomes.
  - (iv) The Project Proponent should avoid the temptation to cut costs on public participation, as the cost of subsequent delays and conflicts may outweigh the apparent cost savings.
- c) The resources to be allocated to the Public Participation Plan include time as well as financial resources.

- (i) Following the provision of information, all stakeholders will require some time to absorb, process and formulate responses to the proposals, information and concepts presented.
  - (ii) Some groups will need more time than others, and some groups will require different forums or to consult with other members of the community.
  - (iii) Sufficient funds must be allocated for translation of written materials and public participation meeting proceedings into multiple languages (including Myanmar and local languages) as is necessary in the circumstances.
- d) The Public Participation Plan should also consider how the Project Proponent can most effectively communicate in a manner that is appropriate to the targeted audience, taking into account important matters such as cultural sensitivities, language constraints, and formal education levels of the participants.
- (i) The Project Proponent's representatives should be chosen based on their empathy, presence, experience in communication and credibility with the PAP, as well as on their content knowledge and technical expertise.
  - (ii) It is critical that all communication is based on respect, an open-mind and a willingness to listen to and learn from participants.

#### 2.6. Implementing the Public Participation Plan

- a) Once the Public Participation Plan has been finalised (and, in the case of EIA Type projects, approved by ECD as part of the ToR), it must be implemented by the Project Proponent.
- b) Implementation of the Public Participation Plan should:
- (i) consider the minimum requirements for meaningful public participation as identified for each of the stage of the EIA process;
  - (ii) consider the recommended good practice for meaningful public participation, in addition to the minimum requirements, in the context of the particular Project Proposal;
  - (iii) be timely, accessible, planned and with clear objectives;
  - (iv) provide information in plain language (i.e. with limited use of technical terms);
  - (v) be undertaken through activities that attempt to overcome barriers to public participation, including the capacity of participants;
  - (vi) ensure that the expected level of participation and the commitments of the Project Proponent are clearly expressed to the PAP and other stakeholders;
  - (vii) establish channels of communication to allow community feedback and identification of potential issues during the assessment of issues and the preparation of the IEE or EIA report;

- The Project Proponent and any EIA Consultant shall use their expertise and judgement to determine whether individual comments require consideration and incorporation into the investigation and report.
- (viii) include processes for the provision of feedback to participants on the results of their contribution (whether individually and/or in summary form); and
- (ix) review and evaluate the effectiveness of the engagement strategies.
- c) The public participation processes and activities should:
  - (i) maximise opportunities for individuals, communities and stakeholder groups to engage in a meaningful way;
  - (ii) promote and support processes for the inclusive representation individuals, communities and stakeholder groups in the engagement process;
  - (iii) develop tailored and culturally appropriate approaches that support engagement opportunities;
  - (iv) promote stakeholder confidence in the proposed project management by ensuring open and transparent discussion of the project, technical studies, impacts and risk management processes; and
  - (v) enhance opportunities for sustainable exploration activities and decision-making by incorporating local community knowledge, views and concerns in technical studies, exploration program design and decision making, where appropriate.
- d) Early engagement with PAP and stakeholders will assist Project Proponents to identify the best way of interacting and engaging with the all groups as the EIA process progresses.
- e) In general, though, when determining the number of public participation meetings the Project Proponent should have regard to:
  - (i) PAP and other stakeholder values, concerns and attitudes;
  - (ii) PAP and other stakeholder expectations in regard to objective information;
  - (iii) the potential impacts arising from the proposed project;
  - (iv) the level of PAP and other stakeholder interest in the proposed project;
  - (v) any existing relationship with the PAP and other stakeholders;
  - (vi) the requirements of individual community stakeholders and groups
  - (vii) different methods for different stakeholders and groups, including maximizing the participation of women, children, youth and the elderly; and
  - (viii) the need to ensure vulnerable and disadvantaged groups and individuals are provided with appropriate opportunities to provide feedback.

- f) Public participation meetings should be held at various times of the day, not only during business hours, to ensure that the maximum number of PAP and other stakeholders are given the opportunity to attend.
- g) Where only one meeting is to occur at a particular stage of the EIA process, an additional alternative public participation opportunity should be considered (for example an information session) at a different time of day.
- h) In implementing the Public Participation Plan, no groups or individuals can be forced to attend public participation meetings.
  - (i) The duty on Project Proponents and EIA Consultants is to provide appropriate opportunities for PAP and other stakeholders to participate, by following the principles and approaches outlined in this Guideline.
  - (ii) Should meaningful attempts be made to provide participation opportunities, the absence of full attendance or comment at meetings will not invalidate the EIA process, but these circumstances should be clearly explained in the relevant report.

#### 2.7. Public Participation Focal Point

- a) Where a Project Proposal requires the preparation of an EIA, the Project Proponent should consider the appointment of a person with a particular responsibility to engage with the PAP and local community as a focal point.
- b) This may be an employee of the Project Proponent or the EIA Consultant appointed to conduct the EIA.
- c) The focal point should be skilled and experienced in undertaking the role, including having undertaken cultural awareness training if appropriate.
- d) The focal point may have the following responsibilities:
  - (i) facilitating community meetings;
  - (ii) responding to questions, comments and complaints in a timely and thorough manner;
  - (iii) being available to contact in person, or by email or telephone;
  - (iv) maintaining information about the Project Proposal (including social media and webpages) to ensure that information about the project is accurate and up-to-date;
  - (v) ensuring the timely disclosure of information about the project to PAP and other stakeholders through the methods identified in the Public Participation Plan.

#### 2.8. Specific procedures to promote public participation

##### 2.8.1. Specific attention for vulnerable and disadvantaged groups and individuals

- a) The identification of PAP and other stakeholders (refer to sections 1.4.4 and 2.2 above) also needs special consideration to identify vulnerable and disadvantaged individuals and groups, particularly within the local

community, and any particular needs they may have to maximise their ability to participate effectively.

- b) They may need additional support to participate, which may take one or more forms:
  - (i) separate meetings with vulnerable and disadvantaged individuals and groups may be important to provide them with the opportunity and appropriate supporting environment to feel empowered to speak and voice concerns;
  - (ii) support and facilitation to encourage people to participate – this may, for example, include appropriate arrangements for women or children or people with disabilities;
  - (iii) physical support to be able to attend meetings – this may be for people with disabilities or other people without a means of getting to a meeting;
  - (iv) facilitation of meetings and provision of documents in the language/dialects of local communities, indigenous peoples and/or ethnic groups; and
  - (v) appropriate scheduling of meetings outside of people's typical work (including domestic work) hours, taking into account suitable times for women's participation.
- c) The Public Participation Plan should include specific elements addressing engagement with vulnerable and disadvantaged individuals and groups.
  - (i) The Public Participation Plan should address how these stakeholders will be identified and their needs will be assessed and what support will be offered, particularly separate meetings.
    - One generally useful strategy is to invite participants to put forward any matters or questions they wish to have addressed in the meetings in advance (e.g. by email, letter or verbally to the Project Proponent).
  - (ii) The Public Participation Plan must consider systemic barriers that impede the full participation of women, and particularly women who likely suffer compound discrimination due to other characteristics (e.g. age, ethnicity, disability, etc.). Additional support, including separate and tailored forms of engagement, will be needed to ensure they have the opportunities to meaningfully participate.
  - (iii) The Public Participation Plan must allocate sufficient time for separate consultations with vulnerable and disadvantaged individuals and groups, based on the particular needs of the identified stakeholders, throughout the EIA process and especially during the investigation stage.
  - (iv) These stakeholders should have the opportunity to propose and discuss differentiated avoidance and mitigation measures so that adverse impacts of the Project Proposal do not fall disproportionately

on them and they are not disadvantaged in sharing any benefits and opportunities (e.g. employment).

## 2.8.2. Specific attention for indigenous peoples and ethnic groups

### 2.8.2.1. General

- a) Public participation processes involving indigenous peoples requires specific consideration to ensure that concerns and views of indigenous communities are fully considered and responded to in accordance with the EIA Procedure.
- b) In addition, Article 5 of the Protection of the Rights of National Races Law provides that "Prior to implementing development projects and major plans, economic plans and major plans, extracting of natural resources, local indigenous inhabitants are to be informed and be explained in detail about these plans and projects to achieve mutual cooperation." This Guideline provides guidance on implementing Article 5, together with any further guidance issued by the Union Minister for Ethnic Affairs.
- c) Where stakeholders are identified as indigenous peoples, this has consequences for both the substance of decisions on the project and the process of public participation.
- d) The EIA should consider that indigenous peoples are often among the most marginalized and vulnerable segments of the population and are particularly vulnerable if their lands and resources are transformed, encroached upon, or significantly degraded. Their languages, cultures, religions, spiritual beliefs, and institutions may also come under threat. As a consequence, Indigenous Peoples may be more vulnerable to adverse impacts from Project Proposals than non-indigenous communities. This vulnerability may include loss of identity, culture, and natural resource-based livelihoods and exposure to impoverishment and diseases.
- e) The EIA should address potential adverse impacts and avoidance and mitigation measures, particularly concerning:
  - (i) their culture and beliefs, including their cultural heritage;
  - (ii) customary use and ownership of land and natural resources; and
  - (iii) livelihoods.

### 2.8.2.2. Stakeholder identification

- a) The identification of PAP and other stakeholders (refer to sections 1.4.4 and 2.2 above) should identify indigenous people who may be impacted by the Project Proposal.
- b) The Project Proponent should consult with the Ethnic Affairs Minister and experts as to whether there are any indigenous peoples in the proposed area of the project.
- c) The Project Proponent should also, through its stakeholder mapping process, identify those people who self-identify as indigenous.
- d) Self-identification should be a fundamental criterion for determining the groups to which these provisions of this Guideline apply.

- e) In addition, if groups do not self-identify, the following characteristics will be taken into account in identifying indigenous stakeholders:
- (i) tribal peoples whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; and
  - (ii) peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
- f)

#### 2.8.2.3. Application of FPIC

- a) While ultimately the decision on the IEE or EIA for a Project Proposal is the responsibility of the government, the application of the principle of “free, prior and informed consent” (FPIC) may have some bearing on that decision.
- (i)
  - (ii) The United Nations Declaration on the Rights of Indigenous Peoples<sup>10</sup> recognises that indigenous peoples have specific rights that should be respected, including through the application of the FPIC principle.
  - (iii) It aims to provide indigenous peoples with self-determination over their lives, lands and resources, including regarding decisions on development projects that might affect them.
  - (iv) FPIC provides for a meaningful process of public participation with indigenous peoples that respects their decision-making procedures and results in a final agreement about the conditions under which the Project Proposal would be accepted or a clear opinion that the Project Proposal is not accepted.
  - (v) The application of FPIC is one clear way that indigenous PAP can be given voice in the EIA process.
- b) The application of FPIC is particularly relevant for Project Proposals that potentially have a significant impact on indigenous peoples, including where:
- (i) the project would be located on, or commercially develop natural resources on, lands traditionally owned by, or under the customary use of, indigenous peoples;
  - (ii) that would seek to relocate indigenous peoples from their lands and/or restrict their use of natural resources; or
  - (iii) when there may be impacts on the cultural heritage of the indigenous peoples.

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<sup>10</sup> UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295.  
[http://www.un.org/esa/socdev/unpfi/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf)

- c) In each of these cases, the Project Proponent should be guided by the application of the IFC Performance Standards, particularly:
  - (i) Performance Standard 1 on Assessment and Management of Environmental and Social Risks and Impacts; and
  - (ii) Performance Standard 7 on Indigenous Peoples.
- d) The Project Proponent should engage with the indigenous peoples in good faith negotiation to reach agreement on the conditions in which the indigenous peoples may accept the Project Proposal, or where agreement cannot be reached, to document the continuing concerns of the indigenous peoples.
- e) ECD will take any agreements or lack of agreement into account when reviewing the IEE or EIA Report and, if the Project Proposal is approved, attaching conditions to the ECC.

#### 2.8.2.4. Resettlement

- a) There may be particularly serious consequences for indigenous peoples if they are resettled from their traditional lands and resources.
- b) For Project Proposals that propose or may involve the resettlement of indigenous peoples, whether voluntary or involuntary, the Project Proponent must:
  - (i) inform ECD and the Union Minister for Ethnic Affairs of that proposal or possibility at the earliest possible stage (no later than in submitting the Scoping Report for EIA Type projects);
  - (ii) comply with IFC Performance Standard 7 on Indigenous Peoples and Performance Standard 5 on Land Acquisition and Involuntary Resettlement until further requirements are adopted in accordance with Myanmar law;
    - These Performance Standards set out requirements around both the processes for public participation as well as the substantive standards around avoidance, mitigation and compensation that must be followed.
  - (iii) consider, as a first step in accordance with these Performance Standards, feasible project alternatives that do not involve resettlement; and
  - (iv) if no alternatives to proposed resettlement can be found, obtain FPIC for the resettlement from the indigenous peoples.
- c) If the indigenous peoples do not consent to the proposed resettlement, ECD will take that into account in any decision-making on the Project Proposal, including in preparing the ECC and any conditions if the Project Proposal is approved.
- d) If the indigenous peoples do consent to the proposed resettlement, the Project Proponent must agree on a Resettlement Action Plan and Livelihood Restoration Plan with ECD and the indigenous peoples involved.



- e) The Public Participation Plan must allocate sufficient time and resources to allow for repeated consultation with the indigenous peoples to explain and develop these plans and for indigenous peoples decision-making processes.
- f) ECD shall make compliance with, and successful completion of, the Resettlement Action Plan and Livelihood Restoration Plan a condition of the ECC for any approved Project Proposal.

#### 2.8.2.5. Approach to public participation processes

- a) There are many barriers to effective participation by indigenous peoples including language, remoteness of locations, lack of familiarity with the EIA process, the need to explain scientific and technical issues using indigenous languages and also the lack of knowledge by Project Proponents and EIA Consultants in engaging with indigenous peoples.
- b) For Project Proposals that may impact indigenous peoples, Project Proponents must ensure that public participation processes involving indigenous peoples recognise and respect their:
  - (i) culture and beliefs;
  - (ii) traditional practices and perspectives on land and natural resources;
  - (iii) communication approaches; and
  - (iv) decision-making processes.
- c) In this context, public participation processes, and the Public Participation Plan, must:
  - (i) ensure that the disclosure of information, consultation meetings, and participation processes generally, are undertaken in a culturally appropriate manner that respects the cultures and beliefs of the indigenous peoples;
  - (ii) be undertaken in a language and manner of presentation that is understandable to the indigenous peoples;
    - This might require the Project Proponent to employ more proactive measures to distribute project related information and to explain the potential impacts of the Project Proposal on indigenous peoples' land and livelihoods.
  - (iii) involve indigenous peoples' representative bodies and organisations (e.g. councils of elders or village councils), as well as other members of affected communities, particularly those not represented in the representative bodies and organisations (such as women and youth); and
  - (iv) provide sufficient time for indigenous peoples' decision-making processes, which will often mean holding multiple meetings to explain the details of the proposed project and to answer any questions.

### 2.8.3. Public participation in conflict-affected areas

#### 2.8.3.1. General

- a) Public participation processes in conflict-affected areas should be planned and carried out with specific attention to the context because conflict-affected areas present unique challenges.
  - (i) Any public participation process needs to be conflict sensitive.
  - (ii) This should be reflected in the Public Participation Plan.
- b) There are regional differences in conflicts, and in relation to different ethnic armed organizations (EAOs). Project Proponents and ECD should adapt public participation processes to each particular circumstance.
- c) The Public Participation Plan should address the key challenges of engaging and operating in conflict-affected areas, including:
  - (i) carrying out specific conflict **analysis and planning** to make sure the public participation process is conflict-sensitive;
  - (ii) addressing potential **unintended consequences** by understanding how the project is likely to affect existing relations and addressing this as part of the consultation;
  - (iii) gaining **access** to relevant stakeholders and appropriate strategies for on-ground engagement;
  - (iv) building **trust** over the short and long-term in communities that may be suspicious and distrustful;
  - (v) **balancing** all perspectives to make sure those potentially impacted by the Project Proposal in particular are heard;
  - (vi) addressing **expectations**, which can become higher and more volatile if misunderstood, managed poorly, or unmet;
  - (vii) ensuring the **security** of staff and stakeholders participating in the public participation process; and
  - (viii) devoting sufficient **time and resources** given the additional challenges.

#### 2.8.3.2. Conduct analysis and planning

- a) The Project Proponent should inform themselves about the conflict dynamics, context and sensitivities, including by:
  - (i) mapping different EAOs operating within the Project Proposal area, the different ethnic groups and the relations between them; and
  - (ii) identifying contacts and intermediaries.
- b) The Project Proponent should consider engaging with experts to advise on conflict-sensitive business practices and the local context.

#### 2.8.3.3. Consider unintended consequences

- a) As a starting point in being conflict sensitive, Project Proponents should recognise that choices made around public participation are political even if they are presented as technical.
- b) Including or excluding parties from consultations is a political choice and can promote conflict and should be addressed carefully and with these considerations in mind, rather than treating public participation in conflict areas as merely a planning exercise.
- c) More broadly, it will be important for Project Proponents to consider the potential unintended consequences of the Project Proposal (be it digging a well or developing a mine).
  - (i) The Project Proponent should consider whether the introduction of a new resource might affect existing or latent conflict dynamics.
  - (ii) This inquiry should be multi-layered. For example, the Project Proponent should take into consideration not only what benefits will accrue to local communities but also whether the proposed project will spur increased competition among communities. The Project Proponent should also consider whether the project would require increased police or military presence in the area, or more in-migration that could increase resentment and tension with those inside and outside the Project Proposal area.
- d) The Project Proponent should consider these issues itself and build them into the public participation process in a careful manner, being sensitive to the possibility of stirring up concerns.

#### 2.8.3.4. Seek to gain access to the full range of stakeholders

- a) Public participation processes should include a wider range of stakeholders than in non-conflict areas.
- b) The Project Proponent will need to plan for the additional political, logistical and security challenges of consulting these additional groups:
  - (i) State and Regional Governments, including any state/region ministers with a relevant ethnic affairs portfolio: it will be important to understand their perspective on the conflict and their development plans for the State or Region.
  - (ii) EAOs: It may not be possible for Project Proponents with no prior links or contacts in a conflict-affected area to contact and discuss with EAOs directly. Instead, the Project Proponent may need to use experts and organisations operating in the area to make contacts and open a dialogue. Project Proponents should consider facilitation by trusted individuals or organisations with strong track record of engagement in the area. Some EAOs do not have clear governance structures. Project Proponents need to obtain advice on the dynamics of EAO leadership and ensure that where there are factions, all factions are provided opportunities to engage and participate, including through bilateral consultations.

- (iii) Local communities: The Project Proponent should not view consultations with EAOs as a substitute for consultation with local communities. EAOs do not necessarily hold the same views as community members and should be consulted separately. There may also be several different ethnicities in the Project Proposal area. The Project Proponent should be aware of the dynamics between different ethnic groups and consider separate consultations, in local languages, to understand each community's local concerns about the Project Proposal and inter-community relationships and dynamics.
- (iv) Displaced groups outside the country: Due to displacement, some community leaders and opinion-formers may be based outside Myanmar, particularly in Thailand. The Project Proponent should adopt measures to ensure that these groups are provided the opportunity to engage and participate.

#### 2.8.3.5. Build trust

- a) The Project Proponent should be aware of the likelihood of heightened scrutiny of proposed projects in conflict affected areas.
- b) This encompasses potential suspicion of both the private sector and the authorities granting approvals to the Project Proponent.
- c) While public participation is required formally in the EIA process, it should be considered a part of longer-term engagement with communities and EAOs in conflict-affected areas.

#### 2.8.3.6. Balance views

- a) Given the potential challenges in gaining access to all relevant stakeholders, the Project Proponent should nonetheless try to ensure that all perspectives are represented as best as possible.
- b) In particular, the Project Proponent should attempt to ensure that those who may be impacted by the project are heard, amongst those with potentially more powerful voices in the process.
- c) Understanding how locals relate to the different authorities – both EAOs and the government – is an important part of ensuring that local communities have the opportunity and space to present their views.

#### 2.8.3.7. Address expectations

- a) Local communities and EAOs may be particularly concerned about who will, or is perceived to, benefit from the Project Proposal.
- b) They may have exaggerated expectations about benefits from the Project Proposal, including employment, distribution of revenues, etc.
- c) Expectations may focus on wider demands by ethnic groups for greater economic benefits, development and control of land and resources, with the potential for volatile responses if they are not met.
- d) If the Project Proposal involves land acquisition or use, the Project Proponent should be aware of local sensitivities about land, and potentially conflicting land registers (if such registers exist at all). For example, an EAO may have its

own land registration process, separate from the Union Government, and possibly not consistent with it.

- e) Project Proponents should particularly emphasise disclosure of information about the Project Proposal in an effort to manage the expectations of local communities. This should address potential impacts of the proposed project and explain potential benefits (if so advised by experts) as this can be an important step in beginning to reduce suspicion and avoid exacerbating conflict.

#### 2.8.3.8. Address security as a core part of the process

- a) Given the conflict context, the Project Proponent should be aware of and address security threats to those participating (including its own staff).
- b) Threats may be posed by different groups including the military, police, EAOs and splinter factions, or those who have an interest in the Project Proposal.
- c) The Project Proponent should make every effort to minimise the possibility that stakeholders may be put at risk as a result of the public participation processes, and consider alternative meeting methods and locations if satisfactory arrangements cannot be agreed.
- d) While the Myanmar government may want to arrange the presence of security personnel at consultations, a police/military presence is likely to reduce the willingness of local communities or other stakeholders to participate and speak openly about their concerns.

#### 2.8.3.9. Plan for sufficient time and resources

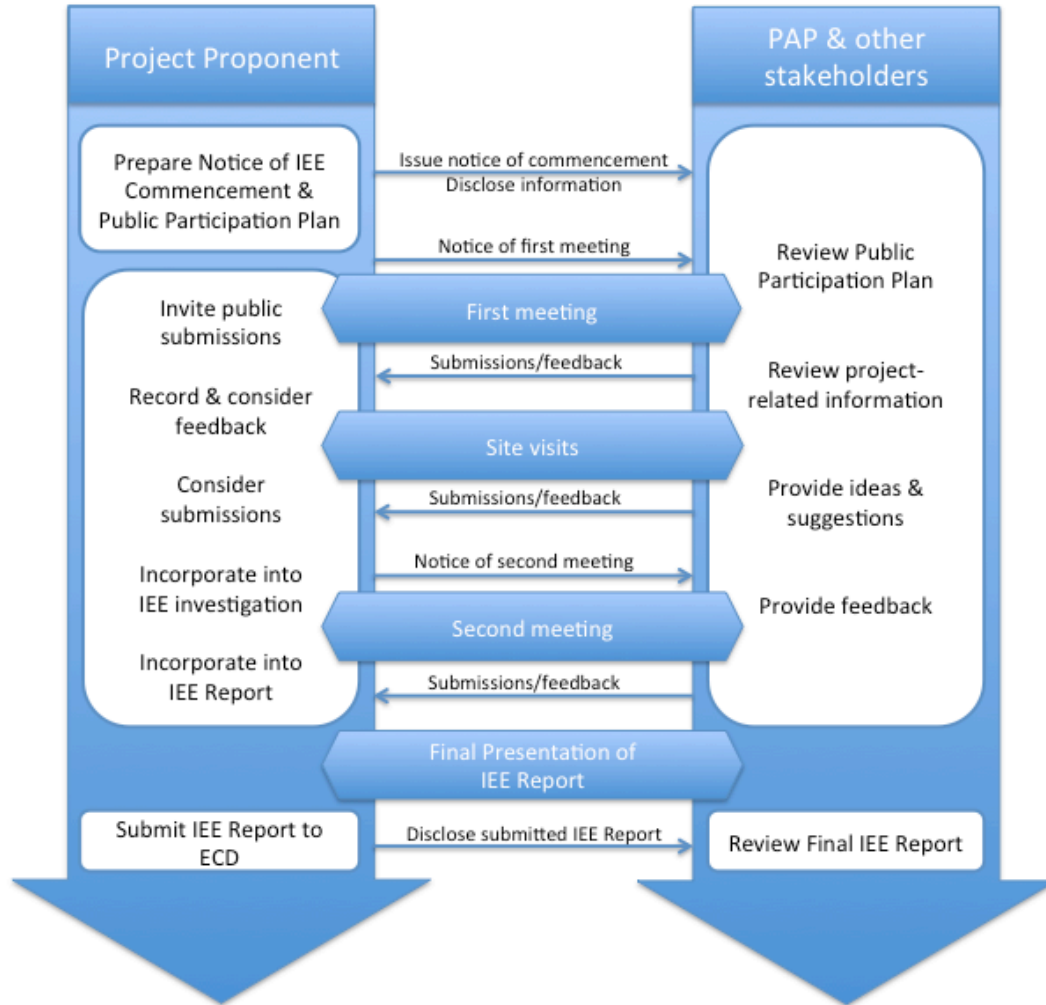
- a) There will be more parties to consult and discussions are likely to be longer and more complex given the circumstances.
- b) Additional time, resources and expertise for public participation processes in conflict-affected areas should therefore be included in the Public Participation Plan.

## **CHAPTER 3: IEE Type Projects**

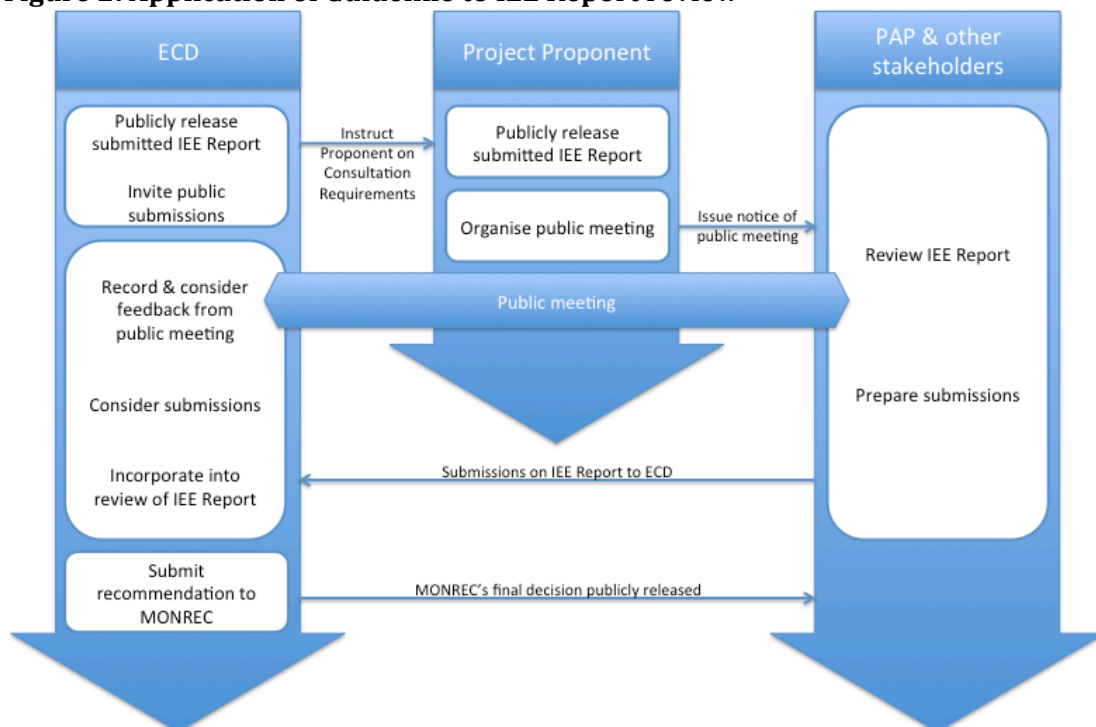
### 3.1. General

- a) In accordance with Article 32 of the EIA Procedure, the Project Proponent may undertake the IEE by itself or may appoint an EIA Consultant to do so. For purposes of clarity this Chapter will only refer to the Project Proponent, but all references to the Project Proponent should be taken to also include any appointed EIA Consultant.
- b) The first step in preparing an IEE is to identify potential impacts and concerns regarding the Project Proposal, in consultation with PAP and other stakeholders (including ECD), to focus the IEE assessment. This is important given the absence of a formal scoping stage involving an ECD decision-point for IEE Type Projects.
- c) To aid in this process, the Project Proponent is encouraged to draft a Public Participation Plan.
- d) The Public Participation Plan will outline the process that the Project Proponent will adopt during the IEE Report preparation stage. This is outlined in Chapter 2.
  - (i) In order to achieve the best results, the Public Participation Plan should be developed in consultation with the PAP and other stakeholders.
  - (ii) The key aim of the Public Participation Plan is to ensure that the PAP and other stakeholders are effectively engaged in the IEE.
  - (iii) The Public Participation Plan should be revised and updated throughout the IEE process as the Project Proponent gathers new information.
- e) Concerns and issues raised by the PAP during the preparation of the Public Participation Plan should be carefully recorded so that these issues may be investigated and addressed during the IEE investigation.
- f) The results of this investigation should be communicated to the PAP during the IEE. This is an essential part of meaningful public participation.
- g) Comments from the public participation process should influence the design and planning for a proposed project. These comments can lead to amendments to the Project Proposal to mitigate the possible adverse impacts.
- h) The application of this Guideline to the IEE investigation is depicted in Figure 1.
- i) The application of this Guideline to the IEE Report review is depicted in Figure 2.

**Figure 1: Application of Guideline to IEE investigation**



**Figure 2: Application of Guideline to IEE Report review**



### 3.2. Notice of Commencement of IEE

- a) In accordance with Article 34 of the EIA Procedure, the Project Proponent must issue notice to the public of the commencement of the IEE .
- b) *Content of the notice:* The minimum information in the public notice should include:
  - (i) type of project and its location;
  - (ii) information about the IEE process;
  - (iii) details about the availability of information related to the project, including how to access such information;
  - (iv) contact details for requesting information about the project;
  - (v) information about where to look for updates; and
  - (vi) information on how to submit written comments on the IEE to the Project Proponent.
- c) *Method of Notice:* the Project Proponent must publish notice of the commencement of the IEE using a combination of the following methods in a way that is appropriate for the Project Proposal and that maximizes the number of PAP and other stakeholders reached:
  - (i) on the Project Proponent's website;
  - (ii) through advertisements published in local newspapers;
  - (iii) the prominent posting of a legible sign board at the project site;
  - (iv) targeted notice to local government, neighbours, local religious organizations, and local community organizations; and
  - (v) through additional methods appropriate to the specific location and nature of the proposed project.
- d) The Project Proponent is encouraged to consult with local communities and government authorities in order to determine the best methods for providing notice of the commencement of the IEE. The Project Proponent must provide an explanation and rationale for the chosen methods for providing notice in the final IEE Report.
- e) *Timing of Notice of Commencement of the IEE:* Project Proponents must issue notice at least 14 days before the first public participation activity under the IEE.

### 3.3. Information disclosure

- a) *Timing of disclosure:* information about the Project Proposal must be made available to the public simultaneously with the issuance of the notice of the commencement of the IEE (EIA Procedure, Article 34).
- b) The Project Proponent shall:
  - (i) actively disseminate information to the general public including PAP, civil society, community representatives including but not limited to local religious leaders and organizations, relevant ministries and



government organisations at the Union and sub-national levels, and other stakeholders who are interested in the project.

- (ii) ensure all information is publicly accessible on project website(s) and in hard copy at convenient, accessible locations near the project site (e.g. schools, local government offices, monasteries, etc.).
- c) Information that is relevant and available will vary between project proposals, for various reasons including the type of project and its location. Generally, the following information should be available to be provided to clearly show the scope and type of the Project Proposal:
  - (i) Summary of the Project Proposal, including type, size, location and timeframes.
  - (ii) Project Proponents (including project funders).
  - (iii) Visual information, including photographs, maps, drawings and diagrams.
- d) As much information as possible should be left with the community to consider and discuss further. See also Box 2 on Information Disclosure.
- e) The information should be relevant and in a form that the PAP and other stakeholders can understand. This means that technical documents should be explained in simple terms in the local language.
- f) If there is a request for scientific and technical information to be explained, then the Project Proponent is encouraged to arrange for a meeting with the appropriate experts and the community.
- g) Information that is publicly disclosed should be made available:
  - (i) On project and Project Proponent website(s)
  - (ii) For distribution at public participation activities and other project-related activities
  - (iii) At the Project Proponent's offices (electronic versions and hard copies)
  - (iv) Hard copies available for viewing at convenient, accessible and independent locations near to the project site and to PAP (e.g. schools, local government offices, monasteries, etc.)
- h) All material provided to the PAP and other stakeholders should be treated as information in the public domain that can be accessed and distributed to people outside the local community.

**Box 2: IEE Information Disclosure**

**What type of information should be provided?**

- Outline of Project Proposal, including maps, draft plans and other available information
- Details of the time frame for construction and outline of possible impacts – updated as more information is made available
- Scientific or technical information about the Project Proposal and possible impacts
- Initial comments from the local communities, CSOs, and government agencies
- Written feedback to stakeholders on their initial comments
- Draft IEE Report, including comments from PAP and other stakeholders, and draft EMP
- IEE Report, EMP and Public Participation Plan

3.4. Public Participation during preparation of the IEE

3.4.1. Number of public participation meetings

- a) In accordance with Article 34(b) of the EIA Procedure, the Ministry requires that the Project Proponent hold at least two public participation meetings during the preparation of the IEE.
  - (i) The Ministry may require the Project Proponent to hold more than two public participation meetings if it determines that more meetings are warranted based on the size and nature of the Project Proposal and the stakeholders.
  - (ii) These meetings shall not include the IEE Report Final Presentation (*see* Section 4.4.4).
  - (iii) Any fewer than two public participation meetings would need to be justified clearly by the Project Proponent, including an indication of how the results of public participation will still be meaningful.
  - (iv) The Project Proponent must gain ECD's explicit approval to hold any fewer than two public participation meetings.
- b) Even at this early stage the Project Proponent should consider separate meetings to ensure that both men and women are able to attend the meetings and raise issues of concern to them.

3.4.2. Organising and conducting public participation meetings

- a) *Timing of Notice of Public Participation Meetings:* Notice should be issued no less than 14 days in advance of each public participation meeting.
- b) *Method of Notice:* The Project Proponent must publish notice of each public participation meeting using a combination of the following methods in a way that is appropriate for the Project Proposal and that maximizes the number of PAP and other stakeholders reached:
  - (i) on the Project Proponent's website;
  - (ii) through advertisements published in local newspapers;

- (iii) the prominent posting of a legible sign board at the project site; and
  - (iv) targeted notices to local government, neighbours, local community organizations.
- c) The Project Proponent is encouraged to consult with local communities and government authorities in order to determine the best methods for providing notice of each public participation meeting during the IEE Report preparation stage. The Project Proponent must provide an explanation and rationale for the chosen methods for providing notice in the final IEE Report.
- d) *Liaison with relevant government agencies to organise meetings:* The Project Proponent should liaise with the relevant government offices to ensure:
- (i) the Project Proponent has invited all relevant PAP and other stakeholders to public participation meetings;
  - (ii) the relevant government agencies are aware of the planned meeting(s); and
  - (iii) the Project Proponent is aware of any relevant local circumstances, such as security considerations.
- e) *Conduct of Public Participation Meetings:* All IEE public participation meetings should involve the following minimum elements:
- (i) An agenda that clearly articulates the objectives for the public participation meeting.
  - (ii) Presentations by the Project Proponent about the project, including but not limited to:
    - a description of the proposed project;
    - the main phases of the project (design, preconstruction, construction, operation, decommissioning/ closure/post closure);
    - a brief history of the project;
    - planned timeframes for the project;
    - the actual status of any existing infrastructure related to the project;
    - the need for the project including a brief justification;
    - potential alternatives to the proposal, including alternative locations;
    - potential environmental impacts of the project (direct, indirect, and cumulative), including: air and water emissions; waste; noise; traffic; odour; socio-economic, cultural, public health or occupational health and safety impacts; or any other type of impact;
    - potential impact avoidance, mitigation and management measures, including the proposed Environmental Management Plan (EMP);
    - the Public Participation Plan for the IEE investigation stage; and

- any grievance mechanism and any on-going community engagement mechanisms to be established if the Project Proposal is implemented.
- (iii) Opportunities for the participants to give public comment orally.
- (iv) Equitable opportunities for women, children and youth to be involved.
- (v) Details on how written comments can be provided, including deadlines for submission of comments
- (vi) Details about the IEE Report approval process.
- f) The Project Proponent must give special consideration to:
  - (i) how to best facilitate the involvement of women;
  - (ii) ensuring that it is able to obtain the views of vulnerable and disadvantaged people, including very poor people and those with disabilities; and
  - (iii) how to best facilitate the involvement of indigenous people.
- g) The Project Proponent must ensure that:
  - (i) public participation meeting proceedings and comments are recorded;
  - (ii) any commitments made by the Project Proponent during the meeting proceedings are recorded;
  - (iii) these records are kept on file; and
  - (iv) these records are made available to ECD with the submission of the IEE Report to ECD for review pursuant to Article 37 of the EIA Procedure.

#### 3.4.3. Site Visits

- a) In order to enhance the effectiveness of the public participation process, the Ministry encourages the Project Proponent to arrange for ECD and other relevant government organisations to visit the site of the proposed project.
- b) Any site visits should be arranged in consultation with the PAP, should be public and should be open to the PAP to join. The Project Proponent shall not prevent the PAP from being accompanied by an outside technical expert during the site visit.
- c) Site visits should be coordinated between the relevant Ministries, local authorities, and representatives of the PAP.

#### 3.4.4. IEE Report Final Presentation

- a) Prior to submitting the IEE Report to ECD, the Project Proponent is encouraged to arrange and conduct a final workshop. This is so that PAP and other stakeholders involved with the project can be informed about the IEE conclusions and recommendations.
- b) The final presentation should also include a presentation of the proposed EMP, which should include details of any proposed community grievance mechanisms or dispute resolution process to apply during implementation if the project is approved.

- c) The Project Proponent must invite participants that include representatives from civil society, the local community, relevant government agencies at the Union and sub-national levels, and other stakeholders involved with the Project Proposal.
- d) The PAP and other stakeholders can use this as an opportunity to prepare comments for submission to ECD during the IEE review stage.
- e) The purpose of the IEE Report Final Presentation is to promote transparency and to give the PAP and other stakeholders an opportunity to gain information about the final IEE Report prior to its submission to ECD. Any new comments or information that the PAP or other stakeholders have at this point should be submitted to ECD during the IEE Report review stage.

### 3.4.5. IEE meetings summary

- a) Table 3 provides a summary of the minimum expected meetings during the IEE investigation, including who should be invited and the expected purpose and outcomes of the meetings.

**Table 3: IEE meetings summary**

	<b>Meeting purpose and expected outcomes</b>	<b>Invitees and participants</b>
<b>1<sup>st</sup> meeting</b>	<p>To inform the PAP and other stakeholders of the Project Proposal, including potential environmental impacts and their relevant mitigation measures</p> <p>To inform the PAP and stakeholders of the IEE process and how it will be conducted</p> <p>To inform the PAP of the proposed Public Participation Plan</p> <p>To set the date for the next meeting</p>	<p>PAP</p> <ul style="list-style-type: none"> <li>• Specific attention should be made to involve women &amp; vulnerable and disadvantaged groups and individuals.</li> </ul> <p>Local and regional CSOs</p> <ul style="list-style-type: none"> <li>• This could include NGOs with an interest in the area or the Project Proposal.</li> </ul>
<b>2<sup>nd</sup> meeting</b> (and any subsequent meetings, if required)	<p>To enable the PAP and other stakeholders to contribute their knowledge, experience and views on the local environment and Project Proposal into the IEE investigation</p> <p>To respond to the initial feedback and ideas from the PAP and other stakeholders on some of the issues that should be included in the IEE</p> <p>To provide updates on the IEE</p>	<p>ECD offices and other relevant government organisations at the State and Regional level</p> <p>Local authorities</p> <p>Other identified stakeholders</p>

	The 2 <sup>nd</sup> meeting, at least, should also include a separate meeting for women (with women facilitators) in addition to a combined meeting	Project Proponent and IEE Consultant  Translator(s)
<b>IEE Report Final Presentation</b>	To present the IEE Report and explain to the PAP and other stakeholders how their comments and concerns were addressed in the Report	

### 3.5. IEE Report Requirements

- a) Article 36(g) of the EIA Procedure requires every IEE Report to include the results of the public participation processes, recommendations received from the public, and the Project Proponent's written responses to comments received.
- b) This is a substantive obligation to consider the results of public participation, not just a procedural summary of the public participation processes undertaken.
- c) *Results of the Public Participation process:* In reporting on the results of the public participation process, the Project Proponent must include in the IEE report, at a minimum:
  - (i) the methodology used for the public participation processes, including any public participation plans prepared;
  - (ii) the initial notice of the commencement of the IEE and information sent out to the public (including the methods of notice and the date on which notice was made);
  - (iii) notice about public participation meeting(s) (including the methods of notice and the date on which notice was made);
  - (iv) the number of public participation meetings held and their location;
  - (v) the number of people attending public participation meetings (broken down by gender and other relevant demographic data such as age);
  - (vi) number of people offering oral comments at public participation meetings;
  - (vii) the number of written public comments received;
  - (viii) a summary of the issues raised by the PAP and other stakeholders in oral and written submissions; and
  - (ix) the ways that the issues raised were addressed in the IEE Report.
- d) If the Project Proponent developed a Public Participation Plan, the IEE Report should also include summary of the Public Participation Plan and how it was implemented during the IEE investigation (with the Public Participation Plan attached to the IEE Report).

- e) *Response to Comments*: Pursuant to Article 36(g) of the EIA Procedure, the Project Proponent must provide responses to the comments received.
  - (i) The responses should specify where the comments were addressed in the IEE Report, including with regard to the proposed project's EMP, or provide rationale as to why the comments or suggestions were rejected.
  - (ii) If the Project Proponent determines that any of the comments or issues raised by PAP or other stakeholders are either not reasonable or not relevant to the proposed project, the Project Proponent shall provide an explanation in its response.

### 3.6. Public Participation during IEE Report Review

#### 3.6.1. General

- a) Article 39 of the EIA Procedure requires public participation during ECD's review of the final IEE Report.
- b) Public participation is essential during the review stage to ensure that:
  - (i) Stakeholders have the opportunity to review and comment on the final version of the IEE;
  - (ii) Stakeholders have the opportunity to contribute their views to the decision-makers, independent of the Project Proponent;
  - (iii) The decision-makers have independent access to the opinions of stakeholders; and
  - (iv) The decision-makers can confirm that the concerns of PAP and other stakeholders were incorporated into the IEE and EMP.
- c) In accordance with Article 39 of the EIA Procedure, ECD is responsible for coordinating the review of submitted IEEs, including the public participation processes intended to inform the decision on the IEE.
- d) In accordance with Article 43 of the EIA Procedure, the Project Proponent shall bear all costs incurred in conducting public participation activities during the review stage.
- e) As Article 42 of the EIA Procedure requires a decision on an IEE Report to be made within 60 days of its submission, the public participation processes at this stage must be structured with sufficient time for:
  - (i) PAP and other stakeholders to access and review the IEE Report;
  - (ii) PAP and other stakeholders to prepare and submit comments on the IEE Report;
  - (iii) PAP and other stakeholders to participate in public participation events; and
  - (iv) ECD to consider the results of public participation undertaken at this stage in the preparation of recommendations on the IEE Report.

### 3.6.2. Disclosure of the IEE Report to the public by the Project Proponent

- a) Both the Project Proponent and ECD are obligated by the EIA Procedure to release the IEE Report to the public for review.
- b) In accordance with Article 38 of the EIA Procedure, the Project Proponent must disclose the IEE Report to civil society, PAP, local communities and other concerned stakeholders no later than 15 days after submission of the IEE Report to ECD.
- c) In order to disclose the IEE Report, the Project Proponent must issue notices of availability of the IEE Report (in addition to making the IEE Report itself available for review) in several different forums, including:
  - (i) on the Project Proponent's website;
  - (ii) through local media (i.e. newspapers and radio);
  - (iii) on a prominent, legible sign board at the project site;
  - (iv) in targeted notices to local government, PAP and local CSOs; and
  - (v) through additional methods appropriate to the specific location and nature of the proposed project.
- d) No later than fifteen days after the submission of the IEE Report to ECD, the Project Proponent must make the IEE Report available to the public for review in the following ways:
  - (i) posting on the Project Proponent's website;
  - (ii) placing a hard copy of the IEE Report at appropriate public places (such as libraries, local government offices, community halls, temples, etc.); and
  - (iii) making hard copies available for review at the offices of the Project Proponent.

### 3.6.3. Disclosure of the IEE Report to the public by ECD

- a) In accordance with Article 39(a) of the EIA Procedure, ECD should make the IEE Report available as soon as possible after the receipt of the IEE Report. Under all circumstances, this should occur within 14 days of receipt of the IEE Report at ECD.
- b) In order to disclose the IEE Report, ECD should issue notices of availability of the IEE Report (in addition to making the IEE Report itself available for review) in several different forums, including:
  - (i) on the Ministry and/or ECD's website;
  - (ii) through local media (i.e. newspapers); and
  - (iii) in targeted notices to local government, PAP and local CSOs.
- c) ECD must make the IEE Report available to the public for review in the following ways:
  - (i) posting on the Ministry and/or ECD's website; and
  - (ii) making hard copies available for review at local ECD offices.



- d) This requires ECD to ensure that the Project Proponent submits both electronic versions and hard copies of all reports and related documentation.

#### 3.6.4. Public Submissions on the IEE Report

- a) *Inviting Submission of Written Public Comments:* In accordance with Article 39(b) of the EIA Procedure, ECD is required to invite the public to submit written comments on the IEE Report for its consideration.
- b) In order to do this, ECD should prominently and clearly include an invitation to submit written comments in the notices of availability of the IEE Report. This information should notify the public of:
  - (i) their right to submit written comments on the Project Proposal and/or the IEE Report,
  - (ii) the preferred method for submitting comments to ECD, and
  - (iii) the final date on which ECD will accept comments from the public.
- c) At least 20 days after notification must be provided for the public to submit written comments on the project proposal and/or IEE Report. No recommendation on the IEE Report will be made until after this submission period has closed and ECD has considered all submissions.
- d) ECD should accept written comments in both hard copy and electronic forms.

#### 3.6.5. Public participation meetings on the IEE Report

- a) In accordance with Article 39(c) of the EIA Procedure, public participation meetings are to be organised at the local level, allowing PAP and other stakeholders the opportunity to contribute their views to the review of the IEE Report.
  - (i) ECD must require the Project Proponent to make arrangements for at least one public participation meeting at an appropriate location in close proximity to the proposed Project site.
  - (ii) Depending on the nature of the Project Proposal under review, ECD may require additional meetings on an IEE Report.
- b) ECD is responsible for ensuring these public participation meetings are organised by the Project Proponent, which requires ECD to give direction to the Project Proponent on the following matters:
  - (i) The number, location and timing of meetings.
  - (ii) How the PAP and other stakeholders are to be notified of the meetings.
  - (iii) Inviting all PAP and other stakeholders that were involved in the earlier public participation processes, with explicit reference in the invitations that IEE Report review meetings are open to the public.
  - (iv) The minimum time between the notification and the meetings (at least 14 days).
- c) The notification of meetings should be given using a combination of the following methods in a way that is appropriate for the Project Proposal and that maximizes the number of PAP and other stakeholders reached:

- (i) on the Project Proponent's and ECD websites;
  - (ii) via social media;
  - (iii) by the prominent posting of a legible signboard at the project site and at meeting sites;
  - (iv) through advertisements on the radio and in newspapers;
  - (v) through targeted invitations to identified potential stakeholders; and
  - (vi) through additional methods appropriate to the specific location and nature of the proposed project.
- d) All PAP and other stakeholders, including those who have provided comments during the IEE investigation stage, should be invited to, and have the opportunity to be represented at, all public participation meetings.
- e) CSOs and the media should be invited to the IEE Report review public participation meetings.
- f) During the public participation meetings, ECD will be responsible for:
- (i) keeping accurate records of all comments;
  - (ii) responding to questions on the IEE process generally and to the decision-making process in particular; and
  - (iii) informing public participation meeting participants of their right to appeal ECD's decision on the IEE Report pursuant to Chapter VI of the EIA Procedure.
- g) During the public participation meetings, the Project Proponent will be responsible for:
- (i) presenting the final IEE Report and highlighting key issues, findings and results of previous public participation processes; and
  - (ii) responding to questions on the IEE Report.

#### 3.6.6. Consideration of public comments and recommendation on IEE Report

- a) In accordance with Article 39(d) of the EIA Procedure, ECD shall collect and review all comments and recommendations received during the IEE Report review period and forward them to the Ministry along with a recommendation regarding the IEE Report.
- b) The recommendation on the IEE Report should include summaries of:
- (i) the public participation undertaken during the review of the IEE Report;
  - (ii) the public comments received;
  - (iii) how the public comments were considered during the review and in formulating the recommendations on the IEE Report; and
  - (iv) the likely key impacts on PAP and other stakeholders if the project proposal is approved and implemented.

### 3.6.7. Environmental Compliance Certificate

- a) Pursuant to Article 41(c) of the EIA Procedure, if the project is approved, ECD must make the ECC, the EMP, and any conditions of the approval available on the ECD website and to be reviewed in hard copy in ECD offices.
- b) The Project Proponent should also make the ECC available on its websites.

## **CHAPTER 4: EIA Type Projects**

### 4.1. Third Party EIA Consultant

- a) In accordance with Article 45 of the EIA Procedure, the Project Proponent must appoint a registered third person or organization to carry out the EIA investigation and reporting (referred to herein as EIA Consultant).
- b) The EIA Consultant will generally also be appointed to conduct the EIA scoping.
- c) The EIA Consultant will be required to comply with this Guideline.
- d) While both the terms "Project Proponent" and "EIA Consultant" are used throughout this Chapter, ultimate responsibility for the EIA process lies with the Project Proponent. EIA Consultants have the obligation to carry out any task or duty under this Guideline in accordance with the EIA Procedure and their contract with the Project Proponent.

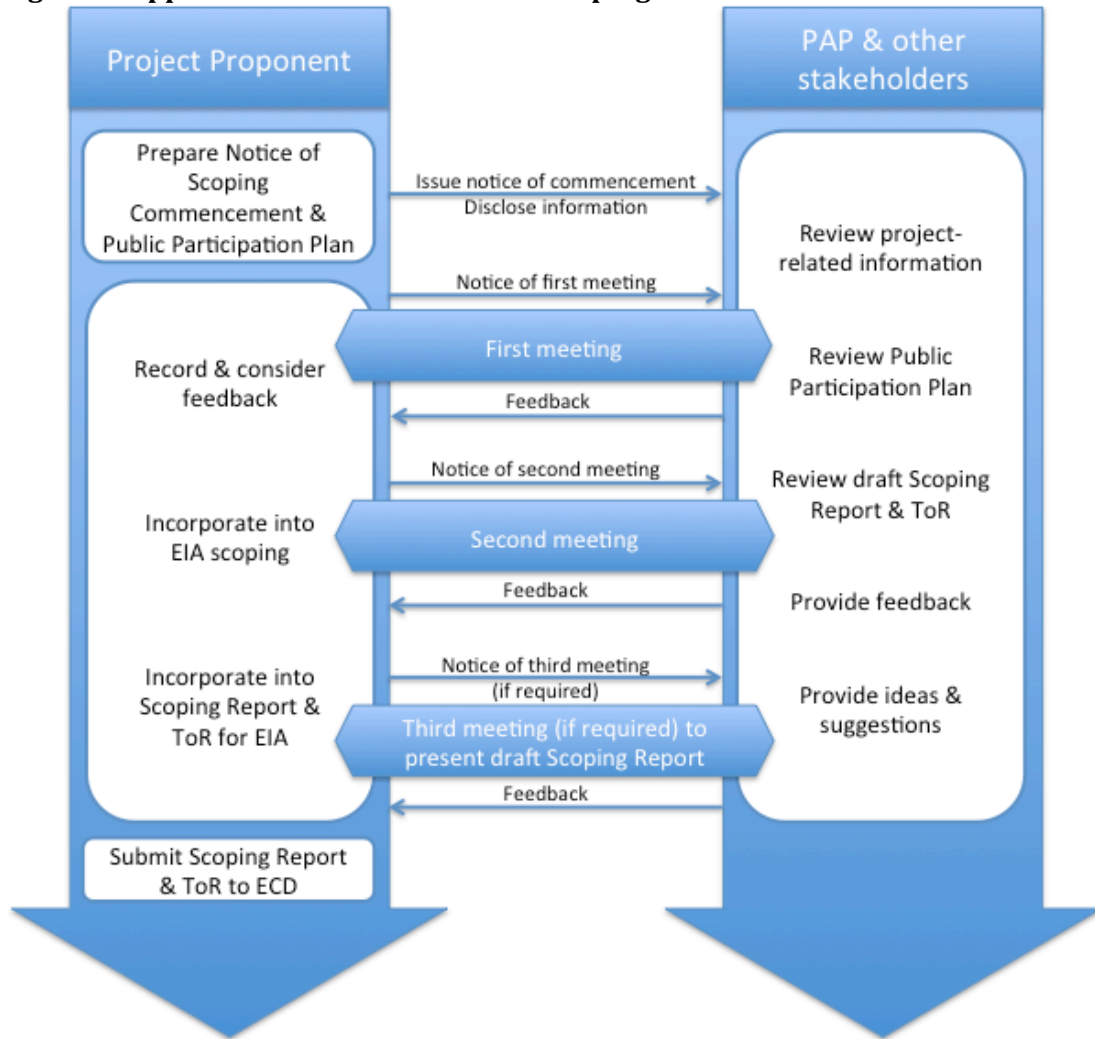
### 4.2. Scoping

#### 4.2.1. General

- a) Scoping is to identify major issues and potential problems, in consultation with PAP and other stakeholders and agreement with ECD, which then focuses the EIA investigation stage.
- b) The scoping stage of the EIA process will also produce a detailed Terms of Reference (ToR) for the EIA, which shall include a Public Participation Plan. Both the ToR and the Public Participation Plan are to be approved by ECD in accordance with Article 54 of the EIA Procedure.
- c) The Public Participation Plan produced during the scoping stage shall outline the public participation approach for the EIA investigation stage. This process for developing the Public Participation Plan is outlined in Chapter 2.
  - (i) While the focus of the Public Participation Plan will be on the EIA investigation stage, the Project Proponent is encouraged to consider developing a dedicated plan for public participation at the scoping stage (especially for major project proposals or those likely to have significant impacts).
- d) The EIA Consultant should ensure that concerns and issues raised by the PAP in the scoping stage are included in the ToR for the EIA so that these issues may be investigated and addressed at the EIA investigation stage. The results of this investigation need to be communicated to the PAP during the EIA process. This is an essential part of public participation.
- e) Comments from the public participation process should influence the design and planning for a proposed project. Information gathered during the scoping stage is important for the EIA Consultant and Project Proponent. These comments should lead to amendments to the Project Proposal to mitigate its possible adverse impacts. The EIA Consultant and Project Proponent should be prepared to provide an explanation as to why any comments from the public were rejected.

f) The application of this Guideline to the EIA scoping is depicted in Figure 3.

**Figure 3: Application of Guideline to EIA scoping**



#### 4.2.2. Notice of commencement of Scoping

- a) In order to implement the requirements of Article 49(e) of the EIA Procedure, the Project Proponent must issue notice to the public of the commencement of the EIA scoping stage.
- b) *Content of the notice:* The minimum information in the public notice should include:
  - (i) type of project and its location;
  - (ii) information about the EIA scoping stage including planned public participation meetings and the anticipated timeframe of the scoping stage;
  - (iii) contact details to request information;
  - (iv) information about where to look for updates; and
  - (v) information on how to submit written comments on the Project Proposal to the Project Proponent.

- c) *Method of Notice:* The Project Proponent must publish notice of the commencement of the EIA scoping stage using a combination of the following methods in a way that is appropriate for the Project Proposal and that maximizes the number of PAP and other stakeholders reached:
  - (i) on the Project Proponent's website;
  - (ii) through ads published in local newspapers;
  - (iii) the prominent posting of a legible sign board at the project site;
  - (iv) targeted notice to local government, local religious leaders and organizations, neighbours, and local community organizations; and
  - (v) through additional methods appropriate to the specific location and nature of the proposed project.
- d) The Project Proponent is encouraged to consult with local communities and government authorities in order to determine the best methods for providing notice of commencement of the EIA scoping stage. The Project Proponent must provide an explanation and rationale for the chosen methods for providing notice in the Scoping Report and the Public Participation Plan.
- e) *Timing of Notice:* The Project Proponent should issue notice of the commencement of the EIA scoping stage at least 14 days prior to the first meeting with PAP or other stakeholders.

#### 4.2.3. Information disclosure

- a) The Project Proponent and EIA Consultant shall:
  - (i) actively disseminate information to the general public including PAP, , civil society, community representatives including but not limited to local religious leaders and organizations, relevant ministries and government organisations at the Union and sub-national levels, and other stakeholders who are interested in the project; and
  - (ii) ensure all information is publicly accessibly on project website(s) and in hard copy at convenient, accessible locations near the project site (e.g. schools, local government offices, local community halls, etc.).
- b) Information that is relevant and available will vary between project proposals, for various reasons including the type of project and its location. Generally, the following information should be available to be provided to clearly show the scope and type of the Project Proposal:
  - (i) Summary of the Project Proposal, including type, size, location, timeframes;
  - (ii) Details about the Project Proponents (including project funders); and
  - (iii) Visual information, including photographs, maps, drawings and diagrams.
- c) As much information as possible should be left with the community to consider and discuss further. See also Box 3 on Information Disclosure.

- d) The information should be relevant and in a form that the PAP and other stakeholders can understand. This means that technical documents should be explained in simple terms in the local language.
- e) If there is a request for scientific and technical information to be explained, then the EIA Consultant should arrange for a meeting with the appropriate experts and the community.
- f) Information that is publicly disclosed should be made available using a combination of methods that are appropriate for the Project Proposal and that maximizes the number of PAP and other stakeholders reached, including:
  - (i) on project and Project Proponent website(s);
  - (ii) for distribution at public participation activities and other project-related activities;
  - (iii) at the Project Proponent and EIA Consultant offices (electronic versions and hard copies);
  - (iv) hard copies available for viewing at convenient, accessible and independent locations near to the project site and to PAP (e.g. schools, local government offices, local community halls, etc.); and
  - (v) through additional methods appropriate to the specific location and nature of the proposed project.
- g) All material provided to the PAP and other stakeholders should be treated as information in the public domain that can be accessed and distributed to people outside the local community.

**Box 3: EIA Scoping Stage Information Disclosure**

**What type of information should be provided?**

- Outline of Project Proposal, including maps, draft plans, project design, project activities, project management, and other available information
- Details of the time frame for construction and outline of possible impacts (in general)
- Any scientific or technical information available about the Project Proposal and possible impacts
- Initial comments from the local communities, CSOs, and government agencies
- Draft Scoping Report, ToR and Public Participation Plan
- Approved Scoping Report
- ToR and Public Participation Plan

**4.2.4. Public Participation Activities**

- a) In accordance with Article 50(b) of the EIA Procedure, the Ministry requires that the Project Proponent hold at least two public participation meetings during the scoping stage for an EIA. The Ministry may require the Project Proponent to hold more than two public participation meetings during the scoping stage if it determines that more meetings are warranted based on the size and nature of the Project Proposal and the surrounding communities.

- (i) Any fewer than two meetings would need to be justified clearly by the Project Proponent, including an indication of how the public participation process and results will still be meaningful.
- (ii) The Project Proponent must gain explicit approval from ECD to hold any fewer than two public participation meetings.
- b) Depending on the size and location of the Project Proposal, the Ministry may require the Project Proponent to hold more than two public participation meetings during the scoping stage.
- c) Even at this early stage the Project Proponent and EIA Consultant should consider separate meetings to ensure that both men and women are able to attend the meetings and raise issues of concern to them.
- d) *Liaison with relevant government agencies to organise meetings:* The EIA Consultant should liaise with the relevant government offices to ensure:
  - (i) the EIA Consultant has invited all relevant PAP and other stakeholders to public participation meetings;
  - (ii) the relevant government agencies are aware of the planned meeting(s); and
  - (iii) the EIA Consultant is aware of any relevant local circumstances, such as security considerations.
- e) *Conduct of the Public Participation Meetings:* All public participation meetings during the scoping stage should involve the following minimum elements:
  - (i) An agenda that clearly articulates the objectives for the public participation meeting.
  - (ii) Presentation(s) by the Project Proponent about the Project Proposal, including but not limited to:
    - a brief description of the Project Proposal;
    - the main phases of the project (design, preconstruction, construction, operation, decommissioning/closure/post closure);
    - a brief history of the Project Proposal
    - expected investment and benefits (taxes, royalties, etc.);
    - the actual status of the existing infrastructure related to the project;
    - potential alternatives to the proposal, including but not limited to alternative locations;
    - potential likely impacts (direct, indirect, and cumulative) of the project; and
    - potential impact avoidance, mitigation and management measures, including a proposed EMP for the project.
  - (iii) Opportunities for the participants to give public comment orally.
  - (iv) Equitable opportunities for women, children and youth to be involved.



- (v) Measures to obtain the opinions of vulnerable and disadvantaged people, including very poor people and those with disabilities, and indigenous people
  - (vi) Details about the scoping, EIA Report preparation, and EIA Report review processes.
- f) In accordance with Article 51(g) of the EIA Procedure, the Project Proponent must ensure that:
- (i) public participation meeting proceedings and comments are recorded;
  - (ii) any commitments made by the Project Proponent during the public participation meeting proceedings are recorded;
  - (iii) these records are kept on file; and
  - (iv) these records are made available to ECD with the submission of the Scoping Report.
- g) There are different ways to obtain information and conduct public participation processes at the scoping stage. Meeting types, locations and structures can be different depending on the situation of the study site and its surroundings, the nature and complexity of the Project Proposal and the number of interested participants.
- h) In addition to the required scoping stage public participation meetings, the Project Proponent is encouraged to hold other types of meetings to help determine the scope, which may include “workshops” with participants in small working groups considering options and other designs.
- i) Depending on the location of the project, the Ministry may require that the Project Proponent arrange for translators to be present at public participation activities to translate information for those who do not speak the same language. Technical and scientific terms and issues may also need to be carefully explained.
- j) Table 4 provides a summary of the minimum expected meetings during the EIA scoping stage, including who should be invited and the expected purpose and outcomes of the meetings.

**Table 4: Scoping stage meetings summary**

	<b>Meeting purpose and expected outcomes</b>	<b>Invitees and participants</b>
<b>1<sup>st</sup> meeting</b>  (early in scoping stage)	To inform the PAP and other stakeholders of the Project Proposal  To inform the PAP and stakeholders of the EIA process, especially the scoping stage, and how it will be conducted  To set the date for the next meeting	PAP • Specific attention should be made to involve women & vulnerable and disadvantaged groups and individuals.
<b>2<sup>nd</sup> meeting</b>	To enable the PAP and other stakeholders to contribute their	Local, regional and

	<p>knowledge, experience and views on the issues that should be included in the Scoping Report and the ToR for the EIA investigation stage</p> <p>To respond to any initial feedback and ideas from the PAP and other stakeholders on the issues that should be included in Scoping Report</p> <p>To present the proposed Public Participation Plan that will include future meetings and provision of information, and to elicit feedback on the proposed Public Participation Plan</p> <p>The 2<sup>nd</sup> meeting, at least, should also include a separate meeting for women (with women facilitators) in addition to a combined meeting</p>	<p>national CSOs</p> <ul style="list-style-type: none"> <li>This includes NGOs with an interest in the area or any aspect of the Project Proposal.</li> </ul> <p>MONREC and other relevant ministries and Union-level government organisations</p> <p>ECD offices and other relevant government organisations at the State and Regional level</p> <p>Local authorities</p>
<p><b>3<sup>rd</sup> meeting</b></p> <p>(if required, otherwise combined with 2<sup>nd</sup> meeting)</p>	<p>To present the draft Scoping Report and ToR for the EIA investigation stage</p> <p>To explain to the PAP and other stakeholders how their comments and concerns were addressed in the draft Report</p>	<p>Other identified stakeholders</p> <p>Project Proponent and EIA Consultant</p> <p>Translator(s)</p>

#### 4.2.5. Notice and Time Frame for Public Participation

- a) *Method of Notice*: The Project Proponent must publish advance notice of each public participation meeting using a combination of the following methods in a way that is appropriate for the Project Proposal and that maximizes the number of PAP and other stakeholders reached:
- (i) on the Project Proponent's website;
  - (ii) via social media;
  - (iii) through ads published in local newspapers;
  - (iv) the prominent posting of a legible sign board at the project site,
  - (v) via radio and television announcements;
  - (vi) targeted notice to local authorities, local religious leaders and organizations, neighbours, and local community organizations; and
  - (vii) through other appropriate means depending on the size and location of the project proposal.

- b) The Project Proponent is encouraged to consult with local communities and government authorities in order to determine the best methods for providing notice of the public participation meetings held during the EIA scoping stage. The Project Proponent must provide an explanation and rationale for the chosen methods for providing notice of the public participation meetings in the Scoping Report and Public Participation Plan.
- c) The Project Proponent should arrange the public participation meetings at a time that is appropriate for the PAP.
- d) The Project Proponent must issue notice of a meeting at least 14 days in advance of the meeting. This time period may be increased by the need to conduct more meetings or at the request of the PAP for more time to consider the information provided by the EIA Consultant.
- e) Each meeting should discuss the next possible meeting (if required). The Project Proponent or EIA Consultant should be as clear as possible about the next steps that will be taken in the EIA process. This is a key way to build trust with the community.
- f) There should be a gap between meetings to allow the PAP and other stakeholders to consider the information provided by the Project Proponent or EIA Consultant. There should be between at least 14 days between meetings.
- g) Public participation should occur early enough in the scoping stage so that there is sufficient time allowed for stakeholders to consider the issues, contribute their views to the preparation of the Scoping Report, ToR and Public Participation Plan, before these documents are finalised and submitted to ECD for review.

#### 4.2.6. Public Participation Outcomes at the Scoping Stage

- a) In accordance with Article 51 of the EIA Procedure, the Project Proponent or the EIA Consultant must prepare a Scoping Report and submit this to ECD for review and comment.
- b) In accordance with Articles 52 and 53 of the EIA Procedure, the Scoping Report must include a draft ToR for the key issues that need to be included in the EIA Report. The draft ToR must be accompanied by the proposed Public Participation Plan for the EIA investigation.
- c) *Results of the EIA scoping public participation process:* In order to fulfil the requirement to report on the results of the EIA scoping public participation process (Article 51(g) of the EIA Procedure), the Project Proponent should include in the Scoping Report, at a minimum:
  - (i) the initial notice of the commencement of the EIA scoping and information sent out to the public (including the methods of notice and the date on which notice was made);
  - (ii) notice about public participation meeting(s) (including the methods of notice and the date on which notice was made);
  - (iii) the number of public participation meetings held and their location;

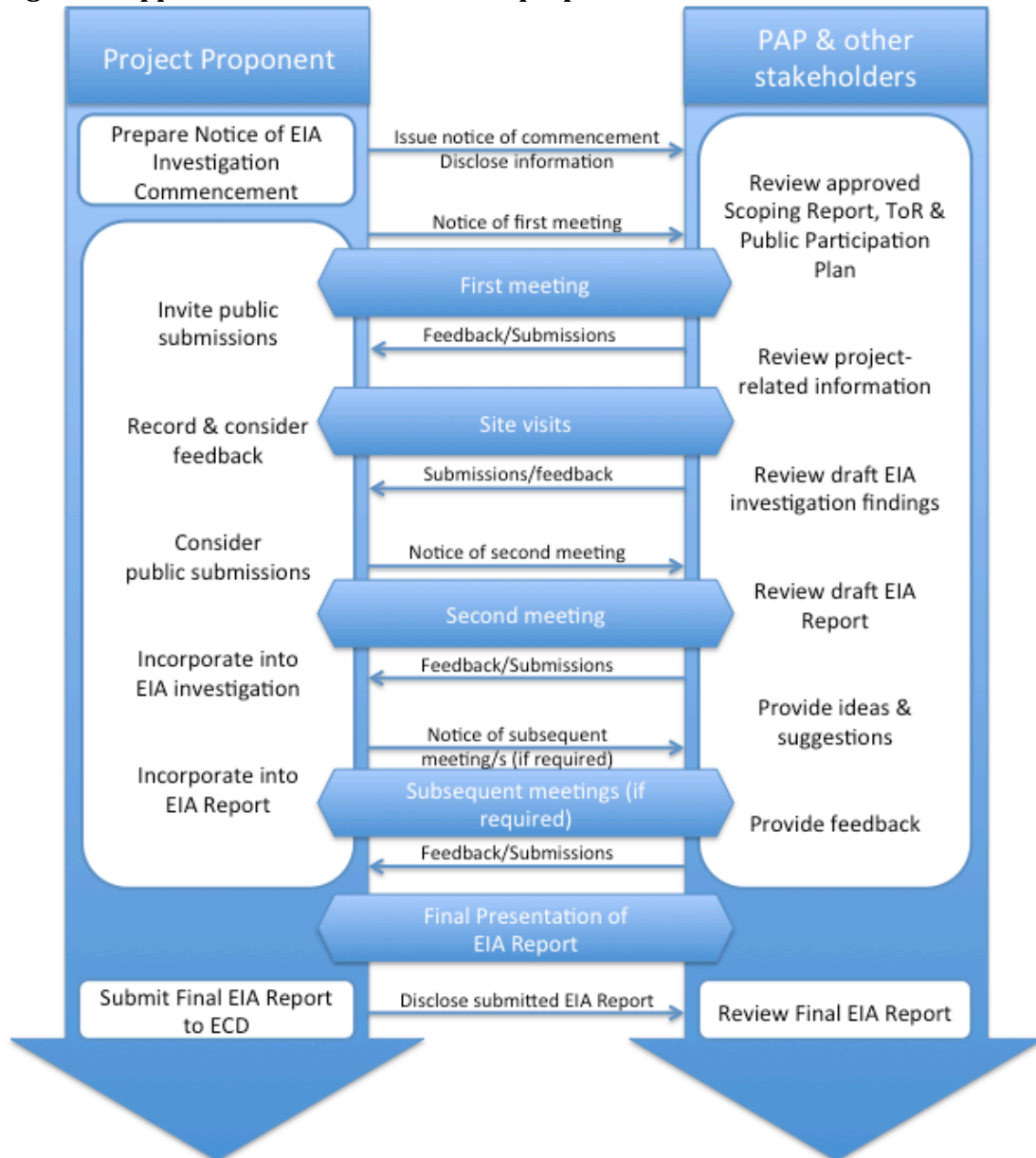
- (iv) the number of people attending public participation meetings (broken down by gender and other relevant demographic data such as age);
  - (v) the number of people offering oral comments at public participation meetings; and
  - (vi) the number of written public comments received; and
  - (vii) the nature of comments received and how these were considered in the scoping stage and preparation of the draft ToR.
- d) Once ECD has reviewed and approved the Scoping Report, the Terms of Reference and the Public Participation Plan, the Project Proponent and its EIA Consultant may proceed to the EIA preparation step.
- e) *Response to Comments:* The Project Proponent must provide responses to the comments received.
- (i) The responses should specify where the comments were addressed in the ToR and Public Participation Plan for the EIA investigation, or provide rationale as to why the comments or suggestions were rejected.
  - (ii) If the Project Proponent determines that any of the comments or issues raised by PAP or other stakeholders are either not reasonable or not relevant to the proposed project, the Project Proponent shall provide an explanation in its response.

### 4.3. Public Participation During EIA Investigation

#### 4.3.1. General

- a) The EIA investigation stage is to study and assess the potential impacts of the project proposal on the PAP, other stakeholders and the environment.
- b) This process requires significant time and effort to complete. The investigation stage may generally be expected to take at least 6 months, and may take multiple years to complete for large and complex projects. .
- c) The nature and scope of the investigation is based on the scale of impact around the project site. This will depend on the ToR, any sector-specific guidelines that may have been developed and the concerns expressed by the PAP and other stakeholders during the screening and scoping stages.
- d) This part of the EIA process will take the longest time and requires extensive public participation. The Project Proponent and EIA Consultant must meet, discuss, interview and consult with PAP and other stakeholders in accordance with the EIA Procedure, this Guideline and any other sector-specific Technical Guidelines issued by ECD.
- e) Once the EIA investigation has been undertaken the EIA Consultant will then need to draft the EIA Report.
- f) The application of this Guideline to the EIA investigation is depicted in Figure 4.

**Figure 4: Application of Guideline to EIA preparation**



#### 4.3.2. Notice of Commencement of the EIA Investigation Stage

- a) In order to implement the requirements of Article 61 of the EIA Procedure, the Project Proponent must issue notice to the public of the commencement of the EIA investigation.
- b) *Content of the notice:* The minimum information in the public notice should include:
  - (i) type of project and its location;
  - (ii) information about the project's proposed land use requirements and potential impacts;
  - (iii) information about the EIA investigation processes, including any planned public participation meetings and the EIA investigation's anticipated timeframe;

- (iv) details about how to access the approved Scoping Report, ToR and Public Participation Plan;
  - (v) contact information to request information about the project proposal and EIA investigation;
  - (vi) information about where to look for updates about the project proposal and EIA investigation; and
  - (vii) information on how to submit written comments on the project proposal and/or EIA investigation to the Project Proponent.
- c) *Method of Notice*: The Project Proponent must publish notice of the commencement of the EIA investigation using a combination of the following methods in a way that is appropriate for the Project Proposal and that maximizes the number of PAP and other stakeholders reached:
- (i) on the Project Proponent's website;
  - (ii) through ads published in local newspapers;
  - (iii) the prominent posting of a legible sign board at the project site;
  - (iv) targeted notice to local government, local religious leaders and organizations, neighbours, and local community organizations;
  - (v) through other appropriate methods depending on the size and location of the proposed project.
- d) The methods for providing notice of the commencement of the EIA investigation should have been determined in the Public Participation Plan, in consultation with PAP and other stakeholders.
- e) *Timing of Notice*: The Project Proponent must issue notice of the commencement of the EIA investigation at least 14 days prior to the first meeting with PAP or other stakeholders.

#### 4.3.3. Information Disclosure

- a) In accordance with Article 61(a) of the EIA Procedure, the Project Proponent and EIA Consultant shall:
- (i) actively disseminate information to the general public including PAP, civil society, community representatives including but not limited to local religious leaders and organizations, relevant ministries and government organisations at the Union and sub-national levels, and other stakeholders who are interested in the project; and
  - (ii) ensure all information is publicly accessible on project website(s) and in hard copy at convenient, accessible locations near the Project Proposal site (e.g. schools, local government offices, local community halls, etc.).
- b) Information that is relevant and available will vary between project proposals, for various reasons including the type of project and its location. Generally, the following information should be made publicly available:

- (i) Summary of the Project Proposal, including type, size, location and timeframes.
  - (ii) Details about the Project Proponents (including project funders).
  - (iii) Visual information, including photographs, maps, drawings and diagrams.
  - (iv) Approved Scoping Report, ToR and Public Participation Plan.
  - (v) Details on project alternatives and their consideration.
  - (vi) Detailed technical and scientific information about the project proposal and possible impacts, including risk assessment of identified impacts.
  - (vii) Summary of the impact assessment methodology.
  - (viii) Summaries of any initially considered prevention and mitigation measures (including details on why the particular measures are being considered and on any particular reasons for not considering other measures).
- c) The information should be relevant and in a form that the PAP and other stakeholders can understand.
- (i) This means that technical documents should be explained in simple terms in the local language.
  - (ii) Supplementary information using plain language (i.e. with limited use of technical terms) may need to be prepared to ensure the general public can readily understand all relevant information about the project proposal and EIA investigation.
- d) If there is a request for scientific and technical information to be explained, then the EIA Consultant should arrange for a meeting with the appropriate experts and the community.
- e) Summary information about feedback already received from PAP and other stakeholders should also be made publicly available.
- f) As much information as possible should be left with the community to consider and discuss further. See also Box 4 on Information Disclosure.
- g) Information that is publicly disclosed should be made available:
- (i) on project and Project Proponent website(s);
  - (ii) for distribution at public participation activities and other project-related activities;
  - (iii) at the Project Proponent and EIA Consultant offices (electronic versions and hard copies);
  - (iv) in hard copy for viewing at convenient, accessible and independent locations near to the project site and to PAP (e.g. schools, local government offices, local community halls, etc.); and
  - (v) through other appropriate means depending on the size and location of the project proposal.

- h) All material provided to the PAP and other stakeholders should be treated as information in the public domain that can be accessed and distributed to people outside the local community.

**Box 4: EIA Investigation Stage Information Disclosure**

**What type of information should be provided?**

- Outline of Project Proposal, including maps, draft plans, project design, project activities, project management and other available information
- Details of the time frame for construction and outline of possible impacts – updated as more information is made available
- Scientific or technical information about the Project Proposal and possible impacts
- Initial comments from the local communities, CSOs, and government agencies
- Written feedback to stakeholders on their initial comments
- Draft EIA Report, including comments from PAP and other stakeholders, and draft EMP
- EIA Report, EMP and Public Participation Plan

4.3.4. Public Participation Activities

4.3.4.1. Number of Public Participation Meetings

- a) Public participation during this stage will follow the Public Participation Plan developed during the scoping stage and approved by ECD.
- b) Ensuring that public participation is meaningful during the EIA investigation stage requires ensuring that PAP and stakeholders:
- (i) First, are fully informed about the proposed project, including background of Project Proponent and the project, and the Public Participation Plan, and have sufficient time to consider that information;
  - (ii) Second, have the opportunity to be consulted on their views and knowledge during the EIA investigation;
  - (iii) Third, have the opportunity to provide feedback on the investigation findings and analysis; and
  - (iv) Finally, have the opportunity to formally comment on a draft EIA Report before it is finalised and submitted to ECD for review.
- c) The number of meetings required to achieve this level of meaningful public participation will vary depending on the situation of the Project Proposal site and its surroundings, the nature of the Project Proposal, and the level of existing awareness of the Project Proposal amongst the stakeholders – including the extent of public participation already undertaken in the screening and scoping stages.
- d) For smaller EIA-type project proposals, at least two meetings with PAP and other stakeholders will be required during the EIA investigation stage.



- e) Complex project proposals, or proposals with many different impacts or a wide area of impact, (e.g. hydropower, mines or infrastructure projects) will require more (and often many more) than two meetings.
- f) It will be the responsibility of the EIA Consultant to determine – based on the Public Participation Plan, the particular circumstances and in negotiation with the Project Proponent – the exact number and locations of meetings that will be required (this should not be any less than was included in the Public Participation Plan).

#### 4.3.4.2. Organising and Conducting Public Participation Meetings

- a) In order to implement the requirements of Article 61 of the EIA Procedure, the Project Proponent must publish advance notice of each public participation meeting using a combination of the following methods in a way that is appropriate for the Project Proposal and that maximizes the number of PAP and other stakeholders reached:
  - (i) on the Project Proponent's website;
  - (ii) via social media;
  - (iii) through advertisements published in local newspapers;
  - (iv) the prominent posting of a legible sign board at the project proposal site;
  - (v) via radio and television announcements;
  - (vi) targeted notice to local government, local religious leaders and organizations, neighbours, and local community organizations; and
  - (vii) through other appropriate methods depending on the size and location of the proposed project.
- b) The methods for providing notice of the commencement of the EIA investigation stage should have been determined in the Public Participation Plan, in consultation with the PAP and other stakeholders.
- c) The EIA Consultant should arrange all meetings at times that are appropriate for the PAP in collaboration with the Project Proponent.
- d) The Project Proponent must issue notice of each EIA investigation public participation meeting at least 14 days in advance of the meeting. This time period may be increased by the need to conduct more meetings or at the request of the PAP for more time to consider the information provided by the EIA Consultant.
- e) There should be a gap between meetings to allow the PAP and other stakeholders to consider the information provided by the Project Proponent or EIA Consultant. There should be at least 14 days between meetings.
- f) Each meeting should discuss the next possible meeting (if required). The Project Proponent or EIA Consultant should be as clear as possible about the next steps that will be taken in the EIA process. This is a key way to build trust with the community.

- g) *Liaison with relevant government agencies to organise meetings:* The EIA Consultant should liaise with the relevant government offices to ensure:
- (i) the EIA Consultant has invited all relevant PAP and other stakeholders to public participation meetings;
  - (ii) the relevant government agencies are aware of the planned meeting(s); and
  - (iii) the EIA Consultant is aware of any relevant local circumstances, such as security considerations.
- h) *Conduct of Public Participation Meetings:* All public participation meetings should involve the following minimum elements:
- (i) An agenda that clearly articulates the objectives for the public participation meeting.
  - (ii) Presentation(s) by the Project Proponent about the project proposal, including but not limited to:
    - A description of the proposed project;
    - The main phases of the project (design, preconstruction, construction, operation, decommissioning/closure/post-closure);
    - A brief history of the project;
    - Planned timeframes for the project, including the timeframes for implementation of the Public Participation Plan;
    - The actual status of the existing and planned infrastructure related to the project;
    - The need for the project including a brief justification;
    - Potential alternatives to the proposal, including alternative locations;
    - Potential environmental impacts (direct, indirect, cumulative) of the project, including air and water emissions, waste, noise, traffic, odour or any other type of impact;
    - Potential socio-economic, public health, occupational health and safety, and cultural impacts of the project, including impacts on incomes and livelihoods and any resettlement necessary for the project;
    - Potential impacts on legally protected national, regional, or state areas;
    - Potential impacts on biological components, with special attention paid to rare, endangered, and vulnerable species;
    - Potential impact avoidance, mitigation and management, and compensation measures, including the draft EMP; and

- Any grievance mechanism and any on-going community engagement mechanisms to be established if the Project Proposal is implemented.
- (iii) Progress on the preparation of the draft EIA report to date.
- (iv) Opportunities for the participants to give public comment orally
- (v) Equitable opportunities for women, children and youth to be involved.
- (vi) Details about the EIA Report Review and approval process.
- i) In accordance with Article 63 of the EIA Procedure, the Project Proponent must ensure that:
  - (i) public participation meeting proceedings and comments are recorded;
  - (ii) any commitments made by the Project Proponent during the public participation meeting proceedings are recorded;
  - (iii) these records are kept on file; and
  - (iv) these records are made available to ECD with the submission of the EIA Report.
- j) The EIA Consultant should also present the draft EMP prepared during the EIA investigation stage, including the proposed budget for the implementation of the EMP, to the PAP and other stakeholders for comments.
- k) The draft EMP should be revised to take into account comments made by the PAP and other stakeholders.

#### 4.3.4.3. Site Visits

- a) In accordance with Article 61(d) of the EIA Procedure and in order to enhance the value and effectiveness of the public participation process, the Project Proponent and EIA Consultant must offer to arrange for ECD and other relevant government organisations to visit the site of the proposed project.
  - (i) This should be done in consultation with the PAP.
  - (ii) This should take into account practicalities of visiting sites that are difficult to access, including for reasons such as security and location (e.g. offshore project sites).
- b) Site visits should be coordinated between the relevant Ministries, local authorities and representatives of the PAP.
- c) Any site visits should have clearly defined objectives and agendas.
- d) These site visits should be conducted transparently and should be open to the PAP to join. The Project Proponent may not prevent the PAP from being accompanied by an outside technical expert during the site visit.
- e) Detailed records of the site visits, including lists of attendees, should be maintained by the EIA Consultant and documented clearly in the EIA Report.

## 4.3.4.4. EIA Report Final Presentation

- a) Pursuant to Article 50(b) of the EIA Procedure, the Ministry requires that the Project Proponent and EIA Consultant arrange to present the EIA Report to the public prior to submitting the EIA Report to ECD. This is so that PAP and other stakeholders involved with the project can be informed about the EIA conclusions and recommendations and the EMP.
- b) The final presentation shall also include a presentation of the proposed EMP, which must include details of the proposed mechanisms for public participation in project monitoring, and community grievance mechanisms to apply during implementation if the Project Proposal is approved.
- c) The Project Proponent shall invite PAP, representatives from the local community, civil society and other stakeholders to attend this final presentation, with skilled officials of ECD and other government officials invited as observers.
- d) The PAP and other stakeholders can use this as an opportunity to prepare comments for submission to ECD during the EIA review stage.

## 4.3.4.5. EIA Investigation Stage Meetings Summary

- a) Table 5 provides a summary of the minimum expected meetings during the EIA investigation stage, including who should be invited and the expected purpose and outcomes of the meetings.

**Table 5: EIA Investigation Stage Meetings Summary**

	<b>Meeting purpose and expected outcomes</b>	<b>Invitees and participants</b>
<b>Informing meetings</b>  (early in the investigation stage)	<p>To inform the PAP and other stakeholders of the Project Proposal, the Public Participation Plan and the ToR for the EIA investigation</p> <p>To inform the PAP and other stakeholders in detail about the types of studies to be carried out (such as household surveys) and to explain how and why these will be undertaken</p> <p>To identify sources of information within the PAP and other stakeholders that could contribute to the research and analysis in the EIA investigation</p> <p>To set the date for the next meeting</p>	PAP <ul style="list-style-type: none"> <li>• Specific attention should be made to involve women &amp; vulnerable and disadvantaged groups and individuals.</li> </ul> Local, regional and national CSOs <ul style="list-style-type: none"> <li>• This includes NGOs with an interest in the area or any aspect of the Project Proposal.</li> </ul>
<b>On-going investigation meetings</b>  (during EIA	<p>To enable the PAP and other stakeholders to contribute their knowledge, experience and views on the local environment (including local livelihood activities) and Project</p>	MONREC and other relevant ministries and Union-level government organisations

<p>investigation and data gathering)</p>	<p>Proposal into the EIA data gathering process</p> <p>To explain to the PAP and other stakeholders the early and on-going findings, potential project impacts and analysis – including project alternatives and other measures to address these impacts</p> <p>To provide the PAP and other stakeholders the opportunity to respond to, and present their perspectives on, these findings and analyses</p> <p>To respond to any initial feedback and ideas from the PAP and other stakeholders on their concerns, ideas and other contributions</p> <p>These on-going meetings during the investigation should also include at least one separate meeting for women (with women facilitators) in addition to a combined meeting</p>	<p>ECD offices and other relevant government organisations at the State and Regional level</p> <p>Local authorities</p> <p>Other identified stakeholders</p> <p>Project Proponent and EIA Consultant</p> <p>Technical and scientific experts (if requested by the stakeholders or otherwise considered necessary)</p> <p>Translator(s)</p>
<p><b>Meetings on draft EIA Report</b></p>	<p>To present the draft EIA Report, explain the findings of the investigation (including the: impacts; alternatives; avoidance, mitigation, restoration and compensation measures; and EMP)</p> <p>To provide information about any proposed benefits from the Project Proposal for the PAP</p> <p>To explain to the PAP and other stakeholders how their views were incorporated into the draft Report</p> <p>To give the PAP and other stakeholders an opportunity to respond to the draft EIA Report before it is finalised</p>	
<p><b>EIA Report Final Presentation</b></p>	<p>To present the final EIA Report (including the EMP and any proposed Complaints and Grievance</p>	

	<p>Mechanism, Resettlement Action Plan, Livelihood Rehabilitation Plan and/or on-going community engagement processes)</p> <p>To explain to the PAP and other stakeholders how their comments and concerns were addressed in the Report</p>	
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#### 4.3.5. EIA Report Requirements Regarding Public Participation

##### 4.3.5.1. Considering Results of Public Participation

- a) Article 63 of the EIA Procedure requires the EIA Report to address: methodology and approach; summary of consultations and activities undertaken; results of consultations; further ongoing consultations; and disclosure.
- b) The EIA Procedure requires the EIA to consider the results of public participation, not just to summarise the public participation processes. This is a substantive obligation, not just a procedural requirement.
- c) This section of the Guideline provides additional guidance on how the results of public participation should be integrated into the EIA and reflected in the EIA Report.
- d) The findings from public participation processes should be considered throughout the EIA process, at each stage.
- e) These findings should particularly inform the assessment of potential impacts (both before and after mitigation measures have been taken into account), the design of mitigation measures (including to ensure that measures respond to the needs and concerns identified by stakeholders and that the measures do not create new problems or concerns), and the development of management and monitoring plans (including to take facilitate ongoing stakeholder participation).
- f) The findings from public participation processes should also influence revisions to the Public Participation Plans used for the EIA to ensure that methods and approaches to public participation are most appropriate and responsive to stakeholder needs.
- g) The way that the results of public participation informed the EIA process should be clearly documented, explained in subsequent public participation processes and reflected in the EIA Report.

##### 4.3.5.2. Documentation in the EIA Report

- a) This section of the Guideline provides additional guidance to Project Proponents on how they should address each element of the chapter on Public Consultation and Disclosure in the EIA Report, as required by Article 63 of the EIA Procedure.
- b) The explanation of the methodology and approach should include:

- (i) a summary of the Public Participation Plan used during all steps of the EIA preparation, including any amendments to the Public Participation Plan;
  - (ii) the Public Participation Plan as an attachment to the EIA Report; and
  - (iii) a summary of how the Public Participation Plan was followed, including any problems encountered and how the problems were addressed
- c) The summary of public participation processes and activities undertaken should include:
  - (i) details of all public participation activities organised including dates and times, locations, participants (number of participants, as well as breakdown of their gender and other relevant demographic data such as age), presenters (including skills and purpose), objectives and agendas;
  - (ii) a summary of the approach to organizing public participation activities, including timing of events, timing of invitations, invitation methods, and approach to liaison with local communities and government officials; and
  - (iii) a summary of any feedback provided to stakeholders following public participation activities
- d) The explanation of the results of public participation should:
  - (i) conform with the approach described in detail in this Guideline (see 4.3.5.1 above);
  - (ii) include in the chapter of the EIA Report on public participation a summary of how the results of public participation processes influenced the other parts of the EIA Report; and
  - (iii) identify any significant findings or inputs from public participation that were not addressed in the EIA Report, including reasons
- e) The explanation of further ongoing public participation processes should:
  - (i) include details of how the Public Participation Plan will be updated;
  - (ii) be consistent with the EMP; and
  - (iii) be linked to any grievance mechanisms proposed in the EIA Report for the project implementation phases
- f) The explanation of disclosure in the EIA Report should include:
  - (i) a list of all project documentation that was disclosed during each stage of the EIA process, including the language of documentation;
  - (ii) details of the methods used for information disclosure and the dates of disclosure; and
  - (iii) a summary of any project documentation that was not disclosed, or that was redacted, including reasons
- g) This documentation of public participation in the EIA Report should not be:

- (i) limited to descriptions of the number or proportion of stakeholders that were consulted; or
- (ii) confused with socio-economic baseline surveys or other forms of assessment of the existing social condition or potential impacts.

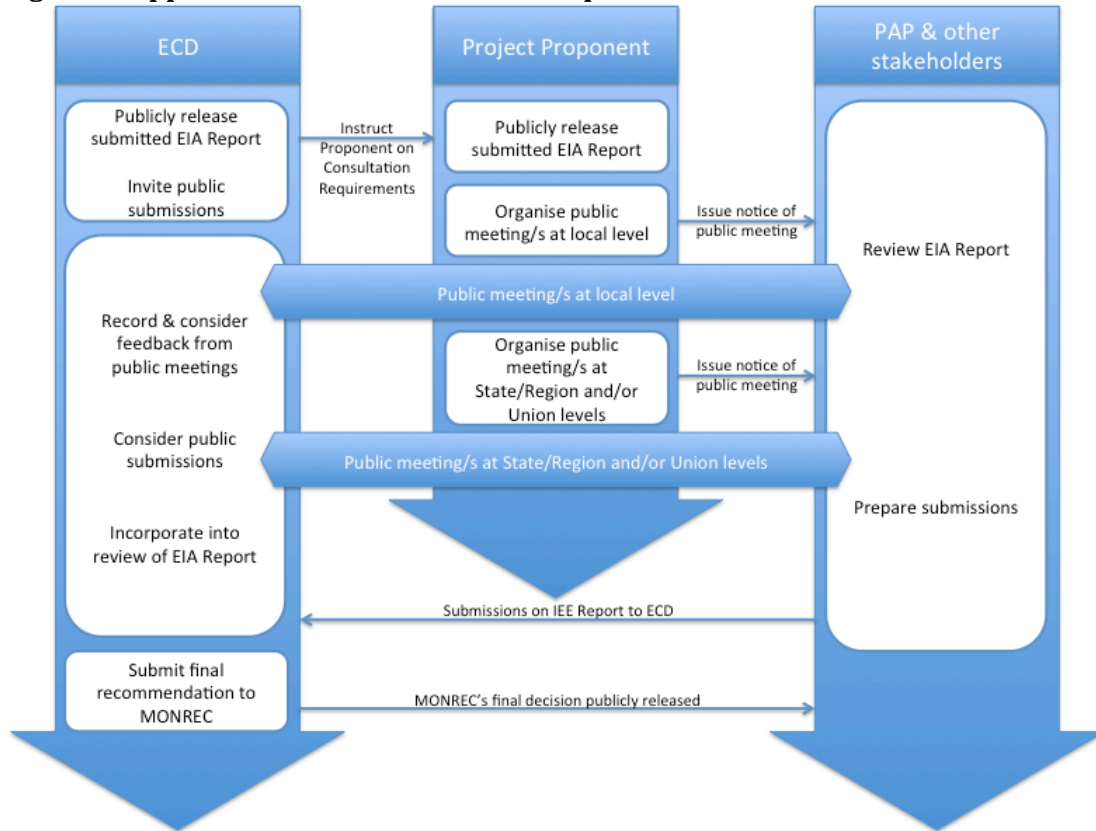
#### 4.4. Public Participation During EIA Report Review

##### 4.4.1. General

- a) Article 67 of the EIA Procedure requires public participation during ECD's review of the final EIA Report.
- b) Public participation is essential during the EIA review stage to ensure that:
  - (i) Stakeholders have the opportunity to review and comment on the final version of the EIA;
  - (ii) Stakeholders have the opportunity to contribute their views to the decision-makers, independent of the Project Proponent and EIA Consultant;
  - (iii) The decision-makers have independent access to the opinions of stakeholders; and
  - (iv) The decision-makers can confirm that the Public Participation Plan was followed correctly and that the concerns of PAP and other stakeholders were incorporated into the EIA and EMP.
- c) In accordance with Article 67 of the EIA Procedure, ECD is responsible for coordinating the review of submitted EIAs, including the public participation processes intended to inform the decision on the EIA.
- d) In accordance with Article 69, the Project Proponent shall bear all costs incurred in conducting public participation activities during the review stage.
- e) As Article 68 of the EIA Procedure requires a decision on an EIA Report to be made within 90 days of its submission, the public participation processes at this stage must be structured with sufficient time for:
  - (i) PAP and other stakeholders to access and review the EIA Report;
  - (ii) PAP and other stakeholders to prepare and submit comments on the EIA Report;
  - (iii) PAP and other stakeholders to participate in public participation events; and
  - (iv) ECD to consider the results of public participation undertaken at this stage in the preparation of recommendations on the EIA Report.
- f) The application of this Guideline to the EIA Report review is depicted in Figure 5.



**Figure 5: Application of Guideline to EIA Report review**



#### 4.4.2. Disclosure of the Final EIA Report by the Project Proponent

- a) In accordance with Article 65 of the EIA Procedure, the Project Proponent must publicly disclose the EIA Report within 15 days of its submission to ECD.
- b) In order to disclose the EIA Report, the Project Proponent must issue notices of availability of the EIA Report (in addition to making the IEE Report itself available for review) in several different forums, including:
  - (i) by means of national media (i.e. newspapers and radio);
  - (ii) on the Project or Project Proponent website(s);
  - (iii) at public meeting places (e.g. libraries, community halls);
  - (iv) at the offices of the Project Proponent;
  - (v) on a prominent, legible sign board at the project site;
  - (vi) in targeted notices to local government, PAP and local CSOs; and
  - (vii) through additional methods appropriate to the specific location and nature of the proposed project.
- c) The Project Proponent shall take measures to ensure that the EIA Report is available to the public for review throughout the entire life of the project.

#### 4.4.3. Disclosure of the Final EIA Report by ECD

- a) In accordance with Article 66 of the EIA Procedure, ECD must also make the submitted EIA Report available to the general public and ensure the public is aware of the Report's availability.
- b) ECD should publicly release the submitted EIA Report in the following ways:
  - (i) On the ECD website;
  - (ii) At sub-national ECD offices; and
  - (iii) Via formal government announcements (e.g. newspapers).
- c) ECD should ensure that the submitted EIA Report is made publicly available:
  - (i) Within 15 days of its receipt;
  - (ii) At least 15 days before any public participation events are held; and
  - (iii) For at least 30 days before any recommendation on the EIA Report is prepared for the Minister's consideration.
- d) This requires ECD to ensure that the Project Proponent submits both electronic versions and hard copies of all reports and related documentation.

#### 4.4.4. Public Submissions on the EIA Report

- a) *Inviting Submission of Written Public Comments:* In accordance with Article 67(b) of the EIA Procedure, ECD is required to invite the public to submit written comments on the EIA Report for its consideration.
- b) In order to do this, ECD should prominently and clearly include an invitation to submit written comments in the notices of availability of the EIA Report. This information should notify the public of:
  - (i) their right to submit written comments on the Project Proposal and/or the EIA Report,
  - (ii) the preferred method for submitting comments to ECD, and
  - (iii) the final date on which ECD will accept comments from the public.
- c) ECD must allow at least 30 days after notification for the public to submit written comments on the Project Proposal and/or EIA Report. No recommendation on the EIA Report will be made until after this submission period has closed and ECD has considered all submissions.
- d) ECD should accept written comments in both hard copy and electronic forms.

#### 4.4.5. Public participation meetings

- a) In accordance with Article 67(d) of the EIA Procedure, public participation meetings are to be organised at different levels, allowing different stakeholders the opportunity to contribute their views to the review of the EIA Report.
- b) ECD is responsible for ensuring these public participation meetings are organised by the Project Proponent, which requires ECD to give direction to the Project Proponent on the following matters:

- (i) the number, location and timing of meetings;
  - (ii) how the PAP and other stakeholders are to be notified of the meetings; and
  - (iii) minimum time between the notification and the meetings.
- c) The notification of meetings should be issued using a combination of the following methods designed to ensure that the maximum number of PAP and other stakeholders are reached:
- (i) on the Project Proponent's and ECD websites;
  - (ii) via social media;
  - (iii) by the prominent posting of a legible signboard at the project site and at meeting sites;
  - (iv) through advertisements on the radio, on television and in newspapers; and
  - (v) through targeted invitations to identified PAP and other stakeholders.
- d) All PAP and other stakeholders, including those who have provided comments during the EIA investigation stage, should be invited to, and have the opportunity to be represented at, all public participation meetings.
- e) CSOs and the media should be invited to the public participation meetings.
- f) During the public participation meetings, ECD will be responsible for:
- (i) keeping accurate records of all comments; and
  - (ii) responding to questions on the EIA process generally and to the decision-making process in particular
  - (iii) Informing public participation meeting participants of their right to appeal ECD's decision on the EIA Report pursuant to Chapter IV of the EIA Procedure.
- g) During the public participation meetings, the Project Proponent will be responsible for:
- (i) presenting the final EIA Report and highlighting key issues, findings and results of previous public participation processes; and
  - (ii) responding to questions on the EIA Report.

#### 4.4.6. Reporting on public participation

- a) In accordance with Article 67(e) of the EIA Procedure, ECD's recommendation to the Ministry on the EIA Report should include summaries of:
- (i) the public participation undertaken during the review of the EIA Report;
  - (ii) the public comments received;
  - (iii) how the public comments were considered during the review and in formulating the recommendations on the EIA Report; and

- (iv) likely key impacts on PAP and other stakeholders if the project proposal is approved and implemented.
- b) ECD should prepare a response to stakeholder comments on the EIA Report, which should be made public as soon as possible following the decision on the EIA.

#### 4.4.7. Environmental Compliance Certificate

- a) If the project is approved, ECD should make the ECC available, together with the EMP and any conditions of the approval, on the ECD website.
- b) The Project Proponent should also make the ECC available on its websites.

## **CHAPTER 5: Stand-alone EMPs**

### 5.1.1. General

- a) In accordance with Article 24 of the EIA Procedure, the Ministry can make a determination that any Project Proposal that goes through the screening stage requires an EMP, even if an IEE or EIA is not required.
- b) The EMP is an important part of the management of the potential impacts of a proposed project. It is necessary that this document is the subject of consultation with the PAP and other stakeholders.
- c) The EMP will include multiple sub-plans and should be divided into different project phases such as:
  - (i) pre-construction;
  - (ii) construction;
  - (iii) operation;
  - (iv) closure and decommissioning; and
  - (v) post closure (i.e. rehabilitation and restoration).

### 5.1.2. Public participation during EMP preparation

- a) A draft EMP should be prepared, together with any budget for the implementation of the EMP, and presented to the PAP and other stakeholders for comments.
- b) Depending on the nature of the Project Proposal (including factors such as potential impacts, location, PAP and project duration) the presentation of the draft EMP and invitation for PAP and other stakeholders to comment should involve:
  - (i) one or more public participation meetings (organised in accordance with the principles and broad approaches outlined in Chapters 1 and 2 of this Guideline);
  - (ii) distribution of hard copies in convenient, accessible and independent locations near the Project Proposal site (e.g. schools, local community halls, etc.), along with details of how, by when and to whom submissions can be made; and/or
  - (iii) public announcements of where electronic versions can be accessed (e.g. Project Proponent website), along with details of how, by when and to whom submissions can be made.
- c) The draft EMP should be revised to take into account comments made by the PAP and other stakeholders.
- d) The Final EMP, together with the sub-plans, should be presented to the PAP and other stakeholders prior to submission to ECD.
- e) Depending on the nature of the Project Proposal and the nature of public comments made on the draft EMP, the presentation of the Final EMP to the PAP and other stakeholders to comment should involve:

- (i) one or more public meetings;
  - (ii) distribution of hard copies in convenient and accessible locations near the Project Proposal site (e.g. schools, local government offices, local community halls, etc.); and/or
  - (iii) public announcements of where electronic versions can be accessed (e.g. Project Proponent website).
- f) If approved, the EMP and any ECC should be made publicly available via the following mechanisms:
- (i) on the website of the Project Proponent; and
  - (ii) in hard copy at the Project Proponent's offices and in convenient and accessible locations near the project site (e.g. schools, local government offices, local community halls, etc.).
- g) Box 5 provides a summary of the type of information that should be disclosed during the preparation of a stand-alone EMP.
- h) The public participation process will continue during the project implementation, if the Project Proposal is approved. The EMP Report should define the future public participation process in terms of:
- (i) objectives of the public participation processes during all project implementation phases;
  - (ii) the PAP and other stakeholders;
  - (iii) engagement mechanisms(s);
  - (iv) complaints and grievances mechanism; and
  - (v) information disclosure.

**Box 5: EMP Preparation Information Disclosure**

**What type of information should be provided?**

- Outline of Project Proposal, including maps, draft plans and other available information
- Details of the time frame for construction and outline of possible impacts – updated as more information is made available
- Scientific or technical information about the project proposal and possible impacts
- Draft EMP for all phases of the project from construction and operation to closure and post-closure (i.e. rehabilitation and restoration)
- Final EMP, including any sub-plans, and ECC for approved projects

## **CHAPTER 6: Project Monitoring and Compliance**

### 6.1. General

- a) Pursuant to authority granted by Articles 83, 85, 91, and Chapter IX of the EIA Procedure, ECD requires that all approved projects or activities undertake some form of monitoring during all phases of the project in order to ensure compliance with all relevant environmental laws and regulations and with all commitments made in the EMP and/or ECC, as the case may be.
- b) Monitoring must occur at all phases of a project's implementation:
  - (i) pre-construction;
  - (ii) construction;
  - (iii) operation;
  - (iv) closure and decommissioning; and
  - (v) post-closure (i.e. rehabilitation and restoration).
- c) Meaningful public participation during monitoring can help to satisfy the PAP and other stakeholders that:
  - (i) the project is being operated in accordance with the conditions of approval; and
  - (ii) any issues and concerns that may arise during project implementation, including those raised by the PAP, are responded to before serious consequences occur.
- d) Monitoring also enables the identification of:
  - (i) any non-compliance with, or failure to implement, measures in the IEE/EIA Report, EMP, ECC and other contractual agreements;
  - (ii) any weaknesses in mitigation and management measures (i.e. measures may be being implemented as per the IEE/EIA report and EMP, but not resulting in the anticipated avoidance or mitigation of impacts);
  - (iii) any new impacts that may not have been included in the IEE/EIA Report, as well as appropriate mitigation measures and associated amendments to the EMP; and
  - (iv) findings and experience that may be relevant for future EIA processes on similar Project Proposals or Project Proposals in similar locations.

### 6.2. Public Participation in Project Monitoring

- a) For all projects requiring an EMP pursuant to Article 24 of the EIA Procedure, the EMP should clearly spell out the public participation processes that will apply to the monitoring of the project's implementation, including roles and responsibilities of relevant stakeholders.
- b) Article 63 of the EIA Procedure requires the EMP for EIA Type Projects to include monitoring sub-plans by project phase (i.e. construction, operation, etc.). The public participation processes should be relevant to each sub-plan.

- c) Comments and concerns raised by PAP and other stakeholders during the IEE investigation stage or EIA scoping and investigation stages should be taken into account and influence the mechanisms proposed for public participation in project monitoring.
- d) The particular monitoring arrangements developed will need to be specific to the particular project, including its location, potential and actual impacts, and PAP.
- e) The mechanisms for involving PAP and other stakeholders in monitoring will also need to be specific to the particular project. These monitoring arrangements could also evolve over time, especially for projects with long lifespans, including as a result of changes in PAP capacity, actual impacts and other developments in the area.
- f) The Public Participation Plan for the project implementation stage (or broader stakeholder engagement strategy) should:
  - (i) clearly document the mechanisms for involving PAP and other stakeholders in monitoring activities;
  - (ii) ensure sufficient resources are provided to facilitate meaningful public participation in monitoring;
  - (iii) be consistent with the project EMP and ECC; and
  - (iv) be made publicly available.

### 6.3. Information disclosure

- a) The mechanisms for public participation in project monitoring shall specifically address how the Project Proponent will ensure the public availability and disclosure of project-related information (including but not limited to the project's monitoring reports) to PAP and other stakeholders during all phases of project implementation.
- b) All information material should be provided in Myanmar language and English and written in non-technical terms so as to be easily understood by the general public.
- c) Throughout project implementation, PAP and other stakeholders should have access to wide-ranging information including:
  - (i) regular monitoring and activity reports;
  - (ii) details on the project's expenditures on mitigation and management measures, monitoring systems and project commitments;
  - (iii) compliance with project conditions and commitments;
  - (iv) information about any breaches of compliance and remedial measures;
  - (v) updated EMPs and project approval conditions;
  - (vi) actual emissions compared to standards;
  - (vii) levels of any toxic waste, pollutant releases or transportation of hazardous waste;



- (viii) action steps and responses to any community concerns.
- d) To facilitate disclosure of information, it is recommended that a dedicated information centre be established within the study area and near the affected people. This could be a place agree to by the community or a local office that can be visited by the PAP.

#### 6.4. Monitoring reports

- a) In accordance with Article 108 of the EIA Procedure, Project Proponents must submit monitoring reports pursuant to the schedule established by ECD or by the project's EMP/ECC. At a minimum, Project Proponents shall submit monitoring reports to ECD no less frequently than every six (6) months.
- b) With regard to public participation in project monitoring, the project's periodic monitoring reports shall include:
  - (i) A summary of PAP and/or other stakeholder participation in project monitoring during the previous reporting period, including the dissemination/availability of project related information to PAP and other stakeholders.
  - (ii) A summary of challenges encountered in implementing project's mechanisms for public participation in monitoring.
  - (iii) Proposed measures to address such challenges.
- c) In accordance with Article 110 of the EIA Procedure, Project Proponents should establish protocol to make their required project monitoring reports available to the public no later than ten (10) days after they are submitted to the Ministry.
- d) Project Proponents must make their project monitoring reports available in the following ways:
  - (i) Electronic copies shall be posted on the project or Project Proponent's website.
  - (ii) Hard copies of monitoring reports shall be made available for review at appropriate public meeting places (e.g., libraries, community halls).
  - (iii) Hard copies shall also be available for review at the project offices.
- e) Additionally, Project Proponents shall be prepared to supply electronic versions of the project monitoring reports to any person upon request.
- f) The Project Proponent shall deliver an electronic copy of the project monitoring reports by email or as otherwise agreed with the requestor no later than ten (10) days after receiving the request.

#### 6.5. Complaints and Grievances Mechanism

- a) The Project Proponent should indicate, in the EMP, how it will manage complaints and grievances. The Environmental Compliance Certificate may also include conditions on continuing consultations following approval of the project and on measures to deal with complaints.

- b) The Project Proponent is encouraged to establish a Complaints and Grievances Mechanism (CGM) to address grievances/complaints, including those related to environmental and social issues arising during all phases of the project's implementation.
- c) The form of the CGM should be scaled to the risks and impacts of the project and may depend on the type of project, its duration and any requirements contained in the ECC.
- d) The outcome of the CGM process should be to find solutions to complaints raised, which should include providing a remedy where there have been impacts on people or the environment.
  - (i) Remedies may include, but are not limited to, apologies, restitution of things lost (such as a job), rehabilitation of things harmed (such as restoring water sources) or financial or non-financial compensation, or guarantees of non-repetition.
  - (ii) Remedies should be accompanied by solutions to help prevent the same impacts recurring, such as changing operating procedures to eliminate pollution or to reduce the risk of worker accidents by providing better procedures or protective equipment.
  - (iii) The EMP for the project should also be reviewed and updated as a result of these remedies and solutions.
- e) The CGM should be designed based on principles set out in international standards<sup>12</sup> as follows:
  - (i) *Legitimate*: the Project Proponent should design the CGM together with the PAPs and other stakeholders (i.e. potential CGM users) as a way of building trust in the CGM, rather than just unilaterally deciding on how it will function. The Project Proponent should also hold itself accountable for fair conduct of the process.
  - (ii) *Accessible*: there should be a clear way for PAP and other stakeholders to raise a complaint to the Project Proponent, regardless of the phase of the project. There should be a contact point that is easily accessible and the CGM process should be promoted and published to the PAP in local languages and understandable terms.
  - (iii) *Predictable*: the CGM should set out clear and simple processes that will be followed to examine and deal with the complaint. This should include, at a minimum, details about who will investigate the complaint, how long it will take to reply to the complaint and what kinds of actions may be taken in response.
  - (iv) *Equitable*: the party making the complaint should have reasonable access to information and advice relevant to their complaint. The CGM should be operated to provide a fair and balanced process, recognizing that the process is not about "winning" but about finding mutually agreed solutions.

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<sup>12</sup> See [UN Guiding Principles on Business and Human Rights](#), Principles 29-31 and IFC Performance Standard 1.

- (v) *Transparent:* The CGM should keep the parties informed about the process and provide information to stakeholders about the performance of the mechanism to provide confidence that it is working. The CGM should include a public complaints register that records all complaints and grievances (both oral and written) and how issues have been resolved, except when that might put a complainant at risk.
- (vi) *Rights compatible:* Each complainant should be treated with dignity and respect. There should be no retribution to the person(s) who originated the complaint. The aim of a CGM is to resolve disputes in a way that respects the legal rights of the complainant, but does not block access to other judicial or administrative remedies if the complainant chooses this route. For complaints that are difficult to resolve or impacting a lot of people, the CGM could provide for the engagement of an independent or neutral mediator who could review the complaints and provide recommendations to the Project Proponent. If this does not resolve the dispute in a quick and fair and open manner, the complainant may bring the matter before the relevant government authorities or other administrative processes, or take the matter to court.
- (vii) *A source of learning:* The Project Proponent should use the CGM process to identify trends and patterns in complaints, learn lessons about what is not working well in its operations and take steps to prevent the repetition of the same kind of complaints in the future.
- (viii) *Based on engagement and dialogue:* The purpose of the CGM is to identify and resolve issues early, and provide a remedy where appropriate. To do that, the process should be based on reaching agreed solutions through dialogue.