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USAID MEKONG SAFEGUARDS ACTIVITY

# Task I.I.I Map Policy and Legal Frameworks Mandating ESG Standards Report

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## ACTIVITY OVERVIEW

<b>Activity Name:</b>	USAID Mekong Safeguards
<b>Activity/Mechanism Start Date and End Date:</b>	August 22, 2018 to August 21, 2023
<b>Name of Prime Implementing Partner:</b>	The Asia Foundation
<b>Agreement Number:</b>	72048618CA00009
<b>Name of Subawardees:</b>	The Henry L. Stimson Center Global Environmental Institute (GEI) China International Contractors Association (CHINCA) Beijing Rongzhi Corporate Social Responsibility Institute (Rongzhi)
<b>Geographic Coverage (States/Provinces and Countries)</b>	China and the lower Mekong countries of Cambodia, Laos, Myanmar, Thailand, and Vietnam.
<b>Reporting Period:</b>	August 22, 2018 to August 21, 2023

# ACRONYMS AND ABBREVIATIONS

<b>Acronym</b>	<b>Definition</b>
ACMECS	Ayeyawady-Chao Phraya-Mekong Economic Cooperation Strategy
Activity	Mekong Safeguards
ADB	Asian Development Bank
ASEAN	Association of Southeast Asian Nations
CA	Concession Agreement
CBD	Convention on Biological Diversity
CDC	Council on Development of Cambodia
CHINCA	China International Contractors Association
CLMTV	Cambodia, Laos, Myanmar, Thailand, and Vietnam
CoC	Code of Conduct
COP	Chief of Party
CPC	Commune Peoples' Committee
CSO	Civil Society Organization
DPC	District Peoples' Committee
ECC	Environmental Compliance Certificate
ECD	Environment Conservation Department
ECL	Environmental Conservation Law
EHIA	Environment and Health Impact Assessment
EHS	Environmental Health and Safety
EIA	Environmental Impact Assessment
EIACWG	EIA Coordination Working Group
EIEB	Environmental Impact Evaluation Bureau
EP	Equator Principle
EPA	Environmental Protected Area
EPB	Environmental Protection Bureau
EPC	Environmental Protection Commitment
EPL	Environmental Protection Law
ERC	Expert Review Committee
ESF	Environmental and Social Framework
ESG	Environmental, Social, and Governance
ESIA	Environmental and Social Impact Assessment
ESIS	Environmental and Social Impact Statement
ESMMP	Environmental and Social Management and Monitoring Plan
ESMS	Environmental and Social Management System
FI	Financial Institution
FPIC	Free, Prior, and Informed Consent
GBV	Gender-Based Violence
GEI	Global Environment Institute
GHG	Greenhouse Gas
GoC	Government of Cambodia
GoL	Government of Lao PDR
GoM	Government of Myanmar
GoV	Government of Vietnam
GRM	Grievance Redress Mechanism
GRS	Grievance Redress Service
ICP	Informed Consultation and Participation
IEE	Initial Environmental Examination
IEIA	Initial Environmental Impact Assessment

IFC	International Finance Corporation
IL	Investment Law
IR	Intermediate Result
Jifeng	Shenzhen Jifeng Green Finance Promotion Center
LEP	Law of Environmental Protection
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
MARD	Ministry of Agriculture and Rural Development
MEE	Ministry of Ecology and Environment
MEP	Ministry of Environmental Protection
MFI	Multilateral Financial Institution
MIC	Myanmar Investment Commission
MIT	Mekong Infrastructure Tracker
MoC	Ministry of Construction
MoE	Ministry of Environment
MOECAP	Ministry of Environmental Conservation and Forestry
MoIT	Ministry of Industry and Trade
MoNRE	Ministry of Natural Resources and Environment
MONREC	Ministry of Natural Resources and Environmental Conservation
MoT	Ministry of Transport
MPAC	Master Plan on ASEAN Connectivity
MWFD	Myanmar Water Framework Directive
NA	National Assembly
NCEA	National Commission for Environmental Affairs
NDRC	National Development and Reform Commission
NEB	National Environmental Board
NEQ	National Environmental Quality
NEQA	National Environmental Quality Act
NGO	Non-Governmental Organization
NWP	National Water Policy
ONEP	Office of Natural Resources and Environmental Policy and Planning
PAP	Project-Affected People
PDG	Preliminary Design Guidance
PEIA	Plan Environmental Impact Assessment
PIL	Public Investment Law
PPC	Provincial Peoples' Committee
RDMA	Regional Development Mission for Asia
Rongzhi	Beijing Rongzhi Corporate Social Responsibility Institute
SEA	Strategic Environmental Assessment
SEDP	Socio-economic Development Plan
SEP	Stakeholder Engagement Plan
SESO	Standard Environmental and Social Obligations
SMMP	Social Management and Monitoring Plan
Stimson	The Henry L. Stimson Center
TAF	The Asia Foundation
TOR	Terms of Reference
UN	United Nations
UNDP	United Nations Development Programme
UNIDO	United Nations Industrial Development Organization
VC	Valued Component
WWF	World Wide Fund for Nature

# EXECUTIVE SUMMARY

## Introduction

USAID Mekong Safeguards (“the Activity”) is a five-year program (2018–2023) that supports policy makers, government regulators, major financiers, developers, and contractors with information and tools to foster consistent application of environmental, social, and governance standards, particularly for power generation and transportation. USAID Mekong Safeguards operationalizes the vision of sustainable infrastructure development that lower Mekong countries have put forward in their national green-growth strategies and regional platforms.

USAID Mekong Safeguards aims to (a) minimize negative environmental impacts of infrastructure projects by fostering more robust and consistent application of environmental, social, and governance (ESG) standards and (b) encourage decision makers to avoid unnecessary, harmful infrastructure through smart technologies, system-scale infrastructure planning, and innovations.

## Task Approach and Methodology

To identify specific legal and policy gaps in the CLMTV countries (i.e. Cambodia, Lao PDR, Myanmar, Thailand, and Vietnam) and China, the legal and policy frameworks mandating ESG standards for infrastructure (i.e., energy and transportation) were mapped and benchmarked against international best practices for environmental and social (E&S) safeguard policies and standards. To achieve these objectives, an international safeguards framework was developed, based on amalgamated E&S safeguards from the Asian Development Bank (ADB), International Finance Corporation (IFC), World Bank, and the Equator Principles (EPs). The framework was used to compare and map the level of conformance of the national ESG laws and policies in the CLMTV countries and China. The results were used to write the gap analysis report (this report) and identify opportunities to strengthen ESG policies and requirements.

## Results of Legal Conformance Mapping and Gap Analysis

The Activity identified that while many of the national laws in the CLMTV countries aligned well with international ESG policies and standards, there are some critical gaps between the national Environmental and Social Impact Assessment (ESIA) legal frameworks and good international best practice for environmental and social management. Based on the gaps identified, recommendations for improvement under Task 1.1.4 (Address gaps and strengthen host country regulation of ESG standards and practices for infrastructure projects) and to inform Task 1.1.5 (Support regional bodies to advocate for regional ESG standards) have been proposed.

Many of the identified gaps were common across all CLMTV countries. These include:

- A lack of details on what is required for comprehensive screening and scoping of the project’s key environmental and social components, issues, and concerns
- It is not mandatory to establish environmental and social management systems (ESMS)
- Baseline study requirements on the current environmental and socioeconomic conditions within the study area are incomplete and missing some of the key components
- There are no requirements to identify and analyze the project’s gender impacts, climate change impacts, cumulative impacts, and/or potential transboundary impacts

- There are no requirements to use the mitigation hierarchy when developing the mitigation and management plans
- Stakeholder consultation and information disclosure is insufficient
- There are few details on what is required as part of the specific management and monitoring plans
- Specific operational standards do not align well with international best practices. These are the operational standards related to labor and working conditions; resource efficiency and pollution prevention and management; community health, safety, and security, including dam safety; land acquisition, restrictions on land use and involuntary resettlement; biodiversity conservation and sustainable management of living natural resources; and indigenous peoples
- It is not mandatory to include operational requirements for environmental and social management plans into bid tenders and contractual arrangements with service providers
- It is not mandatory to set up grievance redress and accountability mechanisms in any part of the project's development phases
- Requirements to ensure adequate project monitoring throughout the project life cycle are missing

The key findings and gaps from the ESG legal conformance mapping for each country are listed below.

## CAMBODIA

The main gaps identified in Cambodia's ESG legal framework include:

- No requirements to conduct a strategic environmental assessment (SEA) and link the results with the assessment and management of risks and impacts at the project level
- Public participation should be mandatory, not just "encouraged"
- The legal framework should clearly state that the specific types of impacts (physical, biological, cultural, socioeconomic, etc.) need to be assessed as part of the ESIA process
- There are no provisions or guidance on how to avoid involuntary resettlement, on procedures for community engagement, and on how to ensure gender equality in the consultation process
- The legal framework should include provisions restricting development in habitats with high biodiversity values, as well as in areas of critical habitat unless there are no other viable alternatives within the region. Provisions should also be included that prohibit the project's activities to have any impact on endangered species

## Lao PDR

- When reviewing and approving the scoping report and Terms of Reference (TOR), the Ministry of Natural Resources and Environment (MoNRE) is expected to organize consultation workshops with relevant ministries and agencies as needed, but there are no requirements to include project-affected people, Civil Society Organizations (CSOs), and other key stakeholders
- No requirements to conduct a gap analysis, which consists of a review of existing environmental and social information using desk-based studies and to use this analysis to identify additional baseline information required for the impact assessment



- There are no provisions or guidance on what methodologies for impact evaluation would be acceptable and robust, and that the impacts should be considered separately for the project construction and operation stages
- While there are provisions for benefit sharing in the key laws, decrees, and regulations related to infrastructure projects, specific provisions should be added to ensure that women and vulnerable or disadvantaged individuals and groups share equally in the project's benefits

## Myanmar

- Although the EIA procedures do require stakeholder mapping, it is required at the scoping phase and not at the pre-feasibility phase
- When developing project alternatives as part of the scoping process, the choice of “no project” should be included as a feasible alternative
- The IFC and Australian Aid have been working with the Government of Myanmar to develop the Environmental and Social Impact Assessment Guidelines for Hydropower Projects in Myanmar. These guidelines include a section on dam safety, and those recommendations should be included as part of the legal framework
- The Land Acquisition, Resettlement and Rehabilitation law should provide more clarity on definitions of “public purpose” for expropriated land, as the current definition is too broad. It lacks clarity on the stakeholder consultation process, and it does not require considerations of alternatives that may prevent land from being expropriated, such as looking at alternative sites or leasing the land instead of expropriating it.

## Thailand

- The SEA is an administrative order for government agencies to apply the SEA Guidelines in the formulation of major development policy and plans that may have severe impacts to the environment, but it is not a mandatory requirement by law
- The legal framework does not provide sufficient details on the requirements of the stakeholder consultations, including issues identified and mitigations measures taken, as well as recommendations for ongoing consultations. The Office of Natural Resources and Environmental Policy and Planning (ONEP) Environmental Impact Assessment (EIA) guidelines only require two public consultation meetings
- The Enhancement and Conservation of National Environmental Quality Act (NEQA) and related notifications issued under the Act, should clearly specify the need to identify the full range of socioeconomic impacts that covers livelihood, vulnerable groups, gender concerns, and other key social concerns, as well as provide directions on the process for full and informed assessment of socioeconomic impacts
- The legal framework needs specific regulations for project developers, on what type of data is needed to identify and analyze the risks related to construction and operation of port and terminal facilities

## Vietnam

- Clarification is needed between the Law on Environmental Protection (LEP), the Law on Investment Law, and the Law on Public Investment, as there is inconsistency in the regulation of EIA. Article 25 of the LEP states that an EIA report needs to be approved and submitted together with a final prefeasibility study to the relevant authority, as a basis for decision-making on an investment policy

report. However, Article 34 of the Law on Investment and the Law on Public Investment states that only preliminary EIA is necessary for approval of an investment policy report. The legal framework should include provisions with explicit requirements for the compliance process

- The legal framework, including the LEP and the Land Law, are not clear on the timing of the screening process. There are also inconsistencies between EIA requirements in the LEP (Article 25) and the requirements for primary environmental assessment in the Law on Investment (Article 34) and the Law on Public Investment (articles 34 and 35)
- For stakeholder consultation and information disclosure, the consultation requirements relate to contact with local authorities through letters and/or meetings. There is no requirement for open public involvement and no requirement or guidance provided on more effective consultation methods. There are no provisions concerning public access to background studies or information associated with the ESIA, and no explicit mention of women's participation in ESIA consultation processes
- The legal framework should include provisions explicitly stating that contractors are required to follow the social safeguard policies, and not only the environmental mitigation policies

## China

- There are no legal provisions stating that project proponents need to conduct a Stakeholder Mapping at the pre-feasibility stage
- The legal framework does not oblige the project proponent to include the public at the project scoping stage; public participation in the ESIA process is required only after the finalization of the draft ESIA document
- There are no legal instruments in China that require the project proponent to conduct a gap analysis before beginning the baseline data study, and to consider alternatives as part of the scoping study
- Baseline studies on social components are missing from the baseline data collection requirements and analysis of impacts
- There are no requirements to identify and analyze the project's gender impacts, cumulative and potential transboundary impacts
- The legal framework has requirements for project-specific energy efficiency and GHG emissions control measures, but provisions need to be added that require project proponents' to include an analysis and management of the risks of climate change for the project, as well as the project's role in climate change adaptation
- China's EIA Law lays out the steps that are required when conducting an ESIA, but the current provisions are too general
- As part of the stakeholder consultation and information-disclosure requirements, the project proponent must include an explanation of whether the opinions of relevant entities, experts, and the general public on the draft ESIA were accepted or rejected (EIA Law Article 21), but the law does not require authorities to consider public comments when deciding whether to approve a project. There are no requirements in the law to allow members of the public an opportunity to comment on the ESIA report once it has been finalized and submitted to the relevant authority, and stakeholder consultation and information disclosure is not mandatory throughout the project life cycle
- There is also no requirement for the project proponent to conduct E&S audits to determine the degree to which project activities and operations are meeting requirements

# I. INTRODUCTION

## I.1 Activity Description

USAID Mekong Safeguards (“the Activity”) is a five-year program (2018–2023) that supports policy makers, government regulators, major financiers, developers, and contractors with information and tools to foster consistent application of environmental, social, and governance standards, particularly for power generation and transportation. USAID Mekong Safeguards operationalizes the vision of sustainable infrastructure development that lower Mekong countries have put forward in their national green-growth strategies and regional platforms. This vision has been publicly championed by major infrastructure financiers such as the World Bank, the Asian Development Bank (ADB), and several bilateral donors, including Australia, Japan, and the United States.

Major donors and lenders are ramping up infrastructure investments in the affected countries, joining new financing vehicles such as the Belt and Road Initiative, the Lancang-Mekong Cooperation Mechanism, and the Ayeyawady-Chao Phraya-Mekong Economic Cooperation Strategy (ACMECS) Infrastructure Fund. With this projected new investment, power generation is expected to grow from 96 gigawatts (GW) to at least 280 GW over the next decade, largely through new hydropower dams and coal-fired power plants. Developers of road and rail infrastructure plans are projecting that, over the same period, rail infrastructure is likely to increase by at least 20 percent, and high-speed rail capacity will increase more than 50 percent.

Environmental regulations and mitigation efforts, however, are not keeping pace; the sheer numbers and cumulative effects of projects are damaging the Mekong ecosystem and affecting fisheries, forestry, farming, air quality, water quality, and flood regulation. Negative impacts on these and other ecosystem services, in turn, threaten lower Mekong populations’ food security, health, homes, and livelihoods. While recognizing the economic-growth imperative of this underdeveloped region and the role of infrastructure in contributing to growth, the Activity promotes profitable economic growth supported by sustainable infrastructure that causes less harm to the environment, biodiversity, and people.

USAID Mekong Safeguards aims to (a) minimize negative environmental impacts of infrastructure projects by fostering more robust and consistent application of environmental, social, and governance (ESG) standards and (b) encourage decision makers to avoid unnecessary, harmful infrastructure through smart technologies, system-scale infrastructure planning, and innovations.

## I.2 Task Approach and Methodology

### Introduction

To identify specific legal and policy gaps in the lower Mekong countries, which would inform the future development of Task I.1.4 (Address gaps and strengthen host country policies and regulations of ESG standards and practices for infrastructure projects) and Task I.1.5 (Support regional bodies to advocate for regional ESG standards), and to increase the utility of the Mekong Infrastructure Tracker, the legal and policy frameworks mandating ESG standards for infrastructure (i.e., energy and transportation) in the lower Mekong countries must be mapped and benchmarked against international best practices for environmental and social (E&S) safeguard policies and standards. In addition, results of the mapping and benchmarking must be presented in a way that different stakeholder groups (e.g., regulators, project proponents, civil society, etc.) will collectively find useful and informative for future discussion. To achieve that broad set of objectives, the Activity:

- Amalgamated the E&S standards of the ADB, International Finance Corporation (IFC), World Bank, and the Equator Principles (EPs) safeguard policies and performance standards into one comprehensive and detailed set of international standards.
- Developed two analytical frameworks to present both the mapping and benchmarking of individual CLMTV countries' policies and performance standards against the amalgamated international E&S standards.

### Background on International Environmental and Social Standards

International E&S standards have developed in an iterative manner over the past fifty years. The World Bank established the earliest safeguard policies to address E&S issues that surfaced in controversial infrastructure projects in the 1970s and 1980s, including the Polonoroeste Highway in the Brazilian Amazon.<sup>1</sup> The IFC and the Multilateral Investment Guarantee Fund also adopted safeguard policies due to complications surrounding the Pangue Dam in Chile in 1997<sup>2</sup>.

Other international financial institutions followed with their own safeguard policies. For example, the ADB established its environmental guidelines in 1981, then developed its first safeguard policy for involuntary resettlement in 1995, followed by the Policy on Indigenous Peoples in 1998, and the Environment Policy in 2002. The EPs<sup>3</sup> were launched in 2003, based on the IFC's Performance Standards on E&S sustainability and on the World Bank's Environmental, Health, and Safety Guidelines. The EPs are a risk management framework that has been adopted by financial institutions to identify, assess, and manage E&S risk in projects and support responsible risk decision-making. Intergovernmental agencies, including the United Nations (UN) agencies such as the United Nations Development Programme (UNDP) and the United Nations Industrial Development Organization (UNIDO) also have developed E&S safeguard policies.

The IFC developed a new performance standard framework in 2006, which was updated in 2012 after an 18-month consultation process with stakeholders around the world<sup>4</sup>. In 2016, the World Bank adopted a new set of E&S policies called the Environmental and Social Framework (ESF) and began applying the ESF to all new World Bank investment project financing as of October 1, 2018. While the IFC's Performance Standards are designed specifically for companies, the World Bank's ESF mainly targets government borrowers.

### Amalgamation of the International Environmental and Social Standards

While there is general agreement among the World Bank, IFC, ADB, and EPs on the E&S areas that should be covered throughout the entire infrastructure project-development cycle to identify and mitigate E&S risks and impacts, there are differences in emphasis of the particular criteria and their level of comprehensiveness among these well-known international standards. For example, some standards cover social issues in greater detail, such as stakeholder engagement, and rights of indigenous peoples, than do others. Others do not explicitly mention social issues such as project benefits sharing, gender, land and resource tenure, and grievance mechanisms.

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<sup>1</sup> Hunter, D. B. 2007. Civil Society Networks and the Development of Environmental Standards at International Financial Institutions. *Chicago Journal of International Law*. 8: 437.

<sup>2</sup> Watkins, G. 2014. Approaches to the assessment and implementation of sustainable infrastructure projects in Latin America and the Caribbean. Inter-American Development Bank (IDB) Technical Note; 739.

<sup>3</sup> <https://equator-principles.com/wp-content/uploads/2020/01/The-Equator-Principles-July-2020.pdf>

<sup>4</sup> IFC. 2012. International Finance Corporation's Guidance Notes: Performance Standards on Environmental and Social Sustainability.

An example is the ADB safeguards, which do not include as many details on social obligations when compared with the revised IFC and World Bank safeguard policies. In practice, a study undertaken for the IFC related to sustainable hydropower development in Lao PDR identified that social obligations are often considered to be one of the more complicated components for the developer because they are more difficult to quantify in comparison with the environmental obligations<sup>5</sup>. Social obligations can be one of the main drivers of failure or cost increases in infrastructure projects. There has also been criticism from Oxfam and other civil society organizations (CSOs) that having E&S safeguard policies and performance standards that are too vague and insufficiently prescriptive will be ineffective in protecting communities affected by the development projects, especially for large-scale infrastructure projects that are usually characterized by high levels of complexity.<sup>6</sup>

Therefore, to ensure that each CLMTV's legal and policy frameworks mandating ESG standards are mapped and benchmarked against the full range of E&S issues that can occur with different infrastructure projects and to adjust for the different level of detail in the ADB, IFC, World Bank, and EPs safeguard policies and performance standards, the Activity amalgamated these institutions' safeguard policies and performance standards into one comprehensive and detailed set of international standards.<sup>7,8</sup> To do so, the main E&S risk categories or sections were identified using at least two or more of the Multilateral Financial Institutions' (MFIs') standard categories, along with the sub-sections and detailed actions. Also incorporated are detailed descriptions of international good practice from sector-specific guidelines such as the Hydropower Sustainability Guidelines on Good International Industry Practice.<sup>9</sup>

### Mapping and Benchmarking Frameworks

To present the mapping and benchmarking of individual CLMTV countries' and China's policies and performance standards against the amalgamated international E&S standards in a way that different stakeholder groups (e.g., regulators, project proponents, civil society, etc.) will collectively find useful and informative for future discussion, the Activity developed two analytical frameworks:

- Country-Level E&S Legal Conformance Assessment Table
- Project Development Cycle E&S Flowchart

The two frameworks were developed using the six stages of a generic infrastructure project-development cycle, which is based on USAID's Power Africa standardized project-development cycle (Figure 1. **Flow Chart of the SEA Process and the Six Stages of the Infrastructure Project Development Cycle**).<sup>10</sup> It was utilized because it provided an effective way to present both the CLMTV country-level and amalgamated international E&S standards, and particularly to highlight at which stage of the project-development cycle the E&S action should occur to ensure compliance.<sup>11</sup>

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<sup>5</sup> Boivin, T. 2014. Standard Environmental and Social Obligations (SESO) Simplification Review. Report prepared for the International Finance Corporation, Vientiane, Lao PDR.

<sup>6</sup> <https://medium.com/@OxfamIFIs/world-banks-how-to-manual-is-confusingly-vague-and-incomplete-c33e650c13ed>.

<sup>7</sup> Many of the safeguards also reflect international agreements related to labor, hazardous materials, pollution, indigenous peoples, and biodiversity, and so there has been a concerted effort among international financial institutions to harmonize their policies and promote convergence around areas of good practice and their performance standards for managing E&S risks.

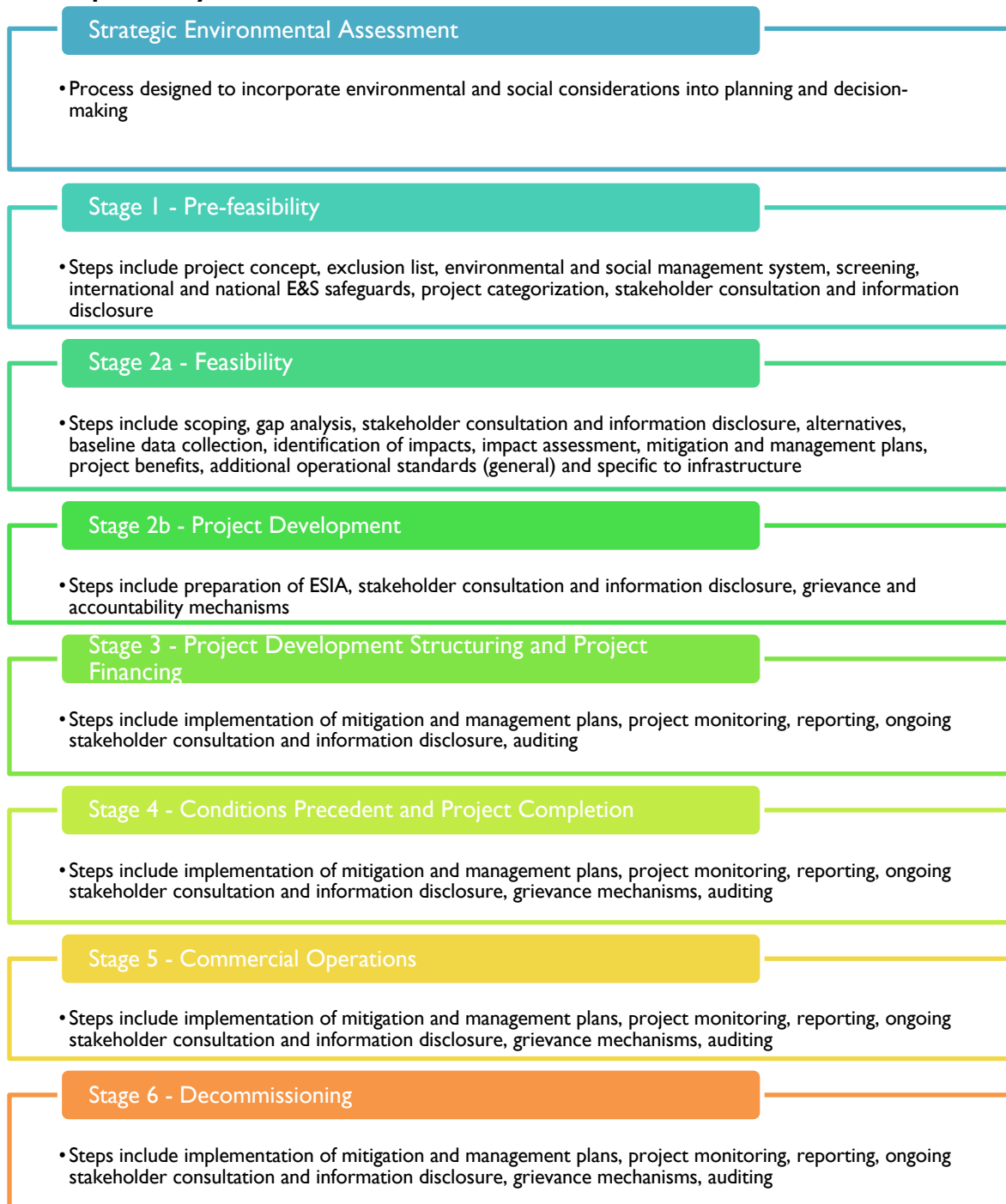
<sup>8</sup> It is important to note that the Activity did not rewrite the international safeguards, but rather the international safeguards for the ADB, IFC, World Bank, and EPs were simply combined.

<sup>9</sup> Locher, H., and J. Costa. 2018. Hydropower Sustainability Guidelines on Good International Industry Practice. Published by the International Hydropower Association. See <http://www.hydrosustainability.org>

<sup>10</sup> See Annex 1. USAID's Power Africa Project Development Cycle.

<sup>11</sup> One of the key findings from interviews the IFC conducted with hydropower developers for the SESO review process in Lao PDR highlighted that the Environmental and Social Impact Assessment (ESIA) is not always completed at the appropriate time in

**Figure 1. Flow Chart of the SEA Process and the Six Stages of the Infrastructure Project Development Cycle**



the project development cycle to influence project design changes, and the steps within the ESIA process are not always completed in the correct order. In fact, the IFC developed a flowchart for both government and project developers/borrowers in Lao to follow to ensure that the steps are followed in the correct sequence in the hydropower project cycle and concession agreement (CA) process.

The Country-level E&S Legal Conformance Assessment Table includes the following information, which is all demarcated using the six stages of the infrastructure project-development cycle:

- Individual country-level E&S standards that include relevant E&S national laws, decrees, and regulations (i.e., map legal and policy frameworks mandating ESG standards of each CLMTV country and China).
- Amalgamated international E&S standards for each corresponding E&S risk category, along with the sub-sections and detailed actions.
- Finally, the individual country-level E&S standards are benchmarked against the corresponding amalgamated international E&S standard to determine if the E&S laws and regulations in the country under review fully conform, partially conform, or do not conform to the amalgamated international E&S standards. Conformance was assessed based on how well the relevant legal instruments closely adhered to the main components in the corresponding international safeguard policies. For example, for baseline studies, data needs to be collected on the current environmental and socioeconomic conditions within the study area that may be impacted by the project, including the physical, biological, socioeconomic (i.e., name of district(s) and villages affected; population [including gender and age distribution, if possible]; ethnicity and languages; main economic activities and means of livelihood of men and women; education level and access to educational services; main sources of water and energy; community health, etc.), visual and physical cultural resources. If the corresponding legal instruments only specify that baseline studies are needed, but do not include a description of the minimum components, or only require environmental but not socioeconomic data to be included, then this is considered to be in partial conformance. Full conformance would be attributed if the laws includes a detailed list of the most relevant components, and the legal instrument would not conform if there was no requirement to collect baseline studies as part of the ESIA process. Gaps will be identified and used eventually to propose recommendations for improvement under Task 1.1.4 (Address gaps and strengthen host country regulation of ESG standards and practices for infrastructure projects) and to inform Task 1.1.5 (Support regional bodies to advocate for regional ESG standards).

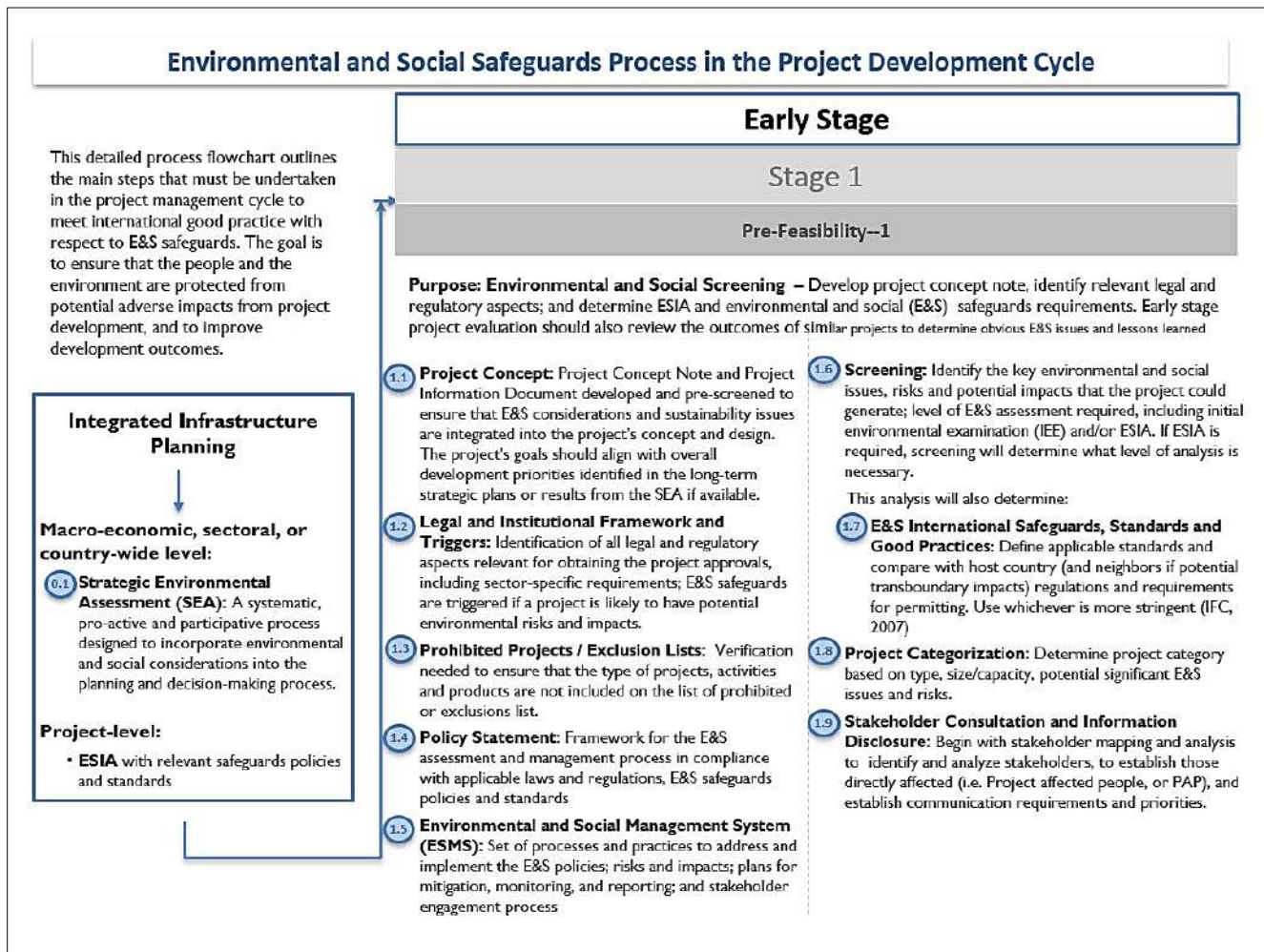
In addition to the Country-Level E&S Legal Conformance Assessment Table, the results from the legal conformance assessment will be summarized in the Project Development Cycle E&S Flowchart, which color-codes the results of the benchmark for each E&S risk category according to the following convention:

- Green: Full Conformance
- Yellow: Partial Conformance
- Red: No Conformance

The Project Development Cycle E&S Flowchart serves multiple purposes:

- Provides an easy-to-interpret snapshot of the level of conformance for national E&S laws and regulations benchmarked against the amalgamated E&S international safeguards.
- Provides guidance as to the various E&S requirements at each stage of the project-development cycle and when they should be conducted.
- Can be uploaded to the Mekong Infrastructure Tracker to increase its utility among its users.

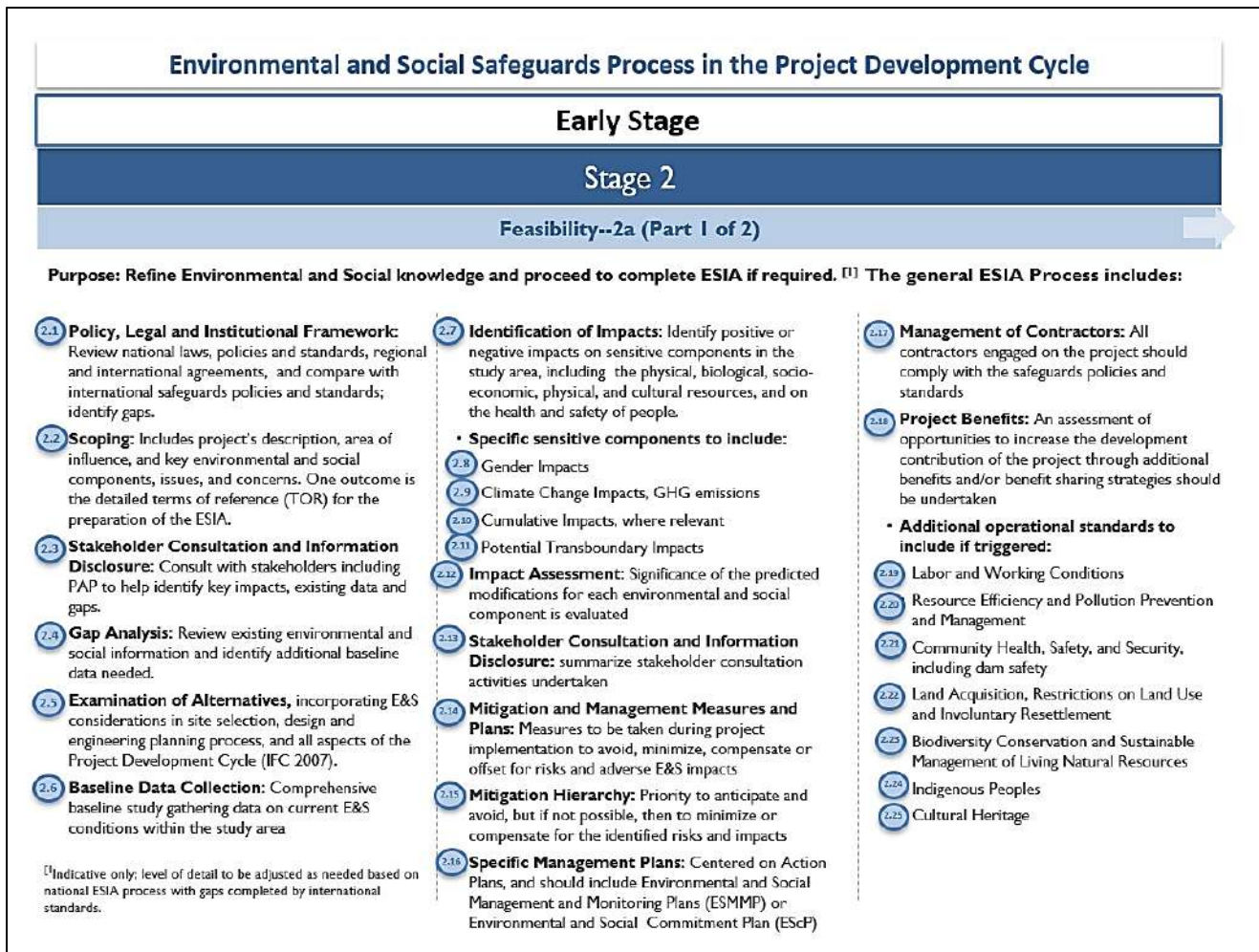
**Figure 2. Required E&S Safeguard Steps at Stage I Pre-feasibility for Infrastructure Projects**



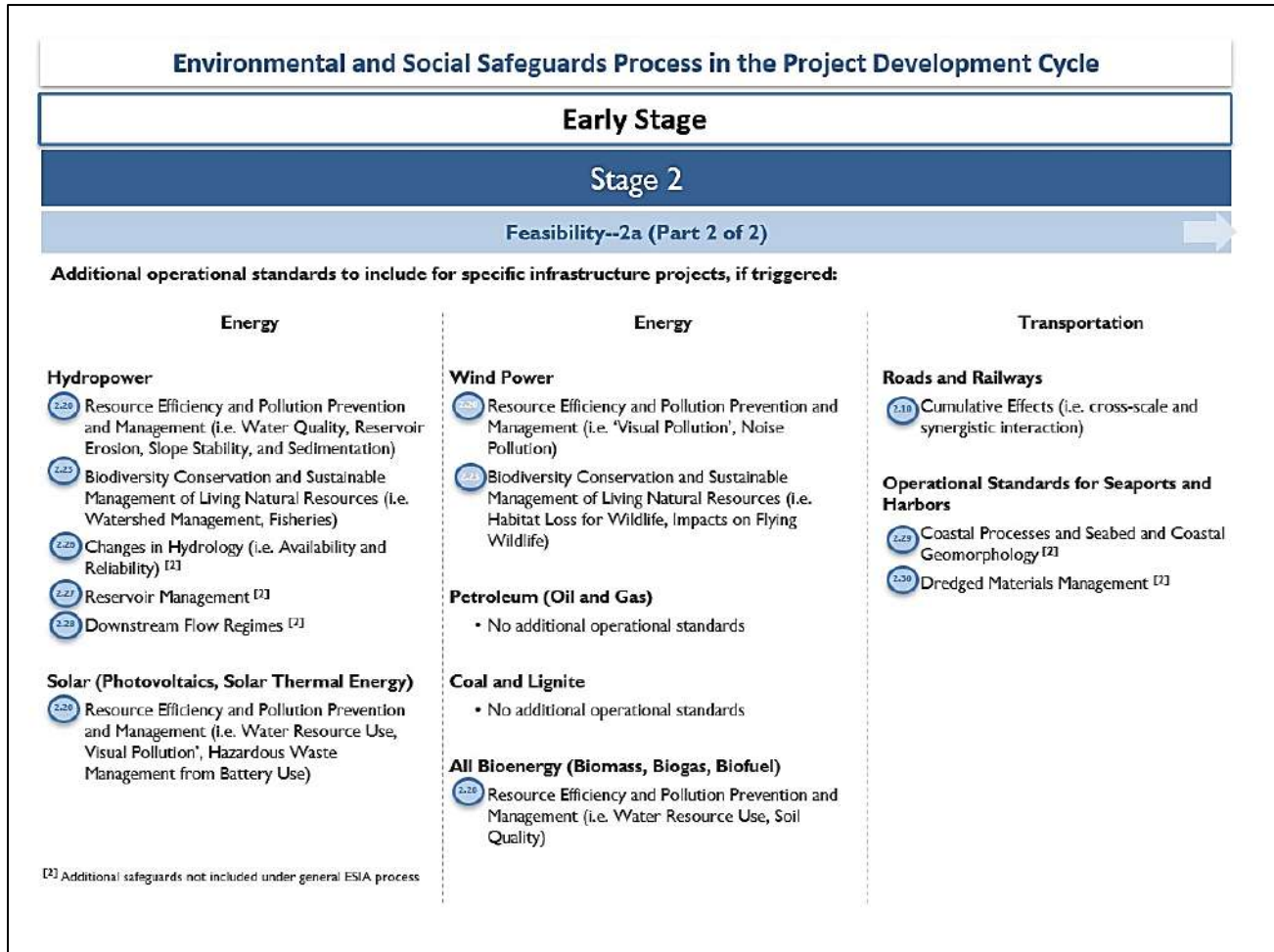
Stage I of the Project Cycle Development Framework process flowchart summarizes all the required E&S safeguard steps at the pre-feasibility stage of an infrastructure project-development cycle, including project concept development, screening, and categorization. Screening is also used to inform the selection of the safeguard instruments that would be required to assess the potential impacts in further detail, commensurate with the significance of anticipated E&S impacts and the associated E&S risks. The first step in the stakeholder consultation and information-disclosure process begins here, starting with stakeholder mapping and analysis and then targeted consultations to obtain stakeholder buy-in.



**Figure 3. Required E&S Safeguard Steps at Stage 2 Feasibility (Part I) for Infrastructure Projects**

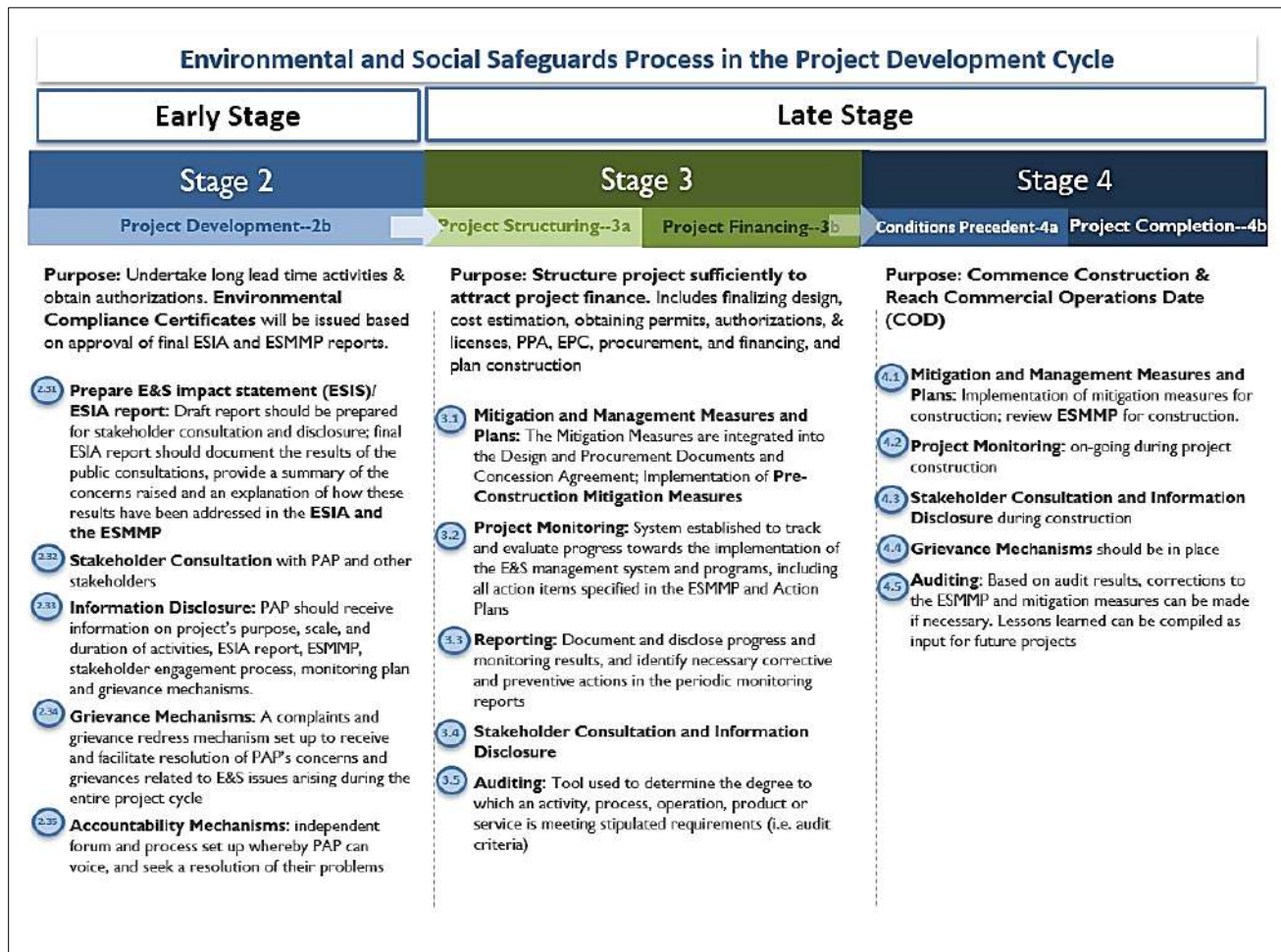


**Figure 4. Required E&S Safeguard Steps at Stage 2 Feasibility (Part 2) for Infrastructure Projects**



Stage 2 includes feasibility and project-development stages, and describes the steps in the ESIA process at the project level, if the screening process has determined that one is required due to the significance of the adverse E&S risks and impacts. This includes the general steps in the ESIA process, as well as the specific operational standards such as labor and working conditions, pollution prevention and management, involuntary resettlement, and biodiversity conservation, among others. It also includes specific safeguards that would be triggered for energy (i.e., hydropower, solar, wind, coal and lignite, bioenergy) and transportation (i.e., road, railways, airports, seaports, and harbors) infrastructure projects at the project feasibility stage.

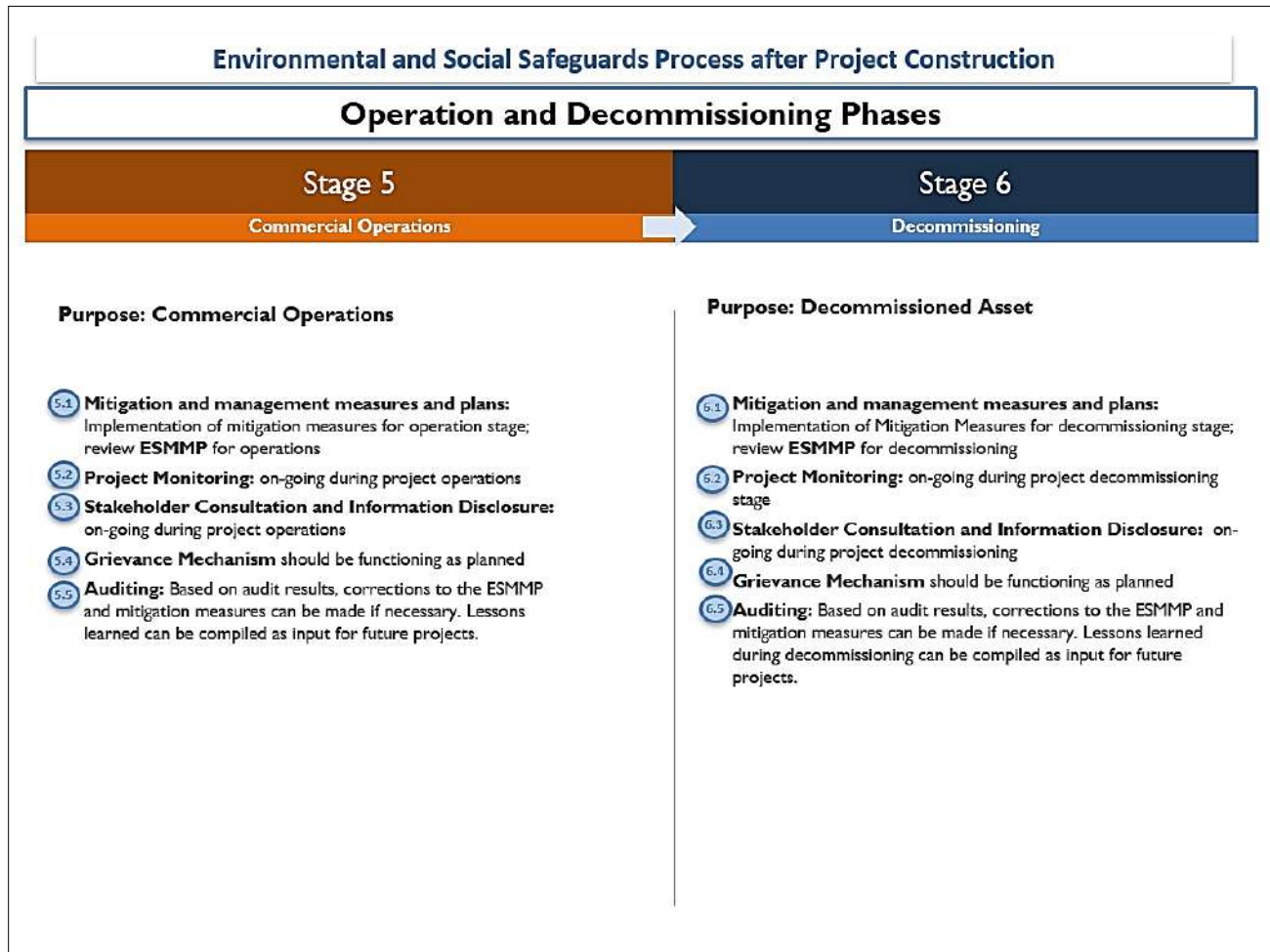
**Figure 5. Required E&S Safeguard Steps at Stage 2 (cont.), Stage 3 Project Structuring and Financing, and Stage 4 Condition Precedent and Project Completion for Infrastructure Projects**



Stage 2 includes the steps required to finalize the ESIA report, including ongoing stakeholder consultation and information-disclosure procedures, as well as grievance and accountability mechanisms. If government authorities and financiers deem that all steps have been completed and meet safeguard requirements, then an environmental compliance certificate will be issued.

Stage 3 of the project-development cycle, under Project Structuring and Project Financing, includes integrating mitigation measures into the design and procurement documents, as well as the Concession Agreement (CA), project monitoring, reporting, and auditing, and additional stakeholder consultation and information disclosure. Stage 4, for Conditions Precedent and Project Completion, includes the steps required after project financial close with the aim to begin commercial operations. The Environmental and Social Management and Monitoring Plans (ESMMPs) for construction are reviewed, and the mitigation measures are implemented. Stakeholder consultation and information disclosure continues during construction, with grievance mechanisms in place and used when necessary. Auditing begins for the project, and if necessary, corrections are made to the ESMMP based on results of the stakeholder consultations and audit.

**Figure 6. Required E&S Safeguard Steps at Stage 5 Commercial Operations and Stage 6 Decommissioning for Infrastructure Projects**



Stage 5 and Stage 6 summarize the E&S steps during the commercial operations and decommissioning phases.

## 2. CAMBODIA

### 2.1 Overview of the ESIA System in Cambodia

The Ministry of Environment (MoE) is the principal agency responsible for environmental protection and natural resources conservation in Cambodia. This ministry began as a secretariat for environmental management in 1993 and was upgraded into MoE in 1996. An Environmental Impact Assessment Department was established within MoE by Sub-Decree No. 57 in 1997.<sup>12</sup>

The key law governing environment protection in the country is the Law on Environmental Protection and Natural Resources Management, approved by the National Assembly (NA) in November 1996. The law provided guidelines to protect environmental quality through pollution prevention, reduction, and control. It also established Cambodia's ESIA system to avoid or mitigate adverse impacts from development and promote long-term environmental and socioeconomic benefits for both public and private initiated projects.<sup>13</sup>

In 1999, the first ESIA guidelines were developed through the Sub-Decree No. 72 on the Environmental Impact Assessment Process. This sub-decree reiterated the overall objectives of the original environmental protection law, requiring ESIA's to be carried out and encouraging public participation. Further guidelines were provided in 2009 by the Prakas (i.e., a regulation issued by a Minister) on General Guideline for Developing Initial Environmental Impact Assessment and Full Environmental Impact Assessment Reports.<sup>14</sup>

In 2012 the Government of Cambodia (GoC) began revisions on the 1999 Sub-Decree No. 72 with the goal of transforming it into the first ESIA law. However, before the law could be promulgated, in 2015 the GOC decided to take a much more ambitious step forward and develop an Environment and Natural Resources Code for Cambodia, but this process is still in development. This code is currently in its eleventh draft and has not yet been finalized.<sup>15</sup> The GOC also developed the Prakas on Guidelines for Public Participation in the EIA Process in 2016, to “promote public participation in the EIA process and to provide for access to information in the EIA Process.” This prakas follows five key principles, namely access to information, public participation, access to social justice and effective remedies, as well as promoting gender equality and indigenous peoples in public participation.<sup>16</sup> The draft version of this prakas has also not been approved, and therefore it has not been adopted into the legal framework.

Until these revised legal instruments related to ESIA's have been finalized and approved, the requirements and procedures laid out in the 1996 Law on Environmental Protection and Natural Resource Management, the 1999 Sub-Decree No. 72 on the Environmental Impact Assessment Process, and the 2009 Prakas on General Guidelines for Initial and Final Environmental Impact Assessment Reports must still be followed.<sup>17</sup> The other key legal instruments relevant to the ESIA process in Cambodia are:

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<sup>12</sup> Environmental Impact Assessment Department of the Ministry of Environment, the NGO Forum on Cambodia, and the Rivers Coalition in Cambodia. 2012. Guidebook on Environmental Impact Assessment in the Kingdom of Cambodia.

<sup>13</sup> Ibid.

<sup>14</sup> Government of Cambodia 2009. Prakas (Declaration) on General Guidelines for Developing Initial and Full Environmental Impact Assessment Reports. 2 September 2009.

<sup>15</sup> <https://opendevdevelopmentcambodia.net/topics/environmental-impact-assessments/#ref-56056-5>

<sup>16</sup> <http://www.sustinatgreen.com/uploads/document/Prakas%20on%20Public%20Participation%20Guideline%20Eng.pdf>

<sup>17</sup> <https://opendevdevelopmentcambodia.net/topics/environmental-impact-assessments/#ref-56056-5>

- Law on Expropriation (2010)
- Sub-Decree No. 27 on Water Pollution Control (2009)
- Law on Protected Areas (2008)
- Law on Water Resource Management (2007)
- Law on Fisheries (2007)
- Law on Investment (amended in 2003)
- Land Law (2001)
- Sub-Decree No. 42 on the Control of Air and Noise Pollution (2000)
- Sub-Decree No. 36 on Solid Waste Management (1999)
- Law on the Protection of the Cultural Heritage (1996)
- Constitution of the Kingdom of Cambodia (1993)

See Annex 2 for the full list of legal instruments that were consulted for the legal conformance assessment in Cambodia.

### Institutional Management System for the ESIA Review Process

The MoE has established a two-stage review process for the Initial Environmental Examination (IEE) or Initial Environmental Impact Assessment (IEIA) and ESIA reports in Cambodia. The first stage is a technical review undertaken by the EIA Coordination Working Group (EIACWG), with the Department of EIA acting as the secretariat. The EIACWG can solicit written opinions on these reports from other experts, including national and international non-governmental organizations (NGOs), university professors, or research institutes. For the second stage, there is a multi-stakeholder meeting that includes other ministries and relevant stakeholders, known as the inter-ministerial review process or Council on Development of Cambodia (CDC). This is led by the Minister of the Environment, and the members of the inter-ministerial group include the director, deputy director of the EIACWG, technical government staff, staff from the ministerial leadership level, relevant institutions, municipal/provincial governors or deputy governors, and staff from the municipal and/or provincial Department of Environment. The outcome of this meeting will be a final recommendation to the Minister of Environment whether to approve or reject the IEE/IEIA or ESIA. If approved, MoE will issue the ESIA Approval Certificate (in some countries known as the Environmental Compliance Certificate, or ECC, with any conditions imposed on the project.<sup>18</sup>

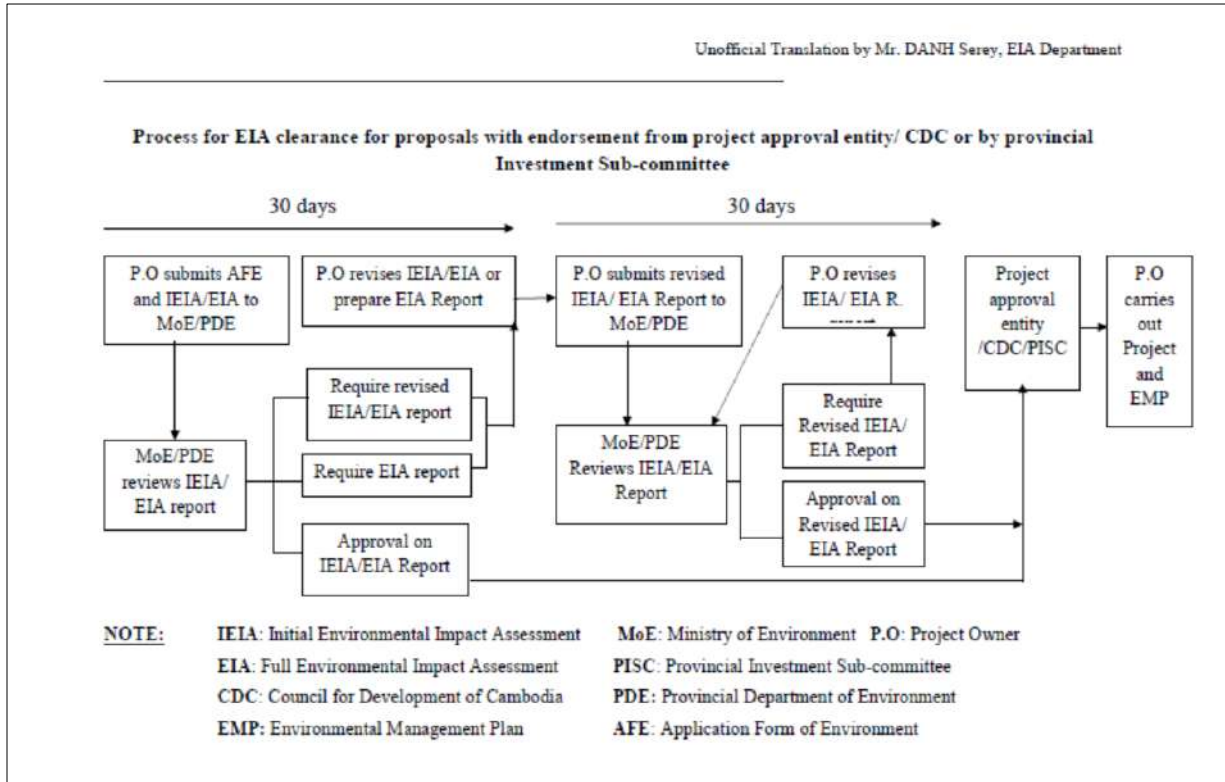
In Cambodia, members of parliament from both the ruling and opposition parties play active roles in the environment committee. Parliamentarians receive complaints from villagers and send letters to ministers. In certain cases, they have gone on site visits to monitor an ESIA feasibility study.<sup>19</sup>

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<sup>18</sup> EarthRights International (ERI). 2016. Environmental Impact Assessment in the Mekong Region.

<sup>19</sup> Wells-Dang, A., Nyi Soe, K., Inthakoun, L., Tola, P.; Socheat, P., Nguyen, T.T.V., Chabada, A., and W. Youttanakorn. 2016. A political economy of Environmental Impact Assessment in the Mekong Region.

**Figure 7. Environmental and Social Impact Assessment Process in Cambodia**



Source: EIA General Guideline for Preparing Initial and Full EIA Reports (2009)

## 2.2 Results

### Strategic Environmental Assessment

While ESAs are used to identify the E&S impacts of a proposed project prior to decision-making in order to predict environmental impacts at an early stage in project planning and design, strategic environmental assessments (SEAs) are used at the policy, planning, and programming levels.<sup>20</sup> In the transport sector, an SEA can be used to influence decisions on the need, mode, and location of transport infrastructure projects. It can help to structure and focus the E&S analysis on the key E&S benefits and costs of each transport mode. In the energy sector, a SEA can guide decisions on which energy generation options are optimal to meet a country's needs.<sup>21</sup>

Cambodia does not have any legal requirement for undertaking SEAs in any sector. The draft Environment and Natural Resources Code for Cambodia has specific provisions for conducting and using an SEA “on any proposal that: a) Is likely to have a significant effect on the environment; or b) Relates to any sector determined by the National Council for Sustainable Development.” Mandating SEAs as part of the

Water Alternatives 9(1): 33–55.

<sup>20</sup> <https://www.floodmanagement.info/what-is-the-difference-between-environmental-impact-assessment-eia-and-strategic-environmental-assessment-sea/>

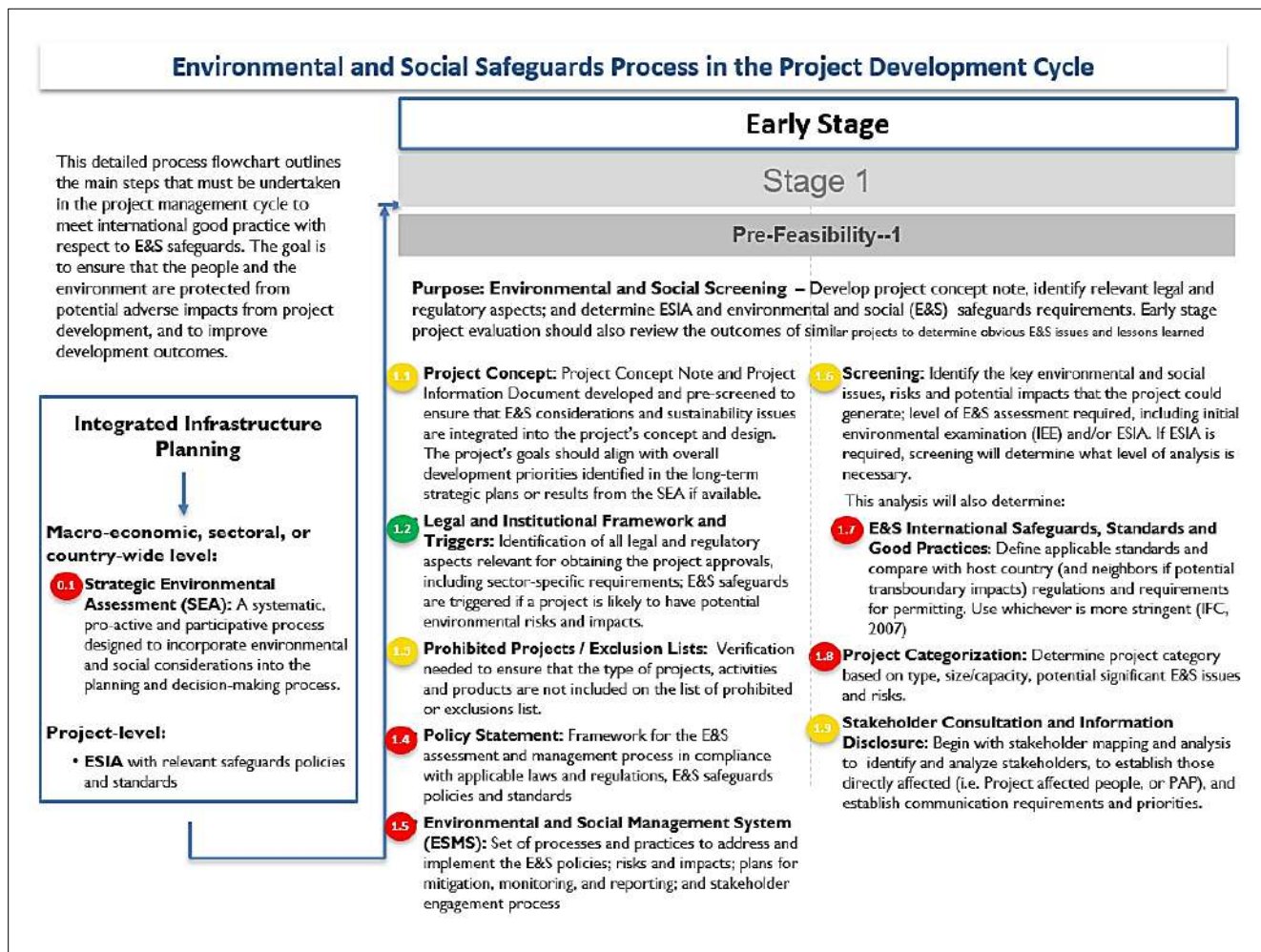
<sup>21</sup> ADB, 2018. Strategic Environmental Assessments for Power Sector Planning in the Greater Mekong Subregion.

country's infrastructure planning processes can help to ensure that environmental considerations, and their interlinkages with social and economic considerations, are better integrated into policies, plans, and programs. SEAs can also guide decisions on the most cost-effective locations to invest in while ensuring minimal impacts on communities and the environment.

### Stage 1: Pre-feasibility

The summary results from the legal conformance assessment (Annex 2) for all the key steps at the pre-feasibility stage are presented in Figure 8. For the nine steps included in the legal conformance assessment at this stage, one (11%) was in conformance, four (44%) were in partial conformance, and four (44%) did not conform.

**Figure 8. Results of the legal conformance assessment for the E&S safeguards at the pre-feasibility stage for Cambodia**



The key E&S safeguard steps at the pre-feasibility stage of an infrastructure project-development cycle include project concept development, screening to decide if an IEE or ESIA is required, as well as the selection of the safeguard instruments that will be required, and project categorization based on the potential E&S risks and impacts. The first step in the stakeholder consultation and information-disclosure process begins at the pre-feasibility stage, beginning with stakeholder mapping and analysis. This involves the identification of all project stakeholders in meaningful groups, including project-affected people (PAP)



or “affected parties,” individuals or groups who are disadvantaged or vulnerable, individuals or groups who may have an interest in the project (“other interested parties”), regulators, and contractors.

Results from the legal conformance assessment showed that full conformance could be attributed only to the E&S safeguard policy that requires the project proponent to identify all legal and regulatory aspects, license conditions, and reporting requirements. The provisions stating that the project’s concept note and design must include E&S considerations are too general and therefore insufficient to ensure that project proponent will describe these components in enough detail, and therefore only partially conform to this procedural step.

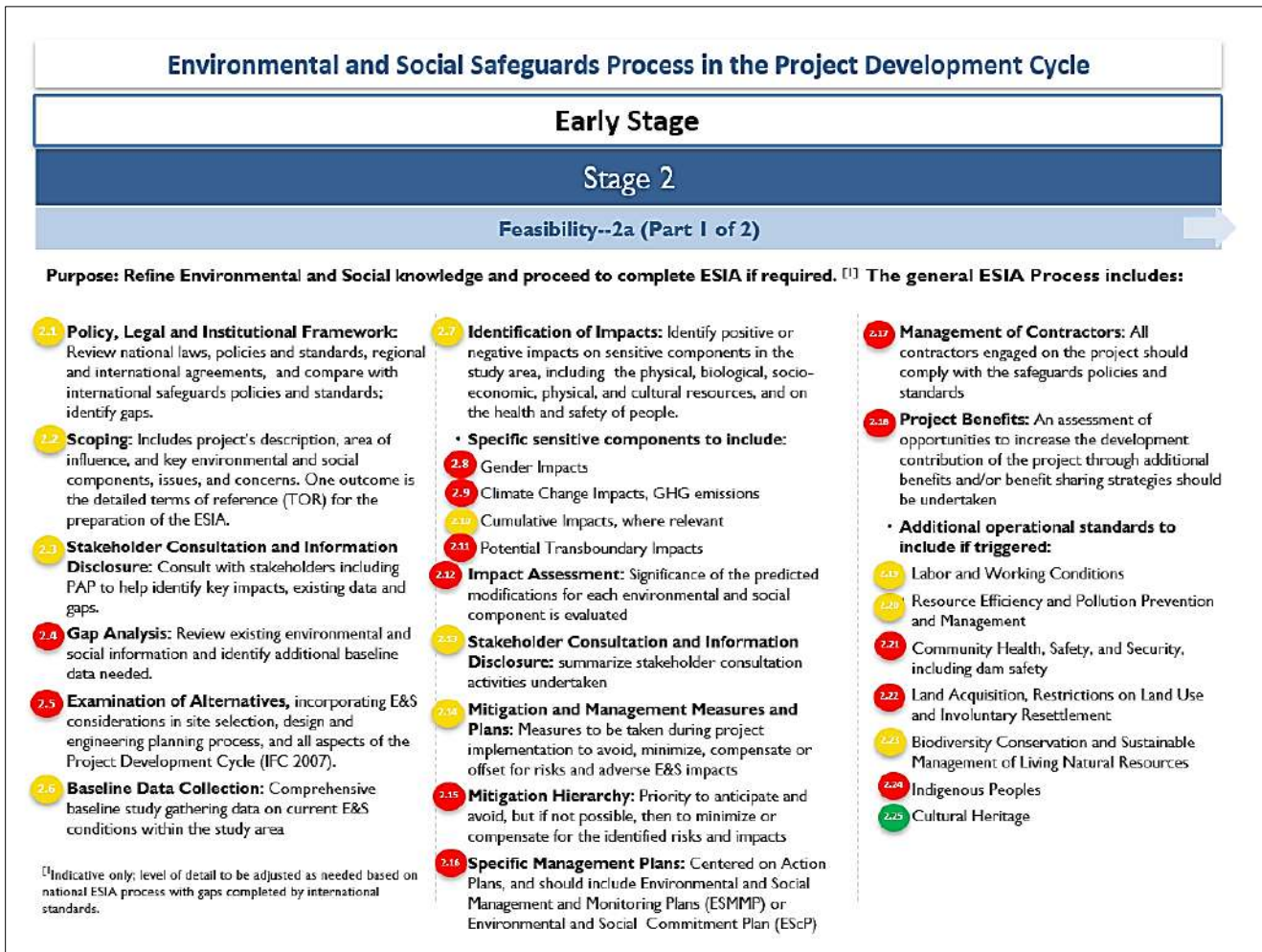
The legal instruments include a list of projects that are prohibited or excluded, but some of the projects listed as allowed but not eligible for incentives would be prohibited based on international safeguard principles. Although there are provisions to screen projects based on their nature and size to determine if an ESIA is required, there are no clear guidelines on the screening criteria and what the screening process should include. Legal instruments governing stakeholder consultation and information disclosure at the screening stage also only partially conform to international E&S safeguard principles, since public participation is “encouraged” but not mandatory. The legal framework should include the provisions on public participation from the draft Prakas on Guidelines for Public Participation in the EIA Process and the draft Environment and Natural Resources Code for Cambodia.

The legal framework does not have any corresponding provisions requiring the project proponent to include a policy statement defining their project’s E&S objectives and principles, to establish and maintain an environmental and social management system (ESMS), to identify and define the applicable international safeguards and standards at the screening stage, and to classify projects based on their potential E&S risks and impacts (e.g., High Risk, Substantial Risk, Moderate Risk, or Low Risk).

### Stage 2a: Feasibility

The summary results from the legal conformance assessment for all the key steps at the feasibility stage are presented in Figure 9. For the twenty-five steps included in the legal conformance assessment at this stage, one (4%) was in conformance, 11 (44%) were in partial conformance, and 13 (52%) did not conform.

**Figure 9. Results of the legal conformance assessment for the E&S safeguards at the feasibility stage for Cambodia**



The feasibility stage is when much of the data collection and report preparation work is done for the ESIA. It includes scoping, more extensive stakeholder consultation and information disclosure about the project's E&S risks and impacts, baseline data collection, the identification of impacts, and then impact assessment. The ESIA is written at this stage, with its accompanying ESMMPs. Along with the overarching international E&S safeguard principles and requirements, the inclusion of specific operational standards may be triggered if the assessment process reveals that the project presents certain risks.

One of the first procedural requirements under international best practices is to describe the policy, legal, and administrative framework within which the project takes place and to identify the laws and regulations that pertain to E&S matters relevant to the project. While this is also recommended in the Prakas on General Guideline for Developing Initial and Full EIA Reports, this should be listed as mandatory for full conformance, and therefore added to the legal provisions and not just included as part of a suggested outline of an ESIA report.

Mandating a comprehensive scoping process is important to ensure that the E&S studies provide all the relevant information on project impacts. It can highlight potential issues at an early phase of sub-project development to allow planners and decision makers to design changes which will mitigate potential E&S impacts. The legal instruments provide suggestions for what should be included at the scoping stage but

would be in full conformance only if they were considered mandatory. The scoping study must also assess relevant and realistic alternatives to the original project design, along with the option of “no project,” but these requirements are not included in the legal framework. An additional best practice is to conduct a gap analysis, using desk-based studies to review existing E&S information, and then develop a gap analysis report to identify additional baseline information required for the impact assessment. There are no legal provisions in Cambodia to undertake a gap analysis.

The first disclosure of the potential project footprint to stakeholders will begin at the scoping phase. A brief road map for stakeholder consultation and engagement, the Stakeholder Engagement Plan (SEP), should be prepared and used to guide interaction during the scoping review. As part of the scoping process, stakeholders should be able to provide comments and recommendations on the draft SEP and any other scoping documents. The current legal framework states that public participation is “encouraged” but not mandatory, and there are no provisions requiring an SEP. These requirements are included in the draft Prakas on Guidelines for Public Participation in the EIA Process and the draft Environment and Natural Resources Code for Cambodia, but until these legal instruments are approved and adopted, the current legal framework only partially conforms with international E&S performance standards.

During this stage of the project-development cycle, the project proponent must undertake a baseline study to collect all relevant information on the current environmental and socioeconomic conditions within the study area. The E&S baseline information must be based on primary information gathered from field surveys, with references to secondary information when needed. In Cambodia, there is no explicit reference to collect baseline data on the current environmental and socioeconomic conditions in the legal framework. The relevant laws partially conform, as the description of the existing environment is one of the suggested topics in the ESIA report, but this should be mandatory, as comprehensive baseline studies are needed to adequately assess the project’s E&S impacts.

After the baseline studies are undertaken, they are used to identify the positive or negative impacts (direct and indirect) caused by project implementation. The analysis includes the effects of the interactions between the sensitive elements in the study area (i.e., valued components [VCs]) and the various activities to be carried out.<sup>22</sup> These elements or components include the physical, biological, socioeconomic, visual, and physical cultural resources, as well as the health and safety of people within the study area. The broad reference in the current legislation is to conduct an “assessment of environmental impacts,” but there is no definition of what “environmental impacts” entail. The legal framework should clearly state the specific types of impacts (i.e., physical, biological, cultural, socioeconomic, etc.) that need to be assessed as part of the ESIA process.

References to gender have been strengthened in the most recent versions of international safeguard policies and performance standards. Projects may have different risks and impacts on women and men, and on disadvantaged or vulnerable individuals or groups (i.e., children, elderly, people with disabilities, people who identify themselves as lesbian, gay, bisexual, transgender, and intersex, or LGBTI, etc.) due to their differentiated socioeconomic roles and their varying degrees of control over and access to assets, productive resources, and employment opportunities. There may be norms, societal practices, or legal barriers that impede the full participation of persons of one gender (usually women, but potentially men) in consultation, decision-making, or sharing of benefits. These legal and societal norms and practices may lead to gender discrimination or inequality. Gender-differentiated impacts should be assessed at the various project phases in the project life cycle, and the risks and impacts identification process should propose measures designed to ensure that one gender is not disadvantaged relative to the other in the

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<sup>22</sup> Ministry of Natural Resources and Environment in Lao PDR and the Environmental Management Support Programme. 2012. Environmental Impact Assessment Guidelines.

context of the project. This may include providing opportunities to enhance full participation and influence in decision-making through separate mechanisms for consultation and grievances, and developing measures that allow both women and men equal access to benefits (such as land titles, compensation, and employment).<sup>23</sup>

Gender-based violence (GBV) occurs in all parts of the world, but the risk is higher where violence is normalized and where rigid concepts of gender exist. Infrastructure projects with major civil works (i.e., large enough to be carried out by a contractor) should assess the risks related to GBV, since these projects can exacerbate the risk of GBV in both public and private spaces by a range of perpetrators and in a number of ways. During infrastructure project preparation and implementation, there are key steps that should be taken to identify and manage these risks, with the understanding that GBV risk assessment is a continuous process and should take place throughout the project life cycle. First, during project preparation, the risks of GBV should be identified and assessed, and mitigation measures should be included in project design. Second, address the risks by identifying and implementing appropriate GBV risk mitigation and monitoring measures on an ongoing basis during project implementation. Third, respond to any identified GBV incidents and ensure that effective monitoring and evaluation (M&E) mechanisms are in place to report on such incidents and to monitor follow-up. Tools to assess the risk of GBV, such as the World Bank's GBV Risk Assessment Tool, can be employed as part of the risk assessment.<sup>24</sup>

There are no corresponding legal provisions in Cambodia's legal framework to identify and assess the project's impacts on gender. There should be explicit requirements to identify and assess gender-differentiated risks and impacts, including GBV, in the legal framework. If the Environment and Natural Resources Code for Cambodia is promulgated, then gender equity and the participation of women in all aspects of decision-making concerning the environment and natural resources should be mandatory, and not simply "promoted and encouraged," as it is currently written.

Revised E&S safeguard policies also include the specific requirement to identify the project impacts on climate change and greenhouse gas (GHG) emissions, as well as potential transboundary impacts. There are no corresponding legal provisions in Cambodia's legal framework.

The next step is the impact assessment. When all the potential effects of a project on an E&S component have been identified, the importance or significance of the predicted modifications for each E&S component is evaluated, in quantitative terms to the extent possible.<sup>25</sup> Impacts should be considered separately for the project construction and operation stages, and the methodology used should be described in detail. The legal framework in Cambodia does not have any provisions or guidelines on what impact evaluation methodologies would be acceptable and robust, and there are no requirements that the impacts should be considered separately for the project construction and operation stages.

Stakeholder consultation and information disclosure is one of the crucial processes enshrined in all international safeguard regimes to support an effective ESIA process. During the preparation of the ESIA, the project proponent should carry out several types of consultation with stakeholders, including with PAP as well as national, provincial, and district government officials. Informal consultation should include regular discussions with residents and local government staff. Formal consultation should include structured meetings with government authorities and village authorities, as well as individual household

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<sup>23</sup> IFC. 2012. International Finance Corporation's Guidance Notes: Performance Standards on Environmental and Social Sustainability.

<sup>24</sup> World Bank 2018. Good Practice Note Addressing Gender Based Violence in Investment Project Financing involving Major Civil Works.

<sup>25</sup> IFC. 2012. International Finance Corporation's Guidance Notes: Performance Standards on Environmental and Social Sustainability.

surveys. The information provided during these discussions should be made available for further review, and all significant project impacts and proposed mitigation measures should be clearly presented. The information collected should be documented and referenced in the ESIA Report, with explanations as to how the issues raised by the stakeholders during the ESIA study have been incorporated into the project documents (e.g., in new designs, additional mitigation measures, better compensation rates, etc.).

Cambodia's legal framework partially conforms with these requirements. While the legislation includes public participation in the ESIA process, there is no explicit mention of the scheduling of participation at the different stages in the current legislation. The Prakas on Guidelines for Public Participation in the EIA Process (draft 2016) recommends following the procedures of MoE, which are not legally binding and may change depending on interpretation or leadership. There is no explicit requirement to undertake the more robust Informed Consultation and Participation (ICP) process for projects with potentially significant adverse impacts. There is also no provision that when consulting with indigenous people / ethnic groups, it is necessary to obtain their free, prior, and informed consent (FPIC). The decree should also include provisions requiring specialized consultations to identify GBV risks in areas deemed of substantial and high risk. The legal framework should also include the provisions on public participation from the draft Environment and Natural Resources Code for Cambodia.

The ESIA should apply the mitigation hierarchy, meaning priority is to anticipate and avoid, or where avoidance is not possible, minimize, and, where residual impacts remain, compensate/offset for risks and impacts to people and the environment. There are no provisions in the country's legal framework to follow this hierarchy.

The ESIA process identifies and defines the management program, which includes a set of E&S mitigation and management measures to be taken during the implementation of the project to avoid, minimize, or compensate/offset for risks and adverse E&S impacts, in the order of priority, and their timelines, following the mitigation hierarchy. The mitigation and management measures and plans should be considered separately for the project construction and operation stages and should include researching appropriate mitigation approaches for all identified impacts. The ESIA should also identify any residual negative impacts that cannot be mitigated. Cambodia's legal instruments partially conform to this requirement, but there are no explicit provisions stating that the project proponent is required to develop an ESMMP, and what should be included in the ESMMP, apart from the suggested outline in Annex I in the Prakas on General Guidelines for Developing Initial and Full EIA Reports. The ESMMP should be listed as a requirement and include details as to the expected content.

Management programs are centered on action plans and improved procedures to avoid, minimize, or compensate for the risks and impacts that were identified.<sup>26</sup> In conjunction with the general ESMMP, the risks and impacts identification process may also determine the need for a range of specific types of environmental, health, and social management plans and action plans. These may include a Resettlement Action Plan, Biodiversity Action Plan, Water Resources Management Plan, Ecosystem Restoration Plan, Community Safety Plan, Community Development Plan, Indigenous Peoples Plan, Gender Action Plan, and GBV Action Plan, among others. There are no provisions in Cambodia's legal framework requiring these specific management plans.

It is the project proponent's responsibility to ensure that all contractors engaged on the project operate in a manner consistent with the requirements of the safeguard policies and standards, including the specific requirements detailed in the ESMMPs. It is also the project proponent's responsibility to set up comprehensive and effective training and awareness-raising programs for personnel and contractors, to

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<sup>26</sup> IFC. 2015. Environmental and Social Management System Implementation Handbook.

ensure their full compliance with the laws and regulations, as well as the E&S safeguard policies and standards. The country’s legal instruments do not include this requirement.

Cambodia does not have any legal provisions ensuring local communities, and PAP receive specific project benefits. These benefits take different forms: some benefits are essential to the core project, such as the improvement of a road, which is necessary for site access or supply transport and can also (or later) be used by the community. Some benefits are in addition to the core project and will have positive outcomes for both the project and the community, such as new or improved health services and/or educational facilities; a riparian or catchment protection program that pays households to maintain or improve vegetation cover, resulting in reduced soil erosion and improved water quality in rivers and streams. Some benefits have been designed specifically to benefit the community, even if they require additional costs, such as contributions to local infrastructure, services and livelihoods, or local-hire policies, even when they require additional training and are not the lowest-cost solution. Project benefits also include benefit sharing; this is distinct from one-time compensation payments due to its ongoing nature and distinct from resettlement support, as it is not related to the mitigation of project impacts. One example would be equitable access to electricity services, whereby project-affected communities are among the first to access the benefits of electricity services from the project.<sup>27</sup>

Depending on the risks and impacts identified, specific operational standards can be triggered. Cambodia’s level of conformance to these operational standards are listed in Table I:

**Table I. Cambodia’s extent of conformance with International Operational Standards**

Specific Operational Standards	Extent of Conformance	Gaps
Labor and Working Conditions	Partial conformance	There are no provisions for gender-responsive strategies and procedures to ensure equal opportunities and fair treatment for all project workers.
Resource Efficiency and Pollution Prevention and Management	Partial conformance	Although there are requirements to apply pollution-prevention and control technologies and practices, it is not clear to what extent these are consistent with internationally recognized standards. The legal framework should include the provisions on resource efficiency as well as pollution prevention and management from the draft Environment and Natural Resources Code for Cambodia.
Community Health, Safety, and Security, including Dam Safety	No conformance	The legal framework should include the provisions requiring a Health Impact Assessment as stated in the draft Environment and Natural Resources Code for Cambodia. Provisions on developing an emergency preparedness plan should also be included.
Land Acquisition, Restrictions on Land Use, and Involuntary Resettlement	No conformance	There are no provisions or guidance on how to avoid involuntary resettlement, on procedures for community engagement, and on how to ensure gender equality in the consultation process.
Biodiversity Conservation and Sustainable Management of Living Natural Resources	Partial conformance	The legal framework should include provisions restricting development in habitats with high biodiversity values, as well as in areas of critical habitat, unless there are no other viable alternatives

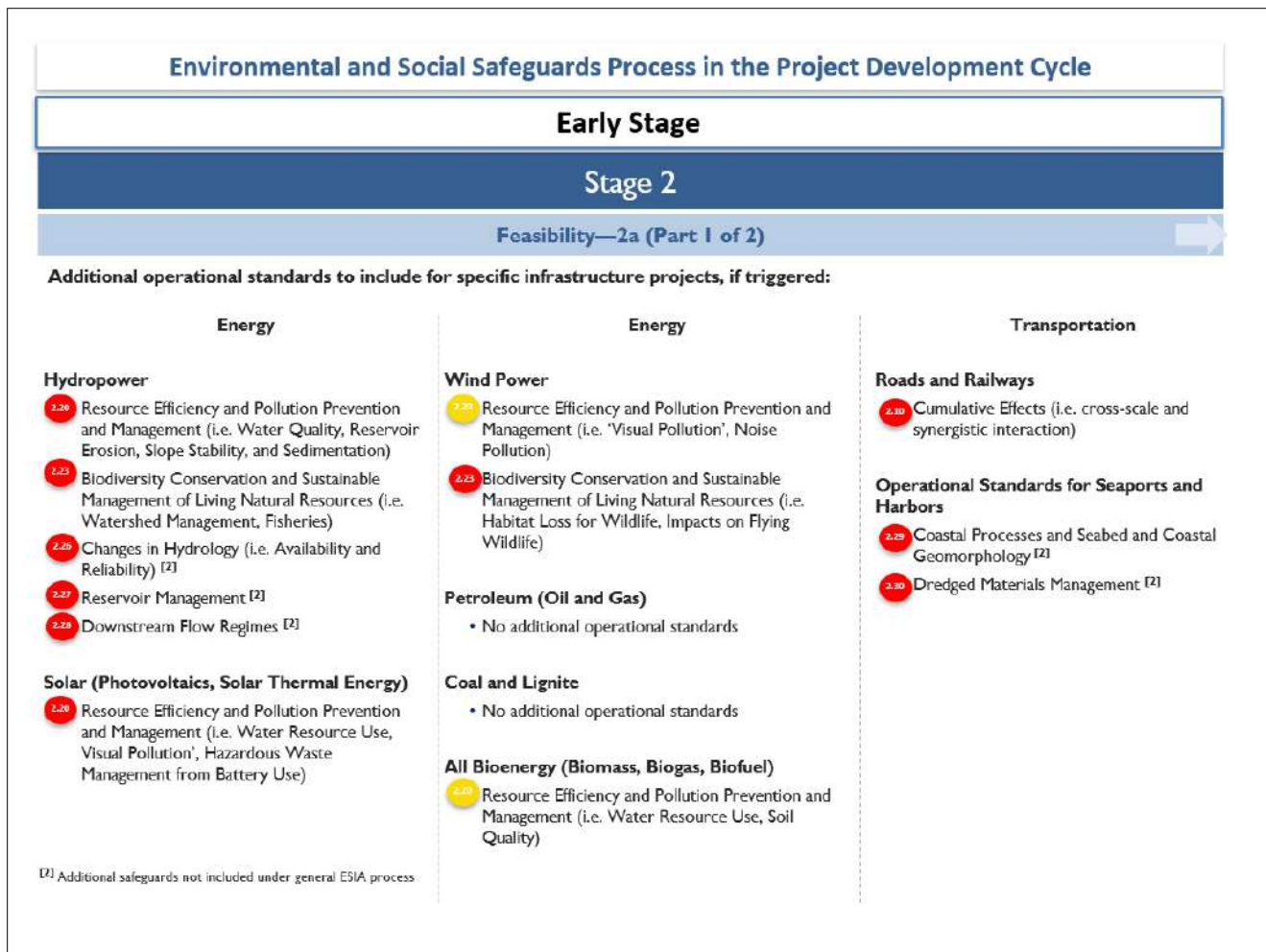
<sup>27</sup> Locher, H. and J. Costa. 2018. Hydropower Sustainability Guidelines on Good International Industry Practice. International Hydropower Association Limited.

		within the region. Provisions should also be included that prohibit the project's activities to have any impact on endangered species.
Indigenous Peoples	No conformance	The legal framework should include the relevant provisions from the draft Environment and Natural Resources Code for Cambodia protecting indigenous peoples' human rights and ensuring fair and effective participation in the ESIA process.
Cultural Heritage	Full conformance	The specific requirements are included in the Law on Protection of Cultural Heritage (1996).

Apart from the operational standards listed above that could apply to any development project, there are additional operational standards that would need to be included that are specific to the inherent risks and impacts from infrastructure projects. The results from the legal conformance assessment for these additional operational standards are shown in Figure 10 as well as in

Table 2, along with Cambodia’s level of conformance.

**Figure 10. Results of the legal conformance assessment for the additional E&S operational safeguards relevant for infrastructure projects for Cambodia**





**Table 2. Cambodia’s extent of conformance with International Operational Standards specific to infrastructure projects**

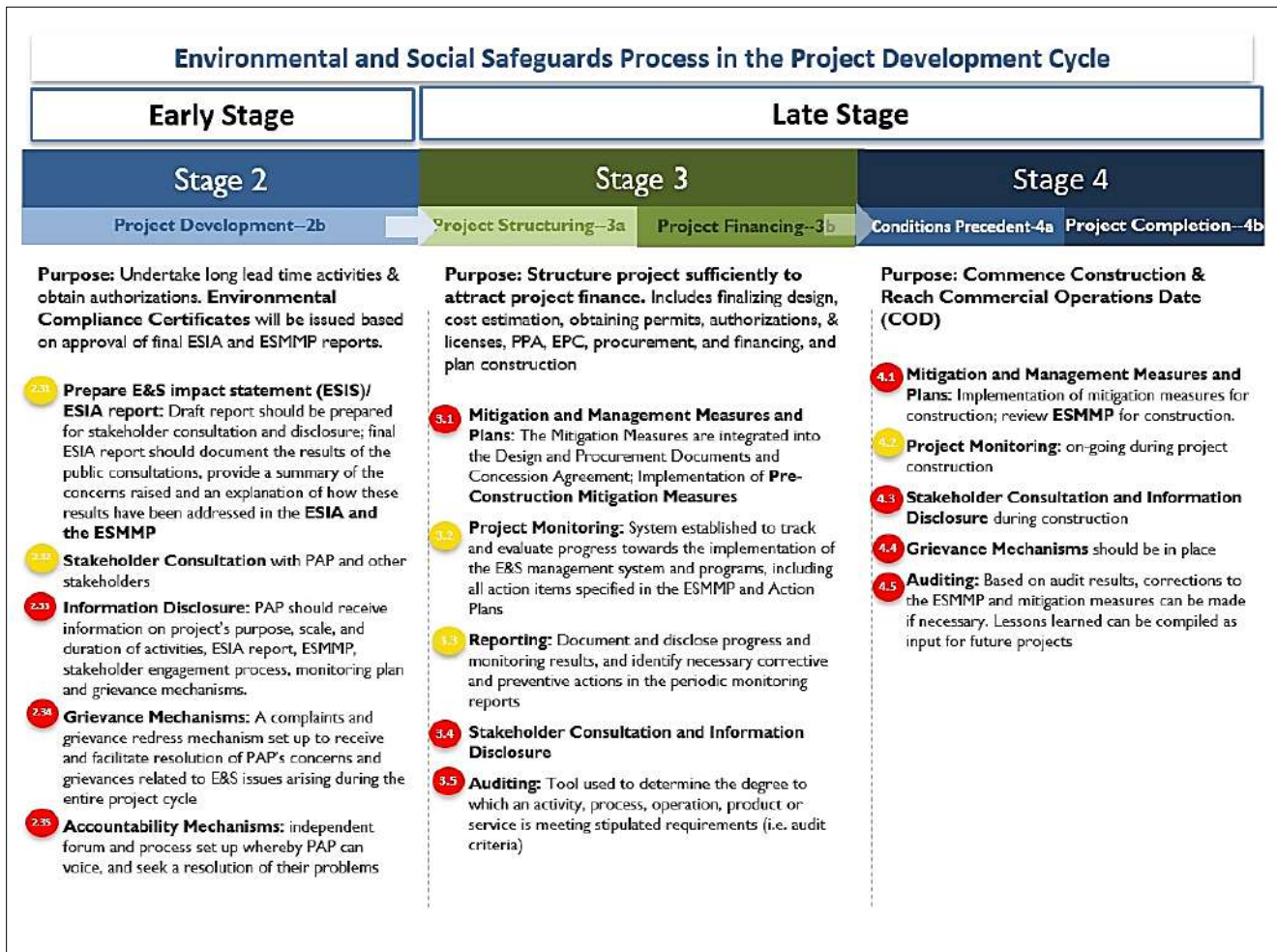
Specific Operational Standards	Extent of Conformance	Gaps
<b>Energy: Hydropower</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Quality, Reservoir Erosion, Slope Stability, and Sedimentation)	No conformance	The legal framework should include provisions requiring the project proponent to implement technically and financially feasible measures for improving efficient consumption of energy, water, and raw materials, as well as other resources.
Biodiversity Conservation and Sustainable Management of Living Natural Resources (i.e., Watershed Management, Fisheries)	No conformance	The legal framework should include provisions that require the project proponent to consider the project’s impacts on the watershed(s) as part of the project’s design, site selection, and selection of alternatives. Projects should be restricted in habitats with high biodiversity values and in areas of critical habitat unless the following conditions are met: there are no other viable alternatives within the region; the project does not lead to measurable adverse impacts on the biodiversity values and ecological processes in the critical habitat; the project does not lead to a net reduction in the global and/or national/regional population of any critically endangered or endangered species; and robust, appropriately designed, and long-term biodiversity monitoring and evaluation program is integrated into the client’s management program.
Changes in Hydrology (i.e., Availability and Reliability)	No conformance	The legal framework should include provisions that require a hydrological resource availability and reliability assessment to be undertaken.
Reservoir Management	No conformance	The legal framework should include provisions for reservoir management, which includes planning for and managing the environmental, social, and economic issues within the reservoir area during project planning, project implementation, and operations of the hydropower facility. Assessments undertaken during the preparation and implementation stage need to ensure issues prior to and during reservoir filling and operations have been taken into consideration, with no significant gaps. At the operation stage, ongoing or emerging reservoir management issues should be identified, and if management measures are required then monitoring should be undertaken to assess if these measures are effective.
Downstream Flow Regimes	No conformance	The legal framework should include provisions that require that flow regimes downstream of hydropower project infrastructure should include measures addressing environmental, social, and economic objectives affected by those flows. Objectives should reflect important river uses, values and services. Management plans for downstream flow regimes should be included in the Environmental and Social Management Plan (ESMP).
<b>Energy: Solar (Photovoltaics, Solar Thermal Energy)</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Resource Use, Visual “Pollution,” Hazardous Waste Management from Battery Use)	No conformance	In 2018, the Electricity Authority of Cambodia issued Regulations on General Conditions for Connecting Solar PV Generation Sources to the Electricity Supply System of National Grid. These regulations clarify the general conditions for installing and operating solar photovoltaic (PV) systems in Cambodia, but they do not regulate any environmental or social risks and

		impacts. The legal framework should include provisions requiring the project proponent to implement technically and financially feasible measures for improving efficient consumption of energy, water, and raw materials, as well as other resources.
<b>Energy: Wind Power</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Visual “Pollution,” Noise Pollution)	Partial conformance	There are no provisions for assessing and reducing visual pollution.
Biodiversity Conservation and Sustainable Management of Living Natural Resources (i.e., Habitat Loss for Wildlife, Impacts on Flying Wildlife)	No conformance	Wind energy has the potential to reduce, fragment, or degrade habitat for wildlife, fish, and plants. Spinning turbine blades can pose a threat to flying wildlife like birds and bats. The legal framework should include provisions requiring the project proponent to identify, assess, manage, and mitigate wind power development on wildlife on biodiversity and ecosystem services throughout the project’s lifecycle.
<b>Energy: Coal and Lignite</b>		
No additional operational standards		
<b>Energy: All Bioenergy (Biomass, Biogas, Biofuel)</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Resource Use, Soil Quality)	Partial conformance	Although there are requirements for applying pollution-prevention and control technologies and practices in the Law on Environmental Protection and Natural Resources Management (1996), the Sub-Decree 27 Water Pollution Control (1999) and the Sub-Decree 42 Air Pollution Control (2000), it is unclear to what extent these are consistent with internationally recognized standards.
<b>Transportation: Road and Railways</b>		
Cumulative Effects (i.e., cross-scale and synergistic interaction)	No conformance	Roads and railways interact with ecosystems across a wide range of scales. The legal framework should include provisions requiring the project proponent to identify, assess, manage, and mitigate the cumulative effects of roads and railways.
<b>Transportation: Operational Standards for Seaports and Harbors</b>		
Coastal Processes and Seabed and Coastal Geomorphology	No conformance	The legal framework should include the provisions on Coastal Zone Management from the draft Environment and Natural Resources Code for Cambodia.
Dredged Materials Management	No conformance	The legal framework should include provisions requiring the project proponent to conduct a risk assessment for dredging activities as part of the development of a Dredging Management Plan.

## Stage 2b: Project Development

The summary results from the legal conformance assessment for all the key steps at the project-development stage, as well as Stage 3: Project Structuring and Financing, and Stage 4: Conditions Precedent and Project Completion, are presented in Figure 11. For the five steps included in the legal conformance assessment for Stage 2b: Project Development, two (40%) were in partial conformance, and three (60%) did not conform.

**Figure 11. Results of the legal conformance assessment for the E&S safeguards during project development, project structuring and financing, and conditions precedent and project completion for Cambodia**



During this stage, the ESIA report is written and stakeholder engagement continues while the project design is being finalized. The ECC is issued based on approval of final ESIA and ESMMP reports.

The outcome of the ESIA process is a physical report, known as an environmental and social impact statement (ESIS), or ESIA report, on the E&S assessment process and findings. The report sets out factual information relating to the project, and all the information gathered relating to screening, scoping, baseline study, impact prediction and assessment, mitigation, and monitoring measures.<sup>28</sup> The report should also include a clear, nontechnical stand-alone summary, as the ESIA forms the basis of public consultation activities and is the document that is presented to regulatory authorities for the basis for decision-making. The ESIA report may be presented in a series of volumes and specialist reports according to the complexity of the project.<sup>29</sup> Cambodia's legal framework partially conforms with this requirement, but it

<sup>28</sup> Diaz-Chavez and Urban, 2015. Environmental Assessment Module. Centre for Development, Environment and Policy. University of London. <https://www.soas.ac.uk/cedep/ipa/file68624.pdf>

<sup>29</sup> MoNRE (Ministry of Natural Resources and Environment in Lao PDR). 2012. Lao PDR Environmental Impact Assessment Guidelines. Developed by MoNRE, Grontmij and SYKE Environment Institute.

should clearly state that the specific types of impacts (physical, biological, cultural, socioeconomic, etc.) need to be assessed as part of the ESIA process.

As part of the stakeholder consultation process, the ESIA should include a summary of stakeholder consultation activities undertaken, issues identified by stakeholders, how these issues were considered, and recommendations for ongoing consultation. The draft ESIA is presented to PAP and other stakeholders for review and comments, and the ESIA is revised based on these comments. The final ESIA report should document the results of the consultations carried out with PAP and other stakeholders, along with a summary of the concerns raised and an explanation of how these results have been addressed in the ESIA and the ESMMP. The description should specify how women were included in the consultation, taking into consideration their gender-specific knowledge, roles, responsibilities, and potential impacts.<sup>30</sup> The legal framework in Cambodia partially conforms with this procedure, but it should include provisions that require women to be included in the consultation.

The project proponent should continue to disclose information about the project to PAP and stakeholders during the life of the project. The various drafts of the ESIA and ESMMP should be made available to the public. This is often achieved by making hard copies available in public venues (for example, at the regulator's office and at local municipal offices); by posting the documents on a publicly accessible website; and by providing summaries on paper and verbally in local public meetings. International good practice requires making the ESIA and ESMMP fully available on a public website so that it can be accessible to a broad group of interested stakeholders, as well as ensuring local availability.<sup>31</sup> This can be achieved by establishing information centers in the project area and the country's capital city. In Cambodia, there are no clear procedures and guidelines on how to ensure the ESIA report and ESMMP are accessible to the public, so it is in nonconformance for this step.

The project proponent should establish a complaints and grievance redress mechanism to receive and facilitate resolution of affected people's concerns and grievances related to E&S issues arising during the construction, operation, decommissioning, closure, and post-closure phases. The grievance mechanism should address affected people's concerns and complaints promptly, using an understandable and transparent process that is gender responsive, culturally appropriate, and readily accessible by relevant parties, particularly those who need to have access to them. Grievances can be collected in many forms, for example, verbally or in writing, through an intermediary (e.g., a village chief), etc. The grievance mechanism may be managed by the project proponent with involvement of local authorities. This may be accomplished by setting up a project mediation committee that will meet on a regular basis, or in response to an incident. The project proponent should indicate how it will manage complaints and grievances in the ESMMP.<sup>32</sup>

For GBV, and particularly sexual exploitation and abuse as well as sexual harassment complaints, there are risks of stigmatization, rejection, and reprisals against survivors. This creates and reinforces a culture of silence, so survivors may be reticent to approach those directly involved in the project. Therefore, there needs to be multiple channels through which complaints can be registered in a safe and confidential manner. For projects with substantial or high GBV risks, a separate GBV grievance redress mechanism system should be set up, potentially run by a GBV Services Provider, with feedback to the project Grievance Redress Mechanism (GRM) similar to that for parallel GRMs by contractors and consultants.<sup>33</sup>

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<sup>30</sup> IUCN. 2020. Environmental and Social Impact Assessment (ESIA). Guidance Note – ESMS Manual.

<sup>31</sup> Locher, H., and J. Costa. 2018. Hydropower Sustainability Guidelines on Good International Industry Practice. Published by the International Hydropower Association. See <http://www.hydropower.org>

<sup>32</sup> ADB. 2009. Safeguard Policy Statement.

<sup>33</sup> World Bank 2018. Good Practice Note Addressing Gender Based Violence in Investment Project Financing involving Major Civil Works.

Along with grievance mechanisms, accountability mechanisms need to be set up as well. PAP and other stakeholders should be able to submit complaints to the lender's Accountability Mechanism or corporate Grievance Redress Service (GRS), in order to provide an independent forum and process whereby PAP can voice and seek a resolution of their problems, including for alleged violations of the lender's operational policies and procedures. The complaints received should be reviewed promptly, followed by a consultation and review process to find solutions to the complaints. The accountability mechanisms should include GBV Allegation Procedures to report GBV issues, and these mechanisms should clearly lay out confidentiality requirements for dealing with cases.

The legal framework in Cambodia does not conform to the grievance and accountability mechanisms safeguard policy. There are no guidelines on how the grievance mechanisms should be set up and operating, including regulations surrounding transparency, confidentiality, accessibility, documentation procedures, etc. Setting up the GRMs should be compulsory. This is particularly important for projects that are considered to have substantial or high risk of GBV. There should be legal provisions requiring that a separate GBV grievance mechanism system be established and include feedback to the lender's Accountability Mechanism.

### Stage 3: Project Structuring and Financing

For the five steps included in the legal conformance assessment for Stage 3: Project Structuring and Financing, two (40%) were in partial conformance, and three (60%) did not conform.

International E&S performance standards require that all E&S requirements, as well as mitigation and management measures and plans, should be included in all relevant procurement and contracting processes. Best practices also dictate that stakeholder engagement is conducted throughout the project cycle, and that the project's ESIA reports, management plans, and other project documents will be made accessible to PAP and other stakeholders. An E&S audit should be conducted after the ESIA and ESMMPs are submitted, to determine the degree to which the project activities, processes, operations, and services are meeting the stipulated requirements. These provisions are not included in Cambodia's legal framework and therefore do not conform to international E&S policies.

The legal framework only partially conforms to the international E&S performance standard for project reporting and monitoring. The relevant legal provisions put the responsibility of monitoring throughout the life cycle of the project on government staff, and not on the project proponent. The Sub-Decree No. 72 on Environmental Impact Assessment states that the project proponent is responsible only for monitoring for six months after ESIA approval. There are no explicit provisions stating that the project proponent is required to document and disclose progress and monitoring results, apart from the suggested outline in Annex I in the Prakas on General Guidelines for Developing Initial and Full EIA Reports. Reporting requirements should be mandatory, with details as to the acceptable level of reporting. There should be provisions requiring the reports also be disseminated to PAP and other stakeholders.

### Stage 4: Conditions Precedent and Project Completion

For the five steps included in the legal conformance assessment for Stage 4: Conditions Precedent and Project Completion, one (20%) was in partial conformance and four (80%) did not conform.

Project construction takes place at this stage, to reach commercial operations. International E&S standards require that the safeguard commitments and mitigation measures in the ESMMP and action plans relevant for the construction phase should be implemented. Stakeholder engagement and project disclosure is expected to continue, and grievance mechanisms should be in place and functioning as planned, with grievances raised by stakeholders and workers documented in reports. E&S audits should continue, with the results used to revise the ESMMP and mitigation measures when necessary. There are no provisions in the country's legal framework that conform to these E&S policies. There are no requirements for

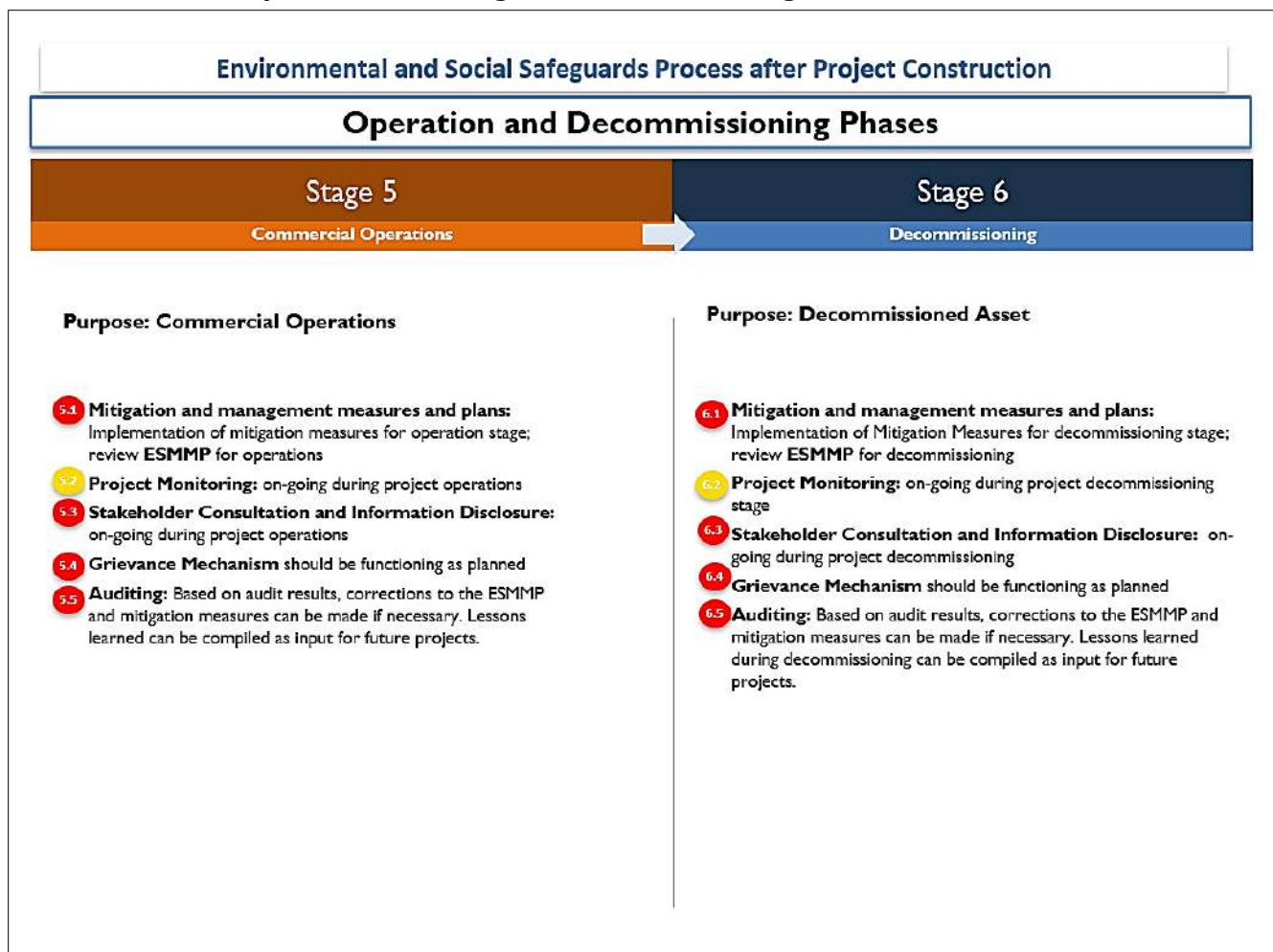
project-level grievance mechanisms in the existing legislation, and there is no explicit mention of the scheduling of public participation at different points of the ESIA process.

The country’s ESIA reporting requirements are in partial conformance. Annex I in the 2009 Prakas on General Guideline for Developing Initial and Full EIA Reports suggests that the environmental management plan must contain a schedule for submission of monitoring reports to MoE and relevant agencies on a quarterly basis; however, this is a recommendation only. Reporting requirements should be mandatory, with details as to the acceptable level of reporting. There should be provisions requiring the reports also be disseminated to PAP and other stakeholders.

### Stage 5: Commercial Operations

The summary results from the legal conformance assessment for all the key steps during Stage 5: Commercial Operations and Stage 6: Decommissioning are presented in Figure 12. For the five steps included in the legal conformance assessment at this stage, one (20%) was in partial conformance, and four (80%) did not conform.

**Figure 12. Results of the legal conformance assessment for the E&S safeguards during Stage 5: Commercial Operations and Stage 6: Decommissioning in Cambodia**



During commercial operations, the E&S safeguard commitments and mitigation measures relevant for this stage should be implemented by the project proponent and followed by the contractor and subcontractors. Like the construction stage, stakeholder engagement and project disclosure should

continue, grievance mechanisms should be in place and functioning, and E&S audits should be taking place. Cambodia's legal framework does not include these requirements and therefore does not conform to these international E&S policies.

The project proponent is expected to monitor the progress of implementation of safeguard plans during the commercial operations stage, and to verify the compliance with safeguard measures and their progress toward intended outcomes. The country's ESIA reporting requirements are in partial conformance because there are no provisions or guidelines for the project proponent on how to establish and follow a robust monitoring plan.

#### Stage 6: Decommissioning

The results of the legal conformance assessment at the decommissioning stage are the same as for commercial operations; one (20%) was in partial conformance, and four (80%) did not conform.

The E&S safeguard commitments and mitigation measures as detailed in the ESMMP and action plans relevant for the decommissioning phase of the project should be implemented. Stakeholder engagement and project disclosure should also be operating, grievance mechanisms should still be in place and include documentation of grievances raised by stakeholders and workers, and the final E&S audits should be done. Cambodia's legal framework does not include these requirements and therefore does not conform to these international E&S policies.

Cambodia's ESIA reporting requirements are in partial conformance because although project monitoring is required during the decommissioning stage, there are no provisions or guidelines for the project proponent on how to establish and follow a robust monitoring plan.

## 3. LAO PDR

### 3.1 Overview of the ESIA System in Lao PDR

The first law governing the protection of the environment, including the assessment and management of projects, was the 1999 Environmental Protection Law (EPL), and its associated Decree on the Implementation of the EPL (2002). The 1999 EPL was amended in December 2012, with new articles on Integrated Spatial Planning, Strategic Environmental Assessment, Preventive Measures Against Natural Disasters, Initial Environmental Examination, Use of Clean Technology, Identification of National Environmental Quality Standards, and Management of Toxic and Hazardous Wastes, among others.

Responsibilities and procedures for conducting ESIA, together with the requirements for E&S monitoring of projects, were further revised in the 2010 Decree on Environmental Impact Assessment (EIA Decree). This decree categorized investment projects according to a schedule in the EIA Decree as Category 1 (small-scale investments that require an IEE) or Category 2 (large-scale investments that require an ESIA). To support the implementation of the 2010 EIA Decree, Ministry of Natural Resources and Environment (MoNRE) developed the Lao PDR Environmental Impact Assessment Guidelines 2012 (EIA Guidelines 2012), with technical assistance from a team of experts from the international consulting company Grontmij and the Finnish Environment Institute (SYKE). The EIA Guidelines 2012 were updated in 2017 and supplemented by the Technical Guidelines for Conducting ESIA Studies 2017, based on lessons learned in reviewing ESIA documents in Lao PDR. Both of these guidelines provide a detailed overview of the ESIA process, along with the main responsibilities of the project proponent. The 2017 guidelines provide additional guidance for project developers and the government on the screening and scoping process, environmental management and monitoring requirements, environmental rehabilitation and project closure. The 2017 guidelines also provide more details about risk assessments and risk mitigation measures, as well as the importance of continuing stakeholder consultation during the project operation phase.

The 2010 EIA Decree was superseded by two Ministerial Instructions in 2013, the Ministerial Instruction on ESIA and the Ministerial Instruction on IEE, which prescribed the separate processes for IEEs and ESIA. The EIA Decree was amended and promulgated by the National Assembly in December 2019. The new decree includes more details on all the required steps in the IEE and ESIA process, including the preparation of the Environmental Management and Monitoring Plan (EMMP) and requirements for public involvement during the different stages of the project-development cycle, as well as the rights and duties of PAP and the project proponent.

The other key legal instruments relevant to the ESIA process in Lao PDR are:

- Law on Forestry (2019)
- Law on Water and Water Resources (2017)
- Law on Investment Promotion (2016)
- Decree 84 on Compensation and Resettlement of People Affected by Development Projects (2016)
- Ministerial Instructions on Pollution Control (2016)
- Constitution of the Lao People's Democratic Republic (2015)



- Labor Law (2013)
- Decree on Land Lease or Concession (2009)
- Wildlife and Aquatic Law (2008)
- Land Law (2003)

See Annex 2 for the full list of legal instruments that were consulted for the legal conformance assessment in Lao PDR.

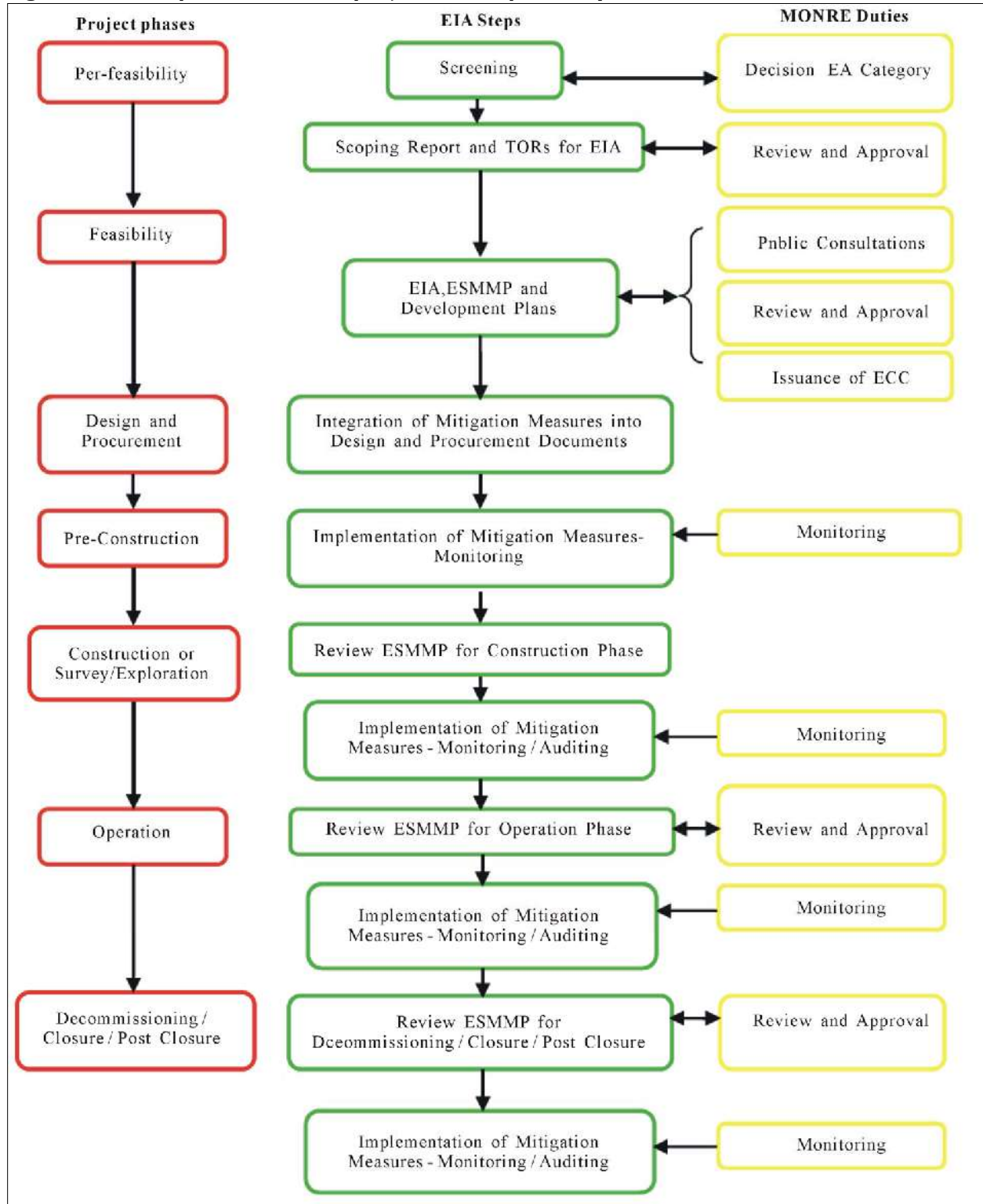
#### Institutional Management System for the ESIA Review Process

MoNRE was established in 2011 and is the government agency responsible for managing the ESIA process, as well as to issue an ECC once an IEE or ESIA report is approved. The EIA Decree stipulates that the report must be completed and the ECC issued prior to the construction of the proposed investment project or activities.

The ESIA process involves four basic steps: (1) screening and scoping; (2) preparation of the ESIA report; (3) review and decision-making; and (4) post-project monitoring.

Figure **13** shows the key ESIA steps that need to be completed by the project proponent throughout the project-planning cycle, along with the roles and responsibilities of MoNRE for reviewing, monitoring, and approving the documents and activities that are undertaken by the project proponent.

**Figure 13. ESIA process and the project-development cycle in Lao PDR**



Source: MoNRE. 2012. EIA Guidelines.

## 3.2 Results

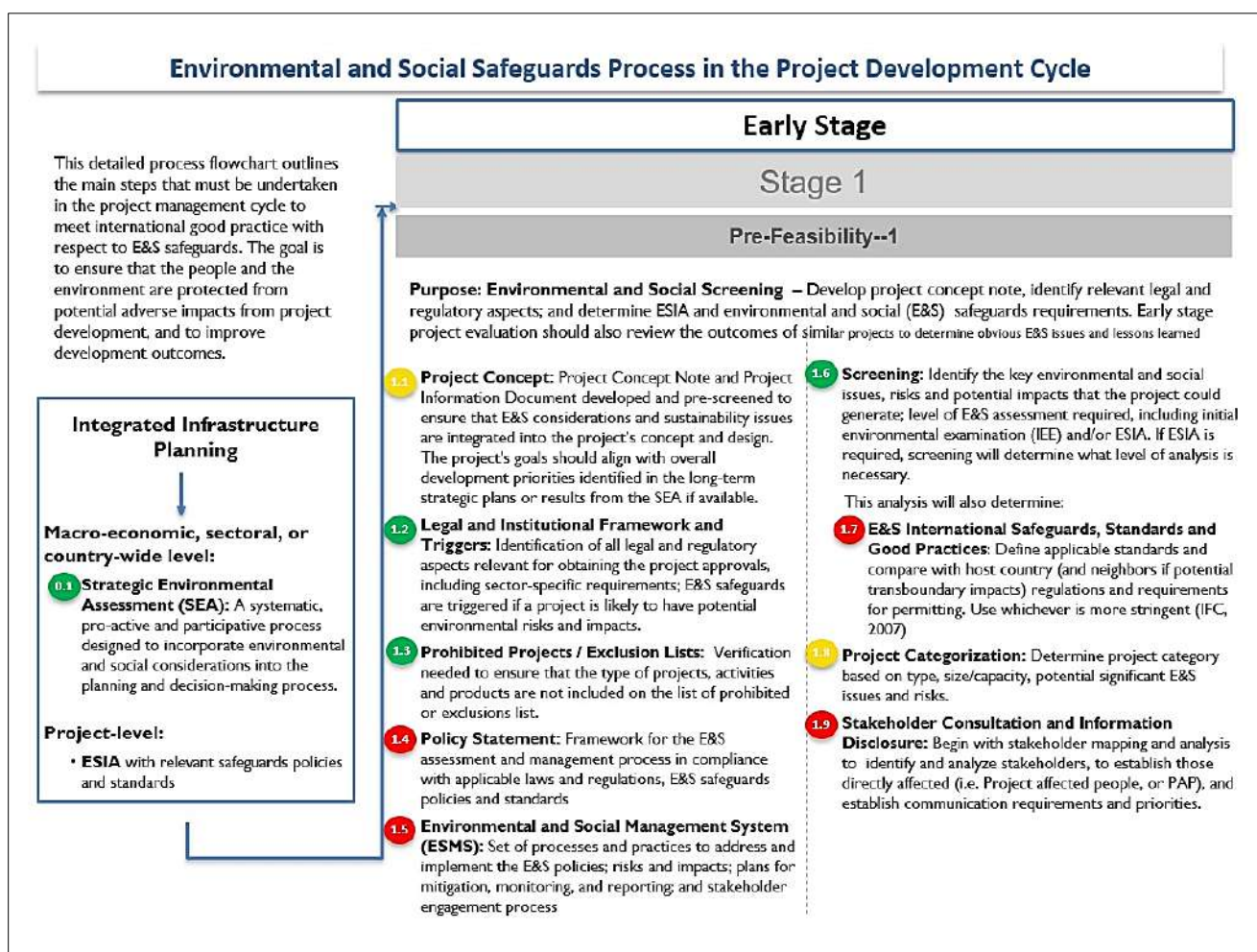
### Strategic Environmental Assessment

Lao PDR's legal framework fully conforms with the E&S safeguard policy to use a SEA as a decision support tool to guide policies, strategic plans, and programs. The revised 2012 Environmental Protection Law contains a new article that requires an SEA to be conducted, especially for the “energy and mining, agriculture and forestry, industry and commerce, public works and transportation, post-telecommunication and communication, information-culture and tourism sector[s].”

### Stage I: Pre-feasibility

The summary results from the legal conformance assessment (Annex 3) for all the key steps at the pre-feasibility stage are presented in Figure 14. For the nine steps included in the legal conformance assessment at this stage, three (33%) were in conformance, two (22%) were in partial conformance, and four (44%) did not conform.

**Figure 14. Results of the legal conformance assessment for the E&S safeguards at the pre-feasibility stage for Lao PDR**



The 2012 Environmental Protection Law lists numerous activities and projects that are prohibited or excluded, and the recently revised Decree on Environmental Impact Assessment contains provisions for screening investment projects and activities.

Provisions requiring the project's concept note and design to include E&S considerations partially conform. The inclusion of the new Article 74, Environmental Obligations, in the 2016 Law on Investment Promotion brings the legislation closer to international standards for responsible business conduct, as there are a limited number of laws on investment that contain such a set of obligations binding upon investors. However, some important provisions are still missing, such as the requirement that investors follow international standards for stakeholder engagement.<sup>34</sup> Provisions requiring the government to use a classification system to reflect the significance of a project's potential E&S risks and impacts partially conforms, as the Decree on Environmental Impact Assessment considers higher-risk projects as "complex projects." However, to fully conform, it should have multiple classification categories, such as high, moderate, and low risk, as per international standards.

For the other four steps, the legal instruments do not conform. The legal framework does not have any corresponding provisions requiring the project proponent to include a policy statement defining their project's E&S objectives and principles, to establish and maintain an ESMS, and to identify and define the applicable international safeguards and standards at the screening stage. The requirements for stakeholder engagement and information disclosure at the pre-feasibility stage also do not conform. Although the Decree on Environmental Impact Assessment follows many of the international safeguard requirements for stakeholder engagement and information disclosure, the requirement to begin the ESIA process with stakeholder mapping and analysis is missing. As a result, there is a risk that many relevant and interested stakeholders may be overlooked, and therefore not included throughout the consultation process.

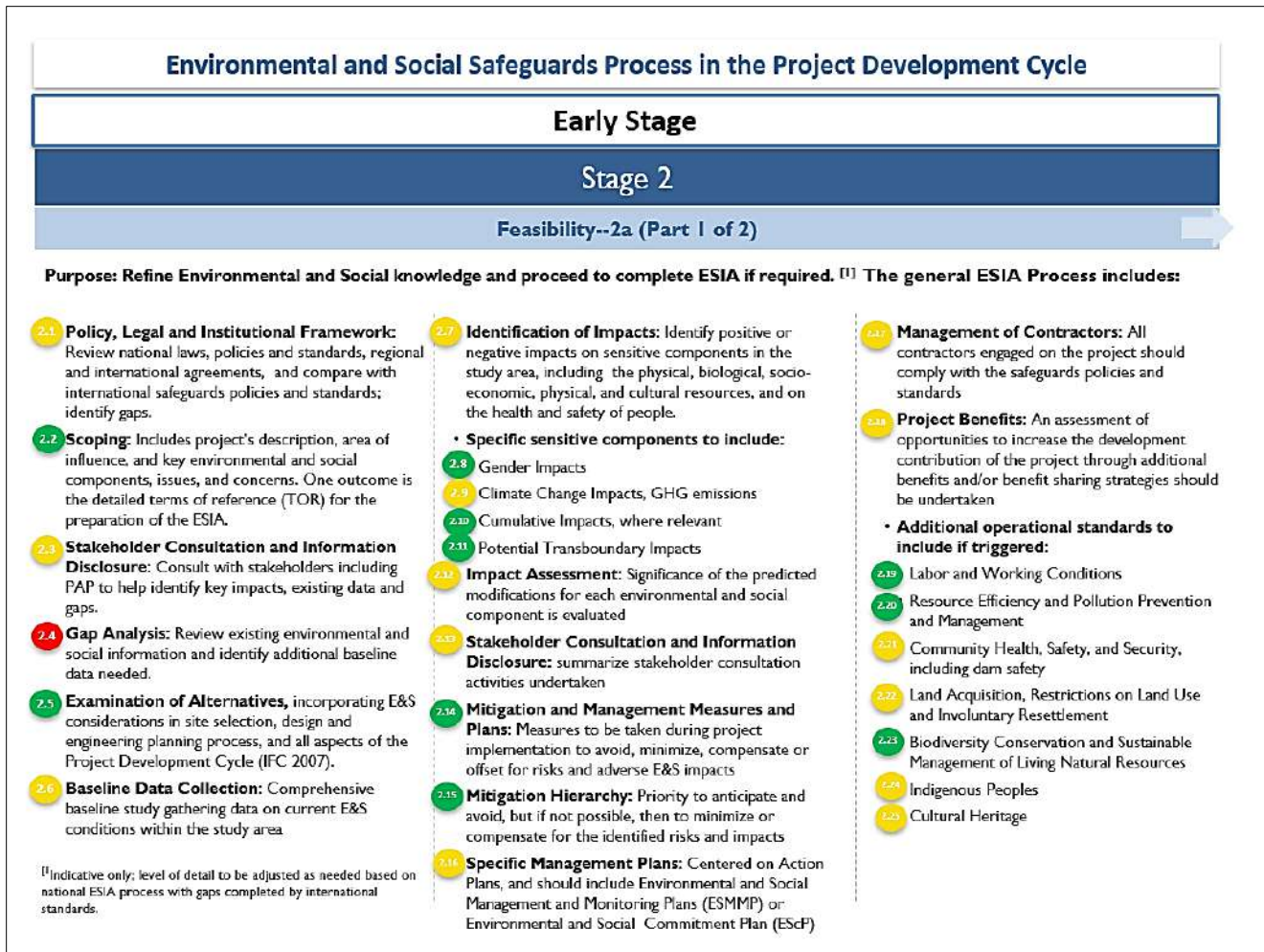
### Stage 2a: Feasibility

The summary results from the legal conformance assessment for all the key steps at the feasibility stage are presented in Figure 15. For the 25 steps included in the legal conformance assessment at this stage, ten (40%) were in conformance, 14 (56%) were in partial conformance, and one (4%) did not conform.

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<sup>34</sup> OECD. 2017. OECD Investment Policy Reviews: Lao PDR, OECD Publishing, Paris.  
<http://dx.doi.org/10.1787/9789264276055-en>

**Figure 15. Results of the legal conformance assessment for the E&S safeguards at the feasibility stage for Lao PDR**



Lao PDR's legal framework partially or fully conforms with all the key procedural steps at the feasibility stage, except there are no legal provisions to include a gap analysis. Full conformance was attributed to scoping requirements, examination of alternatives, and the identification of gender impacts, cumulative impacts, and potential transboundary impacts. There are provisions stating the importance of identifying and defining the management program, along with the E&S mitigation and management measures. Following the mitigation hierarchy is also emphasized, i.e. to anticipate and avoid, or where avoidance is not possible, minimize, and, where residual impacts remain, compensate/offset for risks and impacts to people and the environment.

The Decree on Environmental Assessment describes what is required in the Scoping Report and Terms of Reference (TOR). This decree also requires the project proponent to carry out analysis of at least three alternatives, including the "no development" option. The Decree on Environmental Impact Assessment also includes provisions stating that during the ESIA process, the project proponent must conduct a cumulative impact assessment, a transboundary impact assessment, and a gender assessment. Although this conforms with international E&S safeguard policy, the decree could be improved if specific provisions are added with requirements to assess the risk of GBV. The global prevalence of this human-rights abuse is alarming and often hidden, and infrastructure projects with major civil works can exacerbate the risk of GBV.

The decree describes in detail what should be included in the EMMP and Social Management and Monitoring Plan (SMMP), along with the principles, regulations, and procedures “to prevent, reduce, and mitigate negative environmental impacts; to ensure that the affected peoples are reasonably compensated, resettled, and assisted in improving their living conditions better than existing situation ...” Although this aligns with the mitigation hierarchy, it could be further improved by including a specific requirement to offset for risks and impacts when it is not possible to avoid or mitigate them.

Lao PDR’s legal framework partially conforms with all the other main steps at the feasibility stage. In the Decree on Environmental Impact Assessment, in parallel with the preparation of the feasibility study, the project proponent is required to prepare the ESIA report in Lao language in accordance to the relevant laws and regulations and the scoping report and TOR. However, there is no provision in the decree to compare the national laws with international safeguard policies and standards, and to identify the gaps between them.

As part of the stakeholder consultation and information-disclosure process, MoNRE is expected to organize consultation workshops with relevant ministries and agencies as needed when reviewing and approving the scoping report and TOR, but there are no requirements to include PAP, CSOs, and other key stakeholders. During the preparation of the ESIA, the project proponent should carry out several types of consultation with stakeholders, including PAP as well as national, provincial, and district government officials. Informal consultation should include regular discussions with residents and local government staff. Formal consultation should include structured meetings with government authorities and village authorities, as well as individual household surveys. There is no provision in the Decree on Environmental Impact Assessment requiring the more robust ICP process for projects with potentially significant adverse impacts. There is also no provision in the decree when consulting with Ethnic Groups to obtain their free, prior, and informed consent. The decree should include provisions requiring specialized consultations to identify GBV risks in areas deemed of substantial and high risk.

For baseline data collection, internationally accepted standards for sampling periods have been established for environmental sampling and monitoring, and usually consist of data collected over a minimum of one year to account for seasonal changes. Article 22 in the Decree on Environmental Impact Assessment should include the requirement for seasonal baseline data. Impact assessments should include an analysis for seasonally representative information (such as hydrologic regimes, aquatic, or terrestrial ecology), and this requirement should also be included in Article 22. The decree should include more specific instructions on identifying and analyzing climate change risks and impacts to the physical, biological, socioeconomic, visual, and physical cultural resources. The provision as it is currently written is too vague, and therefore the analysis of climate change risks and impacts may be too cursory and without enough detail to be useful.

The Decree on Environmental Impact Assessment states that the ESIA report must include the methodology and data collection techniques that have been applied in the ESIA process. However, there are no provisions or guidance on what methodologies for impact evaluation would be acceptable and robust, and that the impacts should be considered separately for the project construction and operation stages. The Ministerial Instructions on Pollution Control do not provide guidance on acceptable methodologies.

Provisions are included in the decree requiring the project proponent to “prepare separate EMMP document and attach any corresponding specific management plan as needed.” Gender Action Plans and GBV Action Plans should also be included as examples of the specific management plans that are required as part of the ESIA report. Article 60 in the decree states that the project proponent is accountable for all environmental impacts when contractors do not comply with the terms of their contract. This should

include “social” impacts as well. It would also be beneficial to include provisions requiring contractors to sign a Code of Conduct (CoC) that includes specific provisions for addressing GBV.

While there are provisions for benefit sharing in the key laws, decrees, and regulations related to infrastructure projects, specific provisions should be added to ensure that women and vulnerable or disadvantaged individuals and groups share equally in the project’s benefits. Currently the relevant legal instruments are mostly gender neutral and risk perpetuating gender stereotypes or overlooking the needs and considerations of women or vulnerable groups.

Depending on the risks and impacts identified, specific operational standards may be triggered. Lao PDR’s level of conformance to these operational standards is listed in Table 3 below:

**Table 3. Lao PDR’s extent of conformance with International Operational Standards**

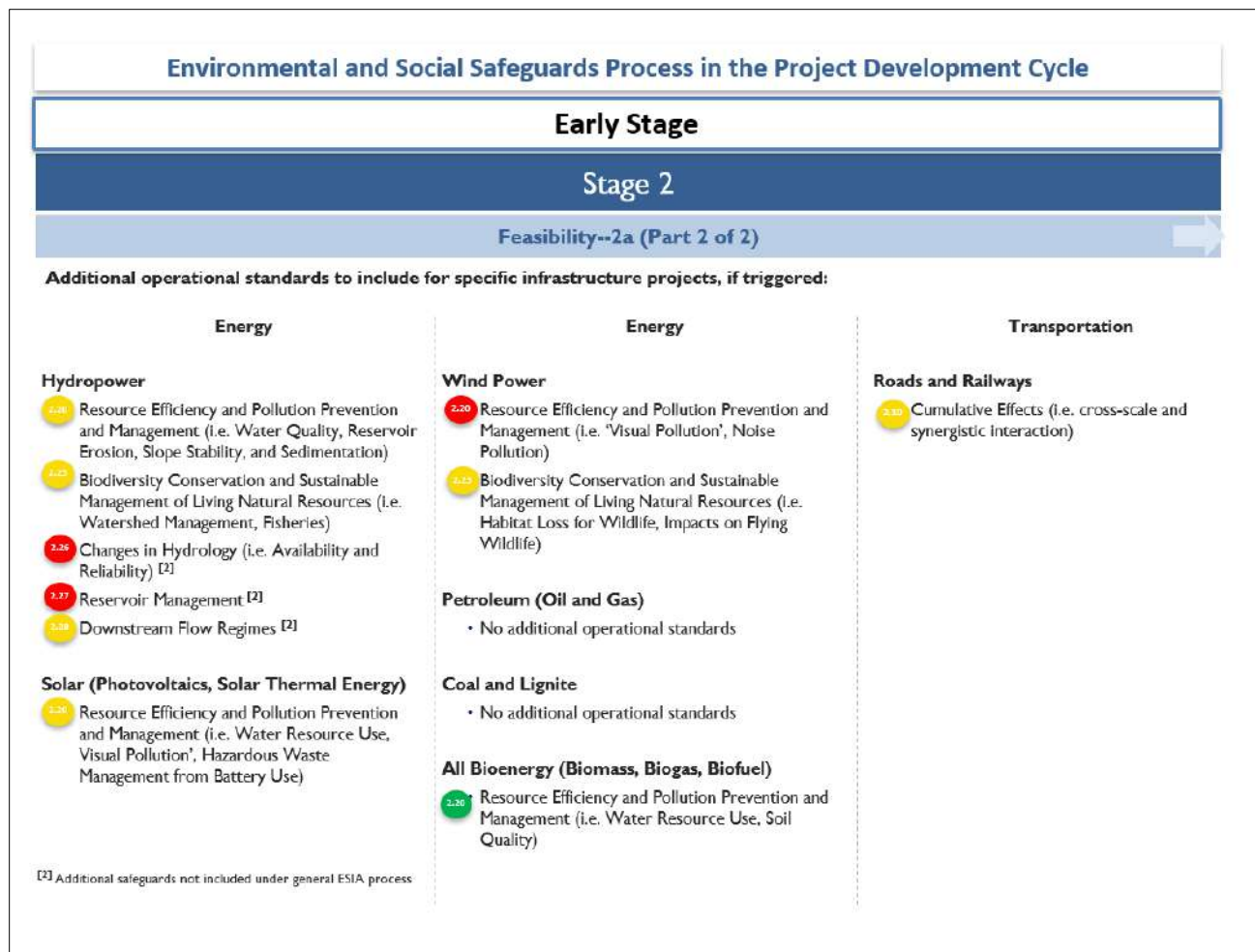
Specific Operational Standards	Extent of Conformance	of Gaps
Labor and Working Conditions	Full conformance	The Labor Law can be improved by including specific strategies to promote equal employment opportunities for women.
Resource Efficiency and Pollution Prevention and Management	Full conformance	
Community Health, Safety, and Security, including Dam Safety	Partial conformance	Provisions are needed that regulate dam safety.
Land Acquisition, Restrictions on Land Use, and Involuntary Resettlement	Partial conformance	There are no legal provisions in the relevant decrees advising project proponents to avoid involuntary resettlement and to ensure that the consultation process includes both women’s and men’s perspectives. There is no guidance on how to ensure gender equality throughout the consultation process.
Biodiversity Conservation and Sustainable Management of Living Natural Resources	Full conformance	
Indigenous Peoples / Ethnic Groups <sup>35</sup>	Partial conformance	There is no provision in the Decree on Environmental Impact Assessment requiring the more robust ICP process for projects with potentially significant adverse impacts. There is also no provision in the decree when consulting with indigenous people / ethnic groups to obtain their free, prior, and informed consent (FPIC).
Cultural Heritage	Partial conformance	In the Decree on Environmental Impact Assessment, it should be explicit that the project proponent is required to collect baseline data on the physical cultural resources in the project area, and then the data must be used as part of the impact assessment.

Apart from the operational standards listed above that could apply to any development project, there are additional operational standards that would need to be included that are specific to the inherent risks and impacts from infrastructure projects. The results from the legal conformance assessment for these additional operational standards are shown in Figure 16 as well as in Table 4, along with Lao PDR’s level of conformance.

<sup>35</sup> The GoL uses the term “ethnic groups” instead of “indigenous people.”



**Figure 16. Results of the legal conformance assessment for the additional E&S operational safeguards relevant for infrastructure projects for Lao PDR**



**Table 4. Lao PDR's extent of conformance with International Operational Standards specific to infrastructure projects**

Specific Operational Standards	Extent of Conformance	Gaps
<b>Energy: Hydropower</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Quality, Reservoir Erosion, Slope Stability, and Sedimentation)	Partial conformance	Provisions should be added to the Decree on Environmental Impact Assessment and the Environmental Protection Law to specifically address the issues related to pollution prevention and management for hydropower projects due to these projects' significant adverse environmental impacts. One example would be to include requirements for a life cycle management approach to sediment management.
Biodiversity Conservation and Sustainable Management of Living Natural Resources (i.e., Watershed Management, Fisheries)	Partial conformance	Although the examples of specific EMMPs in Article 23 include watershed forest protection plans and river basin management plans, provisions should be added in the other articles requiring the data collection and impact assessment to extend to the

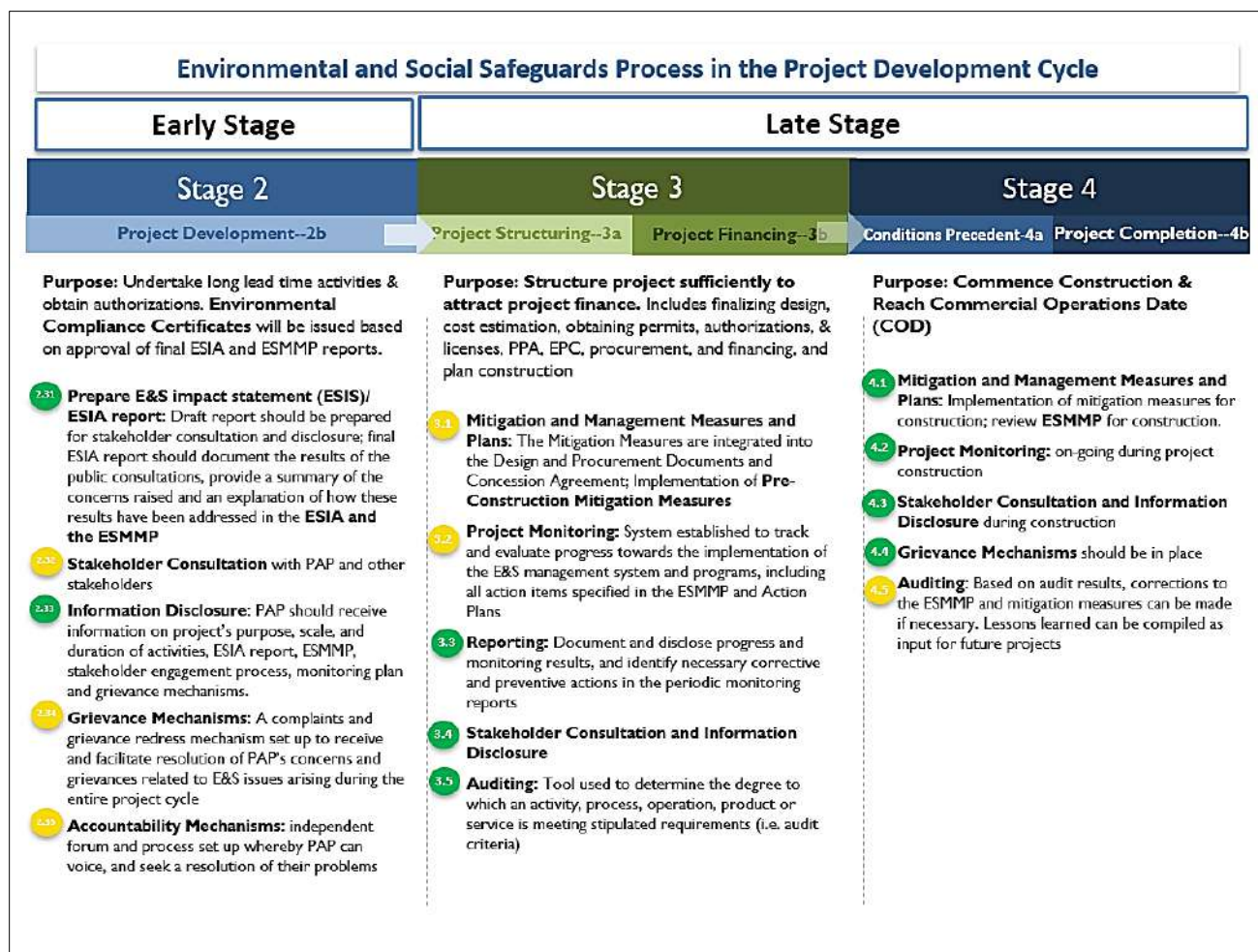
		watershed area as part of the project areas of influence.
Changes in Hydrology (i.e., Availability and Reliability)	No conformance	The legal framework should include provisions that require a hydrological resource availability and reliability assessment to be undertaken.
Reservoir Management	No conformance	The legal framework should include provisions for reservoir management, which includes planning for and managing the environmental, social, and economic issues within the reservoir area during project planning, project implementation, and operations of the hydropower facility. Assessments undertaken during the preparation and implementation stage need to ensure issues prior to and during reservoir filling and operations have been taken into consideration, with no significant gaps. At the operation stage, ongoing or emerging reservoir management issues should be identified, and if management measures are required then monitoring should be undertaken to assess if these measures are effective.
Downstream Flow Regimes	Partial conformance	In the Decree on Environmental Impact Assessment, it states that for hydropower projects located on the Mekong River, when preparing the ESIA report, the project proponent has to comply with the 1995 Agreement on the Cooperation for Sustainable Development of the Mekong River and the relevant regulations. This agreement includes an article to maintain flows on the mainstream (Article 6) and an article to “make every effort to avoid, minimize and mitigate harmful effects that might occur to the environment, especially the water quantity and quality, the aquatic (ecosystem) conditions, and ecological balance of the river system” (Article 7). These provisions should be extended to all river systems in the country, including tributaries of the Mekong River.
<b>Energy: Solar (Photovoltaics, Solar Thermal Energy)</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Resource Use, Visual “Pollution,” Hazardous Waste Management from Battery Use)	Partial conformance	There are no corresponding legal provisions that require baseline data to be collected and analyzed for visual impacts. This requirement should be included in the Decree on Environmental Impact Assessment.
<b>Energy: Wind Power</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Visual “Pollution,” Noise Pollution)	No conformance	There are no corresponding legal provisions that require baseline data to be collected and analyzed for visual and noise impacts. This requirement should be included in the Decree on Environmental Impact Assessment.
Biodiversity Conservation and Sustainable Management of Living Natural Resources (i.e., Habitat Loss for Wildlife, Impacts on Flying Wildlife)	Partial conformance	The existing legal provisions should include data collection for specific biodiversity issues relevant for wind energy projects.
<b>Energy: Coal and Lignite</b>		
No additional operational standards		

<b>Energy: All Bioenergy (Biomass, Biogas, Biofuel)</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Resource Use, Soil Quality)	Full conformance	
<b>Transportation: Road and Railways</b>		
Cumulative Effects (i.e., cross-scale and synergistic interaction)	Partial conformance	While it would be beyond the scope of any specific project to include an assessment of the incremental impact of the project when added to the national transportation system, provisions could be included in the Decree on Environmental Impact Assessment.

## Stage 2b: Project Development

The summary results from the legal conformance assessment for all the key steps at the project-development stage, as well as Stage 3: Project Structuring and Financing and Stage 4: Conditions Precedent and Project Completion are presented in Figure 17. For the five steps included in the legal conformance assessment for Stage 2b: Project Development, two (40%) were in conformance and three (60%) in partial conformance.

**Figure 17. Results of the legal conformance assessment for the E&S safeguards during project development, project structuring and financing, and conditions precedent and project completion for Lao PDR**



The studies and management plans that are required in the ESIA report are described in various articles in the Decree on Environmental Impact Assessment and are in line with international E&S safeguard policy. Article 64 in the decree refers to the disclosure of information on the IEE or ESIA reports and EMMP, including the cost for implementation to the PAP and other stakeholders, as well as the existing and potential direct and indirect environmental impacts generated by the investment projects and activities. Lao PDR's legal framework only partially conforms with all the requirements for stakeholder consultation at this stage, since as per the project feasibility stage, it should be mandatory to include the ICP and FPIC processes when consulting with PAPs and ethnic groups. Provisions are also needed to include specialized consultations to identify GBV risks in areas deemed of substantial and high risk.

The legal framework partially conforms to the international grievance and accountability mechanisms safeguard policy. In the Decree on Environmental Impact Assessment, Article 38 on Public Involvement during Construction and Operation Phases states that "The affected peoples and other stakeholders may provide comments on the implementation of investment projects and activities through various means: urgent telephone, on line, electronic, written comments or complaints, letter to the project proponent or to relevant government and others." However, to fully conform, provisions should also include additional mechanisms that provide a way to register complaints related to GBV in a safe and confidential manner. For projects that are considered to have substantial or high risk of GBV, a recommendation to establish a separate GBV grievance mechanism system, with feedback to the lender's Accountability Mechanism, could be included.

### Stage 3: Project Structuring and Financing

For the five steps included in the legal conformance assessment for Stage 3: Project Structuring and Financing, three (60%) were in conformance and two (40%) in partial conformance.

International E&S performance standards require that all E&S requirements, as well as mitigation and management measures and plans, should be included in all relevant procurement and contracting processes. These mitigation and management plans include action items that are used as part of the monitoring activities throughout the project's life cycle. Lao PDR's legal framework is in partial conformance with these best practices. In the Decree on Environmental Impact Assessment, Articles 40 to 47 describe what is needed before the Government of Lao PDR (GoL) will issue an ECC certifying environmental acceptance for investment projects and activities. However, there are no provisions requiring the ESMMP be included as part of the procurement and contracting processes. There are provisions in this decree mandating the project proponent to establish a monitoring system, but an explicit requirement to establish a GBV management unit as part of the monitoring system is also recommended, with appropriate specialists, for projects that have a substantial or high risk for GBV.

The decree includes provisions and is in full conformance with reporting obligations, stakeholder consultation and information disclosure, as well as the need to conduct an E&S audit.

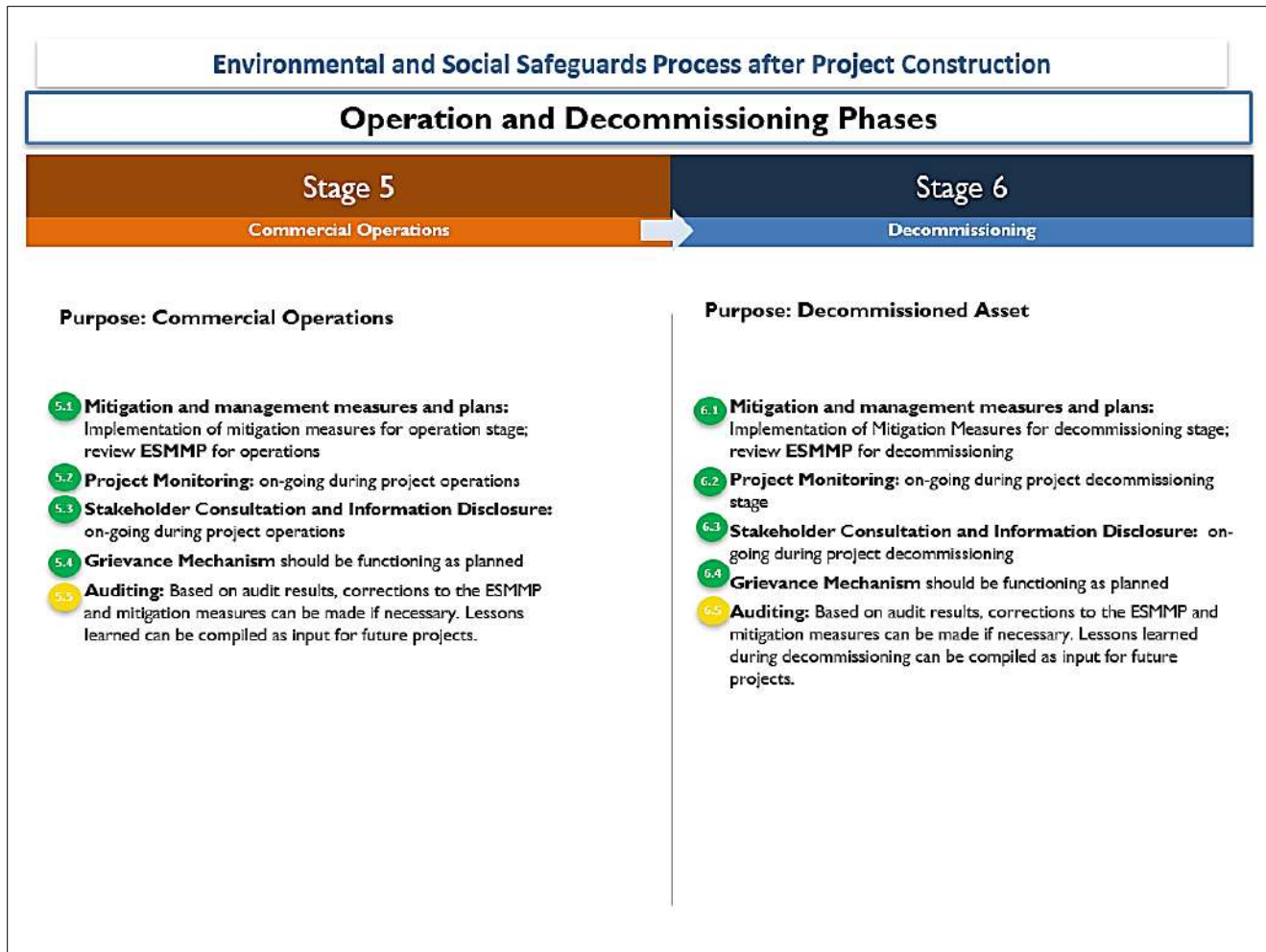
### Stage 4: Conditions Precedent and Project Completion

For the five steps included in the legal conformance assessment for Stage 4: Conditions Precedent and Project Completion, four (80%) were in conformance and one (20%) in partial conformance. The legal framework is in full conformance with the policy to implement the E&S safeguard commitments and mitigation measures during the construction phase, to report monitoring results on a timely basis, to engage with stakeholders and disclose key project documents, and to ensure the grievance mechanisms are in place and functioning as planned. The Decree on Environmental Impact Assessment partially conforms to the auditing requirements. While the decree includes articles pertaining to ongoing inspection of the project activities, there are no specific provisions stating that the results of the audits should be used to make corrections to the ESMMP.

## Stage 5: Commercial Operations

The summary results from the legal conformance assessment for all the key steps during Stage 5: Commercial Operations and Stage 6: Decommissioning are presented in Figure 18. For the five steps included in the legal conformance assessment at this stage, four (80%) were in conformance and one (20%) in partial conformance.

**Figure 18. Results of the legal conformance assessment for the E&S safeguards during Stage 5: Commercial Operations and Stage 6: Decommissioning for Lao PDR**



The Decree on Environmental Impact Assessment states that an updated EMMP should be prepared during the commercial operations stage and followed by the contractor and subcontractors. The decree lists the responsibilities of the project proponent and GoL for public consultation during this stage. It also states that the E&S information, such as the IEE/ESIA report, the EMMP, and reports on the implementation of the project's environmental plan, must be made available to the public through newspaper, television, village communication systems, radio programs, websites, or other means. The PAP and other stakeholders may provide comments on the implementation of investment projects and activities through various means: telephone hot line, email or written comments or complaints, or letters to the project proponent or to relevant government and others. Like the construction stage, the Decree on Environmental Impact Assessment partially conforms to the auditing requirements due to the lack of provisions stating that the results of the audits should be used to make corrections to the ESMP.

### Stage 6: Decommissioning

The results of the legal conformance assessment at the decommissioning stage are the same as for commercial operations; four (80%) were in conformance and one (20%) in partial conformance. The legal framework conforms with the requirements for mitigation and management measures and plans; for project monitoring, stakeholder consultation, and information disclosure; and for the grievance mechanisms. Provisions should be added to the Decree on Environmental Impact Assessment on how to use the results of the inspections, revise the ESMMP, and improve future projects.

## 4. MYANMAR

### 4.1 Overview of the ESIA System in Myanmar

The Myanmar National Environment Policy was adopted in 1994, but the first law governing environmental protection was enacted recently, in 2012 as the Environmental Conservation Law (ECL). This law provides the legal basis for implementing a range of environmental conservation and management measures, including environmental quality standards, management in urban areas, natural and cultural resources conservation, the process for businesses to apply for permission to engage in an enterprise that poses a risk to the environment, prohibitions, offences, and punishments.<sup>36</sup> The regulations to enact the ECL were developed in 2014 as the Environmental Conservation Rules and include technical guidelines on environmental safeguards and pollution abatement.

The Environmental Impact Assessment Procedure (EIA Procedure) was promulgated by the Government of Myanmar (GoM) at the end of December 2015. This is the legal procedure for the ESIA process, and it provides detailed provisions and guidance for application for an ECC. The EIA Procedure prescribes the types and size of the projects, categories of plan, businesses, and activities which require an IEE or an ESIA.

Another key legal instrument for the ESIA process is the 2015 National Environmental Quality (NEQ) (Emission) Guidelines. These guidelines provide the performance level for effluent and emission control for air emissions, noise pollution, dust, water, and wastewater effluent and discharge from development projects. These guidelines were derived primarily from the IFC Environmental Health and Safety (EHS) Guidelines. Myanmar has not yet established nationwide ambient air- or water-quality monitoring networks, which limits its ability to measure and limit ambient pollutant levels.<sup>37</sup>

Several sector specific ESIA guidelines have also been prepared and are in use. The EIA Guidelines for the Mining Sector were developed with support from the ADB and World Wide Fund for Nature (WWF) for the oil and gas sector with support from the Norwegian Environmental Agency (NEA), and for the hydropower sector with support from IFC.

The GoM has also highlighted the importance of the ESIA process in the 2016 Myanmar Investment Law and 2017 Myanmar Investment Rules. Article 36 requires investors to obtain a permit from the Myanmar Investment Commission (MIC) if their businesses are large, capital-intensive investment projects and are likely to cause a large impact on the environment and the local community. The ESIA report must be attached together with the investment proposal for government assessment and review.<sup>38</sup>

#### Institutional Management System for the ESIA Review Process

In 1990, the National Commission for Environmental Affairs (NCEA) was formed with the mandate to develop environmental policies and regulations. In 2005, the NCEA became part of the Ministry of Forestry, and this ministry was upgraded into the Ministry of Environmental Conservation and Forestry (MOECA) in 2011.<sup>39</sup> Following a restructuring of ministries by the newly elected Parliament and Union

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<sup>36</sup> Office of Natural Resources and Environmental Policy and Planning (ONEP), the Ministry of Natural Resources and Environment, and PTT Public Company Limited.

<sup>37</sup> World Bank. 2019. Myanmar – Country Environmental Analysis: Forest, Fisheries, and Environmental Management. Washington, D.C.: World Bank Group.

<sup>38</sup> Baird, M., and R. Frankel. 2015. Mekong EIA Briefing: Environmental Impact Assessment Comparative Analysis in Lower Mekong Countries. Report published by PACT.

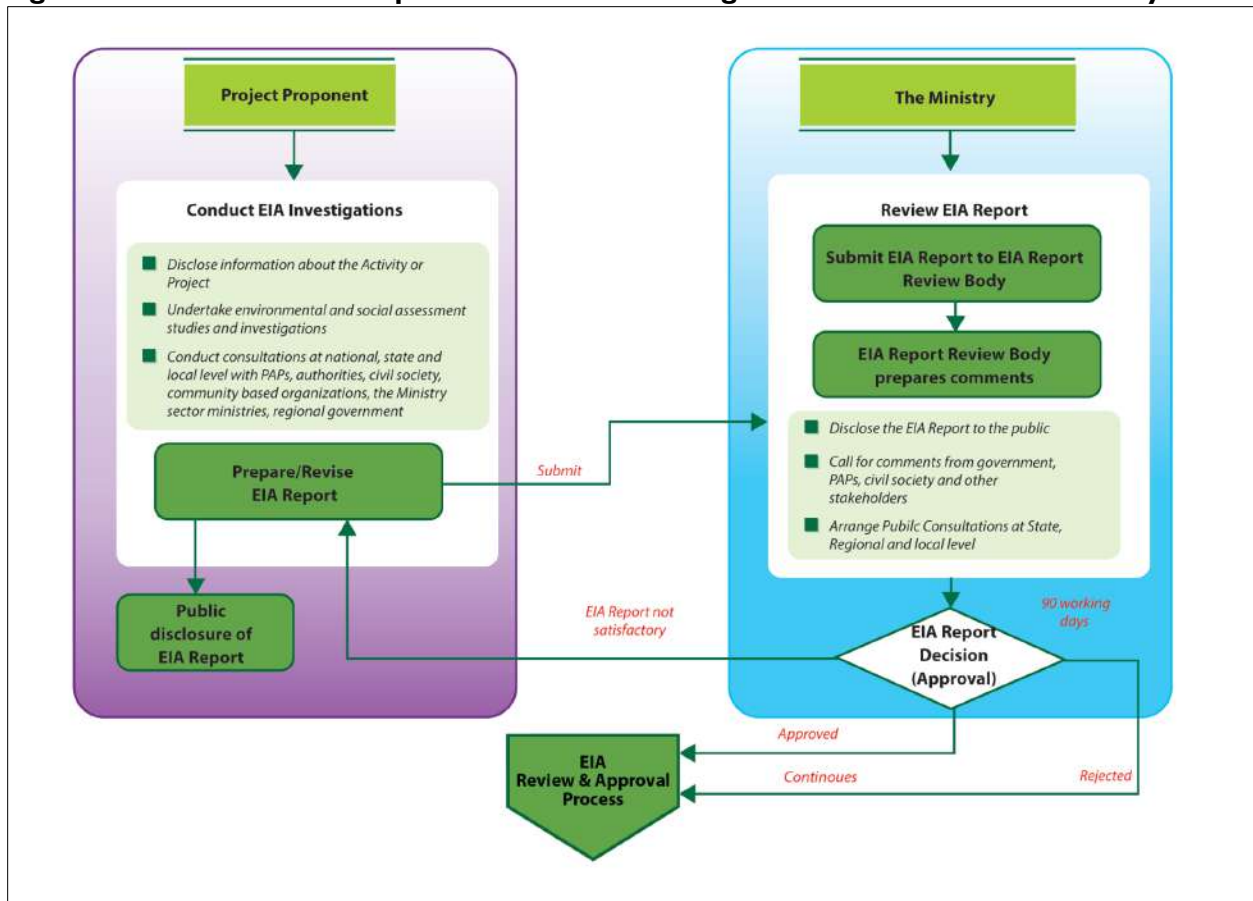
<sup>39</sup> Netherlands Commission for Environmental Assessment. 2019. Myanmar EIA Profile.

government, the portfolio of the Ministry of Mines was merged with the portfolio of MOECAF to establish the Ministry of Natural Resources and Environmental Conservation (MONREC) in March 2016. MONREC acts as a focal point and coordinating agency for environmental management in Myanmar.

The Environment Conservation Department (ECD) was originally established by MOECAF in 2012, and this department has continued under MONREC. It is responsible for the ESIA process at the national level, along with its district and township offices at the sub-national level.

The ESIA investigation and review process as described in the Environmental Impact Assessment Procedures (2015) is shown in Figure 19.

**Figure 19. Environmental Impact Assessment Investigation and Review Process in Myanmar**



Source: Adapted from the Annex 2, investigation, and review process, in the Environmental Impact Assessment Procedures (2015) <sup>40</sup>

<sup>40</sup> Office of Natural Resources and Environmental Policy and Planning (ONEP), the Ministry of Natural Resources and Environment, and PTT Public Company Limited. 2018. Environmental Impact Assessment (EIA) Guidelines for Business Project Development in ASEAN Economic Community (AEC).



## 4.2 Results

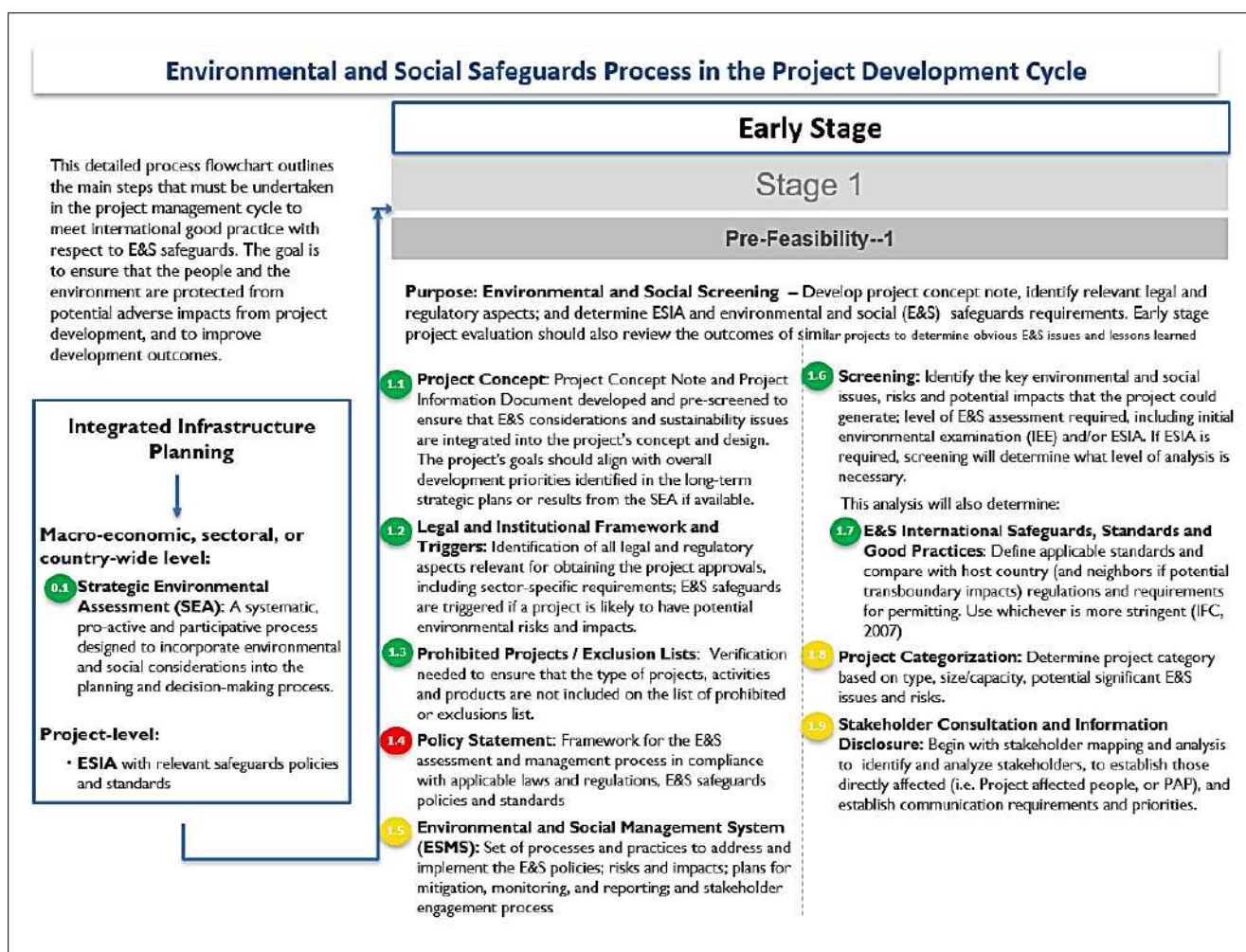
### Strategic Environmental Assessment

Myanmar's EIA Procedures state that MONREC may request that policies, strategies, development plans, frameworks, and programs prepared or being considered by relevant government organizations or other individuals should "be screened for potential environmental and social impacts in accordance with strategic environmental assessment guidelines issued by the Ministry."

### Stage 1: Pre-feasibility

The summary results from the legal conformance assessment (Annex 4) for all the key steps at the pre-feasibility stage are presented in Figure 20. For the nine steps included in the legal conformance assessment at this stage, five (56%) were in conformance, three (33%) were in partial conformance, and one (11%) did not conform.

**Figure 20. Results of the legal conformance assessment for the E&S safeguards at the pre-feasibility stage for Myanmar**



Myanmar's legal framework fully conforms with many of the key steps required as part of international E&S safeguard policy at the pre-feasibility stage. When a project proponent or an investor submits their proposal to the MIC, the Foreign Investment Rules (2013) state that the proposal must include the environmental protection and conservation scheme complying with the existing laws. There are legal

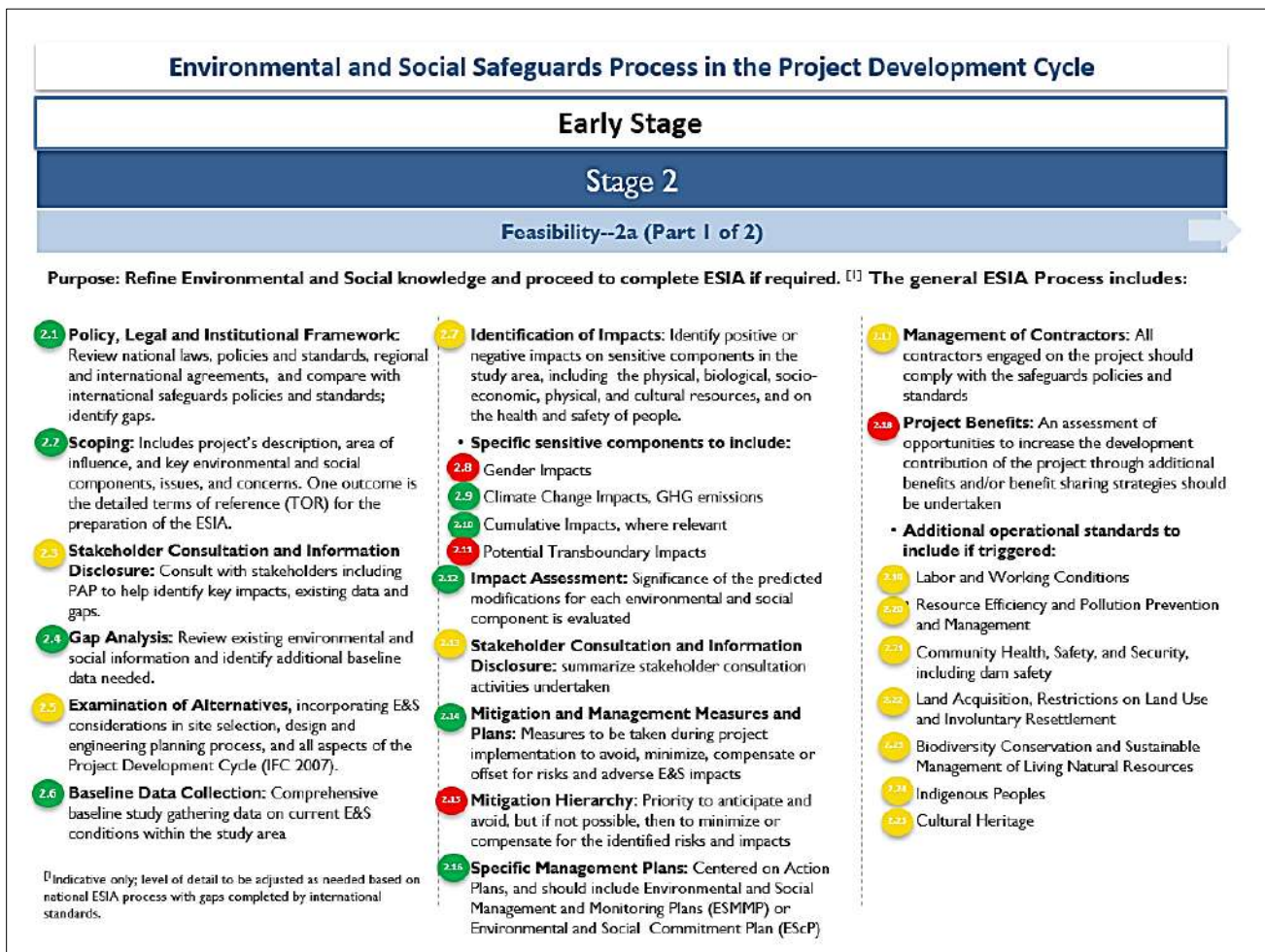
provisions requiring the identification of the legal and regulatory aspects and requirements, license conditions, and reporting requirements needed for project approvals, as well as a list of prohibited projects. The EIA Procedures require a robust screening process, which must include the relevant national and international safeguard standards adopted by the GoM. However, there are no legal provisions that state the project proponent must provide an overarching policy framework defining the E&S objectives and principles to include in their assessment and management process.

Although the EIA Procedures recommends an ESMS system be put in place, this should be mandatory and not considered as optional. Annex I in the EIA Procedures includes a list of proposed project or activity requiring an IEE or ESIA, but these projects are not further classified by “High Risk, Substantial Risk, Moderate Risk or Low Risk” categories. Stakeholder mapping is included as one of the requirements in the stakeholder consultation process, but it is expected to take place at the scoping phase and not at the pre-feasibility phase.

### Stage 2a: Feasibility

The summary results from the legal conformance assessment for all the key steps at the feasibility stage are presented in Figure 21. For the 25 steps included in the legal conformance assessment at this stage, nine (36%) were in conformance, 12 (48%) were in partial conformance, and four (16%) did not conform.

**Figure 21. Results of the legal conformance assessment for the E&S safeguards at the feasibility stage for Myanmar**



In the EIA Procedures, Article 49(b) states that at the scoping phase, “the proposed Project shall start the process of understanding the applicable regulations and standards, and their context for Project design and completion of the EIA.” Myanmar is the only country within the CLMTV countries with provisions requiring the project proponent to conduct a gap analysis. Full conformance was also attributed to scoping requirements, and comprehensive baseline data collection in compliance with national and international standards adopted by the GoM. The legal framework partially conforms with the requirement to identify the physical, biological, social, socioeconomic, health, cultural, and visual impacts, but some specific components are missing. The EIA Procedures requires the identification and assessment of “potential impacts on climate change such as greenhouse gas emissions and loss of carbon sinks or stocks,” and cumulative impacts. However, there are no provisions requiring an identification and assessment of transboundary impacts and gender impacts. Furthermore, there is no legal requirement nor any recommendation or guidance to include women or any other specific social group (e.g., ethnic or marginalized groups) as part of the stakeholder consultation process.

The legal framework fully conforms with the requirement to include E&S mitigation and management measures in the ESIA process, as well as to develop specific management measures and plans when needed for all project phases (i.e., preconstruction, construction, operation, decommissioning, closure, and post-closure). Provisions need to be added, though, explicitly stating that these plans should be developed based on the mitigation hierarchy.

The EIA Procedures include several articles describing the process that the project proponent must follow for public consultation and “all relevant project-related information” through all phases of the IEE and ESIA process. To be in full conformance, however, the legal framework should explicitly state that a Stakeholder Engagement Plan is required at the scoping stage. Provisions also need to be added requiring the more robust ICP process for projects with potentially significant adverse impacts, as well as FPIC requirements when consulting with indigenous people / ethnic groups. The decree should include provisions requiring specialized consultations to identify GBV risks in areas deemed of substantial and high risk.

The EIA Procedures partially conform to international best practices when managing contractors. As part of the section on “Responsibility for all Adverse Impacts,” Article 102(a) states that “the Project Proponent shall bear full legal and financial responsibility for all of the Project Proponent’s actions and omissions and those of its contractors, subcontractors, officers, employees, agents, representatives, and consultants employed, hired, or authorized by the Project acting for or on behalf of the Project, in carrying out work on the Project.” This section should also include a specific requirement to develop a CoC with GBV safeguards. There are also no provisions for benefit sharing in the key laws, decrees, and regulations related to infrastructure projects.

Depending on the risks and impacts identified, specific operational standards may be triggered. Myanmar’s level of conformance to these operational standards are listed in Table 3.

**Table 5. Myanmar’s extent of conformance with International Operational Standards**

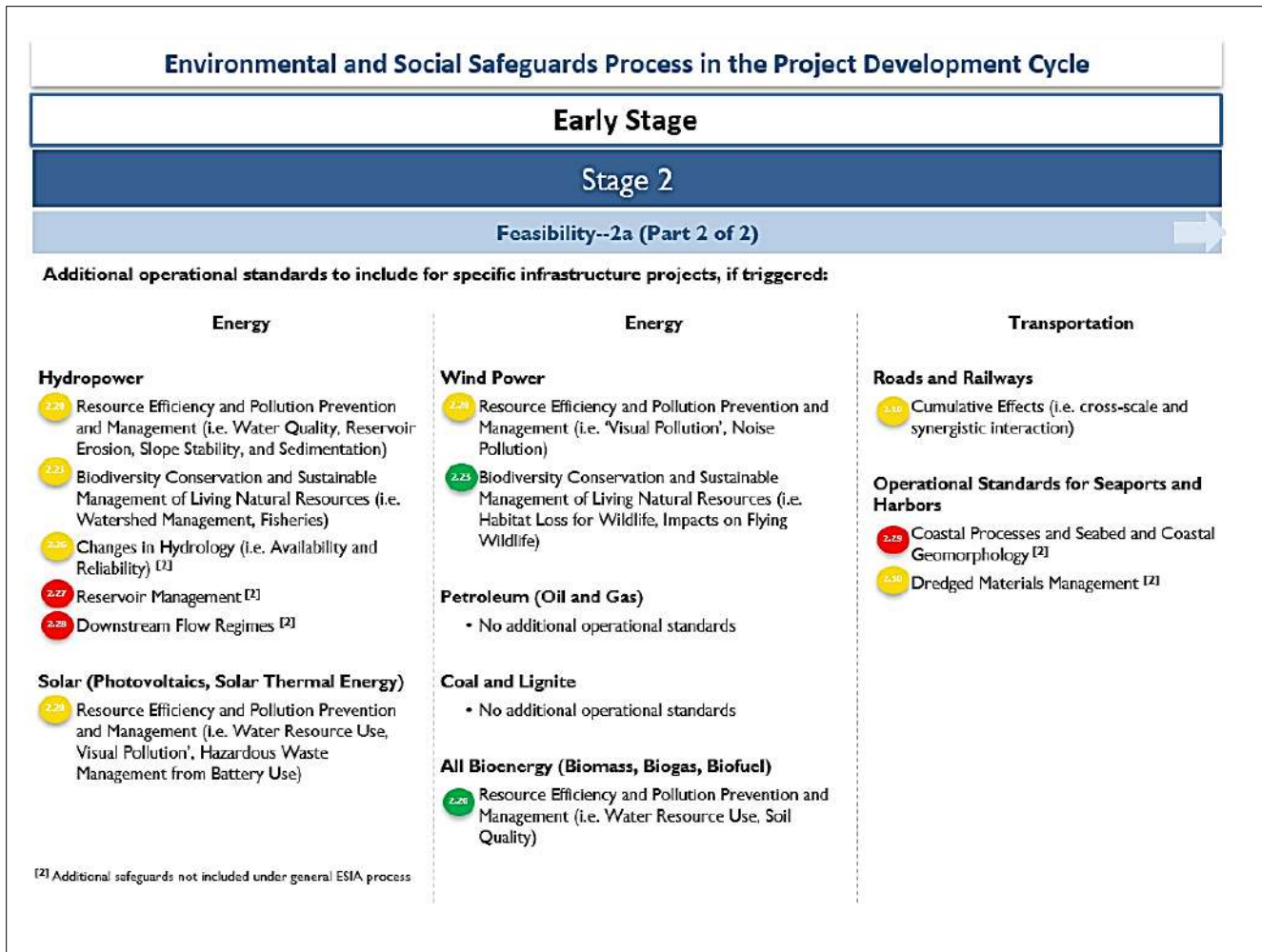
Specific Operational Standards	Extent of Conformance	of Gaps
Labor and Working Conditions	Partial conformance	Labor Law reform in Myanmar began in 2011 and now includes labor dispute resolution mechanisms, a new law governing labor organization, a new social security system, minimum wage rates, and requirements for compulsory employment contracts. However, labor issues remain, such as improved safety requirements for work sites considered risk and limited social

Resource Efficiency and Pollution Prevention and Management	Partial conformance	security coverage. The legal framework should include specific gender-responsive strategies and procedures. The legal framework should explicitly state that resource efficiency and pollution-prevention measures need to be implemented in accordance with the mitigation hierarchy.
Community Health, Safety, and Security, including Dam Safety	Partial conformance	The IFC and Australian Aid have been working with the Government of Myanmar to develop the Environmental and Social Impact Assessment Guidelines for Hydropower Projects in Myanmar. These guidelines include a section (Section 2.24) on dam safety. These recommendations on dam safety should be included as part of the legal framework.
Land Acquisition, Restrictions on Land Use, and Involuntary Resettlement	Partial conformance	The Land Acquisition, Resettlement and Rehabilitation Law should provide more clarity on definitions of “public purpose” for expropriated land, as the current definition is too broad. It lacks clarity on the stakeholder consultation process, and it does not require considerations of alternatives that may prevent land from being expropriated, such as looking at alternative sites or leasing the land instead of expropriating it. <sup>41</sup> There are no specific gender considerations in the new law.
Biodiversity Conservation and Sustainable Management of Living Natural Resources	Partial conformance	The legal framework should include specific details on how the project proponent can manage and mitigate impacts on biodiversity and ecosystem services.
Indigenous Peoples / Ethnic Groups	Partial conformance	The legal framework does not explicitly specify which ministry is obliged to handle reviewing, approving, and monitoring follow-up processes and implementation of social issues.
Cultural Heritage	Partial conformance	The legal framework should include provisions for “chance finds” procedures to address measures to be undertaken when unknown cultural materials are encountered during project implementation of operation.

Apart from the operational standards listed above that could apply to any development project, there are additional operational standards that would need to be included that are specific to the inherent risks and impacts from infrastructure projects. The results from the legal conformance assessment for these additional operational standards are shown in Figure 22 as well as in Table 4, along with Myanmar’s level of conformance.

<sup>41</sup> Wachenfeld, M.G., Yee, H. W., Oo, M. B., Bowman, V., and D. Guest. 2020. Myanmar’s Land Acquisition, Resettlement and Rehabilitation Law 2019 – One Step Forward, Two Steps Back?

**Figure 22. Results of the legal conformance assessment for the additional E&S operational safeguards relevant for infrastructure projects for Myanmar**



**Table 6. Myanmar’s extent of conformance with International Operational Standards specific to infrastructure projects**

Specific Operational Standards	Extent of Conformance	Gaps
<b>Energy: Hydropower</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Quality, Reservoir Erosion, Slope Stability, and Sedimentation)	Partial conformance	The legal framework should include provisions and standards related to sedimentation, erosion, and slope stability for hydropower projects and reservoir development, including reservoirs built for irrigation purposes.
Biodiversity Conservation and Sustainable Management of Living Natural Resources (i.e., Watershed Management, Fisheries)	Partial conformance	The legal framework should include provisions governing watershed management, including relevant recommendations from the National Water Policy (NWP). The NWP of Myanmar is the first integrated water policy for the watersheds, rivers, lakes and reservoirs, groundwater aquifers, and coastal and marine waters, approved in

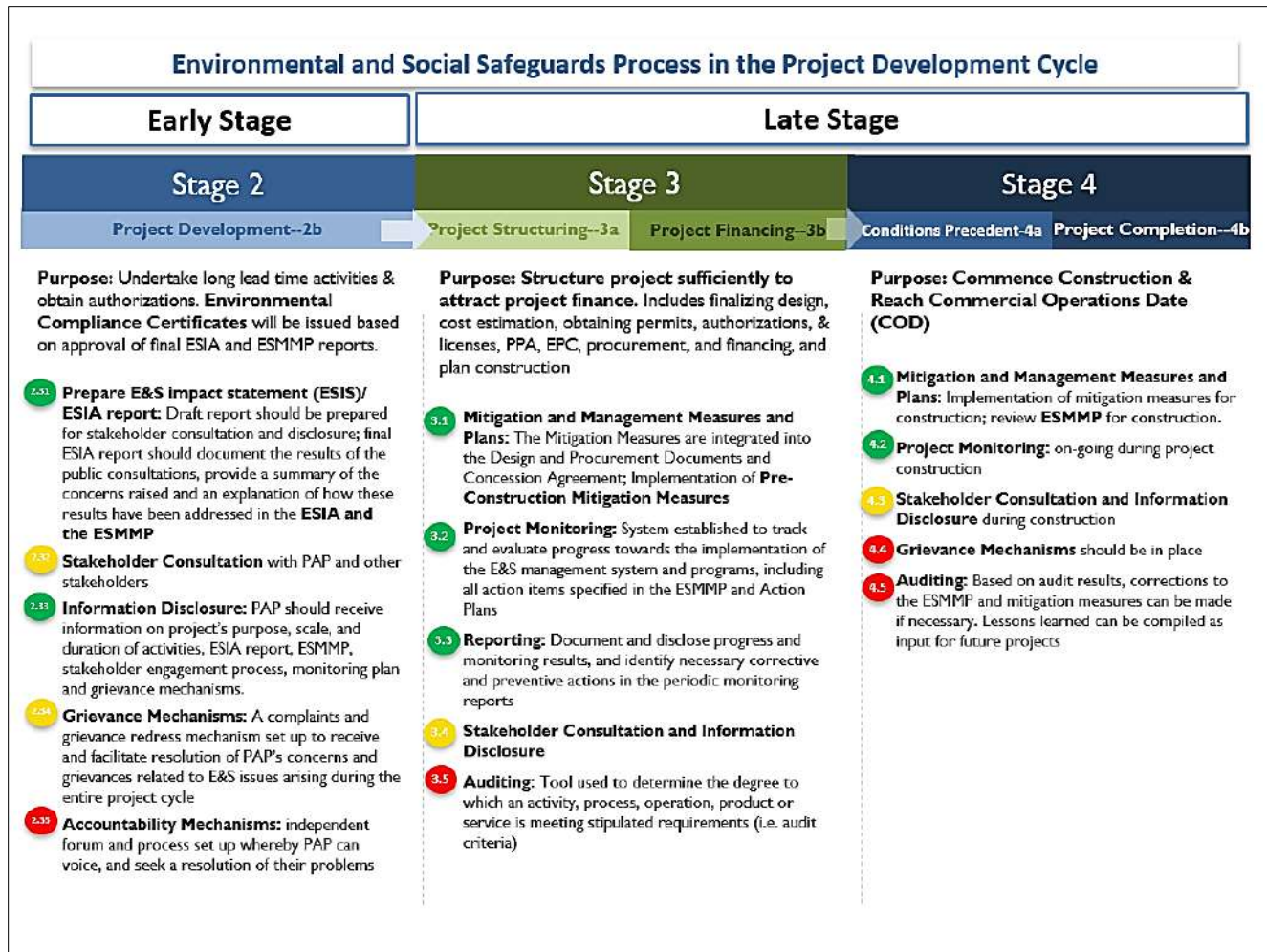
		March 2014. The aim of the NWP is to develop a framework for creating a system of laws and institutions and a plan of action including the Myanmar Water Framework Directive (MWFD).
Changes in Hydrology (i.e., Availability and Reliability)	Partial conformance	The IFC and Australian Aid have been working with the Government of Myanmar to develop the Environmental and Social Impact Assessment Guidelines for Hydropower Projects in Myanmar. These guidelines include a section on Hydrological Changes, but these guidelines are recommendations and not legally binding.
Reservoir Management	No conformance	The legal framework should include provisions for reservoir management, which includes planning for and managing the environmental, social, and economic issues within the reservoir area during project planning, project implementation, and operations of the hydropower facility. Assessments undertaken during the preparation and implementation stage need to ensure issues prior to and during reservoir filling and operations have been taken into consideration, with no significant gaps. At the operation stage, ongoing or emerging reservoir management issues should be identified, and if management measures are required then monitoring should be undertaken to assess if these measures are effective.
Downstream Flow Regimes	No conformance	The legal framework should include provisions that require that flow regimes downstream of hydropower project infrastructure should include measures addressing environmental, social, and economic objectives affected by those flows. Objectives should reflect important river uses, values and services. Management plans for downstream flow regimes should be included in the Environmental and Social Management Plan (ESMP).
<b>Energy: Solar (Photovoltaics, Solar Thermal Energy)</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Resource Use, Visual "Pollution," Hazardous Waste Management from Battery Use)	Partial conformance	The legal framework should include provisions related to visual pollution.
<b>Energy: Wind Power</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Visual "Pollution," Noise Pollution)	Partial conformance	The legal framework should include provisions related to visual pollution.
Biodiversity Conservation and Sustainable Management of Living Natural Resources (i.e., Habitat	Full conformance	

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Loss for Wildlife, Impacts on Flying Wildlife)		
Energy: Petroleum (Oil and Gas)		
No additional operational standards		
Energy: Coal and Lignite		
No additional operational standards		
Energy: All Bioenergy (Biomass, Biogas, Biofuel)		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Resource Use, Soil Quality)	Full conformance	
Transportation: Road and Railways		
Cumulative Effects (i.e., cross-scale and synergistic interaction)	Partial conformance	Examination of the cumulative impacts of the road and rail transport is stated in broad terms in the legal framework and should include more explicit provisions related to road and rail networks, and their cumulative effect.
Transportation: Operational Standards for Seaports and Harbors		
Coastal Processes and Seabed and Coastal Geomorphology	No conformance	The legal framework needs specific regulations for project proponents on what type of data is needed to identify and analyze the risks related to construction and operation of port and terminal facilities.
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Dredged Materials Management	Partial conformance	The legal framework should include provisions requiring the project proponent to conduct a risk assessment for dredging activities as part of the development of a Dredging Management Plan.
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### Stage 2b: Project Development

The summary results from the legal conformance assessment for all the key steps at the project-development stage, as well as Stage 3: Project Structuring and Financing and Stage 4: Conditions Precedent and Project Completion are presented in Figure 23. For the five steps included in the legal conformance assessment for Stage 2b: Project Development, two (40%) were in conformance, two (40%) were in partial conformance, and one (20%) did not conform.

**Figure 23. Results of the legal conformance assessment for the E&S safeguards during project development, project structuring and financing, and conditions precedent and project completion for Myanmar**



The EIA Procedures have a comprehensive list of what should be included in an ESIA report, including mitigation measures, as well as E&S management and monitoring plans. Article 60 states that the ESIA must consider the views and concerns of PAP and other stakeholders, and the ESIA report must “include the results of consultations with the public, affected populations and other stakeholders on the environmental and social issues. The concerns raised during such consultations shall be considered in assessing impacts, designing mitigation measures, and in the development of management and monitoring plans.” The project proponent must make the ESIA report, ESMMP plans, and other related documents available to the public through local and national media, the website(s) of the project or project proponent, libraries, community halls, and other public places, as well as on sign boards at the project site visible to the public, and the project proponent must provide appropriate and timely explanations in press conferences and media interviews. These provisions are in partial conformance to international E&S safeguard policies due to the lack of explicit requirements to incorporate gender considerations. The legal framework should incorporate guidelines promoting women’s participation in the consultation process to ensure their voices are heard.

The EIA Procedures have some allowance for the public to launch an appeal of the ESIA under the “Appeal Process,” but this only partially conforms to international E&S safeguard policy. The appeal process is



limited in scope and should be expanded to include a grievance redress mechanism to receive and facilitate resolution of affected people's concerns and grievances related to issues arising throughout the project's lifetime, including during the construction, operation and decommissioning, closure, and post-closure phases. There are also no legal provisions for accountability mechanisms.

### Stage 3: Project Structuring and Financing

For the five steps included in the legal conformance assessment for Stage 3: Project Structuring and Financing, three (60%) were in conformance, one (20%) was in partial conformance, and one (20%) did not conform.

Myanmar's legal framework fully conforms with international E&S safeguard policy to include all E&S requirements, as well as mitigation and management measures and plans, in the relevant procurement and contracting processes. It also has provisions specifying the necessary project-monitoring and reporting requirements throughout the project life cycle. A recommendation for improvement would be to also require the project proponent to develop an E&S management system.

For the stakeholder consultation and information-disclosure process, the EIA procedures are considered to be in partial conformance to international E&S safeguard policy, as there are no explicit requirements to disclose the full ESIA once approved, and no requirements to disclose the ESIA monitoring report. There are also no legal provisions to conduct an E&S audit.

### Stage 4: Conditions Precedent and Project Completion

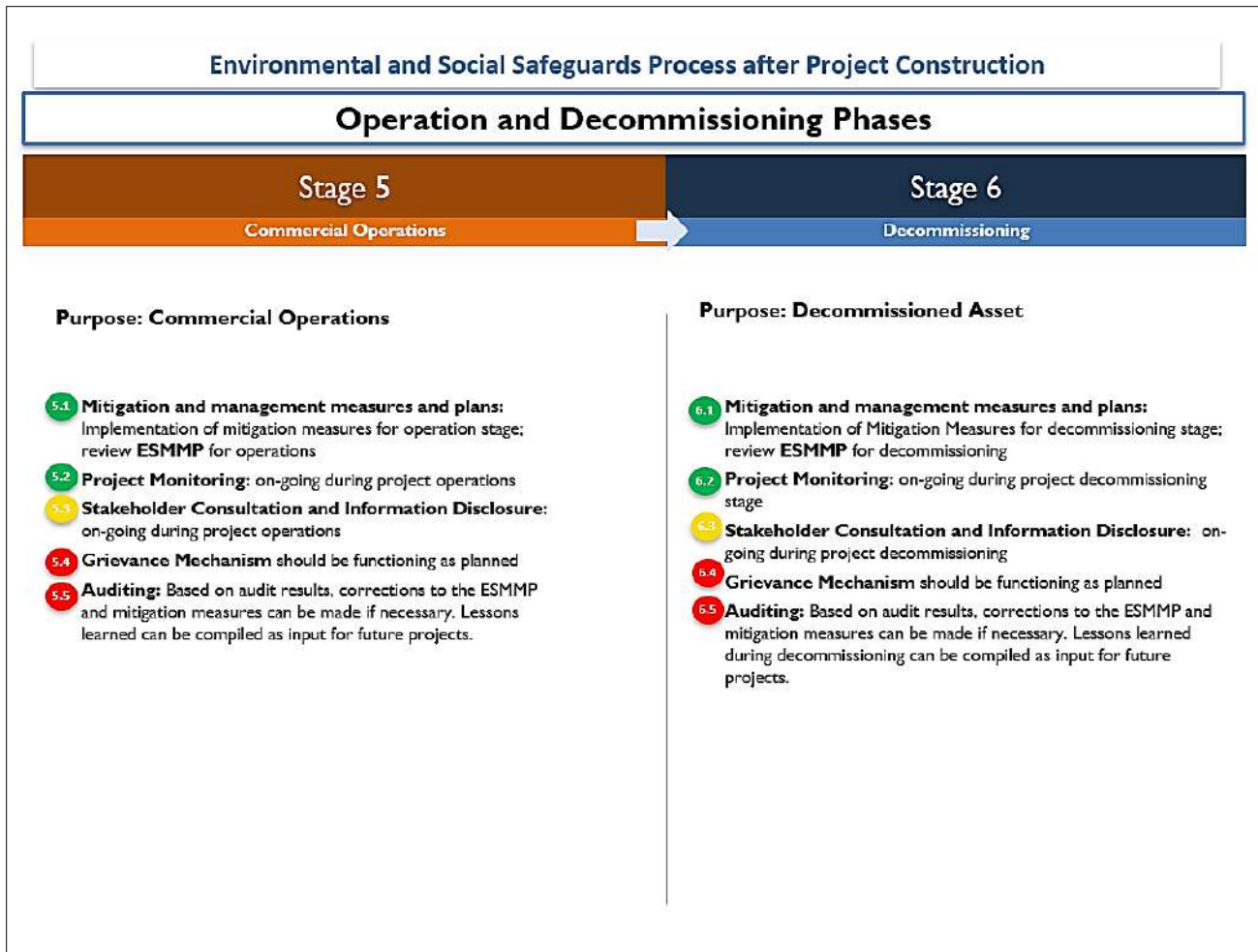
For the five steps included in the legal conformance assessment for Stage 4: Conditions Precedent and Project Completion, two (40%) were in conformance, one (20%) was in partial conformance, and two (40%) did not conform.

The legal framework is in full conformance with the policy to implement the E&S safeguard commitments and mitigation measures during the construction phase, and to report monitoring results on a timely basis. The stakeholder consultation process only partially conforms; as there are no provisions requiring a grievance mechanism throughout the project's life cycle, it is not clear how PAP and other stakeholders can voice their concerns and grievances related to E&S issues during the construction phase. This should be clearly stated in the stakeholder engagement plan. Provisions should be included requiring an E&S audit. The results could be used to revise the ESMMP, and lessons learned could be compiled as input for future projects.

### Stage 5: Commercial Operations

The summary results from the legal conformance assessment for all the key steps during Stage 5: Commercial Operations and Stage 6: Decommissioning are presented in Figure 24. For the five steps included in the legal conformance assessment for Stage 5, two (40%) were in conformance, one (20%) was in partial conformance, and two (40%) did not conform.

**Figure 24. Results of the legal conformance assessment for the E&S safeguards during Stage 5: Commercial Operations and Stage 6: Decommissioning for Myanmar**



Provisions in the EIA Procedures fully conform with the policy to implement the E&S safeguard commitments and mitigation measures during commercial operations, and to report monitoring results on a timely basis. The stakeholder consultation process only partially conforms for the same reasons as during the construction phase, as there are no provisions that allow PAP and other stakeholders to issue a complaint after the initial thirty days of public disclosure once the ESIA report has passed through the Ministry. As stated in earlier phases, there are no provisions requiring the project proponent undertake an E&S audit.

### Stage 6: Decommissioning

The results of the legal conformance assessment at the decommissioning stage are the same as for commercial operations: two (40%) were in conformance, one (20%) was in partial conformance, and two (40%) did not conform. The legal framework aligns with the requirements for mitigation and management measures and plans, and for project monitoring. The stakeholder consultation process, as described in the EIA Procedures, should ensure the full ESIA, and the ESIA monitoring reports are available to the public after they have been approved by the GoM, and grievance mechanisms should be in place. E&S auditing requirements should be included.

# 5. THAILAND

## 5.1 Overview of the ESIA System in Thailand

The legal framework for environmental management and administration in Thailand was first implemented in 1975 with the passage of the Enhancement and Conservation of National Environmental Quality Act (NEQA), B.E. 2518 (1975). The policies, programs, plans, and compliance systems that were derived from this act were compartmentalized and spread across multiple government agencies, according to the respective roles and responsibilities. The NEQA was amended in 1992 with the goal of improving the regulatory system for managing natural resources and environmental conservation in a more transparent and effective manner. The revised Act included provisions to regulate Environmental Protected Areas (EPAs) and Provincial Environmental Management Plans, decentralize the management authority to local authorities and promote the “polluter pays” principle.<sup>42</sup> It provided a framework for standard setting and monitoring, public participation and environmental education, and an environmental fund for investment.<sup>43</sup> The use of the ESIA process as a tool for environmental planning and management for economic development projects became mandatory in 1981. The ESIA system was strengthened under the 1992 NEQA, with provisions on screening, report preparation, the review process, timing, mitigation measures, and monitoring. There have been various ministerial notifications enacted since 1992 to further update the rules, procedures, and guidelines for the preparation of an ESIA. For example, the 2012 Ministerial Notification of Ministry of Natural Resources and Environment detailed the types and sizes of projects and activities that require an ESIA and was further expanded in 2014 and again in 2018 to cover 35 types and sizes of projects and activities.

Article 67 of the previous Constitution of Thailand (2007) contained legal principles on environmental rights, such as assembly rights of a local community to protect the sustainable use of natural resources and biodiversity, rights of access into public information owned by the state, public hearing rights in environmental management and standing to sue the state, and an administrative agency responsible for environmental protection.<sup>44</sup> The Constitution also required projects and activities that had the potential to cause severe adverse impacts to the environment and community health to submit an Environment and Health Impact Assessment (EHIA) in addition to the ESIA. This spurred the development of the Rule, Procedure, Method and Guideline for Preparation of the Environmental Health Impact Assessment in 2009 as well as the Prescription of Types of severe projects requiring EHIA preparation in 2010 (since amended in 2018).<sup>45</sup> After martial law was declared in 2014, the 2007 Constitution was partially repealed and the new Constitution of Thailand was ratified in 2017. The new Constitution explicitly mandated that the public be given a role in the ESIA process.

The NEQA was amended in 2018 and contains new ESIA requirements based on the 2017 Constitution. There are new regulations on scoping, the ESIA review process, decision-making, and monitoring. It also created an environmental fund for subsidizing operations to clean up the environment, reward agencies with good environmental practices, and set up new environmental quality standards.

Thailand does not have one specific ESIA law, and therefore there are several relevant laws, acts, and ministerial notifications that must be adhered to when designing and implementing a project. The 1992

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<sup>42</sup> Thailand Board of Investment (BOI). 2014. Guide on Environmental Regulations.

<sup>43</sup> OECD. 2018. Development Pathways, Multi-Dimensional Review of Thailand (Volume I) Initial Assessment.

<sup>44</sup> EarthRights International (ERI). 2016. Environmental Impact Assessment in the Mekong Region.

<sup>45</sup> Office of Natural Resources and Environmental Policy and Planning (ONEP), the Ministry of Natural Resources and Environment, and PTT Public Company Limited. 2018. Environmental Impact Assessment (EIA) Guidelines for Business Project Development in ASEAN Economic Community (AEC).

NEQA and amended version in 2018, along with its corresponding ministerial notifications, are the main legal instruments that guide the ESIA process.

Some of these other important laws and acts for ESIA include:

- Marine and Coastal Resources Management Promotion Act, B.E. 2558 (2015)
- Fisheries Act, B.E. 2558 (2015)
- Land Development Act (No. 2), B.E. 2558 (2015)
- Occupational Safety, Health and Environment Act, B.E. 2554 (2011)
- Labour Protection Act, B.E. 2541 (1998)
- Official Information Act (1997)
- Energy Conservation Promotion Act, B.E. 2535 (1992)
- Wildlife Preservation and Protection Act, B.E. 2535 (1992)
- National Park Act, B.E. 2504 (1961)
- Ancient Sites and Objects, Artistic Objects and National Museum Act (1961)

The applicable standards include:

- Groundwater quality standards for drinking purpose as of Notification of the Ministry of Natural Resources and Environment, B.E. 2551 (2008)
- Coastal water quality standards as of the Notification of the Environment Board No. 27, B.E. 2549 (2006)
- Soil Quality Standard as of Notification of National Environment Board No. 25, B.E. 2547 (2004)
- National Environment Board Announcement No. 24, B.E. 2547 (2004) on the standardization of air quality in the atmosphere
- Prohibition of dumping wastes into rivers, canals, lakes, waterways per Navigation of Thai Waterways Act, B.E. 2546 (2003)
- Ground water quality standards as of Notification of the National Environmental Board No. 20, B.E. 2543 (2000)
- Community Noise Standard as of Notification of the National Environment Board No. 15, B.E. 2540 (1997)
- Surface water quality standards as of the Notification of National Environmental Board No. 8, B.E. 2537 (1994)

See Annex 2 for the full list of legal instruments that were consulted for the legal conformance assessment in Thailand.

### Institutional Management System for the ESIA Review Process

The Ministry of Natural Resources and Environment (MoNRE) was established in 1992 and oversees 11 ministerial departments as well as several public authorities (e.g., the Wastewater Management Authority) and public companies (e.g., the Forest Industry Organization). Sixteen Regional Environment Offices are responsible for regional environmental planning and reporting as well as monitoring and inspecting environmental quality.<sup>46</sup> The Environmental Impact Evaluation Bureau (EIEB) at the Office of Natural Resources and Environmental Policy and Planning (ONEP) within MoNRE is responsible for the administration of the ESIA process for Thailand.

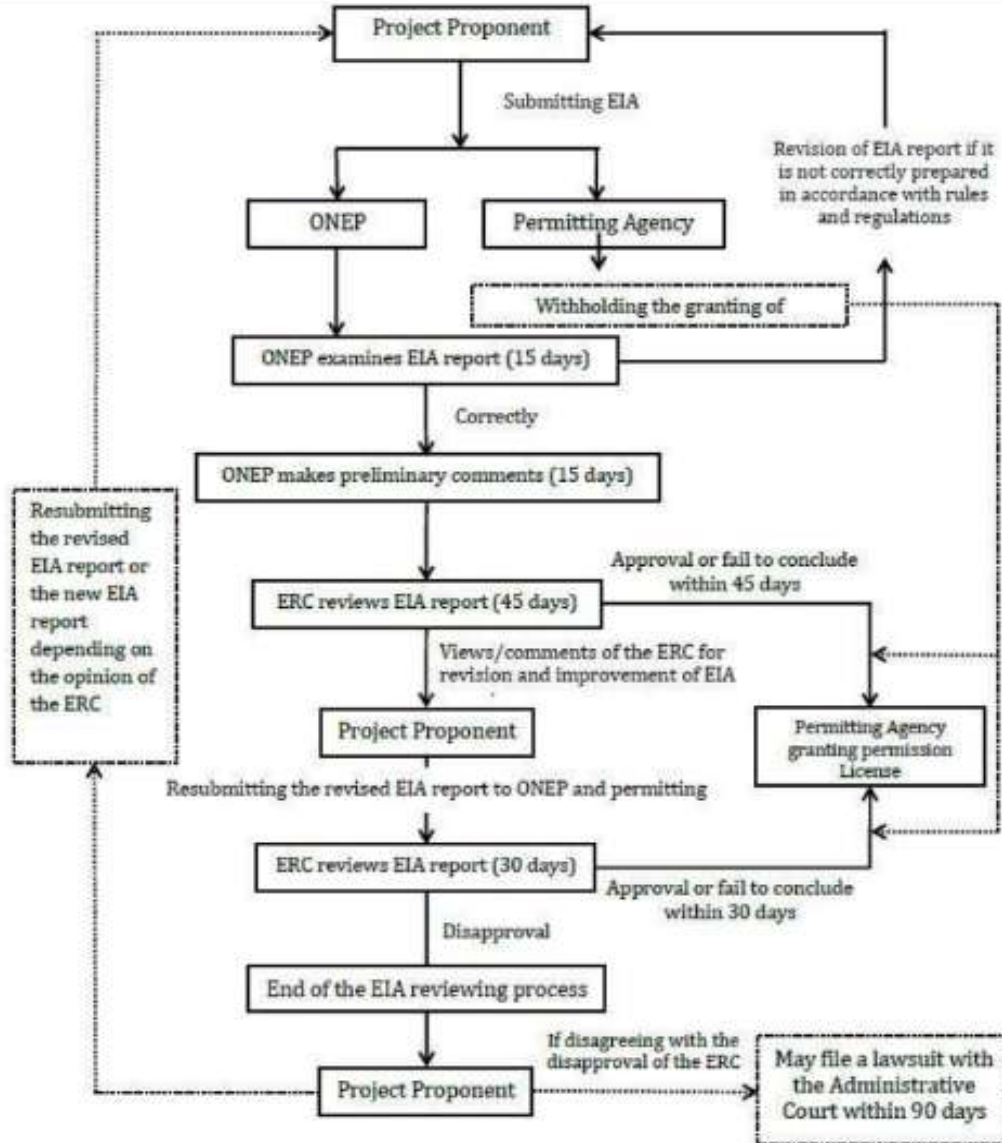
The project proponent must submit the ESIA report to the EIEB of ONEP for preliminary review. The ESIA report, together with the preliminary comments, is then passed to the Expert Review Committee (ERC) for final consideration. The committee is composed of expert members who are qualified or specialized in various fields of related disciplines. The ERC may approve or disapprove the report or may ask for report revision or additional information. After the report has been approved, the report returns to ONEP, who then sends it along with the recommendations to the permitting agencies. If the project proponent is a government agency or state enterprise, the project must be approved by the Cabinet.<sup>47</sup>

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<sup>46</sup> OECD. 2018. Development Pathways, Multi-Dimensional Review of Thailand (Volume I) Initial Assessment.

<sup>47</sup> Office of Natural Resources and Environmental Policy and Planning. Ministry of Natural Resources and Environment. 2012. Environmental Impact Assessment in Thailand. Bangkok, Thailand.

**Figure 25. Environmental and Social Impact Assessment Investigation and Review Process in Thailand**



Source: Sano, D., Matsumoto, I., Urago, A., Takahashi, Y., and N. Genjida. 2016. *Strengthening EIA in Asia*. Prepared for the Asia EIA Conference 2016 in Nagoya, Japan. Hayama: Institute for Global Environmental Strategies.

## 5.2 Results

### Strategic Environmental Assessment

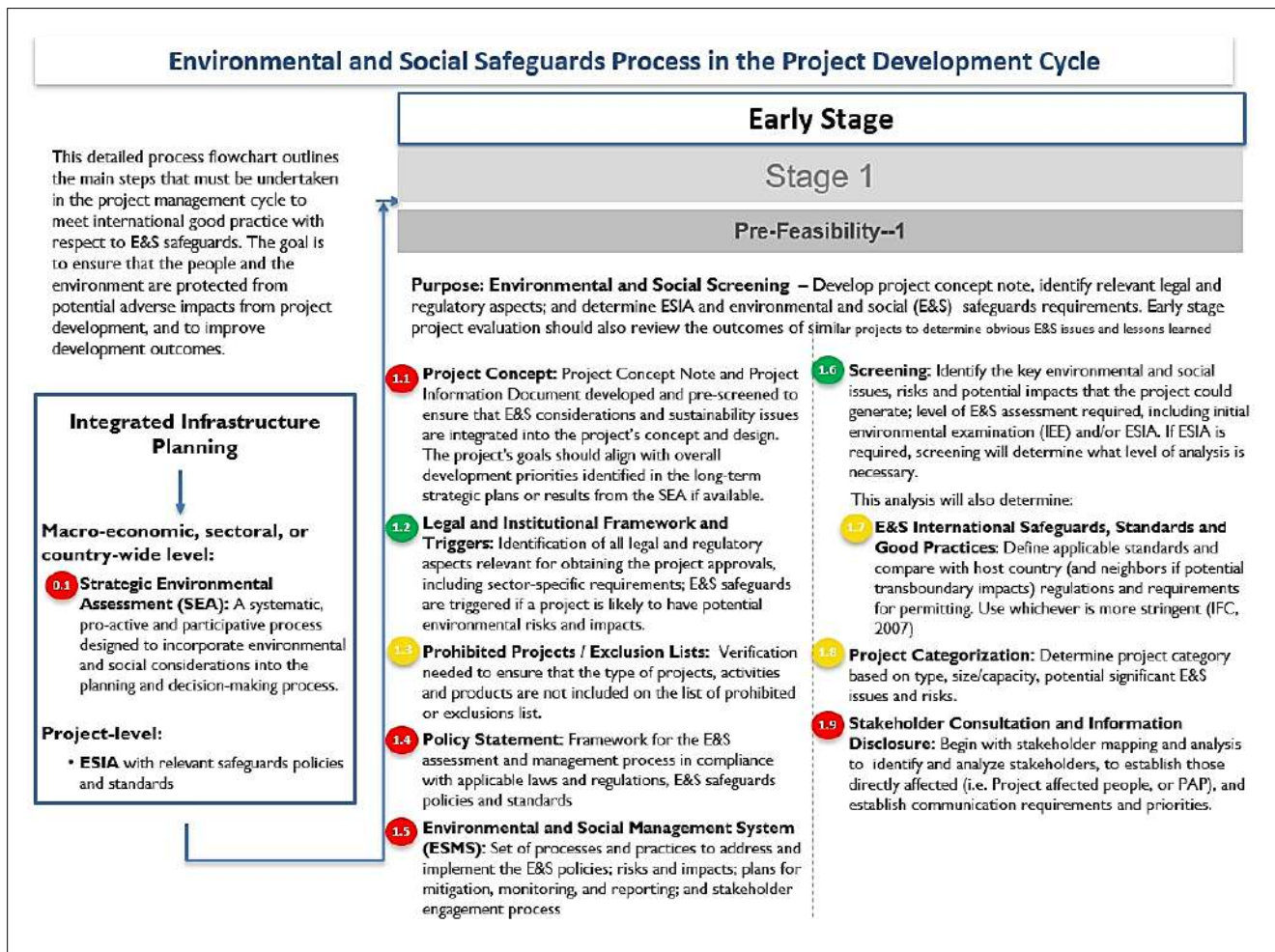
In 2003, the National Environmental Board (NEB) established a Subcommittee on SEA to formulate a policy recommendation for its development in Thailand. The draft SEA Guideline was developed and subsequently submitted for the consideration of the NEB in 2009, and it was approved. In Rayong Province, the Thai Subcommittee on SEA, under the National Committee on Sustainable Development (with funding from the ADB), made recommendations to the Thai Government and prepared draft guidelines to promote the systematic use of the SEA as part of planning for major developments within Thailand. Although the concept of SEA was introduced to Thailand in 2003, the formalization of SEA has taken some time to work its way into legislation. To date, the SEA is an administrative order for government agencies

to apply the SEA Guidelines in the formulation of major development policy and plans which may have severe impacts to the environment, but it is not a mandatory requirement by law.

### Stage I: Pre-feasibility

The summary results from the legal conformance assessment for all the key steps at the pre-feasibility stage are presented in Figure 26. For the nine steps included in the legal conformance assessment at this stage, two (22%) were in conformance, three (33%) were in partial conformance, and four (44%) did not conform.

**Figure 26. Results of the legal conformance assessment for the E&S safeguards at the pre-feasibility stage for Thailand**



In the revised 2018 NEQA, there are legal provisions supporting the identification of the legal and regulatory aspects and requirements, license conditions, and reporting requirements needed for project approvals. During project screening, the corresponding revised ministerial notifications have listed 35 types and sizes of projects and activities for which EIA is required and 11 types and sizes of projects and activities which are required to submit an EHIA, and the Act was considered to be in conformance with international best practices for legal and institutional triggers. However, there are no provisions requiring that the applicable international safeguards and standards should be defined and compared with those in the host country, and in neighboring countries when there are potential transboundary impacts, and therefore the Act only partially conforms with Step 1.7. It also does not fully align with international E&S

safeguard policy regarding project categorization, as projects are not further classified according to their degree or level of “risk.”

The revised NEQA does not list any projects that are considered prohibited or excluded. The Wild Animal Preservation and Protect Act, B.E. 2535 (1992) prohibits exploitative activities within a Wildlife Sanctuary. The Ministerial Notifications of MoNRE on Environmentally Protected Areas lists specific requirement for an ESIA and IEE in environmentally protected areas, and therefore is considered in partial conformance, but the legal framework should include a more extensive and clear list of projects and activities that will not be funded, including those related to human trafficking, child labor, gambling, and other social issues in order to align with international best practices.

There are no legal provisions to initially provide a project concept before feasibility activities are undertaken, and there are no legal provisions that state the project proponent must provide an overarching policy framework defining the E&S objectives and principles to include in their assessment and management process, and to put in place an ESMS system.

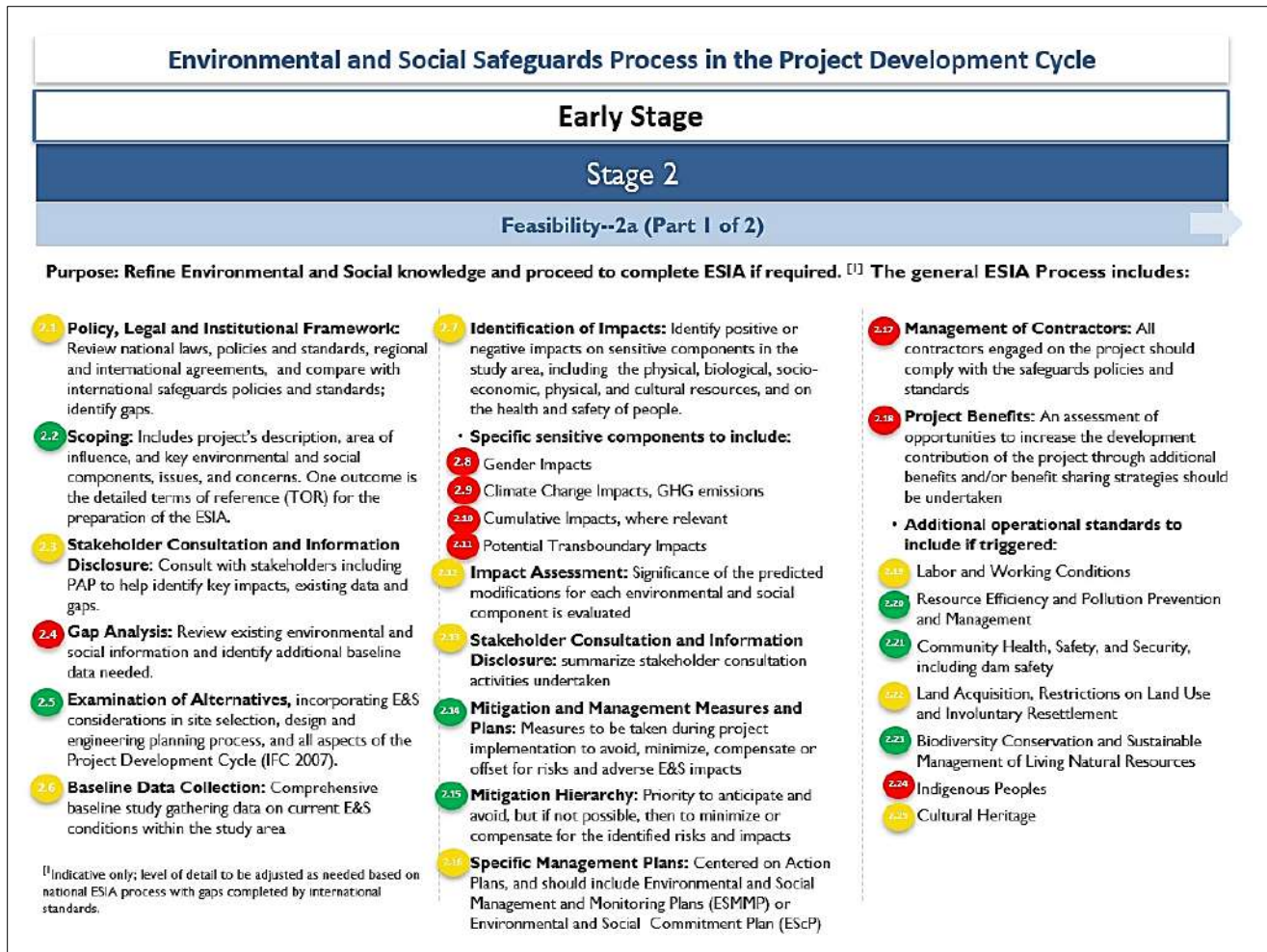
The Thai Constitution outlines the fundamental right of the Thai people to be informed, be consulted, and be a full participant in the ESIA process for development projects. There are also guidelines issued by the ONEP on when, how often, and under what circumstances stakeholder consultation and information disclosure should occur during the EIA process. However, there are no legal provisions to begin with stakeholder mapping and analysis. The legal framework should include a provision to begin the stakeholder consultation process with stakeholder mapping.

#### Stage 2a: Feasibility

The summary results from the legal conformance assessment for all the key steps at the feasibility stage are presented in Figure 27. For the 25 steps included in the legal conformance assessment at this stage, seven (28%) were in conformance, ten (40%) were in partial conformance, and eight (32%) did not conform.



**Figure 27. Results of the legal conformance assessment for the E&S safeguards at the feasibility stage for Thailand**



Thailand's legal framework fully conforms with the E&S safeguard policy for scoping requirements as well as examination of alternatives. However, there are no legal provisions requiring the project conduct a gap analysis prior to collecting baseline data. The requirements for baseline data collection include the main components, but there are no provisions requiring seasonal baseline data, so this was in partial conformance. The 2018 NEQA and ministerial notifications provide substantial guidance on the process of consultation, beginning at the scoping phase; however, there are no provisions requiring the project proponent to develop a Stakeholder Engagement Plan.

While there are general requirements to identify the project's impacts on the physical, biological, socioeconomic, visual, and physical cultural resources within the project's area of influence, there are no legal provisions to include the sensitive components that have been recently added to international safeguard policies and performance standards, namely gender impacts, climate change, and GHG emissions, as well as cumulative and transboundary impacts. For full conformance, the NEQA or notifications issued under the Act should clearly specify the need to identify the full range of socioeconomic impacts that cover livelihood, vulnerable groups, gender concerns, and other key social concerns, as well as provide directions on the process for full and informed assessment of socioeconomic impacts. Without these provisions, the stakeholder consultation process only partially conforms; the legal

framework needs to include specific requirements for gender considerations, ICP for PAP, and FPIC for indigenous people / ethnic groups.

The ministerial notifications detail the mitigation and management measures and plans required as part of the ESIA report, and apply the mitigation hierarchy, in line with international best practices. Requirements for specific E&S management and action plans should also be included.

There are no legal provisions requiring the project proponent to ensure that all contractors engaged on the project operate in a manner consistent with the requirements of the E&S safeguard policies and standards, including the specific requirements detailed in the Management Plans. There are also no provisions governing project benefit sharing.

Depending on the risks and impacts identified, specific operational standards may be triggered. Thailand's level of conformance to these operational standards are listed in Table 7.

**Table 7. Thailand's extent of conformance with International Operational Standards**

Specific Operational Standards	Extent of Conformance	Gaps
Labor and Working Conditions	Partial conformance	Despite progress toward gender equality in Thailand, the country's labor laws discriminate against women migrant workers in several ways. For example, while the Thai Labor Protection Act of 1998 and amendment of 2007 require equal treatment of all employees, including migrant workers irrespective of their legal status, domestic workers are excluded from many provisions of the act, including provisions on the maximum number of hours worked each day; maternity leave; prohibitions on termination due to pregnancy; and minimum wages. <sup>48</sup>
Resource Efficiency and Pollution Prevention and Management	Full conformance	
Community Health, Safety, and Security, including Dam Safety	Full conformance	
Land Acquisition, Restrictions on Land Use, and Involuntary Resettlement	Partial conformance	Thailand's land administration system is managed by multiple government ministries and agencies, each authorized by different laws and with separate mandates. Although the revised constitution of 2017 guarantees compensation for expropriation of private property for the public interest, these procedures have not always been followed in cases of indigenous people losing land for infrastructure development. Legally, women have equal rights of land ownership, but men customarily control most land, particularly in rural areas. <sup>49</sup> Compensation for expropriation of private land and recognition of customary land rights should be guaranteed in the legal framework.
Biodiversity Conservation and Sustainable Management of Living Natural Resources	Full conformance	

<sup>48</sup> UN Women. 2013. Review of Laws, Policies and Regulations Governing Labour Migration in Asian and Arab States: A Gender and Rights Based Perspective. Sending Countries: Southeast Asia. Kingdom of Thailand.

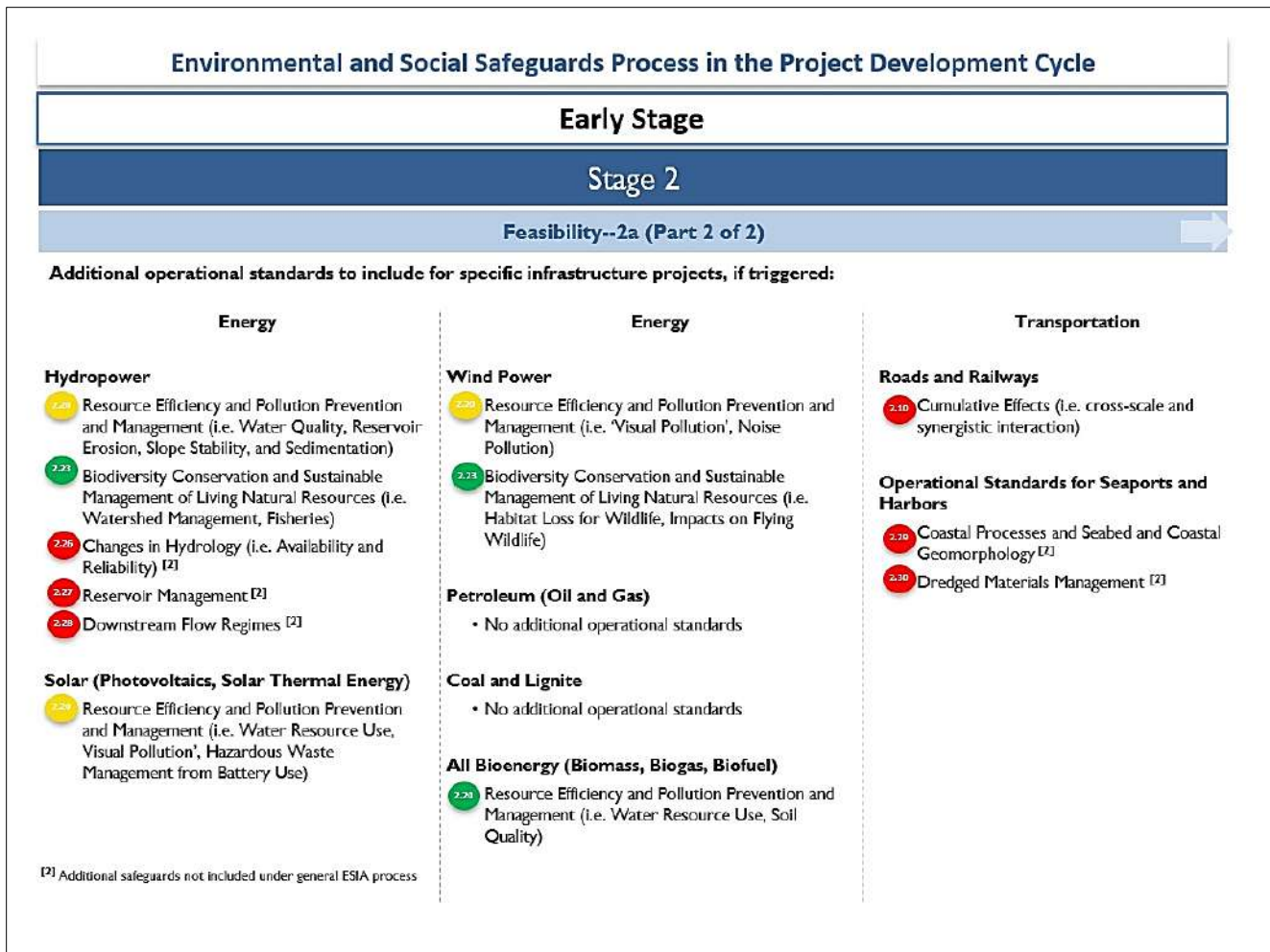
<sup>49</sup> <https://thailand.opendevlopmentmekong.net/topics/land/>

Indigenous Peoples / Ethnic Groups	No conformance	Indigenous peoples are not officially recognized in any state legislation. In 2014, during the drafting of the current Interim Constitution of Thailand, indigenous peoples submitted proposals for specific legislation for the promotion of the rights of indigenous peoples, but these were not accepted. The Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds 2010 does not provide legal recognition to traditional land tenure and resource management systems by indigenous peoples. It allows communities only to collectively manage and use state-owned land for their living, while the state still retains its claim to ownership of these lands. <sup>50</sup>
Cultural Heritage	Partial conformance	Although the NEQA promotes the conservation of cultural environment zones, ONEP must work with local authorities to develop local regulations and to limit the development in the designated area. Previously, some historic areas have not been protected, and local authorities do not participate in their protection. Under the Act on Ancient Monuments, Antiques, Objects of Art and National Museums, these objects must be registered, but the registration process is not straightforward.

Apart from the operational standards listed above that could apply to any development project, there are additional operational standards that would need to be included that are specific to the inherent risks and impacts from infrastructure projects. The results from the legal conformance assessment for these additional operational standards are shown in Figure 28 as well as in Table 8, along with Thailand's level of conformance.

<sup>50</sup> Network of Indigenous Peoples in Thailand. 2016. The Rights of Indigenous Peoples in Thailand. 2nd Cycle Universal Periodic Review Thailand UPR 2016 – Advocacy Factsheet.

**Figure 28. Results of the legal conformance assessment for the additional E&S operational safeguards relevant for infrastructure projects for Thailand**



**Table 8. Thailand’s extent of conformance with International Operational Standards specific to infrastructure projects**

Specific Operational Standards	Extent of Conformance	Gaps
<b>Energy: Hydropower</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Quality, Reservoir Erosion, Slope Stability, and Sedimentation)	Partial conformance	There are no specific measures that deal directly with soil erosion and siltation in any of the various Acts, but instead these subjects are dealt with indirectly in terms of various regulations and restrictions dealing with the protection of the nation’s forests, the control of watershed areas, and the control and monitoring of land use. Key principles from the 2009 Mekong River Commission’s (MRC’s) Preliminary Design

		Guidance (PDG) for Mainstream Dams <sup>51</sup> should be incorporated into the legal framework, including sediment management options, such as sediment routing, sediment bypass, sediment flushing, mechanical removal, sediment traps, and sediment augmentation downstream of reservoirs, as well as the modeling and monitoring of sediments into, within, and downstream of the impoundment, and the inclusion of gates to enable sediment management options.
Biodiversity Conservation and Sustainable Management of Living Natural Resources (i.e., Watershed Management, Fisheries)	Full conformance	While beyond the control of the project proponent, the legal framework should include provisions that shift from a species-based or area-based conservation to one that employs an ecosystem approach, which is also important for watershed management. Protecting ecosystems is recognized as a key tool for achieving the objectives of the Convention on Biological Diversity (CBD). It mainly involves the integrated management of land, water, and living resources with the aim of promoting conservation and sustainable use. The government of Thailand is drafting a new Biodiversity Act to better align its laws protecting biodiversity with the CBD.
Changes in Hydrology (i.e., Availability and Reliability)	No conformance	Key principles from the 2009 MRC's PDG for Mainstream Dams should be incorporated into the legal framework related to river hydrology, including an analysis between hydraulics, river morphology, and ecology.
Reservoir Management	No conformance	Key principles from the 2009 MRC's PDG for Mainstream Dams should be incorporated into the legal framework related to reservoir management.
Downstream Flow Regimes	No conformance	This provision in the Civil and Commercial Code imposes a general limitation on the free utilization of water by individuals, in such a way as not to allow any one party to monopolize, for his/her exclusive benefit and to the prejudice of other users, the water flowing through the land. This provision should be extended to organizations, companies, and commercial entities.
Energy: Solar (Photovoltaics, Solar Thermal Energy)		

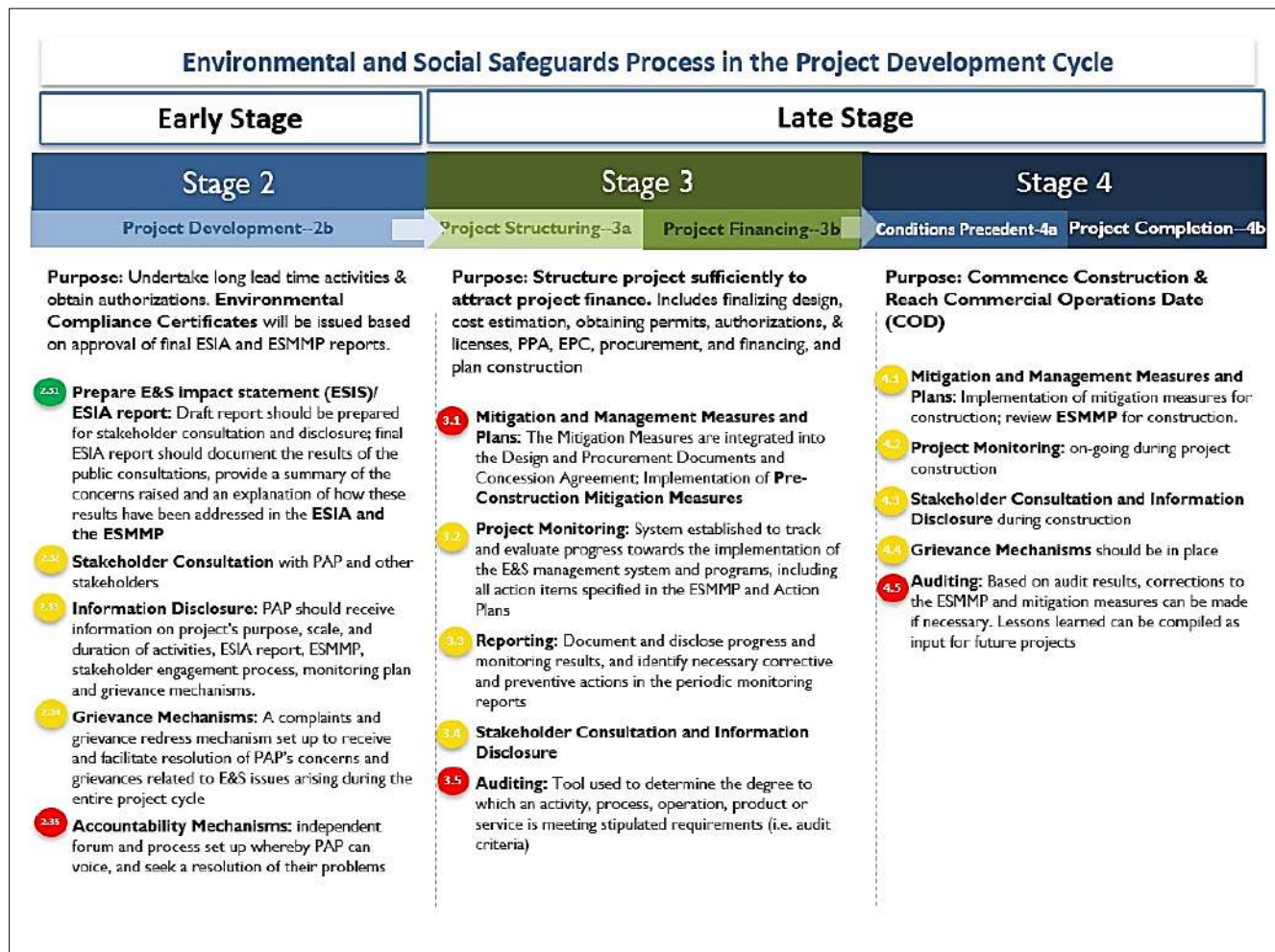
<sup>51</sup> <https://www.mrcmekong.org/assets/Publications/Consultations/SEA-Hydropower/Preliminary-DG-of-LMB-Mainstream-dams-FinalVersion-Sept09.pdf>

Resource Efficiency and Pollution Prevention and Management (i.e., Water Resource Use, Visual “Pollution,” Hazardous Waste Management from Battery Use)	Partial conformance	There are no corresponding legal provisions that require baseline data to be collected and analyzed for visual impacts.
<b>Energy: Wind Power</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Visual “Pollution,” Noise Pollution)	Partial conformance	There are no corresponding legal provisions that require baseline data to be collected and analyzed for visual impacts.
Biodiversity Conservation and Sustainable Management of Living Natural Resources (i.e., Habitat Loss for Wildlife, Impacts on Flying Wildlife)	Full conformance	As above, as part of biodiversity conservation for hydropower projects, the legal framework should include provisions that shift from a species-based or area-based conservation to one that employs an ecosystem approach.
<b>Energy: Coal and Lignite</b>		
No additional operational standards		
<b>Energy: All Bioenergy (Biomass, Biogas, Biofuel)</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Resource Use, Soil Quality)	Full conformance	
<b>Transportation: Roads and Railways</b>		
Cumulative Effects (i.e., cross-scale and synergistic interaction)	No conformance	A SEA can also be used to assess cumulative effects on the environment from many small road projects with individually insignificant environmental impacts. However, conducting a SEA in Thailand is not mandatory.
<b>Transportation: Operational Standards for Seaports and Harbors</b>		
Coastal Processes and Seabed and Coastal Geomorphology	No conformance	The legal framework needs specific regulations for project proponents on what type of data is needed to identify and analyze the risks related to construction and operation of port and terminal facilities.
Dredged Materials Management	No conformance	In 2010, the Port Authority of Thailand compiled a document on “Guidelines of Ports’ Environmental Management,” dividing environmental management into three phases: (1) “Prior to commencement” period deals with report preparation of the EIA; (2) Operating activities during the construction period, including a dredging phase that involves digging of river or seabed to change its sedimentary condition and the location of sediment disposal; and (3) Specific issues related to environmental problems and safety measures to be monitored during the project operational period. Conformance to key principles from these guidelines should be mandatory.

## Stage 2b: Project Development

The summary results from the legal conformance assessment for all the key steps at the project-development stage, as well as Stage 3: Project Structuring and Financing and Stage 4: Conditions Precedent and Project Completion are presented in Figure 29. For the five steps included in the legal conformance assessment for Stage 2b: Project Development, one (20%) was in conformance, three (60%) were in partial conformance, and one (20%) did not conform.

**Figure 29. Results of the legal conformance assessment for the E&S safeguards during project development, project structuring and financing, and conditions precedent and project completion**



The Notification of MoNRE on Projects, Undertakings, or Operations Required to Provide an EIA Report and Rules, Procedure, and Conditions in Providing an Environmental Impact Assessment Report (2019) contain details on key chapters and components that should be in an ESIA. While this notification, along with other legal instruments, includes a summary of stakeholder consultation activities, this was in partial conformance with international best practices, since it does not provide sufficient details. The ESIA report should include the issues identified and mitigation measures taken, as well as recommendations for ongoing consultations. The ONEP EIA guidelines require only two public consultation meetings, which is inadequate. The legal framework also needs to include clear requirements that information about the project must be disclosed throughout the life of the project, along with provisions to ensure that this information is easily accessible to all stakeholders.

The NEQA stipulates the right of any individual to file a petition or lodge a complaint against any party for any act committed in violation of the laws relating to pollution control or conservation of natural resources. MoNRE operates a Public Service Center with several channels for receiving complaints from the public. However, to fully comply with international best practices, it should be mandatory for project proponents to establish effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted, with appropriate resources, rather than relying solely on government processes.

There are no legal provisions requiring the project proponent to establish accountability mechanisms.

### Stage 3: Project Structuring and Financing

For the five steps included in the legal conformance assessment for Stage 3: Project Structuring and Financing, three (60%) were in partial conformance, and two (40%) did not conform.

The NEQA and related notifications specify that monitoring plans should be included as part of the ESIA report; however, they are missing explicit guidance on arrangements for implementation of the ESMMP and action plans, and oversight responsibilities for monitoring compliance with plan agreements. Reporting requirements are also included in these legal instruments, but no explicit reference to implement corrective and preventive actions in the periodic monitoring reports. Stakeholder engagement procedures are also limited. The ONEP EIA Guidelines state that the project proponent is required to hold public participation at least twice, during the scoping phase and during the preparation of the draft EIA report. In the case of a project requiring an EHIA, the guidelines require four public meetings. To fully conform with international safeguard policy, the public consultation process should take place at all stages of the project-development cycle.

Although Section 8 of the 2019 MoNRE Notification requires the mitigation and management measures and plans be included in the ESIA report, there are no requirements that these need to be included in all relevant procurement and contracting processes, and therefore they were considered not to conform with international best practices. There are also no E&S auditing requirements in the relevant legal instruments.

### Stage 4: Conditions Precedent and Project Completion

For the five steps included in the legal conformance assessment for Stage 4: Conditions Precedent and Project Completion, four (80%) were in partial conformance, and one (20%) did not conform.

Although Section 8 of the 2019 MoNRE Notification requires the mitigation and management measures and plans be included in the ESIA report, there are no provisions stating that contractors need to follow these requirements. The NEQA and related notifications specify that monitoring plans should be included as part of the ESIA report, but they should also specify guidance on arrangements for implementation of the ESMMP and action plans, and oversight responsibilities for monitoring compliance with plan agreements. Like the stakeholder engagement requirements during the other stages, for Stage 4 the legal framework should provide more details for stakeholder consultations, including issues identified and mitigation measures taken, as well as recommendations for ongoing consultations. The grievance mechanisms need to be set up by the project proponent, and grievances should be kept confidential.

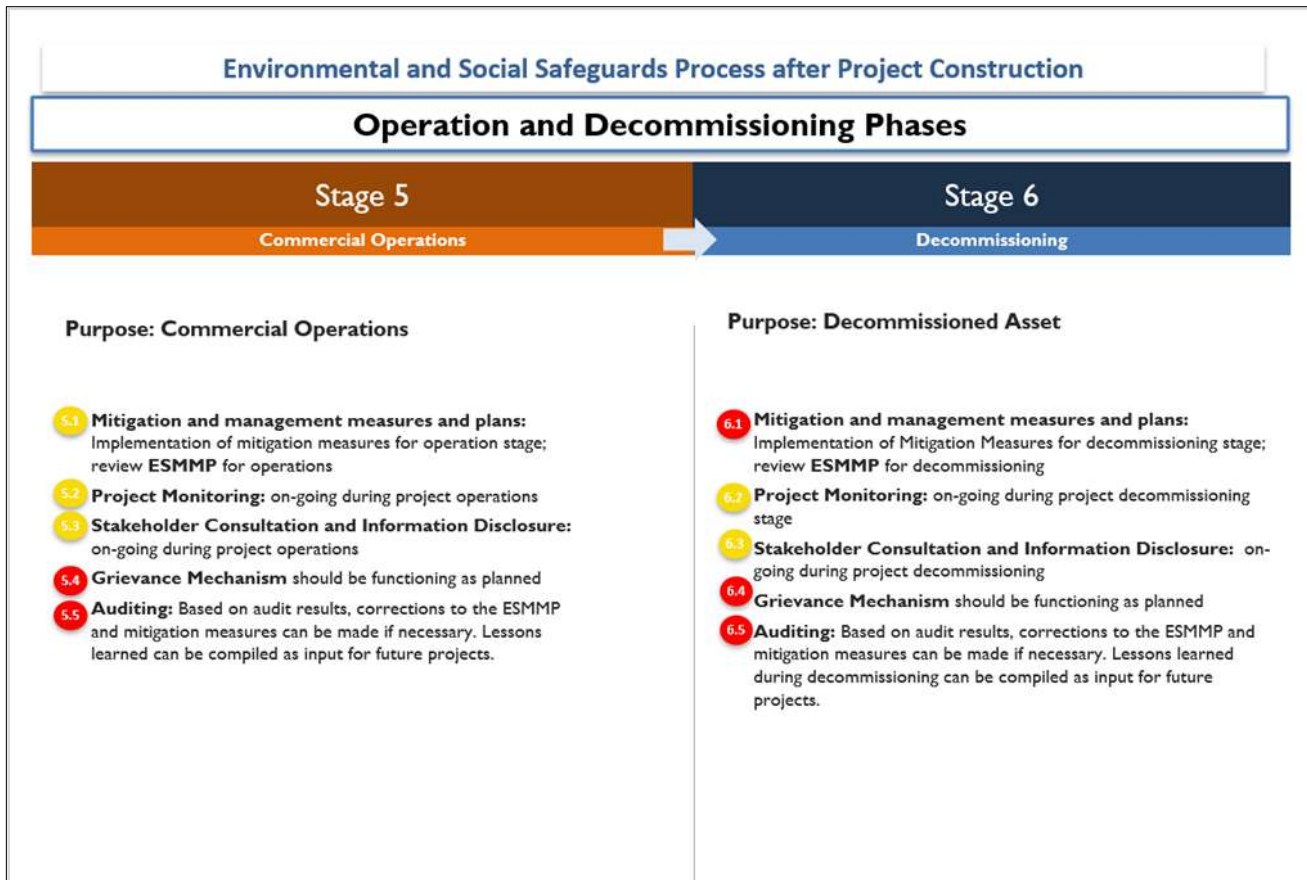
There are no legal provisions requiring the project proponent to establish accountability mechanisms, as well as any E&S auditing requirements.

### Stage 5: Commercial Operations

The summary results from the legal conformance assessment for all the key steps during Stage 5: Commercial Operations and Stage 6: Decommissioning are presented in Figure 30. For the five steps included in the legal conformance assessment for Stage 5, three (60%) were in partial conformance, and two (40%) did not conform.



**Figure 30. Results of the legal conformance assessment for the E&S safeguards during Stage 5: Commercial Operations and Stage 6: Decommissioning**



As per Stage 4, the 2019 MoNRE Notification requires the mitigation and management measures and plans be included in the ESIA report, but there are no provisions stating that contractors need to follow these requirements. The NEQA and related notifications should include guidance on arrangements for implementation of the ESMMP and action plans, and oversight responsibilities for monitoring compliance with plan agreements. The legal framework does not provide sufficient details on the requirements for the stakeholder consultation and information-disclosure process. The grievance mechanisms need to be set up by the project proponent. There are no legal provisions requiring the project proponent to establish any E&S auditing requirements.

### Stage 6: Decommissioning

The results of the legal conformance assessment at the decommissioning stage showed that two (40%) were in partial conformance and three (60%) did not conform. Similar to the commercial operations stage, the NEQA and related notifications should include guidance on arrangements for implementation of the ESMMP and action plans, oversight responsibilities for monitoring compliance with plan agreements, and more details on the requirements for the stakeholder consultation and information-disclosure process. The grievance mechanisms need to be set up by the project proponent and kept in place through the decommissioning stage. The most recent NEQA and MoNRE Notifications do not require the project proponent to implement the mitigation and management measures and plans during the decommissioning phase of the project. There are also no legal provisions requiring the project proponent to establish any E&S auditing requirements.

## 6. VIETNAM

### 6.1 Overview of the ESIA System in Vietnam

The first Law of Environmental Protection (LEP) was promulgated in 1993, with subsequent amendments in 2005, and more recently in 2014. This law is the primary legal instrument that governs the environmental management system in Vietnam. In 2019, the Ministry of Natural Resources and Environment (MoNRE) began the process of revising the LEP to better align its contents with Vietnam's international commitments on climate change. The revised LEP is scheduled to be submitted to the National Assembly for adoption by end of 2020.<sup>52</sup>

Beginning with the first LEP in 1993, the Government of Vietnam (GoV) has promulgated over 250 environmentally related legislation. Environmental protection legislation falls into three general categories: (i) laws that formalize the LEP; (ii) laws that protect specific environmental components, such as water, air, and land; and (iii) laws that integrate environmental protection regulations and requirements into other legislation. In addition, Vietnam has more than 400 environmental quality standards that address ambient air, surface and ground water quality, industrial emissions, land, and noise.<sup>53</sup>

According to the Vietnam Law and Legal Forum<sup>54</sup>, the 2019 draft LEP has left 30 of the articles found in the 2014 LEP unchanged; 47 have been annulled, 78 have been revised, and 57 new articles have been added. Some changes include a reduction in the number of entities that are subject to use the SEA as part of the planning process; only master plans will require an SEA, but SEAs will no longer be required for (sector) strategies and plans. The provisions concerning the ESIA process are being revised to be consistent with the Law on Public Investment. ESIA reports will be required for new construction investment projects with waste treatment facilities and other projects that are likely to affect the environment. For projects that apply the best available techniques, they would not be required to develop an ESIA report, and projects using best environmental practices would have their ESIA reports appraised in a simplified manner.

The 2019 draft LEP has revised and added new provisions to promote waste products as a resource that can be reused and recycled. Waste material that can be used in other production processes would become raw materials, fuels, and materials for other manufacturing sectors. Ordinary solid wastes and household solid wastes would be treated using the “polluters pay” principle. The draft also includes an environmental protection tax; green procurement and preferential policies to support the production, distribution, and use of environment-friendly products and services; response to climate change; and government expenditures for environmental protection.

The regulatory process for managing social issues in Vietnam is spread over several different legal instruments and government agencies. The environmental assessment system does not require social issues to be analyzed to the same extent as biophysical impacts. Social impacts related to land acquisition and resettlement are required by ESIA regulation but impacts on ethnic minority people are not clearly

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<sup>52</sup> <https://www.transparency-partnership.net/news/viet-nams-law-environmental-protection-under-revision>

<sup>53</sup> Nguyen, V. S., Lenihan, M. H., Nguyen, D. T., Annandale, D., Saint-Pierre, C., Nguyen T. D., A. T. Le. 2019. Vietnam: Environmental And Social Country Safeguards Framework Assessment – Phase I. Report prepared for the World Bank under the World Bank Australia Safeguards Partnership.

<sup>54</sup> <https://vietnamlawmagazine.vn/law-on-environmental-protection-to-be-revised-for-sustainable-development-16996.html>

addressed in the legal framework. Social impact assessments can take different forms, depending on the level of social risks and impacts.<sup>55</sup>

Line ministries also have their own legal instruments that govern how E&S management will relate to their own activities. For example, the Ministry of Agriculture and Rural Development (MARD), the Ministry of Construction (MoC), the Ministry of Transport (MoT), and the Ministry of Industry and Trade (MoIT) have Circulars that regulate the application of environmental assessment and other environmental protection instruments and restriction of land use within rights of way.<sup>56</sup>

The planning and implementation of development projects are ruled by an elaborate process that begins with the five-year national Socioeconomic Development Plans (SEDPs) coupled with the National Target Programs and Action Plans. Once the SEDPs are approved, the project-development and approval system come into effect. The formal environmental assessment of projects under the country system begins at the pre-feasibility study stage and is governed by Article 35 of the Public Investment Law (pre-assessment of environmental impacts). However, there is inconsistency in the regulation of EIA between the LEP, the Investment Law (IL), and the Public Investment Law (PIL). Article 25 of the LEP states that an EIA report needs to be approved and submitted with a final pre-feasibility study to the relevant authority, as a basis for decision-making on an investment policy report. However, Article 34 of the IL and the PIL states that only preliminary EIA is necessary for approval of an investment policy report.<sup>57</sup>

The implementation of the LEP is supported by various decrees and circulars, including:<sup>58</sup>

- Decree No. 18/2015/ND-CP on Environmental Protection Planning, SEA, EIA, and Environmental Protection Plans
- Decree No. 19/2015/ND-CP, which provides details for implementing several the LEP articles
- Circular No. 02/2018/TT-BXD for environmental protection in construction and reporting requirements
- Circular No. 18/2016/TT-BNNPTNT containing content on strategic environmental assessment, environmental impact assessment under the management of the minister of agriculture and rural development
- Circular No. 27/2015/TT-BTNMT on SEA, EIA, and Environmental Protection Plans
- Circular No. 32/2015/TT-BGTVT (24 July 2015) on environmental protection in transport infrastructure development

Vietnam also has several other laws relevant to the ESIA process, including:

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<sup>55</sup> Nguyen, V. S., Lenihan, M. H., Nguyen, D. T., Annandale, D., Saint-Pierre, C., Nguyen T. D., A. T. Le. 2019. Vietnam: Environmental and Social Country Safeguards Framework Assessment – Phase I. Report prepared for the World Bank under the World Bank Australia Safeguards Partnership.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Nguyen, V. S., Lenihan, M. H., Nguyen, D. T., Annandale, D., Saint-Pierre, C., Nguyen T. D., A. T. Le. 2019. Vietnam: Environmental and Social Country Safeguards Framework Assessment – Phase I. Report prepared for the World Bank under the World Bank Australia Safeguards Partnership.

- Law on Minerals (2010)
- Law on Biodiversity (2008)
- Law on Forestry Protection (2004)
- Law on Land (2003)

See Annex 2 for the full list of legal instruments that were consulted for the legal conformance assessment in Vietnam.

### Institutional Management System for the ESIA Review Process

MoNRE, established in 2002, is responsible for managing the country's natural resources and environment. The National Environmental Administration of MoNRE helps to manage national environmental protection activities throughout Vietnam, along with the provincial departments and the five cities under central government administration.<sup>59</sup>

The ESIA process in Vietnam differs in several ways when compared to the other CLMTV countries. MoNRE is not involved in the screening and scoping phase and does not approve the TOR for the ESIA. MoNRE only becomes involved in a proposed development project once the ESIA report is submitted to it, as per Article 23 of the LEP. ESIA's for some larger projects of national scope are approved by the MoNRE EIA department, while others are approved by other ministries, by provinces, or even in some cases by state-owned enterprises themselves.<sup>60</sup>

Depending on the project type, location and size, the ESIA assessment authorities will differ and may include: (1) MoNRE; (2) ministries and ministerial agencies; (3) the Ministry of National Defense and the Ministry of Public Security, and (4) the People's Committee of each province.<sup>61</sup>

According to the 2019 World Bank's Environmental and Social Country Safeguards Framework Assessment report, decentralizing the decision-making process has been the most significant development in the assessment and management of E&S risks in recent years. Prior to the 2005 LEP, all environmental approval decisions were made at the national level. Under the 2005 version of the LEP, provincial and district-level authorities have been mandated with a range of new responsibilities in relation to the EIA process. The Provincial Peoples' Committees (PPCs) are responsible for reviewing and approving a wider range of EIAs, and the District Peoples' Committees (DPCs)/Commune Peoples' Committees (CPCs) are tasked with reviewing and approving Environmental Protection Commitments (EPCs). However, the technical knowledge and capacity related to environmental assessment, management and monitoring varies widely from one province to the next.

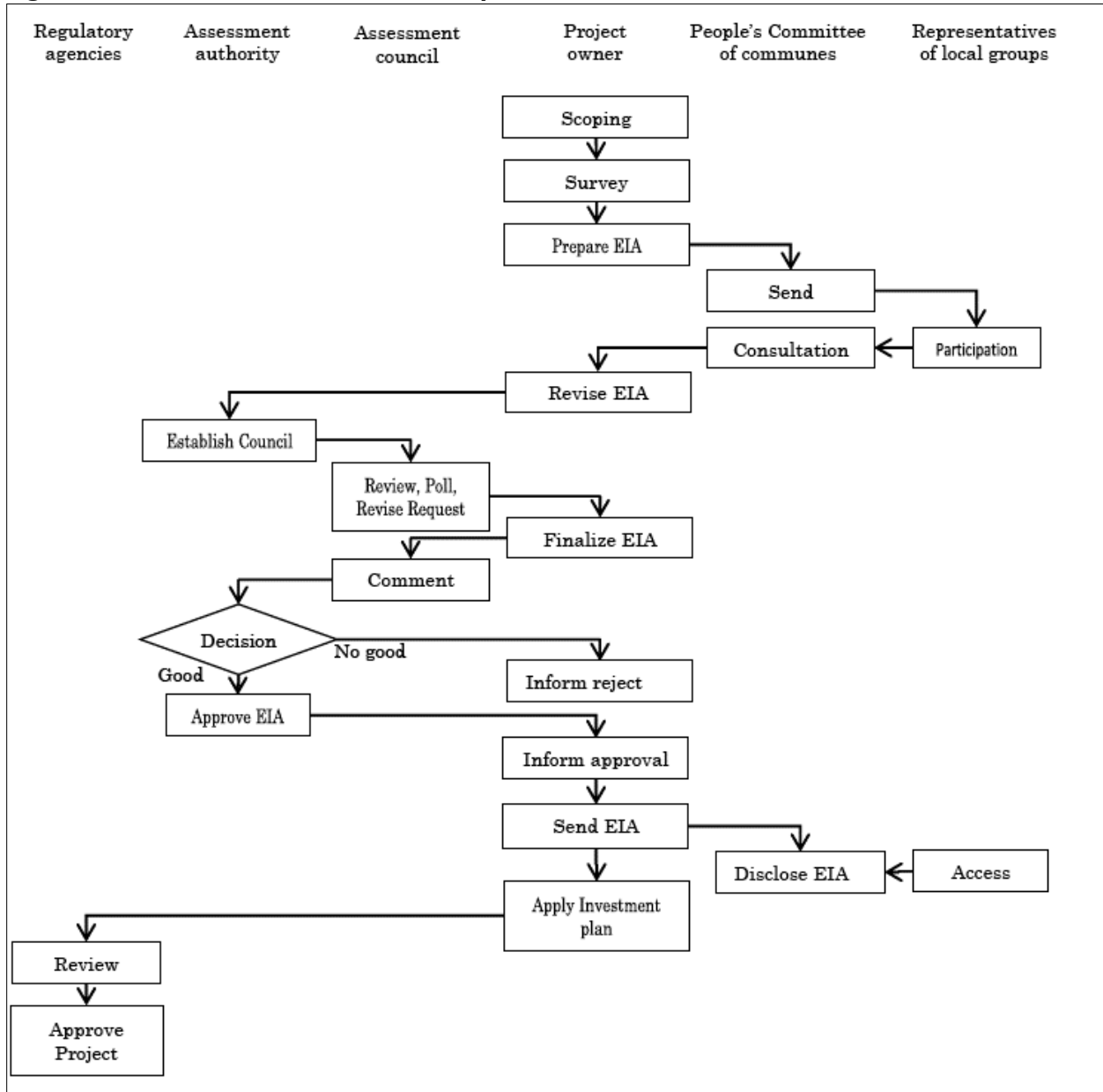
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<sup>59</sup> Baird, M., and R. Frankel. 2015. Mekong EIA Briefing: Environmental Impact Assessment Comparative Analysis in Lower Mekong Countries. Report published by PACT.

<sup>60</sup> Wells-Dang, A.; Nyi Soe, K.; Inthakoun, L.; Tola, P.; Socheat, P.; Nguyen, T.T.V.; Chabada, A. and Youttanankorn, W. 2016. A Political Economy of Environmental Impact Assessment in the Mekong Region. *Water Alternatives* 9(1): 33–55.

<sup>61</sup> Sano, D., Matsumoto, I., Urago, A., Takahashi, Y. and N. Genjida. 2016. Strengthening EIA in Asia. Prepared for the Asia EIA Conference 2016 in Nagoya, Japan. Hayama: Institute for Global Environmental Strategies.

**Figure 31. Environmental and Social Impact Assessment Process in Vietnam**



Source: Sano, D., Matsumoto, I., Urago, A., Takahashi, Y., and N. Genjida. 2016. *Strengthening EIA in Asia*. Prepared for the Asia EIA Conference 2016 in Nagoya, Japan. Hayama: Institute for Global Environmental Strategies.

## 6.2 Results

### Strategic Environmental Assessment

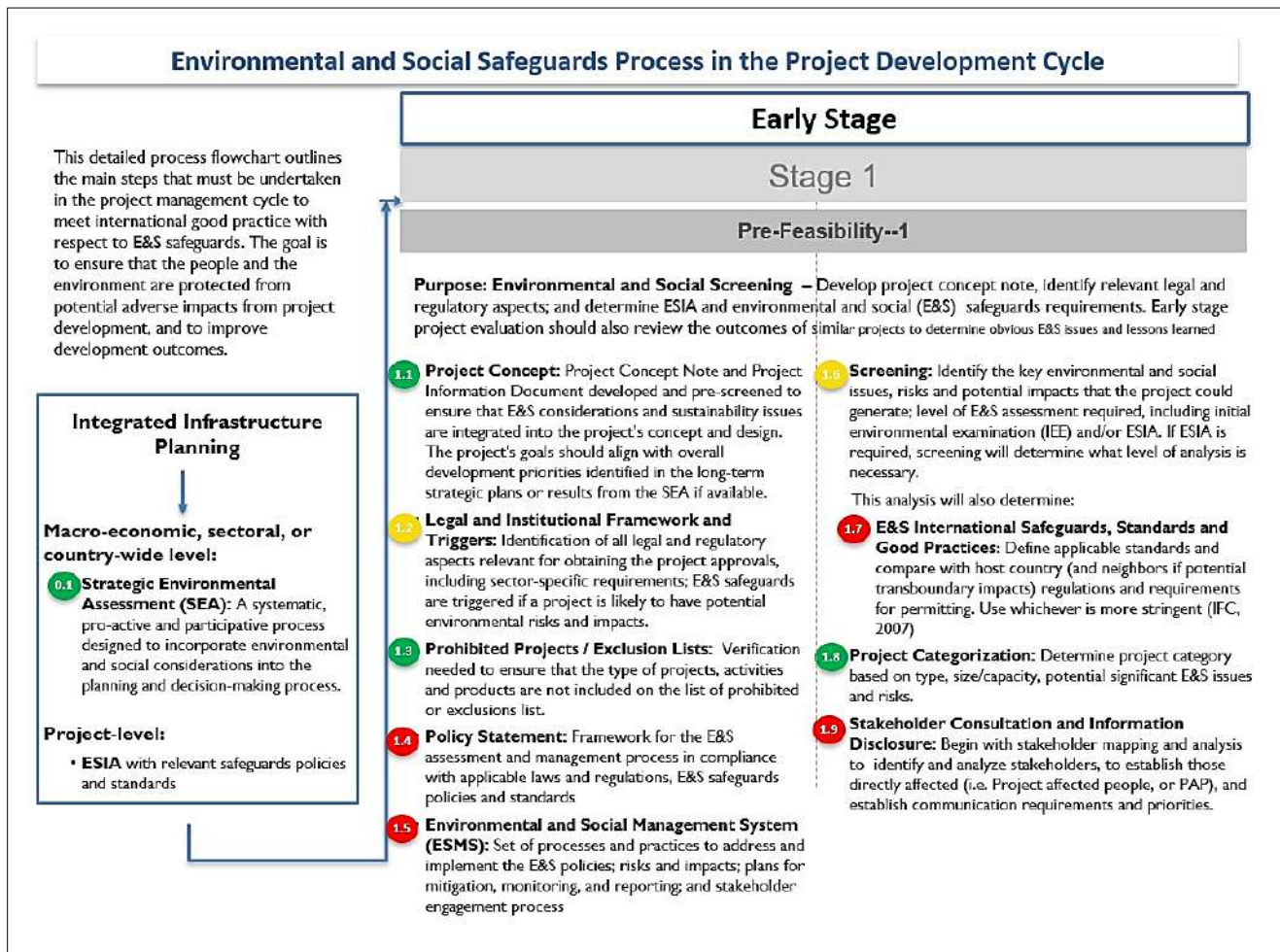
Vietnam fully conforms with international E&S safeguard policy for SEA. In the LEP, Vietnamese government agencies are required to undertake an SEA, and results must be incorporated into the policies, plans, and programs that are listed in Appendix I of Decree No. 18 on Environmental Protection Planning, SEA, EIA, and Environmental Protection Plans. Recent changes to the Planning Law have also improved the sequencing of planning instruments, as the review of SEA studies now takes place prior to the appraisal

of plans.<sup>62</sup> However, the SEA requirements may change based on the draft LEP that is now under development.

### Stage 1: Pre-feasibility

The summary results from the legal conformance assessment for all the key steps at the pre-feasibility stage are presented in Figure 32. For the nine steps included in the legal conformance assessment at this stage, three (33%) were in conformance, two (22%) were in partial conformance, and four (45%) did not conform.

**Figure 32. Results of the legal conformance assessment for the E&S safeguards at the pre-feasibility stage for Vietnam**



The legal framework in Vietnam fully conforms to the international E&S safeguard requirements that E&S considerations must be integrated into the project concept and pre-feasibility study report. The Law on Investment (2015), the Construction Law (2014), the LEP (2014), and other relevant legal instruments

<sup>62</sup> Nguyen, V. S., Lenihan, M. H., Nguyen, D. T., Annandale, D., Saint-Pierre, C., Nguyen T. D., A. T. Le. 2019. Vietnam: Environmental and Social Country Safeguards Framework Assessment – Phase I. Report prepared for the World Bank under the World Bank Australia Safeguards Partnership.

contain a list of prohibited projects and activities. The Law on Public Investment (2014) classifies projects based on their size and significance, including their impacts on the environment.

The legal framework was considered to be in partial conformance with the requirements that the project proponent must identify all legal and regulatory aspects and requirements, license conditions, and reporting requirements relevant for obtaining the project approvals at the pre-feasibility stage due to the inconsistencies between ESIA requirements in the LEP, the Law on Investment, and the Law on Public Investment. Article 25 of the LEP states that an ESIA report needs to be approved and submitted together with a final pre-feasibility study to the relevant authority, as a basis for decision-making on an investment policy report. However, Article 34 of the Law on Investment and the Law on Public Investment states that only preliminary ESIA is necessary for approval of an investment policy report.<sup>63</sup> The legal framework also needs to include provisions with explicit requirements for the compliance process.

The screening requirements were also considered to be in partial conformance. The legal framework, including the LEP and the Land Law, are not clear on the timing of the screening process. There are also inconsistencies between ESIA requirements in the LEP (Article 25) and the requirements for primary environmental assessment in the Law on Investment (Article 34) and the Law on Public Investment (articles 34 and 35).<sup>64</sup>

There are no provisions in the legal instruments requiring the project proponent to establish an overarching policy defining the E&S objectives and principles in the project, to establish an ESMS, and to identify the safeguard instruments that will be required in the impact assessment process at the screening stage. The legal framework has provisions requiring stakeholder consultations and information disclosure at various stages in the project-development cycle, but there are no requirements to begin with stakeholder mapping and analysis.

### Stage 2a: Feasibility

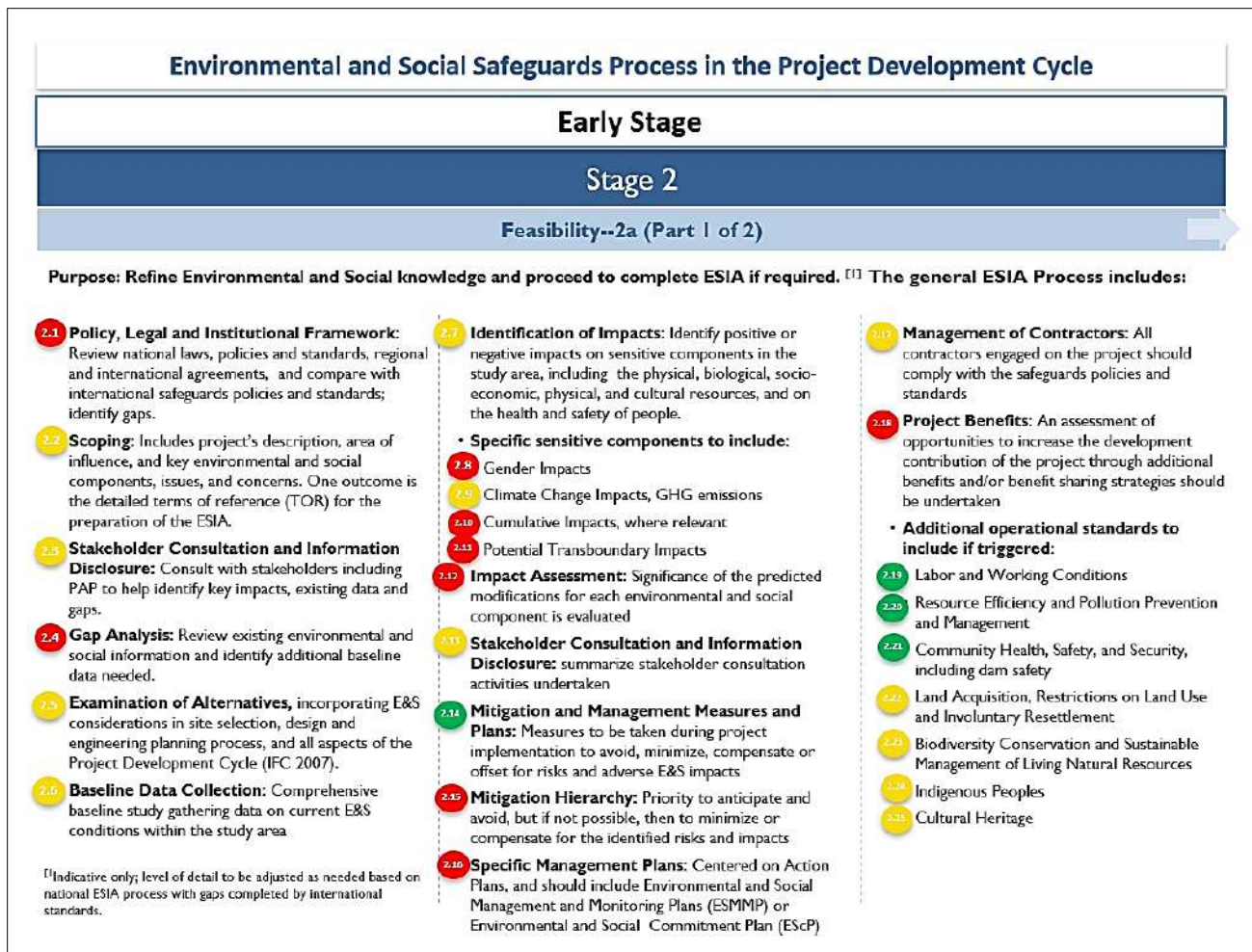
The summary results from the legal conformance assessment for all the key steps at the feasibility stage are presented in Figure 33. For the 25 steps included in the legal conformance assessment at this stage, four (16%) were in conformance, 12 (48%) were in partial conformance, and nine (36%) did not conform.

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<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

**Figure 33. Results of the legal conformance assessment for the E&S safeguards at the feasibility stage for Vietnam**



There are no legal instruments in Vietnam that require the project proponent to identify and describe the policy, legal, and institutional framework as part of the feasibility studies. There are also no provisions requiring the project proponent to conduct a gap analysis before beginning the baseline data studies.

The Law on Public Investment (2014) and the Law on Investment (2014) include a description of what must be included in the scoping study as part of the dossier submitted to the GoV, but there are no explicit requirements to examine both the direct and indirect E&S impacts. Details are lacking as to what the assessment of alternatives should include, such as choosing a different type of activity, choosing an alternative location, or using a different technology or design for the project. There are also no provisions stating that the detailed TOR for the preparation of the ESIA must be included, and therefore the requirements at this step are considered in partial conformance with international E&S safeguard policy.

Vietnam's regulatory framework governing stakeholder consultation and information disclosure has been strengthened in the last fifteen years, particularly for public investment projects. However, gaps remain, and therefore it was considered to partially conform with international E&S safeguard policies. Vietnam public participation and information-disclosure requirements are not specified according to the stages in the ESIA report preparation. There are no provisions requiring the project proponent to develop a



Stakeholder Engagement Plan, and there is also no explicit mention of ensuring women’s participation in the ESIA consultation process.

The LEP includes the principal components that need to be included in the ESIA, but more details are needed describing what type of environmental and socioeconomic data should be collected in an ESIA, as well as seasonal requirements. It should also be explicit that the E&S baseline information should be based on primary information, gathered from field surveys, and that this data can be supported by secondary data.

The legal framework does not formally require the identification and assessment of indirect effects, as the focus is primarily on direct effects. It should include explicit requirements for identifying and assessing the project impacts on women, indigenous people, and vulnerable groups. It should also provide clear definitions for “environmental impact,” “social impact,” “direct,” “indirect,” “cumulative,” and “residual impact” under the ESIA process. There are also no legal provisions to include the sensitive components that have been recently added to international safeguard policies and performance standards, namely gender impacts, cumulative and transboundary impacts. While the LEP does include a chapter on climate change and measures that MoNRE needs to follow to manage GHG emissions to meet international standards, there are no explicit requirements for projects to report on GHG emissions.

Although the LEP and supporting decrees detail the stakeholder consultation and information-disclosure process, there are gaps, and therefore they are in partial conformance with international E&S safeguard policy. The consultation requirements relate to contact with local authorities through letters and/or meetings. There is no requirement for open public involvement and no requirement or guidance provided on more effective consultation methods. There are no provisions concerning public access to background studies or information associated with the ESIA. There is also no explicit mention in the legal framework of women’s participation in the ESIA consultation processes. There is no explicit requirement to undertake the more robust ICP process for projects with potentially significant adverse impacts, and there are no provisions when consulting with indigenous people / ethnic groups to obtain their free, prior, and informed consent. Provisions should be added requiring specialized consultations to identify GBV risks in areas deemed of substantial and high risk.

The legal framework conforms to the requirement that one outcome of the ESIA process is the mitigation and management measures and plans that the project proponent must follow during the construction, commercial operations, and decommissioning stages. However, there are no provisions requiring specific management plans when needed. It is also not clearly specified that the ESIA process must follow the mitigation hierarchy.

The Decree No. 29 and Circular No. 2 state that contractors hired must follow environmental mitigation plans, but provisions need to be added to include adherence to social safeguard policies as well. There are also no provisions mandating project proponents to include benefit sharing measures and plans to ensure local communities derive specific benefits from the development project.

Depending on the risks and impacts identified, specific operational standards may be triggered. Vietnam’s level of conformance to these operational standards are listed in Table 9.

**Table 9. Vietnam’s extent of conformance with International Operational Standards**

Specific Operational Standards	Extent of Conformance	Gaps
Labor and Working Conditions	Full conformance	
Resource Efficiency and Pollution Prevention and Management	Full conformance	

Community Health, Safety, and Security, including Dam Safety	Full conformance	
Land Acquisition, Restrictions on Land Use, and Involuntary Resettlement	Partial conformance	Remaining gaps in the national legal instruments in comparison to international E&S policies include issues related to compensation at full replacement cost, eligibility for compensation of those without legal titles for land or assets, and investments into livelihood restoration. There are also no clear mechanisms to minimize resettlement. <sup>65</sup> The legal framework should include provisions for gender considerations and the protection of the vulnerable groups in land acquisition and resettlement. Provisions need to include requiring the principle of FPIC be included in the planning and implementation process for resettlement and compensation. There should also be a requirement to undertake a social assessment to be able to identify and implement measures to minimize and mitigate adverse impacts, particularly upon poor and vulnerable groups.
Biodiversity Conservation and Sustainable Management of Living Natural Resources	Partial conformance	Impacts on biodiversity are not considered early in the EIA process, and there is no provision for biodiversity impact assessment in the LEP. The requirements for impact assessment do not adequately deal with biodiversity issues during project design, and there is no regulatory guidance on biodiversity offsets. <sup>66</sup>
Indigenous Peoples / Ethnic Groups	Partial conformance	The legal framework in applicable land legislation (Land Law, Law on Forest Protection and Development, etc.) should include explicit formal governance powers over land and natural resources for indigenous people and ethnic groups, particularly the recognition of customary rights to land, forest, and other natural resources. It should also include the relevant provisions from the United Nations Declaration on the Rights of Indigenous Peoples, which grant indigenous people the right of free, prior, and informed consent in relation to state intervention, and ensures fair and effective participation in the ESIA process. According to the World Bank's report on Environmental and Social Country Safeguards Framework Assessment, risks of impact from investment projects on ethnic minority communities are "largely sector-dependent. In health, education, and water sectors, both the regulatory framework and its implementation are mostly consistent with ESF requirements, as well as ESS objectives. In other sectors, including agriculture, energy, environment & natural resources, transport and urban development, the country system, due to capacity constraints, differs

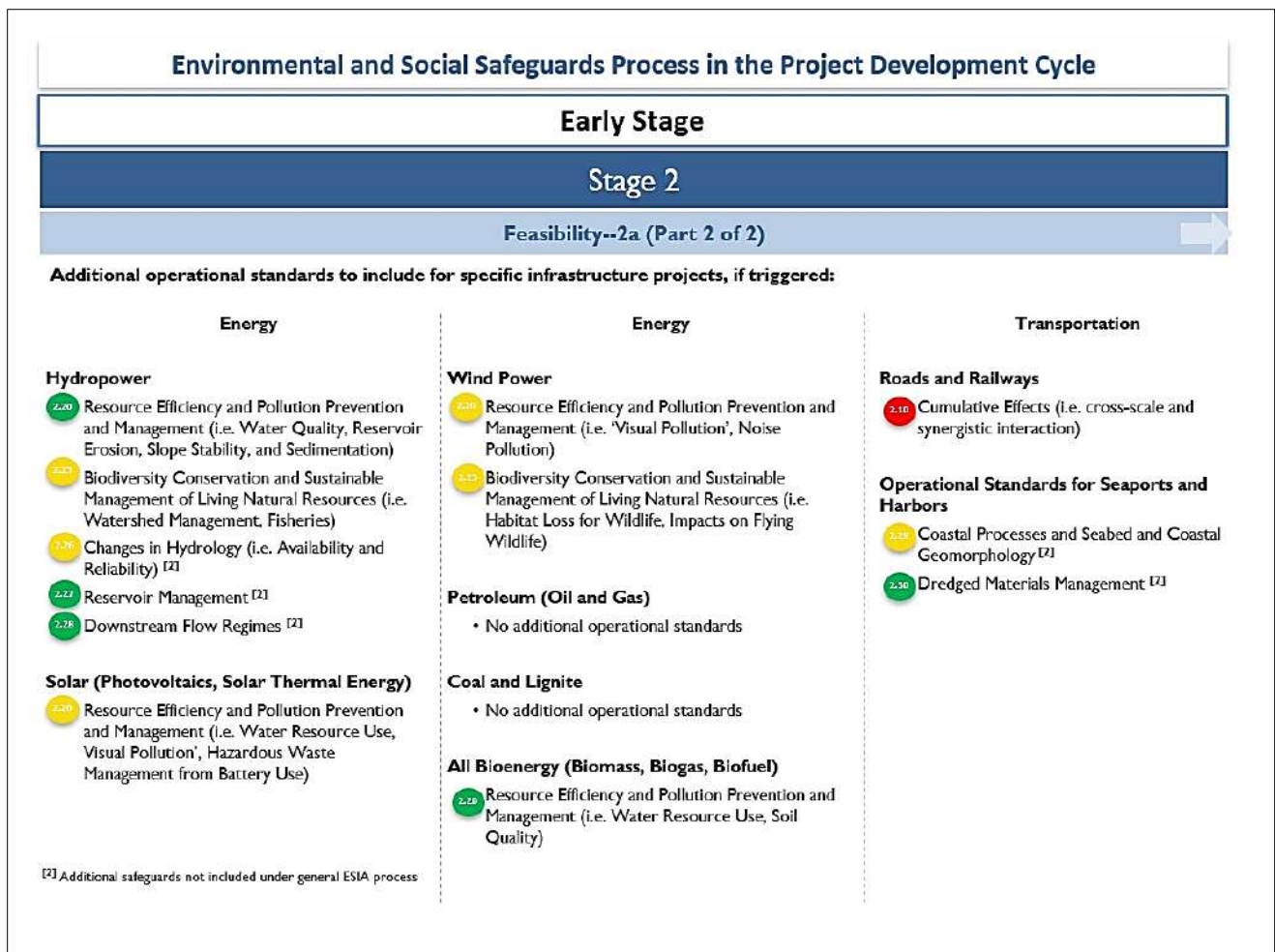
<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

		on those ESF requirements that are critical to manage risks” <sup>67</sup> .
Cultural Heritage	Partial conformance	There are no provisions describing procedures for managing “chance finds” during project implementation. The legal framework does not require the development of Cultural Heritage Management Plans, and stakeholder consultation requirements are too general and do not specifically highlight the importance of cultural heritage.

Apart from the operational standards listed above that could apply to any development project, there are additional operational standards that would need to be included that are specific to the inherent risks and impacts from infrastructure projects. The results from the legal conformance assessment for these additional operational standards are shown in Figure 34 as well as in Table 10, along with Vietnam’s level of conformance.

**Figure 34. Results of the legal conformance assessment for the additional E&S operational safeguards relevant for infrastructure projects for Vietnam**



<sup>67</sup> Ibid.

**Table 10. Vietnam’s extent of conformance with International Operational Standards specific to infrastructure projects.**

Specific Operational Standards	Extent of Conformance	Gaps
<b>Energy: Hydropower</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Quality, Reservoir Erosion, Slope Stability, and Sedimentation)	Full conformance	
Biodiversity Conservation and Sustainable Management of Living Natural Resources (i.e., Watershed Management, Fisheries)	Partial conformance	The legal framework should include the provisions requiring that watershed protection plans and river basin management plans should be included as specific EMMP in the ESIA report, and provisions should be added requiring the data collection and impact assessment to extend to the watershed area as part of the project areas of influence.
Changes in Hydrology (i.e., Availability and Reliability)	Partial conformance	The legal provisions should include details of what should be included in the hydrological resource availability and reliability assessment.
Reservoir Management	Full conformance	
Downstream Flow Regimes	Full conformance	
<b>Energy: Solar (Photovoltaics, Solar Thermal Energy)</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Resource Use, Visual “Pollution,” Hazardous Waste Management from Battery Use)	Partial conformance	There are no corresponding legal provisions that require baseline data be collected and analyzed for visual impacts.
<b>Energy: Wind Power</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Visual “Pollution,” Noise Pollution)	Partial conformance	There are no corresponding legal provisions that require baseline data be collected and analyzed for visual impacts.
Biodiversity Conservation and Sustainable Management of Living Natural Resources (i.e., Habitat Loss for Wildlife, Impacts on Flying Wildlife)	Partial conformance	The Circular on Wind Power Development and Power Purchase Agreement should include explicit requirements to analyze the wind power projects’ impact on flying wildlife and siting restrictions.
<b>Energy: Coal and Lignite</b>		
No additional operational standards		
<b>Energy: All Bioenergy (Biomass, Biogas, Biofuel)</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Resource Use, Soil Quality)	Full conformance	
<b>Transportation: Roads and Railways</b>		
Cumulative Effects (i.e., cross-scale and synergistic interaction)	No conformance	Roads and railways interact with ecosystems across a wide range of scales. The legal framework should include provisions requiring the project proponent to identify, assess, manage, and mitigate the cumulative effects of roads and railways.
<b>Transportation: Operational Standards for Seaports and Harbors</b>		
Coastal Processes and Seabed and Coastal Geomorphology	Partial conformance	The legal framework should include provisions with explicit requirements of the data to be collected as part of the

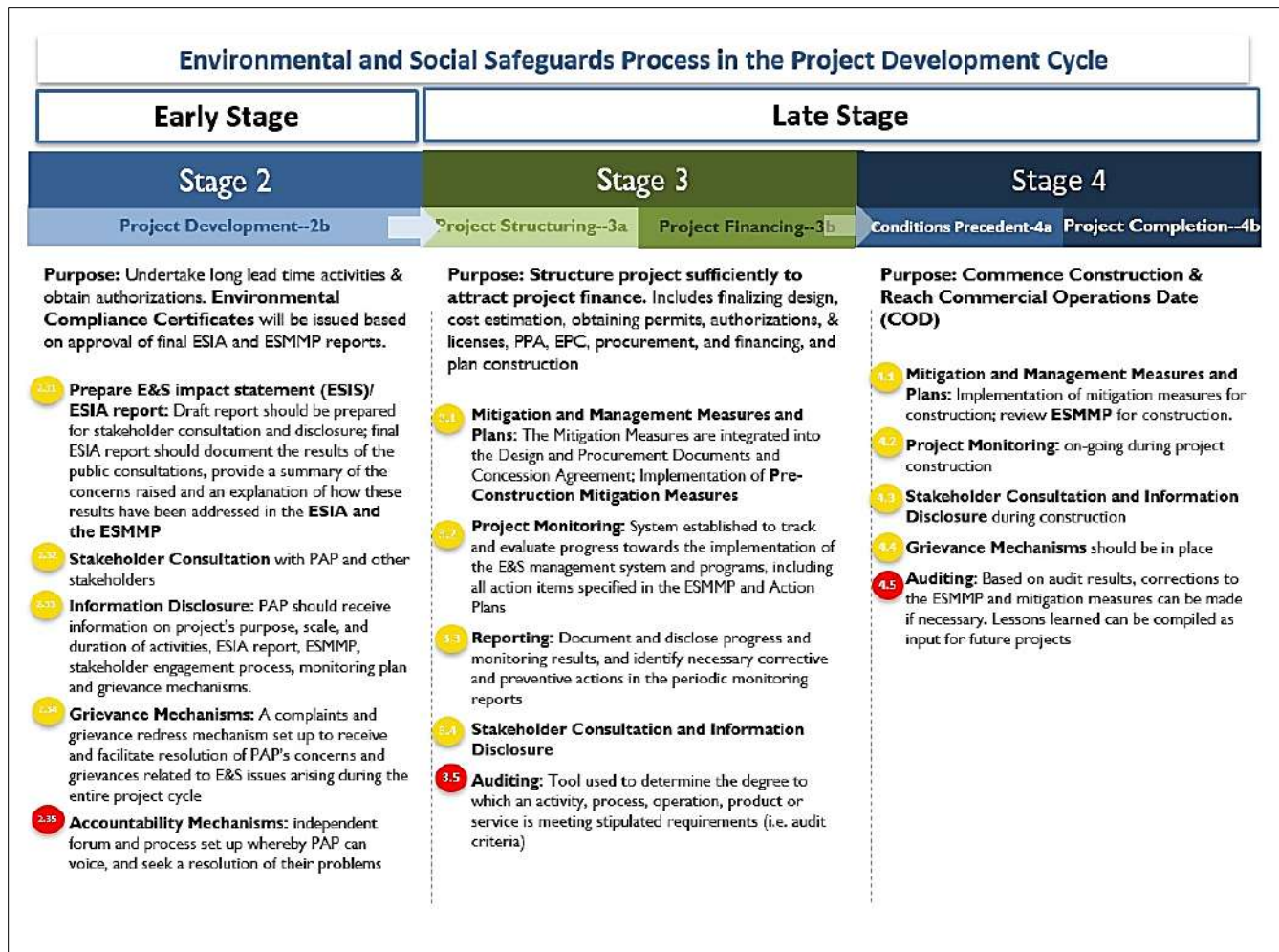
impact assessment, including modeling of metocean, hydrological, sedimentological, and coastal geomorphological conditions, as well as the identification of potential adverse impacts on coastal processes such as erosion and accretion.

Dredged Materials Management Full conformance

### Stage 2b: Project Development

The summary results from the legal conformance assessment for all the key steps at the project-development stage, as well as Stage 3: Project Structuring and Financing and Stage 4: Conditions Precedent and Project Completion are presented in Figure 35. For the five steps included in the legal conformance assessment for Stage 2b: Project Development, four (80%) were in partial conformance, and one (20%) did not conform.

**Figure 35. Results of the legal conformance assessment for the E&S safeguards during project development, project structuring and financing, and conditions precedent and project completion for Vietnam**



The LEP, the Decree No. 29, and the Circular No. 27 list the main subject matter that should be included in the ESIA reports. To better align with international safeguard policies, the content of the ESIA should include the description of the legislative and regulatory framework; the gaps between the national legislation and international requirements; evaluation of cumulative impacts; the Stakeholder Engagement Plan; and the Emergency Preparedness and Response Plan.

The legal framework governing stakeholder consultation and information disclosure includes provisions stating that consultation should occur during the preparation of the ESIA, but it is not clear if the public has an opportunity to review or comment on the final ESIA. Stakeholders participating in the consultations are only those directly affected by the project, and not communities that are indirectly affected communities and other interested parties, such as NGOs. The consultation process should be expanded to include the public. There is also no specific requirement that the ESIA and ESMMPs are public documents. The project proponent should provide information about the project to PAP and other stakeholders throughout the life of the project, and the information should be made widely accessible, including in hard copy format and electronically on websites. The information should include the purpose, nature, and scale of the project; the duration of the proposed project activities; any risks to and potential impacts on PAP and relevant mitigation measures; the proposed stakeholder engagement process; and the grievance mechanisms.

The LEP includes a chapter on handling disputes, but the provisions are considered in partial conformance with E&S safeguard policy. Complaints are limited to state administration, cannot be anonymous, and must be filed before a three-month deadline. There are no provisions with explicit references to project-specific grievance redress mechanisms. The legal framework should require monitoring by an independent monitoring consultant to ensure fairness and confidentiality. For projects that are considered to have substantial or high risk of GBV, a recommendation to establish a separate GBV grievance mechanism system, with feedback to the lender's Accountability Mechanism, could be included. In the LEP, Article 146 should grant local communities the right to submit complaints related to environmental protection violations. There are also no provisions dealing with accountability mechanisms.

### Stage 3: Project Structuring and Financing

For the five steps included in the legal conformance assessment for Stage 3: Project Structuring and Financing, four (80%) were in partial conformance, and one (20%) did not conform.

The legal instruments require the project proponent to submit the ESIA report and receive approval from the relevant government authorities before being granted a construction license (if applicable) or receiving a decision to go ahead with the project. However, there are no provisions requiring E&S commitments, as well as mitigation and management measures and plans, to be included in all relevant procurement and contracting processes. There are also no provisions requiring that gender considerations, and specifically GBV requirements, should be included in the bidding and procurement processes. Provisions should be added stating that project proponents need to include the institutional arrangements or implementation schedules and their ESMMPs.

Project-monitoring requirements are included in the legal instruments, but provisions need to be added to fully conform with international best practices. The legal framework should include provisions stating that where appropriate, the project proponent should engage stakeholders and third parties, such as independent experts, local communities, or NGOs, to complement or verify its own monitoring activities. For project reporting requirements, the project proponent should include measures ensuring the PAP and other stakeholders have access to the reports and not only the government agencies. There are also no provisions requiring an E&S audit to take place at any stage.

International E&S safeguard policy dictate that stakeholder consultation and information disclosure should continue throughout the project's life cycle. In Vietnam's legal framework, continuing the consultation process is left to the discretion of the "appraisal agency." This should be revised to ensure that continuing stakeholder engagement is mandatory.

#### Stage 4: Conditions Precedent and Project Completion

For the five steps included in the legal conformance assessment for Stage 4: Conditions Precedent and Project Completion, four (80%) were in partial conformance, and one (20%) did not conform.

The LEP and the Decree No. 29 describe the project proponent's responsibilities to implement, and supervise the implementation of, the contents of environmental impact assessment reports and the environmental mitigation and management plans. To fully conform with international E&S safeguard policy, the legal instruments should explicitly state that contractors are required to follow the social safeguard policies, and not only the environmental mitigation policies.

Following the improvements needed for the stakeholder consultation and information disclosure during Stage 3: Project Structuring and Financing, during Stage 4 the consultation process should be mandatory, and not solely left to the discretion of the "appraisal agency."

For the reporting requirements, the legal framework should include provisions to ensure the monitoring and compliance reports are accessible to the public. Where appropriate, the project proponent should also engage stakeholders and third parties, such as independent experts, local communities, or NGOs, to complement or verify its own monitoring activities. Project-specific grievance redress mechanisms need to be included in the legal framework. For projects that are considered to have substantial or high risk of GBV, a recommendation to establish a separate GBV grievance mechanism system, with feedback to the lender's Accountability Mechanism, could be included. Currently, there are no requirements that an E&S audit needs to be undertaken during any stage of the project life cycle.

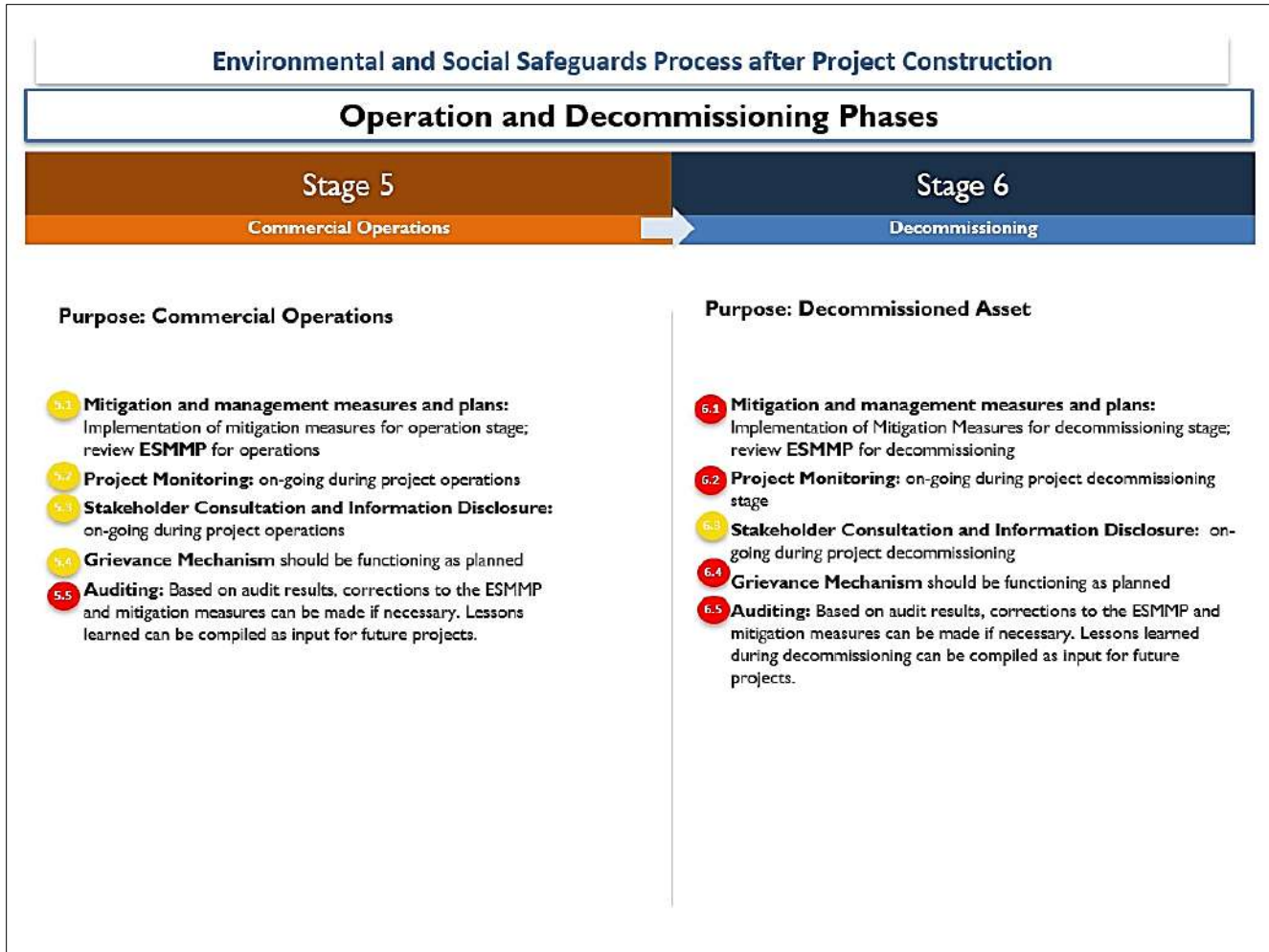
#### Stage 5: Commercial Operations

The summary results from the legal conformance assessment for all the key steps during Stage 5: Commercial Operations and Stage 6: Decommissioning are presented in

Figure 36. For the five steps included in the legal conformance assessment for Stage 5, four (80%) were in partial conformance, and one (20%) did not conform.



**Figure 36. Results of the legal conformance assessment for the E&S safeguards during Stage 5: Commercial Operations and Stage 6: Decommissioning**



The legal conformance assessment results for all five steps are the same in Stage 5 as the earlier stage. For mitigation and management measures and plans, the legal instruments should explicitly state that contractors are required to follow the social safeguard policies as well as the environmental mitigation policies. For the project reporting requirements, additional provisions are needed to ensure the monitoring and compliance reports are accessible to the public. The stakeholder consultation and information-disclosure process should be mandatory, and not solely left to the discretion of the “appraisal agency.” Project-specific grievance redress mechanisms need to be included in the legal framework, along with the requirements for an E&S audit to help determine the degree to which the project’s activities and processes meet stipulated requirements.

### Stage 6: Decommissioning

The results of the legal conformance assessment at the decommissioning stage showed that one (20%) of the procedural steps was in partial conformance and four (80%) did not conform. The legal framework governing the ESIA process in Vietnam needs to be extended to the decommissioning stage, with continuing stakeholder consultation and information disclosure, opportunities for communities to be involved in the project-monitoring process, as well as confidential channels to lodge complaints throughout the project life cycle.

# 7. CHINA

## 7.1 Overview of the ESIA System in China

The concept and practice of environmental protection and impact assessment in China can be traced back to the early 1970s, when EIAs were conducted for major construction projects, regulated by the Several Provisions of Protecting and Improving Environment Draft (1973). In 1974, the State Council introduced a document on prevention of pollution of coastal waters. During the 1970s, China also enacted several new environmental standards to build up national environmental management and to obtain quantitative indicators of environmental health and threats. Environmental protection was also enshrined in the new constitution in 1978, which provided a constitutional basis for China's environmental protection work and environmental legislation in the following decades.<sup>68</sup>

In 1979, after several years of deliberation and preparations, China promulgated its EPL and a series of related decrees. This law defined the principles of environmental protection and liabilities, as well as created a basic framework of environmental standards and assessments. Under the provisions on the EIA process, it stated that before a construction project could begin, an EIA must be carried out and approved by the competent environmental protection bureaus (EPBs). It established the “three synchronization” system, meaning that the design, construction, and operation of the principal parts of a project must be synchronized with the design, construction, and operation of appropriate pollution-prevention and control facilities. The project is not allowed to begin operations until the pollution-prevention and control facilities are examined and approved by the same EPBs that approve the EIA. The law also introduced the “polluter pays principle,” in that the polluter must bear the costs of cleaning up environmental pollution that it causes, pay discharge fees on waste releases that exceed discharge standards, and invest in waste treatment facilities.<sup>69</sup>

Revisions to the EPL were implemented in 1989, but the language remained vague (e.g., emphasis was on “encourage” rather than “require”), which made implementation efforts difficult. In 2015, the EPL was amended to strengthen its commitment to environmental protection. Before approval by the Standing Committee of the National People's Congress, the revisions were sent to environmental law experts, government bodies, local environmental protection bureaus, and even the public for review and comments.<sup>70</sup>

China's initial goals of environmental protection focused on wastewater treatment, waste gas, and factory waste residuals. After the Big Flood of 1998, the importance of ecosystem and biodiversity conservation came to the fore, and several programs were developed to stem environmental degradation and conserve biodiversity, including the Natural Forest Protection Program.<sup>71</sup>

While EIAs for new factories and other construction projects were formerly conducted based on provisions in the EPL, the first law on EIA was promulgated in 2002 and came into effect in 2003. Prior to this law, other instruments governing EIA included the Measures of Environmental Management for Basic

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<sup>68</sup> Wang, Y. 2015. The making of Environmental Law in China. Master's Thesis. Department of Archaeology and Ancient History, Uppsala University, Uppsala, Sweden.

<sup>69</sup> Sun, M., Li, J., and H. S. Freehills. 2017. Major projects: environmental risks in China: Overview. Part of the global guide to major projects: Environmental risks law.

<sup>70</sup> Ker, M., and K. Logan. 2014. New environmental law targets China's local officials.

<https://www.chinadialogue.net/article/show/single/en/6939-Newenvironmental-law-targets-China-s-local-officials>

<sup>71</sup> Biechele-Speziale, D. 2018. Chinese Environmental Protection Policies and Implementation. Honors College Capstone Experience/Thesis Projects. Paper 738. [https://digitalcommons.wku.edu/stu\\_hon\\_theses/738](https://digitalcommons.wku.edu/stu_hon_theses/738)

Construction Projects (Measures). The Measures required an EIA to be prepared for a new or expanded project likely to cause pollution. The Measures specified the scope, background, and procedure of an EIA. The Measures were revised in 1986 to include more details on EIA preparation and review procedures, approval authority and responsible parties, detailed requirements of an environmental report, EIA practitioners' qualification and certification system, and contents of the EIA report and EIA form. In 1998, the Measures were revised again and renamed the Regulations of Environmental Management for Construction Projects by the State Council, making it an administrative law with a higher level of legislation.<sup>72</sup>

The enactment of the first Environmental Impact Assessment Law (EIA Law) put China's EIA system on a sound legal footing and clarified its scope of application.<sup>73</sup> The EIA Law covered both governmental plans (planning EIA) and construction projects (project EIA). However, since the maximum cost of the fines associated with noncompliance was low, many developers were circumventing the EIA process because it was less expensive to pay the fine than to integrate environmental protection measures into their construction plans. The penalty for not submitting an EIA was to conduct a retrospective "make-up" assessment issued by the Environmental Protection Bureau.<sup>74</sup>

In 2016, the Standing Committee of the National People's Congress revised the EIA Law, with several significant revisions made to the project EIA requirements. These revisions included: (1) EIA approval is no longer a condition precedent for the approval of a project, but a condition precedent for the commencement of the project construction. This implies that the period for obtaining EIA approval has been extended, and approval can be achieved even after the approval of the project by National Development and Reform Commission (NDRC) or its local counterparts, but prior to actual project construction; (2) soil and water conservation approval is not required for the purpose of conducting an EIA; (3) industry preliminary examination is not required; (4) the EIA registration form applies to the filing system; and (5) the cost of violating the 2016 EIA Law substantially increases.<sup>75</sup> Under this new law, any noncompliance with the EIA requirement will be punished with a "cease construction order, a significant daily penalty, and an order to restore the property to its original state."

Since the 1990s, the National People's Congress has strengthened the environmental legislative framework to include thirty major environmental laws that address subjects such as water, air, forestry, wildlife, minerals, soil, coal, and renewable energy. Additionally, between the State Council, the State Environmental Protection Administration (SEPA), and provincial governments, nearly thirty administrative regulations, 427 environmental standards, and 900 local laws and regulations have been issued.<sup>76</sup>

Depending on the different law-making bodies and according to the Law on Legislation of the People's Republic of China that regulates the structure for law-making in China, the environmental laws could be divided into levels<sup>77</sup>:

- Laws promulgated by the National People's Congress and its Standing Committee

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<sup>72</sup> Yost, N. C., and X. Zhang. 2017. Environmental Impact Assessment in China and the United States: A Comparison.

<sup>73</sup> Ibid.

<sup>74</sup> Chun, A. 2016. Has China's impact assessment law lost its teeth? <https://chinadialogue.net/en/pollution/9122-has-china-s-impact-assessment-law-lost-its-teeth/>

<sup>75</sup> Yost, N. C., and X. Zhang. 2017. Environmental Impact Assessment in China and the United States: A Comparison.

<sup>76</sup> Wang, L. 2010. The changes of China's environmental policies in the latest 30 years. *Procedia Environmental Sciences*, 2, 1206–1212. doi:10.1016/j.proenv.2010.10.131.

<sup>77</sup> Wu, Q., Zhou Y., Yue Q., Lai J., Pang Z., Zhang F., and W. Malleons. 2020. Environmental law and practice in China: overview.

- Administrative regulations formulated by the State Council
- Department rules formulated by ministries and commissions under the State Council
- Local regulations formulated by each province, autonomous region, municipalities directly under the central government, and districted cities
- Internal regulations of the Communist Party of China, such as the Regulation for the Central Environmental Inspection

The following are the main environmental laws in China that serve as the foundation of the environmental legal framework as well as specific fields of environmental protection:

- Environmental Protection Law (2015)
- Law on Environmental Impact Assessment (2016)
- Air Pollution Prevention and Control Law (2016)
- Marine Environment Protection Law (1999)
- Water Pollution Prevention and Control Law (2018)
- Law on the Prevention and Control of Environmental Pollution by Solid Wastes (2020)
- Law on the Prevention and Control of Soil Pollution (2019)
- Environmental Noise Pollution Prevention and Control Law (1997)
- Radioactive Pollution Prevention and Control Law (2003)
- Grassland Law (1985)
- Forest Law (2019)
- Water Law (1998)

#### Institutional Management System for the ESIA Review Process

China's administrative structure is organized into five levels: the national (central) level, provincial level (provinces, autonomous regions, and municipalities directly under the central government), city level, county level, and town and village level.<sup>78</sup> The environmental administration structure follows this same hierarchy, with the Ministry of Ecology and Environment (MEE) at the national level and EPBs set up at the provincial, city, and county levels.

China's first national environmental administration, the Leading Group for Environmental Protection, was established under the State Council in 1974. It later evolved into the State Environmental Protection Bureau under the Ministry of Urban and Rural Construction and Environmental Protection (established in 1982), and then into the State Environmental Protection Commission in 1984 under the same ministry,

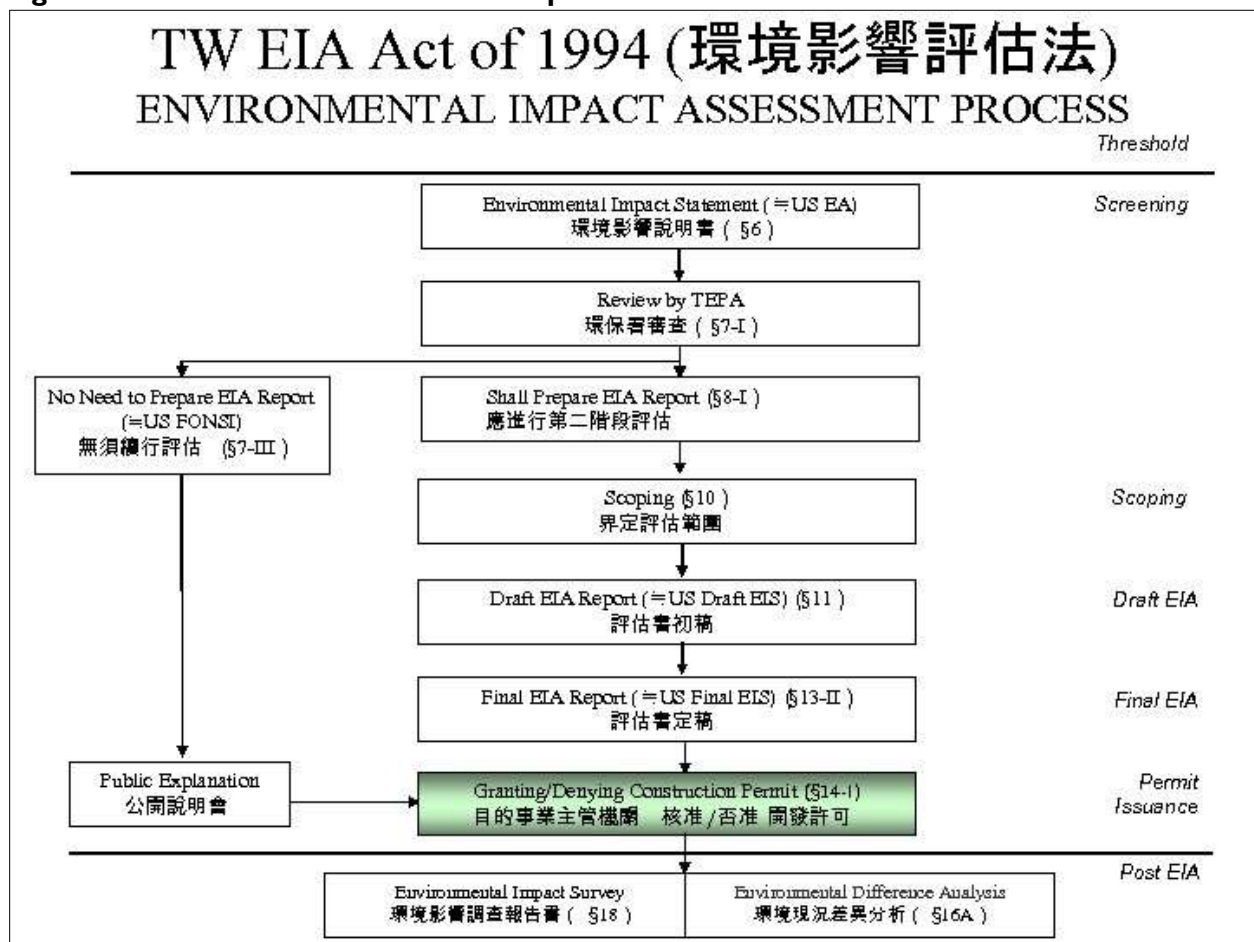
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<sup>78</sup> [https://www.env.go.jp/earth/coop/oemjc/china/e/china\\_e\\_1.pdf](https://www.env.go.jp/earth/coop/oemjc/china/e/china_e_1.pdf)

now called the Ministry of Construction. In 1988, the EPB was separated from the Ministry of Construction and was upgraded to the ministerial level in 1998, then under State Council directly, as the SEPA. The promotion increased its status and decision-making power, as well as more clout to shape policy, monitor, and enforce environmental regulations.<sup>79</sup>

In 2008, SEPA became the Ministry of Environmental Protection (MEP) of the People's Republic of China, and then evolved again in 2018 to become MEE. The Ministry is mandated to protect China's environment from pollution, to implement environmental policies, and to enforce environmental laws and regulations, as well as funding research and development. It also has jurisdiction over China's nuclear safety agency. MEE and its affiliated environmental departments at county, municipal, and provincial levels are responsible for supervising the EIA approval process and implementing enforcement measures such as shutting down facilities and equipment and imposing fines due to noncompliance. Local EPBs are responsible for handling routine procedural matters and have no authority to formulate emission standards. However, provincial governments can set emission standards that are more stringent than the national standards, or that regulate pollutant parameters not covered in the national standards.<sup>80</sup>

**Figure 37. Environmental and Social Impact Assessment Process in China**



<sup>79</sup> Wang, Y. 2015. The Making of Environmental Law in China. Master's Thesis. Department of Archaeology and Ancient History, Uppsala University, Uppsala, Sweden.

<sup>80</sup> [https://www.env.go.jp/earth/coop/oemjc/china/e/china\\_e\\_1.pdf](https://www.env.go.jp/earth/coop/oemjc/china/e/china_e_1.pdf)

## 7.2 Results

### Strategic Environmental Assessment

China's legal framework partially conforms with international E&S safeguard policy for SEA. The concept of SEA places emphasis on the strategic dimension of assessment, as per the principles highlighted in the International Association for Impact Assessment.<sup>81</sup> Within the current Chinese legal system, the corresponding SEA-type model is referred to as a Plan Environmental Impact Assessment (PEIA). PEIAs are used on select government plans, with the goal of strengthening the capacity of sectoral institutions to integrate environmental concerns into their daily activities of planning and implementation. However, only government plans that are related to the economy and expected to have an environmental impact are subject to a PEIA. The PEIA process starts further downstream than an SEA, as the PEIA is expected to start once crucial planning stages and decisions have already been made, such as transport demand, optimal structure, and location of the network if used for a transportation project. Provisions in the EIA Law should be revised to ensure the PEIA process is undertaken earlier to ensure early and effective exchange of information that can help shape the draft project plan in line with environmental protection and sustainable development priorities. The subject matter dealt with in the PEIA is insufficient; the legal instruments do not specify whether the "policies" should apply to the planning EIA process or not.<sup>82</sup> The PEIA study should also examine the social impacts as well as indirect environmental impacts of plans.

### Stage I: Pre-feasibility

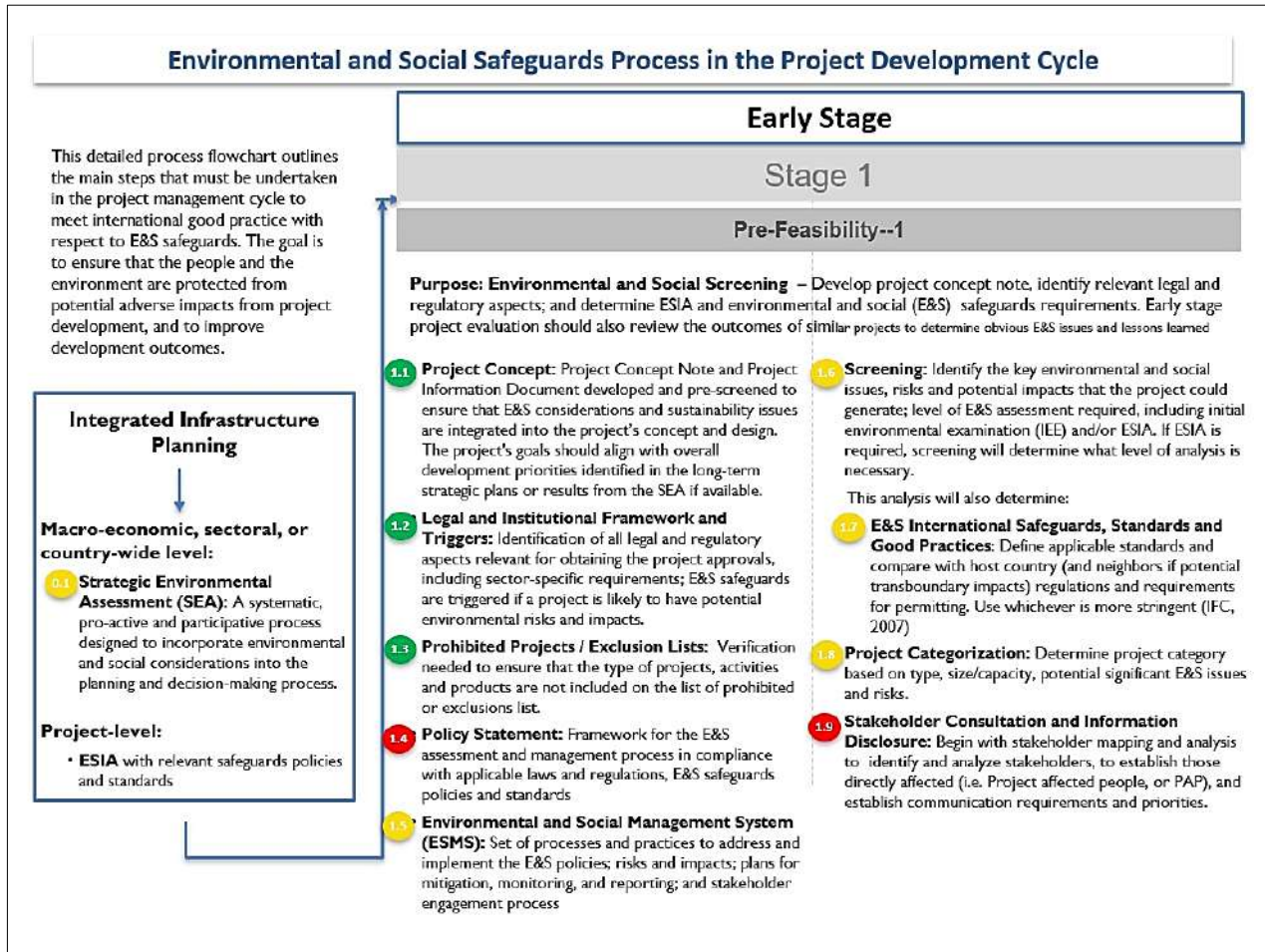
The summary results from the legal conformance assessment for all the key steps at the pre-feasibility stage are presented in Figure 38. For the nine steps included in the legal conformance assessment at this stage, three (33%) were in conformance, four (44%) were in partial conformance, and two (22%) did not conform.

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<sup>81</sup> IAIA. 2002. Strategic Environmental Assessment: Performance Criteria, Special Publication Series No. 1, International Association for Impact Assessment ([www.iaia.org/publications](http://www.iaia.org/publications)).

<sup>82</sup> Bina, O., Jurkeviciute, A., and H. Zhang. 2009. Transition from Plan Environmental Impact Assessment to Strategic Environmental Assessment: Recommendations of the Project "Policy Instruments for a Chinese Sustainable Future". Stockholm Environment Institute, Stockholm, Sweden.

**Figure 38. Results of the legal conformance assessment for the E&S safeguards at the pre-feasibility stage for China**



The legal framework in China fully conforms to the international E&S safeguard requirements that E&S considerations must be integrated into the project concept and pre-feasibility study report. The EPL requires the project proponent to identify all legal and regulatory aspects and license conditions. There are also general “negative lists” in China, which are applicable to all enterprises, including domestic enterprises, and negative lists directed at foreign investors. The 2019 Market Access negative list divided industries into two categories: “prohibited” and “restricted” industries. The most recent negative list includes activities such as construction of golf courses and villas, and activities related to the gambling industry, but limitations on foreign investment in service and manufacturing sectors that were previously prohibited have been relaxed, such as certain mining sector activities, highway passenger transportation, cargo handling, creditworthiness investigation and rating services, accounting and auditing, construction and operation of agricultural wholesale markets, manufacturing of railway transportation equipment, electric bus network equipment, and batteries for new energy vehicles.

Under the EPL, enterprises and public institutions that discharge pollutants must establish an environmental protection accountability system to identify environmental risk and impacts, and the responsibilities of personnel in charge. However, this does not fully comply with international E&S safeguard policy because provisions requiring the identification of social risks and impacts, stakeholder engagement, and management and monitoring programs are missing. The laws governing screening are also in partial conformance since there are no requirements to screen for indirect and cumulative impacts. While the technical guidelines for environmental impact assessment of construction projects state that

the project proponent must analyze project’s conformance with national laws and standards, this requirement would better align with international best practices if the analysis of conformance was extended to international E&S safeguard policies.

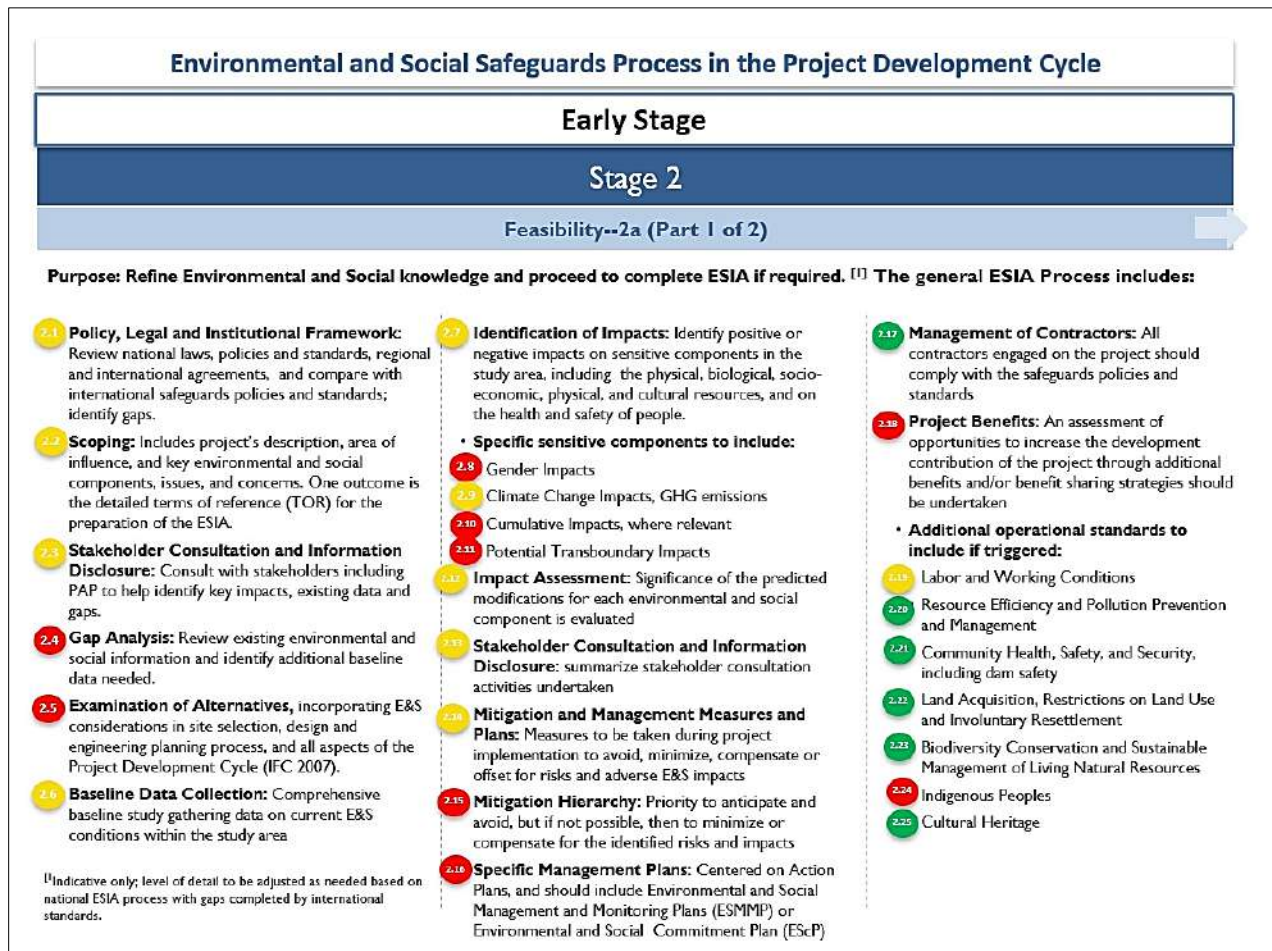
In the EIA Law, projects are classified into three categories based on their potential environmental impacts, and two of the three categories allow abridged assessment if projects are anticipated to have “mild” or “very little” impact. Depending on the severity of the effects, the state determines what level of assessment is required. For projects that require an EIA, no further categorization is required, which does not align with international best practices to further classify projects by level, such as high, medium, or low E&S risk and impact.

Two of the steps at this stage were considered not to conform: there are no provisions that state the project proponent must establish an overarching policy defining the E&S objectives and principles, and there are no legal provisions stating that project proponents need to conduct a Stakeholder Mapping.

### Stage 2a: Feasibility

The summary results from the legal conformance assessment for all the key steps at the feasibility stage are presented in Figure 39. For the twenty-five steps included in the legal conformance assessment at this stage, six (24%) were in conformance, ten (40%) were in partial conformance, and nine (36%) did not conform.

**Figure 39. Results of the legal conformance assessment for the E&S safeguards at the feasibility stage for China**





The Technical Guidelines for EIA of Construction Projects for the scoping stage requires project proponents to analyze the conformity of the construction project's site selection, scale, technology used, etc. with the national and local environmental protection laws and regulations, standards, policies, norms, related planning, and planning EIA, as well as with ecological Red Line requirements, but an examination of social impacts is not included, so these guidelines only partially conform to international E&S safeguard policy for these two steps.

The legal framework does not oblige the project proponent to include the public at the project scoping stage; public participation in the ESIA process is required only after the finalization of the draft ESIA document. This excludes the public from being involved in the ESIA report development stage, which may result in important issues being missed when initiating the ESIA study. The project proponent must also develop a Stakeholder Engagement Plan to guide the consultation process throughout the project life cycle.

There are no legal instruments in China that require the project proponent to conduct a gap analysis before beginning the baseline data study, and to consider alternatives as part of the scoping study.

The baseline data collection requirements and analysis of impacts are also missing the social components; therefore, these two steps were in partial conformance with international best practice. There are also no legal provisions to include the sensitive components that have been recently added to international safeguard policies and performance standards, namely gender impacts, cumulative and transboundary impacts. The legal framework has requirements for project-specific energy efficiency and GHG emissions control measures, but provisions need to be added that require project proponents' to include an analysis and management of the risks of climate change for the project, as well as the project's role in climate change adaptation.

China's EIA Law lays out the steps that are required when conducting an ESIA, but the current provisions are too general. Provisions need to be added requiring project proponents to state what methodology they used to evaluate impacts to fully conform with international E&S safeguard policy. The stakeholder consultation and information-disclosure requirements are also in partial conformance. Although the project proponent must include an explanation of whether the opinions of relevant entities, experts, and the general public on the draft ESIA were accepted or rejected (EIA Law Article 21), the law does not require authorities to consider public comments when deciding whether to approve a project. There are also no requirements in the law to allow members of the public an opportunity to comment on the ESIA report once it has been finalized and submitted to the relevant authority.

According to a 2018 assessment on Public Participation in China's Environment, commissioned by China Water Risk, a key shortcoming in the current legal framework is that when public opinions are solicited for ESIA's, they are often not taken into serious consideration, and there are no clear and objective criteria to determine what counts as "full consideration" (as specified in the EPL), and there are no procedures to examine whether dismissal of any public opinion given on the EIA is a reasonable action made by the government and/or the developer.<sup>83</sup> There are no provisions requiring the more robust ICP process for projects with potentially significant adverse impacts, and to obtain their free, prior, and informed consent when consulting with indigenous people / ethnic groups. Provisions requiring specialized consultations to identify GBV risks in areas deemed of substantial and high risk need to be included. Although the amended

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<sup>83</sup> <http://www.chinawaterrisk.org/opinions/increasing-public-participation-in-chinas-environment>

EPL includes a new chapter dedicated to Public Participation, with articles 53–54 contributing to more efficient and extensive information disclosure, it is at a stage where the ESIA Report is already in progress and not during the initial screening and scoping stages. This makes it more difficult for the public feedback to effect changes in the project’s design, if required. Information disclosure using a variety of methods should be mandatory to ensure that information about the project is accessible to all members of the public, including those who do not have access to the internet.

The EIA Law (Article 17) requires project proponents to include environmental protection measures in the ESIA report. However, the provisions do not describe the form or contents of the required mitigation and management measures and plans, but leave it to the discretion of the project proponent to determine, so this was considered to partially conform with international E&S safeguard policy. The laws must be more prescriptive to ensure a systematic approach when developing the measures and plans. There are no legal provisions to develop specific management plans apart from the standard general ones.

The principles stated in the EIA Law and the EPL partially follow the mitigation hierarchy, as they highlight the importance of “prevention first.” The EIA Law establishes the “three synchronization” system, and no operation is permitted to commence until the pollution-prevention and control facilities are examined and approved by the same competent EPBs that approve the EIA. However, the other steps in the mitigation hierarchy, namely “minimize, and, where residual impacts remain, compensate/offset for risks and impacts to people and the environment” should also be emphasized if prevention is not possible.

The legal framework fully conforms with the contractor management requirements. The Contract Law includes a chapter that specifically deals with construction engineering contracts. Project proponents are legally responsible for ensuring their associated contractors follow the ESIA laws and management plans; otherwise both parties will undertake joint legal liability.

The EIA Law states that project proponents must include a cost-benefit analysis for the economic benefits of their project in their ESIA report. However, there are no legal provisions that explicitly state the project proponent must include benefit sharing for local communities as part of the project investment and therefore does not conform with international E&S safeguard policy.

Depending on the risks and impacts identified, specific operational standards may be triggered. China’s level of conformance to these operational standards are listed in Table II.

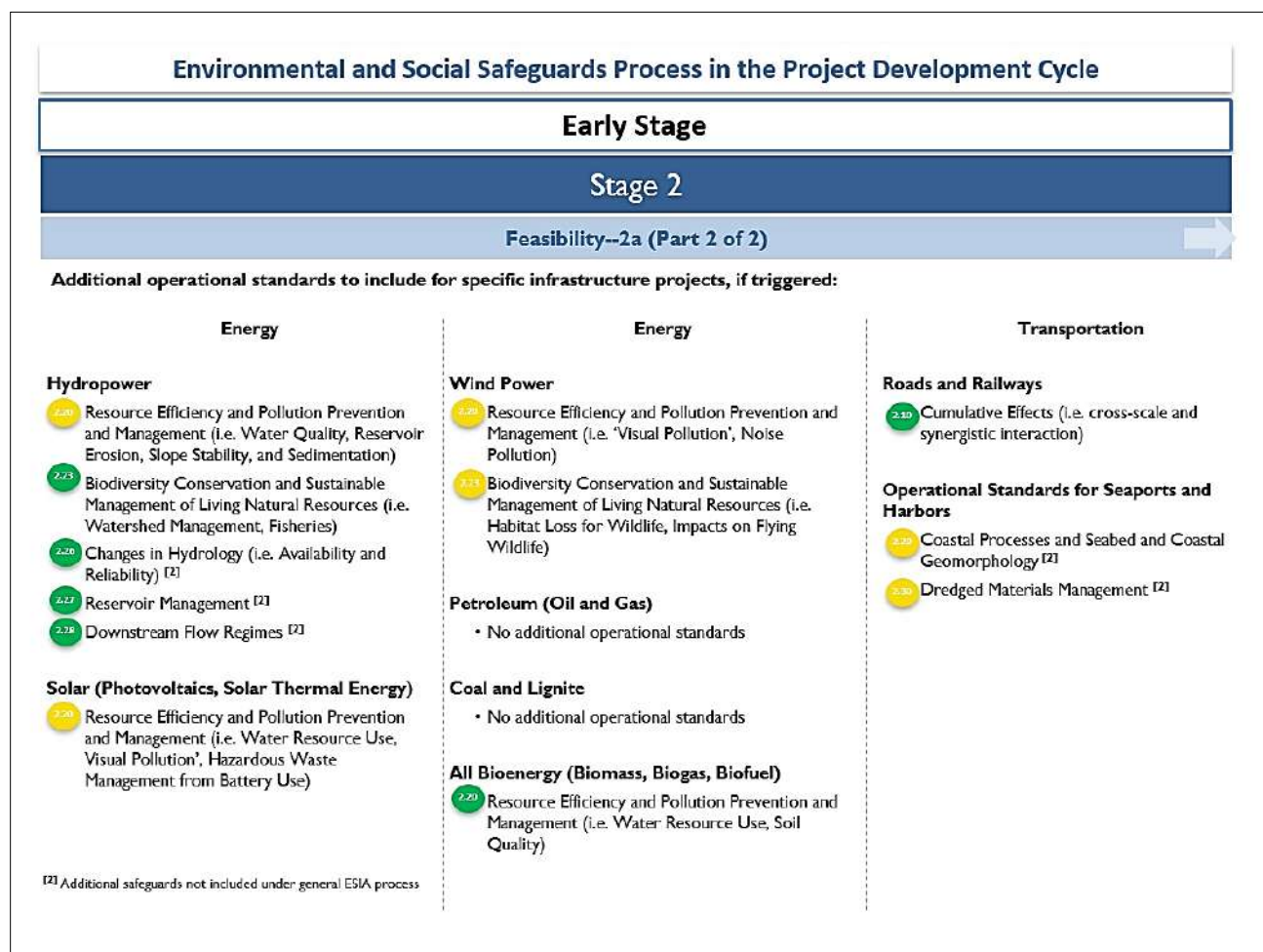
**Table II. China’s extent of conformance with International Operational Standards**

Specific Operational Standards	Extent of Conformance	Gaps
Labor and Working Conditions	Partial conformance	China ratified CEDAW in 1981, and as such committed to eliminating discrimination against women in the field of employment in order to ensure women the same rights as men, in particular “the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment,” and “the right to free choice of profession and employment.” The provision that women will not be hired for jobs that are not deemed suitable for them as determined by the state is discriminatory and subject to biases and stereotyping. The provision that women will not be hired for jobs that are not deemed suitable for them as determined by the state is discriminatory and subject to biases and inappropriate stereotyping.

Resource Efficiency and Pollution Prevention and Management	Full conformance
Community Health, Safety, and Security, including Dam Safety	Full conformance
Land Acquisition, Restrictions on Land Use, and Involuntary Resettlement	Full conformance
Biodiversity Conservation and Sustainable Management of Living Natural Resources	Full conformance
Indigenous Peoples / Ethnic Groups	No conformance
Cultural Heritage	Full conformance

Apart from the operational standards listed above that could apply to any development project, there are additional operational standards that would need to be included that are specific to the inherent risks and impacts from infrastructure projects. The results from the legal conformance assessment for these additional operational standards are shown in Figure 40 as well as in Table 12, along with China's level of conformance.

**Figure 40. Results of the legal conformance assessment for the additional E&S operational safeguards relevant for infrastructure projects for China**



**Table 12. China's extent of conformance with International Operational Standards specific to infrastructure projects**

Specific Operational Standards	Extent of Conformance	Gaps
<b>Energy: Hydropower</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Quality, Reservoir Erosion, Slope Stability, and Sedimentation)	Partial conformance	Provisions governing sediment management (quantity and quality) need to be included in the legal instruments, with an emphasis on the precautionary principle.
Biodiversity Conservation and Sustainable Management of Living Natural Resources (i.e., Watershed Management, Fisheries)	Full conformance	
Changes in Hydrology (i.e., Availability and Reliability)	Full conformance	
Reservoir Management	Full conformance	
Downstream Flow Regimes	Full conformance	
<b>Energy: Solar (Photovoltaics, Solar Thermal Energy)</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Resource Use, Visual "Pollution," Hazardous Waste Management from Battery Use)	Partial conformance	Provisions in the technical guidelines pertaining to impacts of solar energy production should be legally binding.
<b>Energy: Wind Power</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Visual "Pollution," Noise Pollution)	Partial conformance	Provisions in the technical guidelines pertaining to impacts of solar energy production should be legally binding.
Biodiversity Conservation and Sustainable Management of Living Natural Resources (i.e., Habitat Loss for Wildlife, Impacts on Flying Wildlife)	Partial conformance	Provisions in the technical guidelines pertaining to impacts of wind farms should be legally binding.
<b>Energy: Petroleum (Oil and Gas)</b>		
No additional operational standards		
<b>Energy: Coal and Lignite</b>		
No additional operational standards		
<b>Energy: All Bioenergy (Biomass, Biogas, Biofuel)</b>		
Resource Efficiency and Pollution Prevention and Management (i.e., Water Resource Use, Soil Quality)	Full conformance	
<b>Transportation: Roads and Railways</b>		
Cumulative Effects (i.e., Cross-Scale and Synergistic Interaction)	Full conformance	
<b>Transportation: Operational Standards for Seaports and Harbors</b>		
Coastal Processes and Seabed and Coastal Geomorphology	Partial conformance	The coastal zone is a geographical entity covering both terrestrial and submerged areas along the coastline, and it is the interface between the land and sea. It is essential to consider coastal land, coastline, and coastal waters as a whole continuum, and to take an integrated approach to manage the issues on the continuum within a legal and regulatory framework. China has no national law or institution specifically for coastal zone management

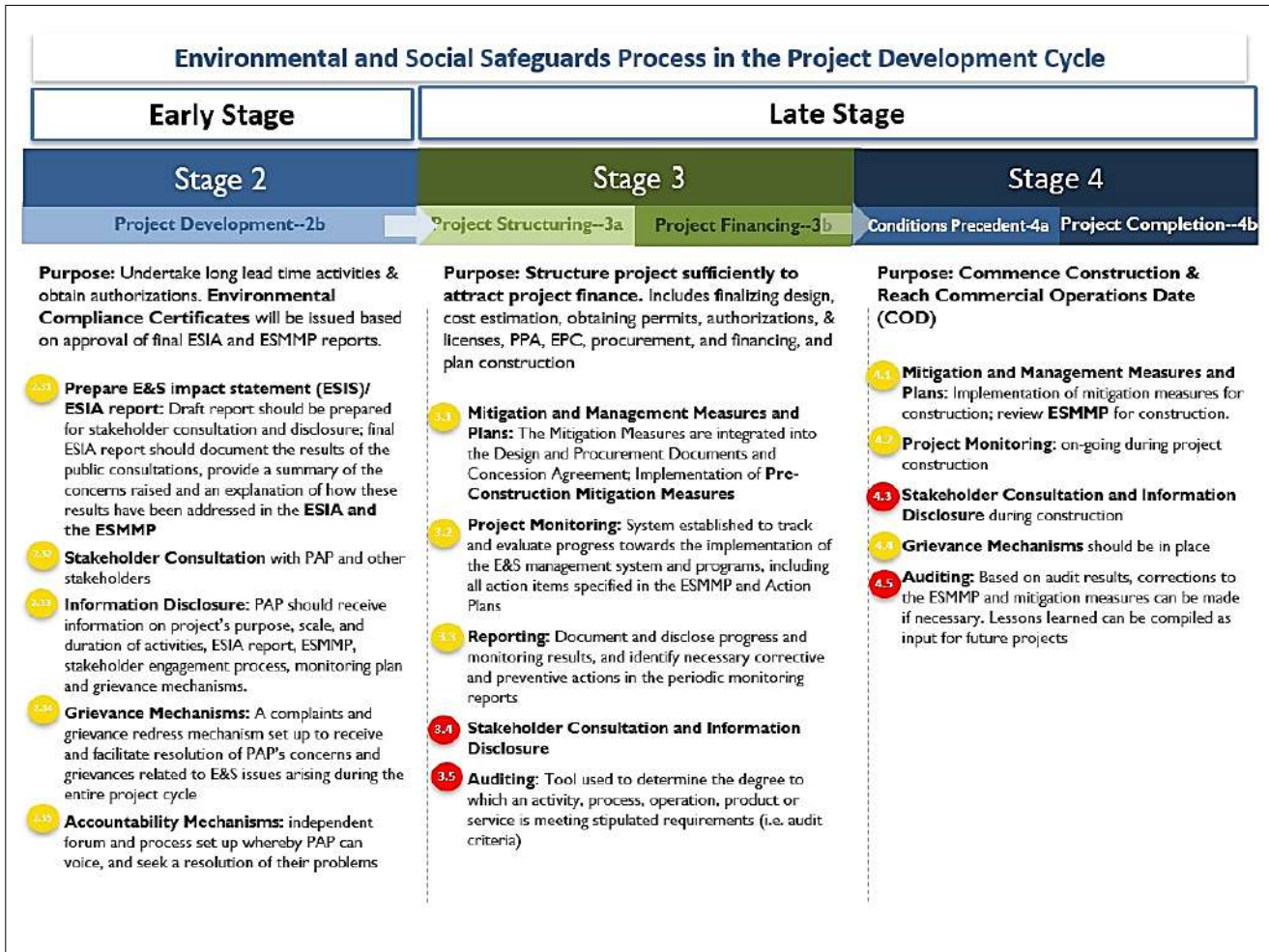
		with consideration of both coastal land and waters and regulating the cross-jurisdictional coastal issues, even though the coastal zone in China is experiencing the most pressure from economic development and population growth. In China, coastal zone management is generally regarded as a part of marine management. Currently, the Chinese government is exploring the application of integrated coastal zone management as their coastal management mechanism. <sup>84</sup>
Dredged Materials Management	Partial conformance	Provisions should be added requiring project proponents to conduct a risk assessment for dredging activities and integrate the results in a Dredging Management Plan.

### Stage 2b: Project Development

The summary results from the legal conformance assessment for all the key steps at the project-development stage, as well as Stage 3: Project Structuring and Financing and Stage 4: Conditions Precedent and Project Completion are presented in Figure 41. For the five steps included in the legal conformance assessment for Stage 2b: Project Development, all five (100%) were in partial conformance.

<sup>84</sup> Che, S., and S. Pearson. 2015. Managing China's Coastal Environment: Using a Legal and Regulatory Perspective. *International Journal of Environmental Science and Development*, Vol. 6, No. 3, March 2015.

**Figure 41. Results of the legal conformance assessment for the E&S safeguards during project development, project structuring and financing, and conditions precedent and project completion**



The legal instruments covering ESIA report preparations and stakeholder consultation at this stage are in partial conformance, but provisions need to be added requiring social risks and impacts to be included in the ESIA report. For the stakeholder consultation process, like the earlier stage, the EIA Law does not require authorities to consider public comments when deciding whether to approve a project. There are also no requirements in the law to allow members of the public an opportunity to comment on the ESIA report once it has been finalized and submitted to the relevant authority. To ensure better transparency and objectivity, public consultation and information disclosure must be mandatory at all stages of the project-development cycle. In areas of substantial and high risk of GBV, the project proponent should identify GBV risks throughout the ESIA process and include measures to mitigate project-related risks in their monitoring and management plans.

The EPL and the Administration Litigation Law authorize “citizens, legal persons and other organizations” to file a complaint against project proponents or individuals who damage the environment. However, permission for NGOs to pursue administrative litigation for actions alleged to have infringed the public interest have been interpreted as being limited to civil disputes directly against polluters, i.e., lawsuits against polluters for damaging the environment. This includes the 2017 amended Administrative Litigation

Law, which excludes NGOs to pursue administrative litigation.<sup>85</sup> These legal instruments include accountability mechanisms, but provisions should also include additional mechanisms that provide a way to register complaints related to GBV in a safe and confidential manner. For projects that are considered to have substantial or high risk of GBV, a recommendation to establish a separate GBV grievance mechanism system, with feedback to the lender's Accountability Mechanism, could be included.

### Stage 3: Project Structuring and Financing

For the five steps included in the legal conformance assessment for Stage 3: Project Structuring and Financing, three (60%) were in partial conformance, and two (40%) did not conform.

International E&S safeguard policy states that all E&S requirements, as well as mitigation and management measures and plans, must be included in all relevant procurement and contracting processes. If the project proponent is hiring contractors, the ESMMP should be incorporated as part of the contract between the project proponent and the contractor, together with appropriate monitoring and enforcement provisions. In China, impact assessments must be obtained before other construction permissions can be requested. Under the new EIA Law, however, different permissions can be applied for in parallel, which was revised to speed up the approval process. However, there are concerns that this will weaken the efficacy of an ESIA as a tool for E&S protection since it will be difficult for authorities to exercise the ESIA veto once the time-consuming financial and construction approvals have been granted. The State Council issued an order mandating that prerequisite approvals were needed only for site selection and land use, except for important or very large projects. Under the new law, that exception has been removed, meaning that the approvals process for huge petrochemical or infrastructure projects can progress in parallel with ESIA approval.<sup>86</sup>

The legal instruments do not explicitly state how often project monitoring and reporting is required by the project proponent. A regular and systematic project-monitoring and reporting schedule needs to be included in the EIA Law.

There are no legal provisions mandating that stakeholder consultation and information disclosure must continue throughout the project life cycle. There is also no requirement for the project proponent to conduct E&S audits to determine the degree to which project activities and operations are meeting requirements.

### Stage 4: Conditions Precedent and Project Completion

For the five steps included in the legal conformance assessment for Stage 4: Conditions Precedent and Project Completion, three (60%) were in partial conformance, and two (40%) did not conform.

Like Stage 5, in the amended EIA Law, Article 25 states that EIA approval will no longer be a condition precedent for the approval of a project, but a condition precedent for the commencement of the project construction. Article 26 states that "During the construction process of a construction project, the construction entity shall simultaneously implement the environmental protection countermeasures proposed in the EIA report."

Project-monitoring requirements are in partial conformance but would better align with international E&S safeguard policy if there was a systematic and regular project-monitoring requirement included in the legal framework. The results of the assessment for China's grievance mechanisms during project construction

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<sup>85</sup> Schulte, W. J., and H. Li. 2017. Testing the Limits of China's Environmental Law. *Chinadialogue*.

<sup>86</sup> <https://chinadialogue.net/en/pollution/9122-has-china-s-impact-assessment-law-lost-its-teeth>

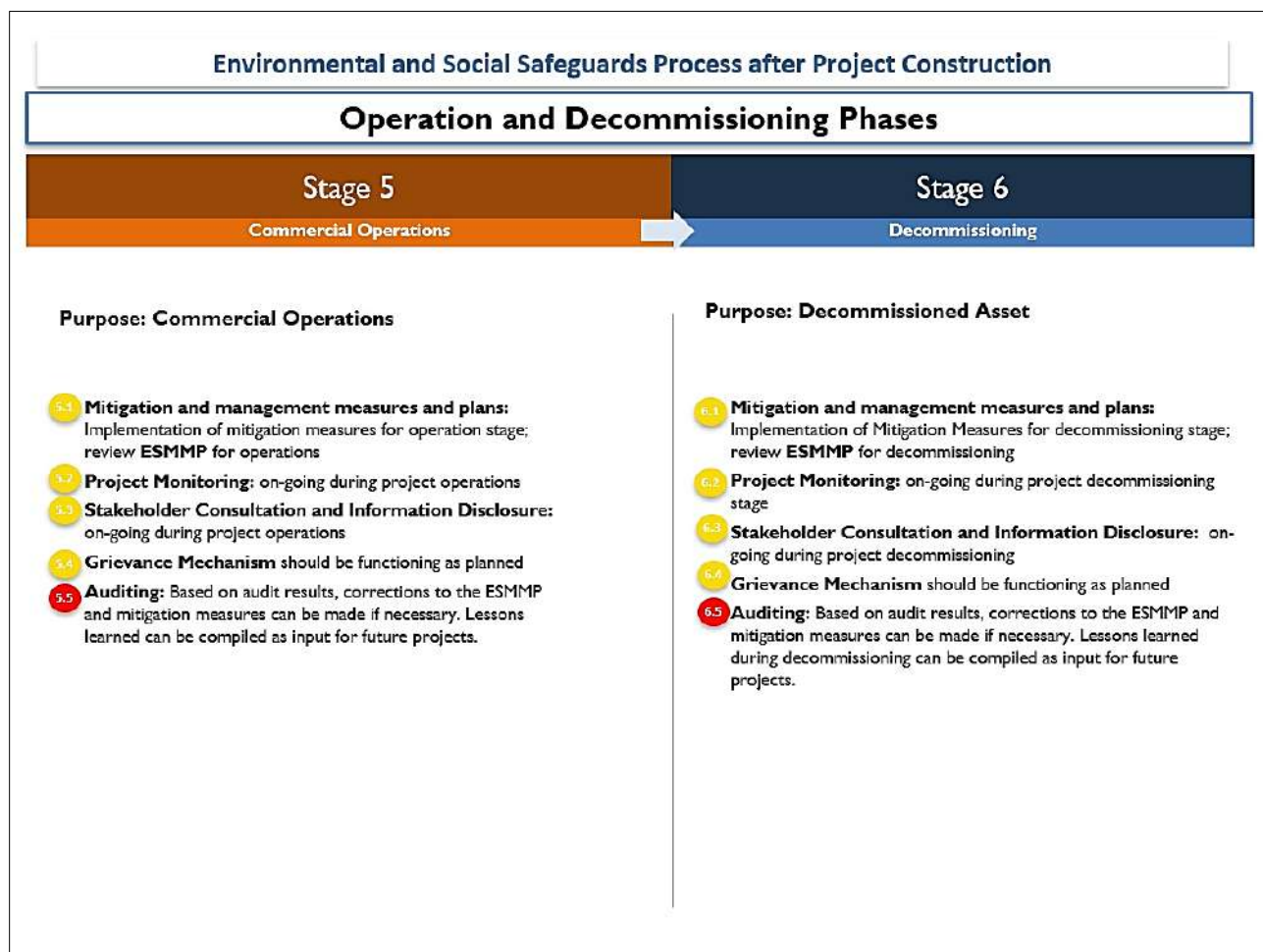
are like the earlier stages; grievance mechanisms should be extended to NGOs to ensure greater transparency and accountability. Provisions should also include additional mechanisms that provide a way to register complaints related to GBV in a safe and confidential manner. For projects that are considered to have substantial or high risk of GBV, a recommendation to establish a separate GBV grievance mechanism system, with feedback to the lender’s Accountability Mechanism, could be included.

The legal instruments do not require stakeholders to be consulted during the project construction stage, and there are no auditing requirements, which does not conform to international best practices.

### Stage 5: Commercial Operations

The summary results from the legal conformance assessment for all the key steps during Stage 5: Commercial Operations and Stage 6: Decommissioning are presented in Figure 42. For the five steps included in the legal conformance assessment for Stage 5, four (80%) were in partial conformance, and one (20%) did not conform.

**Figure 42. Results of the legal conformance assessment for the E&S safeguards during Stage 5: Commercial Operations and Stage 6: Decommissioning for China**



The required ESIA steps during project commercial operations are in partial conformance with international E&S safeguard policy. The legal instruments do not specify the length of time project proponents are required to follow the ESMMP once commercial operations begin. Monitoring requirements are stipulated for the government authorities, but not by the project proponent. Provisions requiring regular monitoring by the project proponent need to be included in the legal framework. Public



engagement should be mandatory throughout the project's life cycle. Additional procedures can be added that provide more particular time frames for public participation. As stated earlier, if grievance mechanisms are extended to include NGOs, it would help ensure greater transparency and accountability. Provisions should also include additional mechanisms to register complaints related to GBV in a safe and confidential manner. Auditing requirements need to be added to better align with international best practices.

#### Stage 6: Decommissioning

The results of the legal conformance assessment at the decommissioning stage showed that four (80%) of the procedural steps were in partial conformance and one (20%) did not conform. The results are like Stage 5: project proponents must continue to follow the ESMMP during project decommissioning; project monitoring and stakeholder engagement should be ongoing; and grievance mechanisms should remain in effect. Mandatory E&S auditing requirements should be added.

# ANNEXES

## Annex I. Task 1.1.1 Terms of Reference

### Task 1.1.1 — Map policy and legal frameworks mandating ESG standards.

<p><b>Description and Rationale:</b></p> <p>To identify specific legal and policy gaps in the lower Mekong countries, which would inform the future development of Task 1.1.4 (Address gaps and strengthen host country regulation of ESG standards and practices for infrastructure projects) and Task 2.2.1 (Conduct PEA of CLMTV Energy and Transportation Infrastructure Decision-Making Process), and to develop information that can be distributed through the Mekong Infrastructure Tracker, the legal and policy frameworks mandating ESG standards for infrastructure (i.e., energy and transportation) in the lower Mekong countries must be mapped.<sup>87</sup></p>
<p><b>Subtasks:</b></p> <p>Lower Mekong Countries:</p> <ul style="list-style-type: none"><li>• Collect prior summary work of the Activity and other USAID<sup>88</sup> and donor projects, and document ESG policy and legal guidelines, and licensing processes, for infrastructure projects (i.e., energy and transportation) in the lower Mekong countries, and develop analytical analysis framework.</li><li>• Based on the identified information gaps of prior summary work, complete mapping of the policy and legal frameworks mandating ESG standards in the lower Mekong countries.</li><li>• Seek approval from USAID/RDMA and confirm accuracy of the collected data in each CLMTV country during the execution of Task 2.2.1 (Conduct PEA of CLMTV Energy and Transportation Infrastructure Decision-Making Process).</li><li>• Identify gaps.</li><li>• Draft report.</li></ul>
<p><b>Resource Requirements:</b></p> <ul style="list-style-type: none"><li>• TAF: COP, Objective I Lead and Assistant Program Officer</li><li>• TAF: CLMTV countries</li><li>• Consultants</li><li>• GEI</li><li>• VLS (TBD and in the lower Mekong countries only)</li><li>• Equipment: None</li></ul>
<p><b>Country of Implementation:</b></p> <p>China, CLMTV</p>
<p><b>Outputs:</b></p> <ul style="list-style-type: none"><li>• Report that identifies the ESG guidelines and directives in CLMTV, related gaps, and opportunities to strengthen ESG policies and requirements.</li></ul>
<p><b>Outcome/Result(s) Expected:</b></p> <p>The task will allow the Activity to identify regulatory gaps and opportunities to improve regulation. The task also provides the requisite data to establish targets for Tasks 1.1.2 and 1.1.3, and will inform the future development and refinement of Tasks 1.1.4 and 1.1.5 (e.g., development of a standardized analysis model that would permit consistent comparison among the lower Mekong countries) that can be included in future Work Plans. The task will eventually contribute to the imposition of stronger ESG requirements in China's and CLMTV's relevant policy and laws. The Activity will complete the mapping of the policy and legal frameworks mandating ESG standards in the lower Mekong countries during the</p>

<sup>88</sup> For example, USAID's Mekong Partnership for the Environment.

execution of Task 2.2.1 (Conduct PEA of CLMTV Energy and Transportation Infrastructure Decision-Making Process) because the completion of Task 1.1.1 will require in-country visits, which can be done at the same time as Task 2.2.1, which also requires in-country visits.

## Annex 2. List of Legal Instruments Used for the E&S Legal Conformance Assessment for Cambodia, Lao PDR, Myanmar, Thailand, Vietnam and China

### Cambodia

- Regulations on General Conditions for Connecting Solar PV Generation Sources to the Electricity Supply System of National Grid (2018)
- Environment and Natural Resources Code for Cambodia (draft version 9 - 2017)
- Law on Roads (2014)
- Prakas on Guidelines for Public Participation in the EIA Process (draft 2016; not adopted yet)
- Law on Expropriation (2010)
- Prakas on General Guideline for Developing Initial and Full Environmental Impact Assessment Reports (2009)
- Law on Protected Areas (2008)
- Law on Fisheries (2007)
- Law on Water Resource Management (2007)
- Law on Investment (amended in 2003)
- Sub-Decree No. 19 on Social Land Concessions (2003)
- Land Law (2001)
- Law on Electricity (2001)
- Sub-Decree No. 42 Air Pollution Control and Noise Disturbance (2000)
- Sub-Decree No. 27 Water Pollution Control (1999)
- Sub-Decree No. 36 on Solid Waste Management (1999)
- Sub-Decree No. 72 on Environmental Impact Assessment (1999)
- Labour Law (1997)
- Law on Environmental Protection and Natural Resources Management (1996)
- Law on Protection of Cultural Heritage (1996)
- Constitution of the Kingdom of Cambodia (1993)

### Lao PDR

- Forestry Law (2019)
- Land Law (amended in 2019)
- Decree No. 21 on Environmental Impact Assessment (2019)
- Water and water resources Law (2017)
- Decree on Compensation and Resettlement Management in Development Projects (2016)
- Law on Investment Promotion (2016)
- Ministerial Instructions on Pollution Control (2015)
- Law on Natural Heritage (2014)
- Environmental and Social Impact Assessment Ministerial Instructions (2013)
- Initial Environmental Examination Instruction (2013)
- Labor Law (2013)
- Ministerial Instruction on the Process of Environmental and Social Impact Assessment of Investment Projects and Activities (2013)
- Ministerial Instruction on the Process of Initial Environmental Examination of Investment Projects and Activities (2013)
- Ministerial Agreement on the Endorsement and Promulgation of List of Investment Projects and Activities Requiring for Conducting the Initial Environmental Examination or Environmental and Social Impact Assessment (2013)
- Environmental Protection Law (2012)
- Law on Electricity (2017)

- Law on Land Transport (2012)
- Environmental Impact Assessment Guidelines (2012)
- Technical Guidelines for Conducting EIA Studies (2017)
- Decree on Environmental Impact Assessment (2010)
- Decree No. 333/PM on the Protection Forest (2010)
- Agreement on the National Environmental Standards (2009)
- Wildlife and Aquatic Law (2007)
- Law on Handling Petitions (2005)

## **Myanmar**

- Land Acquisition, Resettlement and Rehabilitation Law (2019)
- Occupational Safety and Health Law (2019)
- Conservation of Biodiversity and Protected Areas Law (2018)
- Forest Law (2018)
- Notification 15/2017 to the Myanmar Investment Law
- Notification No. 26/2016 to the Foreign Investment Law
- Factories Act (amended in 2016)
- Payment of Wages Act (2016)
- Railway Transport Service Law (2016)
- Road Transport Operations Law (2016)
- Myanmar Investment Law (2016)
- Environmental Impact Assessment (EIA) Procedures Notification 616 (2015)
- National Environmental Quality (Emission) Guidelines (2015)
- Protection of the Rights of National Races Law (2015)
- Electricity Law (2014)
- Environmental Conservation Rules No. 50/201 (2014)
- Multimodal Transport Law (2014)
- Natural Disaster Management Law (2013)
- Prevention of Hazard from Chemical and Related Substances Law (2013)
- Employment and Skills Development Law (2013)
- Foreign Investment Rules (2013)
- Foreign Investment Law (2012)
- Environmental Conservation Law (2012)
- Labour Organization Law (2011) and Rules (2012)
- Settlement of Labour Disputes Law (2012) and Rules (2012)
- Social Security Law (2012) and Rules (2012)
- Decree No. 5 on Ethnic Minorities Work (2011)
- Right to Peaceful Assembly and Peaceful Procession Act (2011)
- Constitution of the Republic of the Union of Myanmar (2008)
- Conservation of Water Resources and Rivers Law (2006)
- Workmen's Compensation Act (amended in 2005)
- Protection and Preservation of Cultural Heritage Regions Law (1998)
- Protection of Wildlife and Protected Areas Law (1994)
- Child Law (1993)
- Freshwater Fisheries Law (1991)

## Thailand

- Notification of the MoNRE on Projects, Undertakings, or Operations Required to Provide an EIA Report and Rules, Procedure, and Conditions in Providing an Environmental Impact Assessment Report (2019)
- Procedure, and Conditions in Providing an Environmental Impact Assessment Report (2019)
- Wild Animal Preservation and Protection Act 2562 B.E. (2019)
- National Park Act 2562 B.E. (2019)
- Enhancement and Conservation of National Environmental Quality Act (No. 2) B.E 2561 (2018)
- Notification of MoNRE Subject: Types and Sizes of Projects or Activities Requiring Environmental Impact Assessment Report and Rules, Procedures, Practices and Guidelines for Preparing Environmental Impact Assessment Report, B.E.2561 (2018)
- Notification of MoNRE Re: Rule, Procedure, Method and Guideline for Preparation of the Environmental Impact Assessment Report for Project or Activity which may Seriously Affect Community with respect to Quality of Environment, Natural Resources and Health (2018)
- Workmen's Compensation (No. 2) Act B.E. 2561 (2018)
- Labor Protection Act (No. 6), B.E. 2560 (2017)
- Kingdom of Thailand Constitution (2017)
- Fisheries Act B.E. 2558 (2015)
- Marine and Coastal Resources Management Promotion Act - B.E. 2558 (2015)
- Land Development Act (No. 2), B.E. 2558 (2015)
- Prevention and Suppression of Human Trafficking (No. 2) Amendment Act, B.E. 2558 (2015)
- Ministerial Notifications of MoNRE on Environmentally Protected Areas (2007, 2010, 2014)
- Thailand Board of Investment Guide on Environmental Regulations (2014)
- Environmental Impact Assessment in Thailand – ONEP Guidelines (2013)
- Act on Ancient Monuments, Antiques, Objects of Art and National Museums (1961, amendments in 1992 and 2013)
- The Guidance for General Public to understand laws, regulations and guidelines for EIA that was issued by the Office of Natural Resources and Environmental Policy Planning (2012)
- Occupational Safety, Health and Environment Act (2011)
- Regulation of the Office of the Prime Minister on Climate Change (2007, 2009, 2011)
- Land Code Amendment Act (No. 11) B.E. 2551 (2008)
- Energy Industry Act B.E. 2550 (2007)
- Prime Minister's Office Rule on Public Hearing (2005)
- Official Information Act, B.E. 2540 (1997)
- Navigation Act (1992)
- Plant Variety Act 2518 B.E. (1975)
- Civil and Commercial Code (1925)

## Vietnam

- Law on Public Investment (2019)
- Decree No. 40 Amendments to Decrees on Guidelines for the Law on Environment Protection (2019)
- MoIT Circular on Wind Power Project Development and Power Purchase Agreement (2019)
- Labor Code (2019)
- Decree on Dam Safety and Reservoir Management (2018)
- Decree No. 159/2018/ND-CP dated November 28, 2018 of the Government on management of dredging operations within seaport water and inland water areas (2018)
- Circular No. 02/2018/TT-BXD on environmental protection in construction activities and reporting on environmental protection work in the construction sector (2018)

- Law on Forestry (2017)
- Law on Fisheries (2017)
- Decree No. 18 Prescribing Environmental Protection Master Plan, Strategic Environmental Assessment, Environmental Impact Assessment and Environmental Protection Plan (2015)
- Circular No. 27 on Strategic Environmental Assessment, Environmental Impact Assessment, and Environmental Protection Plans (2015)
- Law on Investment (2015)
- Law on Environmental Protection (2014)
- Construction Law (2014)
- Decision 64 Regulation on Irrigation and Hydropower project related compensation, support, and resettlement (2014)
- Decree No. 43 Detailing a number of articles of the Land Law (2014)
- Decree No. 47 on Compensation, Assistance, and Resettlement (2014)
- Land Law (2013)
- Law on Water Resources (2012)
- Labor Law Code (2012)
- Decree No. 29 Providing Strategic Environmental Assessment, Environmental Impact and Environmental Protection Commitment (2011)
- Decree No. 21 detailing the Law on Economical and Efficient Use of Energy and measures for its implementation (2011)
- QCVN 40:2011/BTNMT – National Technical Regulation on Industrial Wastewater (2011)
- QCVN 38:2011/BTNMT – National Technical Regulation on Surface Water Quality for protection of aquatic lives (2011)
- QCVN 05:2013/BTNMT – National Technical Regulation on Ambient Air Quality (2011)
- Circular No. 12 on Stipulation Hazardous Waste Management (2011)
- Circular No. 43 Providing for National Technical Standards on Environment (2011)
- Law on Economical and Efficient Use of Energy (2010)
- QCVN 06:2009/BTNMT – National Technical Regulation on Hazardous substances in ambient air (2009)
- QCVN 19:2009/BTNMT – National Technical Regulation on Industrial Emission of inorganic substances and dust (2009)
- Law on Biodiversity (2008)
- Decree No. 24 Decree No. 80 Detailing and Guiding the Implementation of a Number of Articles of the Law on Environmental Protection (2006)
- Detailing the Implementation of the Law on Foreign Investment in Vietnam (2000)

## **China**

- Land Administration Law (2019 amended)
- Urban-Rural Planning Law (2007, 2019 amended)
- Negative List for Market Access (2019 edition)
- Catalogue for Guiding Industry Restructuring (2019 edition)
- Special Administrative Measures on Access to Foreign Investment (2019 edition)
- Free Trade Zone Special Administrative Measures on Access to Foreign Investment (2019 edition)
- Technical guideline for planning environmental impact assessment (General principles) (2019, issued by MEE)
- Environmental Impact Assessment Law (2003, 2018 amended)
- Energy Conservation Law (2018 amended)
- Technical guidelines for environmental risk assessment on projects (2018, issued by MEE)
- Measures for public participation in environmental impact assessment (2018)

- Labor Law (1994, 2018 amended)
- Administrative Litigation Law (2017 amended)
- Cultural Relics Protection Law (2017 amended)
- Water Law (2016 amended)
- Technical guidelines for environmental impact assessment of wind farm projects (2016)
- Environmental Protection Law (2015)
- Measures for Environmental Information Disclosure of Enterprises and Public Institutions (2015)
- Technical Standards for environmental impact assessment of photovoltaic power station (2012)
- Standard for environment protection design of water resources and hydropower project (2011)
- Forestry Law (2009 amended)
- Planning Environmental Impact Assessment Regulations (2009)
- Fisheries Law (2004)
- Contract Law (1999)
- Regulations on Reservoir and Dam Safety Management Regulations (1991)



Annex 3. Cambodia E&S Legal Conformance Assessment Table

## Annex 4. Lao PDR E&S Legal Conformance Assessment Table

Annex 5. Myanmar E&S Legal Conformance Assessment Table

Annex 6. Thailand E&S Legal Conformance Assessment Table

Annex 7. Vietnam E&S Legal Conformance Assessment Table

## Annex 8. China E&S Legal Conformance Assessment Table

## Annex 9. Comparative Analysis of the CLMTV Countries plus China's Legal Framework and Environmental and Social Safeguards with International Safeguard Policies

No.	Key Procedural Steps	Cambodia	Lao PDR	Myanmar	Thailand	Vietnam	China
<b>Strategic Environmental Assessment (SEA)</b>							
0.1	Strategic environmental assessment (SEA)	Red	Green	Green	Red	Green	Yellow
<b>Stage 1 - Pre-Feasibility</b>							
1.1	Project Concept	Yellow	Yellow	Green	Red	Green	Green
1.2	Legal and institutional framework and triggers	Green	Green	Green	Green	Yellow	Green
1.3	Prohibited Projects and Exclusion Lists	Yellow	Green	Green	Yellow	Green	Green
1.4	Policy Statement	Red	Red	Red	Red	Red	Red
1.5	Environmental and Social Management System (ESMS)	Red	Red	Yellow	Red	Red	Yellow
1.6	Screening	Yellow	Green	Green	Green	Yellow	Yellow
1.7	Environmental and Social International Safeguards, Standards, and Good Practices	Red	Red	Green	Yellow	Red	Yellow
1.8	Project Categorization	Red	Yellow	Yellow	Yellow	Green	Yellow
1.9	Stakeholder Consultation and Information Disclosure	Yellow	Red	Yellow	Red	Red	Red
<b>Stage 2a - Feasibility</b>							
<b>Overview of the Policy, Legal and Institutional Framework</b>							
2.1	Policy, Legal and Institutional Framework	Yellow	Yellow	Green	Yellow	Red	Yellow
<b>Scoping Environmental and Social Issues</b>							
2.2	Scoping	Yellow	Green	Green	Green	Yellow	Yellow
2.3	Stakeholder Consultation and Information Disclosure	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow
2.4	Gap Analysis	Red	Red	Green	Red	Red	Red
2.5	Examination of Alternatives	Red	Green	Yellow	Green	Yellow	Red
<b>Environmental and Social Baseline Study</b>							
2.6	Baseline Data Collection	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow
<b>Identification of Environmental and Social Risks and Impacts</b>							
2.7	Identification of Impacts	Yellow	Yellow	Green	Yellow	Yellow	Yellow

No.	Key Procedural Steps	Cambodia	Lao PDR	Myanmar	Thailand	Vietnam	China
2.8	Identification of Gender Impacts	Red	Green	Red	Red	Red	Red
2.9	Identification of Climate Change Impacts and GHG emissions	Red	Yellow	Green	Red	Yellow	Yellow
2.10	Identification of Cumulative Impacts, where relevant	Yellow	Green	Green	Red	Red	Red
2.11	Identification of potential trans-boundary impacts	Red	Green	Red	Red	Red	Red
<b>Impact Assessment</b>							
2.12	Impact Assessment	Red	Yellow	Green	Yellow	Red	Yellow
2.13	Stakeholder Consultation and Information Disclosure	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow
<b>Mitigation and Management Measures and Plans</b>							
2.14	Mitigation and Management Measures and Plans	Yellow	Green	Green	Green	Green	Yellow
2.15	Mitigation Hierarchy	Red	Green	Red	Green	Red	Yellow
2.16	Specific Management Plans	Red	Yellow	Green	Yellow	Red	Red
2.17	Management of Contractors	Red	Yellow	Yellow	Red	Yellow	Green
2.18	Project benefits	Red	Yellow	Red	Red	Red	Red
<b>The following environmental and social issues have specific operational standards that are triggered if the assessment process reveals that the project may present certain risks.</b>							
2.19	Labor and Working Conditions	Yellow	Green	Yellow	Yellow	Green	Yellow
2.20	Resource Efficiency and Pollution Prevention and Management	Yellow	Green	Yellow	Green	Green	Green
2.21	Community Health, Safety, and Security, including dam safety	Red	Yellow	Yellow	Green	Green	Green
2.22	Land Acquisition, Restrictions on Land Use and Involuntary Resettlement	Red	Yellow	Yellow	Yellow	Yellow	Green
2.23	Biodiversity Conservation and Sustainable Management of Living Natural Resources	Yellow	Green	Yellow	Green	Yellow	Green
2.24	Indigenous Peoples	Red	Yellow	Yellow	Red	Yellow	Red
2.25	Cultural Heritage	Green	Yellow	Yellow	Yellow	Yellow	Green
<b>Additional operational standards to include for specific infrastructure projects, if triggered.</b>							
<b>Energy: Hydropower</b>							
2.20	Resource Efficiency and Pollution Prevention and Management (i.e. Water Quality, Reservoir Erosion, Slope Stability, and Sedimentation)	Red	Yellow	Yellow	Yellow	Green	Yellow
2.23	Biodiversity Conservation and Sustainable Management of Living Natural Resources (i.e. Watershed Management, Fisheries)	Red	Yellow	Yellow	Green	Yellow	Green



No.	Key Procedural Steps	Cambodia	Lao PDR	Myanmar	Thailand	Vietnam	China
2.26	Changes in Hydrology (i.e. Availability and Reliability)	Red	Red	Yellow	Red	Yellow	Green
2.27	Reservoir Management	Red	Red	Red	Red	Green	Green
2.28	Downstream Flow Regimes	Red	Yellow	Red	Red	Green	Green
<b>Energy: Solar (Photovoltaics, Solar Thermal Energy)</b>							
2.20	Resource Efficiency and Pollution Prevention and Management (i.e. Water Resource Use, Visual 'Pollution', Hazardous Waste Management from Battery Use)	Red	Yellow	Yellow	Yellow	Yellow	Yellow
<b>Energy: Wind Power</b>							
2.20	Resource Efficiency and Pollution Prevention and Management (i.e. Visual 'Pollution', Noise Pollution)	Yellow	Red	Yellow	Yellow	Yellow	Yellow
2.23	Biodiversity Conservation and Sustainable Management of Living Natural Resources (i.e. Habitat Loss for Wildlife, Impacts on Flying Wildlife)	Red	Yellow	Green	Green	Yellow	Yellow
<b>Energy: Petroleum (Oil and Gas)</b>							
	No additional operational standards						
<b>Energy: Coal and Lignite</b>							
	No additional operational standards						
<b>Energy: All Bioenergy (Biomass, Biogas, Biofuel)</b>							
2.20	Resource Efficiency and Pollution Prevention and Management (i.e. Water Resource Use, Soil Quality)	Yellow	Green	Green	Green	Green	Green
<b>Transportation: Roads and Railway</b>							
2.10	Cumulative Effects (i.e. cross-scale and synergistic interaction)	Red	Yellow	Yellow	Red	Red	Green
<b>Transportation: Operational Standards for Seaports and Harbors</b>							
2.29	Coastal Processes and Seabed and Coastal Geomorphology	Red	NA	Red	Red	Yellow	Yellow
2.30	Dredged Materials Management	Red	NA	Yellow	Red	Green	Yellow
<b>Stage 2b - Project Development</b>							
2.31	Prepare E&S impact statement (ESIS)/ ESIA report	Yellow	Green	Green	Green	Yellow	Yellow
2.32	Stakeholder Consultation	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow
2.33	Information Disclosure	Red	Green	Green	Yellow	Yellow	Yellow
2.34	Grievance Mechanisms	Red	Yellow	Yellow	Yellow	Yellow	Yellow

No.	Key Procedural Steps	Cambodia	Lao PDR	Myanmar	Thailand	Vietnam	China
2.35	Accountability Mechanisms	Red	Yellow	Red	Red	Red	Yellow
<b>Stage 3 - Project Structuring and Financing</b>							
3.1	Mitigation and Management Measures and Plans	Red	Yellow	Green	Red	Yellow	Yellow
3.2	Project Monitoring	Yellow	Yellow	Green	Yellow	Yellow	Yellow
3.3	Reporting	Yellow	Green	Green	Yellow	Yellow	Yellow
3.4	Stakeholder Consultation and Information Disclosure	Red	Green	Yellow	Yellow	Yellow	Red
3.5	Auditing	Red	Green	Red	Red	Red	Red
<b>Stage 4 - Conditions Precedent and Project Completion</b>							
4.1	Mitigation and Management Measures and Plans	Red	Green	Green	Yellow	Yellow	Yellow
4.2	Project Monitoring	Yellow	Green	Green	Yellow	Yellow	Yellow
4.3	Stakeholder Consultation and Information Disclosure	Red	Green	Yellow	Yellow	Yellow	Red
4.4	Grievance Mechanisms	Red	Green	Red	Yellow	Yellow	Yellow
4.5	Auditing	Red	Yellow	Red	Red	Red	Red
<b>Stage 5 - Commercial Operations</b>							
5.1	Mitigation and Management Measures and Plans	Red	Green	Green	Yellow	Yellow	Yellow
5.2	Project Monitoring	Yellow	Green	Green	Yellow	Yellow	Yellow
5.3	Stakeholder Consultation and Information Disclosure	Red	Green	Yellow	Yellow	Yellow	Yellow
5.4	Grievance Mechanisms	Red	Green	Red	Red	Yellow	Yellow
5.5	Auditing	Red	Yellow	Red	Red	Red	Red
<b>Stage 6 - Decommissioning</b>							
6.1	Mitigation and Management Measures and Plans	Red	Green	Green	Red	Red	Yellow
6.2	Project Monitoring	Yellow	Green	Green	Yellow	Red	Yellow
6.3	Stakeholder Consultation and Information Disclosure	Red	Green	Yellow	Yellow	Yellow	Yellow
6.4	Grievance Mechanisms	Red	Green	Red	Red	Red	Yellow
6.5	Auditing	Red	Yellow	Red	Red	Red	Red