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A Comparative Analysis of Environmental Impact Analysis Systems in Latin America

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I. Overview

Most Latin American countries have adopted formal Environmental Impact Assessment (EIA) systems.¹ Colombia was among the first countries in the world to incorporate EIA in its legal framework, more than three decades ago.² Since then, and in accordance with Principle 17 of the Rio Declaration on Environment and Development, countries across the region have used EIA to address the potentially significant environmental impacts of a wide range of projects and activities. Nevertheless, most countries in the region still face the challenge of strengthening the legal framework governing EIA, as well as of developing their organizational capacity to take full advantage of the potential of EIA as a tool to manage complex social and environmental situations.³

This paper presents a comparative analysis of the EIA systems adopted by 20 countries in Latin America.⁴ Sources for the analysis consist mainly of EIA laws and regulations currently in place in each of these countries. Other formal documents, including manuals or guidelines, were used only for clarification or guidance regarding concepts included in laws or regulations. The analysis does not consider other legal instruments that are independent of EIA, but that regulate areas reviewed in this paper (for instance, the analysis considers the requirements for access to information contained in EIA laws or regulations, but not those that are part of specific laws or regulations on that subject).

The comparative analysis focuses not only in differences and similarities among countries in the Latin America region, but also with respect to the United States (US). The US was the first country to adopt the use of EIA in its contemporary sense, with the approval in 1969 of the National Environmental Policy Act (NEPA).

Implementation of NEPA has not been free of problems, as explained in a study conducted 25 years after the adoption of the Act, in which participants identified the need to focus the use of EIA at the strategic level, find more creative ways to engage the public in meaningful consultations, and transcend the notion of EIA as a one-time event to adopt an adaptive environmental management approach.⁵ In addition, empirical evidence shows that interpretation and implementation of NEPA has often been subject to political pressures.⁶

¹ GUILLERMO ESPINOZA & VIRGINIA ALZINA, REVIEW OF ENVIRONMENTAL IMPACT ASSESSMENT IN SELECTED COUNTRIES OF LATIN AMERICA AND THE CARIBBEAN: METHODOLOGY, RESULTS AND TRENDS (2001), available at <http://www.iadb.org/sds/doc/env-revenvimpactassessllac-e.pdf>

² WORLD BANK, REPUBLIC OF COLOMBIA: MITIGATING ENVIRONMENTAL DEGRADATION TO FOSTER GROWTH AND REDUCE INEQUALITY (2006), available at <http://go.worldbank.org/08WXMBRY20> [hereinafter WORLD BANK, COLOMBIA: MITIGATING ENVIRONMENTAL DEGRADATION].

³ ESPINOZA & ALZINA, *supra* note 1; ALLAN ASTORGA, ESTUDIO COMPARATIVO DE LOS SISTEMAS DE EVALUACIÓN DE IMPACTO AMBIENTAL EN CENTROAMÉRICA (2006), available at http://www.eia-centroamerica.org/archivos-de-usuario/Documentos/25_esp.pdf

⁴ These countries are: Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela.

⁵ U.S. CEQ, THE NATIONAL ENVIRONMENTAL POLICY ACT: A STUDY OF ITS EFFECTIVENESS AFTER TWENTY-FIVE YEARS (1997), available at <http://www.nepa.gov/nepa/nepa25fn.pdf>

⁶ See Jay E. Austin et al., A “Hard Look” at Judicial Decision Making Under the National Environmental Policy Act (Env’tl. L. Inst., 2004), available at <http://www.endangeredlaws.org/pdf/JudgingNEPA.pdf>

Nevertheless, the US was used as a reference for three reasons. First, the country has accumulated a wealth of experience on EIA from which other countries can learn. Second, the system developed under NEPA is consistent with best practice principles identified by the International Association for Impact Assessment (IAIA).⁷ Finally, the US's conception of EIA differs significantly from that of most Latin American countries, and therefore provides a different perspective to analyze the EIA systems adopted by Latin American Countries.

The comparative analysis considers on 9 variables, starting with the nature of EIA and then focusing on the main elements of the EIA system. Following is a brief description of the main findings of the analysis.

Nature of EIA

In the US, EIA is conceived as a process to incorporate the environmental and social concerns of different stakeholders into the decision-making of Federal authorities. Underlying this conception is the notion that the decision-making process is strengthened when the authority is capable of systematically incorporating the views and opinions of all relevant stakeholders on the decision at hand. In contrast, Latin American countries have used EIA as an environmental management tool to control the environmental impacts of a broad range of projects. Through EIA, authorities often establish design and operation conditions that aim to compensate for the lack of adequate environmental standards.

Differences in the nature of EIA translate into differences in most of the components of the EIA system, including stakeholders' roles and responsibilities, formal requirements for the EIA process, and the degree to which EIA can influence public decision-making. For example, in the US, compliance with NEPA is mainly the responsibility of public decision-makers. In Latin America, the responsibility for environmental compliance falls on project developers, who must meet EIA-related requirements that are evaluated and enforced by the authority.

Institutional Leadership in the EIA System

Under NEPA, the Federal agency that proposes an action is responsible for supervising the preparation of the EIA. If more than one agency proposes the action, responsibility for supervising the EIA process is defined by criteria such as the magnitude of the agency's involvement or its expertise on the expected environmental impacts. Other agencies that are involved or have appropriate experience participate as cooperative agencies. Under this model, the environmental authority only leads the preparation of EIAs when it proposes, or is involved in an action with potentially significant environmental effects.

In Latin America, supervising the EIA process is the mostly the responsibility of environmental agencies. Only in Ecuador and Peru do sector agencies play a lead role in the EIA process, while in Panama, sectoral environmental units may be granted authority to oversee the EIA process. The prominent role of environmental agencies is associated with the conception of EIA as an environmental management tool.

⁷ Pierre Senécal et al., *Principles of Environmental Impact Assessment Best Practice* (1999), available at http://www.iaia.org/modx/assets/files/Principles%20of%20IA_web.pdf.

Screening

The screening process under NEPA is based on the significance of the effects resulting from the action, which is determined based on the action's context and intensity. In Latin America, screening is mostly based on the use of lists that indicate the actions that call for an EIA. The main differences across countries in the region refer to the flexibility that the lead agency has in terms of expanding, narrowing, or interpreting the list.

The use of lists as screening devices presents a series of challenges, as they often fail to consider the significance of the impacts of a proposed action. As a result resource-intensive EIAs are often required for actions with manageable effects, while actions that are likely to generate significant impacts are not subject to an EIA. The ineffectiveness of lists as screening mechanisms, coupled with the excessive use of EIA as the main environmental management tool, explain why nearly 2,000 EIA applications are submitted yearly in Guatemala,⁸ compared to an average of 530 in the US.⁹

Scoping

Public consultations during the scoping process provide an opportunity to ensure that the EIA considers the impacts of greater concern for all stakeholders. NEPA aims to take advantage of this opportunity by requiring the lead agency to invite comments from stakeholders to identify the issues to be analyzed in depth. However, in Latin American, only Ecuador, Guyana, and Honduras contemplate an open scoping process. 7 additional countries have an informal scoping process through which stakeholders may be consulted, if deemed necessary by the authority or the action developer. In the remaining 10 countries, the scope of the assessment is defined by the legal framework, without providing opportunities for public input.

In addition to the limited role of public participation in the scoping stage, Terms of Reference (TORs) for the Environmental Impact Study (EIS) are based on generic documents in 16 countries, and therefore, do not necessarily consider the specific characteristics of each action. 7 countries have no legal provisions regarding the preparation of the TORs, but their legal framework defines the minimum content of the EIS. In 6 additional countries, the developer is responsible for preparing the TORs, which must then be approved by the authority. In the remaining 7 countries, the authority is responsible for establishing the TORs.

Preparation of the Environmental Assessment

Under NEPA, the EIA is expected to result in an action for which the lead agency will be held accountable. Thus, although the regulations contain few provisions regarding who may prepare the necessary studies, the agency has an incentive to hire a consultant whose work will provide adequate support for such decision. In contrast, project developers are responsible for hiring the EIA preparers in Latin America. Developers

⁸ WORLD BANK, REPUBLIC OF GUATEMALA: COUNTRY ENVIRONMENTAL ANALYSIS, ADDRESSING THE ENVIRONMENTAL ASPECTS OF TRADE AND INFRASTRUCTURE EXPANSION (2006), available at <http://go.worldbank.org/N6KL9BRK10> [hereinafter WORLD BANK, GUATEMALA: COUNTRY ENVIRONMENTAL ANALYSIS].

⁹ Average for statements filed annually between 1997 and 2006. The number of statements filed annually was significantly higher during the early years of NEPA. U.S. CEQ, *Environmental Impact Statements Filed 1970 Through 2006*, at http://www.nepa.gov/nepa/EISs_by_Year_1970_2006.pdf.

have incentives to hire a consultant who is not necessarily interested in enhancing the decision-making process, but instead, in meeting the minimum legal requirements and overcoming any potential objections to the project.

To ensure that the documents prepared as part of an EIA are adequate, 16 countries have adopted legal provisions indicating the qualifications and/or expertise that the consultant must have. In addition, 10 countries require that the consultant be inscribed in a formal registry. Unfortunately, while these requirements do not modify the developers' incentives, they do constitute barriers to entry and generate opportunities for illegal or unethical practices.

Public Participation

The involvement of different stakeholders in the EIA process, particularly of those groups that are likely to be affected by the development of an action, has multiple objectives, including ensuring the legitimacy and credibility of the EIA. All countries reviewed in this paper legally require some form of public participation during the EIA process, although some studies point at the informative character of most consultations, in which participants are merely notified about decisions that have already been made.¹⁰

The comparative analysis focuses on four areas of public participation. In terms of inter-agency coordination, 8 countries require that the responsible authority consult other agencies, 10 countries specify conditions under which inter-agency coordination must take place, and only Argentina (at the national level) and El Salvador do not explicitly require inter-agency coordination.

Regarding public participation, 9 countries provide opportunities to receive public input during various stages of the EIA process, 9 countries only require that consultations take place prior to the evaluation of the EIS, and in Mexico and Venezuela, public consultations are only carried out under specific circumstances.

Legal provisions regarding access to information also vary significantly across countries. While all EIA-related information (except classified information) is available to the public in 5 countries, only the final EIS is available to the public in 10 countries, the public has access to a summary or abstract of the EIS in 4 countries, and Costa Rica's legal framework does not mention anything in this regard.

Finally, in 6 countries public hearings are mandatory, at least for one category of EIA. In other 9 countries, public hearings may be organized if deemed necessary by the authority and/or on request by interested parties. The 5 remaining countries do not contemplate public hearings in their legal frameworks.

Evaluation of Alternatives

¹⁰ U.S. CEQ, *supra* note 5; ASTORGA, *supra* note 3; WORLD BANK, COLOMBIA: MITIGATING ENVIRONMENTAL DEGRADATION, *supra* note 2; WORLD BANK, GUATEMALA: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 8; WORLD BANK, REPUBLIC OF EL SALVADOR: COUNTRY ENVIRONMENTAL ANALYSIS, IMPROVING ENVIRONMENTAL MANAGEMENT TO ADDRESS TRADE LIBERALIZATION AND INFRASTRUCTURE EXPANSION (2006), available at <http://go.worldbank.org/KASZNT90Q0> [hereinafter WORLD BANK, EL SALVADOR: COUNTRY ENVIRONMENTAL ANALYSIS]; 2007.

The evaluation of alternatives allows stakeholders to select the viable, most environmentally sound option for achieving a desired goal. It is for this reason that NEPA regulations consider that the analysis of alternatives is “the heart of the environmental impact statement.”¹¹

In Latin America, only in Ecuador and Colombia do authorities have the power to consider an alternative that is different from the one selected by the developer. In 14 other countries, an analysis of alternatives is required, but mostly to justify why the developer’s choice was selected over other viable alternatives. In the remaining 4 countries, the legal framework does not require an evaluation of alternatives.

Evaluators and Evaluation Criteria

In the US, the authority can make its decision regarding a proposed action if the EIA has met a series of procedural and content requirements, including whether the statement was prepared according to the defined scope and whether it responded to received public comments.

In comparison, under the model adopted by Latin American countries, the authority evaluates the EIA prepared by the developer and determines whether the assessment meets all legal requirements. In 9 countries there are no explicit evaluation criteria and the authorities must therefore assess whether the documents are consistent with the legal framework. In the remaining 11 countries, the legal framework provides evaluation criteria, which range from verifying that the documents are consistent with the TORs to general environmental goals to which the proposed action is expected to contribute. In all cases, the decision-maker has significant discretionary powers to decide whether the EIA is valid or not, and the decision to approve the EIA is based on the official’s own interpretations or views.

Environmental Management and Follow-Up Mechanisms

The EIA process generally includes environmental management and follow-up mechanisms that help authorities to ensure that the conditions for issuing the environmental license are fulfilled, to monitor whether the action’s actual environmental impacts are similar to those predicted by the EIS, and to assess whether the selected mitigation measures are effective. Despite the importance of these mechanisms, studies conducted both in the US¹² and in Latin America¹³ conclude that authorities rarely monitor the action’s impacts after the corresponding license or permit has been issued.

In Latin America, Argentina and Mexico require the definition of mitigation measures as part of the EIA, but do not call for a structured plan or program to ensure that such measures are systematically integrated into the action’s operation. In 9 additional countries, the legal framework mandates the preparation of structured plans or programs for environmental management and/or follow-up activities. Finally, the remaining 9 countries require a substantial number of instruments that may cover a broad range of issues, from environmental education to emergency preparedness.

¹¹ 40 C.F.R. § 1502.14 (2007 through July 12).

¹² U.S. CEQ, *supra* note 5.

¹³ ASTORGA, *supra* note 3; WORLD BANK, COLOMBIA: MITIGATING ENVIRONMENTAL DEGRADATION World Bank, *supra* note 2; WORLD BANK, EL SALVADOR: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 10; WORLD BANK, GUATEMALA: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 8.

II. The Nature of Environmental Impact Assessment

1. Introduction

This section describes how countries considered in this analysis conceive Environmental Impact Assessment (EIA). This is the starting point for the comparative analysis because the characteristics of an EIA system would naturally tend to be different if the assessment is used to ensure compliance with environmental legislation than if it is seen as a process to involve potentially affected communities and other stakeholders in a governmental decision-making process. Consequently, the conception of EIA has a strong influence in the way in which legal frameworks define the components and characteristics of the EIA process, including the types of actions that are subject to the assessment, the roles and responsibilities of different stakeholders, the scope and criteria for environmental studies, and the influence that the assessment may have on the public decision-making process, among other.

The analysis shows most Latin American countries have a conception of EIA that differs from that of the US. In the latter, the National Environmental Policy Act (NEPA), through its requirements for EIA, has “opened up for public scrutiny the planning and decision-making processes of federal agencies”. In contrast, in most Latin American countries, EIA is used as an environmental management and planning tool. Analyses conducted by the World Bank find that countries such as Guatemala and El Salvador often use EIA as the main environmental management tool, even in response to environmental problems that could be addressed more effectively with other instruments, such as legal standards or economic incentives.¹⁴

This section also reviews the type of actions that are subject to an environmental assessment. Half of the considered Latin American countries only contemplate the preparation of EIAs for specific actions, usually referred to as projects, activities, or works, among others. The remaining countries have incorporated the use of Strategic Environmental Assessments (SEAs)¹⁵ in their legal frameworks to upstream the environmental assessment to the policy, plan, or program level, where most critical decisions are made. Among the various benefits that existing literature credits to the use of SEAs is its relevance for assessing the likely outcomes of various means to select the best alternative(s) to reach desired ends. Thus, by incorporating environmental considerations at the higher decision tiers, SEAs can help to define what types of projects are carried out to achieve the objectives of a policy, rather than simply specifying how a predefined project is carried out to minimize its environmental impacts.¹⁶

¹⁴ WORLD BANK, EL SALVADOR: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 10; WORLD BANK, GUATEMALA: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 8.

¹⁵ Strategic Environmental Assessment can be defined as “the formalized, systematic, and comprehensive process of evaluating the environmental effects of a policy, plan, or programme and its alternatives, including the preparation of a written report on the findings of that evaluation, and using the findings in a publicly accountable decision-making” RIKI THERIVEL ET AL., STRATEGIC ENVIRONMENTAL ASSESSMENT (1992).

¹⁶ Bram F. Noble, *Strategic Environmental Assessment: What is it? & What Makes it Strategic?*, 2 J. ENVTL. ASSMNT. POL’Y. & MGMT., 203 (2000).

There are important variations in terms of the requirements for the preparation of SEAs. For example, Mexico and Chile only call for the preparation of SEAs for a very specific set of development plans or programs, while countries such as the Dominican Republic, El Salvador and Venezuela require an SEA for all policies, plans, and programs. Likewise, there are important differences in terms of the level of detail with which SEAs are regulated. For instance, while the legal frameworks of Bolivia and El Salvador do conceive SEAs as instruments that must be approved by the responsible environmental authority, Panama's legislation only mentions the legal existence of SEAs, without providing any additional specifications regarding their content or associated procedures. Finally, regulations in place do not explicitly require that EIAs and SEAs be prepared using different methodologies, as illustrated by the legislation of Belize, Paraguay or Venezuela.

2. The Nature of EIA Systems in the United States

The United States was the first country to adopt the use of EIA in its contemporary sense, as a result of the enactment in 1969 of the United States National Environmental Policy Act (NEPA). In the promulgation of the Act, Congress recognized "the profound impact of man's activity on the interrelations of all components of the natural environment",¹⁷ as well as "the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man."¹⁸ To that end, NEPA established that "it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures (...) to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."¹⁹

According to NEPA's regulations, the main purpose of the Act is to foster excellent action by requiring that a process be undertaken to "help public officials make decisions that are based on understating of environmental consequences, and take actions that protect, restore, and enhance the environment."²⁰ This purpose differs from the main objectives of the rest of the EIA systems that will be considered in this paper in at least two relevant characteristics. On the one hand, the subject that is responsible for complying with the Act is the public official and not the action developer (this characteristic largely explains the courts' important role in examining compliance with NEPA).²¹

On the other hand, the regulations explicitly recognize that the EIA aims to enhance the governmental decision-making process. While the ultimate purpose of NEPA is to protect the environment, the Act envisions such outcome as the result of better decision-making processes. A study conducted to assess the effectiveness of NEPA after 25 years of its implementation found that "NEPA's most enduring legacy is a framework for collaboration between federal agencies and those who bear the

¹⁷ 42 U.S.C. § 4331 (2005).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 40 C.F.R. § 1500.1.

²¹ Austin et al, *supra* note 6.

environmental, social, and economic impacts of their decisions.”²² The finding is consistent with both the focus of NEPA in the decision-making process and with the responsibility that Federal officials have to comply with the Act.

NEPA introduced at least two fundamental institutional modifications that are conducive to enhancing the decision-making process. First, the Act’s dispositions have a wide scope that cover all United States policies, regulations, and public laws, as well as recommendations or reports on proposals for legislation and other major Federal actions²³ with the potential to significantly affect the quality of human environment.²⁴ NEPA further requires all agencies of the Federal Government to undertake a review of their statutory authority, administrative regulations, and policies and procedures with the aim of identifying and correcting any deficiencies or inconsistencies with the purposes and provisions of the Act.²⁵ In this context, programmatic level Environmental Impact Statements (EISs) have been used to assess the environmental impacts of major programs, plans, and policies, thereby constituting a first kind of SEA.²⁶

Second, NEPA mandates all Federal Agencies to thoroughly incorporate environmental considerations in their decision-making processes. To this end, agencies are required to utilize a systemic and interdisciplinary approach that integrates natural and social sciences; give appropriate consideration to unquantified environmental amenities and values, along with economic and technical considerations; and prepare a report on proposals for legislation and other major Federal actions with a detailed statement on the environmental impact of the proposed action and its alternatives.²⁷

Thus, under NEPA, EIA could be described as a process to incorporate the environmental and social concerns of different stakeholders into the decision-making process of Federal authorities. Under this conception, EIA has the potential to strengthen governmental decision-making processes at multiple levels, including legislative acts, policy-making, administrative procedures, and specific projects.

3. The Nature of EIA Systems in the Latin American Region

The vast majority of countries in the Latin American Region have adopted a formal EIA system.²⁸ An overview of existing legal dispositions in the region reveals that national authorities consider EIA as one of the main environmental management and planning tools, as is explicitly recognized in the legal framework of Bolivia²⁹, the Dominican Republic³⁰ and Uruguay,³¹ among others. EIA is defined as an administrative procedure geared towards one of the following objectives:

²² U.S. CEQ, *supra* note 5, at 7.

²³ Federal actions are defined as those that require the approval of a governmental agency at the federal level.

²⁴ 42 U.S.C. § 4332.

²⁵ *Id* § 4333.

²⁶ BARRY DALAL-CLAYTON & BARRY SADLER, STRATEGIC ENVIRONMENTAL ASSESSMENT: A SOURCEBOOK AND REFERENCE GUIDE TO INTERNATIONAL EXPERIENCE (2005).

²⁷ 42 U.S.C. § 4332.

²⁸ A study analyzing 26 countries in Latin America and the Caribbean found that 24 of them had formal, operative EIA requirements. ESPINOZA & ALZINA, *supra* note 1.

²⁹ Ley 1,333, LEY DEL MEDIO AMBIENTE [LAW OF ENVIRONMENT], art. 12, Mar. 23, 1992

³⁰ LEY GENERAL SOBRE MEDIO AMBIENTE Y RECURSOS NATURALES (64-00) [GENERAL LAW ON ENVIRONMENT AND NATURAL RESOURCES (64-00)] [Law 64-00] art. 9.

- a) Obtaining the environmental license or permit to carry out an action, as in Brazil³² Colombia,³³ and Costa Rica.³⁴
- b) Identifying the potential environmental effects or impacts of a proposed action, as in Dominican Republic,³⁵ Nicaragua,³⁶ and Paraguay.³⁷
- c) Identifying the potential environmental effects or impacts of a proposed action and identifying the necessary corrective or mitigation measures, as in Argentina,³⁸ Belize,³⁹ Bolivia,⁴⁰ El Salvador,⁴¹ Guatemala,⁴² Honduras,⁴³ Mexico,⁴⁴ Peru,⁴⁵ and Uruguay.⁴⁶
- d) Ensuring compliance with environmental legislation, as in Chile⁴⁷ and Venezuela⁴⁸.
- e) Ensuring that government officials and society in general have access to the relevant environmental information of an activity or project, as in Guyana⁴⁹ and Ecuador.⁵⁰
- f) Supporting decision-making processes for the adoption of preventive environmental measures, as in Panama.⁵¹

³¹ Ley No. 17.283 art. 7, Nov. 28, 2000, D.O. 25663.

³² Lei No. 7.804 art. 8, 18 de julho de 1989, D.O.U. de 04.01.1990; Resolução CONAMA No. 001 [Resolution No. 001 of 1986] art. 2, 23 de janeiro de 1986, D.O.U. de 17.02.1986.

³³ Law No. 99 [Law 99 of 1993] art. 57, Dec. 22, 1993, D.O. 41146

³⁴ Law No. 7554 LEY ORGÁNICA DEL AMBIENTE [ORGANIC ENVIRONMENTAL LAW] [Law 7554] art. 17; Decreto No. 31849-MINAE-S-MOPT-MAG-MEIC, REGLAMENTO GENERAL SOBRE LOS PROCEDIMIENTOS DE EVALUACIÓN DE IMPACTO AMBIENTAL (EIA) [GENERAL REGULATIONS FOR ENVIRONMENTAL IMPACT ASSESSMENT (EIA) PROCEDURES] [GENERAL REGULATIONS FOR EIA PROCEDURES] art 1, 24.05.2004, La Gaceta No. 125, 28.06.2004.

³⁵ LEY 64-00, art. 16.

³⁶ Ley 217, LEY GENERAL DEL MEDIO AMBIENTE Y LOS RECURSOS NATURALES [GENERAL LAW OF ENVIRONMENT AND NATURAL RESOURCES] [Law 217], art. 5, Mar 27, 1996, La Gaceta No. 105, June 6, 1996.

³⁷ LEY 294/93 DE IMPACTO AMBIENTAL [LAW 294/93 OF ENVIRONMENTAL IMPACT] [Law 294/93], art. 2.

³⁸ Ley 25.675 [Law 25.675], art. 13, Sanctioned Nov. 06, 2002. Partially promulgated Nov. 27, 2002.

³⁹ ENVIRONMENTAL PROTECTION ACT, art. 20 (Rev. Ed. 2000 Law Revision Commissioner).

⁴⁰ LAW OF ENVIRONMENT, art. 24; REGLAMENTO DE PREVENCIÓN Y CONTROL AMBIENTAL [REGULATIONS FOR ENVIRONMENTAL PREVENTION AND OVERSIGHT], art. 14, Gaceta Oficial de Bolivia, Jun. 15, 1992.

⁴¹ Decreto 233, LEY GENERAL DEL AMBIENTE [GENERAL LAW OF ENVIRONMENT] [Decree 233], art. 5. Mar. 02, 1998, D.O. Tomo No. 399, NUMERO 79, May. 04, 1998.

⁴² Acuerdo Gubernativo No. 023-2003, REGLAMENTO DE EVALUACIÓN, CONTROL Y SEGUIMIENTO AMBIENTAL [REGULATIONS FOR ENVIRONMENTAL EVALUATION, OVERSIGHT, AND FOLLOW-UP] [Governmental Agreement 23 of 2003], art. 11, Jan. 27, 2003.

⁴³ Decreto 104-93, LEY GENERAL DEL AMBIENTE [GENERAL LAW OF ENVIRONMENT] [Decree 104-93], art. 5, May 27, 1993, La Gaceta, June 3, 1993.

⁴⁴ LEY GENERAL DE EQUILIBRIO ECOLÓGICO Y PROTECCIÓN AMBIENTAL [GENERAL LAW OF ECOLOGICAL EQUILIBRIUM AND ENVIRONMENTAL PROTECTION] [LGEIPA], art. 28, Dec 22, 1987, D.O.F. Jan. 28, 1988, amended several times.

⁴⁵ Ley 27446, LEY DEL SISTEMA NACIONAL DE EVALUACIÓN DE IMPACTO AMBIENTAL [LAW OF THE NATIONAL SYSTEM OF ENVIRONMENTAL IMPACT ASSESSMENT] [Law 27446], art. 1, Mar. 16, 2001, El Peruano Apr. 23, 2001.

⁴⁶ Ley 16.466 [Law 16.466], art. 1, Jan 3, 1994, D.O. No. 23977, Jan. 26, 1994.

⁴⁷ Ley 19.300: BASES GENERALES DEL MEDIO AMBIENTE [GENERAL LEGAL BASES FOR ENVIRONMENT] [Law 19.300], art. 2, Mar. 1, 1994, D.O. Mar. 9, 1994.

⁴⁸ Decreto No. 1.257, NORMAS SOBRE EVALUACIÓN AMBIENTAL DE ACTIVIDADES SUSCEPTIBLES DE DEGRADAR EL AMBIENTE [NORMS FOR ENVIRONMENTAL ASSESSMENT OF ACTIVITIES THAT ARE SUSCEPTIBLE OF DEGRADING THE ENVIRONMENT] [Decree 1.257], art. 3. Mar. 13, 1996.

⁴⁹ ENVIRONMENTAL IMPACT ASSESSMENT (EIA) GUIDELINES, VOL. 1 RULES AND PROCEDURES FOR CONDUCTING AND REVIEWING EIAs, [EIA GUIDELINES], p. 5, (Version 4, Nov. 2000, Environmental Protection Agency/Environmental Assessment Board).

⁵⁰ Decreto 3399, TEXTO UNIFICADO DE LEGISLACIÓN SECUNDARIA, LIBRO VI [UNIFIED TEXT OF SECONDARY LEGISLATION, BOOK VI], art. 13, Nov. 28, 2002, R.O. 725, Dec. 16, 2002.

Most of the aforementioned conceptions of EIA are similar in that their main objective is to ensure that a proposed action complies with legal standards or other parameters that the responsible authority considers adequate to protect the environment. Such conceptions have implications in at least three areas that differ significantly from the US model described above. First, EIA is a relevant tool mainly for governmental agencies that are responsible for enforcement of environmental legislation and/or for emitting environmental licenses or permits. Naturally, such agencies tend to be environmental agencies and not all Federal agencies.

Second, the usefulness of EIA is not based on the notion that opening up governmental decision-making processes to public scrutiny leads to better decisions being made. Instead, it is grounded on the idea that by obtaining information of the potential impacts of a project, the authority has the capacity to demand modifications in project design and set operating conditions to ensure that the project's environmental outcomes remain within specific parameters that are considered appropriate in light of the existing legal framework.

Finally, as a result of the conception of EIA as an instrument for environmental management, the main contribution of EIA is not necessarily that environmental and social considerations are duly integrated to ensure that the best decision is made, but rather, providing that the relevant projects contemplate a plan or program, generally referred to as Environmental Management Plan (EMP), to ensure that the project is operated in compliance with conditions set by the authority and environmental regulations in place.

4. Types of Environmental Assessment

Over the last years, a growing number of developing countries have incorporated SEAs into their environmental management frameworks. Across Latin America, countries can be grouped into three categories, based on the legal requirement for the use of SEA:⁵²

- a) Use of EIA for projects, works, and activities. 10 countries have not incorporated SEAs into their legal framework, as assessments are only required for:
 - i. Works or activities in Argentina (at the national level)⁵³ and Peru.⁵⁴
 - ii. Facilities and activities in Brazil.⁵⁵
 - iii. Activities, works, and projects in Colombia,⁵⁶ Costa Rica,⁵⁷ Ecuador,⁵⁸ and Nicaragua.⁵⁹

⁵¹ Ley No. 41 de 1 de Julio de 1998 [Law 41], art. 2, Gaceta Oficial No. 23578, Jul. 3, 1998.

⁵² A number of SEAs have been prepared in various countries in the region not because they were required by the national legal framework, but because an international financial institution such as the Inter-American Development Bank or the World Bank led the process. DALAL-CLAYTON & SADLER, *supra* note 26.

⁵³ Law 25.675, art. 11

⁵⁴ Law 27446, art. 2.

⁵⁵ Resolução CONAM 237 of 1997 [Resolution 237 of 1997], art. 1, Dec. 19, 1997.

⁵⁶ Law 99 of 1993, art. 49.

⁵⁷ Law 7554, art. 17.

⁵⁸ Ley 37 LEY DE GESTIÓN AMBIENTAL [LAW OF ENVIRONMENTAL MANAGEMENT] [Law 37], art. 19, e, RO/245, Jul. 30, 1999.

- iv. Projects in Honduras.⁶⁰
 - v. Activities, constructions, and works in Uruguay.⁶¹
- b) Use of EIA and restricted use of SEA. 2 countries have formally adopted the use of SEAs but their legal framework limits the areas in which the instrument can be applied:
- i. Chile's EIA system contemplates the use of EIA for activities and projects, but these include regional urban development plans.⁶²
 - ii. Mexican legislation requires an EIA for works and activities, but a regional assessment may be prepared for a group of works or activities that are part of partial plans or programs for urban development and ecological planning.⁶³
- c) Use of EIA and SEA. 8 Latin American countries have incorporated dispositions in their legal frameworks that refer to the broad use of SEAs.
- i. Under Belize's legislation, EIAs are considered for projects and activities, and programs.⁶⁴ However, the regulations expand the actions that are subject to an EIA to include undertakings with a significant environmental impact, which may include an activity, project, structure, work, policy, proposal, plan or program.⁶⁵
 - ii. The legal framework in Bolivia⁶⁶ and in Panama⁶⁷ requires EIAs for works, activities, and projects, and SEAs for plans and programs.
 - iii. In the Dominican Republic, an environmental assessment is required for works, projects, and activities, as well as for public administration policies, plans, and programs.⁶⁸
 - iv. El Salvador's legal framework requires EIA for activities, works or projects, and SEA for policies, plans, programs, laws, and norms.⁶⁹
 - v. In Guatemala, EIAs are mandatory for projects, works, industry, and activities;⁷⁰ SEAs are prepared for national and governmental policies and plans, as well as for transnational projects.⁷¹

⁵⁹ Law 217, art. 26.

⁶⁰ Decree 104-93, art. 9.

⁶¹ Law 16.466, art. 6.

⁶² Law 19.300, art. 10; REGLAMENTO DEL SISTEMA DE EVALUACIÓN DE IMPACTO AMBIENTAL [REGULATIONS OF THE ENVIRONMENTAL IMPACT ASSESSMENT SYSTEM] [REGULATIONS OF THE EIA SYSTEM], art. 3, D.S. No. 95 of 2001.

⁶³ LGEEPA, art. 28; REGLAMENTO DE LA LEY GENERAL DE EQUILIBRIO ECOLÓGICO Y PROTECCIÓN AL AMBIENTE EN MATERIA DE EVALUACIÓN DE IMPACTO AMBIENTAL [REGULATIONS OF THE GENERAL LAW OF ECOLOGICAL EQUILIBRIUM AND ENVIRONMENTAL PROTECTION FOR ENVIRONMENTAL IMPACT ASSESSMENT] [LGEEPA EIA REGULATIONS], art. 11, D.O.F., May 30, 2005.

⁶⁴ ENVIRONMENTAL PROTECTION ACT, art. 20.

⁶⁵ ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, reg. 2 (Rev. Ed. 2003 Law Revision Commissioner).

⁶⁶ Law 1,333, art. 24; REGULATIONS FOR ENVIRONMENTAL PREVENTION AND OVERSIGHT, art. 7.

⁶⁷ Decreto 209 [Decree 209], arts. 3 and 7, Gaceta Oficial 25625, Sep. 6, 2006.

⁶⁸ LEY 64-00, arts. 38 - 39.

⁶⁹ Decree 233, art. 5.

⁷⁰ Decreto Número 68-86 LEY DE PROTECCIÓN Y MEJORAMIENTO DEL AMBIENTE [LAW OF ENVIRONMENTAL PROTECTION AND IMPROVEMENT], art. 8, Diario de Centro América, No. 27, Tomo 255, Dec. 19, 1986, amended several times.

⁷¹ Governmental Agreement 23 of 2003, art. 13.

- vi. Guyana's legal framework requires an EIA for projects and for any policy, program, or plan that may significantly affect the environment.⁷²
- vii. Paraguayan legislation refers only to works and activities,⁷³ but its regulations incorporate programs, plans, and policies among the proposed actions that are subject to an environmental assessment.⁷⁴
- viii. Venezuela's legal framework indicates that environmental assessments must be carried out during the formulation of projects, policies, plans, and programs.⁷⁵

⁷² ENVIRONMENTAL PROTECTION ACT, 10 and 17 (2).

⁷³ Law 294/93, art. 7.

⁷⁴ Decreto 14,281 [Decree 14,281], art. 2, Gaceta Oficial, July 31, 1996.

⁷⁵ Decree 1.257, art. 2.

III. Institutional Leadership in the EIA System

1. Introduction

This section compares how the EIA institutional arrangements currently in place assign the responsibility for leading the EIA system to different governmental bodies. The comparison considers the differences of existing schemes in terms of the responsibilities of different levels of government as well as of different agencies at the national level.

The analysis finds that an environmental agency is mainly responsible for evaluating the EIA process in most Latin American countries. The prominent role that environmental agencies play in most EIA systems is associated with the conception of EIA as an environmental management tool. Under this conception, the environmental authority acts as an evaluator that assesses whether the proposed action meets administrative criteria to obtain an environmental license or other type of authorization.

2. Distribution of Responsibilities under NEPA

Under the NEPA model, a Federal Government official is responsible for preparing the statement on the environmental impacts of each major Federal action.⁷⁶ In this context, the EIA process is likely to be led by line agencies with a sectoral mandate to regulate actions with potential significant environmental impacts.

A lead agency must be designated when more than one Federal agency either proposes or is involved in the same action or in a group of actions that are interrelated functionally or geographically.⁷⁷ If involved Federal agencies are unable to agree on their respective roles for the preparation of a statement, designation of the lead agency must be determined by the following factors, listed in descending order of importance: magnitude of the agency's involvement, project approval/disapproval authority; expertise concerning the action's environmental effects, duration of the agency's involvement, and sequence of agency's involvement.⁷⁸ If the use of these criteria does not result in an agreement, any concerned person or agency may request the CEQ to determine the agencies' corresponding roles.⁷⁹ This approach differs from that of most Latin American countries, where supervising the EIA process and issuing the corresponding authorizations is typically an inherent function of environmental agencies.

3. Distribution of Responsibilities in Latin American Countries

The schemes that the countries use to assign responsibility for leading the EIA process can be grouped into the following five categories:

⁷⁶ 42 U.S.C. § 4332(b).

⁷⁷ 40 C.F.R. § 1501.5(2)(b).

⁷⁸ *Id.* at § 1501.5(c).

⁷⁹ *Id.* at 1501.5(e).

- a) National Environmental Authority. The environmental organization with the highest hierarchical status is responsible for leading the EIA process in 11 countries. In some instances the law or regulations assign such responsibility to a specific office or entity of the environmental agency, as indicated below.
- i. **Belize.** Department of the Environment of the Ministry of Natural Resources and the Environment.⁸⁰
 - ii. **Costa Rica.** National Environmental Technical Secretary (*Secretaría Técnica Nacional Ambiental-SETENA*), which is a decentralized organ of the Ministry of Environment and Energy, whose main objective consists in harmonizing environmental impacts with productive processes.⁸¹
 - iii. **Dominican Republic:** Secretary of Environment and Natural Resources (*Secretaría de Estado de Medio Ambiente y Recursos Naturales-SEMARN*).⁸²
 - iv. **El Salvador.** Ministry of Environment and Natural Resources (*Ministerio del Medio Ambiente y Recursos Naturales-MARN*)⁸³. In the case of SEAs, sectoral entities lead the process, but must follow the guidelines issued by MARN.⁸⁴
 - v. **Guatemala.** General Directorate of Environmental Management and Natural Resources (*Dirección General de Gestión Ambiental y Recursos Naturales-DGGARN*) of the Ministry of Environment and Natural Resources (*Ministerio de Ambiente y Recursos Naturales-MARN*).⁸⁵
 - vi. **Guyana.** Environmental Protection Agency (EPA).⁸⁶
 - vii. **Honduras.** General Directorate of Impact Evaluation and Environmental Oversight (*Dirección General de Evaluación de Impacto y Control Ambiental-DECA*) of the Secretary of Natural Resources and Environment (*Secretaría de Recursos Naturales y Ambiente-SERNA*).⁸⁷
 - viii. **Nicaragua.** Ministry of Environment and Natural Resources (*Ministerio de Ambiente y de los Recursos Naturales-MARENA*).⁸⁸
 - ix. **Paraguay.** General Directorate for Oversight of Environmental Quality and Natural Resources (*Dirección General de Control de la Calidad*

⁸⁰ ENVIRONMENTAL PROTECTION ACT, 20.

⁸¹ Law 7554, art. 84.

⁸² LEY 64-00, art. 40.

⁸³ Decreto 17, REGLAMENTO GENERAL DE LA LEY DE MEDIO AMBIENTE [GENERAL REGULATIONS OF THE LAW OF ENVIRONMENT] [Decree 17], art. 19, Diario Oficial No. 73, Apr. 12, 2000. **AQUI**

⁸⁴ Decree 233, art. 17.

⁸⁵ Governmental Agreement 186-2001, art. 8.

⁸⁶ ENVIRONMENTAL PROTECTION ACT, 11.

⁸⁷ REGLAMENTO DEL SISTEMA NACIONAL DE EVALUACIÓN DE IMPACTO AMBIENTAL (SINEIA) [REGULATIONS FOR THE NATIONAL ENVIRONMENTAL IMPACT ASSESSMENT SYSTEM (SINEIA)] [SINEIA REGULATIONS], art. 6, La Gaceta No. 27.291, March 5, 1994.

⁸⁸ Decreto 45 de 1994, REGLAMENTO DE PERMISO Y EVALUACIÓN DE IMPACTO AMBIENTAL [REGULATIONS FOR PERMITS AND ENVIRONMENTAL IMPACT ASSESSMENT] [Decree 45 of 1994], art. 3, La Gaceta Diario Oficial, October 31, 1994. art. 1.

Ambiental y de los Recursos Naturales) of the Secretary of Environment (*Secretaría del Ambiente-SEAM*).⁸⁹

x. **Uruguay:** Ministry of Housing, Land-Use Planning, and Environment (*Ministerio de Vivienda, Ordenamiento Territorial y Medio Ambiente*).⁹⁰

xi. **Venezuela:** Ministry of the People's Power for the Environment (*Ministerio del Poder Popular para el Ambiente*).⁹¹

b) National Environmental Authority and Decentralized Regional Environmental Authority.

In **Chile**, responsibility for supervising the EIA process is assigned to the Regional Environmental Commission (*Comisión Regional del Medio Ambiente-COREMA*) that has jurisdiction over the territory where the action will take place. COREMAs are decentralized bodies of the national environmental authority, the National Commission of the Environment (*Comisión Nacional del Medio Ambiente-CONAMA*). CONAMA leads the EIA process if the action is expected to have impacts in different areas over which more than one COREMA has jurisdiction.⁹²

c) National Sectoral Authorities. Only in 2 of the 20 countries included in this study are line agencies responsible for leading the EIA process for an action that is regulated under their sectoral mandate.

i. **Ecuador.** National, sectoral, and sectional agencies with environmental responsibilities and an EIA system approved by the national environmental authority can act as lead agency in the EIA process. The Ministry of Environment only leads the process when it acts as action proponent, when the action is expected to generate significant environmental impacts or risks, or when the process should be led at the provincial level but the action is expected to have impacts in more than one province. If more than one agency has faculties to regulate the proposed action, the relevant agencies must reach an agreement on who will act as lead agency, based on criteria such as institutional capacity and experience. If no agreement is reached, the national environmental authority or the General Attorney's Office makes the decision.⁹³

ii. **Peru.** National and sectoral ministries with environmental competences are responsible for defining and conducting the EIA process. If the action is anticipated to have impacts in areas regulated by more than one sectoral agency, the process is led by the agency that regulates the activity from which the proponent generates the largest share of its revenues. The national environmental authority—National Environmental

⁸⁹ Ley 1,561/00, QUE CREA EL SISTEMA NACIONAL DEL AMBIENTE, EL CONSEJO NACIONAL DEL AMBIENTE Y LA SECRETARIA DEL AMBIENTE [Law 1,561/00 THAT ESTABLISHES THE NATIONAL ENVIRONMENTAL SYSTEM, THE NATIONAL ENVIRONMENTAL COUNCIL, AND THE SECRETARY OF ENVIRONMENT], arts. 14, i and 23, May 29, 2000.

⁹⁰ Law 16.466, art. 6.

⁹¹ Decree 1.257, art. 4.

⁹² Law 19.300, arts. 8 and 9.

⁹³ UNIFIED TEXT OF SECONDARY LEGISLATION, BOOK VI, arts. 10 and 11.

Council (*Consejo Nacional del Ambiente*-CONAM)—has a supervisory and coordination role, but the decision-making power lies in the sectoral agencies.⁹⁴

- d) National and Sub-National Environmental Authorities. In 4 countries, EIAs are clearly part of the environmental agencies' mandates, but the function may be carried out by different levels of government, according to allocations rules contained in the legal framework.
- i. **Bolivia.** The national Vice-Ministry of Biodiversity, Forest Resources, and Environment (which is part of the Ministry of Rural and Agricultural Development and the Environment), oversees EIAs for actions with potential transboundary effects, actions that are located or likely to affect more than one department, and actions that may have impacts on a protected natural area. The environmental instances of Departmental Governments are responsible for leading the EIA process for actions that are neither competence of the national authority nor of municipal authorities. Finally, the environmental units of local authorities bear the responsibility for actions under municipal jurisdiction.⁹⁵
 - ii. **Brazil.** The national Brazilian Institute of Environment and Renewable Natural Resources (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis-IBAMA*) supervises the EIA process only by exception, when the action is expected to generate national or regional impacts, or for actions under Federal jurisdiction. States and municipalities are responsible for other actions, according to their corresponding jurisdictions.⁹⁶
 - iii. **Colombia.** The national Ministry of Environment, Housing, and Territorial Development (*Ministerio de Ambiente, Vivienda y Desarrollo Territorial-MAVDT*) is mandated to act as responsible agency for a list of projects defined by law. The Regional Autonomous Corporations (*Corporaciones Autónomas Regionales-CARs*), which are independent organizations with jurisdiction over a geographic area that comprises an ecosystem or another type of unit, have legal powers to issue environmental licenses—and therefore to evaluate EIAs—for actions within their jurisdictions. CARs may further delegate issuance of environmental licenses to territorial entities that are part of their jurisdiction. Municipalities, districts, and urban areas with populations over one million are granted numerous faculties in the national environmental legislation, including that of issuing environmental licenses that are not under the competence of MAVDT.⁹⁷
 - iv. **México.** The federal Secretary of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales-SEMARNAT*) is legally required to oversee the EIA process. However, SEMARNAT can sign agreements with State governments through which the latter assume

⁹⁴ Law 27446, arts. 16, 17, and 18.

⁹⁵ REGULATIONS FOR ENVIRONMENTAL PREVENTION AND OVERSIGHT, arts. 4, 5, and 6.

⁹⁶ Resolution 237 of 1997, arts. 4, 5, and 6,

⁹⁷ Law 99 of 1993, arts. 52 - 55.

responsibility for carrying out specific environmental management functions, including EIA, within their territorial jurisdiction. Municipal authorities can participate in carrying out these functions. Nevertheless, the legal framework contemplates a list of actions that is reserved for the federal authority.⁹⁸

e) **Shared Responsibilities between Sectoral and Environmental Authorities.** The remaining 2 countries have adopted a system in which both sectoral and environmental authorities have been assigned a lead role in the EIA process.

- i. **Argentina.** At the Federal level, sectoral agencies lead the EIA process, based on their own competences and specific laws. For instance, the Secretary of Environment and Sustainable Development is responsible for overseeing EIAs for actions involving hazardous wastes.⁹⁹ Argentina's legal framework assigns the provinces the main responsibilities for environmental protection, including those related with the EIA process. Thus, those actions that are foreseen to have impacts within a provincial jurisdiction are subject to an EIA that is evaluated by provincial authorities and must comply with provincial regulations.
- ii. **Panama.** The National Environmental Authority (*Autoridad Nacional Ambiental-ANAM*) has the main responsibility for administering the EIA process. ANAM's Regional Administrations lead the process for actions within their geographical area of competence. However, ANAM can also request that Sectoral Environmental Units (*Unidades Ambientales Sectoriales-UAS*) be granted authority to oversee the correct application of the EIA process for actions within their sectoral mandate.¹⁰⁰

⁹⁸ LGEEPA, arts. 5, 11, and 28.

⁹⁹ Ley 24051 [Law 24051], art. 60, sanctioned Dec. 17, 1991, promulgated Jan. 17, 1992.

¹⁰⁰ Decree 209, arts. 8 - 10.

IV. Screening

1. Introduction

Screening refers to the process “to determine whether or not a proposal should be subject to EIA and, if so, at what level of detail”.¹⁰¹ An effective and efficient screening process allows decision-makers to identify the actions that have the potential to generate significant environmental impacts, and use their limited resources to carry out EIAs of the adequate depth for such projects.

In contrast, an ineffective and inefficient screening process typically results in a massive number of actions being subject to an EIA, with each type of action being subject to a similar EIA regardless of their different potential impacts. As a consequence of this situation, the authority must stretch its limited resources to carry out a myriad of EIAs, resulting in lengthy delays in the issuance of the permits and licenses needed to undertake the action. In this context, the usefulness of EIA is reduced substantially, as it becomes a bureaucratic hurdle for the development of projects with limited or negligible environmental impacts, while simultaneously failing to address with adequate depth the significant environmental impacts of other actions.

This section compares the EIA systems adopted in Latin America along the main two dimensions of the screening process, namely: i) the mechanisms by which countries identify the actions that require an EIA, and ii) the procedures used by countries to define the extent and thoroughness of the studies prepared for those actions.

The screening process under NEPA is based on the significance of the effects resulting from the action. In contrast, the vast majority of the studied Latin American countries rely on some form of list. The main differences across countries relate to how that list is managed, including variations in terms of the flexibility that the lead agency has in using the lists, in the mechanisms through which the list is expanded or narrowed, and on the additional mechanisms that the legal framework contemplates to complement the list.

The widespread use of lists as screening devices in Latin America presents a series of challenges, given that this instrument is conducive to inefficient and ineffective screening processes, as described above. The rigidity of the lists limits their ability to filter out the actions that would not generate significant environmental effects, and thus, a wide range of actions must complete the analysis.¹⁰² The use of lists, coupled with the excessive use of EIA as an environmental management tool, largely explains why nearly 2,000 EIA applications are submitted yearly in Guatemala¹⁰³, compared to the average of 550 statements that are filed each year in the United States.¹⁰⁴

¹⁰¹ Pierre Senécal et al., *supra* note 7, at 4.

¹⁰² ASTORGA, *supra* note 3.

¹⁰³ WORLD BANK, GUATEMALA: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 8.

¹⁰⁴ Average for statements filed annually between 1997 and 2006. The number of statements filed annually was significantly higher during the early years of NEPA. U.S. CEQ, *Environmental Impact Statements Filed 1970 through 2006*, at http://www.nepa.gov/nepa/EISs_by_Year_1970_2006.pdf, last accessed on September 4, 2007.

The weaknesses of lists as screening mechanisms are not overcome by providing authorities flexibility to decide how and when to use such lists. In fact, the use of discretionary criteria has been found to be more closely associated with increased probability of error, inequality among similar projects, and opportunities for illegally influencing the decisions taken by authorities, than with better environmental outcomes.¹⁰⁵

The use of lists as the main screening mechanism is indicative of the limitations that EIA faces as a tool for strengthening public decision-making in the studied countries. In general, the environmental analysis is not restricted to the cases where the government's intervention is critical to balance the interests of those who would benefit and those who would be affected by the action. Instead, EIAs are used as environmental management tools to address the potential impacts of a wide range of projects and activities.

2. The Screening Process under NEPA

Under the NEPA model, the screening process hinges on the criteria used by Federal agencies to identify three classes of actions, based on the significance of their potential effects:

a) Environmental Impact Statement (EIS)

When the action is expected to significantly affect the human environment, the action proponent must prepare an EIS, entailing a deeper and more comprehensive analysis of the action's impacts."¹⁰⁶ The regulations for implementing NEPA state that the two variables that determine significance are context and intensity.¹⁰⁷ The former refers to the need to analyze the action's impacts in several contexts—such as society as a whole, the affected region, the affected interests, and the locality—and focusing on the most appropriate context for the action. Both short- and long-term effect are relevant when considering the action's context.¹⁰⁸

Intensity refers to the severity of the impacts, which must be pondered taking into account both beneficial and adverse impacts, the degree to which public health or safety would be affected, the unique characteristics of the geographic area, the potential violation of environmental laws or requirements, and the potential for significant cumulative impacts, among others. Intensity must also consider adverse effects on scientific, cultural or historical resources, as well as on endangered species.¹⁰⁹

The severity of impacts is not restricted to predictable physical impacts, as it must also take into consideration the degree to which the effect on the quality of the human environment is likely to be highly controversial, highly uncertain, or involve unique or

¹⁰⁵ WORLD BANK, EL SALVADOR: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 10; WORLD BANK, GUATEMALA: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 8.

¹⁰⁶ 40 C.F.R. § 1502.1.

¹⁰⁷ *Id.* at § 1508.27.

¹⁰⁸ *Id.* at § 1508.27(a).

¹⁰⁹ *Id.* at § 1508.27(b).

unknown risks, as well as the degree to which the action may establish a precedent for future actions with significant effects.¹¹⁰

b) Environmental Assessment (EA)

When the lead agency is uncertain of whether the action is likely to generate significant impacts or not, an Environmental Assessment (EA) is required. The EA should discuss the need for the proposed action, alternatives to the action, the environmental impacts of the proposed action and its alternatives, and a list of agencies and people that were consulted.¹¹¹ The EA should provide sufficient evidence and analysis to determine whether an EIS is called for. If the EIS is necessary, the EA should facilitate its preparation. Alternatively, if the statement is not necessary, the agency must prepare a Finding of No Significant Impact (FONSI), which is a document that explains why the action will not have significant effects on the human environment.¹¹²

c) Categorical Exclusion

This category applies to actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in previous efforts undertaken by the Federal agency in compliance with NEPA. Actions that fall under this category require neither EA nor EIS.¹¹³

3. Screening Mechanisms in Latin American Countries

Lists are the most common mechanism used in the Latin American countries to define what actions are subject to an EIA. The lists used by Latin American countries can be classified in five categories:

- a) Restrictive Lists. 7 countries considered in the study rely on this type of lists, which define with precision the types of action for which an EIA is mandatory.
 - i. In **Colombia**,¹¹⁴ **Nicaragua**,¹¹⁵ **Panama**,¹¹⁶ and **Uruguay**¹¹⁷ EIAs are only required for the projects that are explicitly enumerated in the law and its regulations.
 - ii. In **Costa Rica**, the regulations establish two lists of actions that require an EIA: those indicated by a specific sectoral law, and those that have the potential to alter or destroy environmental elements, or to generate dangerous or toxic materials.¹¹⁸

¹¹⁰ *Id.*

¹¹¹ *Id.* at § 1508.9.

¹¹² *Id.* at § 1508.13.

¹¹³ *Id.* at § 1508.4.

¹¹⁴ Law 99 of 1993, art. 52; Decree 1220 of 2005, arts. 8 and 9.

¹¹⁵ Decree 45 of 1994, art. 5.

¹¹⁶ Decree 209, arts. 16 and 21.

¹¹⁷ Decreto No. 349/05, REGLAMENTO DE EVALUACIÓN DE IMPACTO AMBIENTAL Y AUTORIZACIONES AMBIENTALES [REGULATIONS FOR ENVIRONMENTAL IMPACT ASSESSMENT AND ENVIRONMENTAL AUTHORIZATIONS] [Decree 349/05], art. 2, D.O. 03/10/2005.

¹¹⁸ GENERAL REGULATIONS FOR EIA PROCEDURES, Annexes 1 and 2.

- iii. The law and regulations of **Chile**¹¹⁹ and **Mexico**¹²⁰ contain a list of actions that may require an EIA, as well as the characteristics, circumstances, thresholds, and additional aspects that would trigger the preparation of an EIA for such actions. Mexico's regulations also include the circumstances under which an exemption may be granted.¹²¹
- b) List Complemented with Faculties to Exclude or Include Additional Actions. In several countries, the legal framework provides a list of actions for which an EIA is obligatory, but in addition, national environmental authorities have powers to determine whether actions not contemplated in the list may be associated with environmental effects that warrant an EIA. These countries are: **Dominican Republic**,¹²² **El Salvador**,¹²³ **Guatemala**,¹²⁴ **Guyana**,¹²⁵ **Honduras**,¹²⁶ **Paraguay**,¹²⁷ and **Venezuela**.¹²⁸
- c) List subject to Criteria. In **Bolivia**¹²⁹ and **Brazil**¹³⁰ the requirement for an EIS is defined with the use of a list coupled with the interpretation of criteria relating to the action's potential impacts.
- d) Open Processes. In the 2 countries grouped under this category, screening mechanisms grant substantial flexibility to the environmental authorities to decide whether an EIA is needed.
 - i. **Belize**. The regulations include three lists for actions that require an EIA; may require an EIA, depending on the authority's opinion; or are exempted from an EIA.¹³¹
 - ii. **Ecuador**. The law mandates that the national environmental authority determine the actions for which an EIA must be completed.¹³² However, the regulations indicate that the lead agency must develop the appropriate screening methods, which may consist of: a list of activities and thresholds that determine if an EIA is necessary; criteria or methods, such as preliminary environmental studies; and the relevant governmental strategies and policies. In addition, all actions in the Galapagos Islands, as well as any action that may generate risks or impacts in a natural protected area, are subject to an EIA.¹³³
- e) Other Screening Mechanisms.

¹¹⁹ Law 19.300, art. 10: REGULATIONS OF THE EIA SYSTEM, art. 3.

¹²⁰ LGEEPA, art. 28.

¹²¹ LGEEPA EIA REGULATIONS, art. 5.

¹²² LEY 64-00, art. 41(I).

¹²³ Decree 233, art. 21.

¹²⁴ Governmental Agreement 23 of 2003, art. 27

¹²⁵ ENVIRONMENTAL PROTECTION ACT, arts 11, 16.

¹²⁶ SINEIA REGULATIONS, Annex A.

¹²⁷ Law 294/93, art. 7, and Decree 14,281, arts. 5 and 6.

¹²⁸ Decree 1.257, art. 6.

¹²⁹ Law 1331 of 1992, art. 27; REGULATIONS FOR ENVIRONMENTAL PREVENTION AND OVERSIGHT, arts. 16 - 19

¹³⁰ Resolution 237 of 1997, art. 2, § 2.

¹³¹ ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, regs. 7 – 9.

¹³² Law 37, art. 9, e.

¹³³ UNIFIED TEXT OF SECONDARY LEGISLATION, BOOK VI, art. 15.

- i. **Argentina.** There are different provisions, depending on the applicable sectoral or provincial regulations. At the national level, the law of the National System of Public Investment includes a list of the acts for which an EIA is obligatory.¹³⁴
- ii. **Peru.** The law states that the regulations will define the actions that will be subject to an EIA.¹³⁵ However, the regulations have not been promulgated yet, and in their absence, each sectoral organism has issued its own norms.

4. Types of EIA in Latin American Countries.

Once the authority has identified the actions that entail the preparation of an EIA, the screening process is also used to determine the type of environmental assessment that is warranted. For instance, an action with significant, regional environmental effects would demand a more comprehensive study than an action with significant but localized effects. The rationale for considering different types of studies is to use resources efficiently, allocating them according to the significance of the effects of the proposed actions.

a) One Category of EIA

- i. **Argentina.** At the national level, the law only considers a generic Environmental Impact Study, which must be prepared if the developer declares in the statement under oath that the action will affect the environment, or if the authority deems it necessary.¹³⁶
- ii. **Belize.** The legal framework considers one only type of EIA, but the national environmental authority has the faculty to determine its extent and scope.¹³⁷
- iii. **Brazil.** There is only one type of EIA, which entails the preparation of a single category of EIS.¹³⁸ However, action proponents must obtain three different licenses, depending on the stage of the action: a Previous License during the planning stage; an Installation License, and an Operation License. The EIS must be adequate for the license that is being requested.
- iv. **Colombia.** There is only one type of Environmental Impact Study, but the regulations indicated that the content and depth of the study should correspond to the action's characteristics and context.¹³⁹
- v. **El Salvador.** In addition to the SEA, there is only one category of EIA.¹⁴⁰
- vi. **Guyana.** There is only one type of EIA for actions included in the list that are expected to significantly affect the environment.¹⁴¹

¹³⁴ Law 24.354, Annex I.

¹³⁵ Law 27446, art. 2.

¹³⁶ Law 25.675, art. 12.

¹³⁷ ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, art. 7.

¹³⁸ CONAM Resolution 239, art. 10.

¹³⁹ Decree 1,220 of 2005, art. 20.

¹⁴⁰ Decree 233, art. 18.

- vii. **Paraguay.** There is only one category of EIA, which requires an Environmental Impact Study. However, the EIS may not be required or its characteristics may vary, depending on the particular action that will be carried out.¹⁴²

b) One Category of EIA Complemented with Requisites for Additional Actions

- i. **Ecuador.** Proponents must submit an Environmental File for all actions that require an EIA, providing justification for the need or not of an EIA. Based on the file, the authority determines if a single type of EIS is necessary.¹⁴³
- ii. **Nicaragua.** Only one category of environmental assessment is contemplated in the law. However, actions that are not considered in the list of actions subject to an EIA must submit an environmental file.¹⁴⁴
- iii. **Honduras** DECA decides, based on the work of technical teams and on the guiding criteria provided by the regulations, whether the project falls under categories I or II. Category I projects require no EIA, but must complete an environmental form and adopt a Follow-up and Control Plan. Category II projects must complete a single type of EIA.¹⁴⁵

c) Two types of EIA Complemented with Additional Requirements

- i. **Chile.** The legal framework considers two categories of EIA: the Environmental Impact Statement (*Declaración de Impacto Ambiental-DIA*) and the Environmental Impact Study-EIS (*Estudio de Impacto Ambiental*), respectively. The DIA is a document presented under oath, based on which the authority evaluates whether the action's expected impacts adjust to the norms in place. An EIS is document that predicts, identifies, and interprets the action's impacts and describes the corresponding mitigation measures.¹⁴⁶
- ii. **Dominican Republic.** Based on a list, the authority determines whether the action requires a full Environmental Impact Study (*Estudio de Impacto Ambiental-EsIA*) or a more limited Environmental Impact Statement (*Declaración de Impacto Ambiental-DIA*). The list contemplates three categories: Category A refers to an action with highly significant regional or national impacts; Category B is an action with highly significant local impacts; and Category C is an action that generates moderate impacts that can be corrected with appropriate technologies or techniques.¹⁴⁷ Category A calls for the preparation of an EsIA, while B and C require only a DIA.
- iii. **Mexico.** There are two types of Environmental Impact Statement (*Manifestación de Impacto Ambiental-MIA*): Regional and Particular. Regional MIAs apply to actions with potential regional effects, such as industrial parks, urban development plans, or projects that would affect a

¹⁴¹ ENVIRONMENTAL PROTECTION ACT, art. 11.

¹⁴² Decree 14,281, art. 5.

¹⁴³ UNIFIED TEXT OF SECONDARY LEGISLATION, BOOK VI, art. 22.

¹⁴⁴ Law 217, art. 25.

¹⁴⁵ SINEIA REGULATIONS, art. 42.

¹⁴⁶ Law 19.300 art. 2, f) and and i), and art. 9.

¹⁴⁷ Resolution 05/2002, Mar. 18, 2002, Annex I.

watershed. The Particular MIA is for actions triggering an EIA that do not qualify for a Regional MIA.¹⁴⁸ A MIA must be complemented by a risk study if the action is considered high-risk. Actions may be exempted from the EIA if the foreseen impacts are already regulated by norms, the works or activities are expressly contemplated in a regional development or urban development plan approved by SEMARNAT, or if the facilities will be located within authorized industrial parks. In such cases, the developer must prepare a Preventive Report (*Informe Preventivo-IP*).¹⁴⁹

- iv. **Venezuela.** An EIS is required for all actions subject to an EIA. However, the authority may require a Specific Environmental Evaluation if it deems a full EIS unnecessary or for the reactivation, expansion, conversion, or closure of actions contained in the restrictive list.¹⁵⁰

d) Three categories of EIA

- i. **Bolivia.** The regulations provide the criteria based on which actions can fall into three EIA categories. An Integrated Analytic EIA is prepared for actions that, due to the incidence of its effects on the ecosystem, must include a detailed analysis and an evaluation of all the factors of the environmental system: physical, biological, socioeconomic, cultural, and legal-institutional factors. A Specific Analytic EIA is for actions that are expected to have incidence in one or more factors of the environmental system. The third category is for actions that only need mitigation measures and an Environmental Implementation and Follow-Up Plan (*Plan de Aplicación y Seguimiento Ambiental*) because their characteristics are well studied and understood.¹⁵¹ Developers are required to present an Environmental File, based on which the responsible authority will determine the type of EIA that is needed.¹⁵²
- ii. **Costa Rica.** The regulations mention three EIA categories, based on the action's potential environmental impacts. Category A is for high potential environmental impacts and requires an Environmental Impact Study. Category B is for moderate potential environmental impacts and is subdivided into B1 for moderately high impacts (which require an Environmental Management Plan) and B2 for moderately low impacts (requiring only a Sworn Statement of Environmental Commitments). Category C is for action with low potential environmental impacts. For Categories C, and for B2, the proponent needs only to commit to comply with existing norms and follow the guidelines of the Code of Good Environmental Practices if the action is part of a plan approved by the national environmental authority.¹⁵³
- iii. **Guatemala.** As in the case of Costa Rica, actions are categorized as follows: "A" for high impacts, "B1" for high to moderate impacts, "B2" for moderate to low impacts, and "C" for low impacts. DGGARN determines

¹⁴⁸ LGEEPA EIA REGULATIONS, arts. 10 and 11.

¹⁴⁹ LGEEPA, arts. 30 and 31.

¹⁵⁰ Decree 1.257, art. 8.

¹⁵¹ REGULATIONS FOR ENVIRONMENTAL PREVENTION AND OVERSIGHT, art. 15.

¹⁵² *Id.*, art. 21.

¹⁵³ GENERAL REGULATIONS FOR EIA PROCEDURES arts. 14, 20.

how the actions included in the restrictive lists are allocated to the different categories.¹⁵⁴

- iv. **Panama.** Based on the expected impacts, one of three types of EIS must be prepared for actions included in the Regulation's list.¹⁵⁵ Category I refers to actions that generate non-significant environmental impacts and do not entail environmental risks. Category II is used for actions that may cause significant environmental impacts that partially affect the environment (i.e. do not cause indirect, cumulative, or synergic impacts), which can be eliminated or mitigated with known and easily applicable measures. Finally, Category III is reserved for actions that may produce negative environmental impacts of quantitative and qualitative significance, which merit a deeper analysis to evaluate the impacts and develop the corresponding Environmental Management Plan (EMP).¹⁵⁶
- v. **Peru.** Category I applies to actions that do not entail significant environmental impacts and for which an Environmental Impact Statement (*Declaratoria de Impacto Ambiental-DIA*) is needed. Category II refers to actions with that may generate moderate impacts that can be eliminated or mitigated with easily applicable measures. A Semi-detailed Environmental Impact Study (*Estudio de Impacto Ambiental Semidetallado-EsIA-s*) is required for Category II. Lastly, Category III calls for a Detailed Environmental Impact Study (*Estudio de Impacto Ambiental Detallado EsIA-d*) because the action has the potential for significant quantitative or qualitative negative environmental impacts.¹⁵⁷
- vi. **Uruguay.** Actions subject to an EIA must be classified under one of three categories. Category A actions generate non-significant environmental impacts, within the permissible limits established in norms. Category B actions generate moderately significant environmental impacts that can be eliminated or minimized through the adoption of well-known and easily applicable measures. A sectoral environmental assessment is required for Category B actions. Finally, Category C actions cause significant environmental impacts, regardless of the inclusion of prevention and mitigation measures and therefore require a full EIA.¹⁵⁸

¹⁵⁴ Governmental Agreement 23 of 2003, arts. 27 and 28.

¹⁵⁵ Decree 209, arts. 22 and 23.

¹⁵⁶ *Id.*, art. 2.

¹⁵⁷ Law 27446, art. 4.

¹⁵⁸ Decree 349/05, art. 5.

V. Scoping

1. Introduction

Scoping is the stage of the EIA process in which the issues and impacts that are likely to be important are identified and based on them, the Terms of Reference (TORs) for the EIA are established.¹⁵⁹ Whereas the screening mechanism is intended to help separate the actions that are likely to cause significant effect from those that are not, the scoping phase aims to distinguish the impacts of a specific action that are likely to be significant from those that are not. Thus, scoping phase is critical for the efficiency and effectiveness of the EIA process, as it enables the lead agency, the action developer, and the rest of the stakeholders to center their resources where they are most needed, while limiting the attention that is given to non-significant issues.

For purposes of this analysis, the scoping process is analytically separated into two components. The first refers to whether the EIA systems adopted across Latin America contain provisions for an open scoping process in which various stakeholders have the opportunity to provide input regarding the impacts that they consider that should be thoroughly assessed by the EIA. Open scoping processes provide an opportunity for those groups that may be affected by a proposed action to express their concerns and to ensure that the EIA duly considers the impacts that may be more significant for them. In contrast, when public participation is not contemplated in the scoping processes, the EIA may focus only on the impacts that the action's proponent or the responsible officials may consider relevant.

EIAs are more likely to contemplate an open scoping process when the analysis is used as a tool to strengthen public decision-making processes. Public input during the scoping phase allows the relevant authority to gather stakeholders' opinions on the action at an early stage of the action. This information is critical to identify potential tensions among different stakeholders as well as the distributional impacts of the proposed action. On the other hand, an open scoping process might not be indispensable when EIAs are used as environmental management tools. For instance, the opinion of nearby communities might not be needed to predict whether the proposed action will meet the existing norms and standards for pollution emissions or waste management.

A comparative analysis shows that only 3 of the countries considered in this document have a formal scoping process, clearly defined in the corresponding laws and regulations, that provides an avenue for public comments. 7 other countries have an informal scoping process, in which an open scoping process is considered, but the conditions for its undertaking and its influence on the definition of the TORs is subject to the discretion of the authority or the action proponent. The remaining 10 countries have not adopted any legal provisions for an open scoping process. In most cases, the legal framework provides a general indication of the EIS's scope, without contemplating opportunities for nurturing it with the opinions of potentially affected communities of other stakeholders.

¹⁵⁹ Pierre Senécal et al., *supra* note 7.

The second component of this section refers to whether countries have adopted specific provisions regarding the establishment of the TORs for the EIA. TORs generally refer to the document that defines the content of the EIS and the responsibilities for preparing it. The TORs are a critical piece of the EIA process, as the evaluation of an action's EIA typically involves reviewing the EIS's compliance with the content and methodological requirements set forth in the TORs. Hence, adequately prepared TORs would be conducive to ensure that the EIS focuses on the relevant impacts identified during the scoping stage. Alternatively, poorly prepared TORs tend to impose excessive conditions for the carrying out of the EIS, result in limited resources being devoted to activities that are not related to the action's significant impacts, and ultimately, may weaken the EIAs usefulness as a tool to manage complex social and environmental situations.

The country systems reviewed in this analysis are grouped under three categories, based on who bears the responsibility for preparing the TORs: 7 countries have no legal requirements regarding the TORs, in 6 other countries the developer must prepare the TORs and submit them for the authority's approval, while the authority is responsible for elaborating the TORs in the remaining 7 countries.

In 12 of these countries, the laws or regulations indicate the minimum contents of the EIS. In 4 additional countries, the authority must issue a reference document (i.e. guidelines, manuals, generic TORs, etc.) that is the basis for the elaboration of the EIS. Thus, in the majority of the countries, the content of the EIS is defined generically and the TORs, whether elaborated by the authority or the action's proponent, simply aim to apply that generic content to the specific characteristics of the proposed action.

The generic content of TORs are a source of inefficiency, as they demand an equal treatment of environmental variables whose relative importance varies depending on the specific action. For instance, based on generic TORs, the scope of an EIA for a road that runs through the Amazon rainforest would be equal to those for a similar project in a large city, independently of their location, size, concurrence with other projects or activities, and technological and location alternatives.

The inefficiencies arising from the use of generic TORs are not necessarily solved by granting discretion to the authority during the elaboration of specific TORs. In fact, administrative discretion is another source of inefficiency. In these cases, one or several public servants are responsible for determining the contents of the TORs, based on the information provided by the action's proponent, and in some instances, a field visit. Consequently, the content of the TORs depends on the education, expertise, experience, and degree of discretion of the involved individuals. The outcome under these circumstances may be the extreme opposite of the case where generic TORs are used, namely that the EIAs of actions with very similar characteristics may be required to contemplate significantly different components.

A third source of inefficiency, which may arise both when generic TORs are used and when the authority is granted discretionary powers, stems from the requirements of information and studies that the authority has no legal competence to evaluate. For instance, TORs often require information on the proposed action's profitability, occupational health issues, and engineering aspects, among others. While the environmental authority has no competence over these areas, it has the power to deny an environmental license based on its opinion on them. At the same time, the action proponent must generate or collect information that should not be relevant for the EIA.

As a result, EIA becomes a burdensome bureaucratic procedure that does not necessarily lead to better environmental outcomes.

2. The Scoping Process under NEPA

Regulations for implementing NEPA indicate the actions that the lead agency must undertake as part of the scoping process for the preparation of an Environmental Impact Statement (EIS).¹⁶⁰ Such actions include, among others:

- a) Inviting the participation of stakeholders, including affected Federal, State, and local agencies, affected Indian tribes, the action proponent and people who might object to the proposed action based on environmental grounds;
- b) Determining the scope and the significant issues to be analyzed in depth, while also identifying and eliminating from such analysis the issues that are not significant or have already been assessed by prior environmental reviews; and
- c) Allocating assignments for preparation of the EIS among the lead and cooperating agencies.

Based on the scope decided through this process, the lead agency must prepare a Draft EIS, which must attempt to cover all the requirements for a Final EIS. The lead agency, with the assistance of cooperating agencies must obtain comments on the Draft EIS, and based on them, prepare the Final EIS.¹⁶¹

In addition to the provisions governing the scoping process, regulations also indicate that the EIS must address: direct effects; indirect effects; possible conflicts between the proposed action and the objectives of land use plans, policies, and controls; the environmental effects of alternatives; energy requirements and conservation potential of various alternatives and mitigation measures; natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures; urban quality, historic and cultural resources, and the design of the built environment; and means to mitigate adverse environmental impacts.¹⁶²

3. Scoping Processes in Latin America

- a) Formal Scoping Procedures. Countries included in this category have legal instruments that define the types of impacts that must be considered by the EIA and that contemplate concrete procedures to obtain public input to define the EIA's scope.
 - i. **Ecuador.** The law establishes that the EIA shall comprise the effects on human population, biodiversity, soil, air, water, landscape, and the structure and function of the ecosystems in the area that is likely to be affected. Also, the EIA must consider the conditions of public tranquility, such as noise, vibrations, smells, luminous emissions, thermal changes, and any other environmental prejudice derived from the action's execution. Finally, the EIA must include the incidence of the action on the

¹⁶⁰ 40 C.F.R. § 1501.7(a).

¹⁶¹ *Id.* at § 1502.9.

¹⁶² *Id.* at § 1502.16

elements that comprise the historic, scenic, and cultural heritage.¹⁶³ These legal requirements are complemented by the regulation's dispositions, which indicate that the EIA must consider the action's potential impacts on the following media: physical (water, air, soil, and climate); biotic (flora, fauna, and their habitat); socio-cultural (archeological, socio-economic organization, etc.); and public health.¹⁶⁴ Also, the regulation's provisions on public participation mandate that the action developer, in coordination with the lead agency, carry out public consultations during the elaboration of the terms of reference, prior to their submittal for review and approval by the lead agency. The consultation should be conducive to the inclusion of the opinions of the general population, and those likely to be affected, in the EIA and its terms of reference.¹⁶⁵

- ii. **Guyana.** The Environmental Protection Act states that every EIA shall identify, describe, and evaluate the direct and indirect effects of the proposed action on: human beings; flora and fauna and the species' habitats; water; soil; air and climatic factors; material assets, the cultural heritage and the landscape; natural resources, including how much of a particular resource is degraded or eliminated, and how quickly the natural system may deteriorate; the ecological balance and ecosystems; the interaction between the mentioned factors; and any other environmental factor that the national environmental authority considers appropriate. However, before any EIA is begun, the corresponding summary must be published in at least one daily newspaper, based on which the public may submit in writing the questions and matters that they consider that the EIA should answer. The national environmental authority then defines the terms of reference and scope of the EIA taking into account the public's submissions.¹⁶⁶
- iii. **Honduras.** The Regulations of the National EIA System indicate that the public must be informed about the beginning of all EIAs. Once informed, the general public and NGOs can submit their doubts, claims, and suggestions on the EIA. The national environmental authority must decide, based on the received arguments, justifications, and technical criteria, whether the received public input is incorporated in the terms of reference.¹⁶⁷

b) **Informal Scoping Procedures.** This category includes countries whose legal framework mentions some public participation mechanism that may influence the scoping process. However, these mechanisms are generally not mandatory and tend to lack specific regulations indicating how the action's scope must consider received comments.

- i. **Belize.** The Environmental Protection Act specifies that an EIA shall identify and evaluate the action's effects on: human beings, flora and fauna, soil, water, air and climatic factors, material assets—including the cultural heritage and the landscape—, natural resources, the ecological

¹⁶³ Environmental Management Law, art. 23.

¹⁶⁴ UNIFIED TEXT OF SECONDARY LEGISLATION, BOOK VI, art. 13.

¹⁶⁵ *Id.*, art. 20.

¹⁶⁶ ENVIRONMENTAL PROTECTION ACT 11(4), (6), (7), and (8).

¹⁶⁷ SINEIA REGULATIONS, art. 46.

balance, and any other environmental factor that needs to be taken into account.¹⁶⁸ In fulfilling this requirement, the EIA must consider the direct and indirect, cumulative, short-term and long-term effects.¹⁶⁹ The developer is required to provide an opportunity for meetings with interested members of the public during the course of an EIA to provide information of the proposed action and to record the concerns of the local community regarding the associated environmental impacts.¹⁷⁰

- ii. **Bolivia.** The identification of the impacts to be assessed by the EIA must include both environmental and socio-economic aspects within the action's area of influence. The EIS should distinguish between the following types of effects: positive and negative, direct and indirect, temporal and permanent, short and long term, reversible and irreversible, cumulative, and synergistic. The EIS must also consider the possibility for accidents, emergencies, and risks. In identifying the impacts to be covered by the EIA, the public's observations, suggestions, and recommendations must be taken into account.¹⁷¹ To this effect, the developer's legal representative must hold public consultations.¹⁷²
- iii. **Dominican Republic.** The regulations consider that the impacts that must be assessed by the EIA system are affectations to natural resources, environmental quality, and the health of the citizens, including their psychological and moral wellbeing.¹⁷³ The EIS must identify and evaluate the action's potential impacts, including indirect, cumulative, and synergistic impacts. The regulations contemplate three levels of public consultation: information, consultations with interested parties during the preparation of the EIS, and consultations with interested parties as part of the evaluation of the EIS. The first two levels are responsibility of the action proponent, while the national environmental authority is responsible for the third.¹⁷⁴
- iv. **Guatemala.** The regulations mention the need to consider actions that might deteriorate renewable and non-renewable natural resources and the environment (which includes bio-topical, abiotic, socio-economic, cultural, and aesthetic elements), as well as those that may induce notorious or adverse modifications to the landscape and the cultural resources of the nation's heritage.¹⁷⁵ Although there is no specific provision on public participation during the scoping phase, the regulations state that the action's proponent must involve the population during the earliest possible stage of the preparation of all environmental assessment instruments.¹⁷⁶
- v. **Panama.** Depending the type of EIA that is required, the EIS must provide a description of the physical environment (geological formations,

¹⁶⁸ ENVIRONMENTAL PROTECTION ACT, art. 20.

¹⁶⁹ ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, reg. 5 (d).

¹⁷⁰ *Id.*, reg. 18 (1).

¹⁷¹ REGULATIONS FOR ENVIRONMENTAL PREVENTION AND OVERSIGHT, art. 25.

¹⁷² *Id.*, art. 162.

¹⁷³ REGLAMENTO DEL SISTEMA DE PERMISOS Y LICENCIAS AMBIENTALES [REGULATIONS OF THE ENVIRONMENTAL PERMITS AND LICENSES SYSTEM], art. 2, created through Resolución No. 05/2002, Mar. 18, 2002.

¹⁷⁴ *Id.*, art. 26.

¹⁷⁵ Governmental Agreement 23 of 2003, arts. 3 and 4.

¹⁷⁶ *Id.*, arts. 50 and 51.

geomorphology, soil, topography, climate, hydrology, air quality, natural threats, floods, erosion and landslides), the biological environment (flora, fauna, and fragile ecosystems), and the socio-economic environment (land use, populations' cultural and educative level, public perceptions on the proposed action, historical, archeological and cultural sites, and landscape). The EIS must then analyze the action's likely impacts on these factors.¹⁷⁷ Although most of the regulations refer to public participation during the evaluation of the EIA, they also indicate that the action's proponent must involve the citizenry in the earliest planning stage of the EIS.¹⁷⁸

- vi. **Paraguay.** The environmental impacts to be covered by the EIA include any modification to the environment that has as a positive or negative, direct or indirect consequence, the affectation to life in general, biodiversity, the quality or a significant quantity of natural or environmental resources and their use, welfare, health, personal safety, habits and traditions, cultural heritage, and legitimate ways of life.¹⁷⁹ The EIA must analyze the following effects: positive and negative, direct and indirect, permanent and temporal, reversible and irreversible, continuous or discontinuous, regular or irregular, cumulative or synergistic, and short, medium, and long-term.¹⁸⁰ The proponent of an action subject to an EIA must submit an Environmental Questionnaire to the national environmental authority. Once the authority has received the questionnaire, it may consult the people, institutions, and administrations that may be affected by the action, to obtain their opinions on the environmental impacts that may be generated, as well as on other suggestions for environmental protection.¹⁸¹
 - vii. **Peru.** The relevant authority has the faculty to request, during the classification of the EIA category, the observations of the community or their representatives and of qualified informants on the proposed action.¹⁸² Although the law has no specific provisions for the EIA scope, the classification of EIAs must be based on the protection of: human health; environmental quality, including air, water, soil, noise, liquid and solid wastes, and gaseous and radioactive emissions; natural resources, including water, soil, flora and fauna; natural protected areas; ecosystems and scenic beauties; the communities' systems and ways of life; urban spaces; and archeological, historical, and architectonic heritage, as well as national monuments.¹⁸³
- c) No Provisions for an Open Scoping Process. Included in this category are countries that have not adopted explicit provisions governing the scoping phase of the EIA process, including dispositions on the role of stakeholder comments as critical input for the definition of the EIA's scope.

¹⁷⁷ Decree 209 of 2000, art. 27.

¹⁷⁸ *Id.*, art. 29.

¹⁷⁹ Law 294/93, art. 1.

¹⁸⁰ *Id.*, art. 3, d).

¹⁸¹ Decree 14.281 of 1996, art. 9.

¹⁸² Law 27446, art. 14.

¹⁸³ *Id.*, art. 5.

- i. **Argentina.** The national law requires that an EIA be carried out for actions that may degrade the environment, one of its components, or that may significantly affect the quality of life of the population.¹⁸⁴ However, there are no federal regulations for EIA, and the scope processes vary depending on the applicable sectoral or provincial legislation and regulations.
- ii. **Brazil.** The regulations indicate that the EIS must include an environmental diagnosis that considers the physical media (soil, water, air, and climate), the biological media and the natural ecosystems (fauna and flora), and the socio-economic media (including land uses, water uses, historical sites, and the dependence of local communities on natural resources). The EIS must also analyze the potential impacts, differentiating between the following types of effects: negative and positive, direct and indirect, immediate and long-term, temporary and permanent, irreversible, cumulative, and synergistic impacts.¹⁸⁵
- iii. **Chile.** The regulations dictate that the EIS include a diagnosis of the environmental elements that are likely to be impacted and that trigger the preparation of the EIA. The EIS should therefore consider the physical environment, the biotic environment, the human environment, the built environment, the use of environmental elements in the action's area of influence, the natural and artificial elements that comprise the nation's cultural heritage, the landscape, the areas where contingencies on human populations or the environment may arise, and the potential risks associated with the action.¹⁸⁶
- iv. **Colombia.** According to the law, the EIS shall contain information on the abiotic, biotic, and socioeconomic elements that may be affected by the action¹⁸⁷.
- v. **Costa Rica.** Neither the law nor the regulations contain provisions regarding scoping. They might be included in the guidelines elaborated by SETENA.
- vi. **EL Salvador.** The regulations indicate that the EIA must describe and consider the impacts on the physical, biological, socioeconomic, and cultural environment, as well as on the action's environmental feasibility.¹⁸⁸
- vii. **Mexico.** The regulations mention the need to analyze cumulative, synergistic, significant, relevant, and residual environmental impacts.¹⁸⁹ In addition, a risk assessment must be presented for high-risk activities.¹⁹⁰
- viii. **Nicaragua.** The regulations define the need to carry out an EIA for any significant alteration, whether positive or negative, generated on any of

¹⁸⁴ Law 25.675, art. 11.

¹⁸⁵ Resolution No. 001 of 1986 art. 6.

¹⁸⁶ REGULATIONS OF THE EIA SYSTEM, art. 12.

¹⁸⁷ Law 99 of 1993, art. 57.

¹⁸⁸ Decree 17, art. 18.

¹⁸⁹ LGEEPA EIA REGULATIONS, art. 3

¹⁹⁰ LGEEPA, art. 30; LGEEPA EIA REGULATIONS, art. 17.

the biotic, abiotic, socioeconomic, cultural or aesthetic components of the environment.¹⁹¹

- ix. **Uruguay.** The law contemplates the negative and positive, direct and indirect, simple and cumulative impacts,¹⁹² that affect the health, security, or quality of life of the population, the aesthetic, cultural, or sanitary conditions, and the configuration, quality, and diversity of natural resources.¹⁹³ The action's *receiving environment* includes the physical, biotic, and human (including historic and cultural sites) environment. The action's environmental risks must also be included in the EIA.¹⁹⁴
- x. **Venezuela.** The documentation submitted to the authorities must include the action's potential impacts on the physical-natural and socioeconomic components of the environment.¹⁹⁵

4. Terms of Reference (TORs)

This section compares the EIA systems adopted in Latin American countries in terms of the process and responsibilities for preparing the TORs. It also summarizes some of the main legal requirements regarding TORs.

a) No requirement provided in the law

- i. **Argentina.** There are no specific provisions regarding TORs in the national law, only references to the minimum requirements of EIAs, including a detailed description of the proposed action, the identification of its consequences on the environment, and the actions destined to mitigate negative effects.¹⁹⁶ Applicable sectoral or provincial regulations may include additional requirements.
- ii. **Bolivia.** Neither the law nor the regulations have specific dispositions for the TORs. However, the regulations do specify that the EIS must include a description of the proposed action and its goals, an environmental baseline, identification of impacts, prediction of impacts, Risk Analysis and Contingency Plans (if required by the type of EIA), impact evaluation, proposed mitigation measures, Prevention and Mitigation Program, cost estimates of prevention and mitigation measures, analysis of the action's socioeconomic impacts, an Environmental Implementation and Follow-Up Plan, a closure and restoration program (if pertinent), identification of applicable legislation, identification of information gaps, and bibliography and references.¹⁹⁷
- iii. **Brazil.** The regulations indicate the general guidelines to which the EIS must adhere, such as: contemplating all the technological and location alternatives for the proposed action; identifying and evaluating the environmental impacts generated during the project's construction and

¹⁹¹ Decree 45 of 1994, art. 3.

¹⁹² Decree 349/05, art. 12

¹⁹³ Law 16.466, art. 2.

¹⁹⁴ Decree 349/05, art. 12.

¹⁹⁵ Decree 1.257, art. 4.

¹⁹⁶ Law 25.675, art. 13.

¹⁹⁷ REGULATIONS FOR ENVIRONMENTAL PREVENTION AND OVERSIGHT, art. 23.

operation phases; defining the action's area of influence; and considering the action's compatibility with governmental programs and plans in the area of influence.¹⁹⁸ The regulations further provide the EIS's minimal contents, which includes: an environmental diagnosis that considers the physical, biological and socioeconomic environment; and analysis of the environmental impacts of the proposed actions and its alternatives; definition of mitigation measures for negative impacts; and the elaboration of the follow-up and monitoring programs.¹⁹⁹ Although the regulation does not include specific dispositions for TORs, the competent environmental authority may issue additional guidelines or require additional EIS contents, based on the project's peculiarities or the environmental characteristics of the area of influence.

- iv. **Chile.** The only dispositions in the regulations refer to the minimum content of the EIS, which include, among other: a description of the proposed activity; the plan for compliance with applicable environmental legislation; a detailed description of the effects that trigger the preparation of the EIA; an environmental baseline; a prediction and evaluation of environmental impacts; a Plan of Mitigation, Restoration, Compensation Measures; a Follow-Up Plan, and a description of any meetings or consultations of potentially affected people.²⁰⁰
- v. **Mexico.** The regulations explain that the national environmental authority will publish guidelines to facilitate the preparation of the different types of EIAs.²⁰¹
- vi. **Uruguay.** The regulations provide the EIS's minimum contents, which include: the characteristics of the environment where the action will take place, identification and evaluation of impacts, determination of mitigation measures, a Plan for Follow-Up, Supervision, and Auditing, and the information used and technicians who intervened in the EIS.²⁰²

b) Terms of reference prepared by the developer and approved by the authority

- i. **Belize.** The regulations specify that the developer must submit the draft TORs to the authority for the purposes of the EIA. The Department has the power to indicate the information that the TORs must contain, and to evaluate whether the draft TORs are satisfactory and adequate for the EIA. If the Department finds the TORs unsatisfactory, it shall direct the developer to modify the TORs as it deems necessary. Once the TORs have been agreed between the developer and the Department, the developer may commence the EIA.²⁰³ In evaluating the EIA, the authority examines whether it complies with the agreed TORs.²⁰⁴ The regulations also provide the minimal contents of EIAs, which must include considerations on the project's environmental effects (including cumulative effects); the significance or seriousness of those effects; comments concerning those effects received from the public; measures

¹⁹⁸ Resolution No. 001 of 1986 art. 5.

¹⁹⁹ *Id.*, art. 6.

²⁰⁰ Decree 95 of 2001, art. 12

²⁰¹ LGEEPA EIA REGULATIONS, art. 9.

²⁰² Law 16.466, art. 12

²⁰³ ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, regs. 15 - 17.

²⁰⁴ *Id.*, reg. 21.

that are technically and economically feasible and that would mitigate or prevent any significant or serious environmental effects; alternative means of carrying out the project; requirements of any follow up program; and the short-term and long-term capacity for regeneration of renewable resources affected by the project.²⁰⁵

- ii. **Ecuador.** The provisions explicitly indicate that it is not sufficient to present the proposed content of the EIA as TORs. The latter must include the techniques, methods, information sources (primary and secondary) and additional tools that will be used to describe, study, and analyze: the environmental baseline, a description of the project and its alternatives, identification and evaluation of environmental impacts, and the definition and components of the Environmental Management Plan. The TORs must also include a brief analysis of the legal and institutional framework and details about the multidisciplinary team that will participate in the EIS. The TORs must incorporate the criteria and observations received from the community. Finally, the scope of the EIS must cover all the phases of the action's lifecycle.²⁰⁶ The TOR will be initially developed by the action's proponent but must be approved by the lead environmental agency, which has the faculty to modify their scope and focus.²⁰⁷
- iii. **El Salvador.** The regulations contain only a few disposition on the TORs, namely that the national environmental authority has the attribution to elaborate guidelines for the preparation of TOR,²⁰⁸ and that compliance with the TORs is a relevant criteria in the authority's evaluation of the EIS.²⁰⁹ Nonetheless, the regulations provide the EIS minimum requirements, which include: an executive summary; a description of the proposed action and its alternatives; applicable law and norms; description, characterization, and quantification of the existing environment; identification, prioritization, prediction, and quantification of environmental impacts; interpretation of the analysis on benefit-costs, efficiency, and profitability, the Environmental Management Program; and the necessary appendixes.²¹⁰
- iv. **Guyana.** The Environmental Protection Act contains the information that must be included in every EIA, which includes: a description of the project; an analysis of alternatives; a description of the likely significant effects; an indication of difficulties encountered by the developer in compiling the required information; a description of the best available technology, a description of any hazards or dangers that may arise from the project; a description of mitigation measures; an emergency response plan; a program for rehabilitating and restoring the environment; and a non-technical summary.²¹¹ However, the EIA procedures indicate that the consultant will conduct scoping of the project during active public consultations. The TORs must be approved by the environmental agency,

²⁰⁵ *Id.*, reg. 26.

²⁰⁶ UNIFIED TEXT OF SECONDARY LEGISLATION, BOOK VI, art. 16

²⁰⁷ *Id.*

²⁰⁸ Decree N° 17, art. 14

²⁰⁹ *Id.*, art. 33.

²¹⁰ *Id.*, art. 23.

²¹¹ ENVIRONMENTAL PROTECTION ACT, 11(5).

working jointly with sector agencies, prior to the commencement of the EIS.²¹²

- v. **Peru.** According to Peruvian legislation, the proponent must submit to the authority the proposed TORs for actions that require an EIA. However, the competent environmental authority may issue generic TORs for all the actions within its sector, thereby eliminating the proponent's responsibility for drafting the TORs. The law further stipulates that the EIS must contain, based on the regulations—yet to be promulgated—and the TORs, the following: a description of the proposed action and its background; the identification and characterization of environmental impacts during the action's full lifecycle; the environmental management strategy; the public participation plan, the plans for follow-up, supervision, and control; and an executive summary.²¹³
- vi. **Venezuela.** The regulations indicate that the scope and content of the EIS will be defined based on the proposed TORs that the developer must submit to the national environmental authority, which shall approve or reject them. The regulation provides the TORs' minimal contents, which includes: a preliminary description of the proposed action and the environment; a description of the proposed action's area of influence; and identification of the potential environmental impacts of the considered alternatives. The TORs must also include a proposal of scope of the EIS in terms of basic information and the elaboration of an environmental baseline; a methodology for the evaluation of environmental impacts; a description of preventive, mitigation, and corrective measures; analysis of different alternatives; a follow-up program; guidelines for the Environmental Supervision Plan; and the summary of the EIS. Finally, the TORs must include the estimated dates for workshops and the presentation of preliminary reports, as well as the composition of the team that will elaborate the EIS.²¹⁴

c) TORs defined by the Authority.

- i. **Colombia.** The law states that the environmental authority that has competence for issuing the environmental license must prepare the TORs for the corresponding EIA.²¹⁵ However, the regulations indicate that, in preparing such TORs, the environmental authority shall use the general TORs elaborated by MAVDT and adapt them to the specific characteristics of the proposed action.²¹⁶
- ii. **Costa Rica.** The regulations define TORs as the list of minimum guidelines of technical, legal, and administrative character that are necessary for the elaboration of an EIA instrument. The TORs are based on a basic reference guide established by SETENA when it decides whether the relevant action calls for an EIS or other type of EIA document.²¹⁷ The authority considers fulfillment of the TORs as a critical

²¹² EIA GUIDELINES, pp. 6, 8, and 14.

²¹³ Law of the National EIA System, arts. 7, 8, 9, and 10.

²¹⁴ Decree 1.257, art. 7

²¹⁵ Law 99 of 1993, art. 57

²¹⁶ Decree 1220 of 2005, art. 13.

²¹⁷ GENERAL REGULATIONS FOR EIA PROCEDURES art. 3.

criteria in the evaluation of EIA instruments.²¹⁸ Furthermore, a consultant can be eliminated from the registry of authorized consultants if the presented documents do not adhere to the TORs established by SETENA.²¹⁹

- iii. **Dominican Republic.** When an EIS is required, the national environmental authority is responsible for determining the TORs. However, the authority may request the developer to prepare a proposal of TORs, based on which the authority will establish the final TORs.²²⁰
- iv. **Guatemala.** The regulations indicate that DGGARN will issue manuals that will determine the TORs, contents and specific procedures for each of the different EIA instruments.²²¹
- v. **Honduras.** A multi-disciplinary team of DECA is responsible for elaborating the TORs, with the assistance of sectoral environmental units.²²² The TORs must be specifically prepared for each project.²²³ The action developer may elaborate a TOR proposal that the authority may accept, modify, or reject. DECA may request the advice of other entities in the elaboration of the TORs.²²⁴ To issue an environmental license, DECA must verify that the EIA fulfills the specific TORs.²²⁵
- vi. **Nicaragua.** The regulations dictate that the national environmental authority (MARENA) must prepare generic TORS. Based on these, MARENA, in coordination with the competent sectoral organism and the proponent, must prepare jointly the specific TORs for each project.²²⁶
- vii. **Panama.** The regulations consider the list of minimum contents for the EIS to be the TORs. These vary depending on the category of the EIA. The main topics to be included in the EIS can be broadly described as consisting of: general information; description of the proposed action; description of the physical environment; description of the biological environment; description of the socioeconomic environment; identification of specific environmental impacts; Environmental Management Plan; benefit-cost analysis considering the action's environmental and social externalities; list of professionals that participated in the elaboration of the EIS; conclusions and recommendations; bibliography, and the necessary annexes.²²⁷
- viii. **Paraguay.** The law establishes the minimum contents for each EIA, which include: a description of the proposed action; an estimate of the socioeconomic significance of the project and its relationship with existing policies and regulations; a description of the action's area of influence, the action's impacts, risks, and effects; the Environmental Management Plan; a description of technical and geographic alternatives; and a

²¹⁸ *Id.* arts. 24, 25.

²¹⁹ *Id.* art. 99.

²²⁰ EIA Procedures, 5.2.3, d).

²²¹ Governmental Agreement 23 of 2003, art. 12.

²²² SINEIA REGULATIONS, arts. 3 and 14.

²²³ *Id.*, art. 44.

²²⁴ *Id.*, art. 45.

²²⁵ *Id.*, art. 51.

²²⁶ Decree 45 of 1994, art. 10.

²²⁷ Decree 209, art. 28.

Relatorio, which summarizes the information and presents the conclusions of the EIA.²²⁸ In addition, the regulations establish that the environmental authority must define the TORs for each EIA. Thus, the EIA must comply with both the requirements set both by the law and by the TORs.²²⁹

²²⁸ Law 294/93, art. 3.

²²⁹ Decree 14.281, arts. 17 and 18.

VI. Preparation of the Environmental Assessment

1. Introduction

The analysis presented in this section focuses on the different arrangements adopted by Latin American countries in terms of who bears the responsibility for selecting and hiring the consultant that will prepare the required Environmental Impact Study (EIS) or other documents. The analysis also compares the legal dispositions that define what firms or individuals are legally allowed to prepare such documents.

In the US, the lead agency is responsible for choosing the consultant, while existing guidelines for the implementation of NEPA contain few indications regarding the minimal qualifications that the consultants must meet. However, since the EIA process is expected to result in a decision for which the agency will ultimately be held accountable, the agency has incentives to hire a consultant whose work will provide adequate technical and legal support for such decision.

In comparison, in most Latin American countries, project proponents are responsible for selecting and hiring the consultant. Evidently, project proponents are mainly concerned with obtaining the licenses needed to undertake their project. In this context, the proponent has incentives to hire a consultant who is not necessarily interested in enhancing the authority's decision-making process, but instead, in meeting the minimum legal requirements set by the authority and overcoming any potential objections to the project. This does not necessarily mean that consultants generally aim to deceive the authority, but that they lack incentives to include in their documents information that may be relevant for the authority if it may result in denial of the license or the setting of additional conditions for the approval of the proposed action.

The approach adopted by most Latin American countries to ensure that the studies prepared as part of the EIA are adequate consists of legal provisions that indicate the minimum technical qualifications and/or expertise that a consultant must have in order to be legally competent to elaborate an EIS. In 10 countries, the legal dispositions further indicate that the studies may only be prepared by consultants that are inscribed in a formal registry. In 7 countries the legal framework includes provisions aiming to exclude consultants that meet certain criteria to avoid conflicts of interest: Brazil, Costa Rica, Guyana, and Panama require that the consultant be "independent", while El Salvador, Guatemala, and Uruguay prohibit the preparation of documents by public officials or consultants working for the authority with responsibility for evaluating the EIA or enforcing environmental legislation.

The rationale behind such dispositions seems to be that a consultant that meets the legal requirements is more likely to prepare an EIA that adequately considers all the issues identified during the scoping process. Likewise, some countries require that the EIA be prepared by an inter-disciplinary team, as means to ensure that each of the different elements of the assessment are considered with equally robust methodologies and are fully integrated into the analyses' findings and recommendations.

The existence of a formal registry of authorized consultants would imply that the authority has a clearly defined system to certify that a firm or individual does have the appropriate academic background and experience to prepare an EIS, although this is generally not the case.²³⁰ In various countries, the registry is also intended to allow authorities to identify, hold responsible, and sanction consultants that fail to comply with the authorized TORs or that submit analyses that are incomplete, biased, or inadequate in any other way.

However, the existence of legal requirements geared towards ensuring that studies are only prepared by qualified or certified consultants does not necessarily strengthen the preparation of EIAs. On the one hand, such regulations do not eliminate conflicts of interests, as the project proponent retains the power to select the consultant and pay for the rendered services. On the other hand, most legal provisions reviewed in this section represent barriers to entry that generate opportunities for corruption, disqualify individuals or firms that do not meet discretionary criteria, and tend to result in the emergence of a consulting industry that submits the same studies on countless occasions.²³¹

2. NEPA Regulations for Statement Preparers

The preparation of an Environmental Impact Statement (EIS) is required to use an inter-disciplinary approach to ensure an integrated use of natural and social sciences and the environmental design arts.²³² In this regard, the regulations state that “the disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process”.²³³

In addition, the EIS must list the names and qualifications of the persons who were responsible for preparing the statement or significant background papers. The statement should also identify the persons who carried out particular analyses.²³⁴

3. Regulations for EIA Preparers in Latin America

a) Requirements for Qualified Consultants

- i. **Belize.** The Environmental Protection Act states that the EIA must be carried out by a suitably qualified person.²³⁵
- ii. **Ecuador.** The regulations indicate that the TORs must specify the composition of the multi-disciplinary team that will respond technically to the scope and depth of the EIS. The action developer and/or the consultant that present the EIS are responsible for the veracity and precision of its contents.²³⁶

²³⁰ ASTORGA, *supra* note 3.

²³¹ WORLD BANK, EL SALVADOR: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 10; WORLD BANK, GUATEMALA: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 8.

²³² 42 U.S.C. § 4332(a).

²³³ 40 C.F.R. § 1502.6.

²³⁴ *Id.* at § 1502.17.

²³⁵ ENVIRONMENTAL PROTECTION ACT, 20 (1).

²³⁶ Unified Text of Secondary Legislation, Book VI, arts. 16 and 17.

- iii. **Guyana.** The Environmental Protection Act mandates that the EIA be carried out by an independent and suitably qualified person approved by the Agency.²³⁷ The Agency has a registry of qualified consultants from which the EIA team can be compiled, subject to the Agency's approval.²³⁸
- iv. **Honduras.** The regulations define consultants as the individual of firm that has the necessary professional preparation and the logistical means to intervene in an EIS. It explicitly states that an EIA cannot be undertaken by a single person.²³⁹
- v. **Nicaragua.** The regulations indicate that the Environmental Impact Document, which is a summary of the EIS, must be prepared by a multi-disciplinary team, under the proponent's responsibility.²⁴⁰
- vi. **Uruguay.** The law requires that the EIS be signed by the participating technicians, one of which must be a professional technician with a college degree in the ideal subject. Public officials from the national environmental authority (MVOTMA), as well as any other officials identified by the regulations, shall not intervene or present an EIS to avoid conflicts of interest.²⁴¹

b) Requirements for Registered Consultants

- i. **Bolivia.** According to the regulations, the Environmental Impact Study must be prepared by an inter-disciplinary consulting team.²⁴² The regulations further indicate that the national environmental authority must institute and administer an environmental consulting registry, and specify the corresponding registration requirements. All professionals, consulting firms, professional societies, environmental units, and NGOs, both domestic and international, that meet the requirements can be registered, and thereby, be authorized to fill the environmental forms and prepare the EIS.²⁴³
- ii. **Brazil.** The EIS must be prepared by an authorized multi-disciplinary team that does not depend directly or indirectly from the action's proponent and that will be technically responsible for the presented results.²⁴⁴
- iii. **Costa Rica.** The consultants that elaborate the EIS must be part of the official registry managed by SETENA and must neither be related to the action's proponent nor have a direct interest in the action.²⁴⁵ The regulations include the registration process for individuals and consulting firms, which include the submission of a form complemented with proof of academic degrees and payment of a fee.²⁴⁶ The regulations also contemplate the conditions under which the consultant's inscription in the

²³⁷ ENVIRONMENTAL PROTECTION ACT, art. 11 (4).

²³⁸ EIA GUIDELINES, p. 6.

²³⁹ SINEIA REGULATIONS, art. 19.

²⁴⁰ Decree 45 of 1994, art. 3.

²⁴¹ Law 16.466, art. 12.

²⁴² REGULATIONS FOR ENVIRONMENTAL PREVENTION AND OVERSIGHT, art. 34.

²⁴³ *Id.*, art. 36.

²⁴⁴ Resolution No. 001 of 1986 art. 7.

²⁴⁵ Regulations for EIA Procedures, arts. 31 and 42.

²⁴⁶ *Id.*, arts. 71 – 73.

registry may be suspended or cancelled. For instance, a consultant may be eliminated from the registry for providing false data, making a biased evaluation, and for not adhering to the TORs in three or more occasions.²⁴⁷ SETENA also has a registry of external consultants, who may be hired to evaluate EIS under specific circumstances.²⁴⁸

- iv. **Dominican Republic.** The law mandates that the EIS, as well as other instruments, must be prepared by a technical team, of multi-disciplinary composition if necessary. The document preparers must be inscribed in a registry set up by the national environmental authority (Secretary of Environment and Natural Resources).²⁴⁹
- v. **El Salvador.** According to the law, the EIS must be prepared by a multi-disciplinary technical team. The firms and individuals that elaborate EIS must be part of the registry established by the national environmental authority. Public servants that comply with all the requisites may register, but are unable to elaborate EIS, particularly when they are hired by the national environmental authority or they intervene in the application and enforcement of environmental legislation.²⁵⁰ The regulations establish the procedures and requisites for the inclusion of individuals and firms in the registry. The requisites for individuals include holding at a minimum a bachelor's degree and providing letters from firms and other people stating their satisfaction with the individual's services. Individuals can be certified by the national authority after they have been inscribed in the registry for at least two years, have presented four or more EIS approved by the authority, have not been denounced, and have received training and approved an evaluation by a certification commission.²⁵¹
- vi. **Guatemala.** The regulations state that the national environmental authority will manage a registry to identify the technicians that can conduct EIS. The registry is intended to include information on the EIS presented by each individual and the corresponding evaluations.²⁵² To be part of the registry, individuals must have an academic degree in Environmental, Biologic, Physic or Social Sciences, and must have approved specialized studies on environmental evaluation, control, and follow-up.²⁵³ The action proponent is responsible for selecting the consultants from the official registry.²⁵⁴ Registered individuals cannot provide their consultant services if they are public officials at the national environmental authority (MARN) or other governmental agencies working in projects under MARN's supervision, nor if they are temporarily providing services, directly or indirectly, to MARN on issues related to the instruments for environmental evaluation, oversight, and follow-up.²⁵⁵

²⁴⁷ *Id.*, art. 100.

²⁴⁸ *Id.*, art. 77.

²⁴⁹ Law 64 of 2000, art. 42.

²⁵⁰ Decree 233, art. 23.

²⁵¹ Decree 17, arts. 42, 43, and 44.

²⁵² Governmental Agreement 23 of 2003, art. 54.

²⁵³ *Id.*, art. 55.

²⁵⁴ *Id.*, art. 56.

²⁵⁵ *Id.*, art. 57.

- vii. **Panama.** The EIS must be prepared by individuals or firms that are inscribed in the registry of authorized environmental consultants.²⁵⁶ The regulations further indicate that the consultants must be independent from the action proponent.²⁵⁷ The consultant and the action proponent share responsibilities for the contents of the EIS.²⁵⁸ Under no circumstances shall an EIS be prepared by only one consultant.²⁵⁹
- viii. **Paraguay.** The EIS must be prepared by environmental consultants or consulting firms, which shall have the competent personnel to guarantee fulfillment of the technical and scientific requirements of the study.²⁶⁰ The consultant must register annually in the Technical Cadastre of Environmental Consultants.²⁶¹ Consultants who present EIS of poor technical or scientific quality, or that contain false information, may be eliminated from the Cadastre.²⁶²
- ix. **Peru.** The law establishes that the EIS must be elaborated by authorized entities with professional teams with expertise on different areas of environmental management. The action proponent is responsible for selecting the consultants. The law further states that the authorities must set up a registry of authorized entities and that the regulations, which are yet to be issued, will specify the characteristics of such registry.²⁶³
- x. **Venezuela.** The TORs must include the names of the members of the consulting team that will elaborate the EIS, the composition of the interdisciplinary team that will participate in it, and the areas in which they make contributions.²⁶⁴ The firms and individuals that aspire to provide consulting services for the elaboration of EIS must register with the national environmental authority by providing documentation, such as the inscription form and the CVs, and paying a fee.²⁶⁵ The environmental consultants must count with multi-disciplinary teams that are legally capable of exercising their profession.²⁶⁶ The consultants will be responsible for the technical and scientific content of the documents. The national environmental authority may exclude from the registry those consultants who provide false information for their registration, elaborate documents of inadequate technical or scientific quality, use false information in the documents that they prepare, or have been sanctioned for violating environmental legislation.²⁶⁷

c) No Provisions Regarding Consultants.

- i. **Argentina.** The national law does not mention anything regarding the consultants who may prepare the EIS; however, sectoral or provincial regulations may include specific requirements. The Secretary of

²⁵⁶ Decree 209, art. 2.

²⁵⁷ *Id.*, art. 14.

²⁵⁸ *Id.*, art. 11.

²⁵⁹ *Id.*, art. 39.

²⁶⁰ Law 294/93, art. 19.

²⁶¹ *Id.*, art. 22.

²⁶² *Id.*

²⁶³ Law of the National EIA System, art. 10.

²⁶⁴ Decree 1.257, art. 7, 6).

²⁶⁵ *Id.*, art. 34.

²⁶⁶ *Id.*, art. 35.

²⁶⁷ *Id.*, art. 37.

Environment and Sustainable Development does require consultants to be part of a registry to able to prepare an EIS.²⁶⁸

- ii. **Chile.** The legal framework has no provisions regulating who may elaborate the EIS.
- iii. **Colombia.** The law has no provisions on this matter.
- iv. **Mexico.** All documents may be prepared by the interested party (action proponent) or by any firm or individual.²⁶⁹

²⁶⁸ Resolución 693/1998, sanctioned Aug. 27, 1998, promulgated Sep. 15, 1998.

²⁶⁹ LGEEPA EIA REGULATIONS, art. 35.

VII. Public Participation

1. Introduction

The involvement of different stakeholders in the EIA process, particularly of those groups that are likely to be affected by the development of an action, is crucial to ensure the legitimacy and credibility of the EIA and the associated decision-making process. Public participation, within the EIA process has multiple objectives, ranging from gathering data and information from the public about their human and biophysical environment, to seeking public input to identify potential impacts and mitigation or compensation mechanisms, to enhancing the quality of the decision-making process and increasing public acceptance and support for the proposed action.²⁷⁰

Identified best practice principles for public participation include, among other: adapting the process to the specific social, institutional, and cultural context in which the project would be developed; acknowledging the right that people have to be informed early and in a meaningful way about proposals that may affect them; ensuring that public input is considered in the decision-making process and that the public is aware of it; defining clear rules and procedures to guarantee that the consultation is credible, rigorous, and focuses on relevant, negotiable issues; facilitating access to information by making relevant, easily understandable documents available for the public; and considering the heterogeneity of stakeholders and the barriers that would limit the active participation of vulnerable or disadvantaged groups.²⁷¹

This section focuses on 4 areas that are associated with public participation. First, the analysis focuses on legal requirements for inter-agency coordination, including both horizontal coordination with agencies of similar hierarchy, as well as vertical coordination with agencies of different levels of government. Inter-agency coordination is necessary to ensure that agencies with responsibilities for different areas of the project or its impacts are involved in the decision-making process. Thus, their input may be critical to determine whether the selected project would be feasible and its mitigation measures enforceable, whether the chosen alternative would have implications that the environmental authority had not considered, or whether there is additional information that the authority should consider during the evaluation of the environmental studies, among others.

Evidently, the legal requirement for agencies to act coordinately is not a sufficient condition for successful inter-agency coordination. Any agency may refrain from participating in the EIS process because it prefers to focus its limited resources on its core activities or because it may perceive its role as cooperative agency as a loss of autonomy vis-à-vis the lead agency, among other factors. Similarly, a lead agency may be reluctant to bring cooperative agencies into the process if it perceives that their participation would affect an outcome for which the lead agency will be held accountable, or simply because of its conflicting visions or values. Still, the

²⁷⁰ André et al. (2006).

²⁷¹ *Id.*

organizational roles defined by the legal framework constitute institutional constraints that influence decision-makers' behavior.²⁷²

Secondly, the analysis reviews existing legal requirement for public consultations on a proposed project and its potential impacts. While most Latin American countries considered in this document have adopted one or more public participation mechanisms, there is significant variation in terms how well these mechanisms are regulated and the extent to which the input collected through them may actually influence the authority's decision. In 9 countries, the legal frameworks establishes an obligation to involve potentially affected communities at an early stage of the EIA process, which is necessary to ensure that the EIS and other assessments consider the public's concerns. In another 9 countries, public consultations occur once the EIS has been completed and submitted to the authority, but before a decision has been made to issue or not the corresponding permit. Although this mechanism would offer an opportunity for affected groups to express their opinions, it does so at a stage where many crucial decisions have already been made. Finally, in the remaining two countries (Mexico and Venezuela) public input is collected only under certain circumstances.

In addition to these considerations, there are a number of variables that may hinder or enhance the meaningfulness of public consultations. For instance, a number of countries require that public comments be submitted in writing and be supported by legal, scientific, or technical evidence. While such a requirement may be effective to reduce the number of frivolous complaints about the proposed action, it may easily become an obstacle for the participation of disadvantaged groups.

Thirdly, the analysis considers whether the information provided by the action developer, as well as the studies and other documents that are produced throughout the EIA procedure, are available to the public. This variable is relevant not only because it provides an opportunity for the public to obtain information about actions that may have significant environmental impacts, but also because it is associated with the transparency of the authority's decision-making and ultimately, with its accountability. In 5 countries all the information associated with the EIA process is public (with the exception of legally protected information), in 10 countries the final EIS is available to the public, 4 countries only require that a summary or abstract of the EIS be made available to the public, and Costa Rica's legal framework does not include explicit provisions regarding public access to information.

Finally, this section compares existing requirements for holding public hearings. Public hearings generate a space in which multiple stakeholders can converge to discuss and exchange ideas aiming to improve the environmental or social effects of a proposed action. These instances generally contemplate the developer's intervention to explain the project, its potential impacts, and the proposed mitigation measures, after which the community or other stakeholders may express their concerns and obtain answers to their questions. Hence, public hearings can have a more significant effect in building consensus or incorporating community's concerns to the EIS than the exchange of written information. However, public hearings are often resource intensive and, if not properly organized, can easily turn into a community's opportunity to voice demands for issues with little or no relationship to the project.

²⁷² Bardach (1998).

Based on the above, the section on public hearings includes information of the conditions under which a public hearing must be held. In 6 countries, public hearings are mandatory, at least for a category of EIA. In 9 other countries, public hearings may be organized under different circumstances, including the authority's assessment or a request by interested parties. Finally, 5 countries do not contemplate public hearings in their EIA legal frameworks.

As with the rest of the elements of EIA, the existence of legal dispositions mandating an early and meaningful involvement of potentially affected communities and other stakeholders does not necessarily mean that such involvement actually takes place. Studies conducted in Brazil,²⁷³ El Salvador,²⁷⁴ Guatemala,²⁷⁵ Peru²⁷⁶ and the seven Central American countries²⁷⁷ find a lack of detailed, consistent regulations to carry out public consultations. These studies also point at the informative character of most consultations, including public hearings, in which participants are merely notified about decisions that have already been made.

2. Public Participation under NEPA

a) Inter-agency Coordination

NEPA requires that the Federal official in charge of preparing the environmental impact statement consults, prior to making such statement, with any other Federal agency, which has jurisdiction by law or special expertise with respect to any environmental impact involved.²⁷⁸

NEPA regulations describe the cases in which one or more agencies must act as lead agencies, while other agencies assume a cooperative role. The need for a lead agency, which is responsible for supervising the preparation of the statement, arises when more than one Federal agency either proposes or is involved in the same action or in a group of actions that are interrelated functionally or geographically. State and local agencies may act jointly with at least one Federal agency as lead agencies.²⁷⁹

If the involved Federal agencies are unable to agree on their respective roles for the preparation of a statement, designation of the lead agency must be determined by the following factors, listed in descending order of importance: magnitude of the agency's involvement, project approval/disapproval authority; expertise concerning the action's environmental effects, duration of the agency's involvement, and sequence of agency's involvement.²⁸⁰ If the use of these criteria does not result in an agreement, any concerned person or agency may request the CEQ to determine the agencies' corresponding roles.²⁸¹

²⁷³ World Bank (2006a).

²⁷⁴ WORLD BANK, EL SALVADOR: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 10.

²⁷⁵ WORLD BANK, GUATEMALA: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 8.

²⁷⁶ World Bank (2007)

²⁷⁷ ASTORGA, *supra* note 3.

²⁷⁸ 42 U.S.C. § 4332.

²⁷⁹ 40 C.F.R. § 1501.5(2)(b).

²⁸⁰ *Id.* at § 1501.5(c).

²⁸¹ *Id.* at 1501.5(e).

The lead agency may request any other Federal agency with legal jurisdiction or expertise with respect to any environmental issue that will be addressed by the statement, to act as cooperative agencies. Alternatively, the agency may request the lead agency to designate it a cooperating agency.²⁸² Cooperating agencies are responsible for participating in the scoping process; assume responsibilities, on request by the lead agency, for developing information and preparing environmental analysis related to its expertise; and make available staff support to enhance the lead agency's interdisciplinary capability. In turn, the lead agency must use the environmental analysis and proposals of cooperating agencies to the maximum extent possible.²⁸³

b) Public Participation

Public participation is contemplated in two distinct moments during the preparation of the EIS. First, as part of the scoping process, to which affected Federal, State, and local agencies, Indian tribes, the action proponent, and other interested persons must be invited.²⁸⁴ The second moment for public participation refers to the invitation that the lead agency must issue to receive comments on a draft EIS. In particular, the agency is responsible for obtaining input from: any Federal agency with legal jurisdiction or expertise with respect to any involved environmental impact; Federal, State, or local agencies with authorization to develop and enforce environmental standards; Indian tribes that may be affected; any agency that has expressed its interest in receiving statements on actions of the kind proposed; the applicant; and from the public, particularly from those persons or organizations that may be affected or interested.²⁸⁵

The regulations further require that, if a cooperating agency submits comments in relation to an EIS, such comments be as specific as possible, provide an alternative methodology if the agency considers the methodology used by the lead agency to be inadequate, indicate the additional information that it needs to comment the EIS's analysis of effects, or specify the mitigation measures that it considers necessary to allow the agency to grant or approve applicable permits or other requirements.²⁸⁶

The lead agency is required to include all received comments in the final EIS and respond to them. Responses may include modifying alternatives including the proposed action, evaluating new alternatives, supplementing or improving the analysis, making factual corrections, or explaining why comments do not warrant further response.²⁸⁷

c) Access to Information

NEPA regulations require that the relevant information is made available to governmental officials and the public prior to any decisions being made or actions being taken. Furthermore, the information must be of high quality, including accurate scientific analysis and expert agency comments. The regulations also indicate that public documents must concentrate on truly significant issues that are relevant for the proposed action, rather than amassing needless detail.²⁸⁸

²⁸² *Id.* at § 1501.6.

²⁸³ *Id.* at § 1501.6(b).

²⁸⁴ *Id.* at § 1501.7(a)(1).

²⁸⁵ *Id.* at § 1503.1.

²⁸⁶ *Id.* at § 1503.3.

²⁸⁷ *Id.* at § 1503.4(a).

²⁸⁸ *Id.* at § 1500.1(b).

3. Inter-agency Coordination in Latin America

a) Countries where inter-agency coordination is mandatory

- i. **Belize.** The regulations indicate that the environmental impact assessment must describe inter-agency coordination and public/non-governmental organizations' involvement.²⁸⁹ In addition, all EIAs are reviewed by the National Environmental Appraisal Committee, which is an inter-agency body integrated by the Chief Environmental Officer, the Commissioner of Lands, the Housing and Planning Officer, the Chief Forest Officer, the Fisheries Administrator, the Chief Hydrologist, the Archaeological Commissioner, the Director of Geology and Petroleum, the Chief Agricultural Officer, and two non-governmental representatives appointed by the minister on the Department's recommendation. All the aforementioned public officials may nominate a representative to participate in the Committee.²⁹⁰
- ii. **Bolivia.** Based on the regulations, sectoral organisms review environmental files, environmental impact studies and environmental statements and submit the corresponding reports to the lead environmental agency. Sectoral organisms are also involved in supervision and follow-up activities that fall within their mandate.²⁹¹
- iii. **Brazil.** Public organisms that express interest or have a direct relationship with the project must receive a copy of the RIMA and have powers to provide comments on it.²⁹²
- iv. **Dominican Republic.** Before granting an environmental license or permit, environmental agencies must consult sectoral organisms that have jurisdiction over the project, as well as with municipal governments.²⁹³ The regulations specify that the Secretary must consult other public agencies that are related to the project or to the resources that will be affected, as well as with local governments, as part of the evaluation of the EIS.²⁹⁴
- v. **Guyana.** Although the Environmental Protection Act does not contemplate inter-agency coordination, the EIA guidelines indicate that sector agencies collaborate with the Agency in the screening of applications for environmental permits, approving the EIA team, finalizing the TORs, reviewing EIAs, and monitoring compliance with the conditions of the permit and the Environmental Management Plan.²⁹⁵
- vi. **Honduras.** Environmental units in a number of public entities assist DECA in elaborating the TORs, reviewing EIA documents, and carrying out monitoring and follow up activities, according to each entity's legal

²⁸⁹ ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, reg. 19 (m).

²⁹⁰ *Id.*, reg. 25 (2).

²⁹¹ Regulations for Environmental Prevention and Supervision, art. 12.

²⁹² Resolution No. 001 of 1986 art. 11 § 1°.

²⁹³ LEY 64-00, art. 43.

²⁹⁴ Regulations of the Environmental Licenses and Permits System, art. 16, paragraph I.

²⁹⁵ EIA GUIDELINES, p. 8.

jurisdiction.²⁹⁶ The regulations indicate that the following entities shall establish an environmental unit: Secretary of Natural Resources, Secretary of Health, Secretary of Education, Secretary of Justice; Tourism Institute, Forestry Administration (COHDEFOR), Secretary of Public Works, Transportation and Housing (formerly SECOPT), Water and Sewerage Service (SANAA), and the National Electricity Enterprise (ENEE). Other public organizations, as well as municipalities, may establish their environmental unit, based on DECA's recommendations.²⁹⁷

vii. **Nicaragua.** The Ministry (MARENA) is obligated by law to consult competent sectoral organisms and municipal governments during the evaluation of the EIS.²⁹⁸ Sectoral organisms also support MARENA in defining the project's specific TORs.²⁹⁹

viii. **Panama.** The regulations indicate that Sectoral Environmental Units have responsibilities for evaluating and providing recommendations for the EIS submitted by the national environmental authority (ANAM). The Units also collaborate with ANAM in supervising and enforcing compliance with the Environmental Management Plan and applicable regulations.³⁰⁰

b) Countries where inter-agency coordination is required under specific circumstances

i. **Chile.** The law indicates that the review of the Environmental Impact Statements and the evaluation of the EIS must consider the opinions of relevant environmental organisms. To this end, the responsible Environmental Commission must request the corresponding reports, if necessary.³⁰¹ The regulations indicate that the environmental organisms that may participate in the review and evaluation process must have powers to issue sectoral environmental permits required by the proposed action. In addition, other public entities may participate if they have a mandate for environmental protection, use of natural resources, or enforcement of regulations or conditions that the project or activity is obligated to meet.³⁰²

ii. **Colombia.** According to the law, once the responsible environmental agency has received the request for environmental license and the corresponding EIS, it may request technical opinions or relevant information from other public entities or authorities.³⁰³ If the Ministry (MAVDT) is the responsible environmental agency, the action developer must also submit copies of the EIS to the regional environmental authorities, which must issue an opinion for the action's aspects that fall within their legal jurisdiction.³⁰⁴

iii. **Costa Rica.** The law stipulates that public officials, as well as individuals or private firms, have the right to be heard by SETENA during all the

²⁹⁶ SINEIA REGULATIONS, art. 14.

²⁹⁷ *Id.*, arts. 15 – 17.

²⁹⁸ Law 217, art. 27.

²⁹⁹ Decree 45 of 1994, art. 10.

³⁰⁰ Decree 209, art. 10.

³⁰¹ Law 19.300 art. 9.

³⁰² REGULATIONS OF THE EIA SYSTEM, art. 22.

³⁰³ Law 99 of 1993, art. 58.

³⁰⁴ Decree 1,220 of 2005, art. 24, paragraph 1.

stages of the EIA process, as well as during the action's operational phase.³⁰⁵ The regulations establish that local authorities must be consulted during the elaboration of the EIS.³⁰⁶ Ojo. Comisión Plenaria de SETENA es inter-agencial.

- iv. **Ecuador.** The regulations establish that cooperating environmental agencies have the faculty to submit to the lead environmental agency reports or opinions for issues within their legal mandate.³⁰⁷ The lead environmental agency is responsible for ensuring inter-agency coordination throughout the EIA process, including during the evaluation of the EIS, which is carried out by a multi-disciplinary team.³⁰⁸
- v. **El Salvador.** If quality of life, human health, and wellbeing may be affected, a public hearing must be organized in affected municipalities, with participation of municipal governments.³⁰⁹
- vi. **Guatemala.** The regulations empower DGGARN and the Ministry's delegations to request the opinions of other public entities and set the period in which such opinions must be submitted.³¹⁰
- vii. **Mexico.** The Secretary (SEMARNAT) is required by the law to notify state and local governments when it receives Environmental Impact Statements (MIA) for: hazardous or radioactive waste facilities, industrial parks where high-risk activities will be undertaken, real estate developments that will affect coastal ecosystems, or actions that will affect natural protected areas under federal jurisdiction. Notified governments may provide comments on the MIA, and may deny issuing any authorization under their jurisdiction, even if the Federal Government has authorized the proposed action.³¹¹ As part of the evaluation of the MIA, SEMARNAT may request the technical opinion of other public agencies or entities, if required by the type of work or activity.³¹²
- viii. **Paraguay.** Based on the law, the lead agency must facilitate access to the EIA for all national, departmental, and municipal organisms that might be affected. The Ministry of Foreign Affairs must be notified if the action may generate negative trans-boundary effects.³¹³
- ix. **Peru.** The law establishes that, for category III actions, the evaluation of the EIS may be carried through a mechanism that involves sectoral, regional or local authorities.³¹⁴
- x. **Uruguay.** Based on the regulations, the Ministry may request the advise of the public organisms that it deems necessary, depending on the nature

³⁰⁵ Law 7554, art. 22.

³⁰⁶ GENERAL REGULATIONS FOR EIA PROCEDURES art. 33.

³⁰⁷ UNIFIED TEXT OF SECONDARY LEGISLATION, BOOK VI, art. 3.

³⁰⁸ *Id.*, art. 18.

³⁰⁹ Decree 233, art. 25.

³¹⁰ Governmental Agreement 23 of 2003, art. 35.

³¹¹ LGEEPA, art. 33.

³¹² LGEEPA EIA REGULATIONS, art. 25.

³¹³ Law 294/93, art. 8.

³¹⁴ Law 27446, art. 11.

and characteristics of the project for which the authorization has been requested.³¹⁵

c) Countries with no provisions regarding inter-agency coordination

- i. **Argentina.** The framework environmental law does not contemplate such consultations.
- ii. **Venezuela.** The regulations do not contemplate inter-agency coordination. However, if municipal authorities or national agencies other than the national environmental authority have the power to issue land use of urban development authorizations, such agencies must provide guidance to action developers to determine whether the action must undergo an EIA or not.³¹⁶

4. Public participation in Latin America

a) Countries where public participation is mandatory at various stages of the EIA

- i. **Belize.** The Environmental Protection Act requires that the action developer consult with public and other interested bodies or organizations during the preparation of the EIA.³¹⁷ In this regard, the regulations further specify that the developer shall provide an opportunity to meet with members of the public, especially those within or immediately adjacent to the geographical area of the proposed action, in order to provide information concerning such action and record the concerns of the community regarding its environmental impacts. In addition, the Department may invite written comments from interested persons at any time during the EIA, and submit such comments to the developer, who must respond to them.³¹⁸ After the developer has submitted the EIA to the Department, the public may provide comments on the conclusions and recommendations of the EIA.³¹⁹ The developer must publish in one or more newspapers circulating in Belize a notice indicating the date on which the EIA will be available, as well as the deadline and address for filing comments.³²⁰ The submitted EIA must include a summary in non-technical terms to facilitate public comments.³²¹
- ii. **Bolivia.** During the classification and preparation of the EIS, the public is allowed to meet with the team that is responsible for such tasks to provide or request information regarding the environmental impacts of the proposed project, work, or activity. Public consultation is mandatory during the scoping phase to collect observations, suggestions, and recommendations from the public that may be affected by the proposed action.³²² During the classification or evaluation of the EIS, as well as during the issuance of the environmental licenses or permits, any

³¹⁵ Decree 349/05, art. 13.

³¹⁶ Decree 1.257, art. 24.

³¹⁷ ENVIRONMENTAL PROTECTION ACT, art. 20 (5).

³¹⁸ ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, regs. 18 (1) and (2).

³¹⁹ *Id.*, reg. 20 (1) (i).

³²⁰ *Id.*, reg. 21 (1).

³²¹ *Id.*, reg. 19 (o).

³²² REGULATIONS FOR ENVIRONMENTAL PREVENTION AND OVERSIGHT, art. 161.

individual or organization may submit written observations or suggestions to the responsible environmental agency, sectoral organism or municipal government. Such comments must be submitted through registered grassroots organizations (OTBs), and must have a technical format and include supporting legal arguments.³²³

- iii. **Costa Rica.** The regulations state that, during the elaboration of the EIS, the action developer and the hired consultants must present the proposed activity, work or project through a procedure that is conducive for interaction with local communities and authorities. The developer and the consultants must also carry out a survey to gauge the opinions of the communities that are located within the area of influence of the proposed action.³²⁴ In addition, SETENA must provide opportunities to receive public comments on all EIS, as well as during the action's operational phase of the activity, work, or project. Received comments must be integrated into the action's file and in the case of EIS, must be considered during their evaluation.³²⁵
- iv. **Dominican Republic.** The law stipulates that public participation must be guaranteed during the review of the EIS.³²⁶ However, the regulations contemplate three levels of public consultations: information; consultations of the action developer with interested parties as part of the preparation of the EIS; and consultations of the national environmental authority with interested parties and society in general during the evaluation of the EIS.³²⁷ For any project that requires an EIS, the developer must visit the project's area of influence at least once to hold public consultations. Invitation to such consultations must be open to all interested parties and must be published in a newspaper of national circulation, as well as in any other means that are adequate for the region.³²⁸ If the authority considers that the consultations carried out by the developer were insufficient or biased, it may extend the consultation period and use the additional time to widen and deepen the consultation process.³²⁹ Received comments must be attached to the technical report on the EIS and be considered in the formulation of technical recommendations for the project.³³⁰
- v. **Ecuador.** The regulations establish that the action developer, in coordination with the lead environmental agency, must carry out public consultations at least in two occasions: during the elaboration of the TORs, and prior to the submission of the final EIS to the authority. The information that is provided to the community must be complete and accurate, must be presented in common language, and if necessary, must be translated to indigenous languages. The regulations contemplate a wide variety of public participation mechanisms, including: informative meetings, where the developer communicates the main characteristics of

³²³ *Id.*, art. 164.

³²⁴ GENERAL REGULATIONS FOR EIA PROCEDURES art. 33.

³²⁵ *Id.*, arts. 41, 42, and 55.

³²⁶ LEY 64-00, art. 43.

³²⁷ Regulations of the Environmental Permits and Licenses System, art. 26.

³²⁸ *Id.*, art. 28.

³²⁹ *Id.*, art. 31.

³³⁰ *Id.*, art. 33.

the project, its potential environmental impacts and the corresponding mitigation measures; participatory workshops, in which the developer collects information on local perceptions and development plans with the aim of adjusting the proposed mitigation measures to the context where the action will take place; public information centers, where the EIS and the Environmental Management Plan (EMP), along with other documents, are accessible to the public; public hearings, and information sharing through websites. Received public comments must be documented, systematized, and classified based on their source and the way in which they are incorporated in the EIS or EMP.³³¹

- vi. **Guatemala.** The regulations state that the Ministry and the developer must inform the public when the EIA has been submitted, with the aim of receiving public comments or statements of opposition to the proposed action. To this end, the developer must publish in a national newspaper the action's basic information. If the project, work or activity will take place in a location where an indigenous language is spoken, the TORs must include specific details for the communication of such information.³³² The community must be involved at the project's earliest possible stage through a public participation plan prepared and implemented by the consultant that is responsible for elaborating the environmental documents. The plan must include content on mechanisms to: foster public participation, share information, receive and respond to questions raised by the community and environmental groups, and to resolve any potential conflicts. For the evaluation of the EIS, DGGARN must consider all comments submitted within the legally established period that have technical, scientific or legal support.³³³
- vii. **Guyana.** Prior to the inception of the EIA, the Agency is required to publish, at the developer's cost, in at least one daily newspaper the notice of the project and make available to the public a summary of the project.³³⁴ The public is entitled to make written submissions to the Agency indicating the questions and matters that they require to be answered or considered by the EIA.³³⁵ Received submissions must be considered in the scoping of the EIA.³³⁶ During the course of the EIA, the developer and the consultants must also consult members of the public, interested bodies and organizations, and provide them on request copies of information obtained for the purpose of the EIA.³³⁷ Once the EIA has been submitted to the authority, the developer must publish a notice in at least one daily newspaper. Public comments are welcomed at this stage.³³⁸ The comments received during the public consultations must be assessed by the Agency when making its decision to approve or reject the project.³³⁹

³³¹ UNIFIED TEXT OF SECONDARY LEGISLATION, BOOK VI, art. 20.

³³² Governmental Agreement 23 of 2003, art. 33.

³³³ *Id.*, arts. 50, 51, and 53.

³³⁴ ENVIRONMENTAL PROTECTION ACT, 11 (6).

³³⁵ *Id.*, 11 (7).

³³⁶ *Id.*, 11 (8).

³³⁷ *Id.*, 11 (9).

³³⁸ *Id.*, 11 (10).

³³⁹ *Id.*, 12.

- viii. **Panama.** The regulations establish that the action developer is obligated to involve the citizenry from the earliest stage of the EIS and must document any activities undertaken to that end.³⁴⁰ Formal public participation requirements vary depending on the EIS category. For Category I actions, the developer must implement a communications plan. Public participation mechanisms for Category II actions include a Public Participation Plan, surveys administered by ANAM or the responsible environmental units to capture the community's perception on the proposed action, and a formal public consultation in which the EIS is available to the public and public comments are welcome. Prior to the consultation, the developer must publish a summary of the EIS in at least two communications media.³⁴¹ In addition to these mechanisms, Category III actions also require a public hearing to be carried out during the decision stage of the EIA.
- ix. **Peru.** The law states that the EIA system includes formal outreach and community participation instances, as well as informal instances, which the developer must use to incorporate in the EIS the perceptions and opinions of the populations that would benefit or be affected by the proposed action.³⁴² During the classification stage, the responsible authority is required to consult the community or its representatives, or qualified individuals, about the background and observations of the proposed action. The developer and the technical team are further required to develop and implement a public participation plan. The authority is required to carry out a formal consultation during the evaluation stage only for detailed and semi-detailed EIS. These studies must be made available to the public, which must be invited to consult them through the publication of a notice in the most widely distributed printed media, as well as through electronic media.³⁴³ These provisions are consistent with the articles of the General Law of Environment that regulate public participation in environmental management decision-making processes.³⁴⁴

b) Countries where public participation is required during the evaluation stage.

- i. **Argentina.** The environmental framework law indicates that authorities must institutionalize procedures for public consultations or hearings as part of the approval process for activities that may generate negative and significant effects on the environment. Convening authorities must make public their decision and, if it differs from received opinions, the authority must provide an explanation.³⁴⁵ Public participation must be ensured primarily in the EIA procedures and in those related to regional development plans and programs, particularly during the planning and evaluation stages.³⁴⁶

³⁴⁰ Decree 209, art. 29.

³⁴¹ *Id.*, arts. 30, 34 – 37.

³⁴² Law 27446, art. 13.

³⁴³ *Id.*, art. 14.

³⁴⁴ Law 28,611, arts. 46 – 51.

³⁴⁵ Law 25,675, art. 20.

³⁴⁶ *Id.*, art. 21.

- ii. **Brazil.** The RIMA, which must be written in easily accessible language, must be accessible for interested parties. The responsible environmental authority must determine the deadlines for the provision of comments on the RIMA by public entities, as well as by any other interested parties.³⁴⁷
- iii. **Chile.** The law empowers legally constituted civil society organizations, as well as individuals that are directly affected by the proposed action, to make observations to the EIS and submit them to the responsible authority. Once the EIS has been submitted, the developer must publish a notice in the Official Newspaper (*Diario Oficial*) and in one national or regional newspaper, as appropriate, including information about the dates and places in which the study will be available and the deadlines for submitting comments.³⁴⁸ The Commission must ponder in its decision all received comments. Individuals or organizations that consider that their comments were not adequately pondered may seek redressal by a higher-ranking authority.³⁴⁹ The regulations require that observations be submitted in writing and include the information that supports them.³⁵⁰
- iv. **Colombia.** The law empowers individuals, public and private organizations to participate in administrative procedures initiated to obtain, modify, or cancel an environmental license or permit for activities that may affect the environment. To facilitate such participation, authorities must issue an act for the initiation of the procedure that must be published in a bulletin that is periodically printed and mailed to anyone who wishes to receive it.³⁵¹ Indigenous and afro-descendent communities must be consulted prior to making any decision regarding the use of natural resources.³⁵²
- v. **El Salvador.** The law establishes the right of all citizens to be timely, clearly, and sufficiently informed about environmental policies, plans, and programs. This right explicitly includes the right to participate in consultations relating to activities, works or projects that may affect them or that require an Environmental Permit.³⁵³ Prior to the approval of an EIS, the studies must be available to the public so that any person that feels affected may express opinions or submit written comments.³⁵⁴ The public must be informed of such studies through the publication of a predefined form in printed media distributed nationwide. The regulations indicate that comments received during public consultations must be pondered based on strictly technical criteria.³⁵⁵
- vi. **Honduras.** According to the regulations, the action developer must inform the public, through printed media and the radio, when the project has been registered with DECA, as well as when the EIA document has been submitted. The document must be available to the public, which may then

³⁴⁷ Resolution No. 001 of 1986 arts. 9, 11.

³⁴⁸ REGULATIONS OF THE EIA SYSTEM, art. 50.

³⁴⁹ Law 19.300, art. 29.

³⁵⁰ REGULATIONS OF THE EIA SYSTEM, art. 53.

³⁵¹ Law 99 of 1993, arts. 69 - 70.

³⁵² *Id.*, art. 76.

³⁵³ Decree 203, art. 9.

³⁵⁴ *Id.*, art. 25.

³⁵⁵ Decree 17, art. 32.

express doubts, claims or objections, including requests to incorporate important environmental impacts or mitigation measures that were not considered in the document.³⁵⁶

- vii. **Nicaragua.** The Ministry must publish once in two national newspapers the notice of availability of the environmental impact documents for public consultation. The documents may be consulted in the Ministry's delegation and the mayor's office in the locality where the project will take place.³⁵⁷
- viii. **Paraguay.** Upon receiving the Environmental Questionnaire, the environmental authority may consult the individuals, institutions and administrations that would be affected by the execution of the project. Consulted parties may provide input regarding the project's environmental impacts or any other issue that may contribute to environmental protection.³⁵⁸ In addition, the administrative authority must make the EIA available to the public.³⁵⁹ The public must be informed of the opportunity to consult the EIA by publishing a notice during three consecutive days in two widely distributed newspapers and through a national broadcasting radio station. The developer must finance the corresponding costs. In addition, the developer must provide a sufficient number of copies of the EIS summary to the municipal and departmental governments, as well as to the environmental authority, to ensure its wide dissemination in the affected areas. Observations and comments to the EIA must be presented in writing and must include supporting technical, scientific or legal arguments. These observations may be incorporated totally or partially to the EIA, based on their technical soundness. Based on received comments, the environmental authority may require the developer to adjust or complement the EIA.³⁶⁰
- ix. **Uruguay.** As part of the authorization request, the developer must submit to the authority a summary of the project and of its potential effects.³⁶¹ The summary must briefly provide the information contained in the project's documents and in the EIS, as well as a chapter that presents the conclusions about the main impacts identified by the study and the mitigation measures that would be adopted.³⁶² The Ministry must make the summary available to the public and must publish, at the developer's expense, the corresponding notification in the Official Newspaper (*Diario Oficial*), a national newspaper and a local newspaper.³⁶³ Comments to the summary must be presented in writing.

c) Countries where public participation does not always take place

- i. **Mexico.** SEMARNAT is required to publish in its weekly Ecologic Gazette all received authorization requests, MIAs, and IPs.³⁶⁴ After submitting the

³⁵⁶ SINEIA REGULATIONS, arts. 60 – 62.

³⁵⁷ Decree 45 of 1994, arts. 14 and 15.

³⁵⁸ Decree 14,281, art. 9.

³⁵⁹ Law 294/93, art. 8.

³⁶⁰ Decree 14,281, art. 16.

³⁶¹ Law 16.466, art. 10.

³⁶² Decree 349/05, art. 14.

³⁶³ Law 16.466, art. 13 and Decree 349/005, art. 15.

³⁶⁴ LGEEPA EIA REGULATIONS, art. 37.

MIA, the developer must publish a summary of the project in a widely distributed newspaper. On requested by the public, SEMARNAT must make the MIA available to the public in the state where the project will be developed. Based on the MIA, any individual may submit observations or suggest additional prevention and mitigation measures. Received comments must be included in the project's administrative file.³⁶⁵

- ii. **Venezuela.** The Ministry has the power to decide if the public must be consulted during the review and evaluation of the study. If consultations do take place, all comments and observations must be submitted in writing, including their technical, scientific, and legal supporting arguments. Received observations may be totally or partially incorporated to the studies, depending on their technical soundness. For all actions that required an EIS, the developer must publish a notice in a local newspaper informing the public about the inception of the elaboration of such study.³⁶⁶

5. Access to EIA Information

a) Countries where all EIA-related documents are available to the public

- i. **Argentina.** The national environmental law entitles individuals to obtain from the authority any non-classified environmental information that they manage.³⁶⁷ Provincial and sectoral regulations define what information may be legally protected.
- ii. **Bolivia.** The regulations establish that the public is entitled to access information during the EIA procedures. The responsible environmental authority may request from the developer proof of the existence of industrial property rights or commercial interests to classify information.³⁶⁸ The Environmental File and the EIS will be available to the public at the Ministry's offices, as well as in the environmental units of the departmental governments during the consultations period.³⁶⁹
- iii. **Chile.** The authority is required to integrate a file of the EIA that must include all the documents that are directly related to the EIA or to the action's implementation. The file must be kept at the office of the COREMA's Secretary or at the office of CONAMA's Executive Director of the National Environmental Commission, as appropriate.³⁷⁰ The files are available to the public, with the exception of documents or pieces that contain technical, financial or other type of elements that may compromise commercial or industrial secret information.³⁷¹ In addition, the EIS must be available to the public during all the stages of the EIA at the offices of the appropriate environmental commission and of the

³⁶⁵ LGEEPA, art. 34.

³⁶⁶ Decree 1.257, art. 26.

³⁶⁷ Law 25.675, art. 16.

³⁶⁸ REGULATIONS FOR ENVIRONMENTAL PREVENTION AND OVERSIGHT, art. 161.

³⁶⁹ *Id.*, art. 163.

³⁷⁰ REGULATIONS OF THE EIA SYSTEM, art. 47.

³⁷¹ *Id.*, art. 48.

municipality where the project will be developed. Interested parties may request, at their own expense, copies of the EIS.³⁷²

- iv. **Colombia.** The regulations entitle individuals to request and receive information from the authorities regarding a project, work or activity that requires an environmental license or the establishment of an Environmental Management Plan.³⁷³
- v. **Honduras.** The regulations indicate that the information regarding the EIA process for any project is public. Any person or organizations may request information about the projects and the EIA.³⁷⁴ Information regarding some processes, technologies, and methodologies may be classified upon the developer's request.³⁷⁵

b) Countries where final studies are available to the public

- i. **Belize.** The notification published to inform that the EIA has been submitted must indicate a place where the EIA may be inspected free of charge and specify the times and period during which it may be inspected.³⁷⁶ The regulations also indicate that, upon receiving the EIA, the Department may direct that copies be made available to interested individuals.³⁷⁷
- ii. **Dominican Republic.** After the results of the EIS have been submitted to the Secretary, these are made available to interested parties and the public through an Environmental Document that summarizes the EIS's findings.³⁷⁸
- iii. **Ecuador.** The regulations contemplate, among various public participation mechanisms, the existence of Public Information Centers (CIPs) in which the EIS, the EMP, and other documents are made available to the public. The CIP must be easily accessible and be staffed with personnel that is familiarized with the project and can provide the necessary explanations. In addition, the EIS and the EMP may be posted in a web page, as long as the public is sufficiently informed about the page and its address.³⁷⁹
- iv. **El Salvador.** The law indicates that, prior to the evaluation of the EIS, it must be made available to the public.³⁸⁰ The Ministry will classify technical and financial information to protect industrial or intellectual property, as well as related licit commercial interests.³⁸¹
- v. **Guyana.** The Act establishes that both the EIS and the EIA are public documents. Both the Agency and the developer must make these documents available to the public at their respective offices, during normal working hours. The documents must be available through the

³⁷² *Id.*, art. 52.

³⁷³ Decree 1,220 of 2005, art. 38.

³⁷⁴ SINEIA REGULATIONS, art. 21.

³⁷⁵ *Id.*, art. 36.

³⁷⁶ ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, reg. 20 (1).

³⁷⁷ *Id.*, reg. 21 (1) (a).

³⁷⁸ Regulations of the Environmental Permits and Licenses System, art. 27.

³⁷⁹ UNIFIED TEXT OF SECONDARY LEGISLATION, BOOK VI, art. 20.

³⁸⁰ Decree 233, art. 25.

³⁸¹ Decree 17, art. 32, a).

duration of the project and five years thereafter. The developer is entitled to delete classified information that may disclose intellectual property rights.³⁸²

- vi. **Mexico.** The law indicates that, once the Secretary has received an MIA, it must make it available to the public. Action developers may request the classification of information that, if disclosed, could affect industrial property rights or commercial interests.³⁸³
- vii. **Panama.** After the authority has accepted an EIS and during its evaluation, the document must be available to the public as part of the formal consultations that must be held for actions rated as category II and category III.³⁸⁴
- viii. **Paraguay.** The law mandates the authority to make the EIA available to the public, protecting industrial property rights.³⁸⁵
- ix. **Peru.** The law establishes that the EIS must be available to the public only in the case of detailed and semi-detailed EIS.³⁸⁶
- x. **Venezuela.** All EIS that have been approved by the authority must be available to the public at the Ministry's Document Centers. Developers may request the Ministry to classify information that may affect industrial property rights and licit commercial interests.³⁸⁷

c) Countries with Public Access to Abstracts of the Studies

- i. **Brazil.** The RIMA must be available to the public at the documentation centers and libraries of the corresponding environmental authority, through the evaluation period. Industrial secret information must be protected, but the developer must prove the need to classify information.³⁸⁸
- ii. **Guatemala.** The public is only given access to information included in the notice that the action developer must publish once the EIA instrument has been submitted. The minimal content of the notice includes: the developer's name; selected site; indication of the type, nature and specific activity that will be undertaken; and deadline for submitting public comments.³⁸⁹
- iii. **Nicaragua.** The regulations mention that the results of the EIS must be made available to the public. The times, locations, and periods for consultation are defined in the TORs.³⁹⁰
- iv. **Uruguay.** According to the law, the public must have access to a summary of the project, which must include the effects that may result

³⁸² ENVIRONMENTAL PROTECTION ACT, 11 (11).

³⁸³ LGEEPA, art. 34.

³⁸⁴ Decree 209, art. 34.

³⁸⁵ Law 294/93, art. 8.

³⁸⁶ Law 27446, art. 14.

³⁸⁷ Decree 1.257, art. 27.

³⁸⁸ Resolution No. 001 of 1986 art. 11.

³⁸⁹ REGULATIONS FOR ENVIRONMENTAL PREVENTION AND OVERSIGHT, art. 33.

³⁹⁰ Decree 45 of 1994, art. 15.

from its implementation.³⁹¹ The authority must classify information related to the developer's industrial property rights or commercial interests.³⁹²

d) Countries that do not contemplate access to EIA-related information

- i. **Costa Rica.** Neither the law nor the regulations contain any provisions regarding public access to EIA documents and other information.

6. Public Hearings

a) Countries where public hearings are mandatory

- i. **Argentina.** The law establishes that authorities must institutionalize consultation procedures or public hearings and use these instances as part of the authorization process for any activity that may generate significant negative effects on the environment. The authority must make public its decision and provide the elements that support it, if it differs from the opinions received during the public hearings.³⁹³
- ii. **Colombia.** Public hearings must be held in relation to any work or activity with potential environmental impacts that requires an environmental license or permit, if requested by environmental authorities, governors, mayors, at least 100 people or 3 non-profit organizations, among others. The EIS and other relevant documents must be available to the public before the hearing takes place.³⁹⁴ Action developers, interested parties, authorities, and registered experts and non-profits are entitled to intervene during the hearing and provide relevant information and proofs. Public hearings may also be held in response to non-compliance with the conditions established in the license or permit. The authority must record the hearing and consider received comments in making the corresponding decision.³⁹⁵
- iii. **Dominican Republic.** The regulations stipulate that a public hearing must be organized if it is required by the magnitude of project's potential impacts and/or the associated public perceptions.³⁹⁶ Two types of hearings are contemplated. Visits, or hearings organized by the developer, must be carried out for all projects requiring an EIS and are open to the public.³⁹⁷ The Ministry may determine the need to organize an additional hearing, which must take place in a venue that is easily accessible for communities near the project. Comments and observations must be submitted in writing during the hearing.³⁹⁸
- iv. **Panama.** The developer must hold a public hearing for Category III actions. The hearing must take place during the evaluation stage and before the authority makes its decision.³⁹⁹ The authority may also

³⁹¹ Law 16.466, art. 13.

³⁹² *Id.*, art. 15.

³⁹³ Law 26,675, art. 20.

³⁹⁴ Decree 2,762 of 2005, art. 8.

³⁹⁵ Law 99 of 1993, art. 72; Decree 2,762 of 2005.

³⁹⁶ Regulations of the Environmental Permits and Licenses System, art. 23.

³⁹⁷ *Id.*, art. 28.

³⁹⁸ *Id.*, art. 30.

³⁹⁹ Decree 209, art. 30.

organize a public hearing in relation to Category II actions, based on its own decision, as well as on the request of at least 2% of the population of the communities located within the project's area of influence or by the organized civil society.⁴⁰⁰ In order to facilitate public participation in the hearing, the developer must publish in advance an abstract of the EIS in various media, which are selected by the environmental authority.⁴⁰¹ The hearing must take place in the community or district where the project would be developed.⁴⁰²

- v. **Peru.** The law specifies that a public hearing must take place as part of the review of detailed EIS. In the case of semi-detailed EIS, the authority has the power to determine if a hearing is necessary.⁴⁰³
- vi. **Uruguay.** The law grants the Ministry the faculty to decide if a public hearing should take place, considering the project's potential cultural, social, or environmental impacts. Participation in such hearings is open to the public.⁴⁰⁴ However, the regulations state that public hearings are mandatory for all category C projects.⁴⁰⁵

b) Countries where public hearings are carried out under specific conditions

- i. **Belize.** The National Environmental Appraisal Committee is entitled to advise the Department of the need or desirability of holding a public hearing in relation to any undertaking, project or activity for which an EIA must be prepared.⁴⁰⁶ Before requiring the hearing, the Department must also consider, among other factors: the magnitude and type of environmental impacts, the amount of investment, the associated commitment of natural resources, the public and government's interest in the proposed undertaking, and the complexity of the problem and the possibility that the hearing may assist the developer in complying with its responsibilities.⁴⁰⁷
- ii. **Bolivia.** The law empowers individuals to make petitions and promote initiatives for environmental protection.⁴⁰⁸ Such petition and initiatives may include requests for a public hearing in relation to an action that requires an EIS, which must be presented during the review of these instruments.⁴⁰⁹ Registered grassroots organizations (OTBs) constitute the formal channel through which petitions for a public hearing must be submitted to the authority.⁴¹⁰ Public hearings are organized and presided by the responsible environmental authority. The authority must integrate a Technical Committee with representatives from all relevant sectors. The Committee must integrate a report of received comments and

⁴⁰⁰ *Id.*, art. 31.

⁴⁰¹ *Id.*, art. 36.

⁴⁰² *Id.*, art. 38.

⁴⁰³ Law 27446, art. 14.

⁴⁰⁴ Law 16.466, art. 14.

⁴⁰⁵ Decree 349/05, art. 16.

⁴⁰⁶ ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, regs. 24 (1) and 25 (1) (c).

⁴⁰⁷ *Id.*, reg. 24 (2).

⁴⁰⁸ Law 1,333, art. 93.

⁴⁰⁹ REGULATIONS FOR ENVIRONMENTAL PREVENTION AND OVERSIGHT, art. 165.

⁴¹⁰ General Regulations for Environmental Management, art. 77.

suggestions, and submit it to the authority, which may consider them in its decision.⁴¹¹

- iii. **Brazil.** If the responsible environmental authority deems it necessary, it may organize a public hearing to provide information about a project and its impacts, as well as to discuss the RIMA.⁴¹²
- iv. **Costa Rica.** If SETENA considers it necessary, it can request the developer and the consultants of a Category A activity, work or project, to organize a public hearing with the aim of providing information to the public about such action and its impacts.⁴¹³ In addition, individuals and organizations may submit to SETENA a request for a public hearing. Before deciding on the need for the hearing, SETENA must consider the magnitude of the potential environmental impacts and the technical aspects of the proposed action. If the authority considers that the hearing is unnecessary, it must provide alternate mechanisms to receive comments and observations.⁴¹⁴ If the hearing is held, SETENA is responsible for organizing it, in coordination with municipal authorities, development associations, and interested parties. SETENA or its departments must record the hearing.⁴¹⁵
- v. **Ecuador.** Public hearings are one of various mechanisms that developers may use to comply with their public participation obligations. Developers are able to choose the appropriate mechanisms, but must justify their selection in the EIS. Hearings are used to present, in an educational manner, the EIS and EMP, and to receive the communities' comments on them.⁴¹⁶
- vi. **El Salvador.** A public hearing must be organized by the Ministry if the EIS concludes that the proposed action may affect the quality of life, health and wellbeing of the population, or the environment.⁴¹⁷ Comments received during the hearing must be pondered, based on their technical soundness, during the evaluation of the EIA.⁴¹⁸
- vii. **Guyana.** The Environmental Assessment Board (EAB) may conduct a public hearing, when necessary, to obtain input to support its recommendations to the Agency for accepting, amending or rejecting an EIA; issuing a permit; or defining the terms and conditions that should be included in the environmental permit.⁴¹⁹ The EAB will aim to ensure that each person has a reasonable opportunity to be heard and that the hearing is not dominated by any person or group. To facilitate public participation, the EAB may accept evidence from any person irrespective of whether that evidence would be admissible in a court of law. The EAB must prepare a report on the issues raised.⁴²⁰

⁴¹¹ *Id.*, arts. 81 and 82.

⁴¹² Resolution No. 001 of 1986 art. 11 § 2°.

⁴¹³ GENERAL REGULATIONS FOR EIA PROCEDURES art. 3.

⁴¹⁴ *Id.* art. 56.

⁴¹⁵ *Id.*, art. 61.

⁴¹⁶ UNIFIED TEXT OF SECONDARY LEGISLATION, BOOK VI, art. 20.

⁴¹⁷ Decree 233, art. 25.

⁴¹⁸ Decree 17, art. 32.

⁴¹⁹ ENVIRONMENTAL PROTECTION ACT, 18 (2).

⁴²⁰ EIA GUIDELINES, pp. 21 and 22.

- viii. **Honduras.** If a public hearing is included in the TORs, requested by the public or NGOs, or required by the authority, the developer must present the results of the EIA in public forums and other media that are conducive to the discussion and exchange of ideas with the public and NGOs.⁴²¹
 - ix. **Mexico.** The law grants the Secretary discretion to organize a public hearing in relation to a work or activity that may seriously disrupt the ecological equilibrium, or affect public health or ecosystems.⁴²² During the hearing, the developer must explain the project or activity's technical environmental aspects, its potential impacts, and the prevention and mitigation measures that would be implemented. The developer must also respond to questions raised during the hearing. The authority must elaborate a report of the hearing.⁴²³
 - x. **Paraguay.** If it deems so necessary, the environmental authority may organize a public hearing to listen to the community's comments regarding a proposed action.⁴²⁴
- c) Countries without Provisions for Public Audiences.
- i. **Chile, Nicaragua, and Venezuela** do not contemplate in their legal frameworks the realization of public hearings as part of their EIA system.
 - ii. **Guatemala.** The legal framework does not expressly consider public hearings in relation to the approval of the EIS. However, the developer and the consultants are required to involve the community in the preparation of the EIS, and may hold workshops or other types of meetings to that end.⁴²⁵

⁴²¹ SINEIA REGULATIONS, art. 60.

⁴²² LGEEPA, art. 34.

⁴²³ LGEEPA EIA REGULATIONS, art. 43.

⁴²⁴ Decree 14,281, art. 16, paragraph four.

⁴²⁵ Governmental Agreement 23 of 2003, art. 51.

VIII. Evaluation of Alternatives

1. Introduction

The examination of alternatives is considered a best practice principle of EIA.⁴²⁶ The main purpose during this stage of the EIA process is to compare various alternatives—including the “without action” scenario—by weighting various types of considerations defined during the scoping stage, but centering on the environmental implications associated with each alternative. Based on the comparison, the most environmentally benign and sound option for achieving the proposal objectives is selected, as long as it is also viable from other standpoints (i.e. technical, economic, etc.).

Under NEPA and its regulations, the evaluation of alternatives is considered the main element of the environmental impact statement. In other words, the statement that is prepared when a Federal action is expected to significantly affect the environment aims to inform the decision-maker and the public about the different options that might be pursued to achieve a desired goal. Hence, the regulations aim to ensure that all alternatives, including those that are not part of the lead agency’s jurisdiction, are considered and compared with equal depth.

The comparative analysis in Latin America shows that only a limited number of countries, namely Ecuador and Colombia, require a real examination of alternatives as part of the EIA process. In these two countries, the authority has the power to select a different alternative than the one preferred by the proponent, if it considers it to be more environmentally sound. In a second group consisting of 14 countries, an analysis of alternatives is required, but often lacks detailed regulations to ensure that different alternatives are seriously considered. In many countries that have been grouped in this same category, the EIS is only required to justify why the proposed action was selected over other viable alternatives. Under these circumstances, the evaluation of alternatives has extremely limited influence on the authority’s decision-making, as one alternative has already been selected and the exercise is simply carried out to confirm that choice. Finally, in the four remaining countries, the legal frameworks do not contemplate the evaluation of alternatives.

2. Evaluation of Alternatives under NEPA.

NEPA establishes that the detailed statement that responsible officials must prepare for every recommendation or report on proposals for legislation and other Federal actions significantly affecting the environment must include the alternatives to the proposed action.

According to the regulations, the analysis of alternatives is “the heart of the environmental impact statement”.⁴²⁷ The prepared statement must present the environmental impacts of the proposal and the alternatives in a comparative form to facilitate the selection of options by the decision-maker and the public.⁴²⁸

⁴²⁶ Pierre Senécal et al., *supra* note 7.

⁴²⁷ 40 C.F.R. § 1502.14.

⁴²⁸ *Id.*

The analysis of alternatives must explore all reasonable alternatives—including those that do not fall within the lead agency’s jurisdiction—and explain briefly why other alternatives were rejected, devote substantial treatment to each alternative, include the alternative of no action, identify the agency’s preferred option(s), and include appropriate mitigation measures not already included in the proposed action or alternatives.⁴²⁹ The statement’s content on affected environment must describe the areas of the environment that are likely to be affected by each alternative under consideration.⁴³⁰ Similarly, the section on environmental consequences must discuss the environmental impacts of the alternatives, including the proposed action, any adverse environmental effects which cannot be avoided if the proposal is implemented, the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources that would result from undertaking the proposed action.⁴³¹

3. Evaluation of Alternatives in Latin American Countries.

a) Countries that Evaluate Alternatives.

- i. **Colombia.** The law empowers the responsible environmental authority to request an Environmental Diagnosis of Alternatives (*Diagnóstico Ambiental de Alternativas-DAA*) prior to the preparation of the EIS. The DAA must include information on the geographical, environmental, and social context of the project alternatives, as well as a comparative analysis of the inherent effects and risks of the work or activity, as well as the potential solutions and control and mitigation measures of each alternative. Based on the DAA, the authority selects one or various alternatives that must be considered in the EIS.⁴³² The regulations include a restrictive list of projects that call for a DAA.⁴³³
- ii. **Ecuador.** The regulations specify that the TORs must include the techniques, sources, and other tools that will be used to describe, study and analyze, among other issues, the project’s alternatives.⁴³⁴ The project’s alternatives are also included as part of the minimum content of the EIS.⁴³⁵ Finally, the lead environmental authority has the faculty to request that the EIS includes additional alternatives, as long as they do not result in significant changes to the proposed action.⁴³⁶

b) Countries that Require a Discussion of Alternatives.

- i. **Belize.** The Environmental Protection Act establishes that the EIA shall include a statement of reasonable alternative sites (if any), and reasons for their rejection.⁴³⁷ The regulations further indicate that the minimum contents of the EIA must include an assessment of the likely or potential

⁴²⁹ *Id.*

⁴³⁰ *Id.* at § 1502.15.

⁴³¹ *Id.* at § 1502.16.

⁴³² Law 99 of 1993, art. 56.

⁴³³ Decree 1,220 of 2005, art. 17.

⁴³⁴ Unified Text of Secondary Legislation, Book VI, art. 16.

⁴³⁵ *Id.*, art. 17.

⁴³⁶ *Id.*, art. 22.

⁴³⁷ ENVIRONMENTAL PROTECTION ACT, 20 (3).

environmental impacts of the proposed activities and the alternatives, including the direct and indirect, cumulative, short-term and long-term effects.⁴³⁸ Such alternatives must be presented in the EIA report in comparative form, exploring each alternative, including the no-action alternative, and the reason why they were recommended or eliminated. The objective of this analysis is to identify the least environmentally damaging alternative that satisfies the basic purpose and the need for the proposed action.⁴³⁹

- ii. **Bolivia.** The regulations indicate that the EIS must include a discussion of action alternatives and a justification of the selected option.⁴⁴⁰
- iii. **Brazil.** Among the guidelines that the EIS must follow is the contemplation of all the technological and location alternatives of the project, comparing them with the hypothesis of not executing the project.⁴⁴¹ The summary (*Relatorio*) of environmental impacts must specify for each of these alternatives—during their construction and operation phases—the area of influence, the use of raw materials, labor, energy sources, technical and operational processes, probable effluents, emissions, energy residues, and the direct and indirect jobs that would be generated. The *Relatorio* must recommend the most favorable alternative.⁴⁴²
- iv. **Costa Rica.** The regulations indicate that the EIS must include as part of its minimal contents a description of the activity, work, or project, and its alternatives.⁴⁴³ The analysis of alternatives must reflect the identification of environmentally fragile areas and the interaction with nearby communities that was carried out as part of the EIS.⁴⁴⁴
- v. **Dominican Republic.** Based on the regulations, the final EIS report must contain a description and analysis of the considered alternatives, an analysis of the impacts of the considered alternatives (including the no project alternative), and a justification of the selected alternative.⁴⁴⁵
- vi. **El Salvador.** The law indicates that the EIA aims to identify, predict, and control the environmental impacts of an activity, work, or project and their alternatives.⁴⁴⁶ The regulations define the goals of the EIA process, including the selection of the alternative that best guarantees environmental protection and conservation of natural resources.⁴⁴⁷ The minimal content of the EIS, as described in the regulations, includes a description of the project and its alternatives.⁴⁴⁸
- vii. **Guatemala.** The regulations conceive the EIS as a planning tool that provides an analysis of the potential effects of a proposed action and its

⁴³⁸ ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, reg. 5 (d).

⁴³⁹ *Id.*, reg. 19 (i),

⁴⁴⁰ REGULATIONS FOR ENVIRONMENTAL PREVENTION AND OVERSIGHT, arts. 22 and 29.

⁴⁴¹ Resolution No. 001 of 1986 art. 5 (I).

⁴⁴² *Id.*, art. 9(II), (VIII).

⁴⁴³ GENERAL REGULATIONS FOR EIA PROCEDURES art. 3.

⁴⁴⁴ *Id.* art. 34.

⁴⁴⁵ Regulations of the System of Environmental Permits and Licenses, art. 19.

⁴⁴⁶ Decree 203, art. 5.

⁴⁴⁷ Decree 17, art. 18.

⁴⁴⁸ *Id.*, art. 23.

practical alternatives in the physical, biological, cultural, and socioeconomic attributes of determined geographic area.⁴⁴⁹

- viii. **Guyana.** According to the Environmental Protection Act, every EIA must include an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental factors. Also, the EIA must include a statement of reasonable alternatives (if any) and reasons for their rejection.⁴⁵⁰
 - ix. **Honduras.** The regulations simply indicate that an analysis of alternatives must be included if it is requested in the TORs.⁴⁵¹
 - x. **Mexico.** Both the regional and particular MIAs must include an evaluation of alternatives.⁴⁵²
 - xi. **Nicaragua.** Both the law and the regulations define the objective of the EIS as consisting of the identification, prediction, and control of the environmental impacts of a project and its alternatives.⁴⁵³
 - xii. **Paraguay.** The law indicates that all EIAs must include a relation of the technical and location alternatives for the project, as well as an estimation of the circumstances that would result if the project were not carried out.⁴⁵⁴
 - xiii. **Uruguay.** Some of the actions included in the restrictive list that determines the requirement for an EIA call for an evaluation of the location's environmental feasibility. Such evaluation should include an analysis of alternative sites, if possible.⁴⁵⁵
 - xiv. **Venezuela.** The minimum content of the TORs included in the regulations include an analysis of design, location, and technology options. If possible, an economic value should be assigned to each alternative. The selected alternative must be justified.⁴⁵⁶
- c) Countries without Provisions Regarding Alternatives.
- i. **Argentina.** The federal law has no provisions regarding alternatives, but these may be contemplated in applicable sectoral or provincial legislation.
 - ii. **Chile, Panama, and Peru** do not include an evaluation of alternatives in the legal instruments in place.

⁴⁴⁹ Governmental Agreement 23 of 2003, art. 15.

⁴⁵⁰ ENVIRONMENTAL PROTECTION ACT, 11 (5).

⁴⁵¹ SINEIA REGULATIONS, art. 53.

⁴⁵² LGEEPA EIA REGULATIONS, arts. 12 and 13.

⁴⁵³ Law 217, art. 5; Decree 45 of 1994, art. 3.

⁴⁵⁴ Law 294/93, art. 3, f).

⁴⁵⁵ Decree 349/05, art. 20.

⁴⁵⁶ Decree 1.257, art. 7.

IX. Evaluators and Evaluation Criteria

1. Introduction

This section compares the formal mechanisms that authorities use to evaluate whether the EIA process has met the existing legal requirements and supports a decision to authorize the proposed action. The evaluation generally focuses on the EIS, but in some countries it also encompasses a revision of other documents (forms, requests, etc.), as well as procedural issues (ranging from requirements on the number of copies of the document that must be submitted to meeting public participation circumstances). Under all circumstances, the evaluation stage should aim to assess whether the report provides an appropriate analysis of the proposed action(s) and adequately informs and supports the authority's decision-making.⁴⁵⁷

Under NEPA, the authority's decision is based on whether the Environmental Impact Statement (EIS) prepared by the authority meets a number of content and procedural criteria, including whether the statement was prepared according to the defined scope and whether it responded to received public comments. If these criteria are met, the authority is in a position to make its decision.

In contrast, the procedure adopted by most Latin American countries includes an evaluation stage in which the authority decides whether the action proponent and/or the consultants working for the proponent have met the procedural and content requirements. Under this approach, the authority has a limited involvement in the elaboration of the necessary studies and in ensuring that public input is duly incorporated in the EIA process.

The analyzed legal frameworks vary significantly in terms of the criteria that authorities must use to evaluate the documents submitted by action developers. In 9 countries, there are no explicit evaluation criteria and the authorities must therefore assess whether the documents are consistent with all the requirements established by applicable laws and regulations. In the remaining 11 countries, the legal framework in place does provide evaluation criteria, which range from verifying that the documents are consistent with the TORs and include all the minimum contents, to general environmental or developmental goals to which the proposed action is expected to contribute.

In any case, the decision-maker has significant discretionary powers to decide whether the EIA, in which he has had only limited participation, is valid or not. For instance, an official may be required to make a decision based on whether the submitted documents comply with the generic TORs and considering whether the proposed environmental management actions are consistent with the identified environmental impacts. However, this does not guarantee that the EIA process will result in a better decision being made as it is not necessarily associated with received public input, systematized environmental information, or the existence of clearly defined criteria to interpret environmental regulations. The existing criteria for the evaluation of EIS often include concepts as "the reproductive capacity of ecosystems" (Belize), "sustainability aspects" (Panama), and "admissible environmental impacts" (Uruguay), which are likely to be interpreted differently by different public officials.

⁴⁵⁷ Pierre Senécal et al., *supra* note 7.

2. EIA Evaluation under NEPA

Compliance with the criteria and requirements for Environmental Impact Statement (EIS) set forth by NEPA and its regulations are a function of both the statement's content and its elaboration process. In terms of its content, NEPA indicates that the EIS must address: (i) the environmental impact of the proposed action; (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented; (iii) alternatives to the proposed action; (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement on long-term productivity; and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.⁴⁵⁸ Such content must reflect a systematic and interdisciplinary approach.

Regulations for the implementation of NEPA provide a predefined format, to which all agencies must adhere unless there is a compelling reason to do otherwise. The guidelines also indicate a page limit—normally less than 150 pages, but less than 300 pages for unusually complex statements—and require that the document be written in plain language.⁴⁵⁹

The elaboration of the EIS must fulfill various procedural steps, including the reception of public comments and meeting of mandatory deadlines. The regulations further indicate that the EIS must be prepared in two stages, except in the case of proposals for legislation. The first stage refers to the draft EIS, which must be prepared in accordance to the decided scope and satisfy as much as possible the requirements for a final EIS. The draft EIS is then circulated for comments to which the final EIS must respond, including responses to opposing views that were not adequately discussed during the draft EIS.⁴⁶⁰

Once the lead agency has produced an EIS that meets the content and procedural requirements, it may make its decision, which must be formalized in a public record of decision. The record must state what the decision was; identify the alternatives considered by the agency and discuss the environmental, technical, and economic considerations of each alternative and the way in which these were balanced in the decision-making process; and explain whether all practicable means to avoid or minimize environmental harm from the selected alternative have been adopted or the reasons for not adopting them. The record must include a monitoring and enforcement plan.⁴⁶¹

3. EIA Evaluation in Latin American Countries

a) Countries without Legally Defined Evaluation Criteria

- i. **Argentina.** The federal law does not refer to the evaluation of the EIA.
- ii. **Brazil.** There are no specific criteria for the evaluation of the EIA. However, CONAMA's Resolution 001 of 1986 establishes the activities, guidelines, and specifications that all EIAs must contemplate.

⁴⁵⁸ 42 U.S.C. § 4332(c).

⁴⁵⁹ 40 C.F.R. § 1502.7.

⁴⁶⁰ *Id.* at § 1502.9.

⁴⁶¹ *Id.* at § 1505.2.

- iii. **Ecuador.** There are no specific evaluation criteria, but the regulations indicate that the evaluation must be carried out by a multi-disciplinary team with the technical and professional expertise to respond to the multiple requirements of an EIS, using a grading system that will guarantee the objectivity of the evaluation.⁴⁶²
- iv. **El Salvador.** There are no specific evaluation criteria, but the regulations indicate that the authority must notify the preparers of the EIS if it does not meet the requirements established in the TORs or if its content must be widened, reformulated, substituted, or eliminated. The authority's final decision will consider the responses to such comments.⁴⁶³
- v. **Guatemala.** Neither the law nor the regulations indicate specific criteria, but the authority's decision is based on the information provided by the evaluation, control, and follow-up instruments; field visits; comments received from public and private entities; and comments received during public consultations.⁴⁶⁴ The regulations do indicate that the evaluation process must be suspended if the action should not be carried out because it is forbidden by law; the information in the EIS is false, imprecise, or has been copied; its location is not viable; information or access for verification purposes has been denied; its environmental impact is highly significant; or for any other technical criteria determined by DGGARN.⁴⁶⁵
- vi. **Honduras.** No evaluation criteria have been adopted, but technical norms are used as reference for the evaluation of impacts.⁴⁶⁶ The public may submit their comments to DECA indicating the need to modify the EIS if it did not consider all the important effects or if the mitigation measures are inadequate.⁴⁶⁷
- vii. **Nicaragua.** There are no criteria in the law or in its regulations.
- viii. **Paraguay.** The law and its regulations provide detailed indications of the requirements that the EIS must meet, but there are no specific criteria for its evaluation.
- ix. **Peru.** The law indicates that the responsible environmental authority may integrate a mechanism to evaluate EIS with the participation of sectoral, regional, and local authorities for category III projects.⁴⁶⁸ There are no other specifications for the evaluation of EIS.

b) Countries with Discretionary Evaluation Criteria

- i. **Belize.** The Environmental Protection Act mentions that the EIA must be submitted to the national environmental authority for evaluation and recommendation. The Act further indicates that the EIA should assess each proposed action considering the need to protect and improve human health and living conditions, as well as to preserve the reproductive

⁴⁶² UNIFIED TEXT OF SECONDARY LEGISLATION, BOOK VI, art. 18.

⁴⁶³ Decree 17, art. 33.

⁴⁶⁴ Governmental Agreement 23 of 2003, art. 38.

⁴⁶⁵ *Id.*, art. 37.

⁴⁶⁶ SINEIA REGULATIONS, art. 74.

⁴⁶⁷ *Id.*, art. 62.

⁴⁶⁸ Law 27446, art. 11.

capacity of ecosystems and the diversity of species. Finally, the Act states that the Department's decision to approve an EIA may be subject to conditions that are reasonably required for environmental purposes.⁴⁶⁹

The Department's decision on an EIA is based on the recommendations of the National Environmental Appraisal Committee, integrated by 9 high-level public officials and 2 non-governmental representatives.⁴⁷⁰

- ii. **Bolivia.** The legal representative of the planned action must submit the EIS to the responsible sectoral or municipal organism, which must then proceed to elaborate a technical report indicating that the EIS is adequate and sufficient, and verifying: the participation of authorized professionals in the elaboration of the EIS; compliance with the contents required by the regulations; the initial environmental baseline, identification and evaluation of environmental impacts, risk analysis and contingency plan; the Prevention and Mitigation Program; cost estimates of prevention and mitigation measures; the Environmental Compliance and Follow-up Plan, and if necessary, the Closing of Operations and Area Restoration Program; the identification of applicable legislation, and inclusion of a summary.⁴⁷¹ If the proposed action is expected to have trans-sectoral impacts, and ad-hoc working group must be integrated to elaborate the report.⁴⁷² The report is sent to the competent environmental agency, which decides to issue or not the Environmental Impact Statement (DIA). Based on the regulations, the environmental authority will not issue the DIA if the project, work or activity: generates serious and/or irreversible health problems; affects or destroys sensitive ecosystems or the areas of ethnic groups; results in significant risks for natural protected areas, as well as historic, archeological, tourist, and cultural sites; will result in the generation of synergic increase of air pollutants, noises and odors, or significantly affects water quality; produces ionic radiations; or produces negative socioeconomic or cultural impacts of large magnitude that cannot be controlled or compensated.⁴⁷³
- iii. **Chile.** The law states that the EIS will be approved if it complies with the applicable environmental laws and regulations, and if it proposes appropriate mitigation, compensation, or restoration measures.⁴⁷⁴ The approval process described in the regulations indicate that, if the EIS complies with all the requisites set forth in the law and regulations (referring to its minimal content, the number of copies that must be submitted, etc.), it must be sent to all the public agencies that have responsibility for issuing a related license and to the municipalities where the action will take place. These entities must send a report with their evaluation of the action's compliance with the legal framework and the appropriateness of the proposed measures. The competent environmental authority must then elaborate a Consolidated Report, which will inform the responsible environmental commission's decision to

⁴⁶⁹ ENVIRONMENTAL PROTECTION ACT, 20.

⁴⁷⁰ EIA Regulations, regulation 25.

⁴⁷¹ REGULATIONS FOR ENVIRONMENTAL PREVENTION AND OVERSIGHT, arts. 69, 70, and 74.

⁴⁷² *Id.*, art. 71.

⁴⁷³ *Id.*, art. 85.

⁴⁷⁴ Law 19.300, art. 16.

approve or reject the EIS.⁴⁷⁵ The resolution on the planned project or activity must state the legal and technical elements that support the decision, the pondering of the observations received from public consultations, and the conditions that the action must meet to obtain the necessary environmental permits.⁴⁷⁶

- iv. **Colombia.** In evaluating the EIS, the responsible authority must verify that it complies with the goals and content described in the TORs and in the regulatory decree. In addition, the EIS must contain relevant and sufficient information on the identification and evaluation of impacts, indicating those that cannot be avoided or mitigated. Finally, the EIS must include an Environmental Management Plan with the adequate mitigation, correction, prevention and/or compensation measures, the required resources; an emergency preparedness plan, and a monitoring plan with indicators that will facilitate verification of compliance with environmental obligations and responsibilities.⁴⁷⁷
- v. **Costa Rica.** The process through which SETENA evaluates the EIS must include a legal opinion stating whether the study fulfilled all the legal requirements and an environmental opinion indicating: the evaluation of alternatives (if applicable); the interaction with nearby communities; the definition and evaluation of significant positive, negative, and cumulative environmental impacts; an analysis of environmental vulnerability and risk; contingency plans; corrective measures; and an Environmental Management Plan.⁴⁷⁸
- vi. **Dominican Republic.** The regulations establish that the EIS will be evaluated by a Technical Team, which will verify that the study's contents are consistent with the TORs and will determine if a public hearing is needed.⁴⁷⁹
- vii. **Guyana.** The Environmental Protection Act mentions that the Agency must approve or reject the project after taking into account the comments received from the public, as well as the findings of the environmental impact assessment and statement.⁴⁸⁰ In reviewing the EIS, EPA and sector agencies will ensure that the EIA is in line with plans, guidelines, regulations, or codes of practice developed by such agencies.⁴⁸¹
- viii. **Mexico.** The law states that the authorization of works and activities must consider compliance with legal requirements, urban development and regional development plans, and the existence of natural protected areas. The Secretary must also evaluate the action's environmental impacts. The authority may deny an authorization if the proposed action does not comply with applicable legislation or may endanger species, as well as if the corresponding documentation contains false information.⁴⁸² The regulations further indicate that, in evaluating the environmental impact

⁴⁷⁵ Regulations of the National EIA System, arts. 17 to 28.

⁴⁷⁶ *Id.*, art. 36.

⁴⁷⁷ Decree 1,220 of 2005, art. 21.

⁴⁷⁸ GENERAL REGULATIONS FOR EIA PROCEDURES art. 40.

⁴⁷⁹ EIA Procedures 5.4.1, 5.4.4, and 5.4.6.

⁴⁸⁰ ENVIRONMENTAL PROTECTION ACT, 12 (1).

⁴⁸¹ EIA GUIDELINES, p. 7.

⁴⁸² LGEEPA, art. 35.

statement, the Secretary must consider: the action's potential impacts on ecosystems; the use of natural resources, taking into account the ecosystem's carrying capacity; and the proposed prevention and mitigation measures.⁴⁸³

- ix. **Panama.** The environmental authority must evaluate the EIS considering: the technical, environmental, and sustainability aspects of such study; appropriate treatment of the minimum contents set by the regulations; the significance of the environmental impacts; and the presentation of mitigation, compensation, or reparation measures.⁴⁸⁴
- x. **Uruguay.** The regulations establish that the national environmental authority will only authorize projects with admissible environmental impacts, defined as those that do not generate pollution, devastation, or destruction of the environment.⁴⁸⁵
- xi. **Venezuela.** The norm only indicates that the authorizations issued by the national environmental authority must be for actions that are consistent with the regional development plans (*planes de ordenamiento territorial*), or in their absence, with the criteria defined by the Organic Law of Regional Development.⁴⁸⁶ Such criteria include: the possibility of providing public services in response to a growing demand arising from the approved action; the soil's conditions and natural vocation, existing land use regulations, and ecological constraints, among others.⁴⁸⁷

⁴⁸³ LGEEPA EIA REGULATIONS, art. 44.

⁴⁸⁴ Decree 209, art. 41.

⁴⁸⁵ Decree 349/05, art. 17.

⁴⁸⁶ Decree 1.257, art. 10.

⁴⁸⁷ Organic Law of Regional Development, art. 76.

X. Environmental Management and Follow-Up Mechanisms

1. Introduction

One of the fundamental contributions of EIA is the identification of mitigation measures that can be implemented to avoid, minimize, or offset the negative effects associated with the selected alternative. The effectiveness of the mitigation measures naturally depends on their adequate implementation, which is why most environmental licenses or permits issued after an EIA include such measures as conditions for the operation or installation of the proposed action.

The EIA process also generally includes a follow-up mechanism that helps authorities to ensure that the conditions for approval are fulfilled, to monitor whether the action's environmental impacts are similar to those predicted by the EIS, to assess whether the selected mitigation measures are effective, and to generate information to improve other EIAs.

The EIA systems adopted throughout Latin America vary significantly in terms of the mitigation and follow-up requirements that project developers must fulfill once their projects have been authorized. In one extreme of the spectrum, Argentina and Mexico only require mitigation measures, without calling for a structured plan or program to ensure that such measures are systematically incorporated into the action's operations. In the middle of the spectrum, 8 countries mandate structured plans or programs for both environmental management and follow-up activities. Finally, at the other extreme, the 10 remaining countries require a substantial number of instruments, some of which are intended to cover wide areas such as environmental education, closure and remediation of the project's site, compliance with environmental legislation, and emergency response, among others.

Independently of the number of plans or programs that are required, these instruments are often used as remedies for the lack of legally established environmental standards or formal governmental programs. In these cases, the mitigation measures are not necessarily related to the impacts that the action is expected to generate, but to activities, such as reforestation or education, that are socially desirable but that the authority is unable to carry out because of its constrained resources.

One of the greatest paradoxes of EIA systems in Latin America is that, although EIA is extensively used as an environmental management tool through which the authority aims to ensure that a wide number of projects or activities operate within specific environmental parameters, most countries rarely monitor the action's impacts after the corresponding license or permit has been issued, mainly due to lack of resources. This has been a consistent finding in studies conducted in Central America (comprising Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama)⁴⁸⁸, and country studies conducted in Brazil,⁴⁸⁹ El Salvador,⁴⁹⁰ Guatemala,⁴⁹¹ and Peru.⁴⁹²

⁴⁸⁸ ASTORGA, *supra* note 3.

⁴⁸⁹ WORLD BANK, EL SALVADOR: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 10.

2. Environmental Management and Supervision under NEPA

The record of decision that the lead agency must prepare to formalize its decision must explain what mitigation measures have been adopted, as well as the reasons why additional measures were not adopted, and provide a monitoring and supervision program.⁴⁹³

The mitigation conditions established in the Environmental Impact Statement (EIS) or committed as part of the decision must be implemented by the lead agency or other appropriate agencies. Furthermore, the lead agency must include the appropriate condition in grants, permits, and other approvals; condition funding of actions on mitigation; and upon request, make available to the public the results of relevant monitoring.⁴⁹⁴

3. Environmental Management and Supervision Instruments in Latin America

a) Countries that Require Mitigation Measures.

- i. **Argentina.** The law establishes that, as part of its minimal contents, EIS must include actions to mitigate potential negative effects.⁴⁹⁵
- ii. **Mexico.** Based on the regulations, the Particular MIA must incorporate information on measures to prevent and mitigate environmental impacts.⁴⁹⁶ The Regional MIA must include strategies to prevent and mitigate cumulative and residual environmental impacts in the regional environmental system.⁴⁹⁷ The authority has the power to require additional preventive and mitigation measures.⁴⁹⁸

b) Countries that Require an Environmental Management Plan and/or a Follow-Up Plan

- i. **Belize.** According to the Environmental Protection Act, an EIA must include the measures that the developer intends to undertake to mitigate any adverse environmental effects.⁴⁹⁹ The regulations further require all EIA processes to include the design and implementation of a follow-up program.⁵⁰⁰ In addition, the EIA report must include a monitoring plan and a mitigation plan.⁵⁰¹
- ii. **Brazil.** Among the mandatory technical activities for the EIS is the definition of measures to mitigate negative impacts, such as the

⁴⁹⁰ *Id.*

⁴⁹¹ WORLD BANK, GUATEMALA: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 8.

⁴⁹² World Bank (2007)

⁴⁹³ 40 C.F.R. § 1505.2(c).

⁴⁹⁴ *Id.* at § 1505.3.

⁴⁹⁵ Law 25.675, art. 13.

⁴⁹⁶ LGEEPA EIA REGULATIONS, art. 12.

⁴⁹⁷ *Id.*, art. 13.

⁴⁹⁸ *Id.*, art. 45.

⁴⁹⁹ ENVIRONMENTAL PROTECTION ACT, art. 20 (3).

⁵⁰⁰ ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, reg. 6 (c).

⁵⁰¹ *Id.*, regs. 19 (k) and (l).

installation of controls and systems to treat wastes. Additionally, the EIS must include the elaboration of a monitoring and follow-up program for positive and negative impacts that indicates the parameters or factors that will be used.⁵⁰²

- iii. **Costa Rica.** The environmental form presented for actions of any category must include a description of the measures that will be carried out to prevent, correct, and mitigate potential environmental impacts.⁵⁰³ Projects with low potential environmental impacts (categories C and B2 with an approved regulatory plan), are only required to comply with existing environmental legislation and the Code of Good Environmental Practices.⁵⁰⁴ B2 actions without an approved regulatory plan must present an Environmental Impact Sworn Statement, committing to carry out the environmental measures proposed by the developer, as well as any additional measures dictated by SETENA.⁵⁰⁵ B1 actions must prepare an Environmental Management Plan (*Plan de Gestión Ambiental*) that includes measures aiming to avoid, mitigate, correct, compensate or remediate environmental impacts.⁵⁰⁶ For actions with high potential environmental impacts (Category A Actions), SETENA must establish a monitoring and oversight procedure that may include: requirements for the elaboration of periodic reports by the developer; registration of the action's environmental management in an environmental log; and the carrying out of inspections or environmental audits.⁵⁰⁷
- iv. **Dominican Republic.** According to the law, every environmental license or permit must include the Environmental Management and Adjustment Program (*Programa de Manejo y Adecuación Ambiental-PMAA*), as well as the corresponding supervision and compliance mechanisms. The program must be based on the environmental parameters and indicators of the National Environment and Natural Resources Information System.⁵⁰⁸ The program must include self-monitoring mechanisms that support the elaboration of the reports that the developer must periodically submit to the authorities.⁵⁰⁹ The regulations further establish that the Environmental Impact Statement and the Environmental Report must include a detailed PMAA.⁵¹⁰ EIS must also include a detailed PMAA, but such Program must comprise follow-up and emergency response sub-programs.⁵¹¹
- v. **El Salvador.** Based on the regulations, the EIS must include an Environmental Management Program (*Programa de Manejo Ambiental*) that must comprise: identification, ranking, and quantification of measures to prevent, mitigate, and compensate environmental impacts, as well as determination of the corresponding necessary investments; monitoring;

⁵⁰² Resolution No. 001 of 1986 art. 6.

⁵⁰³ GENERAL REGULATIONS FOR EIA PROCEDURES arts. 8, 9.

⁵⁰⁴ *Id.*, art. 14.

⁵⁰⁵ *Id.*, art. 21.

⁵⁰⁶ *Id.*, art. 24.

⁵⁰⁷ *Id.*, art. 30.

⁵⁰⁸ LEY 64-00, art. 43.

⁵⁰⁹ *Id.*, art. 46.

⁵¹⁰ Regulations of the Environmental Permits and Licenses System, art. 18.

⁵¹¹ *Id.*, art. 19.

operations closure and rehabilitation, if applicable; and the study of environmental risk and management, if necessary.⁵¹²

- vi. **Nicaragua.** According to the regulations, the resolution issued by the environmental authority to authorize an action subject to an EIA must include the mitigation measures, the monitoring requirements, and the environmental management plan that the developer is obligated to implement.⁵¹³
- vii. **Paraguay.** The law requires that all EIAs include an Environmental Management Plan that must include the protective and mitigation measures, contemplated compensations and indemnities, the supervision, monitor and oversight instruments that will be used, as well as any additional provisions contemplated in the regulations.⁵¹⁴
- viii. **Venezuela.** The scope and content of the EIS must include a description of the preventive, mitigation, and corrective measures for the potential impacts of the considered alternative actions; Follow-Up Program; and guidelines of the Environmental Supervision Plan, which must be prepared by a registered consultant.⁵¹⁵

c) Countries that Require Various Plans or Programs

- i. **Bolivia.** The regulations indicate that the EIS must include a risk analysis and an Emergency Plan, if the proposed action is associated with hazardous substances or if it involves a high risk for nearby population centers. The EIS must further incorporate a proposal of measures to mitigate negative impacts; a Prevention and Mitigation Program (*Programa de Prevención y Mitigación*) that contains all measures to avoid, reduce, remediate or compensate negative environmental effects; an Environmental Compliance and Supervision Plan (*Plan de Aplicación y Seguimiento Ambiental*) that aims to ensure compliance with protection measures and facilitate evaluation of the action's actual impacts; and a program for operation closure and area remediation, if necessary.⁵¹⁶
- ii. **Chile.** The law and its regulations require the EIS to include a Plan of Mitigation, Remediation and/or Compensation Measures (*Plan de Medidas de Mitigación, Reparación y/o Compensación*). In addition, the EIS must include a Follow Up Plan to monitor the relevant environmental variables that trigger the preparation of the EIA, as well as a plan for compliance with applicable environmental legislation.⁵¹⁷
- iii. **Colombia.** The EIS must include a proposed Environmental Management Plan (*Plan de Manejo Ambiental*), which must include: prevention, mitigation, correction, and compensation measures; a monitoring plan to ensure compliance with environmental responsibilities and obligations, as well as to monitor the action's environmental performance; an emergency

⁵¹² Decree 17, arts. 24-28.

⁵¹³ Decree 45 of 1994, art. 18.

⁵¹⁴ Law 294/93, art. 3.

⁵¹⁵ Decree 1.257, arts. 7 and 29.

⁵¹⁶ REGULATIONS FOR ENVIRONMENTAL PREVENTION AND OVERSIGHT, arts. 23, 30, and 31.

⁵¹⁷ Law 19.300, art. 12; REGULATIONS OF THE EIA SYSTEM, arts. 12, and 57-64.

preparedness plan; and the costs and schedule for the Plan's implementation.⁵¹⁸

- iv. **Ecuador.** The regulations indicate that the EIS must comprise an environmental management plan containing the measures to mitigate, control, and compensate the identified environmental impacts.⁵¹⁹ The EIS must also incorporate provisions for environmental monitoring, which may entail self-monitoring by the action's developer; environmental oversight, which is carried out by the lead environmental agency or an authorized third party with the aim of ensuring compliance with the environmental management plan; environmental audits, which are typically carried out by a third party and may focus on environmental management or compliance with environmental legislation; and community supervision, under which social groups supervise the environmental performance of activities or projects that could potentially affect them directly or indirectly.⁵²⁰
- v. **Guatemala.** The EIS is defined as a technical document that, among other things, describes the measures to avoid, reduce, correct, compensate, and control the adverse effects of a planned action.⁵²¹ Action developers must adopt an environmental management plan, which aims to guarantee that the proposed action complies with legal, technical, and environmental norms.⁵²² The regulations contemplate a set of instruments and procedures to verify the application of mitigation measures. These instruments include: Environmental Diagnosis, which is used to identify the measures that are needed to mitigate environmental impacts; Environmental Audits; which are voluntarily or obligatorily used to verify compliance with the environmental management plan; Environmental Supervision and Monitoring, consisting in data collection to assess compliance with environmental responsibilities; and Complementary Instruments, which are general guidelines or conditions set by the authority to ensure environmental management effectiveness and maintain an efficient and effective information system.⁵²³ In addition to complying with the environmental obligations resulting from the EIS and other supervision instruments, action developers must also comply with additional general requirements established by DGGARN.⁵²⁴
- vi. **Guyana.** The Environmental Protection Act requires that every EIA include a description of the measures that the action developer intends to use to mitigate any adverse effects, and emergency response plan, and the developer's program for rehabilitation and restoration of the environment.⁵²⁵
- vii. **Honduras.** The regulations indicate that the final EIA report must include a Mitigation Plan, Management Plan (if required by the TORs), and a

⁵¹⁸ Decree 1220 of 2005, art. 20.

⁵¹⁹ UNIFIED TEXT OF SECONDARY LEGISLATION, BOOK VI, art. 17.

⁵²⁰ *Id.*, art. 19.

⁵²¹ Governmental Agreement 23 of 2003, art. 15.

⁵²² *Id.*, art. 3.

⁵²³ *Id.*, art.

⁵²⁴ *Id.*, art. 26.

⁵²⁵ ENVIRONMENTAL PROTECTION ACT, 11 (5).

Follow-Up and Supervision Plan (*Plan de Seguimiento y Control*).⁵²⁶ The action developer signs a contract with the national environmental authority, whereby the former commits to carry out, directly or through a third party, the follow-up and supervision actions.⁵²⁷

- viii. **Panama.** The regulations indicate that all actions subject to an EIA must include an Environmental Management Plan, but the components of such plan vary depending on its environmental category. In all cases, the Plan must indicate the mitigation measures that will be implemented, the implementing entity, monitoring arrangements, and the associated costs. Additional requirements for categories II and III include a Risk Prevention Plan, Fauna Relocation and Rescue Plan, Environmental Education Plan, Emergency Response Plan, Environmental Remediation and Post-operation Plan, and a Closure Plan, among other requirements.⁵²⁸
- ix. **Peru.** The law indicates that the initial request for an environmental certificate for a proposed action must include information on the planned prevention, mitigation, and correction measures.⁵²⁹ The EIS must comprise the environmental management strategy or the definition of environmental goals, including as appropriate, the management plan, the emergency response plan, the compensation plan, and the closure plan. In addition, the EIS must contain plans for follow-up, supervision, and oversight.⁵³⁰
- x. **Uruguay.** According to the regulations, the EIS must determine the mitigation measures that will be adopted, as well as estimates of the residual environmental impacts that would take place even if such measures were adopted. The EIS must consider: mitigation measures; risk prevention and emergency response plans; compensatory or remediation measures; environmental management plans; site closure programs; and a follow-up, supervision, and auditing plan that will include a plan to monitor the relevant environmental factors within the project's area of influence.⁵³¹

⁵²⁶ SINEIA REGULATIONS, art. 53.

⁵²⁷ *Id.*, art. 71.

⁵²⁸ *Id.*, art. 27.

⁵²⁹ Law 27446, art. 7.

⁵³⁰ *Id.*, art. 10.

⁵³¹ Decree 349/05, art. 12.

XI. Conclusions

The comparative analysis of EIA systems highlights the differences and similarities of the systems that have been adopted across Latin America. There are substantial differences among countries in each of the components considered in this analysis, stemming from the level of detail with which EIA systems have been regulated, as well as from the relative importance that each country has assigned to the components of the system, such as public participation or inter-agency coordination. However, EIA systems also have similar characteristics, largely originating from the shared conception of EIA as an environmental management tool. This section presents the main findings of the analysis, while Annex 1 presents a table summarizing the characteristics of the EIA system in each of the Latin American countries considered in this analysis.

Nature of EIA

In the US, EIA is conceived as a process to incorporate the environmental and social concerns of different stakeholders into the decision-making of Federal authorities. Underlying this conception is the notion that the decision-making process is strengthened when the authority is capable of systematically incorporating the views and opinions of all relevant stakeholders on the decision at hand. In contrast, Latin American countries have used EIA as an environmental management tool to control the environmental impacts of a broad range of projects. Through EIA, authorities often establish design and operation conditions that aim to compensate for the lack of adequate environmental standards.

Differences in the nature of EIA translate into differences in most of the components of the EIA system, including stakeholders' roles and responsibilities, formal requirements for the EIA process, and the degree to which EIA can influence public decision-making. For example, in the US, compliance with NEPA is mainly the responsibility of public decision-makers. In Latin America, the responsibility for environmental compliance falls on project developers, who must meet EIA-related requirements that are evaluated and enforced by the authority.

Institutional Leadership in the EIA System

Under NEPA, the Federal agency that proposes an action is responsible for supervising the preparation of the EIA. If more than one agency proposes the action, responsibility for supervising the EIA process is defined by criteria such as the magnitude of the agency's involvement or its expertise on the expected environmental impacts. Other agencies that are involved or have appropriate experience participate as cooperative agencies. Under this model, the environmental authority only leads the preparation of EIAs when it proposes, or is involved in an action with potentially significant environmental effects.

In Latin America, supervising the EIA process is the mostly the responsibility of environmental agencies. Only in Ecuador and Peru do sector agencies play a lead role in the EIA process, while in Panama, sectoral environmental units may be granted authority to oversee the EIA process. The prominent role of environmental agencies is associated with the conception of EIA as an environmental management tool.

Screening

The screening process under NEPA is based on the significance of the effects resulting from the action, which is determined based on the action's context and intensity. In Latin America, screening is mostly based on the use of lists that indicate the actions that call for an EIA. The main differences across countries in the region refer to the flexibility that the lead agency has in terms of expanding, narrowing, or interpreting the list.

The use of lists as screening devices presents a series of challenges, as they often fail to consider the significance of the impacts of a proposed action. As a result resource-intensive EIAs are often required for actions with manageable effects, while actions that are likely to generate significant impacts are not subject to an EIA. The ineffectiveness of lists as screening mechanisms, coupled with the excessive use of EIA as the main environmental management tool, explain why nearly 2,000 EIA applications are submitted yearly in Guatemala,⁵³² compared to an average of 550 in the US.⁵³³

Scoping

Public consultations during the scoping process provide an opportunity to ensure that the EIA considers the impacts of greater concern for all stakeholders. NEPA aims to take advantage of this opportunity by requiring the lead agency to invite comments from stakeholders to identify the issues to be analyzed in depth. However, in Latin American, only Ecuador, Guyana, and Honduras contemplate an open scoping process. 7 additional countries have an informal scoping process through which stakeholders may be consulted, if deemed necessary by the authority or the action developer. In the remaining 10 countries, the scope of the assessment is defined by the legal framework, without providing opportunities for public input.

In addition to the limited role of public participation in the scoping stage, Terms of Reference (TORs) for the Environmental Impact Study (EIS) are based on generic documents in 16 countries, and therefore, do not necessarily consider the specific characteristics of each action. 7 countries have no legal provisions regarding the preparation of the TORs, but their legal framework defines the minimum content of the EIS. In 6 additional countries, the developer is responsible for preparing the TORs, which must then be approved by the authority. In the remaining 7 countries, the authority is responsible for establishing the TORs.

Preparation of the Environmental Assessment

Under NEPA, the EIA is expected to result in an action for which the lead agency will be held accountable. Thus, although the regulations contain few provisions regarding who may prepare the necessary studies, the agency has an incentive to hire a consultant whose work will provide adequate support for such decision. In contrast, project developers are responsible for hiring the EIA preparers in Latin America. Developers have incentives to hire a consultant who is not necessarily interested in enhancing the

⁵³² WORLD BANK, GUATEMALA: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 8.

⁵³³ Average for statements filed annually between 1997 and 2006. The number of statements filed annually was significantly higher during the early years of NEPA. U.S. CEQ, *Environmental Impact Statements Filed 1970 Through 2006*, at http://www.nepa.gov/nepa/EISs_by_Year_1970_2006.pdf.

decision-making process, but instead, in meeting the minimum legal requirements and overcoming any potential objections to the project.

To ensure that the documents prepared as part of an EIA are adequate, 16 countries have adopted legal provisions indicating the qualifications and/or expertise that the consultant must have. In addition, 10 countries require that the consultant be inscribed in a formal registry. While these requirements do not modify the developers' incentives, they do constitute barriers to entry and generate opportunities for illegal or unethical practices.

Public Participation

The involvement of different stakeholders in the EIA process, particularly of those groups that are likely to be affected by the development of an action, has multiple objectives, including ensuring the legitimacy and credibility of the EIA. All countries reviewed in this paper legally require some form of public participation during the EIA process, although some studies point at the informative character of most consultations, in which participants are merely notified about decisions that have already been made.⁵³⁴

The comparative analysis focuses on four areas of public participation. In terms of inter-agency coordination, 8 countries require that the responsible authority consult other agencies, 10 countries specify conditions under which inter-agency coordination must take place, and only Argentina (at the national level) and El Salvador do not explicitly require inter-agency coordination.

Regarding public participation, 9 countries provide opportunities to receive public input during various stages of the EIA process, 9 countries only require that consultations take place prior to the evaluation of the EIS, and in Mexico and Venezuela, public consultations are only carried out under specific circumstances.

Legal provisions regarding access to information also vary significantly across countries. While all EIA-related information (except classified information) is available to the public in 5 countries, only the final EIS is available to the public in 10 countries, the public has access to a summary or abstract of the EIS in 4 countries, and Costa Rica's legal framework does not mention anything in this regard.

Finally, in 6 countries public hearings are mandatory, at least for one category of EIA. In other 9 countries, public hearings may be organized if deemed necessary by the authority and/or on request by interested parties. The 5 remaining countries do not contemplate public hearings in their legal frameworks.

Evaluation of Alternatives

The evaluation of alternatives allows stakeholders to select the viable, most environmentally sound option for achieving a desired goal. It is for this reason that

⁵³⁴ U.S. CEQ, *supra* note 5; ASTORGA, *supra* note 3; WORLD BANK, COLOMBIA: MITIGATING ENVIRONMENTAL DEGRADATION World Bank, *supra* note 2; and World Bank; WORLD BANK, EL SALVADOR: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 10; WORLD BANK, GUATEMALA: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 8; and 2007).

NEPA regulations consider that the analysis of alternatives is “the heart of the environmental impact statement.”⁵³⁵

In Latin America, only in Ecuador and Colombia do authorities have the power to consider an alternative that is different from the one selected by the developer. In 14 other countries, an analysis of alternatives is required, but mostly to justify why the developer’s choice was selected over other viable alternatives. In the remaining 4 countries, the legal framework does not require an evaluation of alternatives.

Evaluators and Evaluation Criteria

In the US, the authority can make its decision regarding a proposed action if the EIA has met a series of procedural and content requirements, including whether the statement was prepared according to the defined scope and whether it responded to received public comments.

In comparison, under the model adopted by Latin American countries, the authority evaluates the EIA prepared by the developer and determines whether the assessment meets all legal requirements. In 9 countries there are no explicit evaluation criteria and the authorities must therefore assess whether the documents are consistent with the legal framework. In the remaining 11 countries, the legal framework provides evaluation criteria, which range from verifying that the documents are consistent with the TORs to general environmental goals to which the proposed action is expected to contribute. In all cases, the decision-maker has significant discretionary powers to decide whether the EIA is valid or not, and the decision to approve the EIA is based on the official’s own interpretations or views.

Environmental Management and Follow-Up Mechanisms

The EIA process generally includes environmental management and follow-up mechanisms that help authorities to ensure that the conditions for issuing the environmental license are fulfilled, to monitor whether the action’s actual environmental impacts are similar to those predicted by the EIS, and to assess whether the selected mitigation measures are effective. Despite the importance of these mechanisms, studies conducted both in the US⁵³⁶ and in Latin America⁵³⁷ conclude that authorities rarely monitor the action’s impacts after the corresponding license or permit has been issued.

In Latin America, Argentina and Mexico require the definition of mitigation measures as part of the EIA, but do not call for a structured plan or program to ensure that such measures are systematically integrated into the action’s operation. In 9 additional countries, the legal framework mandates the preparation of structured plans or programs for environmental management and/or follow-up activities. Finally, the remaining 9 countries require a substantial number of instruments that may cover a broad range of issues, from environmental education to emergency preparedness.

⁵³⁵ 40 C.F.R. § 1502.14.

⁵³⁶ U.S. CEQ, *supra* note 5.

⁵³⁷ ASTORGA, *supra* note 3; WORLD BANK, COLOMBIA: MITIGATING ENVIRONMENTAL DEGRADATION World Bank, *supra* note 2; WORLD BANK, EL SALVADOR: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 10; WORLD BANK, GUATEMALA: COUNTRY ENVIRONMENTAL ANALYSIS, *supra* note 8.

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Annex 1: Characteristics of EIA Systems in Latin America

	Terminology	Environmental Authorities	Legal Character of EIA
	Abbreviations (in national language) used in regulations <i>Common abbreviations:</i> EIA: Environmental Impact Assessment EIS: Environmental Impact Study SEA: Strategic Environmental Assessment	Entities and authorities with responsibility for environmental issues, particularly regarding EIA	Legal character of EIA instruments
Argentina	LGA: General Law on the Environment (Law No. 25,675) Note: There are sectoral and provincial EIA regulations, but no general regulation at the federal level	Sectoral and Provincial authorities	Instrument of environmental policy and management
Belize	DOE: Department of the Environment NEAC: National Environmental Appraisal Committee	Ministry of Natural Resources and the Environment DOE NEAC	Instrument for analyzing impacts and risks and for recommending mitigation measures
Bolivia	DIA: Environmental Impact Statement CD: Certificate of Compliance FA: Environmental File OTB: Registered Local Grassroots Organization PASA: Environmental Implementation and Monitoring Plan	MRADE: Ministry of Rural and Agricultural Development and the Environment Vice Ministry of Biodiversity, Forest Resources, and Environment Departmental governments Municipal governments	Instrument for environmental planning; technical procedures, studies, and systems to determine the environmental impact of works, activities, or projects; environmental licensing (DIA)
Brazil	RIMA: Environmental Impact Report CSMA: High Council on the Environment (<i>Conselho Superior do Meio Ambiente</i>) IBAMA: Brazilian Institute for the Environment and Renewable Natural Resources	CSMA CONAMA: National Environmental Council IBAMA State governments Municipal governments	Requirement for a permit prior to construction, installation, expansion, or operation of facilities and activities covered by the regulations
Chile	DIA: Environmental Impact Statement (<i>Declaración de Impacto Ambiental</i>) SEIA: Environmental Impact Assessment System	CONAMA: National Environmental Commission COREMA: Regional Environmental Commission Agencies with environmental and sectoral responsibilities	Procedure to determine if the environmental impact of an activity or project complies with prevailing regulations
Colombia	AAU: Urban Environmental Authority CARs: Regional Autonomous Corporations (includes Sustainable Development Corporations) LA: Environmental License	MAVDT: Ministry of the Environment, Housing, and Territorial Development CARs AAUs (in cities larger than 1 million and in historic and tourist districts)	Authorization to carry out works or activities, subject to meeting conditions for prevention, mitigation, remediation, compensation, and management of environmental impacts
Costa Rica	SETENA: National Environmental Technical Secretariat	SETENA	Required prior to beginning specific activities, works, or projects
Dominican Republic	DIA: Environmental Impact Statement LA: Environmental License PMAA: Environmental Management and Adaptation Program (<i>Programa de Manejo y Adecuación Ambiental</i>)	SEMARN: Ministry of Environment and Natural Resources	Instrument for environmental policy and management
Ecuador	SUMA: Unified System of Environmental Management LA: Environmental License FA: Environmental File (<i>Ficha Ambiental</i>)	AAN: National Environmental Authority AAA: Environmental Enforcement Authority AAAr: Responsible AAA AAAc: Cooperating AAA	Instrument for applying environmental regulations; guarantees that officials and public have access to environmental information on activity or project prior to implementation decision; sustainable development
El Salvador	FA: Environmental Form (<i>Formulario Ambiental</i>) SINAMA: National System of Environmental Management	MARN: Ministry of Environment and Natural Resources	SEA: Environmental impacts of policies, plans, and programs EIA: Ensures that activities, works, and projects follow procedures to identify and quantify impacts and mitigation measures

	Terminology	Environmental Authorities	Legal Character of EIA
	<p>Abbreviations (in national language) used in regulations</p> <p><i>Common abbreviations:</i> EIA: Environmental Impact Assessment EIS: Environmental Impact Study SEA: Strategic Environmental Assessment</p>	<p>Entities and authorities with responsibility for environmental issues, particularly regarding EIA</p>	<p>Legal character of EIA instruments</p>
Guatemala	EAE: Strategic Environmental Assessment EAI: Initial Environmental Evaluation ERA: Environmental Risk Assessment SIA: Social Impact Assessment EEA: Evaluation of Cumulative Impacts	DGGARN: General Directorate of Environmental and Natural Resources Management MARN: Ministry of Environment and Natural Resources and its local offices	Instruments to systemically identify and evaluate the environmental impacts of a project, work, industry, or other activity during its planning, implementation, operation, and closure
Guyana	EP: Environmental Permit EIS: Environmental Impact Statement	EPA: Environmental Protection Agency EAB: Environmental Assessment Board Sectoral agencies	Instrument to provide information for identification and planning to help avoid or minimize environmental impacts and strengthen sustainable development
Honduras	DECA: Office of Environmental Evaluation and Oversight	DECA	Process aims to identify, predict, and describe possible positive and negative impacts of project and propose measures to mitigate negative impacts and a plan for oversight and monitoring
Mexico	MIA: Environmental Impact Assessment (Manifestación de Impacto Ambiental) IP: Preventive Report (Informe Preventivo)	SEMARNAT: Ministry of Environment and Natural Resources	Procedures protect environment and avoid or reduce negative impacts by setting conditions for construction or activities that could disrupt ecological balance or violate established limits and conditions
Nicaragua	FA: Environmental Form DIA: Environmental Impact Statement	MARENA: Ministry of Environment and Natural Resources	Instrument for environmental policy and management, consisting of procedures, studies, and technical systems for predicting the impacts of a specific work, activity, or project
Panama	DIA: Environmental Impact Statement EP: Preliminary Study RA: Environmental Resolution AC: Responsible Authority AS: Sectoral Authority	ANAM: National Environmental Authority UAR: Regional Environmental Unit UAS: Sectoral Environmental Unit	Instrument for environmental management; early warning system based on continuous analysis that enables preventive decision-making to protect environment
Paraguay	DIA : Environmental Impact Statement RIMA: Environmental Impact Report	SEAM: Ministry of Environment General Directorate for Oversight of Environmental Quality and Natural Resources	Environmental policy instrument to ensure systematic examination of environmental impacts of an action and its alternatives
Peru	AC: Responsible Authority in each sector EIA-d: Full Environmental Impact Assessment EIA-sd: Partial Environmental Impact Assessment	National and sectoral agencies with environmental responsibilities CONAM: National Environmental Council	Instrument for environmental management, policy implementation, and enforcement; ensures public right to information and participation; instrument for decision-making on environmental viability
Uruguay	AAP: Prior Environmental Authorization EslA-p: Sectoral or Partial Environmental Impact Study EslA-c: Full Environmental Impact Study	MVOTMA: Ministry of Housing, Regional Planning, and Environment DINAMA: National Environment Office	Instrument for environmental management
Venezuela	MA: Ministry of the People's Power for the Environment (Ministerio del Poder Popular para el Ambiente)	MA	Part of process for incorporating environmental concerns in policies, plans, programs, and projects; predict and assess impacts; verify compliance with decrees

	Goal	Screening	Types of EIA Instruments
	Activities subject to EIA; distinguishes between countries in which EIA refers only to projects and works and those that also include policies, plans, and programs (SEA)	Procedure to determine whether an activity is subject to EIA and the extent of the respective study	Different types of EIA instruments, their level of complexity, and their focus
Argentina	Only EIA: works and activities are evaluated	Determined by provincial and sectoral regulations	The LGA does not establish specific EIA instruments
Belize	EIA and SEA: activities, projects, structures, works, policies, proposals, plans, and programs are evaluated	Minister issues regulations listing projects that (a) require, (b) do not require, and (c) may require EIA depending on size and location.	Only one type of EIA; authority determines its extent and scope
Bolivia	EIA: works, activities, and projects are evaluated SEA: plans and programs are evaluated	Based on FA, the relevant authority applies criteria set by regulations to determine EIA category; regulations include list of exempted activities, for which a CD (waiver) is issued	Category 1: Integrated analytical EIA Category 2: Specific analytical EIA of one or more factors Category 3: Characteristics already known, only require mitigation and PASA Category 4: Does not require EIA
Brazil	Only EIA: facilities and activities are evaluated	CONAMA's regulations include a list of projects that must have an environmental license; based on the list, the responsible authorities define the criteria used to determine whether an EIA is required	EIA must be prepared to obtain 3 sequential licenses: 1. Preliminary license (LP, <i>Licencia previa</i>) 2. Construction license (LI, <i>Licencia de instalación</i>) 3. Operating license (LO, <i>Licencia de operación</i>)
Chile	EIA: activities, projects, and regional urban development plans are evaluated	Projects or activities specified in law and regulations; EIS is required if project or activity causes any impacts identified in laws or regulations, otherwise only DIA is needed; includes thresholds	DIA: description of impacts and declaration of compliance with environmental legislation EIS
Colombia	Only EIA: works and activities are evaluated	Law and regulations define projects, works, and activities that require EIA	No categories
Costa Rica	Only EIA: activities, works, projects, and regulatory plans are evaluated	Law and regulations determine which activities, works, and projects do and do not require EIA	Full EIS Sworn Statement of Environmental Responsibilities Code of Good Environmental Practices
Dominican Republic	EIA: projects, civil works, industry, and activities evaluated SEA: public administration policies, plans, and programs evaluated	Law defines list of projects that require EIA (list can be expanded) and SEMARN determines type of study required for each project category	DIA for projects requiring environmental permit EIS for projects requiring LA Exempted projects
Ecuador	Only EIA: activities, works, and projects are evaluated	AAAr determines need for EIS, which can include detailed list, thresholds, criteria, and classification methods Required for all activities in Galapagos or other protected areas	One category FA must be submitted when EIS is not required
El Salvador	EIA: activities, works, and projects evaluated SEA: policies, plans, programs, laws, and norms evaluated	Law defines which cases, in principle, require EIA; Ministry determines, based on FA, if it is necessary	SEA EIA

	Goal	Screening	Types of EIA Instruments
	Activities subject to EIA; distinguishes between countries in which EIA refers only to projects and works and those that also include policies, plans, and programs (SEA)	Procedure to determine whether an activity is subject to EIA and the extent of the respective study	Different types of EIA instruments, their level of complexity, and their focus
Guatemala	EIA: projects, works, industries, and activities evaluated SEA: national and governmental policies and plans, projects of transnational significance evaluated	Detailed list of projects, works, industries, and activities requiring EIS is approved by ministerial agreement Activities classified into three EAI categories to determine which EIA instrument is required	EAE, EAI, EIS, ERA, SIA, EEA
Guyana	EIA: execution of projects is evaluated SEA: policies, plans, and programs are evaluated if they significantly affect the environment	List of projects and other activities that can significantly affect the environment EPA sets criteria and thresholds to determine if project requires EIA	No categories
Honduras	Only EIA: projects, industrial facilities, and any other public and private activity are evaluated	List of the projects that require an EIA is set, as well as criteria to determine when it is not necessary	Category I: Environmental Form and Follow-Up and Control Plan, but no EIA Category II: Requires EIA
Mexico	EIA: works and activities are evaluated In SEA, plans and partial programs for urban development and/or ecological planning are evaluated	Law and regulations establish works and activities that require EIA SEMARNAT may grant exemption based on criteria set in regulations States and Federal District (DF) can demand EIA for other projects	1. Requires regional MIA 2. Requires specific MIA 3. Only requires IP
Nicaragua	Only EIA: activities, works, and projects are evaluated	Law provides exhaustive list of projects that require EIA; MARENA can request that the President of the Republic expand the list	Single category FA must be submitted when the project, works, industry, or activity is not included in the detailed list
Panama	EIA: activities, works, and projects are evaluated, SEA: plans and programs are evaluated	There is an exhaustive list of activities, works, and projects that require EIA; ANAM can modify the list	EIS—Category I: no significant impacts; sworn statement presented EIS—Category II: significant impacts that can be easily avoided or mitigated EIS—Category III: significant impacts requiring EMP
Paraguay	EIA and SEA: works and activities are evaluated; but in the regulations a proposed action is defined as a project, program, plan, or policy	Law and regulations determine the works and activities that require EIA; SEAM can require EIA for other activities, based on criteria provided in the regulations	Single EIA category Some projects require EIS, others do not or can be exempted In some cases, only mitigation, compensatory measures, or EMP required
Peru	EIA: works and activities are evaluated	EIA regulations that define actions subject to EIA are yet to be issued; sectoral organisms have issued their own norms	Category I. Environmental Impact Statement Category II. EIA-sd Category III. EIA-d
Uruguay	Only EIA: activities, construction projects, and works are evaluated	Law defines activities and works that require EIS; executive branch issues rules on minimum criteria; other criteria added by agreement between President and Minister	Category A: No EIA Category B: EslA-p Category C: EslA-c
Venezuela	EIA and SEA: policies, plans, programs and projects are evaluated	Regulations define activities requiring EIA ; Ministry may require EIA in other cases based on review of documents of intent	EIS Specific Environmental Assessment, when full EIS is not necessary

	Scoping	Decisionmaking Responsibility	Terms of Reference (TORs)
	<i>Procedure by which scope and focus of EIA is defined (through dissemination of information to stakeholders and consultation on planned activity); if there is no specific procedure, the regulations define the minimum scope</i>	<i>Authority responsible for final decision in the EIA process</i>	<i>Who defines the content of the TORs and who conducts the corresponding study</i>
Argentina	No provision; the scope includes analyzing actions that damage the environment or that significantly affect the population's quality of life	Sectoral and provincial agencies	Specific laws determine requirements for EIS
Belize	Minister regulates EIA procedures; scope includes identifying and analyzing impacts on people, the environment, natural resources, cultural heritage, landscapes, and ecological balance	DOE	Ministry regulation prescribe content and guidelines; proponent submits draft TORs for DOE approval; DOE can provide TORs in response to a specific request; study must be conducted by a suitably qualified person
Bolivia	No formal scoping procedure The proponent must consult the community during the project classification stage and before carrying out the EIS	Vice Ministry of Biodiversity, Forest Resources, and Environment Departmental governments Municipal governments	Regulations establish basic content For Category 2, the responsible authority defines the scope of the EIS An interdisciplinary team of registered consultants must prepare the EIS
Brazil	The regulations specify the impacts that the EIA must address When requiring an EIS, the relevant authority will specify additional guidelines in accordance with the project's particular features and the area's environmental characteristics	States, municipalities, and in some cases IBAMA	Regulations define general guidelines and technical activities IBAMA or others can set additional guidelines The responsible authority determines the necessary studies The study must be conducted by a qualified multidisciplinary team that is not linked directly or indirectly with the proponent
Chile	No formal scoping process Scope includes potential impacts on human health, natural resources, social conditions, protected areas, landscapes, tourism, and cultural, anthropological, archaeological, and historical heritage	COREMA Executive Director of CONAMA Sectoral permits: responsible ministries or sectoral agencies	Regulations establish minimum content There is no specific provision for who can conduct the study
Colombia	No formal scoping process Scope includes impact on elements of the biotic, abiotic, and socioeconomic environments that can suffer degradation, including significant changes to landscapes	MAVDT CARs AAUs	MAVDT issues TORs for each sector Environmental authorities can adapt TORs or create new ones if needed; general methodology for EIS defined by MAVDT No regulation on who carries out study
Costa Rica	No scoping procedure provided in the law	SETENA	SETENA prepares guidelines (and if necessary, TORs) for activities, works, and projects EIS conducted by interdisciplinary team of registered consultants
Dominican Republic	Developer must hold consultations during preparation of EIS Scope includes impacts on natural resources, environmental quality, health, and psychological and moral wellbeing	SEMARN	SEMARN regulates norms for preparation of EIS and determines TORs for each project or approves specific TORs EIS must be prepared by registered consultants, and if necessary, by an interdisciplinary team
Ecuador	Proponent must consult community before preparing TORs Scope includes impacts on people, biodiversity, nature, ecosystems, public tranquility, historic, scenic and cultural heritage, physical, biotic, sociocultural, and public health environments	AAAr accredited by SUMA	Procedures for defining TORs established by AAAr; proponent presents TORs; authority approves and can modify scope and focus of TORs Study conducted by multidisciplinary team
El Salvador	No formal scoping procedure Scope includes potential impacts on the environment and population (physical, biological, socioeconomic, and cultural environments)	MARN In SEA, each entity or institution conducts the evaluation based on MARN's guidelines	Ministry establishes guidelines EIS has to be conducted by a registered multidisciplinary technical team

	Scoping	Decisionmaking Responsibility	Terms of Reference (TORs)
	<i>Procedure by which scope and focus of EIA is defined (through dissemination of information to stakeholders and consultation on planned activity); if there is no specific procedure, the regulations define the minimum scope</i>	<i>Authority responsible for final decision in the EIA process</i>	<i>Who defines the content of the TORs and who conducts the corresponding study</i>
Guatemala	No formal scope-setting procedure Scope includes identifying and systematically evaluating the environmental impacts of a project, work, industry, or activity	DGGARN	DGGARN designs and issues TORs within its area of authority and determines, with ministerial agreement, TORs for each EIA category SIA carried out by registered consultants
Guyana	Public may submit comments indicating issues to be considered by EIA; EPA defines scope taking into account received comments	EPA	EPA defines TORs with help of sector agencies and consultants Study must be conducted by independent, qualified individual approved by EPA
Honduras	Once project is registered with DECA, public comments may be submitted regarding the scope of the EIA; DECA decides scope, considering received comments	DECA	TORs for each project prepared and approved by a DECA team; TORs can be proposed by developer EIS prepared by qualified individuals
Mexico	No formal scoping procedure Scope includes consideration of ecosystems, their preservation and restoration, and protection of the environment	SEMARNAT States	SEMARNAT provides guidelines for the presentation of MIA and IP IP and MIA can be prepared by any individual
Nicaragua	No formal scoping procedure Scope includes activities that can damage the environment and natural resources or have negative socioeconomic, cultural, biotic, abiotic, or aesthetic impacts	MARENA	MARENA issues technical rules, orders, and guidelines for EIS Specific TORs developed by MARENA and proponent in coordination with sectoral authority Study conducted by interdisciplinary team
Panama	No formal scoping process; Scope includes impacts on human health, flora, fauna, renewable and nonrenewable natural resources, protected areas, landscapes, society, and anthropological, archaeological, historic, or cultural heritage	ANAM UARs and UASs that have been trained and qualified by ANAM	Regulations set minimum contents of EIS; Study conducted by multidisciplinary team registered and certified by ANAM
Paraguay	Interested parties can be consulted about possible impacts Scope includes impacts on life, biodiversity, natural resources, welfare, health, security, habits and customs, cultural heritage, and way of life	General Office for Oversight of Environmental Quality and Natural Resources	SEAM sets specific TORs Study must be conducted by environmental consultants listed in the Technical Registry (<i>Catastro Técnico</i>)
Peru	No scoping process; community consultation possible during project classification stage Scope includes impacts on physical and social environment	Sectoral ministries	Regulations determine content Interested party presents TORs and authority approves Study prepared by authorized organizations with multidisciplinary team
Uruguay	No scoping process Scope includes impacts on public health, security, or quality of life; aesthetic, cultural, or sanitary conditions; and composition, quality, and diversity of natural resources	MVOTMA DINAMA carries out the process	Regulations determine general requirements Suitable professional must be responsible for study
Venezuela	No scoping process Scope includes impacts on physical, natural, and socioeconomic environments	MA	Ministry approves project-specific TORs based on the developer's proposal; study prepared by interdisciplinary team of registered consultants

	Requirements	Institutional Coordination	Public Participation
	<i>Requirements in the TORs related to the impacts that must be taken into account by the EIS</i>	<i>Consultation with public entities and organizations in the EIA process</i>	<i>Provisions for the involvement of the general community or specific parts of the community as well as those directly interested in the EIA process</i>
Argentina	LGA indicates that requirements are established by sectoral and provincial laws EIS must include identification of the project's environmental impacts and mitigation measures	No provisions in LGA	LGA mandates citizen participation in EIA process; procedures for authorizing activities that can generate significant negative environmental impacts must include public hearings
Belize	Must include direct, indirect, cumulative, short- and long-term impacts on humans, flora, fauna, soil, water, air, climatic factors, material goods, cultural heritage, landscape, natural resources, and ecological balance	The NEAC, which is an inter-agency body, reviews the EIA and submits views to DOE	Public must be consulted during preparation of EIS; DOE sets procedures for public consultation and submission of comments; a public hearing can be held by recommendation of the NEAC
Bolivia	Must consider: positive and negative, direct and indirect, temporary and permanent, reversible and irreversible, cumulative, and synergistic impacts on physical, chemical, biological, social, and cultural conditions and environments	Sectoral agencies issue reports on the FA and EIS If there are cross-sectoral repercussions, a cross-sectoral working group is formed to provide reports on classification and EIS	Any individual can present observations, criticisms, and proposals through OTB during the stages of FA review, classification, EIS review, and authorization of the DIA
Brazil	Analyze positive, negative, direct, indirect, short, medium, long-term, temporary, permanent, cumulative, synergistic, and distributional impacts on health, safety, well-being, social and economic activities, biota, the environment, and natural resources	Public agencies that are interested in or directly related to the project receive a copy of the RIMA	Interested parties can present observations on the RIMA within a specified period The responsible authority can hold a public hearing if deemed necessary
Chile	Evaluation of direct, indirect, cumulative, and synergistic impacts on physical, biotic, human, and man-made environments, including economic activities, land use, natural elements, landscapes, historic and cultural heritage	Input must be accepted from the sectoral agencies that issue environmental permits, as well as any other agencies that have a role or responsibility in the matter	CONAMA and COREMA determine specific participation mechanisms Community organizations and directly affected individuals can submit comments on EIS within a specified period
Colombia	Identification and evaluation of impacts on biotic, abiotic, and socioeconomic elements to define which can be prevented, mitigated, corrected, or addressed through compensation	Law establishes period for responsible authority to request technical ideas or reports from other entities and period for reports to be submitted	Any individual may intervene in an administrative procedure for environmental permits and licenses Certain authorities and members of public may request public hearing under certain conditions
Costa Rica	Analysis of significant impacts	Public officials have right to provide inputs or voice opinions to SETENA during EIA process and in operational phase of the work or project	Any individual has the right to be heard by SETENA and to present comments at any stage of EIA process or operational phase SETENA may determine the need for a public hearing
Dominican Republic	Identification and valuation of potential impacts, including direct and indirect, cumulative, and synergistic impacts	The responsible sectoral agencies and local governments must be consulted prior to issuance of environmental permits or licenses	Stakeholders consulted through a hearing during preparation of EIS SEMARN conducts consultations and request comments during EIS review SEMARN holds hearings when required
Ecuador	Identification and evaluation of impacts	AAAc with relevant responsibilities	Public consultation required (meetings, workshops, hearings, information centers, and Internet) for setting priorities for studies, criteria for TORs, and prior to presentation of EIS
El Salvador	Identification, priority setting, prediction and quantification of impacts, interpretation of results, cost-benefit analysis, profitability, and efficiency	If quality of life, human health, and well-being may be affected, a public hearing must be organized in affected municipalities, with participation of municipal governments	Whoever feels affected can express an opinion or submit comments; in special cases there must be a public hearing in the municipalities where the activity will take place

	Requirements	Institutional Coordination	Citizen Participation
	Requirements in the TORs related to the impacts that must be taken into account by the EIS	Consultation with public entities and organizations in the EIA process	Provisions for the involvement of the general community or specific parts of the community as well as those directly interested in the EIA process
Guatemala	Identify and anticipate environmental impacts	Regulations enable DGGARN and MARN to request opinions of other public entities and sets period during which they must be submitted	Proponent must consult population during preparation of SIA; public can present comments and opinions during evaluation of SIA
Guyana	Identification of direct, indirect, and cumulative impacts on environment, including humans, material goods, cultural heritage, natural resources, and ecosystems	EAB must express its opinion prior to the decision to issue an EP Sectoral agencies collaborate in screening of applications, reviewing EIAs, and monitoring compliance with EMP	Public can participate in scoping process, preparation and evaluation of EIS, and submit comments to EPA EAB can determine if a public hearing is required before issuing recommendation
Honduras	Identification of project's positive and negative impacts	Sectoral environmental units assist DECA in elaborating TORs, reviewing EIAs, and carrying out monitoring and follow-up activities	EIS is made available to the public so that comments can be submitted; public hearings organized under specific conditions
Mexico	Environmental forecasts; identification, description and evaluation of the following impacts: environmental, cumulative, synergistic, significant or relevant, and residual	SEMARNAT is entitled to request technical opinions from other federal agencies; in some cases, state and municipal governments must be notified and have opportunity to comment	File available to public; SEMARNAT can conduct public consultations if requested by member of affected community; in special cases public meetings held for information and feedback
Nicaragua	Identification, prediction, and oversight of positive and negative impacts of projects and their alternatives	MARENA must consult on the study with sectoral organizations and municipal governments	Any party can present opinions or suggestions on the environmental impact document, through procedures established by MARENA
Panama	Requirements depend on EIA category Category III EIAs (greatest impacts) require identification, analysis, valuation, and ranking of all negative and positive impacts and induced risks	Regulations establish obligation to request and provide opinions of UARs and UASs related to the issues, environmental components, or impacts of the project	Proponent must involve public during preparation of EIS; ANAM consults community and gathers comments during evaluation of EIS In some cases, a public hearing is required
Paraguay	Analysis of potential positive and negative, direct, indirect, permanent, temporary, reversible, irreversible, continuous, discontinuous, regular, irregular, cumulative, and synergistic impacts	SEAM can consult institutions and agencies likely to be affected by projects	SEAM sets rules for community participation and consultation in project area; can hold hearings to get community feedback
Peru	Possible direct and indirect impacts on physical and social environment in the short and long term; community dynamics and support systems, urban spaces, historic and architectural heritage also included	Responsible authorities can establish review mechanisms with sectoral, regional, or local authorities; participation must be sought from officials responsible for relevant fields	Proponent must consult population during preparation of EIS Responsible authority conducts formal consultation for EIA-d or EIA-sd Public hearings mandatory for EIA-d, optional for EIA-sd; public can comment
Uruguay	Anticipate, identify, evaluate, and quantify potential negative, positive, direct, indirect, individual, and cumulative impacts and risks	MVOTMA requires guidance from national or departmental agencies involved with works or projects Regulations set period for submitting opinions	Interested parties can express opinions during evaluation; public hearings held in special cases
Venezuela	Identification of potential impacts on various environmental components	No provisions in the regulations	MA can order public consultations during the review and evaluation of the study

	Dissemination	Alternatives	Environmental Management Plan (EMP)
	<i>Public notification and dissemination of information generated in the EIA process</i>	<i>Analysis of various alternatives to the planned activity, including not carrying it out</i>	<i>Planned measures to apply during project implementation to address issues and meet requirements identified in the environmental analysis process</i>
Argentina	Authorities must allow public access to any nonclassified environmental information that they manage	No provisions at the federal level	In accordance with LGA, the EIS must include actions to mitigate negative impacts
Belize	After EIS has been presented it must be announced through the media and made available to the public Proponent must present an EIS summary	EIA must include analysis of reasonable alternative sites (if any) and reasons for rejecting them, including the option forgoing implementation	Implementation and Follow-up Program, Mitigation Plan, and Monitoring Plan must be submitted
Bolivia	Summary of EIS required; synthesis of DIA published in Ministry's Bulletin Public can access information on classification and execution of EIS, except when it is legally protected EIA and EIS forms available to public	The EIS must include analysis of alternatives and justification of selected option	Instruments include a Prevention and Mitigation Program, PASA, Contingency Plan, and Accident Prevention Program
Brazil	The information in the RIMA must be comprehensible The public must have access to the RIMA in locations determined by regulation The license request must be published	CONAMA can require studies to analyze alternatives to public and private projects; EIS must consider and compare alternative technologies and locations for the project, including the option of not carrying out the project	EIS must include mitigation measures and a Support and Monitoring Program
Chile	A summary of the EIS must be submitted An abstract must be published The EIS file is open to the public, except for legally protected information	No provisions	There is a Mitigation, Remediation, and Compensation Plan; a Plan to Monitor Environmental Indicators; and an environmental legislation compliance plan
Colombia	Responsible authority must publish act initiating EIA procedure, and its decision, in official Bulletin Anyone can request to be notified of decision; information is public throughout the process	Responsible authority determines if an Environmental Analysis of Alternatives is required, defines TORs, and determines which alternatives must be included in the EIS	EMP includes measures for preventing, mitigating, remeditating, and compensating for environmental impacts There is also a Monitoring Program and a Contingency Plan
Costa Rica	EIA file must be made available to any individual or organization SETENA must disseminate list of received EIS and send abstracts to municipalities	The EIS must include the alternative with the highest environmental benefit	The EIS must include an impact prevention and mitigation program and a monitoring program
Dominican Republic	Proponent must inform public, through media, of intention to carry out the project and provide pertinent information on it The EIS must be available to the public once it has been submitted	Project alternatives and design options must be considered in the EIS, and a justification of the selected alternative must be provided	Environmental Management and Adaptation Program covering environmental prevention, mitigation, and compensation measures Oversight subprogram and self-monitoring program
Ecuador	Executive summary of the EIS must be presented; documents must be available at Public Information Centers AAN maintains a national public registry of environmental files and licenses	Analysis of alternatives must be included in EIS AAA can request modification of alternatives or inclusion of new ones	EIS includes EMP with measures for mitigation, control, and compensation for impacts, as well as environmental monitoring and audits
El Salvador	EIS is publicly disclosed through publication in print media with national circulation in a format designated by the Ministry	EIA and SEA must include a description of alternatives to the policy, plan, program, or project	EMP must be incorporated into the construction, operation, and closure of the activity, work, or project; must define, prioritize, and estimate costs of measures to prevent, mitigate, and compensate for environmental impacts

	Dissemination	Alternatives	Environmental Management Plan (EMP)
	Public notification and dissemination of information generated in the EIA process	Analysis of various alternatives to the planned activity, including not carrying it out	Planned measures to apply during project implementation to address issues and meet requirements identified in the environmental analysis process
Guatemala	DGGARN orders publication of announcement or decree, with basic information about project, industry, works, or activity, in a daily newspaper with nationwide circulation	Evaluation of alternatives is considered a key element of EIS	EMPs are created by the environmental assessment instrument and must be adopted by the proponents
Guyana	Existence of project is announced in a daily newspaper EIS and EIS (summary of EIS) are available to public	At least one alternative project location, design, technology, program, and size must be considered; alternatives examined in EIS and document reasons supporting final selection	EIS must include proposed measures to mitigate adverse impacts
Honduras	Once project has been registered, the public must be notified; all non-classified information from the EIA process is public	Presentation and analysis of alternatives can be required in the TOR	The EIS must have a Mitigation Plan, Management Plan (if required in the TORs), and an Oversight and Monitoring and Plan
Mexico	SEMARNAT publishes weekly list of IPs and MIAs; files of MIA available to public	Local and regional MIA must include environmental projections and evaluation of alternatives	Specific MIA must include measures to prevent and mitigate impacts Regional MIA must include strategies to prevent and mitigate impacts on regional environment
Nicaragua	MARENA publishes notice in national periodical of public availability of DIA, including hours and locations where it may be consulted	EIS must include alternatives to the project	Resolution issued by environmental authority establishes mitigation measures, monitoring requirements, and environmental management program proponent must carry out
Panama	ANAM discloses and makes EIS presentation available to public Proponent publishes abstract and facilitates public access to EIS and other documents	No provision made in law or regulations	EMP includes monitoring and oversight plan approved by ANAM Measures must help minimize negative impacts, gain stakeholder consensus, and prevent accidents Emergency Plan
Paraguay	EIA-d and EIA-sd must be available to the public in parts of the country	EIA must include description of alternative designs and locations for the project and analysis of consequences of not implementing the project	EMP includes measures for protection, remediation, and mitigation of impacts; methods and instruments for surveillance, monitoring, and control
Peru	EIS available to public and must include brief summary EIS-d and EIS-sd available in regional office of the sectoral agency	No provision in the law	Plan for management, emergencies, compensation, and project or site closure; plans for monitoring, supervision, and oversight
Uruguay	Project summary available to public for set period prior to approval by environmental authority; advance project information published in Diario Oficial and other newspapers	Alternatives must be considered only when the EIA is required to include an evaluation of environmental feasibility for the project's site	Environmental management, risk mitigation, and accident prevention plans required; EIS includes mitigation, compensation, or restoration measures, site or project closure programs, and monitoring plan
Venezuela	Approved EIS will remain available to the public at MA	EIS must describe alternative designs, locations, and technologies, and justify selected alternatives	Follow-up program Environmental Supervision Program