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CHAPTER 19

Examining gaps in the EIA framework

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Abstract: While the existing Environmental Impact Assessment (EIA) framework continue to play a crucial role in environmental management, it is not without systemic shortcomings that require continuous review and improvement. This chapter examines the gaps within Malaysia's EIA framework across Peninsular Malaysia, Sabah and Sarawak, recognising that these shortcomings are not intended as criticism of any stakeholder, but rather an exercise to identify structural issues that require reform. It is hoped that identifying these gaps and corresponding recommendations will assist policymakers and relevant agencies in undertaking the necessary changes to the EIA framework so that it can better fulfil its role in protecting Malaysia's environment and natural resources.

INTRODUCTION

Like all systems, the framework governing Environmental Impact Assessments (EIAs) is far from perfect and will always be subject to the need for continuous improvements by its very nature. The framework plays a vital role in regulating the impact posed by anthropogenic activities on the environment and involves many hardworking individuals from various stakeholders, and this is important to acknowledge. Nevertheless, it is always a useful exercise to periodically review the system and any shortcomings with full frankness and objectivity to evaluate how it can be improved further and how any flaws can be addressed.

It is to be borne in mind that any criticism is not intended to be an attack on any stakeholder or party. Instead, it is imperative to recognise the systemic flaws that should not be ignored and need to be addressed. Some of these flaws are inherited and as a result of certain market, societal, and political pressures beyond the control of the various stakeholders playing their respective parts within the framework. Hopefully, addressing these flaws will then enable the contributions of the many hardworking individuals working to regulate the state of Malaysia's environment to be maximised effectively.

EIA frameworks for Malaysia at the federal level, Peninsular Malaysia, Sabah and Sarawak

The primary tool of environmental management and control of certain development projects, used worldwide, is the EIA. In Malaysia, a federation comprising Peninsular Malaysia, Sabah and Sarawak, there is no single unified, comprehensive legislation that governs environmental management and environmentally significant development projects across the entire country. Instead, regulatory frameworks, including compliance with the need for EIA reports and enforcement mechanisms vary between these distinct regions.

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The requirement to conduct an EIA at the federal level and in Peninsular Malaysia is provided for in the Environmental Quality Act 1974 (EQA 1974). The states of Sabah and Sarawak also have their own state enactments, namely the Environment Protection Enactment 2002 (EPE 2002) and the Natural Resources and Environment Ordinance 1993 (NREO 1993) respectively, reducing the application of the EQA 1974 in these two states. The EQA 1974, EPE 2002 and NREO 1993, and their respective subsidiary legislation shall hereafter be referred to collectively as "the Environmental Legislation".

The administrative authority charged with the evaluation and approval of EIA reports at the federal level (primarily Peninsular Malaysia but also with limited scope over Sabah and Sarawak) is the Department of Environment (DOE), in Sabah, the Environment Protection Department (EPD), and in Sarawak, the Natural Resources Environment Board (NREB). DOE, EPD and NREB shall hereafter be referred to collectively as "the Environmental Agencies".

When a project proponent wishes to undertake a project involving a 'prescribed activity', they are required to engage an external EIA consultant team registered with the Environmental Agencies to carry out the EIA study. Typically, such EIA consultants are employed within an environment-related technical consulting firm. The work to carry out an EIA study is then usually awarded to these consulting firms either through an open-market tender or a direct appointment issued by the project proponents.

For EIAs under the EQA 1974, prescribed activities are listed in the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015 (EIA Order 2015) where they are divided according to two schedules with differences on how they are processed and treated. Schedule II EIAs must be publicly displayed and are usually processed by DOE at the federal level, whereas Schedule I EIAs do not require public display and are processed by DOE at the state level.

Sabah and Sarawak's EIA frameworks operate within a distinct constitutional and legal context arising from its autonomy under the Federal Constitution, the Malaysia Agreement 1963 (MA63), and the Inter-Governmental Committee (IGC) Report (Cobbold Commission 1962). While this greater autonomy compared to the other states in Peninsular Malaysia allows these two states to tailor environmental governance to local conditions, it has also resulted in differing procedural safeguards compared to the federal EIA framework, particularly in relation to public participation, transparency, and accountability.

For EIAs under the EPE 2002, the list of prescribed activities are listed in the (Prescribed Activities) Environmental Impact Assessment Order 2005. Under this order, activities are divided into two schedules, the 1st Schedule is made up of prescribed activities requiring a proposal for mitigation measures (PMM) report and the 2nd Schedule consists of prescribed activities requiring an EIA report instead. Activities under both schedules are the same and only differentiated by the size and volume involved, in which smaller-scaled activities will fall under Schedule 1 while bigger activities fall under Schedule 2.

EIAs under Schedule 2 of the Environment Protection (Prescribed Activities) (Environmental Impact Assessment) Order 2005 can be further classified into two types of EIA, namely Normal EIAs and Special EIAs. Normal EIAs are usually conducted for projects where the environmental impacts are localised, and the local sensitivities are not significantly affected. Special EIAs are conducted for projects having special magnitude and sensitivity regarding the environmental impacts which may extend beyond the geographical boundaries of the project site and/or can adversely affect the welfare of local communities. A comprehensive and detailed assessment of the primary and key environmental issues and impacts are required to evaluate the significance of the environmental impacts, and to formulate appropriate mitigation measures and monitoring programmes.

For EIAs under the NREO 1993, the list of prescribed activities requiring an EIA is set out in the Natural Resources and Environment (Prescribed Activities) Order 1994 (First Schedule). Unlike the EIA Order 2015 and the framework in Sabah, Sarawak's prescribed activities are not divided into distinct schedules with different processing rules. All listed activities require submission of an EIA to the NREB. Apart from that, mandatory public display and differentiated procedural tracks do not exist under this regime.

ADEQUACY OF THE EIA PROCESS AND HOW IT FITS IN THE PROJECT PLANNING CYCLE

No limitation to the number of times an EIA can be submitted

One significant shortcoming of the EIA process under the Environmental Legislation is the absence of a statutory limit on the number of times an EIA can be resubmitted for the same project following an initial rejection. This loophole allows project proponents to repeatedly revise and resubmit their EIA reports, using feedback from both the Environmental Agencies and public opposition to make only the minimal improvements necessary to satisfy regulatory requirements. As a result, the collective efforts of concerned communities and experts—who frequently provide substantive arguments about the potential negative impacts on health and the environment—are often rendered ineffective. Despite robust public objections and expert-backed evidence demonstrating the risks posed by such projects, the iterative resubmission process ultimately leads to eventual approval by the Environmental Agencies, undermining public participation and the intended protective function of the EIA process.

For EIAs under the EQA 1974, there are no processing fees for EIA resubmissions. For the EPD, there is a prescribed processing fee for EIA submissions and resubmissions. The applicable fees are RM 200 for a Terms of Reference (ToR), RM 500 for a Special TOR, RM 1,000 for an EIA, and RM 2,000 for a Special EIA. Under Sarawak's environmental framework administered pursuant to the NREO, prescribed processing fees apply not only to initial submissions but also to resubmissions. Under the NREO framework, the applicable fees include RM 100 per project for the prescription of mitigation measures, RM 200 per project for a TOR for an Environmental Management Plan (EMP), RM 500 per project for a TOR for an EIA, RM 1,000 per project for the submission of an EMP, RM 2,000 per project for the submission of an EIA report, RM 2,000 per project for the resubmission of an EMP, and RM 4,000 per project for the resubmission of an EIA report. However, these relatively modest fees may not constitute a significant financial deterrent against repeated revisions or resubmissions, thereby contributing to the ongoing issues associated with multiple EIA resubmissions.

Nevertheless, through some consultation sessions conducted since 2024, it appears that DOE is exploring the option of charging a processing fee for reviewing EIAs (Looi 2025). At the moment, the Environmental Agencies have no choice but to review EIA resubmissions, as they are required to review any subsequent EIA reports submitted for a project, regardless of how many times the EIA has been revised, resubmitted, or set aside. This could also be the result of the implications of a rejection by the Environmental Agencies to an EIA.

The Environmental Agencies at the moment are empowered to only approve or reject an EIA. They have no real say in bigger questions such as whether a project should be shelved, or whether the project proponent should return the project site to the government, or whether an area should be gazetted instead for protection due to the discovery of rare species. As a result, project proponents are presently incentivised to resubmit EIAs until approval is secured as they have already bought the said land and made other investments

to the project and may not have other options to develop the said land. Perhaps a better mechanism should be developed to ensure that rejected EIAs trigger a process of re-evaluating the best land use for the project site and working towards a win-win situation for all parties, including the project proponent and the environment.

Breaking up projects into smaller components for tactical and commercial reasons
It is a fairly common practice for project proponents to fragment large-scale projects into smaller components for tactical or commercial reasons. This fragmentation often serves to circumvent the more stringent requirements imposed by environmental regulations for large-scale developments.

For EIAs under the EQA 1974, by fragmenting the project into smaller components, project proponents may ensure that the individual components fall under Schedule I rather than Schedule II of the EIA Order 2015, or escape EIA scrutiny entirely. This distinction is critical because Schedule II activities mandate a public display period where comments from the public, experts, and other stakeholders are solicited. Consequently, shifting a project to Schedule I effectively bypasses the mandatory public participation process, reducing transparency and public oversight.

Across all EIAs under the Environmental Legislation, project fragmentation is further facilitated by the absence of clear cumulative impact assessment requirements. Large infrastructure projects, particularly roads, dams, plantations, and extractive industries are frequently approved as discrete components, despite forming part of a single broader development corridor or landscape-scale project. This practice prevents meaningful evaluation of cumulative deforestation, hydrological disruption, and wildlife habitat fragmentation across river basins and indigenous territories.

Such tactical breaking up of projects into smaller components is a recognised flaw of the system and there are instances where this has been attempted to be addressed. For instance, the EIA Order 2015 specifies that "any prescribed activity which has been divided into a size or quantum smaller than the size or quantum specified in the First Schedule and the Second Schedule" is also a prescribed activity [a]. The framework in Sabah on the other hand contains provisions on Master Environmental Impact Assessments (MEIAs) which provides the director of EPD with the power to request the submission of a MEIA where the prescribed activities consist of smaller individual development activities to be carried out in stages. Nevertheless, in practice it is not clear whether these provisions have been effective in preventing tactical breaking up of projects as it is subject to the discretion of the authorities.

NEED FOR CUMULATIVE AND HOLISTIC EIA

No requirement for Strategic Environmental Assessment (SEA)
A fundamental gap in the current framework is the absence of a mandated law or policy requiring SEA. While the law mandates EIAs for specific prescribed activities, these are project-specific and do not address the cumulative cross-border impacts of development. SEAs play a significantly different role compared to typical EIAs. They may inform planning processes that determine the zoning and future land use of certain areas at an early stage as the data obtained will enable decision-makers to assess the feasibility of development projects and the appropriateness of zoning decisions as opposed to the typical EIA which only exposes environmental problems at the end of the project planning cycle when most approvals have been obtained and significant investments into the project have been made.

[a] Environmental Quality (Prescribed Activities)(Environmental Impact Assessment) Order 2015, s. 3(4)

SEAs are loosely incorporated into Sarawak's high-level planning through the Post COVID-19 Development Strategy (PCDS 2030), Sarawak Sustainability Blueprint (SSB) 2030 and Regional Corridor Plans (SCORE). These policies position environmental sustainability alongside economic prosperity, focusing on balancing industrial growth with environmental stewardship. However, SEAs are not formally or systematically integrated into the EIA process in Sarawak, which regulates only project-based EIAs for development. While project-level EIAs are mandatory under NREB regulations, they often lack the cumulative impact assessment aspect provided by SEAs.

Nevertheless, there is progress from the state of Sarawak to further enhance the EIA process to develop screening guidance to support compliance with the First Schedule of the Prescribed Activities Order, 1994. It will outline strategic directions and key action to promote state aspiration while promoting environmental protection and resource efficiency Dayak Daily 2025).

Regulatory lag and emerging technologies

The Environmental Legislation all have the same approach of defining prescribed activities that require EIAs. However, by its nature, these laws have failed to keep up with rapid technological advancements since their enactment. Infrastructure developed to support new technologies often do not fall within the legal definition of "prescribed activities", thereby escaping the EIA process entirely.

A pertinent example is the development of data centres. Despite being known to consume significant quantities of energy and water for cooling systems (Raman 2024), data centres are not currently categorised as a prescribed activity under the existing provisions. Similarly, infrastructure for Carbon Capture and Storage (CCS) and Carbon Capture, Utilisation and Storage (CCUS)—with mounting criticism that such technologies may drive up emissions rather than reduce them—are also not adequately regulated under the Environmental Legislation (Raman 2025). Offshore CCS and subsea infrastructure pose additional risks to benthic habitats, fisheries, and marine food webs through potential CO_2 leakage, seabed disturbance, and pipeline failures (Queirós *et al*. 2014). These risks remain poorly addressed within current EIA schedules.

TRANSPARENCY AND PUBLIC PARTICIPATION IN EIA

Regional inconsistencies in public participation

Under the EQA 1974 framework, it is mandatory for all projects listed as Schedule II prescribed activities to undergo a public participation process. However, this requirement is not uniform across the federation. In Sabah, public display is only required for Special EIAs as determined by the EPD. In Sarawak, public participation is not a legal requirement under the NREO 1993. The decision on whether to conduct public consultation rests almost entirely with the project proponent, subject to NREB's discretion. To ensure equitable environmental justice, there is a pressing need for public participation to be mainstreamed and to be granted as a mandatory public right rather than subject to the discretion of the authorities across all jurisdictions in Peninsular Malaysia, Sabah, and Sarawak.

Limitations of the public display process

Although the law mandates public participation for Schedule II projects via "public display" under the EQA 1974 framework, the process remains grossly inadequate. Crucially, this mandatory requirement does not apply to Schedule I activities, despite the potential for significant environmental impact. There is no real justification for why Schedule I activities should be exempt from public display.

Furthermore, the mechanisms for access are restrictive. The public can typically access EIA reports during the display period in two ways:

1. The most common way would be through digital access of the documents by scanning the relevant QR code on the DOE's website or notices, users can then view the digital copy of the EIA. However, these documents are often restricted to "view only" settings and may not be downloaded.
2. A physical copy of the EIA could be accessible in the DOE library. However, photography or photocopying of the contents are usually strictly prohibited.

As this method of socialising the EIA reports, though effective in widespread dissemination of the same, especially to those situated in urban areas—still pose a significant barrier for rural communities and those without smartphones and computers. Additionally, there are generally no public hearings in conjunction with the EIA process; the public only have the option of submitting comments digitally after viewing the report.

There is no requirement under the EPE 2002 to have a public display for EIA reports. However, the Director has the power to prescribe guidelines as deemed necessary. The Handbook on EIA developed by the EPD specifies that any Special EIA would require public display. A period of 14-days or such period as determined by the Director is given to the public to submit their views and comments on any pertinent environmental issues and concerns that should be addressed in the Special EIA study. The Special EIA will be uploaded into the EPD's website for the public to view. While this channel is made available, in most cases, there is no active outreach to the public to ensure that their concerns and feedback are adequately captured. Considering that this is a Special EIA, 14 days for comments are too short to provide comprehensive and in-depth comments.

The requirement for public display is only triggered for prescribed activities under Schedule 2 of the EPE 2002 framework when they are elevated in status to a Special EIA. While projects that do not require Special EIAs may be smaller in scale, this does not equate to lower environmental risk. In ecologically sensitive areas, even moderate-scale developments can result in significant habitat fragmentation, hydrological alteration, or cumulative impacts. The absence of mandatory public display for these activities may therefore undermine transparency and meaningful stakeholder participation, reinforcing the need to extend public display requirements beyond only Special EIA projects.

Quality of engagement and the FPIC deficit

It ought to be noted that accessing an EIA report alone would not constitute meaningful and effective public participation. While EIA consultants are often required to conduct focused group sessions with affected communities, it is doubtful whether these consultations adhere to the principles of Free, Prior, and Informed Consent (FPIC), particularly in relation to indigenous communities, or if they are even effectively and adequately conducted.

Consultations often devolve into "box-ticking" exercises intended to advance the project rather than genuinely solicit feedback that can be used to influence the project design or determine its viability. Consultants may skew sample sizes or "cherry-pick" participants to manufacture favourable public opinion. Furthermore, communities are rarely given the option to reject a project; discussions frequently focus on alleged economic benefits—which often prove to be false promises—rather than the cost of consequential environmental damage.

The technical complexity of EIA reports further alienates indigenous peoples and local communities, who lack the expertise to decipher the technical jargon EIA reports are inundated with. Only a handful of Civil Society Organisations (CSO) focusing on

environmental issues and independent consultants usually possess the capacity to analyse these reports and assist communities. Language also becomes an issue especially if only the main languages of communication are used (e.g., Bahasa Malaysia or English), sometimes without considering other languages used by communities including those from the deaf community.

Further, it is also common for project proponents, for strategic reasons, to only rely on the village heads for consultation. Although elected by the community, village heads are endorsed and paid allowances by the government. This creates a conflict of interest where village heads may agree to projects despite community objections, opening avenues for corruption and manipulation by project proponents (Friends of the Earth Malaysia 2023). Without meaningful participation, the EIA process becomes a token exercise rather than a genuine tool for risk assessment and environmental protection.

Barriers to access to information

Oftentimes, only the EIA reports that are published during the public display are accessible during a specified timeframe of usually a month. Thereafter, public access to the final EIA report that has been approved, the terms and conditions upon which the approval was given, and improvements made to the document pursuant to public participation, are all effectively barred as the document that was finally approved by the Environmental Agencies is not published and not mandated to be published anywhere. When a written request for access is made, the stance often taken by the Environmental Agencies is that any such request for access must be channeled to the project proponent directly as the EIA is the project proponent's intellectual property.

However, the Environmental Legislation does not expressly classify approved EIA reports as confidential nor prohibit their disclosure after approval. The reliance on intellectual property as a basis for non-disclosure therefore appears to be administrative practice rather than a clear statutory requirement. There are further no legal precedents that prohibit DOE or other related agencies from sharing EIA or other technical reports with the rationale that such technical reports are intellectual property of project proponents. Conversely, there is legal authority that supports the notion that principles of natural justice demand that technical reports be made available to those who are adversely affected by an impugned project [b].

There are multiple consequential problems due to this: (i) the marginalised and affected community are not able to apprise themselves of the subject matter of the EIA approval and how it might affect them; and (ii) without access to the final approved EIA report, these communities encounter significant obstacles when attempting to challenge the approval, as the absence of complete and finalised information severely limits their ability to pursue legal action.

In such situations, affected communities, particularly those in rural areas, find themselves powerless, forced to watch as environmental damage unfolds and impacts their lives and livelihoods before they have any real opportunity to intervene.

The paymaster dilemma and conflict of interest

The current system governing the procurement of EIA consultants in Malaysia lacks sufficient regulation and independence. Although legislation stipulates that only consultants accredited by the Environmental Agencies are authorised to prepare and publish EIA reports, oversight is often limited strictly to accreditation. Once a consultant is approved, the Environmental Agencies do not intervene in the financial or contractual relationship between the EIA consultants and project proponents.

[b] *Mohamad Yusof bin A Bakar & Anor v Datuk Bandar Kuala Lumpur* [2019] MLJU 1098

Practically, this means project proponents are restricted to hiring approved consultants, but the integrity of the EIA process is compromised by the financial arrangement: project proponents directly pay the consultants. This creates an inherent conflict of interest, as consultants may feel pressured to deliver findings that favour the interests of those funding them. Consequently, there is a risk that EIA consultants may produce assessments that only satisfy the minimum legal requirements necessary to secure approval from the Environmental Agencies, prioritising their financial security over rigorous environmental scrutiny.

The phrase "the hand that feeds will not be bitten" aptly describes this dynamic, highlighting the vulnerability of the EIA process to undue influence from project proponents. Recognising these shortcomings, the Malaysian government is considering legislative amendments to address the direct payment system. The proposed reforms seek to establish a separate, regulated payment mechanism, aiming to safeguard the independence and credibility of EIA consultants and promote more objective environmental assessments.

Another potential conflict of interest gap exists under the EIA implementation process. Conditions of approval of the EIA and the approved EIA report will usually be binding on the project proponent. This can take different forms. For instance, under the framework under the EPD in Sabah, the Agreement of Environmental Conditions (AEC) legally binds the project proponent to implement and finance all approved environmental mitigation measures and monitoring programmes. In practice, these requirements are implemented by the project proponent with the Environmental Officer responsible for day-to-day regulatory compliance during the project implementation stage, and will work closely with the appointed registered Environmental Consultant who will carry out impact monitoring and submit the Environmental Compliance Reports (ECR) to the EPD.

However, the Environmental Officer and the Environmental Consultant are engaged by the project proponent, creating a conflict of interest and potentially undermining the objectivity and credibility of monitoring data and compliance reporting. This concern is further compounded by the limited capacity and resources of the regulatory authority to independently and continuously verify compliance, resulting in a heavy reliance on self-monitoring and self-reporting and weakening the overall effectiveness of enforcement.

FLAWS IN IDENTIFYING LAND UNDER NATIVE CUSTOMARY RIGHTS (NCR) CLAIMS

Most of the time, community consultations often consist of superficial interview sessions conducted during the data gathering stage of an impact assessment study. In some cases, local communities are unaware of the proposed project at the time the EIA consultants approach them. Only when the communities' opinions about the proposed project are needed, will the EIA consultants briefly explain the project to the communities.

Besides this, local communities are not consulted or requested to give their official consent to draft maps of their territorial boundaries or shown copies of the final version of those maps (Raman *et al.* 2008). This is indeed a serious concern as the federal and states' interpretation on NCR has been shown to be in direct conflict with its indigenous communities.

In addition, the failure to properly identify and recognise NCR lands within EIA studies is systemic. For instance, in Sarawak, mapping exercises are often based on outdated cadastral data or state-sanctioned interpretations of NCR that exclude *pemakai menoa* and *pulau galau* concepts recognised by indigenous communities (Friends of the Earth Malaysia 2021). Communities are rarely given the opportunity to verify or contest maps used in EIAs, resulting in the systematic erasure of customary territories from environmental assessments.

CLIMATE CHANGE CONSIDERATIONS STILL NOT TAKEN INTO ACCOUNT

Despite being signatory to key international climate treaties under the United Nations Framework Convention on Climate Change (UNFCCC) and projects having climate impact, considerations such as greenhouse gas emissions and the reduced carbon storage capacity that a project causes to the environment are usually not required to be reported in EIAs and do not usually determine whether a project should be allowed or not, despite the obvious impacts this creates on climate change. Mitigation measures on carbon emissions, if any, are often minimal and do not usually require a project to be carbon neutral or net zero, for instance.

This significantly undermines Malaysia's climate goals and commitments as projects that drive up carbon emissions keep getting approved, creating more distance between the achievability of such targets. What is worse is that EIA approval often brings about the perception that climate considerations have been accounted for and sufficiently mitigated. However, this is not the case.

WILDLIFE IMPACT ASSESSMENTS AND IMPLEMENTATION

EIAs typically underprioritise wildlife in favour of anthropogenic concerns or human-centric impacts. Assessments typically catalogue flagship species via short-term inventories, neglecting ecosystem-wide effects like habitat fragmentation, wildlife corridor disruptions, species migration disruptions, gene flow interruptions, and cumulative impacts from serial developments within Malaysia's biodiversity hotspots.

This inadequacy stems from several structural flaws:

- Absence of mandatory long-term ecological modelling or population viability analyses;
- Limited integration of indigenous and local knowledge, despite Article 8(j) of the Convention of Biological Diversity (CBD 2026);
- Weak enforcement of post-EIA monitoring;
- Insufficient expertise among EIA consultants, many of whom may lack wildlife ecology training; and
- Methodology applied for wildlife surveys are often generalised and not specific to different species.

The consequences undermine Malaysia's international treaty obligations including the Kunming-Montreal Global Biodiversity Framework (KMGBF) and exacerbates human-wildlife conflicts and ecosystem service losses. Wildlife impact assessments within the EIA process remain largely superficial and procedurally weak. EIAs approved by the Environmental Agencies routinely treat wildlife as an ancillary consideration rather than a core determinant of project viability.

Wildlife surveys conducted are typically short-term, seasonal, and designed to only determine species presence, often relying on rapid biodiversity assessments conducted over limited timeframes. Such approaches fail to account for species detectability bias, seasonal movement patterns, breeding cycles, and long-term population viability. This is particularly problematic for wide-ranging and low-density species such as orangutans, elephants, and large carnivores, whose ecological requirements extend far beyond the immediate project footprint.

Wildlife crossings, buffer zones, and connectivity measures, where proposed, are often generic, non-species-specific, and unsupported by empirical data. Implementation and post-construction effectiveness monitoring are rarely enforced. As a result, EIAs fail to

capture the compounded effects of logging, plantations, dams, and road networks that progressively erode ecological integrity across entire ecosystems. Post-EIA monitoring and compliance relating to wildlife impacts are notably weak. Although mitigation measures may be included as conditions of approval, there is no systematic, transparent mechanism for independent verification of compliance or ecological outcomes.

The failure to conduct robust wildlife impact assessments has contributed directly to escalating human wildlife conflict, including crop raiding, livestock depredation, roadkill incidents, and displacement of wildlife into human settlements. These impacts are treated as secondary social issues rather than as indicators of flawed ecological planning and assessment.

LAND USE AND ZONING

The relationship between land use and EIAs can be a paradox of sorts. In the current scenario, land use and zoning is often determined without the involvement of EIAs. These decisions are often qualified on the basis that projects will be subjected to EIAs later and any problems will be dealt with at that stage. At a much later stage when the EIA is conducted, the EIA may reveal that the project site is unsuitable for the intended purpose. However, the project is often still pushed through by the project proponent as investments have been made to the project. Environmental mitigation measures are often kept to a minimum to ensure the project remains financially viable. Having SEAs for the purpose of determining land use and zoning may solve this gap. However, there is no requirement to do so in the current system.

Another problem with land use is that some prescribed activities are only triggered if a site has a certain zoning classification. However, some of these zoning classifications can be manipulated to avoid the EIA process. For example, projects in 'environmentally sensitive areas' (ESAs) may trigger the EIA process. However, an ESA can be rezoned to an area that is not an ESA (despite anything to the contrary on the ground) and this would enable the said project to escape the EIA process.

This possibility became apparent when the Kelantan State Government proposed to remove huge areas of forest areas from their classification as ESAs in 2023 (PLANMalaysia Kelantan 2023) despite ESAs typically consisting of forest reserve areas, among others. The current status of this proposed change remains uncertain.

RECOMMENDATIONS

Based on the gaps identified above, here are some recommendations identified to help improve the EIA framework in Malaysia:

- Harmonising the different EIA frameworks across Peninsular Malaysia, Sabah and Sarawak;
- Adopt SEAs in land use planning throughout Malaysia;
- Prohibit breaking up of projects for tactical reasons and making cumulative impact assessments a mandatory part of EIAs;
- Frequent revisions of the activities that qualify as "prescribed activities" to keep up with emerging technology;
- Mainstreaming public participation in the EIA process and ensure that engagement is meaningful and effective;
- Implementing and mainstreaming FPIC in all community consultations;
- Make access to information easy (user-friendly) and mandatory;

- Introduce clear climate change assessment and mitigation requirements and methodologies into the EIA processes and guidelines;
- Introduce a statutory limit to the number of times an EIA can be revised;
- Introduce and/or revise processing fees for EIAs and related documents;
- Set up a mechanism to re-evaluate the land use suitability of a project site based on EIA findings upon rejection of an EIA;
- Ensure independence of EIA consultants, environmental officers, and environmental auditors by delinking direct payments/influence by project proponents;
- Make public hearings mandatory;
- Mandatory provision of grounds for rejection of feedback;
- Ensuring robust wildlife assessments in EIA reports;
- Enshrining the right to a clean and healthy environment in the Federal Constitution; and
- Introducing/strengthening appeal processes and oversight mechanisms for affected communities to create more objective accountability and reduce reliance on discretion in the approval process of EIAs.

CONCLUSION

The EIA framework in Malaysia is not perfect and will greatly benefit from continuously being evaluated and improved upon. Whilst the system as it currently is still provides numerous benefits and continues to play a vital role in regulating environmental impacts of development, the environmental and climate crisis demands for more to be done. It is hoped that the above exercise of identifying some of the pertinent gaps in the system and the corresponding recommendations may assist the relevant agencies and decision-makers to undertake the necessary changes needed to allow EIAs to achieve much greater potential in protecting Malaysia's environment and natural resources.

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