



# An analysis framework for characterizing and explaining development of EIA legislation in developing countries—Illustrated for Georgia, Ghana and Yemen

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## ARTICLE INFO

### Article history:

Received 11 July 2011

Received in revised form 23 April 2012

Accepted 27 April 2012

Available online 22 June 2012

### Keywords:

EIA system development

EIA legislation

Analysis framework

Georgia

Ghana

Yemen

## ABSTRACT

Actors in the field of international development co-operation supporting the development of EIA legislation in developing countries often do not achieve the results envisaged. The performance of EIA in these countries often remains weak. One reason, we assume, is that often those actors support the establishment of overly ambitious EIA legislation that cannot achieve its objectives in the light of constraining contexts. To provide more effective support we need to better understand the enabling and constraining contextual factors that influence the development of EIA legislation and to which support actors should align itself. In this article a new analysis framework for classifying, characterizing and explaining the development of EIA legislation is described, measured in terms of ambition levels. Ambitions are defined as intentions the EIA authorities aim to fulfill, expressed in formal EIA legislation. Three country cases, Yemen, Georgia and Ghana are used to illustrate the usefulness of our framework and as a first test to refine the framework. We have formulated the following five hypotheses that complement and refine our analysis framework. One, EIA legislation may develop multilinearly in terms of ambition levels. Two, ambitions in EIA legislation seem to be influenced to a great extent by the power and capacity of, on the one hand, the environmental authorities supporting EIA and, on the other hand, the sector authorities hindering the development of EIA. Three, the political system is the most important context factor influencing the rules of policy-making and the power of the different actors involved. Four, the importance of context factors on the development of ambitions is dependent on the phase of EIA system development. Five, some ambitions seem to be influenced by particular factors; for instance the ambitions for the object of study seem to be influenced by the level of environmental awareness of the sector ministries and parliament.

The analysis framework may also assist actors involved in the development of EIA legislation in setting ambitions for EIA legislation that are feasible within the context in which it will be developed and implemented. Application of a country-specific EIA model would seem to be the preferred model to develop EIA legislation because by taking capacities of actors and context factors as a starting point, it offers more potential to well-performing EIA systems.

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## 1. Introduction

The International Association for Impact Assessment (IAIA, 1999) has adopted a best practice EIA model that is promoted as a standard for EIA system development by the IAIA as well as prominent scholars including for instance Wood (2003). This so-called IAIA model considers sustainable development as a long-term objective, and well-informed and participatory decision-making as short-term objectives of EIA systems.<sup>1</sup> Principles of this model are based on EIA systems in

western democratic countries. Actors in the field of international development co-operation such as the World Bank and the United Nations Environmental Program<sup>2</sup> (2004) usually employ this IAIA model as a starting point for the development of EIA legislation. As a consequence it seems that these actors tend to underestimate the influence of the context of a country in which they intervene, or at least seem to assume that the context can be influenced. UNEP (2004) for instance states that EIA is an important tool in the development of good governance and democracy; two characteristics of the political/administrative system that we consider as contextual factors. This illustrates that UNEP seems to assume that EIA can influence the context. A second implicit assumption is that the evolution of EIA

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<sup>1</sup> The IAIA is the global member organization for impact assessment practitioners. They have developed and adopted the EIA best practice principles aiming to be used as reference by professionals involved in EIA.

<sup>2</sup> UNEP is a normative technical UN Agency and derives its mandate from the United Nations General Assembly (UNGA) Resolution 2997 of 1972.

legislation evolves unilinearly (Wood, 1995). This means that key dimensions of EIA legislation such as the object of study (e.g. aspects to be studied in EIA and the type of decisions subject to EIA) and mechanisms to assure the quality of information will logically develop along pre-defined stages from low or limited to high or comprehensive.

In this paper we criticize these assumptions, arguing that the country-specific context should be the starting point of EIA system development. In this approach the IAIA model can be used as a long term ideal but not necessarily as the starting point. In previous studies (Kolhoff et al., 2009; Runhaar and Driessen, 2007; Van Loon et al., 2010), building on the work of Cherp (2001) and Cherp and Antypas (2003), we argued that context characteristics, such as the political system or the economic situation, and the capacities of the key actors are the most important factors explaining the development of EIA legislation. As a consequence we think that EIA systems may develop along a number of dimensions in multilinear rather than in unilinear ways, depending on (changes in) capacities of key actors and context. This implies that EIA system dimensions will not necessarily develop simultaneously in one direction but that some dimensions may develop from less ambitious to more ambitious, whereas other dimensions express a contrary development. Interventions in EIA system development that are not congruent with the context run the risk of being unfeasible and not yielding the expected results. EIA system development that starts from the country-specific context and capacities that determine the opportunities and the constraints for establishing a certain ambition level might result in a less ambitious EIA system, but that system, in principle, can still perform well.

This article provides an analysis framework to illustrate and tentatively explain the developments of EIA legislation, measured in terms of ambition levels. Ambitions are defined as intentions the EIA authorities aim to fulfill, expressed in formal EIA legislation.

This understanding can be helpful for actors in the field of development co-operation and other actors involved in, and hence their knowledge of, the development of EIA legislation that is *feasible* within the national context. EIA legislation is defined as all EIA-related policies, laws and regulations approved by the legislative and or executive powers.

Firstly, we present an analysis framework that categorizes the EIA ambitions. This framework is based on literature and has been reviewed by a panel of Dutch experts working in the field of EIA system development. Subsequently, this framework is applied in Yemen, Georgia and Ghana with the purpose of illustrating and refining the analysis framework, rather than making an in-depth comparative assessment between those countries. These three countries have been selected because extensive information on the development of EIA legislation through access to key actors and key documents was available over a period of many years. This was due to the fact that the lead author in his function as advisor at the Netherlands Commission for Environmental Assessment has been working in those countries for many years. The consequence of this selection is that those countries are illustrative but not representative for the development of EIA legislation in low and middle income countries.

The development of EIA legislation in these countries is divided into phases. Phases have been demarcated on the basis of the introduction of or major change in EIA legislation, approved by the legislative or executive powers. In order to identify and explain the factors influencing the development of EIA legislation a comparative analysis was made of the three countries in Section 6. For this purpose, we built on an earlier paper (Kolhoff et al., 2009) in which we proposed a set of explanatory context factors and key actors, each with their specific capacities, that have not yet been validated thus far.

Legal documents have been used to describe the characteristics of the EIA legislation for each country. Additional data for the three countries have been collected through semi-structured interviews with 13 primarily high-level representatives of the national environmental protection authority, and who were equally divided over the countries holding high level positions (see Table 1). In this article, we will refer

**Table 1**  
Characteristics of respondents (N = 13).

Position of respondents	Former	Present
Decision-maker		
Minister or Dep. Minister of Environment; Director or Dep. Director of EPA or EPC	5	3
High level staff		
Head or staff member at EIA Department in MoE, EPA or EPC; Head or Dep. Head of Internat. Department at MoE	2	4
Other		
NGO director		1

In total 13 individuals have been interviewed, two persons were interviewed during different moments in time keeping different positions, therefore the number of respondents interviewed in the table is 15.

to one of the two categories, “decision-makers” or “high-level staff” in order to secure anonymity. In the period 2004–2010 most of the respondents were interviewed several times. In Georgia, a director of a NGO was also interviewed because the government had asked this NGO to draft a new EIA law. The main indicator for selecting those respondents was their involvement in and hence their knowledge of the development of EIA legislation. For all countries we have interviewed nearly all persons involved in the relatively small teams that were involved in developing, negotiating and lobbying of EIA legislation. Our findings have been verified through discussions with the people who have been interviewed before in the three countries.

## 2. A framework for characterizing and explaining the development of EIA legislation

### 2.1. Characterizing the development of EIA legislation

In order to get a better insight into the development of EIA ambitions (as laid down in EIA legislation), we have developed an analysis framework based on objectives and performance indicators that are often employed in the scientific literature on EIA.

In the literature three main EIA objectives can be distinguished, namely environmental protection versus sustainable development as a long-term objective, and informed and participatory decision-making as the two short-term objectives (Caldwell, 1989; Meredith, 1991; Therivel et al., 1992; Smith, 1993; Erickson, 1994; Mostert, 1995; Wiesner, 1995; Wood, 1995; Glasson et al., 1996; Sadler, 1996; Olokesusi, 1998; Purnama, 2003; Ahammed and Harvey, 2004; Doelle and Sinclair, 2006; Nooteboom, 2007; Kolhoff et al., 2009).

Often-employed frameworks for EIA system performance evaluation have been developed by Wood (1995), Fuller (1999) and Ahmad and Wood (2002). Ahmad and Wood (2002) have developed the most extensive framework in which they identify 24 indicators divided into four categories; EIA legislation, EIA process, EIA administration and foundation measures. For the development of our framework we used eight of their indicators, all derived from the categories of EIA legislation and EIA process that have been specified in more detail and combined or split. We combined three indicators on ‘mitigation’, ‘alternatives’ and ‘monitoring’ into one indicator: ‘requirements studied in EIA influencing expected impacts’. The indicator ‘screening categories’ have been elaborated into two separate indicators: ‘type of decision subject to EIA’ and ‘investments subject to EIA’. The indicator of ‘public participation in EIA process’ has been elaborated into three separate indicators in our framework: ‘stakeholders involved’, ‘access to information’ and the ‘accountability mechanisms related to government responsiveness’. The remaining three indicators, ‘scoping’, ‘reviewing’ and ‘opportunity for appeal’ have been specified in more detail respectively: ‘quality mechanisms for scoping (quality and independence of the process and quality of the consultants) and for reviewing’ (quality and independence of the process and coherence between review and project approval) and for ‘access to justice’ (opportunity for

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