

## (6) Malaysia: Comparison with International EIA Procedures

Table 1 presents a side-by-side comparison of the key points in Malaysia's Environmental Impact Assessment program and the performance standards issued by a global banking group called the International Finance Corporation (IFC). The IFC standards are considered to be international best practices.

*Table 1. IFC performance standards vs. the Malaysia EIA*

IFC performance standards	Malaysia Environmental Impact Assessment
PS1: Assessment and Management of Environmental and Social Risks and Impacts	This item is included in Malaysian EIAs, which combine environmental and social impacts such as cooperation with stakeholders and involvement of affected communities prior to project implementation. Clients must satisfy legal requirements by taking steps to prevent pollution and/or control physical, ecological, or social impacts in order to minimize environmental harm.
PS2: Labor and Working Conditions	This item is not included in Malaysian EIAs, as it falls under the jurisdiction of the Ministry of Human Resources. Related items are outside the legal framework of the EIA.
PS3: Resource Efficiency and Pollution Prevention	This item is partially included in that clients must calculate greenhouse gas emissions for large-scale agricultural, mining, and infrastructure projects, for example. These calculations are not included for residential development projects.
PS4: Community Health, Safety, and Security	This item is included in the Malaysian EIA program. The EIAs cover them under the Occupational Safety and Health Act (1994) and socioeconomic impacts.
PS5: Land Acquisition and Involuntary Resettlement	Mostly included, though land-related items (particularly for public works projects) are under the jurisdiction of a different government agency.
PS6: Biodiversity Conservation and Sustainable Management of Living Natural Resources	Partially included. EIAs focus less on biodiversity and ecosystem impacts and more on a limited list of fauna and flora.
PS7: Indigenous Peoples	Not included for the most part, but the 1976 Town and Country Planning Act (revised in 2017), does require a separate Social Impact Assessment for certain large projects expected to have major impacts, and Malaysia's initiatives in this area are become progressively stronger.

PS8: Cultural Heritage	Partially included, as Malaysia requires that public relations activities be carried out as part of community planning for projects in cultural heritage areas for the purpose of impact assessment.
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### Conservation measures and monitoring

The International Finance Corporation recommends in Performance Standard 1 that the mitigation hierarchy to address identified risks and impacts favors the avoidance of impacts over minimization, and, where residual impacts remain, compensation/offset (IFC 2012: PS1, para 14).

The Malaysia Environmental Impact Assessment shares many similarities with elements of the Environmental and Social Management System (ESMS) (identification of risks and impacts, mitigation measures, management programs, monitoring and review, and stakeholder engagement). Project categories required under the ESMS are similar to list of projects required by an Environmental Impact Assessment (EIA), Environmental Management Plan (EMP), or post-EIA monitoring and reporting, though there are some differences in the details.

Performing an Environmental Impact Assessment in Malaysia primarily involves identifying possible environmental pollution or other negative environmental impacts. The next step is to implement land-disturbing pollution prevention and mitigation measures (LD-P2M2) as well as pollution prevention and mitigation measures for industrial activity (P2M2), using these to formulate an action-oriented control plan that will minimize the impacts of project development as a whole. The LD-P2M2 is extremely critical during the construction phase of projects in Malaysia, as the country struggles with increasingly severe land development, heavy rainfall, and project scheduling issues. The LD-P2M2 and P2M2 primarily use best management methods and technologies intended to prevent, reduce, or eliminate the generation of pollutants at the source to attain compliance with the conditions stipulated in the EIA approval conditions. This indicates that Malaysian EIAs generally emphasize the importance of specific projects on the micro level rather than comprehensive approaches on the macro level.

Aside from these issues, Malaysia’s Department of the Environment is making an effort to get all project stakeholders actively involved in environmental conservation within their respective roles—adopting a self-regulatory approach where clients are expected to voluntarily take action. This approach makes it clear that mainstreaming an environmental agenda is an absolutely critical element in all procedures that clients implement in all aspects of project execution. The concept of self-regulation is that client executives, specifically by monitoring the environmental performance and effectiveness of pollution prevention and control measures throughout the lifecycle of the project

(P2M2), must not only ensure that the project continues to conform to regulations, but also be thoroughly familiar with the environmental issues it poses. It is expected that this approach will complement the way the existing chain of command functions at the Department of Environment.

When preparing an Environmental Impact Assessment according to international EIA procedures, clear priority needs to be given to avoidance of impacts over minimization, and, where residual impacts remain, compensation/offset. Performance Standard 1 also demands that clients retain external experts to verify their monitoring information for projects with significant impacts (IFC 2012: PS1 para 22).

The Environmental Impact Assessment program in Malaysia requires that a third party perform an on-site environmental audit once every four, six, or twelve months while the project is underway, or once a year during the course of project implementation. The main purpose of these audits is to make sure that clients are in compliance with environmental demands, taking all appropriate steps to prevent or control environmental harm, functioning according to plan, and continuing to perform properly. Audits carried out at industrial complexes are performed in line with established MoUs outlining responses to nonconformity, and are implemented in cases where there are clear legal violations or where violations are suspected.

### Climate change, cumulative impacts, and impacts from associated facilities

The International Finance Corporation requires under Performance Standard 1 and 3 that clients properly consider the emissions of greenhouse gases as well as cumulative impacts and impacts from associated facilities (IFC 2012: PS1, para 7, 8). For projects that produce more than 25,000 tons of CO<sub>2</sub>-equivalent annually, clients are required to quantify direct as well as indirect greenhouse gas emissions from these facilities (IFC 2012: PS3, para 7,8).

The quantification of greenhouse gas emissions for large-scale agricultural, mining, or infrastructure projects in Malaysia is included as part of the Environmental Impact Assessment. The calculation of these emissions is not included for residential development projects.

Strategic environmental assessment concepts have not penetrated the national or regional level in Malaysia. This means that at the national level, the Department of Environment or some other single agency does not have the authority to coordinate comprehensive environmental policy. Ideally, environmental impact assessments, strategic environmental assessments, and environmental management systems would be more integrated with one another, but Malaysia has not yet made it that far (Briffet 2004). Still, the country has decided that EIAs must be performed in line with the

National Policy on the Environment formulated in 2002. Spec sheets on environmental impact assessments also encourage a review of cumulative impacts.

### Information disclosure and community participation

When there are communities affected by the project, the International Finance Corporation requires under Performance Standard 1 that (IFC 2012: PS1, para 30) that consultation (1) begin early in the process, (2) be based on the prior disclosure of information which is in the appropriate local language(s) and format and understandable to the affected communities, (3) be free of external manipulation, and (4) enable meaningful participation (IFC 2012: PS1, para 30). For projects with potentially significant adverse impacts on affected communities, the client must conduct an Informed Consultation and Participation (ICP) process (IFC 2012: PS1, para 31). Projects that fall under the Second Schedule are subjected to a four-week Environmental Impact Assessment Report disclosure process, where the report is published on the Department of Environment website as well as distributed to DOE state offices, local government offices, public libraries, and so on to invite evaluation and commentary from local residents and other stakeholders. Clients also have an obligation to widely publicize their EIA reports through traditional media platforms, the DOE website, and other channels. Second Schedule projects may also be subject to the appointment of representatives from NGOs or other groups to the EIA Technical Review Committee charged with reviewing the EIAs.

### Labor and working conditions

The International Finance Corporation prohibits the employment of persons under the age of 18 under all conditions in Performance Standard 2 (IFC 2012: PS2, para 21), but section 6-8 of Malaysian Employment Act allows for the employment of anyone age 12 or older—so it is important to take note of this discrepancy.

Performance Standard 2 demands that clients apply the requirements for safe and healthy working conditions to contracted workers and supply chain workers as well (IFC 2012: PS2, para 6 & 7). It also requires that clients provide a grievance mechanism for workers to raise concerns with their employer regarding working conditions (IFC 2012: PS2, para 20). Malaysian EIAs do not legally require that labor and working conditions be included. These issues fall under the jurisdiction of the Ministry of Human Resources.

### Community health, safety, and security

The International Finance Corporation requires under Performance Standard 4 that project design take into consideration safety risks to third parties and affected communities, bringing in external experts for high-risk projects (IFC 2012: PS4, para 6). The standard also requires that clients consider the

health of third parties and affected communities (IFC 2012: PS4, para 7, 9 &10), and Malaysian EIAs include these requirements under the Occupational Safety and Health Act (1994) and socioeconomic impacts. Finally, while Performance Standard 4 requires security-related risk management (IFC 2012: PS4, para 12), Malaysia does not require that projects take this step.

### Land acquisition and involuntary resettlement

The International Finance Corporation states in Performance Standard 5 that when displacement cannot be avoided, the client must offer displaced communities and persons compensation for loss of assets at full replacement cost and other assistance to help them improve or restore their standards of living or livelihoods (IFC 2012: PS5, para 9). Malaysian EIAs include this as well for the most part, but land-related issues—particularly with public works projects—fall under the jurisdiction of other government agencies.

Performance Standard 5 also requires that compensation be paid to displaced persons with no legal right or claim to the land or assets they occupy or use (IFC 2012: PS5, para 17).

### Biodiversity conservation and management of natural resources

When projects are located in critical habitats of importance to critically endangered or endangered species, the International Finance Corporation stipulates under Performance Standard 6 that the client should retain external experts, ensure that the project does not lead to a net reduction in the global and/or national/regional population of those species, and that a long-term monitoring program be established (IFC 2012: PS6, para 8, 16&17). Performance Standard 6 also stipulates that clients identify priority ecosystem services and prevent the introduction of alien species (IFC 2012: PS6, para 22&24).

Malaysian EIAs partially include these items. However, the focus less on biodiversity and ecosystem impacts and more on a limited list of fauna and flora.

That said, Performance Standard 6 demands that clients purchasing commodities (especially but not exclusively food and fiber commodities) produced in regions where there is a risk of significant habitat conversion, adopt systems and verification practices will be adopted as part of their ESMS to evaluate the suppliers of those commodities (IFC 2012: PS6, para 30). Malaysia has no restrictions to this end.

### Indigenous peoples

In Performance Standard 7, the International Finance Corporation defines indigenous peoples as those who self-identify as members of a group with a collective attachment to geographically distinct areas

and with customary cultural, economic, social, or political institutions (IFC 2012: PS7, para 5). The performance standard also requires that clients obtain Free, Prior and Informed Consent (FPIC) so that these communities have sufficient information in advance to freely make decisions where a project may significantly impact their critical cultural heritage (2012: PS7, para 12, 16 & 17).

That said, Article 10 of Malaysia's National Forestry Act 1984, which identifies eleven types of permanent reserved forests, does not provide any stipulations for land rights of indigenous peoples, the need for consultation or to declare opposing views with affected communities, or to provide notifications of statements of protest submitted, questions, or decisions. Nor are there laws demanding prior consent from communities that may be impacted in the issuance of deforestation or other development rights in indigenous areas. And like the National Forestry Act, neither Malaysia's National Parks Act of 1984 or its Wildlife Conservation Act of 2010 requires notification of affected communities in conservation areas or consultation and consent from impacted indigenous peoples. The Wildlife Conservation Act does grant a few hunting rights to Orang Asli communities in conservation areas, but they are limited to purposes of personal consumption for the subsistence of these groups.

Malaysian EIAs contain almost none of the items stipulated in Performance Standard 7, but the 1976 Town and Country Planning Act, which was revised in 2017, does require a separate Social Impact Assessment for certain large projects expected to have major impacts, and Malaysia's initiatives in this area are become progressively stronger. The new law applies not only to the Malay peninsula, but also to certain Environmental Impact Assessments in the states of Sabah and Sarawak as well. The Town and Country Planning Department (PLAN Malaysia) has issued a Manual for Social Impact Assessment of Project Development (2nd Edition) outlining the process for preparing Social Impact Assessments in Malaysia.

The Aboriginal Peoples Act of 1954 simply treated the areas where indigenous people live as areas occupied by those communities, and did not protect them as aboriginal areas or aboriginal preserves. The Aboriginal Peoples Act defers to state government policies for the purpose of the handling customary land rights of indigenous peoples, including compensation for the loss of those rights. Still, these efforts are in no way sufficient—particularly in terms of legal enforcement—when it comes to protecting the customary land rights of the Orang Asli. Article 11 of the Aboriginal Peoples Act does at least stipulate that compensation be paid to the Orang Asli for any state land where they have lost access to their fruit or rubber trees.

The National Land Code of 1965 does not make mention of customary land rights or to rights of possession for Orang Asli communities. In defining land categories on the Malay Peninsula, the law skirts the issue of land rights claims made by these indigenous peoples, and no land category exists that in any way explicitly recognizes the customary rights of indigenous peoples.

It has been proposed that the Land Acquisition Act of 1960 be used in the aboriginal area compensation process. Unlike the Aboriginal Peoples Act of 1954, this law does stipulate that the protection of the rights of indigenous people on the Malay Peninsula falls under the scope of Article 13 (Rights to Property) of the Federal Constitution, laying out stronger obligations to compensate when land is actually taken. Compensation to indigenous peoples for customary land rights also falls under Article 5 of the Federal Constitution, which recognizes their customary law. The National Forestry Act of 1984 only includes the briefest mention of forestry resources held by Orang Asli communities. Article 62(2) (b) of the act, which covers payment for forest produce or industrial products (such as textiles) makes it possible to recognize Orang Asli communities as groups eligible to receive these benefits. Still, later revisions to this subsection did not result in the inclusion of traditional forestry rights.

### Cultural heritage

Where the risk and identification process determines that there is a chance of impacts to cultural heritage, the International Finance Corporation requires under Performance Standard 8 that clients retain competent professionals to assist in the identification and protection of cultural heritage (IFC 2012: PS8, para 7). Malaysian EIAs partially include this item as well, requiring that public relations activities be carried out as part of community planning for projects in cultural heritage areas for the purpose of impact assessment. However, this policy does not stipulate that clients must hire experts for the purpose of identification and protection of important cultural heritages.