Aide-Memoire on Environmental Impact Assessments (EIAs) and Environmental Compliance Certificates (ECCs)

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EIAs and ECCs are instruments of law intended to protect the environment and ensure the general welfare of the people and communities prior to the implementation of development projects. This says Presidential Decree (PD) 1586.[1] It's State policy.[2] It is to this day.[3] But too often, EIAs and ECCs elude accurate appreciation of what they are, why they are, and what they're for.

What's an EIA?

Let's let official documents say what it is.

1. It's a "*process that involves predicting and evaluating the likely impacts of a project (including cumulative impacts) on the environment during construction, commissioning, operation and abandonment. It also includes designing appropriate preventive, mitigating and enhancement measures addressing these consequences to protect the environment and the community's welfare".*[4] *Its purpose is "to enhance planning and guide decision-making. . . to integrate environmental concerns in the planning process of projects at the feasibility stage*."[5]

2. It's mandatory on *"environmentally critical projects"* (ECPs) and on projects to be sited in *"environmentally critical areas"* (ECAs).[6]

How's an EIA done?

EIA is done by 3rd party EIA preparers (not by DENR)[7]. It involves (1) scientifically assessing how a project might positively or negatively affect the environment;[8] (2) reviewing the assessment findings and recommendations (by 3rd party and DENR experts);[9] and (3) conducting public participation activities (hearings and consultations) to secure public inputs on how a project could comply with existing

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1 The law that created the Philippine EIA System.

2 PD 1586 (1978): *"... the pursuit of a comprehensive and integrated environment protection program necessitates the establishment and institutionalization of a system whereby the exigencies of socio-economic undertakings can be reconciled with the requirements of environmental quality;"* Sec. 1: *"It is hereby declared the policy of the State to attain and maintain a rational and orderly balance between socio-economic growth and environmental protection."*

3 See Art. 1 Sec. 1, DENR DAO 2003-30 (the current Implementing Rules and Regulations of the Philippine EIA System): *"Consistent with the principles of sustainable development, it is the policy of the DENR to implement a systems-oriented and integrated approach to the EIS system to ensure a rational balance between socio-economic development and environmental protection for the benefit of present and future generations."*

4 Ibid., Art. 1 Sec. 3.h.

5 Ibid., Art. 1 Sec 1b; paras. 2 & 3, *Revised Procedural Manual for DAO 2003-30* [RPM-D30] DENR-EMB MC 002 s. 2007). EIA is to be done together with the feasibility study of a project (Sec. 2, Malacañang Administrative Order No. 42 s 2002.); these emphasize that EIA is a planning tool.

6 Ibid., Art. 1 Sec 3.e & 3.f; Table 1-1, [RPM-D30]; these are projects classified as Categories A, B, and C in Art. 2 Sec. 4.3.c.

7 See definition of "EIA Consultants" in Ibid., Art. 1 Sec. 3.i; see exclusion of DENR personnel in the 1st chapeau paragraph 1, Art. 2 Sec. 5.2.

8 Ibid., Art. 1 Sec. 1.d

9 Ibid., Art. 1 Sec. 3.j and Art. 1 Sec. 3.hh

environmental laws and best environmental practices.[10] This is to promote social justice alongside the implementation of an EIA.[11] An EIA is done based on both science and principles of environmental law:[12]

An EIA produces an "Environmental Impact Statement" (EIS).[13] It describes how the EIA was done, its findings of significant impacts, and an Environmental Management Plan that prescribes the measures to enhance a project's identified environmental good (if any) and mitigate its identified environmental harms (if any).[14] These measures include mitigations of environmental risks.[15] Measures are based on the best available information and science at the time the EIA was conducted.[16] They're also based on the "social acceptability" of the measures.[17]

"Social acceptability" refers to the *"acceptability of a project by affected communities based on timely and informed participation in the EIA process particularly with regard to environmental impacts that are of concern to them."*[18] It's requisite that "social acceptability" be the *"result of meaningful public participation, which shall be assessed as part of the Environmental Compliance Certificate (ECC) application, based on concerns related to the project's environmental impacts."*[19]

Because EIA is specific to a project of a distinctive specification, that's to be located in a site with distinctive environmental conditions and ecological features, and done using a distinctive body of science and methods, it's a *sui generis* exercise.[20]

In summary, EIA is: (1) a scientific and legal tool used to identify potential environmental good and harms of a project; (2) employs experts to do it; (3) requires public participation and involvement of stakeholders; (5) requires "social acceptability" for legally legitimizing its findings and recommendations;

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10 Ibid., Art. 2 Sec. 5.3; also, para 11 (Public Participation in the EIA Process), RPM-D30; see also para 10.a.i; p. 9.

11 DENR Administrative Order 2017-15: *Guidelines on Public Participation under the PEISS*.

12 See ClientEarth Communications, 2019; https://www.clientearth.org/latest/latest-updates/stories/what-are-environmental-principles/; The principles include:

1. Principle of Prevention *(To stop environmental damage even before it occurs or when it is critical and potential damage may already be irreversible")*; c.f. *Rules of Procedure for Environmental Cases* ratio., at 44 [citing Nicholas De Sadeleer, Environmental Principles: from Political Slogans to Legal Rules 21, at 61 (2002)];
2. Precautionary Principle *(Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost- effective measures to prevent environmental degradation")*; c.f. Principle 15, Rio Declaration (1992);
3. Environmental damage should be rectified at source (Working alongside the prevention principle, this ensures damage or pollution is dealt with where it occurs");
4. Polluter pays principle ("… the person who causes pollution should bear the costs of the damage caused and any remedy required");
5. Integration Principle ("Environmental protection is integrated into all other policy areas, in line with promoting sustainable development … all government departments have responsibilities to protect our environment."

13 DAO 2003-30, op. cit., Art. 1 Sec 3.k

14 Ibid., Art. 2, Sec. 5.2.1

15 Ibid., Art. 1, Sec. 3.q.; Art. 2 Sec. 5.2.1.f.

16 Ibid., Art. 1, Sec. 1.c: *"Project proponents are responsible for determining and disclosing all relevant information necessary for a methodical assessment of the environmental impacts of their projects."*

17 Ibid., Art. 1 Sec. 3.l; see also Art. 1 Sec 1.d (on criteria for evaluating EIS measures, which include *"technical soundness"* and *"social acceptability"* of the measures; Art. 2 Sec. 5.1.2.h requires *"proof of consultations with stakeholders".*

18 Ibid., Art. 1 Sec. 3.ff; see also related provisions: Art. 1 Sec. 3.aa (definition of *"public participation"*) and Art. 1 Sec 3.gg (definition of *"stakeholders"* comprising *"affected communities").*

19 Ibid., Art. 1 Sec 1.f.

20 The same EIA can't be used to apply to another project and site. This was also pointed out by Atty. Eduardo Sedillo to the Dumaguete City Council, August 11, 2021.

and (6) produces a *sui generis* EIS of "socially acceptable" findings and measures to address a project's environmental impacts, that DENR then uses to decide to grant or deny an ECC for the project.

What's an ECC?

An ECC certifies that, following an EIA process, a project proponent has *"complied with all the requirements of the [Philippine] EIS System."*[21] It certifies that the proponent commits to "conform with" and has *"sworn"* to assume "*full responsibility over implementation (sic) of specified measures which are necessary to comply with existing environmental regulations or to operate within the best environmental practices that are not currently covered by existing laws."*[22] It certifies that the measures are *"socially acceptable"* to the proponents, host LGUs, and stakeholders.[23]

ECCs are issued by DENR only after *"substantive review"*[24] by the Environmental Impact Assessment Review Committee (EIARC) of 3rd party and DENR experts, and following the EIARC recommendation to grant the ECC or not.[25]

ECCs are *not* approvals of projects. They cover only the environmental impact aspect of a project, not its economic, engineering, financial, political, and other considerations that could play into the decisions to do it or not.[26] An ECC is not a permit *per se* but a planning support for host LGUs to consider in their decision whether or not to issue local permits for a proposed project.[27] Projects are to be approved by LGUs and proponent agencies.[28]

In summary, ECCs certify: (1) a project's satisfactory completion of the EIA requirements of law; (2) the social acceptability of the environmental enhancement and mitigation measures to be imposed on the project; and (3) that the project proponent has sworn to implement the measures. And like EIAs, ECCs are *sui generis* to a project and site. The measures they prescribe are deemed unique, valid, and legitimate only for a project to which it's been granted (given its distinctive design), the site where the

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21 Ibid., Art. 1 Sec. 3.d; *[ECC is a "document issued by the DENR/EMB after a positive review of an ECC application, certifying that based on the representations of the proponent, the proposed project or undertaking will not cause significant negative environmental impact. The ECC also certifies that the proponent has complied with all the requirements of the EIS System and has committed to implement its approved Environmental Management Plan. The ECC contains specific measures and conditions that the project proponent has to undertake before and during the operation of a project, and in some cases, during the project's abandonment phase to mitigate identified environmental impacts.];* an ECC may cover a large area with a number of ECPs or which is an ECA; ECCs for these areas could be "programmatic" in nature *(Ibid., Art. 1 Sec. 1.w.)*

22 RPM-D30 op. cit., para 10.a.i; p. 9.

23 DAO 2003-30 op. cit., Art. 1 Sec. 1f.

24 A *technical evaluation*; Ibid., Art. 1 Sec. 3.hh

25 Ibid., Art. 1 Sec. 3.j; the issuance is legally mandatory once its requisite requirements have been complied with.

26 *"The issuance of ECC or CNC [Certificate of Non-Coverage] for a project under the EIS System does not exempt the proponent from securing other government permits and clearances as required by other laws." (*Ibid. Art. 2 Sec. 4.2).

27 This is the decision of the Supreme Court *en banc* in June 26, 2012 in Boracay Foundation Inc. versus The Province of Aklan (GR No. 196870).

28 *"The final decision whether a project will be implemented or not lies either with the LGUs who have spatial jurisdiction over the project or with the lead government agency who has sectoral mandate to promote the government program where the project belongs, e.g. DOE for energy projects; DENR-MGB for mining projects."* (Ibid., Art. 1 Sec. 3.j). Recognizing LGUs as *final* approving entity follows the local autonomy provision in Section 2 of the *Local Government Code* (RA 7160, 1991). This is especially If the LGU is itself the project proponent or is a partner of another. it's its initial decision to have or not have the project, and its decision to actually do it once all plans and approvals are obtained. This is a logical imperative akin to a person wanting to build a house. It's his/her decision to plan to build a house of a particular size, design, and cost. It's his/her decision to ask for permits and zoning approvals. And his/her decision to actually build it once permitted.

project is to be located (given its distinctive ecological conditions),[29] and, like the EIA that produced it, the best science available at the time when it was done.

Common Misconceptions about EIAs and ECCs

In many places in the country, EIAs are believed to be bureaucratic activities done by DENR.[30] They're not. They're a scientific and participatory exercise required by law and which involve 3rd party and DENR experts and the public.

Likewise in many places in the county, ECCs are misconstrued as "permits" or "approvals" of projects. They're not, legally and logically.[31] And some think that the measures they prescribe could be used in similar projects elsewhere. Not so; not when they're incompatible with the EIA findings of the other project and they have no "social acceptability" among the stakeholders of the other project.

These misconceptions seem because EIAs and ECCs are not kind to hasty perusal of their underlying science and legal principles. Their *sui generis* applications often escape people. And, I suspect, because EIAs are expensive to do and ECCs hard to have, people could conclude that when granted, an ECC is an approval of a project.[32]

I believe that these misconceptions could be best averted and minimized by careful study of the Philippine EIA System as it is described and prescribed by law.[33]

A Personal Plea

EIAs, ECCs, and development projects are important for our country and communities to achieve a sustainable and sought-after future. But with a raging pandemic now being a clear and immediate danger to many Filipinos, it seems necessary – and urgent – that our attention and preoccupation presently focus on controlling CoViD. This is what our health professionals say, and I agree because after all, the real and ultimate proof of caring for people is attending to their health and survival first. They're what matter now.

Health today precedes whatever wealth is gained tomorrow.

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[29] A measure that is included in an ECC may be included in another if (1) it is deemed necessary as part of the set of measures for the other project; (2) its application in the other project uses tools and techniques appropriate to the project and to its site; and (3) the scientific and social bases for the measure and of its intended tools and techniques are socially acceptable to the project's proponent, host LGU, and stakeholders.

[30] There've been many changes to how EIAs are done today since its incipience in 1978. Conditionalities and measures in ECCs have likewise evolved as science and legal developments (and jurisprudence) progressed over the years. But their essential elements remain the same since 1978: science-based, anchored on law, done by 3rd party and DENR experts; involves stakeholders; open and participatory; and requires social acceptability of the environmental measures to be imposed on environmentally significant projects before they are finally permitted by other government agencies and finally approved to be done by host LGUs and proponents.

[31] An analogy would be that a "certification" for passing an emission test is to be considered an actual approval of a car's registration. It's not. A certification of having passed the test is a necessary but not sufficient reason for registering the car. It could be registered or denied registration for reasons other than air emission (like that it's found to have been stolen).

[32] Misconceiving EIAs and ECCs could be simply innocent; one just doesn't know.

[33] Certainly more than this brief account because their complexity easily lends to mistaking their features and misconstruing the details of their scientific and legal foundations. This account may have missed and could be wrong on many of these details so readers are encouraged to do their own study of the EIA System, especially among those who refer to them in academic studies, research, and official or professional capacities. When available, good staff work would be helpful.