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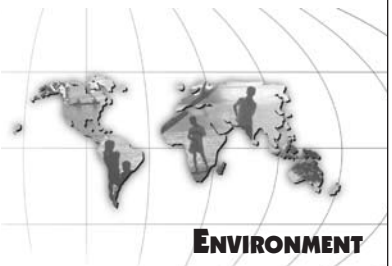

ENVIRONMENT STRATEGY PAPERS

No. 13

A Selective Review of SEA Legislation

Results from a Nine-Country Review

Kulsum Ahmed and Yvonne Fiadjoe

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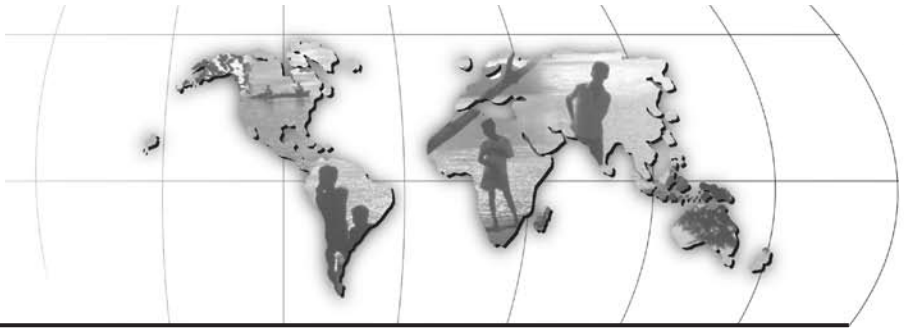
In 2001, the World Bank completed the comprehensive two-year process of preparing its Environment Strategy, Making Sustainable Commitments: An Environment Strategy for the World Bank. It was endorsed by the Bank's Board of Directors and published in October 2001. The Environment Strategy Paper series includes revised versions of background papers published during the Strategy preparation phase, as well as new reports prepared to facilitate implementation and to report on progress.

The recommendations made in this paper represent the views of the authors and not those of the World Bank.



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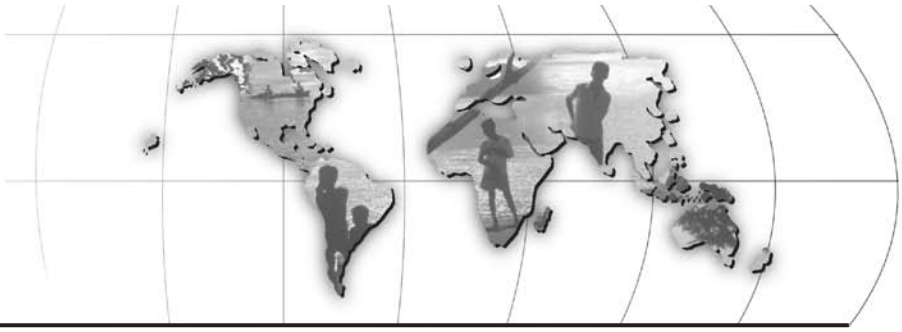

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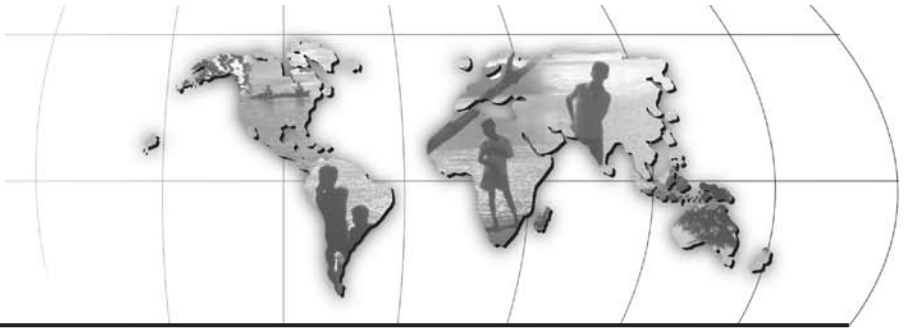


Acronyms and Abbreviations

AFR	Africa
AP	Andhra Pradesh (India)
CBD	Convention on Biological Diversity
CEQ	Council on Environmental Quality
CIDA	Canadian International Development Agency
DAC	Development Assistance Committee
DWAF	Department of Water Affairs (South Africa)
EA	Environmental Assessment
EAP	East Asia and Pacific
EC	European Commission
EPA	Environmental Protection Agency
EU	European Union
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EGAT	Electricity Generating Authority of Thailand
FONSI	Finding of No Significant Impact
IAIA	International Association for Impact Assessment
IIED	International Institute for Environment and Development
IEM	Integrated Environmental Management
LAC	Latin America and the Caribbean
LEGEN	ESSD and International Law Unit
MEC	Minister of the Executive Council
MENA	Middle East and North Africa
NEPA	National Environmental Policy Act
OECD	Organisation for Economic Co-operation and Development
PPPs	Policies, Plans and Programs
SAR	South Asia
SEA	Strategic Environmental Assessment

TA	Technical Assistance
TOR	Terms of Reference
UK	United Kingdom
UN	United Nations
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
USA	United States of America
WBI	World Bank Institute
WSSD	World Summit on Sustainable Development

Executive Summary

In recent years, countries have begun to incorporate the use of Strategic Environmental Assessment (SEA) as a tool in their national legislation. At the same time, there has been an evolution in SEA concepts and thinking. This report is intended as a small step forward in providing information about how current SEA legislation and legal instruments in selected countries relates to the current thinking on SEA. It is intended particularly for countries considering new SEA legislation.

Strategic Environmental Assessment (SEA) is a tool for including environmental considerations into policies, plans, and programs at the earliest stages of decision making. In that context, SEA provides a practical and direct means of progressing Millenium Development Goal (MDG) Number 7 on Environmental Sustainability, which calls for the "integration of the principles of sustainable development into country policies and programmes." SEA extends the application of environmental impact assessments (EIAs) from projects to policies, plans, and programs (PPPs).

Strategic Environmental Assessment was first considered to be an impact assessment of policies, plans, and programs. More recently, both concept and practice have evolved and SEA is currently considered an umbrella term that encompasses a continuum of approaches. This continuum can be at several levels and includes a range of approaches that (1) focus purely on environmental effects to those that also bring in social and economic effects; (2) emphasize impact assessment to those that emphasize institutional and governance aspects to improve management of impacts; and (3) emphasize incorporating environmental aspects in PPPs to those that emphasize good environmental outcomes from implementation of PPPs.

Legal instruments from nine countries, representative of developed, developing, and middle income countries from various regions (and based on availability of information) were examined. These countries are Belize, Canada, China, the Dominican Republic, Ethiopia, Ghana, Kenya, Palestine, and South Africa.

Despite the paper's limitations as a desk review of select legal frameworks that govern SEA nationally, a number of conclusions emerge from the analysis. They include the following:

- There is a range of explicit and implicit references to SEA, principally in EIA laws. Often there is reference to an EIA or an EA of a policy, plan, or program, rather than directly to SEA. The most recent legislation reviewed uses the term SEA. There is also considerable variation in whether policies, plans, and/or programs are covered.
- The scope of the law with respect to SEA application is variable. In most cases the list of sectors is broad. In a few countries, a list of sectors that require SEA is highlighted in the law with allowance for other sectors to be included.
- The purpose of the SEA ranges from enhancing positive sustainable development outcomes to "doing no harm," that is, on only mitigating environmental damage.
- There are only a few examples of legal instruments that ensure accountability for SEA implementation. Rarely are sanctions prescribed for noncompliance with SEA legislation. This lack of sanctions is in contrast to EIA legislation, which often prescribes detailed sanctions. Where sanctions are prescribed, they are typically financial. Since SEA is often carried out by government departments responsible for preparing policies, plans and programs, this lack of meaningful sanctions may reflect the difficulty of one part of government imposing a sanction on another part. The situation is further complicated by the fact that the environment ministry (responsible for ensuring compliance with SEA procedures) is often a politically weaker agency than the agencies responsible for the productive sectors (who may be preparing the SEA).
- Some laws attempt to define responsibilities among agencies for preparing, reviewing, and approving SEAs. In other cases, less thought is given to this separation of functions, because it appears that lawmakers assume that, as with an EIA, there is a clear and separate applicant and reviewer. However, SEAs are typically also prepared by a government agency and are sent for review and clearance to another government agency. There is clearly room for improvement on this front.
- There is little focus on monitoring SEA outcomes, an area that needs to be improved if policy makers are to be convinced of the value of SEA as a tool for facilitating sustainable development.
- There is generally low coverage of supranational transboundary issues in the national SEA legislation reviewed.
- The methodology for conducting SEA is variable. In most countries reviewed, EIA methodology is prescribed. Some countries like Canada offer more flexibility.
- All the laws reviewed had some reference to citizen participation, either in terms of opening processes to the public or focusing on views of affected parties, and in a few cases both.

These findings suggest that overall SEA legislation needs to catch up with the recent evolution in SEA concepts and methodologies as an approach for sustainable development rather than an impact assessment tool. However, this review also provides examples of good practice in SEA legislation consistent with the conceptual evolution of SEA mentioned earlier.

- Given that government is typically involved with preparing policies, plans and programs, it is important that a different set of requirements with respect to approving SEA and ensuring accountability for carrying out SEA recommendations are detailed in legislation. These need to be distinct from

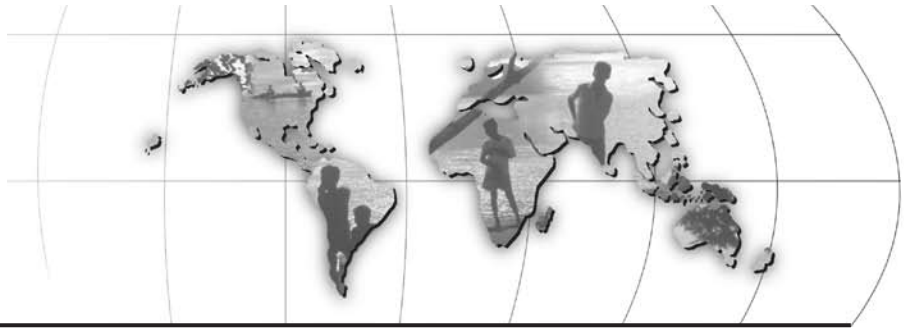
EIA provisions where typically there is a clear separation between project proponent and EIA clearance, through the licensing procedure. Hence it is important that legal instruments have distinct provisions for SEA. One way to clarify the distinctions between SEA and EIA is to use the term SEA when discussing policies, plans, or programs, as was done by Canada, Dominican Republic, Kenya, Palestine, and South Africa, rather than referring to SEA as an EIA or EA of a policy, program, or plan.

- In order to focus the use of SEA as a tool where it really matters, it may be useful to consider which sectors have the greatest impact on the environment, rather than putting a general provision in the law for all sectors of the economy. The Palestinian example illustrates good practice by specifying some sectors, but also allowing for the inclusion of other sectors as necessary. Alternatively, subsequent procedures could specify that SEA is carried out in the cases where there is substantial or significant positive or negative impact on the environment, rather than in all cases.[1]
- In line with current thinking on SEA, it is good practice for legislation to explicitly clarify the purpose of using SEA as an approach for sustainable development rather than to solely mitigate damage, or even as an end in itself.
- It may be desirable to place sanctions for noncompliance only in cases where an SEA has value-added for the country. Given that SEAs are conducted by government agencies on government policies, plans, and programs, political or administrative sanctions, such as not adopting legislation or not financing implementation, may be more appropriate than financial penalties. Another complementary option is creating incentive structures to help promote enforcement and compliance with SEA requirements.
- Given that SEAs are both conducted and approved by the government, a system of checks and balances provides greater clarity on the roles and responsibilities of different agencies to conduct, approve, and monitor SEA outcomes, as is done in the Chinese legislation and the Canadian Cabinet Directive. This separation of functions should also help shift the focus to sustainable development outcomes rather than stopping at the preparation of an SEA report.
- To learn from experiences with SEA, nations must collect data by monitoring the effectiveness of their efforts. Thus, a focus on evaluating SEA outcomes and learning from this information to revise policies, plans, and programs, should be incorporated in future SEA legislation.
- Kenya and Palestine provide good examples of how potential transboundary issues can be incorporated in legal instruments. In both these countries' legal instruments, there is reference to the use of treaties and/or agreements with neighboring countries to mitigate transboundary environmental impacts.
- Allowing for greater flexibility in SEA methodology, as is done in Canada, helps achieve the SEA's purpose of enhancing positive outcomes as well as mitigating damage. The definition of guiding principles, as done in the Palestinian instrument, also provides flexibility.
- Finally, given the emphasis on sustainable development and long-term learning, public

[1] It is also important to note the limitations of both approaches. Requiring SEA for a sector could lead to "paper" compliance with the legal instrument. Alternatively, it is difficult to define objectively the term "substantial or significant impact" and much-needed SEAs could be avoided by manipulating the definition.

participation should be undertaken at two levels, as exemplified in the Canadian and Ethiopian legal instruments. First, the decision-making process should be transparent to the public and second, the SEA process should actively engage and consider the views of parties most affected by the decisions. Countries might consider innovative mechanisms beyond communication and consultation to ensure that the weaker stakeholders are also considered.

Clearly SEA legislation is evolving as many countries move forward on this front. The challenge for countries is to ensure that their legislation keeps up with the fast-moving pace with which the methodologies for conducting SEA and the concept of SEA itself is evolving as an approach for sustainable development.



Chapter 1

Introduction

In recent years, countries have begun to incorporate the use of Strategic Environmental Assessment (SEA) as a tool in their national legislation. At the same time, there has been an evolution in SEA concepts and thinking. This paper is intended as a small step forward in providing information and a better understanding of how current SEA legislation in selective countries relates to current thinking on SEA. It is aimed particularly at countries thinking about enacting new SEA legislation.

Organization of Report

This report is divided into three parts. This introductory chapter provides a brief summary of the international and regional SEA frameworks and states the report's objectives and limitations. First, it discusses the evolution of SEA concepts and outlines the methodology used for this review. Second, Chapter 2 analyzes the weaknesses and strengths of national legal instruments that govern SEA in nine countries. Finally, Chapter 3 draws some inferences from this analysis.

International and Regional SEA Frameworks and Context

There is an emerging legislative framework for the application of SEA in developed and developing countries. Sometimes the driver for these frameworks is a regional SEA instrument. The two main regional legal instruments[2] that address SEA specifically are:

1. the *Protocol on Strategic Environmental Assessment* (Kiev (SEA) Protocol)[3] to the *Convention on Environmental Impact Assessment in a Transboundary Context* (Espoo), which has yet to enter into force, and

2. the *Directive 2001/42/EC of the European Parliament and of the Council on the Assessment of the effects of certain plans and programs on the environment* (EU SEA Directive), which entered into force in 2001.

[2] Other regional arrangements, such as approaches toward international waters in regional seas agreements or river basin commissions may also carry out certain types of strategic reviews. However, for the purposes of this paper, these two main instruments were examined.

[3] http://www.unece.org/env/eia/sea_protocol.htm (accessed August 16, 2005).

A detailed review of these instruments can be found in Annex 1. The protocol is open to United Nations Economic Commission for Europe (UNECE) member states; but could be open more widely once the amendment to allow all UN member states to become state parties comes into force. The SEA directive applies to the 25 member states of the European Union. Both instruments are procedural, mandating that certain plans and programs that are likely to have significant effects on the environment are subject to a strategic environmental assessment in the case of the protocol and an environmental assessment in the case of the directive. In addition, the protocol, which has yet to enter into force, makes a nonmandatory reference to considering and integrating environmental (including health) considerations in the preparation of proposals for policies and legislation.

Internationally, there are various agreements that partially address SEA. For example, Article 7 of the *Convention on Access to Information, Public Participation and Access to Justice on Environmental Matters* (Aarhus) prescribes that state parties "shall make appropriate practical, and/or other provisions for the public to participate during the preparation of plans and programs relating to the environment…"[4] In so doing, the convention allows for the use of EIA/SEA or any other instrument that state parties deem appropriate. Basically, the convention provides—for countries that have ratified it—"a clear, transparent, and consistent framework to implement"[5] its provisions. Similarly, the Convention on Biological Diversity (CBD)[6] also facilitates the use of SEA. Article 6(b) mandates state parties to "integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programs, and policies."[7]

Many developed and developing countries have either national legislative or other provisions directly addressing SEA. For example, several European countries have provisions that pre-date the EU SEA Directive.[8] In some regions, such as East Asia, there is a growing interest in establishing SEA legislative frameworks. In addition to legislation, there are several other drivers of SEA, including international processes[9] and development agencies,[10] the latter particularly in developing countries.[11]

Objectives

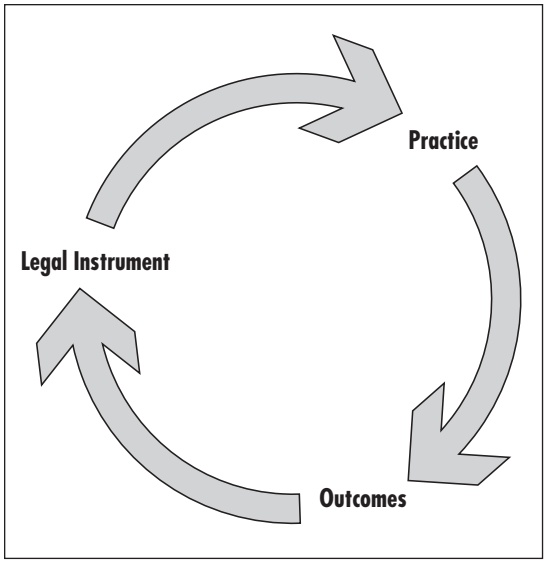
In the context of increasing interest in national SEA legislation, this paper is intended to be only a first step to improve understanding of

[4] *Convention on Access to Information, Public Participation and Access to Justice on Environmental Matters* (Aarhus),1998. http://www.unece.org/env/pp/documents/cep43e.pdf (accessed August 16, 2005).
[5] Article 1. http://www.unece.org/env/pp/documents/cep43e.pdf (accessed August 16, 2005).
[6] *Convention on Biological Diversity*, article 1. http://www.biodiv.org (accessed August 16, 2005).
[7] http://www.biodiv.org/doc/legal/cbd-en.pdf (accessed August 16, 2005).
[8] DAC (Development Assistance Committee), OECD (Organisation for Economic Co-operation and Development), 2006. *Good Practice Guidance on Applying Strategic Environment Assessment (SEA) in Development Cooperation*, DAC Guidelines and Reference Series (forthcoming).
[9] For example the World Summit on Sustainable Development (WSSD) held in Johannesburg. Other drivers include the Millennium Development Goals (MDGs) and the search for tools to further sustainability or sustainable development.
[10] Pillai, Poonam and Jean Roger Mercier (forthcoming). "Learning from good practice examples: Review of SEAs supported by the World Bank". Environment Department, World Bank, Washington DC.
[11] Dalal-Clayton, Barry and Barry Sadler. 2004. *Strategic Environmental Assessment (SEA): A Sourcebook and Reference Guide to International Experience*. Final pre-publication draft, October 13, 2004. http://www.iied.org/spa/sea.html (accessed August 16, 2005)

the content of current SEA legislation and how it relates to current thinking about SEA and its uses. Hence, the objective of this paper is to examine select national legal instruments that address SEA; and compare them with each other and with the most current thinking on SEA to highlight the best practices around the world. By highlighting these successes, as well as pointing out weaknesses in some laws, we hope to facilitate the application of SEA as a tool to foster environmentally sustainable development.

It is also important to be clear about the limitations of this paper. For example, in order to understand the effectiveness of national legislation pertaining to SEA, it is important to also review SEA practice[12] as it relates to national SEA legislation. This task has been left for separate country-level or regional reviews. Clearly, other analyses that need to be undertaken to provide a more comprehensive picture to countries on how to put in place an effective system for integrating environmental sustainability concerns into policies, plans, and programs, include: (1) how national legislation is developed through regulations and institutional frameworks into an implementable SEA system as well as the corresponding experience of implementation; and (2) the effectiveness of national SEA legislation and the underlying institutional frameworks for implementation in increasing the number of SEAs and their respective quality and, most importantly, their effectiveness, that is, their influence on outcomes.[13] Figure 1.1 provides a schematic of this process.

Figure 1 1: Holistic Approach to Understanding SEA



It is also important to note that the legal regimes reviewed in this paper focus primarily on environmental legal instruments rather than sectoral legal instruments (with the exception of South Africa where the primary form of SEA legislation is sectoral). Sectoral instruments are equally important to understanding the legal regime that governs SEA in a country, particularly for the sectors that typically have significant impacts on the environment. An analysis of sectoral legal instruments is also left for a later review.

The next section discusses in more detail the evolution in thinking about SEA concepts and its applications.

Evolution in SEA Concepts

Strategic environmental assessment (SEA) is a tool for including environmental considerations into policies, plans, and programs at the earliest stages of decision making. In that con-

[12] 'SEA practice' refers to actual SEAs which have been conducted as well as processes which have the elements of an SEA but are not termed SEA.

[13] Guidance on how to evaluate an SEA can be found in DAC OECD, 2006 (forthcoming).

text, SEA provides a practical and direct means of progressing Millennium Development Goal (MDG) Number 7 on Environmental Sustainability, which calls for the "integration of the principles of sustainable development into country policies and programmes."[14] SEA extends the application of environmental impact assessments (EIAs) from projects to policies, plans, and programs.[15] The umbrella term typically used to encompass both EIA and SEA is Environmental Assessment (EA). However, for the purposes of this paper, reference in legal instruments to EA or EIA of policies, plans, and programs are deemed to be the same as SEA (See Box 1.1).

BOX 1.1
Terminology

Environmental Assessment (EA):The umbrella term typically used to encompass environmental impact assessment and strategic environmental assessment

Environmental Impact Assessment (EIA): Typically used to refer to impact assessments of projects prior to their commencement

Strategic Environmental Assessment (SEA): The environmental assessment of policies, plans, and programs (PPPs). At first SEA was considered to be an impact assessment of PPPs. Now SEA is considered an umbrella term that encompasses a "continuum of approaches." This continuum occurs at several levels and includes a range of approaches that (1) focus purely on environmental effects to those that also bring in social and economic effects; (2) emphasize impact assessment to those that emphasize institutional and governance aspects to improve management of impacts; and (3) emphasize incorporating environmental aspects in PPPs to those that emphasize good environmental outcomes from implementation of PPPs.

Historically, SEA evolved from the limitations[16] of EIA and provided a mechanism to analyze environmental effects of policies, plans, and programs—all upstream of the project. More recently, SEA is increasingly recognized as a family of approaches, rather than a single, fixed approach.[17] For example, the most recent collaborative effort to describe the benefits and good practices of SEA is the Development Assistance Committee (DAC) of the OECD's *Good Practice Guidance on Applying SEA in Development Cooperation*,[18] which refers to SEA as a range of "analytical and participatory approaches that aim to integrate environmental considerations into policies, plans, and programs and evaluate the interlinkages with economic and social considerations." Hence, at one end of the spectrum SEA focuses on integrating only environmental effects into higher levels of decision making. At the other end of the spectrum are integrated assess-

14 DAC OECD, 2006 (forthcoming).

15 Ahmed, Kulsum, Jean-Roger Mercier and Rob Verheem. 2005. "Strategic Environmental Assessment Concept and Practice." Environment Strategy Note No. 14. World Bank, Washington D.C.

16 Ortolano, Leonard. 2005. Policy-Level Environmental Assessment. Background paper for World Bank. In particular, Ortolano notes that "examples of the limitations of EIA that can be overcome by SEA include: the inability of EIA to account for the cumulative effects of multiple, successive projects in a particular area, and the inability of EIA to focus attention on strategic choices which, if they had been made, would have precluded the need for the project considered in the EIA. For more on this subject see Thérivel and Partidário (1996:8-9) and Connor and Dovers (2004:153). A 2004 intergovernmental policy forum on environmental assessment characterized, as "core premises...that SEA will lead to fewer and/or simpler EIAs and will be more effective in identifying issues of cumulative impact" (Canadian Environmental Assessment Agency, 2004a:17)."

17 DAC OECD, 2006 (forthcoming).

18 *Ibid.*

ments[19] (also termed sustainability appraisals or sustainability assessments by some SEA experts), which take into account not only the environmental effects of policies, plans, and programs, but also consideration of their social and economic effects. Therefore deciding which SEA approach to select and implement is context specific.

There has also been a recent analysis of how to improve the effectiveness of applying SEA to policies, as opposed to plans and programs.[20] By trying to better understand the policy formulation process, this analysis concluded that the complex interactions between political, social, and environmental factors create special challenges for the environmental assessment of policies. For example, powerful stakeholders and elites often prevail over other stakeholders, including poor and indigenous communities, who may be particularly vulnerable to the social and environmental impact of policy choices. Hence SEA of policies, if it is to be more effective, requires a thorough understanding of political economy factors and institutional settings. This implies that the SEA approach needs to place more emphasis on improving governance and social accountability (i.e., the obligation of public officials and decision makers to be accountable to their citizens regarding their plans of action, their behavior, and the results of their actions) on a continuous basis. It should also emphasize social learning, which is essential to raise more attention to environmental issues and to continuously improve the design of public policies.

Third, there is increasing emphasis on not just incorporating environmental aspects upfront into policies, plans, and programs, but on actually achieving good environmental outcomes from the implementation of these policies, plans, and programs. Thus there is more focus on measuring outcomes and impact beyond the SEA report.[21] This measurement of outcomes is particularly important if decision makers are to understand the benefits of applying SEA.

Hence, increasingly, there is an emphasis on the use of SEA as a means to an end, namely sustainable development, through the design and implementation of sustainable policies, plans, and programs and on using flexible methodology rather than taking a prescriptive approach. Indeed, the DAC OECD *Good Practice Guide* notes that "[t]he different needs of SEA users, the different legal instruments they face, the diversity of applications of SEA in development cooperation, and, last but not least, the rapid evolution of SEA practice imply that it is neither feasible nor desirable to suggest a precise "one size fits all" methodology let alone prescriptive, blue print guidelines for SEA." The evolution of SEA from its earlier concept as an extension of the EIA project-based process for use with policies, plans, and programs, is often referenced in the remainder of this report.

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[19] "Integrated assessment" is defined by Dalal-Clayton and Sadler as "a structured process to assess complex issues and provide integrated insights to decision makers early in decision-making processes in Dalal-Clayton, Barry and Barry Sadler. 2004. *Strategic Environmental Assessment (SEA): A Sourcebook and Reference Guide to International Experience*. Chapter 2, 12.

[20] World Bank, 2005, *Integrating Environmental Considerations in Policy Formulation: Lessons from Policy-Based SEA Experience*. Report No. 32783. Washington DC: World Bank.

[21] This comment reflects discussions and presentations at the International SEA Conference, organized by the International Association for Impact Assessment (IAIA), in Prague in September 2005, as well as other sources, including ERM (2004), Ortolano (2005), World Bank (2005), and DAC OECD (2006, forthcoming).

BOX 1.2
What Makes for Successful Strategic Environmental Assessment?

The detailed criteria for SEA used by the World Bank to guide task team leaders as they work to support clients with their SEA implementation can be grouped into seven characteristics:

1. *Integrated*. A good SEA addresses the interrelationships of biophysical, social, and economic aspects and is tiered to policies, programs, and plans in both the environmental field and other relevant sectors and regions.
2. *Sustainability-led*. The SEA identifies the available sustainable development options and proposals.
3. *Focused*. The SEA concentrates on key issues and provides reliable, useful information for planning and decision making.
4. *Accountable*. The leading agencies take responsibility for the SEA and make sure the process is professional and fair, and is subject to independent checks and verification. How decisions are made is clearly documented.
5. *Participative*. Throughout the process, public and government stakeholders are involved and informed and their concerns are documented and considered in decision making. The goal is to provide a forum for discussion and, if possible, to ultimately build consensus among stakeholders.
6. *Iterative*. The assessment information is available early enough to influence decision making and guide future choices.
7. *Influential*. SEA improves the strategic decision and its implementation and influences future policies by raising awareness and changing attitudes toward sustainable development.

Source: Ahmed, Kulsum, Jean-Roger Mercier and Rob Verheem (2005).

Methodology

Initially, a review was conducted on international and regional legal instruments that pertain to SEA. This review was followed by a more detailed desk review and comparison of the scope of two instruments that specifically address SEA: the Kiev (SEA) Protocol and the EU SEA Directive (see Annex 1).

Next, a broad review was conducted to determine which countries have legislative provisions to address SEA and which have no such provisions but still conduct SEAs. This review was carried out by conducting online searches, literature reviews, and interviews with task team leaders of projects that conducted SEAs. Other SEA practitioners were also consulted to verify information where necessary. As a result of this exercise, a list was generated detailing the countries where there was deemed to be either SEA legislation or some form of SEA practice (see Annexes 2 and 3). This list is not exhaustive but provides some guidance in identifying countries where there is either SEA legislation or practice. In developing Annex 2, the recent study, *Strategic Environmental Assessment (SEA): A Sourcebook and Reference Guide on International Experience*" [22] was used to identify countries with some form of SEA practice or legal instruments. Several countries were not included in the study because their legislation was not readily available for review.

Legal instruments from nine countries, representative of developed, developing, and middle income countries from various

[22] Dalal-Clayton, Barry & Sadler, Barry–Strategic Environmental Assessment (SEA): A sourcebook and reference guide on international experience. Final pre-publication draft, October 13, 2004. Available at http://www.iied.org/spa/sea.html

regions have been examined. These countries are (1) Belize, (2) Canada, (3) China, (4) The Dominican Republic, (5) Ethiopia, (6) Ghana, (7) Kenya, (8) Palestine, and (9) South Africa. In addition, laws of Nigeria, Swaziland, and Zimbabwe were examined because a number of references document SEA practice in these countries. In the latter two cases, there is reference only to EIA of projects, and no reference to SEA, EA or EIA of policies, plans, or programs. In the case of Nigeria, there is a distinction in the law between EIA[23] and EA. EA is defined specifically as "an assessment of the environmental effects of a project…" and hence it was assumed that policies, plans, and programs were excluded from the scope of the law. Where appropriate, reference is also made to the laws of other countries.

Each national legal instrument in the nine countries was analyzed as follows: (1) definition of SEA, (2) scope of the law, (3) purpose, (4) accountability, including an examination of whether sanctions or penalties are prescribed for noncompliance with the SEA procedure, (5) the authorities responsible for conducting, reviewing, and enforcing SEA legislation, including any mention of interinstitutional coordination, (6) provisions for monitoring SEA outcomes, (7) coverage of subnational, supranational regional and international issues, (8) methodology for conducting the SEA, and (9) provisions that allow for citizen participation.

The criteria for the analysis of national legal instruments addressing SEA were derived by trying to understand whether legislation is consistent with the "continuum of approaches" concept presented earlier, and whether it lies in the middle or at one end of the spectrum. The list also draws upon the criteria for successful SEA presented in Box 1.2.

Pertinent to the remainder of the paper is a brief introduction to EIA methodology and terminology often found in SEA legislation. EIA methodology encompasses a number of systematic processes such as screening, scoping, generation of alternatives, identification of significant impacts, public consultation, mitigation options, and monitoring and evaluation.

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[23] *Environmental Impact Assessment Decree,* No.86 (1992) does not specifically define EIA. However, section 1 of the Decree states that the objectives of any environmental Impact Assessment shall be "(a) to establish before a decision taken by any person, authority corporate body or unincorporated body including the Government of the Federation, State or Local Government intending to undertake or authorize the undertaking of any activity that may likely or to a significant extent affect the environment or have environmental effects on those activities shall first be taken into account; (b) to promote the implementation of appropriate policy in all Federal Lands (however acquired) States and Local Government Areas consistent with all laws and decision making processes through which the goal and objective in paragraph (a) of this section may be realized; (c) to encourage the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant environmental affects on boundary or trans-state or on the environment of bordering towns and villages."

Chapter 2

Analysis of National Laws/Instruments Addressing Strategic Environmental Assessments

A number of national laws address the environmental assessment of policies, plans, and/or programs. As illustrated in Box 2.1, programmatic EIAs in the United States date back to the 1970s. The Netherlands and Australia followed with legislation in the late 1980s, followed by Canada, New Zealand, and other countries in the early 1990s. Consequently, many countries have put in place detailed procedures for SEA, such as those described briefly in Box 2.2 for the United States.

BOX 2.1

Snapshot of the Global History of Sea Legal Instruments

1970: U.S. *National Environmental Policy Act* (1969). S.102[42 USC§ 4332]
1978: NEPA regulations issued by Council on Environmental Quality (CEQ)
1987: Netherlands *Environmental Impact Assessment Act* (1987) (amended 1994)
1989: Australia *Resource Assessment Commission Act*, (1989)
1990: Canada Environmental Assessment Process for Policy and Programme Proposals by order in Council (amended 1999)
1991: New Zealand *Resource Management Act* (1991)
1991: (Espoo) Convention on EIA in a Transboundary Context
1993: Denmark *Environmental Assessment of Government Bills and Other Proposals* by Prime Minister's Office circular (amended 1995, 1998)
1994: UK Guide on Environmental Appraisal of Development Plans (updated 1998)
1995: Norway *Assessment of White Papers and Government Proposals* by Administrative Order
Slovakia *Environmental Impact Assessment Act*, (1994)
1998: Finland *Guidelines on Environmental Impact Assessment of Legislative Proposals* by Decision-in-Principle
1999: Australia *Environmental Protection and Biodiversity Conservation Act*
2001: EU SEA *Directive* (2001/42/EC)
2003: Protocol on Strategic Environmental Assessment to the (Espoo) Convention on EIA in a Transboundary Context

Adapted from UNEP. 2002. *Environmental Impact Assessment Training Resource Manual, Second Edition*. http://www.iaia.org/Non_Members/EIA/ManualContents/Sec_E_Topic_14.PDF (accessed August 16, 2005)
Source: *Sadler*, 2001. Note that this is an indicative, rather than a comprehensive, list of all SEA legal instruments.

BOX 2.2

The US National Environmental Policy Act 0f 1969

The National Environmental Policy Act (NEPA)[25] provides the policy framework for SEA in the United States. The NEPA established the Presidential Council on Environmental Quality (CEQ),[26] which provides guidance regarding the NEPA regulations and developed the guidelines for the environmental impact statement (EIS) process.

NEPA (S 102[42 USC §4332]) states that all agencies of the Federal Government shall "include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on (1) the environmental impact of the proposed action, (2) any adverse environmental effects which cannot be avoided should the proposal be implemented, (3) alternatives to the proposed action, (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."

The detailed statements are generally referred to as Environmental Impact Statements (EIS) CEQ Regulation 1508 defines the term "actions" to " include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals" (Secs. 1506.8, 1508.17).[27]

The NEPA process encompasses levels of analyses that depend on whether or not a proposed action could significantly affect the environment. In circumstances where an agency determines that there is no significant environmental impact, the activity is excluded from an environmental analysis. At another level, a federal agency prepares a written environmental assessment (EA) to assess whether the undertaking would significantly affect the environment. If the answer is no, then the agency issues a finding of no significant impact (FONSI). If the answer is yes, then an EIS is prepared.[28]

SEA practice is also evident in many countries (see Box 2.3). As described earlier, some practice is driven by national or regional legislation and some by alternative factors, including development agencies or national decision makers. A number of reviews document such practice, and others are forthcoming.[24]

This chapter analyzes the national SEA legal instruments in nine countries. It should be noted that these countries are neither parties to the SEA protocol or subject to the EU SEA Directive. In analyzing the legislation, this paper does not consider actual SEA practice in these countries, which is left as a separate task. Actual SEA practice is varied. Some countries, such as Canada and South Africa (see Box 2.4) have a history of SEA implementation. Other countries have fewer examples of application. This review is a first step that strives to analyze the legislation itself.

[24] For example, a review of good practice SEA examples linked to World Bank-supported projects is forthcoming from Pillai and Mercier. In addition, an international conference on SEA, organized by the International Association for Impact Assessment (IAIA), held in Prague in September 2005, also highlighted the broad range of current SEA practice.

[25] *The National Environmental Policy Act* of 1969. http://ceq.eh.doe.gov/nepa/regs/nepa/nepaeqia.htm. (accessed August 24, 2005).

[26] http://www.epa.gov/history/topics/nepa/01.htm (accessed August 24, 2005).

[27] http://ceq.eh.doe.gov/nepa/regs/ceq/1508.htm#1508.16 (accessed August 24, 2005).

[28] http://www.epa.gov/compliance/basics/nepa.html (accessed August 24, 2005).

BOX 2.3

Countries with SEA Laws or Practice in Various Regions

Developed Countries	Australia, Canada, Norway, the Netherlands, the United States
Transition Countries	Bulgaria, Czech Republic, Hungary, Poland, Slovakia, Slovenia
Southern Africa	Botswana, Lesotho, Mozambique, Namibia, South Africa, Swaziland
Francophone Africa	Benin, Burkina Faso, Cote D'Ivoire, Guinea, Madagascar, Morocco
Sub-Saharan Africa	Cape Verde, Ghana, Uganda
Latin America and the Caribbean	Argentina, Bolivia, Brazil, the Dominican Republic, Ecuador, Trinidad and Tobago
Asia	China, Nepal, Pakistan, Sri Lanka, Thailand, Vietnam

Note: This list is illustrative rather than exhaustive. SEA activity is far wider than the countries specified in the box.
Source: Adapted from (1) a Presentation given by Rob Verheem of the Netherlands EIA Commission at the World Bank, 2004 and (2) Dalal-Clayton, B., and B. Sadler. 2004. *Strategic Environmental Assessment (SEA): A Sourcebook and Reference Guide to International Experience*. Final pre-publication draft, October 13, 2004.

As described earlier, this paper analyzes SEA legal instruments in nine countries from the following perspectives: (1) definition provided for SEA, (2) scope of the law, (3) purpose, (4) accountability including an examination of whether sanctions or penalties are prescribed for noncompliance with the SEA procedure, (5) the authorities responsible for conducting, reviewing and enforcing SEA legislation, including any mention of institutional coordination, (6) provisions for monitoring SEA outcomes, (7) coverage of regional and international issues, (8) methodology for conducting the SEA, and (9) provisions that allowed for citizen participation. Annex 3 presents summaries of these features of SEA legislation in the nine countries reviewed in this paper.

BOX 2.4
SEA Practice in South Africa

In South Africa, SEA practice is well established and on the increase. Due to the promulgation of SEA legislation and guidance, this trend in SEA practice is expected to continue. In fact, a recent paper by Retief *et al* (2004) notes that "South Africa has emerged as a leading country in the development of SEA, especially among developing countries." The extent of SEA practice varies and includes a range of scales, types and tiers. The study notes, "Apart from the traditional integration of SEA with policy, plan, or program tiers of decision making", it is also uniquely implemented as a "substitute where strategic-level decision-making processes were weak or absent." SEA practice in South Africa has been primarily voluntary and this is attributed to the fact that it adds value to decision making. Some examples of SEA conducted in South Africa include:

- SEA for the KwaZulu-Natal Trade and Industry Policy (Trade and Industry Sector)
- SEAs for the Mhlathuze catchment and Usutu-Mhlathuze WMA (Water Management Sector)
- SEA for the Greater Addo National Park (Conservation and Biodiversity Management Sector)
- Marine Diamond Mining of the West Coast (Mining Sector)

Source: Adapted from (1) Retief, F., N. Rossouw C. Jones, S. Jay. 2004. *The Status of Strategic Environmental Assessment (SEA) Practice in South Africa*. Paper to International Association for Impact Assessment Conference, Vancouver, IAIA, Fargo, ND and (2) Dalal-Clayton B. and B. Sadler.2004. Strategic Environmental Assessment (SEA): A Sourcebook and Reference Guide to International Experience. Final pre-publication draft, 13 October 2004.

Definition of SEA

Unlike its predecessor EIA, which often provides clear legislative provisions and clear incidence of practice, SEA appears to be breaking new ground in its application.

In five out of nine countries reviewed–Belize, China, Ethiopia, Ghana, and Kenya–SEA requirements are subsumed under EIA laws and/or provisions. In three cases, there is no explicit reference to SEA, but rather to EIA of policies, plans, or programs. For example, in Ethiopia's *Environmental Impact Assessment Proclamation*,[29] the law requires an EIA for a "public instrument," which is defined as a "policy, strategy, program, law, or international agreement."[30] Similarly, China's *Environmental Impact Assessment Law*[31] states that an EIA is the methodology and system for analyzing, forecasting and assessing the potential impact on the environment of a plan or construction project. In Belize, the law states that an EIA should be carried out by "any person intending to undertake a project, program, or activity."[32]

In other instances, SEA is captured by legal definitions that address Environmental Assessment (EA). For example, in Palestine, the *Environmental Assessment Policy*,[33] defines SEA as the environmental assessment of plans and programs.[34] In Ghana, the *Environmental Assessment Regulations*,[35] refer to both EA and EIA. EA is defined as "the process for the orderly and systematic identification, prediction, and evaluation of the likely environmental, socioeconomic, cultural, and health effects of an undertaking and the mitigation and management of those effects."[36] An undertaking is defined as "any enterprise, activity, scheme of development, construction, project, structure, building, work, investment, plan, or program and any modification, extension, abandonment, demolition, rehabilitation, or decommissioning of such undertaking, the implementation of which may have a significant impact."[37] EIA is defined as "the process for the orderly and systematic evaluation of a proposal including its alternatives and objectives and its effect on the environment including the mitigation and management of those effects; the process extends from the initial concept of the proposal through implementation to completion, and, where appropriate, decommissioning."[38] The law specifies undertakings that are mandatory for EIA even though the EIA definition does not include undertakings. No undertakings are listed as mandatory within the context of EA. Hence we assume that in this case, given the separate definition for EIA and EA, that SEA could be implied. Note that this assumption is different from the case of Nigeria, where the law refers to both EIA and EA, but specifically defines EA in the context of projects.

The case of South Africa is unique in that the National Environmental Management Act (NEMA)[39] does not specifically provide an explanation for what constitutes a SEA,

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29 Environmental Impact Assessment Proclamation, 2002, No.299.

30 Environmental Impact Assessment Proclamation, 2002, No.299. *(Sections 2(3) and 2(10))*

31 Environment Impact Assessment Law of the People's Republic of China, 2003

32 Section 20(1) of the Environmental Protection Act, 2000, Cap. 328.

33 Environmental Assessment Policy, 2000.

34 Environmental Assessment Policy, 2000, Article 1(18).

35 Environmental Assessment Regulations, 1999.

36 Environmental Assessment Regulations, 1999 Section 30(1).

37 Environmental Assessment Regulations, 1999 Section 30(1).

38 Environmental Assessment Regulations, 1999 Section 30(1).

but rather provides the framework for the development of procedures for assessing the potential impact of activities, where "activities" is defined as "policies, programs, plans, and projects."[40] The *White Paper on Environmental Management Policy for South Africa*[41] defines SEA as "a process to assess the environmental implications of a proposed strategic decision, policy, program, piece of legislation, or major plan."[42]

Of the nine legal instruments examined, five countries–Canada, Dominican Republic, Kenya, Palestine and South Africa–refer to SEA directly (see Table 2.1).[43] In Kenya, for example, *The Environmental (Impact Assessment and Audit) Regulations*[44], specify that an SEA is the "process of subjecting public policy, programs and plans to tests for compliance with sound environmental management."[45] Canada was one of the early adopters of the term SEA in a legal instrument. Kenya, the country with the most recent legislation in the sample to use this term, has some references to SEA of policies, plans, and programs as opposed to references to EIA or EA of policies, plans, and programs.

Scope of the Assessment

With regard to the scope of the frameworks

[39] National Environmental Management Act, 1998, Act 107.
[40] National Environmental Management Act, 1998, Section 1.
[41] White Paper on Environmental Management Policy, 1997.
[42] *White Paper on Environmental Management Policy*. Appendix 2 Glossary.
[43] In the case of the Dominican Republic, the reference is to strategic environmental evaluation (article 16 (27) rather than assessment.
[44] The Environmental (Impact Assessment and Audit) Regulations, 2003.
[45] Section 2.

Table 2.1. Select Countries' Application of SEA

Country	Date of legal instrument	Explicit reference to SEA	Explicit reference to EA of policies, plans, or programs	Explicit reference to EIA of policies, plans, or programs	Policy	Plan	Program
Belize	2000			X			X
Canada	1999	X			X	X	X
China	2002			X		X	
Dominican Republic	2001	X			X	X	
Ethiopia	2002			X	X		X
Ghana	1999		X				
Kenya	2003	X			X	X	X
Palestine	2000	X	X	X		X	X
South Africa	1998	X[a]			X	X	X

Note: a Reference is in white paper rather than *National Environmental Management Act*. Explicit reference is also made to strategic impact assessment in Chapter 2, section 2(4)(f) of the Local Government Municipal Planning and Performance Management Regulations, 2001 promulgated in terms of the Municipal Systems Act, 2000, N0.32.

governing SEA, again legislative provisions differ. For example in the Dominican Republic, Article 39 of the General Law on Environment and Natural Resources[46] specifies that the policies, plans, and programs of public administration must be evaluated in terms of their environmental effects. This law introduces the concept of strategic environmental evaluation as "an instrument of environmental evaluation of the public policies, plans, activities, and projects, to guarantee the incorporation of the environmental variable in different sectors of public administration."[47]

The Palestinian Environmental Assessment Policy also prescribes a wide scope for SEA. It states that the policy applies to proposed public and private sector plans and programs prescribed in the annexes. There, it is stated that "SEA may be used for plans and programs such as (a) power generation and supply, (b) solid waste management, (c) transportation infrastructure development, (d) tourism infrastructure development, (e) parks and natural reserves development and management, (f) development and management of industrial policy and estates, (g) master plans and (h) agricultural development programs."[48] However, the policy also facilitates the inclusion of other plans and programs, thereby making the application of the policy quite broad.

In Ethiopia, on the other hand, the legislation does not mention specific sectors but leaves the selection to the Environmental Protection Authority.[49] In principle, this could allow for changes in the sectors affected as priorities change without corresponding changes in the proclamation.

In South Africa, the requirement for an SEA is embodied in various pieces of sectoral legislation. As a result, the scope of application of SEA appears to be relatively flexible. For example, the *White Paper on National Commercial Ports Policy* specifies that different tools may be used to ensure integrated environmental management. These tools can range from SEA of plans that take place on a more strategic level to project-specific plans that require an EIA.[50] Thus, SEA may be used for integrated environmental management in the context of commercial ports. The Local Government Municipal Planning and Performance Management Regulations[51] also refer to the use of SEA in spatial development frameworks. Chapter 2 section 2(4)(f) of the regulations states that a spatial development framework reflected in a municipality's integrated development plan must "contain a strategic assessment of the environmental impact of the spatial development framework."

Purpose of SEA

For the most part, the legislative objective for the SEA requirements in the selected countries, is to evaluate environmental effects and to propose appropriate measures to mitigate environmental damage. In other cases, there is

46 General Law on Environment and Natural Resources, No.64-00

47 General Law on Environment and Natural Resources, No.64-00; Article 16 (27)

48 Palestinian Environmental Assessment Policy, 2000; Annex 4 .

49 Environmental Impact Assessment Proclamation -No 299/2002(Section 13(2))

50 Section 10(1). Available at http://www.transport.gov.za/library/docs/white-paper/ports_wp.html (accessed August 24, 2005).

51 Local Government Municipal Planning and Performance Management Regulations, 2001 promulgated in terms of the Municipal Systems Act, 2000, N0.32

broader reference to sustainable development and quality of life, implying the incorporation of recommendations that enhance positive outcomes rather than only reducing negative outcomes. In some laws, both purposes are mentioned.

Some countries state that the main purpose of the legal instrument is to ensure that environmentally sound decisions are made. For example, the Canadian Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposal states this succinctly by noting that SEA "seeks to incorporate environmental considerations into the development of public policies."[52] In South Africa, the *Guideline Document on SEA* published by the Department of Environmental Affairs and Tourism[53] states that SEA "aims to ensure that environmental issues are addressed from an early stage in the process of formulating policies, plans, and programs, and incorporated throughout the process."[54] In Kenya, the purpose of conducting the assessment is "to determine the most cost-effective and environmentally friendly approach…"[55]

Several countries note the need to prevent or mitigate harmful environmental effects. For example, in the Dominican Republic, the purpose of the environmental evaluation is to prevent, control, and mitigate the possible impacts on the environment and natural resources caused by works, projects, and activities. In Ghana, the Environmental Assessment Regulations state that the purpose of the assessment is to evaluate a proposal including its alternatives and objectives and its effect on the environment including the mitigation and management of those effects.

Interestingly, the Ethiopian Environmental Impact Assessment Proclamation in its preambular provisions notes that the purpose of EIA is "to bring about administrative transparency and accountability, as well as to involve the public and, in particular, communities in the planning and decision taking on developments which may affect them and [their] environment."

Indeed, stating the purpose of the law is useful as it helps decision makers understand what they are trying to achieve by conducting the SEA. Stating the purpose should also help guide the agency to select an appropriate methodology.

Accountability

Most of the laws examined[56] provide sanctions to address noncompliance with EIA. The converse, however, is true for SEA. For example in Kenya, the *Environmental (Impact Assessment and Audit) Regulations*, provide that any person who conducts any project without approval granted under the regulations, commits an offence and is liable to penalties prescribed by the act.[57] These provisions are not applicable to SEA. Palestine, Canada, and South Africa,

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[52] The Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals, 1999; Section 2.1.1.

[53] Guideline Document, Strategic Environmental Assessment in South Africa, February 2000.

[54] Summary of Guidelines, p.5.

[55] Section 42(1) of The Environmental (Impact Assessment and Audit) Regulations, 2003.

[56] In fact six of the nine countries examined prescribe sanctions. These are (1) Belize, (2) China, (3) Dominican Republic, (4) Ethiopia, (5) Ghana, and (6) Kenya.

[57] Section 45 (1) of The Environmental (Impact Assessment and Audit) Regulations, 2003

offer no provisions for penalties for noncompliance with SEA.

In Belize, the law states that failure to carry out an EIA shall result in summary conviction to a fine not exceeding BZD $25,000 or to imprisonment not exceeding five years or to both.[58] Since SEA is captured under the definition of EIA of programs, it is assumed that these penalties apply equally to SEA. In China, there is a penalty for preparing a false EIA.[59] Presumably the penalty is also applicable in the case of EIA of plans (SEA). The same applies to Ethiopia given its reference to SEA in the context of EIA of a public instrument, which includes policies and programs.

Laws require sanctions or incentive structures to ensure compliance. As noted in the laws reviewed above, there are typically no sanctions specified for noncompliance with SEA, even though the same laws have sanctions for noncompliance on EIA. Recognizing that SEA is primarily for government's policies, plans, and programs, it may be appropriate to specify political or administrative sanctions such as not adopting or financing any policy, plan, or program that fails to comply with a requirement for SEA. A complementary option is to have incentive structures that promote enforcement and compliance with SEA requirements.[60]

Authorities Responsible (including Interinstitutional Coordination)

This section reviews any reference in the legislation to the authorities responsible for conducting, reviewing, and enforcing SEA legislation, including any mention of institutional coordination. Since SEA applies to policies, plans, and programs, typically government agencies both prepare and review/approve SEAs. Hence, intersectoral coordination and a clear system of checks and balances are important. In order to better understand this issue, it is important to look at the system in place for implementing this legislation. However, this paper only reviews the actual legislation, rather than the corresponding system for implementing it, which is left for a separate study. Discussion of this issue for the SEA systems in place in Canada and the Netherlands can be found in World Bank (2005).

Legislation in a number of countries attempts to separate responsibilities for preparing, reviewing, and approving SEAs among government entities. One example is China, where Articles 7 and 8 of the *Environment Impact Assessment Law*, state that relevant departments of the State Council, local people's governments at or above the level of municipalities, and their relevant departments shall organize and conduct EIAs of certain plans. Basically, these institutions are required to coordinate their efforts to ensure that the EIA process is carried out. The EIA is then reviewed by the designated department of environmental protection or review group comprised of representatives of relevant departments and experts. The ultimate approval of the EIA lies with the State Council. Palestine and Canada have also specified separation of functions for implementing SEAs in their legal instruments.

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[58] Environmental Protection Act, 2000; Section 22.
[59] Environmental Impact Assessment Law of the People's Republic of China, 2003; Articles 29 and 30.
[60] Further discussion of accountability of two of the oldest, functioning SEA systems–those of the Netherlands and Canada–can be found in the World Bank (2005).

In other countries, such as Kenya and Ethiopia, the wording of the law is such that the same agency could be responsible for multiple functions. For example, in Kenya, lead agencies, in consultation with the National Environmental Management Authority, are responsible for preparing, reviewing, and approving decisions regarding the SEA.

In other cases, less thought seems to have been given to the need for a clear definition of responsibilities for SEA in contrast with a project-level EIA, where this process ultimately links up with approval for an environmental license. For example, in Belize, all EIAs–including EIAs of programs–are to be carried out by a "suitably qualified person"[61] and submitted to the Department of Environment for review and decision making.

Finally, in South Africa, the National Environmental Management Act leaves the details of procedures and the institutional arrangements with respect to SEA to subsequent regulations. That notwithstanding, sec.24 (4) (f) states that every application for environmental authorization must ensure the "coordination and cooperation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state."

Monitoring

One of the most critical aspects of SEA laws is the monitoring component. Monitoring allows for an understanding of whether any of the recommendations of SEA are incorporated in the respective policy, plan, or program and whether they are implemented. It also allows for learning about how these recommendations can be improved in subsequent policies, plans, and programs for greater sustainability. In addition, strong monitoring provisions indicate a clear commitment to ensure that the SEA procedure is carried out. Monitoring done by independent agencies may be more objective than self-monitoring procedures.

In some of the countries reviewed, monitoring provisions are either absent or vague. In other instances, monitoring provisions clearly specify the procedure to be followed. These provisions are described below.

The Palestinian Environmental Assessment Policy (Article 5(6))[62] states that the Environmental Management Authority (EMA) is responsible for monitoring and follow-up related to SEAs. The EMA is also tasked with the responsibility of providing advisory and technical guidance to individuals, organizations, agencies, and proponents who must comply with implementing the policy.

In South Africa, the National Environmental Management Act (sec. 24(4)(4)d)) states that every application for environmental authorization must ensure that provision is made for the

"Investigation and formulation of arrangements for the monitoring and management of impacts, and the assessment of the effectiveness of such arrangements after their implementation."

China and the Dominican Republic have self-monitoring provisions. In China, extensive provisions are in place to ensure that EIAs of plans/SEAs are effectively monitored by the plan-preparing institutions. In fact, these

[61] Environmental Protection Act, 2000; Section 20(1).
[62] *Environmental Assessment Policy, April 2000.*

institutions are also required to organize their own tracing assessments and report the results to the approval institutions. In circumstances where they find obvious adverse environmental impacts, they must propose improvement measures. The Dominican Republic's SEA monitoring components are fused with monitoring by the State Secretariat for the Environment. The State Secretariat may either conduct an environmental evaluation itself or may do so through the use of third parties.

In contrast, Kenya's Environmental (Impact Assessment and Audit) Regulations make a clear distinction between EIAs and SEAs. They do not prescribe monitoring provisions for SEAs but have detailed provisions addressing the monitoring of EIAs. Similarly, there are no monitoring provisions for EIAs of programs in Belize, or for monitoring outcomes of SEAs in the Canadian SEA Directive, or for public instruments in the Ethiopian legislation.

Subnational, Supranational Regional and International Issues

Six of the nine countries examined recognize the possibility of either subnational or supranational transboundary environmental impacts and as a result have drafted provisions pertaining to regional and international issues that may result from a policy, plan, or program upon which an SEA is conducted (see Table 2.3).

Some laws explicitly discuss subnational regional issues across different jurisdictions. For example, China's EIA law (Article 36) stipulates that the provincial governments, autonomous regions, and municipalities directly under the central government may request EIAs for plans prepared by the central government. The detailed methods are to be established by the provinces, autonomous regions, and municipalities directly under the central government in accordance with the law.

On the other hand, in Kenya, the law states that where such transboundary environmental damage is foreseen, the National Environmental Management Authority shall ensure that appropriate measures are taken to mitigate any adverse impacts taking into account the treaties and agreements between Kenya and other countries. Similarly in Palestine, the Environmental Assessment Policy (Article 9)

Table 2.2. Select Countries' Identification of Transboundary and/ or Subnational and Supranational Regional Issues

Country	Transboundary/regional issues addressed
Belize	None
Canada	None
China	Subnational regional issues addressed, not supranational
Dominican Republic	Reference to sub-national application
Ethiopia	Subnational regional issues addressed, not supranational
Ghana	None
Kenya	Supranational issues addressed
Palestine	Supranational issues addressed
South Africa	Supranational issues addressed

indicates that the Palestinian National Authority through the Ministry of Environment Affairs shall negotiate reciprocal agreements with neighboring countries to ensure that an EA contributes to mitigating any environmental impacts. Additionally, Article 9 requires that such agreements must be consistent with the principles of the 1991 United Nations Convention on Environmental Impact Assessment in a Transboundary Context. In South Africa, the National Environmental Management Act makes provisions for giving effect to international environmental instruments, as necessary, through future provisions.

Methodology

Most of the laws provide detailed methodology for carrying out EIAs. However, for SEAs, the methodology is often omitted or provides very little guidance. For example, in the Dominican Republic, little is said about the methodology for conducting SEAs. In Ethiopia, no methodology is prescribed for carrying out SEA.

Similarly, in Palestine, no methodology for SEA is described; however, reference is made to principles in accordance with which the SEA should be conducted. The principles listed are: (1) the application of the policy "must be transparent, equitable and effectively administered in order to encourage environmentally sound development, (2) environmental assessment must enhance development, by contributing to its environmental sustainability, not inhibit it, (3) environmental assessment should begin as early as possible since it is a means for both planning and evaluating activities through all stages including decommissioning, (4) proponents of development activities should pay the costs of carrying out environmental assessment studies. Preparation of studies and reports must be carried out by qualified specialists, (5) environmental assessment should specify measures for mitigating potential impacts, and for environmental monitoring and management, throughout the life of a development activity, (6) environmental assessment should specify measures for mitigating potential impacts, and for environmental monitoring and management, throughout the life of a development activity, 7) in the absence of Palestinian environmental standards, appropriate standards will be considered in EA studies and in the measures and conditions included in the environmental approvals of projects, (8) stakeholder consultation is an essential component of the EA policy."[63]

Generally, as noted above, EIA methodology is used for the SEA process. In some cases, this is done because the laws are EIA laws and SEA is implied through reference to EIA of a program or plan, as in Belize or China. On the other hand, some laws differentiate between EIA and EA, but still refer to EIA methodology, as in Ghana. Similarly, even though they are not legislative, the guidelines for SEA in South Africa use EIA methodology.

The case of Canada is interesting and worth highlighting. The Canadian Cabinet Directive states that there is no single "best" methodology for conducting SEA. Therefore, federal departments and agencies are encouraged to apply appropriate frameworks or techniques and develop approaches tailored to their specific needs within the prescribed guidelines.[64] The guidelines note that the SEA should be

[63] Environmental Assessment Policy, April 2000; Article 3.
[64] The Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals, 1999; Section 2.3.

(1) flexible in that it can be applied in various policy settings, (2) practical in that it does not require specialist skills and information or a substantial commitment of resources and time, and (3) systematic in that it is based on logical and transparent analysis.

The directive goes further by breaking the SEA process into three stages: (1) preliminary scan, which includes identifying the direct and indirect outcomes associated with implementing the proposal as well as a consideration of whether the outcomes could affect any component of the environment; (2) analyzing environmental effects, which includes addressing issues such as (a) the scope and nature of potential effects, (b) the need for mitigation or opportunities for enhancement, (c) the scope and nature of residual effects, (d) follow-up, and (e) public and stakeholder concerns; and (3) appropriate level of effort, which requires that the level of effort committed to the SEA should be commensurate with the level of environmental effects anticipated from the implementation of the proposed policy, plan, or program. Each stage of the process includes detailed guidance on what should be conducted.

Citizen Participation

A key to a successful SEA is the participation of the citizenry. In fact, citizen participation is an important element of promoting good governance. Where there is no citizen participation, a fundamental element of the SEA process is lost. Recognizing the importance of the participation of the citizenry, all countries examined have included provisions, both implied and expressed, that address the need for citizens to be involved in the SEA process.

In this regard, some countries like Belize, China, South Africa, and Dominican Republic emphasize transparency by opening the process to the public. For example, in Belize, EIA terminology is used to state that a developer must consult with interested bodies or organizations when preparing an environmental impact statement.

Ghana and Palestine place more emphasis on participation by those who will be adversely affected by the policy, plan, or program. For example, in Ghana, the EPA is to hold public hearings when: (1) there appears to be adverse public reaction to the commencement of the undertaking, (2) the undertaking will involve the dislocation, relocation, or resettlement of communities or (3) the EPA considers that the undertakings will have extensive and far reaching effects on the environment.[65] In so doing, the EPA is required to appoint a panel to address the issues.

In Canada and Ethiopia the legal instruments speak to both types of public participation. The case of Ethiopia is particularly interesting, because the ultimate purpose of the assessment is to bring about greater transparency and accountability, as well as to involve affected parties in decision making. The Environmental Protection Agency (EPA) must make any environmental study report accessible to the public and solicit comments on it. The EPA also has a responsibility to ensure that comments by affected communities are included in the report as well as the evaluation.

Finally, in Kenya, there is no specific provision detailing this type of consultation with regard

[65] Environmental Assessment Regulations, 1999; Section 17 (1).

to the SEA. There is an implied obligation through the requirement to present a summary of consulted stakeholder views in the environmental analysis. With regards to EIA, however, there are very detailed provisions addressing public participation.

Chapter 3

Conclusions and Recommendations

As mentioned earlier, this paper reviews and analyzes the legal frameworks that govern SEA nationally. It is a first step to improve understanding of the content of current SEA legislation and how it relates to current thinking about SEA as a tool to foster sustainable development. As described earlier, this paper has many limitations: it does not undertake reviews of sectoral, as well as environmental, legislation; it does not assess how legislation is developed and implemented through regulations and institutional frameworks; and it does not assess SEA practice and its effectiveness at influencing more sustainable outcomes.

Despite these limitations, a number of conclusions can be drawn from the current nine-country review with respect to the consistency of the design of the laws and the evolving thinking about SEA approaches from a pure impact assessment tool to an approach for incorporating sustainable development dimensions in policies, plans, and programs through a variety of different methodological tools. These conclusions include the following.

- There is a range of explicit and implicit references to SEA, principally in EIA laws. Often there is reference to an EIA or an EA of a policy, plan, or program, rather than directly to SEA. The most recent legislation reviewed uses the term SEA. There is also considerable variation in whether policies, plans, and/or programs are covered.
- The scope of the laws with respect to SEA application is variable. In most cases the list of sectors is left broad. In a few countries, a list of sectors that require SEA is highlighted in the law with allowance for other sectors to be included.
- The purpose of the SEA ranges from enhancing positive sustainable development outcomes to "doing no harm," that is, on only mitigating environmental damage.
- There are only a few examples of legal instruments that ensure accountability for SEA implementation. Rarely are sanctions prescribed for noncompliance with SEA legislation. This lack of sanctions is in contrast to EIA legislation, which often prescribes detailed sanctions. Where sanctions are prescribed, they are typically financial.

Since SEA is often carried out by government departments responsible for preparing policies, plans, and programs, this lack of meaningful sanctions may reflect the difficulty of one part of government imposing a sanction on another part. The situation is further complicated by the fact that the environment ministry (responsible for ensuring compliance with SEA procedures) is often a politically weaker agency than the agencies responsible for the productive sectors (who may be preparing the SEA).

- Some laws attempt to define responsibilities among agencies for preparing, reviewing, and approving SEAs. In other cases, less thought is given to this separation of functions, because it appears that lawmakers assume that as with an EIA, there is a clear and separate applicant and reviewer. However, SEAs are typically also prepared by a government agency and are sent for review and clearance to another government agency. There is clearly room for improvement on this front.
- There is little focus on monitoring SEA outcomes, an area that needs to be improved if policy makers are to be convinced of the value of SEA as a tool for facilitating sustainable development.
- There is generally low coverage of supranational transboundary issues in the national SEA legislation reviewed.
- The methodology for conducting SEAs is variable. In most countries reviewed, EIA methodology is prescribed. Other countries like Canada offer more flexibility.
- All the laws reviewed had some reference to citizen participation, either in terms of opening processes to the public or focusing on views of affected parties, and, in a few cases, both.

These findings suggest that overall SEA legislation needs to catch up with the recent evolution in SEA concepts and methodologies as an approach for sustainable development rather than an impact assessment tool. However, this review also provides examples of good practice in SEA legislation consistent with the above-mentioned conceptual evolution of SEA. Some of these examples are described below:

- Given that government is typically involved with preparing policies, plans, and programs, it is important that a different set of requirements with respect to approving SEA and ensuring accountability for carrying out SEA recommendations are detailed in legislation. These need to be distinct from EIA provisions where typically there is a clear separation between project proponent and EIA clearance, through the licensing procedure. Hence it is important that legal instruments have distinct provisions for SEA. One way to clarify the distinctions between SEA and EIA is to use the term SEA when discussing policies, plans, or programs, as was done by Canada, Dominican Republic, Kenya, Palestine, and South Africa, rather than referring to SEA as an EIA or EA of a policy, plan, or program.
- In order to focus the use of SEA where it really matters, can be most effective, rather than putting a general provision in the law for all sectors of the economy, it may be useful to consider which sectors have the greatest impact on the environment, rather than putting a general provision in the law for all sectors of the economy. The Palestinian example illustrates good practice by specifying some sectors, but also allowing for the inclusion of other sectors as necessary. Alternatively, subsequent procedures could specify that SEA is carried out in the

cases where there is substantial or significant positive or negative impact on the environment, rather than in all cases.[66]

- In line with current thinking on SEA, it is good practice for legislation to explicitly clarify the purpose of using SEA as an approach for sustainable development rather than to solely mitigate damage, or even as an end in itself.
- It may be desirable to place sanctions for noncompliance only in cases where an SEA has value-added for the country. Given that SEAs are conducted by government agencies on government policies, plans, and programs, political or administrative sanctions, such as not adopting legislation or not financing implementation, may be more appropriate than financial penalties. A complementary option is creating incentive structures to help promote enforcement and compliance with SEA requirements.
- Given that SEAs are both conducted and approved by the government, a system of checks and balances provides greater clarity on the roles and responsibilities of different agencies to conduct, approve, and monitor SEA outcomes, as is done in the Chinese legislation or the Canadian Cabinet Directive. This separation of functions should also help shift the focus to sustainable development outcomes rather than stopping at the preparation of an SEA report.
- To learn from experiences with SEA, nations must collect data by monitoring the effectiveness of their efforts. Thus, a focus on evaluating SEA outcomes and learning from this information to revise policies, plans, and programs, should be incorporated in future SEA legislation.
- The Kenyan and Palestinian provisions provide good examples of how potential transboundary issues can be incorporated in legislation. In both these countries, there is reference to the use of treaties and/or agreements with neighboring countries to mitigate transboundary environmental impacts.
- Allowing for greater flexibility in SEA methodology, as is done in Canada, helps achieve the SEA's purpose of enhancing positive outcomes as well as mitigating damage. The definition of guiding principles, as done in the Palestinian policy, also provides flexibility.
- Finally, given the emphasis on sustainable development and long-term learning, public participation should be undertaken at two levels, as exemplified in the Canadian and Ethiopian legal instruments. First, the decision-making process should be transparent to the public and second, the SEA process should actively engage and consider the views of parties most affected by the decisions. Countries might consider innovative mechanisms beyond communication and consultation to ensure that the weaker stakeholders are also considered.[67]

Clearly SEA legislation is evolving as many countries move forward on this front. The challenge for countries is to ensure that their legislation keeps up with the fast-moving pace with which the methodologies for conducting SEA and the concept of SEA itself is evolving as an approach for sustainable development.

[66] It is also important to note the limitations of both approaches. Requiring SEA for a sector could lead to "paper" compliance with the legal instrument. Alternatively, it is difficult to define objectively the term "substantial or significant impact" and much-needed SEAs could be avoided by manipulating the definition.

[67] See World Bank (2005) for more discussion on this topic.

Annex 1

International and Regional Legal Instruments

Internationally, the framework that governs SEA comprises various agreements that address SEA partially or holistically. For example, Article 7 of the *Convention on Access to Information, Public Participation and Access to Justice on Environmental Matters* (Aarhus) prescribes that state parties "shall make appropriate practical, and/or other provisions for the public to participate during the preparation of plans and programs relating to the environment..."[68] Additionally, the article provides that "each party shall endeavor to provide opportunities for public participation in the preparation of policies relating to the environment." It establishes that sustainable development can be achieved only through the involvement of all stakeholders; links government accountability and environmental protection; and focuses on interactions between the public and public authorities in a democratic context. Hence it forges a new process for public participation in the negotiation and implementation of international agreements. In so doing, the convention allows for the use of EIA/SEA or any other instrument that state parties deem appropriate. Basically, the convention provides–for countries that have ratified it–"a clear, transparent, and consistent framework to implement"[69] its provisions.

Similarly, the Convention on Biological Diversity (CBD)[70] also facilitates the use of SEA. Art. 6(b) mandates state parties to "integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programs, and policies."[71]

Two main legal instruments,[72] however, address SEA specifically. These are (a) the *Protocol on Strategic Environmental Assessment* (Kiev (SEA) Protocol)[73] to the *Convention on Environmental Impact Assessment in a Trans-*

[68] *Convention on Access to Information, Public Participation and Access to Justice on Environmental Matters* (Aarhus),1998. http://www.unece.org/env/pp/documents/cep43e.pdf (accessed August 16, 2005).
[69] Article 1. http://www.unece.org/env/pp/documents/cep43e.pdf (accessed August 16, 2005).
[70] *Convention on Biological Diversity*, article 1. http://www.biodiv.org (accessed August 16, 2005).
[71] http://www.biodiv.org/doc/legal/cbd-en.pdf (accessed August 16, 2005).
[72] Other regional arrangements, such as approaches toward international waters in regional seas agreements or river basin commissions may also carry out certain types of strategic reviews. However, for the purposes of this paper, these two main instruments were examined.
[73] http://www.unece.org/env/eia/sea_protocol.htm (accessed August 16, 2005).

boundary Context (Espoo), and (b) the *Directive 2001/42/EC of the European Parliament and of the Council on the Assessment of the effects of certain plans and programs on the environment* (EU SEA Directive). These two are discussed below.

Convention on Environmental Impact Assessment in a Transboundary Context (Espoo)

The Espoo Convention, named after the city in Finland where it was adopted and opened for signature is a regional environmental convention negotiated by the member States of the United Nations Economic Commission for Europe (UNECE). The convention entered into force in September, 1997. Currently, it has 30 signatories and 40[74] parties.[75] (See Table 1 for signatories and parties). Twenty-nine states and the European Community (EC) signed the convention, and all but four states (Belarus, Russian Federation, the United States, and Iceland) later ratified, approved or accepted it. A further 14 states directly acceded to the convention , therefore there are now 40 parties.[76] The convention "stipulates the obligations of parties to assess the environmental impact of certain activities at an early stage of planning. It also lays down the general obligation of states to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries."[77] Article 2(7) provides that "to the extent appropriate, the parties shall endeavor to apply the principles of environmental impact assessment to policies, plans, and programs."

Initially , the Espoo Convention was open only to UNECE member states, but an amendment was adopted in 2001 that, once in force, will allow UN member states to become state parties .[78]

Article 14(4) of the convention provides that amendments shall enter into force "on the nineteenth day after the receipt by the depositary of notification of their ratification, approval, or acceptance by at least three fourths of the number of parties at the time of their adoption." Currently, only three countries, Poland, Luxembourg, and Germany, have ratified or accepted the amendment. At the time of the adoption of the amendment, there were 34 member states to the convention.[79]

The Convention is supplemented by the Kiev (SEA) Protocol adopted in May 2003.

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[74] The convention was adopted on Feb 25,1991 in Espoo, Finland .The convention remained open for signature till September 2, 1991, in New York. Information obtained from email correspondence with the Espoo Convention Secretariat dated August 17, 2005.

[75] http://www.unece.org/env/eia/convratif.html (accessed August 16, 2005).

[76] For more information on acceptance, approval, and ratification, see UN Treaty Manual. http://untreaty.un.org/English/TreatyHandbook/hbframeset.htm (accessed August 16, 2005).

[77] See "Information on the EIA Convention" at: http://www.unece.org/env/eia/eia.htm (accessed August 16, 2005).

[78] By extension, therefore, the protocol will also be open to UN member states. It is also noteworthy to mention that article 21 of the protocol states that the protocol is also open to "States having consultative status with the Economic Commission for Europe….and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which Member States have transferred competence over matters governed by this Protocol…" Article 23(3) goes further by providing that any other State which is a "Member of the United Nations may accede to the Protocol upon approval by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol."

[79] Information obtained from email correspondence with the Espoo Convention Secretariat dated June 6th, 2005.

Kiev (SEA) Protocol

The Kiev (SEA) Protocol (see Table 1 for signatories) has not yet entered into force. Article 24(1) states that "the protocol shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval, or accession." Since only two countries, Finland and the Czech Republic,[80] have ratified it, the parties are under no obligation to enforce any provisions of the protocol. However, as is standard practice in international law, none of the parties is to take actions that would defeat the object and purpose of the treaty.[81] Thirty-six states and the EC signed the protocol in the period allowed in 2003, but only two states have since ratified it: In contrast, 29 states and the EC are signatories to the Espoo Convention but 40 countries have ratified, acceded to, approved, or accepted the convention. It is unclear why states have not acceded to, accepted, or ratified the protocol in the same manner that they have the convention, particularly since a number of them already have national SEA legislation (as illustrated in Table 1).

Furthermore, many of the parties to the Espoo Convention and signatories to the Kiev (SEA) Protocol are also subject to the EU SEA Directive (see below) which requires EU member states to "bring into force the laws, regulations, and administrative provisions necessary to comply with the directive before 21 July 2004."[82] For example 24 of the 25 EU member states are parties to the Espoo Convention.[83] Nine countries are parties to the convention and protocol only. Nine countries are also parties to the convention, protocol, and directive only. Eight countries are parties to the convention only. Two countries have ratified the protocol only. Of the 24 parties to the protocol and the directive, the original 15 EU member states have had national legislative provisions for SEA in place prior to the directive and the protocol (See Table 1 and Figure 1).

The Kiev Protocol has five principal objectives: (1) "ensuring that environmental, including health, considerations are taken into account in the development of plans and programs, (2) contributing to the consideration of environmental, including health, concerns in the preparation of policies and legislation, (3) establishing clear, transparent and effective procedures for strategic environmental assessment, (4) providing for public participation in strategic environmental assessment and (5) integrating by these means environmental, including health, concerns into measures and instruments designed to further sustainable development."[84]

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[80] Finland ratified the Protocol on April 18, 2005 and the Czech Republic on July 19, 2005.

[81] Article 18 of the *Vienna Convention on the Law of Treaties* (1969) provides that "a State is obliged to refrain from acts which would defeat the object and purpose of a treaty when (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed." Full text of the Vienna Convention on the Law of Treaties available at http://www.un.org/law/ilc/texts/treaties.htm (accessed August 16, 2005).

[82] *Directive 2001/42/EC of the European Parliament and of the Council on the Assessment of the effects of certain plans and programs on the environment* (EU SEA Directive Article 13(1).

[83] Malta is not a party to the Espoo Convention. Information obtained from correspondence with Espoo Convention Secretariat dated June 16, 2005.

[84] Article 1.

The protocol's provisions on SEA are described in the context of EIA methodology. For example, the articles of the protocol are divided into subheadings including screening, scoping, environmental report, public participation, consultation with environmental and health authorities, transboundary consultations, decision, and monitoring

Article 2 (6) defines strategic environmental assessment as the "evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public parti- cipation and consultations in a plan or program."[85] Interestingly, this definition refers only to application on programs and plans required under the protocol. The protocol also has a separate non-mandatory reference to use of SEA in the context of considering and integrating environmental concerns in the preparation of proposals for policies and legislation (see below).

The protocol states that a strategic environmental assessment shall be carried out for "plans and programs which are prepared for agriculture, forestry, fisheries, energy, industry including mining, transport, regional development, waste management, water management, telecommunications, tourism, town and country planning or land use, and which set the framework for future development consent for projects listed in annexes 1 and 2[86] which require an environmental impact assessment under national legislation."[87] Financial or budgetary plans and programs as well as those with the sole purpose of serving national defense or civil emergencies are exempt from the provisions of the protocol.[88]

State parties are responsible for monitoring the environmental, including health, effects of the implementation of their plans and programs and for identifying and remedying unforeseen adverse effects.[89] Softer language is used in the context of policies and legislation, in a separate article. Article 13, states that "each party shall endeavor to ensure that environmental, including health, concerns are considered and integrated to the extent appropriate in the preparation of its proposals for policies and legislation that are likely to have significant effects on the environment, including health."

Article 10 mandates state parties to notify, as early as possible, other state parties that may be adversely affected by significant transboundary environmental, including health, effects as a result of the implementation of a plan or program. If a party that is likely to be significantly affected requests it, the state party

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85 http://www.unece.org/env/eia/documents/protocolenglish.pdf (accessed August 16, 2005)

86 Annex 1 lists 17 types of projects which include crude oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 metris tons or more of coal or bituminous shale per day, large dams and reservoirs, integrated chemical installations..., Annex 2 lists ninety projects. Among them, projects for restructuring of rural land holdings, projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes, intensive livestock installations (including poultry)..."

87 Protocol on Strategic Environmental Assessment (Kiev (SEA) Protocol) to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo)Article 4(2).

88 Kiev Protocol, Article 4(5)(a) and (b).

89 Kiev Protocol, Article 12.

Table 1. Comparison of Countries that are Parties to the Espoo Convention, Parties to the SEA Protocol, EU Member States Subject to the EU SEA Directive, with Countries that have National SEA Legislation

Country	Signature/Succession to Signature of the Espoo Convention	Ratification, Acceptance, Accession to Convention	Signature to Kiev (SEA) Protocol	X denotes Ratification, Acceptance, Accession to Kiev Protocol	X denotes EU Member State Subject to EU SEA Directive	X denotes National SEA Legislation
Albania	02/26/91	10/04/91	05/21/03			*
Armenia		02/21/97	05/21/03			*
Austria	02/26/91	07/27/94	05/21/03		X	X
Azerbaijan		03/25/99				*
Belarus	02/26/91					*
Belgium	02/26/91	07/2/99	05/21/03		X	X
Bosnia and Herzegovina			05/21/03			*
Bulgaria	02/26/91	05/12/95	05/21/03			*
Canada	02/26/91	05/13/98				Administrative requirement in place
Croatia		07/08/96	05/21/03			*
Cyprus		07/20/00	05/21/03		X	*
Czech Republic	09/30/93	02/26/01	05/21/03	X	X	*
Denmark	02/26/91	03/14/97	05/21/03		X	X
Estonia		04/25/01	05/21/03		X	*
European Community+	02/26/91	06/24/97	05/21/03			n.a.
Finland	02/26/91	08/10/95	05/21/03	X	X	X
France	02/26/91	06/15/01	05/21/03		X	X
Germany	02/26/91	08/08/02	05/21/03		X	X
Georgia			05/21/03			*
Greece	02/26/91	02/24/98	05/21/03		X	X
Hungary	02/26/91	07/11/97	05/21/03		X	*
Iceland	02/26/91					*
Ireland	02/27/91	07/25/02	05/21/03		X	X
Italy	02/26/91	01/19/95	05/21/03		X	X
Kazakhstan		01/11/01				*
Krygyzstan		05/01/01				*
Latvia		08/31/98	05/21/03		X	*
Liechtenstein		07/09/98				*
Lithuania		01/11/01	05/21/03		X	*
Luxembourg	02/26/91	08/29/95	05/21/03		X	X
Macedonia, former Yugoslav Republic		08/31/99	05/21/03			*

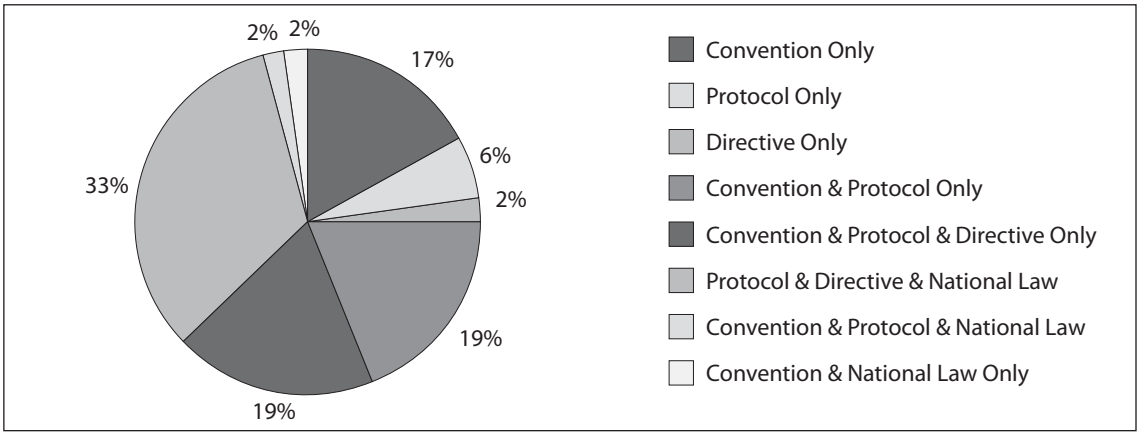
Notes:
n.a. Not applicable
* Information pertaining to existence of national SEA legislation not reviewed.
+ The chart does not include the European Community since some of the countries of the European Community are listed separately with regard to the Directive and national laws.

Table 1. Comparison of Countries that are Parties to the Espoo Convention, Parties to the SEA Protocol, EU Member States Subject to the EU SEA Directive, with Countries that have National SEA Legislation *(continued)*

Country	Signature/ Succession to Signature of the Espoo Convention	Ratification, Acceptance, Accession to Convention	Signature to Kiev (SEA) Protocol	X denotes Ratification, Acceptance, Accession to Kiev Protocol	X denotes EU Member State Subject to EU SEA Directive	X denotes National SEA Legislation
Malta					X	*
Moldova		01/04/94	05/21/03			*
Netherlands	02/25/91	02/28/95	05/21/03		X	X
Norway	02/25/91	06/23/93	05/21/03			*
Poland	02/26/91	06/12/97	05/21/03		X	*
Portugal	02/26/91	04/06/00	05/21/03		X	X
Romania	02/26/91	03/29/01	05/21/03			*
Russian Federation	06/06/91					*
Serbia and Montenegro			05/21/03			*
Slovakia	05/28/93	11/19/99	12/19/03		X	*
Slovenia		08/05/98	05/22/03		X	*
Spain	02/26/91	09/10/92	05/21/03		X	X
Sweden	02/26/91	01/24/92	05/21/03		X	X
Switzerland		09/16/96				*
Ukraine	02/26/91	07/20/99	05/21/03			*
United Kingdom	02/26/91	10/10/97	05/21/03		X	X
United States	02/26/91					X

Notes:
n.a. Not applicable
* Information pertaining to existence of national SEA legislation not reviewed.
+ The chart does not include the European Community since some of the countries of the European Community are listed separately with regard to the Directive and national laws.

Figure 1: Comparison of Countries that are Parties to the Espoo Convention, Parties to the SEA Protocol, EU Member States Subject to the EU SEA Directive, with countries that have National SEA Legislation



must also notify the affected party prior to the adoption of the plan or program.[90]

State parties are required to take the necessary legislative, regulatory, and other appropriate measures to implement the provisions of the protocol within a clear and transparent framework.[91] Notwithstanding the fact that the protocol is quite prescriptive, Article 3(4) states that the protocol should in no way limit the ability of state parties to introduce additional measures with regard to issues covered by the protocol.

In sum, the protocol addresses the application of SEA to programs and plans. With regards to policies, however, state parties are to endeavor to consider and integrate environmental considerations.

EU SEA Directive

The EU SEA Directive of the European Union came into effect in 2001. It applies to the 25 member states of the European Union. In fact, all the original 15[92] EU member countries[93] had some form of environmental assessment procedures in place for policy, plans, and programs prior to the directive. These procedures include laws and other statutory instruments, cabinet and ministerial decisions, and circulars and advice notes.[94] For example, in the Netherlands,[95] the Environmental Impact Assessment Decree mandates strategic EIA for specific plans and programs. This national law is comprehensive and creates an Environmental Impact Assessment Committee which is responsible for overseeing the application of the EIA procedure.

The SEA Directive[96] is of a procedural nature and mandates certain plans and programs that are likely to have significant effects on the environment be subject to an environmental assessment. The plans referred to in the directive are "those plans and programs, including those co-financed by the European Community, as well as any modifications to them: which are subject to preparation and/or adoption by an authority at national, regional or local level or

90 Article 3 (1) of the *Espoo Convention* also addresses the issue of transboundary harm. That article states that " for a proposed activity listed in Appendix 1 that is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations under Article 5, notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity." http://www.unece.org/env/eia/eia.htm (accessed August 16, 2005).

91 Espoo Convention, Article 3(1).

92 The original 15 member countries were (1) Austria, (2) Belgium, (3) Denmark, (4) Finland, (5) France, (6) Germany, (7) Greece, (8) Ireland, (9) Italy, (10) Luxembourg, (11) the Netherlands, (12) Portugal, (13) Spain, (14) Sweden, and (15) the United Kingdom. http://www.defra.gov.uk/environment/statistics/waste/kf/wrkf08.htm (accessed August 16, 2005).

93 There are currently 25 member countries of the EU. These are (1) Austria, (2) Belgium, (3) Cyprus, (4) Czech Republic, (5) Denmark, (6) Estonia, (7) Finland, (8) France, (9) Germany, (10) Greece, (11) Hungary (12) Ireland, (13) Italy, (14) Latvia, (15) Lithuania, (16) Luxembourg, (17) Malta, (18) the Netherlands, (19) Poland, (20) Portugal, (21) Slovakia, (22) Slovenia, (23) Spain, (24) Sweden, (25) United Kingdom. For more information, see http://www.eurunion.org/states/home.htm (accessed August 16, 2005).

94 http://europa.eu.int/comm/environment/eia/sea-studies-and-reports/sea-legal-proce-en.htm . See also http://europa.eu.int/comm/environment/eia/sea-studies-and-reports/sea_transport.pdf (accessed August 16, 2005).

95 Environmental Impact Assessment Decree, 1994 as amended by Decree of May 7,1999: Staatsblad (Bulletin of Acts and Decrees) no. 224

96 http://europa.eu.int/comm/environment/eia/full-legal-text/0142_en.pdf (accessed August 16, 2005).

which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and which are required by legislative, regulatory or administrative provisions."[97] There is no reference to policies.

The directive speaks of environmental assessment, which encompasses strategic environmental assessment by providing a comprehensive definition. Environmental assessment means "the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision...."[98] In order to ensure that the SEA is conducted at an early stage in the process, article 4(1) mandates environmental assessments to be carried out during the preparation of a plan or program and before its adoption or submission to the legislative procedure.

Of interest is the fact that the directive requires SEA to be integrated into existing procedures rather than to be conducted as a stand-alone procedure. Basically, the requirement is for state parties to either incorporate the requirements into existing procedures or incorporate them into procedures established to comply with the directive.[99]

In circumstances where the implementation of a program or plan is likely to have a significant environmental effect on another member state's territory, "or where a Member State likely to be significantly affected so requests, the Member State in whose territory the plan or program is being prepared shall , before its adoption or submission to the legislative procedure, forward a copy of the draft plan or program and the relevant environmental report to the other Member State."[100] When a member state is sent a draft plan or program and an environmental report, it must indicate whether "it wishes to enter into consultations before the adoption of the plan or program or its submission to the legislative procedure and, if it so indicates, the Member States concerned shall enter into consultations concerning the likely transboundary environmental effects of implementing the plan or program and the measures envisaged to reduce or eliminate such effects."[101] Where such consultations occur, the member states concerned shall agree on detailed arrangements to ensure that the authorities[102] and the public[103] "in the Member State likely to be significantly affected are

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94 http://europa.eu.int/comm/environment/eia/sea-studies-and-reports/sea-legal-proce-en.htm . See also http://europa.eu.int/comm/environment/eia/sea-studies-and-reports/sea_transport.pdf (accessed August 16, 2005).

95 Environmental Impact Assessment Decree, 1994 as amended by Decree of May 7,1999: Staatsblad (Bulletin of Acts and Decrees) no. 224

96 http://europa.eu.int/comm/environment/eia/full-legal-text/0142_en.pdf (accessed August 16, 2005).

97 Directive 2001/42/EC of the European Parliament and of the Council on the Assessment of the effects of certain plans and programs on the environment (EU SEA Directive) Article 2(a.)

98 EU SEA Directive, Article2(b)

99 EU SEA Directive, Article 4(2) and Preambular section, paragraph 9

100 EU SEA Directive, Article 7(1)

101 EU SEA Directive, Article 7(2)

102 EU SEA Directive, Article 6(3) provides that "Member States shall designate the authorities to be consulted which, by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programs."

103 EU SEA Directive, Article 6(4) states that "Member States shall identify the public...including the public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive, including relevant non-governmental organizations, such as those promoting environmental protection and other organizations concerned."

informed and given an opportunity to forward their opinion within a reasonable time-frame."

The directive is mandatory, signifying a strong commitment by the EU to use SEA as a tool in the context of preparing plans and programs. Furthermore, the emphasis on integrating SEA procedures into existing procedures is worth noting, as this reflects current thinking on the importance of conducting SEA in an integrated manner with the program or plan formulation rather than separately, particularly if the SEA is to be successful in incorporating sustainability dimensions into the program or plan.

Comparison of the Kiev (SEA) Protocol with the EU SEA Directive

The SEA protocol and the EU SEA directive have both common and different provisions. For example, both instruments are procedural in nature, mandating that certain plans and programs that are likely to have significant effects on the environment are subject to an environmental assessment in the case of the directive and a strategic environmental assessment in the case of the protocol.

The protocol and the directive are pertinent to "plans and programs which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use...."[104] Similar to the Kiev (SEA) Protocol, article 3(8) of the directive excludes financial or budgetary plans and programs as well as those that are solely related to serving the national defense or civil emergency. It is noteworthy that although the provisions in the directive and the protocol dealing with plans and programs are similar, they are not identical. The protocol goes further by providing an article that addresses policies and legislation separately, albeit in a nonmandatory way, to its requirement for plans and programs.[105] On the other hand, the directive specifically refers to EA of plans and programs, but not policies. Additionally, the protocol goes further than the directive by subjecting regional development plans and programs to an SEA. It also highlights mining,[106] which in the directive is subsumed under industry (Article 3.2 (a)).

One fundamental difference is that the protocol places great emphasis on the linkages between environmental degradation and health impacts whereas this emphasis is absent from the directive.

Unlike the protocol, which sets its articles in the context of EIA methodology, the directive explains the scope of its provisions and provides the obligations of state parties. The subheadings used in the directive include the following: environmental report, consultations, transboundary consultations, decision making, information on the decision, monitoring information, reporting, and review. However, in implementation, most experts consider that the mandatory provisions of the protocol are broadly equivalent to those of the SEA directive.[107]

A key difference between the directive and the

[104] Article 4(2) of the EU (SEA) Protocol and article 3(2) of the EU SEA Directive.
[105] European Commission(EC), 2003. Implementation of Directive 2001/42/EC , 3.
[106] The reference to mining falls within the scope of industry. Article 4(2) in the protocol states inter alia that "industry including mining" plans and programs require a SEA.
[107] Correspondence between Nicholas Bonvoisin, UNECE secretariat to the (Espoo) Convention on Environmental Impact Assessment in a Transboundary Context and one of the authors, dated October 6, 2005.

protocol is that the directive entered into force in 2001 and was to be implemented by member states before July 21, 2004. In contrast, the protocol is not yet in force as of the date of this publication.

In summary, many of the provisions of the protocol and the directive are similar. However, each document also has some unique provisions.

Annex 2

Broad Review of SEA Frameworks

This review compiles information regarding SEA legislation, proposed legislation, and SEA procedures based primarily on secondary references.

COUNTRY	LEGAL INSTRUMENT	REFERENCE	SCOPE (where information available)
Armenia	Law of the Republic of Armenia on Environmental Review (Environmental Expertise) (DRAFT)	E-mail correspondence with Nicholas Bonvoisin, July 16, 2005	
Australia	Environment Protection and Biodiversity Conservation Act, 1999 Environment Protection and Biodiversity Conservation Regulations, 2000	http://www.deh.gov.au/epbc/about/index.html http://www.deh.gov.au/epbc/about/index.html	policy, plan, program
Belize	Environmental Protection Act, 2000, Cap 328	http://www.oas.org/usde/FIDA/laws/legislation/belize/belize_epa-328.pdf	*project, program, activity. Sections 20–23
Benin	Outline Law on the Environment No. 98–030 February 12, 1999 Decree No. 95–47 February 20, 1995	Clayton & Sadler (a) Clayton & Sadler (a)	
Botswana	National Water Master Plan	http://www.un.org/esa/sustdev/csd/csd12/statements/botswana_2904.pdf;	
Brazil	Decree (1986)	Clayton & Sadler (a)	

COUNTRY	LEGAL INSTRUMENT	REFERENCE	SCOPE (where information available)
Burkina Faso	Environmental Code, Law No. 005/97/ADP, January 30, 1977	Clayton & Sadler (a)	
	Decree No. 2001–342/ PRES/PM/MEE, July 17, 2001	Clayton & Sadler (a)	
	Decree No. 2002–542 PRES/PM/MECV, November 27, 2002	Clayton & Sadler (a)	
Cameroon	Outline Law No 96/12, August 8, 1996	Clayton & Sadler (a)	plan, program
Canada	The Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals, 1999	http://www.ceaa-acee.gc.ca/016/directive_e.htm	*policy, plan, program. All sections apply
Cape Verde		Clayton & Sadler (a)	
Chile	General Environmental Framework Law of 1994 (Ley 19.300)	Clayton & Sadler (a) http://www.law.pace.edu/landuse/felipa.html#fn45	
China	Environment Protection Law, 1979	http://www.nov-excn.com/environmental_protec_law.html	
	Environmental Impact Assessment Law September 1, 2003	Clayton & Sadler (a)	*plan, construction project; Articles 1, 7, 8, 9, 10, 13, 29, 30, 31, 36
	Environment Protection Management Ordinance for Construction Projects, 1998	Clayton & Sadler (a)	
	Air Pollution Prevention and Control Act	http://www.standard.gov.hk/eng/environment.htm **	

COUNTRY	LEGAL INSTRUMENT	REFERENCE	SCOPE (where information available)
Comoros	Environment Outline Law No. 94–018 June 22, 1994	http://www.unep.org/padelia/publications/comp1Comorospt1.pdf; http://www.unep.org/padelia/publications/comp1Comorospt2.pdf; http://www.unep.org/padelia/publications/comp1Comorospt3.pdf (French)	
Cote D'Ivoire	Environmental Code, Law No. 96–766, October 3, 1996	Clayton & Sadler (a)	
Czech Republic	The Law on Environmental Impact Assessment (No. 244/1992) EIA Act (100/2004)	Clayton & Sadler (a) Clayton & Sadler (a)	
Denmark	Administrative Order, 1993, amended 1995 and 1998	Clayton & Sadler (a)	policy
Djibouti	Outline law on Environment, Law No.106/AN/00/4 L	Clayton & Sadler (a)	
Dominican Republic	Environment and Natural Resources No. 64–00, 2000	http://www.law.du.edu/naturalresources/weblinks/listweblinks2.cfm?cc=29	* public policy, plan, activity and project Articles 16, 29,39,41,42, 43,45,46
Ethiopia	Proclamation No.299/2002 Environmental Impact Assessment Proclamation	Paper copy obtained from John Boyle, World Bank staff	*project, public instrument Sections 2,3, 7,13,15, 18
European Union	EU Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment	http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32001L0042&model=guichett	plan, program All sections apply
Finland	Environmental Impact Assessment Procedure Act (468/1994)	http://www.ymparisto.fi/download.asp?contentid=12805&lan=en	plan, program

COUNTRY	LEGAL INSTRUMENT	REFERENCE	SCOPE (where information available)
Gabon	Environmental Law No. 16/93, August 26, 1993	http://www.unep.org/padelia/publications/comp1Gabon.pdf (French)	
Ghana	The Environmental Protection Agency Act, 1994	http://www.epa.gov.gh/Act.htm	
	Environmental Assessment Regulations, 1999	http://www.epa.gov.gh/Act.htm	*undertaking, proposal; Sections 4, 6, 7, 8,9, 17, 24, 30
	Environmental Assessment (Amendment) Regulations, 2002	http://www.epa.gov.gh/l11703.pdf	* Section 8 ; Schedule 2A, 2B, 2C
Guatemala	Regulations on Environmental Assessment, Control and Follow-Up (Acuerdo Gubernativo, n.23-2003 of January 27, in force after April 2003)	Clayton & Sadler (a)	policy, plan
Guinea-Conakry	Environmental Protection and Development Order, May 28, 1987, No.045/PRG/87/SGG	http://www.unep.org/padelia/publications/comp1Guinea.pdf (French)	
	Environment Code, Order No.045/PRG/87/SGG, May 28, 1987	Clayton & Sadler (a)	
	Decree N199/PGR/SGG/89, Nov 8, 1989	Clayton & Sadler (a)	
	Law No. 90.033, Environment Charter, December 21, 1990	Clayton & Sadler (a)	
Hungary		Clayton & Sadler (a)	
Kenya	The Environmental (Impact Assessment and Audit) Regulations, 2003	Paper copy obtained from John Boyle, World Bank staff	*policy, plan, program; Sections 2,3,42,43,44,45
Latvia		Clayton & Sadler (a)	

COUNTRY	LEGAL INSTRUMENT	REFERENCE	SCOPE (where information available)
Lebanon	Framework Law for Environmental Protection Law 444, 2002	http://www.moe.gov.lb/Corporate/The+ministry/Laws+and+Regulations/(Lebanese)	
		http://www.undp.org.lb/programme/environment/newsletters/sea/SEA02.pdf	
	Draft Decree on EIA	Clayton & Sadler (a)	
Lesotho	Environment Act, 2001, No.15	Clayton & Sadler (a)	
Madagascar	Decree (MECIE) No. 99-945, December 15, 1999	Clayton & Sadler (a)	
Malawi	Environmental Management Act 1996, No. 23 **	Clayton & Sadler (a)	
		http://www.unep.org/padelia/publications/comp1Malawi.pdf	
	National Environmental Action Plan, 1994	Clayton & Sadler (a)	
	National Environmental Policy, 1996	http://www.sdnp.org.mw/~paulos/environment/policy/NEP4.htm	
Mali	Law No. 91–04/AN-RM February 23, 1991	Clayton & Sadler (a)	
	Decree No. 99–189 July 5, 1999	Clayton & Sadler (a)	
	Order No. 98–027/P–RM August 25, 1998	Clayton & Sadler (a)	
Mexico	General Law of Ecological Balance and Environmental Protection (1988)**	http://www.semarnat.gob.mx/wps/portal/.cmd/cs/.ce/155/.s/1809/_s.155/1815	policies, plans, programs
		Clayton & Sadler (b)	

COUNTRY	LEGAL INSTRUMENT	REFERENCE	SCOPE (where information available)
Morocco	Law on Environmental Protection	http://www.minenv.gov.ma/index.asp?param=2_cadre_juridique/textes_juridiques.htm (French)	
Mozambique	EIA Regulations, 1998, No.76**	Clayton & Sadler (a)	
Namibia	Draft Environmental Management Bill Environmental Assessment Policy	Clayton & Sadler (a) http://faolex.fao.org/docs/texts/nam18374.doc	
Nepal		Clayton & Sadler (b)	
Netherlands	EIA Decree ,1987, amended 1994, Cabinet Order, 1995	http://www.vrom.nl/international/	plan, program
New Zealand	Resource Management Act, 1991	www.mfe.govt.nz/laws/rma/	national and regional plan and program
Niger	Order No. 97–001 January 10, 1997 Outline law No. 98–56, December 29, 1998	Clayton & Sadler (a) Clayton & Sadler (a)	
Nigeria	EIA Decree, 1992, No.86	Clayton & Sadler (b) http://www.elaw.org/resources/text.asp?id=2690	*project Sections 1, 4,7, 10,11,12, 57
OECS Countries (Proposed)		http://www.oecs.org/esdu/documents/Final_OECS_EMS_document_12th_March_2002.pdf	
Pakistan	Pakistan Environmental Protection Act—PEPA , 1997	http://www.elaw.org/assets/pdf/Law%2DPEPA%2D1997.pdf	
Palestine	Environmental Assessment Policy, 2000	Paper copy obtained from John Boyle, World Bank staff	*Project, Plan, Program; Article 1(18); Annex 4
Samoa	Planning and Urban Management Act	http://www.parliament.gov.ws/legislations.cfm	

COUNTRY	LEGAL INSTRUMENT	REFERENCE	SCOPE (where information available)
Senegal	Environmental Code No. 83–05, January 28,1983, Law No 2001–01, January 15	http://www.unep.org/padelia/publications/comp1Senegal.pdf (French)	
Seychelles	The Environment Protection Act, 1994, Act 9	http://www.unep.org/padelia/publications/comp1Seychelles.pdf http://faolex.fao.org/docs/texts/sey4585.doc	
Slovak Republic	Act on Environmental Impact Assessment, 1994**	Clayton & Sadler (b)	
Slovenia	Environmental Protection Act (nos. 801-01/90-2/107, 1993)	Clayton & Sadler (a) http://www.cemt.org/topics/env/SEA99/SEAdusic.pdf	
South Africa	Land Use Bill, 2003	Clayton & Sadler (a)	
	National Environmental Management Act, 1998, No. 107	http://www.elaw.org/resources/text.asp?id=797	*activity; Sections 23, 24, 25, 34
	National Water Act, 1998	http://www.elaw.org/resources/text.asp?ID=1153	
	Mineral and Petroleum Resource Development Act, 2002, No. 28	http://www.acts.co.za/mprd_act/mprd_act.htm#mineral_and_petroleum_resources_development_act_2002.htm	mining activities
	Municipal Planning and Performance Management Regulations, 2001	http://www.local.gov.za/DCD/homewnu.htl	*Spatial Development Framework Section 2

COUNTRY	LEGAL INSTRUMENT	REFERENCE	SCOPE (where information available)
South Africa (continued)	National Forests Act, 1998**	http://www-dwaf.pwv.gov.za/Documents/Forestry/Tact84.doc	
	Guideline Document on Environmental Impact Assessment Regulations **	http://www.environment.gov.za/PolLeg/GenPolicy/eia.htm	
	Guideline Document, Strategic Environmental Assessment in South Africa	http://www.iaia.org/Members/Publications/Guidelines_Principles/sea-sa.pdf	*policy, plan, program. All sections apply
	Amended Draft EIA Regulations Jan 14, 2005	http://www.environment.gov.za/ http://www.environment.gov.za/PolLeg/Legislation/2004Dec15/Amended_Draft_EIA_Regulations_15Dec2004.pdf	
	White Paper on National Commercial Ports Policy, 2002	http://www.transport.gov.za/library/docs/white-paper/ports_wp.html	*Tool to ensure integrated environmental management Section 10
Swaziland	The Environmental Management Act, 2002, No.5	http://www.ecs.co.sz/leg_sd_files/env_leg_sd_envmngt_act.htm	
	Draft Environmental Management Bill	http://www.ecs.co.sz/leg_sd_files/env_leg_sd_env_mngt_bill.htm	program, strategies
	Environmental Audit, Assessment and Review Regulations	http://www.elaw.org/resources/text.asp?id=2485	*project; Sections 5, 6, 10, 12, 15, 20
	Environment Authority Act, 1992	http://www.ecs.co.sz/leg_sd_files/env_leg_sd_seaact.htm	
Tanzania	Draft Environmental Management Act	http://www.unep.org/padelia/publications/comp1Tanzania.pdf	

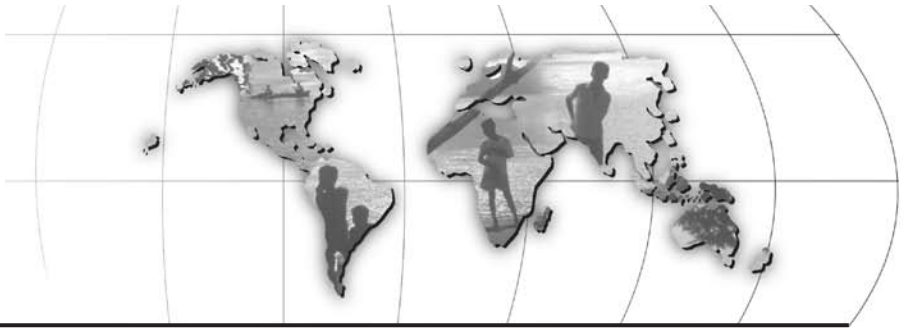
COUNTRY	LEGAL INSTRUMENT	REFERENCE	SCOPE (where information available)
Thailand	National Environmental Quality Act, 1975 now Enhancement and Conservation of National Environmental Quality Act, 1992	http://www.mekonglawcenter.org/download/0/thai.htm	
Tunisia	Forest Code Amendment Law No. 88–20 of April 13,1988 (article 208)	http://faolex.fao.org/docs/pdf/tun2805.pdf (French) Clayton & Sadler (a)	
	Law No. 88-91, August 2 1988, creating a National Environmental Protection Agency	Clayton & Sadler (a)	
	Decree No. 91–362, March,13, 1991	Clayton & Sadler (a)	
Turkey	Draft SEA Regulation	http://www.cedgm.gov.tr/scd/draftseareg.pdf	
Uganda	National Environmental Statute, 1995	http://www.un.org/esa/earthsummit/ugn-cp.htm http://www.unep.org/padelia/publications/comp1Ugandapt1.pdf http://www.unep.org/padelia/publications/comp1Ugandapt2.pdf http://www.unep.org/padelia/publications/comp1Ugandapt3.pdf	
Ukraine		Clayton & Sadler (b)	
United Kingdom	Guidance on Policy Appraisal and the Environment, 1991, amended 1997, Planning and Guidance Note 12 to Local Authorities, 1992, amended 1998	Clayton & Sadler (a) and (b)	plan, program

COUNTRY	LEGAL INSTRUMENT	REFERENCE	SCOPE (where information available)
United States	National Environmental Policy Act, 1969 Council on Environmental Quality (CEQ)—Regulations for Implementing NEPA	http://ceq.eh.doe.gov/nepa/regs/nepa/nepaeqia.htm http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm	*policy, plan, program
Vietnam	Law on Environmental Protection, 1993**	Clayton & Sadler (b) http://lawvianet.com/lawsregs.html	
Zambia	Statutory Instrument No. 28, 1997** Environmental Protection and Pollution Control Act, 1990, cap. 204**	Clayton & Sadler (a) http://www.unep.org/padelia/publications/comp1Zambia.pdf	
Zimbabwe	EIA Policy , 1994** Environmental Management Act, 2002 as amended March 25, 2006	Clayton & Sadler (a) http://www.kubatana.net/html/archive/legisl/060325envmact.asp?orgcode=par001&year=2006&range_start=31--	 *project Sections 2, 10, 97, 98, 99, 101, 108

Notes:
* Reviewed
** EIA Legal Instrument
Text in Italics References made to SEA but no legal instrument provided.

Sources:
Dalal-Clayton, Barry, & Sadler, Barry (a). *Strategic Environmental Assessment (SEA): A Sourcebook and Reference Guide on International Experience*. Final prepublication draft, October 13, 2004. Available at http://www.iied.org/spa/sea.html

Dalal-Clayton, Barry, & Sadler, Barry (b), *EIA and SEA: Towards an Integrated Approach*, UNEP 2004—Available at http://www.unep.ch/etu/publications/EIA_2ed/EIA_E_top14_hd.PDF



Annex 3

Country Summaries

BELIZE	
Applicable Law	Environmental Protection Act, 2000, Cap. 328
Definitions	
SEA	No formal definition provided. SEA captured by the mention of "program" under the EIA requirements.
EIA	No formal definition provided. However, a definition may be implied from the purpose of the law below.
Scope	Law states that an EIA shall be carried out by "any person intending to undertake a project, program, or activity" (sec. 20 (1)). No specific sectors are listed. However, sec.21 states that the minister may make regulations prescribing the types of projects, programs, or activities that require an EIA[108]. The minister is also empowered to prescribe the procedures, contents, guidelines, and other matters relevant to such an assessment
Purpose	The purpose of the EIA is to identify and evaluate the effects of specific developments on (a) human beings, (b) flora and fauna, (c) soil, (d) water, (e) air and climatic factors, (f) material assets, including the cultural heritage and landscape, and (g) natural resources, (h) the ecological balance, and (i) any other environmental factor that needs to be taken into account (sec. 20(2)).
Accountability	A person who fails to carry out an EIA shall be liable on summary conviction "to a fine not exceeding twenty-five thousand dollars (BZD)[109] or to imprisonment for a term not less than six months and not exceeding five years or to both such fine and imprisonment" (sec. 22).
Authority Responsible	(including institutional coordination)
Preparing	EIA is to be carried out by suitably qualified person (sec 20(1)).
Reviewing	EIA is to be submitted to the Department of Environment for evaluation and recommendations (sec. 20(1)).
Decision making	The minister, (charged with responsibility for the environment) may make regulations prescribing the types of projects, programs, or activities that require an EIA. He also prescribes the procedures, guidelines, content, and other matters relevant to the assessment (sec. 21). "A decision by the department to approve an EIA may be subject to conditions which are reasonably required for environmental purposes" (sec. 20 (7)). Furthermore, sec 20(8) states that in circumstances where such powers are exercised by the department, it is an exercise of a disaster-preparedness-related power and must be within the meaning of sec.13(1) of that act.

[108] For the purposes of this review, only the Environmental Protection Act was examined. Therefore, there may be a list of sectors to which this law applies but these were not reviewed.
[109] http://www.xe.com/ucc/convert.cgi (accessed August 26,2005) 1USD = 1.965 BZD 25,000.00 = USD 12,722.65

BELIZE (*continued*)	
Subnational, Supranational, Regional, and International Issues	No provisions detailing subnational, supranational regional, and international issues with regards to the EIA.
Methodology	EIA must include "measures which a proposed developer intends to take to mitigate any adverse environmental effects" as well as a statement of reasonable alternative sites (if any) as well as reasons for their rejection (sec. 20(3)).
Citizen Participation	Sec. 20(5) provides that a proposed developer must consult with public and other interested bodies or organizations when making an environmental impact assessment.
Monitoring	No provisions in the law for monitoring.
Notes	The law makes provision for the creation of regulations in pursuance of the law.

CANADA	
Applicable Requirement	The Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals, 1999
Definitions	
SEA	The systematic and comprehensive process of evaluating the environmental effects of a policy, plan, or program and its alternatives (adapted from *The Practice of Strategic Environmental Assessment*, by Riki Thérivel and Maria Rosário Partidário, 1996)(sec. 3.0).
EIA	The Directive does not apply to EIA.
Scope	Applies to policy, plan, and program proposals (sec. 2.1).
Purpose	No specific purpose is stated for the SEA. It is however stated that the purpose of the directive is to "provide guidelines for federal departments and agencies on implementing the Cabinet Directive on the environmental assessment of policies, plans, and programs." The Directive provides that SEA "seeks to incorporate environmental considerations into the development of public policies. Through Strategic Environmental Assessment, environmental considerations can be addressed at the earliest appropriate stage of planning…"(sec. 2.1.1). Furthermore, it is stated that by "addressing potential environmental considerations of policy, plan, and program proposals, departments, and agencies will be better able to (1) optimize positive environmental effects and minimize or mitigate negative environmental effects from a proposal, (2) consider potential cumulative environmental effects of proposals, (3) implement sustainable development strategies, (4) save time and money by drawing attention to potential liabilities for environmental clean-up and other unforeseen concerns, (5) streamline project-level environmental assessment by eliminating the need to address some issues at the project stage, (6) promote accountability and credibility among the general public and stakeholders, (7) contribute to broader governmental policy commitments and obligations"(sec. 2.1.1).
Accountability	No penalties are prescribed by the requirements.

CANADA (*continued*)	
Authority Responsible	(including institutional coordination) Several institutions are responsible for various aspects of the SEA process (sec. 2.6). "Individual Ministers are responsible for ensuring that the environmental consequences of their policies, plans, and programs are considered consistent with the Government's broad environmental objectives and sustainable development goals" (sec. 2.6.2). Department and agency officials are "responsible for ensuring that environmental considerations are properly integrated into the development of policy, plan, and program proposals. When a proposal is presented for decision, officials should ensure that, when appropriate, an assessment of the potential environmental effects of a policy, plan, or program is completed for each viable option presented. Officials should consult, as appropriate, with other departments and agencies with relevant mandates and expertise to assist them to report on the environmental implications of their policies, plans, and programs" (sec 2.6.4). Environment Canada is responsible for supporting the minister's responsibilities by consulting with other departments and agencies and providing expert policy, technical, and scientific analysis and advice on sustainable development and potential environmental effects of policy, plan, and program initiatives (sec 2.6.5). The Canadian Environmental Assessment Agency promotes the application of SEA to policy, plan, and program proposals of the federal government. In consultation with other departments and agencies, it provides guidance and training to improve the implementation of the SEA of policies, plans, and programs (sec 2.6.6). The Commissioner for the Environment and Sustainable Development is responsible for the oversight of the government's efforts to protect the environment and promote sustainable development. The commissioner's office holds government accountable for greening its policy, operations, and programs, and reviews progress in the implementation of department's and agency's sustainable development strategies (sec. 2.6.7).
Subnational, Supranational, Regional, and International Issues	No provisions detailing supranational and international issues. However, in the definition section, the term "environmental effect" is defined *inter alia* as any change… to the policy, plan, or program that may be caused to the environment, whether any such change occurs within or outside Canada (sec 3.0).
Methodology	No single "best" methodology is prescribed. The directive encourages federal departments and agencies to apply appropriate frameworks or techniques and to develop approaches tailored to their particular needs and circumstances (sec. 2.3). General guidelines are prescribed for carrying out SEA. They include guidelines for undertaking a preliminary scan, analyzing environmental effects, committing an appropriate level of effort, addressing issues of public concern, and documenting and reporting (secs. 2.3- 2.5).
Citizen Participation	Sec.2.4 states that in analyzing the potential effects of a policy, plan, or program proposal, there should be some indication of the concerns of the effects on those most likely to be affected as well as other stakeholders and the public. The directive also provides that the "involvement of the public should be commensurate with public involvement on the overall development of the policy, plan, or program proposal itself and should make use of any public involvement activities that may be under way as part of the proposal. If public documents are prepared for use in a consultation exercise, it is advisable to incorporate them into the results of the strategic environmental assessment to address potential environmental concerns."(sec. 2.4).

CANADA (*continued*)	
Monitoring	The directive states that the SEA should "consider the need for follow-up measures to monitor environmental effects of the policy, plan or program…" (sec. 2.3.2(4)).
Notes	Very detailed information on institutional coordination as well as the roles and responsibilities of various institutions in the SEA process.

CHINA	
Applicable Law	Environment Impact Assessment Law of the People's Republic of China, 2003
Definitions	
SEA	No definition provided. SEA is captured by the mention of plans under the EIA definition.
EIA	The methodology and system for analysis, projection, and evaluation of potential impacts on the environment resulting from the implementation of a plan or a construction project, for countermeasures and measures to prevent or alleviate adverse impact on the environment and for carrying out tracing monitoring (art. 2).
Scope	Arts. 7 and 8 provide that relevant departments under the State Council, local people's government at or above the district municipality level shall prepare the EIA and chapters or descriptions of the environmental impact of plans for land-use and construction and exploitation plans of regions, river basins, and sea areas. Additionally, the law states that they must prepare and "organize EIAs before the submission of the draft specific plans for approval and submit the environmental impact statements" for the following areas: (1) industry, (2) agriculture, (3) live stock breeding, (4) forestry, (5) energy, (6) water conservancy, (7) transportation, (8) urban construction, (9) tourism, and (10) natural resources and other specific plans.
Purpose	No formal purpose is stated for the EIA. The purpose may be implied from the definition provided above. It is also stated that the purpose of the law is to realize a sustainable development strategy, prevent adverse impacts on the environment from the implementation of plans and construction projects, and promote coordinated development of the economy, society, and environment (art.1).
Accountability	If a plan-preparation institution uses fraud to prepare an EIA thereby preparing a false EIA, the person(s) directly responsible shall be subject to administrative sanction by the competent higher authority or by the supervising administration (art. 29). Additionally, art.30 states that " for any plan approval institution which violates this law to approve the draft plan that shall prepare chapters or descriptions on environmental impacts but have not prepared or approved the draft specific plan that shall submit EIS but have not, the person in charge who is directly responsible and any other persons who are directly responsible shall be subject to administrative sanction by the competent higher authorities or by the supervision administration."

CHINA (*continued*)	
Authority Responsible	(including institutional coordination)
Preparing	Arts. 7 and 8 provide that the relevant departments of the State Council, local people's governments at or above the level of municipalities (with districts) and their relevant departments shall organize and conduct EIAs on specific plans.
Reviewing	The People's Government at or above the level of district municipalities shall designate either the competent department of environmental protection administration or other departments to organize a review group made up of representatives of relevant departments and experts who will examine the EIS. Review methods shall be formulated by the competent department of environmental protection administration under the State Council in conjunction with relevant departments under the State Council (art.13).
Decision making	EIA must be submitted to the State Council for approval. (art. 9).
Subnational, Supranational, Regional, and International Issues	Article 36 stipulates that the people's governments of provinces, autonomous regions, and municipalities directly under the central government may request EIAs for plans prepared by the people's governments at the country level. The detailed methods for this shall be formulated by the people's government of provinces, autonomous regions, and municipalities directly under the central government in accordance with this law
Methodology	Art. 7 provides that the EIA shall perform analysis, projection, and evaluation on the potential impacts resulting from the implementation of the plan; propose countermeasures and measures to prevent or alleviate adverse environmental impacts. The results are to be submitted to the relevant departments for approval. The relevant department shall then organize, prepare and conduct the EIA before submitting the Environmental Impact Statements (EIS) together with the draft plans for approval (art. 8) The EIS shall include "analysis, projection, and evaluation of the potential environmental impacts" resulting from the implementation of the plan; "countermeasures and measures to prevent or alleviate adverse environmental impacts, and conclusions of the EIA" (art. 10). Article 13 provides that the "people's government at or above the level of municipality with districts shall designate the competent department of environmental protection administration or other departments to organize a review group participated in by representatives of relevant departments and experts to examine the EIS of a plan before making any decisions on whether to approve a draft specific plan." Art. 14 states that the relevant departments of the people's government at or above the level of municipality with districts shall take the EIS's conclusions and the review opinions as important decision- making basis, when reviewing the specific plans.
Citizen Participation	Art. 11 states that the institutions responsible for preparing the plan shall hold public hearings and expert meetings in order to solicit comments and suggestions on the draft EIS.
Monitoring	Plan-preparation institutions shall organize tracing assessments in a timely fashion, and report the results to the approval institutions. They are also required to propose improvement measures in a timely manner if obvious adverse environmental impacts are found (art.15). There is no mention of monitoring the outcome of the EIA of plans.
Notes	Very decentralized approach to EIA/SEA with different municipalities having authority over the EIA/SEA process. The review group for the EIS is composed of representatives of relevant departments as well as experts.

DOMINICAN REPUBLIC	
Applicable Law	General Law on Environment and Natural Resources, 2000, No.64
Definitions	
SEA	The law does not specifically refer to the term SEA. However, the law provides for strategic environmental evaluation. Art. 16(27) defines this as "an instrument of environmental evaluation of the public policies, activities, and projects to guarantee the incorporation of the environmental variable in different sectors of public administration." The law specifies a list of instruments namely (1) environmental impact statement, (2) strategic environmental evaluation, (3) environmental impact study, (4) environmental report, (5) environmental license, (6) environmental permit, (7) environmental audits, and (8) public consultation, which are to be used for the purposes of preventing, controlling, and mitigating the possible impacts on the environment and natural resources caused by works, projects, and activities (art. 38).
EIA	The law introduces environmental impact evaluation, which is defined as "the instrument of environmental policy and management made up of the totality of technical procedures, studies, and systems which permit the estimation of the effects which the execution of a particular work, activity, or project can cause on the environment" (art.16(28)).
Scope	Art. 39 specifies that the policies, plans, and programs of public administration must be evaluated in terms of their environmental effects. Additionally, a list of 20 projects or activities that require an environmental impact evaluation is specified. This list includes but is not exclusive to the following: (1) ports, docks, navigation ways, breakwaters, piers, canals, shipyards, drains, maritime terminals, reservoirs, dams, dikes, irrigation canals and aqueducts; (2) high voltage electrical transmission lines and their substations; (3) hydro and thermo-electrical central stations and nuclear generating plants; (4) airport, bus and railroad terminals, railroad lines, highways, roads and public roadways…(8) plans for agrarian transformation, agricultural plantations and cattle breeding, rural settlements, including those carried out according to the agrarian reform laws…
Purpose	As stated above, the purpose of the environmental impact evaluation and the strategic environmental evaluation among other tools is to prevent, control, and mitigate the possible impacts on the environment and natural resources caused by works, projects, and activities.
Accountability	Once the environmental permit is granted, the person to whom it is issued assumes the responsibility for any administrative, civil, and criminal liabilities for damages caused as a result of their activity (art. 45). Additionally, In order to ensure compliance with the environmental license and permit, the responsible party must render a performance bond equivalent to 10 percent of the total costs of the physical works required to comply with the environmental management and adjustment program (art. 47). The law does not specify whether arts.45 and 47 apply to environmental impact evaluation or strategic impact evaluation.

DOMINICAN REPUBLIC (*continued*)	
Authority Responsible	(including institutional coordination)
Preparing	Each institution is responsible for preparing its own strategic environmental evaluation (art.39).
Reviewing	The State Secretariat of Environment and Natural Resources issues the directives for the evaluations. Additionally, the process of issuing environmental permits and licenses is administered by the State Secretariat of Environment and Natural Resources in coordination with the corresponding institutions that are obligated to review the environmental impact studies with the competent sectoral entities as well as with municipal townhalls (art. 43).
Decision making	The State Secretariat of Environment and Natural Resources approves the sectoral environmental evaluation. With reference to environmental impact evaluation, art. 41 specifically provides a list of the types of projects subject to this type of evaluation. Additionally, the provision gives the State Secretariat of Environment and Natural Resources the ability to expand the list.
Subnational, Supranational, Regional, and International Issues	There is no mention of supraregional and international issues in the context of strategic environmental evaluation. There is some mention of subnational issues with regards to strategic environmental evaluation. The law prescribes that "all plans, programs, and projects of a national, regional, provincial, or municipal nature must be drafted or adjusted and oriented by the guiding principles" of this law, environmental policies, and programs established by competent authorities (art. 29),
Methodology	An analysis must be performed of the consistency with the national policy on environment and natural resources. In evaluating the policies, plans, and programs, the alternative with the least negative impact must be selected (art.39). With reference to the environmental impact statement, the State Secretariat of Environment and Natural Resources issues the "technical standards, structure, content provisions, and methodological guidelines necessary for the drafting of the environmental impact studies, the program for environmental management and adjustment, and the environmental reports as well as the time of duration of the effectiveness of the environmental permits and licences, which are to be determined by the magnitude of environmental impacts produced. The procedural standards for the presentation, categorization, evaluation, publication and approval or rejection, control, follow-up, and supervision of the environmental permits and licences shall be established by the corresponding regulation" (art. 42).
Citizen Participation	Art. 43 provides that prior to a permit or licence being issued, the corresponding institution shall be responsible for ensuring that a review has been conducted by competent sectoral entities and municipal town halls to guarantee the participation of the citizenry.
Monitoring	The State Secretariat of Environment and Natural Resources supervises compliance with its recommendations and shall perform an environmental evaluation when it deems it so convenient through its own means or through third parties (art. 46). Art. 46 also provides that there be a program of self monitoring whereby the person responsible for the activity, work, or project must comply with and report periodically to the State Secretariat of Environment and Natural Resources.
Notes	The self-monitoring provision does not state when the said party must report to the secretariat. Very specific details are given as to the types of projects or activities subject to an environmental impact evaluation, but less detail is given for strategic environmental evaluation. Furthermore there is lack of clarity with respect to the provisions that apply to strategic environmental evaluation versus environmental impact evaluation.

ETHIOPIA	
Applicable Law	Environmental Impact Assessment Proclamation, 2002, No 299
Definitions	
SEA	No mention of SEA. However, SEA is captured by the EIA definition, which includes public instruments. A public instrument "means a policy, strategy, program, law, or an international agreement" (secs. 2(3) and 2(10)).
EIA	"The methodology of identifying and evaluating in advance any effect, be it positive or negative, which results from the implementation of a proposed project or public instrument" (sec. 2(3)).
Scope	A public instrument which falls within a category specified by the Environmental Protection Authority shall, prior to approval, be subject to an environmental impact assessment (sec.13 (1)). Basically, the Environmental Protection Authority issues guidelines to determine the category of public instruments "which are likely to entail significant environmental impact and the procedure of their impact assessment" (sec. 13(2)).[110]
Purpose	"To bring about administrative transparency and accountability, as well as to involve the public and in particular, communities, in the planning and decision taking on developments which may affect them and [their]environment" (preambular provisions).
Accountability	Art. 18(1) states that "without prejudice to the provisions of the Penal Code, any person who violates the provision of this Proclamation or of any other relevant law or directive, commits an offence and shall be liable accordingly." Any person who makes a false representation in their EIA report or who does not receive the necessary authorization from the requisite authority, commits an offence and shall be liable to not less than Br 50,000 and no more than Br 100,000 (sec. 18(2)).
Authority Responsible	(including institutional coordination)
Preparing	Any organ or government shall prepare the EIA (sec.13 (3)),
Reviewing	"Any government organ shall collaborate with the Authority (Environmental Protection Authority) to enable the evaluation of likely environmental impacts of any public instrument prepared by it" (sec.13(4)).
Decision making	The Environmental Protection Authority issues guidelines to determine which category of public instruments are likely to entail significant environmental impacts and the procedure their impact assessments should follow. The Environmental Protection Authority also determines whether or not an EIA should be conducted (sec.3(2)).
Subnational, Supranational, Regional, and International Issues	There is no mention of supranational and international issues in the context of EIA of public instruments. Sec.14 (2) provides that each regional environmental agency is responsible for the evaluation of an environmental study report. In circumstances where the project is not subject to licensing, execution, or supervision by a federal agency and is unlikely to have a transregional impact, then the regional environmental agency is also responsible for monitoring the implementation of the project.

[110] For the purpose of this review, only the Environmental Impact Assessment Proclamation was examined. There may be a list of categories of public instruments subject to an EIA embodied in guidelines. However, guidelines were not reviewed.

ETHIOPIA (*continued*)	
Methodology	No clear methodology is prescribed for public instruments. The only requirement is that where the law prescribes that the instrument is subject to an EIA, then the instrument "shall, prior to approval, be subject to environmental impact assessment" (sec.13). In contrast, however, very detailed steps are provided for projects. For example, the impact of the project is to be assessed on the basis of size, location, nature, cumulative effect with concurrent impacts of phenomena, transregional effect, duration, reversibility or irreversibility, or other related effects (sec.4(1)). When determining the negative impacts of a project, the authority responsible must weigh both the beneficial and detrimental effects. Where there is only a slight benefit, the authority must determine whether there is likely to be a significant negative impact (sec 4(2)). The EIA must be supported by an environmental impact study report as well as all documents required by the authority. The cost of the assessment is borne by the proponent (secs.7 (1) and (3)).
Citizen Participation	The Environmental Protection Authority or the relevant regional environmental agency shall make any environmental study report accessible to the public and solicit comments on it (sec. 15(1)). The Environmental Protection Authority or the relevant regional environmental agency shall ensure that the public comments, especially those made by the communities most likely to be affected, are incorporated into the environmental impact study report as well as in its evaluation (sec.15(2)).
Monitoring	No monitoring provisions regarding public instruments. The Environmental Protection Authority is responsible for monitoring implementation if a project is subject to licensing, execution, or supervision by a federal agency or if it is likely to have a transregional impact. The regional environmental agency is responsible for monitoring all other types of projects(arts 14 (1) and (2)).
Notes	No monitoring provisions for EIA of a public instrument/SEA. Decentralized approach to EIA/SEA.

GHANA	
Applicable Law	Environmental Assessment Regulations, 1999 Environmental Assessment (Amendment) Regulations, 2002
Definitions SEA	No definition provided. However, sec.30 (1) defines environmental assessment in a way that may capture SEA. That section prescribes that environmental assessment means "the process for the orderly and systematic identification, prediction, and evaluation of (a) the likely environmental, socioeconomic, cultural, and health effects of an undertaking, and (b) the mitigation and management of those effects." An undertaking is defined as "any enterprise, activity, scheme of development, construction, project, structure, building, work, investment, plan, program, and any modification, extension, abandonment, demolition, rehabilitation, or decommissioning of such undertaking the implementation of which may have a significant impact."

GHANA (*continued*)	
EIA	"The process for the orderly and systematic evaluation of a proposal including its alternatives and objectives and its effect on the environment including the mitigation and management of those effects. The process extends from the initial concept of the proposal through implementation to completion and where appropriate decommissioning" (sec.30(1)). The word "proposal" is not defined in the law. The definition makes no reference to projects even though projects fall within the definition provided for undertaking. The definition for EIA does not mention undertaking. The second schedule of the regulations specifies undertakings for which an EIA is mandatory.
Scope	EIA is mandatory for all undertakings mentioned in the second schedule of the regulations. These undertakings cover 17 areas: (1)agriculture, (2) airport, (3) drainage and irrigation, (4) land reclamation, (5) fisheries, (6) forestry, (7) housing, (8)industry,(9) infrastructure, (10) ports, (11) mining , (12) petroleum, (13) power generation and transmission, (14) resort and recreational development, (15) waste treatment and disposal, (16) water supply, and (17) environmental conservation and management. There is no mandatory list prescribed for EA. The first schedule lists thirty undertakings that require registration and an environment permit.
Purpose	No specific purpose is prescribed. However, the purpose may be implied from the definition of EIA
Accountability	Any person who begins an undertaking without an environmental permit, fails to comply with directives of the Environmental Protection Agency, submits false information to the agency which is required by the regulations, contravenes any of the provisions of the regulations, or fails to submit an annual environment report commits an offence and is liable on summary conviction to a fine not exceeding 2 million cedis or imprisonment for a term not exceeding one year or to both. In the case of a continuing offence, there is a further fine of 200,000 cedis for each day that the offence is committed (sec.29).
Authority Responsible	(including institutional coordination)
Preparing	The regulations do not specify who prepares the EIA and the EA. However, the regulations specify that if a person is required to register an undertaking and obtain an environmental permit, then the applicant is required to prepare the EIA or EA application (sec.4(1)).
Reviewing	The Environmental Protection Agency is responsible for screening the application. In so doing, several factors are taken into account: "(a) location, size and likely output of the undertaking, (b) the technology intended to be used, (c) the concerns of the general public, if any, and in particular the concerns of immediate residents, if any, (d) land use, and (e) any other factors of relevance to the particular undertaking to which the application relates"(sec. 5(1)).
Decision making	The Environmental Protection Agency approves the application (sec. 6).
Subnational, Supranational, Regional, and International Issues	No subnational, supranational regional, or international issues pertaining to EA or EIA are addressed in the regulations.
Methodology	After the application is screened by the EPA, the EPA issues a screening report, which states whether the application is approved or not or whether there is the need to submit a preliminary environment report or an environmental impact statement (sec. 6). After the agency approves the application, it registers the undertaking and issues an environmental permit (sec. 7).

GHANA (*continued*)	
Methodology *(continued)*	The applicant must then pay a fee, prescribed by the EPA, for the environmental permit. Sec. 8(1) of the Environmental Assessment (Amendment) Regulations) states that " the fees and charges for permits specified in Schedules 2A and 2B to these regulations shall be paid to the Agency (EPA) in respect of the matters specified in relation to them in the Schedules." Schedule 2 A provides " Environmental Processing and Permit Fees for large scale undertakings" and Schedule 2B lists the "Environmental Processing charges and permit fees other than indicated in Schedule 2A." Schedule 2C, lists various fees for "environmental assessment, environmental certificate" and "environmental assessment for large scale undertaking." The EPA shall publish in the gazette and the mass media, in such form as the EPA shall determine, notice of every environmental permit issued within three months of its issue (sec 8(A) of the Environmental Assessment (Amendment) Regulations). If a preliminary environmental assessment is necessary, the EPA shall request that the applicant submit a preliminary environmental report on the proposed undertaking (sec. 9(1)). If the EPA is satisfied that significant adverse environmental impact is likely to result, the applicant shall be asked to submit an environmental impact statement regarding the undertaking. (sec. 9(2)). This requirement is to be outlined in an environmental scoping report (sec. 10(1)). The scoping report is to set out the scope or extent of the environmental impact assessment to be carried out and shall include draft terms of reference that must provide the essential issues to be addressed in the environmental impact statement (sec.11). The EPA shall, within 25 days of receiving the scoping report, inform the applicant about whether or not it is acceptable (sec.13(1)).
Citizen Participation	The Environmental Protection Agency is to hold a public hearing on an application if (a) there appears to be adverse public reaction to the commencement of the undertaking; (b) the undertaking will involve the dislocation, relocation, or resettlement of communities; or (c) the EPA considers that the undertakings will have extensive and far- reaching effects on the environment In so doing, the EPA shall appoint a panel made up of not less than three or more than five persons. At least one third of the panel members must be residents from the geographical area of the intended undertaking and shall reflect varying opinions, if any, on the subject of the hearing. The chair of the panel shall not be a resident of the area of the proposed undertaking. (secs.17 (1)(1) and (2)).
Monitoring	The person responsible for an undertaking for which an environmental impact statement or preliminary environmental report has been approved is responsible for submitting to the EPA an environmental management plan within 18 months of the commencement of its operation and thereafter every three years (sec. 24(2)).
Notes	Very detailed provisions. The distinction is clearly drawn between EIA and EA. Since no specific reference is made to either programs or plans with regards to an EIA or EA, it may be argued that SEA could fall within either of these rubrics. This is evident from the fact that even though EIA specifically lists a number of undertakings that require an EIA, when one delves further into the undertakings, one finds a reference to programs. For example, in the case of agriculture, the provision states that agricultural programs necessitating the resettlement of 20 or more families, require an EIA.

KENYA	
Applicable Law	The Environmental (Impact Assessment and Audit) Regulations, 2003
Definitions	
SEA	"The process of subjecting public policy, programs, and plans to tests for compliance with sound environmental management" (sec.2).
EIA	"A systematic examination conducted to determine whether or not a program, activity, or project will have any adverse impact on the environment" (sec.2).
Scope	The regulations apply *inter alia* to policies, plans, and programs specified in Part IV, V and the second schedule of the act (sec.3). No definition is provided for "act" in the regulations. It is presumed that the act refers to the Environmental Management and Coordination Act since it is by the powers conferred on the Minister from that Act that the regulations were made.[111]
Purpose	The purpose of the SEA is to determine the most cost-effective and environmentally friendly approach when implemented individually or in combination with others (sec.42(1)).
Accountability	Sec.45(1) provides that any person who conducts any project without approval granted under the regulations, commits an offence and is liable to penalties prescribed by the Act . No specific reference is made to penalties prescribed for noncompliance with the SEA procedure.
Authority Responsible	(including institutional coordination)
Preparing	Lead agencies, in consultation with the Environmental Management Authority must subject all policy, plans, and programs to a strategic environmental assessment (sec.42(1)).
Reviewing	Lead agencies, in consultation with the Environmental Management Authority review the SEA. In so doing, they must consider the effect of the "implementation of alternative policy actions taking into consideration (a) the use of natural resources, (b) the protection and conservation of biodiversity, (c) human settlement and cultural issues, (d) socioeconomic factors, and (e) the protection, conservation of physical surroundings of scenic beauty as well as protection and conservation of [the] built environment of historic or cultural significance" (sec. 42(2)).
Decision making	Sec.42(3) states that the government and all lead agencies shall incorporate principles of SEA in the development of sector or national policy.
Subnational, Supranational, Regional, and International Issues	In circumstances where a project may have a transboundary impact, the proponent, in consultation with the National Environmental Management Authority, shall ensure that the appropriate measures are taken to mitigate adverse impacts taking into account the treaties and agreements between Kenya and other countries (sec.44).
Methodology	The strategic environmental impact report is to include: "(a) the title of the report, (b) a summary of the potential significant impacts of a proposed policy, program, or plan, (c) potential opportunities to promote or enhance environmental conditions, (d) recommendations for mitigation measures, and (e) alternative policy, program, or plan options to ensure compliance with the Act" (sec.43(1)).

[111] The Environmental Management and Coordination Act was not examined as part of this review.

KENYA (*continued*)	
Methodology *(continued)*	The proposed policy must include "(a) the purpose and rational of the policy, program, or plan taking into consideration socioeconomic, environmental, and cultural issues; (b) alternatives and strategies of the policy, program, or plans; (c) areas and sectors affected by the policy, program, plan, or proposed activities;" (d) an environmental analysis, which details "baseline information focusing on areas potentially affected, relevant legislative framework and related policy documents, summary of views of key stakeholders consulted, predicted impacts of the policy, plan, or program; (e) alternative policy options and comparison against environmental indicators, ongoing projects and how they fit in the proposed policy, program, or plan; recommendations outlining suggested policy changes, proposed mitigation measures, strategic environment assessment, and (f) relevant technical appendices such as stakeholders meetings referred to in the assessment" (sec. 43(2)).
Citizen Participation	No specific provision detailing consultation with the citizenry. However, citizen participation is implied from the requirement of the summary of views of stakeholders consulted for the environmental analysis (sec. 43(2)(d)(iii)).
Monitoring	No provisions addressing monitoring for SEA. However, very detailed provisions regarding monitoring for EIA.
Notes	Overlap with the definitions of EIA and SEA. Both definitions speak to programs. It will be important to note which one will apply since the law prescribes different procedures for each one. With regards to the scope of the law, it is interesting to note that SEA falls under Part VI and therefore is not captured by the application provisions. Of special interest is the fact that the penalties apply only to projects and not to policies or programs even though the initial definition of EIA and SEA captures both. Regarding decision making, there is a requirement that SEA principles are used as a guide. However, no SEA principles are listed.

PALESTINE	
Applicable Policy	Palestinian Environmental Assessment Policy, 2000
Definitions	
SEA	"The environmental assessment of plans and programs" (art.1(18)).
EIA	"Detailed assessment of the environmental impacts of a proposed project according to approved terms of reference" (art.1(8)).
EA	"The overall process whereby the potential environmental impacts of proposed development activities are studied and reviewed before considering environmental approval"(art.1.(4)).
Scope	The policy applies to proposed public and private-sector projects, proposed extensions or additions (as described in annex 3), proposed plans and programs (as described in annex 4), existing projects (as described in annex 5) (art.4). Annex 4 states that SEA may be used for plans and programs such as (1) power generation and supply, (2) solid waste management, (3) transportation infrastructure development, (4) tourism infrastructure development, (5) parks and natural reserves development and management, (6) development and management of industrial policy and estates, (7) master plans, and (8) agricultural development programs. This is quite useful and the policy is not restrictive in terms of stating that only these types of plans or programs can be subjected to SEA.

PALESTINE (*continued*)	
Purpose	No specific purpose is stated for EIA, EA or SEA. However, the purpose of the environmental assessment policy is to assist in (1) ensuring an adequate standard of life and not negatively affect the basic needs and the social, cultural, and historical values of people as a result of development activities; (2) preserve the capacity of the natural environment to clean and sustain itself; (3) conserve the biodiversity, landscapes, and sustainable use of natural resources; (4) avoid irreversible environmental damage and minimize reversible environmental damage from development activities (art.2).
Accountability	No provisions in the policy for penalties for noncompliance.
Authority Responsible	(including institutional coordination)
Preparing	Individuals, organizations, agencies, and proponents may prepare the SEA.
Reviewing	Art.6 provides the framework for the Environmental Assessment Committee. The committee is to be composed of ten people from the following government agencies: (1) Ministry of Environment Affairs (Chair), (2) Ministry of Industry, (3) Ministry of Local Government, (4) Ministry of Transport, (5) Ministry of Agriculture, (6) Ministry of Health, (7) Ministry of Tourism and Antiquities, (8) Ministry of Planning and International Cooperation, (9) Palestinian Water Authority, and (10) Palestinian Energy Authority. The EA Committee ensures adequate scoping of environmental assessment studies, prepares and approves terms of reference (TOR) for environmental assessment studies, reviews environmental assessment reports, recommends environmental assessment decisions to the minister, and assists the ministry to ensure compliance of projects with environmental approval conditions.
Decision Making	The Minister of Environment makes decisions on environmental assessment matters. However, the EA Inter-agency Committee recommends environmental assessment decisions to the Minister (art.6(b)).
Subnational, Supranational, Regional, and International Issues	Art.9 indicates that the Palestinian National Authority through the Ministry of Environment Affairs shall negotiate reciprocal agreements with neighboring countries to ensure that EA contributes to mitigating any environmental impacts. Additionally, there is a requirement that such agreements must be consistent with the principles of the 1991 United Nations Convention on Environmental Impact Assessment in a Transboundary Context
Methodology	Art. 3 provides principles that are to guide the assessment process. The principles listed are: (1) the application of the policy "must be transparent, equitable, and effectively administered in order to encourage environmentally sound development; (2) environmental assessment must enhance, and not inhibit, development by contributing to its environmental sustainability: (3) environmental assessment should begin as early as possible since it is a means for both planning and evaluating activities through all stages including decommissioning; (4) proponents of development activities should pay the costs of carrying out environmental assessment studies and preparation of studies and reports must be carried out by specialists qualified to do the work; (5) environmental assessment should specify measures for mitigating potential impacts, and for environmental monitoring and management, throughout the life of a development activity; (6) environmental assessment should specify measures for mitigating potential impacts, and for environmental monitoring and management, throughout the life of a development activity; (7) in the absence of Palestinian environmental standards, appropriate standards will be considered in EA studies and in the measures and conditions included in the environmental approvals of projects; and (8) stakeholder consultation is an essential component of the EA policy.

PALESTINE (*continued*)	
Citizen Participation	Art.3 (8) specifies that stakeholder consultation is an essential component of the EA policy. Additionally, art. 8 (1) states that proponents are required to consult stakeholders during the scoping and conduct of EIAs. During initial environmental evaluations, the Ministry of Environment Affairs may also require stakeholder consultation. The Ministry is also empowered to conduct its own stakeholder consultations in order to verify information or to extend the proponent's consultations. In addition, the Ministry shall "coordinate EA consultations with consultations by other authorities pursuant to other regulations and laws."
Monitoring	The Ministry of Environment Affairs is responsible for monitoring and follow up of conditions related to activity environmental approvals (art.5(6)).
Notes	The provision of principles underlying the policy are useful in guiding the SEA process. Of interest is the fact that EA agreements are to be consistent with the principles of the 1991 UN Convention on Environmental Impact Assessment in a Transboundary Context even though Palestine is not a participant to that convention.

SOUTH AFRICA	
Applicable Law, Policy, Regulations, Guidelines	National Environmental Management Act (NEMA), 1998; White Paper on Environmental Management Policy, 1997; The White Paper on National Commercial Ports Policy, 2002,The Local Government Municipal Planning and Performance Management Regulations, 2001 promulgated in terms of the Municipal Systems Act , 2000, No.32; Guideline Document: Strategic Environmental Assessment in South Africa, issued by the Department of Environmental Affairs and Tourism, 2000.[112] NEMA provides the framework for the development of procedures for assessing the potential impact of activities. It provides for "cooperative environmental governance by establishing principles for decision making on matters affecting the environment, institutions that will promote cooperative governance, and procedures coordinating environmental functions exercised by organs of state; and…matters connected therewith." As a result, Government policy is found in several documents and implemented through various acts and sectoral legislation. Rules, regulations, white papers, and guideline documents all contain provisions dealing with SEA. Therefore, it is difficult to have a comprehensive picture of the SEA procedure since some aspects of SEA are addressed by legislated provisions while others are not. Regulations are really a form of delegated legislation, which may be promulgated by a state, provincial, or local administrative agency given authority to do so by the appropriate legislature. A white paper is a government report or national publication of the government. Although it does not have the force of law, it addresses a specific problem and proposes solutions. Basically, therefore, NEMA is the overarching legislation and the regulations, white paper and sectoral legislation have all developed in pursuance of the intent of the provisions of the NEMA. The ministers have several powers and responsibilities in creating environmental regulations that comply with NEMA.

[112] The Acts, regulations, guidelines, and white paper of South Africa were examined because South Africa provides a unique example of the SEA procedure and framework being embodied in various pieces of sectoral legislation as well as different instruments, which range from those that have the force of law to those that merely provide guidance as to how the SEA process ought to be conducted.

SOUTH AFRICA (*continued*)	
Definitions	
SEA	NEMA does not specifically define SEA. However, NEMA promotes the application of tools that ensure integrated environmental management. It states that "the potential impact on the environment of listed activities must be considered, investigated, assessed, and reported on to the competent authority" (sec. 24). The term "activities" means policies, programs, plans, and projects (sec. 1). The White Paper on Environmental Management Policy defines SEA as "a process to assess the environmental implications of a proposed strategic decision, policy, program, piece of legislation, or major plan"(Appendix 2 Glossary).
EIA	NEMA refers to the investigation, assessment, and communication of the potential impacts of activities. Activities are defined as policies, programs, plans, and projects (sec.1).
Scope	No reference to sectors in NEMA, however SEA is used in sectoral or planning legislation. For example, the Local Government Municipal Planning and Performance Management Regulations mandate the use of SEA in spatial development frameworks (sec.4(f)). The White Paper on National Commercial Ports Policy also states that SEA may be used as one of the tools to ensure Integrated Environmental Management (IEM) (sec.10.1).
Purpose	Chapter 5 of the NEMA states *inter alia* that the purpose of the chapter is to promote the application of integrated environmental management tools in order to ensure the integrated environmental management of activities. The Guideline Document, *Strategic Environmental Assessment in South Africa*, states that SEA aims to "ensure that environmental issues are addressed from an early stage in the process of formulating policies, plans, and programs and incorporated throughout the process" (summary provisions).
Accountability	NEMA does not prescribe penalties for noncompliance with SEA procedures but rather for various other legislative requirements pertaining to the environment (sec. 34 and schedule 3). The White Paper on Environmental Management Policy states that one of the roles of government in enforcing regulations is to enforce regulations and legislation through prosecutions, fines, litigation, and any other necessary measures. The policy also states that those responsible for environmental damage must pay the repair costs both to the environment and human health, and the costs of preventive measures to reduce or prevent further pollution and environmental damage (sec. 3(principles). In the case of the White Paper on National Commercial Ports Policy there are no penalties for noncompliance with respect to SEA. However, it must be noted that the policy states that it is necessary to consider the broad policy framework within which the policy has been formulated (sec. 2). Similarly, the Local Government Municipal Planning and Performance Management Regulations makes no mention of penalties for noncompliance with its SEA requirement.
Authority Responsible	(including institutional coordination)
Preparing	Since NEMA creates the framework for the development of laws and regulations in compliance with its provisions, depending on the sectoral or local regulation/legislation, the preparing institution will vary. Additionally, sec 2(l) of NEMA provides that "there must be intergovernmental coordination and harmonization of policies, legislation, and action related to the environment." Although the Local Government Municipal Planning and Performance Management Regulations mandate the use of SEA in spatial development frameworks, there is no explicit reference as to who is responsible for preparing, reviewing, or taking decisions regarding the SEA. Similarly, the White Paper on National Commercial Ports Policy does not specify who is responsible for preparing, reviewing, or taking decisions on the SEA

SOUTH AFRICA (*continued*)	
Authority Responsible *(continued)*	
Reviewing	Based on sec. 24(5)(i) of NEMA, the minister, and every minister of the executive council (MEC) with the concurrence of the minister, may make regulations "prescribing review mechanisms and procedures including criteria for, and responsibilities of all parties in, the review process."
Decision Making	Based on sec. 24 (5)(f) of NEMA, the minister and every MEC, with the concurrence of the minister may make regulations " requiring that competent authorities maintain a registry of applications for, and records of decisions in respect of, environmental authorizations."
Subnational, Supranational, Regional, and International Issues	NEMA makes provision for the minister to introduce legislation in Parliament which may be necessary to give effect to an international environmental instrument (sec.25(3)).
Methodology	The Guideline Document, *Strategic Environmental Assessment in South Africa*, uses EIA- based terminology to specify the methodology to be applied in carrying out SEA. These are: (1) identifying broad plan and program alternatives, (2) screening, (3) scoping, (4) situation assessment, (5) formulating sustainability parameters for the development of the plan or program, (6) developing and assessing alternative plans and programs, (7) decision making, (8) developing a plan for implementation, monitoring, and auditing ,and (9) implementation (sec. 4).
Citizen Participation	Sec. 2(4)(f) of NEMA states that "the participation of all interested and affected parties in environmental governance must be promoted and all people must have the opportunity to develop the understanding, skills, and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured." Within the context of Chapter 5 (i.e integrated environmental management) of NEMA, sec.23(2)(d) provides that the general objective is to ensure adequate opportunity for public participation in decisions that may affect the environment.
Monitoring	Sec 24(4)(f) of NEMA states that every application for environmental authorization must as a minimum ensure the "investigation and formulation of arrangements for the monitoring and management of impacts, and the assessment of the effectiveness of such arrangements after their implementation." In addition, sec. 24(5) (a) states that the minister and every MEC with the minister's concurrence may make regulations "laying down the procedure to be followed in applying for, the issuing of, and monitoring compliance with environmental authorizations."
Notes	Different instruments (white paper, regulations, acts, guidelines) used to address the use of SEA based on the NEMA's overarching reference.