



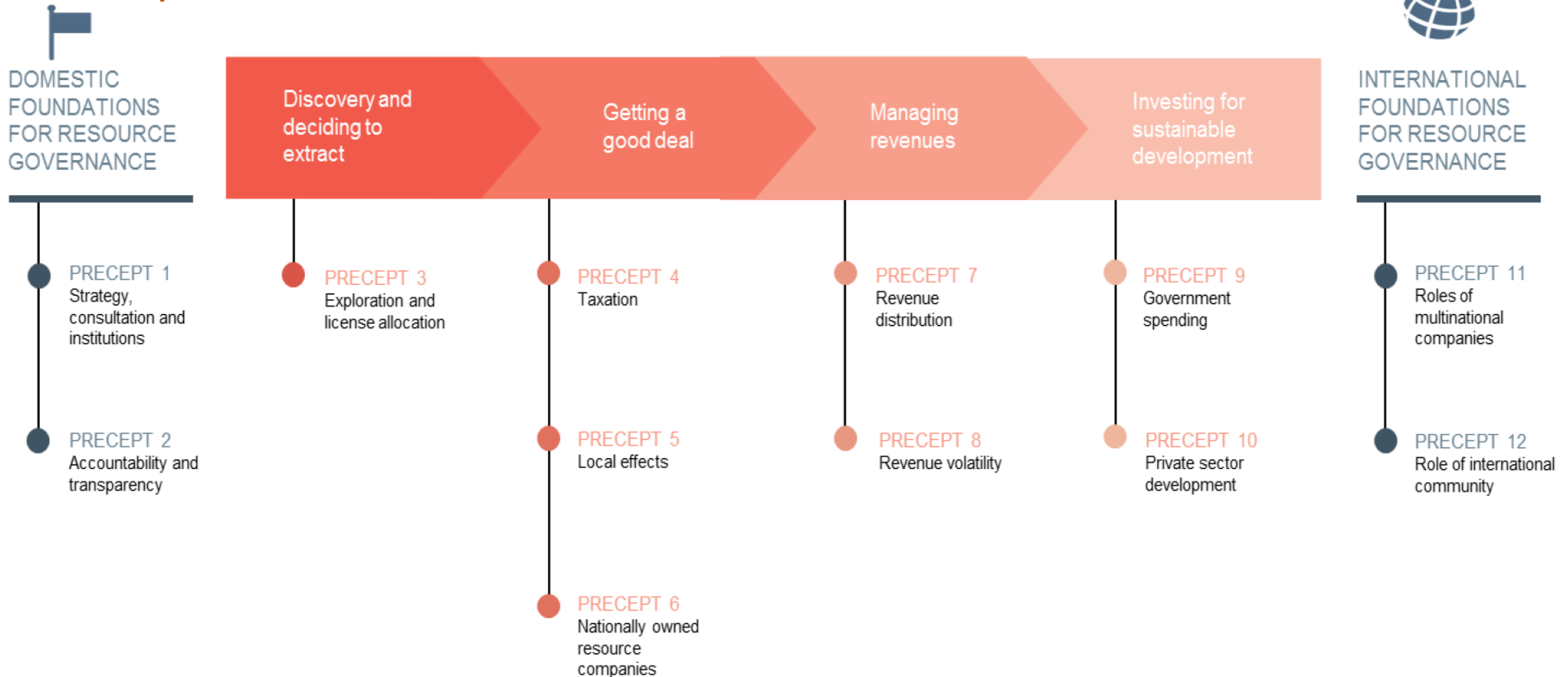
Environmental and Social Considerations

Revisiting the the frameworks and tools for managing the ecological and human rights impacts of extractives

Overview

- Principles of environmental and social rights
- Tools for fulfilling environmental and social rights
- Process
- Applicable standards
- Emerging Issues, emerging frameworks
- Focus on FPIC
 - FPIC

When should environmental and social impacts be considered?



Environmental and social standards

Environmental Assessment
Natural Habitats
Physical Cultural Resources
Pest Management
Forestry
Projects on International Waterways

Indigenous Peoples
Involuntary Resettlement
Safety of Dams
Projects in Disputed Areas
Occupational Health and Safety
Labor



General objectives

- Screening, Scoping, Prediction, Mitigation, Management and monitoring, Audit
 - screens projects to identify potential impacts early in project cycle and categorizes projects according to level of impacts
 - Categories trigger varying due diligence, participation, and information disclosure requirements
 - Identified impacts to be avoided or minimized and project alternatives (“no project scenario”) examined
 - Mitigation measures often contained in Environmental Management Plan

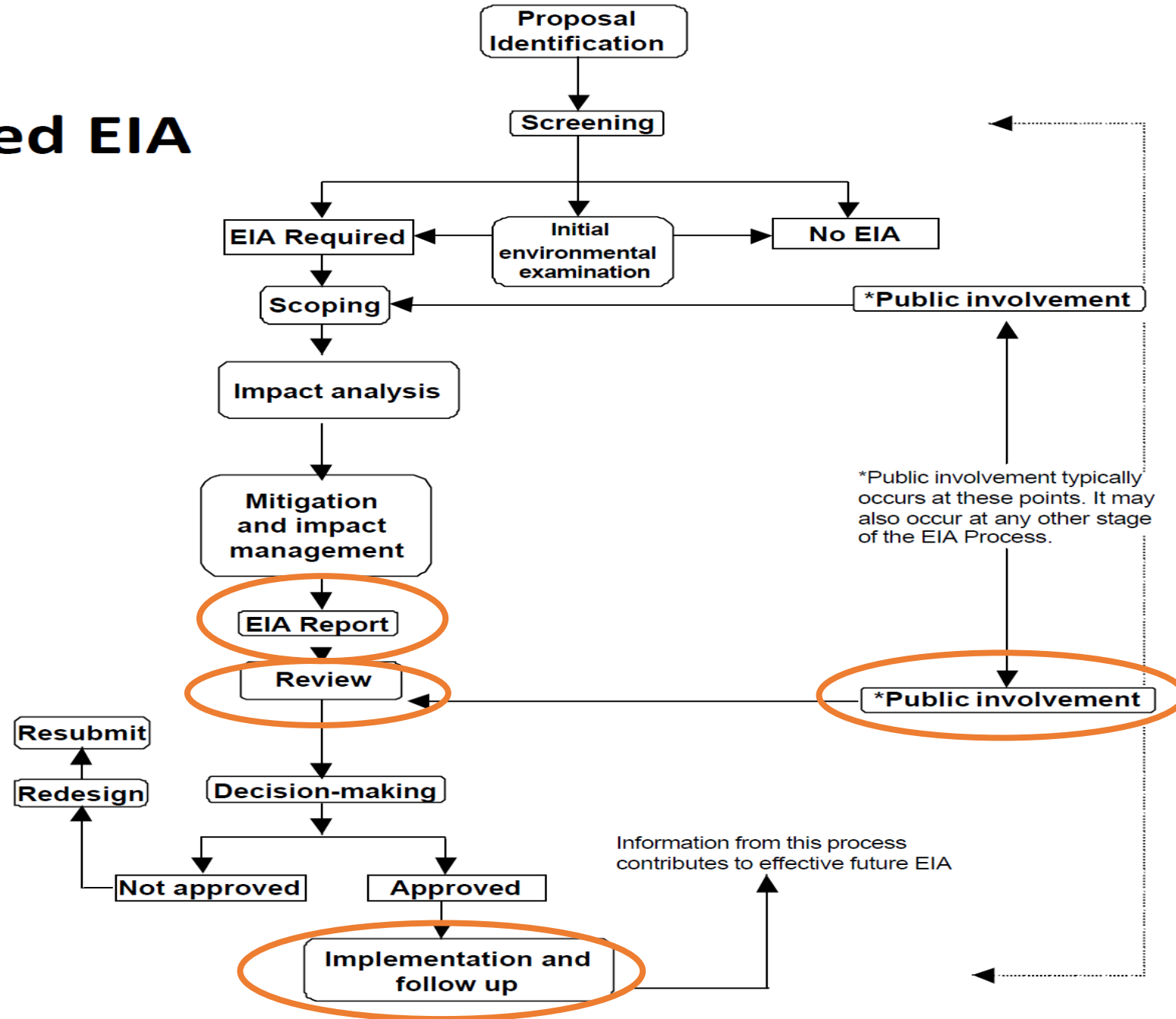
International Environmental Law Principles

- Precautionary Principle
- Prevention
- Equity
- Polluter Pays
- Transparency, Information, Participation
- State Sovereignty
- Key component of the rule of law
- Not just problem identification but also proposition

Understand the Risks

- Cost-Benefit analysis traditionally considers only the costs and benefits *internal* to the project...
- ... environmental and social impacts are *externalities*...
- ... *quantification of environmental* harm controversial

Generalized EIA Process



Public Participation

- Central to E(S)IA process
- Critical to project success
- Often improves project
- Must do stakeholder analysis to be effective
- Project proponent should pay for potentially-impacted people to participate meaningfully

Prediction

- Assessments to set a baseline
- Social and scientific studies
- Identify potential impacts ***based on the characteristics of the site***
- Identify alternative approaches for the project

- Contamination
- Sometimes toxic or radioactive
- Loss of drinking water
- Groundwater impacts
- Sedimentation, sometimes contaminated
- Higher water levels
- Flooding
- Contamination, death of fish, aquatic life food chain
- Erosion
- Loss of arable land
- Changes to topography

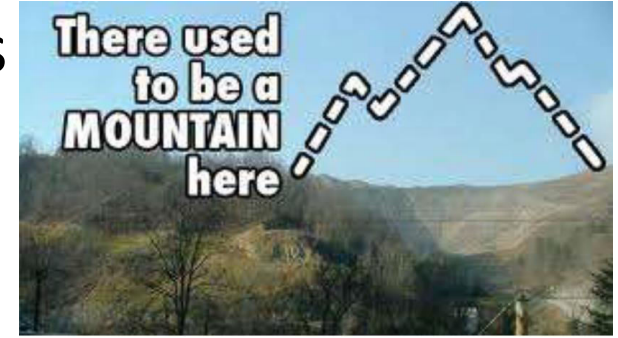
- Destruction of forest
- Loss of animal species or habitat
- Displaced communities
- Loss of livelihoods, way of life
- Cultural sites
- Disparate impacts on women
- Climate impacts
- Toxins in the dust, sometimes radioactive
- Conflict, violence

Mitigation of Impacts

- Identify alternative operational and technological approaches
- Placement of infrastructure
 - – Waste treatment and disposal
 - – Runoff control
 - – Dust suppression
 - – Erosion control, etc...
- Throughout the project
- Closure – Reclamation, Restoration,
- Rehabilitation, Post-closure...?

Environmental Compensation

- Conservation of a similar area of land – no net loss
- Biodiversity offsets
- Ecosystem services esp. hydrology, livelihoods
- Complex valuation methodologies



Environmental Action/Management Plan

- The guide to implement the approach identified by the prediction and mitigation phase of the EIA
 - Following mitigation measures
 - Carrying out compensation measures

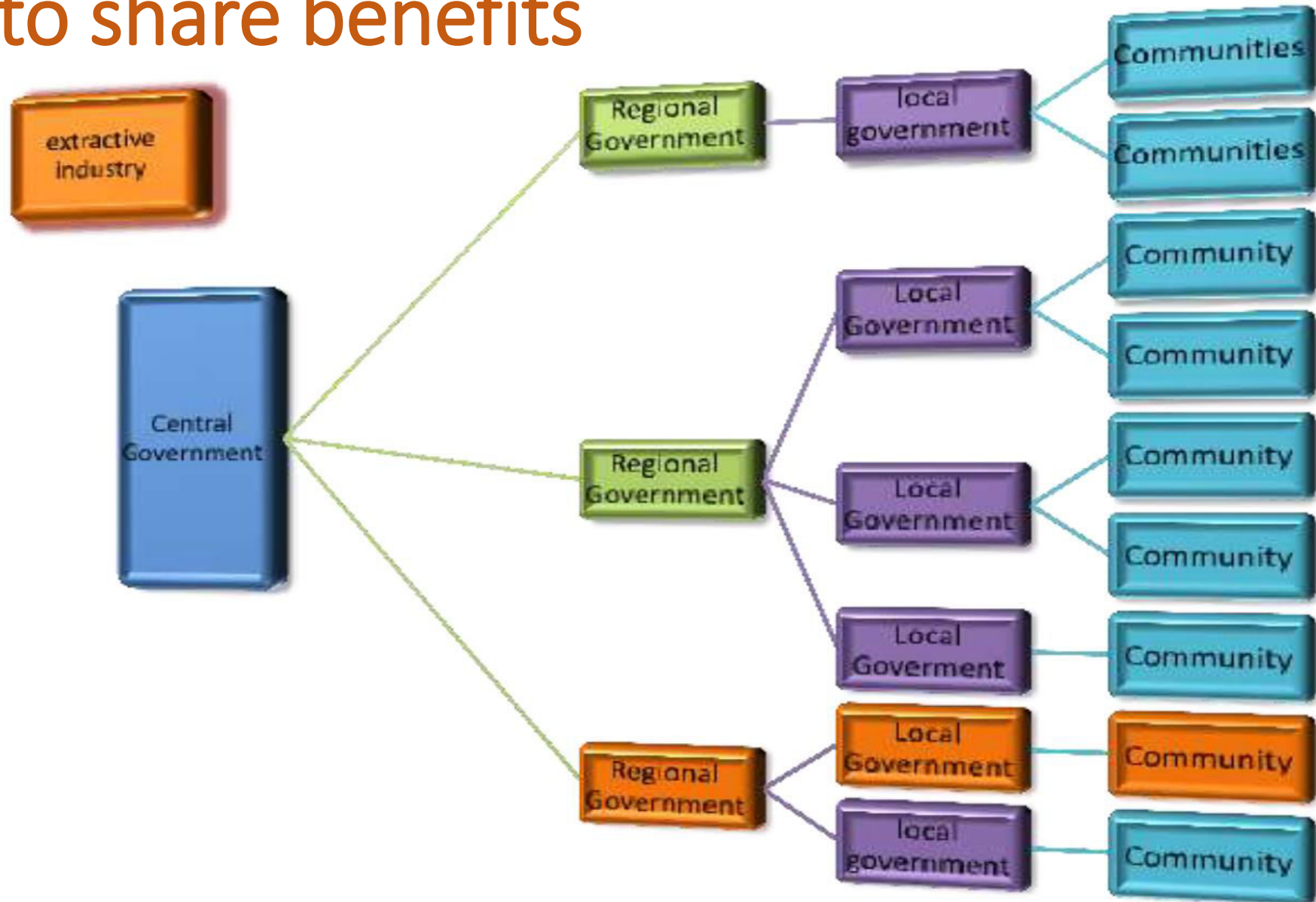
Compliance Monitoring

- Translating the rules to reality:
 - Can be costly
 - Highly technical
 - Informed public can help

Informed/participatory decision-making

- ***Due Process*** critical for proper ***Ex Ante*** consideration of env'l and social context and values
- Involves assuring that potentially impacted communities and their advocates and governments are ***capable*** of participating meaningfully
- Improves projects

How to share benefits



Local content

- Increasingly required by local law
- Very context specific
- Services, supplies *and jobs*



What if?



Preparedness

- Plan ahead – be ready
- Consider downstream/transboundary effects
- Consider potential political constraints
- Joint UNEP/OCHA Environmental Emergencies Unit

Instruments for Enforcing Environmental and Social Protections

- Contract provisions
- Constitutions
- National law; e.g. Water laws protect basic human needs; ownership
- Lender standards: IFC-PS; EP; VP
- Associations of companies: ICMM, IPIECA
- International laws/agreements
- Laws and standards of the country where the company is based



Involuntary Resettlement

- People displaced from their homes or suffered economic displacement due to loss of land, buildings, or sources of income.
- Involuntary resettlement to be **minimized, if not avoided**
- Displaced persons must be assisted at a minimum in **restoring** their former living standards, income earning capacity, and production levels. **Improving** living standards of resettled persons should be an objective
- Resettlement activities should be conceived and executed as **sustainable development programs** (not just mitigation)
- Triggers: **loss of land** (including buildings), **assets**, or **sources of income**. Also applies when a project restricts **access to parks and protected areas**
- **Affected persons without formal title or legal claims to the land they occupy are covered by the policy but will be provided resettlement assistance rather than compensation for the loss of occupied land.**
- **Land-based** resettlement strategies “**should**” be provided to displaced persons whose livelihoods are land-based. Does not require **land-for-land** compensation.
- Compensation for loss of land or assets is to be at **full replacement value**
- Taking of land and related assets allowed **only after compensation has been paid** and resettlement **sites** and moving allowances **have been provided**
- Displaced persons to be offered transitional support and development assistance to **restore livelihoods, in addition to compensation.**

Involuntary Resettlement

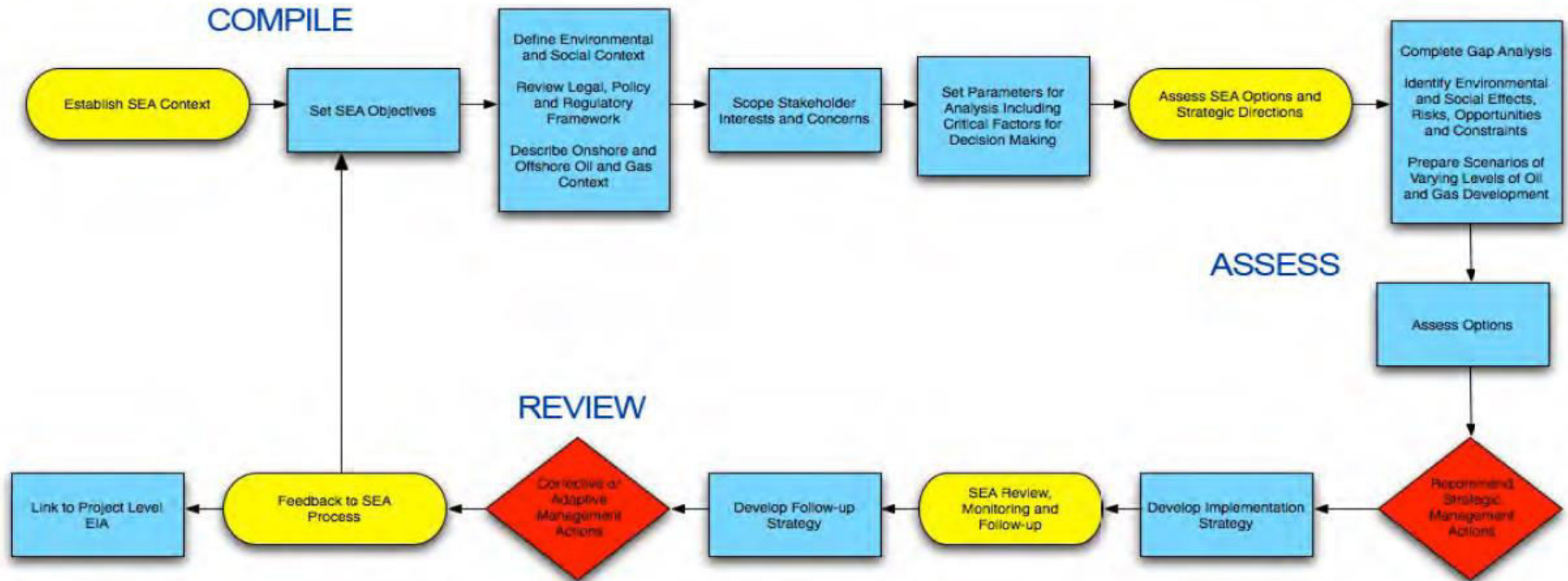
- Affected persons must be consulted on resettlement options and offered opportunities to **participate in planning, implementing, and monitoring.**
- Borrower prepares **resettlement plan (RAP) on all aspects** of resettlement. Must identify choices of affected persons regarding resettlement measures and compensation.
- Draft resettlement plans must be available at an accessible place in a form, manner, and language that are understandable.



Free, prior and informed consent (PIC)

A plethora of emerging tools

- SEA/SESA: takes a comprehensive view of resources...and look at project specific impacts



A plethora of emerging tools

- SWIA: looks at bigger picture of potential negative impacts and opportunities, using human rights lens



- CIA: looks at social and environmental impacts which result from the incremental impact of the action when added to their past, present and reasonably foreseeable future actions
 - Eg. Tata Mundra Coal Project



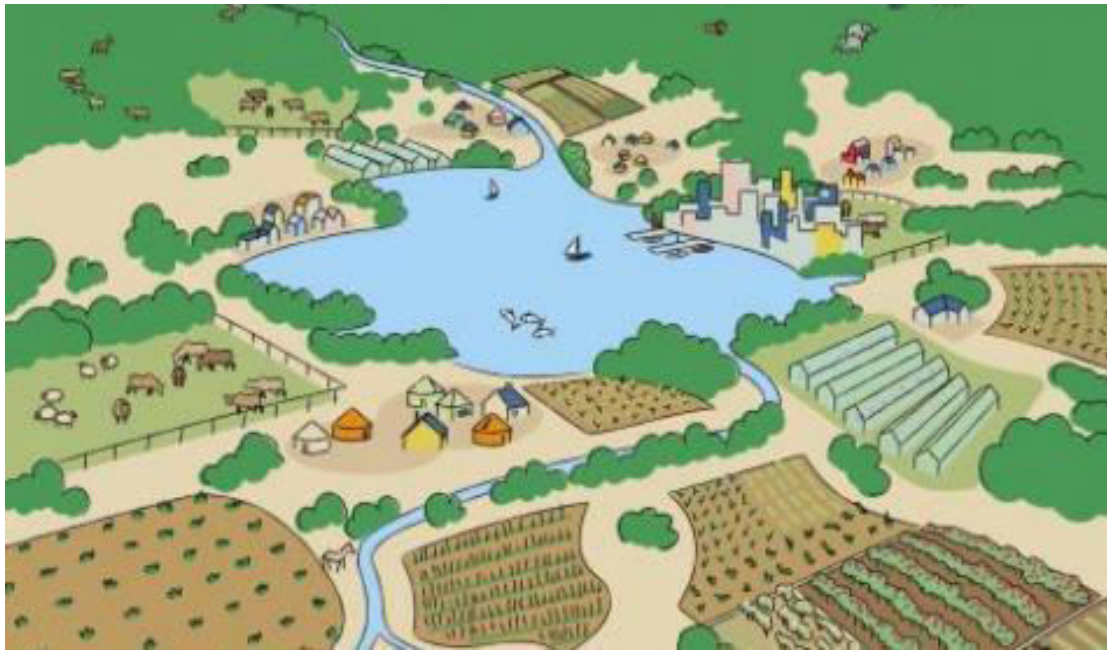
- WAVES: accounts for potential income for the future that cannot be represented by the GDB (only measures current income and production)

FIGURE 1. COMPREHENSIVE WEALTH COMPOSITION



Landscape approach

- Emphasizes an integrated approach for sustainably managing land, water and coastal resources for multiple purposes and functions; connects multiple land uses at the landscape level as the basis for enhancing people's livelihoods, security, and resilience to climate variability and change
- [A tool for cross-economic sector policy making and development planning, focused on "minimizing trade-offs and reaping more value from existing resources."](#)



ETO

A consortium that pushes for Extraterritorial obligations (ETOs) of host and base states to support human rights, which have been locked up behind domestic bars to prevent their universal application. Applies to cross-border investment projects



Final thoughts

- Principles of environmental and social rights
- Tools for fulfilling environmental and social rights
- Sources of standards
- Using the tools successfully
- Emerging Issues...

.... Discussion

Country group exercise

1. Describe your country policies that safeguard environmental and social rights.
2. What are their strengths? What are their shortcomings?
 - Consider the following:
 - Scope: are requirements for and coverage of safeguards limited or broad?
 - Responsibility: are roles clear and coordinated for those mandated to protect E/S rights?
 - Enforcement: are these mandatory or voluntary?
 - Implementation capacity: budget, staffing, monitoring
 - Redress mechanism: What measures are guaranteed to hold companies, governments, financiers accountable?
 - Any policy provisions citing conditions not to develop sub-soil wealth?
3. Have there been cases where E/S tools applied successfully?
4. What made them work? How do we define success?