

Monitoring Mechanisms of Mining Operations



Environmental Impact Assessment

- EIA is a process in sustainable development to reduce & mitigate anticipated impacts of development projects
- EIA is a “planning and decision-making tool”



Sustainable Development

- The EIA was endorsed by the **Rio Declaration on Environment and Development** for application to achieve sustainable development goals in each country
- 5 Primary Mechanisms:
 1. Reliance on participatory approaches
 2. Application of the precautionary principle
 3. Application of the principle of intergenerational equity
 4. Conservation of biological diversity and ecological integrity is a primary consideration
 5. Improved valuation, pricing and incentives

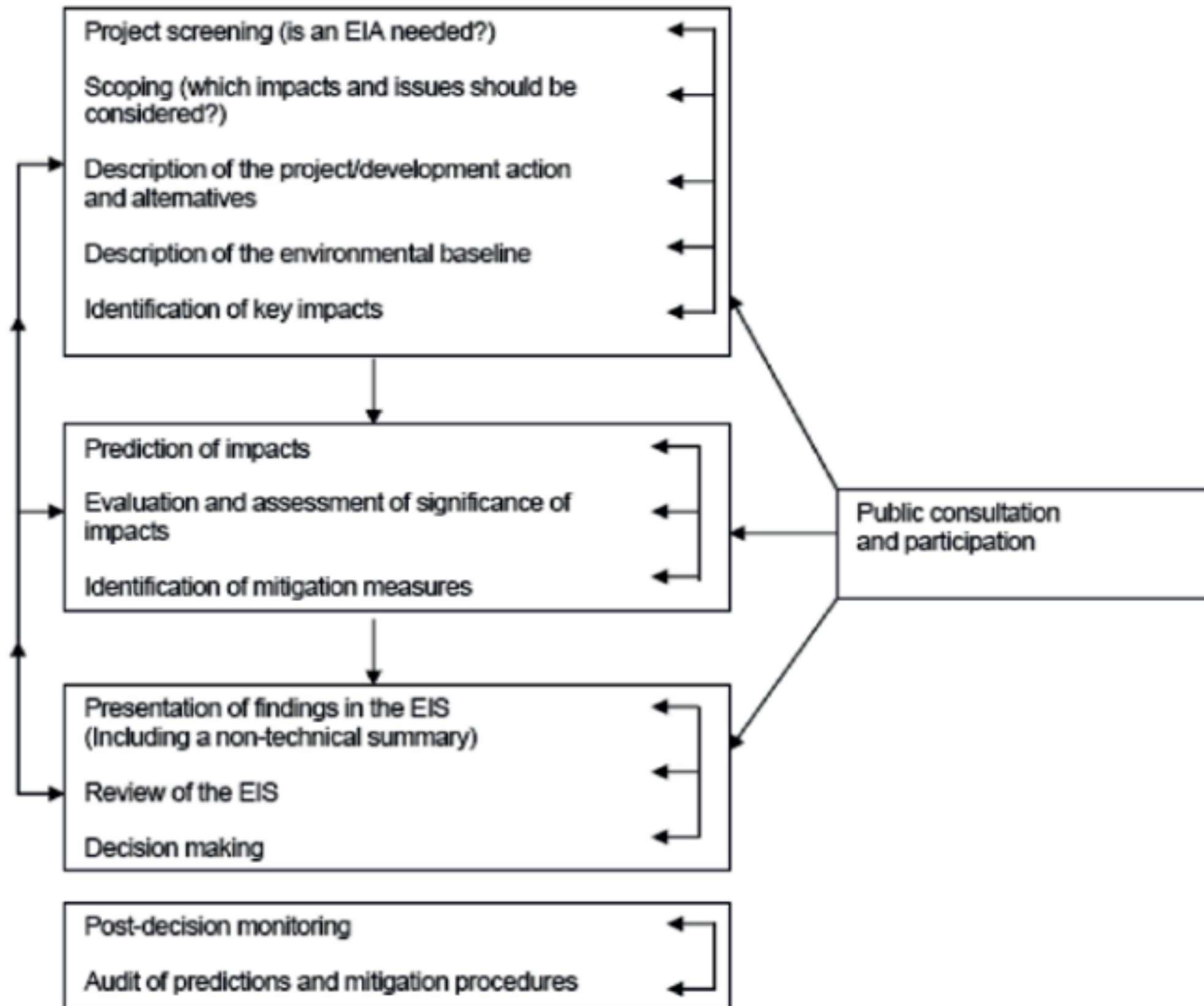
Precautionary Principle

- If an action or policy has a suspected risk of causing harm to the public/ environment, **in the absence of scientific consensus that the action or policy is not harmful, the burden of proof that it is not harmful falls on those taking an action**

Public Participation in EIA



- Opportunities for PP at different stages:
 1. Screening;
 2. Scoping;
 3. Preparation of EIA report by the EIA consultant;
 4. Post-approval monitoring, compliance, and enforcement



Public Participation in EIA

- Studies have indicated that EIA accounts for less than 2% of projects costs, for large-scale projects this could be as low as 0.7%.¹



Philippine Environmental Impact Statement System (PEISS)

- PD No. 1586 mandated all gov't agencies including GOCCs and private corporations to prepare an EIS for any project that significantly affects the quality of the environment



PEISS

- PEISS is anchored on the principles of sustainable development and is implemented to ensure a rational balance between socio-economic development and environmental protection and sound management of natural resources



ECPs and ECAs



- Proc. No. 2146 defined Environmentally Critical Projects (ECPs) and Environmentally Critical Areas (ECAs)
- **All mining projects are ECPs**

Key Operating Principles of PEISS

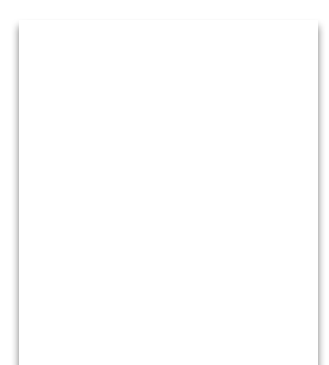
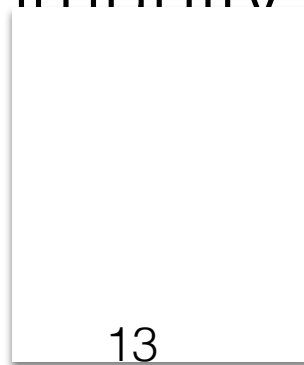
- EIS Process assesses the impacts of a company's project on the biophysical and human environment and ensures these impacts are addressed by appropriate measures
- Companies are responsible for determining and disclosing all relevant information necessary for a methodical assessment of the environmental impacts of their projects;

KOP of PEISS

- Criteria for review of EIA Reports by the DENR-EMB:
 - environmental considerations are integrated into the overall project planning;
 - assessment is technically sound and proposed environmental mitigation measures are effective, and
 - EIA process is based on a timely, informed and meaningful public participation of potentially-affected communities;

EIA, EIS and ECC

- Environmental impact assessment (**EIA**) is conducted to determine the possible impacts of a proposed project on the environment and community.
- Results of this study are reported in a document called Environmental Impact Statement (**EIS**) .
- If the EIS is approved, an Environmental Compliance Certificate (**ECC**) is issued, certifying that the proposed project will have minimal impacts on the environment and community.



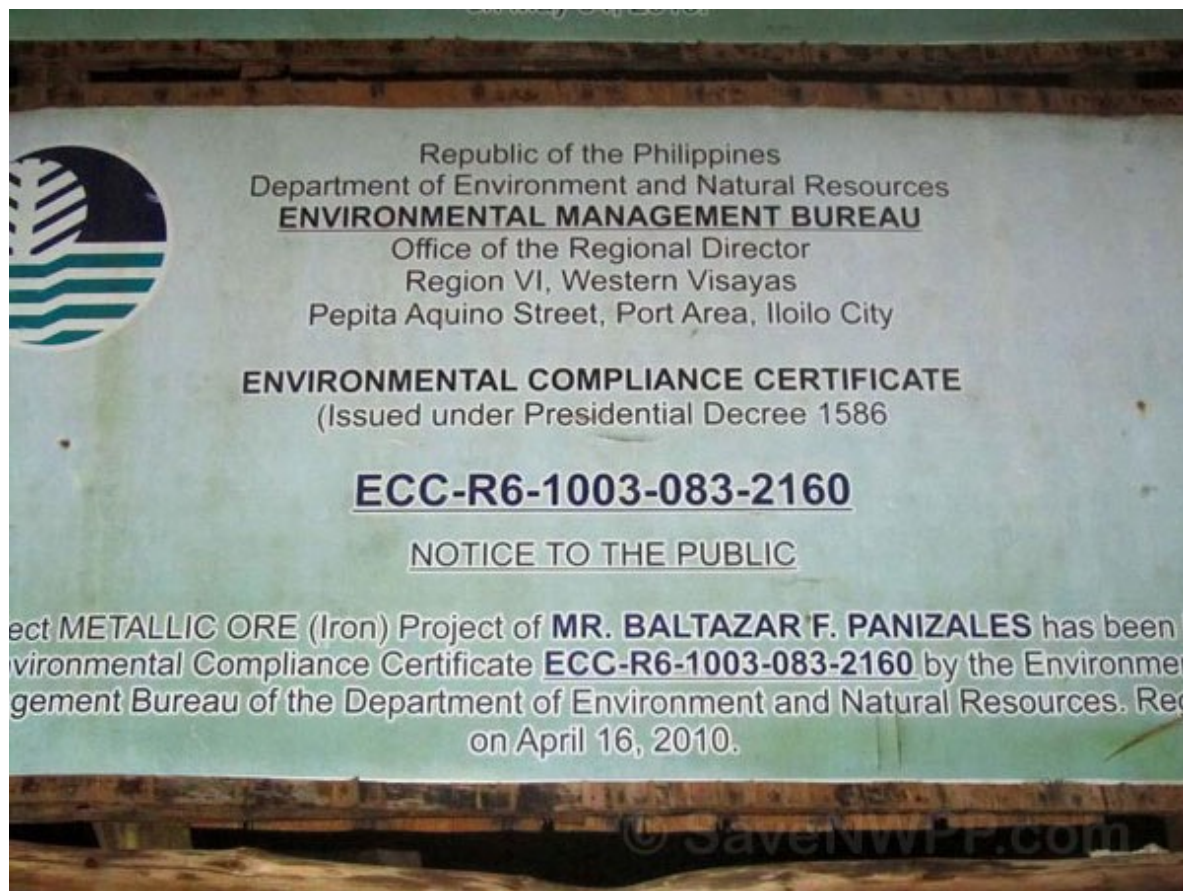
1. Contents of EIA Report

- Project Description;
- Baseline Environmental Description (of the land, water, air and people);
- Environmental Impact Prediction and Evaluation; and
- Environmental Impact Management Plan,

2. EIS Basic Requirements

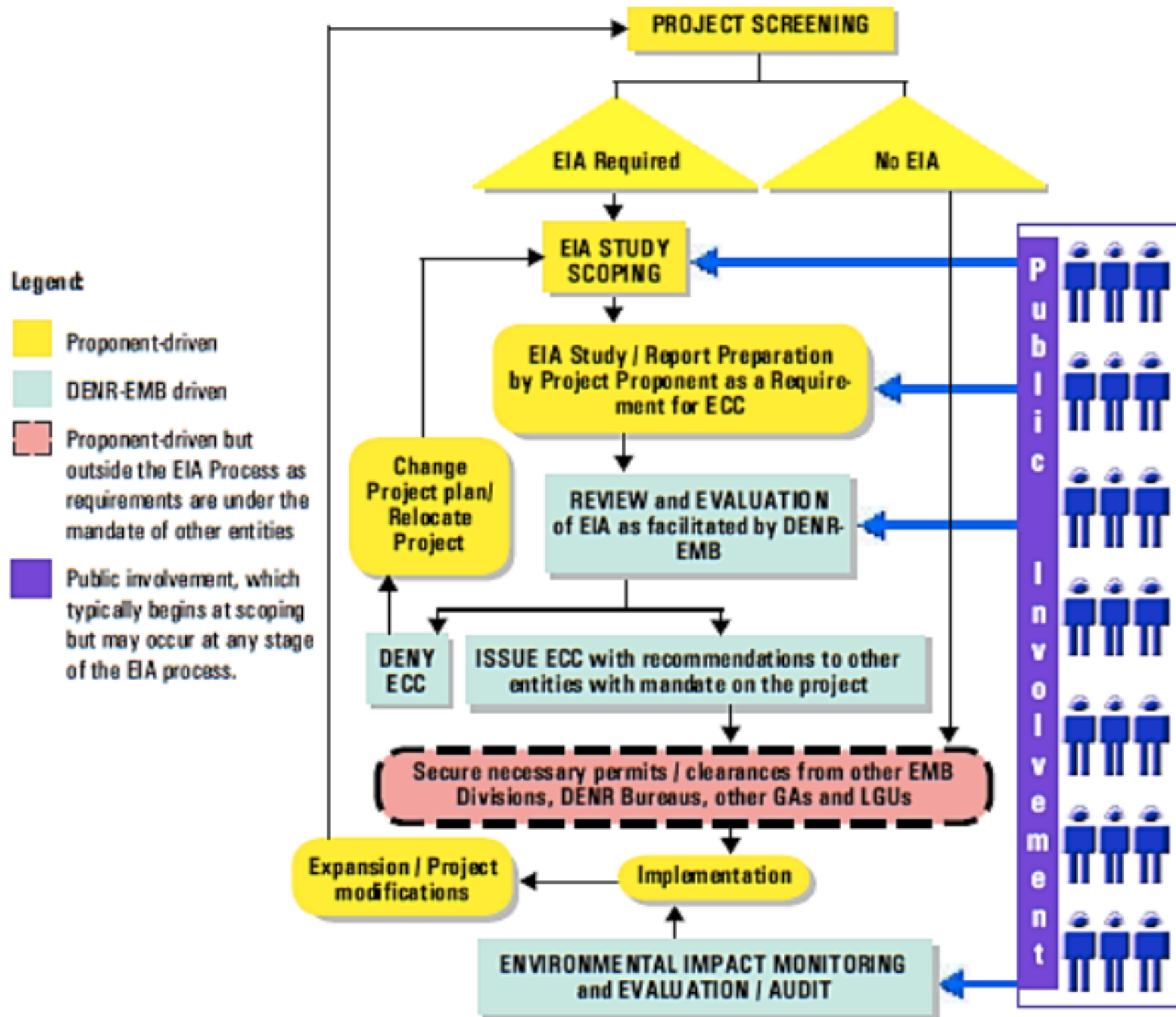
- Project fact sheet;
- Executive summary;
- Basic project information;
- Description of EIA process;
- Project description, including the following:
 - location, rationale, alternatives, development plan, project components
 - description of project phases (activities, associated wastes and pollution control measures)
 - manpower requirements, project cost, project duration/schedule;
- Baseline environmental conditions, impact assessment and mitigation (relevant modules only on land, water, air, people);
- Environmental risk assessment;
- Environmental management plan (impacts management plan; social development framework; IEC framework; emergency response policy and generic guidelines; abandonment/decommissioning/rehabilitation policies and generic guidelines; environmental monitoring plan; and
- Institutional plan for EMP implementation

3. ECC



- ECC is not a permit to operate for mining companies. It is just one of the requirements in securing the Declaration of Mining Project Feasibility
- ECC is valid and active for the lifetime of the project.
- ECC certifies that the project will generate minimal effects on the environment and community.
- The ECC outlines the commitments of the company

Summary Process

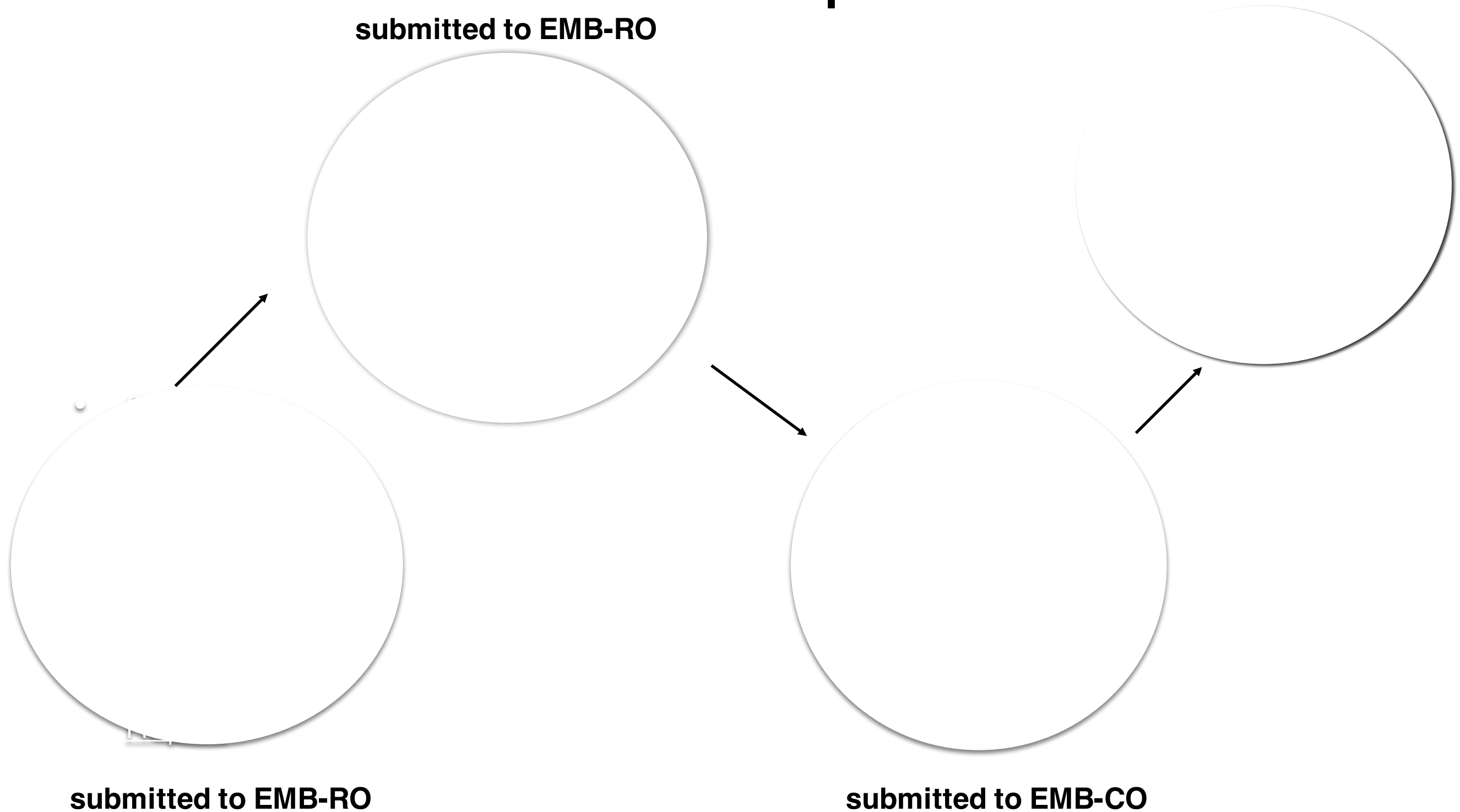


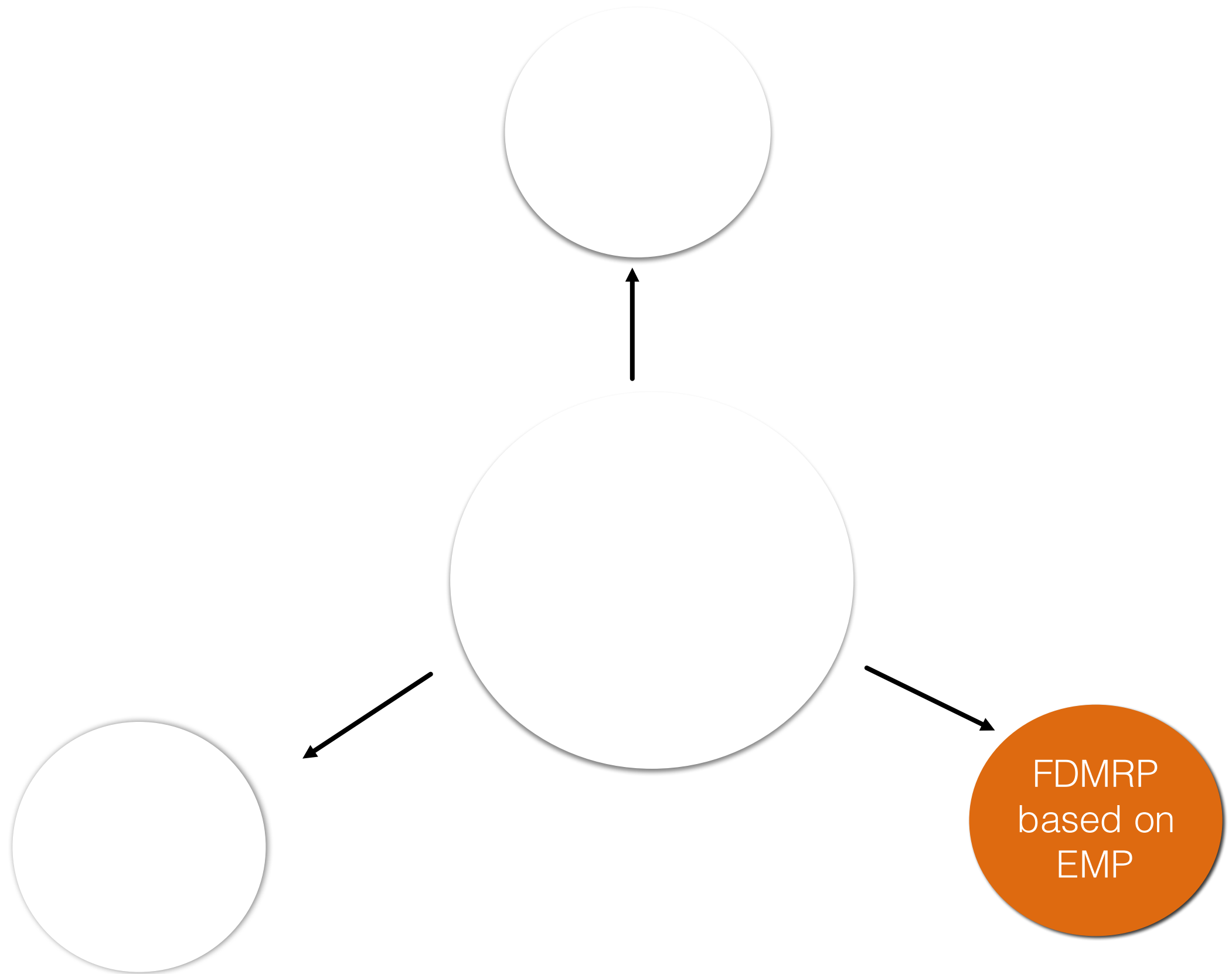
Stages of the PEISS Process

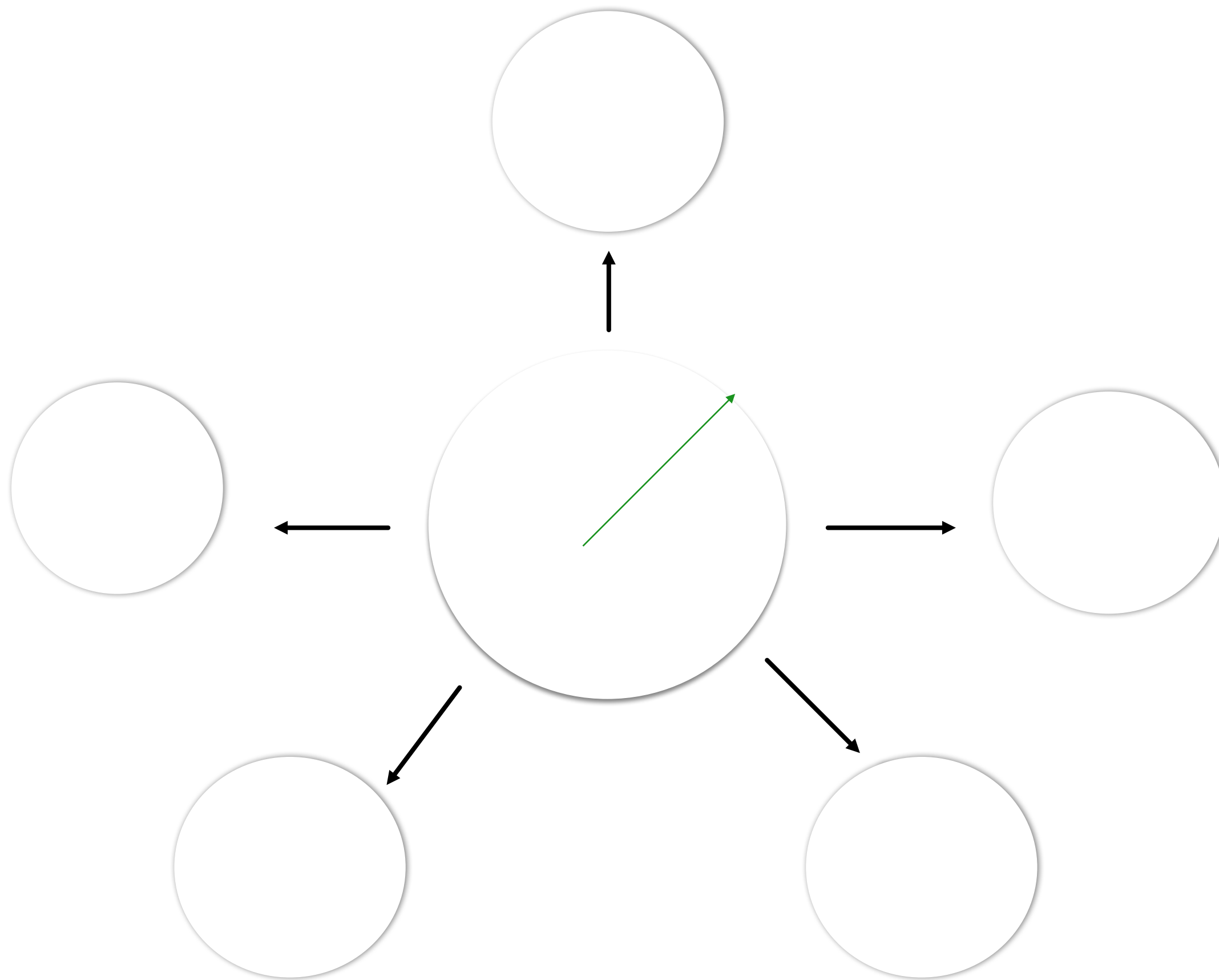
- **Stage 1:** Screening (conducted by company). This stage determines if a project is covered or not by PEISS.
- **Stage 2:** Scoping (conducted by company). This is the public consultation stage led by the company. The public and concerned agencies are asked to comment on the purpose and need of the project, issues and impacts and ways to mitigate impacts.
- **Stage 3:** EIA study and report preparation (conducted by company). The EIA study involves a description of the proposed project, the environment, and possible project impacts and mitigation measures.
- **Stage 4:** EIA review and evaluation (conducted by DENR-EMB). EIA Review Committee evaluates the EIS and to make appropriate recommendations.
- **Stage 5:** Decision making (conducted by DENR-EMB).
- **Stage 6-a:** Post-ECC monitoring (conducted by company/proponent);
- **Stage 6-b:** Validation and evaluation/audit stages (conducted by DENR-EMB and MMT). This stage assesses the performance of the company against the ECC and its commitments in the EMP to ensure project impacts are prevented or mitigated.

MMT Reports

submitted to EMB-RO

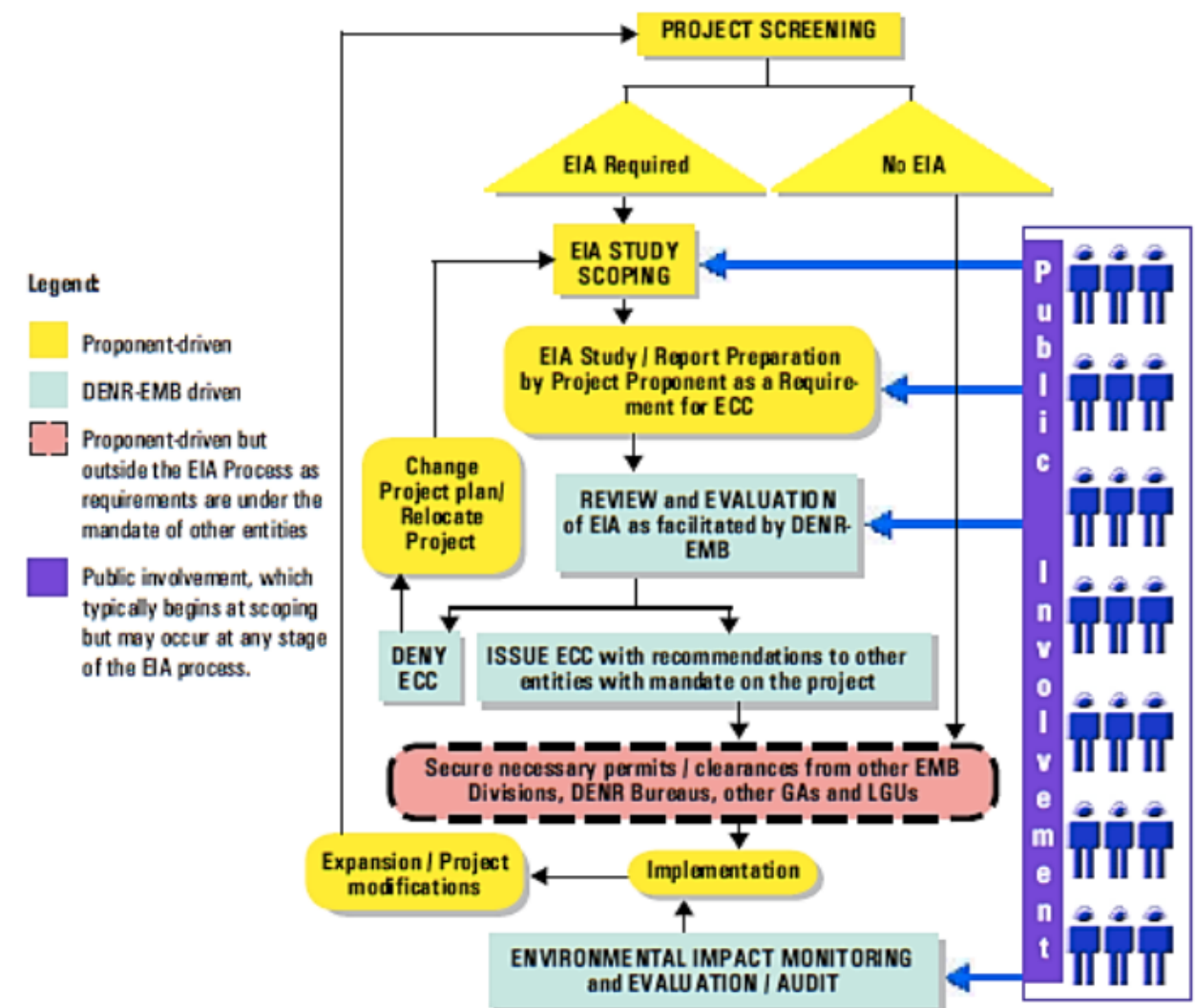
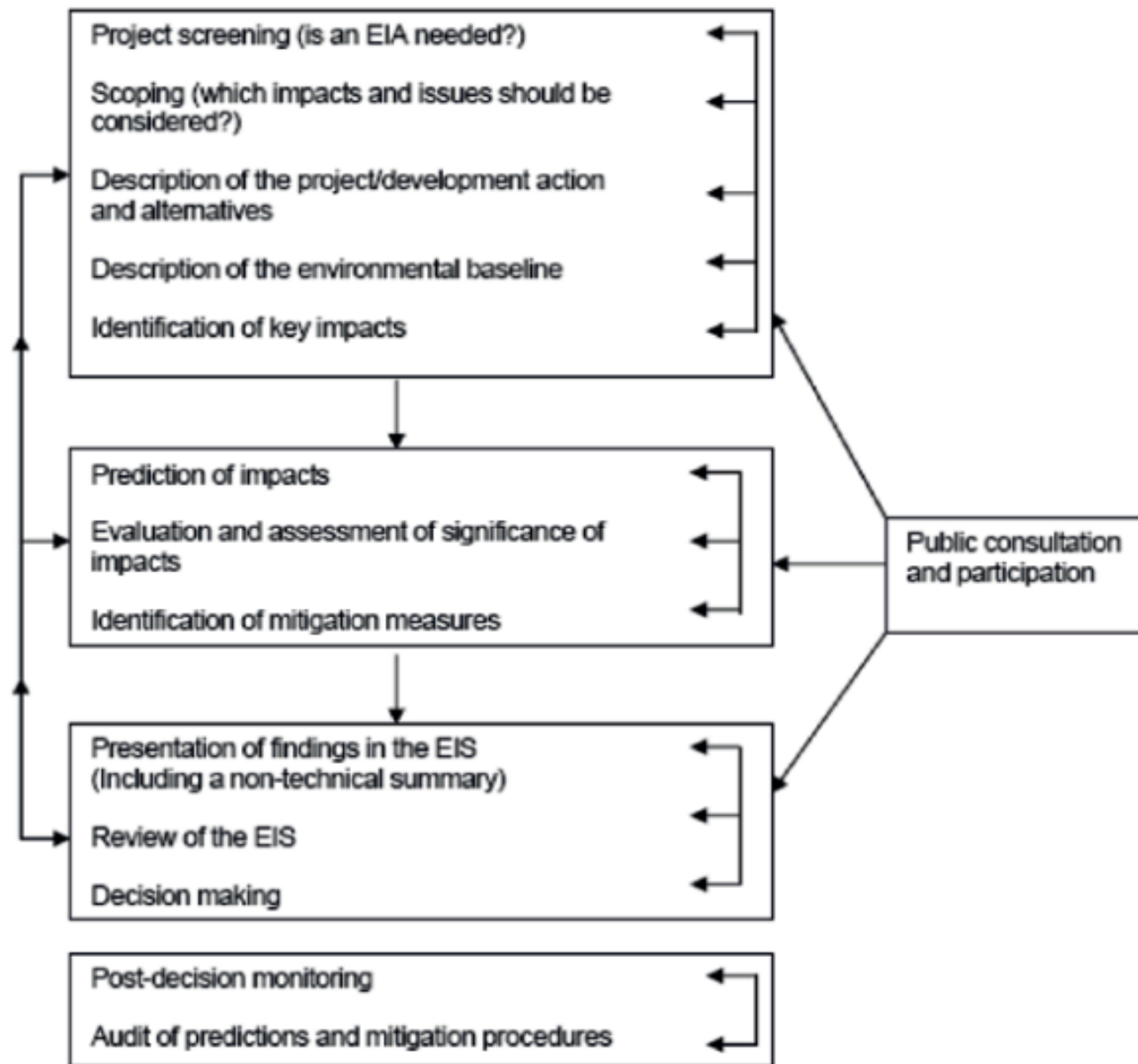






Gaps in the PEISS

Public Participation: In Comparison



Source: Initiatives to Streamline the PEISS: A Brief Guide for LGUs. 2007. Environmental Management Bureau.

No PP in Project Screening

- Screening:
 - Answers the question if the proposal should be subject to the EIA process
 - Public opinion is not taken into consideration when determining WON to build/mine
 - Decision already has been made, thereby rendering the EIA process a formality.
- PP limited to: (DAO 03-30)
 - ... local stakeholders, **who may serve as local expert sources, aides/guides and resource persons in primary data collection**
 - **interviewers/ interviewees in the socio-economic/perception surveys**

No PP in Project Screening

- EIA does not provide cost-benefit and opportunity-cost analysis vis-a-vis other economic activities such as tourism, fisheries and wildlife conservation
- This denies the local communities, the opportunity to make informed decisions or to resist the project



Public Hearing



- Public Hearing is required for all new ECPs **BUT it is not the appropriate venue to ensure that the findings of the EIA study had been communicated to the stakeholders.** (Revised DAO 03-03)
- **The communication by the proponents of the EIA study should have been completed before the submission of EIS**
- If not, what then?

Public Hearing

- **BUT a waiver of the Public Hearing** requested by the Proponent may be granted by the DENR-EMB **subject to the absence of mounting opposition or written request for one with valid basis**
 - what constitutes as “valid basis”?
- Public Consultation may be conducted instead of Public Hearing. (DAO 2003-30)

Absence of Grievance Mechanism in the PEISS

- No requirement for the proponent to establish any community consultative committee or grievance mechanism
- No avenue for redress if EIS process not followed:
 - common defense used: “EIS is a tool, not a contract.”
 - Guidelines only provide for penalties in noncompliance with ECC conditions, and not with the PEISS process

Documents released prior Public Hearing/ Consultation



- Full EIA Report to the EMB - RO and host municipalities
- Executive Summary to the host barangays; and
- Project Fact Sheets to other stakeholders

Absence of Guidelines for Participation

- Access to project information and EIA reports is be limited.
 - stakeholders are not given the full report
 - unclear how much time is given to stakeholder to review and understand the project and its issues
- Public hearings may be waived on request
- Unclear what documents are made accessible during stages with PP
- Public comments and inputs are merely attached as an annex to the EIA report and thus most probably not taken into consideration in the selection of mitigation measures

Selection of Stakeholders

- Direct (DIA) and indirect impact areas (IIA) serve as the main reference for the determination of stakeholders.
- DIA is delimited during the Pre-EIA Study Stage as the area where all project facilities are to be constructed/and where all operations are to be undertaken and buffer zones
- IIA is clearly delineated only after the EIA Study is done
- Effect on IIAs are not mandatorily considered during the scoping stage

Thailand: Stakeholders

- Local communities which would be impacted;
- Project owners;
- Expert panels at the central government;
- Local expert panels;
- Regional and/or provincial natural resources;
- Monitoring agencies;
- Local authority for natural resources;
- Local administrative offices;
- Independent environmental organization;
- Educational institutions;
- Civil society organizations;
- Media;
- National Environmental Board;
- Office of Natural Resources and Environmental Policy and Planning ;
- EIA consultants;
- Concerned citizens;
- General public;
- Regional government offices;
- Permitting authorities; and
- The Cabinet.

Post-Scoping Activity

- The agreements and issues raised in the Public Scoping stage shall be integrated in the Scoping Checklist.
- The Scoping Checklist constitutes the formal conclusion of the entire scoping exercise
- The Proponent shall **attempt** to have the Public Scoping List of Issues and Agreements signed off, at the minimum by community representatives from the project site
- **Non-signing of the list shall not adversely affect or delay the conduct of the Technical Scoping of the Review Team on site.**

EIA Preparers

- No accreditation system in place
 - A particular EIS stated that there were rattle snakes in the Philippines
- Underestimation of adverse environmental impacts
- Scientific-modeling based on assumptions and variables that cannot easily be verified
- Focus is on mitigation measures rather than prevention of environmental harm
- some measures offered in the EIA/EIS are unrealistic



Post-ECC Consultation

- Guidelines for public consultation and participation in the EIA process generally end when the ECC is approved
- Post-ECC monitoring conducted by the MMT



Gaps in the MMT

- Not all MMT reports disseminated to community or interested stakeholders despite being set in AOs
- Only a few reports follow the template set in the Revised DAO 03-30 guidelines making review and evaluation difficult
- Only a few reports contain air, soil and land sampling
- Template does not respond to the monitoring duties of MMT (ECC, EMP and Environmental Monitoring Plan (EMoP) and committee made in the EIA Report, EPEP, FMR/DP and SDMP)

Gaps in the MMT



- No monitoring of submission of quarterly MMT reports; no penalties
- Unclear what happens to the Audit Report of the EMB-CO
- No CSO accreditation guidelines to be MMT member
- No training on the protocols of monitoring given to MMT members
- not all projects with ECCs are required to form a MMT; MMTs are now only required for ECPs

Contrary to the Rio Declaration

- Upon submission of the ECC application and if no decision is made within the specified timeframe (30-180 days), **the ECC application is deemed automatically approved**
- Precautionary Principle: *if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is not harmful, the burden of proof that it is not harmful falls on those taking an action*
- **Meeting administrative deadlines > appropriate mitigation measures**

Recommendations

- Development of Public Participation Guidelines per PEISS stage
 - timing of public participation/ number and type of meetings/ consultations
 - documents made accessible to the public
 - dissemination of information and capacity-building for communities
 - integration of feedbacks in the PEISS

Recommendations

- Recalibrate the thinking that PEISS as a process and not just a planning tool
- Strengthen institutions, agencies and communities
 - MMT
 - EMB
 - CSOs/ local stakeholders

Recommendations: Legal Redress

- Adverse claim, protest or opposition with Panel of Arbitrators
 - Disputes involving Mineral Agreements, FTAA's or Permits=> ECC is a mandatory requirement
- Action for cancellation of existing permits
 - Violation of any of the terms and conditions of the permits or agreements (ECC, EPEP etc.)
 - Falsehood or omission of facts in the application for permits and agreements, which may alter, change or affect substantially the facts set forth in said statements

Recommendations: Legal Redress

- Imposition of fines for noncompliance with ECC conditions
- Action for cancellation of small-scale permits filed with the PMRB:
 - adverse claim, protest or opposition to applications=> PEIMP is a mandatory requirement
 - Failure to comply with the terms and conditions of the small-scale mining contract/mineral processing license=> ECC must be complied with
- ***When national interest and public welfare so require or for environmental protection or ecological reasons***
- Citizen suit
- Writ of Continuing Mandamus
- EPO
- Writ of Kalikasan

Recommendations

- Feasible < Appropriate
- The process should always start by comparing alternatives, followed by continuous monitoring
- The goal of the EIS process is not to increase bureaucracy and paperwork, but inform decision-making in the proposal, implementation and monitoring stages