

NATIONAL LEGISLATION OVERVIEW

September 26, 2021

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MAR FUND

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MAR FUND'S ESMS

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GLOSSARY

CONAP	National Council of Protected Areas – Guatemala
EACM	Environmental Assessment, Control and Monitoring Regulation – Guatemala
EPI Law	Environment Protection and Improvement Law, Decree 68-1986 (Guatemala)
ES	Environmental and Social
Escazú Agreement	Regional Agreement on Access to Information, Public Participation, and Justice in Environmental Matters in Latin America and the Caribbean
EPA	Belize Environmental Protection Act
EIA	Environmental Impact Assessment
ESIA	Environmental and Social Impact Assessment
EsEIA	Environmental Impact Assessment Study – Honduras
ESMS	Environmental and Social Management System
ESS	Environmental and Social Safeguards
FPIC	Free, Prior, and Informed Consent
GE	General Environment Law – Honduras
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ILO	International Labour Organisation
LGEEPA	General Law on Ecological Balance and Environmental Protection – Mexico
MAR Fund	Mesoamerican Reef Fund
MARN	Environment and Natural Resources Ministry – Guatemala
OAS	Organization of American States
SICA	Central American Integration System
SIGAP	Guatemalan System of Protected Areas
SINEIA	Sistema Nacional de Evaluación de Impacto Ambiental – Honduras

TABLE OF CONTENTS

GLOSSARY	3
1 Introduction	6
1 Ratification of Multilateral Environmental Agreements	8
1.1 United Nations Declaration on the Rights of Indigenous Peoples and the MAR Countries	8
1.2 Multilateral Agreements and Instruments by the MAR Countries	8
2 Indigenous Peoples Rights and the Obligations of the MAR Countries in the Inter-American System	14
2.1 Note on Jurisdiction.....	14
2.2 Prior and Informed Consultation in the Inter-American System.....	14
3 Belize.....	17
3.1 Environmental Protection Act (No. 22 of 1992).....	17
3.2 Environmental Impact Assessment Regulations (No. 107 of 1995).....	19
3.3 Other Normative Instruments.....	22
4 Guatemala.....	23
4.1 Environment Protection and Improvement Law, Decree 68-1986.....	23
4.2 Environmental Assessment, Control, and Monitoring Regulation, Government Agreement No. 137-2016	23
4.3 Other Normative Instruments.....	27
5 Honduras.....	29
5.1 General Environmental Law, Decree No. 104-1993.....	29

5.2	Regulation of the National Environmental Impact Assessment System (SINEIA), Government Agreement No. 8-2015	31
5.3	Other Normative Instruments.....	34
6	Mexico.....	36
6.1	General Law on Ecological Balance and Environmental Protection (LGEEPA)	36
6.2	Regulation of the General Law on Ecological Balance and Environmental Protection with respect to Environmental Self-Monitoring and Auditing.....	40
6.3	Other Normative Instruments.....	41

TABLES

Table 1:	Ratification/Acceptance/Approval/Accession of Multilateral Agreements and Instruments by the MAR Countries.....	9
Table 2:	Environmental Management Instruments - Guatemala.....	24

1 INTRODUCTION

This document presents the National Legislation Overview of the MAR Fund’s Environmental and Social Management System (ESMS) and is a support tool to be used by organizations preparing proposals to be presented to MAR Fund. Complying with the national legal requirements is the basic responsibility of every organization preparing proposals to MAR Fund or executing projects approved by MAR Fund.

This framework incorporates Multilateral Agreements that the MAR countries have ratified in keeping with the international community commitments. These Multilateral Agreements have been adopted, or otherwise included in their national legislation, thus becoming mandatory in their jurisdictions. As the Multilateral Environmental Agreements play a pivotal role in defining the environmental and social safeguard context, chapter one of this document summarily presents an overview of their ratification by the MAR countries. It also clarifies the status of the Instrument (ratified, signed, etc.) when pertinent. Especial mention is made of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted through resolution 61/295 of the General Assembly on 13 of September 2007, approved with the vote of the four MAR countries. Links to the text of the Instruments and other resources are included in Table 1: Ratification/Acceptance/Approval/Accession of Multilateral Agreements and Instruments by the MAR Countries or in the footnotes of chapter 1.

Chapter 2 briefly discuss the obligations of Belize, Guatemala, Honduras, and Mexico regarding Indigenous Peoples, with the perspective of the Inter-American System. These concepts inform the foundation of MAR Fund’s ESS 7 Indigenous Peoples and Traditional Local Communities.

Chapters 3 to 6 present the National Legal Framework of the MAR countries. In these frameworks there is usually a general Environmental Act that comprehends the defining elements of environmental and social sustainability matters. Then, the mandate of the General Law is developed by a set of regulations that provides specific direction to social actors such as governmental agencies, private sector organizations, NGOs, and individuals involved in the use and protection of biodiversity and living natural resources.

This overview discusses the General Laws of each of the four countries and some other essential legislation that define and govern environmental and social sustainability. The document is far from exhaustive: important norms that may be of obligatory reference for

some grants and proposals are not included. MAR Fund's grantees are encouraged to refer to this National Legislation Overview when establishing the pertinent framework of their grants and proposals and to consult any other legal or normative instrument that may be required, on a case-by-case basis.

1 RATIFICATION OF MULTILATERAL ENVIRONMENTAL AGREEMENTS

Multilateral Environmental Agreements play a pivotal role in the definition of the environmental and social safeguard framework of the MAR countries. This section presents an overview of the ratification of these agreements by country and, when pertinent, clarifies the status of a given agreement with regards to some of the MAR countries.

1.1 UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES AND THE MAR COUNTRIES

Especial mention is mandatory to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), that was adopted through resolution 61/295 of the General Assembly on 13 of September 2007. The four MAR countries (Belize, Guatemala, Honduras, and Mexico) voted in favor of the resolution.

The UNDRIP “is the most comprehensive international instrument on the rights of indigenous peoples”, establishing a “universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world”.

Although the UNDRIP by nature of being a Declaration is a non-binding text, “as a resolution adopted by the General Assembly with the approval of an overwhelming majority of Member States, [it] represents a commitment on the part of the United Nations and Member States to its provisions”.

In addition, the UNDRIP “reflects the existing international consensus regarding the individual and collective rights of indigenous peoples in a way that is coherent with, and expands upon, the provisions of the ILO Convention No. 169” and it can be said to be “the most authoritative expression of this [international] consensus”.

1.2 MULTILATERAL AGREEMENTS AND INSTRUMENTS BY THE MAR COUNTRIES

The status of the MAR country with regards to several Instruments that are pertinent to the conceptualization and operationalization of the MAR Fund’s ESMS is summarized in the table of the following page (Table 1). Some of these Instruments are referred by MAR Fund’s ES Policy and Exclusion List and ESSs as well.

Table 1: Ratification/Acceptance/Approval/Accession of Multilateral Agreements and Instruments by the MAR Countries¹

INSTRUMENT	COUNTRY			
	BELIZE	GUATEMALA	HONDURAS	MEXICO
Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement , 2018) ²	2020 (only signed)	2018 (only signed)	Not signed	2021
Convention on Biological Diversity (1992) ³	1993	1995	1995	1993
<i>Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (2010)</i> ⁴	-	2014	2013	2012
<i>Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety (2010)</i> ⁵	-	-	-	2012
<i>Cartagena Protocol on Biosafety to the Convention on Biological Diversity (2000)</i> ⁶	2004	2004	2008	2002
United Nations Framework Convention on Climate Change (1992) ⁷	1994	1995	1995	1993

¹ The table is Based on Table 1 of the Economic Commission for Latin America and the Caribbean (ECLAC) and Caribbean, Court of Justice Academy of Law (CCJ Academy of Law), Ensuring environmental access rights in the Caribbean: analysis of selected case law (LC/TS.2018/31/Rev.1), Santiago, 2018, at p. 13 but it has been revised and updated through the official multilateral treaties sites, including the United Nations Treaty Collection [online] <http://treaties.un.org/>

² Full Treaty available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

³ Full Treaty Available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

⁴ Full Treaty Available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

⁵ Full Treaty Available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

⁶ Full Treaty Available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

⁷ Full Treaty Available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

INSTRUMENT	COUNTRY			
	BELIZE	GUATEMALA	HONDURAS	MEXICO
<i>Paris Agreement (2015)</i> ⁸	2016	2017	2016	2016
<i>Kyoto Protocol (1997)</i> ⁹	2003	1999	2000	2000
ILO- Forced Labour Convention, 1930 (No. 29) ¹⁰	1983	1989	1957	1934
ILO- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) ¹¹	1983	1952	1956	1950
ILO- Right to Organise and Collective Bargaining Convention, 1949 (No. 98) ¹²	1983	1952	1956	2018
ILO- Equal Remuneration Convention, 1951 (No. 100) ¹³	1999	1961	1956	1952
ILO- Abolition of Forced Labour Convention, 1957 (No. 105) ¹⁴	1983	1959	1958	1959

⁸ Full Treaty Available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

⁹ Full Treaty Available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

¹⁰ Full Treaty available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

¹¹ Full Treaty available [here](#): Ratification Status retrieved on August 9, 2021 from [here](#).

¹² Full Treaty available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

¹³ Full Treaty available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

¹⁴ Full Treaty available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

INSTRUMENT	COUNTRY			
	BELIZE	GUATEMALA	HONDURAS	MEXICO
ILO- Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ¹⁵	1999	1960	1960	1961
ILO- Indigenous and Tribal Peoples Convention, 1989 (No. 169) ¹⁶	-	1996	1995	1990-
ILO- Minimum Age Convention, 1973 (No. 138) ¹⁷	2000	1990	1980	2015
ILO- Worst Forms of Child Labour Convention, 1999 (No. 182) ¹⁸	2000	2001	2001	2000
Minamata Convention on Mercury (2013) ¹⁹	-	-	2017	2015
International Treaty on Plant Genetic Resources for Food and Agriculture (2001) ²⁰	-	2006	2004	2003
Stockholm Convention on Persistent Organic Pollutants (2001) ²¹	2010	2008	2005	

¹⁵ Full Treaty available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

¹⁶ Full Convention available [here](#). Ratification Status retrieved on September 26, 2021 from [here](#).

¹⁷ Full Treaty available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

¹⁸ Full Treaty available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

¹⁹ Full Treaty available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

²⁰ Full Treaty available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#) and [there](#).

²¹ Full Treaty Available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).



INSTRUMENT	COUNTRY			
	BELIZE	GUATEMALA	HONDURAS	MEXICO
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998) ²²	2005	2010	2011	2005
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989) ²³	1997	1995	1995	1991
Vienna Convention for the protection of the Ozone Layer (1985) ²⁴	1997	1987	1993	1987
<i>Montreal Protocol on Substances that Deplete the Ozone Layer (1987)²⁵</i>	1998	1989	1993	1988
Convention on the Conservation of Migratory Species of Wild Animals (1979) ²⁶			2007	
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973) ²⁷	1986	1979	1985	1991
Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971) ²⁸	1998	1990	1993	1986

²² Full Treaty available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

²³ Full Treaty Available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

²⁴ Full Treaty Available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

²⁵ Full Treaty Available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

²⁶ Full Treaty Available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

²⁷ Full Treaty Available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

²⁸ Full Treaty Available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).



INSTRUMENT	COUNTRY			
	BELIZE	GUATEMALA	HONDURAS	MEXICO
United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (1994) ²⁹	1998	1998	1997	1995
Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) ^{30,31}	1990	1979	1979	1984
Convention on Protection of the Underwater Cultural Heritage (2001) ³²				

²⁹ Full Treaty Available [here](#). Ratification Status retrieved on August 9, 2021 from [here](#).

³⁰ Complete text of the World Heritage Convention [here](#).

³¹ Dates for Belize, Guatemala, and Honduras refer to the date of deposit of Ratification (R) while for Mexico refers to the date of deposit of Acceptance (Ac).

³² Text of the Convention [here](#).

2 INDIGENOUS PEOPLES RIGHTS AND THE OBLIGATIONS OF THE MAR COUNTRIES IN THE INTER-AMERICAN SYSTEM

2.1 NOTE ON JURISDICTION

As member States of the American Convention on Human Rights (American Convention), **Guatemala, Honduras and Mexico** have accepted the jurisdiction of the IACtHR³³ and are thus not only have these States “undertake[n] to respect the rights and freedoms recognized [in the American Convention] and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition” (Article 1 of the American Convention) but as well are bound by the jurisprudence of the Inter-American Court on Human Rights (IACtHR).

Belize, on the other hand, is not a party to the American Convention, but as member State of the Organization of American States (OAS)³⁴ is bound to respect the American Declaration of Rights and Duties of Men³⁵. In addition, the Inter-American Commission (IACHR) can receive, analyze, and investigate individual petitions against Belize that alleged violation of the human rights set forth in the American Declaration³⁶.

2.2 PRIOR AND INFORMED CONSULTATION IN THE INTER-AMERICAN SYSTEM

On the issues of indigenous rights, the IACHR and IACtHR have developed robust standards for the protection of indigenous peoples. What follows, is a non-exhaustive and summary overview of some of the most relevant standards and cases that protect indigenous peoples rights to prior and informed consultation, to their land, and to their natural resources.

First, it is worth noting that the IACtHR has established that in guaranteeing the right of equality before the law (Article 24) and complying with the obligation of respecting all rights without discrimination (1.1.), “States should take into consideration the specific characteristics that differentiate members of indigenous peoples from the general

³³ Respectively, Guatemala, Honduras and Mexico ratified the American Convention in 1978, 1977, 1981 (see [here](#)) and accepted the jurisdiction of the IACtHR in 1987, 1981, and 1998 (and see [there](#))

³⁴ Belize ratified the Charter of the Organization of American States in 1991 (see [here](#))

³⁵ Adopted during the Ninth International Conference of the American States

³⁶ Articles 23 and 51 of the Rules of Procedure of the Inter-American Commission on Human Rights, approved by the Commission at its 137th regular period of sessions, held from October 28 to November 13, 2009, and modified on September 2nd, 2011, and during the 147th Regular Period of Sessions, held from 8 to 22 March 2013, for entry into force on August 1st, 2013. Available [here](#).

population and that shape their cultural identity”³⁷. As such States must take “into account their particularities, their economic and social characteristics, as well as their special and social characteristics, as well as their situation of special vulnerability, their customary laws, values, uses and customs [...]”³⁸.

Second, in relation to the right to prior and informed consultation, the IACtHR has established that States have the obligation to actively consult with an indigenous community with respect to any development plan or project that may impact their territory or land. Specifically, the IACtHR has held that:

“in order to ensure the effective participation of the members of an indigenous community or people in development or investment plans within their territory, the State has the obligation to consult the said community in an active and informed manner, in accordance with its customs and traditions, within the framework of continuing communication between the parties. Furthermore, the consultations must be undertaken in good faith, using culturally appropriate procedures and must be aimed at reaching an agreement. In addition, the people or community must be consulted in accordance with their own traditions, during the early stages of the development or investment plan, and not only when it is necessary to obtain the community’s approval, if appropriate. The State must also ensure that the members of the people or the community are aware of the potential benefits and risks so they can decide whether to accept the proposed development or investment plan. Finally, the consultation must take into account the traditional decision-making practices of the people or community. Failure to comply with this obligation, or engaging in consultations without observing their essential characteristics, entails the State’s international responsibility”³⁹.

These human rights standards are of direct applicability to and for indigenous peoples in Guatemala, Honduras, and Mexico.

With regards to Belize, as it was said above, the country is bound by the American Declaration of Rights and Duties of Men and therefore the IACHR is competent to receive and investigate individual petitions against Belize that alleged violation of the human rights set forth in the American Declaration. In this regard it will be important to keep in the case of the *Mayan Indigenous Communities of Toledo District v. Belize (Case No 12.053)*, decided by the IACHR on October 12th, 2004 and where important determinations were made in regard to the duty

³⁷ I/A Court H.R., Case of the Yakye Axa Indigenous Community v. Paraguay. Case of Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of 17 June 2005. Series C No. 125, para 51.

³⁸ Id., para 63.

³⁹ I/A Court H.R., Case Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of 27 June 2012, para. 177. See also, I/A Court H.R., Case of the Saramaka People v. Suriname. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of 28 November 2007. Series C No. 172, para 132.

to consult indigenous peoples. As well, it is important to consider the Document Release on May 6th, 2013⁴⁰ whereby the IACHR Urged Belize to Guarantee the Rights of Maya Indigenous Communities, as well as the standards compiled in its publication "*Situation of human rights of the indigenous and tribal peoples of the Pan-Amazon region* (2019)"⁴¹

Finally, there is a comprehensive compilation of the IACtHR jurisprudence on the rights of indigenous peoples available⁴².

⁴⁰ The text of the released document is available [here](#).

⁴¹ The text of the Indigenous and Tribal Peoples of the Pan-Amazon Region is available [here](#).

⁴² The compilation is the [Jurisprudence Booklet No. 11: Indigenous and tribal peoples](#).

3 BELIZE

3.1 ENVIRONMENTAL PROTECTION ACT (NO. 22 OF 1992)

The Environmental Protection Act No. 22 of 1992, as amended in 2000 and 201⁴³ (hereinafter, **EPA**), “establishes a comprehensive legal and institutional framework for environmental protection in Belize”⁴⁴.

Part II of the EPA establishes the creation of the “Department of the Environment which is entrusted with broad regulatory and enforcement authority for the prevention and control of environmental pollution, conservation and management of natural resources, and environmental impact assessment”⁴⁵.

Article 10 of the EPA establish a general duty for “[a]ny person or undertaking exploiting land, water resources, seas or other natural resources [...to] ensure the protection of the environment against unnecessary damage or from pollution by harmful substances”. Complementarily, Article 11 of the EPA establishes a prohibition against emitting, importing, discharging, depositing, disposing, or dumping “waste that might directly or indirectly pollute water resources or damage or destroy marine life”. Failure to comply with this prohibition, will constitute an offence under the EPA. Moreover, Article 11.01 establishes a duty to report “any act of pollution of any aspect of the environment”.

Part III of the EPA specifically establishes rules and norms regarding the prohibition against dumping, which for the purpose of the EPA means “the deliberate disposal at sea from ships, aircraft, tankers, floating craft or other marine vessels, or other man-made structures, and includes disposal by incineration or other thermal degradation of any substance” (Article 12). Subsection (a) and (b) of this article, provides a list of substances that would be excluded from this prohibition.

Part IV of the EPA establishes the Environmental Impact Assessment (EIA) as the process that must be followed by “[a]ny person intending to undertake any project, programme or activity which may significantly affect the environment” (Article 20).

As a general guiding objective of the EIA, subsection 4 of Article 20 establishes that the assessment must be performed with having in mind “the need to protect and improve human health and living conditions and the need to preserve the reproductive capacity of

⁴³ Environmental Protection Act (No. 22 OF 1992), Chapter 328, Revised Edition 2011. Available [here](#). [EPA Belize]

⁴⁴ ECLCAC, *Observatory on Principle 10 in Latin America and the Caribbean*, Policy Instruments, Belize, Environmental Protection Act (No. 22 OF 1992). Available [here](#). [ECLAC, Policy Instruments, EPA Belize]

⁴⁵ *Id.*

ecosystems as well as the diversity of species”. Additionally, subsection 2 of Article 20 establishes that the EIA must “identify and evaluate the effects of specified developments on” several different subjects, including human beings, flora and fauna, the ecological balance, water, among other.

Per subsection 3 of Article 20, the EIA must include the mitigation measures that the “developer” intends to take vis-à-vis the possible adverse environmental effects of the project, as well as “a statement of reasonable alternative sites (if any), and reasons for their rejection”. Moreover, subsection 5 of Article 20 establishes that public consultations, including all interested bodies and organizations, must be carried out when performing an EIA and subsection 6 of the same article provides that the Department can make “its own” EIA and “synthesise the views of the public and interested bodies”.

Subsection 7 of Article 20, list some of the conditions that may be required before the approval of an EIA by the Department, which may include “the signing of an Environmental Compliance Plan, the payment of an environmental monitoring fee, the posting of guarantees or performance bonds”, among other.

It is worth noting that Article 23.01 – which was included following the 2009 amendments – mandates that even when a project may not be required to undergo an EIA, if the project may nonetheless have “some negative impact [on the environment] that need to be properly studied and assessed”, a limited level environmental study may be required by the Department.

Both Articles 21 and 23, read together, establish that the procedure to follow and the conditions of categorisation and exclusion vis-à-vis the EIA will be governed by the EPA and any subsequent Regulations on the matter (see, *infra* 2.2).

Article 22 establishes the penalties for failing to comply with the EIA process and all of Part V and Part VI establish, respectively, rules regarding “investigation, procedures, reports, offences and penalties” and “Enforcement, Notices, Offences and Penalties”.

Finally, the following rights are also protected by the EPA:

- the *right to access information* that is guarantee by articles 4(K) and (r) which establish that the Department must provide “information and education to the public regarding the importance of protection and improvement of the environment”⁴⁶. These articles, also require the Department to “provide decision-making with the necessary information so as to achieve long-term sustainable development”⁴⁷.

⁴⁶ ECLAC, Policy Instruments, EPA Belize, *supra* nota 2, “Right to Information”.

⁴⁷ *Id.*

- The *right to public participation* which, in addition to the protection established in Article 20, is guaranteed by article 7(2) which, namely, establishes that “the Minister may (a) consult with any other Government department or agency, non-governmental organisation, or any person interested in the quality of the environment or the control or abatement of environmental pollution; and (b) organize conferences of representatives of industry, labour and municipal authorities and any interested persons described above”⁴⁸.

3.2 ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS (NO. 107 OF 1995)

The Environmental Impact Assessment Regulations (No. 107 of 1995)⁴⁹, amended in 2007⁵⁰ and in 2020⁵¹ (together “**the EIA Regulations**”), “establish the processes involved in the preparation and evaluation of environmental impact assessments, including the requirements on public participation and public hearings”⁵².

Per Regulation 7 all “undertakings, projects or activities specified in **Schedule I** shall require an environmental impact assessment” (EIA)⁵³. Per regulation 12, the Depart will not consider nor decide upon a project specified within Schedule I unless the EIA has been undertaken.

On the other hand, per Regulation 8, it will be up to the Department to determine if the “undertakings, projects or activities specified in **Schedule II**”, shall require an EIA⁵⁴ or “a limited level environmental study”⁵⁵. Regulation 10, as amended by the 2007 EIA Amendment Regulation, provides the steps to follow with regard to those projects specified in Schedule II that the Department considers require a limited level environmental study (Regulation 10(1)) or not (Regulation 10 (2))⁵⁶. Furthermore, Regulation 13, as amended by the 2007 EIA Amendment Regulation, prescribes the steps to follow when the Department decides an EIA is required⁵⁷.

⁴⁸ *Id.*, “Right to Participation”.

⁴⁹ Environmental Impact Assessment Regulations (No. 107 of 1995). Belize. [EIA Regulation 1995, Belize]. Document [here](#).

⁵⁰ Environmental Impact Assessment (Amendment) Regulation (2007). Belize. [EIA Regulation Amendment 2007, Belize] Document [here](#).

⁵¹ Environmental Impact Assessment (Amendment) Regulation (2020). Belize. [EIA Regulation Amendment 2020, Belize] Document [here](#).

⁵² ECLCAC, *Observatory on Principle 10 in Latin America and the Caribbean*, Policy Instruments, Belize, Environmental Impact Assessment Regulations (No. 107 of 1995). Available [here](#).

⁵³ EIA Regulation 1995, Belize, Regulation 7.

⁵⁴ EIA Regulation 1995, Belize, Regulation 8.

⁵⁵ EIA Regulation Amendment 2007, Belize, Article 4 “Amendment of Regulation 8”.

⁵⁶ EIA Regulation Amendment 2007, Belize, Article 6 “Amendment of Regulation 10”.

⁵⁷ See together, EIA Regulation 1995, Belize, Regulation 13 and EIA Regulation Amendment 2007, Belize, Article 8 “Amendment of Regulation 13”.

Regulation 9 establishes the projects that will be excluded from the EIA process. Namely: a) educational and health projects, b) computer processing projects and c) projects to be carried out during declared national emergency for which temporary measures have been taken by the Government⁵⁸.

Importantly, Regulation 11, as amended by the 2007 EIA Amendment Regulation, prescribes that “before proceeding with the final design of an undertaking”⁵⁹ a written notification must be transmitted to the Department. Per Regulation 14, as amended by the 2007 EIA Amendment Regulation, the Department has 30 days from the moment it receives such notification to examine the information and determine whether an EIA a limited level environmental study or no study at all is required⁶⁰.

Regulation 5 establishes the minimum content that any Environmental Impact Assessments must have and Regulation 6 establishes the process that must be followed when an EIA is to be carried out which includes: (a) the preparation of the terms of Reference⁶¹; (b) a review by the [National Environmental Appraisal] Committee as provided in Regulation 25 of these Regulations⁶²; (c), “when approval is recommended by the Committee, the development and implementation of an Environmental Compliance Plan (EPC) that meets the approval of the Committee”⁶³. Regulation 15 and 16 determine the steps and procedure that should be followed in respect of the terms of reference prescribed in Regulation 6.a⁶⁴. Only after the terms of reference are approved in writing, the developer of the project may commence the EIA.

Regulation 18, as amended by the 2007 EIA Amendment Regulation, establishes that during the EIA public consultations must be carried out with the interested members of the public, “especially within or immediately adjacent to the geographical area of the proposed undertaking” to, among other things, “record the concerns of the local community regarding the environmental impact of the proposed undertaking”. The department, per Regulation 18(2) “may invite written comments from interested persons concerning the environmental impact of an undertaking”, which shall be answered by the developer (Regulation 18(3)).

⁵⁸ See together EIA Regulation 1995, Belize, Regulation 9 and EIA Regulation Amendment 2007, Belize, Article 5 “Amendment of Regulation 9”.

⁵⁹ See together, EIA Regulation 1995, Belize, Regulation 11 and EIA Regulation Amendment 2007, Belize, Article 7 “Amendment of Regulation 11”.

⁶⁰ See together, EIA Regulation 1995, Belize, Regulation 14 and EIA Regulation Amendment 2007, Belize, Article 8 “Amendment of Regulation 14”.

⁶¹ EIA Regulation Amendment 2007, Belize, Article 3 “Amendment of Regulation 6”.

⁶² EIA Regulation 1995, Belize, Regulation 6.

⁶³ EIA Regulation Amendment 2020, Belize, Article 3 “Amendment of Regulation 6”.

⁶⁴ EIA Regulation 1995, Belize, Regulation 15 and 16.

The specification, both in form and detailed content of the EIA report are established in Regulation 19, as amended by the 2007 and 2020 EIA Amendment Regulations. Regulation 21, as amended by the 2020 EIA Amendment Regulation, establishes the procedure that will be followed once the Department receives the EIA. Regulations 20, as amended by the 2007 EIA Amendment Regulation, prescribes that after an EIA that complies with the requirements of Regulation 21(1)(b) is submitted, the developer must publish “a notice, vetted and approved by the [Department] in at least two widely circulated newspapers for two consecutive weeks”⁶⁵. Regulation 20 further provides the specific wording the notice must include⁶⁶.

Regulation 22 and 22A (per the 2007 EIA Amendment Regulation, prescribe the different steps, additional information or requirements that may be required by the Department, and thus the different procedure that will be followed once the Department reviews the EIA or limited environmental study. If the EIA is “deficient in any respect”, Regulation 23 prescribes the different option at the disposal of the Department and developer. In addition, Regulation 24, as amended by the 2007 and 2020 EIA Amendment Regulations, prescribes that a public hearing or public consultation may be required by the Department with respect to a project considering the factors listed in subsection 2 of the Regulation 24. When the National Environmental Appraisal Committee is caused to screen a project or EIA, the factors listed in Regulation 26, as amended by the 2020 EIA Amendment Regulations, shall be considered.

Finally, the EIA Regulations – read together- provide the relevant Schedules:

- Schedule I (Reg. 7 projects that require an EIA)⁶⁷.
- Schedule II (Reg 8. Projects that may require an EIA or a limited environmental study)⁶⁸.
- Schedule III (Guidelines to be used by permitting and/or licensing agencies to determine when a project, programme, undertaking, or activity is to be sent to the Department)⁶⁹.

⁶⁵ EIA Regulation Amendment 2007, Belize, Article 12 “Amendment of Regulation 20”.

⁶⁶ EIA Regulation 1995, Belize, Regulation 20.

⁶⁷ Together, EIA Regulation 1995, Belize, Schedule I; EIA Regulation Amendment 2007, Belize, Article 19, “Amendment of Schedules”. EIA Regulation Amendment 2020, Belize, Article 11, “Amendment of Schedule I.

⁶⁸ Together, EIA Regulation 1995, Belize, Schedule II; EIA Regulation Amendment 2007, Belize, Article 19, “Amendment of Schedules”. EIA Regulation Amendment 2020, Belize, Article 12, “Amendment of Schedule II.

⁶⁹ Together, EIA Regulation Amendment 2007, Belize, Article 19, “Amendment of Schedules”, which includes Schedule III. EIA Regulation Amendment 2020, Belize, Article 13, “Amendment of Schedule III.

3.3 OTHER NORMATIVE INSTRUMENTS

Belize also has passed the following normative instruments that can be of relevance:

- The Freedom of Information Act (No. 9 of 1994), which “promotes maximum disclosure of information in the public interest, guarantees and facilitates the right of access to information of every person and provides for effective mechanisms to secure that right”⁷⁰.
- The Disaster Preparedness and Response Act (No. 10 of 2000), which “provides for the organisation of State actions for the mitigation of, preparedness for, response to and recovery from disasters in Belize. It includes requirements for public inquiries in the decision-making process of plans, programmes and policies”⁷¹.

⁷⁰ ECLAC, *Observatory on Principle 10 in Latin America and the Caribbean*, Policy Instruments, Belize. Available [here](#).

⁷¹ *Id.* Text available [here](#).

4 GUATEMALA

4.1 ENVIRONMENT PROTECTION AND IMPROVEMENT LAW, DECREE 68-1986

The Environment Protection and Improvement Law, Decree 68-1986 (*La Ley de protección y mejoramiento del medio ambiente -Decreto 68-1986*)⁷², hereinafter **EPI Law**, seeks to ensure the maintenance of the ecological balance and the quality of the environment to improve the quality of life of the inhabitants of Guatemala⁷³ (see, Article 11). Article 12 of the EPI Law further list specific objectives of the law, which include:

- The protection, conservation and improvement of the country's natural resources, and the prevention of the deterioration and misuse or destruction of these resources (Article 12(a)).
- The prevention, regulation and control of any activities which cause deterioration of the environment and contamination of ecological systems. (Article 12(b)).

From Articles 14 to 19, the EPI Law establishes that the Government and corresponding authority must adopt Regulations with respect to the following: the atmospheric system, the water system, the lithic and edaphic systems, for the prevention and control of pollution, including auditory pollution, and the conservation and protection of biotic systems.

Article 20 creates the “National Environment Commission”, which is tasked with the implementation of the disposition of the EPI Law.

4.2 ENVIRONMENTAL ASSESSMENT, CONTROL, AND MONITORING REGULATION, GOVERNMENT AGREEMENT NO. 137-2016

The Environmental Assessment, Control and Monitoring Regulation (*Reglamento de Evaluación, Control y Seguimiento Ambiental, Acuerdo Gubernativo Número 137-2016*)⁷⁴, hereinafter EACM Regulation, establishes the “guidelines and procedures necessary to support the country’s sustainable environmental development, including instruments and rules that facilitate the environmental evaluation, control and monitoring of projects, works, industries or activities” (Article 1).

Article 3 of the EACM Regulations includes detailed and highly specific definitions of 84 different terms, concepts, and processes to which the Regulation refers.

⁷² The text of the law is available [here](#).

⁷³ ECLAC, *Observatory on Principle 10 in Latin America and the Caribbean*, Policy Instruments, Guatemala, *La Ley de protección y mejoramiento del medio ambiente Decreto 68-1986*. Available [here](#).

⁷⁴ *Reglamento de Evaluación, Control y Seguimiento Ambiental, Acuerdo Gubernativo Número 137-2016*, Guatemala, 11 De Julio De 2016. Available [here](#). [EACM Regulation, Guatemala]

Article 4 of the EACM Regulation establishes the principles of the environmental evaluation process. These include the principle of prevention, the principle of precaution, the principle of environmental responsibility, the principle of proportionality, the principle of *indubio pro natura*⁷⁵, the principle of participation, among other.

Title III of the EACM Regulation establishes the structure and functions of the environmental assessment, control, and monitoring system (hereinafter the EACM system), which is created by Article 5. The purpose of the EACM system is to establish a set of norms, processes, and technical and operational instruments, which together, will allow for the evaluation, control and monitoring of the environment vis-à-vis any project, work or industry that may “lead to deterioration of the environmental and natural resources, whether renewable or non-renewable, or introduce harmful or notorious modifications to the landscape and to the cultural resources of the national heritage”.

Title IV of the EACM Regulation establishes the creation of two types of environmental management instruments: i) the environmental instruments, which include predictive, corrective, and complementary instruments); ii) and the control and monitoring instruments (Article 11). These are listed in the following Table:

Table 2: Environmental Management Instruments - Guatemala

ENVIRONMENTAL MANAGEMENT INSTRUMENTS	
<i>Predictive instruments</i> (Article 13)	a) Initial environmental assessment; b) Environmental impact assessment study; c) Strategic environmental assessment; and, d) Form of activities for registration in the lists.
<i>Corrective instruments</i> (Article 14)	a) Environmental diagnosis; b) Low impact environmental diagnosis; and, c) Remedial activities form for registration.
<i>Complementary instruments</i> (Article 15)	a) Environmental risk assessment; b) Social impact assessment; c) Cumulative effects assessment; and, d) Environmental Management Plan.
<i>Control and monitoring instruments</i> (Article 17)	a) Environmental audits; and, b) Environmental monitoring and surveillance actions, developed by the proponent and ex-officio by the proponent and ex officio

⁷⁵ Which establishes that when in doubt about whether an action or omission may impact the environment, the protection of nature and the environment takes precedence. EACM Regulation, Guatemala, Article 4.h).

Article 18 of the EACM Regulation establishes that an exhaustive list for the categorization of works, projects, industries, or activities is created and that for those projects not fitting within such list the Environment and Natural Resources Ministry (MARN, for its Spanish acronym), will decide as to the nature of the project. The categorization scheme is listed in Article 19 and includes the following categories:

- Category A: highest environmental impact, i.e., Development Megaprojects
- Category B: Moderate environmental impact and include B1 (moderate to high risk) and B2 (moderate to low risk).
- Category C: low environmental risk and impact. This category can include works, projects or activities that will be carried out permanently or only in one instance but cannot apply in protected areas.

Article 20 of the EACM Regulation categorizes the areas where the project could be located in the following three: environmentally fragile areas, areas that have territorial planning and areas without territorial planning.

Articles 21 through 37 establish the step-by-step administrative process for environmental assessments, including different requirements and procedures to follow vis-à-vis the different categories of projects (Article 23 for Category A, Article 24 for Category B1, Article 25 for Category B2, Article 27 for Category C). In addition, Article 29 establishes that “all projects, works, industries or activities located in protected areas must have the opinion of the National Council of Protected Areas (Consejo Nacional de Áreas Protegidas -CONAP), and in the case that the area is not part of the Guatemalan System of Protected Areas -SIGAP-, the proponent must present a notarised affidavit by which it is established in the record that the project, work, industry, or activity to be carried out is not located in a protected area”.

Article 33 of the EACM Regulations refers to a list of reasons which will lead to the non-approval of the respective environmental instrument. These reasons include the following:

- When “the sum of the cumulative effects in the area exceeds the resisting capacity of environmental systems and elements, according to previously performed studies in the area where the project would take place” (Article 33.f);
- When “the environmental impact is highly significant and incompatible with the environmental setting and therefore unacceptable, according to technical criteria (Article 33.h); and, among other,
- When “the sum of environmental significance levels warrants the submission of another environmental instrument in a different category (Article 33.n).

When the relevant environmental instrument is approved, Article 36 establishes that the proponent of the project must “submit a surety insurance in favour of MARN and pay for the

environmental licence within the period established in the resolution”, failure of which will result in the immediate closure of the file. In such a case, the proponent would be required to redo the whole process to obtain the authorization again and carry on the project.

Article 39 establishes the procedure to be followed when the proponent sees to implement changes or modification to the design of the project, works or activity, which cannot be done without previous authorization. Article 40 establishes the circumstances when an update of the environmental instruments will be necessary or will follow.

Title VI of the EACM Regulations establishes the rules and procedures for ensuring public participation. As per Article 34, public participation will be required for projects in categories A or B1 and must be carried out under the following mechanisms:

- Publication of a notice in a mayor newspaper of national reach and in a newspaper of the area of the project (subsection a, Article 34). Per article 44, the notice must be published in Spanish and in the language, or languages, “predominant in the area [or areas] where the project, work, industry or activity is located.
- Participative methodology must be used for the documentation of public concerns, which can include – depending on the Category of the project- “interviews, surveys, workshops, assemblies and/or working meetings” and which must consider the linguistic community and the cultural backdrop of the project's area of influence; (subsection b, Article 34).
- Public communication through radio stations for over 5 working days that reach the project’s area of influence. This is not required for category B1 projects (subsection c, Article 34).
- A public participation guide which shall specify, minimally, how was public participation incentivized during the elaboration of the environmental instruments, how potential conflicts will be resolved, and the detail of all activities that will be carried out during the different stages of the project in order ensure the participation and consultation of the public (subsection d, Article 34).

Article 34 further specifies that “public participation mechanisms must be carried out before, during and after the environmental evaluation, control and monitoring process and specific additional rules are referred to for project in category A or B1. Article 45 establishes the time frame (20 days from the third day of publication of the notice) for the public to present observations and even opposition to the project

Title VIII establishes the types of licences and processes for the granting of these in the process of Environmental Management. Article 58 lists the types of licences (i.e., environmental licence, environmental service provider licence, etc.,) and the following Articles provide the rules and specifications for what each licence requires, their duration, their renewal, and the obligations these create.

Title XI establishes the rules and procedures regarding the environmental control and monitoring, including environmental audits and its different modalities (Articles 88 through 90), and environmental inspections, monitoring and investigation (Articles 91 through 97).

Finally, the following articles are also relevant:

- Article 99 through 103 establish a system of incentives with the intent of promoting compliance by the industrial, commercial, and other services-oriented industries of good practices and clean and innovating technologies that will minimize the negative environmental impacts.
- Article 115, which establishes that the MARN, as part of risk management, the DIGARN should encourage preventive environmental management and promote and disseminate good environmental practices to be applied during emergency conditions by the local authorities with the intend of orienting a line of action that promotes minimisation and mitigation of environmental risks

4.3 OTHER NORMATIVE INSTRUMENTS

Guatemala also has passed the following relevant normative instruments:

- Decree that approves the Convention 169 of the International Labour Organisation concerning Indigenous and Tribal Peoples in Independent Countries, *Decree No. 9 of 1996 (Decreto que aprueba el Convenio 169 de la Organización Internacional del Trabajo sobre Pueblos Indígenas y Tribales en Países Independientes (Decreto No. 9 de 1996))*.
 - As a result of the passing of this Decree, per the obligations establish in the 169 Convention, Guatemala has the duty to “consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures that may affect them directly. In addition, the Government must establish means by which the peoples concerned can freely participate at all levels in decision-making in elective institutions and administrative bodies responsible for policies and programmes which concern them”⁷⁶.
- Public Information Access Law, Decree No. 57-2008 (*Ley de Acceso a la Información Pública (Decreto No. 57-2008)*)⁷⁷

⁷⁶ ECLAC, *Observatory on Principle 10 in Latin America and the Caribbean*, Policy Instruments, Guatemala, *Decreto que aprueba el Convenio 169 de la Organización Internacional del Trabajo sobre Pueblos Indígenas y Tribales en Países Independientes (Decreto No. 9 de 1996)*. Available [here](#) and [here](#).

⁷⁷ Available [here](#).

- “The purpose of the law is to guarantee the right of any interested person, without discrimination, to request and have access to public information held by the authorities [...], as well as to guarantee transparency in public administration”⁷⁸.
- Climate Change Framework Law, Decree 7-2013 (*Ley Marco de Cambio Climático (Decreto 7-2013)*)⁷⁹
 - “The law aims to establish the necessary regulations to prevent, plan and respond in an urgent, adequate, coordinated and sustained manner to the impacts of climate change in Guatemala”⁸⁰.
- National Policy on Environmental Education, Government Agreement No. 189-2017, (*Política Nacional de Educación Ambiental de Guatemala (Acuerdo Gubernativo No 189-2017)*)⁸¹
 - “The Policy seeks to implement programmes and processes of formal, non-formal and informal environmental education with a multicultural and equitable approach, which will raise awareness in society for the adoption of responsible attitudes towards the conservation of environmental”⁸².

⁷⁸ ECLAC, *Observatory on Principle 10 in Latin America and the Caribbean*, Policy Instruments, Guatemala, Ley de Acceso a la Información Pública (Decreto No. 57-2008), Available [here](#).

⁷⁹ Available [here](#).

⁸⁰ ECLAC, *Observatory on Principle 10 in Latin America and the Caribbean*, Policy Instruments, Guatemala, *Ley Marco de Cambio Climático (Decreto 7-2013)*. Available [here](#).

⁸¹ Available [here](#).

⁸² ECLAC, *Observatory on Principle 10 in Latin America and the Caribbean*, Policy Instruments, Guatemala, *Política Nacional de Educación Ambiental de Guatemala (Acuerdo Gubernativo No 189-2017)*. Available [here](#).

5 HONDURAS

5.1 GENERAL ENVIRONMENTAL LAW, DECREE NO. 104-1993

The General Environment Law, Decree No. 104-1993 (*Ley General del Ambiente, Decreto No. 104-1993*)⁸³, hereinafter GE Law, seeks to establish the framework for environmental management. Among other things, Article 9 refers that the objectives of the GE Law are to:

- Provide “guidance to the agricultural, forestry and industrial activities” that will lead to the adoption of “forms of exploitation compatible with the conservation and with the rational and sustainable use of natural resources” (subsection a, Article 9).
- Establish “the necessary mechanisms for the maintenance of the ecological balance, allowing for the conservation of resources, the preservation of genetic diversity and the rational use of species and renewable and non-renewable natural resources” (subsection b, Article 9).
- Establish “the Environmental Impact Assessment (EIA) [process as necessary] for the execution of public or private projects that are potentially polluting or degrading” (subsection d, Article 9).
- Promote “the participation of citizens in activities related to the protection, conservation, restoration and adequate management of the environment and natural resources” (subsection e, Article 9).

Additionally, Articles 1 through 8 establish the general principles that guide interpretation and implementation of the GE Law. Notably, these provide that non-renewal natural resources must be used in such a way as to prevent their depletion (Article 3); that public or private project that may have an impact on the environment must be designed considering the interrelation of human beings with the environment and all natural resources (Article 4); and that those projects that are likely to contaminate or degrade the environment, natural resources or historical-cultural patrimony of the country, must be preceded by an EIA (Article 5). Article 78 further reinforces the obligatory nature of performing the EIA before the commencement of any work, project, industry, or activity that may cause, or is likely to have an environmental impact, including a non-exhaustive list of these types as well of activities.

Articles 10 through 29, establish the creation of the Environment Secretary (*Secretaría de Estado en el Despacho de Ambiente*) and other bodies that are charged with managing, controlling and monitoring the environment, defining their respective roles and functions.

Title III of the EG law establishes rules for the protection of the environment and the rational use of the natural resources. Specifically, the EG Law provides guidance in relation to:

- Continental and maritime waters (Articles 30 through 34).

⁸³ The text of the law is available [here](#).

- Nature in general, which includes rules on the establishment of protected areas (Articles 35 through 40), and in relation to wild flora and fauna (Articles 41 through 44) and forests (Articles 45 through 47).
- Soils, including for agricultural, agrarian and forestry use (Articles 48 through 50), and urban and industrial use (Articles 51 through 54).
- Maritime and costal resources (Articles 55 through 58).
- The atmosphere (Articles 59 through 62).
- Mineral and hydrocarbons (Articles 63 through 65).

Articles 66 through 76 provide guidance vis-à-vis interests other than natural resources that can also be impacted by projects, works or activities, including historical-cultural patrimony and human health. Notably, with respect to indigenous ethnic groups, Article 71 establishes that the state should provide “special support” in relation to “their traditional systems for the integrated use of renewable natural resources, which should be studied in order to establish their viability as a sustainable development model”.

Article 83 establishes that those bodies charged with management the environment will exercise inspection and monitoring actions and that public recognition will be given to those juridical or natural persons that of their own initiative execute preventative and environmental improvement practices in their communities.

Articles 84 and 85 establish that environmental education must be incorporated in the National Education System and that Ministry of Public Education must propose the participation of non-governmental national and international organizations, as well as the community as a whole, in environmental educative actions.

While Articles 86 to 91 establish the administrative crimes and infractions of general nature, Articles 92 to 95 establish certain actions contrary to the GE Law and the protection of the environment that will amount to Environmental Crimes. Notably, the public can institute a claim denouncing any act or omission that is contravention of the GE Law (Articles 90 and 99).

The EG Law establishes a right to access information by the public in Article 103, the obligation of active transparency for the government (Articles 11.f), and the duty to promote participation by the community in actions relating to the defense and preservation of the environment (Articles 102 and 39).

Finally, it is worth noting that the EG Law is completed by:

- the General Regulation of the Environmental Law, Agreement N° 109-93, (*Reglamento General de la Ley del Ambiente, Acuerdo N° 109-93*)⁸⁴, which is of mandatory

⁸⁴ The text is available [here](#).

implementation “for any activity that is potentially harmful or that currently pollutes or degrades the environment, natural resources or the historical and cultural heritage of the nation, carried out by any State body and private national or foreign persons”⁸⁵.

- the Environmental Audits Regulation, Agreement N° 887/09 (*Acuerdo N° 887/09 - Reglamento de auditorías ambientales*)⁸⁶, which seeks to “regulate everything related to audits derived from the licensing and environmental control process in its different modalities in order to establish an efficient environmental control and monitoring mechanism”⁸⁷.

5.2 REGULATION OF THE NATIONAL ENVIRONMENTAL IMPACT ASSESSMENT SYSTEM (SINEIA), GOVERNMENT AGREEMENT NO. 8-2015

The Regulation of the National Environmental Impact Assessment System (SINEIA, for its Spanish acronym), Government Agreement No. 8-2015, (*Reglamento del Sistema Nacional de Evaluación de Impact Ambiental (SINEIA), Acuerdo No. 8-2015*)⁸⁸, hereinafter SINEIA Regulation, seeks to, among other things, to “ensure that plans, policies, programs, projects, industrial installations or any other public or private activity susceptible of contaminating or degrading the environment be subject to an environmental impact assessment with the purpose of preventing significant, reversible and irreversible harms to the environment” (Article 2, subsection b). Additionally, the SINEIA Regulation aims to promote, manage, and coordinate the public, non-governmental organizations, and other interested parties’ participation withing the SINEIA process (Article 2, subsection d).

Article 3 of the SINEIA Regulation establishes, among other, the following guiding principles: the principle of prevention, the principle of precaution, the principle of environmental responsibility, the principle of proportionality, and the principle of good faith. Article 5 includes a detailed and specific list of 54 definitions for all relevant terms, concepts, processes, and terminology.

Chapter III refers to the norms regarding the SINEIA itself. Article 6 establishes that the SINEIA is a set of process and procedures which seek to ensure the sustainable development of the country, as well as an equilibrium between development of projects, works and activities and

⁸⁵ ECOLEX, The gateway to environmental law, *Legislation*, “Acuerdo N° 109-93 – Reglamento General de la Ley del Ambiente”, Abstract. Available [here](#).

⁸⁶ The text is available [here](#).

⁸⁷ ECOLEX, The gateway to environmental law, *Legislation*, “Acuerdo N° 887/09 - Reglamento de auditorías ambientales”, Abstract. Available [here](#).

⁸⁸ The text is available [here](#).

the preservation and care of the environment. The fundamental responsibility of the SINEIA is to carry out environmental evaluation and control.

Chapter IV establishes the operation procedure for the granting of the Environmental Licence. Article 30 establish the four different categories (1, 2, 3, or 4) that projects, works, or activities will be sorted in depending on their magnitude, nature, characteristics and the potential environmental impacts or risks. The categories are defined as follows:

- Category 1: low potential environmental impact or risk
- Category 2: moderate potential environmental impact or risk
- Category 3: high potential environmental impact or risk
- Category 4: very high potential environmental impact or risk. Megaprojects are considered to belong in this category.

Further, Article 30 establishes that all those activities or projects that “by the own nature are below the category 1, will be qualified as a very low environmental impact [activity] and thus not subject to the procedure for obtaining an Environmental Licence”.

Nonetheless, it is also specified that if such a project is located in “an environmental fragile area”, the project will immediately become a Category 1 project and thus an Environmental Licence will be required. The increase of category bracket when a project is located in “an environmental fragile area” seems to apply vis-à-vis all categories.

Article 24 establishes the obtainment of an environmental licence as the necessary pre-condition for the start of any project, work, or activity, whether public or private. Additionally, as referred by Article 31, projects, works or activities in any of the four categories must follow the 8 steps established in Article 24.

Article 25 establishes that a notice must be published in a national newspaper for at least 5 working days, and it specifies that “in case when the project, work, or activity is located on land titled to indigenous peoples and local communities, [the projects] must be adequately socialized with such communities”. It is important to note, for example, that Articles 26 and 28 establishes specific rules regarding publication for projects of Category 4 (see Article 30 for categorization).

Article 34 through 40 establish the process for the elaboration of the Environmental Impact Assessment Study (EsEIA, for its spanish acronym), which is defined as a technical document that will be able to showcase and will predict the impact that the given project will have on the environment (Article 34). Per article 40, the EsEIA must use, as a minimum, the

standardize procedure that the Environment Ministry has established in the Environmental Evaluation and Control Manual.

Articles 41 through 45 establish the process for the review of the EsEIA and include specific rules as to how the EsEIA must be presented (copies, formats, deadlines, etc.,). Of particular importance, Article 43 provides for the obligation of ensuring public consultation of the EsEIA and Article 44 establishes that “[a]ny person – natural or legal- that considers that the EsEIA has not adequately projected an important impact or that has not proposed adequate mitigation measures, may request the [Environment Ministry] that the necessary changes be made”. Furthermore, Articles 58 through 61 establish the norms regulating public participation in the environmental assessment process, which may include a hearing or public forum to openly discuss the project and its assessment instrument (Articles 60).

If the EsEIA complies with all the requirements and is approved, per Article 46 the Environment Ministry will issue first an *Operations Environment Licence* which will be valid until the *Functioning Environment Licence* is granted. Article 46 also establishes that within 4 months of the issuance of the *Operations Environment Licence*, the proponent of the project must fill the necessary paperwork with the Environmental Ministry. In addition, Article 46 establishes that during this time a control and follow-up inspection will be carried out which will seek to determine the environmental viability of the project for the granting of the *Functioning Environment Licence*, the need to extend the period of the *Operations Environment Licence*, sanctions in case of non-compliance, or the cancellation all together of the *Operations Environment Licence*.

Article 47 establishes that the *Functioning Environment Licence* will be granted for a 5-year period. Article 48 establishes the process and timeline for renewal of such Licence. Article 49 establishes special rules regarding projects that may be subject to different Categories and Articles 55 and 56 establish instead rules regarding environmental incentives.

Furthermore, Articles 50 through 54 establish rules and process that must be followed in case the proponent wishes to modify the plan, activity, or project. In addition, Article 14 establishes when a new licence must be processed, including when the conditions have changed significantly.

Chapter VIII provides guidance in relation to other instruments of the EIA, which includes “strategic environmental assessments” (Articles 63 through 65) and “disaster response and management” (Articles 66 through 68)

Articles 70 and 71 provide for the possibility that the Environment Ministry, in coordination with the respective agencies in charge of environmental impact assessments in other countries of the region, may develop regional environmental impact assessment instruments. Notably, Article 70 refers the Regional Agreements established within the framework of the Central-American Integration System (SICA for its Spanish acronym).

Articles 72 through 74 establish that the Environment Ministry may elaborate, review and update “Technical Standards” and “Good Practices Guides” for environmental protection.

Finally, it is worth noting that the Government of Honduras has also passed the Agreement N° 16-2015 – Environmental Categorisation Table (*Acuerdo N° 16-2015 – Tabla de categorización ambiental*)⁸⁹, which seeks to sort the projects that are categorised by sector, sub-sector and activity, works or projects and that are subject to the Environmental Impact Assessment (EIA) process, and to classify them according to their potential environmental impact.

5.3 OTHER NORMATIVE INSTRUMENTS

Honduras has also enacted the following relevant normative instruments:

- The Law on Citizen Participation, Decree No. 3 of 2006, (*Ley de Participación Ciudadana (Decreto No. 3 de 2006)*)⁹⁰, which “establishes the general framework for participation in Honduras, defining the principles, powers, rights, obligations and forms of its exercise through plebiscites, referendums, open municipal councils, citizens’ initiatives, and others indicated in the law”⁹¹.
- The Law on Transparency and Access to Public Information, Decree 170-2006, (*Ley de transparencia y acceso a la información pública (Decreto 170-2006)*)⁹², which seek to develop and implement “the national transparency policy, as well as the exercise of the right of everyone to access public information in order to strengthen the rule of law and consolidate democracy through citizen participation”⁹³.

⁸⁹ The text of the agreement is available [here](#).

⁹⁰ The text of the Decree is [here](#).

⁹¹ ECLAC, *Observatory on Principle 10 in Latin America and the Caribbean*, Policy Instruments, Honduras, Ley de Participación Ciudadana (Decreto No. 3 de 2006). Available [here](#).

⁹² The text of the Law is available [here](#).

⁹³ ECLAC, *Observatory on Principle 10 in Latin America and the Caribbean*, Policy Instruments, Honduras, Ley de transparencia y acceso a la información pública (Decreto 170-2006). Available [here](#).

- The Climate Change Law, Decree No. 297/2013 (Ley de Cambio Climático (Decreto 297-2013)⁹⁴, which establishes “the principles and regulations necessary to plan, prevent and respond in an adequate, coordinated and sustained manner to the impacts generated by climate change in Honduras”⁹⁵

⁹⁴ The text of the Law is available [here](#).

⁹⁵ ECLAC, *Observatory on Principle 10 in Latin America and the Caribbean*, Policy Instruments, Guatemala, Ley de Cambio Climático (Decreto 297-2013). Available [here](#).

6 MEXICO

6.1 GENERAL LAW ON ECOLOGICAL BALANCE AND ENVIRONMENTAL PROTECTION (LGEEPA)

The *General law on ecological balance and environmental protection*⁹⁶ (hereinafter, *LGEEPA* for its Spanish name), “addresses the preservation and restoration of the ecological balance, as well as the protection of the environment, in the national territory and the areas over which Mexico exercises its sovereignty and jurisdiction”⁹⁷.

The rules established by the *LGEEPA* are public order norms and intend to promote sustainable development (Article 1) and, among other, seek to guarantee: the right of everyone to live in a healthy environment for their development, health and wellbeing (Article 1, subsection I); environmental preservation, restoration and betterment (Article 1, subsection III); the preservation and protection of biodiversity, as well as the establishment and administration of protected natural areas (Article 1, subsection IV); the sustainable use, preservation and, where appropriate, restoration of soil, water and other natural resources, in such a way that economic benefits and the activities of society are compatible with the preservation of ecosystems (Article 1, subsection V); the prevention and control of air, water and soil pollution (Article 1, subsection VI); and, among other, the co-responsible participation of people, individually or collectively, in the preservation and restoration of the ecological balance and the protection of the environment (Article 1, subsection VII).

Article 28 establishes the Environmental Impact Assessment (EIA) as the process to which all works and activities that may cause an ecological imbalance or that may overstep the limits and conditions established in environmental protection, preservation and restoration dispositions must be subject to.

Article 28 refers the following activities as requiring an EIA: hydraulic works, forest exploitation in tropical forests and species of difficult regeneration; changes of use of soil in forest areas, as well as in jungles and arid zones; works and activities in wetlands, mangroves,

⁹⁶ LEY GENERAL DEL EQUILIBRIO ECOLÓGICO Y LA PROTECCIÓN AL AMBIENTE, Nueva Ley publicada en el Diario Oficial de la Federación el 28 de enero de 1988, TEXTO VIGENTE. Última reforma publicada DOF 18-01-2021. Available [here](#).

⁹⁷ Environmental and social safeguards of the Mexican Fund for the Conservation of Nature A.C (Annex 10). See Annex 1, Mexican Legal Framework, *General law on ecological balance and environmental protection*. Available at:

lagoons, rivers, lakes, and estuaries connected to the sea, as well as in their coastlines or federal zones; and works and activities in protected natural areas, among others⁹⁸.

Articles 30 through 35 bis 3 contain the process of the EIA with the purpose of receiving the required authorization from the Environment and Natural Resources Ministry (*La Secretaría de Medio Ambiente y Recursos Naturales*, hereinafter “the Ministry”). This includes, submitting environmental impact statements (*manifestación de impacto ambiental*) and when necessary, risk assessments, prevention reports, and other studies and document. Additionally, the LGEEP foresees a component of public consultation and participation throughout the EIA (See Article 34 and subsections).

Specific rules and the implementing measures for the LGEEPA about EIA can be found in the *Regulation of the General law on ecological balance and environmental protection on environmental impact*⁹⁹ (see, *infra*).

Per Article 35, the Ministry may promulgate official norms and regulations on environmental issues and for the sustainable use of natural resources.

Articles 38 provides that “producers, companies or business organisations may develop voluntary processes of environmental self-regulation, through which they improve their environmental performance, respecting legislation and regulations in force on the matter and committing to surpassing or meeting higher levels, goals or benefits of environmental protection”. Articles 38 through 38 bis 3 regulate how these processes of self-regulations must be carried out.

The Second Title of the LGEEPA establishes rules and norms regarding the protection of *Biodiversity*, including specific regulations on Natural Protected Areas (Articles 44 through to 87 bis 2), which include: the objectives and process for establishing different types and categories of protected area (Articles 44 to 75 bis); the creation of a National System of Natural Protected Areas (i.e. Articles 76-77); the establishment, administration and management of areas destined *voluntarily* for conservation by indigenous peoples, social organizations or private and public persons (Articles 77 bis); the establishment of Restoration Zones (Article 78 to 78 bis 1); and the preservation and sustainable use of wild flora and fauna (Articles 79 to 87 bis 2).

Of particular relevance, Article 45, subsection II, states as a purposes of natural protected areas the “safeguard of the genetic diversity of wild species on which evolutionary continuity

⁹⁸ See, Article 28, Mexico *LGEEPA* for full list.

⁹⁹ Information available [here](#).

depends, as well as to ensure the preservation and sustainable use of the national territory's biodiversity, in particular to preserve endangered, threatened, endemic, rare and specially protected species”.

The Third Title of the LGEEPA, on the other hand, establishes the rules and procedures for the sustainable use and exploitation of Natural Resources including Water and Aquatic Ecosystems (Articles 88 to 97); Soils and its resources (Articles 98 to 105); and Non-renewable Resources *vis-à-vis* the Ecological Balance (Articles 108-109).

Title Four Title of the LGEEPA establishes that detail rules and procedures regarding the protection of the environment, including rules on prevention and control of: atmospheric contamination (Articles 110 through 116), water and aquatic ecosystems” contamination (Articles 117 through 133), soil contamination (Articles 134 through 144).

As well, This Title establishes rules regarding activities considered highly dangerous (Articles 145 through 149), dangerous materials and residues (Articles 150 through 153), nuclear energy (Articles 154), noise, vibrations, thermic energy, smells, visual contamination, and others (Articles 155 through 156).

Title Five Title of the LGEEPA establishes guidance for the promotion co-responsible social participation in the planning, execution, evaluation, and monitoring of the environmental policies and natural resources (Article 157), as well as about the dissemination of environmental information (Article 159)¹⁰⁰.

Notably, Article 158 subsection I of the LGEEPA refers that for achieving this, among other, the Ministry shall “[c]onvene, within the framework of the National System of Democratic Planning, the organisations of workers, businesspeople, peasants, farmers and agricultural, fishing and forestry producers, agrarian communities, indigenous peoples, educational institutions, social and private non-profit organisations and other interested persons to express their opinions and proposals”.

Additionally, regarding the rights of indigenous peoples the following Articles are of notable importance:

- Article 15, subsection XIII, which “guarantees the right of communities, including indigenous peoples, to the protection, preservation, and sustainable use and

¹⁰⁰ See also Article 40 of the LGEEPA Regulation on EIA, *infra*.

exploitation of natural resources, as well as safeguards and use of biodiversity, in accordance with the provisions of the [LGEEPA] and other applicable regulations”¹⁰¹.

- Article 45, subsection V, which establishes as a purpose of natural protected areas the creation, salvaging and dissemination of knowledge, practices, and technologies, traditional or new, that allow for the preservation and sustainable use of the national territory's biodiversity.
- Article 59, which states that indigenous peoples, public or private social organisations, and other interested persons, may promote before the Secretariat the establishment of natural protected areas, on land they own or through contracts with third parties, for the preservation, protection, and restoration of biodiversity in such areas.
- Article 64 bis 1, which establishes that the Federation and other federal entities may issue permits, concessions, and authorizations for the realization of works or other activities in protected natural areas in conformity with the LGEEPA and regulations and that priority will be given to agrarian communities, indigenous peoples, and other owners of such lands where the specific activity will be carried out.
- Article 79, subsection X, which states that for the preservation and sustainable use of wild flora and fauna, “traditional biological knowledge and the participation of communities, as well as indigenous peoples [will be considered] for the elaboration of biodiversity programmes in the areas they inhabit”.

Finally, Title Six establishes directions regarding the rule of law and enforcement (*Control and Security Measures and Sanctions*, Article 160), including rules on inspection and monitoring (Articles 161 through 170 bis) and on the possibility of instituting a Popular Demand (Denuncia Popular, Articles 189 through 204).

Specifically, the later means that “[a]ny person, social groups, non-governmental organisations, associations and societies may denounce [...] any fact, act or omission that produces or may produce ecological imbalance or damage to the environment or to natural resources, or that contravenes the provisions of the [LGEEPA] and of the other norms that regulate matters related to the protection of the environment and the preservation and restoration of the ecological balance” (189).

¹⁰¹ Article 15, subsection XIII, Mexico LGEEPA

6.2 REGULATION OF THE GENERAL LAW ON ECOLOGICAL BALANCE AND ENVIRONMENTAL PROTECTION WITH RESPECT TO ENVIRONMENTAL SELF-MONITORING AND AUDITING

The *Regulation of the General law on ecological balance and environmental protection with respect to environmental self-monitoring and auditing*¹⁰² (*Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en materia de Autorregulación y Auditorías Ambientales*), hereinafter, LGEEPA Regulation on EIA) establishes the rules and procedures to follow with regard to an EIA. As per Article 1, the implementation of this Regulation is under the purview of the Ministry (*Secretaría de Medio Ambiente y Recursos Naturales*). Article 2 includes a list of relevant definitions.

Article 3 establishes that the “Environmental Audits and Self-Regulation” have as their purpose the observance of the principles of environmental policy contained in article 15, sections III, IV and VI of the LGEEPA.

Articles 6 through 10 provide the general rules and considerations regarding the national program of environmental auditing. The objectives of the program can be found in Article 6. Article 8, on the other hand, establishes the terms of reference that will govern the Environmental Auditing process.

With the objective of incentivizing compliance with the environmental protection laws, and going beyond the minimum commitments, the LGEEPA established the issuance of a Certificate (See Article 3). The rules governing the issuance and procedure of this Certificate can be found in Articles 11 through 27. This section includes reference to:

- The type of information that must be provided in the request (Article 12).
- The process regarding the Environmental Auditing (Article 14) and the presentation and adequation of the Environmental Auditing Report (*Informe de Auditoría Ambiental*) (Article 15 through 17).
- The preparation and execution of an Action Plan (Article 18 through 23).
- The process for renewing said Certificate (Article 24 through 26).
- The commitments that a given company or organization assumes with the issuance of a Certificate (Article 27).

¹⁰² Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en materia de Autorregulación y Auditorías Ambientales, Nuevo Reglamento publicado en el Diario Oficial de la Federación (2010-04-29) Texto vigente, última reforma publicada DOF 31-10-2014. Available [here](#): [LGEEPA Regulation on EIA]

Articles 29 through 32 establish a system for Recognition and Incentives, which include the ability of the Ministry to grant a *Recognition of Environmental Excellence* as means to distinguish those companies that, once certified at the highest level of Environmental Performance demonstrate outstanding actions in the care of the environment (see Article 31, which establishes the requirements that apply for this recognition).

The selection of Environmental Auditors, and their duties, role and responsibilities are governed by the rules established in Articles 33 through 39 bis.

Finally, Articles 42 through 44 establish rules on the control measures for non-complying entities and Articles 46-47 refer the rules for the verification visits.

6.3 OTHER NORMATIVE INSTRUMENTS

Mexico also has passed the following normative instruments that are of relevance:

- Enacting Decree of the International Labour Organisation's Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (1991)¹⁰³, by which, per the obligations establish in the 169 ILO Convention, Mexico has the duty to “consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures that may affect them directly. In addition, the Government must establish means by which the peoples concerned can freely participate at all levels in decision-making in elective institutions and administrative bodies responsible for policies and programmes which concern them”¹⁰⁴.
- Official Mexican Norm (NOM-002-SAG-BIO/SEMARNAT-2017)¹⁰⁵, that contains the regulation regarding the characteristics and requirements that must be included in the evaluation studies about risks of the experimental release of genetically modified organisms that could cause harm to the environment and to the biological diversity, as well as to animal and plant animal, plant and aquaculture health.

Additionally, the following may also be relevant:

- Decree approving the Escazú Agreement, 2020 (*Decreto que aprueba el Acuerdo de Escazú*)¹⁰⁶

¹⁰³ The text of this instrument is available [here](#).

¹⁰⁴ ECLAC, *Observatory on Principle 10 in Latin America and the Caribbean*, Policy Instruments, Mexico, *Decreto promulgatorio del Convenio 169 de la Organización Internacional del Trabajo sobre Pueblos Indígenas y Tribales en Países Independientes*, Avialable [here](#).

¹⁰⁵ In Spanish: Norma Oficial Mexicana NOM-002-SAG-BIO/SEMARNAT-2017, Por la que se establecen las características y requisitos que deberán contener los estudios de evaluación de los posibles riesgos que la liberación experimental de organismos genéticamente modificados. The text of the norm is available [here](#).

¹⁰⁶ The text is available [here](#).

- Federal Law on Biosafety of Genetically Modified Organisms, 2005 (*Ley Federal de Bioseguridad de Organismos Genéticamente Modificados*)¹⁰⁷
- Federal Environmental Liability Law, 2013 (*Ley Federal de Responsabilidad Ambiental*)¹⁰⁸
- General Climate Change Law, 2012 (*Ley General de Cambio Climático*)¹⁰⁹
- Sustainable Rural Development Act, 2001 (*Ley de Desarrollo Rural Sustentable*)¹¹⁰
- General Law on Sustainable Forestry Development, 2018 (*Ley General de Desarrollo Forestal Sustentable*)¹¹¹

**** END OF DOCUMENT ****



¹⁰⁷ The text is available [here](#).

¹⁰⁸ The text is available [here](#).

¹⁰⁹ The text is available [here](#).

¹¹⁰ The text is available [here](#).

¹¹¹ The text is available [here](#).