

## Guatemala

### EIA profile

**Updated to:** 02 September 2019

#### Overview ESIA procedure

The process starts with the categorization request and/or relevant terms of reference to MARN. When the proponent is able to determine for himself the applicable category, he can choose to start the procedure with the applicable environmental instrument (initial environmental assessment, full EIA, or SEA).

When the environmental assessment study is ready, review starts (procedure is different for each category). The last step is the Environmental Resolution (=approval).

#### Screening

##### Screening process

In the screening process, use is made on a 40 p. so-called lista taxativa (screening list), dividing projects, activities, works and industries in categories A, B1, B2 and C (ACUERDO MINISTERIAL No.199-2016).

The Ministry of Environment and Natural Resources (MARN), through the DIGARN determines the category of those projects, works, industries or activities which are not listed in the prescriptive listing.

There are four different categories:

- Category A: high potential impact on the environment or environmental risk.
- Category B1: moderate to high potential impact on the environmental or environmental risk.
- Category B2: moderate to low potential environmental impact or environmental risk.
- Category C: low potential impact and/or environmental risk.

##### *Sensitive areas*

The classification process takes into account the location of project, work, industry or activity in fragile areas. Initiatives developed in the protected areas require a revision of the National Council of Protected Areas (Consejo Nacional de Áreas Protgidas, CONAP) according to the master plan of the protected area (mandatory for all categories). The protected areas are registered and controlled by the Guatemalteco System of Protected Areas (Sistema Guatemalteco de Áreas Protegidas, SIGAP).

Recently, an update of the screening list was made available (no. 204, 2019). New elements are:

- additional minimum and maximum thresholds, for example: areas in square meters, number of hectares, number of workers, etc.
- the possibility of being able to present an environmental management plan within the category C, without the need to obtain a license.

- a specific screening for projects that are located in protected areas
- the possibility for companies to request the recategorization of their activities based on technical criteria
- This new list will enter into force on September 26, 2019.

source

<http://www.marn.gob.gt/Multimedios/4740.pdf>

### **Contents of the starting document**

A starting document is only required for projects not mentioned in the screening list. This classification process is based on information provided in a form. Details have to be provided on the proponent, the project and its location.

source

[http://www.marn.gob.gt/paginas/Categoria\\_C3\\_Actividades\\_de\\_Registro\\_FAR\\_](http://www.marn.gob.gt/paginas/Categoria_C3_Actividades_de_Registro_FAR_)

## **Scoping**

### **Scoping process**

There is no formal scoping process. It is just stated that terms of reference, content and specific technical procedures for the development of each environmental instrument (for instance initial environmental assessment, full EIA) will be determined by MARN.

source

Regulation 137-2016, articles 12-17

## **Assessment**

### **Assessment process**

For category C and B2 a simple environmental assessment is elaborated. Category B2 also requires the elaboration of an Environmental Management Plan.

For category A and B1 (high and moderate environmental impact potential) a full environmental impact assessment is required, which has to be elaborated by certified consultants.

The MARN support environmental assessments by issuing and promoting sector support guidelines.

### **Contents of the EIA report**

According to the guidance of the Ministry of Environment and Natural Resources an EIA must address the following topics:

- Summary;
- Introduction;
- Overview;
- Description of the project;
- Description of the legal framework;
- Finance of the investment;
- Description of the impacts in soil, water and air;
- Biological environment description;
- Description of the social-economic and cultural effects;
- Description of alternatives;
- Identifying environmental impacts and determination of mitigation measures;
- Environmental management plan;
- Risk analysis and Plan of Contingency;
- Environment modified by the development of the project work, industry or activity;
- References of literature.

source

[http://www.marn.gob.gt/paginas/Instrumentos\\_de\\_Evaluacin\\_Ambiental](http://www.marn.gob.gt/paginas/Instrumentos_de_Evaluacin_Ambiental)

### **Accreditation of consultants**

Consultants and consultancy firms must be accredited by the MARN to be able to conduct EIA studies. The DIGARN administers a register of accredited consulting firms and consultants.

source

[http://www.marn.gob.gt/paginas/Consultores\\_Ambientales\\_1](http://www.marn.gob.gt/paginas/Consultores_Ambientales_1)

Articles 78 and 79 Regulation 137-2016

### **Review**

#### **Review process**

For Category A projects:

- DIGARN appoints a multidisciplinary group, confirming that it is actually an activity listed as category A and checking whether the EIA study meets the requirements established for this type of category
- The review is carried out within 90 days, which begins at the end of the public consultation, which may be extended according to the circumstances such as opinions of other entities (e.g.

CONAP, INAB or MEM), or by request for additional information to the proponent

- The proponent may request a meeting between DIGARN, the multidisciplinary group, the proponent and the environmental consultant to present or technically defend the project.

For Category B1 projects:

- The procedure is similar except that the review is done by DIGARN or departmental delegation, and the timeline is 30 days.

For Category B2 projects:

- Review is done by DIGARN or departmental delegation within 15 days. There is no possibility for a meeting with DIGARN.

For Category C projects:

- Similar procedure as compared to B2, but within 5 days.

The proponent and the DIGARN advise the civil society through the media that the documents are available at the DIGARN. The public has the possibility to give their comments. The DIGARN reviews all documents and takes into account public comments. The DIGARN requests the sectors' advice where projects have a sectoral scope. Depending on the category, field verification can be done by the DIGARN technicians or staff of the departmental delegations. The Ministry of Environment and Natural Resources (MARN) emits the resolution of approval or rejection.

source

Articles 21 to 27 Regulation 137-2016

<http://www.marn.gob.gt/Multimedios/4739.pdf>

## Review expertise

The National Council of Protected Areas (CONAP) is involved in case of projects, works, industry or activities in protected areas. In the case of mining investments, hydrocarbons or energy, the DIGARN requestes an opinion from the social-environmental unit of the Ministry of Energy and Mining (MEM). Also the opinion on the National Institute for forests (INAB) or departmental delegations of MARN can contribute to the review.

source

Articles 29 and 30, Regulation 137-2016

## Timeline Review

The timelines differ according to the category, from 90 days for category A projects, to only 5 days for category C. The timelines can be longer when the proponent is asked to submit additional information, or when the opinion of other review agencies (like CONAP, INAB or MEM) is required.

source

Articles 21 to 27 Regulation 137-2016

## **Decision making**

### **Integration of ESIA into decision-making**

The review results in a so-called Dictamen Técnico (technical document) which is the basis for the Final Resolution.

According to the category, the DIGARN or the departmental delegations of the MARN, will issue a resolution with citation of legal regulations, approving or not approving the EIA study. The approval contains environmental commitments, environmental control measures, amount of insurance, as well as the value, validity and term for the payment of the environmental license.

Approval implies the environmental viability of the project, work, industry or activity. However, it does not authorize the development of the project, work, industry or activity, which is subject to approval by the corresponding institutions.

The final resolution will be issued within 30 days.

source

Articles 34-35, Regulation 137-2016

<http://www.marn.gob.gt/Multimedios/4739.pdf>

### **Decision justification**

Only required in case of rejection. In that case the resolution will necessarily contain detailed results of the review process and findings. Article 33 gives a number of reasons for which the decision can be negative.

source

Article 33, Regulation 137-2016

### **Timeline decision-making**

30 days

### **Possibilities for appeal**

Against the decisions of DIGARN in relation to approval of EIA, appeals can be filed according to the administrative law court.

The proponent and the public can appeal against the decisions of the environmental resolution according to the regulations of public administration.

source

Ley de lo Contencioso Administrativo decreto 199-96 Ley de Protección y Mejoramiento del Medio Ambiente (artículos 30 y 37)

## **Follow-up**

### **Compliance monitoring**

Control and monitoring actions must be executed by the DIGARN for any project, work, industry or activity in categories A and B1, and the departmental delegations of the MARN in categories B2 and C. The kind of instrument applied can be different (e.g. environmental audit, inspection and control)

source

Regulation 137-2016, Articles 84 to 97

### **Non-compliance penalties**

The Regulation specifies the kind of activities subject to penalties and the amounts to be paid. If payment is not done, the environmental license can be withdrawn or an environmental consultant will no longer be registered.

source

Articles 104 to 112, Regulation 137-2016

## **Stakeholder engagement**

### **Public participation requirements for ESIA process stages**

Public participation is required for projects in Category A and B1. The proponent must inform the population about the stage of operation of project, work, industry or activity, so that formal requirements established by the DIGARN can be met and allow the affected population to express its observations so that the appropriate environmental control measures will be applied prior to the issuance of the final resolution.

Any publication event must be published in Spanish and in the language that predominates in the area where the project is located, However, when the project covers several municipalities, the publication must be in Spanish and in the language that predominates in each of them.

The MARN must place a digital copy of the public announcement on its website together with the EIA study.

Observations, including opposition statements, can be submitted within a period of 20 days from the third day of the public announcement. Comments will be sent to the proponent in order to address the comments and improve the EIA study.

MARN will consider comments in their final Resolution, as long as comments are technically, legally and scientifically sound.

source

Articles 43-47, Resolution 137-2016

### **Timeline for public comments**

The public can present its observations or opposition in written within 20 days after the publication of environmental assessment document, before the MARN, either the central DIGARN or the MARN delegations where appropriate.

### **Access to information**

The proponent publishes a notice in coordination with the MARN about the availability of the environmental assessment for the public. This notice is published in a journal of national or regional importance. The notice has at least the following information:

- Name proponent;
- Location;
- Description of the project, work or activity;
- Inform the public that within a period of 20 working days after the last publication in the national newspaper the public can send its observations and comments to the DIGARN or MARN delegations.

Announcement of the availability of an EIA study will also be done by radio during 5 working days.

In the region where local languages are used, the publication must also be written in their language (s) (multilingual information can be obtained at the National Institute of Statistics, INE)

The environmental impacts assessment studies and environmental management plans are available at the offices of the DIGARN (national level) or the MARN delegations (local level).

source

Articles 43-47, Resolution 137-2016

<http://www.marn.gob.gt/Multimedios/4739.pdf>

### **ESIA practice**

#### **Annual no. of ESIA's**

The number of EIA's (approximate numbers) processed by the Ministry of Environment and Natural Resources:

- 1999: 350;
- 2000: 480;
- 2001: 790;
- 2002: 660;
- 2003: 800.

These data relate not only to the Environmental Impact Assessments, but to all categories. EIA's are only

elaborated in the cases of high to moderate impact (category A y B1).

source

[Marco jurídico y político de gestión Ambiental en el informe nacional del estado ambiente de la Dirección de Gestión Ambiental y Recursos Naturales \(2003\).](#)

### Central ESIA database

MARN maintains a database with submitted EIA studies and their corresponding environmental licenses.

source

[http://apps.marn.gob.gt/notificar/TM\\_ESTUDIOS\\_IMPAMB/ShowTM\\_ESTUDIOS\\_IMPAMBTablePage.aspx](http://apps.marn.gob.gt/notificar/TM_ESTUDIOS_IMPAMB/ShowTM_ESTUDIOS_IMPAMBTablePage.aspx)

### Relevant links

Centre for Environmental and Social Legal Acción (Centro de Acción Legal Ambiental y Social, CALAS)

Network for Impact Assessment of Central America (website in English)

Website in Spanish of Work Group on EIA in Central America Grupo de Trabajo de Evaluación de Impacto Ambiental de Centro-America

## Background information

### History of ESIA

In Guatemala the legislation of environmental impact assessment began in 1986, based on the Law for Environmental Protection and Improvement (Decree No. 68-86) and with the creation of the National Committee for the Environment (Comisión Nacional del Medio Ambiente; CONAMA). In 1990, the CONAMA approved the "instruction for EIA procedure", which was in force until 1997. The Law for Environmental Protection and Improvement was amended in 1993, mandating CONAMA to approve Environmental Impact Assessment Studies, prior to the implementation of a project. The competences for EIA approval were transferred to the Ministry of Environment and Natural Resources (MARN) in 1997.

In 1998 CONAMA issued a new EIA procedure which was amended several times. The current regulation is the Regulation on Environmental Assessment, Control and Monitoring (no. 137-2016).

Major milestones:

- 1986. Law for the Protection and Improvement of the Environment.
- 1990. CONAMA issued the first procedure in EIA.
- 1993. Reform of the law for the Protection and Improvement of the Environment. Gives competence to the CONAMA on approval of the EIA.
- 1997. Creation of the Ministry of Environment and Natural Resources. Acquired competencies of EIA.
- 1998. CONAMA emit new procedure of the EIA.
- 2002. Central American Action Plan in EIA.
- 2003. Regulation on Environmental Assessment, Control and Monitoring (Agreement No. 23-2003).



- 2007. Regulation on Environmental Assessment, Control and monitoring (Agreement No. 431-2007) to respond to the new national reality and new demands of free trade agreements in the topic environment.
- 2007. Issuing of the environmental guide for the urban infrastructure sector (Agreement No. No. 399-2007).
- 2009. Ministerial Agreement No. 676-2009 on the creation of the regional and departmental delegations of MARN (EIA decentralization).
- 2010. Ministerial Agreement No. 266 approves the environmental guidelines.
- 2010. Approval of the socio-environmental guides as mandatory for projects of prevention, recovery and reconstruction to catastrophic events (Ministerial Agreement No. 267-2010).
- 2016 Approval of Regulation on Environmental Assessment, Control and monitoring (137-2016)

source

<http://www.marn.gob.gt/Multimedios/4739.pdf>

## Legal framework

### Enabling law

The legal framework for EIA is provided by the Environmental Protection and Improvement Law (Protección y Mejoramiento del Medio Ambiente), (Decree No. 68-86) from 1986, which was amended in 1993.

source

[http://www.marn.gob.gt/paginas/Base\\_Legal](http://www.marn.gob.gt/paginas/Base_Legal)

### National detailed regulation

Regulation on environmental assessment, control and monitoring (137-2016).

source

<http://www.marn.gob.gt/Multimedios/4739.pdf>

### Guidelines

The Ministry of Environment and Natural Resources elaborated a guide for environmental management in the urban infrastructure sector in 2007 in cooperation with IUCN and CCAD. This guide was approved in 2007 (Government Agreement No. 399).

Environmental guidelines for construction, tourism, agricultural and agribusiness were issued by Ministerial Agreement (No. 266-2010) as instruments of technical guidance for the strengthening of environmental impact assessment studies.

There is also a general guide for the elaboration of Terms of Reference for EIA studies (2004).

source

<http://www.marn.gob.gt/multimedios/304.pdf>

### **Sector specific procedures or regulations**

The Mining Law requires a EIA process for mining activities. Article 20 of the Mining Law provides that those interested in obtaining a mining license, must submit a study of environmental impact to the corresponding entity for review and approval of the respective license. The study should be submitted to the Ministry of Environment and Natural Resources. When the project is within a protected area the proponent must also submit the EIA to the National Council of Protected Areas (Consejo Nacional de Áreas Protegidas CONAP).

source

Ley de Minería, decreto no. 48-97, [www.mem.gob.gt](http://www.mem.gob.gt)

### **Scope of application**

Any project, work, industry or any other activity which can produce deterioration of renewable natural resources or the environment; or which modifies landscapes or cultural national heritage, requires an environmental impact assessment. Categories of Environmental Impact are A, B1, B2, and C.

source

Regulation on environmental assessment, control and monitoring (137-2016), article 5

<http://www.marn.gob.gt/Multimedios/4739.pdf>

### **Exemptions from application**

According to the environmental assessment regulation, all actions executed during a State of Exception (disaster or natural disaster) and 60 days thereafter - provided that they are linked directly with mitigating and provided they minimize the negative effects of the catastrophic event - are exempted from any environmental assessment. However, it is required to register all such activities with the Ministry of Environment and Natural Resources (MARN).

In 2010 socio-environmental guidelines for prevention, recovery and reconstruction projects aimed at mitigation of catastrophic events were approved (Ministerial Agreement No. 267).

source

Article 113 and 114, Regulations on Environmental Assessment, Control and Monitoring (137-2016)

<http://www.marn.gob.gt/Multimedios/4739.pdf>

## **Institutional setting**

### **Central ESIA authority**

The Ministry of Environment and Natural Resources (MARN) is the central authority. Its functions are exercised through their Directorates. The MARN has ten directorates.

Important for the EIA are the following: General Directorate for Environmental Management and Natural Resources (DIGARN), GD of National Coordination, and GD of Legal Affairs.

The DIGARN deals with categories with high impact (A, B1) and megaprojects and serves the MARN Delegation of the City of Guatemala, for the purposes of the environmental assessment.

The Directorate of National Coordination to which the MARN delegations belong, processes the categories with low impact (C and B2).

source

[http://www.marn.gob.gt/paginas/Direccin\\_General\\_de\\_Gestin\\_Ambiental\\_1](http://www.marn.gob.gt/paginas/Direccin_General_de_Gestin_Ambiental_1)

Articles 6-10 or Regulation 137-2016

<http://www.marn.gob.gt/Multimedios/4739.pdf>

#### **Other key (governmental) parties**

The Ministry of Energy and Mining (MEM), including its social-environmental management unit is a major authority involved in environmental management. The social-environmental management unit of the MEM has amongst other functions the task to analyze, evaluate and advise on environmental impact assessment studies submitted for consideration and the supervision and control of implementation of mitigation measures set out in environmental impact assessment studies.

The National Council of Protected Areas (Consejo Nacional de Áreas Protegidas, CONAP) plays an important role in environmental assessments for projects, works or activities in protected areas.

#### **(De)centralisation of mandates**

The Ministry of Environment and Natural Resources (MARN) has a deconcentrated structure. There are regional and departmental delegations (created in 2009 by Ministerial Agreement no. 676). Those delegations were assigned tasks in order to streamline and improve the system of EIA.

The Directorate of the National Coordination of the MARN coordinates the activities of the delegations. Delegations are the actors that shape the policies of the MARN in the regions. However, the General Directorate of the MARN is the decision-maker in the case of environmental assessments (category A and B1). The delegations approve projects categorized as B2 and C, corresponding to very low and low impact.

source

Acuerdo Ministerial no. 676-2009

Articles 6-10 or Regulation 137-2016

<http://www.marn.gob.gt/Multimedios/4739.pdf>

**Payment system**

The proponent pays to the MARN through the agencies of the National Bank System. This Bank manages the MARN revenues. Articles 72-77 contain extensive lists of costs to be paid for environmental formats, Terms of Reference, environmental licenses, registration of consultants amongst others.

source

Articles 72-77 of Regulation 137-2016

<http://www.marn.gob.gt/Multimedios/4739.pdf>

**Contact****Ministry of Environment and Natural Resources (MARN)**

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source

<http://www.marn.gob.gt/paginas/Contacto>