

## Peru

### EIA profile

**Updated to:** 03 September 2019

#### Overview ESIA procedure

The process starts with the categorization of projects and approval of Terms of Reference. Thereafter the EIA study is elaborated and reviewed and finally an Environmental Certificate is issued.

#### Screening

##### Screening process

Screening is a required step.

The proponent sends a request for environmental certification to the competent authority. The competent environmental authority reviews the request of the proponent. The first step is to apply the inclusive list of annex II of the SEIA Law. If the project, work or activity is mentioned in the inclusive list the proponent has to prepare a preliminary assessment. The competent authority reviews documentation and makes a classification decision.

The project is allocated to one of the following categories:

**Category I** Environmental Impact Declaration: includes activities, projects or works whose execution causes low negative environmental impacts

**Category II** Semi-detailed Environmental Impact Assessment: includes projects, activities, or works whose implementation can cause moderate environmental impacts and whose negative environmental impacts can be mitigated or minimized through easily applied measures.

**Category III** Detailed Environmental Impact Assessment: includes projects, activities or works whose implementation can cause significant negative environmental impacts. These projects require an in depth analysis to review their impacts and to propose an environmental management plan.

Projects which lead to resettlement, automatically are part of Category III.

The website of MINAM contains a list of projects, indicating the competent authority taking the screening decision.

In addition, competent Authorities may categorize investment projects and approve Terms of Reference for projects that have common or similar characteristics, in which case the proponent can directly submit the environmental study for review and approval.

The pre-established categorization is available for the following sectors: Hydrocarbons, Mining, Transport, Industry and Commerce, Sanitation and Solid Waste (Clasificación anticipada).

##### *Sensitive areas*

For activities, projects or works in protected areas a consultation with the National State institute of

Protected Areas (SERNANP) is required. The SERNANP gives its technical opinion. The technical opinion of the National Water Authority (ANA) should be requested in the case of the use of water resources.

source

Articles 36-46 Reglamento del Ley SEIA

<http://www.minam.gob.pe/seia/listado-de-inclusion-de-proyectos-de-inversion-sujetos-al-seia/>

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

For proposed projects, works or activities on the inclusive list (annex II Act SEIA) the proponent shall prepare a document to request environmental certification. The document includes a preliminary assessment.

The document should contain the following information:

- Description of project, work or activity which will be implemented in stages of planning, construction, operation, maintenance, and closing
- Legal documents
- Environmental and socio-economic aspects of the area of influence
- Description of potential environmental impacts
- Measures of prevention, mitigation or correction
- Citizen participation plan
- Monitoring and control plan
- Closure/Abandonment plan
- Timeline
- Budget of the project.

Annex VI of the SEIA regulation contains detailed content requirements.

source

Article 41, and Annex VI Reglamento de la ley SEIA

### **Timeline Screening**

For Category I the Preliminary Assessment document can directly be approved or rejected by the competent authority, that will issue environmental certification in case of approval. For Categories II and III, the proponent submits draft terms of reference for a semi-detailed or detailed EIA study, for approval.

Within a period of 20 working days the competent authority will evaluate the contents of the request and classifies the investment. If additional information is required the proponent should submit this

information within 10 working days, or if more time is requested, the maximum period can be up to 20 working days.

source

Article 42-45, Reglamento de la Ley SEIA.

## **Scoping**

### **Scoping process**

As part of the categorization (screening), for investments in categories II and III it is an obligation to elaborate an environmental impact assessment. Therefore, the proponent has to prepare the Terms of Reference. The competent authority reviews the terms of reference and approves the ToR; if not approved the proponent has to correct the ToR according to the comments of the authority.

The competent authority may invite opinions of technical institutes in the categorization process, including terms of reference.

source

<http://www.minam.gob.pe/wp-content/uploads/2013/10/Ley-y-reglamento-del-SEIA1.pdf>

### **Contents of the scoping document**

Terms of Reference for the environmental impact assessment. Annexes of the environmental regulation lay down general criteria for Terms of Reference. Annex III for semi-detailed EIAs and Annex IV for detailed EIAs. The Ministry of Energy and Mining establishes supplementary rules for the Terms of Reference for the activities in the sector.

source

Annexes III and IV

<http://www.minam.gob.pe/wp-content/uploads/2013/10/Ley-y-reglamento-del-SEIA1.pdf>

### **Timeline scoping**

Scoping/Terms of Reference is part of the screening/categorization process, therefore the same timelines apply.

## **Assessment**

### **Assessment process**

The proponent prepares an environmental impact assessment, including physical, biological, archaeological, social and economic impacts. The EIA also includes an environmental management strategy. For category III economic valuation of environmental impact is compulsory.

The proponent elaborates a participation plan in the EIA study and executes this plan to involve the local and/or regional actors. The EIA takes into account public consultations.

The proponent presents the EIA with additional documents to the competent environmental authority.

In the case of projects, activities or works of category III, a public hearing is organized after the presentation and publication of the EIA.

source

Article 47-50

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

The SEIA Law defines a mandatory content of environmental impacts assessment (EIA) studies.

- Summary
- Description of the proposed action
- Base line study
- Identification and characterization of the environmental impacts throughout the project cycle
- Environmental management plan
- Contingency plan
- Plan of closure
- Public participation plan
- Monitoring and control plan
- Schedule and budget
- Economic recovery; only for the Detailed EIA
- Community relations plan; only for the Detailed EIA.

Annex III and IV contain detailed requirements.

The EIA study needs to be elaborated according to the approved Terms of Reference.

Sectors can establish additional requirements. For example, the Ministry of Energy and Mining requires also a list of local authorities and documentation of participation events.

### **Accreditation of consultants**

Each sector manages a registry of approved EIA consultants. The Ministry of Environment is starting the implementation of a central register of authorized entities to conduct environmental studies.

source

Articles 72-74, Reglamento SEIA.

## **Review**

## Review process

For projects, activities or works of category I the preliminary assessment document (screening document) is reviewed to obtain environmental certification. If the competent authority approves the preliminary assessment, an environmental certificate is issued.

For projects in category II and III the competent environmental authority reviews the EIA study, the information of the public hearing, the information concerning the participation plan (surveys and/or participation workshops) and public comments. During the review process the competent authority can request the opinion of other public bodies and institutions. In a technical review document, it has to be justified how and whether the opinions were considered.

For detailed environmental impact assessment studies (category III), the competent authority may establish a mechanism of review involving the authorities of other sectors and/or regional and/or local organization that are involved.

source

Articles 51-53, Reglamento SEIA.

## Review expertise

The review is done by the competent authorities, but they can make use of technical opinions of other entities or authorities.

source

Article 53, Reglamento SEIA

## Timeline Review

- 40 working days for the process of evaluation and review by the competent authority for category II ,
- 70 working days for category III

The competent authority may extend the timeline once with a maximum of 30 working days

source

Article 52, Reglamento SEIA

## Decision making

### Integration of ESIA into decision-making

Environmental certification is required prior to the execution of the project, activity or work. The elaboration of EIA is required in the case of investments that can cause moderate or significant negative environmental impacts.

The competent authority that makes a decision on the environmental certification is the corresponding sectoral authority. For example the Ministry of Health provides environmental certification for hospitals and the Ministry of Production grants environmental certification for industrial fishing activities.

Th Environmental Certification entitles the proponent to obtain other authorizations, licenses, permits or

other requirements that are necessary for the execution of the project.

The Environmental Certification obliges the holder to comply with all obligations to prevent, control, mitigate, rehabilitate, compensate and manage impacts indicated in the Environmental Impact Study. Any breach with these obligations is subject to administrative penalties and may even lead to cancellation of the Environmental Certification.

source

Article 55, Reglamento SEIA.

### **Decision justification**

The competent environmental authority provides the technical and legal considerations that underlie the decision. The resolution of environmental certification is published. The published information includes the justification for the decision taken.

### **Timeline decision-making**

20 working days

source

Article 52, Reglamento SEIA.

### **Possibilities for appeal**

It is possible to file an appeal against the decision on the screening and the decision of approval of an EIA. One may appeal before the administrative authority.

Every citizen, public and private organizations, and the proponent may appeal against the decision of approval or rejection of the environmental impact assessment study or environmental certification via administrative procedures of appeal. Also municipalities may appeal against decisions of environmental certifications in their jurisdiction.

The Court of Auditors (Controlaria General) and the Ombudsman of the Environment (Defensoria del Pueblo, Adjuntia de Medio Ambiente) guard state activities related to human rights, human health and the environment. They monitor environmental licensing by the state in the case the project, works or activity cause environmental damage or damage to health of citizens.

source

Article 59, Reglamento SEIA.

### **Follow-up**

#### **Compliance monitoring**

The environmental impact assessment study should include a Monitoring and Supervision Plan.

The supervision, enforcement and control is done by authorities at national, regional and local level, according to what is established in the approved EIA study and according to their legal mandates.

source

Articles 75-81 of SEIA.

### **Non-compliance penalties**

There is a possibility for sanctions and penalties, but amounts are not specified.

## **Stakeholder engagement**

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

According to the SEIA Law and its regulations the EIA process is a participatory process. From the start of the process the proponent involves the various actors in the area of influence. The proponent has the obligation to draw up a public participation plan and execute it during the EIA process. The competent authority approves and monitors.

In the review process, a public hearing is mandatory for projects, works and activities of category III. Regarding category II, the competent authority may require a public hearing.

The regulations on transparency, access to environmental information by the public and consultation and participation of citizens in environmental matters, define the access to information and participation of citizens in the EIA process. The Ministry of Energy and Mining provides complementary standards on citizen participation.

There is a specific requirement for participation by peasant communities and indigenous peoples, following the ILO 169 requirements.

The competent authority shall take into account the observations of the citizens in the EIA approval.

source

Articles 68-71 Reglamento SEIA.

### **Timeline for public comments**

Timelines for public comments are determined by the sectoral, regional or local norms and standards.

The Ministry of Energy and Mining sets timelines for the citizen participation process. After the environmental impact study is completed and the conformity declared, a notice is published within 7 days in the national and regional media. Within 40 calendar days the public hearing is held. After the public hearing 30 calendar days are scheduled to receive comments and observations and 20 calendar days to hold additional workshops.

### **Access to information**

All documentation on the EIA process is accessible to the public, unless declared as secret, confidential or reserved information. Under no circumstances this may limit the right of access to public information regarding documentation related to impacts involving hazards and/or effects to human health or the environment. Access to information for the citizen is regulated in the Law on Transparency and Access to Information .

The citizens can make request for information to the environmental authority in writing with their name, ID and address.

In general, a summary of the environmental impact study is presented to the public at the headquarters of the corresponding sectoral Regional Directorate, and at the headquarters of the district or provincial municipality. Furthermore, the environmental resolution is published in newspapers. The competent authority may require the summary to be written in the local language.

source

Supreme Decree N° 002-2009, MINAM

<https://www.gob.pe/945-acceso-a-la-informacion-publica-acceso-a-la-informacion-publica-del-organismo-de-evaluacion-y-fiscalizacion-ambiental>

## **ESIA practice**

### **Central ESIA database**

Each sector has its administration of environmental certifications and assessments. This is coordinated with MINAM and the national system of environmental information (SINIA).

source

<https://sinia.minam.gob.pe/>

### **Relevant links**

[Peruvian Society for Environmental Law](#) (Sociedad Peruana de Derecho Ambiental, SPDA)

[www.actualidadambiental.pe](http://www.actualidadambiental.pe)

Peruvian Institute for Environment and Sustainable Development (Instituto Peruano de Medio Ambiente y Desarrollo Sostenible)

## **Background information**

### **History of ESIA**

The Environment and Natural Resources Law (Legislative Decree no.613 of 1990) stipulates the procedures for the implementation of EIA for activities, projects or works that can cause environmental damage. The energy and mining sector issued specific regulations on environmental protection activities for metallurgical mining and oil and gas drilling activities in 1993. In 1994 the electricity sector established specific norms for EIA in the sector.

In 2005 the Congress approved the General Environment Law (Law no. 28611, 2005). With the creation of the Ministry of Environment in 2008 environmental management in the country was further developed.

General EIA procedures were approved in 2009 by the Law on the National System of Environmental Impact Assessment, SEIA (Law no. 27446). The passing of this Law has been important to unify and



develop the EIA procedures for all sectors. The law was modified several times to cater for changes to the screening lists (projects subject to EIA) .

Key milestones:

- 1990 Law of Environment and Natural Resources
- 1993 Environmental protection regulations in the energy and mining sector
- 2005 General Environmental Law
- 2008 Establishment of the Ministry of Environment
- 2009 Law on the National System of Environmental Impact Assessment (SEIA), last amendment in 2017.

source

<http://www.minam.gob.pe/wp-content/uploads/2013/06/ley-general-del-ambiente.pdf>

<http://www.minam.gob.pe/wp-content/uploads/2013/10/Ley-y-reglamento-del-SEIA1.pdf>

<http://www.minam.gob.pe/seia/listado-de-inclusion-de-proyectos-de-inversion-sujetos-al-seia/>

## Legal framework

### Enabling law

General Environment Law (Law no. 28611, 2005).

source

<http://www.minam.gob.pe/wp-content/uploads/2013/06/ley-general-del-ambiente.pdf>

### National detailed regulation

The Law on National System of Environmental Impact Assessment (SEIA, Law No. 27446) and its procedural rules adopted in 2009. (Supreme Decree No. 019, published in the “El Peruano”)

source

<http://www.minam.gob.pe/wp-content/uploads/2013/10/Ley-y-reglamento-del-SEIA1.pdf>

### Guidelines

General Directorate of environmental affairs for the Energy Sector (of the Ministry of Energy and Mining):

- Guidelines on community relations

- Environmental Guidelines for the Electricity sector, for exploration and production projects in the hydrocarbons sector

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

Specific Sectoral Regulations/procedures:

Energy and mining sector:

- Ministerial Resolution on the Register of Entities that are allowed to conduct EIA.
- Regulation on Citizen Consultation and Participation in the approval of the EIA in the Energy and mining sector (RM 596-2002-EM/DM)
- Regulation for environmental protection in oil and gas drilling, mining, electricity and energy activities

Industrial production sector:

- Ministerial Resolution that approves the guidelines for the prevention of contamination by the industrial production sector (R.M. No. 198-2006)

Transport sector:

- Resolution that approves the guidelines for the elaboration of EIA for harbor projects (D. N° 012-2007-MTC).

Tourism sector:

- Register of authorized entities that are allowed to develop environmental impact studies and are allowed to conduct other environmental management instruments applicable to the activities of the tourism sector.
- Draft environmental rules for the development of tourism activities.

#### **Scope of application**

It includes policies, plans and programs at the national, regional and local levels that generate significant environmental implications, as well as public or mixed capital investment projects that could cause significant negative environmental impacts.

source

<http://www.minam.gob.pe/seia/>

#### **Exemptions from application**

In a state of emergency due to catastrophic events the activities related to these events do not require EIA. MINAM however has to be informed.

source

p.78 <http://www.minam.gob.pe/wp-content/uploads/2013/10/Ley-y-reglamento-del-SEIA1.pdf>

## Institutional setting

### Central ESIA authority

There is no central environmental authority in EIA. The competent environmental authority for EIA is the corresponding sectoral authority. The Ministry of the Environment establishes the rules and procedures regarding EIA, coordinates their implementation, monitors its correct functioning according to the legislation, renders its technical opinion if required, and manages registration of the entities authorized for processing EIAs, and the environmental certification system.

source

<http://www.minam.gob.pe/seia/preguntas-frecuentes/>

### Other key (governmental) parties

According to article 5 of the Regulation of the SEIA Law, apart from MINAM, the following parties are involved:

- **Competent authorities:** these can be the national sectoral authorities, regional and local governments, the latter whenever the function of EIA has been transferred to them within the framework of the decentralization process. They are responsible for conducting the environmental evaluation process, approving the classification of investment projects, approving the terms of reference, reviewing and evaluating environmental studies and granting environmental certification, if applicable.
- **SENACE:** specialized public body attached to MINAM, which is responsible for the review and approval of the Detailed Environmental Impact Studies (EIA-d) of public, private or mixed capital projects of national or multiregional nature.
- **Technical institutes:** in the event that an investment project has been planned within a Protected Natural Area or in a Buffer Zone, or is directly or indirectly linked to the use of a water resource, the Competent Authority will request an opinion from SERNANP (protected areas) and ANA (water related).
- **Environmental supervision, inspection and sanction authorities:** related to the fulfillment of the obligations assumed in the approved and agreed environmental study.

Important sectoral ministries for EIA are:

- Ministry of Energy and Mining (MINEM) with its General Directorates of Environmental Affairs for Mining Activities and Environmental Affairs of the Energy Sector
- Ministry of Production (Produce) and its General Directorate of Environmental Affairs for Industrial Activities
- Ministry of Transportation and Communication (MTC)
- Ministry of Housing, Construction and Sanitation (Vivienda, Construcción y Saneamiento)
- Ministry of Health (MINSA)

source

<http://www.minam.gob.pe/seia/preguntas-frecuentes/>

**(De)centralisation of mandates**

The EIA system is decentralized in the sense that sectoral, regional and local authorities have a mandate in the EIA process.

The sectoral ministries delegate their functions of relative small local and regional EIAs to their Regional Directorates.

**Payment system**

The proponent pays a fee. The procedure for payment is in agreement with the regulation for administrative procedures (TUPA). The payment is done at the National Bank.

source

<https://www.gob.pe/institucion/minam/informes-publicaciones/20021-texto-unico-de-procedimientos-administrativos-tupa-del-ministerio-del-ambiente>

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