Afghanistan

EIA profile

Updated to: 25 February 2015

Overview ESIA procedure

The EIA process as defined in the EIA regulations (2008) includes a Screening, assessment, review and a decision-making process. Scoping and follow-up activities are advised, but not mandatory. In general, the EIA process in its interim state is recommended to follow international best practices. The outcome of the EIA process is the granting or rejecting of a Certificate of Compliance. The EIA policy (2007) provides flow charts on the overall EIA process and the different EIA stages.

The following main documents result from the EIA process: Screening report, EIS, Comprehensive mitigation plan, evt. Review document, Certificate of Compliance.

Screening

Screening process

Screening is required. According to the Environmental Law, NEPA is the screening decision authority but receives recommendations from the EIA Board of Experts.

The proponent should conduct a screening process and submit an application with a technical screening report to NEPA. The screening report should be consistent with international best practices and the technical guidelines for Screening, which are added to the EIA regulations (2008) in their Schedule 3. NEPA will then distribute a notice of public disclosure and thereafter NEPA will take a Screening decision. The NEPA then decides, if the information provided is sufficient and a Certificate of Compliance can be issued, if further information is requested, or if the applicant should do an EIA in order to obtain the Certificate of Compliance.

The Screening decision is taken on the basis of lists provided by the EIA regulations. They divide the activities into different impact categories:

- Category 1: activities likely to have significant adverse impacts
- Category 2: activities with potentially adverse impacts;

The lists are inclusive and uses tresholds that are based on initiative features and environmental parameters. Activities under category 1 or 2, any activity which is likely to have negative environmental impacts that is located in an environmentally sensitive area or other activities that are determined by the NEPA is a ?prohibited activity? and thus subject to EIA by the Environment Law (2007). If a proposed activity is listed as 'prohibited activity' (in EIA approach annex 1), a Certificate of Compliance is required for it before the activity can be undertaken.

Sensitive area's

Regulation 2(3) of the EIA regulations (2008) give some provisions for environmentally sensitive areas. Activities that are likely to have significant adverse effects on the environment of an area that has been determined by NEPA to be a environmentally sensitive area, are defined as prohibited activities and are thus subject to EIA.

Contents of the starting document

The information that is to be supplied by the proponent in the application (screening report) is included in Schedule 3 of the EIA regulations (2008). They advise that information regarding the following issues should be provided: the applicant, the activity, the location of the activity, potential sources of impact, mitigation measures, public participation etc.

Timeline Screening

The NEPA has 14 days after receiving a complete application to distribute the notice of public disclosure. Within 21 days of distribution the notice of public disclosure the NEPA than will take the screening decision. Thus within 35 days from when he had submitted the application, the proponent receives the decision of NEPA on whether an EIA has to be conducted.

source

EIA regulations (2008)

Scoping

Scoping process

No provisions for scoping are given in Environment Law or the EIA regulations (2008). The non-binding EIA policy, however, does mention a Scoping stage.

The EIA policy defines a Scoping procedure. It states that the NEPA is responsible for the Scoping process with assistance by the Board of EIA Experts. According to the guidelines during the Scoping stage, the NEPA decides on the activities for which EIA was required (as determined in the Screening phase) if those activities can commence work already and what the EIA requirements for it are. There are three options:

- projects can require an EIA before works can be commenced
- project can be granted permission to commence works but thea are still requested to prepare an EIA report
- a permit is released with no further EIA requirements

  Projects with most severe impacts and thus activities that fall under Category 1 as defined in the Screening phase are likely to not be given permission to commence works.

For those project for which an EIA report is required, NEPA provides the proponent with the Terms of Reference. Guidelines for scoping may be developed in the future, but sector specific guidelines are a higher priority.

Contents of the scoping document

Proponents are guided by international best practices.

source

UNEP contact

Assessment

Assessment process

No specific requirement on the assessment process are given. The proponents are responsible for the EIA study and the quality of the EIA reports. The assessment shall be done in accordance with international best practice.

source

Administrative guidelines for the preparation of Environmental Impact Assessments (draft March 2007) and EIA policy (2007)

Contents of the EIA report

The EIA report shall contains information on the activity:

- a full description of the activity and its need and desirability
- a description of the location and the environment of the activity;
- information on likely impacts and benefits;
- information on alternatives and their impacts;
- mitigation measures
- monitoring measures
- an identification of all involved parties;
- a description of the public participation process during the EIA process
- other information as required by NEPA.

Review

Review process

The NEPA reviews the EIA reports. If it finds the submitted technical reports and information to be not in accordance with international best practice, the proponent will be adviced to submit a review document indicating the manner in which the applicant has addressed the concerns of the NEPA.

source

UNEP contact

Review expertise

Once in place, the Board of Experts will advice NEPA the review process. It is unclear if the Board of Experts is already established in practice.

source

National Environmental Management Act 107 of 1998 (Chapter 5 section 24I)

Timeline Review

45 days from submission of the EIA report, it should be approved and a decision should be made on the issuance of the perrmit. If the EIA report is not approved and a review document has been submitted by the proponent, within 30 days a decision should be taken on whether the certificate of compliance will be issued or not.

Decision making

Integration of ESIA into decision-making

Acceptance of the EIA report and issuance of the permit is an integrated decision taken by NEPA. By accepting the EIA report, NEPA issues the required permit simultaneously. The Certificate of Compliance gives authorisation for commencing works on the activity. The Certificate of Compliance is issued if:

- the applicant has complied with the procedural requirements for EIA;
- the submitted technical reports and information are in accordance with international best practice;
- if the applicant has fully consulted with affected people; and has adequately addressed their concerns.

In addition to the Certificate of Compliance, the activities might also require a separate authorization for the polluting activity during operation, a pollution control licence. Hence, the Certificate of Compliance may not be the only authorisation required for project approval.

source

EIA regulation 9 (2008)

Decision justification

The decision on the Certificate of Compliance falls together with the EIA report approval. If the EIA report is found to be not satisfactory the proponent is informed in writing about the concerns of the NEPA regarding it.

Timeline decision-making

Within 45 days from submission of the EIA report it has to be decided if the report is approved. This decision falls together with the decision on the issuing of a Certificate of Compliance.

Possibilities for appeal

Appeal is possible to any person under the Environment Law (2007, article 17) to the Director-General of

NEPA. The decision on the granting or rejecting of the Certificate of Compliance can be appealed. The Director will then review the appeal application and take a decision regarding it. If the appellant wishes to appeal this decision of the Director-General of NEPA, the matter will be referred to a relevant court.

Follow-up

Compliance monitoring

The EIA regulations (2008) do not provide requirements for a follow-up on the Certificate of Compliance. However, the non-binding EIA policy (2007) mention follow-up to be part of the EIA process but to provide very limited information on the process. The follow-up process includes ensuring that the terms and conditions of the approval are met.

Non-compliance penalties

NEPA may issue a compliance order if the conditions of the permit have been breached and can required the person to take actions, or take these actions itself and recover the costs and may suspend the license with immediate effect. If the holder of the permit fails to comply with the compliance order he shall be tried by a court of law and shall be sentenced to up to three month imprisonment and/or 10,000 Afghanis. (Environment Law article 69-70)

Stakeholder engagement

Public participation requirements for ESIA process stages

It is required by Law that the public can participate in all stages. In the EIA regulations (2008), specific provisions are given for the public participation during the Screening phase.

Article 19 of the Environmental Law determines that affected persons may express their opinion on the following elements:

- the proposed activity, plan or policy as such
- the preliminary assessment
- the EIS
- the final record of opinion
- the comprehensive mitigation plan

Bearing in mind the reality on the ground in Afghanistan, there is no restriction on form. The proponent will be responsible for collecting comments at, for example, public meetings. However NEPA will perform an oversight function in this regard. During the transitional period, it is anticipated that the proponents will have a mentoring function in relation to NEPA. Although there is a conflict of interests of sorts in this approach, it should be borne in mind that most proponents are donors/ implementing agencies, and that capacity building is the focus of many of their programmes.

The EIA Law specifies that the NEPA shall not take a decision on the Certificate of Compliance until the proponent has fullfilled several requirements on public participation. Also that the consultant has to have fully consulted with affected people and that he has adequately addressed their concerns is named as a main criteria of the NEPA to decide whether the Certificate of Compliance will be granted or not.

The costs are borne by the proponent in terms of article 18 of the Environment Law.

source

Environment Law (article19 of the Environment Law) and regulation 7 (4) of interim EIA regulations

Timeline for public comments

The public has 21 days to comment after the notice of public disclosure, before the NEPA takes a screening decision.

Access to information

See also at the public participation requirements:

Article 19 of the Environmental Law determines that affected persons may express their opinion on the following elements:

- the proposed activity, plan or policy as such
- the preliminary assessment
- the EIS
- the final record of opinion
- the comprehensive mitigation plan

The proponent is responsible for distributing copies of the documents that are subject to public review to affected persons. Also the proponent has to inform the public about the documents that are made available through advertising the document and displaying a copy of it for inspection. During the Screening phase, a notice of public disclosure is distributed. Application documents are available at NEPA.

ESIA practice

Annual no. of ESIAs

No information

Central ESIA database

No information

Professional bodies

No information

Background information

History of ESIA

In December 2005, the Afghan cabinet approved an Draft Environmental Law that for the first time gave Afghanistan a legal tool for environmental management. The concept of EIA has been introduced in Afghanistan through this Environment Law. It was gazetted in early 2007 after it had been reviewed and amended. EIA regulations gazetted in 2008 further legally define the EIA process.

The National Environmental Protection Agency (NEPA) as the central EIA authority was established simultaneously to the EIA legal system. As it was expected that the NEPA in its starting phase lacks capacity, a flexible EIA system was developed that NEPA can implement in line with its existing capacity. Also the interim EIA system was directed to recognize the development needs in Afghanistan in a post-conflict timeframe. As part of the interim EIA system, a non-binding EIA policy was issued in 2007. Furthermore, Interim EIA regulations (2007) and administrative guidelines for the preparation of EIA were prepared by the NEPA.

In this interim EIA system, the responsibility for technical content remains with the proponent. As almost all proponents of EIA-subjected projects in Afghanistan are donors or donor-funded implementing agencies, it is hoped that such proponents will fulfill their obligations in this regard. Also, it is anticipated that the proponents will have a mentoring function (comparable to external experts in other EIA systems) as capacity building is the focus of many of the programmes of the donors. Proponents are bound by international best practice on EIA as the EIA regulations require. In due course, NEPA will take on more of a substantive role, as envisioned in the Environment Law and EIA policy (using the Board of Experts etc.). The UNEP has supported the NEPA throughout this process of EIA policy development.

source

UNEP Post-conflict EA, 2003

Environews, 2006

Afghanistan Biodiversity, 2009

Legal framework

Enabling law

The Environmental Law (2007) builds the framework for ESIA. It introduced ESIA into the legislation in Afghanistan and also established the National Environmental Protection Agency as its central authority. The UN Environment Programme (UNEP) assisted the development of the law.

source

Environmental Law 2007

National detailed regulation

The first national regulations that operationalised ESIA were the ESIA regulations that were gazetted in 2008 by NEPA (Official Gazette No. 873). They built upon the Interim ESIA regulations from 2007.

source

Environmental Impact assessment Policy

Guidelines

The National Environmental Impact Policy issued in 2007 is a non-binding tool guiding the interim ESIA

system. Also, administrative guidelines for the preparation of Enviornmental Impact Assessments were issued in 2008.

The UNEP is supporting the NEPA to establish sector guidelines to guide the proponents. It is not confirmed if these sector guidelines have already been finalised.

Sector specific procedures or regulations

The minerals law (2010) requires an ESIA - including a social impact assessment - in order to obtain the needed exploitation licenses.

The National Pollution Control and Management Policy (2008, Draft) further indicates that an approach to pollution control should be integrated in the ESIA system. The National Development Strategy (2008) mentions ESIA with respect to the following sectors: Urban projects, agriculture and rural development and transport. It is thus expected that the ESIA will be further established in the different sector policies.

Scope of application

The EIA policy (2007) approach focuses on development activities by development agencies, but it states that once NEPA has developed skills in the art of EIA administration and enforcement it could extent its influence to encompass the private sector. The Environment law states that the EIA regulations apply to any person, ministry or national authority.

Exemptions from application

No categorical exemptions are formulated. However, NEPA may approve a project subject to EIA without requiring an EIA if it is convinced that the environmental impacts will not be significant and/or the proposed mitigation measures will be sufficient.

Institutional setting

Central ESIA authority

The National Environmental Protection Agency (NEPA) is the central EIA authority in Afghanistan. It was established in 2005 through the Draft of the Environmental Law as an independent agency to combat the environment. It has 34 sub-province offices. NEPAs mandate is to mainstream the environment into all national and sectoral initiatives and hence includes the advocating and overseeing EIAs of all major development projects. NEPA has a Division for Environment, Impact Assessment which is further divided in two departments, one for EIA and the other one for Sustainable Development. Article 9 of the Environmental Law (2008) specifically names the provision of environmental management services in the field of environmental assessment as one of the functions of NEPA.

The NEPA was established at the same time as the EIA process in Afghanistan. Hence, the capacity of NEPA to administer full EIA was considered to be limited at the start of EIA practice in Afghanistan. An interim EIA system was thus developed that limits the role of NEPA in this process accordingly. It determines that the obligation to meet international best practice lies with the proponent and that the NEPA's role is largely limited to ensure that the process that is outlined in the regulations is followed. In March 2010, NEPA underwent a major restructuring with significant changes to both its organizational and staffing structures.

source

Afghanistan Biodiversity 2009

Environment programme, 2012

UNEP programme annual report 2010

Other key (governmental) parties

The EIA Law (2005) gives provisions for an EIA Board of Experts that reviews, assesses and considers applications and documents submitted by proponents for obtaining permits. It also makes technical recommendations on whether the permits should be issued or not, as well as on the conditions that should be attached to the permit. The Board is appointed by the General Director of the NEPA and is composed of not more than 8 members. Has it been established? The Law also provides for a Committee for Environmental Coordination, which among other functions, shall make recommendations to coordinate environmental activities including cooperation on EIA procedures.

The proponents (international donors) and UNEP experts are currently building NEPA's capacity to implement the EIA system.

source

Environmental Law 2007 article 10, 20.

(De)centralisation of mandates

The EIA policy from 2007 determined that the provincial offices of the NEPA yet needed to be utilized i the EIA process. As a start for that, it was intended that they are fistly responsible for the distribution of the public disclosure of the proposed project. The NEPA headquarter is responsible for the remainder of the EIA related tasks until the system is functioning adequately. Once their capacity is increased, the role of the provincial offices of the NEPA will be defined further.

source

EIA policy 2007

Payment system

A proponent, being a non-Afghan natural or legal person or a combined Afghan and non-Afghan enterprises, pays 100,000 Afghanis to the Ministry of Finance when the Certificate of Compliance has been issued.

source

EIA regulation 11 (2008)

Contact

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