

# Democratic Republic of Congo

## EIA profile

**Updated to:** 19 August 2019

### Overview ESIA procedure

Once the proponent submits a screening request, the ACE decides whether a project must undergo ESIA. If required, the proponent hires an environmental consultant to conduct the study. The ESIA report, including an Environmental and Social Management Plan (ESMP) is then submitted to the ACE.

Upon receiving the ESIA, the ACE establishes a panel of experts to review the report. The panel approves, rejects or asks for amendments. In case the ESIA is approved, the proponent needs to submit a more elaborate ESMP, which is again reviewed by the ACE. Only when both the ESIA and the ESMP are approved, the ACE grants the environmental certificate to the project.

### Screening

#### Screening process

The proponent sends a screening request to the ACE. The ACE reviews whether the project fits into the activities outlined in the Annex of the ESIA Decree and decides whether ESIA is required.

#### Contents of the starting document

The proponent is expected to send a screening request in line with the manual formulated by the ACE. This manual is not yet formulated.

### Scoping

#### Scoping process

Scoping is not a required step in the ESIA procedure.

### Assessment

#### Assessment process

The proponent is responsible for the ESIA study and recruits, after approval from the Ministry of Environment, a consulting firm to conduct the study.

## Contents of the EIA report

Article 19 of the ESIA Decree demands that the following is included in reports:

- A non-technical summary both in English, French and the relevant local language.
- Project context and justification.
- Legal and institutional framework.
- Detailed description of the project, including useful maps and images.
- Detailed baseline information on the environmental, socio-economic and humanitarian situation and in particular elements and natural resources that may be used or impacted.
- A comparative analysis of alternatives, justification of selected technologies and an explanation of the environmental considerations that were taken into account
- Identification and analysis of predictable direct, indirect and cumulative impacts of the project on the environment.
- The Environmental and Social Management Plan that describes:
  - *impacts, mitigation measures*
  - *responsibilities and costs for monitoring and evaluation*
  - *monitoring indicators and timelines*
  - *modalities for capacity development and*
  - *the results of public consultations.*
- A conclusion that can be drawn from the study and a statement from the proponent to respect environmental and social requirements.
- Annexes including maps, figures, documentation of the public hearing, administrative documents, results of analysis, curriculum vitae of experts and the terms of reference for the study.

## Accreditation of consultants

Article 22 of the ESIA Decree states that the conditions to approve consultancies allowed to carry out ESIA studies shall be adopted by a Ministerial decision.

Before hiring a consultant, the proponent first needs to get approval from the ACE. International consultancies may be engaged, but in case of equal competence, national consultancies should be given priority. All international consultants recruited need to be associated with a national consultancy.

## Review

### Review process

Upon receiving the ESIA report, the ACE establishes a multi-disciplinary and multi-sectoral panel of experts with the relevant expertise to review the report. Based on this review, the ACE informs the proponent whether the ESIA is accepted, certain amendments need to be made or is rejected.

When a study is rejected, the proponent needs to re-do the ESIA study. In case the ACE demands for amendments, the proponent has 30 days to integrate these amendments into the ESIA report. If this term is surpassed, the study will be considered as rejected. On the contrary, when a proponent does

not get a response from the ACE within three months, the study is considered as accepted and an Environmental Certificate acquired.

### **Review expertise**

The panel of experts to review ESIA exists of:

- 4 representatives of the competent institution.
- 1 representative of the Ministry concerned with the project.
- 1 representative of the National Social Service Promotion Fund.
- 3 resource persons with relevant expertise.

### **Timeline Review**

The ACE must notify the proponent on its decision within three months from receiving the ESIA report.

### **Decision making**

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

When a project requires an ESIA, the same project must also acquire an environmental certificate from the ACE. The provision of an environmental certificate is linked to the approval of an ESIA and its ESMP and is given for the entire project period.

#### **Timeline decision-making**

When receiving the elaborated ESMP, the ACE has 60 days for its review. If the ACE fails to validate it within this given period, the plan is considered as approved.

#### **Possibilities for appeal**

The proponent has the right to appeal against the decision by the ACE not to deliver an environmental certificate or the decisions by the competent authority related to the public hearing. The procedure for appeal must follow existing administrative laws.

### **Follow-up**

#### **Compliance monitoring**

During the whole project period, the proponent is responsible to implement the measures in the ESMP, and to monitor sub-contractors in order to avoid, reduce and to compensate for adverse environmental impacts. The proponent is also required to monitor the environmental situation and the effectiveness of the proposed mitigation measures.

## **Non-compliance penalties**

In case of non-compliance, the ACE can suspend a project and demand compliance from the proponent within a certain period of time. If the proponent does not respond within the given period, the agency cancels the environmental certificate of the project. In case the mitigation measures agreed upon prove to be ineffective or non-suitable, the proponent must make the necessary adaptations.

## **Stakeholder engagement**

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

When a project requires an ESIA, the proponent must approach and request the relevant governor to initiate a public hearing. This request must be accompanied with the following information:

- A document outlining the main technical characteristics of the proposed project.
- A non-technical summary of the project.
- The map outlining the project's zone of influence.

Upon receiving a request for a public hearing, the governor in question establishes a commission that is chaired by the administrator or the mayor of the area, and with representatives from the local environmental and other relevant services and civil society. If necessary, experts may be hired to assist this commission. The proponents must bear the costs of the public hearing. After collecting comments from the public and stakeholders, the commission delivers a report to the competent authority. This report outlines the process and provides a synthesis with recommendations and decisions proposed by stakeholders. The report must also include the minutes of each hearing, with signatures of the commission members and participants.

The ESIA Decree does not specify how the outcomes of the public hearing link with the ESIA report and its approval.

### **Timeline for public comments**

At least two months in advance to its opening, stakeholders must be informed about the public hearing. The public hearing is announced in the project area through all communication channels that are accessible to the public. This announcement must be both in French and the local language. Subsequently, during a period of maximum two months, the suggestions and proposals of stakeholders are collected.

### **Access to information**

After receiving and reviewing the public hearing report, the competent authority either accepts this report or demands for further information or clarification. If the commission responsible for the public hearing does not respond within 15 days, the competent authority publishes the report through all channels available in the project area.

## **ESIA practice**

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

It is estimated that around 389 impact assessment studies have been realized in DRC in the

period 2012-2016.

### Professional bodies

ACE is affiliated and an active member of SIFEE (Le Secrétariat international francophone pour l'évaluation environnementale).

### Relevant links

<http://extwprlegs1.fao.org/docs/pdf/cng140363.pdf>

<https://www.medd.gouv.cd/v2/index.php/documents-et-publications>

[http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=fr&p\\_isn=96987&p\\_country=COD&p\\_count=241 /](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=fr&p_isn=96987&p_country=COD&p_count=241/)

<http://www.ilo.org/dyn/natlex/docs/SERIAL/96987/114901/F-2083192176/COD-96987.pdf>

<https://www.ifdd.francophonie.org/ressources/ressources-pub-desc.php?id=776>

## Background information

### History of ESIA

ESIA was first introduced in DRC through its mining code in July 2002 and the mining regulation that followed in March 2003. After only applying to the mining sector for several years, ESIA obligation was expanded to other fields with the enactment of the environmental law in 2011.

source

mining code: law no 007/2002

mining regulation: Decree no 038/2003

Environmental law: no 11/009

### Legal framework

#### Enabling law

In DRC, the general environmental law - no 11/009 of July 2011- outlines the principles for environmental protection and governance. This law calls for the inclusion of environmental and social considerations in decision making and promotes sustainable development and public participation. Article 21 obliges the conduct of ESIA for certain projects.

source

<http://www.ilo.org/dyn/natlex/docs/SERIAL/96987/114901/F-2083192176/COD-96987.pdf>

### National detailed regulation

Decree no 14/019A (2014) sets out the procedural requirements for ESIA. The same decree also provides the requirements for SEA, environmental audits and public hearings.

In addition to the mining sector, there are other sectoral laws that refer to ESIA obligation:

- Law no 11/022 of December 2011 related to agriculture development
- Law no 15/012 of August 2015 related to hydrocarbon development
- Law no 15/026 of December 2015 related to water

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

Mining regulation March 2003.

#### **Scope of application**

Decree no 14/019 (Article 18) states that all projects for infrastructural, industrial, commercial, agricultural, forestry, mining, hydrocarbon, cement, telecommunication development, and others with potential environmental impacts are susceptible to ESIA. The Annex of this decree gives a list of activities for which an ESIA report and an ESMP must be submitted. This list suggest that all activities in the list must undergo ESIA and thresholds are given for only a few activities.

### **Institutional setting**

#### **Central ESIA authority**

The authority for ESIA is ACE (l'Agence Congolaise de l'Environnement). ACE is part of the Ministry of Environment and Sustainable Development.

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

When reviewing the Environmental and Social Management Plan of an ESIA, the ACE needs to get advice from the National Social Service Fund.

#### **Payment system**

The ESIA Decree (Article 30) states that the proponent must pay a fee upon submitting its ESIA report. The decree does not provide further specification.

### **Contact**