

South Africa

EIA profile

Updated to: 03 February 2015

Overview ESIA procedure

In South Africa, the EIA process can also be called the environmental authorisation process as it starts with an application for an environmental authorisation and leads up to getting such a permit. Two levels of assessment are distinguished: a basic assessment process and a full EIA. They require different levels of detail of the information that has to be collected and assessed. The full EIA process comprises of the following steps:

- Screening
- Scoping
- Assessment study (may involve specialist studies and specialised processes)
- Review
- Decision making
- Follow-up

An overview of how the different processes related to each other is provided by the flowchart that can be found on the pages 10, 15 and 19 of the Companion Guideline for the Implementation of the EIA regulations from 2010.

The following milestone documents are outputs of the EIA process:

Application form for environmental authorisation (during Screening), plan of study for EIA (during Scoping), Scoping report, specialist report and specialised processes (if applicable), EIA report or a Basic Assessment Report, Environmental Management

Programme (EMP), Environmental Authorisation document.

Screening

Screening process

Screening is done by the relevant authority at national, provincial or local level, as may be designated.

The EIA regulations distinguish between two levels of assessment, a Basic Assessment (BA) and a full EIA. The purpose of the BA process is to streamline EIA so that smaller-scale activities, such as road widening, construction of dams below 5m in height etc., are not subjected to a full EIA process. It does not include a scoping phase. Three different lists of projects and activities are provided that determine what type of assessment is required. List 1 refers to activities requiring a Basic Assessment, while activities under List 2 require scoping and a full EIA. These lists can be found in Government notice no R. R544 and R545 of 2010. List 3 in Notice R546 lists activities that would require authorisation if carried

out in certain geographical areas. These 3 Screening lists are inclusive and use thresholds based on initiative features and environmental parameters.

The proponent is required to appoint an Environmental Assessment Practitioner (EAP) who determines whether a basic assessment or full EIA is required. In both cases, the EAP has to consult with the public, designated competent authority and other relevant stakeholders. The EAP is required to consider the input by the stakeholders before submitting the screening report for the screening decision by the DEA.

Sensitive areas

List 3 used for the screening process lists activities for which an environmental authorisation has to be acquired for specific geographical areas. There are specific requirements formulated for protected areas. A full EIA is required for projects that have an effect on a national protected area. In such cases, the Minister is designated as the competent authority.

Contents of the starting document

The starting document consists of a completed prescribed application form with additional documents. The enclosed documents depend on whether only a basic assessment or a full EIA is required. If a basic assessment is required, the EAP must submit the completed application form together with the basic assessment report and evidence of consultation with relevant stakeholders, a declaration of interest to perform the EIA and the specified application fee, if any. If a full EIA is needed, the EAP must complete and submit the application form together with a filled declaration of interest form and the prescribed application fee, if any.

Timeline Screening

30 days

Scoping

Scoping process

Scoping is a required step but only for major activities that must undergo a full EIA, as listed in Government notice no R. 545 of 2010, List 2.

Scoping the responsibility of the applicant who may acquire services of an approved Environmental Assessment Practitioner. Scoping is mainly done through the involvement of relevant stakeholders. The EIA guidelines of 2010 provide a guide as to the steps to be taken during the scoping process (Section 27). After submitting an application for which scoping is required, the proponent must:

- i) conduct the public participation process;
- ii) give notice in writing of the proposed application to any state agency with jurisdiction on the proposed activity;
- iii) open and maintain a register for public participation;
- iv) consider all objections and representations received from interested and affected parties;
- v) identify relevant issues, potential environmental impacts, alternatives of the project activity;
- vi) prepare a scoping report which must be commented on by all concerned parties;

- vii) give interested and affected parties an opportunity to comment on the scoping report;
- viii) submit the scoping report to the competent authority for review and decision-making.

Once it is submitted, the competent authority then takes a decision on whether the Scoping report is approved, rejected or if amendments should be done to it.

Contents of the scoping document

The section 28 of the EIA regulations (2010) give detailed requirements for the scoping report. In summary, the scoping document should contain:

- (a) Environmental Assessment practitioner and their EIA expertise;
- (b) a description of the proposed activity;
- (c) a description of the proposed alternatives;
- (d) a description of the location of the activity;
- (e) a description of the environment that may be affected by the activity;
- (f) legal framework
- (g) a description of environmental issues and potential impacts;
- (h) details of the public participation process, including minutes of meetings held and received comments
- (i) description of the need and desirability of the proposed activity;
- (j) responses of EAP's to received comments
- (k) a plan of study for environmental impact assessment
- (l) any specific information required by the competent authority.

In addition, a scoping report must take into account any guidelines applicable to the kind of activity, which is the subject of the application.

Timeline scoping

The timeframe for taking the decision on approving the scoping report is 30 days.

Assessment

Assessment process

The assessment process begins with the acceptance of the scoping report by the competent authority. After this, the EAP proceeds with tasks according to the approved plan of study for EIA which the EAP submits as part of the scoping report, including those relating to public participation.

Assessment and reporting is the responsibility of the applicant who may acquire services of an approved EAP. The applicant or the EAP managing the application may appoint an expert to carry out a specialist study or a specialised process. The content of a specialist report or a specialised process is determined in Section 32 of the EIA regulations (2010).

The EIA regulations do not prescribe any specific method of assessment.

Contents of the EIA report

The EIA regulation (2010) gives in the section 31 a detailed description of the contents of an environmental impact assessment report. In summary, these include details of:

- (i) details of the EAP;
- (ii) description of the proposed activities;
- (iii) description of the location of the activities;
- (iv) a description of the environment that may be affected;
- (v) details of the public participation process;
- (vi) description of the need and desirability of the activities
- (vii) description of potential alternatives to the activities and their analysis;
- (viii) indication of the adopted methodology;
- (ix) a summary of the findings and recommendations of any specialist report or report on a specialised process;
- (x) environmental issues identified;
- (xi) significant impacts;
- (xii) assumptions, uncertainties and gaps in knowledge;
- (xiii) a reason opinion as to whether the activity should or should not be authorised;
- (xiv) a draft EMP;
- (xv) copies of any specialist reports and reports on specialised processes; and
- (xvi) any specific information that may be required by the competent authority.

For activities subjected to a Basic Assessment, a Basic Assessment Report (BAR) is required. Its content is specified in Section 22 of the EIA regulations (2010).

Accreditation of consultants

The accreditation system of consultant is recently changing. In 2011, the Environmental Assessment Practitioners Association of South Africa (EAPASA) was launched. Once constituted the Board of EAPASA will apply to the Minister of Water and Environmental Affairs to be recognised as a Registration Authority in terms of Section 24H of the NEMA. Once EAPASA has been recognised, the Minister will publish a date by which all EAPs practicing in terms of NEMA must be registered.

In the mean time, the only specified requirements in the EIA regulations (2010) for EA practitioners are that they must be independent, have the necessary expertise in conducting EIAs, have an understanding of the legal requirements, perform work in an objective manner and take into account the issues listed in section 17 of the EIA regulations (2010). Three main bodies in South Africa verify and certify environmental practitioners and maintain a professional register. These include The South African Council for Natural Scientific Professions (SACNASP); The Southern African Institute for Ecologists and Environmental Scientists (SAIEES); and, most recently, The Interim [Certification Board for](#)

[Environmental Assessment Practitioners \(ICB\)](#). The former is a statutory body carrying out mandatory registration, while the latter two are professional bodies conducting voluntary certification

Review

Review process

The competent and other relevant authorities are responsible for review. Although the NEMA provides for mechanisms for independent review, the current EIA regulations do not require peer review. They state that the relevant authority should review the EIA report with the assistance of other authorities, specialists, interested and affected parties. The competent authority can either accept the EIA report or refer it for specialised review by a team for their comments especially where technical knowledge or a high level of objectivity is required to review any aspect of the report. The role of the public during the review process is not clear.

source

Southern Africa Institute for Environmental Assessment. 2003. Environmental Impact Assessment in Southern Africa. Windhoek. Southern Africa Institute for Environmental Assessment

Review expertise

There are provisions to appoint technical specialist to review EIA reports.

Timeline Review

The timeframe for reviewing the EIA report is 60 days. For a Basic Assessment Report the competent authority has 30 days to accept, reject it, suggest alternatives or to subject it to full EIA.

Decision making

Integration of ESIA into decision-making

Once the EIA report is approved, a decision is taken on whether an environmental authorisation is granted for the activity. Such an environmental authorisation is required before any activities can be undertaken by the developer. In the EIA regulations the whole EIA process is described as the application process for such an environmental authorisation, thus EIA is supporting the decision on this authorisation. However, the granting of an environmental authorisation does not necessarily lead to a project approval. Other licences separate from the one issued by DEA have to be received from other relevant authorities before proposed project activities can be commenced.

According to the Regulations 37(1), the environmental authorisation must, besides other elements, contain authorisation conditions and information on the manner in which and when the competent authority will approve the EMP. Furthermore, the Environmental Authorisation may require that compliance reports, environmental audit reports or proof of compliance (for mining) are prepared and submitted to the competent authority.

The competent authority taking the decision on whether the environmental authorisation is granted or not can be the Minister of Environmental Affairs, Members of the Executive Council (MEC), the Minister of

Mineral Resources for mining related activities or the provincial or local environmental authorities with delegated powers. Which authority is the competent authority depends on the type of activity. The Schedules 1,2 and 3 that are used for the screening process and categorize the activities, give provisions on how the responsible competent authority can be identified for the different activities.

Decision justification

The decision of the authority on the application is communicated in writing to the applicant and reasons for the decision are given.

Decisions have to be made public. The applicant or the EAP managing the application is required, in writing, to inform registered interested and affected parties of the outcome of the application and the reasons for the decision and draw their attention to the fact that they can appeal the decision.

source

EIA regulations 2010 section 10

Timeline decision-making

The competent authority must within 45 days of acceptance of the EIA report refuse or grant the environmental authorisation. For activities that are subjected to a basic assessment process, the decision shall be taken within 30 days from the approval of the BAR.

Possibilities for appeal

A person who wishes to appeal against a decision, must submit a notice of intention to appeal with the Minister in charge of the environment, the MEC or a delegated organ of state to the appeal authority. An appeal panel can be appointed to support the processing of the appeal. It submits its recommendations to the competent authority in writing. The Minister in charge of the environment, MEC or Minister of Mineral Resources or any other empowered competent authority then make a decision on the appeal.

The following decisions can be appealed:

- decisions that were taken by an organ of state that has delegated powers as the competent authority
- decisions that are subject to an appeal to the Minister in charge of the environment or Members of the Executive Council (MEC) in terms of section 43(1) of the NEMA

An appeal is not possible if the Minister or Members of the Executive Council (MEC) took the decisions themselves in their capacity as the competent authority.

source

EIA regulations (2010) Section 58-66

Follow-up

Compliance monitoring

Monitoring is a mandatory requirement. Despite this requirement by NEMA, the current EIA regulation (2010) does not provide prescriptions for these additional steps. The applicant is required to submit an

Environmental Management Plan as part of the EIA study report. The EMP should give the proposed mechanisms for monitoring compliance and reporting thereon. The environmental authorisation issued by the competent authority also includes the requirements for the management, monitoring and reporting of the impacts of the activity on the environment throughout the life cycle of the activity.

Non-compliance penalties

Article 47 of the EIA regulations (2010) promulgate that the competent authority may suspend an Environmental Authorisation for several reasons, for instance if there are reasonable grounds for believing that the contravention or non-compliance with a condition of the authorisation causes harm to the environment or if it is necessary to prevent such harm. The Article 48 defines the procedures to be followed in case of such a suspension.

Section 71 (1) further states that a person is guilty of an offence if that person

provides misleading or incorrect information, fails to disclose information to the competent authority, fails to comply with a request to submit an environmental audit report, fails to comply with any conditions granted in an authorised exemption, continues with an activity for which an Environmental Authorisation was suspended. A person is liable on conviction of an offence can be punished with imprisonment for a period not exceeding one year or to a fine prescribed not exceeding R1 million, or to both a fine and imprisonment.

Stakeholder engagement

Public participation requirements for ESIA process stages

Public participation is required both for projects that require only basic assessment (during screening) or and projects that require full EIA (screening, scoping and EIA study). There are however, there are no provisions for public participation during the decision phase and during monitoring of EIA activities.

The public participation process involves the information of the public and providing access to any draft outputs of the EIA process or the basic assessment process to potential interested and affected people. Also, the people are given opportunities to comment on these reports and statements. The public is also informed about decisions and their reasoning. Guidelines on public participation must be followed as contemplated in section 24J of the NEMA.

It is a requirement that the comments of interested and affected parties regarding any of the written submissions of the EIA process must be recorded and accompany the report when it is submitted to the competent authority. The EAP also has to explain any responses to the representations, objections, comments and views of the public.

Timeline for public comments

10 days after notification of decision

Access to information

There are provisions prescribing that every person is entitled to have access to information held by the State and department of state on environmental issues. Also, all relevant facts in respect of the application for an environmental authorisation shall be made available to potential interested and affected parties. The proponent or the EAP is required by law to open a register of interested and

affected parties. Any person who submits a request for it can access this register.

Before the EAP submits a report to the competent authority, she/he must give registered interested and affected parties access to the draft report. Also they must be given an opportunity to comment on all these written submissions of the EIA process, namely:

- BARs
- BARs that have been amended or resubmitted
- Scoping reports
- Scoping reports that have been amended and resubmitted
- Specialist reports and reports on specialised processes
- EIA reports
- EIA reports that have been amended and resubmitted
- Draft EMPs

Moreover, these draft reports must also be referred to the relevant state department which also has the opportunity to make comments on them.

Section 54 of the EIA regulations (2010) determines that the person conducting a public participation process must give notice to all interested and affected parties by (in summary):

- (a) Fixing a notice board at a place conspicuous to the public at the site of the activities
- (b) giving written notice to several affected people and institutions
- (c) placing an advertisement in a local newspaper or in any official gazette that is published specifically to provide public notice and in at least one provincial or national newspaper if the activity may have impacts beyond the local level
- (d) using other reasonable alternative methods

ESIA practice

Central ESIA database

The relevant authority registers applications by the applicant/consultant.

Professional bodies

Centre for Public Participation: The Centre for Public Participation is an independent non-partisan organisation contributing towards the buildings of an empowered civil society engaging actively with accessible and accountable structures and processes of government. Through its monitoring, lobbying, research and capacity building programmes, it strives to ensure that the government policy and legislative processes are transparent, accessible and accountable ;

International Association for Impact Assessment South African Affiliate (IAIAsa): The website of IAIAsa contains useful information, resources and links for EIA practitioners, as well as information on forthcoming conferences

The *Southern Africa Institute for Environmental Assessment (SAIEA)* is an independent organisation, with access to a large number of professionals from within the southern African region, who provide

expertise in a wide range of fields and disciplines. Their website contains links to case studies, EIA guidelines, Manuals and training on EIA.

The *Environmental Assessment Practitioners Association of South Africa (EAPASA)* performs a quality assurance role in EA practice. 802 individuals are the founding members and form the organisation. It has not yet been consulted.

Relevant links

- [SAIEA Calabash Website EIA participation guidance](#)

Background information

History of ESIA

EIA in South Africa dates back to 1970s. EIA was firstly undertaken on a voluntary basis until in September 1997, the government passed EIA regulations under the old Environment Conservation Act (Act 73 of 1989). They were the first legislated EIA requirements. These regulations emerged separately from the development of the National Environmental Management Act (NEMA) was issued in 1998. It repealed most of the previous Environment Conservation Act of 1989 but the EIA regulations still remain in force.

Since the EIA regulations came into effect in 1997, EIA practice has been developing, with several challenges cropping up. For instance, the EIA regulations did not apply to mining. In response, the DEAT promulgated new EIA Regulations under NEMA, which came into effect in July 2006. In 2010, new EIA regulations again replaced the ones from 2006. Both the provincial and national government implement these regulations. In addition, there are several sector specific regulations and guidelines that address EIA for certain projects.

Legal framework

Enabling law

National Environmental Management Act (Act No 107 of 1998).

National detailed regulation

The EIA regulations from 2010.

They were amended in December 2010 and in December 2012, when amendments to the EIA regulations on Listing Notice 1 and 2 have been gazetted.

Guidelines

A variety of different guidelines on EIA exist in South Africa.

In 2004, the DEA has published an **Integrated Environmental Management Information Series (IEM)** which comprises of 16 guidelines on environmental management. Some of them directly relate to EIA (e.g. on screening, scoping, stakeholder engagement, impact significance, cumulative effect assessment, strategic environmental assessment, alternatives in EIA, environmental impact reporting,

review in EIA, socio-economic impact assessment ect). They can be found via the following link.

There are also **departmental guidelines, general guidelines, process guidelines and specialist guidelines** provided by the DEA that relate to EIAs, all of which can be accessed online. A companion guideline for the implementation of the EIA regulations of 2010 was published in 2012.

Also **sector EIA guidelines** exist:

- EIA Guidelines for Aquaculture (2013)
- Other draft sector guidelines for EIA for roads, energy, agri-industry, housing and linear developments (other than roads) were published by DEA in 2010 and on renewable energy in 2014.

While these guidelines are not legally binding they must be taken into account while preparing, submitting, processing or considering any application for environmental authorisation as mentioned in the EIA regulations (2010).

Sector specific procedures or regulations

- Section 110 of the National Water Act No 36 of 1998 states that the Minister must prepare an EIA relating to any proposed waterworks.
- The Biodiversity Act No. 10, 2004 prescribes an EIA for any project that may pose a threat to any indigenous species or to the environment.
- Environmental Authorisations for mining are issued under the Minerals and Petroleum Resources Development Act (MPRDA), No. 28 of 2002. Its section 39 requires an EIA and an EMP for mining activities. The DEA is merely a commenting agency for mining projects. However, according to new provisions in the NEMA amendment No 62 of 2008 and corresponding amendments to the MPRDA (still in progress), this will change. Once the new MPRDA amendment has come into effect, all new mining, exploration and production rights and renewals will have to comply with the EIA regulations of NEMA. It is proposed that DEA will eventually become the competent authority.

Scope of application

The EIA regulation applies to all activities as prescribed by the Minister in charge of Environment in the EIA regulations of 1997. These include private, government, national or foreign initiated activities.

Exemptions from application

The EIA regulations 2010 prescribe that any person may apply for an exemptions from any provision of the Act as it relates to EIA or from any provision of the regulations.

Upon application, the Minister in charge of the environment, the Minister of Mineral Resources or an Member of the Executive Council (MEC) may exempt any person from complying with specific provisions of the NEMA and the EIA regulations (2010).

source

Institutional setting

Central ESIA authority

The Department of Environmental Affairs (DEA) is the central authority on EIA. It exists in this exact form since 2009, after the administration of environmental matters has been restructured at national level. The Department of Environmental Affairs and Tourism (DEAT) had previously been responsible for EIA until then. It was split and the environmental affairs component is now the Department of Environmental Affairs. DEA is an autonomous department of the Ministry of Water and Environmental Affairs.

Other key (governmental) parties

Some EIA activities may require consultation with national sector departments and/or provincial and local authorities. Relevant state departments can access and comment on draft reports that are outputs of the EIA process.

Furthermore, the Minister of Water and Environmental Affairs, as well as Members of the Executive Council (MEC) or the Minister of Mineral Resources for mining related activities can be the competent authorities for decisions related to EIA.

(De)centralisation of mandates

DEA is responsible for EIA at the national, as well as the provincial level. While the policy formulation and coordination takes place at the national level, the approval for EIA for most development projects has been devolved to the provinces. Provincial environmental authorities are mandated as the relevant authority to receive and consider EIA applications that are cross-boundary between districts. In cases where a project falls within a certain district, it is possible for a higher authority than the competent authority to designate the local authority for EIA.

The section 24(C)(2) of the National Environmental Management Act of 2004 (Second Amendment) specified which instances form the exception when the Minister takes the role of the competent authority rather than the provincial departments. In most provinces the administrative unit involved with EIA is located within departments dealing with natural resource management, rural development, tourism, conservation, economic development or agriculture. Among others, they may undertake the following functions: Advise the proponent on EIA and provide him the necessary information, receive applications, review them and make a decision regarding the applications.

source

Walmsley B. & Patel S., 2012. SADC Environmental Legislation Handbook 2012. Development Bank of Southern Africa, Noordhoek, South Africa.

Payment system

The proponent may be required to pay to DEAT a specified administration fee when submitting an application for environmental authorisation. Additionally, the proponent may also be required to pay a specified fee when submitting an application for amendment and withdrawal of Environmental authorisations.

Contact

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South Africa