Congo Brazzaville

EIA profile

Updated to: 28 August 2019

Overview ESIA procedure

There is no official screening procedure but it is implicitly assumed to be the responsibility of the MFEE. When an environmental study is required, the proponent first organises a public inquiry and prepares a draft terms of reference (ToR) for the study. This ToR must be approved by the responsible administration. When the ToR is approved, the proponent hires an agency to carry out the study. The draft ESIA or the environmental and social notice is then validated through a public hearing and a technical analysis by a review committee and approved by the Minister for the environment. During implementation phase, the administration responsible for the environment is responsible to monitor the proponent on its compliance with the ESIA and the environmental and social management plan.

Screening

Screening process

Decree 415/2009 does not outline a separate procedure for screening.

Scoping

Scoping process

Scoping begins with a mandatory public inquiry organised by the proponent, after which the proponent develops a draft terms of reference for the ESIA or notice. The Minister for the Environment has 10 days to react to this request and an additional 5 days in case the proponent reminds him/her of the request after the first 10 days.

source

Articles 15 to 19 of Title IV of Decree 2009/415.

Contents of the scoping document

The purpose of scoping is to identify environmental elements that may be affected by the project and which raise public, professional or legal concerns. It also aims to define ways of informing and involving the public. The scoping document contains the terms of reference for the study. Guidelines to formulate this terms of reference are still expected.

Timeline scoping

10-15 days.

Assessment

Assessment process

Before an assessment can start, the proponent must first submit a request to DGE to authorise the study. This request includes:

1. proof of accreditation of the selected consultant firm, non-government organisation or association;
2. the terms of reference of the study and;
3. the copy of the contract between the proponent and the consultancy.

The environmental administration must decide on the authorisation of the study within 15 days.

The assessment should be done in a way that all contents as required in article 11 of decree 2009/415 are covered. During the assessment, the proponent is expected to (i) organise public inquiry to collect inputs from the public and; (ii) be in permanent contact with the ministry responsible for the environment for the entire duration of the environmental study process, to ensure procedural compliance (Article 21 decree 2009/415).

source

Article 21 of decree 2009/ 415.

Contents of the EIA report

The ESIA report should include at least the following elements:

- An analysis of the initial state of the site including its socio-economic, natural and human environment and natural resources that could be potentially affected.
- A detailed description of the project activities or proposed investment, reasons and technical justification for the selected site.
- Analysis of the likely impacts of the project on the project site and immediate surroundings. The types of impacts include a.o: negative, positive, direct, indirect, temporary, permanent, cumulative, social, cultural and economic.
- Comparative analysis of implementation options and technical reasons or justification for the chosen alternatives.
- An indication of the environmental risks for a neighboring state resulting from the proposed activity.
- An indication of gaps in knowledge and uncertainties encountered in the compilation of the necessary information.
- Presentation of the environmental, social and health management plan.
- An estimate of the residual impacts after implementation of corrective measures.
- An estimate in economic terms of environmental costs for projects in categories A and B.
- Mitigation measures and and their implementation and financial programming and emergency and risk

management plan.

- A non-technical summary relating to the previous sections, for public information.

The environmental impact notice must include a brief presentation of the following:

- A description of the state of the project site and its surroundings.
- A description of the proposed activity.
- A description of features or elements of the project that may have negative or positive impacts.
- A description of features or elements of the environment that may experience negative impacts.
- A determination of the nature and significance of impacts on the environment.
- A presentation of measures to eliminate, reduce, manage or compensate for the adverse effects on the environment and the corresponding estimated costs.

Accreditation of consultants

The environmental and social study must be carried out by a consulting firm, a non-governmental organization or an association accredited by the Minister for the Environment. Order No. 835/MIME/DGE (September 1999) specifies the conditions for he accreditation of agencies, institutions and consultancies. Authorization is subject to a technical inquiry by accredited inspectors of the Directorate General of the Environment. Elements to be taken into account for this technical inquiry are not well known.

Review

Review process

After completion of the environmental and social study, the proponent submits a written request to the Minister of the environment to validate the study. The proponent submits the report in 10 copies with a non-technical summary of no more than twenty pages. The validation takes place in two phases; (i) the public hearing or consultation and; (ii) the technical analysis.

Public consultation is required for projects in category C, which is actually inconsistent with the fact that projects of category C do not require ESIA or an environmental and social impact notice. Public hearings are required for projects in categories A and B and are carried out by an investigating commissioner appointed by local judicial authorities. The ministerial order to establish the procedures for the recruitment of this commissioner is still awaited. The public hearing results in a memorandum which is integral part of the validation file of the study.

After receiving the ESIA or impact notice, the Minister in charge of the environment forms a review committee for the technical validation. After 15 days of receipt of the memorandum of the public hearing, the technical validation committee is convened to assess whether existing guidelines and benchmarks have been correctly applied and the proposed measures to prevent and mitigate impacts are sufficient and appropriate (Article 27 decree 2009/415). Methods and evaluation criteria for the technical analysis are not specified in the decree.

The analysis by the technical validation committee must take place within three months from filing the ESIA or the environmental impact notice.

Review expertise

Decree 2009/415 and memorandum no.

001647/MDDEFE/CAB-DGE determine that a technical validation committee is responsible for reviewing ESIA / impact notice. These texts make no explicit pronouncements about the competences of reviewers.

Timeline Review

Three months.

Decision making

Integration of ESIA into decision-making

Before a project can start, the competent authority must give the proponent its authorisation. For projects that are subject to ESIA or an impact notice, this authorisation must be based on the recommendation and the '*certificate of environmental conformity*' given by the Minister of the environment.

The Minister of environment formulates its final advice based on the recommendations of the technical validation committee, based on the ESIA or impact notice. The Minister can approve or disapprove the ESIA or the impact notice. In case the ESIA report is considered not to be acceptable, a justified notification is immediately sent to the proponent.

If the administration does not react on the ESIA report within three months, the proponent can run the project, but must comply with legal and regulatory provisions relating to the environment.

Decision justification

It needs to be justified when a request from the proponent, the ESIA study or environmental and social impact notice are not accepted, or additional information is requested. This decision does not have to be made public.

source

Article 42 of Decree 2009/415.

Timeline decision-making

The minister has 7 days to decide.

Possibilities for appeal

In principle, there are possibilities for appeal. Although not specified in legislation, theoretically any decision can be subject to appeal by all persons/institutions.

Follow-up

Compliance monitoring

The administration in charge of the environment is responsible for monitoring. If necessary, they can get support from independent experts. Social and environmental monitoring is done to verify the compliance with the recommendations of the Minister in charge of environment and applicability of the measures proposed in the ESIA's environmental and social management plan. The proponent is requested to write quarterly reports summarizing the results of environmental and social monitoring.

Non-compliance penalties

A series of penalties are provided for in the Law on Environmental Protection (Title 13). More specifically, decree 2009/415 states that the non-realization of an ESIA or notice, even though it is required, results in the suspension of the activity (Article 48). Similarly, if damage occurs to the environment due to the absence of the study or non-compliance with environmental requirements, this is the responsibility of its authors (Article 49).

Stakeholder engagement

Public participation requirements for ESIA process stages

Decree 2009/415 distinguishes the following types of public participation:

- Public hearing: a process to allow the public and affected stakeholders to evaluate the impacts of a project.
- Public consultation: activities to seek advice from the public on a certain decision to be taken.
- Public inquiry: an act meant to inform the public and to receive their comments and counter-propositions prior to the environmental impact study or notice.

Scoping begins with a mandatory *public inquiry,* before the proponent develops a draft terms of reference for the environmental impact study. Also during the impact assessment, *public inquiry* is demanded to collect public inputs and suggestions. During the review phase, *public consultation* is demanded for projects of category C and *public hearings* for projects in categories A and B.

In the review phase, upon receipt of the assessment report, the Minister for the Environment informs the local authority of the project area about the opening of a public consultation. A notice of the *public consultation* must be published during 15 days and must contain; (i) the relevant parts of decree 414/2009; (ii) a brief description of the project and the intended location and; (iii) the organization and methods of consultation. Then, the ESIA, or the impact notice and the feasibility study of the project are made public during 30 days. The consultation process is carried out and reported by a locally appointed agent. The report of the consultations is submitted by the local authority to the ministry of the environment.

The p*ublic hearing* is carried out by an investigating commissioner appointed by the local judicial authority. The hearings result in a memorandum, which is an integral part of the validation file of the study.This report is written and submitted to the environmental authority within 5 days after the finalization of the activity. The authority transmits the report to the Minister of the environment within 5 days after this deadline.

Although not specified in legislation, the proponent is responsible for the costs related to public involvement.

source

Institut de l?énergie et de l?environnement de la Francophonie: Étude d?impact sur l?environnement d?une centrale thermique à Brazzaville,

au Congo (2006)

UN Economic Commission for Africa: Review of the Application of Environmental Impact Assessment in Selected African Countries (2005)

Timeline for public comments

The announcement of the public consultation is 15 days. After its opening, the public has 30 days to submit their comments.

Access to information

During the scoping, the proponent must notify the administrative authority and populations in the project location by all appropriate means that an environmental and social impact assessment or notice will be realized (Article 18 of decree 2009/415). The respective local authority informs the public of the opening of a pubic consultation by posting, written or audiovisual media (Article 33).

The ESIA or impact notice and the feasibility study of the project are made available to the public during 30 days from the date of publication of the notice of consultation (Article 37 of decree 2009/415). These reports scan be consulted by any physical or legal person who expresses the need to do so (article 52 decree 2009/415).

ESIA practice

Annual no. of ESIAs

It is estimated that in the period between 2014 and 2016, about 27 environmental and social impact studies were submitted to relevant authorities.

Central ESIA database

No central ESIA database exists.

Professional bodies

Congolese Association for the Environmental Assessment (ACEE).

Relevant links

https://www.commissiemer.nl/docs/mer/diversen/os_evolution_eia_centralafrica_2014.pdf

http://extwprlegs1.fao.org/docs/pdf/con93661.pdf

Background information

History of ESIA

Environmental Impact Assessment (EIA) became mandatory in Congo Brazzaville in June 1986, when decree No 86/775 was adopted. This decree described EIA obligations and procedures and was replaced by decree 2009/415.

Legal framework

Enabling law

Article 2 of the environmental protection law 003/91 obliges environmental impact studies for any economic development projects.

National detailed regulation

- Decree 2009/415 of November 2009 is currently the text that guides the scope, content and procedures for environmental and social impact studies (ESIA).
- Decree 835/MIME/DGE (September 1999) details the conditions to authorizing specialised agencies, institutions and consultancies conducting E(S)IA.
- Memorandum 001647/MDDEFE/CAB-DGE (May 2010) establishes the organisation and the functioning of the Technical Committee responsible for the validation of ESIAs.
- Memorandum 002521/MDDEFE/CAB-DGE (July 2010) prescribes the fees to be paid for the review of ToRs and ESIAs by the technical validation committee.

Guidelines

There are no guidelines for ESIA.

Sector specific procedures or regulations

Sectoral codes have been developed for various fields like forest, water, electricity, mining and hydrocarbons. All these codes contain aspects related to the protection of the environment and advocate E(S)IA as a tool to preserve the environment:

- Law No. 24-94 (August 1994) regulates oil exploration activities, research and production of hydrocarbon resources.
- Law No. 4-2005 (April 2005), the Mining Code, regulates the exploration, research and production of solid mines.
- Decree No. 2007-274 (May 2007) establishes the conditions for prospecting, exploration and exploitation of minerals and administrative supervision.
- Decree No. 2007-293 (May 2007) fixes the technical rules for the exploitation of the quarries and geo-materials.
- Law No. 16-2000 (November 2000), the Forest Code.
- Law No. 37-2008 (November 2008) on wildlife and protected areas.
- Law No. 10-2003 (April 2003), the Water Code.

- Law No. 14-2003 (April 2003), the Electrical Code.
- Law No. 9-2004 (March 2004), the Domain of the State Code.

Scope of application

Any socio-economic development project with potential significant impacts on the environment require either an ESIA or environmental and social impact notice. Projects are classified into three categories:

- Category A: high impact activities requiring ESIA.
- Category B: medium impact activities requiring environmental and social impact notice.
- Category C: low impact activities which do not require ESIA or the notice.

An environmental and social impact assessment and notice are also required for all activities located in sensitive or protected areas. Ministerial orders to (i) define the categories and activities subject to ESIA or impact notice and (ii) specify sensitive areas are still expected.

source

Article 4 of the decree 2009/415 provides that

Exemptions from application

Projects that are implemented in response to an emergency declared by the national authorities and that shall necessarily be implemented.

source

Article 7 of decree 2009/415

Institutional setting

Central ESIA authority

The Ministry in charge of the environment oversees the activities related to ESIA. Currently this is the Ministry of Forest Economy and Environment (MFEE).

Under the authority of the MFEE the Directorate General of the Environment (DGE) is the governing body for environmental management. DGE coordinates and supervises the work of the technical validation committee that reviews ESIAs/impact notices. The DGE is also responsible for environmental and social monitoring, and enforcement of the measures recommended in the environmental management plan of a project.

Other key (governmental) parties

Other ministries are authorized to identify violations in the ESIA process. Also, decentralized territorial authorities, the private sector, civil society are engaged in the impact study process.

(De)centralisation of mandates

The Ministry of Forest Economy and the Environment (MFEE) is the only decision-making authority for environmental impact assessment and notice. The process is thus centralized.

Payment system

Proponent pays the full costs of the ESIA report and costs related to public involvement. Project developers pay the following amounts to allow the technical validation committee to review an ESIA :

Terms of reference:

- Activities of Category A: 2.000.000 FCFA

  Activities of Category B: 1.000.000 FCFA

Analysis of ESIA reports and notices of environmental impacts:

- Activities of Category A:
- *Petroleum exploitation: 8.000.000 FCFA*

  Non-petroleum extractive industries: 6.000.000 FCFA
- *Chemical industries: 7.000.000 FCFA*

  Other activities: 5.000.000 FCFA
- Activities of Category B:
- *Water conditioning and products, the establishment of factories, and the installation of thermal energy facilities: 3.000.000 FCFA*
- *Other activities: 2.000.000 FCFA*

source

Memorandum 2521

Contact

ACEIE: Congolese Association for Environmental Impact Assessment

Telephone : (242) 551 26 79 / (242) 650 58 66

E-mail: kitemogaston@yahoo.fr / louisbibissi@yahoo.fr

Website: http://seeac.org/congo/contact.html?langue=fr&option1=14