

Overview of Law and Regulations on Environmental and Social Impact Assessment in the Democratic Republic of Congo

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1. Introduction

The principal objective of an Environmental and Social Impact Assessment (ESIA) is to predict and evaluate the potential environmental and social impacts of proposed projects, programmes and policies, and to incorporate these evaluations into decision-making and planning frameworks. While numerous countries have well-established ESIA mechanisms, the relevant legislation has progressively been developed in the Democratic Republic of Congo (DRC) since the 2000s and is still evolving. For project proponents in the DRC, even when undertaking public works, a thorough understanding of the legal framework, regulations, and procedures governing an ESIA is crucial. However, comprehensive and systematic resources on ESIA currently remain limited in this country. Therefore, this document aims to provide essential information on the laws, regulations, and procedures for conducting an ESIA in the DRC, thereby enabling project proponents to navigate the process effectively and facilitate the smooth progression of their projects.

2. Legal Framework on ESIA

When the project requires an ESIA, it can refer to the following laws and regulations:

- (i) Journal Office of the Democratic Republic of Congo. Office of the President of the Republic. Constitution of the Democratic Republic of Congo: Modified by Law No. 11/002 of 20 January 2011, revising specific articles of the Constitution of the Democratic Republic of Congo of 18 February 2006.
- (ii) Journal Office of the Democratic Republic of Congo. Office of the President of the Republic. Constitution of the Democratic Republic of Congo: Modified by Law No. 11/002 of 20 January 2011, revising specific articles of the Constitution of the Democratic Republic of Congo of 18 February 2006.
- (iii) Journal Official of the Democratic Republic of Congo: Cabinet of the President of the Republic. Law No. 11/009. Fundamental Principles Relating to the Protection of the Environment. 52nd yr. on 16 July 2011.
- (iv) Democratic Republic of Congo. Decree No. 14/019. Rules of Operation of the Procedural Mechanisms for the Protection of the Environment, dated 02 August 2014
- (v) Ministerial Order No. 022/CAB/MIN/EDD/AAN/2017 of 06 September 2017 Setting the Fees for Appraisal of Environmental and Social Studies.
- (vi) Other laws which may be related to the project:
 - Agricultural Code (Law No.11/022 of 24 December 2011 on Fundamental Principles relating to agriculture)
 - Water Code (Law No.15/026 of 31 December 2015 related to water)

Prior to the enactment of Decree No. 14/019 on 02 August 2014 (see this and others in the list above), the government of the DRC lacked a comprehensive legal framework mandating that project proponents conduct ESIA studies and provide the necessary technical details for their development activities. Consequently, without established ESIA procedures, many proponents implemented projects based solely on technical feasibility studies, often overlooking critical environmental and social considerations at the project sites. A foundational step towards environmental regulation was taken in July 2002 with the DRC's Mining Code. Subsequently, the Mining Regulation of 2003 formally required proponents to undertake an Environmental Impact Assessment (EIA) for mining exploration and development projects, and it encouraged the inclusion of public inquiries and consultations (Osei and Effah, 2023). This was further strengthened by the passage of the environmental law in July 2011 (as referenced in Law No. 11/009), which established fundamental principles for environmental protection and management within the DRC.

To streamline the environmental assessment process, the government of the DRC enacted Decree No. 14/019 in August 2014, which established specific rules for ESIA procedures by Law No. 11/009 of July 2011. This Decree also provided clear guidelines on the categories of projects necessitating an ESIA. Specifically, Article 18 of the Decree stipulates that all infrastructure, industrial, commercial, agricultural, forestry, mining, oil and gas, cement, telecommunications, and other projects deemed likely to have environmental impacts are subject to ESIA. Furthermore, the activities explicitly listed in the Annexe to this Decree are mandated to undergo an ESIA.

Moreover, the Constitution of the DRC, enacted in 2006 and amended in 2011, serves as the nation's highest legal authority and includes articles concerning environmental protection rights. Specifically, Section 53 of Chapter 3 establishes every citizen's right to a healthy environment that supports their development, consequently highlighting the need for environmental protection (Osei and Effah, 2023). The State bears the responsibility of safeguarding the environment and the health of its people.

Therefore, when project proponents are legally obligated to undertake an ESIA study, adherence to the aforementioned laws and regulations is paramount. However, their responsibilities are not confined solely to these stipulations, and they may also be required to satisfy other pertinent legal obligations.

3. Responsible Agencies

The Congolese Environment Agency (ACE - l'Agence Congolaise de l'Environnement in French) operates as an autonomous administrative body under the oversight of the Ministry of Environment and Sustainable Development (MEDD - Ministère de l'Environnement et Développement Durable in French) in the DRC. Established by Decree No. 14/030 of November 18, 2014, as a public institution with its own statutes, the ACE is primarily responsible for conducting and coordinating the ESIA process throughout the DRC.

4. The Proceedings of ESIA

4.1 Overview

Upon finalising the outline of a development project, a proponent submits an ESIA screening request to the ACE. The ACE then determines whether a comprehensive ESIA will be required for the project. If deemed necessary, the proponent will engage an environmental consultant to conduct the ESIA study. Subsequently, the proponent is obligated to submit an ESIA report, which must include an Environmental and Social Management Plan (ESMP). Following receipt of the ESIA report, the ACE establishes a panel of experts to review its contents and decide whether to approve, reject, or recommend amendments. If the

ESIA is approved, the proponent proceeds to submit a more detailed ESMP, which undergoes a further review by the ACE. Ultimately, if both the ESIA and the detailed ESMP receive approval, the ACE issues an environmental permit for the project.

4.2 ESIA Process

The ESIA process is formally established by Decree No. 14/019, as previously mentioned (iv). Figure 1 illustrates the complete ESIA process in the DRC.

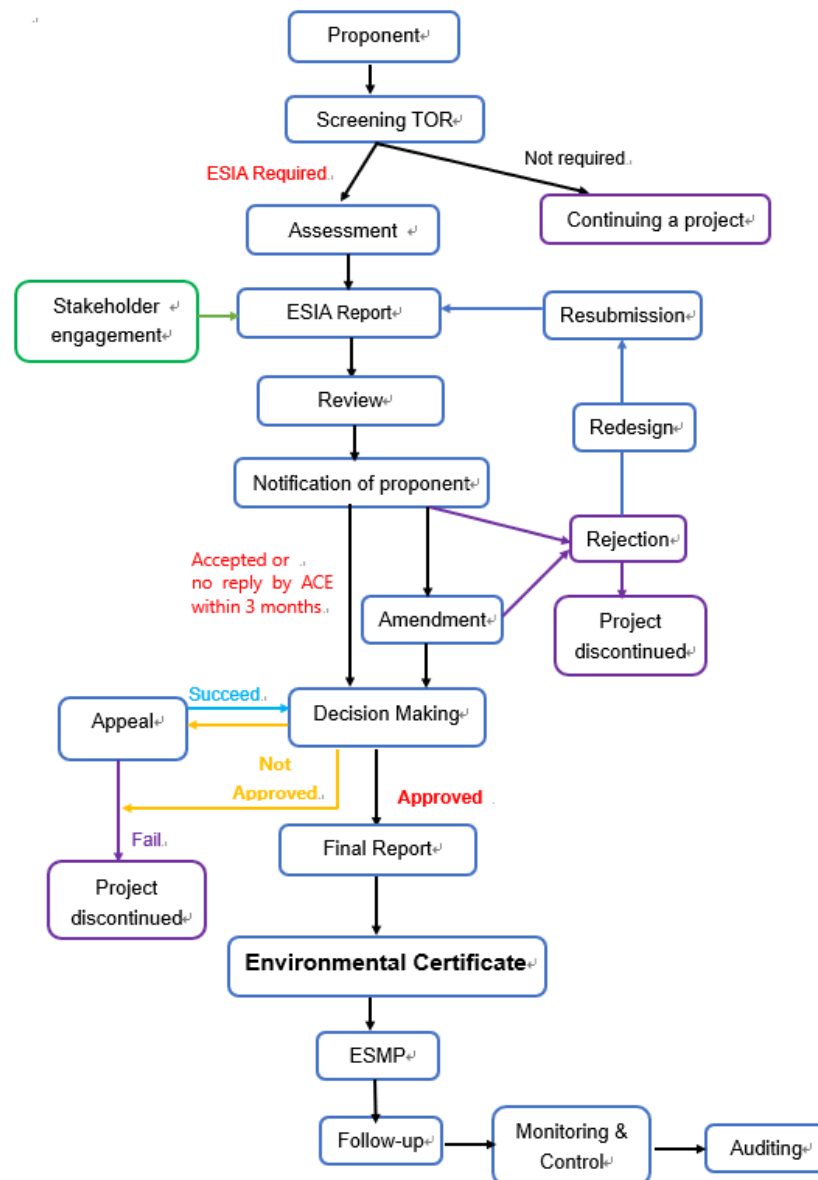


Figure 1: Flowchart of the ESIA process in the DRC (the author's image based on the Decree (iv))

1) Screening

The proponent submits a screening request to the ACE to assess whether the proposed project aligns with the activities specified in the Annex of Decree No. 14/019. This screening document is structured as Terms of Reference (TOR), the required contents of which are detailed in Article 19 of the same Decree. Subsequently, the ACE determines the necessity of conducting a full ESIA; however, an official screening manual has not yet been developed by the agency.

2) Scoping

No provision of a scoping stage to identify and prioritise the significant potential environmental and social impacts and issues associated with a proposed project.

3) Assessment

The proponent is responsible not only for implementing the ESIA study but also for recruiting consultants.

a) The Contents of the ESIA Report

Article 19 of Decree No. 14/019 stipulates the required content of the ESIA report, specifying that it must detail the foreseeable impacts of the project on the environment and, in particular, include the following elements:

1. non-technical summary written in French, English and the language of the area in which the project is to be implemented;
2. context and justification for the project;
3. institutional, legal and judicial framework of the project;
4. detailed description of the project, including plans, maps, images and figures used to understand the project;
5. accurate and detailed inventory of the initial state of the site and its natural, socio-economic and human environment, including in particular the elements and natural resources likely to be affected and the use that will be made of them;
6. comparative analysis of the development options, the technical justifications for the choice made, and the procedures to be adopted by the developer, considering environmental protection concerns;
7. identification, analysis and assessment of the foreseeable direct, indirect and cumulative environmental consequences of the project and its implementation options;
8. ESMP describing, in particular, the impacts, the mitigation or improvement measures, the monitoring and follow-up responsibilities and their estimated cost during and after project implementation, the monitoring indicators, the timetable, the capacity-building arrangements, and the results of public consultations;
9. conclusion composed of the outcome of the preparation of the study and the promoter's undertaking to comply with the environmental and social requirements; and
10. appendices consisting of maps, figures, documentation relating to public consultation, various administrative documents, the results of analyses, the experts' curricula vitae, additional information related to the study and the study's terms of reference.

b) Recruitment of a survey consultant

The responsibility for engaging a consultant authorised to conduct the ESIA study rests with the proponent, as stipulated in Articles 21 and 22 of Decree No. 14/019. Article 22 further specifies that the criteria for approving consultants authorised to undertake ESIA studies must be established by a decision of the Minister of the Environment. Prior to engaging any consultant, the proponent is required to obtain approval from the ACE. While the employment of international consultants is permissible, preference should be accorded to equally competent national consultants. Any international consultant engaged must be affiliated with a national consultancy firm.

4) Review

Upon receiving the ESIA report, the ACE convenes an interdisciplinary and multi-sectoral panel of experts possessing relevant expertise to conduct a thorough review of the document. Based on this evaluation, the ACE notifies the proponent of the decision, indicating whether the ESIA is accepted, requires specific amendments, or is rejected (Article 27 of Decree No. 14/019).

In the event of a rejection, the proponent is obligated to repeat the ESIA study in its entirety to seek approval from the ACE. However, should the ACE require amendments, the proponent is granted a period of 30 days to incorporate these revisions into the ESIA report. Failure to meet this deadline will result in the study being deemed rejected. Conversely, if the proponent does not receive a response from the ACE within a period of three months from the date of submission, the study is considered accepted by default, and an environmental certificate is subsequently issued (Articles 28 and 29 of Decree No. 14/019).

a) Timeline

The ACE is required to notify the proponent of its decision regarding the ESIA report within a period of 3 months following the date of its receipt.

b) Expert panel

The Expert Panel responsible for reviewing the ESIA comprises the following members (as stipulated in Article 26 of Decree No. 14/019):

- 4 representatives of the competent bodies
- 1 representative of the ministries concerned with the project
- 1 representative of the National Fund for Promotion and Social Services
- 3 resource persons with relevant expertise

The financial responsibility for the ESIA rests with the proponent and can be accounted for within the budgetary allocations for the study report (Article 30 of Decree No. 14/019).

5) Decision making

When a project necessitates an ESIA, obtaining an environmental certificate issued by the ACE is mandatory. Furthermore, even after the issuance of the environmental certificate, the ESMP must undergo evaluation and approval by the ACE prior to the commencement of project activities. The issuance of the environmental certificate is contingent upon the approval of both the ESIA and the ESMP and remains valid for the entire duration of the project lifecycle (Articles 31-33 of Decree No. 14/019).

a) Timeline of decision-making

Upon receipt of the detailed ESMP, the ACE has a period of 60 days to conduct its review. Should the ACE fail to validate the elaborated ESMP within this stipulated timeframe, the plan is considered tacitly approved.

b) Possibility for appeal

Project proponents possess the right to appeal decisions rendered by the ACE regarding the non-issuance of an environmental certificate, as well as decisions made by the competent authority concerning public hearings. The procedures governing such appeals are subject to the prevailing administrative laws (Article 34 of Decree No. 14/019).

6) Follow-up

a) Monitoring and control

Throughout the project lifecycle, the proponent bears the responsibility for implementing the mitigation measures outlined in the ESMP and for diligently monitoring subcontractors to prevent, minimise, and offset any adverse environmental impacts. Furthermore, the proponent is obligated to continuously monitor environmental conditions and assess the effectiveness of the implemented mitigation strategies (Articles 36 and 37 of Decree No. 14/019).

b) Penalties for non-compliance

In case of non-compliance with environmental regulations or the stipulations of the environmental certificate, the ACE reserves the right to suspend project activities and mandate that the proponent rectify the non-compliance within a specified timeframe. Failure by the proponent to adhere to this directive within the given period will result in the revocation of the environmental certificate by the ACE. Furthermore, should the agreed-upon mitigation measures prove to be ineffective or inadequate, the proponent is obligated to implement necessary adaptations to ensure environmental compliance (Article 62 of Decree No. 14/019).

Sanctions for non-compliance are stipulated under Articles 72 and 73 of Law No. 11/009 of July 2011 (referenced in Chapter 8: Offences and Penalties of the Law). Specifically, any individual or entity that undertakes a project or activity mandatorily subject to an ESIA without conducting the requisite assessment is liable to a punitive fine equivalent to five times the cost of the evaluation and its verification. Furthermore, any party providing false or fraudulent information within an ESIA is subject to a penalty of twice the costs incurred for the evaluation and verification of the aforementioned study (Osei and Effah, 2023).

7) Stakeholder Engagement

a) Public participation requirements for ESIA process stages

When a project necessitates an ESIA, the proponent is obligated to formally approach and request the relevant governor to initiate a public hearing. This request must be accompanied by the following information, as stipulated in Article 53 of Decree No. 14/019:

- A document outlining the main technical features of the proposed project.
- Non-technical overview of the project.
- A map outlining the project area of influence.

Upon receiving a formal request for a public hearing, the relevant governor is mandated to establish an ad hoc committee. This committee is to be chaired by either the chief administrative officer or the mayor of the concerned locality, and its membership shall include representatives from the local environmental service, other pertinent district (sectoral) ministries, and duly appointed representatives from civil society organisations. The governor retains the discretion to engage external experts to provide technical assistance to this committee as deemed necessary (NCEA, 2019).

After collecting opinions from the public and stakeholders, the committee submits a report to the competent authority. This report provides an overview of the process and includes a synthesis of the recommendations and decisions proposed by stakeholders. Furthermore, the report must append the signed minutes of each hearing, duly attested by committee members and participating individuals. The cost of the public hearing is to be borne by the proponent. It is

important to note that the ESIA Decree (Article 54) remains silent on the specific implications of public hearing outcomes for the ESIA report and its subsequent approval (NCEA, 2019).

b) Timeline for public comments

According to Article 55, stakeholders shall be informed of the public hearing at least 2 months prior to its commencement. Notification of the public hearing will be disseminated within the project area through all available communication channels accessible to the general public. This announcement is to be issued in both French and the relevant local languages. Subsequently, proposals and suggestions from stakeholders will be collected for a period not exceeding 2 months, as stipulated in Article 56.

8) Other Administrative Procedures

a) Access to Information

Upon receipt and due consideration of the public hearing report, the competent authority shall either accept the report or formally request supplementary information or clarification, as stipulated in Article 58. Should the committee responsible for the public hearing fail to respond within a period of 15 days, the competent authority will proceed to publish the report through all accessible means within the project area, in accordance with Articles 59 and 60.

b) Submission methods

The procedure for the ACE's review of an ESIA report necessitates the submission of 10 hard copies and a single electronic version (CD-R) of the draft by the proponent. Following the ACE's acknowledgement of receipt of the draft report, the proponent is then responsible for its finalisation and subsequent submission of 5 hard copies and 1 electronic version (CD-R) to the ACE (Results of interview with ACE on 03 September 2024).

c) Costs of ESIA procedures

In accordance with Article 30 of Decree No. 14/019, the financial responsibility for the ESIA assessment rests with the proponent, and these expenses are eligible for inclusion within the cost structure of the ESIA study report. The primary classification of these charges is outlined in the following table, based on the provisions of Article 3 of Ministerial Order No. 022 of 06 September 2017.

Procedures	Amount payable
1 Validation of the terms of reference for the environmental and social compliance plans	500 USD
2. Validation of the terms of reference for the environmental and social impact studies	1.000 USD
3. Drawing up terms of reference for environmental and social studies	1.000 USD
4. Preparation of environmental and social studies	2.000 USD

Procedures	Amount payable
5 Validation of environmental and social impact studies Investment \leq 100,000USD	2000 USD
Investment $>$ 100,000USD \leq 1,000,000USD	2000 USD + 1% Difference in investment amount
Investment $>$ 1,000,000USD \leq 10,000,000 USD	11.000 USD + 0,125% Difference in investment amount
Investment $>$ 10,000,00 USD	22.250.5 USD + 0,025% Difference in investment amount
6. Validation of other environmental and social studies (EES, EER, PMCES, PSR, PAR, CGES, PGES chantier, PGES ouvrage, PLAN d'urgence, etc.)	1.000USD to 10.000USD depending on investment amount
7 Environmental monitoring and inspection	500USD to 5.000USD/yr depending on investment amount

* Besides the above detailed costs, the proponent is also accountable for the expenses incurred in hiring consultants.

5. Key Issues Concerning the ESIA Process in the DRC

As noted by some preceding researchers (NCEA, 2019, Osei and Effah, 2023), many aspects of the DRC's ESIA process necessitate improvement. Among these are the following:

- Absence of a formal scoping stage;
- Insufficiently detailed and comprehensive consideration of alternatives;
- Limited public participation in certain ESIA stages;
- Restrictive timeframe for amending ESIA reports, potentially precluding the resolution of complex issues;
- Absence of operational and procedural manuals for ESIA implementation within the legislative annexes;
- Lack of specified criteria or thresholds for determining which actions require assessment (leading to discretionary selection);
- Potential for high levels of political discretion and corruption to override objective assessment of environmental and social impacts; and
- Potentially prohibitive costs of ESIA, even for public projects, due to unclear legislation on all fees.

Addressing the challenges facing ESIA implementation in the DRC will enhance its effectiveness and contribute to advancing the nation's sustainable development goals.

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Disclaimer

The views and opinions expressed in this fact sheet are solely those of the author and do not necessarily reflect the official position of IGES.

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