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DEMOCRATIC REPUBLIC OF CONGO

CHAPTER 8: DEMOCRATIC REPUBLIC OF CONGO

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8 DEMOCRATIC REPUBLIC OF CONGO (DRC)

8.1 Constitutional requirements for environmental protection in the DRC

The Constitution, also known as the Constitution of the Third Republic, was adopted on 18 February 2006. Article 53 states that:

- Every person has a right to a healthy environment, which is favourable to his/her full development.
- The environment must be protected.
- The state must look after the protection of the environment and the health of the people.

Article 123 of the Constitution makes provision for laws on, *inter alia*, the protection of the environment, the sustainable development of the natural resources of the country, and protection of vulnerable groups. Article 203 allows for cooperative governance by central government and the provincial administrations “*to protect the environment, natural sites and landscapes, and the conservation of such sites [as well as] the protection of vulnerable groups.*”

Article 51 ensures the protection and promotion of vulnerable groups and all minorities (this would include indigenous peoples as defined by the World Bank and International Finance Corporation).

8.2 Institutional and administrative structure

Under the Constitution of the Third Republic, the government is composed of a Cabinet of Ministers and Deputy Ministers, the number of whom varies from one government to the next. The Prime Minister, who is appointed by the President, heads the government. The government is the effective arm of the state in charge of the country’s central administration and in all the domains in which the central government has concurrent jurisdiction with the provinces.¹ Ongoing efforts by the World Bank amongst others, are being made to decentralise most government administrative functions, including environmental affairs, to the provinces, but this has been hampered by the lack of infrastructure, capacity issues and lack of political will.

¹ www.wikipedia.org

There are now 26 provinces (compared to the previous 11): Lower Uele, Equateur, Upper Katanga, Upper Lomami, Upper Uele, Ituri, Kasai, Kasai-Central, East Kasai, Kinshasa, Kongo Central, Kwango, Kwilu, Lomami, Lualaba, Mai-Ndombe, Maniema, Mongala, North Kivu, North Ubangi, Sankuru, South Kivu, South Ubangi, Tanganyika, Tshopo, Tshuapa.

Environmental management is dealt with between several ministries and at different levels of government.

8.2.1 Parliamentary Commission for the Environment and Natural Resources

Under the former government of Joseph Kabila, there was a Parliamentary Commission for the Environment and Natural Resources which had between 50 and 60 members, organised into four committees: general environment, mining environment, flora and fauna, and environmental control. Since the general election in January 2019, the new shape of parliament has not yet emerged and it is not certain if this Commission will continue as before.

8.2.2 Ministry of Environment and Sustainable Development

The Ministry responsible for the environment in the DRC has undergone several changes in name since the Ministry was created under Ordinance No. 75/231 of 22 July 1975. The latest name is the Ministry of Environment and Sustainable Development which was changed in 2017 (from the Ministry of Environment, Nature Conservation and Tourism).

The Ministry of Environment and Sustainable Development (MESD) is responsible for the preparation and implementation of policies relating to the environment and nature conservation. It is directly responsible for the fight against all forms of pollution, prevention of desertification and the protection and regeneration of soils, forests and woodlands and the sustainable utilisation of forest resources. It is also responsible for protection of fauna and flora and the natural environment. The MESD is the main authority for national parks and nature reserves.

Of the several directorates and departments within MESD, five play an important role in implementing the national environmental policy. These include:

- Department of Forest Management;
- Department of Nature Conservation;
- Department of control and internal audit for the management and monitoring of activities at species control checkpoints;
- Department of Sustainable Development; and
- Department of Sanitation.

Other structures which are attached to the MESD include the Congolese Institute for Nature Conservation and the Congolese Environmental Agency (CEA). At the provincial level, environmental management is delegated to the Provincial Environmental Committees. However it should be noted that these provincial institutions have significant capacity weaknesses particularly relating to monitoring project compliance.

The administration of ESIA is the mandate of the CEA, which has replaced the former Groupe d'Etudes Environnementales du Congo. The CEA is the body which is directly responsible for the implementation of environmental and social impact assessment (ESIA) policies in relation to development activities in the DRC.

The Environmental Protection Act (EPA), No 11/009 of 2011 also makes provision for the government to establish a National Council for the Environment and Sustainable Development under the authority of the Prime Minister (Article 17). This Council will provide advice on:

- The definition and implementation of national environmental policies; and
- The development of sectoral environmental plans and programmes where the sector may have an impact on the environment.

8.2.3 Congolese Environmental Agency (CEA)

The CEA was created by Decree N° 14/030 of 18 November 2014 which established the structure of the CEA. Its main mandate is the administration and coordination of the ESIA process in the DRC. Without prejudice to the clauses contained in Article 71 of Law No 11/009 of 09 July 2011, which sets out the fundamental principles relating to the protection of the environment, the CEA must take into account the protection of the environment in the execution of all development projects relating to infrastructure, industry, commercial agriculture, forestry, mining, telecommunications, etc., which may have an impact on the environment. CEA's roles include the following:

- Approval of ESIA reports, which includes an analysis of the environmental and social impacts, the proposed environmental and social management plans (ESMPs) and the Environmental and Social Compliance Implementation Plans;
- Administrative and technical monitoring of projects during construction and operation (analysis of monitoring reports, environmental inspections and audits).

The CEA is assisted by Environmental Focal Points within various line ministries for the review and evaluation of projects within the ambit of their ministry. Although the CEA has the skills and human resources to carry out ESIA reviews, it is hampered by limited physical and financial resources to properly carry out all its functions.

8.2.4 Inter-ministerial Committee on Environment, Nature Conservation and Tourism

This Committee was originally established by Law No. 75/232 of 22 July 1975. It is chaired by the Minister of Environment, and members include ministers whose portfolios address environmental issues in some way, the private sector, civil society, research centres and universities, and local authorities.²

8.2.5 Ministry of Mines

Until the promulgation of the EPA in 2011, the only activities that had a formal requirement for an ESIA in the DRC were exploration, mining and quarrying under the then Mining Code No 007/2002. Article 15 of the previous Mining Code made provision for the establishment and powers of a Department for the Protection of the Mining Environment (DPEM). Up until the promulgation of the EPA, the DPEM was responsible for all aspects of environmental regulation and administration within the mining sector. This has now changed with the promulgation of both the EPA and the new Mining Code No 18/001 of March 2018 and the associated Mining Regulations (Decree No 18/24 of June 2018). The functions of the DPEM are set out in the new Mining Regulations.

Under the current legal framework, the CEA handles the evaluation and approval of ESIA's for all mining activities and follows up on their implementation (or through the Provincial Environmental Committees).

8.3 Policy and legal framework for ESIA

8.3.1 National Environmental Action Plan

In response to Agenda 21 of the United Nations Conference on the Environment and Development held in Rio de Janeiro in 1992, the DRC formulated its National Environmental Action Plan (NEAP) in 1997 with funding from the United Nations Development Programme (UNDP). The NEAP was finally adopted by the government on 13 February 2002. The main finding was that the system of management of the country's natural resources was deficient and that a legal framework was urgently required. It also found that environmental management was spread over a wide range of sectors, which precluded the formulation of a coherent environmental policy to focus attention and resources on environmental protection.³

The major issues identified in the NEAP were:

² www.unep.org

³UNDP (United Nations Development Programme), 1997. *Plan National d'Action Environnementale. Document Synthèse*. New York: UNDP.

- Daily destruction of the environment as a result of extreme poverty, population growth and general ignorance about environmental matters;
- Water pollution, together with the absence of national water quality standards;
- Soil erosion and degradation in areas with high population densities due to poor management practices;
- Air pollution resulting from agriculture, industry and the energy industries;
- Urban degradation and insalubrious conditions resulting from a combination of poor planning, the inability of municipal authorities to control the influx of migration to the cities, as well as population growth; and
- Deforestation, illegal forestry, intense levels of poaching and illegal mining in protected areas.

In order to combat these problems, as well as the weak and sometimes conflicting disparate legal framework, the NEAP recommended a number of strategies to sustainably manage the biological resources of the DRC. Unfortunately in spite of some changes in the legal framework, few of the planned interventions set out in the NEAP have been implemented. The EPA states that a new National Environmental Policy on the sustainable management of natural resources will be translated into a revised NEAP (Article 15). Furthermore, each province is required to develop its own programmes related to the management and protection of the environment, in conformance with the new NEAP (Article 16). At a UNEP meeting in May 2016, the then Minister for Environment and Sustainable Development set out the National Strategy for Sustainable Development and a Programme of Action that covered the period 2012-16, as well as a 2030 Vision which is articulated around priority environmental and climate change issues relating to mining, agriculture, forestry and industry. In spite of these provisions and intentions, no new policy on the environment has been formulated since the original NEAP.

8.3.2 Climate Change Policies and Programmes

The Environmental Protection Act No 11/009 of July 2011 states in Article 66 that the government will make regulations regarding the contents and notification procedures relating to greenhouse gas emissions. However, no regulations are yet in place. Nevertheless, the National Climate Change Adaptation Plan was adopted in 2007 which allows *inter alia* the establishment of a climate risk inventory and the urgent measures needed to mitigate this risk. One of these measures has been the 'Reducing Emissions from Deforestation and Forest Degradation' (REDD) programme, under the leadership of the MESD, with technical and financial support from Multilateral Development Banks and the UN-REDD. This programme has been in place since 2009.

As part of REDD, The Forestry Investment Programme (FIP) comprises two projects: the Improved Forest Landscape Management Project supported by the World Bank and the

Integrated Emissions Reduction Project in the Mbuji Mayi / Kananga and Kisangani regions supported by the African Development Bank. The Improved Forest Landscape Management Project has the objective of testing new approaches to improve community wellbeing and forest management, and to reduce emissions from deforestation and forest degradation in certain areas.

8.3.3 Environmental Protection Act, No. 11/009

The Environmental Protection Act (EPA), No. 11/009 was promulgated on 9 July 2011. The law sets out the fundamental and universal principles for sustainable development and sound environmental management. The principles, which will also serve as a basis for any other sector-specific laws relating to the environment, are as follows:

- The principle of sustainable development – all national policies that affect the economic and social development of the country must be based on the principle of sustainable development;
- The principle of access to information and the participation of the public in decision-making on environmental matters;
- The principle of preventative and corrective actions;
- The precautionary principle;
- The polluter pays principle;
- The principle of international cooperation on environmental matters; and
- The principle of mainstreaming sustainable development across all relevant sectors.

The EPA contains several requirements, notably the obligation to undertake an environmental and social impact study (ESIS) or assessment (ESIA); environmental audits; environmental evaluation of policies, plans and programmes; the creation of new institutional structures; and an Environmental Fund for research, conservation, clean-up operations, rehabilitation and pollution prevention (Article 25). The Act is articulated in nine chapters:

- Chapter 1: General dispositions
- Chapter 2: Institutional framework
- Chapter 3: Procedural mechanisms
- Chapter 4: Financial mechanisms
- Chapter 5: Management and conservation of natural resources
- Chapter 6: Prevention of risks and control of pollution and other nuisances
- Chapter 7: Responsibilities of civil society
- Chapter 8: Offences and penalties
- Chapter 9: Transitional arrangements, repeals.

The EPA defines the term 'environment' as *"the assemblage of all natural and man-made elements and the biological and geochemical systems in which they operate, as well as economic, social and cultural factors that promote the existence, transformation and development of the milieu, living organisms and human activities"*. This is a broad definition of the environment. It therefore has to be assumed that gender and health aspects would be considered under 'social' – although the term 'social' itself is not defined in the Act. It also does not explicitly mention climate change, although it is implied under 'geochemical systems'.

An **Environmental and Social Impact Study** (ESIS) is defined as *'a systematic process to identify, predict, evaluate and mitigate the physical, ecological, aesthetic and social impacts prior to the implementation of projects relating to the construction, manufacture, commissioning, installation or establishment of industrial units, agriculture, etc., in order to obtain an appreciation of the direct and indirect consequences on the environment'*. It should be noted here that the requirement to include occupational health and safety issues is not clear in any of the definitions of what should be included in an ESIA. Most provisions for the management and control of occupational health and safety at the workplace are contained in the Congolese Labour Code (see Table 8.6).

Article 21 of the EPA requires the development, construction or operation of all activities relating to industrial, commercial, agricultural, forestry, mining and telecommunications projects, and any other activities that may have an impact on the environment, to be subject to an ESIS and an environmental and social management plan (ESMP), before obtaining approval from the competent authority. The steps to be taken are described more fully in s. 8.4.1.

8.3.4 Regulations and guidelines

Decree No. 14/019 of 02 August, 2014 sets out the regulations made in terms of the EPA for environmental protection, including all the procedures for conducting ESIA's in such a manner as to ensure that the proposed project respects standard practice in environmental matters. Specifically, the Regulations set out the procedures for the following:

- Strategic environmental assessment;
- The environmental and social impact study;
- The conditions and procedures for carrying out an environmental audit;
- Public participation procedures.

The ESIS must be commissioned by, and be the sole responsibility of, the project proponent. The Terms of Reference must be established by the line ministry of the sector concerned, in

conjunction with the project proponent, based on the general and sectoral guidelines which have been developed by the CEA.

In addition to the Regulations, the CEA will develop, in collaboration with all relevant parties, a Manual of Operations and Procedures for Conducting Environmental and Social Impact Assessments and make these available to the public (Article 20).

In addition to general guidelines on ESIA's, the Department of Surveys and Forest Management has developed a series of guidelines for a range of activities associated with forest management including *inter alia*: Framework and Guidelines for Socio-economic Studies (June 2017); and Forest Management Plans (June 2017).

8.3.5 Mining Code

The Mining Code of 2002 has been revised and promulgated by Law No. 18/001 of 9 March 2018 and there are also new Mining Regulations contained in Decree No. 18/24 of 8 June 2018. The main change affecting environmental administration is that now the CEA handles the evaluation and approval of ESIA's prepared for any exploration or mining permit application, rather than the DPEM. Under the new Mining Code the applicant for an exploration or mining permit must obtain an Environmental Certificate from the CEA prior to commencing operations, in addition to any environmental obligations contained in the new Mining Code. The CEA is also responsible for monitoring compliance with the conditions set out in the Environmental Certificate.

However, the DPEM will still have a role in informing the mitigation and restoration plan to be submitted by the holder of a mining right, and the rights holder must also submit its Environmental Certificate to the Mining Registry once obtained from the CEA.

The new Mining Code has also introduced specific requirements for mining companies in relation to their social responsibility towards local populations, as well as the need to obtain public opinion from local people during the process for obtaining an operating licence. Some of the key changes which may affect the conduct of ESIA's are as follows:

- In order to maintain a Mining Right, the holder must comply with all social obligations as per the approved timetable contained in the ESMP;
- A minimum contribution of 0.3% of the mine's turnover must be allocated to community development projects managed by a legal entity comprising the mining rights' holder and the local affected community;
- The rights' holder may be required to fund new roads, hospitals and schools in the area in which they operate;

- Holders of an exploration or mining permit are required to pay compensation to the occupants of any land covered by such right if their activities e.g. farming, will be affected;
- The rights' holder must consult with the local authorities;
- There are provisions in the Mining Code regarding the conservation of archaeological artefacts and the procedures that must be followed in the event of chance finds during the project;
- Rehabilitation costs must be covered by a Financial Guarantee as per the new Mining Regulations.

The new Mining Code and Regulations have been widely criticised and it is not clear if they are in full operation yet.

8.3.6 Offences and penalties

The EPA specifies the offences and associated penalties related to violations of the Act and Regulations. These are summarised in Table 8.1 below.

Table 8.1: Offences and penalties

Offence	Penalty
Any official of the Ministry who violates the EPA	A fine equal to 5 times the fee that would have been paid for the evaluation and validation of the ESIS
Any person who intentionally provides incorrect or erroneous information in the ESIS	A fine of equal to double the fees paid for the evaluation and validation of the study
All operators of a classified installation who do not have an emergency plan as prescribed in the EPA.	A fine of CDF9 – 40 million
All persons who import hazardous wastes or radioactive material	A prison sentence of 5 to 10 years; and/or a fine of CDF100 – 250 million; and they must re-export or remove the hazardous waste without delay and/or restore the sites or landscapes that have been degraded or polluted at their own cost. If this is not done, a tribunal can order it to be done at the cost of the culprit and it can interdict the operations that were the origin of the wastes to stop operations.
All persons who transport, dispose of, abandon, throw away or discharge industrial, artisanal, medical, biomedical or pharmaceutical wastes in violation of the EPA	A prison sentence of 6 months to 3 years; and/or a fine of CDF1 – 25 million
All persons who pollute or degrade the soil or subsoil in violation of the EPA	A prison sentence of 6 months to 3 years; and/or a fine of CDF2.55 – 25 million; and they must re-export or remove the hazardous waste without delay and/or restore the sites or landscapes that have been degraded or polluted at their own cost. If this is not done, a tribunal can order it to be done at the cost of the culprit and it can interdict the operations that were the origin of the wastes to stop operations.
All persons who pollute, in any manner, freshwater bodies or the ocean or degrade the coastal ecosystems	A prison sentence of 6 months to 3 years; and/or a fine of CDF5 – 50 million; and they must re-export or remove the hazardous waste without delay and/or restore the sites or landscapes that have been degraded or polluted at their own cost. If this is not done, a tribunal can order it to be done at

Offence	Penalty
	the cost of the culprit and it can interdict the operations that were the origin of the wastes to stop operations.
All persons who alter the quality of the air in violation of the EPA	A prison sentence of 6 months to 3 years; and/or a fine of CDF5 – 50 million.
All persons who produce, import, use, put on the market or discharge toxic chemicals in violation of the EPA	A prison sentence of 2 to 5 years; and/or a fine of CDF90 – 200 million.
Anyone who operates, transforms or modifies a classified installation or changes the manufacturing process, leading to dangerous or negative impacts	A fine of CDF100 – 250 million.
Anyone who dumps, incinerates or discharges, by any means, hazardous or radioactive wastes into freshwater or the ocean under DRC jurisdiction	A prison sentence of 6 to 10 years; and/or a fine of CDF100 – 250 million.

8.3.7 Fees

The costs related to the evaluation of the environmental and social impact studies are borne by the promoter and payable at the time of submission of the study report (Article 30 of the EIA Regulations). A schedule of fees is not available on the CEA or MESD websites.

8.3.8 Environmental standards

The environmental quality standards applicable to mining operations are provided in Annex IX of the old Mining Code, together with details on monitoring frequency, monitoring locations, calculations and measurement techniques. Tables showing standards for water quality, air pollution and noise for mining operations are included in Annex IX and are repeated below in Tables 8.2 to 8.5. It is assumed that these standards will remain in force under the new Mining Code.

Table 8.2: Maximum concentration of contaminants in water (mining)

Determinant	Maximum concentration (mg/l, except where indicated)
Temperature at the edge of the mixing zone	5°C above the maximum ambient temperature of the receiving waters and a maximum of 3°C if the ambient water temperature is 28°C or more
Oil and grease	20
Biological oxygen demand	50
Acute toxicity	More than the acute level specified for freshwater fish and crustaceans
pH	6 – 9 units
Suspended solids	100
Arsenic	0.4
Copper	1.5
Cyanide, total	2.0
Iron	6.0
Lead	0.5
Mercury	0.002
Nickel	1.0
Zinc	10.0
Hydrocarbons	10.0

Table 8.3: Threshold limits for air pollution within the mining rights area

Nature of contaminant	Threshold limit (mg/m ³)
Arsenic	0.5
Carbon monoxide	29
Copper	1
Free silica	5
Hydrogen cyanide	11
Hydrogen sulphide	14
Lead – emissions and fumes	0.15
Nitrogen dioxide	6
Solid particles	10
Sulphur dioxide	5

Table 8.4: Threshold limits for air pollution outside the mining rights area

Nature of contaminant	Threshold limit (g/m ³)
Particulate matter (<10 µm):	
Annual average	100
Average maximum in 24 hours	500
Nitrogen oxide as NO ₂ :	
Annual average	100
Average maximum in 24 hours	200
Sulphur dioxide	
Annual average	100
Average maximum in 24 hours	500

Table 8.5: Maximum sound levels

Terrain	Night-time (dB(A))	Daytime (dB(A))
Built-up residential areas with schools, hospitals or other sensitive teaching or health establishments	40	45
Areas with permanent commercial activities, hunting, fishing or other recreational activities	50	55
Areas with mostly industrial or agricultural activities	70	70

Note that night-time is from 7pm to 7am, and daytime is from 7am to 7pm.

Where no DRC standards exist, World Bank/IFC and World Health Organisation guidelines are applied.

8.3.9 Certification of Consultants

There are no formal requirements for certification and registration of consultants in the DRC, but local consultants and consulting companies need to be on a list of 'approved' consultants held by CEA before they can undertake an ESIA in the country.

8.4 ESIA procedural framework in the DRC

8.4.1 ESIA process

The following steps to be followed in carrying out an ESIA are set out in the ESIA Regulations (Decree No. 14/019 of 2 August 2104) and summarised in Figure 8.1.

Any project which may have an adverse impact on the environment such as the development of infrastructure, extractive industries including the mining or exploration for minerals and hydrocarbon production, industry, commercial activities, agriculture, forestry, cement manufacture, telecommunications infrastructure, etc., (see Appendix 8-1) must be subjected to an ESIA, which must be submitted to CEA together with an environmental and social management plan (ESMP) in order to obtain an **Environmental Certificate** (Articles 18 and 24 of the Regulations).

The first step in the process to obtain an Environmental Certificate is to submit Terms of Reference for the ESIA to the CEA (Figure 8.1). The Terms of Reference should include the following requirements:

- An examination of the interactions between nuisance emissions from project activities and environmental and social receptors;
- Identification of the biophysical and social elements of the environment which may be affected by the project which may have been raised as concerns by the public or determined by specialists;
- Identification all the potential impacts of the project on the environment and local communities and an evaluation of the impacts using an appropriate impact assessment method which will highlight those of greatest importance. Only those impacts which are most significant should be subjected to a detailed specialist study;
- Propose mitigation or enhancement measures for negative and positive impacts respectively in an ESMP. The ESMP should include *inter alia*:
 - A realistic and practicable monitoring programme;
 - An Emergency Preparedness and Response Plan to address potential risks from accidents;
 - Plans for the management of solid wastes, liquid effluents, and gases which may be generated during construction or operations;
 - A management plan for all project ancillary facilities including borrow pits and quarries;
- Carry out a sensitisation programme for the public within the project's zone of influence regarding the protection of the environment and their safety.

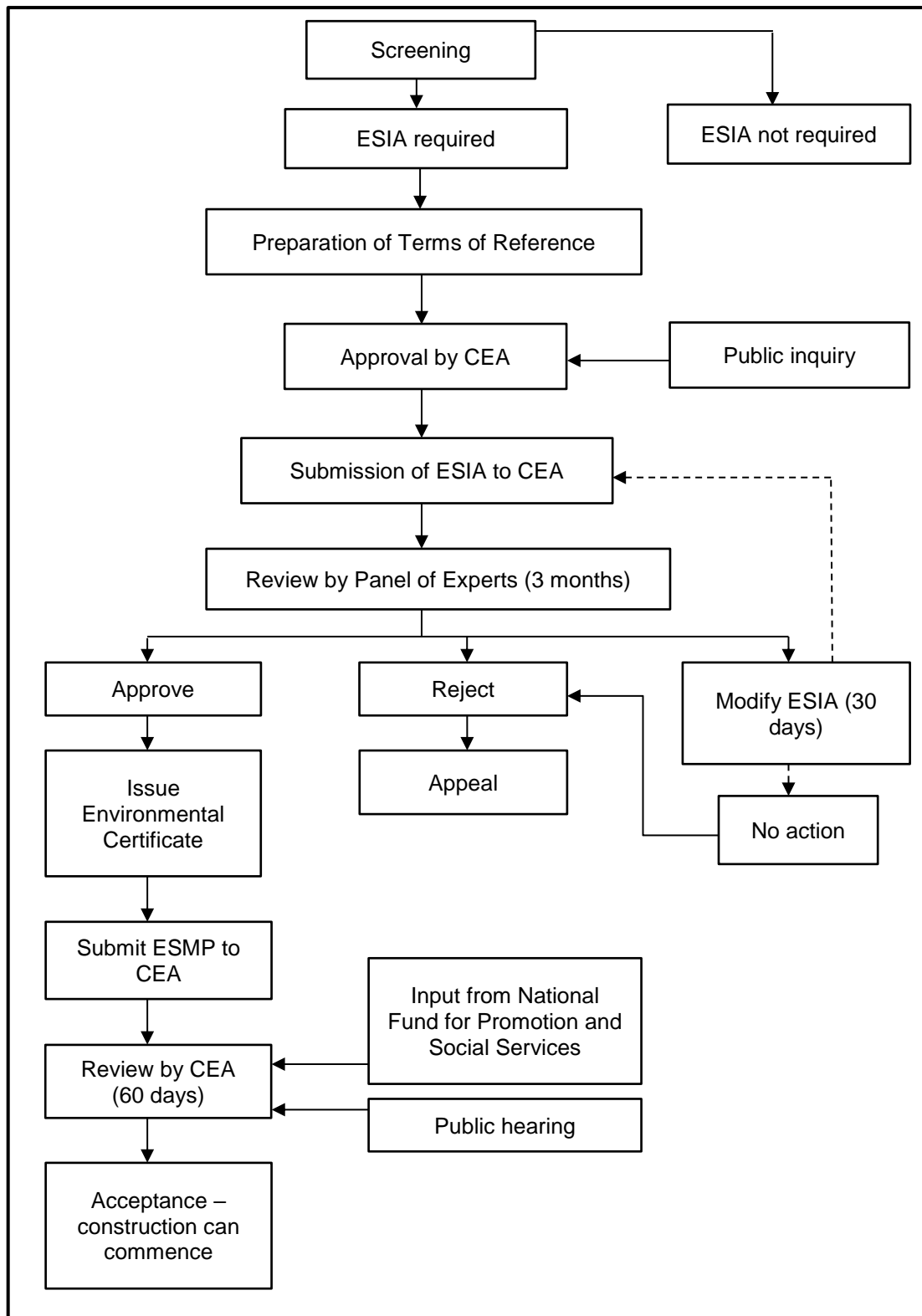


Figure 1: ESIA process

Once the CEA has approved the Terms of Reference, the consultants shall prepare an ESIA report. The ESIA report must describe the predicted impacts of the project on the environment and should include the following:

- a) A non-technical summary written in French, English and in the language spoken by the project-affected persons;
- b) The context and justification of the project;
- c) The institutional, policy and legal framework of the project;
- d) A detailed description of the project, including plans, maps, images and figures to aid understanding;
- e) An accurate and detailed inventory of the baseline environment, its natural, socio-economic and human environment, including in particular, the elements and natural resources likely to be affected and the use that would be made of them;
- f) A comparative analysis of the project alternatives, the technical justifications of the choice made, as well as the processes to be adopted by the proponent, taking into account environmental protection concerns;
- g) The identification, analysis and assessment of the predicted direct, indirect and cumulative consequences of the project;
- h) The environmental and social management plan describing, in particular, the impacts, mitigation measures and the monitoring plan together with their estimated costs during and after the completion of the project, the monitoring indicators, timeline, and capacity building modalities,
- i) The results of public consultations;
- j) A conclusion describing the predicted impacts and the commitment of the proponent to environmental and social requirements;
- k) Annexes consisting of maps, figures, documentation relating to public consultation, the various administrative documents, results of analyses, curriculum vitae of experts, additional information relating to the study, and the terms of reference for the study (Article 19).

The environmental and social impact study is the responsibility of the project proponent who must appoint suitably qualified Congolese consultants approved by the Ministry of the Environment or international consultants. Wherever possible, preference should be given to local consultants so long as they have equal or greater capability than foreign agencies. If international consultants are used, the proponent must ensure that they partner with local consultants.

8.4.2 ESIA review and decision-making

The review and decision-making process is set out in Articles 23 – 29 of the Regulations and includes the following steps:

On the submission of the ESIA report, the CEA will convene a Panel of Experts comprising the following members:

- 4 representatives of the competent authority;
- 1 representative per relevant line ministry;
- 1 representative from the National Social Service Promotion Fund;
- 3 resource persons identified because of their expertise in the sector of the project being reviewed.

The CEA has **three months** from the date of submission of the study to notify the promoter of one of the following decisions (Figure 8.1):

- Approval of the ESIA, in which case it issues an Environmental Certificate, which is valid for the duration of the project; or
- Comments and observations which need to be addressed before the report may be approved. The proponent then has a period of **30 days** from the date of receiving the comments and observations to integrate them into his study for reconsideration. After this period, the study is deemed rejected; or
- Rejection of the ESIS report, in which case the proponent must re-do the ESIA or cease his project.

If the proponent receives no response from the CEA within the three month time limit set out above, the study shall be considered admissible and the certificate acquired.

Upon the issuance of the Environmental Certificate and prior to the execution of the works, the proponent must prepare an ESMP and submit it to the CEA for evaluation (Article 32). When the ESMP is filed, the CEA has to obtain the opinion of the National Social Service Promotion Fund regarding the social management plan of the project. The CEA has a period of **60 days** from the date of receipt of the ESMP for its review and validation. After this period, the ESMP is deemed to be acceptable.

In the case where modifications are made to the project which was issued an Environmental Certificate by the CEA, an updated ESIA report, subject to the same conditions, is required.

8.4.3 Appeal procedures

The promoter has a right of appeal against the decision not to issue the Environmental Certificate. This recourse is exercised in accordance with the procedures in force in administrative law.

8.4.4 Monitoring and enforcement

The implementation of the ESMP during the life of the project is important in order to suppress, reduce and possibly compensate for the harmful consequences of project activities on the environment. The oversight of ESMP implementation by the proponent and sub-contractors is the responsibility of an environmental officer appointed by the proponent. Compliance monitoring consists of observing the changing state of the environment, as well as checking the effectiveness of the mitigation measures, and other recommended provisions.

In case of non-compliance with the commitments contained in the ESMP, the CEA can suspend the work and ask the proponent to comply within a time limit to be determined according to the extent of the negative impacts. If the promoter does not react within the time allotted to him, the Environmental Certificate shall be cancelled with immediate effect.

If the measures originally planned in the ESMP prove to be inadequate to reduce or otherwise manage the impacts on the environment, the promoter is required to take the necessary adjustment measures. These measures must comply with any new directives and applicable environmental standards.

8.4.5 Public access to ESIA documents

Reports on environmental and social impact studies are kept by the CEA. They can be consulted by any natural or legal person who expresses the need. However, for confidentiality reasons, certain technical details of the project may be withdrawn from the information made available to the public. This withdrawal may be appealed in accordance with the procedures in force in administrative law. Some, but not all ESIA's are posted on the Ministry website.

8.4.6 Public hearing

All projects or activities that could have an impact on the environment must be subjected to a **public hearing** during the ESIA (Article 24). The aims of the public hearing are as follows:

- Inform the public in general and the affected communities in particular about a project or activity;
- Obtain information about the environment and understand whether there are any other rights held by third parties in the zone affected by the project or activity;
- Collect the concerns, ideas and suggestions for alternatives in order for the competent authority to consider all aspects necessary for decision-making.

The request for a public hearing must be accompanied by a file including the following documents prepared in French:

-
- A project information document highlighting the main technical characteristics of the project;
 - A non-technical summary of the project;
 - The map of the area of influence of the project.

The cost of the hearing is the responsibility of the proponent (Article 54), but it is conducted by a Commission constituted and chaired by the administrator of the region or the mayor, which includes:

- A representative of the local environment agency;
- Representatives of the other sectoral ministries concerned;
- Representatives from local civil society;
- The chairman of the committee may, at the request of the members of the commission, make use of private experts if the public and/or the specific issues of the project require it.

The public hearing must be announced via the main public communication channels of the area and a notification about the project must be placed in the newspapers in French and in the local language of the project-affected people, at least **two months** before the project commencement date (Article 55).

The public hearing is carried out in two stages:

- Preliminary communication of the project to the stakeholders in French, in the national language of the province, as well as in a language of the project-affected people;
- Collecting concerns, suggestions and counter-proposals from stakeholders.

The duration of the public hearing may not exceed **two months**.

The public hearing ends with the transmission of the Commission's report to the competent authority. The report includes:

- Description of the process;
- The minutes of each public meeting signed by the members of the Commission and the stakeholders consulted;
- Summary of consultations, recommendations issued and decisions taken in consultation with the stakeholders.

After examining the report, the competent authority sends its decision to the public hearing Commission with either an acceptance of the report or a motivated request for additional information. The Commission then has a period of **15 days** from the receipt of the report from the competent authority to submit the additional information required. If this period is exceeded, the competent authority publishes the investigation report (in French and the local language of the project site), including its observations, in all the main media channels. A copy is reserved for the Minister as well as the sectoral Ministers affected by the project.

In accordance with the administrative procedure, the applicant has a right of appeal against the competent authority.

8.4.7 Environmental audit

Articles 39 - 50 of the EIA Regulations make provision for an environmental audit to be conducted. The aim of the audit is to assess through a systematic, documented and objective monitoring process, the impact that all or part of a project activity generates or is likely to generate, directly or indirectly, on the environment and the population. To this end, it aims to:

- Ensure compliance with standards and technical regulations;
- Operational control of practices that may have an impact on the environment;
- Contribute to maintaining environmental compliance
- Help reconcile economic productivity with environmental standards;
- Prescribe any appropriate measures of environmental protection;
- Assist in the application of the sanctions provided by environmental legislation.

An individual auditor must be approved by the Minister, hold at least a Bachelor's degree or other equivalent degree, and have at least five years of experience in one of the following areas:

- Environmental legislation and regulations;
- Environmental sciences and technologies;
- Environmental assessment;
- Environmental auditing processes and techniques (Article 50).

Any company or other organisation (legal person) that wishes to undertake an audit must be approved by the Minister and have at least five years of experience in environmental auditing or environmental management (Article 50).

If environmental risks are likely to be, or are being, caused by a project, or on renewal of the Environmental Certificate, the Minister may commission an environmental audit by a qualified auditor as described above. The auditor will be notified of the scope of work to be performed,

the project or the activity to be audited, the period, the duration and the content of the audit. The environmental audit must be conducted in accordance with the Operations and Procedures Manual (see s. 8.3.4). The auditor's fees shall be borne by the public treasury.

It is the responsibility of the auditee to collect and analyse any samples taken from the site that may be required by the auditor.

At the end of the audit, the auditor sends the environmental audit report to the Minister. The latter takes note of it, and notifies the auditee of the conclusions, who has a period of **15 days** to contest them. On expiry of this period, the Minister may either instruct the CEA to follow up on the findings, or demand that all corrective and / or mitigation measures are implemented. The audit report will also be published by the CEA.

In the event of a dispute with the conclusions of the report, the auditee may request a second opinion and designate at his own expense an auditor fulfilling the required criteria laid down in Article 50 of the Regulations (see above). The auditee has, from the date of notification of the contested report, a period of **45 days** to send the second opinion audit report to the Minister. Notwithstanding the motion to contest the audit findings, the Minister may order any precautionary measures, including suspension of the Environmental Certificate or obtaining, in consultation with the sectoral ministry, a stop-work notice.

On receipt of the second opinion audit report, the Minister submits it for review by a commission under the direction of the CEA and the expert authors of the two reports. The commission evaluates the above-mentioned reports and delivers its conclusions within **15 days** of receipt of the documents. The report of the panel of experts is then sent to the Minister who, in light of the recommendations, may:

- Order the withdrawal of the Environmental Certificate;
- Advise the CEA to enforce the implementation of the necessary corrective measures;
- Apply the stipulated fees and penalties in case of infringements and non-compliance.

8.4.8 Strategic Environmental Assessment

According to Article 19 of the EPA, an 'environmental evaluation' is required for all policies, plans and programmes in the following sectors: infrastructure, hydrocarbons, mining, energy, telecommunication, industry, land, forestry, agriculture, fishing and breeding, urban planning and housing, transport, rural development, tourism and the hotel industry, education, health, any commercial activity and any other project likely to have an impact on the environment. While it does not use the term 'strategic environmental assessment', the intent of the Article is the same. Article 3 of the EIA Regulations describes the purpose of SEA more fully, as being

the systematic prior examination of the environmental consequences of a policy, plan or programme developed by the State, the Province or any other public institutions.

Article 5 of the EIA Regulations sets out the following steps to be followed to assess the expected impacts of a policy, plan or programme on the environment.

Screening involves a review of the policy, plan or programme document by the CEA to determine whether an SEA may be required. If it is, the CEA must appoint an international or local approved consultant to undertake the work. As with ESIA studies, any international consultants who may be appointed are encouraged to partner with local consultants.

The scoping stage includes:

- Collation of baseline environmental reports;
- Establishment of the policy, legal and institutional framework;
- Identification of all relevant stakeholders;
- Identification of key challenges and threats;
- Identification of the appropriate SEA methodology to be adopted for the analysis;
- The key variables to take into consideration;
- Identification of the assumptions and limitations.

After submission of the scoping report, the CEA convenes a panel of experts to review the report composed of:

- 4 representatives of the CEA;
- 1 expert from the relevant line ministries affected by the policy, plan or programme;
- 1 expert from the National Social Service Promotion Fund;
- 2 resource persons identified on account of their expertise in the particular sector of the policy, plan or programme.

The CEA and panel of experts shall have a period of **three months** from the submission of the scoping report to review and notify the applicant regarding:

- The admissibility of the scoping report, in which case it authorises the implementation of the strategic environmental management plan;
- Rejection of the report, in which case the applicant may be required to revise the report;
- A set of conditions which need to be met before the report can be accepted.

In the latter case, the State, the province, the decentralised territorial entity or the requesting public institution shall have **three months** from the date of the notification, to submit a revised report for reconsideration. If no response is received by the end of this period, the report is

deemed rejected. However, if, within the three month period, the CEA does not notify its findings on the scoping report to the applicant, the authorisation of the SEA scoping report is deemed to have been obtained and the full SEA may proceed.

The SEA report must contain at least the following:

- A description of the baseline environment;
- Identification of environmental opportunities and constraints;
- Identification and assessment of cumulative impacts as well as potential opportunities;
- Performance indicators, mitigation and optimisation measures;
- Conclusions and recommendations.

Strategic environmental assessment is the responsibility of the State, the province, the decentralised territorial entity or the public institution which draws up any policy, plan or programme whose implementation is likely to have significant effects on the environment. The procedure for the consideration of the SEA report is the same as that described for the SEA Scoping Report above. After acceptance of the SEA report, the CEA will issue the decision to the applicant, stipulating that the implementation of the policy, plan or programme must comply with the principles of environmental and social safeguards.

In the event of significant changes to the original policy, plan and programme that was subject to an SEA, the CEA will require an update of the SEA report, subject to the same conditions set out above.

Any decisions made in the SEA process can be appealed in accordance with the administrative procedure.

Article 8 makes provision for the CEA to develop SEA guidelines for carrying out SEAs in the DRC.

8.4.9 Trans-boundary impacts

The DRC is bordered by nine countries but there are no provisions in the EPA or the EIA Regulations for the analysis of trans-boundary impacts. However, there is a Memorandum of Understanding between the States of the Congo Basin (1997) which provides for co-operation in sharing environmental information.

8.5 Other relevant environmental legislation in the DRC

As noted, legislation concerning the environment in the DRC is spread between a number of ministries and laws. Both the ministries and the laws are frequently changed and, therefore, the following is merely a guide to possible relevant legislation. The reader is urged to check the latest situation.

Table 8.6: Other potentially applicable sectoral legislation

Sector	Primary agency	Title and date of document	Purpose
General environment	MESD: CEA	National Environmental Action Plan	Defines all the actions required to implement better environmental management at national level in line with Agenda 21.
		Decree No. 002 of 18 March 1997	Provides for the creation, organisation and operation of a national network for environmental information (Réseau National pour l'Information Environnementale).
		Ministerial Order No. 043 of 8 December 2006	Requires an EIA for all projects.
		Environmental Protection Act, No. 11/009 of 9 July 2011	Sets out the fundamental principles relating to the protection of the environment, as well as the institutional framework and procedural mechanisms for an environmental and social impact study. Also sets out the requirements relating to the management and conservation of natural resources, the prevention of pollution risk and pollution control.
		ESIA Regulations, Decree No. 14/019 of 02 August 2014	Sets out the procedures for conducting and reviewing ESIA's, SEAs, public hearings and audits. Includes a list of projects which require an ESIA.
Water resources (including the coastal zone, rivers, wetlands and lakes)	MESD	Law No. 15/026 of 31 December 2015	<p>The main objectives of this Law are to:</p> <ul style="list-style-type: none"> • Respond to Articles 9 and 48 of the Constitution; • Establish the rules for sustainable and equitable management of water resources; • Establish the responsibilities for the management of water and sanitation in accordance with the current economic and social development framework of the

Sector	Primary agency	Title and date of document	Purpose
			<p>country;</p> <ul style="list-style-type: none"> • Determine the appropriate instruments to ensure the rational and balanced management of water resources in a sustainable manner; • Review the current legal and institutional framework especially in terms of addressing the low rate of access to drinking water; • Protect and regulate water resources; • Make the water sector more efficient; • Attract investors to form Public-Private partnership to develop water resources.
Water supply infrastructure (dams and bulk water pipelines)	Ministry of Infrastructure, Public Works and Reconstruction	Ordinance No. 81/23 of 14 February 1981	Creates an action committee for water and sanitation.
Water quality and pollution control	MESD	Environmental Protection Act, No. 11/009 of 9 July 2011	Makes provision for the conservation, management and utilisation of water for domestic, industrial and artisanal use.
	Ministry of Mines	Ordinance No. 52-443 of 21 December 1952	Contains measures to protect springs, groundwater aquifers, lakes and watercourses against pollution and water wastage and to control water rights.
	Local government	Ordinance of 1 July 2014	Water pollution control
	Local government	Regulation on Lake and Watercourse Contamination and Pollution of 1 July 1914	Grants local authorities the power to determine the protection areas for streams, lakes and other water sources that may constitute a source of drinkable water.
Waste management - Hazardous - Non-hazardous	MESD Local government	Environmental Protection Act, No. 11/009 of 9 July 2011	Makes provisions for the control of urban, industrial and medical wastes. All foreign waste is considered dangerous and the Act prohibits the sale, purchase, importation, transit or stockpiling of any nuclear or dangerous wastes from other countries.
Air quality and ozone-depleting substances	MESD	Environmental Protection Act, No. 11/009 of 9 July 2011	Makes provision to protect air quality and prohibits the importation, manufacture and use of equipment that contains ozone-depleting substances.
	Ministry of Mines	Mining Code, Law No. 18/001 of 9 March 2018	Air quality guidelines are contained in the Regulations of the Mining

Sector	Primary agency	Title and date of document	Purpose
			Code.
		Mining Regulations, Decree No. 18/24 of 8 June 2018	
Mines	Ministry of Mines: DPEM	Mining Code, Law No. 18/001 of 9 March 2018	
		Mining Regulations, Decree No. 18/24 of 8 June 2018	Sets out, <i>inter alia</i> , the social commitments, compensation to be paid, quantum of rehabilitation fund, archaeological chance find procedures.
Forests and forestry	MESD: Department of Forests	Forest Code, Law No. 011/2002 of 29 August 2002	Sets out the law applicable to the conservation, exploitation and development of forestry resources. Stipulates the rules applicable to silviculture, research, transformation and trade of forestry products, and promotes biodiversity and the protection of natural habitats, fauna and tourism. The Code prohibits deforestation in zones susceptible to erosion and/or flooding and within certain specified distances from water courses. The Code requires that all cleared forest areas should be compensated by the re-forestation of an equal area. Permits are required for any deforestation of areas larger than 2 ha.
		Ministerial Decree No. 034 of 3 July 2015	This provides the operational guidelines relating to the procedures for describing, approving and implementing management plans for forestry concessions for timber production.
Energy (oil and gas exploration)	Ministry of Energy National Commission of Energy	Law No. 15/012 of 1 August 2015	Establishes the general legal framework for hydrocarbon exploration and production.
		Decree No. 16/010 of 19 April 2016	Sets out the regulations pertaining to the exploration for and production of oil and gas.
Roads	Ministry of Transport and Communication Routes	Decree No. 03/027 of 16 September 2003	Defines the allocation of roles between the Ministries of Roads and Infrastructure.
	Office of Highways (non-urban)	Ordinance No. 71-023 of 26 March 1971	Ordinance to create the Office of Highways (L'Office des Routes).
	Office of Roads	Ordinance No. 87-331 of 16	Ordinance to create the Office of

Sector	Primary agency	Title and date of document	Purpose
	and Drainage (urban)	September 1987	Roads and Drainage (L'Office de Voiries et Drainage).
Land management Land tenure	Ministry of Land Affairs	Law No. 73/021 of 20 July 1973 Law No. 80/08 of 18 July 1980 Law No. 77/001 of 22 February 1977 and Law No. 11-2004 of 26 March 2004	All land in the DRC is state-owned and has to be leased from the state. The law sets out the general regime of property and land tenure. These laws concern the expropriation of land for public use
Biodiversity protection and conservation	MESD: ICCN	Regulation No. 69/041 of 22 August 1969	Nature conservation
		Ordinance No. 75/232 of 2 July 1975	Creates an inter-ministerial committee for the environment, nature conservation and tourism.
		Decree No. 10/15 of 10 April 2010	Sets out the status and mode of operation of the Congolese Institute for Nature Conservation (ICCN).
		Law No. 14/003 of 11 February 2014	Regulates trade in protected species.
Biosecurity	Ministry of Agriculture, Fishing, Livestock and Rural Development MESD	National Framework on Biosecurity Decree No. 5/162 of 18 November 2005	How to implement laws relating to biosecurity; the integration of policies for all line ministries relating to biosecurity; how to implement mechanisms to evaluate and manage biotechnical risks; and reinforcement of national capacities to manage biosecurity in the country. This Decree contains regulations on phyto-safety
Public Health	Ministry of Public Health	National Programme against HIV/AIDS and STDs (in Ordinance No. 11/023 of 18 March 2011)	Sets out the objectives and strategies required to combat HIV/AIDS and STDs.
Heritage resources	Ministry of Art and Culture	Statutory Instrument No. 71/016 of 15 March 1971	Relates to the protection of cultural property
Labour and employment	Ministry of Labour	Law No. 15/2002 of 16 October 2002 (the Labour Code)	The law inter alia protects the health and safety of workers, assures medical services for workers, guarantees a minimum wage, regulates the employment of women and children and the Code also requires equal pay for equal work.. It also regulates working conditions. The Code complies with the conventions and recommendations of the ILO.
		Decree No. 78/004 of 3 January 1978	Requires health and safety committees to be set up in each

Sector	Primary agency	Title and date of document	Purpose
			workplace.
Trans-boundary issues	Ministry of Foreign Affairs	Memorandum of Understanding between the States of the Congo Basin, July 1997	Provides for cooperation in sharing environmental information.

Appendix 8-1

List of activities which require an ESIA

1. Infrastructure and Facilities, Agriculture, Livestock

Any construction and road construction project, whether paved or unpaved;
Any railway construction and layout project;
Any railway rehabilitation project;
Any project for the construction, development or rehabilitation of an international or regional airport;
Any project of construction, development or rehabilitation and maintenance (specifically dredging) of main and secondary ports;
Any project to establish a seaport or fluvial port;
Excavation and backfilling of more than ten thousand cubic meters (10,000 m³);
Any project for the development of economic and social development zones;
Any nuclear energy project;
Any solar energy project;
Any wind installation project;
Any project for the construction or installation of telecommunication antennas;
Any industry in operation phase;
Any thermal power plant project;
Any electrical installation project;
Any hydroelectric dam project;
Any waterway development project including dredging;
Any irrigated agriculture project or agricultural development or rehabilitation project of more than five hundred hectares (500 ha);
Any intensive or industrial livestock project;
Any surface or underground water withdrawal of more than thirty cubic meters per hour (30m³/h);
Any chemical spraying project, which may impact the environment and human health;
Any development of land intended to for the construction of facilities for more than five thousand (5000) spectators;

2. Renewable natural resources

Any introduction of new animal or plant species or genetically modified organisms (GMOs) to the National territory;
Any logging project;
Any project for the capture and sale of wildlife species for export;
Any project for the creation of parks and reserves, terrestrial or marine, of national and regional scope;
Any hunting and sport fishing project;
Any increase in fishing effort in marine areas by type of resource;

3. Tourism and hotels

Hotel facilities with a capacity of more than twenty (20) rooms;
Recreational tourist development;
Any restaurant with a capacity of more than two hundred and fifty (250) seats;

4. Industrial sector

Any industrial unit subject to authorization;
Any industrial or semi-industrial processing units of products of animal origin (cannery, salting, meat products, tanneries);

Any livestock feed manufacturing unit.

5. Product Management and Miscellaneous Waste

Any pesticide, chemical or pharmaceutical storage unit with a capacity greater than ten tons (10 tonnes);

Any unit for the recovery, disposal or treatment of domestic, industrial and other types of hazardous wastes;

Any medical waste treatment or disposal unit;

Any type of storage of radioactive products and / or waste;

Any storage of dangerous products;

Any domestic wastewater treatment unit;

6. Mining sector

Any exploration, mining or quarrying activity;

Any project for artisanal mining of minerals;

Any mining of radioactive substances;

Any physical or chemical treatment of mineral substances.

7. Hydrocarbons and fossil energy

Any exploration or production project for hydrocarbons or natural gas;

Any pipeline transportation project for hydrocarbons or natural gas;

Any project for the extraction and industrial exploitation of coal or coking plants;

Any project for the establishment of crude oil refineries, gasification and liquefaction plants;

Any off-shore and onshore implementation project;

Any project for the extraction of bituminous mineral substances;

Any project for storing petroleum and derived products or natural gas;

Any geothermal energy project;

Any project of degassing;

Any biofuel production project.

Acronyms

AIDS	Acquired immune deficiency syndrome
CDF	Congolese Franc
CEA	Congolese Environmental Agency
DPEM	Direction chargée de la Protection de l'Environnement Minier (Department for the Protection of the Mining Environment)
DRC	Democratic Republic of Congo
EPA	Environmental Protection Act
ESIA	Environmental and Social Impact Assessment
ESIS	Environmental and Social Impact Study
ESMP	Environmental and Social Management Plan
HIV	Human Immuno-deficiency Virus
ICCN	Institute Congolaise pour la Conservation de la Nature (Congolese Institute for Nature Conservation)
IFC	International Finance Corporation
MESD	Ministry of Environment and Sustainable Development
MRP	Mitigation and Rehabilitation Plan
NEAP	National Environmental Action Plan
REDD	Reducing Emissions from Deforestation and Forest Degradation
SADC	Southern African Development Community
SEA	Strategic Environmental Assessment
SNEL	Société Nationale d'Électricité
STD	Sexually transmitted disease
UNDP	United Nations Development Programme

Contacts

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