



IMPROVING LEGAL FRAMEWORKS FOR ESIA AND MANAGEMENT

WEBINAR

Wednesday, July 8
9 a.m. Ottawa / 3 p.m. Geneva

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SPEAKERS

Moderator:

- **Greg Radford**, Director, Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF)

Speakers:

1. **Clémence Naré**, Outreach Manager and Law Advisor, IGF Secretariat
2. **Paula Dobbelaar**, Technical Secretary, Netherlands Commission for Environmental Assessment
3. **Harriet Wachira**, Program Coordinator, Policy, Legal, and Institutional Framework, Transparency International (Kenya)



AGENDA

1. Welcome and introduction
2. Overview of the IGF Guidance for Governments
3. Unpacking international good practices for ESIA legal frameworks:
IGF Secretariat
4. Advice on IGF guidance document and beyond: **NCEA**
5. Perspectives from NGO stakeholder: **Transparency International**
6. Next steps (including upcoming webinars)
7. Discussion (Q&A)



QUESTIONS AND ANSWERS

We will have a Q&A session after the presentation.

Please to submit your written questions throughout the webinar **using the Q&A function** at the bottom of your screen.

Thank you.



Who We Are

Intergovernmental forum for dialogue, implementation

- 76 member countries
- Member Executive Committee
- Secretariat (hosted by IISD)

IGF Mining Policy Framework commitment

IGF members commit to ensuring that mining activities within their jurisdictions are compatible with the objectives of sustainable development and poverty reduction.

IGFMining.org

History

2002: Johannesburg Summit, formally recognized by the UN as a Type 2 Partnership

2003: Global Dialogue Initiative, South Africa & Canada

2005: 1st IGF AGM, 25 member countries

2010: UNCSD 18th Session, needs survey accepted

2011: Mining Policy Framework, UNCSD 19th Session

2013: IGF-MPF recognized by G8, Lough Erne Summit

2015: 55 members; 10 years old; Secretariat moved to IISD and funded by Global Affairs Canada

2020: 76 members

2020: 16th AGM, October 20 to 22 (virtual)



OVERVIEW OF GUIDANCE DOCUMENT

GUIDANCE FOR GOVERNMENTS

Improving legal frameworks
for environmental and
social impact assessment
and management

JUNE 2020





PURPOSE OF GUIDANCE DOCUMENT

Provide IGF members with a summary of good international practice in:

- Legal frameworks for ESIA
- Environmental and Social Management Plans
- Guide the process of granting permits and negotiating mining contracts

Guidance specifically for governments and mining sector

Project level ESIA focused on large-scale mines



CONSULTATION AND PEER REVIEWS

International
Association for Impact
Assessment (IAIA)

International Council
on Mining and Metals
(ICMM)

IGF Members States
AGM: 2018 & 2019

Netherlands
Commission for
Environmental
Assessment (NCEA)

Secrétariat
international
francophone pour
l'évaluation
environnementale
(SIFÉE)

Transparency
International &
Public Online
Consultation

EXTENSIVE RESEARCH

Two years of study covering over 55 jurisdictions





UNPACKING INTERNATIONAL GOOD PRACTICES

GUIDANCE FOR GOVERNMENTS

Improving legal frameworks
for environmental and
social impact assessment
and management

JUNE 2020





ORGANIZATION OF THE GUIDANCE DOCUMENT

SECTION A: Setting the Stage	1.0 Importance of a Comprehensive Legal Framework	
	2.0 Key Concepts: The Basics of ESIA and Management	
SECTION B: Good Legal Framework Components and Enabling Mechanisms	3.0 Components of a Comprehensive Legal Framework	
	4.0 Enabling Factors and Mechanisms	
SECTION C: Key Government Actions by Phase	5.0 Screening Process Through the Exploration Phase	
	6.0 Environmental and Social Impact Assessments Process Through the Mine Planning Phase	
	7.0 Monitoring, Inspections, and Enforcement Through Construction and Operation Phases	
	8.0 Ensure Impacts Are Managed Throughout Closure, Relinquishment, and Post-Closure	
SECTION D: How to Improve Your Legal Framework in Practice	9.0 Strategies for Assessing and Revising Your Legal Framework	
	10.0 Good Governance Checklist	
ANNEXES	ESIA ISDS Cases Table	Key Issues
	Definition of Key Concepts	Additional References by Topic



A COMPREHENSIVE LEGAL FRAMEWORK FOR ESIA AND MANAGEMENT: THEMES

Commitment to Sustainable Development

Coordination

Coverage of All Phases of Mine Life

Public Engagement, Consultation, and Transparency

Grievance Mechanisms

ESIA Requirements

Environmental and Social Management Plans

Mine Closure and Financial Assurance

Permits and Approvals

Monitoring, Inspections, and Enforcement



20 COMPONENTS OF A COMPREHENSIVE LEGAL FRAMEWORK

Commitment to Sustainable Development

1. Commitment to sustainable development, including environmental and social protection, is stated in the legal framework.

Coordination

2. Consistency is maintained across all legal instruments.
3. Responsible authorities are clearly identified, along with their respective roles in review, decision-making, and monitoring processes.

Coverage of All Phases of Mine Life

4. Social and environmental requirements are defined for all phases of the mine life, commensurate with risks.



Public Engagement, Consultation, and Transparency

5. Requirements and guidelines for public engagement and consultation are provided, including ongoing requirements for public engagement throughout the life of the mine.
6. Requirements and guidelines regarding transparency and access to environmental and social information are provided.

Grievance Mechanisms

7. Requirements and guidelines for grievance mechanisms are provided.



ESIA Requirements

8. Standard requirements for the initial project proposal are clearly defined.
9. Screening procedures are required to determine when a mining activity will require an ESIA and review process.
10. Requirements and procedures for scoping are provided, including requirements for stakeholder input.
11. The ESIA is part of project planning and is conducted before any decisions are made to approve a proposed large-scale mining project.
12. A reasonable timeline for the ESIA report review process is defined.



Environmental and Social Management Plans

13. ESMPs are required in the review process, and guidelines are provided.

Mine Closure Plans and Financial Assurance

14. Preliminary mine closure and post-mining transition plans are required in the review process, and guidelines are provided.
15. Adequate financial assurance for remediation and mine closure is required and must be maintained by the mining license holder.

Permits and Approvals

16. Permits and approvals are subject to standard terms and conditions, including reporting and updating requirements.



Monitoring, Inspections, and Enforcement

17. Oversight of environmental and social impacts across the life of the mine is required through monitoring, inspections, and enforcement.
18. Sanctions for non-compliance are commensurate with the level of violation.
19. Existing permit conditions must be met prior to renewal and prior to approving a permit for large-scale mine development.
20. Clear conditions are provided for “exit tickets,” relinquishment, and management of residual risks.



CHAPTERS 5-8: KEY GOVERNMENT ACTIONS IN EACH PHASE OF THE LIFE OF THE MINE

Implementation of the legal framework

The screening process through the exploration phase and defining when a project needs an ESIA review process

The ESIA process through the mine planning phase

The monitoring, inspection, and enforcement process through the construction and operations phases

Closure and post-mining transition



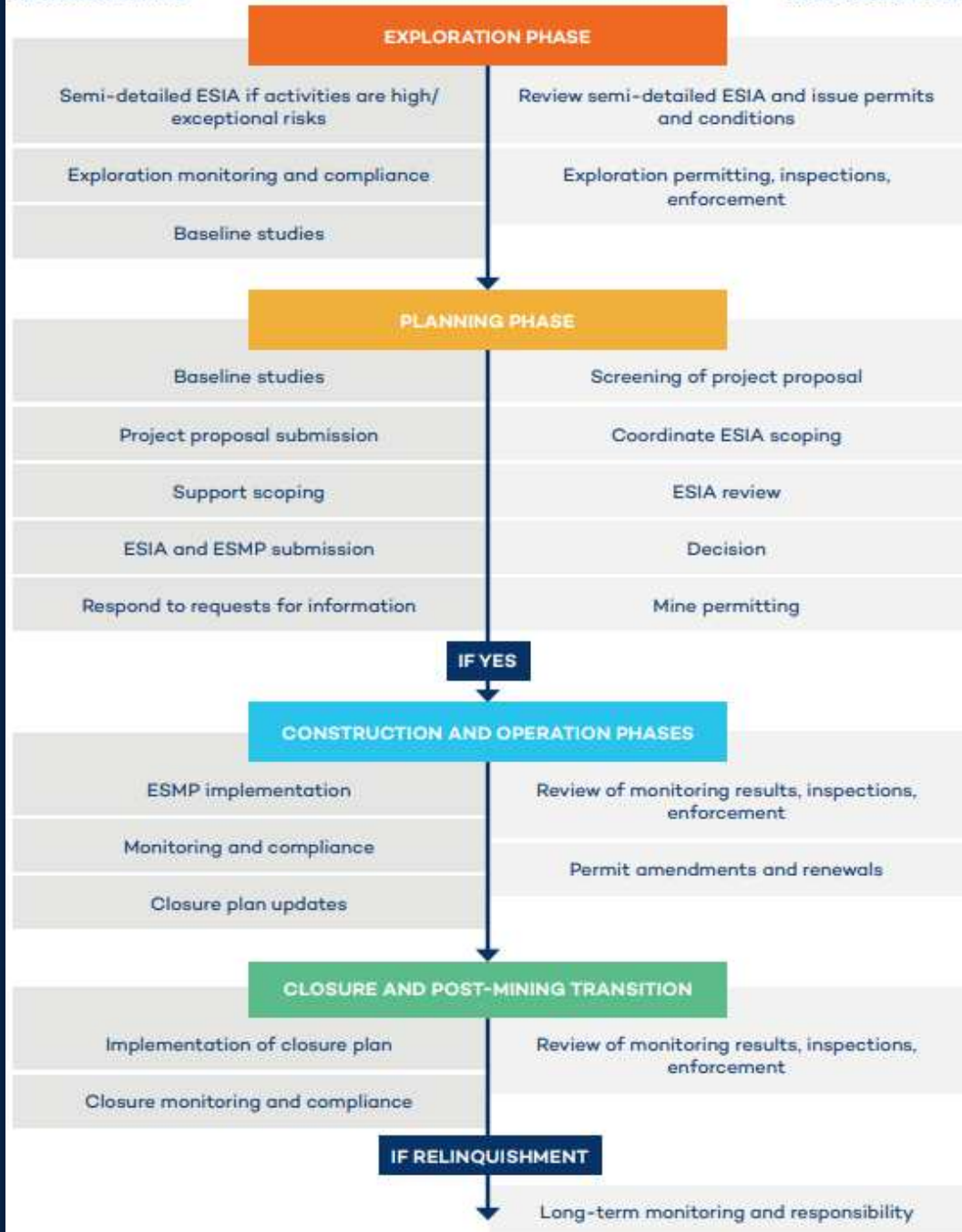
MINE PROJECT PHASES

Chapters 5-8 link project phases to company and government responsibilities.

Understanding the activities and constraints companies and governments have through the project phases allows for coordinated expectations, fewer adverse impacts, and realized benefits for all.

PROPONENT RESPONSIBILITIES

GOVERNMENT RESPONSIBILITIES





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DISCUSSION (Q&A)



THANK YOU

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IGF

INTERGOVERNMENTAL FORUM
on Mining, Minerals, Metals and
Sustainable Development



Netherlands Commission for
Environmental Assessment

IGF Guidance for Governments

Improving legal frameworks for environmental and
social impact assessment and management

Paula Dobbelaar
Technical secretary international cooperation
Focal point for mining
pdobbelaar@eia.nl,

Presentation



- **What is the NCEA**
- **Importance of this guidance**
- **Role of NCEA & this Guidance**
- **Our main findings**



What is the NCEA - <https://www.eia.nl/en>

■ Country activities
■ Regional activities

- **Independent**, Put in place due to our environmental legislation
- In the **Netherlands** since 1987: independent advice on ESIA and SEA
- In **development cooperation** since 1993: independent advice and support to Dutch partner countries Environmental Assessment systems.
- **International** programmes, e.g. Government to Government



Importance of this Guidance



Guidance can improve:

- Alignment of Env and Mining legislation
- Clarity all round for everyone
- Collaboration between all Stakeholders

Role of NCEA & this Guidance

- Draft version 9th October 2019, Notes by NCEA
13th December 2019
- Draft version 9th March 2020 Independent
Advisory review 20th May 2020

Our final advice is published:
<https://www.eia.nl/en/projects/7309>



Main observations

1. Exploration phase
2. Public engagement – transparency & access to information
3. Review and approval of ESIA



Exploration phase

Separate ESIA for exploration phase?

- Exploration permit/license, and
- Licence to Operate

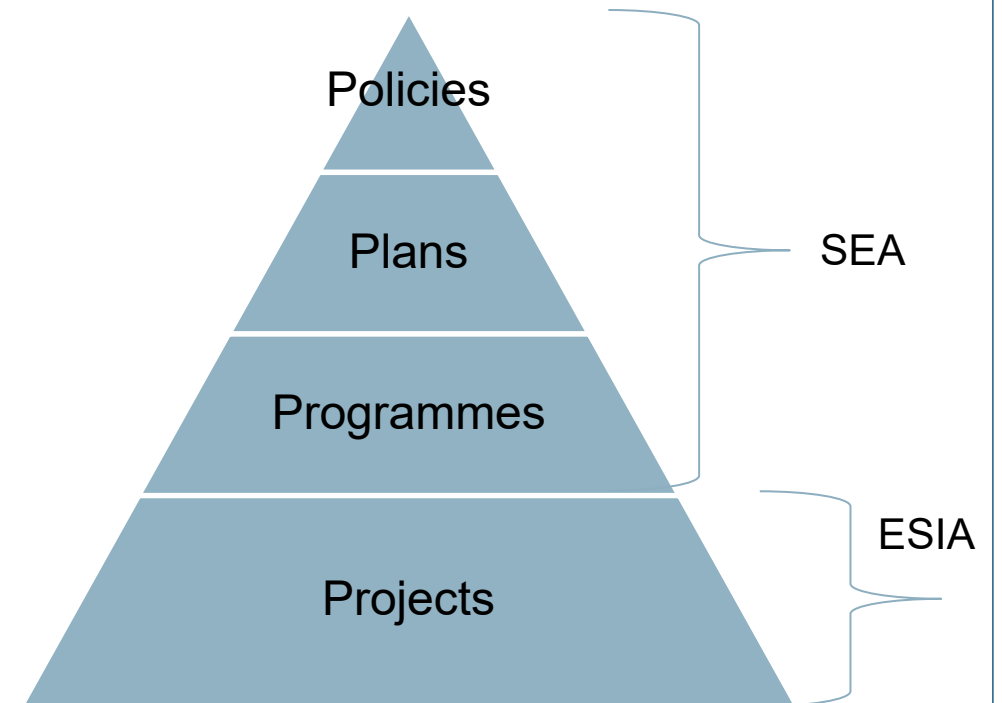
ESIA for exploration enables governments and project proponents to identify conflicting land use interest and other env and social aspects. This can lead to more reasoned decisions.



Strategic Environmental and Social Assessment for the mining sector - SESA

Strategic (inclusive) planning at a National Level

- Decide at a national level (inclusive) on spatial planning of mining sector (e.g. no mining close to nature conservation areas, or cities...)
- Decision on methodologies (e.g. forbidding cyanide and mercury), promotion of env friendly technologies, innovation
- Decision on how responsible mining will contribute to sustainable development of the country



In the end it is all about people like you & me





IMPROVING LEGAL FRAMEWORKS FOR ESIA AND MANAGEMENT

**Access to Information and Transparency in the EISAs: What governments need to know
about for better outcome mining processes**

Harriet Wachira, Transparency International

8th July 2020

ACCOUNTABLE MINING PROGRAM



- Twenty(20) Transparency International country offices (or “chapters”) participating in the global Accountable Mining Programme – Funded by BHP foundation and Australian Government through Department of Foreign Trade
- Focus is on strengthening transparency and accountability to reduce the risks of corruption during project licensing and permitting.
- We conduct [research](#) and engage with all relevant stakeholders to improve integrity and the quality of decision-making in the mining sector.
- ESIAAs are a key focus for Transparency International because gaps in the ESIA process could lead to decisions to approve mining projects not be made in the public interest.

WHY TRANSPARENCY AND ACCESS TO INFORMATION



- ESIA needs to prioritise stakeholder access to information:
 1. *about the steps and requirements of the process*
 2. *produced as part of the ESIA process*

ACCESS TO INFO ABOUT THE STEPS



- **Companies:** country legal requirements of an ESIA- Scope , criteria government will use to make decisions , which government department and by when
- **Mining Communities:** right to participate , when consultations will take place , by when and by whom
- **Governments:** governments need to ensure the process is clear and transparent for all stakeholders.

CSO/NGOs usually help to bridge the information gap by providing [simplified versions](#) of these process.

ACCESS TO INFO PRODUCED AS PART OF EISA



Communities and CSOs: Information about the ESIA reports, Environmental and Social Management Plans (ESMP)

- Including obligations and conditions set for the company
- Potential risks and impacts of the mining operations

MAKING INFORMATION TRULY ACCESSIBLE



- Easily accessible to the community (local administration office, library, community center etc.)
- Easy to understand (accounting for varying literacy levels and language preferences)
- Ensuring informed and active participation in consultations (particularly from women and other vulnerable groups)

THE NEW NORMAL?



- How do we ensure informed and active participation in consultations from communities in the wake of COVID 19?
 - The use of technology - good or bad?



Thank you
Asante