



INTERGOVERNMENTAL FORUM
on Mining, Minerals, Metals and
Sustainable Development

GUIDANCE FOR GOVERNMENTS: IMPROVING LEGAL FRAMEWORKS FOR ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT AND MANAGEMENT

Executive Summary

BACKGROUND AND PURPOSE

The Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) members decided at the October 2017 Annual General Meeting to develop a new guidance document on the legal framework for environmental and social impact assessment (ESIA) and related plans in the context of granting permits and negotiating mining contracts. The IGF members selected this topic based on their awareness of the challenges in assessing and managing environmental and social impacts and their insights that improving ESIA and related management plans are critical components of optimizing sustainable development benefits of the minerals sector.

The purpose of this document is to provide IGF member states with a summary of good international practice in legal frameworks for

ESIA and related management plans for large-scale mines. Examples, strategies, and tools are included to aid in evaluating and improving legal frameworks and environmental and social aspects of resource governance. While professional organizations have published technical guides on ESIA, guidance on law and policy frameworks for ESIA and related management plans are largely lacking in the literature. This guidance document aims to fill this gap for governments and other stakeholders seeking to improve their legal frameworks and management of environmental and social impacts in their mining sector.



IMPORTANCE OF LEGAL FRAMEWORKS FOR ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT AND MANAGEMENT

When improperly regulated, mining activities have the potential to harm the environment and disrupt social and economic structures within a community, instead of capturing the many benefits that can flow from the sector. ESIA and related tools, such as Environmental and Social Management Plans (ESMPs), are thus critical components in legal frameworks for mining activities, both to minimize the negative impacts and to optimize the positive contributions of the mining sector.

With mining activities taking place in jurisdictions with varying levels of social and environmental protection, a survey of best practices for the governance of environmental and social impacts and benefits of mining through all phases of the life cycle of the mine, from exploration through the post-mining transition, is fundamental. When the legal framework adequately addresses the timing, scope, implementation, monitoring, and enforcement processes of ESIA and related management frameworks, governments and other stakeholders have a roadmap for managing impacts and optimizing social and economic benefits from the mining sector.

Unfortunately, the environmental and social impacts of mining are often not properly considered before mining activity begins. Regulatory shortcomings and procedural flaws in the ESIA process, monitoring, and enforcement can have negative repercussions: trust between mining proponents, governments, and communities can be jeopardized; mines can operate with inadequate ESMPs; and mine closure plans and related financial guarantees are often insufficient. In some cases, mines are simply abandoned, leaving

an environmental and social legacy for communities and governments. The growing number of international disputes related to unclear processes for environmental and social management of the mining sector is a testimony to the importance of a clear, transparent, and comprehensive legal framework for ESIA and environmental and social management.

ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS AND MANAGEMENT PLANS ARE IMPORTANT TOOLS FOR GOVERNMENTS

ESIA is a tool used to identify and evaluate the potential environmental and social impacts of a project. ESMPs are developed during the ESIA process and propose actions to respond to, mitigate, and manage identified impacts and benefits.

Government review of ESIA and related management plans is a key component in a government's decision regarding whether a proposed mining project should be approved or not. The process helps governments to carefully consider how the proposed project will be implemented, to ensure that it proceeds only in a manner that protects the environment and advances the social and economic interests of current and future generations. Where a mineral development permit is granted, ESMPs then serve as a reference document for the permit holder, government monitoring agencies, communities, and other key stakeholders throughout the life of the mining project.

The legal framework should provide a clear roadmap for the environmental and social impact assessment and management process, incorporating practices that aid the government in meeting all aspects of its sustainable development objectives.



ORGANIZATION OF THIS GUIDANCE DOCUMENT

FIGURE 1. ORGANIZATION OF THE GUIDANCE DOCUMENT





This guidance document is organized into four sections and 10 chapters.

Section A sets the stage for the guidance document. It consists of two chapters:

- **Chapter 1** provides an overview of the importance and key benefits of a comprehensive legal framework for environmental and social impact assessment and management. This chapter presents current trends in environmental and social impact assessment and management plans across the jurisdictions studied in the preparation of this guidance document, as well as trends in international disputes related to ESIA in the mining sector.
- **Chapter 2** explains what an ESIA is and lays out the key steps of and key stakeholders in the ESIA process. This chapter also describes the mine life cycle, common impacts across each stage of the life of the mine, and types of ESMPs to help respond to and manage these impacts.

Section B provides an overview of a good legal framework for environmental and social impact assessment and management. It includes two chapters:

- **Chapter 3** identifies 20 components of a comprehensive legal framework for environmental and social impact assessment and management plans for the mining sector and proceeds with a discussion of each component.
- **Chapter 4** provides an overview of key enabling factors and mechanisms of a good framework for environmental and social impact assessment and management.

Section C presents key government actions over four phases, each in its own chapter:

- **Chapter 5** describes the screening process and steps the government can utilize through the exploration phase to

determine when a proposed mine needs a full ESIA and related government review process.

- **Chapter 6** covers the ESIA review process and related requirements through the mine planning phase, culminating in the government's decision to approve or deny the environmental authorization and transfer of any conditions of project approval to subsequent permits.
- **Chapter 7** covers monitoring, inspections, and enforcement roles through the construction and operations phases to ensure that environmental and social impacts and socioeconomic benefits are continually managed.
- **Chapter 8** describes government management of the final steps of closure, relinquishment, and post-closure, and the importance of regular review and updates of mine closure plans to ensure that social and environmental aspects of mine closure are addressed in the event of a temporary or permanent mine closure.

Section D covers how to improve your legal framework in practice. This section includes two chapters:

- **Chapter 9** details strategies for assessing and revising legal frameworks for ESIA and environmental and social management of the mining sector and provides actionable steps.
- **Chapter 10** provides a detailed list of assessment questions and tools to guide assessing and improving legal frameworks. The lists are aligned with each substantive chapter of this guidance document.

The Annex to this document provides additional tools, including definitions of key concepts related to ESIA and environmental and social management, a bibliography, and a list of additional references by topic.



KEY RECOMMENDATIONS

COMPONENTS OF A COMPREHENSIVE LEGAL FRAMEWORK FOR ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT AND MANAGEMENT

Governments should adopt **a comprehensive legal framework** for environmental and social impact assessment and management of the mining sector to ensure that it protects the environment and optimizes opportunities to advance sustainable development. Following a study of a wide range of jurisdictions and review of good international practice, Chapter 3 presents 20 components of a comprehensive legal framework for environmental and social impact assessment and management plans.

Commitment to Sustainable Development

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

Consistency and 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 described.
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 licence 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.

This guidance document also identifies **enabling mechanisms and factors** in Chapter 4 that will support the success of implementing a comprehensive framework for ESIA and ESMPs. This includes aligning international, national, and subnational law and policy in order to ensure consistency across the legal framework. Governments should also avoid legal stabilization of environmental and social provisions in laws and contracts so that they may continue to improve and update their legal framework. Conducting a strategic environmental and social assessment (SESA) for the mining sector can also promote greater understanding and clarity for all stakeholders regarding national and subnational development plans, land-use plans, and a range of environmental and social criteria and objectives. Establishing a coordinating agency is also important to facilitate inter-ministerial collaboration and decision making. Another key enabling factor is to ensure meaningful consultation and engagement—guidelines can provide greater clarity for all stakeholders and foster positive outcomes. Finally, to ensure

ongoing improvement of the legal framework and its implementation, it is also fundamental for governments to identify sources of funding and ensure that required human resources are in place.

KEY GOVERNMENT ACTIONS IN EACH PHASE OF THE LIFE OF THE MINE TO IMPLEMENT THE LEGAL FRAMEWORK FOR ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT AND MANAGEMENT

Responsible management in each phase of the life of the mine sets the stage for responsible management of subsequent phases. With this in mind, government action in the exploration phase cannot be overlooked. Likewise, government actions and decisions in the mine planning phase can set a mining project up for optimal contributions for sustainable development, from the construction phase through mine closure and post-mining transition. Chapters 5 to 8 present key government actions by mining phase.

THE SCREENING PROCESS THROUGH THE EXPLORATION PHASE AND DEFINING WHEN A PROJECT NEEDS AN ESIA REVIEW PROCESS

The screening process is critical, as it determines when a proposed mining activity will need a full ESIA, based on the level of environmental and social risks. Establishing clear requirements for managing environmental and social risks in this exploration phase is very important to the responsible governance of the mining sector and often determines the “first impression” of mining for communities. Large-scale mining projects and major expansions of mines should always require an ESIA process. Governments should ensure that any issued permits and approvals are subject to standard terms and conditions, with special conditions for exploration and



other mining activities where required. In some types of advanced exploration activity with higher levels of environmental or social risks, a semi-detailed or full ESIA may be required, for example, where Indigenous Peoples are present or exploration requires building a road through a potentially sensitive area. Finally, governments should require existing permit conditions to be met prior to renewal and large-scale mine development.

THE ESIA PROCESS THROUGH THE MINE PLANNING PHASE

The government's ESIA review process is critical to determine if and under what conditions the mining project will be developed, based on identified environmental and social impacts and proposed mitigation measures. The government will undertake a review of the mine development plan and set out criteria for project scoping. Government will then develop and agree to the content of the ESIA report, based on stakeholder input, through Terms of Reference (ToR). Throughout the mine planning phase, governments should also require and oversee meaningful engagement and consultation processes, including building stakeholder capacity for participation. When the ESIA report is submitted, a lead government agency should ensure that it is complete and aligned with the ToR, then coordinate the reviews of all relevant government agencies and oversee the stakeholder review process. The timeline for review should be reasonable and may take years for a large-scale mining project. The government evaluation should include a review of the ESIA report, management plans, closure plans, and other relevant plans. The review should ensure that sufficient financial assurance for remediation and mine closure are provided prior to mine development. Based on this evaluation and review process, the government will approve or deny the environmental authorization. The decision will

be based on consideration of all technically feasible alternatives, including a "no project" alternative. If approved, all conditions of project approval must be transferred to subsequent permits and monitored for compliance.

THE MONITORING, INSPECTIONS, AND ENFORCEMENT PROCESS THROUGH THE CONSTRUCTION AND OPERATIONS PHASES

Once a mining project is approved, the government's role is to ensure that environmental and social impacts and socioeconomic benefits are continually managed through the construction and operations phases. Governments will ensure that stakeholder and community engagement and capacity building are maintained. Government will also ensure ongoing transparency in communicating the results of compliance and enforcement to communities and the public, including through clear guidelines for environmental and social reporting. Collaboration between national and local governments is particularly important at this stage, to effectively manage the impacts and benefits of the workforce. Governments must also ensure that progressive rehabilitation is undertaken throughout the life of the mine, as well as ongoing preparation for environmental and social aspects of the post-mining transition. Effective monitoring requires governments to conduct regular reviews of progress reports and monitor the implementation of management plans. Providing clear inspection requirements and adequate human resources for compliance checks and enforcement is also crucial for the monitoring process. Governments may need to enforce permit conditions and manage non-compliance. Where there are material changes to mine plans or impacts, governments may need to request updated assessments and amended management plans.



CLOSURE AND POST-MINING TRANSITION

This crucial phase involves managing the final steps of closure, relinquishment, and post-mining transition. The success of this phase builds on the quality of mine closure planning, implementation, and monitoring of previous phases. Mine closure planning must address not only the environmental aspects of mine closure but also the social and economic aspects of post-mining transition. Preparation for mine closure requires ongoing action through the planning and operations phases in particular to prepare for temporary and permanent closures. Governments must regularly review mine closure plans, require updates as needed, and ensure that closure planning addresses the social, environmental, and economic aspects of mine closure. The legal framework must provide clear conditions for “exit tickets,” relinquishment, and management of residual risks. Finally, governments should inspect and monitor closure and post-mining transition plan implementation and complete a final inspection prior to relinquishment.

Government and company responsibilities in environmental and social impact assessment and management by mine phase are summarized in Figure 2.

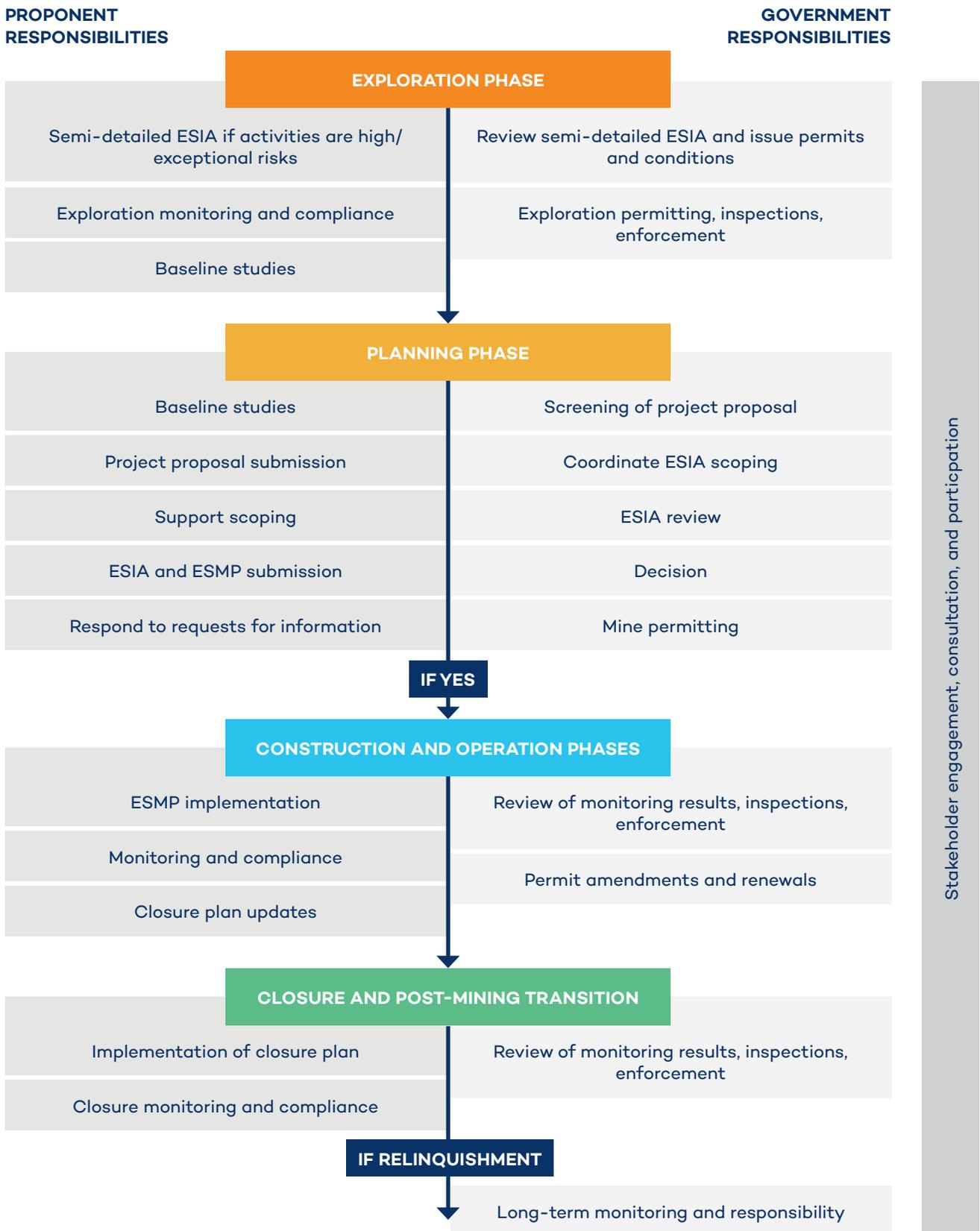
PRACTICAL TOOLS AND STEPS TO IMPROVE LEGAL FRAMEWORKS FOR ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT AND MANAGEMENT

Chapter 9 provides governments with practical steps to review and improve their legal framework with an aim to enhance environmental and social protection in the mining sector. The first step is to conduct a “gap analysis” that compares the legal framework to international good practice. This guidance document and its Chapter 10 Good Governance Checklists provide useful references for such an analysis.

When considering whether the time is right for reforms, the government should prepare by scanning for challenges and opportunities, identifying risks associated with an inadequate reform process, and determining what legal instruments should be changed. This guidance document then provides a process with steps for revision, including collaborating through an inter-agency platform or working group; analyzing by completing the gap analysis; planning and developing an ESIA framework that fills existing gaps; reviewing through a review committee; submitting the draft for adoption or endorsement; implementing through an implementation action plan and strategy; and checking, assessing, and monitoring to review and audit the effectiveness of the plan. Governments should put a system in place to manage change and continuously monitor, evaluate, and improve legal frameworks.



FIGURE 2. GOVERNMENT AND PROPONENT RESPONSIBILITIES IN ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT AND MANAGEMENT BY MINE PHASE





LIMITATIONS OF THIS GUIDANCE DOCUMENT

This guidance document does not cover artisanal mining or present all the unique challenges of small and medium-sized mining operations. While these are all very important areas for environmental and social impact management, they require more attention than is possible in the limited space of this guidance document.

The guidance presented in this document, while incorporating the input of technical experts, does not set out detailed technical aspects of conducting ESIA's. The guidance focuses on international good practices in legal frameworks and key government actions over the life of a large-scale mine.

ADDITIONAL RESOURCES

In addition to the resources provided in the Annex to this guidance document, you can find additional information in a range of languages at www.IGFMining.org. This guidance document may lead to additional future resources, including case studies, training courses, and online materials. If you are interested in more information or would like to request additional training or materials, please contact the IGF Secretariat at secretariat@igfmining.org.



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