

Decree no 76/98 of 29 December

The appropriate instrument of environmental policy and management to foresee the possible consequences for the environment and for the community of adopting a particular policy, or approving an undertaking, is the assessment of its environmental impact in its various forms and phases. Law no 20/97, of 1 October, establishes the regime of environmental licensing, based on assessing the environmental impact of activities or undertakings of a particular scale and/or nature, remitting the norms for this to a specific set of regulations.

Thus, in terms of Article 33 of Law no 20/97 of 1 October, the Council of Ministers decrees: The appended set of regulations on the Procedure for Environmental Impact Assessment, which is an integral part of this decree, is hereby approved.

Approved by the Council of Ministers

Let it be published

The Prime Minister
Pascoal Manuel Mocumbi

Regulations on the Procedure for Environmental Impact Assessment

COUNCIL OF MINISTERS

Decree no 76/98 of 29 December

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General Provisions

Article 1

Definitions

For the purposes of the current set of regulations:

- a) Area of influence: means the area and the geographical space directly or indirectly affected by the environmental impact of an activity.
- b) Community: means a group of persons located in the area of influence of a proposed activity, and which is not necessarily limited to a village or to a district.
- c) Public consultation: means the process of listening to the opinions of the various sectors of civil society, including corporate or individual persons, directly, indirectly or potentially affected by the proposed activity.
- d) Sustainable development: means development based on environmental management that meets the needs of the present generation without compromising the environmental balance and the possibility of future generations also meeting their needs.
- e) Government body responsible for environmental management: means the central or local government organ in charge of implementing environmental policy.
- f) Environmental licence: means the certificate confirming the environmental viability of a proposed project, issued by the Ministry for Coordination of Environmental Affairs.
- g) Monitoring: means the regular and periodic measurement of the environmental variables that represent the development of the environmental impact of the activity after the project of an activity has begun implementation (the measurements prior to the start of activity constitute the basic data) in order to document alterations caused, with the aim of verifying the occurrence of the impacts envisaged and the effectiveness of mitigating measures.
- h) Pre-assessment: means the process of preliminary environmental analysis of the draft project concerning its potential impact, and the definition of the depth to which the impact study should go, which thus determines the specific nature of the study and its terms of reference.

- i) Proposer: means any person or entity, public or private, Mozambican or foreign, who proposes to carry out an activity.
- j) Review: means the analysis and scientific assessment of the content of an environmental impact study, in order to verify the technical quality of its methodology and the information it contains, in accordance with the Terms of Reference and the quality standards defined by law.
- k) Reference Environmental Situation: means the study of the quality of the environmental components and their interactions as they present themselves in the area of influence of an activity prior to its implantation.
- l) Terms of reference: means the document that contains the parameters and specific data that must inform the drafting of the environmental impact study of an activity. It must be presented by the proposer for approval by the Ministry for Coordination of Environmental Affairs before starting work on the environmental impact assessment.
- m) Directives: means the overall guidelines and parameters to which the undertaking of the environmental impact assessment must be submitted in the various areas of economic and social activity, and which shall be the subject of ministerial dispatches from the Ministry for Coordination of Environmental Affairs.
- n) Environmental Viability: means the capacity an activity has of being implemented without causing significant negative impact on the environment of the place of implementation, or where its negative impacts can be mitigated.

Article 2

Scope of application

1. The provisions contained in this diploma are applicable to all public or private activities that may have a direct or indirect influence on the components of the environment, under Article 3 of the Environment Framework Law.
2. The activities contained in the appended list require an obligatory environmental impact study, which must be carried out in the terms of this set of regulations.
3. Environmental impact studies for oil and gas prospection, research and production and for the mining industry shall be governed by specific regulations.
4. Proposals for activities that seek to deal with emergency situations resulting from natural disasters shall be exempt from the requirement for an environment impact study. They must, however, receive the due guidelines from the Ministry for Environmental Coordination, or shall require a later audit.

Article 3

Powers in the sphere of Environmental Impact Assessment

In the sphere of environmental impact assessment, the Ministry for Environmental Coordination shall have power to:

- a) Issue and publicise general directives on environmental impact assessment procedure;
- b) Approve the specific Terms of Reference proposed by the proposer of an activity, which shall serve to guide the undertaking of the environmental impact studies;
- c) Issue periodically, in coordination with the relevant tutelage bodies, updated environmental criteria and standards that the activities and studies undertaken in the sphere of environmental impact assessment must obey.
- d) Undertake reviews of environmental impact studies, in collaboration with the interested public entities, civil society and the communities;
- e) Issue environmental licences;
- f) Register, and keep a register of, the professionals and consultancy companies that have the requisite skills to undertake environmental impact studies;
- g) Undertake, in coordination with the bodies that exercise a tutelage role over the activities, the control and supervision of licensed activities, by promoting inspections, the monitoring of environmental impacts, and the holding of environmental audits.
- h) To activate legal mechanisms, in coordination with the tutelage institutions, in order to embargo or order the destruction of work, or to cancel activities which by their nature constitute an assault on the quality of the environment.

Environmental impact assessment

Article 4

Proceedings

In order to begin the environmental impact assessment procedure, to promote the pre-assessment and formulate the specific terms of reference to guide the environmental impact studies, the proposers shall present the following documentation to the Ministry for Environmental Coordination:

- a) Description, location and characterisation of the activity;
- b) Executive summary of the project
- c) Data on the environment in the place where the activity is to be implemented.

Article 5

Pre-assessment

1. All activities not covered by the appendix to the present diploma, and capable of causing significant environmental impact, shall be subjected to pre-assessment undertaken by the Ministry for Environmental Coordination.
2. The purpose of pre-assessment shall be to determine whether or not an environmental impact study is necessary.
3. When the pre-assessment indicates that the environmental impact of an activity or undertaking is already known, the Ministry for Coordination of Environmental Affairs shall issue the respective environmental licence.

Article 6

Environmental Impact Study

1. Undertaking the environmental impact study and the monitoring programme is an obligation that is entirely the responsibility of the proposers of the activity.

2. The environmental impact study must contain at least the following:
 - a) The delimitation and geographical representation of the area of influence of the activity, as well as its reference environmental situation;
 - b) The description of the activity and its alternatives, in the planning, construction, operation and (in the case of a temporary activity) de-activation stages;
 - c) The comparison of the alternatives considered and the forecast of the future environmental situation of the area of influence in the event of adopting each alternative;
 - d) The identification and assessment of mitigating measures;
 - e) The undertaking's environmental management programme, including the monitoring of impacts, and accident prevention and contingency plans;
 - f) Identification of the team that drew up the study.

3. The environmental impact study must also contain a non-technical summary covering the main questions dealt with and the conclusions proposed, for purposes of public consultation.

4. The environmental impact study shall be presented to the Ministry for Coordination of Environmental Affairs, in the form of a report written in Portuguese.

Article 7

Public consultation

1. In order to undertake public consultation during the environmental impact assessment period, the Ministry for Coordination of Environmental Affairs shall adopt methods that, on a case by case basis, are most appropriate for achieving the intended goals, guaranteeing full access to all existing information and (world illegible) on the matter.
2. The public consultation period and procedures, including those for publicity and for receiving petitions, shall be made widely known by the proposer, according to the guidelines of the Ministry for Coordination of Environmental Affairs, so as to reach the communities affected by the project.
3. The Ministry for Coordination of Environmental Affairs shall call public hearings, whenever the scale or likely effects of the project so justify, or when this is requested by a public or private entity interested in the activity or by a legally constituted association for the protection of the environment.
4. In the public hearing, members of civil society, local government bodies, local bodies of economic associations, and of education and research centres, who have some direct or indirect interest in the proposed activity, shall have the right to participate or to be represented.
5. All the oral submissions and presentations made at the public hearing, or the written ones presented to local government bodies or to the Ministry for Coordination of Environmental Affairs, up until ten days prior to the close of the period of the review of the environmental impact study, in accordance with article 9 of this set of regulations, shall be considered in the decisions on granting the activity an environmental licence, as long as they concern its direct or indirect environmental impact.
6. The final descriptive report from the public consultation shall specify the diligences undertaken, the participation that took place, the questions raised in the debates, the submissions and presentations received in due time, accompanied by the respective replies and conclusions.

Article 8

Assessment criteria

1. The results of the assessment of the proposed activity shall be determined on the basis of the following factors:
 - a) The number of persons and communities covered;
 - b) The ecosystems, plants and animals affected;
 - c) The location and size of the area affected;
 - d) The duration and intensity of the impact;
 - e) The direct, indirect, potential, overall and cumulative effects of the impact;
 - f) The reversibility or otherwise of the impact.
2. The environmental impact assessment shall be submitted to environmental quality standards and to the maximum tolerable levels of contamination of air, water, soil and natural ecosystems.
3. Until specific national standards are adopted, the standards established by international bodies and the international conventions ratified by Mozambique shall be observed.

Article 9

Review of the environmental impact study

1. Once the environmental impact study has been received and compliance with the norms established in this set of regulations has been verified, the Ministry for Environmental Coordination shall undertake its technical review.
2. The technical review of the environmental impact study may be carried out by a committee established for this purpose, coordinated by the Ministry for Environmental Coordination, and composed by representatives of the ministry that supervises the activity, of other government bodies, of universities and of research centres in the environmental area.
3. During the review period, the Ministry for Environmental Coordination may request data that complements the environment impact study on aspects of the specific terms of reference approved during the pre-assessment phase, and which have not been fully dealt with.

4. When the scale and complexity of the matter so demands, the review of environmental impact studies may be undertaken through the private contracting of specialists in various subjects. The specialists thus contracted shall declare in writing, prior to signing their contracts, that they do not have, and have never had, any conflict of interests concerned directly or indirectly with the project under analysis, and that they do not belong to any pressure group linked to interests competing with those that are to be the subject of analysis and review.
5. After the review of the environmental impact study, which shall be undertaken on the basis of the terms of reference approved during the pre-assessment period, the Ministry for Coordination of Environmental Affairs shall take a decision on the environmental viability of the proposed activity.
6. The technical opinion of the team in charge of the review and the respective argumentation shall be registered in minutes signed by all the professionals and technical staff involved. These minutes shall be an integral part of the procedure for licensing the activity and shall constitute the basis of the decision on granting an environmental licence for the proposed activity.
7. In the event that the environmental impact study is rejected for omission of data, or because it does not obey the terms of reference, directives and standards of analysis stipulated by law, the documentation shall be returned to the proposer, accompanied by the respective legal and scientific arguments.
8. The proposer shall bear the costs of reformulating the environmental impact study, in accordance with the directives issued for this purpose by the Ministry for Coordination of Environmental Affairs.

Article 10

Decision on environmental viability

1. When the environmental viability of the proposed activities is proved, the respective environmental licence shall be issued.
2. In the event of a serious objection that makes it impossible to accept the proposed activities and grant them an environmental licence, the Ministry for Coordination of Environmental Affairs shall take one of the following decisions:
 - a) A written communication completely rejecting the proposal, with the due technical, scientific and legal explanation;
 - b) A written communication on the need to introduce alterations to the proposal, indicating what alterations should be made, and giving the respective technical, scientific and legal explanations.

Article 11

Time limits for communicating decisions

1. The Ministry for Coordination of Environmental Affairs shall observe the following time limits:
 - a) Pre-assessment: up to five clear days;
 - b) Review of the environmental impact study: up to 60 clear days;
 - c) Issuing of environmental licences: up to ten clear days after the expiry of the period of analysis mentioned in *line b*);
 - d) Communication of the rejection of proposals or of the need to alter them: up to ten clear days after the expiry of the period of analysis mentioned in *line b*).
2. In exceptional cases, which must be duly grounded and communicated in writing to the proposer, the government body responsible for environmental management may extend the time limits established in the previous paragraphs by a period not longer than 30 days.
3. The time limits indicated in this article shall be counted as from the date on which the reception of the environmental impact study is registered, and shall be interrupted whenever complementary data is required, and resumed when such data is duly presented by the proposer.

Environmental licence

Article 12

Validity

1. Any environmental licence shall be considered null and void if the activity to which it refers does not begin within two years of the licence being issued.
2. When the time limit mentioned in the previous paragraph expires, if the proposer is still interested in the licensed activity, he must submit to the Ministry for Coordination of Environmental Affairs a written request asking that the term of validity of the licence be extended.

The Ministry may take one of the following decisions:

- a) Update the licence, regarding it as still valid and compatible with the circumstances of the time;
 - b) Demand the total or partial updating of the environmental impact study.
3. The decision of the Ministry for Coordination of Environmental Affairs shall be communicated within 30 days, counted as from the date of reception of the written request.

Environmental consultants

Article 13

Register of environmental consultants

1. The Ministry for Coordination of Environmental Affairs shall create a system for registering environmental impact assessment consultants.
2. Only the specialists and middle and higher level technical staff who are registered in terms of this article may carry out environmental impact studies in Mozambique.
3. Registration may be in the name of an individual consultant, a consultancy firm, or a consortium of consultancy firms.
4. A certificate of the above-mentioned registration shall be issued on a request in writing from those interested, containing the following data on the consultants:
 - a) Name, nationality, profession, workplace, usual address;
 - b) A certificate of higher level academic qualifications for senior technical staff, and a certificate of technical qualifications for mid-level technical staff;

- c) Curriculum vitae, showing experience and knowledge of the reality and problems of the environment in Mozambique and in other southern African countries;
 - d) An individual consultant must also present his tax number for purposes of tax, and a declaration that he does not work for, and is not under contract to, the Ministry for Environmental Coordination;
 - e) In the case of a company, in addition to the information concerning its consultants in terms of the previous lines, it must also submit a portfolio of studies already undertaken, its Commercial Registry number, and its tax number for tax purposes;
 - f) Evidence of collective or individual professional insurance.
5. Foreigners who wish to undertake environmental consultancy in Mozambique, apart from respecting the requirements stipulated in the previous paragraphs, must also observe the legal conditions imposed by the current labour legislation for foreigners, without prejudice for any conditions imposed by professional associations.
6. Once it has received the written request, the Ministry for Environmental Coordination shall issue the registration certificate within no more than ten days, counted as from the date of receiving the request.
7. Should it have any doubts, the Ministry for Environmental Coordination reserves the right to demand proof of the information supplied by the interested party.
8. The registration certificate shall be paid for in terms of the provisions of article 17 of this set of regulations.

Article 14

Responsibility of environmental consultants

Consultants who are registered to undertake environmental impact studies shall bear civil and criminal responsibility for the data they provide in the environmental impact study report.

Inspection, sanctions and fees

Article 15

Inspection and audits

1. The Ministry for Environmental Coordination shall undertake regular inspection of the monitoring and environmental management work of the activity, carried out by the proposer, in order to ensure the quality of the environment. It may request an environmental impact audit or undertake environmental inspections, when the complexity of the environmental control questions so justifies.
2. The Ministry for Environmental Coordination may order the holding of environmental audits for activities already under way which have not been submitted to environmental impact assessment procedures, and which may cause damage to the environment.

Article 16

Responsibility for damage

1. Any proposer shall bear civil and criminal responsibility for damages he has caused to the environment in cases where:
 - a) He does not submit his project or activity to the prior procedure of environmental licensing;
 - b) Having submitted his environmental impact assessment study, he changes substantially the initial project without prior approval of the alterations by the Ministry for Environmental Coordination;
 - c) He does not implement the measures proposed in the study and in the environmental licence.

Article 17

Environmental licence fees

1. For environmental licensing, in terms of Article 11, paragraph 1 c) and Article 12, paragraph 2, of the current set of regulations, the following fees shall be paid:
 - a) Licensing of projects up to a value equivalent to one million US dollars...1,000,000.00 MT

- b) Licensing of projects with a value equivalent to between one and two million US dollars....2,000,000.00 MT
- c) Licensing of projects with a value equivalent to between two and ten million US dollars....3,000,000.00 MT
- d) Licensing of projects with a value equivalent to more than 10 million US dollars....5,000,000.00 MT
- e) For the purposes of registering environmental consultants, in terms of Article 13 of the present decree, the following fees shall be charged:
 - f) Registration of individual consultants.....1,000,000.00 MT
 - g) Registration of consultancy firms.....2,000,000.00 MT

Article 18

Sanctions

1. Obstructing or hindering, without just cause, the undertaking of the powers attributed to the bodies mentioned in this set of regulations shall be punished with a fine of between 5,000,000.00 MT and 20,000,000.00 MT.
2. Anyone who does not update his environmental licence in terms of article 12 of this set of regulations shall be punished with a fine of between 5,000,000.00 MT and 20,000,000.00 MT.
3. Anyone found working as an environmental consultant without respecting the provisions of article 13 of this set of regulations, shall be punished for illegal exercise of activity with a fine of 5,000,000.00 MT.

Article 19

Updating the sums charged and their destination

1. The fees and fines established in this set of regulations shall be updated whenever necessary by a joint ministerial diploma from the Minister of Planning and Finance and the Minister for Environmental Coordination.
2. The destination for the fees and fines established in this set of regulations shall be:
 - a) 40% for the state budget;
 - b) 60% for the National Environment Fund.

3. The fees and fines mentioned in this set of regulations shall be delivered to the tax department in the respective tax area the month following that in which they have been charged by the relevant body.

APPENDIX

Activities which may have significant impact on the environment and which require environmental impact studies:

1. Programmes and projects for intensive livestock and agricultural development, covering individual or cumulative areas greater than 350 hectares.
2. Clearing, dividing and exploiting the native vegetation cover of individual or cumulative areas greater than 100 hectares.
3. Hydraulic works such as dams, dikes, channels and irrigation and drainage systems.
4. High tension electrical energy transmission lines with a capacity equal to or greater than 150 KV.
5. Pipelines carrying oil, gas or minerals and underwater cables with a length equal to or greater than 25 kilometres.
6. Urban water supply and sanitation systems, their piping, treatment stations and effluent disposal systems.
7. Extraction, storage, transport and processing of hydrocarbons, and production of hydrocarbon derivatives.
8. Exploitation and processing of minerals.
9. Industrial and agro-industrial installations and complexes, such as: cement, steel and coking factories, chemical products, paper and cellulose factories, tanning, pesticide factories, drinks industries, cashew nut processing, cold stores, slaughterhouses, food processing industries.

11. Hydroelectric power stations of any capacity.
12. Ports, airports and railways that occupy an area equal to or greater than 25 hectares, or with a length equal to or greater than 25 kilometres.
13. Building of new road alignments with a unit cost higher than 100,000 USD per kilometre.
14. Building of new bridges with a span equal to or greater than 250 metres.
15. Transport, processing, storage and elimination of toxic and dangerous (including radioactive) products and residues.
16. Landfills, treatment, incineration and other forms of eliminating municipal, industrial and hospital waste.
17. Fish farming projects, with an area equal to or greater than 5 hectares.
18. Industrial fisheries processing.
19. Programmes and projects that imply the permanent or temporary displacement of populations and communities.
20. Plans and projects for territorial development and occupation, with any purpose, including tourism.
21. Plans, programmes and projects that may affect, directly or indirectly, sensitive areas, such as:
 - a) coral reefs;
 - b) mangroves;
 - c) native forests;
 - d) small islands;
 - e) zones of imminent erosion, including dunes along the coastline;
 - f) areas exposed to desertification;
 - g) conservation or protected zones or areas;
 - h) wetlands
 - i) zones where the habitat and ecosystems are in danger of extinction
 - j) zones of outstanding landscape beauty;
 - k) zones of archaeological, historical and cultural value that should be preserved; zones where plant or animal species threatened with extinction are located;
 - l) ground waters used for public consumption;
 - m) areas for the protection of springs and water sources.