

Submission to the UN Special Rapporteur on the human right to a clean, healthy and sustainable environment

Environmental impact assessments and the right to a clean, healthy and sustainable environment in DR Congo's mining sector

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Rights and Accountability in Development ([RAID](#)) is a UK-based NGO of legal and policy researchers who expose corporate wrongdoing, environmental harm and human rights abuses. Through our partnerships with human rights law firms around the world, we work alongside frontline communities to hold companies to account.

We welcome the opportunity to provide information to the Special Rapporteur on the human right to a clean, healthy and sustainable environment to inform the report to be submitted to the United Nations General Assembly. Our submission provides input from our work scrutinising industrial copper and cobalt mining in the Democratic Republic of Congo (DRC).

In March 2024, RAID, in partnership with the African Resources Watch ([AFREWATCH](#)), a Congolese human rights NGO, published a report titled *Beneath the Green: A Critical Look at the Environmental and Human Costs of Industrial Cobalt Mining in DRC*.¹ This in-depth study examined the impacts of water pollution from industrial mining operations on fenceline communities in the DRC. It was based on two years of fieldwork and a detailed analysis of corporate environmental impact assessments (EIA) alongside the regulatory framework governing them.

In response to the Special Rapporteur's call for input, RAID draws directly from this body of work to highlight key opportunities, challenges and regulatory shortcomings in the oversight and implementation of EIAs in the DRC's mining sector.

EIA regulation for mining companies in the DRC

The DRC amended its mining legislation in 2018 with important modifications to its EIA provisions.² The new legislation requires all companies, at the start of a mining project (and every five years or whenever there are significant changes to the project), to produce: (a) an environmental and social impact assessment, identifying, predicting, assessing, and reducing social and environmental impacts; (b) an environmental and social management plan, outlining measures to eliminate, reduce, or compensate adverse impacts identified in the assessment; (c) a mitigation and rehabilitation plan, detailing commitments to remediation of environmental

¹ RAID and AFREWATCH, *Beneath the Green: A critical look at the environmental and human costs of industrial cobalt mining in DRC* (March 2024).

² Loi n° 007/2002 du 11 juillet 2002 portant code minier telle que modifiée et complétée par la Loi n° 18/001 du 09 mars 2018 [DRC Mining Code], Art 1(19), 1(40-41) & 204 ; Décret N° 038/2003 du 26 Mars 2003 portant Règlement Minier tel que Modifié et Complété par le Décret N° 18/024 Du 08 Juin 2018 [DRC Mining Regulations], art 450 et seq.

impacts of research-related mining activities; and (d) financial security for the fulfilment of environmental obligations, determined in accordance with the approved environmental plan.³

Furthermore, companies are required to adhere to the Directive on Environmental and Social Impact Assessment,⁴ which establishes both procedural and substantive requirements for EIAs, ensuring greater consistency across the mining sector.

Requirements for public disclosure are stipulated, but remain flawed

Congolese legislation requires EIA studies to be made public.⁵ Summaries of the environmental and social impact assessment and management plan, containing, among others, a description of impacts and corresponding mitigation measures and the different subcontractors, must be published on the Ministry of Mines' website within fifteen days of the receipt of the company's request for EIA's approval. They must also be published on the website of a specialised agency (*the Cellule Technique de Coordination et de Planification Minière – CTCPM*) as well as the website of all mining companies that have one. Moreover, as mentioned below, a summary of the EIA translated into a local language must be shared with local stakeholders.

These requirements seek to achieve transparency, allowing various stakeholders to access information about a project's environmental impacts and the company's strategies to mitigate them, with the possibility to press for action. Unfortunately, these objectives are hindered by vague provisions, weak implementation, and a lack of penalty incentives for non-compliance.

Below are some of the problems we have noted in our research:

1. It is not clear at which stage a company should publish the summary of its EIA and whether the fifteen-day period extends to companies. In practice, companies often refuse to share their EIAs until they have been approved by the relevant state agency or until the document is published on a government website—an unlikely outcome (see below), leaving communities unable to access crucial information. Some companies have also declined to share earlier versions of the assessments with communities and representatives, arguing that they are outdated, and that stakeholders must wait for the most current version to be approved.⁶ Some companies told us it was not a common practice for them to communicate the results of environmental programmes to local communities. In a few cases, companies have begun holding periodic environmental feedback sessions—usually on a quarterly basis—but to our understanding, these are only conducted orally.
2. While the law requires companies to publish summaries of their EIAs and provide translated versions to local stakeholders, there is currently no enforcement mechanism to ensure compliance. To our knowledge, no company has been held to account or received any meaningful push from the government to comply. The absence of a company website is sometimes cited as a practical barrier to online publication, but this could be addressed by requiring companies to use an official third-party repository. Without clear penalties and active oversight, these legal requirements remain largely ineffective in practice.
3. Although three separate government agencies review EIAs (see below), the mining legislation does not specify which agency is responsible for preparing EIA summaries—it simply indicates where they should be published. The result is that these summaries are

³ On financial security, Mining Code, art 204(4); Mining Regulations, art 410 et seq.; Mining Regulations, Annex II.

⁴ Mining Regulations, Annex VIII, Directive sur l'Étude d'Impact Environnemental et Social.

⁵ Mining Code, art 42; Mining Regulations, art 25 octies.

⁶ RAID and AFREWATCH, *Beneath the Green*, p. 23.

not prepared consistently, if at all.⁷ Research conducted in 2023 on environmental and social compliance in DRC's mining sector found that 75 out of 93 assessed companies lacked an environmental and social management plan,⁸ underscoring the urgent need for stronger institutional support and accountability.

The existing regime crucially falls short of fostering substantive dialogue. Unlike South Africa or Chile, for example, there is no clearly stated purpose that the publication of a draft EIA must allow for public review and comment.⁹

Challenges facing public bodies in EIA oversight: Tensions and resource gaps

Three Congolese government agencies, each with a distinct mandate (i.e., environment, social services, and mining), are responsible for reviewing EIAs. These include the Congolese Environment Agency (ACE), the National Fund for Promotion and Social Service (FNPSS), and the Directorate of the Ministry of Mines in charge of the protection of the mining environment (DPEM).¹⁰ Together the three agencies manage a Standing Evaluation Committee (CPE), which reviews a company's EIA against the requirements set out in the ESIA directive. The Committee is authorised to request an independent assessment where necessary.¹¹

There are no minimum requirements regarding the Standing Committee members' qualifications, expertise or skillset, raising concerns about the Committee's technical capacity to effectively evaluate EIAs. Researchers we speak to reveal insider accounts from DPEM officials on companies frequently relying on copied content from other EIAs and the lack of any systematic review of submitted reports.

In day-to-day operations, state agents often lack technical expertise or equipment to meaningfully evaluate corporate environmental assessments or to monitor their implementation. Interviews conducted for our *Beneath the Green* report revealed that staff at ACE, for instance, "relied heavily on their sight and sense of smell to assess cases of pollution because they had neither the equipment nor sufficient expertise to conduct adequate testing."¹² In practice, state agencies frequently depend on external private laboratories and consultancies to analyse the samples they collect and to generate environmental data;¹³ still, they do not have the funds to do this on a regular basis. Similarly, CPE's ability to rely on external expertise may offer some technical backstopping but this does not compensate for the systemic gaps in state capacity and in-house expertise.

The mining legislation does not establish any mechanisms for preventing or addressing conflicts of interest among CPE members. The only relevant safeguard prohibits consultancy firms that have conducted an EIA on behalf of a company from being contracted by DPEM to evaluate that same assessment.¹⁴ Yet, according to researchers we spoke to, some local firms that prepare EIAs on behalf of companies are reportedly established by officials from these public agencies.

A further concern is the ongoing conflict of competence among the three regulatory agencies. During our investigation for the *Beneath the Green* report, ACE and DPEM officials we interviewed described a strained and often ineffective partnership between the three agencies, stemming

⁷ KPMG, 'Rapport d'évaluation du niveau d'exécution par les entreprises extractives de leurs obligations sociales et environnementales dans trois provinces pilotes de la RDC' (ITIE – RDC, March 2023), p. 15

⁸ *ibid.* p. 14.

⁹ In South Africa, see EIA Regulations (2014), s 40(1).

¹⁰ Mining Code, art 42.

¹¹ Mining Regulations, art 455.

¹² RAID and AFREWATCH, *Beneath the Green*, p. 67.

¹³ *ibid.*

¹⁴ Mining Regulations, art 418.

from vague definitions of their roles in the inter-ministerial order 2019.¹⁵ The lack of clarity significantly hampers coordination and creates confusion over an agency's responsibility throughout an EIA cycle. One example of this, as noted above, is that the mining legislation does not specify which state entity is responsible for preparing EIA summaries, resulting in a systematic failure to make these documents publicly accessible. To date, it is difficult, if not impossible, to find an EIA summary on government websites. Another example is the failure to undertake joint investigations on companies' social and environmental compliance as required by the mining legislation.¹⁶ The inter-ministerial order 2019 is opaque about how the three agencies should coordinate joint evaluations, and FNPSS officials have told us they have never conducted a tripartite mission. To worsen the situation, provincial authorities create services that, in effect, compete with these agencies.¹⁷

While involving a broad range of relevant services in the evaluation and implementation of EIAs is commendable—and reflects the interconnected nature of environmental, social, and health issues—such inclusivity must not come at the expense of clearly defined responsibilities, minimum competence standards, or safeguards to prevent conflicts of interest.

Communities are consulted, but not heard

Stakeholder engagement is mandated both during and after the assessment, primarily with two obligations: conducting public consultations and sharing a summary of the EIA in the local language.¹⁸ Companies are required to familiarise themselves with local communities and their social and cultural values, and to involve them meaningfully in the design of mitigation and rehabilitation action plans. A written summary of the EIA must be provided in the local language to local authorities, grassroots organisations and community representatives. Each EIA must also include appendices detailing the public consultation process, including consultation methods used, meeting schedules, issues discussed and conclusions.¹⁹

Companies' EIAs consistently show that communities raise serious environmental concerns during consultations—ranging from air, water and soil pollution to deforestation—and frequently identify the operating company as the source of these problems.²⁰ Communities also request access to environmental monitoring results.²¹ However, company responses are typically vague and non-committal. They tend to rely on generic assurances that the EIA includes appropriate mitigation measures,²² or deflect responsibility by attributing pollution to historical sources. While some companies do share EIA summaries in local languages (e.g., Swahili and Sanga) at the conclusion of the assessment,²³ this remains relatively rare, and communities are given limited opportunity to engage with the findings or suggest amendments.

Furthermore, some issues affecting specific groups within communities continue to be overlooked—either due to flawed methodological approaches or because they fall outside the typical scope of risk assessments. For example, despite widespread evidence of adverse environmental impacts on women's gynaecological and reproductive health in the Congolese

¹⁵ Arrêté Interministériel no 0083/CAB.MIN/MINES/01/2019, no 003/CAB.MIN/EDD/AAN/2019 et no 045/CAB.MIN/AFF.SOC/2019 du 22 février 2019.

¹⁶ Mining Regulations, art 11.

¹⁷ E.g., the creation in the Haut-Katanga province of the *Division Provinciale de Contrôle de l'Environnement et des Exportations Minières* (DPCEEM). See, OI-FLEG, [Rapport de mission de terrain no 13](#) (2019), p. 10-11.

¹⁸ Mining Regulations, art. 451.

¹⁹ Mining Regulations, Annex VIII, Directive sur l'Étude d'Impact Environnemental et Social., Art 126.

²⁰ 'Rapport d'Impact Environnemental et Social. Volume 2' (TFM, July 2019) pp. 404-409 [TFM EIA 2019];

'Environmental and Social Impact Assessment for the Mutanda Mine' (Mutanda Mining, 2021), p. 218.

²¹ *ibid.*

²² TFM EIA 2019, p. 404.

²³ E.g., TFM EIA 2019, p. 402-403.

copper-cobalt belt,²⁴ these harms are consistently absent from EIAs and other due diligence processes. None of the five multinational mining companies studied in *Beneath the Green* appeared to have any information on these issues. From our prior conversations with some mining companies, it was evident that no measures had been taken to ensure gender-differentiated impacts were included in the risk assessments. It is clear that companies need to engage female officers to liaise with local women, with an express mandate to document women-specific health concerns—recognising that a female-to-female setting may offer the safety and trust needed for such issues to be raised.

Enforcement gaps: Limited use of sanctions in EIA oversight

The primary administrative authority responsible for ensuring mining companies comply with environmental requirements is the Minister of Mines. In 2023, the minister suspended the activities of Boss Mining, a subsidiary of Luxembourg-based Eurasian Resources Group (ERG), after a tailings dam collapse released significant amounts of mine waste into the nearby Kakanda River and Kakanda town. The incident resulted in severe environmental and safety incidents, including deaths.²⁵ The suspension was conditional on the company undertaking environmental rehabilitation or pollution mitigation, the revision of its environmental management system, and the payment of damages to affected families. The suspension was renewed twice before finally being lifted in June 2024. While this case sets an important precedent for administrative enforcement of EIAs, such decisive action remains rare, despite numerous reports of environmental incidents in the mining sector.

EIAs and the right to a healthy environment: Conclusion and recommendations

The right to a clean, healthy, and sustainable environment in the DRC's mining regions is fundamentally undermined by the serious and systemic shortcomings in how EIAs are regulated, implemented and enforced. EIAs often serve as formalities rather than meaningful safeguards. Without urgent reform to close the gaps identified above, EIA processes will continue to fall short of their intended function, allowing environmental degradation and human rights violations to persist unchecked.

The Special Rapporteur can consider country-specific changes through visits or official communications to press for stronger protections and genuine accountability. The upcoming thematic report to the UN General Assembly can be the opportunity to recommend that states (a) amend legislation, where relevant, to encourage, through appropriate incentives and disincentives, the timely and mandatory publication of EIAs, giving affected and interested parties the opportunity to review, comment on, and scrutinise these assessments; (b) develop guidance or norms on conflict of interests and set out minimum competence requirements for state agents involved in EIAs approval and monitoring; (c) encourage businesses, through appropriate incentives and disincentives, to take differentiated and tailored actions in their EIAs to identify, document and mitigate women-specific environmental impacts; (d) strengthen national agencies with adequate funding, training and capacity to effectively review and monitor EIAs; and (e) ensure policy coherence across domestic legal frameworks at all levels.



²⁴ RAID and AFREWATCH, *Beneath the Green*, pp. 32-36.

²⁵ Michael J Kavanagh, '[Congo Halts ERG's Copper Mining Project After Waste Leakage](#)' (Bloomberg, 2 June 2023).