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**Policy and implementation review in
the area of Environmental and Social
Evaluation in the SAWAP region**

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Policy review and evaluation Practices of the environmental impact on the SAWAP region

Analysis will be based on the following points:

- (i) The political and legal framework regulating the ESE
- (ii) National procedures
- (iii) Principal actors involved





(Benin, Burkina Faso,
Chad, Ethiopia, Ghana,
Mali, Mauritania,
Niger, Nigeria,
Senegal, Sudan and
Togo)

Questionnaire sent to countries

Answered:

- Chad
- Niger

■ Mission and personal contact with countries:

- **Togo**
- **Nigeria**
- **Mali**
- **Senegal**
- Burkina
- Benin

■ No response, no contact:

- Ethiopia
- Sudan
- Ghana
- RIM





L'ESE: a tool of environmental and social governance

- L'ESE is “a systemic process of evaluating, and documenting the possibilities, capabilities and functions of
 - natural and human systems
 - resources
- in order to facilitate sustainable planning and development and decision-making in general
- as well as plan and manage the negative impact and consequences of proposed development in particular”





Political Framework of ESE

“The ministry responsible for the environment in collaboration with the concerned ministries and institutions, taking into account environmental dimension in all plans, programmes and development projects”

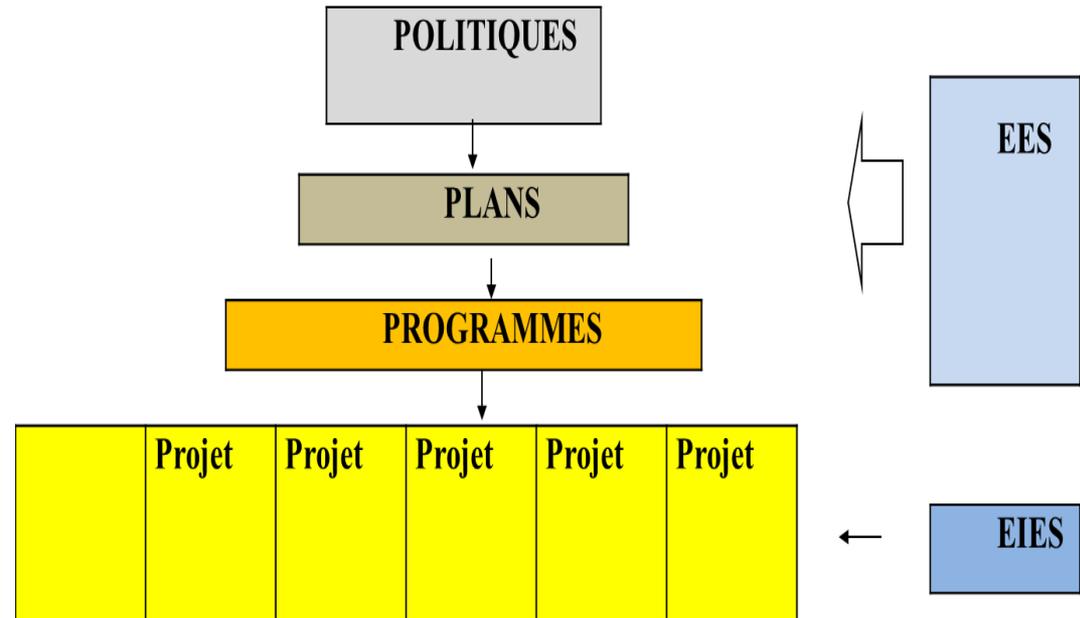
Explicitly, than means achieving some ESE for:

- policy
- plans
- programmes
- project





Position of the ESE in the decision- making process

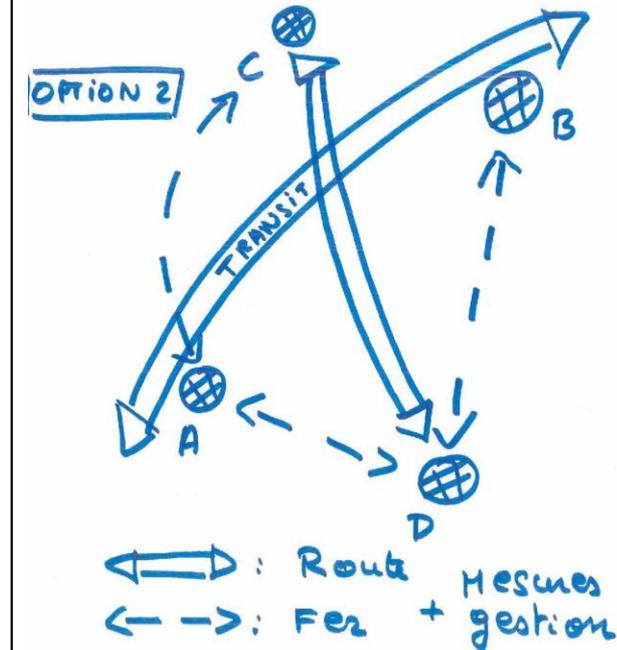
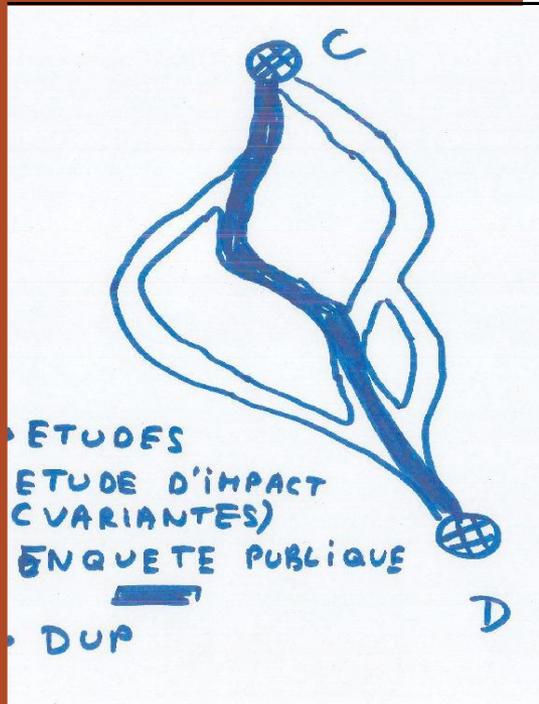


- ESE is required for policy, plans, programmes and projects
- Several instruments: EESS, CGES, CPR, EIES, PGES, PAR
- Audit, Environmental monitoring, Environmental Management System (EMS): control and management tools
- EESS is scarcely achieved for policy, plans, and programmes of State
- WB or BAD programmes: CGES or CPR
- Only EIES is achieved for the projects
- Several texts regulating the ESE and the environmental and social thematic areas (environment code, water code, forests, mines etc)
- Lack of coherence and complementarity between the different texts
- Lack of guidelines and practical system of reference on the ESE
- Texts on expropriation and not on reinstallation
- Convergence/divergence with policies of partners (WB, ADB, WADB) not sufficiently mustered





Exemple de comparaison



Range of weak options

Level of weak uncertainty

Degree of important detail

Nature de l'évaluation des impacts plus quantitative

Range or number of options

Level of important uncertainties

Degree of insufficient detail

Nature de l'évaluation des impacts plus qualitative





The ESE procedures and practices in the countries

- **Information about project and its classification**
- **Terms of reference preparation**
- **RTD validation**
- **Achievement of ESE**
- **Validation of ESE**
- **Public audience**
- **Validation of ESE and the issuing of certificate/environmental permit**
- **Preparation of implementation**
- **Supervision and environmental and social monitoring**



National institutions in charge of the ESE

National ESE procedures are conducted by institutions purposefully established for them:

- These institutions charged to promote the ESE have not retarded the projects
- Status and anchorage (Agency, Office or Management affect their performance
- “The creation of an autonomous structure overseeing the ESE: an option desired by actors”
- Decentralization of the processes: the dynamics of which are acclaimed by all to better reposition, restructure and to support”
- Limited human, material and financial resources constitute a major handicap to the monitoring





Institutions in charge of ESE

- Agencies and autonomous authorities:
 - ABE (Benin)
 - ANGE (Togo)
 - APE (Ghana)
 - EP Authority (Ethiopia)
 - HCENR (Sudan)

- Autonomous Offices:
 - BEEEI (Niger)
 - BUNEE (Burkina)

Directorates (Ministry of Environment):

- Federal Ministry of Environment (FMEnv)
- DEEC (Senegal)
- DNACPN (Mali)
- DGE (Chad)
- DEnv (RIM)





Classification of the project for the realization of a ESE

It is done by national institutions in charge of the ESE on the presentation of a project advice by the promoter:

- List of projects pre-selected mostly (incomplete study)
- Very few of them have a selection form (screening)
- Field trip (not systematic) to appreciate the project zone

Classification:

- Category A or 1: *major impact project (EIES deepened)*
- Category B or 2: *moderate impact projects (AEI Or Impact notice or EI summary)*
- Category C: *minor projects or without impact*





Promoters of the project (owner)

- “All are not aware of the exigencies and stages of ESE procedures. The willingness exists in some people but the urgency of project accomplishment relegates the question of ESE to the background in spite of the efforts agreed on “
- On the whole some insufficiencies are often identified on the part of the promoters in terms of taking into account the environmental and social aspects as well in the preparation of TDR as in the achievement of technical studies and the preparation of dossiers for implementation
- The State as a Promoter: is lagging behind in its own projects and programmes (EESS, EIES, PAR, monitoring)
- Private promoters and programmes of financiers are more targeted.
- Several promoters: many promoters do not often respect the procedures regarding the ESE and the monitoring of PGES”: they are only interested in their full environmental discharge”; “They do not appreciate the importance and the cost of services related to the ESE”; etc.





Preparation and validation of the Terms of Reference (ToR)

ToR Preparation by project promoters :

- Existence of rather too general ToR models.
- No specific focus on the stakes in the zones concerned relative to the project (implementation and operation): all that is being asked is not necessary (eg. DE)
- Difficulties in aligning with partner requirements

ToR validation by authority in charge of ESE:

- Validation duration is a punishment to the Consultant and the promoter





Accomplishment of the ESE

- Consultants, individuals or firms.
- Constraints in the preparation and conduct of field missions (consultations and institutional meetings, characterization of the project area, assessment of stakes and report writing)
- Most of the Consultants do not have mastery over the ESE processes (invasion of sector which becomes a money-making opportunity: “achieve an EIES is possible for everybody.
- No thematic expert pointed support for in-depth study requiring certain skills.
- Consequences :Little or no framing report; artificial report, without in-depth analysis more qualitative than quantitative (without scientific and technical data on the Reference point, modeling, impacts etc) too voluminous (not what is important) and difficult to work with.
- Other constraints: period of achieving the EIES relative to the project cycle: APS or API)





Validation of the ESE reports

- Validation by a Technical Committee or an ad hoc group
- Validation decentralization in some countries
- more administrative than technical representation
- Limited capacities of ESE members (representatives of sectorial departments)
- Constraints of examination methodology/validation of reports
- Confusion in roles: technical Assistance or tribunal





Public Audience –
public Consultation –
public Enquiry

- public consultation, public audience and public enquiry: a confusing concept!
- **The public enquiry** is generally directed and controlled by the local administrative authority
- **The public consultation** is made by the Consultant during his mission
- **Public audience** is a moment of sharing the ESE with the local populations





Public consultations: An uncontrolled process, carried out unexpectedly

Contingences.

- Objectives and processes are unanimously approved
- Issues :
- The absence or lack of advance information:
- The reluctance of the local authorities to speak
- without the authorization for their base.
- The interference of political sensibilities
- An attempt to recover and capitalize the process by the local political leaders
- lack of mechanisms which guarantee considering other pertinent preoccupations after the departure of local experts
- The inexperienced use of communication skills to promote local participation
- Difficulty in differentiating between “technical” project from “EIES project”





Hearing and public inquiry

- Hearing: “A public hearing in the style of fair, whose holding at the end of the ESE is inopportune and impertinent”
- Public inquiry: essential for the projects with important stakes (land , social etc) and promote the removal of difficulties ahead of time before going to the field.





Deliverance of environmental conformity certificate

- Duration penalizes promoters (take off of project)
- In some countries a provisional authorization is given





Preparation for ESE implementation

“a lack of articulate views and continuity between The end of the ESE and the internationalization of Measures in the DAO preparation and works execution dossiers”

- Promoters have no idea about what to do with the EIES
- No support by Consultant
- No support by the authority in charge of the ESE
- Measures and clauses to be inserted into the DAO and DE?
- Business requirements on Enterprises and Mdc, PGES-E and Supervisory plan?





Environmental action implementation

- By building contractors
- Absence of validated PGES-Site
- Increased presence of QHSE authorities within the building industry
- Deficient in the implementation of environmental and social action plans (slow down of the execution of their specific projects)
- priority is generally given to the execution of technical measures which is the thrust of their contract to the detriment of environmental and social issues especially if the cost or a request is not granted





Social and environmental supervision and monitoring

- Progressive broadening of MdC missions on environmental and social aspects (capacity of ESE?)
- Absence of validated supervision plan
- Increased presence of an environment expert (capacities of ESE?)
- Confounding terminologies of supervision, monitoring and inspection
- limited human and material capacities in environmental and social supervision and monitoring
- technical aspects to the detriment of environmental and social aspects
- Supervision and monitoring based on “affectivity” rather than “efficiency”





Supervision: Control mission

- Certified offices and consultants
- Insufficient confirmed competences in the ESE

Monitoring: Institution in charge of ESE

- Human, material and financial problems
- Project dependence (financing field missions)



Other actors

Local authorities

- the projects are executed in their territories
- competences exist in the environment and natural resources but very few human, material and financial resources
- they are implied in the organization and animation of public consultations (and public hearings
- authoritarian and interference in the conduct of consultations
- Mobilization, sensitization, prevention and management of conflicts





Other actors

Local administrative officials

- *“They are essential in facilitating procedure; however, their role must be clearly defined to avoid confusions”*

Civil society: Local associations, ONG

- *existence of a multitude of ANG (notably ESE Associations) capable of ensuring transparency, equity, acknowledgement of the interest of local populations in the ESE management process;*
- *capable of playing a counter role considering the interest and stakes relative to the environmental and social studies of projects and programmes*





Review and analysis of the legislative and regulatory framework controlling the resettlement

- *Of ancient texts essentially oriented on the legal regime and land tenure, authoritative on the conditions and modalities of expropriation and compensation, and very deficient in the area of resettlement”*
- *Notable differences with procedures of donors (WB, ADB, IFC, MCC) especially on the question of eligibility of PAP, the date limit of eligibility, of calculating compensation for goods, of alternatives to the resettlement, taking into account vulnerable persons, of the economic readjustment of PAP etc.*





National institutional framework for the management of the expropriation procedure

- No specific actors responsible for the resettlement: institutional blurring with the ESE national institutions
- Traditional services like the Domains, the Cadastres, the Local Assessment Boards; the expropriation judge
- Competence in the area of expropriation according to national procedure, land issues and assessment of the implications according to the national provisions
- National structures not very consistent with the requirements and donors procedures for resettlement (WB;IFC;ADB;MCC etc.)
- Notwithstanding, more and more national structures benefit from donors' programmes





Conclusion of the analysis

Policies and texts regulating the ESE

"More emphasis placed on EIES projects than on the EESS policies plans and programmes"

- *"A diversified legislative and regulatory framework, but exclusively centered on the EIES with basic reference guidelines on the EESS and very deficient on the resettlement"*

Roles and capacities of players regarding the ESE

- *"A plurality of players conscious of the stakes in general, of the interests and different expectations, unanimously dissatisfied with the procedures of the ESE, and whose capacities in the ESE vary and must be strengthened"*





Acquisitions

- Existence of environmental evaluation legal framework (Environmental Code and application decree)
- - Regulation of the EIE (approval, public participation, content; report and; TDR etc.)
- - Existence of an institution in charge of the ESE
- Existence of consulting firms and individual experts certified in the ESE domain





Limitations (Legislation and ESE procedures)

Legislation and procedures relative to the ESE:

- Lack of coherence between some sectoral texts (mining and forestry codes for example) and the environmental and social procedure;
- Limitations and lack of pertinence of the texts and application tools (decrees and orders) of the legislation on the ESE (categorization of projects, texts on the TDR, contents and reports, validation etc.),
- Absence of specific regulation on the strategic environmental evaluation, system of environmental management; involuntary resettlement
- insufficient convergence between national legislations and those of development partners (WB, ADB, WADB, IFC etc)





Limitations (institutional framework)

Players in the ESE's accomplishments:

- limitations and non-performance of national institutions responsible for the ESE (anchorage, institutional profile, structure and means in the management of the procedure of the ESE);
- Slowness and duration of approbation processes (TDR, validation of EIES, public hearing, environmental discharge);
- Weak capacity of Committee members and validation report groups o ESE and shortcomings in their designation
- Inadequate information and promoters' presence on the ESE and their place in the project cycle;
- The non-respect of engagement and recommendations of ESE by the project promoters





(Continuation)

- Insufficient dialogue between ESE players (National institutions in charge of ESE , State Technical Services, Private promoters, Consultants; Local Councils, ANG)
- Lack of information and communication on the importance and ESE procedures
- Reluctance in subjection of State projects (financed by National budget) to the ESEs;
- Weak expertise and capacity of consultants in the achievements of ESEs





(Continuation)

- Weakness in the environmental and social implementation capacity (Construction companies), supervision (Project directorate), and monitoring (National institutions in charge of ESEs);
- Interference and pressures in the validation process of some projects with major environmental and social stakes;
- Insufficient involvement of local authorities and civil society associations in the environmental and social evaluation processes of policies, plans, programmes and projects.





Need for strengthening

Strengthening legal framework

- Review ESE procedures taking into account project cycle (phases APS; APD etc);
- Review environmental legislation to include all the terminology presently used in the ESEs (EESS, CGES, CPR, PAR, Audits, SME etc);
- Develop a text concerning involuntary resettlement
- Improve the regulatory texts for law enforcement on the ESE (categorization, TDR, structure, contents of EESS, CGES, PAR; validation, consultation, etc.)





(Continuation)

- Revise the order/bye-law on the organization and functioning of the Technical Committee, decentralize its organization and functions thoroughly regarding choice of members, and ESE procedures and modalities for analysis; motivation of members etc.
- Harmonize the position of the law on the environment and other laws (mine, forest, waters, etc.) with regard to the ESEs.
- Propose a national law on harmonization of ESEs with those of development partners (WB, IFC, ADB, EB, WADB, etc.)





(Continuation)

Strengthening the Institutional framework:

- Review the statutes, the anchoring, the organizational style and functioning of national institutions in charge of ESEs
- Strengthen the capacities of players in environmental and social evaluation (national and partners' procedures; etc.), especially national institutional agents in charge of some ESEs, members of ESE report validation committees; Consultants;
- Sensitization of project promoters (especially state technical structures); the local authorities; the ANG Revoir le statut, l'ancrage, le mode d'organisation et de fonctionnement des institutions nationales en charge des EES





(Continuation)

- Strengthen the policy of legal text production and distribution on environmental and social evaluation;
- Involve the local authorities and ANGs more in all ESE issues especially in the monitoring of promoter engagements vis-a-vis the population and local authorities
- Strengthen national institutional capacities in charge of ESEs in the environmental and social monitoring





Thank you

