



**NATURAL
JUSTICE**

LAWYERS FOR COMMUNITIES AND THE ENVIRONMENT



**A GUIDE ON PUBLIC
PARTICIPATION IN THE
ENVIRONMENTAL IMPACT
ASSESSMENT STUDY PROCESS
IN KENYA**

ACKNOWLEDGMENTS

An understanding of the impact of our actions on the environment is a prerequisite for sustainable development and a basis for our survival.

– Anonymous.

We would like to extend our appreciation to our community' partners and organizations, who more often bear the brunt of the implementation of projects and for allowing us to journey with them in various Environmental Impact Assessment (EIA) processes. We continue to learn invaluable lessons from you.

We are also grateful to our Community Environmental Legal Officers (CELOs), for sharing their lessons and providing us with practical understanding and awareness of the challenges faced while engaging in the EIA process. While the document is not exhaustive, this Guide should nonetheless be customized to reflect issues relevant to the project.

We also appreciate Environmental Law Alliance Worldwide (ELAW) for providing technical support as we have reviewed EIA reports. The knowledge provided has been immense and we continue to learn and pursue solutions to improve the EIA process.

This Guide is a product of enormous team effort, and Natural Justice is grateful to everyone who has made this publication possible.

We hope that this guide provides everyone with knowledge of the spaces available to influence environmental decision-making and gives them courage to occupy those spaces unapologetically.

Funding for this project was provided by Heinrich Böll Stiftung. We are grateful for their support.



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ABBREVIATIONS



CBOs	Community Based Organizations
CEC	County Environmental Committee
CoK	Constitution of Kenya
CSOs	Civil Society Organizations
EIA	Environmental Impact Assessment
EMCA	Environmental Management and Coordination Act
EPRA	Energy and Petroleum Regulatory Authority
IFC	International Finance Corporation
NEAP	National Environmental Action Plan
NEMA	National Environment Management Authority
NED	National Environmental Department
NET	National Environmental Tribunal
NPE	National Policy on Environment
PP	Public Participation
SEA	Strategic Environmental Assessment
AC	Technical Advisory Committee
ToRs	Terms of Reference

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A GUIDE TO PUBLIC PARTICIPATION IN THE EIA PROCESS IN KENYA



Introduction

In the implementation of sustainable development, citizens are expected to contribute to administration through active participation in the formation of a local action programme. A conscious attempt to combine a top-down implementation with a bottom-up mobilization of local actors is key to the implementation process.

With the emergent concepts of sustainable development in the 1980's especially after the Bruntland Report (World Conference on

Environment and Development, 1987), the Rio Declaration and Agenda 21 (United Nations Conference on Environment and Development, 1992), public involvement was considered an indispensable condition for the achievement of the objectives (social, economic and ecological) of sustainability. The Rio Declaration, Principle 10 states that: -

"Environmental issues are best handled with the participation of all citizens, at the relevant level, and thus public education, participation and access to information and redress should all be promoted."

Public involvement is a feature of nearly all Environmental Impact Assessment (EIA) systems, and public involvement of stakeholders is widely recognized as a fundamental element of the process. The range of stakeholders involved in an EIA typically includes the local communities, the proponent, government agencies, NGOs and academics. Public participation should influence and inform the decision-making process.

Main Objective

This Guide has been developed to provide an understanding of the requirements for public participation under the *Kenyan Environmental*

(Impact Assessment and Audit) Regulations (2003).

It aims to achieve the following objectives: -

1. To provide a brief description of the legal framework and the applicable laws.
2. To outline the legal obligation to undertake environmental assessments (also types of EIA processes).
3. To explain the triggers for an environmental assessment and requirements for different EIA processes.
4. To provide an outline of the EIA process.
5. To explain the importance of public participation in EIA processes
6. To highlight the rights and opportunities to participate in the environmental assessment process.
7. To outline the requirements of public participation in the EIA process and prepare the public to engage with the process.
8. To provide samples and templates that can be used in the EIA process.

Who is the intended Audience?

This guide is primarily intended for Civil Society Organizations, Community Based Organizations (CBOs) and members of the public so that they can understand the obligations and responsibilities of the National Environment Management Authority (NEMA) and other government agencies in relation to public participation in EIAs as well as the stages in which the public can get involved and contribute to the EIA process and influence the decision-making process.

1.

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INTRODUCTION TO ENVIRONMENTAL IMPACT ASSESSMENT (EIA)



1.1. Introduction

Our social, economic, and cultural lives are linked to the environment. Therefore, activities that take place within the environment may potentially affect human beings and the ecosystems they live in positively or negatively. The 21st Century marks a decade where governments in several countries are implementing mega infrastructural projects to promote development in their regions. Implementing these projects without exercising caution may result in serious negative impacts on the environment and the livelihoods of thousands of communities who rely on the environment for their well-being. This chapter introduces Environmental Impact Assessments (EIAs), a tool that provides a precautionary approach to development and seeks to ensure that development projects are implemented in a sustainable way, preventing unnecessary harm to human beings, biodiversity, and ecosystem services.

1.2. What is an Environmental Impact Assessment?

An EIA is the cornerstone of sustainable development. It is the process through which the potential impacts of a planned project on the environment are identified, predicted and critically examined through a systematic and scientific study, with the aim of improving the quality of their outcome¹. EIAs consider the impacts of proposed projects on a wide range of environmental components including the social and cultural lives of communities, as well as the potential impacts a project on landscapes, land use and natural resources.

1 Section 2 Environmental Management and Coordination Act, 18 of 1999 defines an environmental impact assessment as a tool for evaluating the environmental risks and opportunities of project proposals and improving the quality of their outcome.

The main users of information collected during an EIA include decision makers, affected persons/communities and project proponents. The National Environmental Management Authority (NEMA), which is Kenya's environmental regulator, relies on EIAs to make decisions on whether to grant an EIA licence allowing developers to go ahead with a planned project. Project proponents also use information gathered during EIA processes to identify potential impacts – both positive and negative – and to develop mitigation measures for any negative impacts that may result from the implementation of the proposed development activities. For communities, knowing about the potential impacts of a project is important for ensuring that they participate effectively in the environmental decision-making process as required by law.

EXERCISE

Which of the following statements does not describe an EIA?

1. It is an environmental decision-making tool.
2. It provides information on the impacts of a proposed project on the environment and people.
3. It provides information to communities likely to be impacted by projects to ensure their effective participation in environmental decision-making.
4. It does not help with decision-making.

1.3. History of Environmental Impact Assessments in Kenya

In the late 1960s, EIAs were used in the United States of America (USA) as a planning and environmental management tool for predicting the possible impacts of proposed projects and their alternatives. This was recognized in the 1972 United Nations Conference on the Environment in Stockholm.

The use of EIAs was later adopted in more than forty (40) countries by the early 1990s. The requirement to conduct EIAs has now become mandatory even in countries where there is no formal requirement to do so. That is because most bilateral and multilateral agencies who fund development projects in such countries have

now made it a pre-condition for offering financial support.

In Kenya, EIAs were first incorporated in the National Environment Action Plan (NEAP) and the National Policy on Environment (NPE) in 1970. It was later officially included as a requirement under Kenya's first legal framework on environment in the 1990s following the enactment of the Environmental Management and Coordination Act (EMCA) of 1999. This made it mandatory for all project proponents to undertake an EIA before implementing a proposed project. Further EIA and audit guidelines were developed in 2003 to facilitate the practical implementation of the provisions under EMCA. Since 2000, the use of EIAs has been common practice in Kenya and is a fundamental requirement in ensuring that Kenya develops sustainably.

1.3.1. Changes over the years

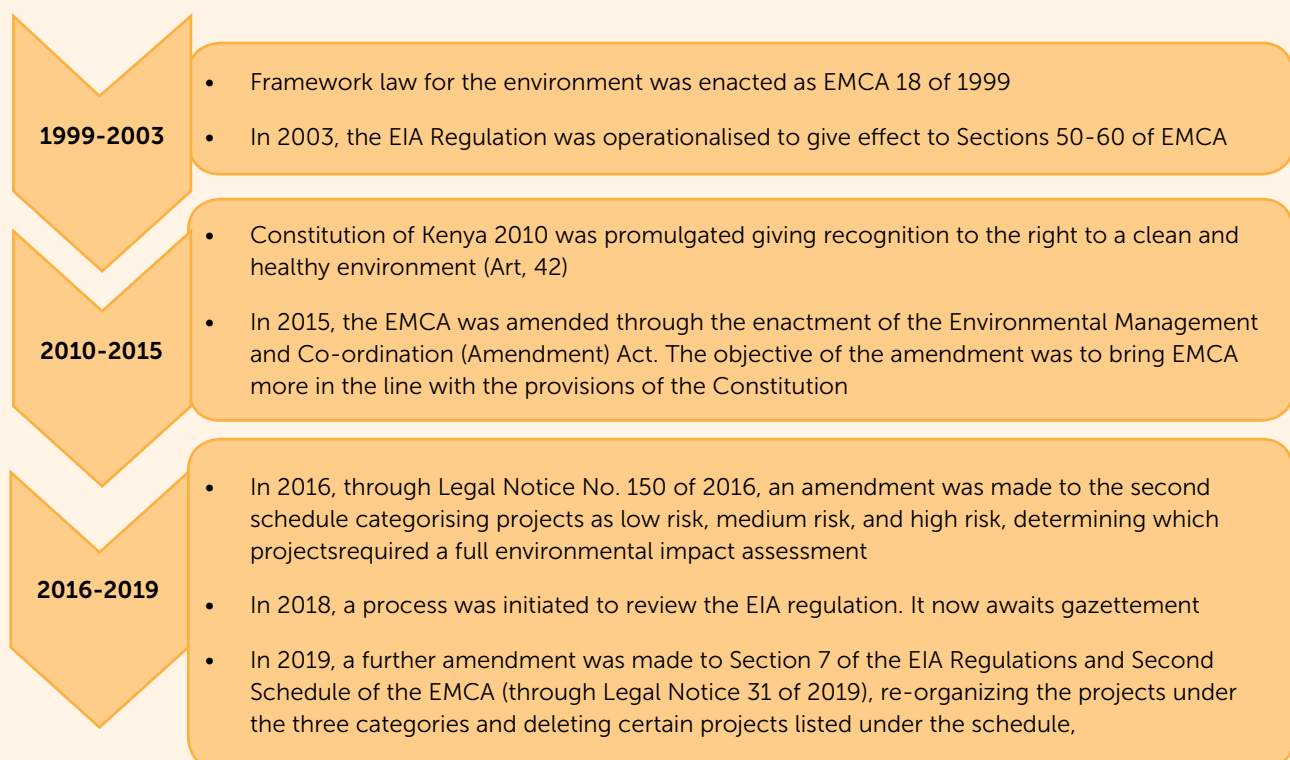


Figure 1.1 Changes over the years (1999-2019)

1.4. Legal Framework on EIA in Kenya

EIA is one among various tools of environmental management legally recognized in Kenyan law. The Constitution of Kenya lays the foundation for the development of a comprehensive EIA framework. EMCA, 1999, which is the primary

regulatory framework for the management of the environment in Kenya makes more detailed provisions and guidelines on EIAs. There are also other environmental sector specific laws which integrate EIAs as an essential component in the implementation of their provisions. Below is a summary of all relevant laws and key provisions relating to EIAs in Kenya.



Table 1.1: Relevant laws and key provisions relating to EIAs in Kenya

LAW	OVERRIDING OBJECTIVE(S)	GENERAL PRINCIPLES	KEY PROVISIONS
Constitution of Kenya, 2010	This is the supreme law of the land that provides for the rights of citizens and responsibilities of the Government towards its people.	<ul style="list-style-type: none"> Public Participation Sustainable development 	<p>The CoK underlines the right to a clean and healthy environment as a human right in the Bill of Rights.</p> <p>It also outlines the State's obligations with respect to the environment. It encourages public participation in the management, protection, and conservation of the environment.</p> <p>The State is obliged to establish systems of EIA, environmental audit and monitoring of the environment.</p>
Environmental Management and Coordination Act. (EMCA) 1999	Provides an overall legal foundation and establishes an institutional framework for the management of the environment and other connected purposes.	<ul style="list-style-type: none"> Polluter-pays principle Sustainable development Precautionary principle Inter- and intra-generational equity Principle of public participation in the development of policies, plans and processes for the management of the environment. Cultural and social principles traditionally applied by any community in Kenya as long as they are not repugnant to justice and morality. International co-operation for resources shared between two/more states. 	<p>Grants every person in Kenya, the right to a clean and healthy environment and a corresponding duty to cooperate with the State to safeguard the environment.</p> <p>Grants every person the right to access any information relating to the implementation of the Act which is in the possession of NEMA or a lead agency.</p> <p>Establishes the institutions responsible for administering the Act including:</p> <ol style="list-style-type: none"> Cabinet Secretary for Environment – responsible for policy formulation. National Environmental Management Authority (NEMA) – independent body responsible for the implementation of the Act and all policies relating to the environment. County Environment Committees (CECs) – manages the environment at the county level and develops the County Strategic Environmental Action Plan every 5 years. National Environmental Complaints Committee (NECC) – investigates allegations or complaints against any person or NEMA in relation to the condition of the environment in Kenya. <p>The Act requires NEMA and the CECs to develop the National Environmental Action Plan and County Environmental Action Plans respectively, to harmonize environmental policies, plans and programs and secure environmental protection across the country.</p>

LAW	OVERRIDING OBJECTIVE(S)	GENERAL PRINCIPLES	KEY PROVISIONS
Environmental (Impact Assessment and Audit) Regulations, 2003	These regulations were developed to provide guidance on how to conduct an EIA, and the process of making an application for an EIA licence as stated in the EMCA.		<p>The Act makes provision for EIAs. While all entities are required to conduct a Strategic Environmental Assessment (SEA) in respect of all plans, policies and programs, all project proponents are required to undertake an EIA and submit an EIA study report to NEMA before the issuance of an EIA licence allowing the implementation of the proposed project.</p> <p>It also specifies the types of projects that must undergo a full EIA study.</p> <p>Upon receiving an EIA study report, NEMA is obliged to publish in the Gazette, at least 2 newspapers circulating in the proposed project area and a radio station, a notice inviting oral or written comments on the EIA study report from the public.</p> <p>It establishes the National Environmental Tribunal (NET) to hear and determine appeals from the decisions of NEMA.</p>
Forest Conservation and Management Act, 2019	This Act provides for the development and sustainable management and utilization of all forest resources for the socio-economic development of the country.	<ul style="list-style-type: none"> Principles of good governance in accordance with Article 10 of the CoK which lists the recognized values and principles of governance. Public participation and community involvement in the management of forests. 	<p>A step-by-step guide on how to conduct an EIA study, and the required content of an EIA study report is provided for in this regulation.</p> <p>It also specifies the requirements for conducting effective public participation during the EIA study process.</p> <p>In addition, the Regulations state the factors to be considered by NEMA when considering an application for an EIA licence.</p> <p>Information or documents submitted to NEMA by any person in connection with an EIA together with NEMA's decision and the reasons thereof shall be made available to the public on terms and conditions as the Authority may prescribe.</p> <p>Section 75 of the Act provides that the EMCA also applies to all situations where a person is required to conserve or protect the environment under the Forest Conservation and Management Act.</p> <p>Similarly, in addition to obtaining any user rights, licences or permits under the Forest Conservation and Management Act, a person shall comply with the relevant provisions of EMCA relating to the conservation and management of the environment.</p>

LAW	OVERRIDING OBJECTIVE(S)	GENERAL PRINCIPLES	KEY PROVISIONS
		<ul style="list-style-type: none"> • Consultation and co-operation between the national and county governments. • Values and principles of public service in accordance with Article 232 of the CoK. • Protection of indigenous knowledge and intellectual property rights of forest resources. • International best practices in the management and conservation of forests 	<p>Section 75(3) states that obtaining a strategic environmental, cultural, economic and social impact assessment licence where required under EMCA is a precondition for acquiring a user right or other related rights under the Forest Conservation and Management Act.</p> <p>Some of the activities under the Forest Conservation and Management Act that requires the conduct of an EIA study include:</p> <ol style="list-style-type: none"> Quarrying (Section 46) Variation of boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest (Section 34 (4)) upon the recommendation of the Cabinet Secretary. Exchange of forest area with private land (Section 36). Proposal to grant a concession for the utilization of a public forest (Section 44).
Wildlife Conservation and Management Act, 2013	It provides for the protection, conservation, sustainable use and management of wildlife in Kenya and for connected purposes.	<ul style="list-style-type: none"> • Devolution of wildlife conservation and management to the owners and managers of land where wildlife occurs. • Effective public participation in the conservation and management of wildlife. • Conservation and management shall be encouraged using an ecosystem approach. • Wildlife conservation and management shall be encouraged and recognized as a form of land use on public, community and private land. 	<p>Section 26 of the Act subjects all matters with respect to conservation, protection and management of the environment to the provisions of EMCA including the requirement to conduct EIA studies for certain activities.</p> <p>Section 27(1) provides no exemptions - to the requirements - from compliance with environmental laws even where a person has acquired certain user rights or licences to conduct activities under the Act.</p> <p>Section 27 (2) also states that obtaining a strategic environmental, cultural, economic and social impact assessment licence where required under EMCA is a precondition for acquiring a user right or other related rights under the Wildlife Conservation and Management Act.</p> <p>The Act specifies the types of projects that need to undergo an EIA study to include: -</p> <ol style="list-style-type: none"> The variation of boundaries or revocation of a national park or marine protected area (Section 34 (d))

LAW	OVERRIDING OBJECTIVE(S)	GENERAL PRINCIPLES	KEY PROVISIONS
Water Act, 2016	This Act makes provision for the regulation, management and development of water resources, water and sewerage services and for connected purposes.	<ul style="list-style-type: none"> • Benefits of wildlife conservation shall be derived by the land user to offset costs and ensure the value and management of wildlife do not decline. • Management and conservation of wildlife in accordance with the principle of sustainable utilization to meet the benefits of present and future generations. • Equitable enjoyment of benefits from wildlife conservation and management by the people of Kenya. 	<ul style="list-style-type: none"> b. Exchange of part of national land with private land (Section 38 (c)). c. Mining and quarrying (Section 45)
		<ul style="list-style-type: none"> • All national values and principles of governance listed in Article 10 of the of the CoK. • Economic and social rights as provided for under Article 43 of the CoK. • Principles of land policy under Article 60, which includes: - <ul style="list-style-type: none"> a. Equitable access to land. b. Security of land rights. c. Sustainable and productive management of land resources. d. Transparent and cost-effective administration of land. e. Sound conservation and protection of ecologically sensitive areas. f. Encouragement of communities. • All the values and principles of public service listed under Article 232 of the CoK. 	Section 40 (4) of the Act states that an application for a water permit is subject to public consultation and where applicable to undergo an environmental impact assessment study in accordance with EMCA.

LAW	OVERRIDING OBJECTIVE(S)	GENERAL PRINCIPLES	KEY PROVISIONS
Climate Change Act, 2016	This Act provides a legal framework for enhancing response to climate change and mechanisms to achieve low carbon climate development for the sustainable development of Kenya.	<ul style="list-style-type: none"> • Intergenerational equity • National values and principles of governance under Article 10 of the CoK. • Values and principles of public service in Article 232 of the CoK. • Article 42 and 69 of the CoK on the right to a clean and healthy environment and the State's responsibility towards the environment, respectively. • Sustainable development • Equity and social inclusion in allocation of effort, costs and benefits to cater for special needs, vulnerabilities, capabilities, disparities and responsibilities. • Integrity and transparency. • Participation and consultation with stakeholders. 	This Act recognizes the need for conducting EIAs and most importantly, integrating climate risk and vulnerability assessment in all forms of assessments under Section 20.
Mining Act, 2016	It gives effect to Articles 60, 62(1)(f), 66(2), 69 and 71 of the CoK in so far as they apply to minerals, provide for prospecting, mining, processing, refining, treatment, transport and any dealings in minerals.		<p>As per Section 176 of the Act, a mineral right or other licence shall not exempt a person from complying with any law concerning the protection of the environment.</p> <p>It also provides that for one to be granted a mining licence, the applicant must first obtain an EIA licence, social heritage assessment and an approval of the environmental management plan.</p> <p>Under this Act, an EIA report is required prior to the issuance of a: -</p> <ol style="list-style-type: none"> Prospecting licence. Retention licence (Section 86 (3) (c)) Mining licence (Section 101 (2)) Renewal of a mining licence (Section 115 (c))

LAW	OVERRIDING OBJECTIVE(S)	GENERAL PRINCIPLES	KEY PROVISIONS
Physical and Land Use Planning Act, 2019	This is an Act of parliament to make provision for the planning, use, regulation and development of land and for connected purposes.	<ul style="list-style-type: none"> National values and principles of governance set out in Articles 10 and 232 of the CoK. Principles of land policy set out in Article 60 of the CoK. Leadership and integrity principles set out in Articles 73 and 75 of the CoK. Principles, procedures and standards of physical and land use planning contemplated in this Act. 	Section 4 of the Third Schedule requires planning authorities to ensure that all applications for major developments are subjected to an environmental and social impact assessment when considering a development application.
Energy Act, 2019	<p>This Act: -</p> <ol style="list-style-type: none"> Consolidates the laws relating to energy. Provides for the National and County Government functions in relation to energy Establishes and grants powers and functions of the energy sector Promotes renewable energy, exploration, recovery and commercial utilization of geothermal energy Regulates midstream and downstream petroleum and coal activities 		<p>Section 100 (2) provides that all licences of permits issued by the Energy and Petroleum Regulatory Authority (EPRA) shall require the licensee to comply with all applicable environmental, health and safety laws before the issuance of a licence or permit.</p> <p>A person engaged in the production of energy utilizing coal shall comply with the applicable environmental, health and safety laws (Section 114 (1)).</p>

LAW	OVERRIDING OBJECTIVE(S)	GENERAL PRINCIPLES	KEY PROVISIONS
Petroleum Act, 2019	<p>f. Regulation, production, supply and use of electricity and other energy forms</p> <p>It provides a framework for the: -</p> <ol style="list-style-type: none"> a. Contracting, exploration, development and production of petroleum b. Cessation of upstream petroleum operations c. To give effect to relevant articles of the CoK in so far as they apply to upstream petroleum operations d. Regulation of midstream and downstream petroleum operations 		<p>Section 16 (1) of the Act obligates a contractor to comply with all environmental principles and safeguards prescribed in the EMCA and its regulations such as conducting an EIA study.</p> <p>Further, Section 16 (5) states that a contractor shall conduct a Strategic Environmental and Social Impact Assessment to establish the effect of upstream petroleum operations to be undertaken under a contract.</p> <p>According to Section 32 of the Act, all applications for a petroleum production permit must be accompanied by an EIA study report of the upstream petroleum operations; all relevant environmental licences and reports as required by law among other requirements.</p> <p>Part VIII of the Act is dedicated to provisions on environment, health and safety in petroleum exploration and production activities.</p> <p>Section 56 stipulates that a contractor must conduct their activities in accordance with all the applicable environment, health, safety and maritime laws and best petroleum industry practices.</p> <p>In Section 87 (1) (b) the Act states that the licensing Authority shall, before issuing a permit take into account all the relevant factors including compliance with the relevant environmental, safety, planning and maritime, and county government laws.</p>

1.5. What triggers an EIA?

Every project proponent who intends to undertake a project listed in Schedule II of EMCA must submit an environmental project report to NEMA. The schedule provides three categories of projects (high risk, medium risk and low risk) requiring an EIA.

The Act does not define low risk, medium risk and high-risk projects but provides a list of the types of projects that would fall under the different categories of projects (see Annexure I: Table of projects classified under schedule II).

- Section 58(1) of the Act read together with Regulation 7 of the Environmental (Impact Assessment and Audit) Regulations, 2003 and Schedule II (low risk and medium risk sections) require a project proponent for projects listed under low risk and medium risk categories, to undertake and submit a summary project report which includes:
- The nature of the project
- The location of the project, and potential environmental impacts and the mitigation measures to be undertaken during and after the implementation of the project.

Following the submission of the project report, the Authority may direct the project proponent to undertake a comprehensive project report in cases where NEMA concludes that a low risk or medium risk project is likely to have significant, adverse environmental impacts².

EIA Regulation 7(4) - a comprehensive project report must include:

- The nature of the project
- Location of the project
- Activities to be undertaken during constructions, operation, and decommissioning.
- Description of legal national and international frameworks
- Preliminary design and materials to be used.
- Potential environment impacts and mitigation measures.
- Analysis of alternatives of project, design, technologies, and process
- Action plan for prevention and management of possible accidents and to ensure health and safety of workers.
- Economic and socio-cultural impacts to the local community
- Plan for relocation/ resettlement of the persons affected.
- An environmental management plans.
- Project costs
- Integration of climate change vulnerability assessment

Section 58(2) of the Act read together with Schedule II (high risk category projects) requires a project proponent for projects listed under high-risk category in Schedule II of the Act to undertake a full EIA study to establish the impacts of the project and suggest the mitigation measures to either avoid or minimize those impacts³, after

2 Regulation 7(3)(b) of the Environmental (Impact Assessment and Audit) Regulations, 2003.

3 Legal Notice 150 of 2015.

which they must submit an EIA study report to NEMA. In arriving at their decision, the Authority should consider whether a project is likely to have significant negative impacts on the environment or not. High risk projects will trigger the need to conduct a comprehensive and thorough EIA.

Regulation 10 (3) of the EIA Regulations

If the Authority finds that the project will have a significant impact on the environment, or that the project report discloses no sufficient mitigation measures, the Authority shall require that the proponent undertake an environmental impact assessment study in accordance with these Regulations.

1.6. Who can conduct an EIA in Kenya?

The law authorizes only qualified and recognized EIA experts to conduct an EIA study and prepare a report. An expert can either be an individual or a firm of experts.

To confirm whether a person is qualified to conduct an EIA study, one can visit NEMA's website and download the list of licenced EIA experts. The register of EIA experts is a public document which must be made available to the public at all times or upon request. See https://www.nema.go.ke/index.php?option=com_content&view=article&id=18&Itemid=156

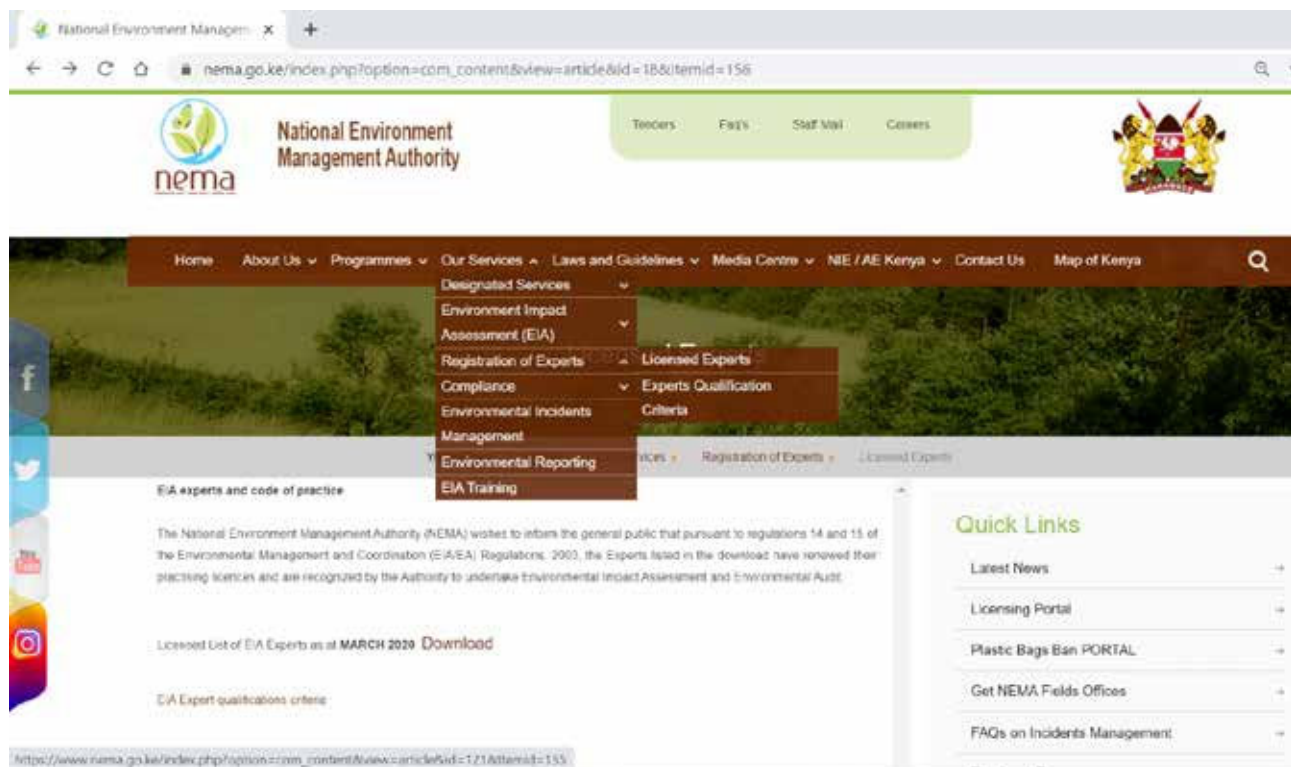


Figure 1.2: Confirming the qualification of the person conducting EIA

1.7. Step-by-step process of undertaking EIAs in Kenya

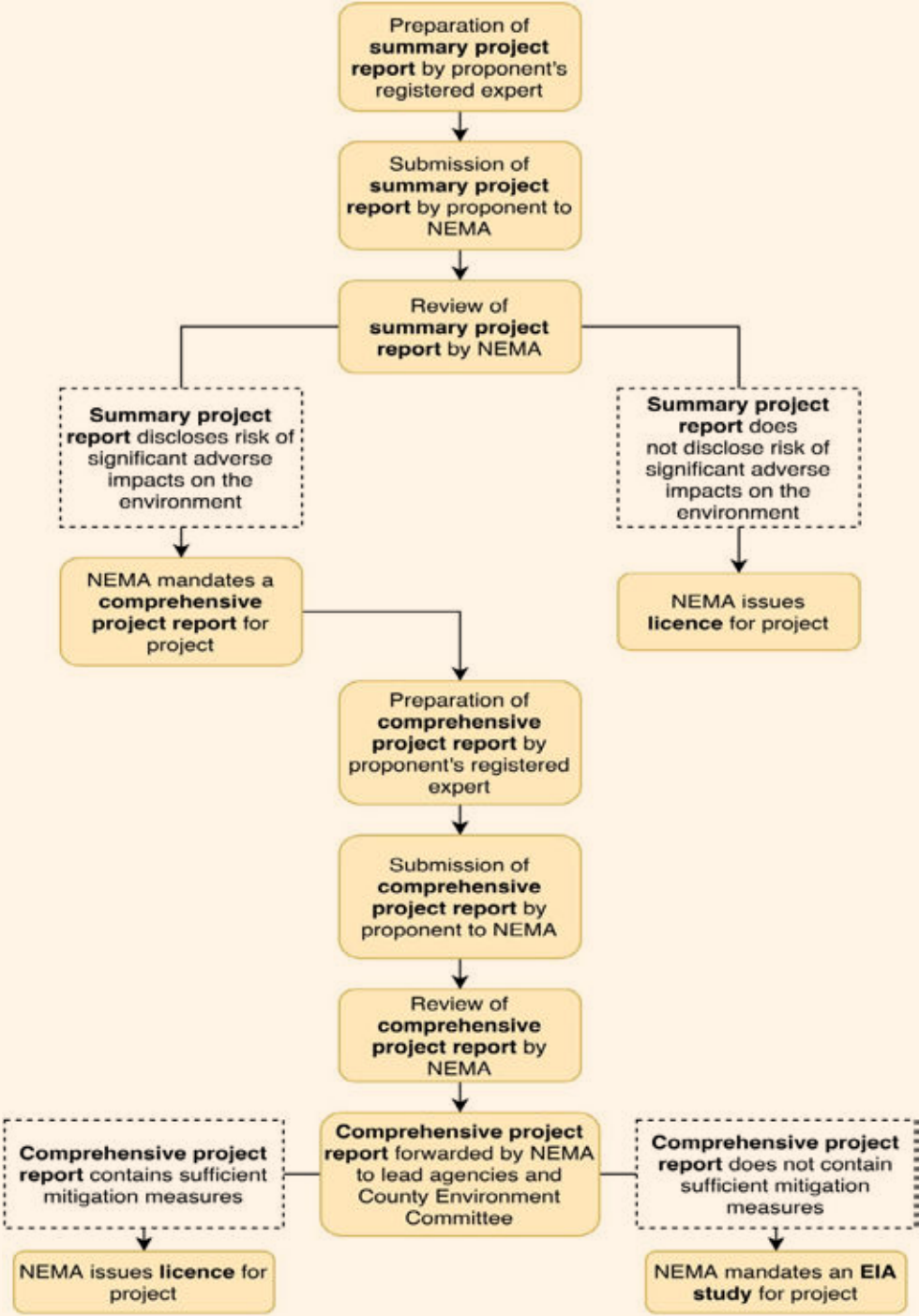


Figure 1.3: Step by step EIA process for low risk and medium risk projects

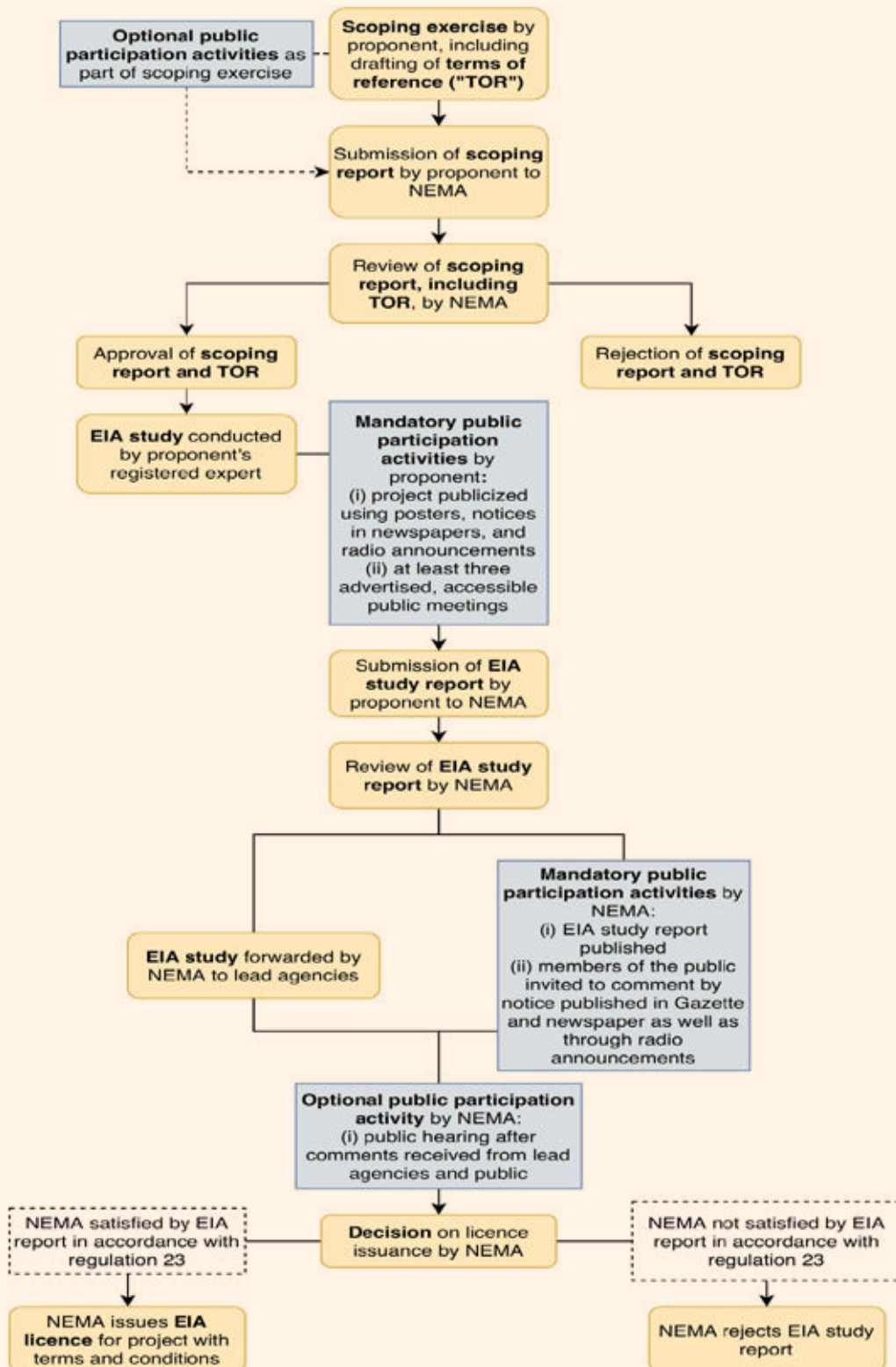


Figure 1.4: Step by step EIA process for high-risk projects

Summary of Stages of an EIA

This section covers the timelines and other parameters in the Environmental Impact Assessment Process Cycle. The EIA process is set out in Sections 58-64 of EMCA, which should be read together with the EIA Regulations.

Stages for determination of low and medium risk projects are covered in Section 58 of EMCA, which should be read together with Regulations 7-10 of the EIA Regulations.

1.7.1. Screening

The nature of the project determines whether the project proponent undertakes and submits a summary of project report, a comprehensive project report or an EIA study report.

1.7.2. Project Report

- a. A proponent of a low or medium risk project under Schedule II prepares a project report of the likely environmental effects of the project. The project report should comprise all relevant information on the project including its nature, location, potential impacts, and mitigation measures to be undertaken during and after implementation of the project.
- b. NEMA, upon receipt of the report, undertakes screening and assessment. It is then to communicate its decision to the project proponent within five (5) days. Where NEMA considers that the project is not likely to have any significant adverse environmental impact, it issues a licence to the proponent. Where it considers that the project is likely to have significant adverse environmental impacts, it will recommend the proponent prepare and submit a comprehensive project report: EIA Regulation 7(4).

1.7.2.1. Participation by relevant Lead Agencies

Upon receipt of ten (10) copies of the comprehensive project report, NEMA submits a copy to each of relevant lead agency and each relevant county environmental committee within 7 days for their written comments. The written comments must be submitted within twenty-one (21) days of receipt to NEMA as stipulated in the (EIA Regulation 9).

1.7.2.2. Decision-making

NEMA makes its determination on a comprehensive project report and communicates its decision together with reasons thereof to the project proponent within forty-five (45) days of the submission of the comprehensive project report.

1.7.3. Approval of Terms of Reference

- a. An EIA study must be conducted according to the Terms of Reference (ToRs) developed during the scoping exercise by the project proponent and approved by NEMA (Regulation 11(1)).
- b. The ToRs provide a framework for all the matters to be considered in developing the EIA. Although there is no standard format prescribed in Regulation 11, the ToR should demonstrate that the project proponent will take into account all criteria to be considered, as specified in EIA Regulation 18 and the Third Schedule of the EIA Regulations.



1.7.4. Environmental Impact Assessment Study

1.7.4.1. Content of the Report

- a. The EIA is undertaken according to general guidelines set out in the Third Schedule of the EIA Regulations. The Schedule prescribes that an EIA study should include sources of impacts, project inputs, project activities, areas of impact on the nature and human environments, environmental impacts, environmental guidelines and standards, mitigation measures, environmental management plan and environmental monitoring and audit.
- b. The EIA study must consider environmental, social, cultural, economic, and legal considerations (Section 58). EIA Regulation 16 provides that the EIA study should identify the anticipated environmental impacts of the project and the scale of impacts,

identify, and analyse the proposed projects, propose mitigation measures to be taken during and after the implementation of the project and develop an environmental monitoring plan with mechanisms for monitoring and evaluating the compliance and environmental performance.

1.7.4.2. Public Participation prior to submission of the EIA

Public participation is at the heart of the EIA. During the process of conducting an EIA study, the proponent must, in consultation with NEMA, seek the views of persons who may be affected by the project.

In seeking these views, Regulation 17(2) requires the proponent to publicize the project and its anticipated effects and benefits by:

- i. Posting posters in strategic public places in the vicinity of the site of the proposed project.

- ii. Publishing a notice on the proposed project in a newspaper with nationwide circulation for two successive weeks.
- iii. Making an announcement in both official and local language in a radio with nationwide circulation.
- iv. The proponent must, at the very least, hold three public meetings with the affected parties and communities to explain the project and its effect.
- v. The venue and times of the meeting must be communicated at least a week in advance through appropriate notices.
- vi. During the meeting, a suitably qualified coordinator must receive both oral and written comments.

1.7.4.3. Public participation post EIA submission

a. Oral and written Comments

- Upon receipt of 10 copies of the EIA Study report, NEMA submits a copy within 14 days to any relevant agency for their comment. Lead agencies must submit their comments within thirty (30) days of receipt.
- Regulation 21 provides that once the EIA is submitted to NEMA; NEMA must, within 14 days of receipt, also invite the public to make oral and written comments on the report. NEMA is required to publish the call for two consecutive weeks in the Gazette, and in a newspaper with nationwide circulation in the area of the proposed project and make an announcement of the notice in a radio with nationwide coverage in both official and local language at least once a week for two consecutive weeks.
- EMCA gives NEMA discretion to determine the time within which the lead agency and

the public can submit comments. However, according to Section 59(1)(d) of the Act, the time prescribed for the submission of oral or written comments shall not exceed sixty (60) days.

b. The public hearing

- Upon receipt of comments, Regulation 22 gives NEMA discretion to hold a public hearing, and subsequently submit the report to the Director General of NEMA who may then approve the EIA and issue an EIA Licence.
- If a public hearing is selected, NEMA is required to set a date, time and place and communicate the same at least one week prior to the meeting through a notice in the daily newspaper of nationwide circulation and newspaper of local circulation and make at least two announcements in the local language of the community and the national language through radio of nationwide coverage – Regulation 22(3).
- The public hearing should be at a venue convenient and accessible to the people likely to be affected by the project.
- During the meeting, the proponent is required to first make a presentation and then respond to presentation made by the public.

1.7.4.4. Decision-making

- Regulation 23 requires NEMA to give its decision on the EIA study report within three (3) months of receiving the EIA. The decision should be in writing and should contain reasons.
- It must be communicated to the proponent within 14 days of the date of decision. Where it approves the EIA report, NEMA will issue an EIA licence.

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PARTICIPATION IN EIA PROCESSES: THE RIGHTS AND OPPORTUNITIES TO SHAPE ENVIRONMENTAL DECISIONS



Human beings, as all other forms of life, are dependent on the environment for their wellbeing. Humans also form part of, become dependent upon, and affect ecosystems in various ways. The relationship between a development project, people and the environment it affects is dynamic and changeable. People affect the environment in which they live and are affected in turn by changes in the environment. The people to be affected by the project proposal at all relevant levels, therefore, should always be consulted and given an opportunity to participate actively in the EIA process. The process should be as open as possible.

Principle 10 of the Rio declaration:

“Environmental issues are best handled with participation of all concerned citizens at the relevant level. At the national level, everyone shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

Public participation is a fundamental principle of EIA. It is the inclusion of the views of the affected and interested parties, to ensure that decision-making process is equitable, fair and leads to a more informed choice and better environmental outcomes⁴.

4 UNE “public Involvement” in EIA training Manual (2002) 2nd Edn > https://unep.ch/etu/publications/EIA_2ed/EIA_E_top3_body.PDF<.

The CoK and the framework legislation for environment not only place an emphasis on the need for public participation in matters affecting the environment but it also outlines a step-by-step EIA process including the opportunities the public have to engage in the EIA⁵. The characteristic and form of public participation depends on the magnitude of the project being implemented and the requirements of the law.

The scope of public involvement should be commensurate with the significance of the environmental and social impacts for local people.

2.1. Understanding the Legal and Institutional Framework for Public Participation in EIAs

Most EIA systems have provisions for public involvement in the process. While EMCA and the EIA regulations are the overarching laws guiding EIA processes, the rights and responsibilities for public involvement also depend on the nature and type of project. Therefore, it is important to identify and understand the laws that regulate projects. For instance, mining projects are regulated under the Mining Act 2016;⁶ Energy and petroleum projects are regulated under the Energy and petroleum Act 2019.⁷

5 Article 10 and 69 (d), (e), (f) of the CoK, and Sections 58-60 of the Environmental Management and Coordination Act.

6 No. 12 of 2016.

7 No. 1 of 2019.

It is important to understand the rights and obligations provided for under these legal frameworks for the project proponents, and the institutional mechanisms created within the law touching on access to information, public participation and eventually the environmental decision-making. These legal provisions also determine the timing, scope of consultation, stakeholders to be consulted and the type and amount of information to be disclosed.

2.2. Public participation opportunities

The public participation requirements in EIA processes vary depending on the EIA system. The level and form of public participation may also vary depending on the issue at hand, the population, and the terminology used such as inform, consult, participate and negotiate.⁸

The framework law for the environment, EMCA, uses different terminologies in the EIA system to describe public involvement. It uses terms such as "seek views," "explain" and "consult". Depending on the term and context, the implication is different to the extent that public participation will fall in a range from passive to active. Regardless of the terminology, the public should engage as fully and effectively as possible in the EIA process.

Access to adequate, credible and timely information

Access to information is the cornerstone for effective public participation. In order to participate effectively, access to adequate and credible information in a timely manner and in a form that is easy to understand is extremely important. The EIA law provides for access to EIA and related information and designates a central place for accessing these documents. As much as possible, the EIA and related information should be

adapted to local conditions. Where possible, the information should be provided in local languages and in areas with high levels of illiteracy, other media should be used for providing information (videos, radio programs, meetings etc.)

The stakeholders involved in the EIA process

There should be a stakeholder analysis in which both the primary and secondary stakeholders are identified. These stakeholders should be included in the scoping, implementation of the EIA study, review phase of the EIA study and post review phase of the EIA study. Consultations with these stakeholders should begin early and they should be given an opportunity to participate in every stage of the EIA process including to discuss various project alternatives and EIA recommendations. The range of stakeholders involved in an EIA include:

- **The project proponents and project beneficiaries.** They want to shape the proposal and project to give it the best chance of success. In addition, they want to obtain the social licence to operate. Their main aim is to ensure that they create an understanding within the public of the project, its design, the alternative considered, the associated impacts and the mitigation measures proposed.
- **Government agencies.** The government agencies are involved as the lead agencies or ultimate decision-makers in the EIA process because of their policy and regulatory responsibilities in ensuring adequate impact analysis, and that compliance with public participation requirements are adequately and effectively addressed.

8 IAEA "Public Involvement" on EIA Training Manual (2002) 2nd edn 162.

- *Individuals, groups and communities directly affected by the project.* These groups are involved as persons directly affected by the project. The aim is to inform them of the project proposal, the likely impacts, to understand and address the concerns they may have and to tap into the knowledge they have regarding the project environment that would be beneficial to the baseline data.
- *NGOs and interest groups (Private sectors and academics).* These groups are involved because of the policy perspective and other field related expertise contributions they make to the EIA process and study.

2.3. Opportunities for public participation in EIA process

2.3.1. Public participation during the EIA process

Regulation 17 requires the project proponent to seek the views of persons who may be affected by the project. It is important for the public to get involved to ensure that significant issues are identified and alternative ways of implementing the project are considered. It is the role of the project proponent to ensure that certain objectives are met while undertaking an EIA to create the best possible outcome.

Guiding Principles:

Value adding. Public participation in the EIA process should be approached in a way that it adds value to the EIA.

Inclusivity. The proponent should give stakeholders easy access to the process.

Early engagement. The stakeholders should be given an opportunity to participate in the process from the earliest stage possible.

Transparency and accountability. The process should be transparent, and all information provided.

Fairness. All stakeholders should be treated in a fair and unbiased way.

Capacity development. Increasing the capacity of the stakeholders about the project and process should be the aim of the EIA process.

Flexibility. The process should be flexible enough to adapt to changing needs and conditions.



At this stage, the purpose of public participation is to:

- Communicate the need for and objective of the project proposal;
- Provide sufficient, relevant information in a form that is easily understood by non-experts;
- Allow enough time for stakeholders to review, consider and respond to the information and its implications;
- Actively listen to the concerns of the affected people and other interested stakeholders;
- Identify key issues and alternatives to be considered;
- Identify the significant impacts and mitigation measures;
- Respond to all questions, issues raised, and comments made by stakeholders.

Important Pointers:

In seeking the views, the proponent is required to:

- a. Publicize the project and its anticipated effects and benefits

Notice of the project EIA (Regulation 17(2)
(a):

- a. Posting posters in strategic places in the vicinity of the site of the proposed project.
- b. Publishing a notice on the proposed project for two successive weeks in a newspaper that has a nationwide circulation.
- c. Making announcement of the notice, in both official and local language, in a radio with a nation-wide coverage at least once a week for two successive weeks.



- b. Hold at least three meetings with the affected parties and communities to explain the project and its effects, and to receive oral or written comments.

2.3.2. Public participation post EIA submission

2.3.2.1. Reviewing and preparing oral or written submissions

The purpose of public participation at this stage is to comment on/respond to the EIA report and its adequacy to ensure that the EIA includes accurate information that satisfactorily reflects environmental and local communities' concerns.

Regulation 21 (1) Environmental Impact Assessment Regulations:

"The Authority shall within fourteen (14) days of receiving the Environmental Impact Assessment study report, invite the public to make oral and written comments on the report."

Important pointers:

What should an affected or interested person look out for in order to get involved in the EIA post-submission phase?

- i. Notice inviting the public to submit comments;
- ii. Format of providing comments.

Regulation 21(2): Notice of invitation to submit comments to an environmental impact assessment study report: -

- a. Publish a public notice in the Gazette for two successive weeks.
- b. Publish a notice in a newspaper with a national wide circulation, in particular with circulation in the area of proposed project.
- c. Make an announcement of the notice in official and local language in a radio with nation-wide coverage, once a week for two consecutive weeks.



Impacts	Proposed Mitigation Measures
HIV/AIDS	<ul style="list-style-type: none"> • Trainings and awareness campaigns to prevent spread of STIs. • Safe sex strategies such as use of condoms. • Establish wellness centers including VCT and ARV centers at strategic locations. • Auditing /Evaluation the impacts of the HIV/AIDS prevention and awareness strategies.
Child abuse	<ul style="list-style-type: none"> • Implementation and enforcement of laws protecting rights and safety of children. • All construction workers to sign code of conduct integrated with child protection components. • No engagement of persons below the age of 18 to undertake any form of project related activity.
Loss of cultural heritage	<ul style="list-style-type: none"> • Sensitization of communities on appropriate interactions with immigrants.

The full report of the proposed project is available for inspection during working hours at:

- Director-General, NEMA, Popo Road, off Mombasa Road, P.O. Box 67839-00200, Nairobi.
- Principal Secretary, Ministry of Environment and Forestry, NHIF Building, Community, P.O. Box 30126-00100, Nairobi.
- County Director of Environment, Uasin Gishu County.

The National Environment Management Authority invites members of the public to submit oral or written comments within thirty (30) days from the date of publication of this notice to the Director-General, NEMA, to assist the Authority in the decision making process of the plan.

GEOFFREY WAHUNGU,
Director-General,

MR/0426106 National Environment Management Authority.

GAZETTE NOTICE No. 777

THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT (No. 8 of 1999)

THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY ENVIRONMENTAL IMPACT ASSESSMENT STUDY REPORT FOR THE PROPOSED LAMU PORT ACCESS ROAD IN LAMU COUNTY

INVITATION OF PUBLIC COMMENTS

Pursuant to Regulation 21 of the Environmental Management and Co-ordination (Impact Assessment and Audit) Regulations, 2003, the National Environment Management Authority (NEMA) has received an Environmental Impact Assessment Study Report for the above proposed project.

The Proponent, Kenya National Highways Authority (KeNHA), is proposing to construct 11.4 km access road to the port and 2.9 km to the Lamu Kenya Army Barracks. The road starts at approximately 180 km from Gulf Energy Station, off Lamu Witu Garsen (C112) Road and ends at the entrance of Lamu Port. The other section branches of and ends at the Lamu Kenya Army Barracks.

The following are the anticipated impacts and proposed mitigation measures:

Impacts	Proposed Mitigation Measures
Air quality	<ul style="list-style-type: none"> • Sprinkling of water to limit dust. • Vehicles will be serviced regularly.

Impacts	Proposed Mitigation Measures
Construction material sourcing	<ul style="list-style-type: none"> • Buying fuel efficient machines/trucks. • Obtain appropriate authorization and licenses for the use of the borrow pits and quarries before commencing activities. • Carry out inspection of each of the sites' soil stability before excavation. • All borrow pit sites shall be clearly indicated on a plan and approved by the engineer. • Borrow pits and quarries to be located more than 100 metres from watercourses to minimize storm water runoff into watercourse and mitigate potential conflicts.
Soils	<ul style="list-style-type: none"> • Confining project operations such as earthworks, excavations and bush clearing to avoid exposing adjacent soils to agents of soil erosion. • Proper installation of drainage structures to channel storm water to the nearest natural catchments. • Stabilizing road embankments and progressive re-vegetation of developed sections and areas cleared unintentionally. • Heavy machines/truck movements that may cause soil compaction will be restricted within permitted working corridor. • Drivers/operators will be sensitized on sustainable machine operations such as keeping off vegetation within project corridor and access roads to material sites.
Noise and excessive vibrations	<ul style="list-style-type: none"> • Procuring machines/trucks that meet internationally recognized noise emission standards. • Machine operators/truck drivers to be sensitized on safe driving to avoid unnecessary braking or hooting. • Aligning the road away from humans' settlements/homestead. • Tress along the traverse not within carriage will not be cut as they will act as sound absorbers.
Solid and liquid wastes	<ul style="list-style-type: none"> • Adoption of waste management hierarchy. • Enforcement of EMCA 38 (Waste Management) Regulations, 2006.
Water quality	<ul style="list-style-type: none"> • Establishing spillage containment units where there is likelihood of spillage wash-offs. • Using biodegradable absorbers to absorb spillages at workshop/garage.
Occupational health and safety	<ul style="list-style-type: none"> • Provision of face masks and appropriate PPEs to workers. • Contractor(s) education and training on pedestrian safety. • Restrict access of non-project personnel to work areas. • Work safety trainings will be conducted.

The full report of the proposed project is available for inspection during working hours at:

- Director-General, NEMA, Popo Road, off Mombasa Road, P.O. Box 67839-00200, Nairobi.
- Principal Secretary, Ministry of Environment and Forestry, NHIF Building, Community, P.O. Box 30126-00100, Nairobi.

The notice provides the following information (Section 59(1) EMCA;

Regulation 21(3) EIA Regulations). These include:

- The title/nature of the proposed project.
- The location of the project.
- A summary of the anticipated positive and negative impacts and the mitigation measures.
- The place where the full report may be inspected.
- The period within which NEMA shall receive oral/written comments.

Figure 2.1: A sample of the Gazette Notice



Important pointers:

1. The Gazette can be accessed through: http://kenyalaw.org/kenya_gazette/
2. Newspapers can be accessed at nearby vendors.

Timeline

Section 59(1)(d) EMCA:

A time limit not exceeding sixty days for the submission of oral or written comments environmental impact assessment study evaluation or review report

Section 59(2) EMCA:

The Authority may, on application by any person extend the period stipulated in sub-graph (d) so as to afford reasonable opportunity for such person to submit oral or written comments on the environmental impact assessment report

"The National Environment Management Authority invites members of the public to submit oral or written comments within thirty (30) days from the date of publication of this notice to the Director General, NEMA, to assist the Authority in the decision-making process of the plan."

Usually, the Authority gives a time limit of thirty-(30) days for the submission of the EIA report.

However, the time limit may be extended, on request, to facilitate timely submission to NEMA by writing a letter or email to the Director General (dgnema@nema.co.ke)

2.3.2.2. Public Hearing

Public hearings provide affected communities with a platform to influence decision makers about the project.

Regulation 22(1) of the EIA Regulations:

“Upon receipt of both oral and written comments as specified in Section 59 and 60 of the Act, the Authority may hold a public hearing.”

Important pointers:

Where should public hearing be conducted:

- A venue **convenient** and **accessible** to people likely to be affected by the project.

Notice of the public hearing - 22(3):

- At least one notice in the daily newspaper with nationwide circulation **and** one newspaper of local circulation.
- At least two announcements through radio with nation-wide coverage. The announcement should be done in the local language of the community and the national language.

What should be contained in the public hearing notices? – 22(3):

- Date of the public hearing
- Venue of the public hearing

Who should preside over the public hearing? – 22(2):

- A suitably qualified person appointed by NEMA

What is the role of the participants in a public hearing?

- To present views either in oral or written





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**REVIEWING AN
ENVIRONMENTAL
IMPACT ASSESSMENT**



Reviewing EIA documents can be a daunting process. Project proponents submit reports that include complex and obscure technical terms. Because of the government institution bureaucracies and inefficiencies, sometimes information is never made available or is made available in piecemeal to the public. The purpose of an EIA is to provide clear and impartial information about a project's potential environmental and social impacts. Questions to consider when reviewing an EIA include:

- Does the EIA fulfill requirements for the proposed activity as set out in the relevant EIA guidelines or Terms of Reference?
- Does the EIA focus on the issues that most concern the community?
- Does the description of the existing environment reflect actual conditions? Is the information sufficient?
- Has the EIA defined the area of direct and indirect influence of the project?
- Is the impact analysis clear about the extent and significance of the impacts? Is the analysis rigorous enough?
- What sources support the conclusions? Can they be verified?
- Is there enough information about alternatives to the project?
- Is the EIA clear and easy to understand? Does it acknowledge limitations and difficulties?
- Does the EIA describe how the project proponent would implement proposed mitigation and management measures (including pollution control measures and closure)?
- Does the EIA accurately detail the public participation discussions

How to obtain the relevant information (information seeking)

Reviewing an EIA and preparing comments are based on the information one gets.

What information should one seek?

- The Terms of Reference
- The environmental impact assessment study report
- Annexures to the EIA study report particularly the public participation annexure

Where can the information be obtained?

All relevant project information are transmitted to the NEMA headquarters and NEMA county offices by project proponents.

The EIA study report can be obtained online, through the NEMA website <http://www.nema.go.ke/> Using the following steps:

Click on the website <http://www.nema.go.ke/>

- Scroll and click downloads
- Then click EIA/SEA reports
- Scroll to check for the EIA study report according to the number cluster

Project documents can also be obtained through the EIA process tracker resource, on the natural justice website <https://naturaljustice.org/eia-process-tracker/>

Section 59 (3) EMCA

The Authority shall ensure that its website contains a summary of the EIA Study report

Number cluster:

Number cluster refers to the system used to record EIAs and upload on the website for ease of reference. They usually are 10 reports per cluster.

Example:

NEMA has invited the public to submit comments to the EIA Study report for the proposed construction of Lamu Port Access Road NEMA/EIA/1553; you will want to search for the report in the cluster **EIA _1550-1559_ Reports.**

Alternatively, one can obtain the information by visiting the NEMA headquarters in Nairobi or NEMA County offices to inspect or applying to the Authority for access. The application can be done in the form of an access to information letter (see annex 2).

Section 3A EMCA (Access to Information)

Every person has the right to access any information that relates to the implementation of this Act that is in possession of the Authority, Lead Agency or any other person.

Section 123 EMCA (Public access to Records transmitted to the Authority)

Any person may have access to any records transmitted to the Authority and may on application to the Authority, be granted access to the said records.

Regulation 11 of EIA Regulations:

An environmental impact assessment study shall be conducted in accordance with the terms of reference developed during the scoping exercise by the proponent and approved by the Authority.

3.1. Evaluating the Terms of Reference

What are Terms of Reference (ToRs)?

Terms of reference serve as a roadmap for EIA preparation, and should ideally encompass the issues and impacts that have been identified during the scoping exercise, which need to be reviewed in detail in the EIA study.

Who prepares the ToRs and when are they developed?

The terms of reference are prepared by the project proponent. The project proponent does this exercise during the scoping exercise.

Who approves the terms of reference?

NEMA is mandated to approve the ToRs prepared by the project proponent. Approval is usually subject to an initial review, to ensure that the EIA is properly framed and will address issues of concern satisfactorily.

What does the ToRs contain?

The Terms of Reference includes the following:

- A description of the projects.
- Geographic area to be studied.

- EIA requirements in applicable laws and regulations.
- A list of agencies responsible for overseeing the EIA process and making decisions.
- Impacts and issues to be studied.
- Provisions for public involvement.
- Key stakeholders.
- Expected work products and deliverables.
- Budget for the EIA.
- Summary of qualifications of the EIA experts.
- study commenced?
- Are the ToRs drafted in relation to the proposed project?
- Are the ToRs authentic? Have they been plagiarized?
- Do the ToRs adequately guide the project proponent to undertake an in depth and sufficient EIA study?

3.2. The Environmental Impact Assessment study

When reviewing the ToRs, one should ask questions as follows:

- Are there approved ToRs?
- Have the ToRs been approved by NEMA? If so, was the approval obtained before the EIA

The EIA study shall always be implemented in such a way that it guarantees, as far as possible, an independent and impartial assessment of the environmental impacts of the project proposal. At the same time, the EIA needs to be integrated into the project planning process to make it possible for the EIA to influence this process.



The EIA should as a result give an EIA document including information provided in Regulation 18 and summarized below:

A common structure of an EIA document is:

- A non-technical summary.
- Legal, policy and administrative framework (essentially those that affect the project).
- A description of the project, its objectives, alternative locations and scope.
- Analysis of project alternative (site, design and technologies) including zero alternative(s).
- Baseline study (surrounding areas that can be affected by the project).
- Expected environmental impacts of the different alternatives.
- Mitigation measures planned to reduce or eliminate negative impacts.
- Plans for monitoring and evaluation.

Appendices

- References
- Detailed baseline studies
- Minutes of meetings or summaries of the points of view of the general public.

3.2.1. Different parts of an EIA study

Below the different parts of an EIA study are presented in brief:

- i. Collection of baseline data.* The EIA study is required to collect and incorporate detailed data on relevant physical, ecological, economic, social, cultural and demographic conditions in the project area. It is often a good idea to use participatory methods to obtain the assistance of local people for acquiring both current and historical data on the area. This data forms the basis of a description of the existing environment and expected changes to the environment based on current human activities, without any effects resulting from the project - the zero alternative - against which an assessment is made of the proposed project.
- ii. Identification of environmental and social impacts.* The study should identify both positive and negative social, health, economic and environmental impacts that can arise directly or indirectly, because of the proposed project. In addition, the study should identify cumulative, irreversible, short-term and long-term effects of the proposed project. The impacts on different groups -women, men, children, and vulnerable groups- should be presented separately when relevant.

It is necessary that all stakeholders are given the opportunity to present their views at this stage. It is important that a specific report is made on the degree of uncertainty in the assessments of different types of impacts and risks. It is also important to relate the analysis to existing environmental legislation and other national and international agreements.



iii. Identification and assessment of alternatives to the project. The EIA should identify project alternatives (including the zero alternative) and alternatives within the project itself that could be made to strengthen the project's contribution to environmentally sustainable development and to avoid, as far as possible, any negative environmental impacts. The alternatives should refer to both the design, location of the project, and technologies. To make it possible for an alternative to form the basis of meaningful comparisons, it is essential that it is an "honest" alternative. The aim is not to shed more advantageous light on a certain solution with the aid of a "bad" alternative. This puts credibility of the EIA document at risk, and ultimately the project also.

iv. Stakeholder consultation. It is important that stakeholders be given an opportunity to participate actively throughout the entire EIA process: screening/ scoping phase, EIA implementation phase, and review phase. Consultation should start as early as possible and should continue to the very end, and different points of view submitted and considered.

v. Plan for the implementation of measures and for monitoring and evaluation. It is important that proposals are made of persons or institutions that will be responsible for taking agreed measures and for monitoring environmental impacts and measures. It is also important that funds are allocated for monitoring and evaluation within the framework of the project.

vi. 3.2.2. Evaluating the Executive Summary

Section 59(3) of EMCA

The Authority shall ensure that its website contains a summary of the report referred to subsection (1) – the environmental impact assessment study report.

The executive summary of an EIA provides decision-makers and the public with a concise presentation of the most significant issues contained in the body of an EIA. The executive summary is critical because it should contain a concise summary of material from the body of the EIA that describes critical environmental and social impacts.

Although EIAs may be several hundred pages long, decision makers and other reviewers are always encouraged not to read the executive summary in isolation but to read through the document. Since project proponents understand that decision-makers may only read the executive summary, material from the body of the EIA that describes serious environmental and social impacts may be softened or omitted entirely from the executive summary.

3.2.3. Evaluating Project Description

The project description is one of the most important sections of the EIA. The crucial issue is whether this section describes every aspect of the proposed project in sufficient detail to enable citizens to understand the project's true environmental and social impacts.



Project description of a poor EIA (site location):

Consider the Proposed Hazardous Waste Treatment and Transfer Station

"The proposed waste treatment and transfer station is located in one-hundred-acre unreferenced land in Kang'petei area of Lokori of Turkana County."

Explanation: : In the above project description, the statement is missing details that are essential to understanding the nature of the site i.e., whether it's an environmentally sensitive area, and identifying the environmental and social impacts when the site location is on community land.

Project description for a good EIA (site location):

Consider the Proposed Expansion of Krystalline Salt Ltd Marereni Salt Works

"Krystalline Salt Ltd Marereni is located in Kilifi County, Magarini sub-county, Gongoni location, Fundi Issa Location, Marereni Sub-Location off Malindi-Lamu Road on Land reference number 13427. The proposed expansion will be conducted in a section of undeveloped land of the said land reference, which falls within the following GPS coordinates UTM X- 0629397, UTM Y- 9683901, UTM X- 0629933, UTM Y - 9686198, UTM X- 06281010, UTM Y- 9686140, UTM X- 0628108, UTM Y- 9683877. The approximate area for the proposed expansion will be 800 hectares. Map 1 gives the location of the proposed project site and appendix 1 is the land title deed for the proposed project site."

Explanation: In the above project description, the question of the site location is answered as the EIA provides the GPS coordinates, a map and clear administrative description of the site. Hence one can analyze the project with regards to the location sufficiently.

A good project description will answer questions like:

- Where will the project be located (geographic location)?
- What is the starting up phase?
- What is the winding up phase?
- What materials will be used for construction?
- Which technology has been selected and why?
- Has the project design been selected and have maps, diagrams, and pictures been provided?

3.2.4. Evaluating the Baseline Information

This section is vital in defining the area of direct influence of the project and predicting and evaluating potential environmental impacts of any development project prior to any development. The EIA study starts with the collection of background data on relevant physical, ecological, economic, socio-cultural and demographic conditions in the project area.⁹ These data form the basis of a description of the existing environment and expected changes in this environment caused by present and expected

⁹ SIDA Guidelines for Environmental Impact Assessment in International Development Corporation (1998) 37.

human activity without the project, the so-called no project alternative, against which the proposed project shall be assessed. It also forms an

important reference for all future assessments and project monitoring. Consider the figure below:

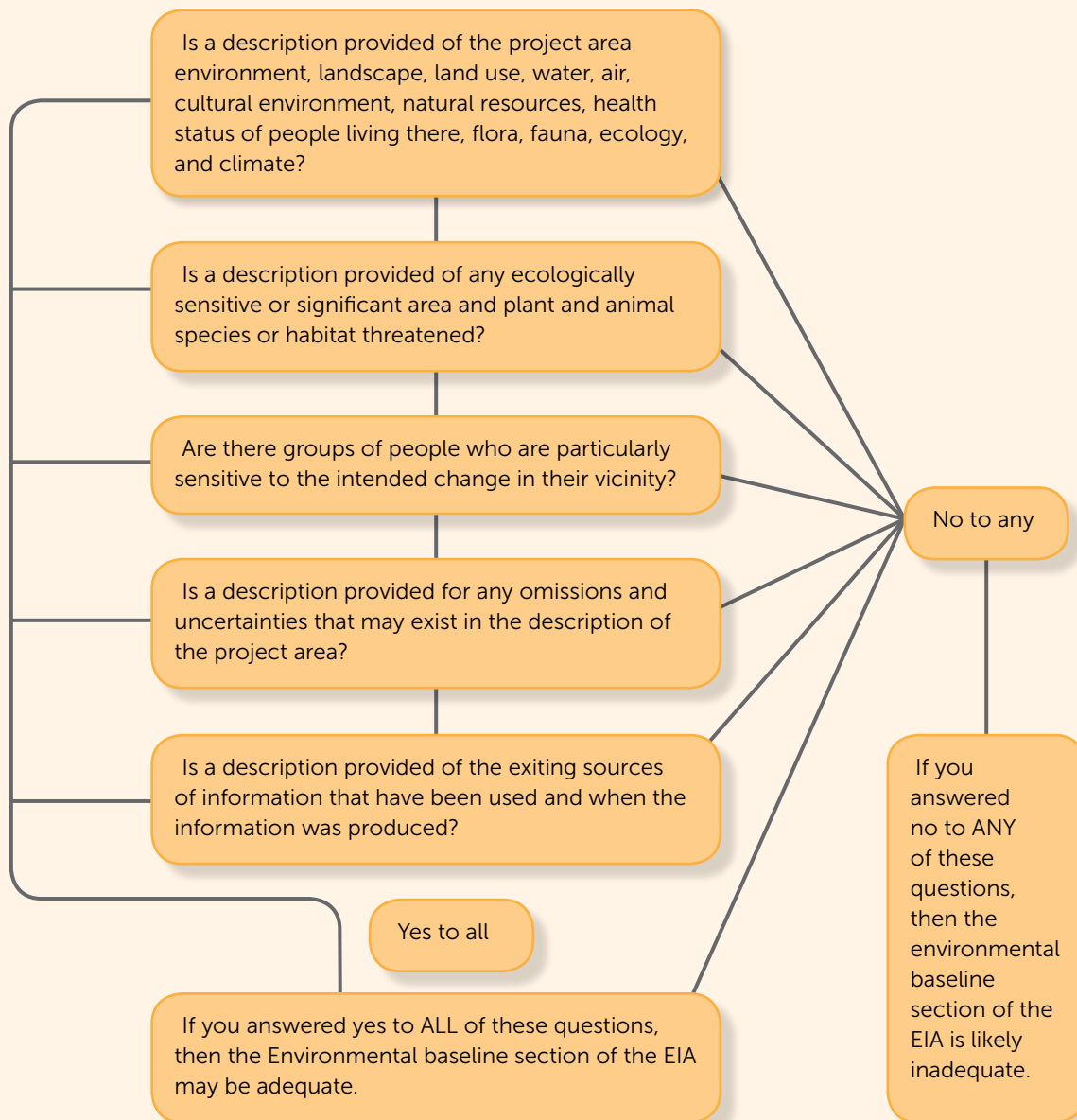


Figure 3. 1: A flow chart used in reviewing baseline information

Example 1: Description of wildlife species and population

Baseline information about wildlife must include a list of wildlife species within the project area and interactions between species. An EIA should include a description of the region, species maps, population densities, and species distribution. This includes all flora and fauna that have, by national legislation or international conventions, been listed as threatened or endangered.

Excerpt from a Road project EIA:

*“Arawale National Reserve forms the western border of the road project between Ijara and Masabubu (see Fig. 4-1, Chapter 4). The Arawale National Reserve is a designated conservation area managed by the Garissa County in assistance with the Kenya Wildlife Service. It lies 77 km south of the town of Garissa. The reserve covers an area of about 533 km². Arawale was gazetted in 1973 with the primary purpose of protecting the *Hirola* or **Hunter’s hartebeest (*Beatragus hunteri*) an extremely rare antelope species, which is found only in this region. The landscape in this area is mostly a dry thorn bush savannah. The *Hirola* is critically endangered according to the IUCN red list of threatened species. Arawale is also a refuge for some species like elephant, giraffe, Grevy’s zebra, African wild dog, cheetah, lesser kudu, buffalo, hippo and crocodile (at the Tana River area)”***

Comment on the above excerpt:

The EIA is inadequate as it does not include any specific data or management plans to ensure the protection of any of these species.

Example 2: Characterization of seismic conditions and project environment

An EIA must adequately characterize existing seismic conditions. Consider the information below.

Excerpt from a gas project:

“The layout of the well pad shall cover an area of 200 metres by 200 metres. The drilling site is unknown as analysis of the seismic data is incomplete.”

Explanation: The failure is significant because the environmental footprint for exploratory wells includes not only the 200m x 200m well pad, but also associated facilities, such as temporary waste disposal pits and ponds and access roads. Without knowledge of the exact location of these facilities, there is no way to truly understand the totality of the environmental impact of the proposed project.

“Pate Island is largely populated with scrub bushes, scatter palms and indigenous trees, scrubs as well as grassy open swampy places in some parts causing drainage problems due to low altitude in the region”.

Explanation: Because the ESIA does not identify the exact location of the project, it is impossible to assess the impact of auxiliary infrastructure. Further the stakeholders are likely to be denied any opportunity during the ESIA process to comment on how the location of the projects and associated roads would impact their health, critical ecological and agricultural resources.

3.2.5. Evaluating the Project Alternatives

Regulation 18 (i):

An EIA should contain information on alternative technologies and processes available and reason for referring the chosen technology and processes.

Regulation 18(j):

Analysis of alternatives including project sites, design and technologies and reasons for referring the proposed site, design and technology.

An EIA should consider project alternatives options and the no project alternative option.

The no project alternative option is necessary and presented in order to provide a baseline against which to compare other alternatives for the various elements of the Project. Under this alternative, the project would not be undertaken in any form.

Similarly, an EIA should analyze project alternatives, looking at various ways in which a proposed development project can be implemented. In doing this, an EIA should consider analyzing the following: -

- Delayed projects start up alternative (if there are environmental benefits for instance, if a more environmentally friendly technology is available);

- Location alternatives. Viable location alternatives should not involve creation of new land impacts or increased environmental risks (water quality and quantity impacts, landscape impact, air quality impacts, impacts on cultural heritage etc.), should not be locations that are unacceptably close to the adjacent community; should support reasonable capital and operating costs.
- Technology alternative. The EIA should consider the technology that has the best potential for reducing environmental impacts e.g., alternative waste treatment technologies.
- Site access alternatives. The project site access during project development is important and the EIA should, in analyzing this alternative, look at the terrain difficulty, number of affected people, road length and proximity to other facilities (in the case of mining operations), to name a few.

Example 1: Assessment of alternative to deal with associated gas (onshore gas project)

Assessment of alternatives should be documented and recorded to inform the most feasible choice and the best possible mitigation measures to be adapted. Consider a project with an onshore gas well, with potential to emit large quantities of gas containing hydrocarbons and hydrogen sulfides. The EIA was considering flaring and venting as options for dealing with associated gas.



Excerpt from Onshore Gas project EIA:

"If the results of logging indicate a potential for hydrocarbon/gas bearing formations, the well may be tested. The hydrocarbons will be flowed through a test package where the pressures, flow rates, and hydrocarbon types will be characterized and sampled, and excess hydrocarbons flared. The escaping gas will be flared or vented out in the open. The gas flaring or venting will create a flame and noise from the burning of the gas. Testing is important in order to determine the pressure, flow and composition of the gas in the well. Flaring is also done for safety during emergencies, maintenance, and equipment repairs, where equipment or piping becomes over-pressured. This is done to avoid risk of fires and explosions. Flare gas systems are also used to manage waste gas that cannot be efficiently captured and returned to the system for processing."

Explanation:

- i. The EIA barely elaborates on the two measures (flaring and venting), which on their own could ideally be the subject of an entire report.
- ii. Associated gas should never be vented and should be flared only if feasible alternatives are not available. The EIA should have considered IFC Guidelines on onshore oil and gas developments for best practice.
- iii. The project proponent has also failed to elaborate on the type of flaring to be used: enclosed or open. The EIA should consider an option of flaring that is environmentally friendly.
- iv. The EIA should consider alternative options to flaring or venting which include gas utilization for on-site energy needs, export of the gas to a neighboring facility or to market, gas injection for reservoir pressure maintenance, enhanced recovery using gas lift, or gas for instrumentation.

When reviewing project alternatives, consider the questions below:

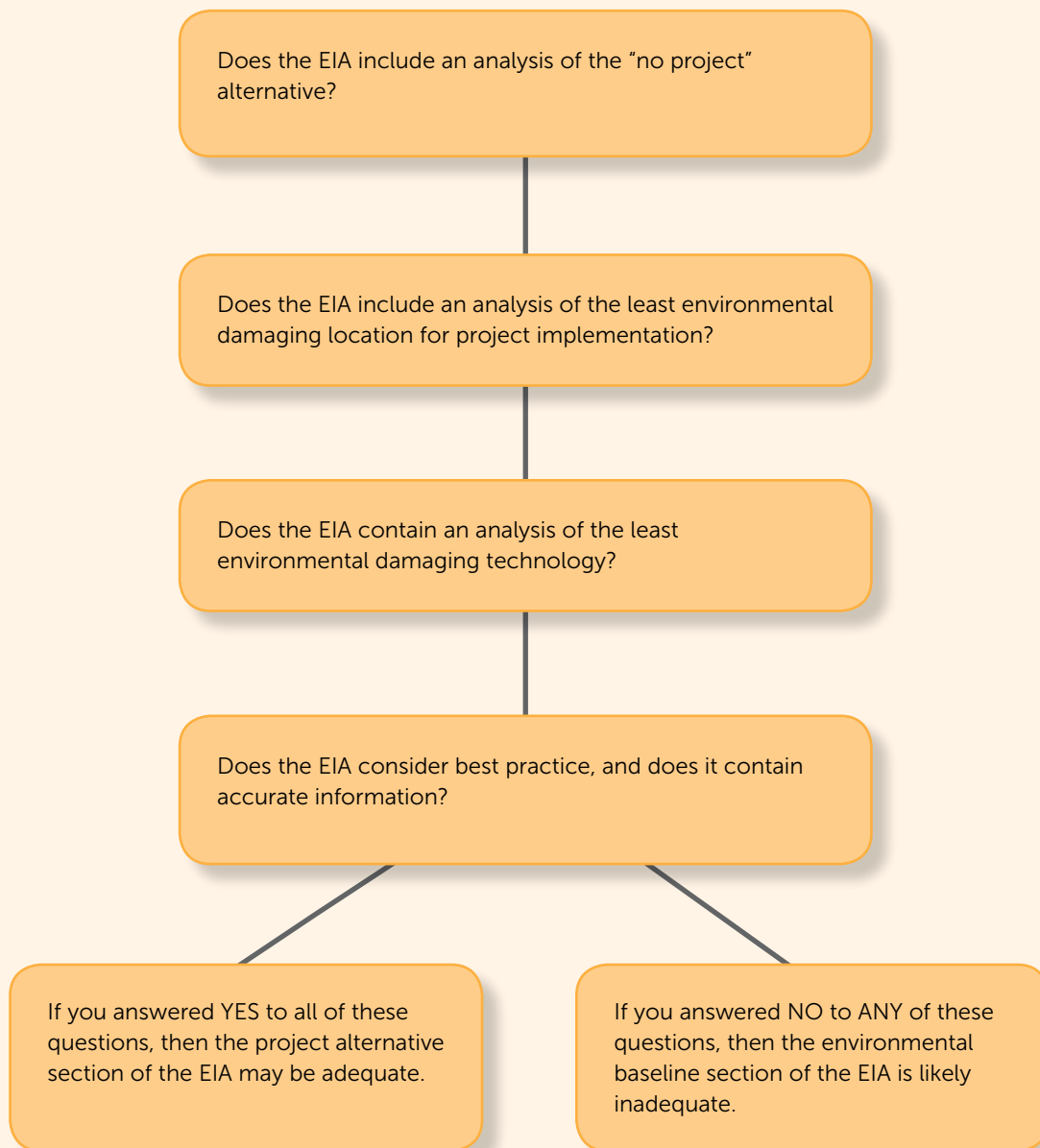


Figure 3.2: Key questions to consider when reviewing project alternatives

3.2.6. Evaluating the public participation summaries

The main objective when evaluating public participation summaries is to establish the effectiveness and adequacy of the process. To do this, one wants to understand the following:

- The role, scope and contribution of public involvement in the EIA and the decision-making process.
- To recognize and analyze the options and phases for which the public was involved in the EIA process.
- The techniques used for public participation.
- The stakeholders involved in the process.
- Information provided to the stakeholders.
- The issues and concerns raised by stakeholders and how they have been addressed.

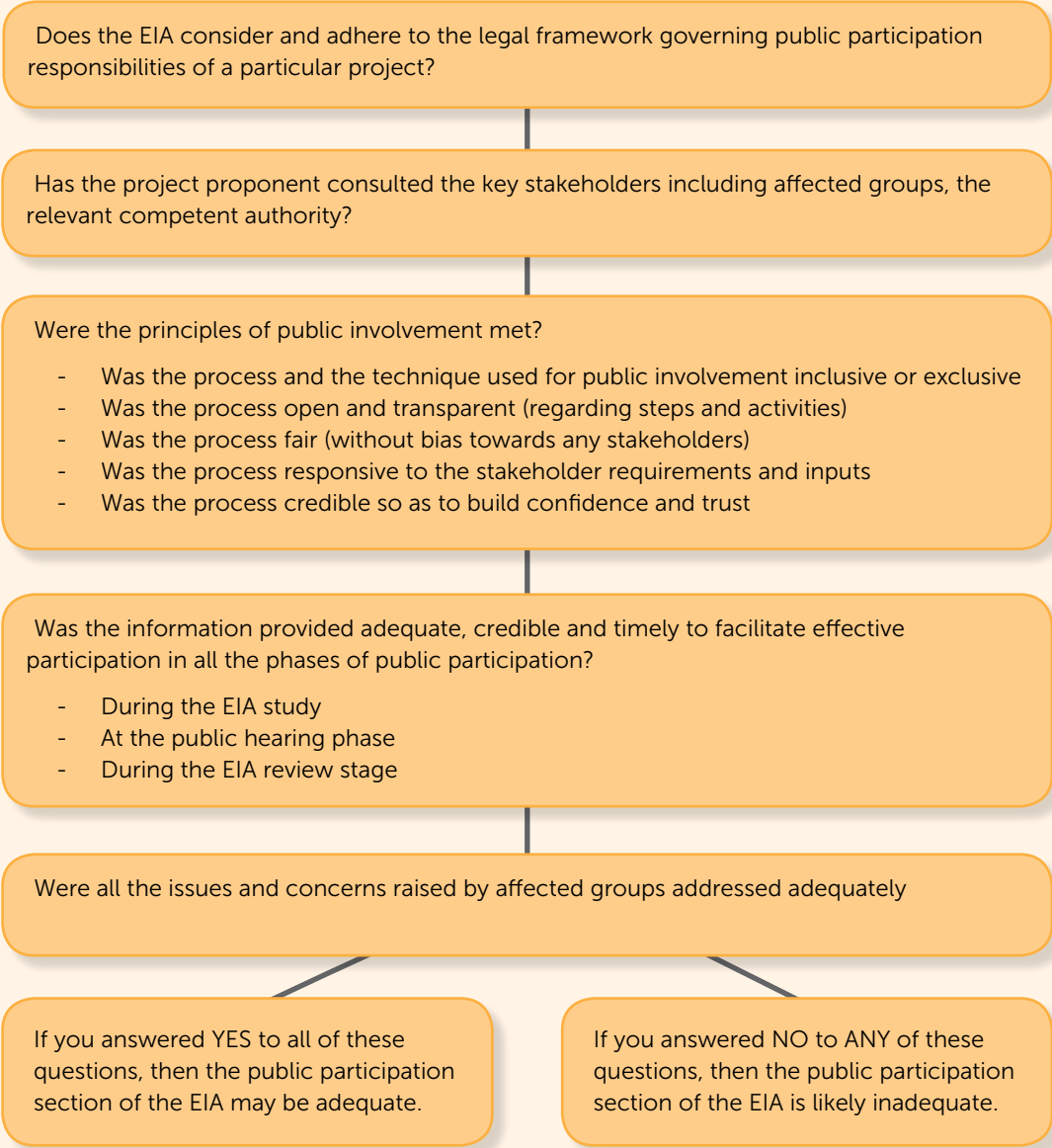


Figure 3.3: Flow chart for evaluating public participation summaries



3.2.7. Evaluating the project's potential social and environmental impacts

Regulation 18(h) of the EIA Regulations requires:

The EIA study to have information of the environmental effects of the project including the social and cultural effects, and the direct, irreversible, indirect, cumulative, long-term, short-term effects anticipated.

The EIA should identify both negative and positive effects on the environment, which can arise directly or indirectly, as a consequence of the proposed project. These also include the social, health, and economic outcomes which are related to the environmental effects. Noting that there are projects which affect different groups (women, children, men, youth) in different ways, those effects should be presented separately, with special consideration given to weak and poor groups and to future generations. When reviewing the EIA report, one should consider the flow chart in figure 3.4 to establish whether the EIA answers the following questions under this section:

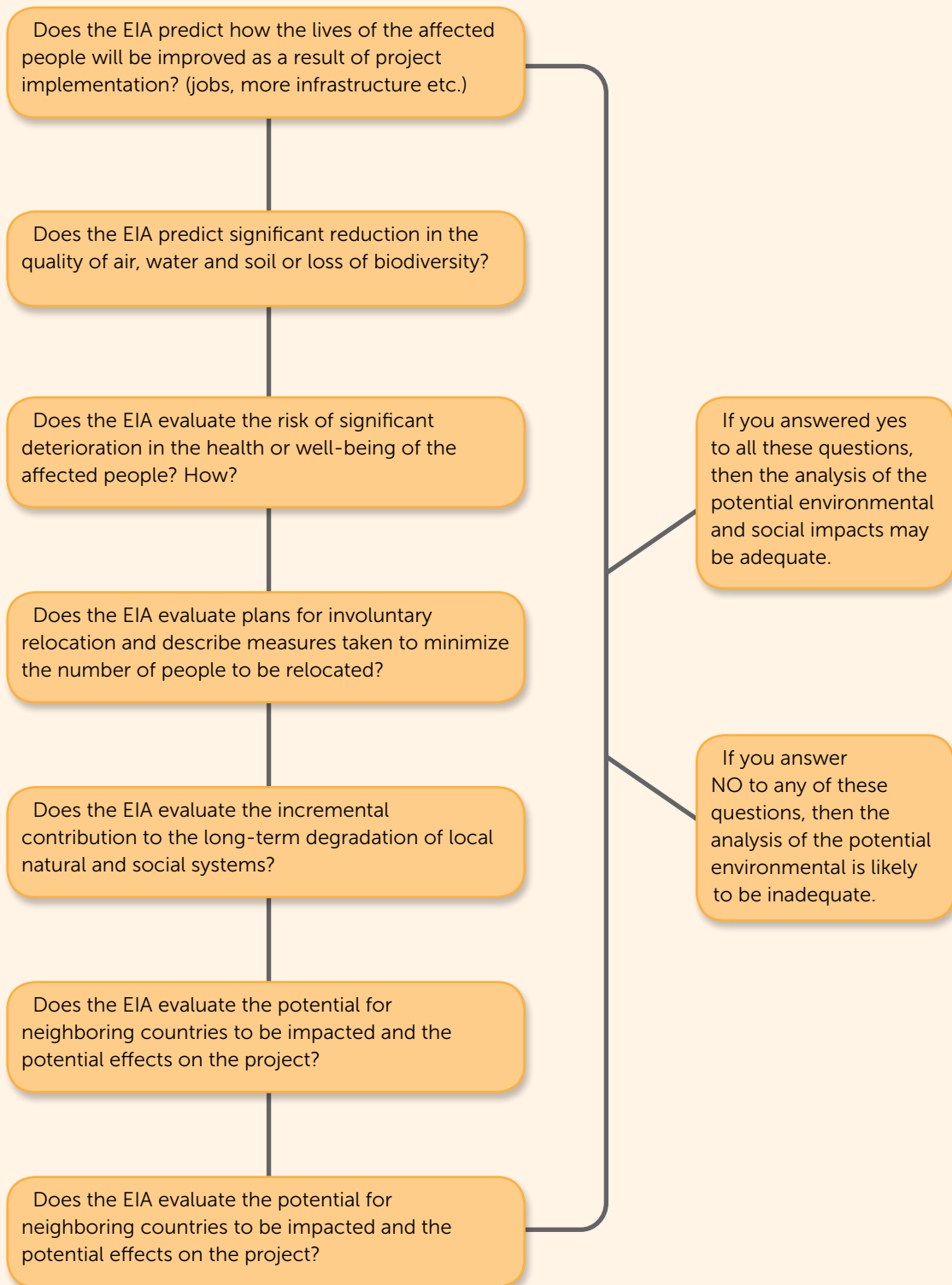


Figure 3.4: Key considerations when reviewing the EIA Report

Regulation 18(1)(0) also requires the EIA to contain an economic and social analysis of the project. This is important because it allows for the environmental, social and health impacts resulting from the project and to be evaluated in monetary terms and the proposals for necessary measures in the conclusions of the EIA to be integrated into the economic and financial analysis of the project assessment. This way, it is then possible to weigh the project's costs and benefits, and evaluate the advantages and disadvantages of different possible alternatives and scenarios.¹⁰

In the Lamu Port case, the court noted that frequently the government recognizes that many external costs will occur but fails to quantify these. To address this gap, the court shaped jurisprudence by requiring the project proponents to consider, assess, estimate and report on the external costs so as to balance the benefits of the project against the external costs to further facilitate an informed decision of whether to proceed with the project.

When analyzing the section, consider whether the information provided in the study is inadequate and thus undermines the impacts, is incomplete and misleading, or has been omitted.

10 External costs refer to the reduction in well-being resulting from project related activities. These costs manifest in various ways: loss of life or health, reduction in the supply of an existing good or service, and an increase in price that must be paid to obtain a new good or service to name a few.

3.2.8. Evaluating the mitigation measures and monitoring plan

Regulation 18(1) (k):

An Environmental Management Plan proposing measures for eliminating, minimizing, or mitigating adverse impacts on the environment, including the cost, timeframe and responsibility to implement the measure.

The EIA study should outline measures to avoid or minimize damage (social and environmental effects), and to optimize the contribution of the project to sustainable development.

- Can negative effects be avoided by relocating the project?
- Are there people who, despite the changes and measures to reduce effects on the environment, are still affected negatively by the project? How shall these people be compensated, and by whom?
- Are the project proposal's negative effects or environmental risks of such magnitude that, despite the measures which can be introduced to alleviate the effects, the project should not be implemented?

When developing mitigation measures, a mitigation hierarchy is used for effective management of environmental risks. The hierarchy prioritizes avoidance before moving to efforts to minimize impacts, restore damaged ecosystems and finally offset residual damage.¹¹

11 S Bice 'Three reasons why the mitigation hierarchy matters to impact assessments' available at <https://www.iaia.org/news-details.php?ID=62>

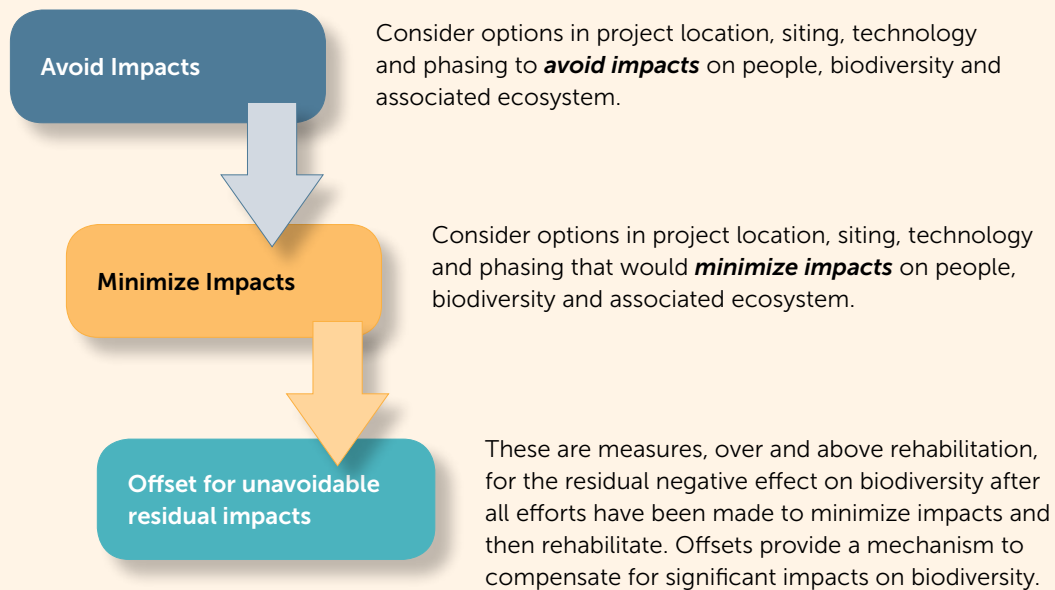


Figure 3.5: Source: J Houdet & C Chikozho “The Valuation of Ecosystem Services in the context of the new South African Mining and Biodiversity Guidelines: Implications for Theory and Practice” (2014) Research Gate.¹²

When analyzing the mitigation measures, one should ask the following questions:

- Is there a detailed plan covering mitigation of predicted impacts, management of residual effects, relocation and compensation schemes, decommissioning, and training programmes?
- Does the plan allocate roles and responsibilities to relevant institutions?

As a rule, a conclusion that the mitigation measures prescribed is inadequate will be made if the EIA has failed to:

- Assess impacts likely to arise from the implementation of the projects e.g., climate change.
- Provide adequate information on the mitigation of impacts identified.
- Provide mitigation measures for the impacts identified.

¹² Available at https://www.researchgate.net/publication/271714913_The_Valuation_of_Ecosystem_Services_in_the_Context_of_the_new_South_African_Mining_and_Biodiversity_Guidelines_Implications_for_Theory_and_Practice/citation/download.

3.3. Making an EIA Decision

When making a decision, the Authority is required to assess the adequacy of the EIA study report

Regulation 23: Factors to take into account in making a decision

- Validity of the EIA report submitted
- Comments made and submitted by lead agencies and other interested stakeholders
- Report of the precising officer compiled after a public hearing
- Other crucial factors for the implementation of the project

NEMA can also set up a TAC to advise it on related EIA reports.

Section 61 EMCA

“The Authority may set up a technical advisory committee to advise it on environmental impact assessment related reports and the Director-General shall prescribe the terms of reference and rules of procedure for the technical advisory committee appointed here under”

The Technical Advisory Committee (TAC) is designed to bring together the unique knowledge and skills of experts in order to effectively guide decision making. Although it cannot make directives, it can make recommendations and provide key information to the decision-making process



In making a decision, the Authority may do the following:

- i. Require the project proponent to carry out a further environmental impact assessment and submit additional information for the purpose of ensuring that the EIA study report is as accurate or exhaustive as possible.
- ii. Issue an EIA licence on such terms and conditions as may be appropriate to facilitate sustainable development (See figure 9).
- iii. Refuse to grant a licence.



Figure 3.6: The Environmental Impact Assessment Licence (Form 3 First Schedule)

Where a decision is made to grant a licence, the environmental licence will be accompanied with conditions set out in four parts:

- General conditions
- Construction condition
- Notification conditions
- Decommissioning conditions

Remember:

- The decision to issue an environmental impact licence should be communicated to the project proponent within 14 days from the date of the decision (Regulation 23(4))
- The licence should be made available for inspection at NEMAs office.

NEMA may refuse to grant a licence in the following instances:

- Where the law (substantive and/or procedural EIA laws) has not been followed
- Where the information provided is not adequate to enable NEMA to make a decision and a further EIA is therefore required.
- Where the project proponent withholds information or fraudulently makes false statements in the EIA or other records to be kept by NEMA.

Questions

Can one obtain a copy of a project environmental licence? Yes.

How can one obtain a copy of a project environmental licence?

Visiting the NEMA headquarter office or NEMA office at the relevant county

- Writing an information request to NEMA (see annexure 2)

Principles to guide administrative decisions:

1. The administrator must consider all relevant factors and must not be biased.
2. The administrator must make a decision within the boundaries of laws i.e., according to the powers conferred under a written law.
3. The persons likely to be affected by the administrative decision must be accorded procedural fairness

4.



REMEDIES FOR GRIEVANCES ARISING FROM THE EIA PROCESS



Legislation creates administrative bodies mandated to make decisions that affect the environment. NEMA is mandated to oversee the EIA process under Sections 58-63 of EMCA, to review the EIA submitted by the project proponent, and to subsequently make a decision to grant an environmental licence for implementation of projects.

Administrative and judicial platforms are available for any person who has been aggrieved by

decision to grant an environmental licence. In fact, Article 47 of the CoK strengthens control over administrative bodies and gives every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

Article 162 requires a specialized Environment and Land Court, and the Tribunal to hear appeals about decisions on environmental licences (see figure 10 below).

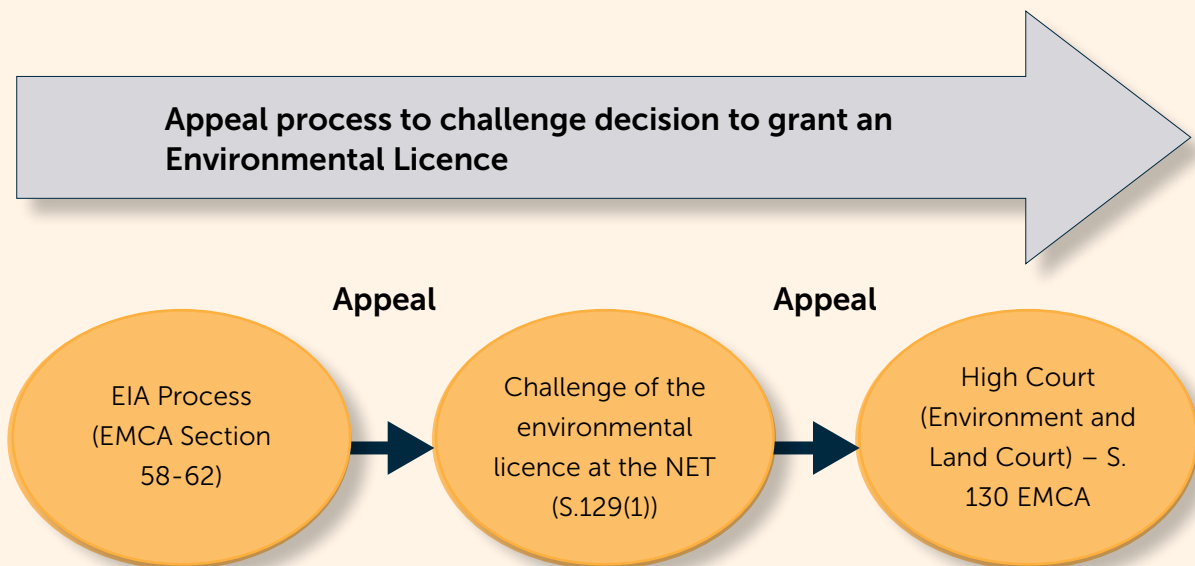


Figure 4.1: Appeal process to challenge decision to grant an Environmental Licence

4.1. Administrative Mechanism

For a party that is aggrieved by the decision of NEMA to grant an environmental licence, the next step would be to seek an administrative review of the decision in the form of an appeal to the National Environment Tribunal (NET).

Section 129(1) of EMCA allows a person aggrieved by a grant of licence or refusal to grant a licence to appeal to the tribunal within sixty (60) days.

As part of the tribunal's mandate, it is important that there be strict compliance and adherence to the letter of the law. The tribunal's jurisdiction does not allow it to waive the provisions of statute (EMCA) or regulations (EIA Regulations) made thereunder.

The appeal may be based on:

- a lack of proper and effective public participation.
- a lack of a complete and scientific sufficiency of the EIA report that has resulted in the licence issued by NEMA.
- a failure to disclose critical or sufficient information.

To enable a person affected by the administrative decision to grant a licence, appeal to the tribunal would require¹³

- A copy of reasons for which the decision was made.
- Relevant documents relating to the matter.

Important pointers:

- Appeals must be made within 60 days.
- To facilitate an appeal application, one requires to obtain reason for the decision and relevant document (including copy of EIA and environmental licence, witness statements, scientific studies etc.)
- Identify ground of appeal.

4.2. Judicial Mechanism

Section 130 of EMCA provides that any person aggrieved by the decision or order of the Tribunal (commonly referred to as the National Environmental Tribunal), may appeal against such decision or order to the Environment and Land Court (ELC). This may be done within 30 days of such a decision or order.¹⁴

¹³ Section 6, Fair Administrative Action Act 4 of 2016.

¹⁴ The ELC is established under Article 162 of the Constitution as a specialised court.

Decisions under this provisions are final and cannot be appealed any further should any party be aggrieved by the decision/outcome of the appeal process.

The general rule for appeals and reviews is that a higher court cannot entertain a matter subjected to review unless the mechanisms, including internal mechanisms of appeal and review and all remedies available under any other written laws are first exhausted.¹⁵

Exception to the rule

- The need to adhere to the general rule may be waived: if the courts consider such exemption to be in the interest of justice.
- If the issues in a case are polycentric.

Mohamed Ali Baadi & Others vs. The Hon. Attorney General & 7 Others

In our considered opinion, the Tribunal is not a suitable forum for the purpose of settling environmental conflicts at community level as disclosed in this Petition. In addition, the design of the Tribunal is such that it does not envisage the participation of all interested parties, such as developers, government, the community, non-governmental organizations, and environmental groups in a joint effort aimed at restoring the environment and agreeing on their sustainable use. Differently put, the multiplicity of parties and the polycentricity of issues in a case such as this one makes it unsuitable for the Tribunal.”

¹⁵ Section 9(2), FAAA.

ANNEXURE I: Table of projects classified under schedule II – Legal Notice No. 31 of 2019

<https://www.nema.go.ke/images/Docs/Regulations/Legal%20Notice%2031%20&%2032%20of%202019%20on%20EIA.pdf>

PROJECT TYPE	PROJECT SUB-TYPE	EXAMPLES
Low Risk Projects		<ul style="list-style-type: none"> Community water projects such as digging boreholes, water pans. Community based and social projects including sport facilities, stadia, social halls. Building local roads and facility access roads.
Medium Risk Projects	Urban Development	<ul style="list-style-type: none"> Construction of apartments of not more than 100 units. Construction of hotels with a bed capacity of not more than 150.
	Transportation	<ul style="list-style-type: none"> Construction and road rehabilitation. Construction of jetties. Construction of footbridges.
	Water resources and infrastructure	<ul style="list-style-type: none"> Water abstraction works. Water production and distribution projects
	Artisanal mining	<ul style="list-style-type: none"> Small scale sand harvesting. Small-scale gold mining.
	Forestry related activities Agriculture and related activities	<ul style="list-style-type: none"> Harvesting of timber in plantation forests. Reforestation and afforestation.
	Medium scale processing and manufacturing industries	<ul style="list-style-type: none"> Medium-scale agriculture not exceeding 100 hectares.
	Medium scale processing and manufacturing industries	<ul style="list-style-type: none"> Food processing industries
	Power and infrastructure projects.	<ul style="list-style-type: none"> Solar power farm or plant.
	Hydrocarbon projects	<ul style="list-style-type: none"> Liquefied Petroleum Gas (LPG) filling plant. Petrol service station.
	Waste disposal	<ul style="list-style-type: none"> Waste transfer stations.
	Packaged treatment plants or onsite waste treatment plants	
	Biofuel processing plants	
	Telecommunication infrastructures.	
Expansion of tertiary institutions and related infrastructures.		

PROJECT TYPE	PROJECT SUB-TYPE	EXAMPLES
High Risk Projects	General	
	Changes in land use	<ul style="list-style-type: none"> A project that seeks to convert a pastoralist or agricultural area into a commercial/industrial area.
	Urban Development	<ul style="list-style-type: none"> Establishing a recreational area in a National Park, Forest, Nature Reserve or any other area that is environmentally sensitive. For instance, the construction of the Standard Gauge Railway (SGR) through Nairobi National Park.
	Transportation and related infrastructure projects	<ul style="list-style-type: none"> Large scale transport and infrastructural projects such as the Lamu Port South Sudan Ethiopian Transport Corridor Project (LAPSSET Project).
	Water resources and related infrastructure	<ul style="list-style-type: none"> Construction of storage dams such as the Kimwarer and Aror Dam Project and the Solai Dam Project. Construction of sea walls.
	Mining and other related activities	<ul style="list-style-type: none"> Large scale salt mining and harvesting activities.
	Forestry related activities	<ul style="list-style-type: none"> Clearance of a forest area.
	Agriculture	<ul style="list-style-type: none"> Large scale irrigation exceeding 100 hectares such as the Tana River Irrigation Scheme.
	Processing and manufacturing industries	<ul style="list-style-type: none"> Sugar factories such as the Kibos Sugar and Allied Company and Transmara Sugar Company.
	Power and infrastructure projects	<ul style="list-style-type: none"> Proposed construction of a coal-fired power plant in Lamu. Geothermal development such as the Okaria Geothermal project in Naivasha.
	Hydrocarbon projects	<ul style="list-style-type: none"> Oil and gas fields development.
	Waste Disposal works	<ul style="list-style-type: none"> Sewerage works and waste-water treatment plants such the Kisumu Water and Sewerage Company (KIWASCO).
	Activities in natural conservation areas	<ul style="list-style-type: none"> Establishment of protected areas such as Lake Bogoria National Reserve.
	Marine resource exploitation and reclamation	<ul style="list-style-type: none"> Mineral exploitation and reclamation such as oil drilling.
Any other project which poses high environmental risks		

ANNEXURE 2 – REQUEST FOR INFORMATION TEMPLATE

The Director General

[Date]

National Environment Management Authority

South C, Popo Road off Mombasa Rd

P.O. BOX 67839-00200,

NAIROBI

Dear Sir,

**RE: REQUEST FOR A COPY OF THE TERMS OF REFERENCE FOR THE PROPOSED PROJECT
EIA/12/1989**

The above matter refers.

Kindly provide us with a copy of the Terms of Reference for the proposed project EIA/12/1989.

We make this request pursuant to Article 35 of the Constitution of Kenya, Section 4 of the Access to Information Act, 2016 and Sections 3A and 123 of the Environmental Management and Coordination Act.

Pursuant to Section 9 of the Access to Information Act, we would be grateful to receive this information within twenty-one (21) days from the date of receipt.

Yours faithfully

[Name of Requestor]

Designation

The Director General

[Date]

National Environment Management Authority

South C, Popo Road off Mombasa Rd

P.O. BOX 67839-00200,

NAIROBI

Dear Sir,

RE: REQUEST FOR A COPY OF THE ENVIRONMENTAL IMPACT ASSESSMENT STUDY REPORT AND ANNEXURES

The above matter refers.

Kindly provide us with a copy of the EIA and its annexures to facilitate development of comments.

We make this request pursuant to Article 35 of the Constitution of Kenya, Section 4 of the Access to Information Act, 2016 and Sections 3A and 123 of the Environmental Management and Coordination Act.

Pursuant to Section 9 of the Access to Information Act, we would be grateful to receive this information within twenty-one (21) days from the date of receipt.

Yours faithfully

[Name of Requestor]

Designation

ANNEXURE 3: CATEGORIES OF LICENCE CONDITIONS

The Director General

[Date]

National Environment Management Authority

South C, Popo Road off Mombasa Rd

P.O. BOX 67839-00200,

NAIROBI

Dear Sir,

RE: REQUEST FOR A COPY OF THE ENVIRONMENTAL IMPACT ASSESSMENT LICENCE AND REASON FOR THE DECISION

The above matter refers.

Kindly provide us with a copy of the EIA Licence for the proposed project, and the reasons for granting the Licence.

We make this request pursuant to Article 35 of the Constitution of Kenya, Section 4 of the Access to Information Act, 2016, Sections 3A and 123 of the Environmental Management and Coordination Act and Sections 4(2) and 6 of the Fair Administrative Action Act, 2015.

Pursuant to Section 9 of the Access to Information Act, we would be grateful to receive this information within twenty-one (21) days from the date of receipt.

Yours faithfully

[Name of Requestor]

Designation

