



Netherlands Commission for
Environmental Assessment

Observations on Revised Draft Report for EIA and Audit Fees (December 2015)

Memorandum by the NCEA

UGANDA



15 January 2016



Advice of the Secretariat

To National Environmental Management Authority (NEMA), Uganda
Attn. Ms Christine Akello, Mr Waiswa Ayazika
From The Netherlands Commission for Environmental Assessment (NCEA)
Date 15 January 2016
Subject **Observations on Revised draft report for EIA and Audit fees, Uganda (December 2015). Follow-up to advice provided in October 2015**

By: the Secretariat of the Netherlands Commission for Environmental Assessment - Ms Ineke Steinhauer, Mr Reinoud Post

Advice 2016-01

1. Introduction

The NCEA has had several co-operation activities with the Ugandan NEMA in the past, including an EIA mapping workshop and support on SEA for the Albertine Graben. The NEMA is currently reviewing a number of regulations and among these are the EIA and Audits regulations. In August 2014 the NEMA requested the NCEA to provide input in the draft EIA regulation. This input was provided in a memo (November 2014). Subsequently, a new draft of the EIA regulation was developed early 2015. The NCEA was invited to partake in a workshop on this draft in Jinja. In a follow-up memo of March 2015, the NCEA presented additional recommendations for the draft EIA regulation, on the basis of discussion that had taken place at the Jinja workshop. In the memo, the NCEA made a selection of the most pertinent topics: screening, review, integration of EIA and decision-making, transboundary EIA, environmental risk assessment and EIS content requirements.

A separate memo was written for input into the NEMA team discussions on the EIA regulation in April 2015, concerning financing of the EIA-related tasks. On those occasions, lengthy discussions took place on number of issues regarding the existing fees schedule. The team members agreed that e.g. the percentages should be adapted, but they could not agree on how exactly. Therefore it was decided to contract a consultant doing an assignment on this matter, to have a better justification for the percentages and come up with other recommendations.

A first draft of this assignment was available in October 2015. The consultant had been asked to develop a fee schedule not only for EIA but also for audits. He was also to provide the rationale for both. At the request of NEMA, NCEA provided comments, consisting of some overall observations (please see Annex 2) and detailed observations in track changes in the document itself.

In January 2016, NEMA requested NCEA input into a revised report for EIA and Audit fees presented by the consultant following a technical review meeting convened to scrutinise the report. The main NCEA observations are summarized below, and should be read in conjunction with an annotated track-changes version of the consultants report in Annex 1. The NCEA also checked whether its observations on the first draft report have been taken into account.

2. Summary observations on revised draft

1. The report does not include an overview/assessment of the functioning of the present fee system, its revenues and the allocation of these revenues. This overview should be included to justify the need for revision of the system and the fee levels.
2. Management of NEF is extremely important for good EIA performance of government but its management is unclear from the study.
 - a. Main sectors that attract investments with EIA-obligation (infrastructure, energy, telecom, industry) not represented on the board.
 - b. No insight in procedures for disbursements (requests, appreciation procedures, criteria for disbursements, appeal).
 - c. Public reporting on management and auditing (auditor general).
3. Consultation results are included (in detail) in the report and the the report states that they have been taken into account. It is recommended to include a separate chapter in the report justifying and explaining how they have been taken into account.
4. The calculation of the funds needed for government tasks in EIA and Auditing lacks reality:
 - a. Table 9 assumes 32 days of staff input for a full EIA procedure. The chapter on conclusions mentions for the period 2011–2015 a total of 3533 EIAs submitted and 2087 approved (706 respectively 417 per average year). A staff member produced 220 staff days per year. If the figure of 32 staff days would be realistic, NEMA would have a staff of at least $417 \cdot 32 / 220 \approx 60$ staff members working on EIA. In reality Nema has ≈ 10 staff members working on EIA.
 - b. This implies that the cost calculation results in figures that are way too high in comparison with reality.
 - c. This also implies that if the fee system is indeed enacted as proposed, the NEF will accumulate a massive excess amount of funds.
5. The figure of 32 staff days for a full EIA procedure may even be an underestimation, as time for public participation steps in the EIA procedure are not included yet.

ANNEX 1

Detailed NCEA observations in track changes on Revised Draft Report for EIA and Audit Fees (December 2015)



GOVERNMENT OF UGANDA
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA)

IMPROVING UNDERSTANDING OF AND ABILITY TO ADDRESS
THE IMPACT OF OIL AND GAS DEVELOPMENT ON UGANDA'S
BIODIVERSITY AND ECOSYSTEMS

REVIEW OF ENVIRONMENTAL IMPACT ASSESSMENT AND
AUDIT FEES

REVISED DRAFT REPORT

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EXECUTIVE SUMMARY

The Government of Uganda is reviewing the legislation and policy [review](#) for environmental management in the country. The review covers the National Environment Act cap 153 and some of its accompanying regulations including the Environmental Impact Assessment Regulations, Regulation, S.I. No. 13/1998 and the National Environment (Audit) Regulations, Statutory Instrument (S.I.) No. 12/2006. The National Environment Management Authority (NEMA) on behalf of the Government of Uganda and with financial support from Tetra Tech undertook this review to develop a new schedule of the Environmental Impact Assessment (EIA) and Environmental Audit (Audit) fees with accompanying rationale and explanatory notes. The review was conducted through stakeholder consultation, literature review and discussions with key stakeholders on the process of evolution of EIA and environmental Audit and the fees structure. Comparative review with other countries and budget estimation of EIA and Audit costs and accompanying discussions were used.

The following is the summary of EIA Fees Schedule and explanatory notes proposed:

Explanatory notes

- This EIA fees schedule has been developed in the spirit of ongoing revisions to the national environmental management legislation and regulations, specifically the Environmental Impact Assessment Regulations, Regulation, S.I. No. 13/1998 and the National Environment (Audit) Regulations, Statutory Instrument (S.I.) No. 12/2006.
- The basic principles on which the EIA fees schedule has been developed are (described in section 3.1):
 - (i) *Cost recovery;*
 - (ii) *Recovering costs from the polluters: the Polluter Pays Principle (PPP);*
 - (iii) *Recovering cost from the user: the User Pays Principle (UPP);*
 - (iv) *Recovering the costs in the case of uncertainty: the Precautionary Principle;*
- The seven categories of EIA fees that are found in the Environmental Impact Assessment Regulations, Regulation, S.I. No. 13/1998 are maintained. Whereas EIA costs change and are influenced by the types of sectors, the rigour required based on the increased investment commitment of different projects was found to outweigh the specific requirements of the pollution in the sectors. The principle of equity in applying EIA also applies at the technical effort given the potential environmental, social and economic impacts of project.
- A progressive EIA and Audit fees rate is proposed. Under the progressive EIA and Audit fees structure the EIA fees structure is divided into two parts: the project profile development support and review fees, and fees for completion of EIA review and Decision including certification where an EIS is satisfactory or rejection and report on grounds for rejection of EIS. The fees for project profile development support and review as well as accompanying administrative costs will only be 30% of the full EIA cost. The second component of fees for completion of EIA will be paid once the project profile phase has been successful and when the Authority proposes to the developer to conduct an EIA.

- The progressive Audit and Monitoring fees will only be charged when the developers have an EIA certificate and need to take compulsory and/or voluntary Audit and Monitoring fees. The Audit fees will be charged a single block fee. The single block fees payment for an Audit is proposed because the Audit processes will be conducted to the end. Even when the regulator makes requests for improvements and adjustments no additional fees are envisaged.
- Under the revised EIA Fees and Audit Fees Schedules, the international best practice precedent 0.1% of project size charge for EIA and Audit is adopted. The fees are distributed between EIA and Audit processes with the EIA activities taking 0.07% while the Environmental Audit and Monitoring activities taking 0.03% for the largest category of project size. The distribution for the other categories of project size are different as shown in Table 12, however, the principle of equity and international best practice is carried along. Therefore, the fees structure is spread out in an equitable manner to reduce the potential burden on the larger categories.
- From the points above, separate schedules are proposed for EIA, and Audit and Monitoring. However, the spirit of international practice such as the 0.1% rule of thumb precedent for the major project developers is maintained. The segregation of fees would help in implementing EIA and Audits concurrently thereby improving efficiency in the environmental management processes.
- The full cost to the regulator for EIA and Environmental Audits in Uganda, based on current rates, is estimated at Shs. 23,309,320,000/year. This cost is estimated for handling an average 1000 EISs and 3,500 Environmental Audits. The full cost also includes the cost of the EIAs at Shs. 8,700,000,000/year and the cost of Environmental Audits at Shs. 12,950,000,000. The Administrative costs for EIA and Audit were estimated at Shs 642 million/year and 1.017 billion/year, respectively.

Met opmerkingen [RP1]: The relation with real costs of government services seems to be abandoned here. It would be good to inform the reader which relation exists between the fee and the real cost incurred by government.

Revised Schedule of EIA fees

Description of categories	Proposed rate payable based on project size (%)	Indicative average (UGX)
1. Where the total value of the project does not exceed Shs. 50 million	0.500%	250,000
2. Where the total value of the project is more than Shs. 50,000,000/= but does not exceed 100,000,000, the amount payable shall be Shs. 500,000/= the amount payable shall not be less than Sh. 250,000	0.475%	475,000
3. Where the total value of the project is more than Shs. 100,000,000/= but does not exceed Shs. 250,000,000/= the amount payable shall be Shs. 750,000/=; the amount payable shall not be less than Sh. 475,000	0.375%	937,500
4. Where the total value of the project is more than Shs. 250,000,000/= but does not exceed Shs. 500,000,000/= the amount payable shall not be less than Sh. 937,500	0.28%	1,375,000
5. Where the total value of the project is more than Shs. 500,000,000/= but does not exceed Shs. 1,000,000,000/= the amount payable shall not be less than Sh. 1,375,000	0.20%	2,000,000
6. Where the total value of the project is more than Shs. 1,000,000,000/= but does not exceed Shs. 5,000,000,000/= the amount payable shall not be less than Sh. 2,000,000	0.09%	4,500,000
7. Projects between UGX 5 billion and \$ 50 million (capped; i.e. all projects with investments of over \$50 million pay an equivalent of 0.1% of \$50 million), the amount payable shall not be less than Sh. 4,500,000	0.07%	74,375,000

Proposed Schedule of fees for Environmental Audit and Monitoring

Description of categories	Proposed rate payable based on project size (%)	Indicative average (UGX)
1. Where total value of the project does not exceed Shs 50 million	0.250%	125,000
2. Where the total value of the project is more than Shs. 50,000,000/= but does not exceed Shs. 100,000,000/=.	0.125%	125,000
3. Where the total value of the project is more than Shs. 100,000,000/= but does not exceed Shs. 250,000,000/=	0.125%	312,500
4. Where the total value of the project is more than Shs. 250,000,000/= but does not exceed Shs. 500,000,000/=	0.100%	500,000
5. Where the total value of the project is more than Shs. 500,000,000/= but does not exceed Shs. 1,000,000,000/=	0.050%	500,000
6. Where the total value of the project is more than Shs. 1,000,000,000/= but does not exceed Shs. 5,000,000,000/=	0.030%	1,500,000
7. Projects between UGX 5 billion and \$ 50 million (capped at \$50 million for all projects with investments of over \$50 million)	0.030%	31,875,000

Highlighted recommendations are:

Fees Structure

- A progressive EIA fees rate is proposed comprising of two parts the project profile development support and review fees, and fees for completion of EIA review and Decision: 30% The fees for project profile development support and review as well as accompanying administrative costs will only be 30% of the full EIA cost; and 70% for completion of EIA review and Decision making including certification where an EIS is satisfactory or rejection and report on grounds for rejection of EIS.
- The developer, with an EIA certificate whether in need of a compulsory and/or voluntary Audit and Monitoring fees, will pay for these fees as a single block payment. The single block fees payment for an Audit is proposed because the Audit processes will be conducted in its entirety even though the regulator makes requests for improvements and adjustments no additional fees are envisaged.

Met opmerkingen [RP2]: repetition of bullet 4

Met opmerkingen [RP3]: repetition of bullet 5

Funding Mechanisms

- The EIA and Environmental Audit fees is Non-Tax Revenue that is managed under the National Environment Fund (NEF) and can be drawn and used within the confines of NEF and the National Environment Act. The funds obtained as described in this report would be able to cover up to 96% of the budget required.
- Lead agencies and District Local Governments ought to invoke the Polluter Pays Principle and the User pays Principle to access environmental management funds collectable by the Minister for Finance under the National Environment Act and the Public Finance Management Act 2015. Also, under sector based Environmental Mainstreaming and compliance sector set performance standards, fines and charges on environmental management under the Environment Act can be a source of funds. Therefore, the segregated implementation of the Polluter Pays Principle and the User pays Principle can allow for funding of EIA and Audit activities at lead agency and District Local government level.
- Additional assessment study and capacity building on financing for EIA and Environmental Audit is proposed. Additionally, guidance and guidelines and a financing mechanism should be developed to enable lead agencies and Districts integrate such financing in their medium term and annual budget cycles.

Met opmerkingen [RP4]: must the lacking 4% come from fines and charges? Is the competence of local government to levy fines and charges regulated?

1. INTRODUCTION

1.1 Background

The Government of Uganda (GoU) through the Ministry of Water and Environment (MWE) and the National Environment Management Authority (NEMA) is undertaking legislative and policy review for environmental management. The review covers the National Environment Act cap 153 and some of its accompanying regulations. Among these accompanying regulations under review are the Environmental Impact Assessment Regulations, Regulation, S.I. No. 13/1998 and the National Environment (Audit) Regulations, Statutory Instrument (S.I.) No. 12/2006, herein respectively referred to as the EIA and Environmental Audit Regulations.

Environmental impact assessments are conducted to determine the possible environmental impacts of a proposed project and measures to mitigate their effects as provided under Sections 19, 20 and 21 of the National Environment Act cap 153 and as described in regulations 10, 11 and 12 of the EIA regulations (GoU 1995; 1998). The Act and regulations state that an environmental impact assessment shall be undertaken by the developer where the lead agency, in consultation with the Executive Director NEMA, is of the view that the project; may have an impact on the environment, is likely to have a significant impact on the environment or will have a significant impact on the environment. In the statutory instrument No 12 of 2006 on the National Environment (Audit) regulations, environmental audit is defined as a systematic documented, periodic and objective evaluation carried out to determine how well a facility and its management and equipment are performing in conserving the environment and its resources (GoU 2006). The environmental audit is also used to determine the compliance status with environmental regulatory requirements, the environmental management systems and the overall risk of the facility.

Under the EIA regulations, NEMA is empowered to, depending on the size of the project in question and the circumstances of each particular case, charge a fee on the developer for project brief or environmental impact assessment. The fees payable are specified in the Fourth Schedule of the regulations, in addition to any other amount fees such as payments for advertisement required under the regulation. Currently no regulator fees are charged for undertaking environmental audits. As part of the on-going review and revisions of the National Environment Act cap 153 and its accompanying regulations, NEMA and the Environment and Natural Resources (ENR) sub-sector are proposing revision of the EIA fees and introduction of environment audit fees.

1.2 Objective and tasks of Assignment

The overall objective was to develop a new schedule of the EIA and Audit fees with rationales and explanatory notes. The specific tasks of the assignment were to:

- (a) Review of financial, policy and other frameworks in Uganda and other countries as necessary for the development of schedules of EIA and audit fees and specifically review EIA Regulations and the National Environment (Audit) Regulations and the fees proposed under those regulations, to fully understand the importance of having fees under those Regulations;
- (b) Give examples from other countries and establish principles and guidance on how to determine EIA and Audit fees and develop rationale and explanatory notes for the fees and respective amounts that will form part of the schedules to National Environment (Audit) Regulations;

- (c) Develop two schedules on fees, one for the EIA Regulations and the other for the National Environment (Audit) Regulations;
- (d) Present the proposed fees and related rationales and explanatory notes to a stakeholder meeting convened by NEMA for the review and approval of the EIA and Audit fees;
- (e) Review and incorporate comments from stakeholders; and
- (f) Undertake any other activity that is desirable in order to ensure the effective performance of the work under this consultancy.

1.3 Methodology

1.3.1 Consultancy Design

The consultancy design was a descriptive evaluation leading to review and revision of the EIA and Audit fees with rationale and explanatory notes. The consultancy has relied on considerable literature review and discussions with specific stakeholders both within and outside the country. The principle categories are: the regulator—(s) the National Environmental Management Authority and Lead Agencies;— the Ministries Departments and Agencies (MDAs); the developers and potential developers both in private sector and public sector; and EIA and Audit private practitioners. The specific institutions consulted were Kampala Capital City Authority (KCCA), Ministry of Works and Transport (MoWT), two leading EIA practice firms ATACAMA Consulting and WSS Services (U) Ltd. and Uganda Association for Impact Assessment (UAIA), District Environment Officers for Wakiso, Kayunga and Buikwe Districts, and Ministry of Energy and Mineral Development. Whereas the public sector is represented by MDAs, the private sector is represented by industry associations such as the Uganda Manufacturers Association (UMA), Petroleum Companies, Fuel Station Owners Associations, Hotel Owners Associations, among others. The report received contributions from NEMA staff, the Netherlands Commission on Environmental Assessment (NCEA), USAID through the Environment Management for Oil Sector (EMOS) managed by Tetra Tech and a stakeholder consultative meeting convened to review the draft report on revised EIA and Audit Fees.

Seven steps towards revising an architecture for funding government tasks in EIA (NCEA 2015, page 6). The process comprises of:

1. Identify tasks to be carried out in EIA implementation, environmental licensing and follow through.
2. List entities that (must) carry out these tasks, (re-)attribute tasks to individual entities.
3. Collect statistics on EIA and environmental audit application and environmental licensing.
4. Collect data on cost of actual, and top quality implementation of tasks attributed to government agencies (start estimating, then refine on basis of actual accounting data).
5. Calculate funding need per task and make budget per government agency involved.
6. Take decisions on applicable policies with regard to EIA and environmental audit system funding.
 - a) Applicable principles (e.g. the polluter pays principle among others).
 - b) Choice of funding mechanism(s).
7. Elaborate funding mechanism and revise legal and regulatory texts accordingly.

1.3.2 Required tasks and entities undertaking specific tasks

For the purpose of revising the EIA Fees Schedule, the **tasks/actions** implemented by the regulator are divided into seven steps (Table 1). The steps are; the project profile development and review where the Authority or regulator supports the developer with guidance and to review the likely environmental impacts and

Met opmerkingen [IS5]: This text is introduced without explanation. Seems to suggest that these 7 steps will be taken systematically in the next parts of the report, but does not seem to be the case.

Met opmerkingen [RP6]: If you include to mention these steps in the report but use another process to come to fees, than please describe the alternative process and justify the choice for this alternative process

Met opmerkingen [IS7]: these are not the same 7 steps as mentioned above, confusing for the reader

Met opmerkingen [IS8]: Term not used in EIA regulation, better use 'project brief'

Met opmerkingen [IS9]: One and the same?

whether or not they are planned for, scoping of environmental impacts and mitigation options, public participation and the role of the regulator, review of the EIS, the decision of the Authority, review and guidance on the environmental and social management and monitoring plans, and the post-EIA assessment process.

Complementary activities for the Authority include maintaining a database, communications between project developer, EIA practitioner and lead agencies (MDAs), and local governments. The regulator also supports activities of ensuring that the EIA practitioners involved in the process offer adequate technical support to the developer as well as improving own capacities through training, mentoring and regular review of performance.

Met opmerkingen [IS10]: ???

Met opmerkingen [RP11]: the table does not describe tasks but process steps. It includes activities for all actors in EIA.

Table 1: Summary of EIA process described in guidelines

EIA step	Activities defined
1. Project Profile	<ul style="list-style-type: none"> The project brief shall demonstrate how the developer has followed the mitigation hierarchy to avoid and minimize impacts as part of the design and implementation of the project, as well as any effort to rehabilitate or restore the affected environment If the Authority determines that the project brief discloses sufficient mitigation measures to cope with the anticipated impacts or that the project will have no significant impacts on the environment, it may approve the project or part thereof. In addition it may require that the project be re-designed, including directing that a different technology or an alternative site be identified; refer back the project or part thereof to the developer where there is insufficient information and require further study or submission of additional information as necessary to enable the Authority make a decision; or reject the project. Where the Authority makes a decision to reject a project, it states reasons for the rejection in writing. Where the Authority approves the project it shall issue a certificate of approval Where the Authority finds that the project will have significant impacts on the environment or that the project brief discloses no sufficient mitigation measures to cope with anticipated impacts, it shall require the developer to undertake an environmental impact study. Whether or not the lead agency submits comments within the specified period, the Authority may proceed to consider and make a decision on the project brief.
2. Scoping	<ul style="list-style-type: none"> Scoping involves deciding from all possible project impacts and from all alternatives that could be addressed those which would be significant ones for this particular project and location, and therefore should be further assessed in the EIA study. The scoping report, including terms of reference is prepared by the developer. Where the Authority deems the scoping report to be complete, it shall transmit a copy of the scoping report to the relevant lead agency for comments within 10 working days of receiving the scoping report. Whether or not the lead agency submits comments within the specified period the Authority may proceed to consider and make a decision on the scoping report. The Authority within thirty working days of receipt of the scoping report or the comments of the lead agency considers the scoping report, including how stakeholder comments have been taken into account and in writing – <ul style="list-style-type: none"> accept the report and advise the developer to proceed with the tasks contemplated in the plan of study for environmental impact assessment; request the developer to make such amendments to the scoping report as the Authority may require; or reject the scoping report if it ????? add two sub-items Where a scoping report is not accepted by the Authority, the developer may be advised to revise the report as appropriate and re-submit it if he or she so desires for reconsideration under this regulation. Where a scoping report is accepted by the Authority, the developer shall be informed to conduct an environmental impact study.

Met opmerkingen [IS12]: Guidelines? I would recommend to describe the process based on the new draft EIA regulations (version April 2015), because then the fees will be correctly calculated based on the new situation.

Met opmerkingen [IS13]: Change into project brief.

EIA step	Activities defined
3. Public participation	<p>In seeking the views of the public or the persons in the communities who may be affected by the project, the developer shall–</p> <ul style="list-style-type: none"> o publicise the intended project, its anticipated effects and benefits o after the expiration of the period of 15 working days from the date of the notices, hold, where appropriate, public meetings with the public or the persons in the communities receive their oral or written comments; o as far as is possible, register the participation of the interested and affected persons; o ensure, in consultation with the Authority that a suitably qualified coordinator is appointed to receive and record both oral and written comments and any translations thereof received during all public meetings for use in the environmental impact study.
4. Review of EIS	<ul style="list-style-type: none"> • The Authority shall undertake review of an environmental impact statement in accordance with regulations and the terms of reference approved by the Authority. • The Authority may contract a technical third party to review the environmental impact statement on his or her behalf and such third party shall be bound to perform the review with the highest technical ability and in accordance with professional ethics and conduct. • The Authority documents review findings in a report and sends them to lead agency for authentication. • The Authority may, within a period of up to 30 working days of receipt of the environmental impact statement, conduct onsite baseline verification inspections for purposes of inspecting the project area that is the subject of the environmental impact assessment. • In making a decision regarding an environmental impact assessment under the EIA Regulations, the Authority shall take into account –the validity of the predictions made in the environmental impact statement. and the comments made under these Regulations, including comments by the general public or person specifically affected by the project; the report of the presiding officer at a public hearing and a report of the lead agency under regulation 40 of these Regulations, where applicable;
5. Decision of the Authority.	<p>The Authority in taking into account the review may –</p> <ul style="list-style-type: none"> • approve the environmental impact statement for the project or part of the project; • require that project be re-designed, which will require up-dated environmental impact statement; • refer back to the developer the environmental impact statement of the project or share with the developer the review report where there is insufficient information and require further study as necessary to enable the Authority make a decision; • require implementation of appropriate risk management strategies or monitoring of the activity in the receiving environment; or reject the environmental impact statement. • A decision of the Authority under this regulation shall be made within 21 working days from the last received input. The decision referred to shall be notified to the public and communicated to the developer within ten working days of making the decision and a copy of the decision shall be made available for inspection at the Authority's offices. • Where a certificate of approval is granted, it shall be valid for a period stated in the certificate and based on the individual assessment of each project.
6. Environmental and social management and monitoring plans	<ul style="list-style-type: none"> • The developer responsible for a project in respect of which a project brief or environmental impact statement is required, needs to submit to the Authority together with the project brief or environmental impact statement, an environmental and social management and monitoring plan in respect of project operations and thereafter every 3 years. • A developer engaged in any of the projects which were in existence before the coming into force of these Regulations shall submit an environmental and social management and monitoring plan within 18 months of the coming into force of these Regulations and thereafter every three years.
7. Post-EIA Processes.	<ul style="list-style-type: none"> • The Authority in liaison with the relevant lead agency may, within 12 months of grant of certificate of approval, arrange for onsite inspections and monitoring to ensure compliance with the conditions in the certificate of approval, before the audit period sets in. • The Authority shall maintain a register or database for the following – individual experts or firms of experts duly authorized to conduct or prepare environmental impact assessment studies and audits; screening decisions; certificates issued under these Regulations; project briefs and environmental impact statements; and any other appropriate information.

Met opmerkingen [IS14]: there is also an option for public participation on scoping: (b) where required by the Authority, make available for inspection and comment by the general public in the locality of the proposed project or activity, copies of the scoping report.

Met opmerkingen [IS15]: As part of review, there are also some in between tasks for the Authority, namely inviting comments from lead agencies and the general public: 'The Authority shall within five working days of receipt of the environmental impact statement, transmit the environmental impact statement to the relevant lead agency and request it to make comments' and 'The Authority shall within ten working days of receiving the comments of the lead agency and if satisfied that the environmental impact statement is complete, invite the general public in the local area and persons who are most likely to be affected by the project, at the expense of the developer to make oral or written comments on the environmental impact statement' and in some cases: (1) The Authority shall consider the environmental impact statement and shall, at the expense of the developer, call for a public hearing on the environmental impact statement if –

- (a) as a result of the comments made under regulations 25 or 36 of these Regulations the Authority is of the opinion that a public hearing will enable it to make a fair and just decision;
- (b) there is a controversy;
- (c) the project may have inter-district or transboundary impacts; or
- (d) the Authority considers it necessary for the preservation of socio-cultural values, protection of human health and the environment or the promotion of good governance.

The subsequent articles 39-41 specify tasks for the Authority.

It would be good to have a bit broader description of concrete tasks for the Authority based on the above table: like was done in the previous report table 1, third column: requirement for financial resources for regulator to perform tasks. Also perhaps some extra tasks will have to be specified in line with public participation during review (currently not mentioned in the table above)

Met opmerkingen [RP16]: agree!

The key function under Environmental Audit (and Monitoring) is to ensure observance of proper environmental safeguards in the execution of all development strategies, projects and policies that have or are likely to have significant impact on the environment. This function contributes to strengthening compliance and enforcement of environmental laws. The core areas under this are: (i) enhance compliance monitoring, enforcement and reporting; (ii) strengthen compliance assistance for increased impact; (iii) ensure timely review and processing of Environmental Audits, and permit applications; and (iv) enhance data collection, processing and analysis for decision making.

The key activities of environmental audit and monitoring are merged and summarised with descriptions in Table 2 below. However, the specific actions undertaken are: (i) reviewing Audits, permitting and auditing facilities/projects, pollution control, compliance assistance, and environmental quality monitoring duties; (iii) Checking performance of environmental monitoring equipment; (ii) Checking corporate compliance with environmental legislation and checking the accuracy of environmental impact predictions; (iv) Verifying or confirming compliance with environment regulations such as emission limits, effluent standards, waste management practices and EIA Regulations; (v) Carrying out inspection of sites threatened by degradation as part of environmental baselining activities; (vi) Maintaining a register (database) on auditors practitioners and audits done; (v) Reviewing audits and EIA reports; (vi) Ensuring restoration and compensation of damages or liabilities caused; (vii) Ensuring compliance with audit and inspection requirement; (viii) Identifying areas of weakness and problems and in so doing ensure solutions; and (ix) Collecting and analysing relevant and sufficient audit evidence to determine audit findings and reach audit conclusions.

Met opmerkingen [IS17]: reviewing audits already mentioned under (i) and reviewing EIA reports already mentioned in previous part on EIA related tasks.

Met opmerkingen [RP18]: in table 10 it becomes clear that audits will be done without external expert input. Seems impossible to me!.

Table 2: Summary of Environmental Audit and Monitoring process as described in guidelines

Steps	Activities defined
1. Environmental Enforcement Audits.	<p>Determination of environmental enforcement audit.</p> <ul style="list-style-type: none"> The Authority shall, where it so determines that: (i) there is sufficient public interest and sufficient cause to believe that a project has or may have significant adverse impacts on the environment, instruct an environmental auditor to carry out the environmental enforcement audit; (ii) there is evidence of violations or a danger to human health or the environment, instruct the operator to carry out an environmental compliance audit within a specified period determined by the Authority; and (iii) there is no cause to believe that a project has or may have significant adverse impacts on the environment or may not pose a danger to human health, reject the petition and give reasons in writing for the rejection within sixty days of receiving the petition. Where the environmental enforcement audit is required, the operator shall bear the cost of carrying out the audit. The Authority shall determine the terms of reference for carrying out the environmental enforcement audit.
2. Audits by environmental inspector:	<ul style="list-style-type: none"> An environmental inspector may conduct or cause to be conducted an environmental enforcement audit on any project where there is reasonable cause to believe that: (i) the activities being conducted at the project are likely to cause immediate danger or harm to human health, or have undesirable and irreversible impacts on the environment; (ii) the activities being carried out at the project violate or are likely to violate the Act or Regulations made under the Act; and (iii) a violation of any other law relating to the environment, other than one referred to in paragraph (b), is taking place.

This summing-up is acceptable to me but should be placed after table 2 that, again, lists process steps and not government action in auditing.

Met opmerkingen [IS19]: Are there any new drafts of the Audit regulations?

Steps	Activities defined
	<ul style="list-style-type: none"> • An environmental inspector may serve the operator of the project with a notice in writing, requiring the operator to carry out an environmental compliance audit within a period determined by the inspector. • An environmental inspector may, in the process of conducting an environmental enforcement audit, consult the members of the public affected or likely to be affected by the project being audited. • An environmental inspector shall on completion of an environmental enforcement audit, submit an environmental enforcement audit report to the Authority • An environmental inspector shall, in making an environmental enforcement audit report: (i) discuss with the operator, the environmental issues identified at the project; (II) make available to the operator, a draft report of the environmental enforcement audit and require him or her to make written comments within fourteen days after receipt of the draft audit report; and (III) take into account the comments of the operator and attach the comments as an annex to the final audit report. • An environmental inspector may, in the environmental enforcement audit report recommend to the Authority: (i) where he or she suspects that the operator has committed a criminal offence, that the operator be prosecuted; (II) that the operator enters into an environmental compliance agreement in accordance with regulation; (iii) that the operator in addition to entering into an environmental compliance agreement executes a refundable performance deposit bond to guarantee environmental compliance; or • After studying the environmental enforcement audit report, the Authority may require the operator to take specific mitigation measures to ensure compliance with the Act, Regulations made under the Act and any other law.
3. Review of Environmental Compliance and Voluntary Audit Reports.	<ul style="list-style-type: none"> • The Authority shall evaluate the environmental audit report submitted and may- take a decision on the environmental audit report and inform the operator of its adequacy in terms of content and corrective measures to ensure compliance; or transmit the environmental audit report to a lead agency for comment. • Where the Authority takes a decision, it shall communicate that decision to the operator within 50 days of receipt of the environmental audit report. • The Authority may, if dissatisfied with the standard or quality or both of the environmental audit report, reject the environmental audit report stating reasons for rejection and require the operator to conduct the environmental audit again. • The lead agency shall review the environmental audit report and related audit corrective action plan, if any to ensure. The lead agency shall make comments on the audit report and transmit them back to the Authority within thirty days of receipt of the report.
4. Environmental Management Systems.	<ul style="list-style-type: none"> • An operator whose activities are likely to have an impact on the environment shall establish, maintain and ensure availability and accessibility to an environmental management system. • An environmental management system shall include, among other matters that the Authority may prescribe— an environmental management policy <u>and</u> a commitment by operator to implement and communicate to employees; a documented plan with clear objectives, timelines, roles and responsibilities of employees or agents, targets and documented activities and procedures for the implementation of the environmental management policy; a mechanism for reporting, reviewing, monitoring and evaluating the environmental performance of the project to ensure the suitability, adequacy and effectiveness of the environmental management system in place, among others. • <u>The</u> Authority may, from time to time, publish in a newspaper with national circulation in Uganda, a list of categories or types of projects that are required to have environmental management systems. • The Authority may issue guidelines for the establishment of environmental management systems. • An environmental inspector may access any project to determine whether the project has an environmental management system and whether it is functioning well.

Steps	Activities defined
5. Environmental Compliance Agreements.	<ul style="list-style-type: none"> • Environmental compliance agreement: Where the operator indicates <u>what?</u> in an environmental compliance audit or a voluntary environmental audit, the Authority and the operator may enter into an environmental compliance agreement, specifying: (i) the measures required to bring the audited project into compliance with the Act and these Regulations; (ii) the timeframe within which the measures will be undertaken; (iii) the compensation to be paid to persons injured by the activities of the audited project; (iv) the restoration measures that must be undertaken to redress environmental damage; (v) a refundable performance bond, if required, and the nature of the bond; (vi) the frequency of periodic reports to be submitted to the Authority; and (v) any other matter which the Authority may consider necessary. • Failure by an operator of a project who has entered into an environmental compliance agreement to comply with the agreement shall constitute a waiver of the voluntary environmental audit privilege provided for by regulation. • Where the operator has entered into an environmental compliance agreement following the submission of a voluntary environmental audit report, the recurrence of noncompliance at the audited project shall constitute a waiver of the privilege.
6. Environmental Monitoring.	<ul style="list-style-type: none"> • The operator of a project is responsible for carrying out monitoring of his project to assess and mitigate its possible impacts on the environment. • The operator undertakes the monitoring in a regular and timely manner and shall submit monitoring reports to the Authority and a lead agency on a quarterly basis or as prescribed or required. • The Authority may and where necessary, in consultation with lead agencies monitor– all environmental phenomena against a baseline; assess any possible changes in the environment and their possible impacts; the operation of any industry, project or activity with a view to determining its immediate and long-term effects on the environment; and <i>compliance with environmental safeguard and conservation requirements contained in permits, licenses and other approvals.</i>
7. Voluntary Disclosure.	<ul style="list-style-type: none"> • An operator responsible for the release of a substance into the environment that has caused, is causing, or may cause an adverse impact, shall forthwith, as soon as the operator knows or ought to know of the release, report it to the Authority within seven days. • An operator who voluntarily provides the Authority with detailed information about non-compliance with the requirements of the Regulations may be assisted to comply with these Regulations. • Disclosure shall be deemed voluntary if– the disclosure is made within seven days following a reasonable investigation, among other reasons; • A disclosure shall not be voluntary if – specific permit, license or approval conditions require monitoring and maintenance and submission of monitoring records to the Authority, among other reasons.

1.3.3 Data type and collection

The type of data collected covers the interviews on financial requirements for EIA and Audit, policy and related concerns from environmental legislative and policy reviews 2014/2015. The data also included EIA and Audit fees in other countries. Additionally, literature review was conducted on the development of schedules of EIA and audit fees and specifically review EIA Regulations and the National Environment (Audit) Regulations and the fees proposed under those regulations, to fully understand the importance of having fees under those Regulations; Examples from other countries; and principles and guidance on how to determine EIA and Audit fees. Other data type required is on current fees and/or costs of undertaking EIA and sources of financing and how representative and equitable these are.

Met opmerkingen [RP20]: agree

Met opmerkingen [IS21]: Can be deleted, I have already read this in 1.2 and 1.3

The data collection undertaken comprised of:

- Key information interviews with regulators, lead agencies and other MDAs that conduct regular EIAs or have such activity under the sector. There will also be meetings organised under the auspices of

Met opmerkingen [RP22]: agree

NEMA in which closer group interaction can be achieved. There will also be consultations with the Ministry of Finance Planning and Economic Development (MFPED); and

- Literature review will be conducted by visiting lead agency, libraries, internet information searches and specific report requests from authorities that have access to information such as the UNDP and UN FAO on available information. The literature review will extend to the Environmental Regulations of other countries that have similar environmental management regimes.

1.3.4 Analytical approaches

The analytical approach calculated funding needs per task and made a budget per government agency involved, described decisions on applicable policies with regard to EIA and environmental audit system funding in terms of the applicable principles and the applicable funding mechanism(s) based on available and/or expected resources. Additionally, the analysis elaborated funding mechanisms and revised legal and regulatory texts accordingly i.e. for both the rationale as well possible explanatory text to be used for the regulatory review.

The Rationale and Explanatory Notes were based on approaches to financing for EIA and Audits in Uganda and elsewhere. The examination and comparison of approaches in other countries was undertaken. The different regimes with lower and upper limits were also considered with a view of integrating an appropriate regime of fees.

A cost recovery budgeting was undertaken to establish the annual cost of implementing EIA for NEMA and the staff involved in the EIA, contribution of lead agency staff and other activities that are funded through the National Environment Fund (NEF). The numbers of EIAs executed by sector, severity of environmental impacts, length of review period and other cost recovery components was budgeted. The results obtained have been will be exposed to expert judgement of the Consultant, the EIA regulator, practitioners and project developers through a series of meetings. Discussions with experts involved in similar regulation financing will also has been undertaken.

Met opmerkingen [IS23]: Delete, see observation above and: seems to be copied from ToR for this consultancy (as if taking place in future).

Met opmerkingen [RP24]: part of NCEA proposed steps

Met opmerkingen [RP25]: is that table 9 and 10?

Met opmerkingen [RP26]: include references in this report.

2. RATIONALISING THE REVIEW OF EIA AND AUDIT FEES

2.1 Issues from based on stakeholder discussions

Met opmerkingen [IS27]: valuable information!

A summary of issues that emerged from discussion on the development of EIA and Audit fees with different EIA stakeholders is [isare](#) raised in (Table 3). The specific concerns about the fees [wereas](#) whether they would be determined based on cost and how they would be distributed to project developers. There were concerns about additional fees for the auditing and/or environmental and social monitoring plans and whether these would escalate fees. The distribution of tasks and compensation for these tasks especially for the local governments were key issues as well.

Table 3: Stakeholder concerns about EIA and Audit Fees

Source	Stakeholder contributions
Technical Review Workshop for review of the Updated Draft Amended EIA Regulations	<ul style="list-style-type: none"> (i) Whether it is realistic to maintain a percentage structure of fees, and whether this caters for the required fees for all issues to be taken into account. (ii) Stakeholders stated that percentage fees are a tax, actually. When it comes to fees they should be cost-based, reflecting the cost of what you are doing. An hourly fee can be charged.
Kampala Capital City Authority	<p>What is the current proposal on the fees? Is it still 2% of the project cost?</p> <ul style="list-style-type: none"> (i) How do we as agencies and LGs who monitor compliance to EIA conditions benefit from the EIA fees? i.e. for their input into inspections, monitor performance etc. but use our own resources. This could explain why there is gross non-compliance perhaps. Is there an option for revenue sharing (percentage transfer to LGs and Agencies)? (ii) The rationale for the fees should be clearly justified. E.g. % Administrative costs, % Review, % Inspection, % Compliance monitoring % processing & issuance of certificate? Etc. This rationale can be used to justify the revenue sharing proposed in 1 above.
Local Governments	<ul style="list-style-type: none"> (i) Local governments make a considerable input into the EIA process but they are not compensated for their effort and investment (ii) Occasionally activities during the EIA process occur without adequate consultation and local government staff have to provide information that requires investment of working time as well
EIA practitioners	<ul style="list-style-type: none"> (i) EIA fees are a good idea although the current system of their determination based on a bundling structure can be rather confusing. I don't know whether it might be easier to use a percentage system by sector. (ii) In addition to the EIA fees, there was a plan to levy a fee on developers for purposes of monitoring the implementation of the ESMPs of their respective projects – once the project have been approved by NEMA. The monitoring fees are to be disbursed to the respective local governments where the project are located there-by addressing the funding bottleneck that most authorities are faced with when it comes to monitoring projects. (iii) How are the EIA fees and the monitoring fees related? I.e. what portion of both will be levied on a particular project?
Lead Agencies	<p>The EIA process sometimes allows for development projects that contravene the Environment Act to go ahead and the issues to address are:</p> <ul style="list-style-type: none"> (i) Capacity of the regulator to undertake comprehensive EIA review (ii) Capacity of EIA practitioners to produce quality results especially in key areas of economic, social, macroeconomic and long-term impacts (iii) Whether the use of technical expertise in MDAs and other agencies has been fully used (iv) Use of independent reviewers for EIA and Audit reports (v) Compensation to MDAs for work done as part of the fees
NEMA	<p>The EIA and Audit are the main environmental compliance tools in the country and therefore adequate resources have to be invested into the process.</p>

Source	Stakeholder contributions
	<ul style="list-style-type: none"> (i) Currently the load of EIA review process is taken by NEMA staff. Whereas Lead Agencies make contributions to the EIA process, the experience over time is that NEMA staff have to constitute teams within the EIA team and support of other NEMA staff to do thorough reviews (ii) There is a large number of EIAs to be done and primary EIA staff have sometimes up to 10 EIA and Audit reports to review a month based on current resources. If the process is to be improved, more staff need to be recruited and staff time has to be adequately compensated (iii) The risk of too much load on staff would be backlog and a worst case scenario of inadequate input in the review process. (iv) From time to time NEMA needs to undertake consultations and additional field inspections, visits beyond the indications in the initial discussions with the developer to verify some of the information in the EIA and developer documents. (v) Increasingly, NEMA realizes that the input of key stakeholders especially the Local Government staff is crucial to the success of the EIA process but their compensation has not been adequately catered for. (vi) Litigation costs over EIAs often become large costs and these are not catered for in the current schedules. (vii) Whether or not a project is small in investment size if a full EIA activity is undertaken all the review stages must be undertaken. Indeed, even though some of the projects fall in a category of lower fees the actions associated with the review process could be quite costly. (viii) Large projects require a lot of due diligence often given the likely scale of environmental impacts and the categories created in the schedule are to allow for adequate effort in the EIA process (ix) The EIA fees should be cost based and distributed among projects in a manner that enables and does not constrain the developers' plans.
Uganda National Roads Authority (UNRA)	<ul style="list-style-type: none"> (i) The 0.1% charge on projects under UNRA is very high yet EIA mobilizes funds from international funding agencies where the requirement for ESIA is a pre-requisite for obtaining such financing. (ii) Since UNRA builds roads of a public good nature it is possible to waive the EIA fees because UNRA often faces delays in accomplishing this requirement due to the large size of funds that have to be mobilised. (iii) Allocation of resources towards EIA fees actually reduced fees available for road construction and may influence the implementation of projects. (iv) If non-timely payment of EIA fees by UNRA causes delays in roads projects, as development partners' delay to disburse funds, the economic impacts of such delays are often substantial. <p>UNRA also proposes as follows:</p> <ul style="list-style-type: none"> (i) Retain good requirements in the current regulations especially on national conditions; (ii) Develop regulations and guidelines in a manner that minimizes risk of non-compliance for developers; (iii) Bridge the gaps between international requirements and technical feasibility and national conditions; (iv) Remove barriers that could lead to delays to prepare and approve ESIA's and harmonise EIA process with other national legislation and regulations; (v) Strengthen the transparency of the ESIA process; (vi) Ensure thoroughness of methodology especially on impact identification to avoid omission of sectors, issues and generalities.
Other Project Developers (reports and discussions)	<ul style="list-style-type: none"> (i) The EIA and Audit processes are costly but they have to be undertaken because they are a requirement. (ii) Many times the EIA process is time consuming. (iii) Some developers indicate that some projects such as infrastructure projects have to undertake a lot of EIA requirements.

These considerations were included in the process of developing the revised fees schedule and the explanatory notes. Additional consultations included the primary data and the comments in the early drafts of this report, as well as stakeholder consultation meetings organised by NEMA and Tetra Tech.

Met opmerkingen [RP28]: meaningless statement. You should include a report that clarifies point by point whether and how the issues raised in the consultations are indeed addressed in the process of determination of the fees and its results.

2.2 Current status of fees

Schedule four of the National Environment Bill 2015 and previously schedule three of the National Environment Act cap 153 delineated 21 categories of projects for which Environmental Impact Assessment is mandatory. These types of projects where EIA is mandatory are: (i) Transport, transportation equipment and related infrastructure; (ii) Utilisation of water resources and water supply; (iii) Power generation and transmission infrastructure; (iv) Housing and urban development; (v) Wood industries; (vi) Textile industry; (vii) Tanning and leather industry; (viii) Chemical industry; (ix) Food and beverage industry; (x) Manufacturing of non-metallic products; (xi) Metal and engineering industry; (xii) Electrical and electronics industry; (xiii) Mining industry and mineral processing; (xiv) Petroleum operations (upstream, midstream and downstream); (xv) Nature conservation areas; (xvi) Forestry activities (i.e. change, revision of land use; medium, largescale extraction or harvesting); (xvii) Hotel, tourism and recreational development; (xviii) Agriculture, livestock, range management and fisheries, especially at medium to large scale; (xix) Telecommunication sites; (xx) Waste management facilities; and (xxi) General including; dredging, installations of capture of carbon dioxide (CO₂) streams for geological storage, or where total yearly capture of CO₂ is 1.5 megatonnes or more, tobacco processing and storage, facilities for manufacture of medical and veterinary equipment, and aerial spraying.

Therefore, the schedule in *Table 4*, was developed. Fees payable of project briefs and environmental impact assessment under sub-regulation (1) of regulation 37) under Schedule Three of the National Environmental Impact Assessment Regulations S.I. No. 13/1998. The fees fall in seven categories from a low of UShs 250,000/= for projects not exceed Ushs 50 million in size to those in excess of Ushs five billion, where a 0.1% payment as EIA fees is paid.

Table 4: Schedule of EIA fees

	Description of category charged	Amount (or proportion) of fees paid
1.	Where the total value of the project does not exceed Shs.50,000,000/=	The amount payable shall be Shs. 250,000/=;
2.	Where the total value of the project is more than Shs. 50,000,000/= but does not exceed Shs. 100,000,000/=	The amount payable shall be Shs. 500,000/=.
3.	Where the total value of the project is more than Shs. 100,000,000/= but does not exceed Shs. 250,000,000/=	The amount payable shall be Shs. 750,000/=;
4.	Where the total value of the project is more than Shs. 250,000,000/= but does not exceed Shs. 500,000,000/=	The amount payable shall be Shs. 1,000,000/=;
5.	Where the total value of the project is more than Shs. 500,000,000/= but does not exceed Shs. 1,000,000,000/=	The amount payable shall be Shs. 1,250,000/=;
6.	Where the total value of the project is more than Shs. 1,000,000,000/= but does not exceed Shs. 5,000,000,000/=;	The amount payable shall be Shs. 2,000,000/=
7.	Where the total value of the project is more than Shs. 5,000,000,000/=,	The amount payable shall be 0.1% of the total value of the project.

Source: GoU (1998)

2.3 Legislation for NEMA managing EIA Fees

Under the National Environment Act Cap 153, Part XII (Financial Provisions) a Fund was established for the National Environment Management Authority, the National Environment Fund (NEF). The sources of funds for the NEF, include among others; all fees charged under this Act; any fees prescribed for any service offered by the authority; and any fines collected as a result of the breach of the provisions of this Act or any statutory

instrument. The law therefore has sufficient provisions to cover the implementation of the EIA schedule on fees. However, to ensure proper use and oversight over the Fund, the Act allocated responsibility for administration of the fund to the Board (of the Authority). The Board may, on the advice of the Executive Director, provide funding for any GoU institution involved in the field of environmental conservation and natural resources management. The members of the Board proposed by the National Environment Bill 2015 comprise of

- (i) representative of the Ministry responsible for environment;
- (ii) representative of the Ministry responsible for agriculture, animal industry and fisheries;
- (iii) representative of the Ministry responsible for finance, planning and economic development;
- (iv) representative of the ministry responsible for health;
- (v) representative of the Ministry responsible for tourism, wildlife and antiquities;
- (vi) two representatives of academic and research institutions;
- (vii) representative of nongovernmental organizations legally registered and present in Uganda; and
- (viii) a representative of the private sector.

It is envisaged that the broad membership of the fund allows for private sector and other project developers, government, non-governmental organisations, to be involved in the management of the fund and therefore the implementation of the EIA regulations. The EIA fees are paid into the National Environment Fund, according to the EIA Regulation and the National Environment Act 153. The fees are disbursed on the authority of the Board of Governors for the National Environment Management Authority towards planned activities of EIA implementation. At the outset only the EIA Regulations were developed in 1998 even though the Act acknowledged audit activities as crucial to the EIA process. When the Audit Regulations were developed in 2006 no specific fees were developed. Indeed, Audits have been undertaken in the spirit that the activities are an extension of the EIA process.

Met opmerkingen [RP29]: this is an incorrect assumption. The authorities that oversee the main investment sectors (telecommunication, public works, road department, energy and mining) are not represented on the board. Transparent management of the fund is of crucial importance. No word in this report on how the fund is managed (disbursement request, criteria for approval of requests, public reporting on fund management, auditing by auditor general etc. etc.)

Met opmerkingen [IS30]: Do sufficient funds flow back to NEMA for EIA related tasks? The above text is just a description of the mechanism, but lacks an analysis of current practice: does it work? is it sufficient for NEMA to be housed, staffed and function?

3. REVIEW OF FINANCIAL, POLICY AND FRAMEWORK FOR EIA AND AUDIT FEES

3.1 Basis for designing EIA and Audit Fees

The EIA and Audit fees are a means of financing environmental management. Therefore, deciding on charges for EIA is normally based on three basic considerations; economic principles that guide financing policies, conditions and criteria that guide selection of financing mechanisms and selecting and implementing financing mechanisms (NCEA 2014). The second and third basic considerations are reasonably documented in NEMA documents such as 'Guidelines and Action Plans for Financing Biodiversity Conservation in Uganda' and similar documents.

The core principles used for developing the EIA and Environmental Audit Fees schedules are; cost-recovery, polluter pays principle, and the precautionary principle and the prevention of conflict of interest principle. These principles are based on the spirit of the principles of environment management in the National Environment Act Cap 153; Section 2 Principles of Environmental Management: (c) to use and conserve the environment and natural resources of Uganda equitably and for the benefit of both present and future generations, taking into account the rate of population growth and the productivity of the available resources; (g) to establish adequate environmental protection standards and to monitor changes in environmental quality; (k) to ensure that the true and total costs of environmental pollution are borne by the polluter; and (l) Under the Minister's powers in relation to taxation; notwithstanding, income tax, the Minister of Finance may on the advice of the Board and Policy Committee include in the annual budget; (b) user fees to ensure that those who use environmental resources pay the proper value for the utilisation of the resources; and (c) tax disincentives to deter bad environmental behaviour that leads to depletion of environmental resources or that causes pollution.

(i) *Cost recovery*

Under the cost recovery approach two types of fees can be collected; fees for goods and services, and cost recovery taxes i.e. primarily levies, but also some excises and customs duties (OECD 2012; Australia Government 2013). In the Uganda, cost recovery is used in the context of costs incurred by the regulator and lead agencies and other public agencies engaged in the implementation of EIA. The costs are recoverable by the regulator (the Authority) as well as the Ministry of Finance Planning and Economic Development (MFPED). However, implementation of the Public Finance Management Act 2015 and the vote structure of government means that the cost recovery is often limited to NEMA's own fees even though central government transfers often also contribute to EIA regulatory activities. However, all agencies can participate in NEMA led activities where additional support to NEMA's own activities can be supported. This allows for joint implementation of the polluter pays principle. Finance for other agencies engaged in EIA implementation will be discussed further in a later section.

Met opmerkingen [RP31]: is that in the law?

Met opmerkingen [RP32]: Explain please. The mechanism is not clear.

(ii) *Recovering costs from the polluters: the Polluter Pays Principle (PPP);*

The "Polluter-Pays Principle" means that the polluter should bear the "costs of pollution prevention and control measures", the latter being "measures decided by public authorities to ensure that the environment is in an acceptable state" (OECD 1992). The polluter pays principle was introduced into international environmental practice at the Rio De Janeiro UN Conference on Environment and Development in 1992 and has been re-affirmed since, including in the National Environment Act Cap 153, as referenced above. Whereas the EIA and Environmental Audit fees are charged as part of the polluter pays principle the concept of polluter pays principle in Uganda is shared among various agencies. The fees described in this report and subsequent schedules only relate to the implementation of EIA and Environmental Audit.

The implications of the polluter pays principle are that the polluter has to bear the cost of steps that he is legally bound to take to protect the environment, such as measures to reduce the pollutant emissions at source and measures to avoid pollution by collective treatment of effluent from a polluting installation and other sources of pollution.

(iii) *Recovering the costs in the case of uncertainty: the Precautionary Principle;*

The Precautionary Principle is drawn out from Agenda 21 arrived at the UNCED (1992). It states; “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” The precautionary principle is fundamental to environmental management by ensuring that management action can be undertaken as the process of generating scientific evidence progresses. In this context, the EIA fees structure builds on the criteria for assessment developed under the EIA regulations, and guidelines developed for environmental management for the different sectors. Some of the guidance will be based on expert judgement with limited scientific data.

In reviewing the EIA and Audit fees for Uganda these ~~five~~ environmental management principles contribute to the rationale for design adopted in developing the EIA and Audit fees schedules. The prevention of conflict of interest principle was relevant because openness about the fees charged will promote integrity among project developers and promote equity in administration of EIAs and Audits. On the other hand, the cost recovery principles provide a basis for rationalising the magnitude of the fees proposed (Netherlands Commission for Environmental Assessment 2014).

3.2 Assessment of current fees rate and amount

Review of the current EIA fees shows that they generally decrease percentage-wise as the project or investment size increases. The highest average rate is for projects with an investment of between UGX 50 and 100 million, at 0.75%, while the lowest rate is 0.1% for the largest size projects. However, larger projects on average still contribute the larger magnitude of EIA fees even though their rate was less (*Table 5*).

The review shows that the rate for category six was not equitable compared to the other categories. Whereas the average for the sixth category was 0.102%, at the lowest end i.e. firms with project size close to UGX 5 billion, the EIA rate was only 0.04% while at the higher end projects with a size close to UGX 1 billion the rate was 0.2%. A revision within this category would seek to create more equity. Whereas in seventh category the projects have a uniform fee of 0.1%, by magnitude the rate charged may be equitable as the overall contribution to the fees would be larger. Moreover, the 0.1% rate was precedent set across a number of countries such as Ghana, Kenya and South Africa. Also, the structure of the rate ~~also~~ shows that stated amounts of fees for a block category were not as equitable. Whereas the spirit of the charge is that lower fees should be paid for projects of a larger size, the fees were often inequitable across the band of investor categories. Some investors had to pay 1% of their investment while others within the same band paid only half 0.5%. A system is needed perhaps based on just the rate alone where the categories created are based on equity of contributions to environmental governance, including fairness for all investors involved.

Met opmerkingen [RP33]: a polluter must also pay for restoration of environmental and social damage that her or she has caused.

Table 5: Description of Current EIA fees

Category	Description	Project Size (UGX)	% of fees	Average rate (%)	EIA Fees payable (amount UGX)
1.	Where the total value of the project does not exceed 50,000,000/=	> 50,000,000/=	0.5%	0.500	250,000
2.	Where the total value of the project is more than Shs. 50,000,000/= but does not exceed Shs. 100,000,000/=	> 50,000,000 ≥ 100,000,000/=	0.5 – 1.0%	0.750	500,000
3.	Where the total value of the project is more than Shs. 100,000,000/= but does not exceed Shs. 250,000,000/= the amount payable shall be Shs. 750,000/=	>100,000,000 ≥ 250,000,000	0.3 - 0.75%	0.525	750,000
4.	Where the total value of the project is more than Shs. 250,000,000/= but does not exceed Shs. 500,000,000/= the amount payable shall be Shs. 1,000,000/=	>250,000,000 ≥ 500,000,000	0.2 - 0.4%	0.300	1,000,000
5.	Where the total value of the project is more than Shs. 500,000,000/= but does not exceed Shs. 1,000,000,000/= the amount payable shall be Shs. 1,250,000/=;	>500,000,000 ≥ 1,000,000,000	0.125 - 0.25%	0.1875	1,250,000
6.	Where the total value of the project is more than Shs. 1,000,000,000/= but does not exceed Shs. 5,000,000,000/= the amount payable shall be Shs. 2,000,000/=	>1,000,000,000 ≥ 5,000,000,000	0.04 - 0.2%	0.102	2,000,000
7.	Where the total value of the project is more than Shs. 5,000,000,000/=, the amount payable shall be 0.1% of the total value of the project.	5,000,000,000	0.10%	0.1000	5,000,000

Source: adapted from GOU (1998)

3.3 EIA performance by sector

Between 2010/11 and 2014/15, 3,533 Environmental Impact Statements (EIS) were submitted and 2,087 of these were approved. On average, approvals ranged between 50 and 60% of EISs submitted. The other 40-45% of the EISs were sent back to the developer for further assessment and/or refinement. Among the EIAs that were approved the largest sector was information communication technology (ICT) from coverage expansion by telecommunication companies and additional investment in the sector. The ICT sector was followed by the infrastructure sector in terms of EIAs submitted and approvals. The two sectors contributed nearly 60% of all approvals showing a high dominance of EIA compliance.

The other main sectors were industry processing and manufacturing, fuel stations and depots and minerals, mining and oil and gas at 11%, 10% and 6.6% respectively (NEMA 2015). There were a number of sectors with fluctuating EIA activity as listed in *Table 6*. Overall the others category contributed 13.2% of EIA approvals distributed among nine sectors. The distribution of EIA performance activity shows that the intensity of activity for EIA compliance is often a case by case concern and may not be necessarily limited to a specific sector. Whereas for instance chemical pollution may be limited with ICT investments, there may be concern about impact of siting masts and other investments in urban areas where many of these investments occur. Such scrutiny may require high level expertise. The EIA assessment for infrastructure, industry and minerals sectors involve considerable lifecycle assessment involving testing of products, assessing use, and waste management, among others. Even sectors that may seem less harmful such as education, water and sanitation investments may need rigorous assessment given the likely impact to the public.

Met opmerkingen [RP34]: why this focus on sectors? What is the use? Sector seems irrelevant to me.

Table 6: EIA Approvals between 2010/11 and 2014/15, by sector

Sector	Number	Percent
1. Information communication technology	748	35.8
2. Infrastructure (Roads, Railway, Housing estates)	486	23.3
3. Industry (processing and manufacturing)	230	11.0
4. Fuel stations and fuel depots	211	10.1
5. Minerals, mining and oil and gas	138	6.6
6. Others		
a. Energy (production and distribution), hydropower and solar	274	13.2
b. Land use change (agriculture, forestry, ranches)		
c. Waste management infrastructure (landfills, effluent treatment plants)		
d. Water supply & sanitation including gravitational flow schemes		
e. Wildlife management, leisure, recreation and hotels		
f. Education facilities (schools, universities)		
g. Miscellaneous assessments (plans, policies)		
h. Pests, vector and disease control (new species introduction)		
i. Water resources, wetlands, fisheries (source protection, conversion, management plans, fish ponds)		
Total	2,087	100

Source: NEMA 2015

The EIA approvals between 2010/11 and 2014/15 have generally increased. The high levels were in 2010 and the recent peak in 2014/15 at 591 (Table 5). The number of EIAs done will likely increase due to increased infrastructure investments, and likelihood of increased investment in the oil and gas sector. The lower EIA performance in 2011/12 and 2012/13 was generally associated with lower investment activity in the two leading sectors of ICT and infrastructure development.

Table 7: Average annual EIAs approved between 2010/11 and 2014/15

Financial Year	Number of EISs approved
2010/11	405
2011/12	373
2012/13	281
2013/14	437
2014/15	591

Source: NEMA (2015)

A review look at the investment projects conducted by the Uganda Investment Authority (UIA) benchmarking investments over a 20-year period (UIA 2012) shows that the manufacturing sector attracted the largest investments, followed by wholesale and retail trade (Table 8). The second set of leading investments by magnitude of investment were accommodation and food services sectors, arts and entertainment sectors. However along these was ICT at 6.3%, Education 6%, real estate at 5.4%, transport and storage 3%, electricity, gas, steam and railway and air 2.7%. The larger investments in trade and food industry were likely to be limited to environmental screening and no comprehensive EIA, given the clear information and ability to issue guidance actions by regulator without requiring independent generation of information, while the leading sectors subject to EIA were still similar to those listed in the regulators reporting on EIA performance.

Table 8: Sectoral distribution of private investment and average actual value invested/ project by sector (\$)

Sector or categorisation	No. of projects	Planned investment \$	Actual investment \$	% of no of investment	Average actual investment/project
Accommodation & food service	81	162,129,892	310,751,481	9.1	3,836,475
Administration and support services	45	182,143,208	162,683,125	5.1	3,615,181
Arts, entertainment & recreation	61	231,891,035	171,031,383	6.9	2,803,793
Construction	8	16,431,000	14,561,161	0.9	1,820,145
Education	53	350,032,376	261,396,229	6.0	4,932,004
Electricity, gas, steam and air	24	104,347,477	103,744,099	2.7	4,322,671
Conditioning supply	5	19,792,000	8,740,869	0.6	1,748,174
Financial & insurance activities	22	64,512,866	45,834,200	2.5	2,083,373
Human health & social work activities	10	109,670,000	34,005,737	1.1	3,400,574
Information & communication	56	658,795,032	476,991,930	6.3	8,517,713
Manufacturing	256	670,795,032	590,562,035	29.2	2,280,162
Mining & quarrying	16	51,033,500	102,737,348	1.8	6,421,084
Not specified	2	1,182,000	10,403,424	0.2	5,201,712
Other specified	3	350,000	205,120	0.3	68,373
Professional, scientific & technical activities	1	500,000	110,810	0.1	110,810
Administration & defence; social security	3	3,023,000	2,092,457	0.3	697,486
Real estate	48	283,346	167,247,724	5.4	3,484,328
Transport and storage	27	62,046,000	21,719,468	3.0	804,425
Water supply, sewerage, waste management & remediation activities	7	7,326,923	7,742,558	0.8	1,106,080
Wholesale & retail trade, repair of motor vehicles & motorcycles	157	278,734,994	368,619,928	17.7	2,347,898
Total	888	3,258,251,238	2,861,184,085	100.0	3,222,054

Source: UIA (2012)

The UIA data provides an indication to the regulators on where the concentration of EIA process will be. The UIA information was used to compare the status of overall investment and contributions to environmental compliance as part of improving the rationale for the fees structure. Additionally, the size of investments allows the regulator to plan a fees structure that will not disrupt the operations of companies. With this information, the regulator in the medium to long-term can plan for human resource capacity and support to EIA practitioners and developers that is relevant to the landscape of developers in the country.

3.4 Cost recovery for EIA and Environmental Audit and Monitoring fees estimates

3.4.1 Estimated cost of conducting EIA and Environmental Audit and Monitoring

The full cost to the regulator for EIA and Environmental Audits in Uganda, based on current rates, is estimated at Shs. 23,309,320,000/year. This cost is estimated for handling an average 1000 EISs and 3,500

Met opmerkingen [RP35]: please refer to calculations later in this report.

Environmental Audits; i.e. all EIS documents those approved and those sent back for revision; the projected average number of EIAs/year and Audits/year over the next five years. The full cost also includes the cost of the EIAs at Shs. 8,700,000,000/year and the cost of Environmental Audits at Shs. 12,950,000,000.

As *Table 9* and *Table 10* show, the average cost of the EIA will change from one project to another. For example, projects with largest investment often require a more comprehensive review that could increase the number of days allotted by the regulator to 56 to 70 days. In some case additional expertise is recruited using consultants to help beef up the findings of NEMA's team. The cost of basic inputs for EIA was estimated as Shs. 8.7 billion while the basic inputs for Environmental Audit and Monitoring were estimated at Shs. 12.95 billion. The other costs were administrative costs that are considered in *Table 11*.

Table 9: Environmental Impact Assessment Estimates based cost-recovery

EIA step	Activities defined	Types of inputs	Working days	Rate	Amount	
Project Profile	The project brief shall demonstrate how the developer has followed the mitigation hierarchy to avoid and minimize impacts as part of the design and implementation of the project, as well as any effort to rehabilitate or restore the affected environment	Staff time	5	150,000	750,00	Met opmerkingen [IS36]: These should be made much more specific, see observation on Table 1 made earlier. This will help to make the financing resources needed as accurate as possible. Now it is just a reiteration from table 1. And the type of inputs do not correspond with the activities defined, eg project profile → activity is certificate of approval and input is 'per diem'
	Where the Authority makes a decision to reject a project, it shall state the reasons for the rejection in writing.	Field visit	2			Met opmerkingen [RP37]: Staff time input estimates six times the real staff time input in the last five years. Not credible and resulting in cost calculations that seem not at all realistic.
	Where the Authority approves the project it shall issue a certificate of approval	Per diems	2	400,000	500,00	Met opmerkingen [IS38]: No costs? Or are the 2 days part of the 5 above?
	Where the Authority finds that the project will have significant impacts on the environment or that the project brief discloses no sufficient mitigation measures to cope with anticipated impacts, it shall require the developer to undertake an environmental impact study.	Transport costs	2	200,000	400,00	Met opmerkingen [IS39]: 800.000? Or 400.000?
	Decision of the Authority on the project brief; where the Authority determines that the project brief discloses sufficient mitigation measures to cope with the anticipated impacts or that the project will have no significant impacts on the environment, it may approve the project or part thereof.					
Scoping	Scoping involves deciding from all possible project impacts and from all alternatives that could be addressed those which would be significant ones	Authority staff time	3	150,000	450,000	
	The lead agency shall make comments and transmit them to the Authority within twenty working days from the date of receipt of the scoping report.	Technical Support	2	500,000	1,000,00	Met opmerkingen [IS40]: Is this the number of days for the lead agencies? How is the 500,000 arrived at? Is this for more representatives from the lead agencies?
	Whether or not the lead agency submits comments within the specified period the Authority may proceed to consider and make a decision on the scoping report.					
	The Authority within thirty working days of receipt of the scoping report or the comments of the lead agency considers the scoping report, including how stakeholder comments have been taken into account and in writing					
Public participation	In seeking the views of the public or the persons in the communities who may be affected by the project, the developer shall–	Authority staff time	3	150,000	450,00	Met opmerkingen [IS41]: Is this the number of days for public participation on the scoping report and on the EIS study together? Should extra days be budgeted in case of a public hearing?
Review and Decision making	Authority shall undertake review of an environmental impact statement in accordance with regulations and the terms of reference approved by the Authority.	Authority staff time	5	150,000	750,00	Met opmerkingen [IS43]: What happens in case the EIS is not yet good enough? then it will be re-submitted again later, and requires extra days?
	Authority may, within a period of up to 30 working days of receipt of the environmental impact statement, conduct onsite baseline verification inspections for purposes of inspecting the project area that is the subject of the environmental impact assessment.	Field visit (per diem and transport)	2	400,000	800,00	Met opmerkingen [IS42]: To me it seems unlikely that review of an EIS study would require the same amount or work as the project brief as the table now suggests. I think that review of a full EIS study requires more work, especially if the comments from the public are a lot.
	In making a decision regarding an environmental impact assessment under these Regulations, the Authority shall take into account –the validity of the predictions made in the environmental impact statement.	External Technical Support time	2	500,000	1,000,00	Met opmerkingen [IS44]: In Table 1 there was also the possibility that in particular cases an external third party may be contracted. If so, then there also should be made a budget estimation for this option.
Decision of the Authority.	Authority in taking into account the review may – approve the environmental impact statement for the project or part of the project, among other activities;	Authority staff time	3	150,000	450,00	Met opmerkingen [IS45]: why is this a lower amount as compared to the field visit for the project brief?
Environmental and social management and monitoring plans	Environmental & social management & monitoring plan.	Authority staff time	3	150,000	450,00	
	The developer responsible for a project in respect of which a project brief or environmental impact statement is required, shall submit to the Authority together with the project brief or environmental impact					

EIA step	Activities defined	Types of inputs	Working days	Rate	Amount
	statement, an environmental and social management and monitoring plan in respect of project operations and thereafter every 3 years.				
Post-Environmental Impact Assessment Processes.	Post environment assessment inspections and monitoring: The Authority in liaison with the relevant lead agency may, within 12 months of grant of certificate of approval, arrange for onsite inspections and monitoring to ensure compliance with the conditions in the certificate of approval, before audit period sets in.	Authority staff time	2	150,000	300,000
		Field work (Per diem & transport)	2	400,000	800,000
	Registers and databases: The Authority shall maintain a register or database for the following – individual experts or firms of experts duly authorized to conduct or prepare environmental impact assessment studies and audits; screening decisions; certificates issued under these Regulations; project briefs and environmental impact statements; and any other appropriate information.	Authority staff time	2	150,000	300,000
Estimated Average for a Single EIA					8,700,000
Estimated Total for 1000 EIAs					8,700,000,000

Met opmerkingen [IS36]: These should be made much more specific, see observation on Table 1 made earlier. This will help to make the financing resources needed as accurate as possible. Now it is just a reiteration from table 1. And the type of inputs do not correspond with the activities defined, eg project profile → activity is certificate of approval and input is 'per diem'

Met opmerkingen [RP37]: Staff time input estimates six times the real staff time input in the last five years. Not credible and resulting in cost calculations that seem not at all realistic.

Met opmaak: Frans (standaard)

Met opmerkingen [IS46]: I think in practice this is an underestimation of real time and costs (see observations above). In the previous report the table 7 mentioned 20% facilitation costs of the total budget. Why is this not any longer included here? Also the staff time was budgeted at 180.000 instead of 150.000. Which figure is the most realistic one?

Table 10: Environmental Audit and Monitoring estimates based cost-recovery

EIA step	Activities defined	Types of inputs	Working days	Rate UGX)	Amount
Environmental Enforcement Audits.	The Authority shall, where it so determines that: (i) there is sufficient public interest; (ii) there is evidence of violations or a danger to human health or the environment; and (iii) there is no cause to believe that a project has or may have significant adverse impacts on the environment or may not pose a danger to human health, reject the petition and give reasons in writing for the rejection within sixty days of receiving the petition.	Authority staff time	2	150,000	300,000
	An environmental inspector may conduct or cause to be conducted an environmental enforcement audit on any project where there is reasonable cause to believe that: (i) the activities being conducted at the project are likely to cause immediate danger or harm to human health, or the environment; (ii) the activities being carried out at the project violate or are likely to violate the Act or Regulations, among other reasons.	Authority staff time	2	150,000	300,000
	An environmental inspector may serve the operator of the project with a notice in writing, requiring the operator to carry out an environmental compliance audit within a period determined by the inspector.	Field costs (perdiem and transport)	2	300,000	600,000
Review of Environmental Compliance and Voluntary Audit Reports.	The Authority shall evaluate the environmental audit report submitted and may- take a decision on the environmental audit report and inform the operator of its adequacy in terms of content and corrective measures to ensure compliance; or transmit the environmental audit report to a lead agency for comment.	Authority Staff time	2	150,000	300,000
Environmental Compliance Agreements.	Environmental compliance agreement: Where the operator indicates in an environmental compliance audit or a voluntary environmental audit, the Authority and the operator may enter into an environmental compliance agreement	Authority staff time	2	150,000	300,000
Environmental Management Systems.	An operator whose activities are likely to have an impact on the environment shall establish, maintain and ensure availability and accessibility to an environmental management system.	Authority staff time	2	150,000	300,000
Environmental Monitoring.	Monitoring by operator: The operator of a project is responsible for carrying out monitoring of his project to assess and mitigate its possible impacts on the environment.	Authority staff time	2	150,000	300,000

Met opmerkingen [RP47]: Auditing seems to be done without external expert input. Seems impossible to me!

EIA step	Activities defined	Types of inputs	Working days	Rate UGX)	Amount
	Monitoring by Authority and lead agency: The Authority may and where necessary, in consultation with lead agencies monitor – all environmental phenomena against a baseline assess any possible changes in the environment and their possible impacts	Field costs (Per diem and transport)	2	400,000	800,000
Voluntary Disclosure.	An operator responsible for the release of a substance into the environment that has caused, is causing, or may cause an adverse impact, shall forthwith, as soon as the operator knows or ought to know of the release, report it to the Authority within seven days. A disclosure shall not be voluntary if – specific permit, license or approval conditions require monitoring and maintenance and submission of monitoring records to the Authority, among other reasons.	Authority staff time	2	150,000	300,000
Estimated Average for a Single Audit					3,700,000
Estimated Total for 3500 EIAs					12,950,000,000

Met opmerkingen [RP47]: Auditing seems to be done without external expert input. Seems impossible to me!

The Administrative costs for EIA and Audit were estimated at Shs 642 million/year and 1.017 billion/year, respectively (Table 11). These costs cover the housing fees for staff-10 staff for each of the EIA and Audit activities, office space acquisition, stationery and other materials that include (paper, cartridges, note books and pens, cameras, GPS, computers, access to laboratory testing, and geographical position system (GPS) kits. The laboratory testing was estimated at Shs. 500,000 per EIA and Shs. 250,000 per Audit, although these are averages and the Department ought to have discretion to re-distribute resources based on need. Therefore the estimates overall budget for EIA and Environmental Audit is Shs 7.642 billion/year and 10.992 billion/year, respectively. This gave a grand total of Shs 23.3 billion/year based on a budgeting within the concept of cost recovery.

Met opmerkingen [IS48]: It is not entirely clear to me how this total amount is calculated?

Table 11: Estimates other costs expected for EIA and Audit team

Administrative costs	Units	Rate/year (Shs)	Amount for EIA (Shs)	Amount for Audits (Shs)
Housing (10, 10), housing units	20	7,200,000	72,000,000	72,000,000
Offices space (4)	4	12,000,000	12,000,000	12,000,000
Stationery & material				
Reems of paper	416	15,000	1,560,000	1,560,000
Cartridges	48	500,000	6,000,000	6,000,000
Notebooks & pens	600	2000	600,000	600,000
Cameras	20	1,500,000	15,000,000	15,000,000
GPS	24	2,000,000	20,000,000	20,000,000
Laboratory costs	3500	500,000	500,000,000	875,000,000
Computer & maintenance	10	1,500,000	15,000,000	15,000,000
Total (Shs)			642,160,000	1,017,160,000
Grand Total including Tables 9 & 10 (Shs)			13,967,160,000.00	9,342,160,000

Met opmerkingen [IS49]: Are the figures correct? I cannot see where they come from?

Met opmerkingen [RP50]: figures swapped between columns

3.4.2 Recovery of estimated cost of EIA and Environmental Audit and Monitoring from Schedules

The proposals for recovery for EIA and Audit fees show a segregated structure that would allow for appropriate allocation. EIA rates proposed are similar to those of the schedule under revision, the principle maintained to have a 0.1% fees rate in line with international practice. However, to enhance equity in contributions to the EIA and Audit process high rates are used for the categories with low capital and this is gradually reduced up to the 0.1% for the largest category of Shs 5 billion capped at \$50 million. This capping is comparable to the capping employed in Ghana and Kenya (See section 3.5.1). A further consideration used is an assumption on the proportion of projects based on average total number of projects envisaged over the next five years; i.e. 1000 projects/ year for EIA and 3,500 projects/year for Audit. The lowest two

categories of projects; i.e. projects less than Shs 50 million and Shs 100 million subject to EIA are only 10% (5% and 5%). The largest proportion of projects are of size of Shs 500 million to one billion at 25% followed by projects of Shs 250 million to Shs 500 million, and those whose size is between one billion and five billion shillings. The larger projects over Shs 5 billion are about 10% of all investments. This information was synthesized from discussions with; the regulator, stakeholder discussions and review of UIA reports (UIA 2012).

It is envisaged that Shs 22,490,937,500 will be mobilised from the fees structure delineated in *Table 12*. The proposed budget from cost recovery is 96% of the estimated cost of the EIA and Audit and Monitoring (Table 9, 10 & 11). The margin allows a flexibility of +/- 5% depending on the performance of EIA and Audit reports.

Met opmerkingen [IS51]: I do not understand what is meant here. In fact there is a shortage of 4 % to reach full cost recovery?

Table 12: Estimates of EIA fees based on cost-recovery estimates for EIA fees

Description of categories	Estimates for EIA			Estimates for Environmental Audit and Monitoring			Proportion of projects
	EIA rate (%)	Average (UGX)	EIA Amount	Audit Rate	Average (UGX)	Audit Amount	
1. Where the total value of the project does not exceed Shs. 50 million	0.500%	250,000	12,500,000	0.250%	125,000	21,875,000	5.00%
2. Where the total value of the project is more than Shs. 50,000,000/= but does not exceed Shs. 100 million.	0.475%	475,000	23,750,000	0.125%	125,000	21,875,000	5.00%
3. Where the total value of the project is more than Shs. 100,000,000/= but does not exceed Shs. 250,000,000/=	0.375%	937,500	140,625,000	0.125%	312,500	164,062,500	15.00%
4. Where the total value of the project is more than Shs. 250,000,000/= but does not exceed Shs. 500,000,000/=	0.28%	1,375,000	275,000,000	0.100%	500,000	350,000,000	20.00%
5. Where the total value of the project is more than Shs. 500,000,000/= but does not exceed Shs. 1,000,000,000/=	0.20%	2,000,000	500,000,000	0.050%	500,000	437,500,000	25.00%
6. Where the total value of the project is more than Shs. 1,000,000,000/= but does not exceed Shs. 5,000,000,000/=	0.090%	4,500,000	900,000,000	0.030%	1,500,000	1,050,000,000	20.00%
7. Projects between UGX 5 billion and \$ 50 million (capped; i.e. all projects with investments of over \$50 million pay an equivalent of 0.1% of \$50 million)	0.0700%	74,375,000	7,437,500,000	0.030%	31,875,000	11,156,250,000	10.00%
Total for a single EIA (by proportions) (UGX)		83,912,500			34,937,500		100%
Grand Total for 1000 EIAs & 3500 Audits (UGX)			9,289,375,000			13,201,562,500	

Met opmerkingen [IS52]: Not easy to understand how this figure is calculated, give example

3.5 Lessons from EIA and Audit fees structure of other countries

3.5.1 Basic Review of EIA and Audit Fees Schedules

A basic review of EIA and Audit fees performance in Sub-Saharan Africa found that in Kenya the Environment Management and Coordination Act (EMCA) 1999 required that during the EIA process a proponent, or in Uganda's case developer, in consultation with the Authority seeks the views of persons who may be affected by the project or activity through posters, newspaper, radio and hold at least three public meetings with the affected parties and communities. The Project proponent pays for the entire EIA process.

- The fee payable to the National Environment Management Authority (NEMA) of Kenya was 0.1% of the project cost similar to the cost paid in Uganda. In 2003, the Government of Kenya undertook reviews leading to a joint environmental impact and audit regulation, the Environmental (Impact Assessment and Audit) Regulations, 2003; Review of Environmental Impact Assessment (EIA) Fees, and Gazette Notice No. 13211. These revisions were included in regulation 48 of the Environmental (Impact Assessment and Audit) Regulations, 2003. Nonetheless, the Environmental Impact Assessment fees payable were maintained at 0.1% of the total cost of the project. But a minimum of KSh.10,000 with no upper capping was added.
- In Rwanda, Article 69 of the Organic Law (No. 04/2005 of 08/04/2005) indicates that environment impact assessment shall be carried out at the expense of the developer. Upon project approval, a developer is required to pay an administrative fee to the environmental fund (FONERWA) to be determined as a percentage of the estimated cost of the investment. This exercise, however, has not been operational because the Ministerial decree (order) has not been enacted as yet (Rwanda Development Board 2015).
- In the Netherlands, the Fee Schedule, the amount that the competent authorities are asked to pay for voluntary advice depends on the complexity of the EIA, as follows (as per 1st July 2012 – 31st, December 2013): Standard fee of € 10,000; plus a low fee of € 5,000. This fee applies to relatively straightforward scoping or review advice, which includes: EIAs for large scale pig farming operations, certain flood protection measures (dike strengthening), gas/oil extraction at sea, certain infrastructure measures, and for a second opinion on case-by-case EIA screening; or a high fee of € 24,000. This fee applies to more complex EIAs and for SEAs, such as an SEA for infrastructure planning (including rail and shipping routes), SEAs for national level spatial plans and EIA/SEAs for airports, power plants, and transmission lines. In addition, if two advisory reports are needed within one EIA procedure (scoping and review advice), the NCEA charges 160% of the fee for both combined (rather than 200%). For review of supplementary information, the NCEA charges € 3,500. This fee applies when the NCEA review of an EIA report has shown essential information to be lacking, and supplementary information has later been provided. Therefore the combine fee ranges between €27,500 and 57,900, the equivalent of UGX 113,537,600 – 283,895,400. The cost would be lower if the project did not require comprehensive EIA perhaps (NCEA 2015).
- In Ghana, the proponent is required to pay processing and permitting fees prior to collecting the permit. The fees are determined based on the Environmental Assessment Fees Regulations of 2002. The level of fees is dependent on the scale of activity and the sector within which it falls. For example, large scale undertakings with total development cost exceeding US\$10 million are charged 0.1% of the total development cost, but in any case, not exceeding the cedi equivalent of US\$50 thousand. Twenty-five percent of this amount is paid for processing of the application as overhead

costs, e.g. for site visits, review processes, advertisements, public hearings, post EIA monitoring, etc. (ECA 2005). However, the arrangements are a little more complex, therefore an excerpt from NCEA (2014) is used for illustration:

Distinctive feature of EIA fees in Ghana is that the fees are tailored to project impacts. The fees system that Ghana has implemented for activities subject to environmental impact assessments is noteworthy because of the extent to which the fee structure is tailored to overall project impacts. Ghana's system classifies projects according to three separate criteria: industry sector, project investment cost, and scale of impact. As a result, fees are differentiated in a manner that approximates the government costs of administering different types of projects. In addition, the system further addresses differences in government costs that may be incurred over time by implementing proponent charges through three different fees.

Under the EPA Act 1994, Act 490, Ghana's Environmental Protection Agency is charged with imposing and collecting environmental protection fees and the Agency is authorised to establish a fee system for EIA Activities. The fees system includes (1) a processing fee, (2) an environmental permit fee, and (3) an environmental certification fee. The three-part system enables the Agency to respond to three distinct areas where government costs are incurred, as follows:

a. PROCESSING FEE

The processing fee is designed to recover the cost of processing project applications, but also includes an administrative charge. The cost of processing applications includes the following components: (a) site inspection cost; (b) allowances for technical review committee members; (c) cost of mailing materials (e.g., stationery); (d) postage; (e) staff time; (f) risk allowance; and (g) 20% administrative fee.

b. PERMIT FEE

The permit fee is based on a point system that assigns monetary values to impact levels. The determinants of the various levels of impact points include: (a) sensitivity of the location of the proposed project; (b) potential for relocation/resettlement of communities; (c) diversion of water bodies, roads, etc.; (d) need to hold public hearings; (e) potential for reclamation and restoration of degraded areas; (f) decommissioning/closure measures required; (g) overall level of project impact. Each impact point is equivalent to a certain monetary value depending on the sector.

c. CERTIFICATION FEES (RECURRING)

Once projects have been granted permits, they are required to obtain environmental certificates after 24 months in operation. Small and medium sized projects must renew them every 24 months, while large projects must renew them every 36 months. The Environmental Protection Agency charges fees for issuing certificates, which are equivalent to the processing fee, plus 50% of the permit fees. This fee is intended to cover the ongoing costs of monitoring operating activities.

d. DECOMMISSIONING COSTS

The Environmental Protection Agency has plans to develop a fee to cover decommissioning costs but has not yet developed a fee structure to cover this

The arrangements of the Ghana Environmental Protection Agency (EPA) whereas elaborate are most similar to Uganda's NEMA. For example, the revenues raised from the EIA fees are deposited into the National Environment Fund, and a fraction of these fees about 25% used to cover the cost of the Agency's operations, upon approval of the EPA Board. In the case of NEMA, the Environment Fund provides key funding but additional funding is obtained from other fees and charges under the Environment Act Cap 153, Central

Government Transfers and from own revenue sources i.e. own investments made by NEMA as part of revenue generation.

The indications from the international review of practice shows that Uganda already has a structure financing plan for EIA that attempts to satisfy a number of key criteria. In the interim period, it is unlikely that the EIA costs will be divided based on the processing, permitting and certification costs as in the case of Ghana because there is not enough synthesis of this information. Moreover, requiring site by site analysis before charging developers a cost would impose considerable delays on the EIA process and require additional human resource for the developer. EIA implementation in Uganda is a more equitable process with all EIAs that extend beyond project screening subject to scoping, review, public hearings, decision making and post-EIA. In the case of Uganda a strong auditing process circumvents the need for renewal of the EIA certificate although evaluation of effectiveness could reinforce this process. Some of the international experiences whereas compatible with Uganda, such as Netherlands, would likely be expensive for project developers.

3.5.2 Basic Review of EIA and Audit Fees Schedules

- A progressive EIA and Audit fees rate where the fees become due based on the stage of the EIA and Audit and Monitoring implementation were considered an important international lesson. When the fees are broken down the developers would be able to pay for support on project profile development and review separately from the rest of the EIA phases. Moreover projects whose EIA are rejected would need to undertake the EIA process afresh and they would only make payments for the components where additional work is needed and would not carry the bulk of the Audit fees until such fees become due.
- An international best practice rate of 0.1% seems to be a rule of thumb in many of the countries reviewed. In the case of Uganda the 0.1% rule of thumb is only possible for the largest projects, those in excess of five billion shillings. However, the fees structure is spread out in an equitable manner to reduce the potential burden on the larger categories.
- Separate schedules are proposed for EIA, and Audit and Monitoring. However, the spirit of international practice such as the 0.1% rule of thumb precedent for the major project developers is maintained. The segregation of fees would help in implementing EIA and Audits concurrently thereby improving efficiency in the environmental management processes.

4 PROPOSALS FOR REVISED EIA AND AUDIT FEES

4.1 Explanatory Notes for EIA fees

- This EIA fees schedule has been developed in the spirit of ongoing revisions to the national environmental management legislation and regulations, specifically the Environmental Impact Assessment Regulations, Regulation, S.I. No. 13/1998 and the National Environment (Audit) Regulations, Statutory Instrument (S.I.) No. 12/2006.
- The basic principles on which the EIA fees schedule has been developed are (described in section 3.1):
 - (i) *Cost recovery;*
 - (ii) *Recovering costs from the polluters: the Polluter Pays Principle (PPP);*
 - (iii) *Recovering cost from the user: the User Pays Principle (UPP);*
 - (iv) *Recovering the costs in the case of uncertainty: the Precautionary Principle;*
- The seven categories of EIA fees that are found in the Environmental Impact Assessment Regulations, Regulation, S.I. No. 13/1998 are maintained. Whereas EIA costs change and are influenced by the types of sectors, the rigour required based on the increased investment commitment of different projects was found to outweigh the specific requirements of the pollution in the sectors. The principle of equity in applying EIA also applies at the technical effort given the potential environmental, social and economic impacts of project.
- A progressive EIA and Audit fees rate is proposed. Under the progressive EIA and Audit fees structure the EIA fees structure is divided into two parts: the project profile development support and review fees, and fees for completion of EIA review and Decision including certification where an EIS is satisfactory or rejection and report on grounds for rejection of EIS. The fees for project profile development support and review as well as accompanying administrative costs will only be 30% of the full EIA cost. The second component of fees for completion of EIA will be paid once the project profile phase has been successful and when the Authority proposes to the developer to conduct an EIA.
- The progressive Audit and Monitoring fees will only be charged when the developers have an EIA certificate and need to take compulsory and/or voluntary Audit and Monitoring fees. The Audit fees will be charged a single block fee. The single block fees payment for an Audit is proposed because the Audit processes will be conducted to the end. Even when the regulator makes requests for improvements and adjustments no additional fees are envisaged.
- Under the revised EIA Fees and Audit Fees Schedules, the international best practice precedent 0.1% of project size charge for EIA and Audit is adopted. The fees are distributed between EIA and Audit processes with the EIA activities taking 0.07% while the Environmental Audit and Monitoring activities taking 0.03% for the largest category of project size. The distribution for the other categories of project size are different as shown in Table 12, however, the principle of equity and international best practice is carried along. Therefore, the fees structure is spread out in an equitable manner to reduce the potential burden on the larger categories.

Met opmerkingen [IS53]: I thought this one was deleted?
Instead the conflict of interest principle did apply?

- From the points above, separate schedules are proposed for EIA, and Audit and Monitoring. However, the spirit of international practice such as the 0.1% rule of thumb precedent for the major project developers is maintained. The segregation of fees would help in implementing EIA and Audits concurrently thereby improving efficiency in the environmental management processes.
- The full cost to the regulator for EIA and Environmental Audits in Uganda, based on current rates, is estimated at Shs. 23,309,320,000/year. This cost is estimated for handling an average 1000 EISs and 3,500 Environmental Audits. The full cost also includes the cost of the EIAs at Shs. 8,700,000,000/year and the cost of Environmental Audits at Shs. 12,950,000,000. The Administrative costs for EIA and Audit were estimated at Shs 642 million/year and 1.017 billion/year, respectively.

4.2 Revised schedules on fees for the EIA Regulations

The revised Schedule for EIA fees consists of seven categories of investment value similar to the previous schedule of EIA fees. The Table 13 shows the rates charged for EIA fees declining from 0.5% of project size for the smallest project to 0.1% for the largest project size. The seventh category of project size has been adjusted five billion Uganda shillings with a cap created at \$50 million. Therefore, projects with a size greater than \$50 million will the equivalent of 0.1% of \$50 million dollar. This progressive arrangement is aimed at encouraging larger investments especially infrastructure projects where the concern for the magnitude of EIA investment has been reflected by many stakeholders. Fees are based on percentage. However, if rate calculated cannot go below the rate set for the lower category. This is based on the principle of equity.

Met opmerkingen [IS54]: ??

Table 13: Revised Schedule of EIA fees

Description of categories	Proposed rate payable based on project size (%)	Indicative average (UGX)
1. Where the total value of the project does not exceed Shs. 50 million	0.500%	250,000
2. Where the total value of the project is more than Shs. 50,000,000/= but does not exceed the amount payable shall be Shs. 500,000/= the amount payable shall not be less than Sh. 250,000	0.475%	475,000
3. Where the total value of the project is more than Shs. 100,000,000/= but does not exceed Shs. 250,000,000/= the amount payable shall be Shs. 750,000/=; the amount payable shall not be less than Sh. 475,000	0.375%	937,500
4. Where the total value of the project is more than Shs. 250,000,000/= but does not exceed Shs. 500,000,000/= the amount payable shall not be less than Sh. 937,500	0.28%	1,375,000
5. Where the total value of the project is more than Shs. 500,000,000/= but does not exceed Shs. 1,000,000,000/= the amount payable shall not be less than Sh. 1,375,000	0.20%	2,000,000
6. Where the total value of the project is more than Shs. 1,000,000,000/= but does not exceed Shs. 5,000,000,000/= the amount payable shall not be less than Sh. 2,000,000	0.09%	4,500,000
8. Projects between UGX 5 billion and \$ 50 million (capped; i.e. all projects with investments of over \$50 million pay an equivalent of 0.1% of \$50 million), the amount payable shall not be less than Sh. 4,500,000	0.07%	74,375,000

4.4 Fees for Environmental Audit Regulations

The new Schedule for Environmental Audit and Monitoring Fees also consists of seven categories of investment value similar to the schedule for EIA fees. The Table 14 shows the rates charged for Environmental Audit and Monitoring fees declining from 0.25% of project size for the smallest project to 0.03% for the largest two project sizes. Fees are based on percentage. However, if rate calculated cannot go below the rate set for the lower category. This is based on the principle of equity.

Table 14: Proposed Schedule of fees for Environmental Audit and Monitoring

Description of categories	Proposed rate payable based on project size (%)	Indicative average (UGX)
1. Where the total value of the project does not exceed Shs 50 million	0.250%	125,000
2. Where the total value of the project is more than Shs. 50,000,000/= but does not exceed Shs. 100,000,000/=.	0.125%	125,000
3. Where the total value of the project is more than Shs. 100,000,000/= but does not exceed Shs. 250,000,000/=	0.125%	312,500
4. Where the total value of the project is more than Shs. 250,000,000/= but does not exceed Shs. 500,000,000/=	0.100%	500,000
5. Where the total value of the project is more than Shs. 500,000,000/= but does not exceed Shs. 1,000,000,000/=	0.050%	500,000
6. Where the total value of the project is more than Shs. 1,000,000,000/= but does not exceed Shs. 5,000,000,000/=	0.030%	1,500,000
8. Projects between UGX 5 billion and \$ 50 million (capped at \$50 million for all projects with investments of over \$50 million)	0.030%	31,875,000

5. CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

- The stakeholder issues from EIA and Environment Audit fees point to whether the fees charged are proportionate to the effort of conducting the EIA themselves. Other considerations were how local government and lead agency stakeholders who contribute to the EIA process derive their compensation. The Authority was concerned with the load of EIA and Audits on a small number of staff who are not adequately compensated. There were also concerns on how to fund the input of lead agencies and District Staff engaged in EIA and Audit process. The developers, MDAs and practitioners worried about the likely increase in cost of EIA and Audit regulation.
- The core principles used for Fees schedules were the cost recovery, polluter pays principle, the precautionary principle and the prevention of conflict of interest principle. These principles were based on the National Environment Act Cap 153 principles on: use and conserve the environment and natural resources of Uganda equitably; establishing adequate environmental protection standards and to monitor changes in environmental quality; ensuring that the true and total costs of environmental pollution are borne by the polluter; and user fees to ensure that those who use environmental resources pay the proper value for the utilisation of the resources.
- The review shows that the rate for EIA fees were not equitable for some categories. Whereas the average for the sixth category was 0.102%, at the lowest end i.e. firms with project size close to UGX 5 billion, the EIA rate was only 0.04% while at the higher end projects with a size close to UGX 1 billion the rate was 0.2%. A revision within this category would seek to create more equity. However recalculation shows that in trying to create equity within the category there is a risk of losing equity across the categories therefore, it may be better to create minimum thresholds based on magnitude and maintain a percentage across the category.
- Between 2010/11 and 2014/15, 3,533 Environmental Impact Statements (EIS) were submitted and 2,087 of these were approved. Among the EIAs that were approved the largest sector was information communication technology (ICT) from coverage expansion by telecommunication companies and additional investment in the sector. The second largest sector with approved EIS was the infrastructure sector. The ICT and infrastructure sectors contributed nearly 60% of EIA approvals. The other main sectors were industry processing and manufacturing, fuel stations and depots and minerals, mining and oil and gas at 11%, 10% and 6.6% respectively.
- The UIA data provides an indication to the regulators on where the concentration of EIA process will be. The size of investments allows the regulator to plan a fees structure that will not disrupt the operations of companies. The average range of projects was \$ 68,373 (equivalent to Shs 227.7 million) and \$6,421,084 (equivalent to Shs. 21.38 million). However, individually, many projected investments ranged between \$ 283,346 (equivalent to Shs. 943.5 million) and \$670.8 million (equivalent to Shs. 2,233.7 billion). With this information, the regulator in the medium to long-term can plan for human resource capacity and support to EIA practitioners and developers that is relevant to the landscape of developers in the country.

- The proposals for recovery for EIA and Audit fees is a segregated structure that would allow for appropriate allocation. EIA rates proposed are similar to those of the schedule under revision, the principle maintained to have a 0.1% fees rate in line with international practice. However, to enhance equity in contributions to the EIA and Audit process high rates are used for the categories with low capital and this is gradually reduced up to the 0.1% for the largest category of Shs 5 billion capped at \$50 million. It is envisaged that Shs 22,490,937,500 will be mobilised from the fees structure delineated in *Table 12*. The proposed budget from cost recovery is 96% of the estimated cost of the EIA and Audit and Monitoring (Table 9, 10 & 11). The margin allows a flexibility of +/- 5% depending on the performance of EIA and Audit reports.

5.2 Recommendations

General recommendations

1. The review of EIA and Audit regulations should be undertaken at a more regular interval of at least five years. This will allow for progressive assessment of changes in sector importance to EIA, effectiveness of the EIA process and financing arrangements.
2. Whereas already commendable, the role for lead agencies and District Environment Officers should be more explicit and enhanced to provide additional support for the main regulator, NEMA. The role can also be expressed in a manner that allows the sister agencies mobilise additional resources for their specific role in the EIA process. The revisions for the National Environment Act need to explicitly state how Non-Tax Revenues, revenues from Environmental Fiscal Reforms (e.g. the environmental levy) and even tax revenues should complement environmental compliance at the sector level.

Fees Structure

- Proposed EIA fees structure: A progressive EIA and Audit fees rate is proposed comprising of two parts: the project profile development support and review fees, and fees for completion of EIA review and Decision
 - 30% The fees for project profile development support and review as well as accompanying administrative costs will only be 30% of the full EIA cost; and
 - 70% for completion of EIA review and Decision making including certification where an EIS is satisfactory or rejection and report on grounds for rejection of EIS.
- Proposed Environmental Audit and Monitoring fees structure: The developer, with an EIA certificate whether in need of a compulsory and/or voluntary Audit and Monitoring fees, will pay for these fees as a single block payment. The single block fees payment for an Audit is proposed because the Audit processes will be conducted in its entirety even though the regulator makes requests for improvements and adjustments no additional fees are envisaged.

Funding Mechanisms

- The EIA and Environmental Audit fees is Non-Tax Revenue that is managed under the National Environment Fund (NEF) and can be drawn and used within the confines of NEF and the National Environment Act. The funds obtained as described in this report would be able to cover up to 96% of the budget required.

- However, there are no funds directly available for the lead agencies and the District staff. A proposal that emerged from the stakeholder discussions was invoking the Polluter Pays Principle and the User pays Principle. Lead agencies and District Local Governments can seek for such funds from the fees collectable by the Minister for Finance under the National Environment Act and the Public Finance Management Act 2015. Additionally, under sector based Environmental Mainstreaming and compliance sector can set performance standards and fines and charges on environmental management on the basis of the Environment Act. Therefore, the segregated implementation of the Polluter Pays Principle and the User pays Principle can allow for funding of EIA and Audit activities at lead agency and District Local government level.
- An additional assessment study and capacity building on financing for EIA and Environmental Audit is proposed. Additionally, guidance and guidelines and a financing mechanism should be developed to enable lead agencies and Districts integrate such financing in their medium term and annual budget cycles.

Further Undertakings

1. Additional research and consultations on the effectiveness of EIA processes given the funds used in the process. The evaluation of efficiency and effectiveness of EIA may also be used as basis for identifying and adopting more cost-effective ways of implementing EIA for project developers and the regulator.
2. The use of adequate human resource is important to ensuring efficiency of financing. It does seem that the human resource available for EIA process can be enhanced so that the number of EIA handled per staff can be reduced from the current eight per month per EISs staff to at least four EISs per month per EIA staff.

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ANNEX 2

Summary of NCEA observations on first draft of report on EIA and Audit fees (October 2015)

Overall observations regarding readability of report:

- Structure of report is a bit unclear: seems to be mix of elements of ToR and activities carried out and results thereof.
- As a structuring principle for reporting, either the a) to f) consultants tasks can be reported on, or the 7 step approach for revising funding of government tasks in EIA. Now the report is neither of the two which makes it difficult for the reader to follow.
- Sometimes it is unclear whether conclusions and recommendations are ideas of the consultant and/or whether they are the (agreed) outcome of stakeholder meetings/consultations.

Other observations per chapter:

- Chap. 1.3.3: Table 1: EIA and Audit process for which fees assessment will be conducted. Apparently other EIA related tasks were not inventoried, for instance maintaining EIA database, certification of experts etc. Was there a specific reason do exclude these? If so, will these EIA tasks be funded?
- Chapter 1.3.4: It says here that ‘The financing will be divided by source including; public sector, private sector, non-governmental organizations and development partners’, but the report does not present this information
- Chapter 2.1: Rationale for consultancy work should be better explained: why were the EIA fees discussed, or for what reason it was decided to revise the fees schedule? Why were the current fees are not any longer useful etc.
- Chapter 2.3: How does this NEF function? Do sufficient funds flow back to NEMA for EIA related tasks? The above text is just a description, but lacks an analysis of current practice. Are there any recommendations needed for the revision of this NEF?
- Chapter 3.1: Describes 5 principles: the consultant does provide some information on whether the EIA and Audit fees schedules are in line with these principles, but does not give any further analysis on the implications of each of these principles for the fees schedules.
- Chapter 3.2.1: List stakeholder observations. It remains unclear what was the rationale behind some of these observations (e.g. why should payment be phased). Also it is not clear what has been done with each of these observations: to give some examples, there is no mention of non-fundable fees in the report, and no evidence of consultation with Ministry of Finance.
- In Chapter 3.2.2 the equity criterion is introduced: it is not clear who decided that this criterion would be important to apply (consultant? of result of stakeholder meeting?).
- Chapter 3.2.3: What was the purpose of making a comparison between NEMA data and those of the Ugandan Investment Authority and what is the conclusion based on this comparison? Can more EIAs per year be expected that currently ‘escape’ the EIA procedure?

- Chapter 3.3: On cost recovery: Table 7: only 2 units applied: working days and field visitation. Have other items been considered as well, such as stationery, housing, transport, communication, lab analyses etc. Or are these included in the 20% facilitation?
- Chapter 3.3: at the end of Table 7: *Annual investment \$848 million (foreign) + 30% domestic investment = total (\$1,102,400,000/year) unclear where these figures come from.
- Chapter 3.3: some more evidence would be helpful to explain how certain data/numbers have been estimated (this can be done in an annex for instance)
- Chapter 3.3. Table 8: gives insight in the amount of funds that the new fees will generate. It is concluded that this will not be enough to cover all costs. It is then proposed that the gap will have to be paid from Central government: unclear why this is concluded? One could also think of slightly adapting the fees to come to a 100% cost recovery.
- Chapter 3.4: A more thorough analysis based on this comparison of different countries would be useful. What elements can be copied and why? Which elements are not feasible and why? Level playing field considerations etc.?
- Chapter 4.1: Fourth bullet speaks of: The basic entry for EIA fees schedule is a 0.1% applied for all seven categories. Does this apply always for all projects? Is unclear
- Chapter 4.2: a new category 8 is introduced, but without explaining the justification for this decision.
- Chapter 4.4: fees for audits: the number of 2807 is used, but this will increase over time as more and more EIAs get approved each year. It is suggested that 28% of the fees collected as part of the EIA fees schedule can be used for Environmental Audit. So probably this percentage has to increase in future.