

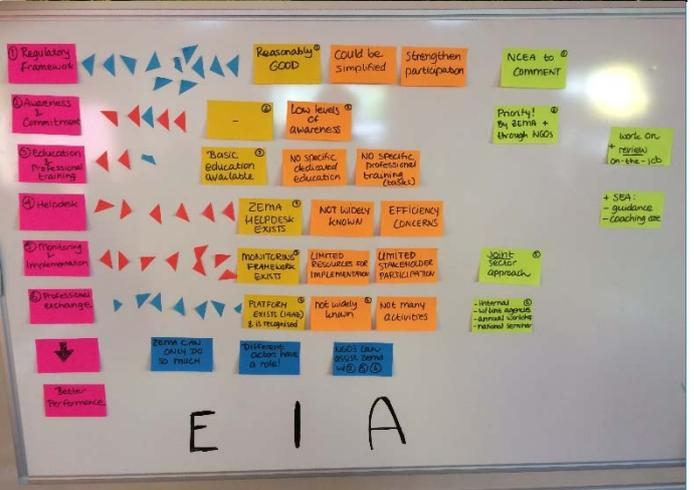


Netherlands Commission for
Environmental Assessment

ESIA exploratory Mission

Report

ZAMBIA



26 June 2017
Ref: 8034



ESIA exploratory Mission Report

To ZEMA
WWF Zambia
WWF-NL

Att ZEMA Mr John Msimuko, Director General
ZEMA Mr Maxwell Nkoya, Director Operations
ZEMA Mr Humphrey K. Mwale, Director Legal
ZEMA Mr Constantino Mwembela, Principal Inspector

WWF Zambia, Ms Raquel Filgueras
WWF Zambia, Mr Mwape Sichilongo

WWF NL, Mr Bart Geenen
WWF NL, Ms Annemarie Winkelhagen

From The Netherlands Commission for Environmental Assessment (NCEA)

Date 26 June 2017

Subject By: the Secretariat of the Netherlands Commission for Environmental Assessment –Ms Gwen van Boven, international technical secretary at the NCEA; Mr Gijs Hovenaars, legal advice

Reference 8034

Contact:
W: www.eia.nl
T: +3130 234 76 60
E: ncea@eia.nl

Table of contents

1.	Context and justification	2
1.1	Programme and objectives	2
1.2	This report	3
2.	Key observations and recommendations	4
3.	ZEMA: Specific observations and recommendations for follow-up	7
3.1	Main topics & feedback	7
3.2	NCEA system approach to ESIA & priority system functions to work on	8
3.2.1	Function 1: Legal framework	8
3.2.2	Function 2: Awareness raising	9
3.2.3	Function 5: Monitoring	10
3.2.4	Function 6: Professional exchange	11
3.3	Working processes	12
4.	WWF: Specific observations and recommendations for follow-up	13
4.1	Main topics & feedback	13
4.2	Role of CSOs	14
4.3	Priorities to work on	15
4.3.1	Legal Framework	15
4.3.2	Helpdesk, awareness raising & professional exchange	15
4.3.3	Improving ESIA quality & Monitoring	18
5.	Observations on draft ESIA regulation	20
5.1	Main observations	20
5.2	Detailed observations	22
5.2.1	General remarks	22
5.2.2	Screening	23
5.2.3	Scoping	24
5.2.4	Relation to decision	25
5.2.5	Review	25
5.2.6	Participation	26
5.2.7	Monitoring	27
5.2.8	Other remarks	27
5.2.9	Inspiration for selection criteria: Annex III of the EU EIA directive	29
	Annex 1: Programme of the Visit – outline	31
	Annex 2: Lists of Participants	33
	Annex 3: System functioning	34

1. Context and justification

Within the Shared Resources, Joint Solutions (SRJS) programme, WWF–Netherlands has asked the Netherlands Commission for Environmental Assessment (NCEA) to act as technical advisor on ESIA¹ and SEA. A multi–annual MoU is currently being drafted to formalise this cooperation.

The first actual activity was undertaken in Zambia, where ESIA and potentially also SEA play an important role in the SRJS programme. NCEA was asked by WWF–Zambia as well as by ZEMA, the Zambia Environmental Management Authority, to identify ways of strengthening the national ESIA/SEA system. ZEMA also specifically asked assistance with the revision of the ESIA regulation, which is currently on–going. WWF looked for the specific role of CSOs in the system. To this end, NCEA visited Lusaka and combined different activities with ZEMA, WWF and jointly.

This report reflects on the findings of that visit. The visit was financed by WWF–SRJS. In the report, the NCEA makes recommendations on how to strengthen the ESIA/SEA system in Zambia. On the basis of these recommendations, WWF will develop a programme (activities & budget) that fits within SRJS. This will include a capacity development programme for CSOs, that will have ESIA as an important component.

1.1 Programme and objectives

The visit combined several objectives, which have all largely been met during a short week that was effectively organized by ZEMA and WWF:

- Identify needs for strengthening of the ESIA/SEA system in Zambia, both from the perspective of ZEMA as from the perspective of other stakeholders, including CSOs;
- Discuss the current revision of the legal framework for ESIA and make recommendations on how to improve it;
- Identify the role of WWF and CSO partners in the ESIA system;
- Provide recommendations for follow–up for both ZEMA and WWF, and possible support by NCEA in this follow–up.

The week was organized in the following programme. A more detailed programme outline can be found in Annex 1.

Monday 15 May 2017: arrival and planning meeting with WWF Zambia

Tuesday 16 May 2017: EA assessment meetings with ZEMA

Wednesday 17 May 2017: ZEMA stakeholder workshop

Thursday 18 May 2017: analysis & planning meeting with ZEMA

Friday 19 May 2017: ESIA assessment workshop with WWF & CSO Partners

Saturday 20 May 2017: analysis & planning meeting with WWF & ZGF

¹ Note that the NCEA consistently uses the term ESIA: Environmental and Social Impact Assessment, as the term is increasingly adopted at the international level by donors and countries alike. See also ch 5.

List of participants will be presented in Annex 2, once they have been supplied by at ZEMA and WWF Zambia and added to this report.

1.2 This report

In Chapter 2, NCEA's key observations and recommendations for follow-up are provided regarding the ESIA system in Zambia. In Chapters 3 and 4, more detailed information is given on the work carried out with ZEMA and WWF, respectively. In Chapter 5, dedicated recommendations on the draft ESIA regulation are provided.

2. Key observations and recommendations

Focus on ESIA

With both ZEMA and WWF & CSO partners, focus of the discussions has been on ESIA and not so much on SEA. ESIA clearly is at the forefront of what is happening in Zambia, in the context of a growing economy with an increase of the number of investments requiring ESIA. SEA will certainly help planning of investments in a more sustainable manner, but as long as ESIA still requires a lot of strengthening in practice, partners in Zambia consider it too early to put a lot of focus on SEA.

In conclusion, focus of a support programme through SRJS would be on ESIA. At the same time, both ZEMA and WWF would consider it a good idea to start gaining some experience in SEA, through the application of an SEA process with NCEA as coach. Lessons learnt could then be used to feed into the development of SEA regulations and system.

In the coming years, SRJS is recommended to focus on ESIA. At the same time, it would be advisable to start gaining some experience with SEA in practice, a process that could be coached by NCEA.

The quality of ESIA

A key concern to all stakeholders is the poor quality of ESIA reports and processes. Both ZEMA, other government stakeholders and NGOs indicate that the quality is poor, making ESIA as an instrument ineffective. This should be remedied.

Different ways exist to improve quality of ESIA reports and processes:

- Improve scoping and ToR: through good quality scoping processes, including effective consultation of relevant stakeholders, good quality ToR can be developed for the ESIA study to be carried out. These ToR will direct the content and approach of the ESIA and can also function as a review framework once the study is carried out;
- Strengthen review: through better ToR, review checklists and standards, better engagement of other stakeholders and better working methods at ZEMA, review can be strengthened so that when ESIA reports are found insufficient, they will be sent back to amend shortcomings;
- Strengthen participation in scoping and review: insights from local stakeholder, sectoral stakeholders and NGOs can improve scoping and review as it brings on board knowledge and perspectives that are not always available at ZEMA;
- Invest in developers and consultants: ensure that they are aware of what is required of them, that they understand how to read and apply ToR and how to write a good ESIA report;
- Accreditation: work through registered or accredited ESIA consultants. This requires a register and an administrative system that tracks the quality and validity of applications/registrations;

- Create a more transparent ESIA system: through publication, the quality of the ESIA reports will become apparent, which will motivate consultants to do a better job or will discourage developers from engaging the same consultants again.

The NCEA recommends ZEMA and SRJS to jointly explore best ways to improve the quality of ESIA reports and processes. It recommends ZEMA to invest more in scoping to render the procedure more pro-active in terms of guiding ESIA contents. It recommends to organise dedicated working sessions with ZEMA to develop formats, checklists and internal working methods. It recommends WWF and partners to invest on awareness raising on the use of these formats, and more.

Revision of ESIA regulation

Zambia's ESIA regulation is currently being revised. While many elements could be strengthened, it is a comparatively complete regulation that covers most aspects that are required in an ESIA regulation. When looking at the overall system, both ZEMA and CSOs consider the regulation as one of the stronger functions of Zambia's ESIA system.

Nevertheless, it is felt that it could be strengthened. Most often people remark that it could be simplified. The regulation is very elaborate and could be much shortened in order to make it easier for the reader to find his/her way. As the legal framework forms the basis for all other functions of the ESIA system, it is considered a priority. At the request of ZEMA, the NCEA has compiled its initial detailed observations on the current draft. These observations are based on analysis of the document and discussions during the visit.

SRJS is recommended to invest in strengthening the ESIA regulation, which is currently being revised. This regulation will form the basis for all other ESIA-related work. The NCEA shares its initial observations in chapter 5. It recommends to organise a follow-up workshop with ZEMA's legal and technical staff to jointly develop a 2nd draft. It also recommends to allow time for feedback by the NCEA on the draft SEA guidelines (a request by ZEMA).

ZEMA can only do so much: Role of NGOs

During the discussions at ZEMA and at the stakeholder workshop, it became clear that for an ESIA system to perform well, different actors need to play their role effectively. Not only the regulatory body is responsible for ESIA: also sector ministries, public and private developers, consultants, and civil society play an important role.

At the moment, ZEMA's workload is very high and demanding, which makes it hard to work efficiently. Other actors also do not yet play their role effectively. For the system to perform better, this should be improved. ZEMA staff acknowledged that 'ZEMA can only do so much'. Throughout the discussions, potential roles of other stakeholders have been discussed and identified.

The NCEA recommends ZEMA and partners to continue discussions on the different roles that are to be played in a well-functioning ESIA system, and regularly assess how these roles could be strengthened. An important way forward is to share roles and responsibilities and work together in an open and transparent way.

ESIA Functions to work on

During the visit, the NCEA facilitated a discussion on the functions within the ESIA system that require strengthening, internally at ZEMA, during the stakeholder workshop and with WWF and CSO partners. Among those, priority seems to be given to awareness raising, monitoring and professional exchange. More details are provided in the following chapters.

The NCEA recommends to invest in awareness raising on ESIA, combined with the helpdesk function, so that different actors will play their role more effectively. It recommends to strengthen monitoring of ESIA to ensure that the findings of ESIA will be implemented in practice. Lastly it recommends to invest in professional exchange as a means to keep the debate going on what the Zambian ESIA system should look like and how to apply best practice.

3. ZEMA: Specific observations and recommendations for follow-up

3.1 Main topics & feedback

With ZEMA, discussions focused on the regulatory framework and on internal working processes and how these could be strengthened. After joint analysis of the overall ESIA system, discussions also targeted awareness raising, monitoring and professional exchange as elements that needs strengthening. The following paragraphs reflect on these issues in more detail.

Feedback

The following feedback was given by the participants of the ZEMA stakeholder workshop. Feedback was asked on the day itself and on ideas for follow-up.

Feedback ZEMA stakeholder workshop	
<i>Reflection on the day</i>	<i>Reflection on next steps</i>
<ul style="list-style-type: none"> The day was very fruitful (3x) 	<ul style="list-style-type: none"> More has to be done on a) tactics of reviewing the EIA documents, and b) Ways of monitoring and implementing of ESIA/EPB in an effective manner
<ul style="list-style-type: none"> Very good exchange, engagement and discussion 	<ul style="list-style-type: none"> Would have liked to see a case study of the Zambian process
<ul style="list-style-type: none"> The presentation of the functions very clear and can provide basis for future work 	<ul style="list-style-type: none"> Limited time cut of SEA [from the programme], should do more
<ul style="list-style-type: none"> Key gaps in the ESIA in Zambia were highlighted 	<ul style="list-style-type: none"> Particularly interested in following up on specific discussed: professional training
<ul style="list-style-type: none"> The presentations were OK! 	<ul style="list-style-type: none"> Need to have more interaction
<ul style="list-style-type: none"> Good, interactive, brought out key values, e.g. stewardship. Educative. 	<ul style="list-style-type: none"> I would like to have more engagements on the issues discussed
	<ul style="list-style-type: none"> There is a need for follow-up

3.2 NCEA system approach to ESIA & priority system functions to work on

The NCEA defines an ESIA system as a coherent set of 'functions' that are necessary for effective ESIA practice. At system level, the NCEA has identified six key functions (see graph).

In the view of the NCEA, these six functions need to be fulfilled for an ESIA system to be effective. For each of the six functions we have formulated the results that we would hope to see as we work with partners to ensure that each of the functions is operational within their EIA system. For each result we have defined a set of indicators to measure progress on these results, as well as means of verification.

During the visit, a joint analysis was made of system functioning, with ZEMA internally, and with ZEMA and partners at the multi stakeholder workshop. It was further discussed with WWF and CSO partners at the end of the week.

ZEMA and partners agreed that, although all functions could be strengthened, the functions of especially Awareness raising, Monitoring and Professional exchange require attention. The results of the group work and the discussions is presented in Annex 3. These were used as input for an analysis and planning session with ZEMA on Thursday, which led to suggested activities that will be further discussed in the following paragraphs.

3.2.1 Function 1: Legal framework

ESIA

The ESIA legal framework is currently under revision. This window of opportunity should not be missed. Although not considered as one of the weaker functions, still the legal framework is considered a priority as it forms the basis for work on all other functions. Once the revised regulation is adopted, awareness needs to be raised on its contents, for example. For this reason, the ZEMA requested the NCEA to provide its professional opinion on the current draft. The revision processes will be adjusted so that NCEA's recommendations can still be incorporated.

In Chapter 5, the NCEA's initial observations are presented. The observations however imply certain choices to be made and the NCEA therefore recommends to also organise a follow-up work session during which NCEA and ZEMA's legal and technical staff jointly develop a 2nd and final draft.

EIA system
(six functions)



EIA system functions & organisations/capabilities.

SEA

There is no Zambian SEA regulation as yet. In the past, SEA guidelines have been drafted (with Swedish help) but not finalised. NCEA suggested that rather than developing a regulation straight away, the way forward might be to first gain some experience with SEA in practice, and on the basis of those lessons learnt, start drafting SEA regulations. That would allow for the development of regulations that really fit the specific Zambian planning context. ZEMA welcomed this approach, and would like to see which SEA case would be suitable for such learning trajectory. This could perhaps be done in connection with the WWF-SRJS programme and with coaching from NCEA.

In the meantime, ZEMA requested the NCEA to read and comment upon the draft SEA guidelines, to see how suitable they will be for Zambia and how much work would still be needed to amend and finalise them.

3.2.2 Function 2: Awareness raising

Who could assist with awareness raising? Who should be targeted? And on which topics should awareness be raised? These questions were discussed at ZEMA.

The following topics were identified, that ZEMA should take on and that NGOs could also take on in awareness raising:

- The importance of ESIA in development
- The process and procedure itself: how does it work, what is required, what are the quality standards?
- Explain ESIA reports to stakeholders/communities/local governments
- Monitoring / role of stakeholders/citizens
- Right to a clean environment and to a role in ESIA (substantial & procedural rights)

In more detail, the table shows the role that ZEMA and NGOs could play and which groups could be targeted. Most urgent groups to be targeted are identified as primary target groups.

Key actors in awareness raising on ESIA	
ZEMA	Part of mandate. Owner of regulation. In its own interest that stakeholder understand how to apply ESIA
NGOs	Well placed to engage with CSOs and citizens. Enable them to reach out to CSOs and citizens
Primary target groups	
CSOs	to enable them to reach out to citizens and engage in ESIA processes themselves
Sector ministries	to enable them to inform developers and effectively engage in ESIA processes themselves
Developers, consultants & intermediaries (e.g.	to understand the importance/role of ESIA so that they can apply ESIA effectively and develop better quality ESIA

chambers of commerce & industry)	
Media	to inform the public about the importance of ESIA as a tool for sustainable development of Zambia's economy
Secondary target groups	
	Parliament & executive government
	Judiciary (on environmental issues, including ESIA)
	Schools & students
	Traditional leaders / house of chiefs
	Local governments

The issue of a possible study tour on ESIA and SEA was mentioned but not further discussed due to time constraints.

3.2.3 Function 5: Monitoring

ZEMA is mandated to carry out compliance monitoring, to carry out environmental audits and to monitor the effectiveness of the measures identified in the ESIA. Target is to do this twice a year, the reality is closer to once a year, if at all. What could be done is:

- Adjust the frequency to project needs
- Make use of public complaints/find a precursor to notify ZEMA of need to do monitoring
- Identify role of NGOs/CSO in monitoring
- Capacity development: how to organise effective monitoring? Options discusses include:
 - Orienting, on the job experiencing
 - Supervision/institutional changes
 - Look at available checklists & documentation, exchange on international best practice
 - Select key project: identify key issues
 - Develop sector specific checklists

The above brainstorm brought about the idea to organise a joint sector approach, as follows:

- Organise a multi-stakeholder sector workshop, during which existing checklists & approaches are analysed and discussed: what would be appropriate for Zambia? On that basis, develop sector specific checklists for Zambia
- Back-to-back with the workshop, organise a joint inspection of a project to field-test the developed checklists
- On the basis of that experience, finalise the checklists. Publish them so that developers know what to expect. Use the checklists as part of the review framework for ESIA.

3.2.4 Function 6: Professional exchange

The positive feedback at the multi-stakeholder workshop demonstrated the appreciation for this type of sessions of professional exchange. Participants agreed that it is dearly missed, that it happens far too little, while it is relatively easy to organise. ZEMA takes this message seriously and also sees the importance of keeping on board all these different professionals, with their different capacities and roles within the ESIA system.

A positive element in this respect is the existence of the IAAZ, the Impact Assessment Association of Zambia. This association gathers members from a diversity of background, all of them active in the field of ESIA in one way or another. The IAAZ is officially recognised by ZEMA, which pays the membership fees of its staff and even has an MoU with IAAZ. It is also a member of the IAIA, the International Association for Impact Assessment. This makes IAAZ a potentially functional platform for professional debate and exchange. It's operations need to be further explored, as its representative indicated that the IAAZ has not been very active recently, but the potential is there.

When discussing the way forward with ZEMA, four levels of professional exchange were identified that ZEMA would like to see organised:

1. Internally at ZEMA: dedicated sessions with satellite offices
2. Within government: focus group sessions with other government offices that have a formal task in ESIA (review or other)
3. Targeted multi-stakeholder: smaller workshops on specific topics within ESIA (similar to this week's workshop)
4. Broad multi-stakeholder: annual national seminar on ESIA functioning

ZEMA sees itself as key organiser of 1, 2 and 4. For 3, this could be initiated by ZEMA but also by IAAZ, or could even be taken over by IAAZ.

In addition to such 'physical' meetings, the option of an internet-based forum on best practises is identified as a useful support to professional exchange. This could potentially be hosted by IAAZ.

3.3 Working processes

As mentioned in chapter 2, the quality of ESIA reports is a key concern to ZEMA and partners. Among the ways discussed to improve the quality, ZEMA has a main responsibility in scoping and review. What would be needed in that respect is:

- Improve scoping and ToR: through good quality scoping processes, including effective consultation of relevant stakeholders, good quality ToR can be developed for the ESIA study to be carried out. These ToR will direct the content and approach of the ESIA and can also function as a review framework once the study is carried out;
- Strengthen review: through better ToR, review checklists and standards, better engagement of other stakeholders and better working methods at ZEMA, review can be strengthened so that when ESIA reports are found insufficient, they will be send back to amend shortcomings;
- Strengthen participation in scoping and review: insights from local stakeholder, sectoral stakeholders and NGOs can improve scoping and review as it brings on board knowledge and perspectives that are not always available at ZEMA;

ZEMA has requested NCEA to organise internal, on-the-job activities on working processes:

- Look at ESIA reports and reviews together. Identify gaps and weaknesses that need to be remedied;
- Based on that analysis, provide hands-on training to ZEMA and others that have a formal role in review (namely WARMA, Department of National Parks & Wildlife, Energy Regulation Board, Ministry of Mines/Department of mines safety, Ministry of local government (including local authorities), National Heritage Conservation Commission);
- Jointly develop formats (such as sector specific ToR that can be adjusted for the project) and check-lists (process steps but also what kind of issues (environmental and social) to look out for) to be used for scoping and review.
- Train staff in the use of these formats and check-lists. In a later stage, also train/raise awareness among consultants and developers on the use of these formats and checklists.

4. WWF: Specific observations and recommendations for follow-up

4.1 Main topics & feedback

WWF-Zambia will be carrying out the SRJS programme in Zambia under the umbrella of its Fresh water – programme. Main landscapes are Luangwa catchments and Kafue flats. With many investments impacting on water and water resources, ESIA and SEA are considered as important tools for sustainable management of these resources. Like for ZEMA, focus seems to be on ESIA rather than SEA, at this point.

Main partner in this programme will be the Zambia Governance Foundation, which supports the functioning of CSOs in Zambia. Through its extensive network of CSOs, ZGF will be able to extent capacity development and awareness raising work to these CSOs. ZGF is currently making an inventory of existing CSOs in the two landscapes, measuring their mood and understanding of water issues, and how relevant these CSOs are for WWF/ESIA. An important question at the WWF-CSO workshop was therefore: what could be the potential role of NGOs/CSOs in ESIA in Zambia?

One role that WWF and some other environmental NGOs already play is to provide comments on ESIA reports during the review phase. This could however be strengthened, as now, often last-minute and ad-hoc inputs are provided. Another topic on the workshop agenda was therefore: how to best organise review? How does NCEA organise these working processes?

ESIA: there is huge interest, and little understanding.

Feedback

The following feedback was given by the participants of the WWF – CSO workshop. Feedback was asked on the day itself and on ideas for follow-up.

Feedback WWF – CSO workshop	
<i>Reflection on the day</i>	<i>Reflection on next steps</i>
<ul style="list-style-type: none"> • Good facilitating methods simple and straight forward making it easy to follow up the discussion 	<ul style="list-style-type: none"> • Synthesis of information to inform recommendations for CSO engagement + capacity building.
<ul style="list-style-type: none"> • It's been informative and made good suggestion of what the EIA process should be like in Zambia and what it really is for now. 	<ul style="list-style-type: none"> • As a way forward, there is need to develop a CSO program that will forms on ESIA, EIA for engagement and capacity building
<ul style="list-style-type: none"> • The day was productive I have understood the EIA process and how to develop an EIA process 	<ul style="list-style-type: none"> • Need a clear plan for capacity building for CSOs/NGOs in EIA/SEA practice and review
<ul style="list-style-type: none"> • Workshop very informative just enough content, very clear delivery and good level of engagement. 	<ul style="list-style-type: none"> • Capacity building for ESIA review
<ul style="list-style-type: none"> • Very enlightening • Good meeting • Informative sessions 	<ul style="list-style-type: none"> • How to access legal support for CSOs is a challenge in Zambia. How can we overcome this?

<ul style="list-style-type: none"> The discussion was educative and informative on EIA process 	<ul style="list-style-type: none"> Planning going forward should include communities
<ul style="list-style-type: none"> Good interactive process but more NGOs/ CSOs should have been included 	
<ul style="list-style-type: none"> Suggestion: In future we need more time allocation on EIA review process to NGOs 	

4.2 Role of CSOs

Like with ZEMA and stakeholders, the systems approach to ESIA was also discussed with WWF and CSO partners. For each function, different responsible parties can be identified. While prioritising functions to work on, it is relevant to distinguish between those functions in which NGOs can play a role, and those in which it cannot, or to a lesser extent. Likewise within each ESIA procedure, there are steps that NGOs could play a role in, while others seem less likely.

The table below shows theses that were discussed by the participants. The NGOs present feel they have an important role to play when it comes to ensuring the quality of ESIA's, by contributing to scoping/ToR, providing information, suggesting alternatives, checking the information (review), and assist in monitoring. Although not their formal mandate, they feel well placed to assist with awareness raising and providing access to information, to prepare communities for ESIA's that are coming up.

The participants strongly feel that they should not be there carry out assessments nor to gain people's support for the ESIA or a project

Theses as discussed in the group	Should NGOs play this role?	Additional remarks
Awareness & Information 1. NGOs should make sure that the public is aware of an ongoing ESIA	Yes/No	We have a big role to play, but it is not our formal mandate. We are well placed to do it. We could create tools & guidelines
Quality of ESIA 2. NGOs should supply baseline information for an ESIA	Yes	NGOs are a rich source of (local) information that can be made use of for accurate impact assessments (of course with reference)
3. NGOs should submit proposals for alternatives and recommendations to be included in the ESIA	Yes	We can provide our professional view, and community-driven We do this already when comments are asked during review
4. NGOs should check if the information in the ESIA is correct and complete	Yes	Yes!! Everyone fully agreed
5. In addition: scoping	Yes	In addition to the task in review, NGOs could also look at ToR to see if they are inclusive
6. In addition: monitoring	Yes	NGOs can play an active role in monitoring & enforcement
Participation 7. NGOs should organize stakeholder consultation in the ESIA process	Yes	See also no. 1. We can mobilise people and prepare them for public hearings. We could do expectation management on the project, see also no. 10

Assessment 8. NGOs should undertake the assessments in the ESIA	No	We can monitor and ensure accuracy We can do alternative studies, but we should not play the role of the developer. Baseline data yes: see also no. 5
Support for project and ESIA 9. NGOs should ensure that the local people support the ESIA and the project	No	Not SUPPORT: we can participate in the process to provide accurate information, and neutralise. But we should be aware of our own agenda as well.

4.3 Priorities to work on

During the day, the NGOs also discussed the different functions of a well-performing ESIA system. After the discussion, each participant individually voted for the two functions that performed best (blue stickers) and which would need most improvement (red stickers).

The functions 1) Legal framework and 6) Professional exchange were considered relatively advanced compared to especially functions 4) Helpdesk and 5) Monitoring. Function 2) Awareness also requires attention, according to the group (see photo).



4.3.1 Legal Framework

As shown above, among all things that are needed, the NGOs consider the legal framework as relatively strong and therefore less of a priority. This reflects the same view as ZEMA's. However, like ZEMA, the NGOs also feel that the window of opportunity that exists with the currently ongoing revision of the ESIA regulation should not be missed. They would therefore like SRJS to invest in this revision and engage the NCEA to provide support to ZEMA to this end. They would also like the NCEA to have a look at the SEA guidelines. In that process of revision, they would like to recommend to use the inputs of NGOs in the drafting of the ESIA regulation, especially with respect to participation and access to information.

4.3.2 Helpdesk, awareness raising & professional exchange

In the discussions, the functions of Helpdesk, Awareness raising and Professional exchange all became interlinked, which is why we discuss them here together.

Helpdesk

Establishing and running a helpdesk for ESIA is primarily a task that belongs to government. ZEMA also acknowledged this and moreover, feels that they have a helpdesk in place.

However, other stakeholder raise concerns that the helpdesk is not widely known and that accessibility is a concern. The NGOs feel more strongly that it does not function well.

ZEMA sees that it should be re-organised, to make it more functional and efficient, and that it could be included in awareness campaigns, so that more developers and others will know about it and use it.

This is where NGOs could play a role. They could make CSOs and communities aware of the existence of the helpdesk and how to use it. They could also assist by making information available, as part of their work on the right on access to information. Although currently there is no Access to information act in Zambia, ESIA does contain a right to environmental information and a right to engage in the process through participation. It is through this window that NGOs could play their role.

A concrete idea is providing a space to put and maintain information on ESIA as a passive provision for access to information and awareness raising. This could be at the WWF or ZGF websites, or a dedicated website. An interesting option to explore is the newly established Environment Hub. A representative was present at both the ZEMA stakeholder workshop and the WWF-CSO workshop. The Environment hub is hosted by WWF and aims to be a platform for information, funded by the Civil society environment fund. It will mostly be a virtual hub. Either way, this space will require funding and data management/software support.

Awareness Raising

A long discussion ensued regarding awareness raising and the role of NGOs. Most people felt that they could play a role but should be attentive to their position, not wanting to become part and parcel of the decision making process. Yet if the system is to be strengthened, quite some work on awareness raising is needed. ESIA is making sure information gets in the public domain and in the decision making process. So it is not about having an agenda but rather making sure that objective information becomes available. This can be done through the helpdesk (see above) and through awareness raising. So what could be done by NGOs?

- NGOs could help raise awareness on impacts, issues, setting the tone for specific ESIA processes. Point out to CSOs and communities what their rights are in those processes when it comes to consultation and access to information, and prepare them for such occasions
- Next step would be how to do things, for that you need the regulations and input from ZEMA
- NGOs in Lusaka could lead a coalition of CSOs on the ground in the landscapes, who would in turn have access to communities. What these CSOs could do:
 - General: importance, objective of ESIA, procedure, rights and obligations: enlarge ESIA literacy
 - Also raise awareness on key types of developments: dams, irrigation/agriculture, mining: ESIA thinking regarding such investments: issues, impacts, choices, alternatives
 - They could possibly also work with larger organisations, such as agricultural investors, chambers of commerce, farmers associations, OPPI, etc as intermediaries to investors, and make them aware of the procedure and the importance of a good process.

What would be needed for WWF, ZGF and partners to work on awareness raising?

- For these ideas, some can be done already and without (much) funding.
- Mostly staff time is needed to raise awareness: find out what is already out there, adjust it to the local context, create new things if necessary. It is not difficult but requires time.
- Would need dedicated & knowledgeable staff. This is not currently available at WWF or ZGF, now everybody is helping out and it is reactive rather than proactive. The offices would therefore need to be strengthened with a coordinator with knowledge on ESIA. WWF suggests that if both is not possible, ZGF should be prioritised (and perhaps ActionAid, which works in other parts of the country and focuses more on mines). Fundraising may be needed. ZGF may have ways to start fundraising. SIDA should be contacted as they would like environment to become a sector and they have a good environment person.

Given the importance that ZEMA attaches to awareness raising and the role it potentially foresees for NGOs in awareness raising, the NCEA considers it a relevant path to explore for WWF and partners, and also recommends engaging a dedicated person to ESIA to oversee and guide awareness raising, learning and other actions related to ESIA and SEA.

The role of the NCEA could be to provide technical backstopping to the training of awareness raisers and the development of tools and awareness raising activities. Through its helpdesk function it could provide access to knowledge, information and resources. It could also link WWF and partners to local actors in ESIA, such as SAIEA.

Professional exchange

Another topic that requires strengthening according to ZEMA and stakeholders, is professional exchange. WWF and CSOs did not initially pick it as a priority but during the discussion and also in relation to the helpdesk and awareness raising functions, professional exchange did become an interesting topic to deal with.

They felt they could participate in professional exchange activities, they could initiate or organise them. They could use them as platforms for access to information.

It would be worthwhile to explore working with or targeting IAAZ, for awareness raising, professional exchange and access to information. IAAZ, when functional, could be a good platform and starting point for this. It would be worthwhile to explore this as an option rather than creating new and possibly competing structures in an already under-resourced field such as ESIA.

It would also be worthwhile to check alumni of the Swedish funded international training programme on SEA that is currently on-going and in which several Zambian people have already participated. These could be useful partners in building a critical mass of professionals on ESIA and SEA (check www.niras.com).

4.3.3 Improving ESIA quality & Monitoring

As discussed above, the quality of ESIA's is a great concern to WWF and CSOs, as it also is to ZEMA. All actors seem to agree that the quality is generally insufficient and should be strengthened.

ZEMA identified ways from their side to strengthen their internal working procedures and assist developers in better applying the regulations (see 3.3). NGOs also feel they could contribute to better quality ESIA during the procedure and once the ESIA is approved, during monitoring (see 4.2).



Scoping & Review

Initially, the request to NCEA was to facilitate a session on review as a means to improve quality of ESIA. Step by step, the review process in the Netherlands was presented, allowing understanding of the importance of elements such as:

- Allowing sufficient time for the review
- Engaging the required expertise, specific for the project
- Organising stakeholder participation
- Using the results of the participation, and justifying this use
- The importance to focus on essential short comings that would really impair decision making
- The added value of having independent review, especially in case of complex or controversial projects
- The importance of transparency during review, of making ESIA a public procedure allowing transparent decision making

The discussion however also steered towards timing within the procedure. Better review will help improve ESIA reports by sending them back in case of essential short comings. However: this will always be after the ESIA report is already written and therefore a reactive step. Generally, developers will not be too keen on investing too much additional work when they thought they had already concluded the ESIA, and potentially sent the consultants off.

Investing in a sound scoping step in the procedure is more pro-active and will help prevent short comings in the ESIA. Scoping is the phase in the procedure during which it is determined which impacts are to be expected and therefore need to be studied during the ESIA, which alternatives need to be compared, and which stakeholders need to be engaged, among others. Good scoping already involves a site visit and public consultation in order to identify potential impacts together with local stakeholders and their local knowledge, with verification on site. This will allow for the development of tailor-made Terms of Reference for the ESIA.

Later on, during review, these formally approved ToR can then be used by ZEMA as framework for the review of the ESIA report.

Currently, the draft regulation could be strengthened when it comes to scoping. This will also be recommended by the NCEA (see ch.5.). NGOs could play a role during scoping by pointing out potential issues and impacts, alternatives to be considered during the ESIA. They could make available baseline data that will help improve the quality of the ESIA. They could help prepare communities for the stakeholder participation during scoping.

Monitoring

Once the ESIA is approved, a project permit is issued with conditions or the ESMP, that are derived from the ESIA. ZEMA is formally mandated to carry out compliance monitoring, but is looking into ways to strengthen this task (see 3.2.3).

Both ZEMA and the NGOs themselves see that NGOs could also play a role in compliance monitoring. They could:

- Advocate for sound ESIA and monitoring as part of their awareness raising work
- Prepare CSOs and communities to play a role in alerting the authorities when they observe that a project starts and therefore monitoring should start
- Similarly, alert authorities when they observe cases of non-compliance

The best ways to start this should be explored further, partly with ZEMA such as through the joint sector approach that is proposed in 3.2.3.

Specific projects

WWF wants to influence the ESIA of specific projects in the SRJS landscapes. They have identified five such projects, and retained the Devil gorge dam in the Luangwa catchments landscape as most suitable. In Kafue flats projects may be more related to agriculture.

Could the NCEA assist, and if so, how could this be done?

- The NCEA would need to retain its neutral and independent position regarding specific projects. If it would issue independent advice on scoping or review of a specific project, it would issue this advice to the ZEMA as the mandated authority for ESIA. In this scoping, the NCEA could also take into account WWF input as part of the collected inputs from consulted stakeholders. It could not directly/separately comment on WWF scoping for a specific project;
- With respect to specific type of projects, the NCEA could facilitate a workshop on scoping for large dams with Devil gorge as a case, preferably jointly with ZEMA and different government and non-government stakeholders, but at least with ZEMA knowing and finding it OK.

5. Observations on draft ESIA regulation

In this document the NCEA gives remarks on the Draft EIA regulation (dated May 2017). As has already been mentioned while the NCEA was in Zambia, the current draft is a rather good example of EIA regulation. It has sufficient legal basis in the act and is quite elaborate with regard to all different EIA phases. However, this does not mean that there are no specific points of concern.

In par. 5.1, key observations are provided that NCEA considers as crucial and recommends to be considered in the revision of the regulation. Subsequently in par. 5.2, more detailed observations are provided that should help ZEMA to further elaborate the recommendations by the NCEA.

The NCEA could help ZEMA to incorporate the observations into a new and final draft. This would best be done through a separate dedicated sessions as some issues require specific choices to be made by ZEMA.

Please note that generally, the NCEA uses the term ESIA and it has done so in the rest of this mission report. In this Annex 4 however, the NCEA consistently uses the acronym 'EIA', in order to be in line with the Zambian regulation. ZEMA could consider the use of ESIA to be in line with international developments.

5.1 Main observations

Decision making

- The relation between the EIA report and the decision-making procedure with regard to the project is not clear. Is the EIA or the EMP part of the final decision on the project?

Recommendation: the relation between the EIA report and the decision-making procedure should be strengthened. A separate session on decision-making could sketch different options how to strengthen this link.

- In the draft it is not made explicit that the decision letter is a purely technical decision. It is important to make a distinction between political and technical decisions. In a technical decision there is no need to take into account other interests than environmental and social interests. Apparently there is a political decision in the form of a decision by the minister in the case of an appeal against the decision letter. It is strange that the nature of the decision changes after appeal. Furthermore, the nature of this decision is not made explicit in the draft.

Recommendation: distinguish explicitly between political and technical decisions. Improve the status of the decision on the appeal by the minister.

- The draft seems to suggest that a decision letter can only be issued if a project has no adverse social or environmental effects whatsoever. This will in reality however never be the case: each project has at least some effects.

Recommendation: decision letter can only be issued if the project only has acceptable social and environmental effects.

Procedure

- The screening procedure in EIA is intended to identify swiftly which projects are subject to EIA (or a lighter form of EIA) and which are not. The current regulation is very complex and requires that all projects are submitted to the Agency.

Recommendation: simplify the screening procedure by introducing a list of projects that need EIA and projects that need a prior assessment to determine whether an EIA is required. Other projects are not subject to EIA. A list of criteria that determine whether EIA is required should be adopted. The example of the European EIA directive is included as annex to this memo.

- Scoping is an important part of the EIA procedure: it provides a framework for participation in the EIA procedure and gives direction to the preparation of the EIA report which improves the quality of the reports. The article on scoping is rather brief. There are no draft terms of reference for specific sectors, such as the mining industry.

Recommendation: improve the importance of the scoping phase in the EIA procedure. To further enhance the quality of EIA reports, introduce sector specific draft terms of reference that are supposed to be made project specific by the developer.

- Sometimes very specific expertise is needed with regard to complex projects. In the legislation of Mozambique, for example, there is a possibility for the reviewing agency to use independent experts for the review of complex projects. For certain mining projects very specific expertise is needed. External independent experts can provide this expertise.

Recommendation: introduce possibility for Agency to hire independent experts for complex projects.

- Monitoring/environmental audit is the part of the EIA procedure that checks whether all measures were adopted in the construction phase and whether the effects of the projects in reality are not more adverse than expected. The environmental audit in the regulation is restricted to so-called self-monitoring.

Recommendation: enhance the efficiency of the monitoring system by on the one hand introducing the obligation to notify the Agency of the start of the construction phase and on the other hand strengthening the possibilities of participative monitoring. Essential for participative monitoring is the publication of permits, its conditions and EIAs. Self-monitoring is dependent on the goodwill of the developer and is therefore never sufficient.

Process

- In the draft, participation is mentioned at various occasions. However, the articles on participation all vary in regard to the level of participation, the stakeholders concerned and the formulation. Moreover, there is no obligation to report how the results of the participation process are taken into account.

Recommendation: introduce a uniform formulation on participation and insert the obligation to take into account the results of participation. A separate session on participation could help distinguish different forms of participation and identify the need to publish information, in order to introduce a uniform formulation on participation.

5.2 Detailed observations

In the next paragraphs the remarks are clustered per subject and related to the articles of the current draft.

5.2.1 General remarks

- The legal basis to regulate aspects on the level of the Regulation provided for by the 2011 Act is too broad. The Act itself gives only limited guidance to what the system should look like.
- The Regulation is relatively long and very elaborated. The NCEA recommends to shift much information that is now in the Regulation to the Guidelines. Example: art. 22(5) and 23(1). Moreover, many articles can be slided into each other. Example: art. 30(2) and 30(3). And some articles can easily be deleted. Examples: art. 26 is void because no one can check when exactly the decision was made. Art. 27 seems unnecessary: why wouldn't a developer apply for required licenses? If he does not want to continue the project after approval, he formally is in violation of this article. Article 29(4) deals with internal affairs of the Agency and should not appear in a regulation such as this one.
The NCEA could help reduce the number of articles considerably. However, such an operation requires a separate session to go through the draft article by article.
- Guidelines should not be part of a Regulation (see art. 12(7) and the Sixth Schedule). Guidelines have a different legal status than Regulations.
- Schedules should be better tuned to the main text of the Regulation. There seems to be much overlap in the different schedules, with some differences (f.ex. different

content requirements, criteria to consider, formats and guidelines that are not in line with each other). In a separate session these different schedules can be looked at in order to resolve these inconsistencies.

- Terminology is sometimes inconsistent, f.ex. evaluation versus screening, and EIA versus ESIA. The NCEA recommends to consistently use screening and ESIA.
- Art. 4(3): this is the most important article of the regulation. It deserves more attention than as third paragraph of an article. The NCEA recommends to introduce this paragraph as separate article after the article for definitions. It will then provide a framework to read the rest of the Regulation.
- The Regulation seems to be rather bureaucratic: many fees and competences for the Agency. Are all these fees really necessary? This huge number of competences, is that even feasible for the Agency? If the workload becomes too large, the system can fail. Moreover, too many competences in one organization makes it very sensitive to corruption.
- Definitions: does environmental assessment encompass both EIA and EPB? This is not made explicit. Does this mean that EIA and EPB only differ in the (number of) content requirements and the scoping phase?

5.2.2 Screening

There is not a clear and simple screening procedure that enables a developer to swiftly identify whether an EIA is required. In other countries the legislation might be less elaborate but it is much easier to determine whether an EIA is required. In a separate session these examples can be looked at.

- Art. 3 declares that all Zambian projects need to be submitted to the Agency. This will create a huge workload and makes the Agency sensitive for corruption. The NCEA recommends to limit the submission to the most damaging projects. It is therefore necessary to at least mention at the level of art. 3 that it is about significant adverse effects and insert a link to the Second Schedule. In this respect, a requirement for EIA or EPB should not exist for 'any alterations or extensions' (see art. 6(1b) and 10(1b)). Nor should there be a possibility to require EIA for projects that are not on the list (see art. 6(1c) and 10 (1c)).
- Art. 4(2a): is there a specific procedure for this authorisation? Is there a specific time-frame?
- The screening procedure should be as simple as possible. To this end most EIA systems distinguish between three categories of projects:
 1. projects that need not do EIA
 2. projects that need a prior assessment to determine whether there is a need to do EIA. A list of criteria is needed to facilitate this assessment (see annex to this memo for an example)
 3. projects that need to do EIA

In some countries there is an extra category of projects: those that need only do a light version of an EIA. The Zambian system is much more complex. First of all it lacks the first category. Each project in Zambia might need to do EIA. This is fully at the discretion of the Agency, without any list of criteria that limits this discretionary competence. This system creates legal uncertainty: a developer cannot know beforehand whether it is likely that the project needs an EIA. The NCEA recommends

to introduce a category of projects that need not do EIA: if it does not appear on one of the list, there is no need to EIA.

The second category does not exist either. Although the current EPB instrument seems to be prior assessment that in the end can require EIA. However, the requirements (procedural as well as substantial) of an EPB are much more severe than needed for such a prior assessment. The NCEA recommends to introduce this second category. With the form in the Seventh Schedule there should be enough information to do this prior assessment. The example of a list of criteria, in the Annex of this memo, should be part of this assessment.

Lastly, the EPB could be reformed as an EIA light. It should be clear which parts of the EIA procedure and content requirements are not obligatory for an EPB. In the current draft the content requirements for EPB and EIA seem alike and different at the same time. What are the exact advantages of an EPB? Isn't this instrument too extensive for craft workshops? Moreover, if an EPB is required, it should be impossible to require an EIA as well (see art. 9(7)). The EPB procedure is time-consuming. It seems a waste of time if afterwards an EIA should also be done. The NCEA recommends to delete this 'upgrade of EPB to EIA'.

- The terms 'project proposal' and 'project brief' are confusing. In most EIA systems 'project proposal' is used for proposed projects. Project brief is used for a form that contains a short description of a proposed project. The NCEA recommends to use these more common terms.
- Art. 4(2c): Why should the Agency impose conditions on the projects if it has been decided that the project has no significant effects?
- The classification of projects is unclear. There are five classes, of which 1–4 all should do EIA and only 5 needs to do EPB. Apparently, the only reason for the distinction 1–4 is the applicable fee. The NCEA therefore recommends to mention that distinction in classes only in the Schedule with regard to the applicable fee. In the current Regulation the class distinction seems to entail much more.

5.2.3 Scoping

Scoping is an important phase in the EIA procedure. It improves the quality of EIA reports, because it provides guidelines for the preparation of the EIA report. Therefore the NCEA recommends to stress its importance by creating a separate part in the draft with articles on scoping. Furthermore, it should be explicit that the Terms of reference are the framework for the preparation and review of the EIA.

- The scoping report does not receive much attention. Art. 11 does not explain what should be the content of Terms of reference (other than art. 11(7)) or a scoping report.
- The definition of Terms of reference is directed to the procedure of EIA, not to the report itself. In the text of the regulation however the term is used for the (draft) report.
- The Agency only has seven days to determine whether the draft terms of reference are acceptable (art. 11(5)). This seems a rather short period of time. The procedure that follows is rather unclear. For the approval of the final terms of reference there is no time-frame. Is it not less time-consuming for the Agency to indicate what should

be in the terms of reference instead of providing guidance? It could be in the form of an advice that is made public.

- The Terms of reference should be used as a framework both for the preparation (art. 12(7) states that experts conduct EIAs in accordance with guidelines, but fail to mention in accordance with Terms of reference as well) and the review of the EIA (the Terms of reference are not included in art. 24(1)).

5.2.4 Relation to decision

- According to the Regulation the decision letter deals with project approval (see definition of decision letter). Art. 29(4) of the Act seems to be more narrow: the approval only relates to the acceptability of adverse effects of a project. There are other (sectoral) licenses needed for the project (see art. 27). This could be made more explicit, that the decision letter is not a project approval. In art. 9 on EPB this is already more explicit.
- Art. 25 implies that the review results in project approval by a decision letter. From discussions with ZEMA we learnt that the decision letter is not a political decision, but purely technical. The decision of the minister on an appeal against the decision letter is however seen as a political decision. The Regulation does not explicitly distinguish between these two types of decisions. The NCEA recommends to make a clear distinction between technical and political decisions. Furthermore, the decision in appeal should be of the same type as the one that was attacked. Otherwise, the system invites everyone to appeal the technical decision: the assessment framework of a political decision is completely different from a technical decision.
- There seems to be no direct relation between the EMP and the decision letter. This should be reconsidered: how can the EMP be enforced if it is not attached to a license or permit? Art. 30(4) seems to imply that the EMP is approved at one point. The NCEA recommends to attach the EMP to the decision letter and publish it on the website of the Agency. This will enable participative monitoring.

5.2.5 Review

- The draft seems to suggest that a decision letter can only be issued if a project has no adverse social or environmental effects whatsoever. The Act seems to imply that all effects should be mitigated. This will in reality however never be the case: each project has at least some effects that cannot be mitigated fully. The NCEA recommends to stress that a decision letter can only be issued if the project only has acceptable social and environmental effects.
- Sometimes very specific expertise is needed with regard to complex projects, f.ex. mining projects. In the legislation of Mozambique there is a possibility for the reviewing agency to use independent experts for the review of complex projects. The NCEA recommends to introduce this possibility for Agency to hire independent experts for complex projects.
- The review process seems to distinguish two phases: one review of the draft report (20 days, art. 16(2) and one of the final report (art. 16(3)). It is not clear why two phases are required. To enhance the efficiency of the review procedure the NCEA recommends to

only have one review procedure. If the EIA statement lacks information, there should be a possibility to send it back while explaining which additional information is required.

- What is meant by 'specialist reports' in art. 16(2)?
- Art. 24 explicitly states which documents are taken into account in the review process by the Agency. Why doesn't the Agency take into account the complete EIA statement, but only impact prediction and mitigation measures (see art. 24(1 a))? The NCEA recommends to take into account not only the entire EIA statement, but also the approved Terms of reference for this project. Furthermore the NCEA recommends to delete art. 24(1 d).

5.2.6 Participation

The draft contains provisions on participation but they are not uniform and do not require any justification of the way in which the results of participation were taken into account.

- Art. 7(3): on what document are the interested people consulted? The NCEA recommends to make more explicit what where the results of the consultation and how they were taken into account (instead of 'append evidence of the consultations').
- Art. 11(2): in what way is this consultation different from the one in art. 7(3)? Does 'public' encompass all the organisations in art. 11(2). Why not use the same formulation? On what information are these organisations consulted?
- Art. 13 is another article on participation with a different content. The article however does not make explicit to report the results of the consultation and justify how the results were taken into account. How much time does the public have to submit opinions on the project and its effects?
- Art. 18 also deals with participation, in the review phase. Paragraph 3 states that comments should be made within ten days from the last publication. This is too short. Normally, comments can be made within a month or even six weeks. Art. 24(1 a) states that comments should be taken into account, but there is no obligation to justify how they were taken into account.
- There are provisions on the need to publish relevant documents (see f.ex. art. 13(2a). Especially part VI deals with access to information. However, a document is not public if there is a fee to access the information. The NCEA recommends that all relevant documents such as project proposals, terms of reference, EIAs, and also decisions of the Agency should be made and kept public by the Agency itself. Art. 28 does not mention the NCEA decisions on the Terms of reference and the decision letter. The same goes for art. 46 that states that a register is kept of EIAs: a register of decisions of the Agency should be kept as well. The NCEA recommends that the Agency publish all these documents on its website in order to enable stakeholders and the public to participate in the EIA procedure, including the monitoring phase. With regard to the protection of personal information: public comments should be anonymised.
- What is the difference between a public meeting (art. 18(2)) and a public hearing (art. 21)? The public hearing seems to have much more procedural guarantees. However, the public hearing, mentioned in art. 21, is dependent on a decision by the Agency. The criteria in that article are rather vague. The NCEA recommends to explicitly regulate for which types of projects a public hearing is obligatory. Such a regulation avoids political pressure on the Agency not to hold a public hearing. Moreover, it provides legal certainty to all parties concerned.

5.2.7 Monitoring

- The environmental audit mentioned in article 30 is limited to self-monitoring. This type of monitoring is dependent on the goodwill of the developer. Article 30(3) requires the experts that carry out the audit to be independent from those who prepared the EIA statement. However, these experts are never independent from the developer itself, because of the payment relationship between developer and expert.
- How will the Agency be aware of the fact that an environmental audit has taken place? There is no obligation to submit a report to the Agency. There is not even an obligation to inform the Agency of the start of the construction of the project. The NCEA recommends to strengthen the audit/monitoring procedure. First of all, the EMP should be a public document. Secondly, information on the construction should be submitted to the Agency and. Lastly, if there is a system of self-monitoring, all information on the audit should be reported to the Agency.

5.2.8 Other remarks

- Fees schedule is very brief without any explanation on the amount of the fees.
- Art. 3(2) mentions a fee. Which fee: special fee for screening or application? This should be made more explicit.
- Art. 4(2b): This article suggests that there can be an EMP without an EIA. In what cases?
- Art. 9(6): This article is rather difficult to read: it seems rather strange to state that the Agency may not do something.
- Art. 12 introduces a system of certified experts. We learnt from discussions with ZEMA that certification is meant to increase the quality of EIA reports. The NCEA would like to point out that certification has some disadvantages and that there are other options to increase the quality of the reports.
- Art. 12(2): the NCEA recommends to make more specific what is meant by 'independent of the project'. Does this mean that the expert should have no personal or business relation to the project? Can the firm for which he or she works have any relations? Art. 12(3): how can an expert be independent if he or she works for the developer? Even though an expert is not from an internal department of the developer, there is still a payment relationship when an expert is hired. Does this mean that an expert can never be independent? Art. 12(5): it should be made clear on which grounds an expert can be rejected for working on an EIA. Is it only with regard to independency to the project?
- Art. 19 deals with transboundary effects on a neighbouring state. Is this state treated like any other stakeholder? The NCEA recommends special treatment for the neighbouring state by upscaling the procedure to a political level in case of comments.
- If the decision letter expires, a new procedure should be started. Article 32 provides an extra procedure for letters that have expired. This procedure is sensitive to corruption, not transparent and without any participation. The NCEA recommends to delete this procedure.

- Why should there be a procedure to transfer decision letters (art. 34)? Is transfer needed after the project is executed? Or only for the (at most) three year period that the letter is valid and construction has not started yet?
- How can a new firm be registered as a firm of environmental experts? According to art. 36(6) the firm needs a track record. It seems impossible for new firms to fulfil this requirement.
- The part of the regulation concerning a register of experts should start with art. 38 that states that the Agency maintains a register.
- Art. 39(c) requires an expert in the register to be independent. Independent of what or whom?
- Shouldn't art. 41(1) also be applicable to employees of appropriate authorities? Instead of article 41(2)?

5.2.9 Inspiration for selection criteria: Annex III of the EU EIA directive

1. CHARACTERISTICS OF PROJECTS

The characteristics of projects must be considered having regard, in particular, to:

- (a) the size of the project;
- (b) the cumulation with other projects;
- (c) the use of natural resources;
- (d) the production of waste;
- (e) pollution and nuisances;
- (f) the risk of accidents, having regard in particular to substances or technologies used.

2. LOCATION OF PROJECTS

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to:

- (a) the existing land use;
- (b) the relative abundance, quality and regenerative capacity of natural resources in the area;
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under Member States' legislation; special protection areas designated by Member States pursuant to Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds [\(1\)](#) and to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [\(2\)](#);
 - (vi) areas in which the environmental quality standards laid down in Union legislation have already been exceeded;
 - (vii) densely populated areas;
 - (viii) landscapes of historical, cultural or archaeological significance.

3. CHARACTERISTICS OF THE POTENTIAL IMPACT

The potential significant effects of projects must be considered in relation to criteria set out in points 1 and 2, and having regard in particular to:

- (a) the extent of the impact (geographical area and size of the affected population);
- (b) the transfrontier nature of the impact;
- (c) the magnitude and complexity of the impact;
- (d) the probability of the impact;
- (e) the duration, frequency and reversibility of the impact.

Annex 1: Programme of the Visit – outline

Monday 15 May 2017: arrival and planning meeting with WWF Zambia

- Getting to know each other
- Planning of the week

Tuesday 16 May 2017: EA assessment meetings with ZEMA

- Welcome by ZEMA Director of the Board
- Getting to know each other
- Current status of ESIA regulation
- Technical meeting on ESIA System functioning

Wednesday 17 May 2017: ZEMA stakeholder workshop

- Professional exchange on ESIA in Zambia
- Getting to know each other
- Current status of ESIA regulation
- Joint assessment of ESIA System functioning

Thursday 18 May 2017: analysis & planning meeting with ZEMA

- On the basis of the results of the previous two days' work: priority setting & development of next steps
- Free space: time to discuss emerging issues

Friday 19 May 2017: ESIA assessment workshop with WWF & Partners

- Getting to know each other
- ESIA System functioning
- Feedback on work with ZEMA
- Working processes
- Actors, roles and capacities/ CSO needs assessment
- Free space: time to discuss emerging issues

(see more details on next page)

Saturday 20 May 2017: analysis & planning meeting with WWF & ZGF

- Priority setting & development of next steps
- Free space: time to discuss emerging issues

Programme ESIA assessment workshop with WWF & CSO Partners

Day → Time ↓	Friday 19 May
8:30–9:00	Getting to know each other Introduction of participants, WWF, and NCEA – short introduction on SRJS and ESIA in Zambia (by WWF) – short introduction of NCEA
9:00 – 10:30	ESIA system functioning – Quick round of experiences with the ESIA system in Zambia – What does a functioning ESIA system look like? – How does the system perform in Zambia? – What are important gaps according to the experiences?
10:30 – 11:00	Break
11:00 – 12:30	Working processes – How does the NCEA deal with review? What are the steps involved? – Exchange on how to best approach review & inputs to review by external stakeholders
12:30 – 13:30	Lunch break
13:30 – 15:00	Actors, roles and capacities / CSO needs assessment – identification of actors in the system, their roles and gaps in capacities – specific role of CSOs in the ESIA system – capacity needs assessment
15:00 – 15:30	Break
15:30 – 17:00	Free space Time to discuss emerging issues

Annex 2: Lists of Participants

ZEMA multi-stakeholder workshop

- to be provided by ZEMA

WWF-CSO workshop

- to be provided by WWF Zambia

Annex 3: System functioning

Analysis of system functions by ZEMA & stakeholders

Derived from sessions at ZEMA and the stakeholder workshop

Function	Things that go well	Things that should be strengthened	Discussion & conclusions	Other remarks (cross cutting)
1. Regulatory framework	<ul style="list-style-type: none"> Reasonably good framework in place Guidance exists 	<ul style="list-style-type: none"> Consultation framework Limited access to documents Low compliance & enforcement ESIA formulation ESIA review 	<ul style="list-style-type: none"> Strengthening needed but compared to other countries, rather elaborate 	<p>Society becomes more complex, the economy is growing, so ESIA also becomes more complex Though relatively strong, nevertheless priority for strengthening as it will influence all other functions</p>
2. Awareness & Commitment	<ul style="list-style-type: none"> ZEMA has established four offices and more to come Website & other communication efforts (Social media, toll free line There is some good media interest, but... 	<ul style="list-style-type: none"> Very low levels of awareness Low environmental literacy Mixed political & administrative will/signals Mixed levels of interest Sustainability not taken seriously Low budget Media not well informed, mostly generalists 	<ul style="list-style-type: none"> Low budget allocation applies across the system (ZEMA, CSOs, etc) More public awareness and engagement is needed, also across government Honorary environmental inspectors could play a role 	<p>The physical presence of ZEMA needs to increase <u>ZEMA can only so much!</u> <u>NGO's can assist ZEMA, especially with functions 2, 5 and 6</u> Different actors have a role! ZEMA cannot do it alone</p>
3. Education & Professional training	<ul style="list-style-type: none"> Basic education is available: EIA is included in general environmental & engineering courses 	<ul style="list-style-type: none"> There is no dedicated, specific education on ESIA/SEA At lower level institutions, it is even worse No professional training available 	<ul style="list-style-type: none"> Dedicated ESIA courses should be introduced ESIA should be incorporated as of primary school Curricula should be analysed 	<p>Issue is conflict of interests within ESIA development and review. Especially experts in public projects who may also be government official involved in review. People should be training in not playing double roles.</p>

		<ul style="list-style-type: none"> • Little training on the job (task related) 	<ul style="list-style-type: none"> • Review should be included • Task-related training should get more emphasis
4. Helpdesk	<ul style="list-style-type: none"> • ZEMA helpdesk exists • ZEMA advises when approached 	<ul style="list-style-type: none"> • Helpdesk not widely known • Accessibility concern • Concerns on efficiency • Should be reorganised because disturbs reviewers in work 	<ul style="list-style-type: none"> • Should be included in awareness campaigns • Perhaps have on-duty officer so that others can focus on review work? • Have more offices
5. Monitoring & Implementation	<ul style="list-style-type: none"> • Monitoring framework exists • Compliance monitoring is done • Environmental audits are done • Bi-annual returns 	<ul style="list-style-type: none"> • Limited resources for implementation • Little stakeholder participation • Need to improve monitoring • Need to improve implementation of conditions 	<ul style="list-style-type: none"> • Monitoring at commencement & throughout the activity • Whistle blowing mechanism? • Awareness! • More funding and man power • Find external capacity • Honorary env officers?
6. Professional exchange	<ul style="list-style-type: none"> • National association for impact assessment (IAAZ) exists • IAAZ is recognised by ZEMA and others • Collaboration exists 	<ul style="list-style-type: none"> • In recent years, few professional exchange activities have been organised • Other stakeholders present do not know IAAZ and are not member 	<ul style="list-style-type: none"> • More opportunities, like today's meeting, should be organised to jointly critically follow the ESIA system

	<p>In this context, the challenges related to the lack of an automated ESIA Cases Management system were also discussed. Such a system would greatly enhance access to information and also management of workload by ZEMA.</p>
	<p>There should be an 'alert function' in case of spills and other observations Including commencement of the activity, as ZEMA is often unaware of its start</p>
	<p>IAAZ was founded in 2009 and has over 150 members (with diverse background: government, NGOs, consultants. Also institutions). IAAZ has a MoU with ZEMA and is member of IAIA There is a link to IAAZ on the ZEMA website Issue is ethics for ESIA professionals, should be developed A register could help, could be hosted by IAAZ?</p>