Kenya

EIA profile

Updated to: 25 February 2015

Overview ESIA procedure

1. The key elements in the EIA process include:

    1) Screening: Development and submission of a Project Report

2. Scoping: drawing-up of Terms of Reference (TOR) for the study

3. Assessment: Gathering of baseline information through investigation/ research

4. Review of EIA Study Report by the Authority and relevant lead agencies

5. Decision on EIA Study Report leading to a decision on the issuance on the EIA licence

6. Monitoring and Auditing of the project

The following documents are essential outcomes of the EIA process: Project Report (Screening), Terms of Reference (Scoping), EIA report, EIA licence, Environmental Audit Reports, Monitoring Reports.

Screening

Screening process

The second schedule of the EMCA comprises of a list of projects to undergo EIA. If a project is on the list, the proponent is required to submit an initial project assessment report (prepared by a registered EIA expert) that contains an initial assessment of environmental effects. Use of checklists, matrices, threshold limits and overlays in preparing an Initial Environmental Assessment are suggested in the EIA guidelines, but no specific details are given.

On the website of NEMA a screening list of projects is provided.

NEMA decides, on the basis of the initial environmental assessment, if a full EIA is required.

Sensitive areas

There are provisions under the EMCA for protection of sensitive areas. Projects that have an effect on sensitive areas must undergo a full EIA.

Contents of the starting document

The EIA regulations stipulate that the initial project assessment report should contain information on:

i) the nature of the project;

ii) the location of the project;

iii) activities of the project during construction, operation and decommissioning phases;

iv) the design of the projects;

v) the materials to be used, products and by-products, including waste generated and the methods of their disposal;

vi) impacts and mitigation measures;

vii) an action plan for the prevention and management of possible accidents during the projects cycle;

viii) a plan to ensure the health and safety of the workers and neighbouring communities;

ix) the economic and socio-cultural impacts to the local community and the nation in general?

x) the projects budget; and

xi) any other information that NEMA may require.

Timeline Screening

NEMA has 45 days to decide whether a full EIA is necessary or whether the project can be licensed on the bais of the initial assessment (the timeline can be varied by NEMA depending on the time needed to solve contentious issues).

Scoping

Scoping process

Once it has been decided that a full EIA is needed, scoping is a mandatory step with specified requirements. The proponent is responsible for scoping (registered experts may prepare the EIA report on behalf of the proponent).

The main part of the scoping exercise is the development of the Terms of Reference (ToR) by the proponent, in consultation with the lead agencies and NEMA. The EIA guidelines suggest the development of a communication plan and continual consultation especially with the potentially affected persons. NEMA , in consultation with the lead agencies, approves the ToR.

Contents of the scoping document

The final result of scoping process is the Terms of References for the EIA. These have to be formally approved. The EIA guideline stipulates that the ToR is meant to focus on key issues of concern identified during the scoping exercise, including, but not limited to:

i) Impacts on flora, fauna, soils, air and water;

ii) Legislation and institutional framework relation;

iii) Proposed activities;

iv) Proposed (possible) mitigation measures;

v) Proposed Environmental Management Plan;

vi) Details of experts to do the proposed EIA Study and study schedules;

vii) Details of the total project implementation costs;

viii) Modalities for environmental Audit and Monitoring;

ix) Identification of sources of baseline information and information gaps.

Timeline scoping

Not specified

Assessment

Assessment process

The main steps for the EIA study, as outlined in the EIA regulations and the EIA guidelines, are:

1. Assembling of the team of experts;
2. Examining the ToRs for each expert (assigning responsibilities to each member of the team, specifying who the lead expert responsible for the study is, agreeing on time schedules);
3. Plan field work including consultations and public participation (collection of baseline data and information, awareness creation, generation of primary data, ecological, socio-cultural and economic surveys, designing of EMP to implement the mitigation measures and involving all the affected persons);
4. Report writing.

For the impact assessment, environmental effects as well as social and cultural effects are considered.

Contents of the EIA report

Required contents include a description of:

1. location
2. legislative and baseline information reference
3. objectives
4. technology, procedure & process to be used
5. materials for project construction and implementation
6. products, by-products and waste to be generated
7. description of potentially affected environmental effects
8. alternatives
9. Environmental Management Plan
10. action plan for prevention and management of foreseeable accidents and hazardous activities
11. knowledge gaps
12. economic and social analysis and

13.a non-technical summary.

Accreditation of consultants

Local and foreign EIA individuals and firms wishing to undertake EIA activities in Kenya must register with NEMA, and incur payment of a prescribed fee. A set of qualifications is required for lead and associate experts. The requirements relate to academic level (Doctorate/ Masters/ Bachelors) and education (has to including EIA training from a recognised institution) as well as practical experience (between 3-8 years). To register as a firm of experts, it is a requirement to be registered under the laws of Kenya and submit to NEMA a firm profile indicating capacity to undertake EIA/audit studies.

Review

Review process

The proponent submits the EIA report to NEMA, who forwards it to the relevant Agencies. These Lead Agencies review the report against the ToR and relay their comments to NEMA. NEMA, at the expense of the proponent, provides the report to the public and invites them to submit comments. If there are outstanding issues after the review of the comments received (both written and oral), NEMA may decide to hold a public hearing. Depending on the case, a Technical Advisory Committee may be established to advise NEMA on the quality and content of the EIA report.

Review expertise

Expert input in the review is organised through the involvement of the Technical Advisory Committee that consists of not less than 5 multi-disciplinary specialists. Anyone who wishes to review the EIA report can apply to NEMA to inspect the EIA report.

Timeline Review

NEMA is required, within 14 days of receiving the EIA report, to invite the lead agents and the public to give comments. Within 3 months of receiving the EIA report, NEMA has to take a decision on the report.

Decision making

Integration of ESIA into decision-making

The approval of the EIA report leads to a decision on the issuing of an environmental impact assment licence. Whether a licence is granted or not is based on the following criteria:

- Validity of environmental impact study report

- Comments made by affected parties

- Public hearing report

- any other information the NEMA may require

Such a licence is required before other licences (trading, commercial or development) can be issued. EIA

approval and project approval are thus two separate decisions taken by different competent authorities.

NEMA takes the decision on the environmental impact study report approval as well as on the issuing of the environmental impact assessment licence.

Terms and conditions are formulated for the environmental impact assessment licence.

Decision justification

NEMA's decision and the reasons are communicated in writing to the proponent. Besides the validity of the EIA report, the EIA regulations state that NEMA should take into consideration the comments made by the lead agency and other interested parties, the report of the presiding officer compiled during public hearing, and other factors which the NEMA considers crucial in the implementation of the project.

The decision of NEMA is communicated to the proponent within fourteen days from the date of the decision. A copy of the decision is made available for inspection at NEMA's offices, and can be viewing by anyone who wishes to do so, upon payment of a prescribed fee.

Timeline decision-making

Within 90 days of receiving the EIA report.

Possibilities for appeal

There are legal recourse options. The Public Complaints Committee is an autonomous environmental ombudsman that receives and investigates complaints against NEMA or any person, in relation to the environment including on EIA. The National Environmental Tribunal arbitrates over contentious matters. While the High Court is the final referee that may review and possibly overturn decisions by the Tribunal.

Any matter relating to the EMCA for which decisions have been made can be appealed against as long as the appeal falls within the period provided. Even decisions made by National Environmental Tribunal can be appealed against in the High Court.

Any person/ institution has the right to appeal on any matter relating to the EMCA.

Follow-up

Compliance monitoring

Monitoring and auditing are a mandatory requirement under the EMCA for all activities that are likely to have significant environmental consequences.

The proponent is required do self audits of a project for which an EIA study report has been made, keep accurate records and make annual audit reports to NEMA describing to what degree the project conforms with the EIA study report. The proponent is also required to take all responsible measures to mitigate any undesirable effects not contemplated in the EIA study report and keep records of the same. Self audits can be carried out by external auditors commissioned by the proponent as long as the auditors are registered with NEMA.

NEMA can decide to carry out a control audit and may carry out inspections from time to time.

Non-compliance penalties

NEMA can suspend or require an update of an EIA license at any time after issuing it. This can occur if:

- there is a substantial change or modification in the project or in the manner in which the project is being operated;
- the project poses environmental threat which could not be reasonably foreseen at the time of the study, evaluation or review; or
- it is established that the information or data given by the proponent in support of his application for an EIA license is false, inaccurate or intended to mislead.

Stakeholder engagement

Public participation requirements for ESIA process stages

There are provisions for public participation in the EMCA and in the EIA and audit regulations. The EIA guidelines state that public participation should be a part of the screening, scoping and review of EIA report. The proponent is responsible for collecting the views of the public during these stages. Additionally, the EMCA requires public participation in the review of the EIA report.

During the screening phase, the possibly affected people have to be informed about the project and consulted for their concerns. The views of the public shall then be incorporated into the project report used for screening.

According to the EIA guidelines, public consultation in the scoping phase can involve the following methods:

- Securing written submissions by Lead Agencies and the public
- Public opinion
- Community meetings and public hearings
- Preliminary field studies/site visits
- Workshops/seminars
- Establishing inter-sector task forces

During the review process, the EIA report is made available to the public. To a minimum, the public has to be able to submit written reactions to the EIA, but a public hearing may be held if NEMA deems this necessary. The outcomes of the public hearing are recorded by a qualified person and are submitted for consideration in the final decision. A member of the public can, after showing reasonable cause in writing, petition NEMA to carry out an EIA audit.

To inspect the register of EIA licenses issued, any person wishing to do so requires to pay a prescribed fee of Ksh 200 per register (approx USD2).

Comments can be made in writing by any member of the public. In a public hearing, oral and written comments are recorded by a NEMA presiding officer for further transmission and consideration in the final decision.

Evidence of public involvement during the EIA study has to be included in the EIA study report and consideration of comments made by the public is required before decision is made.

There are no specific manuals for public participation, but the EIA guidelines provide some guidance on consultation and public participation.

Timeline for public comments

90 days

Access to information

The public can access and assess information registers at NEMA upon application. Such information may include:

i) Project report;

ii) EIA study report;

iii) Environmental Monitoring Report;

iv) Record of Decision for EIA approval;

v) Licenses for project report;

vi) Licenses for EIA;

vii) Data base for EIA firms and experts.

Information is disseminated through Kenya Gazette notice, local newspaper, internet (limited) and local radio stations (both in local and national languages). It is the responsibility of the proponent to ensure effective distribution of the EIA study report information to the affected persons to avoid unnecessary delays in decision-making and project implementation.

ESIA practice

Annual no. of ESIAs

Estimated at 1000 per year.

Central ESIA database

NEMA maintains a register of all EIA licenses, reports, audit studies and monitoring reports.

Professional bodies

Kenya Institute of Environmental Assessment (KIEA): Established in March 2005 and objectives include promotion of best practices and ethical standards in environmental management, auditing and assessment, as well as improving the members knowledge and skills and enhancing the members? professional capacity. KIEA also raises awareness and provide training on the EIA/Audit process amongst stakeholders.

Eastern Africa Association of Impact Assessment: EAAIA was formed to enable the Eastern Africa region to establish a well-managed database that acts as: a source of EA information, a mechanism for exchange and sharing of knowledge, information and experience on EA policies and practice; support maximization on the use of available resources in the region. Kenya is a member.

East African Network for Environmental Compliance and Enforcement (EANECE): Regional network of governmental agencies which have in their mandate environmental management, compliance and

enforcement responsibilities in the East African nations of Kenya, Uganda, Tanzania, Rwanda and Burundi.

Background information

History of ESIA

In the late 1970?s, the Kenyan government committed to improving environmental impact assessments . By then, the National Environment Secretariat (NES) in Kenya already viewed environmental impact assessment as a key tool for meeting its environmental protection objectives, but there was a lack of proper legal basis for EIA and NES was ineffective in enforcing the practice of EIA. This prompted the formation of Inter-Ministerial Committee on the Environment (IMCE). The IMCE provided NES with the ability to co-opt Committee members and use the legislative mandates of those members to require EIA application for industrial projects. In the 1990s, this approach was still considered insufficiently effective and EIA was given legal status and more recognition by incorporation into the Environmental Management and Coordination Act (EMCA). This Act became effective on 14th January 2000. Subsequent to the Act, Environmental Impact Assessment and Audit Regulations (EIAAR, 2002) and Environmental Impact Assessment Guidelines and Administrative Procedures (EIAGAP, 2003) were formulated to guide the EIA process.

Legal framework

Enabling law

The Environmental Management and Co-ordination Act (1999)

source

- Environmental regulations and laws on the NEMA website.

National detailed regulation

The Environmental (Impact Assessment and Audit) Regulations, 2003. They have been amended in 2007 and in 2009.

Guidelines

- The Environment Impact Assessment guidelines and administrative procedures (2003) outline the EIA process and contents requirements of the EIA report.
- Environmental Impact Assessment (EIA) Guidelines for Tourism Sector in Kenya were finalized in 2007.

Sector specific procedures or regulations

The Water management regulations specifically refer to the EIA requirement for activities likely to have any adverse impacts on water quality or quantity.

Scope of application

All activities (public, private, national and international) specified in the Second Schedule of EMCA 1999 require EIA.

Exemptions from application

There are no specific grounds for EIA exemptions.

Institutional setting

Central ESIA authority

NEMA is the central EIA authority. It operates under the National Environmental Council, which falls under the Ministry of Environment. The law provides for consultation on EIA with lead agencies, District and Provincial Environment Committees on EIA matters. Depending on the project, NEMA may form a Technical Advisory Committee (TAC) with a specific mandate to give advice on a particular project.

Other key (governmental) parties

- *Lead Agencies:* These may be a government ministry, department, parastatal (a fully or partially state-owned government agency), state corporation or local authority responsible for control or management of any element of the environment or natural resource. They may be requested by NEMA to comment on the application document and the EIA report.
- *Provincial Environment Committees (PEC) and District Environment Committees (DEC):* Local level committees consulted during decision-making.
- *The Standard Enforcement Review Committee:* This committee advises competent authority on standards of water quality, air quality, emissions of noise, pollution and radiation. The committee in consultation with NEMA vets expert (s) for EIA practice. It may advise NEMA to revoke, suspend or cancel a license where the licensee contravenes the provisions of the license.
- *National Environmental Tribunal:* Comprised of a judge, an advocate of the high court, an environmental lawyer and two academics and functions to hear disputes of a technical nature on the administration of the EMCA as well as appeals against the administrative decision taken by NEMA and other organisations responsible for enforcement of the EMCA and the regulations issued under the EMCA.
- *High Court:* Is the highest appeal authority that receives, analyse, approves or disapproves appeals on decisions made by the National Environmental Tribunal.

(De)centralisation of mandates

Decision making is centralised. NEMA decides on all EIAs centrally, but has to consult with Provincial and District level Committees for decision-making on EIA (to be confirmed with NEMA).

Payment system

The proponent pays a set fee of 0.1% of the project cost to NEMA or the appointed agent in the District where the project is to be undertaken, for processing of the EIA.

Contact

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