

Role of EMCA 1999 in Environment Management in Kenya

It guides the co-ordination of environmental planning

It guides co-ordination at various levels which are responsible for the preparation of the action plans which contain an analysis of the natural resources with an indication of change in their distribution and quantity over time, analytical profile of various uses and value of the natural resources and also recommend appropriate legal and fiscal incentives that may be used to encourage the business community to incorporate environmental requirements into their planning for national development, methods of building national awareness through environmental education.

The Act also sets out operational guidelines for the planning and management of the environment and natural resources. This also assists in the preparation of environmental action plans which cut across the country; national to district environmental action plans. These plans are prepared by the national environment management authority through the district environmental officers.

It establishes committees that ensure ongoing projects have no negative impacts

These committees in consultation with the relevant lead agencies monitor all environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible impacts and also monitor the operation of any industry, project or activity with a view of determining its immediate and long-term effects on the environment. These committees include the public complaints committee where the public can air out their views concerning any project. The public is entitled to raise objections if the project is likely to affect them negatively.

Provides guidance for the formation of quality and standards committees that ensures cleaner production with respect to air, water, soil and biodiversity

The committee established is known as the Standards and Enforcement Review Committee which deals with the issues of water and air quality. Concerning water quality the committee gives advice on how to establish criteria and procedures for the measurement of water quality and recommends the minimum water quality standards for all the waters of Kenya and for different uses, including:-

drinking water; water for industrial purposes; water for agricultural purposes, water for recreational purposes; Water for fisheries and wildlife,

The committee analyze conditions for discharge of effluents into the environment, prepare guidelines or regulations for the preservation of fishing areas, aquatic areas, water sources and reservoirs and other areas where water may need special protection, Identify areas of research on the effects of water pollution on the environment, human beings flora and fauna;, Carry out investigations of actual or suspected water pollution including the collection of data; take steps or authorize any works to be carried out which appear to be necessary to prevent or abate water pollution from natural causes or from abandoned works or undertakings document the analytical methods by which water quality and pollution control standards can be determined and appoint laboratories for the analytical services required and collect, maintain and interpret data from industries and local authorities on the pre-treatment nature and levels of effluents;

The committee gives advice on how to establish criteria and procedures for the measurement of air quality.

EMCA provides guidelines for orders for restoration, conservation and environmental assessment

An environmental conservation order may be imposed on burdened land so as to:- Preserve flora and fauna; Preserve the quality and flow of water in a dam, lake, river or aquifer, Preserve any outstanding geological, physiological, ecological, archaeological, or historical features of the burdened land; Preserve scenic view; Preserve open space; Permit persons to walk in a defined path across the burdened land; Preserve the natural contours and features of the burdened land; Prevent or restrict the scope of any activity on the burdened land which has as its object the mining and working of minerals or aggregates; Prevents or restrict the scope of any agricultural activity on the burdened land; Create and maintain works on burdened land so as to limit or prevent harm to the environment; or Create or maintain migration corridors for wildlife. Through this conservation measures are undertaken by individuals.

Provides the ways for entering both regional and international agreements and treaties

These international treaties include:-

- The Nile Basin Agreement that concentrates on checking the volume of water drawn from Lake Victoria
- o The Rio Earth Summit
- o The millennium development goals

Kenya is signatory to various international and regional treaties and agreements which must always be respected and implemented. To this effect EMCA 1999 provides the required legal structures for entering into such commitments. The country participates in various conferences on climate change including the recent talks at Kasarani where various countries were represented.

EMCA provides powers to appoint environmental assessors and inspectors

The work of these assessors and inspectors is taking cases to a three man bench of judges in the Environmental Court which acts on the cases and pass judgments, giving fines where necessary. This also involves setting up a tribunal which Make such orders for the purposes of securing the attendance of any person at any place where the Tribunal is sitting, discovery or production of any document concerning a matter before the Tribunal or the investigation of any contravention of this Act as it deems necessary or expedient and take evidence on oath and may for that purpose administer oaths; or on its own motion summon and hear any person as witness

The environmental assessors work also involves the constant monitoring of activities deemed to have massive impacts on the environment. The case of Tiomin mining project in Kwale district was taken before a tribunal by the local community sometime back leading to delays in implementation of the first phase.

EMCA defines the offences related to the environment

The Act defines the various offences related to the environment and prescribes measures to be taken in case of contravention of the laid down regulations governing the environment. Offenders are entitled to appear in an environmental court and answer questions pertaining disregard for the environment. There are usually heavy penalties involved. It clearly stipulates that an offender maybe any person who hinders or obstructs an environmental inspector in the exercise of his duties, fails to comply with a lawful order or requirement made by an environmental inspector, refuses an

environmental inspector entry upon any land or into any premises, vessel or motor vehicle which he is empowered to enter, impersonates an environmental inspector, refuses an environmental inspector access to records or documents kept, fails to state or wrongly states his name or address to an environmental inspector in the course of his duties, misleads or gives wrongful information to an environmental inspector or fails to submit a project report among other offences.

A case in point is the Dagoretti slaughter houses which were closed and consequently the owner of the premise arrested. Actions of the slaughterhouse were deemed to be polluting the environment at a large scale leading to closure. The local community had witnessed heavy pollution taking place in the rivers due to channelization of waste into the water resources.

Stipulates guidelines concerning environmental impact assessment

Before a project is implemented, its potential impact should be assessed so as to determine positive or negative impact in order to take necessary precaution through;

- Formation of technical advisory committees on environmental impact assessment
- Application for an EIA license
- Further EIA
- Submission of fresh EIA report after license is issued
- Transfer of EIA license

Revocation, suspension or cancellation of EIA license is also stipulated Example may include the case of Dominion project at Yala swamp where there was a temporary suspension of EIA licence after a wide consultation. The local residents had their objections to the said project and as such this led to the suspension. The proponents did not also adhere to some regulations leading to the suspension, the Tana River development project where the various projects have received mixed reactions from both the environmentalist and the local residents thereby leading to their licenses being suspended. This was after the local community and various other stakeholders raised a red flag over the project. The project was deemed to have massive impacts on the environment.

The owner of the Kiambu building which collapsed sometime back did not adhere to the standards of EIA. It was established that the proponent did not conduct an EIA before undertaking the project.

Conclusion

The EMCA act has made great strides in the management of the environment. Through the various bodies set up by the act, there has been massive improvement in the way people perceive the environment. The act provides for improved legal and administration coordination of the diverse sectoral initiatives in order to improve national capacity of environmental management. However there are some setbacks with regard to the full implementation of the act. Political interference by powerful individuals has rendered the act almost impossible to fully implement. Proper mechanisms have also not been put in place to deal with various aspects as stipulated in the act. Lack of finances has also hampered the full implementation. In order to realize the effectiveness of this act, proper mechanisms should be put in place. The various bodies set up by this act should be given more authority to deal efficiently with environmental matters. (Kithika J, *susbizkenya.org*)

Environmental Impact Assessment (EIA)

Introduction to Environmental Impact assessment (EIA)

EIA involves description and quantification of impacts of given policy options. However, EIA does not require full information about costs and benefits; impacts are not expressed in monetary terms. The onus of decision-making is left with policy makers to weigh different impacts against each other. EIA is a very important aid to CBA.

Definition of EIA and its Importance

Environmental Impact Assessment (EIA) is a policy and management tool for both planning and decision-making. It is a systematic process that assists to identify predict and evaluate the foreseeable environmental consequences of proposed development projects, plans and policies. The process is applied prior to major decisions and commitments being done. The outcome of an EIA study assists the decision maker and the general public to determine whether a project

should be implemented and in what form. EIA involves description and quantification of impacts of given policy options. However, it does not require full information about costs and benefits; impacts are not expressed in monetary terms. The onus of decision-making is left with policy makers to weigh different impacts against each other. EIA is a very important aid to CBA.

EIA is not restricted to or biased to the examination and mitigation of negative impacts alone. EIA can also look into the possible positive issues due to the developmental projects and explore or suggest ways of enhancing them further by carrying out modifications in the project.

The purpose of EIA is to:

- Provide information for decision making on the environmental consequences of proposed actions; and
- Promote environmentally sound and sustainable development through the identification of appropriate enhancement and mitigation measures
- Reducing the burden of environmental impacts is necessary if development is to become sustainable. The role of EIA is formally recognized in Principle 17 of the Rio Declaration on Environment and Development:

“Environmental Impact Assessment as a national instrument shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority”

In practice, EIA is applied to prevent or minimize the adverse effects of major development proposals.

The immediate aim of EIA is to inform the process of decision-making by identifying the potentially significant environmental effects and risks of development proposals. The ultimate or long term aim of EIA is to promote sustainable development by ensuring that development proposals do not undermine critical resource and ecological function or the well being, lifestyle and livelihood of the communities and people who depend on them.

Immediate objectives of EIA:

- improve the environmental design of the proposal
- ensure that resources are used appropriately and efficiently;
- identify appropriate measures for mitigating the potential impacts of the proposal;

- facilitate informed decision making including setting the environmental terms and conditions for implementing the proposal

Long term objectives of EIA:

- protect human health and safety
- avoid irreversible changes and serious damage to the environment
- safeguard valued resources, natural areas and ecosystem components and
- enhance the social aspects of the proposal

The benefits of EIA can be direct, such as the improved design or location of a project, or indirect such as better quality EIA work or raised environmental awareness of the personnel involved in the project.

Specific benefits may include:

- Better environmental planning and design of a proposal- carrying out an EIA entails an analysis of alternatives in the design and location of projects. This can result in the selection of an improved technology which lowers waste outputs or an environmentally optimum location for a project. A well designed project can minimize risks and impacts on the environment and people and thereby avoid associated costs of remedial treatment or compensation for damage
- Ensuring compliance with environmental standards – compliance with environmental standards reduces damage to the environment and disruption to communities. It also avoids the likelihood of penalties, fines and loss of trust and credibility
- Savings in capital and operating costs – EIA can avoid the undue costs of unanticipated impacts.

These can escalate if environmental problems have not been considered from the start of proposal design and require rectification later

- Reduced time and costs of approval of development applications: if all environmental concerns have been taken into account properly before submission for project approval, then it is unlikely that delays will occur as a result of decision makers asking for additional information or alterations to mitigation measures
- Increased project acceptance by the public – this is achieved by an open and transparent EIA process with provision of opportunities for public involvement that are most directly affected by and interested in the proposal.

Overview of EIA Processes

EIA is generally conducted in tiers. In most cases, the process falls into four tiers, as explained below. Conducting EIA in tiers helps optimize the resources as well as to increase the effectiveness of the exercise by maintaining a better focus.

1. Screening

This is a process to decide whether the EIA process is applicable at all to the development project. It aims to clear all those projects where there are no major negative impact issues. Screening criteria generally involve the specification of the *location, type* and *size* of the project. (In Kenya, the regulations set by EMCA 2000 also stipulate the nature of projects that require EIA).

Screening thresholds are generally set considering the project type, size and location. The project type and size are used to estimate the extent of the impacts while the thresholds of the project size depend on the project type. Financial institutions also have specific guidelines for screening projects to ascertain whether an EIA is required or not – e.g. ADB, USAID, WB.

2. Scoping

If screening does not automatically clear a project, then the developer is asked to undertake a scoping exercise. This step helps in understanding the extent of environmental impacts and identifies significant environmental issues for further study. It involves sufficient research and expert advice to identify the project's key impacts on the local environment in terms of impact issues and to evaluate briefly the importance of the critical issues to the various stakeholders apart from the decision makers. Setting the boundaries of the assessment is the most important step of the entire EIA. Too narrow a scope will likely leave out an important factor or effect, but too broad a scope may make the analysis unwieldy or take too long a time. Other aspects of scoping are to choose the important issues to be resolved and to agree on responsibilities for performing the EIA.

The scoping exercise should involve:

- review of all written materials on the purpose, need or prospectus for the project
- perform field reconnaissance of the desired site or sites for the project

- interview local residents and affected communities that use resources;
- consult with other agencies that have expertise, jurisdiction, or influence on the decision to approve, design, or site a project;
- consult with local or regional scientists at colleges, universities, institutes or field stations;
- visit local political leaders where the project may be sited.

3. Environmental impact assessment Study:

An EIA study is to be conducted in accordance with the general environmental impact assessment guidelines and sector EIA guidelines set out in the Third Schedule to the Regulations.

An environmental impact assessment study must take into account environmental, social, cultural, economic, and legal considerations, and shall

- i) identify the anticipated environmental impacts of the project and the scale of the impacts;
 - ii) identify and analyze alternatives to the proposed project;
 - iii) propose mitigation measures to be taken during and after the implementation of the project;
- and
- iv) develop an environmental management plan with mechanisms for monitoring and evaluating the compliance and environmental performance which shall include the cost of mitigation measures and the time frame of implementing the measures.

4. The Environmental Impact Assessment Study Report

After an EIA study has been conducted the proponent submits to the Authority an EIA Study Report incorporating but not limited to the following information:

- i) the proposed location of the project;
- ii) a concise description of the national environmental legislative and regulatory framework, baseline information,
- iii) and any other relevant information related to the project; the objectives of the project;
- iv) the technology, procedures and processes to be used, in the implementation of the project;
- v) the materials to be used in the construction and implementation of the project;
- vi) the products, by products and waste to be generated by the project;

- vii) a description of the potentially affected environment;
- viii) the environmental effects of the project including the social and cultural effects and the direct, indirect, cumulative, irreversible, short-term and long-term effects anticipated;
- ix) alternative technologies and processes available and reasons for preferring the chosen technology and processes;
- x) analysis of alternatives including project site, design and technologies and reasons for preferring the proposed site, design and technologies.
- xi) an environmental management plan proposing the measures for eliminating, minimizing or mitigating adverse impacts on the environment; including the cost, time frame and responsibility to implement the measures;
- xii) provision of an action plan for the prevention and management of foreseeable accidents and hazardous activities in the course of carrying out activities or major industrial and other development projects;
- xiii) the measures to prevent health hazards and to ensure security in the working environment for the employees and for the management of emergencies;
- xiv) an identification of gaps in knowledge and uncertainties which were encountered in compiling the information;
- xv) an economic and social analysis of the project;
- xvi) an indication of whether the environment of any other state is likely to be affected and the available alternatives and mitigating measures; and
- xvii) such other matters as the Authority may require.

The environmental impact assessment study report must also be accompanied by a non-technical summary outlining the key findings, conclusions and recommendations of the study and must be signed by the proponent and environmental impact assessment experts involved in its preparation.

5. Public participation

Public participation is at the centre of EIA. During the process of conducting an environmental impact assessment study the proponent must in consultation with NEMA seek the views of persons who may be affected by the project. After the approval of the EIA Report by NEMA, the proponent must;

- a) publicize the project and its anticipated effects and benefits by: posting posters in strategic public places in the vicinity of the site of the proposed project informing the affected parties and communities of the proposed project; publishing a notice on the proposed project for two successive weeks in a newspaper that has a nation-wide circulation; and making an announcement of the notice in both official and local languages in a radio with a nation-wide coverage for at least once a week for two consecutive weeks;
- b) hold at least three public meetings with the affected parties and communities to explain the project and its effects, and to receive their oral or written comments;
- c) ensure that appropriate notices are sent out at least one week prior to the meetings and that the venue and times of the meetings are convenient for the affected communities and the other concerned parties; and
- d) ensure, in consultation with the Authority that a suitably qualified coordinator is appointed to receive and record both oral and written comments and any translations thereof received during all public meetings for onward transmission to the Authority.

6. Comments from Lead Agencies

After NEMA has received the Report, has to submit a copy thereof to any relevant lead agencies for their comments. Lead agencies review the report to ensure that it complies with the terms of reference under Regulation 11 and that it is comprehensive. They thereafter send their comments to NEMA on the report within 30 days or such extended time as the Authority may specify. If no comments are received from the Lead Agencies the Authority may proceed with the determination of the application for the implementation of the project.

7. Submission of comments and public hearing

Regulation 21 obligates NEMA to invite the public to make oral or written comments on the report. The invitation for public comments shall state;

- i) The nature of the project;
- ii) The location of the project;
- iii) The anticipated impacts of the project and the proposed mitigation measures to respond to the impacts;
- iv) The times and place where the full report can be inspected; and

v) The period within which the Authority shall receive comments.

Upon receipt of both oral and written comments the Authority may hold a public hearing.

On conclusion of the hearing, the presiding officer shall compile a report of the views presented at the public hearing and submit a report to the Director General of NEMA within 14 days from the date of the public hearing. The Authority may then approve the Environmental Impact Assessment Study Report and issue an EIA License under Regulation 24.