

**SUMMARY OF THE COMMENTS ON THE DRAFT ENVIRONMENTAL (STRATEGIC ASSESSMENT, INTEGRATED IMPACT ASSESSMENT AND AUDIT) REGULATIONS, 2018 IN ISIOLO COUNTY ON 13<sup>TH</sup> MARCH 2018 HELD AT SILVER BELLS HOTEL ISIOLO**

**SUMMARY OF THE COMMENTS OF THE DRAFT EIA REGULATIONS 2018  
EASTERN/NORTH EASTERN**

(Garissa, Wajir, Mandera, Marsabit, Isiolo, Meru, Tharaka Nithi, Embu, Kitui)

<b>Regulations</b>		<b>Institution</b>	<b>Comments</b>	<b>Deliberation by Task Force</b>	<b>Way Forward</b>
1	Interpretations Regulation 2	<b>Sarah Chileo Grevy's Zebra Trust and Ewaso Lions</b>	<p>The definition of <b>cumulative impact</b> is currently insufficient as it only covers a singular project, program or activity, and does not refer to the interactions between various activities and their impacts.</p> <p>We propose an amendment of the definition to:                      "The past, current and reasonably foreseeable future impact of an activity, considered together with the impact of activities associated with that activity that in itself may not be significant, but may become significant when added to the existing and reasonably foreseeable impacts eventuating from similar or diverse activities."</p>	The proposal is already captured by the word "incremental" under part 1 (2).	.

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2			Proposes that the definition of the <b>environment</b> be inclusive of humans. Environmental assessment in this sense is inclusive of the assessment of social impact.	The definition is from EMCA Cap 387 and therefore cannot be amended.	
3			A definition and required composition of the County Environment Committees is needed.	The membership and functions of CEC is captured in Section 29 of EMCA Cap 387.	
4			Proposes the inclusion of a section which defines timeframes for environmental assessment i.e. Outline how interested and affected parties should interpret the stipulated number of days provided for comments.	<b>Taskforce to consider clarity on timelines to be prescribed as working days.</b>	.

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			Are there provisions for extending the timeframe when public holidays fall within the period? If the deadline falls on a weekend, is the deadline extended to a working day? Should there be a restriction on meetings or requests for public comment over the December/January holiday period?	For uniformity across the religious groups, holidays the prescription of timelines as working days should be able to address the concern.	
5	Under Regulations 20		Public Participation. Should there be a minimum stipulation of the time period in which a public participation process should be conducted?	Refer to regulation 19 (1) on public participation.	
6	Regulation 8(3)		Should be register of environmental experts and not expects	A typo error to be corrected.	
7	Part 2.Registration of Experts		Proposes replacing the term “expert” with “practitioner” to reflect the reality that those engaged in the field of environmental assessment are in a continuous process of learning.	The word expert is used in the EMCA Cap 387 Act but the spirit of continuous improvement is noted. That is why we have EIK and the code of practice.	

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	Schedule 2		Proposes that those currently referred to as “lead experts” with a PhD or Master’s Degree and with significant, focused experience in a particular field of relevance, should be referred to as “specialists”. We propose that the remainder of consultants be referred to as practitioners .		
8	Regulation 9(1) & (2)		With regards to the accreditation of learning institutions (page 11), clarity is needed as to whether these institutions need to be local or whether they can be international/regional? The Southern African Institute for Environmental Assessment is an example of a training institution of regional relevance.	The taskforce to consider incorporating the proposal under regulation 9.	
9	3 <sup>rd</sup> Schedule		What are the terms of training for environmental experts? Is the training voluntary or mandatory? Reference is made in the Second Schedule to required attendance of environmental assessment experts at one seminar per year. What are the reporting	To consider amending COP section 18 (1) of the 3 <sup>rd</sup> schedule to capture proof of having attended the relevant course or seminar at least once a year. Use of the word ‘shall’ means it is mandatory.	

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			requirements for experts with regards to attendance?		
10	3 <sup>rd</sup> Schedule Code of conducts for Environmental experts		Proposes an additional clause under “misconduct of environmental assessment experts”. This proposed clause relates to the unauthorized use of the name of a “lead expert” on an assessment report, where the lead expert in question is uninformed and uninvolved in the assessment. There is precedent here with regards to the Project Report of the Isiolo Dam (where the stated lead expert was not involved in nor informed of the assessment) and there is need for the provision of a specific safeguard in this regard.	Consider amending section 13 (2) of the 3 <sup>rd</sup> schedule to capture the proposal.	
11	Regulation 7 (2)		Proposes an additional requirement for signatures of lead and associate experts on the relevant assessment to verify their involvement and safeguard against instances of false statements, as per the above point.	Consider additional sub section 7 (3) of the 3 <sup>rd</sup> schedule to capture the proposal.	
12	Part 3 - Project Report under Regulation 9		With regards to the required aspects of the Project Report, proposes that the proponent and financier be clearly stated.	To be discussed by the full taskforce including the legal implications.	

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	Regulation 10 (2)		With reference to page 12 and the requirement for at least 1 meeting, we question whether the bar is set too low here. How was the minimum requirement determined?	The word used is 'at-least' and furthermore this is applicable to low and medium risk projects and not for high risk.	
	Regulation 19 (1) b		There is no stipulation of how the meeting notice of 14 days should be disseminated or how the stakeholders are determined.	This is addressed under regulation 14 (4) k.	
			With reference to page 13, section 14.2, what are the criteria for assessment?		
13	Part 4 - Integrated Environmental Assessment		With regards to the required aspects of the Integrated Environmental Assessment, proposes that the proponent and financier be clearly stated.	To be discussed by the full taskforce including the legal implications.	

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	Regulation 15(3)(b)  Regulation 21(b) &(1 Regulation 24		With regards to 15.3.b (page 13), how are key stakeholders defined? Would Kenya consider developing a register system for Interested and Affected Parties, as per the practice in other countries? We propose that this would allow for a more comprehensive stakeholder engagement process as well as consistent communications with stakeholders throughout the project cycle.	This is addressed under regulation 14 (4) k. Furthermore the interested and affected parties are not static and keep changing depending on the duration, nature and locality of the project.	
14	Part 5 – Environmental Audit and Monitoring		Will all the audit reports be made available to the public? We cross-reference Part 7, section 51 (access to information) and request a specific clause in Part 5 related to the availability of audit reports to the public.	Check regulation 36 (2) (k) on views of the public during the audit study and regulation 36 (4) on institutional recognition during the audit review.	
			With reference to page 22, at what frequency should the proponent submit these self-audit reports? Stipulations are required as to what the self-auditing report should be composed of.	<b>Taskforce to look at regulation 34 on self-audit.</b>  <b>Refer to regulation 32 (5) which should be merged with 34 on self-audit.</b>	

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			<p>With reference to page 23, section 36, we propose that in addition to the report stating whether there has been adherence to the measures prescribed, it should state whether the actions have been effective.</p>		
			<p>-The requirement for the integration of climate change in the auditing and monitoring is not clear.</p>	<p>Refer to regulation 35 (2) (g) capturing climate change issues in the auditing.</p>	



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15			<p>Part 6 – SEA</p> <ul style="list-style-type: none"> <li>- What are the criteria for screening whether an SEA is required? We are concerned that too many SEAs are being triggered in Kenya, with the quality and scope of these SEAs reduced, thus diluting the effectiveness of the SEA as a tool for strategic decision-making at national level.</li> <li>- The reference to the “identification of issues that are less significant at this stage” is vague and requires clarification.</li> <li>- Regarding point 44 (2) e, prediction and evaluation of impacts should include reference to scenario-based planning. This is a critical component of SEA.</li> </ul>	<p>The details required are in the national guidelines on SEA.</p>	
			<p>With regards to 44 (5) a, the minimum stipulation of 2 public participation meetings during an SEA process, which is conducted at a far greater scale than EIA, is inadequate.</p>	<p>The taskforce to consider a higher threshold on the number of meetings.</p>	

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			<p>- With regards to 46(1), there is no mention of the county environment committees. Will they be engaged in the review of SEA?</p>	<p>Refer to regulation 46 (1) and 47 (2) on the involvement of county governments.  <b>The taskforce to consider involvement of the county environment committees at these stages.</b></p>	
			<p>- Stipulations are required for instances in which an SEA is applied post the development of EIAs and activities e.g. in the case of LAPSSET. In particular, the expected sequence of SEA and EIA needs to be clearly stated.</p>	<p>Captured in the SEA national guidelines as ex-post and ex-ante assessments.</p>	
			<p>With reference to section 46(4), we require clarity on the timeline for publishing the draft SEA on the NEMA website i.e. when it will be published, and when it will be removed. We also request a clear stipulation for the signed and dated copy of the draft SEA to be published such that stakeholders can verify whether the report is the most up-to-date version available.</p>	<p><b>The taskforce to consider amending regulation 46 (4).</b></p>	

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16	Part 7- Miscellaneous Provision	<p>With regards to 52 (2), according to what criteria and process will the Authority determine whether the request for information exclusion is indeed an issue of “commercial confidentiality” or in the “interests of national security”.</p>	<p>To be addressed in Form 23 (b). Taskforce to finalize.</p>	
		<p>With regards to the Third Schedule and the composition of the Environmental Experts Advisory Committee, we propose inclusion of a representative of civil society to ensure balanced public representation.</p>	<p>Taskforce to consider.</p>	
		<p>Clarity is required on the legal process of appeal and in particular, the role and mandate of National Environmental Tribunal. In particular, a statement is required as to who is responsible for enforcement of the decisions of the Tribunal.</p>	<p>In practice it is NEMA who is responsible for Enforcement of the decision of the NET. The Taskforce to consider making these a regulation under regulation 55.</p>	

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			<p>Have a formal register for affected persons at beginning of the project which can be used throughout the project cycle.</p>	<p>This is addressed under regulation 14 (4) k. Furthermore the interested and affected parties are not static and keep changing depending on the duration, nature and locality of the project.</p>	
			<p>Include civil society as part of TAC.</p>	<p>The Composition of the TAC Is determined by the expertise required as indicated in Regulation 6.</p>	
		<p>Mr.Ali Goidana</p>	<p>Issues of political interference, conflict of interests and marginalized counties. Individual attitude change towards the environment.</p> <p>How to tailor make the regulations for illiterate people.</p> <p>Environmental issues to be disseminated at primary and tertiary institutions.</p> <p>How can we involve youth in environmental conservation</p> <p>Effect of crocodile jaw dam on those down stream</p> <p>Public participation was not undertaken prior to construction of dam these impacts</p>	<p>An attempt has been made in the regulations to address the challenges e.g by having provisions; The code of practice, strategic communication planning, conflict resolutions through the NET, Institutional recognition during the review of EIA reports, ETC.</p>	

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			on the people and wildlife.		
17.		Elizabeth Nema Embu County	Appreciated the work of the taskforce. Reduce time frame for review and issuing of license	Captured under The Gazette Notice No.149.	
			No time frame for processing of Audits.	Refer to Regulation 36(5) and (6).	
			No minimum standards for questionnaires.	This is addressed under regulation 14 (4) k. Furthermore the interested and affected parties are not static and keep changing depending on the duration, nature and locality of the project.	
			Expound on how access to information should be given.	Refer to the First Schedule Form 23A.	
			Put up a system to check up on the misconduct of experts which includes copy pasting.	Addressed in the code of practice which is the third schedule of this regulation.	
18.	Regulation Definitions	2 Paul Njuguna	Define public participation and how it should be done.	This is addressed under regulation 14 (4) k.	

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		From Upper Tana			
			Clarify on the Integrated Impact Assessment in relation to International practice	The Taskforce had benchmarked on the same	
17		Mr.Gicheru NEMA MERU	Reduce the number of hard copies reports received and consider soft copies to cde and can be shared with lead agencies due to limited space.  There is need to consider continuous professional development in renewal of expert licenses.	Noted and work in progress.  This is captured in the code of practice in Third schedule of this regulation.	
18.	Regulation 12	Mureithi NEMA Samburu	Comments by lead agencies should be mandatory.	Institutional recognition is provided for under regulation 12 and regulation 22 (1).	
19.		Mugambi EIK Isiolo	Number of copies for EIA, EA Audit and monitoring reports submitted to NEMA should be standard.	<b>To be considered by the Taskforce.</b>	

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			Clarify on how to move from associate to lead expert Experts who are registered should have a background in environmental studies.	This is addressed in the criteria for registration of Experts, in the 2 <sup>nd</sup> Schedule.	
			Public participation questionnaire to suffice based on target audience.	Noted.	
			Borrow from NCA where experts receive alerts on reports submitted through their registration number.	Automatic notification is work in progress within the Authority which has started with the headquarters and it will be cascaded to all Counties.	
20.	Regulation 7	Jafford Chuka EIK	Need to have a contract form between the expert and the proponent.	This Mandate of EIK.	
			Have a feedback mechanism from NEMA to experts on reports submitted.	Automatic notification is work in progress within the Authority which has started with the headquarters and it will be cascaded to all Counties.	
			Seeks definition of “intergrated”		

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21.	Regulation 14(4)	Naftali Osoro NEMA KITUI	Consider having a technical advisory committee at the county level.	This is captured in regulation 6.	
			Clarify on where to appeal regulation 14(4).	Any appeal is captured in Regulation 55.	
22.	Regulation 7	NJENGA EIA Expert	Registration of experts to be done by EIK EIK to ensure professional development of Experts.	The registration of Experts is the mandate of NEMA as provided for in Section 58 (6) of EMCA Cap, 387.	
23		Sandy WWF	Have a multi sector strategic committee of interested parties from all sectors who will be used to communicate information or seek compliance on strategic planning	This is a practice already adopted eg the partnership between NEMA-KAM, NEMA-KEPSA, NEMA-PIEA, NEMA-KOGA, etc.	
23			Capture the spirit of decentralization in low, medium and high risk project.	<b>The Taskforce to finalize on the risk based decentralization.</b>	