

SUMMARY OF THE COMMENTS ON THE DRAFT ENVIRONMENTAL (STRATEGIC ASSESSMENT, INTEGRATED IMPACT ASSESSMENT AND AUDIT) REGULATIONS, 2018 HELD AT KISUMU IMPERIAL HOTEL ON 27TH MARCH 2018

SUMMARY OF THE COMMENTS OF THE DRAFT EIA REGULATIONS-KISUMU (WESTERN REGION)					
(Kisumu, Kakamega, Vihiga, Homa Bay, Bungoma, Migori, Kisii, Siaya, Nyamira, Busia)					
No.	Regulations	Name/Institution	Comments	Deliberation by Task Force	Way Forward
1	Regulation 10 Part III Pg24	Belinda Nyakinya County Government of Kisumu	Recommended Resettlement Action Plan (RAP) to be included.	RAP is already recognized as a social aspect of IEIA.	It is already captured in the Regulation 10 (j). We need to consider in cooperating RAP as content of IEIA in Regulation 20.
			Clear guidelines on RAP.	The National guidelines on RAP are work in progress. It should also be noted that in the interim International (e.g World Bank, AfdB etc.) are applicable.	
			RAP issues to be done separately as an annex report and charged separately from EIA Report.		
			Suggested that Experts should have a guideline for charging EIA projects fees.	This is a Role of EIK.	it's a guideline to be developed and issued by EIK to its membership
			CoG should be considered as a member of the Experts Advisory Committee.	Noted and to be debated by the full Taskforce.	

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			<p>There is a repetition the project reports are dispatched to County Environment Committee CEC) and the County Government that is repetition because all the County Environmental matters are handled by CEC Environment.</p>	<p>CEC as an Institution is not the same as the County Executive Member for Environment in terms of the mandate and Authority but we need to consider sending a copy to the CDE- NEMA.</p> <p>Note Regulation 22 (1) to be made comprehensive on the dispatch of the IEIA Reports.</p>	
			<p>Environmental Inspectors are appointed by the DG NEMA what about those from the County Government who also need to conduct inspections given that NEMA has fewer inspectors.</p>	<p>Gazetment of Environmental Inspectors is open to other lead Agencies upon training.</p> <p>Regulation 39 (1) recognize the role of NEMA and the County Government and lead Agencies in undertaking joint monitoring.</p>	

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			Suggested that we should have Technical advisory Committee at the County Level.	Captured in Regulation 6(1).	
			How can we compel the County Governments to ensure that all County Integrated Development Plans (CIDP) projects are not executed without undertaking SEA. The Regulation should address conflict of interest where by the lead agencies or County Government is required to give comments on projects including their own projects.	There is work in progress on strategic partnership. Section 42 of EMCA CAP 387 has made SEA requirement for eligible PPPs. Provisions of SEA are captured under part 6 of this regulation. Reports for a specific lead agency or County Government should not be dispatched to the same agency or County for.	
2.	Part I Regulation 6(1).	Joash Owiro EIA Expert.	Consider some County Departments in the County Environment Committees and include a schedule in the Draft Regulations naming the departments. These will encourage Governors to gazette the committees both at the County and National Levels.	Membership and functions of the CEC is captured under EMCA CAP 387.	

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			Consider having an upper limit on the composition of the Technical advisory committees eg 9, 7, 11 this will inform the required quorum of the committees.	To be considered by the full Task force.	
3.		Judith Kavala WRA Kisumu	Requested the committee if she can send her comments later after reading the draft		
			Suggested that we add a clause that a copy of submitted self-Audit reports should be dispatched to lead Agencies	Already Captured under Regulation 36 (4).	
4.	Part V Regulations 34	Joyce Opondo Kibos Sugar Company	The Initial Environmental Audits should be done by External NEMA licensed Experts and not the operator or their Employee's.	We need to consider the proposal under regulation 32 (3).	
			It should be clarified or captured in the regulation that after 30 days from the date of submitting the project report without receiving a response from NEMA, that the proponent may commence works.	Capture the spirit of EMCA Cap 387 section 58 (8 & 9).	Taskforce to consider capturing the provisions of EMCA in regulation 13 of the draft regulations.

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			<p>Clarify on EIA Fees it seems you want to sneak it back.</p> <p>The fees will discourage the presidents big four Agenda especially the one on manufacturing.</p>	<p>Scrapping of the EIA fees was a Cabinet directive and the Authority is awaiting legal amendments in EMCA Cap 387. To date the Authority has complied with the directive.</p>	
			<p>Regulation of Expert fees on project reports should be done by EIK not the Regulation.</p>	<p>Ok.</p>	
			<p>Environmental Experts should be considered in the Technical Advisory Committee at the county and National Level.</p>	<p>Refer to regulation 6 (2) indicating that the TAC is made up of multi-disciplinary specialists some of who are environmental experts.</p>	

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			The Regulation should define the County Director of Environment where submission of the project reports will be done.	To consider a definition to differentiate the CDE NEMA and the CDE under the County Government. (Regulation 10 and 20).	
5.	Section 12	Francis Omondi EIA Expert	Appreciated the Taskforce work for the comprehensive Regulation.		
			Suggested submission of electronic copy and comprehensive summary of the project report and eliminate submission of hard copies of the project reports.	Noted. Though it is work in progress and submission and dispatch of the summary report alone will limit the full disclosure of the project and EIA Report.	
			Clarify on the EIA fees which include transfer, variation fees.	Scrapping of the EIA fees was a Cabinet directive and the Authority is awaiting legal amendments in EMCA Cap 387. To date the Authority has complied with the directive.	

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6.	Preliminary Regulation 11	Joshua Kolondo NEMA Vihiga	<p>The Definition of County Director of Environment should be clear in the regulations to mean the NEMA County Director of Environment.</p>	<p>To consider a definition to differentiate the CDE NEMA and the CDE under the County Government. (Regulation 10 and 20).</p>	
			<p>Suggested that project reports should also be submitted in soft copy because sometimes the number of project reports needed by lead agencies could be more than five.</p>	<p>Regulation 11 to be amended to capture the soft copy requirement</p>	
			<p>Suggested that we develop guidelines for this regulations</p>	<p>The provision is captured in this regulations and what is required is a review of the <i>National guideline on EIA and EIA reviewers guidelines</i></p>	
			<p>Legislative framework; is it supposed to be discussed in the project report?</p>	<p>Acceptable to be captured under regulation 10(1)</p>	

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7	Regulation 34	Joshua Kulundu	Most people or even the project proponents do not know the contents of an audit report to enable them carry out a self-Audit.	Clarity provided under part V of these regulations. The Taskforce to look at Regulations 34 to make self-Auditing requirement clear/comprehensive	
			For how long and when will the proponent stop submitting the Environmental Audits?	Periodic Environmental Audit is a tool for continual improvement and therefore should not be stopped	
8	Part III	Fredrick Moi County Public Health Office-Kisumu	14 days' timeline for submission of written comments from lead Agencies to NEMA is too short. Furthermore, without facilitation of EIA inspection and review fees submission of comments from lead agencies within 14 days will be a challenge.	Lead Agencies are expected to have Environmental Desks, with exchequer funded work plans to facilitate efficient submission of comments as required by Ease of Doing Business (EODB).	
			Clarity is needed on EIA fees.	See No.5 above.	

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			After submission of comments, Can the lead Agencies have a feedback on the Record of decision of NEMA?	Yes, it can be considered by amending regulation 13 (2) (3) and regulation 25(4) for both project report and IEIA.	
			Lead Agencies should work together on environmental issues and make decision as a team and in unison.	Yes, that is the spirit of having the reports dispatched to relevant County Committees.	
9.	Regulation 38(2)	Catharine Alungwa SRI- KALRO	Do we have a penalty for an Institution that does not submit an Environmental Audit Report on time? Who is punished is it the personnel or the Organization?	Offences under Regulation 54 (2) we need to improve an offence for failure to submit an environmental Audit as required. This is captured under section 145 of EMCA Cap, 387.	
		Tom Misenya. Migori County Government	To add on the small personnel of NEMA can the County Governments assist in EIA Licensing?	While we appreciate comments from the County Government EIA licensing is a National function and only the decentralized to NEMA County Offices.	

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		Jared Gambo Lake Basin Development Authority	Proposed we define the County Director of Environment at the preliminary stage.	Refer to No.4 above	
Regulation 38(2)		Anthony Okeyo County Government of Kisumu	On the institutional oath of secrecy how do you compel somebody to give protected information or document and will this legislation override this? For example at the County Government you cannot issue some information to other departments or organization without authorization.	Refer to regulation 52 on protection of proprietary information based on confidential business information (CBI) or the interest of National Security.	
		Eng. S. Mburu LVSWSB	Kenya Devolution programme propose domestication of EIA through the County Assemblies.	As it stands EIA is not a devolved function.	
		Jenipher Oduor Fisheries Director	What happens if there is non-disclosure of information in the project report right from the beginning?	Refer to Regulation 31 (2) on suspension, revocation and cancellation of the EIA License and Regulation 54 (2) on offences related to the same.	
		Dianga Moses Public Health.	Facilitation of EIA fees - We have been calling the proponent to pay the fee. Most of them have been licensed without consultation from public health. Is the sending of EIA reports to lead agencies just a formality?	Refer to 5 above.	