

SUMMARY OF THE COMMENTS ON THE DRAFT ENVIRONMENTAL (STRATEGIC ASSESSMENT, INTEGRATED IMPACT ASSESSMENT AND AUDIT) REGULATIONS, 2018 ELDORET ON 20TH MARCH 2018

SUMMARY OF THE COMMENTS OF THE DRAFT EIA REGULATIONS-ELDORET					
No.	Regulations	Institution	Comments	Deliberation by Task Force	Way Forward
1.	Regulation 7 Schedule 2	Professor Vincent K. Sudoi University of Eldoret	Thanked NEMA for the workshop	Refer to the 2 nd schedule on registration requirements for experts	
			There is registration of too many experts unlike in the public health Associations Who are legible to be registered as Environmental Assessment Experts?		
	Has the environmental restoration order been modified?		This has been captured under the Environmental offences related to EIA (Part IX of EMCA, Cap, 387)		
	How should we regulate the juakali sector such as garages on used oil management? Currently there is no proper provision for disposal. With time the spilled oil will pollute the environment.		This challenge will be addressed as we strengthen other supportive safeguards such as planning and economic safeguards in the EIA process Refer to the revised 2 nd schedule legal Notice No.150		
Part II & Part IV		Integrated EIA should include ecological risk assessment which encompasses damage to plants and animals as well as restoration.	Yes, the concept is considered in the understanding of the IEIA		
2.	Part II and Schedule 1	Collins Wawire EIA Expert	Clarify on roles and responsibilities of lead and associate Expert	Refer to the 2 nd schedule on registration requirements for experts and the need to respect seniority and competency in	

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	Regulation 19			the profession.	
			Lead expert guides the direction of the report while the Associate expert does a lot of work however; the authority for submission is vested in the lead expert. Therefore, the Associate expert should be given the authority to sign and submit the report		
			Proposed projects differ in different geographical areas so as public participation. Therefore use of questioners may not apply as evidence of public participation since you will find some areas are sparsely or densely populated.	Yes, this is considered under Regulation 14(4)(k) on the need to develop a strategic communication plan to ensure inclusive participation	
			Let us have an annex that can indicate which projects to be submitted at county level.	The Taskforce to consider based on risk categorization of projects as indicated in the revised 2 nd schedule Gazette Notice No.150	
3.		Isaac Kibet	NEMA cannot Enforce the Regulations 100%; develop a way of incorporating Environmental Experts to assist in Enforcement Incorporate Environmental Experts in Compliance and Enforcement process	Regulation 27 and 39 provides for continuous monitoring of projects and the role of experts needs to be clear on the same and the taskforce to deliberate	
4.		Edwin Cheserek Student in Post Grad in Env. Science – Moi University	Have a link between NEMA and NACOSTI for ease of getting science research permits from NEMA. The permit is a requirement NACOSTI for Natural Resource research scientist	This is a requirement under the licensing of Access to genetic Resources and Benefit Sharing in Kenya Regulations, 2007	

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5.	Regulation 23	Dr. Grace Cheserek University of Eldoret and a Lead Expert	Part IV section 23 on the need to invite comments within 14 days - <i>Suggests that the 14 days period for submission of comments should be reduced to 7 days, to shorten the length of time it takes to get an EIA License.</i>	The Taskforce to deliberate and consider.	
			Supports the draft section stating that proponents of low impacts projects shall undertake Environmental Audits after 3 years, Medium projects after 2 years and High Risk Impacts after 12 months.	Noted.	
	Regulation 13		<p>The record of decision for Integrated EIA study report submitted shall be given within 3 months. Does this apply for project reports? – <i>Suggests record of decision for Project Reports should take 21 days and Study Report 30 days.</i></p> <p>That if the lead expert will do a good job, this will make NEMA's work easier.</p> <p>NEMA Should recognize the fact that there were few EIA experts until the year 2000. Today we have more experts and more training centers which need to be regulated.</p>	<p>Refer to regulation 13 on ROD on project reports states that the decision to proponent shall be communicated within 30 days.</p> <p>Noted.</p> <p>The challenge is addressed under the Code of practice in the 3rd Schedule and the registration of the Experts in the Schedule.</p>	
	Schedule 2		There are so many people with a Degree in BSc. Environmental sciences/studies. So let Bsc in Environmental Science/Studies be a requirement for one to be registered as an Associate Expert.	To be deliberated by the Taskforce	

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1 st Schedule				
		<p>Why are we allowing people from public health in Environmental Associations while Environmentalists are not allowed in public health Associations?</p> <p>Suggested that Lead Experts should have 3 years' experience after master's degree, those that have qualifications below three years after masters should be registered as associates, while those with BSc. can be registered as Associates,</p> <p>Diploma holders should not be allowed to register since EIA training is considered as a postgraduate Diploma.</p>	<p>Refer to the 2nd schedule on registration requirements for experts and also the need to observe multi/interdisciplinary of IEIA.</p> <p>To be deliberated by the Taskforce</p>	
		<p>Suggestion to assist regional Experts by having a regional or County register for Experts. Where proponents can easily pick experts from as opposed to having a national register.</p>	<p>To be deliberated by the Taskforce</p>	
		<p>Form 24A on registration of Firms is a double registration since it is still a requirement to be registered individually - <i>Suggested to either register under a company or as an individual</i></p>	<p>To be deliberated by the Taskforce</p>	

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			At least 25-30% of a foreign firm of experts should encompass locals with certain specified expertise.	To be deliberated by the Taskforce	
			EIK should form part of the membership of the county environment committee.	The membership to the CEC is already prescribed in EMCA, Cap 387.	
			Annual registration of experts should be at least 3 years.	This will contradict the spirit of continuous professional development.	
			How big is EIA section? It should be a directorate or a Commission.	A good suggestion but this is an administrative issue to be discussed by the NEMA Management.	
6.		Job Ngetich an EIA Expert from University of Eldoret	<p>Presentation is good. Issue to address environmental problem in Kenya. How will the regulation solve the problem in Kenya?</p> <p>The regulation should look into the problem of wetlands and sensitive areas.</p> <p>Wetlands should be repossessed by government and the affected land owners compensated.</p> <p>NEMA should ensure that riparian land is surveyed and Gazzeted.</p> <p>Site for any project should be suitable for the proposed project other than just looking at ownership. Let the site suitability verification precede other EIA processes.</p>	EIA as a concept is a planning tool.	
				Site suitability and adherence to the existing planning framework is key consideration in EIA process.	

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			Have you (taskforce) benchmarked to see what happens in other countries in regard to the EIA process?	Yes	
	Regulation 17		How can the independence and objectivity of the EIA Expert be achieved - <i>Suggests NEMA appoint lead experts and pay them to ensure that the reports are objective.</i>	The code of practice and the role of EIK should address this fear.	
	Regulation 9		During review NEMA needs to engage a team of experts to make sure that the report is independent.	In difficult scenarios and pursuant to regulation 6 the Authority may setup an independent TAC	
			Registration Board to ensure standardizing exams in addition to the qualifications.	Refer to Schedule 2 on criteria for registration of Experts with emphasis on item E and F.	
			Borrow from traditional methods of conducting public participation.	Yes, this is considered under Regulation 14(4)(k) on the need to develop a strategic communication plan to ensure inclusive participation	
			Where is innovations captured in the proposed draft. This is because some innovations have a lot of cumulative impact on the environment for example in engineering and agriculture. This are emerging issues – <i>suggests we should have assessment of every technology and embrace collaboration with NACOSTI.</i>	This is captured under analysis of alternatives in Regulation 20 (n). Regulation 10 should be reviewed to capture the issue of alternatives in the project report	
7.	Regulation	Philip Barno from ELDICORE (CBO)	Reported problems of wetlands, quarry and a petroleum station that is near a wetland.	Adherence to the EIA as a planning tool should help to address the concern.	

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	55		Sought clarity on petitions or tribunals when aggrieved.	Refer to Section 129 of Emca, Cap 387 and regulation 55 of the draft regulations	
			Work out on public participation as advertisements are a challenge to most people.	Yes, this is considered under Regulation 14(4)(k) on the need to develop a strategic communication plan to ensure inclusive participation	
8.	Part IV	Festus Kelonye Kibabii University	Fails to see a comprehensive integrated EIA in the regulations. He wishes to see a more multi-sectorial approach.	The definition of IEIA is given and the role of the County Administration and the lead Agencies indicates the multi-sectorial nature of the process	
	1 ST Schedule		Broaden mandate that for instance require harvesters of commercial forests are required to do an EIA, as well as large scale farmers who use a lot of sprays.	Refer to the 2 nd schedule on registration requirements for experts and also the need to observe multi/interdisciplinary of IEIA.	
			The forms in the regulations are too many; can they be merged to reduce paper work? Can we move digital?	To be considered by the Taskforce where justified.	
9.		Richard Kipseret Ketnet, Elgeyo Marakwet	Decried car wash activities along the river and suggested that NEMA regulates the industry. Landslides are a major environmental issue in Elgeyo, the Government usually gives periodic warning. What is NEMA doing to give a permanent solution?	Comments noted to be referred to the Relevant laws and regulations.	

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10.	1 ST Schedule	Dr. Christopher Saina from University of Eldoret	We need proper guideline on progression from Associate to Expert.	Refer to Schedule 2 on criteria for registration of Experts	
			It is noted that other training institutions give Diploma as the minimum requirement. This should be streamlined. – <i>Suggests that the minimum qualification should be an undergraduate.</i>	To be considered by the Taskforce where justified.	
			There should be continuous review of the EIA curriculum and NEMA should take the lead.	Refer to Regulation 9 on the accreditation of training institutions the Taskforce to consider periodic review of the curriculum.	
			NCA and other relevant agencies should not have conflicting laws on EIA.	Yes, but the EIA process requires multi-sectorial and building of synergies to inform the ROD	
11.	Regulations 13 & 25	Willy Bii from Water Resources Authority	EIA assessment, we receive huge numbers of EIA Reports and NEMA should undertake a joint site visit with other lead agencies for specific projects especially for potentially highly pollutant projects.	It is agreeable and a common practice what is required is a logistical support.	
			NEMA should involve some of the stakeholders in coming up with a decision for both project reports and the EIA record of decision.	The definition of IEIA is given and the role of the County Administration and the lead Agencies indicates the multi-sectorial nature of the process	

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			<p>Increase of carwash activities in Eldoret town is a big threat to water resources.</p> <p>Disposal of solid waste near water resources especially in urban areas is a big challenge. For example the Eldoret Huruma dumpsite is located near river Sosiani and leachate from the dumpsite is polluting river Sosiani.</p> <p>Accidental spillage of liquid or solid to the environment is another challenge.</p>	Comments noted to be referred to the Relevant laws and regulations.	
12.		<p>Andrew Kemboi Kandie</p> <p>SACOFA (Community Forest Association)</p>	<p>We should enhance compliance and enforcement on people who are discharging sewage from Septic tanks to the storm drains during the rainy season.</p> <p>This is very common in residential areas in Eldoret such as Kimumu area whereby waste is released to the drains during rainy season.</p>	Comments noted to be referred to the Relevant laws and regulations.	
13.	Part II	Bernard Wanjohi University of Eldoret	Experts should be paid by NEMA to improve on quality of EIA reports.	The code of practice and the role of EIK should address this fear.	
14.		James Meli Nandi County Government Director of Environment	<p>There is politics in environmental matters.</p> <p>King'wal and Kibirong wetlands have been declared as wetland areas by the county Government of Nandi,</p>	<p>Yes, political recognition as is the case of the current 4 big action plans drives the environmental Agenda.</p> <p>Comments noted to be referred to the Relevant laws and</p>	

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			however some people have subdivided the wetlands into plots. The beacons are located inside the wetland.	regulations.	
			NEMA and other Authorities should be empowered more as of now it seems like an association. For example to deal with experts who undertake reports within a day.	The code of practice and the role of EIK should address this fear and such experts should be reported to the NEMA for action.	
15.	Regulation 9	Leonard Levi from GIZ/ACCI	Who are the professional bodies that are recognized by the Authority?	EIK is recognized by NEMA.	
			He reported that production of plastic bags was happening at the boarder of Kenya and Uganda. How is the Authority managing the cross boarder issue on plastic bags?	Comments noted to be referred to the Relevant laws and regulations	
16.		John Ngalia KWS – Elgeyo Marakwet	We should come up with regulations that will safeguard the fragile ecosystems.	Yes, the Regulations are available eg the Wetlands regulations, Biodiversity, the water Towers etc.	
			Areas which are degraded should be considered and the counties should be guided on climate change and its impacts.	Comments noted to be referred to the Relevant laws and regulations	
17.	Part III & IV	Vincent Mahiva CDE NEMA Nandi County	We should have categorization of projects of low risk, medium and high risk.	Refer to the revised 2 nd schedule Gazette Notice No.150 on risk categorization of projects	

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18.		Salina Katwa from Livestock Department	Appreciated the work done by the team. Encouraged the team not to dilute or compromise on quality of draft regulations.	Noted and appreciated.	
19.	Regulation 31	Daisy Maina Environment Officer NEMA - Nakuru	Should EIA submission fee for projects reports that were submitted before January 2017 scrapping of the fees be paid? The regulations are stating that there is a fee to be paid yet there is a directive from the Cabinet on non-payment of the EIA related fees. Will the proponents pay fees for variations or transfer of license?	The scrapping of EIA related fees was cabinet directive. However EMCA CAP 387, still has the provision prescribing the EIA fees unless amended	
20.	Part VI	Duncan Osale NEMA CDE - Elgeyo Marakwet	SEA is difficult to be implemented at the county level and should therefore be handled at the national level - <i>suggested policy intervention in implementation of the SEA</i>	Agreed and it is work in progress	