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Joint Project on Environmental Law
and Institutions in Africa



THE EAST AFRICAN SUB-REGIONAL PROJECT

DEVELOPMENT AND HARMONISATION OF ENVIRONMENTAL LAWS

VOLUME 3

REPORT ON THE DEVELOPMENT AND HARMONISATION OF ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS

JUNE 1999



**UNEP/UNDP JOINT PROJECT ON ENVIRONMENTAL
LAW AND INSTITUTIONS IN AFRICA**

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HARMONISATION OF ENVIRONMENTAL
IMPACT ASSESSMENT REGULATIONS**

VOLUME 3



**REPORT ON LEGAL AND INSTITUTIONAL
ISSUES IN THE DEVELOPMENT OF
ENVIRONMENTAL STANDARDS**

June 1999

TABLE OF CONTENTS

PREFACE	vii
OVERVIEW	xi
KENYA COUNTRY REPORT	
ACRONYMS	2
EXECUTIVE SUMMARY	3
CHAPTER ONE	5
1.0 BACKGROUND	5
1.1 The Origin and Functions of EIA	5
2.2 Structure of the EIA Process	6
2.3 Institutional Arrangements for EIA	8
2.4 Procedural Frameworks for EIA	9
2.5 Constraints facing the Implementation of EIA	10
CHAPTER TWO	11
2.0 ANTECEDENTS IN REGIONAL HARMONIZATION	11
2.1. The ECE Recommendations	11
2.2 The ESPOO Convention	11
2.3. The European Union Directive	12
CHAPTER THREE	15
3.0 REVIEW OF EIA PROVISIONS IN KENYAN LAWS	15
CHAPTER FOUR	17
4.0 DRAFT REGULATIONS AND GUIDELINES	17
CHAPTER FIVE	19
5.0 INSTITUTIONAL AND FUNCTIONAL ARRANGEMENTS	19
5.1 PROPOSED INSTITUTIONAL LINKAGES	19
5.2 NEAP GUIDELINES	20
CHAPTER SIX	21
6.0 RECOMMENDATIONS FOR A FRAMEWORK FOR HARMONISATION	21
CHAPTER SEVEN	23
7.0 TRAINING	23
CHAPTER EIGHT	25
8.0 PRINCIPLES TO BE INCORPORATED INTO DRAFT EIA REGULATIONS	25
BIBLIOGRAPHY	27
ANNEX REGULATIONS RELATING TO ENVIRONMENTAL IMPACT ASSESSMENT	29

TANZANIA COUNTRY REPORT

LIST OF ACRONYMS	36
CHAPTER ONE	39
1.0 INTRODUCTION	39
1.1 Background to the Project	39
1.2 Structure of the Report	39
CHAPTER TWO	41
2.0 BACKGROUND TO ENVIRONMENTAL IMPACT ASSESSMENT	41
2.1 Integrating Environment and Development	41
2.2 Environmental Planning and Environmental Management	42
2.3 Environmental Protection Paradigm	42
2.4 Environmental Protection Strategies	43
2.5 The Concept of EIA Defined	44
2.6 The Origins and Development of the EIA Concept	45
2.6.1 The National Environmental Policy Act (NEPA)	45
2.6.2 State Environmental Protection Acts	45
2.7 EIA in CANADA	47
2.7.1 Conclusion	50
2.8 Framework Environmental Laws and EIA Regulations in Africa	50
2.8.1 EIA Law and Practice in Africa	50
2.8.2 Conclusion	51
2.9 Objectives or Purposes of EIA Procedures	54
2.10 Some Benefits of the EIA Procedures	54
2.11 The Structure of the EIA Process	55
2.11.1 Procedural Frameworks for EIA	55
2.11.2 Logical Sequence of Tasks in an EIA Process	55
2.12 Constraints in the Implementation of EIA	61
2.13 Conclusion	63
CHAPTER THREE	65
3.0 ANTECEDENTS IN REGIONAL HARMONIZATION	65
3.1 Introduction	65
3.2 Recommendations by the Economic Commission for Europe (ECE) to Governments for Establishing EIA Procedures	66
3.3 Espoo (Finland) Convention on Environmental Assessment in a Trans-boundary Context	66
3.4 EU Directions on the Assessment of the Effects of Certain Public and Private Projects on the Environment	67
CHAPTER FOUR	69
4.0 REVIEW OF EIA PROVISIONS/TOPOLOGIES IN THE LAWS	69
4.1 EIA Provisions in the Laws of Tanzania	69
4.2 The National Environment Policy: An Overview	69
4.2.1 EIA as a Planning Tool	69
4.2.2 Environmental Law an Essential Environment Management Component	70
4.2.3 Importance of Environmental Standards	70
4.3 Environmental Impact Assessment in Tanzania	70
4.3.1 Recommendations for the EIA process in Tanzania	72

CHAPTER FIVE	
5.0 PRINCIPAL FEATURES OF THE PROPOSED EIA REGULATIONS	73
5.1 Introduction	73
5.2 Main Parts of the Proposed Framework Environmental Legislation	74
5.3 Basic Features of the Proposed EIA Regulations	74
CHAPTER SIX	
6.0 INSTITUTIONAL AND FUNCTIONAL ARRANGEMENTS FOR EIA	79
6.1 Introduction	79
6.2 Existing Legal Framework and Institutions for Environmental Management in Tanzania	79
6.2.1 The Legal Framework for Environmental Management in Tanzania	80
6.2.2 Proposed Institutional arrangement for environmental management in the National Environment Policy	80
6.3 Institutional Requirements for EIA Generally	82
6.3.1 Some Basic Considerations for Institutional Arrangement for EIA	83
6.3.2 Some Structural Problems in the EIA Process	83
6.4 Institutional Linkages for Enforcement and Implementation Mechanism for EIA in Tanzania	84
6.4.1 Recommendations for Institutional Linkages for EIA in Tanzania	84
6.5 Recommendations for a Framework for Harmonisation	86
6.5.1 Proposals for Harmonization in the EIA Process	86
6.5.2 Framework for Harmonization	86
6.5.3 Basic Principles for the Sub-regional Protocol/Treaty on EIA under the Auspices of the East African Co-operation Framework	86
CHAPTER SEVEN	89
7.0 TRAINING REQUIREMENTS	89
7.1 Institutional Capacity-Building	89
7.2 Research and Training Institutions	89
7.3 Constraints on Training for EIA	91
7.3.1 Recommendations for Training for EIA	91
7.4 CONCLUSION	92
REFERENCES	92
A GLOSSARY OF EIA TERMS	93
Annex I	95

UGANDA COUNTRY REPORT

LIST OF ACRONYMS	125
EXECUTIVE SUMMARY	127
CHAPTER ONE	129
REVIEW OF EXISTING LEGISLATIONS ON EIA	129
1.1 The Framework for EIA in the National Environment Statute	129

CHAPTER TWO	131
DEFINITION OF EIA IN THE STATUTE AND THE CONCEPT FOLLOWED IN THE REGULATIONS	131
CHAPTER THREE	133
RATIONALE FOR EIA	133
3.1 Legal Authority and the Appropriate Framework	133
CHAPTER FOUR	135
CONSIDERATIONS IN DESIGNING THE EIA REGULATIONS	135
4.1 Levels of Assessment	135
4.2 The Environmental Impact Statement	136
4.2.1 Credibility and Reliability of the Study and the Statement	136
4.3 Public Participation in EIA	136
4.4 Decision Making	137
4.5 Grounds of Decision	137
CHAPTER FIVE	139
CO-ORDINATION OF GOVERNMENT DECISION MAKING	139
5.1 Delegation of EIA Review Functions	139
5.2 Tiering of Projects	139
CHAPTER SIX	141
TIME FRAMES FOR ACTIONS	141
6.1 Paying for EIA	141
6.2 Timing of the EIA	141
6.3 Institutional Arrangements within the Authority for Managing EIA	141
6.4 Appeals and Alternative Dispute Resolution	142
6.5 Human Resources for EIA Management	142
6.4.1 Training Needs	142
THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 1998	143
WORKSHOP ON DEVELOPMENT AND HARMONIZATION OF ENVIRONMENTAL LAW ON SELECTED TOPICS IN EAST AFRICA	164
REPORT OF THE MEETING OF THE PERMANENT SECRETARIES ON THE DEVELOPMENT AND HARMONIZATION OF ENVIRONMENTAL LAW ON SELECTED TOPICS UNDER THE EAST AFRICAN SUB-REGIONAL PROJECT	169
RECOMMENDATIONS ON THE HARMONISATION OF ISSUES FOR THE DEVELOPMENT OF ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS	172
List of Participants by Subjects	174

PREFACE

Environmental law is an essential tool for the governance and management of the environment and natural resources. It is the foundation of national and regional policies and actions to ensure that the use of natural resources is done equitably and sustainably.

In the East African sub-regional countries of Kenya, Tanzania and Uganda have, since 1995, been developing and harmonizing various environmental laws in selected sectors within their region. The process of developing and harmonizing environmental laws is intended to lead to the enactment or amendment of the internal legislative, regulatory and administrative framework of each country. Such change has been harmonized at a sub-regional level where the three countries have agreed on legal principles, definitions and substantive legal provisions to govern a segment or matter of the environment or natural resource sector.

The volumes produced by the UNEP/UNDP/Joint Project on Environmental Law and Institutions in Africa, East African Sub-regional Project, are intended to build capacity in Kenya, Tanzania and Uganda in environmental law. The East African Sub-Regional Project is a component of the UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa funded by the Dutch Government. The underlying presupposition is that the three countries share similar historical and legal heritage and that the physical and historical situation in East Africa offered an opportunity to initiate and encourage dealing with environmental issues according to problem-sheds. The historical facts are that (a) there is a history of regional cooperation among the countries from colonial times; and (b) there is shared legal tradition which derives from common law origins. These two historical facts were relied upon to support development and harmonization of legislation on selected themes in the commonly shared environment.

The UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa is funded by The Royal Dutch Government, as a pilot project, to work with selected countries towards development of environmental law and institutions in Africa. The purpose is to enhance the capacity of the countries to develop and enforce laws relating to environment and natural resources. Phase I of the Project which commenced at the end of 1994, and is scheduled to end in December, 1999, involves seven countries, namely: Burkina Faso, Malawi, Mozambique, Sao Tome and Principe, Kenya, Tanzania and Uganda. While activities in the first four countries focus on entirely national activities, the work in the three East African countries are focused on issues which are essentially of sub-regional character. The management of the Joint Project is based at UNEP within its environmental law activities and is directed by a Task Manager, who works under guidance of a Steering Committee. Members of the Steering Committee are UNEP, UNDP, FAO, The World Bank, IUCN Environmental Law Centre and The Dutch Government.

The Process For Development and Harmonization Of The Laws

Representatives of the three governments met in February 1995 to work out general principles and modalities for their cooperation.

A second meeting was held in May, 1995, to discuss the general terrain of topics amenable to development and harmonization of laws. The final decision on six priority topics was taken at their third meeting in February 1996.

The six topics which were selected for the Project's activities are:

- (i) Development and harmonization of EIA Regulations;
- (ii) Development and harmonization of laws relating to transboundary movement of hazardous wastes;
- (iii) Development and harmonization of the methodologies for the development of environmental standards;
- (iv) Development and harmonization of forestry laws;

- (v) Development and harmonization of wildlife laws; and
- (vi) Recommendation for legal and institutional framework for the protection of the environment of Lake Victoria.
- (vii) The seventh topic, development and harmonization of laws relating to toxic and hazardous chemicals was taken up in 1998 when the work on the first six was virtually complete. The three countries considered this as one of the critical issues in environmental protection in the sub-region.

For each of the topics, the governments jointly worked out generic terms of reference. However, each national team subsequently worked out country-specific terms of reference to reflect national legal and institutional situations, existing initiatives on the same task as well as existing priorities. The respective national consultants were also selected by the National Coordinating Committees (NCC), working in consultation with an officer at the UNDP country office.

The national consultants have now completed their work. In each case, the reports have enjoyed reviews by the national panels constituted under the aegis of the respective NCCs. Draft reports, as they evolved, were circulated to the consultants in the three countries. In many cases, the consultants were able to take the reports of their counterparts into account in finalizing their reports. Therefore, very high degree of harmonization of reports had been achieved before the consultants could meet together.

At the end, a workshop to finally harmonize the reports was held in 1998 in Kisumu, Kenya and was attended by the consultants for each topic for substantive discussions of their reports and to agree on recommendations to their governments. The objectives of the workshop were to; (a) ensure that recommendations for policies and law for the respective topics as far as possible, are in harmony; (b) promote the development of legal and institutional machineries which are comparable in all the three East African countries in the absence of an over-arching sub-regional framework; (c) harmonize the normative prescriptions and institutional machineries and therefore create an opportunity for harmonized enforcement procedures; and (d) create an opportunity for dealing with the respective environmental problems according to the problem-sheds, which are essentially sub-regional. The workshop was facilitated by Professor David Freestone, Legal Advisor, International and Environmental Law Unit of The World Bank and Mr. Jonathan Lindsay, a Legal Officer in Development Law Service at the United Nations Food and Agricultural Organization.

Thereafter, a meeting for Permanent Secretaries responsible for environment from the three countries was held and attended by the national coordinators. The Permanent Secretaries as accounting officers and policy leaders in their ministries were fully briefed on the aspirations and activities of the project; how the project had developed and the process of harmonization. They assumed ownership of the outcome of the reports. They also resolved that the stage was well-set for development of a sub-regional binding instrument on environmental management. Their debate recognized that a legally binding instrument in the form of a protocol within the framework of the Treaty of East African Cooperation would take time to evolve and could involve a broad cross-section of ministries. For these reasons, they resolved that as an interim measure, they would sign a memorandum of understanding.

Subsequently, a Memorandum of Understanding on Cooperation in Environmental Management was entered into by the three governments on 22 October 1998 covering all the themes of the project and also covering other aspects which had not been envisaged in the project. One of the main features of the Memorandum of Understanding is a commitment to develop a protocol on environment management under the auspices of the proposed East African Treaty.

The governments of Kenya, Tanzania and Uganda are expected to take up the recommendations and the Memorandum of Understanding and implement the recommendations. In fact, the Permanent Secretaries specifically requested UNEP and its cooperating agencies in the Joint Project to assist in the development of the Memorandum of Understanding.

Meanwhile, the Joint Project has undertaken to produce the reports on the seven topics as stand-alone publications and as bases for national legislation. In addition, a report on the review of national projects related to environmental law and institutions has been prepared as part of the publications. The national reports were prepared by the National Coordinators in the three countries. This report is intended to assist in avoiding duplication of efforts and create a coherent synergy in reviewing and developing environmental laws.

The reports were prepared by national consultants who had been selected by national coordinating committees comprising national stakeholders. The initial draft reports were reviewed by national consensus-building workshops to enrich the inputs and to broaden the ownership of the final product. It is after that process the reports were harmonized at a joint workshop of the respective teams from the three East African countries, after which presentations were made to the Permanent Secretariats who would decide on action at national level.

The national consultants who conducted the research and drafting of the reports were: Dr. Albert Mumma for Kenya; Ms. Verdiana Macha and Mr. Robert Makaramba for Tanzania; and Mr. John Ntambirweki for Uganda. Their contribution to this important work is gratefully acknowledged.

The views presented in the report do not necessarily represent the policies of UNEP, UNDP or any of the partners in the Joint Project.

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OVERVIEW

In many respects two hundred years of industrialisation have made the world a better place to live in. During the industrialization process, the environment was viewed as an inexhaustible source of resource supplies, as well as an unlimited sink for harmful products of economic prosperity. That mistaken belief was tenable only for a limited duration. With increasing tempo of industrialization and human consumption, it became evident that the capacity of the environment to autobiodegrade wastes was limited. Today, environmental deterioration often serves to undermine the governing objective of development - improvement of human welfare - by reducing the capacity to produce more consumable goods.. Development activities and land use changes can have significant impacts on the environment.

Environmental assessment of development is therefore no longer a luxury but a necessity to ensure that the natural resources and the environment are protected i.e. the need to reconcile present economic growth with the sustainable utilization of natural resources. Environmental impact assessment process is the tool to analyse such possible impacts on the environment. Environmental impact assessment is the examination, analysis and assessment of planned activities with a view of ensuring environmentally sound and sustainable development.

The purpose of environmental impact assessment is to assess how the potential impact of a planned action may adversely affect the environment, and if such potential is found to exist, to identify alternatives that will prevent, mitigate or minimize those adverse impacts. The low cost of preventing environmental damage as opposed to the high cost of repairing such damage provides a sound economic foundation for such assessment.

The three countries of Kenya, Tanzania and Uganda all are in the process of industrialisation, expanding or modernising their agricultural production so as to improve the welfare of their people. These countries are also liberalising their economies so as to increase their revenue base. These activities do heavily impact on the environment and natural resources. It follows, therefore, that a harmonised environmental impact assessment process will ensure that the anticipated development activities will not adversely affect the environment.

This report is a clear attempt at ensuring that Kenya, Tanzania and Uganda develop and harmonize their legislation and guidelines on environmental impact assessment process. The following is an overview of each country report.

KENYA COUNTRY REPORT

The Kenyan country report is prepared against the background that an Environmental Management and Coordination bill, which has been drafted, will be enacted soon. It is under this law that the Environmental Impact Assessment Regulations are proposed to be made.

The report provides a historical origin and functions of EIA, having first been introduced in the USA in 1969. The report just like that of Tanzania has a heavy regional harmonization content: several examples of harmonization are provided. These examples range from the European Directives on EIA procedures to the ESPOO Convention on EIA for transboundary contexts.

The report further provides structures and contents of the EIA processes. The major components being the scoping, preparation of the terms of reference, EIA reports, impact mitigation plans and decision-making processes. Another major input of the EIA process being the stakeholder and public involvement processes. The report provide options for institutional arrangements for the EIA regulation.

To caution against anticipated problems during implementation, the report outlines the constraints likely to be faced. These constraints relate to scope of EIAs, involvement and usefulness of the public, poor integration of bio-physical environmental impacts with socio-economic effects and poor follow-up of recommendations for mitigation measures.

The report reviews EIA provisions in the laws of Kenya where only minimal inferences are identified. This review includes the provisions as provided under the draft Environmental Management and Coordination Bill. When enacted, the EIA process will become a legal requirement under the laws of Kenya. A review of the Environmental Impact Assessment (EIA) Guidelines and Administrative Procedures of 1996) is also made in the Report. The said guidelines provide the categories of projects to undergo the EIA process, and the procedure of conducting any environmental impact assessment in real practice.

To ensure effective implementation, a proposal is made on the institutional and functional arrangements for the EIA framework. The Authority proposed in the draft National Environment Management and Coordination Bill is recommended to be the national coordinating agency in charge of approving and regulating EIAs particularly in relation to such assessments for national and regional projects.

The report further provides concrete recommendations for principles of harmonization of EIA laws and regulations at the East African level. Principles for drafting the EIA Regulations at national level are also provided. A training framework necessary for implementation of the law is also outlined. Proposals are made for Training and capacity building to meet national manpower needs. To complete the Report, draft Regulations on EIA are provided based on the principles mentioned above.

THE TANZANIA COUNTRY REPORT.

The Tanzania country Report traces the development of environmental planning, with examples traced from the USA National Environment Policy Act (NEPA). The historical background is well supported by case law and State Environmental Protection Acts in the USA. Other examples from Canada and African countries such as Uganda, Kenya, Zanzibar, Gambia, Egypt, Zambia, Ghana, Nigeria, Congo, Malawi, Algeria and Tunisia are provided. It lays the justification and usefulness of EIA emphasizing that managers, planners and lawyers engaged in formulation and implementation of laws should have a good knowledge of the adverse effects of their development plans. It also lays down a philosophical and practical justification, of the need for EIA based on socio-economic considerations. The conclusion drawn from the review is that there is no uniform international standard on the EIA procedures, practices and laws at international level. The Country Report provides a well founded structure of the EIA process which Tanzania should adopt.

On the issue of decision-making, the report makes a significant departure from the Kenyan Report, in that a decision of the environmental agency may be appealed against to the Minister. Here, the Minister would appoint an Environmental Appeals Board to hear the appeal and take a decision. A process of appeal is accordingly provided in detail. The report like the Kenyan report provides constraints in implementation, which include narrowness of EIA, determination of significant adverse impact on the environment, public involvement in the process and the technical nature of environmental impact statements.

The Tanzania Country Report, like that of Kenya, has a strong and well elaborated regional harmonization component. The regional harmonization is based on matters which arose under the Stockholm Conference on Human Environment of 1972, the various United Nations General Assembly resolutions, The European Union directives and Espoo Convention. Advantages and disadvantages of the regional EIA processes are given. At the East African level, detailed areas necessary for sub-regional harmonization are provided. This is comparable to those given in the Kenyan report.

A review of the laws of Tanzania is made where it is revealed that there is no framework legislation on environment management or specific EIA legislation. It is noted, however, that EIA typologies exist in a couple of principle laws. The EIA process is well recognized as an important planning tool under the national environmental policy which has already been adopted. The policy makes it a priority to make the EIA process part of the law. Examples of cases where EIA was done or should have been carried out are also given in the report.

The Report provides principles upon which EIA should be based. The principles also highlight the main features of the proposed framework of EIA. Like the Kenyan and Ugandan reports, institutional and functional arrangements for EIA process are outlined. A brief history and proposals on the most appropriate institutional arrangements are analyzed

based on Tanzania institutional arrangements. The conclusion is that the ministry responsible for environment should continue to provide the neutral leadership required for the EIA process. A detailed training and capacity building requirements are given where various institutions responsibilities are identified.

The conclusion of the report provides draft EIA Regulations which should be made under a proposed Environmental Protection Bill, but is still in form of a proposal which has not been adopted. The report, unlike those from Uganda and Kenya, provides well thought-out regulations on EIA public hearings, some of which details are usually included in EIA guidelines.

THE UGANDA COUNTRY REPORT

The Uganda country report, although harmonised with those of Kenya and Tanzania, provides a different approach.

During the period 1991 - 1994 Uganda carried out a comprehensive legal, policy and institutional review under the National Environment Action Plan (NEAP) process with a view of providing recommendations for reform in environment management. The recommendations led to, among others, the enactment of the National Environment Statute in 1995, and the adoption of the National Environment Policy and Action Plan. The National Environment Statute provides the framework for enacting EIA regulations and operational guidelines.

The Country Report for Uganda takes into account the efforts earlier on made under the National Environment Action Plan (NEAP) process. Unlike the country reports of Kenya and Tanzania, Uganda followed the UNEP guidelines in preparing her regulations. The report traces the development of EIA process in various parts of the world. It also provides the rationale for EIA, the principal reason being that it is a tool which prevents environmental degradation, promotes cost-effectiveness and is necessary for long-term planning.

The report further provides the major considerations in designing EIA Regulations. The considerations being based on the pro-investment climate prevailing in Uganda. The process should not be cumbersome to developers with limitations on the decision making process. The Uganda report recommends 3 levels of assessment - automatic exclusion, project brief and environmental impact study. It proposes that only where the significant impacts cannot be easily identified and mitigated that a full impact study should be conducted. Elaborate public participation process at preliminary and decision making levels are provided. These include a public hearing processes in order to include stakeholders in decision-making.

The Uganda report outlines a process of decentralization of the government decision making process and regulatory powers to lead agencies. Recommendations for training requirements are also outlined. In Uganda, the EIA Regulations and Guidelines have already been adopted into law and both are being implemented in the country. The Environment Impact Assessment Regulations are cited as Statutory Instruments. No.8 of 1998 gazetted by order of Government.

KENYA COUNTRY REPORT

ACRONYMS

DDC	District Development Committee
DEC	District Environment Secretariat
EIA	Environmental Impact Assessment
ECE	Economic Commission for Europe
ELU	Environment Liaison Units
EU	European Union
NEMA	National Environmental Management Authority
NEAP	National Environmental Action Plan
NEC	National Environmental Council
NGOs	Non-Governmental Organisations
PEMC	Provincial Monitoring and Evaluation Committee

EXECUTIVE SUMMARY

This Report focuses on the harmonisation of Environmental Impact Assessment Regulations in the East African Sub-region. It deals with the institutional linkage, enforcement and implementation mechanism for EIA at national, regional and district level; review institutional capacity in the private as well as public sector and recommends a training programme to build capacity in the EIA process; and finally identifies a framework for harmonisation of EIA legislation at Sub-regional level.

The Report recommends that harmonisation be based on EIA principles and practices which have been adopted world-wide over the last twenty-five or so years.

It has been revised to take into account recommendations of the Kisumu Workshop on 2 -3 February, 1998, on regional harmonisation; and, the Naivasha National Consensus Building Workshop on 26-30 April, 1998.

CHAPTER ONE

1.0 BACKGROUND

1.1 The Origin and Functions of EIA

Environmental Impact Assessment (EIA) is essentially a technique for ensuring that environmental considerations are taken into account in any decision on development activities. Environmental considerations extend to not only the physical environment, but also the human environment. In principle, EIA should apply to all actions likely to have an environmental impact. This includes policies, plans, programmes and projects. Indeed, it is in the nature of decision-making that the form of action at one level is conditioned by prior action, thus, limiting feasible alternatives available to subsequent decision-makers. The implementation of a project, for instance, is conditioned by the policy decisions already taken at higher levels which may have pre-empted some alternative strategies.

Although the benefits of undertaking an EIA are widely acknowledged for policies, plans and programmes, it remains a complex under-taking and its methodology is very much in its infancy. EIA has been undertaken therefore, mainly at the project level where the methodology is further advanced. Indeed, it is commonly more narrowly defined as:

"a technique and a process by which information about the environmental effects of a project is collected, both by the developer and from other sources and taken into account by the decision-making authority in forming a judgement on whether the development should go ahead."

EIA has been in existence since 1970 when it was introduced in the USA following the coming into effect of the National Environmental Policy Act of 1969. It has rapidly spread to other parts of the world. Its use has been

formalised by the introduction of national laws and regulations and, in some cases, policies which establish systems of institutionalised procedures to ensure that all proposed physical development with a potentially adverse environmental impact is assessed prior to authorization. Those systems of linked and integrated procedures set out the rules by which:

- (a) individual proposed actions are subject to an EIA study;
- (b) such EIAs are conducted;
- (c) EIA results and recommendations are used in decision-making; and,
- (d) if an authorization is obtained, indicate how the results are to be used to guide and assist the implementation and operation of the proposal.

The main benefits of EIA are:

- (i) improved project design and siting;
- (ii) more informed decision-making;
- (iii) increased accountability and transparency during the development process;
- (iv) improved integration of projects into their environmental and social setting;
- (v) reduced environmental damage;
- (vi) more effective projects in terms of meeting their financial and/or socio-economic objectives; and,
- (vii) a positive contribution towards achieving sustainability.

2.2 Structure of the EIA Process

Most EIA processes have a similar structure, following stages outlined below:

- (i) **Screening:** This is an initial assessment to decide whether a project requires further investigation in an EIA. It would be time consuming and a waste of resources for all proposals to undergo an EIA. Therefore some screening is done to determine which proposals should go in for full assessment.

Different methods exist for screening. Some designate projects or areas using threshold lists. Others use judgement or initial evaluations to determine environmental significance based on proposal type, size, cost, the sensitivity of the environment to development or the strength of community opinion; but all projects, irrespective of type, scale, thresholds or environmental sensitivity should be subjected to a screening process to determine whether or not they are likely to have serious environmental impacts. Only projects with potentially serious environmental impacts are subjected to detailed environmental assessment leading to the preparation of an EIA.

- (ii) **Scoping:** This is a technique for identifying the key impacts requiring further investigation, and for preparing the Terms of Reference for the EIA study. Scoping should be a mandatory process and the public, affected communities and concerned authorities must be involved in the exercise.

Scoping is an activity designed to identify the key priority and contentious issues relating to a proposed development or course of action. It forms the basis of the EIA. It helps in focusing the assessment, thereby saving time and reduce costs.

- (iii) **Terms of Reference (TOR):** These are prepared by the project proponent in consultation with the Environmental Assessment Review authority. The TOR specify the following:

- (a) likely significant impacts to be identified, predicted, evaluated, mitigated and monitored;
- (b) alternative designs or locations to be assessed; and
- (c) work plan for EIA study and schedule of consultations.

- (iv) **The Environmental Impact Assessment:** The EIA is the identification, analysis and evaluation of the significance of impacts. It is concentrated on a systematic prediction and evaluation of the impacts identified in the TOR. It would include a prediction and evaluation of social, economic and health impacts. The study should also consider mitigative measures. These are measures to prevent, reduce or compensate for impacts and to make good out of environmental damage.

- (v) **The EIA Report:** The Report presents the results of the EIA Study in a useable format. It is prepared by the project proponent. Its aim is to provide the authorising agency with sufficient information to enable judgement to be made on whether to issue or refuse an authorization.

The Report is prepared for the use of non-experts. It therefore, must be written in a way which communicates effectively with its audience. It should be brief with a minimum of technical terminology, and be illustrated with good quality maps, charts, diagrams and other visual aids. The Report must also contain an Executive or Non-Technical Summary which presents the main conclusions and options for decision-making.

The EIA Report should contain the following:

- Executive or Non-Technical Summary.
- An Introduction.
- Descriptions of the Aims of the project.
- Discussion of the relationship between the proposed project and current land-use and other relevant policies for the area likely to be affected.
- Description of the proposed project and alternatives (including no development).
- Description of the expected environmental conditions at the time of probable project implementation.
- An evaluation of the impacts of each alternative, with clear information on the criteria used to assign significance.
- Comparative evaluation of alternatives, covering significant adverse and beneficial impacts, mitigation and monitoring measures and identification of the environmentally preferred option, if possible, using a set of sustainability criteria.

- An Impact Management Plan.
 - Discussion of the uncertainties involved in interpreting or using results from predictive methods and analytical techniques, and a description of gaps in baseline and other data used in the EIA work and included in the EIA Report.
 - Appendices - all technical information and description of approaches or methods used to provide conclusions in the EIA Report, should be included in appendices if not suitable for the main text. Also, appendices should contain:
 - a glossary;
 - explanation of acronyms;
 - a full list of all reference materials;
 - names of the members of the EIA team; and
 - TORs for the EIA.
 - Finally if stake-holder involvement has occurred between scoping and production of the EIA Report, a section may be added on comments received and the responses made.
- indications as to how environmental impacts will be managed at the decommissioning stage.
- In the plan, it is useful to specify the characteristics of the mitigating measures to be implemented, in particular:
- a description of the mitigation action;
 - time and place for implementation;
 - expected results;
 - responsibility for implementation (named individual in operator's organisation);
 - monitoring strategy needed to check on implementation and level of performance success; and,
 - reporting procedures within operator's organisation and to a control authority and community liaison committee.

(vi) The Impact Mitigation Plan

The prevention or control of impacts depends on the implementation of mitigation measures. There should be a clear, written plan of action to guide the impact management work.

The process of impact management has three basic phases:

- (a) implementation of mitigation measures;
- (b) monitoring and evaluation; and,
- (c) revision of the plan.

Impact management requires the following elements to be in place:

- mitigation measures;
- monitoring schemes;
- contingency plans for emergencies;
- liaison arrangements with the relevant statutory agencies and local communities;
- implementation, when considered necessary, of an appropriate environmental management audit system.

(vii) Monitoring

There are three main types of monitoring which can be undertaken for a project: compliance monitoring; mitigation monitoring (whether mitigation actions have been implemented in accordance with an agreed schedule and are working as expected); and, impact monitoring (scale and extent of impacts caused by the project).

For monitoring to be successful, it needs to be technically adequate and be part of an effective institutional framework which can make use of the data needed for appropriate action. There is no point in collecting data which is shelved because there is no institutional arrangement within which it can be utilised.

In formulating monitoring programmes the relationship between baseline data collection and impact monitoring programmes needs to be enhanced and emphasised.

(viii) Review of EIA Reports

This is the process of assessing the adequacy of the EIA report in terms of the existing plans, policies and standards. The authorising agency may seek outside technical expertise to assist it with the review.

If the EIA report is not acceptable technically, the agency should require additional work before it can be accepted for decision-making purposes. The revised report should

then be further reviewed by the agency until it is considered acceptable.

(ix) **Decision-making:** This is when the authorising agency decides whether the proposal can proceed and, if so, under what conditions. It is a common failing to focus all attention on the decision-making stage of the EIA process as the main or only way of ensuring an environmentally sensitive project. This stage is important, but if EIAs are undertaken throughout project life cycles then the significance of the decision-making stage may decline.

The significance of the final approval stage lies with the fact that all aspects, including the environment, are considered and trade-offs made; because of this, it is necessary to ensure that decision-makers include EIA results in their deliberations, and a special mechanism may be necessary.

Special mechanisms include the requirement that the decision-making body issues, publicly, an account of the decision-making process and how the EIA results should be used.

(x) *Stake-holder and Public Involvement*

The involvement of stake-holders and the public, generally, is vital to the success of an EIA.

The term "stake-holder" refers to:

- local people and communities likely to be affected by the project;
- project beneficiaries (whether local or not);
- national and local government agencies with responsibility for management of natural resources and welfare of the people likely to be affected by the project; and,
- the interested public.

These individuals, groups and organisations represent the minimum (sample) to be involved in the EIA.

There are three main types of public involvement in EIA, that is:

- First, there is "information dissemination" which occurs when the proponent provides information to stakeholders without providing for responses from them.

- "Consultation" involves information exchange between the proponent and stake-holders. Consultation gives stake-holders an opportunity to express views on the proposal. The authorising agency and the proponent are, however, not bound to take such views into account.

- "Participation" indicates shared involvement and responsibility. Participation should be the aim when countries are introducing, or amending, EIA procedures.

The timing and nature of public involvement in these activities, plays a crucial role in EIA effectiveness. In scoping, it helps to ensure that likely significant issues are identified and investigated. There are a number of basic principles to be followed during the period of stake-holder involvement:

- sufficient information must be provided in a form which is easily understood by non-experts;
- sufficient time must be allowed for individuals to read, discuss and consider the information and its implications;
- sufficient time must be allowed to enable views and opinions to be presented;
- a response must be provided to issues raised or comments made by individuals; and
- selection and timing of venues or contexts must encourage the maximum attendance and free exchange of views.

The stages at which public involvement may occur are:

- scoping to prepare the TOR for an EIA;
- project appraisal at release of preliminary EIA report and/or the draft final EIA report;
- project implementation; and,
- project evaluation.

2.3 Institutional Arrangements for EIA

Institutional arrangements deal with:

- (a) type and effectiveness of the agency responsible for the EIA system;

- (b) its relationships with focal points in government, especially sectoral or lead agencies;
- (c) the mechanisms for coordination and cooperation among all agencies; and,
- (d) the nature and extent of involvement of actors in the EIA process.

Countries have created various kinds of institutional arrangements to promote environmental management objectives. They are of four types:

- (a) adding environmental responsibilities to existing sectoral agencies, especially environment related agencies such as Ministry of Natural Resources;
- (b) creating environmental departments within sectoral agencies;
- (c) establishing a central environmental agency in the form of either an inter-agency committee, a subsidiary part of a ministry, or an independent body placed in the Office of the President as an integral part of national economic planning; and,
- (d) creating a Ministry of Environment.

It is thought that placement in a high profile Ministry with responsibility for economic planning would be the most effective arrangement.

Institutional arrangements are either centralised or decentralised. Under centralised arrangements, all the activities are concentrated in either the central environmental agency or in a lead agency. Under decentralised arrangements roles in the EIA process are shared among either various tiers of government (hierarchical decentralisation) or among lead agencies (functional decentralisation).

Complete centralisation of EIA activities in the environmental agency is not desirable since many sectoral agencies have environmental responsibilities. EIA responsibilities should be functionally decentralised in countries with unitary systems of government. Environmental units should be established in each sectoral agency to assist project proponents in carrying out EIAs.

2.4 Procedural Frameworks for EIA

EIA procedural frameworks refer to the sequence of tasks shared among participants in the EIA process. They allocate

responsibilities and the timing of the process. EIA can be undertaken without a set of formal procedures. Formal procedures however, ensure uniformity and guarantees that all relevant projects are examined in a clearly defined structured manner, so that the assessment is thoroughly executed and the results are effectively utilised. Formal procedures also eliminate inconsistencies as well as personal prejudices, whims and caprices of environmental agency or lead agency officials. Furthermore, the absence of a defined assessment procedure creates uncertainties for project proponents regarding the actions they are expected to take.

The following are suggested as basic elements of an EIA procedure:

- (i) The assessment should be conducted in two stages in order to save time and costs involved in detailed assessments. All projects, irrespective of type, scale, thresholds or environmental sensitivity, should be subjected to a preliminary or initial environmental assessment or screening to determine whether or not they are likely to have serious environmental impacts. Only projects with potentially serious environmental consequences are then subjected to detailed environmental assessment leading to the preparation of an EIA.
- (ii) Scoping should be mandatory, and the public, affected communities and concerned agencies must be involved in the exercise.
- (iii) The Terms of Reference (TOR) is to be prepared by the project proponent in consultation with the EIS Review Committee.
- (iv) The EIA should be conducted "in-house" by the project proponent or by the use of consultants duly registered with the environmental agency or with an accredited professional body.
- (v) The EIS should be circulated to all concerned government agencies, ensuring inter-agency cooperation.
- (vi) There should be an opportunity for a public hearing.
- (vii) Time limits should be set for EIS reviews, ensuring that project implementation is not unduly delayed as a result of the EIA requirement.
- (viii) In order to ensure that the development is executed in line with measures approved in the EIA, concerned

agencies should be involved in monitoring compliance and post-project audits.

Effective incorporation of EIA into the project cycle can only be achieved if EIA is fully internalised as an element of the planning process. EIA should be carried out at the inception of a proposed action when there is a real choice between alternative courses of action. Therefore, the EIA system should be integrated into the existing planning or development control framework of the country.

2.5 Constraints facing the Implementation of EIA

There are some constraints facing EIA when it is being administered. These relate to both the scope and the application of EIA. The constraints relating to scope are as follows:

- (a) the main focus of EIA is limited to major physical development projects with little application to national, sectoral or regional development plans;
- (b) small-scale projects are not included in most EIA systems, although their cumulative impact may be significant over time; and,
- (c) EIA is not applied to macro-economic initiatives such as structural adjustment programmes or budgetary/taxation initiatives.

The constraints relating to applications are as follows -

- (a) difficulties in ensuring adequate and useful public involvement;

- (b) insufficient integration of EIA work with feasibility and similar studies in the project life-cycle, and the major decisions made before EIAs are completed;
- (c) lack of consistency in the selection of development projects requiring specific EIA studies;
- (d) weak procedures for obtaining early agreement on the scope of EIA studies;
- (e) inadequate understanding of the relative roles of baseline description and impact prediction;
- (f) There is poor integration of biophysical environmental impacts with social, economic and health effects;
- (g) EIA reports produced are not easily understood by decision-makers and the public because of their length and complexity;
- (h) lack of mechanisms to ensure that EIA reports are considered in authorization decisions;
- (i) weak linkages between the EIA report recommendations on mitigation and monitoring, and project implementation and operation;
- (j) limited technical and managerial capacities to implement EIAs; and
- (k) benefits of EIA tend to be long-term, diffuse and are widespread whereas the costs tend to be immediate or short-term, and are seen to be borne by specific proponents and organisations.



2.0 ANTECEDENTS IN REGIONAL HARMONIZATION

There are a number of examples of efforts at regional harmonization. The most successful are all operating in Europe. They include -

1. Recommendations by the Economic Commission for Europe (ECE) to governments for establishing EIA procedures;
2. The Espoo (Finland) Convention on environmental impact assessment in a trans-boundary context; and
3. The European Union Directive on the assessment of the effects of certain public and private projects on the environment (85/337/EEC).

2.1. The ECE Recommendations

These are as follows -

- (a) That priority should be accorded to the implementation of EIA through legislation which should -
- (b) In the case of separate legislation, provide for linkage with other legislation which governs, *inter alia*, land use planning and planning in different economic sectors, licensing and permit systems and environmental management;
- (c) provide for the analysis and evaluation of possible environmental impacts of activities before a decision is taken, as well as in the construction and operation phases;
- (d) Contain provisions to promote the integration of environmental considerations into planning and decision-making processes;

(e) Promote integrated environmental management in relation to sustainable economic development; and,

(f) Allow for the necessary resources to be allocated to the EIA process.

2.2 The ESPOO Convention

This Convention was agreed in Espoo, Finland on 25th February 1991 under the aegis of the United Nations Economic Commission for Europe (ECE) whose members include the European countries, Canada and the United States of America. Its aim is to enhance international cooperation in assessing environmental impact, in particular in a trans-boundary context. It is the only international convention on EIA, although it is not yet in effect.

The Convention imposes an obligation on State Parties, either individually or jointly, to take all appropriate and effective measures to prevent, reduce and control significant adverse trans-boundary environmental impact from proposed activities. Parties are required to take the necessary legal, administrative or other measures, *inter alia*, to establish an EIA procedure that permits public participation and preparation of stipulated environmental impact assessment documentation. The Convention lists in Appendices activities which should be subjected to EIA, and the documentation which should be prepared. The list is a list of activities likely to cause significant adverse trans-boundary impact.

At the initiative of any party, concerned parties shall enter into discussions on whether one or more proposed activities not listed in the Appendix is or are likely to cause a significant adverse trans-boundary impact and thus should be treated as if it or they were so listed. Where these parties so agree the activity or activities shall be so treated. General guidance for identifying criteria to determine significant adverse impact is set forth in an Appendix to the Convention.

The Convention requires that EIA shall, as a minimum requirement, be undertaken at the project level. It states also that parties shall endeavour to apply the principles of EIA to policies, plans and programmes.

The Convention protects the right of parties to implement national laws, regulations and administrative provisions or accepted legal practices protecting information the supply which would be prejudicial to industrial and commercial secrecy or national security. It also preserves the right of Parties to implement more stringent measures than those in the Convention.

2.3 The European Union Directive

This Directive introduces general principles for the assessment of environmental effects with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment.

The premise of the Directive is that principles for the assessment of environmental effects should be harmonised, in particular with reference to:-

1. the projects which should be subject to assessment;
2. the main obligations of the developers;
3. the content of the assessment.

The Directive stipulates that development consent for public and private projects which are likely to have significant effect on the environment should be granted only after a prior assessment of the likely significant environmental effects of those projects have been carried out. This assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by people who may be concerned by the project in question.

The Directive stipulates that projects belonging to certain types of categories have significant effect on the environment and must as a rule be subject to assessment. Other projects which may not have significant effects on the environment in every case should only be assessed where the Member States consider that their characteristics so require. For projects which are subject to assessment a certain minimum amount of information must be supplied concerning the project and its effects.

The Directive stipulates that Member States shall adopt all measures necessary to ensure that, before consent is given

projects likely to have significant effects on the environment by virtue of their nature, size or location are made subject to an assessment with regard to their effects. It lists the classes of the projects in an Annex.

The Directive provides that the EIA may be integrated into the existing procedures for consent to projects in the Member States or, failing this, into other procedures or into procedures to be established to comply with the aims of the Directive.

The Directive allows Member States, in exceptional cases, to exempt a specific project in whole or in part from EIA. In that case it shall -

- (a) consider whether another form of assessment would be appropriate and whether the information thus collected should be made available to the public;
- (b) make available to the public the information relating to the exemption and the reasons for granting it; and
- (c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available where appropriate, to their own nationals.

The EIA needs to identify, describe and assess the direct and indirect effects of the project on -

- (a) human beings, fauna and flora;
- (b) soil, water, air, climate and the landscape;
- (c) the interaction between these factors; and
- (d) material assets and the cultural heritage.

The Directive lists projects which must be subjected to EIA and projects which shall be assessed where Member States consider that their characteristics so require. It permits Member States to specify certain types of projects as being subject to an assessment, or to establish the criteria and/or thresholds necessary to determine which of the projects of the classes listed as subject to an assessment if Members States so decide are to be subject to mandatory EIA.

The Directive requires that in the case of projects subject to mandatory assessment Member States shall adopt measures to ensure that the developer supplies information specified in an Annex to the Directive. The information shall include at least -

- | | |
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| <ul style="list-style-type: none"> (a) a description of the project comprising information on the site and design of the project; (b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects; (c) the data required to identify and assess the main effects which the project is likely to have on the environment; and (d) a non-technical summary of the information supplied. | <ul style="list-style-type: none"> (f) it determines the manner in which the public is to be consulted; and (g) it fixes the appropriate time limits for the various stages of the procedure in order to ensure that a decision is taken within a reasonable period. |
|--|--|

Additionally, the Directive requires Member States to ensure that any authorities with relevant information make it available to the developer.

Further the Directive requires Member States to ensure that authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the request for development consent. Member States shall designate the authorities to be consulted for this purpose in general terms or in each case when the request for consent is made. The information gathered shall be forwarded to these authorities. Additionally, Member States shall ensure that -

- (a) any request for development consent and any information gathered are made available to the public;
- (b) the public concerned is given the opportunity to express an opinion before the project is initiated;
- (c) it (the Member State) determines the public concerned;
- (d) it specifies the places where the information can be consulted;
- (e) it specifies the way in which the public may be informed;

The Directive stipulates that where a decision has been taken the competent authority shall inform the public concerned of -

- (a) the content of the decision and any conditions attached to it; and
- (b) the reasons for the decision.

The Framework Directive allows Member States to lay down stricter rules regarding the scope and procedure when carrying out EIA.

The Directive has been amended to deal with two problems which arose in its implementation. First, there was a wide variation in the requirements of the Member States regarding the thresholds defined for Annex II projects which are not subject to mandatory assessment). Some Member States set high thresholds, resulting in assessments in only a few cases while others set low thresholds, requiring assessment of projects with only limited impacts. The amendment clarifies the circumstances in which Annex II projects are required to undergo assessment, that is, in every case where the project is liable to have a significant effect on special protection areas designated by member states.

A second weakness was that the content of information submitted by developers has varied greatly in the absence of minimum standards; most developers submit only a bare minimum of information. The amendment introduces the concept of scoping, enabling an indication to be given of the nature of information to be gathered.

CHAPTER THREE

3.0 REVIEW OF EIA PROVISIONS IN KENYAN LAWS

Kenya did not have any provision for EIA in its laws until the enactment of the Physical Planning Act 1996.

The Physical Planning Act of 1996 is "An Act to provide for the preparation and implementation of physical development plans." It provides for the preparation of Regional Physical Development Plans and Local Physical Development Plans.

The Act empowers local authorities to control development including the power to consider all development applications and grant all development permissions." Section 30 prohibits carrying out development within the area of a local authority without development permission granted by the local authority. Section 36 provides that "if in connection with a development application a local authority is of the opinion that proposals for industrial location, dumping sites, sewerage treatment, quarries or any other development activity will have injurious impact on the environment, the applicant shall be required to submit together with the application an Environmental Impact Assessment Report."

Separately the Government is currently finalising a bill known as the Environmental Management and Coordination Bill. Among other things the Bill establishes the National Environmental Management Authority (NEMA). The functions of this authority include -

"To identify projects and programmes, plans and policies for which environmental impact assessment, environmental audit or environmental monitoring must be conducted under the Act." (Article 9(j)).

Part VII of the Bill is devoted to Environmental Impact Assessments. Article 72 provides that "notwithstanding any

approval, permit or licence granted under this Act or any other law in force in Kenya, any person, before taking or financing any new project specified in the 2nd schedule, shall submit a Project Report to the Authority in the prescribed form."

The second Schedule to the Act specifies the following projects:- urban development; transportation, dams, rivers, and water resources; aerial spraying, mining, including quarrying and open cast extraction; forestry related activities; agriculture; processing and manufacturing industries; electrical infrastructure; management of hydrocarbons; waste disposal; natural conservation areas; nuclear reactors; major developments in biotechnology.

The Bill provides that the proponent shall undertake at his own expense an EIA study and submit a report to the Authority. The EIA shall be conducted in accordance with the guidelines and procedures provided for in the 4th Schedule to the Act. This provides that, the Report should contain the following:-

- (i) an introduction;
- (ii) a title, with a description of the project;
- (iii) a description of the Project Initiator;
- (iv) a statement of need for the project;
- (v) a project description;
- (vi) a project options description;
- (vii) a description of the existing environment;
- (viii) a descriptions of the results of preliminary assessment;
- (ix) a detailed examination of the impacts;

- (x) suggested mitigation and abatement measures;
- (xi) a description of residual impacts;
- (xii) an evaluation of the project;
- (xiii) a summary of conclusions;
- (xiv) an indication of data sources, consultations and public participation;
- (xv) a list of references.

The Bill stipulates that the Director General shall respond to applications for environmental impact assessment licences within six months. If no communication is received from the Director General within six months the applicant may within nine months of his application start his undertaking.

The Bill provides for publicity. It stipulates that upon receiving an EIA Report the Authority shall publish in the Gazette and in two daily newspapers having the largest circulation in the area, a notice which shall state -

- (a) a summary description of the project;
- (b) the place where the project is to be carried out;
- (c) the place where the EIA Report may be inspected; and
- (d) a time limit not exceeding ninety days for the submission of written comments by any Member of

the public on the EIA Report. The Authority may, on the application of any person, extend the period stipulated so as to afford a reasonable opportunity for such a person to submit comments.

Article 74 provides that the Authority may, after being satisfied as to the adequacy of an EIA Report, issue an environmental impact licence on such terms and conditions as it deems fit.

Article 75 provides for the possibility of a fresh EIA. It states that the Authority may, at any time after the issue of the licence, direct the holder to submit at his expense a fresh EIA Report where -

- (a) there is a substantial change or modification in the project or in the manner in which the project is being operated;
- (b) the project poses an environmental threat which could not reasonably be foreseen at the time of the submission of the Report;
- (c) it is established that the information or data given by the licensee in support of his application was false, inaccurate or intended to mislead.

Finally Article 78 stipulates that the Authority may cancel, revoke or suspend any EIA licence for upto 24 months where the licensee contravenes its provisions. And under Article 79 the Authority is responsible for carrying out an environmental audit of all activities that are likely to have an effect on the environment.

CHAPTER FOUR

4.0 DRAFT REGULATIONS AND GUIDELINES

Following the drafting of the Environmental Management and Coordination Bill the Kenya National Environmental Action Plan Secretariat (NEAP) drafted in October 1996, a Report on "Environmental Impact Assessment (EIA) (Guidelines and Administrative Procedures)."

The Report covers the following areas:-

- (i) Definitions of "EIA", "project" and "environment";
- (ii) Objectives of EIA;
- (iii) A description of the EIA process;
- (iv) The legal framework in Kenya for EIA;
- (v) A description of the important considerations in EIA;
- (vi) Procedures for assessment;
- (vii) The EIA review process;
- (viii) Guidelines for preparing EIA Reports;
- (ix) EIA sector checklist.

The NEAP Guidelines notes that the application of EIA in Kenya has been on ad hoc basis due to various limitations, including:-

- (i) inadequate finance and human resource capacity;
- (ii) absence of comprehensive legal provisions to guide project proponents to comply with EIA requirements;
- (iii) absence of comprehensive administrative procedures to ensure that EIA study recommendations are complied with and that performance standards are monitored during implementation and decommissioning;

- (iv) absence of, or inadequate policies for, integrating environment and development at the planning and management levels.

In the absence of legislation EIA activities are implemented through a variety of instruments including sectoral laws, policy statements, and other administrative means, for instance, permits and licences.

The Environmental Management and Coordination Bill provides a format for the EIA process.

The Guidelines provide a summary description of EIA procedures. The first step is for the project proponent to put in a development proposal. Secondly, the proposal is classified into one of three categories as follows -

- (a) All Schedule II activities must do an EIA when it is clear from the development of the proposal that there will be significant impacts;
- (b) If it is uncertain whether the proposal could result in significant impacts, an Initial Environmental Review is carried out;
- (c) If no formal assessment is required an Environmental Authority Review is conducted.

The third step is the Environmental Impact Assessment itself. Before the commencement of the EIA the proponent is given the Terms of Reference by the line department in consultation with the Authority. This gives an outline of key areas of concern, methods proposed, type of data expected, the depth of investigation required and the reporting method. The Authority shall maintain a register of EIA specialists, who may be used.

The EIA study is followed by a Review Process. This is conducted by an Independent Review Panel comprised of persons from relevant disciplines and chaired by an appointee of the Director General of the Authority.

The Panel will review the EIA study for technical soundness. The Authority provides a Secretariat for it.

The EIA Report must be written in a specified format. It should have -

- (a) A front cover page showing the title and project proponent;
- (b) A table of contents;
- (c) The project justification;
- (d) The Project Description;
- (e) The Project Options;
- (f) A description of the project's existing environment;
- (g) An indication of potential significant impacts;
- (h) Mitigation measures;
- (i) A monitoring and evaluation plan;
- (j) Conclusions and Recommendations;
- (k) Sources of Data, Consultations and public involvement;
- (l) A list of references.

The Decision Stage follows the Review Process. If approval is given the conditions of approval must be reflected in the Record of Decision. One of the conditions may be a Management Plan to be followed in implementing the project. A proponent can appeal to the Environment Tribunal and/or a court of law if not satisfied with the decision.

Checklists

The final section of the Guidelines contain checklists. This provides guidance on the likely environmental impacts and possible mitigation measures that development projects in ten selected sectors may have. The checklists are to assist the agencies in doing the following:-

- (i) identifying and scoping environmental implications of proposed development projects;
- (ii) preparing adequate Terms of Reference;
- (iii) reviewing the results of an EIA study;
- (iv) determining the project's viability.

Each checklist comprises seven aspects of an EIA study:-

- (i) sources of impacts;
- (ii) project inputs;
- (iii) project activities;
- (iv) areas of impacts;
- (v) environmental impacts;
- (vi) environmental guidelines or standards; and
- (vii) mitigation measures.

Sources of impacts refers to elements of a project that may lead to significant impacts, e.g. the type of project; its inputs and its activities (project siting, construction, operation and decommissioning).

Areas of impact provides information on the natural and human environments most likely to be affected by the project impacts. They include land, water, air, flora and fauna, critical habitats, wildlife, migratory routes, mineral resources, areas supporting significant biodiversity, human settlements, land use, sites of historical and cultural importance, infrastructural facilities, public health and safety and cultural practices and values.

Environmental Impacts discusses the principal impacts on the environment:

Environmental Guidelines and Standards lists the pertinent national legislations, regulations and standards, and international guidelines, conventions and treaties.

Mitigation measures discusses the measures necessary for the prevention or reduction of the potential impacts and may include a Mitigation Plan. The measures may be applied at all stages in the project cycle, that is in planning, siting, designing, implementation, operation, monitoring, auditing and decommissioning.

The sectors listed are Agriculture; Industry; Transport; Human Settlement and Infrastructure; Water Resources; Mining; Forestry; Energy; Wildlife Management and Tourism; and Fisheries and Aquaculture.

On the basis of these Guidelines the Consultants draft of Regulations for EIA are annexed to this Report.

CHAPTER FIVE

5.0 INSTITUTIONAL AND FUNCTIONAL ARRANGEMENTS

At present there is no dedicated institutional arrangements for the management of EIA procedures in Kenya.

The Bill provides for the establishment of a National Environmental Council (NEC) as the policy making and coordination institution, and a National Environmental Management Authority (NEMA). The Authority is to be responsible, inter alia, for standard setting, enforcement, over-sight of EIAs and rehabilitation of degraded areas. Also to be established is an Environmental Tribunal in which decisions of the Authority may be challenged.

The NEC would be chaired by the line Minister (such as the Minister for Environment). Its membership would include other line Ministers, the private sector, Non-Governmental Organisations and Universities. NEMA would be a parastatal, reporting to the Minister of Environment. It would be managed by a Director General and three deputies.

The Authority's statutory functions are to be carried out through a number of specialised committees established by the Bill. Among the Authority's statutory functions is to preside over EIAs and issue environmental licences. Also, the existing provincial and district environmental committees would become a part of the Authority's committee structure.

The third component of this institutional structure is the Environmental Tribunal.

The institutional framework contained in the Bill is likely to improve vertical coordination and integration within government. The means for doing so is the District Environment Committee, which is designed to transfer

decision-making to local levels. Institutional framework provides for the incorporation of the public into decision-making at all levels. The framework, finally, provides for the Authority to coordinate between the several institutions which may be involved in the EIA process.

5.1 PROPOSED INSTITUTIONAL LINKAGES

The Kenya National Environmental Action Plan (NEAP) 1994 proposed an institutional structure and linkage for EIA which is based on whether the proposed project is to be a district, provincial or national project.

For district-based projects the regulating authority for EIA would be the District Development Committee (DDC) under the Chairmanship of the District Commissioner. The technical arm of the DDC is the District Environment Secretariat (DES) of the environmental coordinating institution (to be established by statute).

For inter-district projects the regulating authority is the Provincial Monitoring and Evaluation Committee (PEMC) under the Chairmanship of the Provincial Commissioner. No Environmental Secretariat is proposed at the provincial level to perform technical functions. It is not stated how these functions are to be performed.

The proposed regulating authority for national projects would be a body to be established, the EIA agency. Under the proposal, the EIA agency would be part of the national environment coordinating body.

Interlinkages would be between the national body and its district offices. Thus the District Environmental Secretariat is the district office of the national environment coordinating institution. As indicated the DES would be the technical arm of the DDC, which itself brings together

all the district heads of the line ministries. In addition the DDC would be able to use the expertise of line ministry officials in carrying out reviews and monitoring.

5.2 NEAP GUIDELINES

In view of the draft Environmental Management and Coordination Bill the NEAP Secretariat produced "EIA Guidelines and Administrative Procedures" which, in a sub-section on "Administration of the "EIA Guidelines and Procedures" proposes an institutional linkage, enforcement and implementation framework.

Under these proposals EIA will be administered by the National Environment Management Authority (NEMA). The NEMA will have co-ordination powers over all public and private sectors but every sector will play a role in the implementation of the EIA requirements. This will require the establishment of Environment Liaison Units (ELU). Provincial and district linkages will be achieved through environmental committees to be designated by NEMA. The role of these committees will be to implement EIA requirements at district and provincial levels. Although it is not stated expressly the role of these committees is likely to be served by the District Environment Secretariat and the Provincial Monitoring and Evaluation Committee respectively.

The draft Guidelines provide that formal submission under the EIA requirements will be made to NEMA through the relevant line agencies. NEMA will provide the procedures and technical advice to project proponents on how to comply with the EIA requirements.

Another aspect of linkage is inter-sectoral coordination. The Environmental Management and Coordination Bill requires that the Government agencies administer their respective statutes in accordance with the NEMA powers.

NEMA has the mandate to ensure that every sector complies with the EIA requirements. Implementation is the responsibility of both NEMA and the relevant line agencies. Both organisations will ensure that all appropriate mitigation measures are implemented.

The report recommends that the preparation of an appropriate institutional linkage, enforcement and implementation mechanism for EIA at national (interpreted in this study to mean "provincial") and district level is based on a review of the following documents which indicate the Government's policy and intentions as to how the environmental institution will fit into the Governmental structure.

1. The draft Environmental Management and Coordination Bill.
2. The Kenya National Environment Action Plan (NEAP) Report, 1994.
3. The draft "EIA Guidelines and Administrative Procedures", NEAP Secretariat Report 1996.
4. The draft "Policy Paper on Environment and Development" Ministry of Environment and Natural Resources, 1995.
5. The District Focus for Rural Development Strategy (the Blue Book, 1986).

On the basis of these documents NEMA as the national coordinating agency would be in charge of approving and regulating EIA, particularly in relation to EIA for national and regional projects. NEMA would be expected to have its own technical secretariat. However NEMA would rely on line ministries for specialist expertise in the various sectors.

NEMA would maintain district and provincial offices, in the form of a District Environment Secretariat and a Provincial Environmental Secretariat. These offices would be in charge of approving EIAs for district and certain inter-district (provincial) projects. In approving EIAs the District Environment Secretariat would work through the District Development Committee and the Provincial Monitoring and Evaluation Committee as district and provincial decision-making bodies respectively. In monitoring and regulating projects approved after an EIA the District and Provincial offices of the NEMA would draw on the expertise of the district offices of the line ministries.

The linkage proposed here is more elaborately set out in the draft Regulations annexed.

CHAPTER SIX

6.0 RECOMMENDATIONS FOR A FRAMEWORK FOR HARMONISATION

Under the East African Cooperation Treaty the East African countries have pledged to cooperate with a view to bringing about greater harmony in their economies. In the field of environmental management EIA laws and regulations have been selected for greater harmonisation. Harmonisation of EIA regulations among the East African countries is important for the following reasons:

- (a) There is need for a “level playing field” in environmental regulation among countries in the sub-region. Discrepancies in EIA regulations may lead to discrepancies in investments between the three countries. Consequently there is need for a common definition of the environment for the purposes of the EIA process. Further EIA harmonisation is important in relation to scope, content and enforcement.
- (b) There is need for sub-regional conformity with internationally agreed norms and practices such as the precautionary principle found now in Article 15 of the Rio Declaration, 1992. EIA has been singled out as a significant procedure for achieving sustainable development in a large number of international instruments including the Rio Declaration.
- (c) There are advantages accruing from political cooperation, the operationalisation of the principles of good neighbourliness and of conflict avoidance, the promotion of the “good governance” agenda and the further development of the common legal heritage of East Africa.
- (d) Such harmonisation facilitates optimal sustainable utilisation of shared resources, the capacity to address

trans-boundary problems as well as procedure for information sharing and dispute settlement.

The Consultant's recommendations are that the proposed harmonisation of EIA laws and regulations should be along the following principles.

First all laws should enshrine the principle that activities which potentially could have a significant impact on the environment must be subjected to prior environmental impact assessment before a decision is taken on whether they may be allowed to proceed.

Second, a methodology for conducting EIA into policies, plans and programmes should be used to assess cumulative impacts.

Thirdly, the requirement for an EIA should be a formal legal requirement, rather than being a matter of mere policy. The law must stipulate the organisation responsible for approving the EIA, the powers of the organisation and its relationship with other authorising agencies. The law should also stipulate the procedure and criteria to be followed in seeking EIA approval.

Fourth, the laws should enshrine the principle that the responsibility to conduct an EIA is that of the developer. The developer must meet the predetermined and justifiable costs of the EIA review process. The involvement of the EIA authority should be limited to ensuring that the conduct of the EIA meets minimum quality standards as regards scope and the gathering and analysis of data.

Fifth, members of the public must be given an opportunity to be involved in the EIA process. This, ideally, would be at the scoping stage and at the decision making stage. Additionally the laws must enshrine the right of the public to have access to information as a precondition to a

meaningful involvement in the EIA process, except for commercially confidential and security sensitive information. A version of the Non-Technical summary should be in the local language.

Sixth, wider rights of *locus standi* should be provided. In trans-boundary issues these should extend to residents of neighbouring states on the basis of reciprocity.

Seven, the laws should require that the decision of the authorising agency, in those cases where an EIA is required, must not be made without taking into account the report of the environmental impact study. The decision itself must provide reasons justifying the conclusion reached in the light environmental impact study. The reasoned conclusion and the decision must be made public.

Eight, the laws should enshrine the principle that there must be a right to resort to court on judicial review to challenge the decision of the authorising agency. The right of court action should be available to both the developer and the public as long as they have participated in the

EIA process. In appropriate cases (such as on scientific and technical matters) Alternative Dispute Resolution should be provided for.

Nine, the laws should enshrine the principle that regulations must specify time frames within which the authorising agency must give decisions. This principle is particularly important if EIA is not to be seen as a fetter on the development process. The time frames should be comparable in the sub-region.

Ten, laws should enshrine the principle that where a project which poses a threat of adverse impacts on the environment is permitted to proceed then the developer must submit for approval a Mitigation Plan, outlining how the potential adverse impacts will be mitigated. The laws should stipulate that compliance with the Mitigation Plan is a condition for the continuing validity of the EIA authorization, and also that failure to carry out the Mitigation Plan is an offence for which there are penalties.

Eleven in order to ensure compliance with the Mitigation Plan the laws must empower the authorising agency and other concerned agencies to carry out monitoring and enforcement action.

Twelve, the laws should enshrine the principle that project developers must introduce environmental management systems into their operations, and carry out periodic audits in order to be able continuously to improve their environmental performance.

For projects with trans-boundary implications, there should be a principle of prior consultation and information sharing with affected neighbours. Also a procedure for conflict avoidance should be provided for.

Certain of the above principles are already reflected in the laws of the three East African countries. However some others are not. The Consultant's recommendation is that the framework for harmonisation should be the adoption of all these principles including those which are not yet a part of the laws and regulations of any of the countries in the sub-region.

CHAPTER SEVEN

7.0 TRAINING

EIA is a process that involves all sections of society. Training would therefore need to cater for the diverse needs of a whole range of people. These include -

1. **Trainers:** Additional training would enable them to contextualise their knowledge and make it more relevant to the local circumstances.
2. **Practitioners:** i.e. those who intend to undertake EIA and who need to develop sufficient skills to be able to carry out EIA. This group includes private sector consultants, officials in resource management agencies, and officials at national, regional and district offices of the EIA agency.
3. **Managers:** these people would have the task of managing and monitoring the EIA process, evaluating the results, and planning and monitoring implementation recommendations of the EIA, and they may be managers of public or private enterprises.
4. **Decision-makers and policy makers** who need to develop an appreciation for the process, the key objectives and features of the process and some concept of the process itself.
5. **The Public,** including NGOs who will need to develop an appreciation of the key objectives of EIA, the process and the outcome of EIAs.

An appropriate training programme would need to cover a range of issues including the following areas:

1. legal and economic issues affecting the particular organisation;
2. health and safety issues as they affect the particular organisation;

3. multi-sectoral expertise combining environmental training with training in other technical and management subjects;
4. training in interpersonal skills, including skills in consensus building, resolving conflict and negotiation;
5. training in skills for relating to communities affected by a project proposal.

In order to achieve the most from the EIA process it is important that those practising EIA have an understanding of the purpose/objectives of the process and its potential in assisting in the move towards sustainability. But because of the different levels of involvement in the process by the various actors training needs also differ.

In Kenya EIA training is offered at the Moi University School of Environmental Studies. The training is offered as part of a Master of Philosophy curriculum and takes the form of a two-week intensive seminar. The capacity at Moi University to offer training in EIA can be built on to mount a diverse range of courses for different groups and tailored to suit the needs of these groups. Depending on demand, other Kenyan universities can also mount EIA courses.

Training can also be had abroad, either for long periods, leading to formal qualifications or for only short periods.

Further it would be important to continue training with practical hands-on experience. This is best arranged by placing certain key personnel from the EIA unit of NEMA on internships in organisations with long experience as EIA regulatory authorities, such as the US Environmental Protection Agency. Those who have undergone training can then mount short training courses for those - such as the members of the District Environment Secretariat who may not have the opportunity for training abroad.

CHAPTER EIGHT

8.0 PRINCIPLES TO BE INCORPORATED INTO DRAFT EIA REGULATIONS

1. Application

- (a) Application for an EIA permit shall be made by the developer to the local office of the NEMA.
- (b) The application shall be on a prescribed form to be supplied by the NEMA office.
- (c) The application shall contain an annexed description of the nature of the project, its proposed location and the scale of proposed activities.

2. Screening

- (a) The NEMA shall decide within 30 days whether the project falls within the category of projects for which an EIA is required.
- (b) In coming to its decision the NEMA may seek the opinion of the relevant lead agency.
- (c) If the NEMA is of the opinion that an EIA is required it must give reasons for its decision.
- (d) The developer may appeal to the Environment Tribunal against NEMA'S decision.

3. Initial Environmental Assessment (IEA)

In case the project requires an EIA -

- (a) The developer shall carry out an Initial Environmental Assessment to develop the Terms of Reference for the EIA to follow.

(b) The IEA shall identify the project's likely key impacts on the environment, indicate the likely extent of the impacts of the project, give a brief evaluation of the importance of these impacts, and identify likely mitigation measures, if any.

(c) The potentially affected public must be given an opportunity to comment on the Initial Environmental Assessment at meetings organized by the developer.

(d) The developer shall submit a Report of the IEA to the NEMA for approval.

(e) The Report shall include a list of the names of the people who shall carry out the EIA study together with their qualifications.

(f) The NEMA shall give its decision on the IEA within 30 days.

(g) In coming to its decision the NEMA may consult the lead agency.

(h) If the NEMA does not approve the IEA Report the developer may revise it along lines suggested by the NEMA and resubmit it for approval. The NEMA's decision must be given in 30 days.

(i) The NEMA may disqualify any of the names submitted to conduct the study, giving written reasons.

(j) Any person whose name is disqualified may appeal against the decision in the first instance to the Director General of NEMA who must give his decision in 14 days. If the Director General upholds the disqualification the affected individual may appeal to the Environment Tribunal.

4. The Environmental Impact Study (EIS)

- (a) The EIS shall be carried out by the developer according to the TOR approved by the NEMA office.
- (b) The EIS must-
 - identify project impacts.
 - predict the extent and scale of the impacts.
 - identify mitigation measures, including alternatives.
 - identify a monitoring and evaluation plan.
- (c) The developer shall organise meetings with the affected public to seek their views.
- (d) The developer shall submit the EIS Report to the NEMA for its decision.
- (e) Upon receipt of the Report the NEMA shall send a copy of the Report to the relevant line Ministry for its comments, make a copy available for public consultation at a time and place to be publicised by the NEMA and constitute a Review Committee for the Report, and seek views from whoever it deems appropriate.
- (f) The NEMA shall give its decision within 3 months of receiving the Report although the developer may agree to an extension for upto another three months at the request of NEMA.

5. The Review

- (a) The Review Panel shall review the EIS Report for compliance with the TOR, and for quality and shall give its opinion to the NEMA.
- (b) The Review Panel may invite comments from whoever it determines, including the developer, in coming to its opinion.
- (c) The opinion of the Review Panel shall be in writing and the NEMA may, but shall not be required, to make it available to the public. A copy shall be given to the developer.

6. Public Hearing

- (a) The NEMA may choose to hold a public hearing before

giving its decision.

- (b) If a public hearing is held the public will be allowed to attend and may with the Chairman's permission, address the hearing.
- (c) The Report of the public hearing shall be made by the Chairman to the NEMA who may choose to publish it, but must avail it on request.

7. The Decision

- (a) The NEMA shall make a decision on the EIS Report on the basis of all the information before it.
- (b) The NEMA's decision must be made public.
- (c) The NEMA's decision must contain a reasoned explanation
- (d) The NEMA may
 - approve the project
 - attach conditions to its approval
 - reject the project
 - defer a decision, pending further EIS Report on specified issues.
- (e) The NEMA's decision may be appealed to the Environment Tribunal by the developer and any one who gave comments in writing to the NEMA.
- (f) The decision of the NEMA may be reviewed by the High Court on points of law.

8. Fees

- (a) The developer shall pay an Application fee to be set by NEMA.
- (b) There shall be different scales of fees for a project which is determined not to require an EIA from one which does.
- (c) The fees shall be so set as to enable NEMA to recover its costs but not to make a profit.
- (d) NEMA may choose to charge a basic fee for information it supplies.

9. Post Assessment Audits

- (a) It shall be a condition of the EIA approval that the developer carry out and submit to NEMA an audit report within a period to be set after the project's implementation.
- (b) NEMA may, on the basis of the audit report, require adjustments to the mitigation plan.
- (c) NEMA may at any time after approval carry out an inspection of the project, or seek the assistance of the lead agency in doing so.

10. Offences/Immunity

- (a) Contravention of these Regulations is an offence for which criminal penalties may be imposed.
- (b) The EIA approval may be suspended or revoked if an offence has been committed of a kind considered serious enough to vitiate the approval, e.g. fraudulent misrepresentation.
- (c) Members of the Review Panel, NEMA officials and the Chairman of the public hearing shall be immune from civil action for statements made or action taken in the performance of their functions under these regulations.

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ANNEX

REGULATIONS RELATING TO ENVIRONMENTAL IMPACT ASSESSMENT (Under section ... of the Environmental Management and Coordination Bill 199..)

Citation

1. These Regulations may be cited as the Environmental Impact Assessment Regulations.

Application of these Regulations

2. (a) No developer shall implement a project for which environmental impact assessment is required under the Act and these Regulations unless an environmental impact assessment has been concluded in accordance with these Regulations.
- (b) No licensing authority under any law in force in Kenya shall issue a licence for any project for which an environmental impact assessment is required under the Act unless the applicant produces to the licensing authority a certificate of approval of environmental impact assessment issued under these Regulations.
- (c) An application for a certificate of approval of environmental impact assessment shall be made by the developer on a prescribed form to the district office of the National Environmental Management Authority.
- (d) If the district office of the National Environmental Management Agency determines that the application raises issues of interdistrict or national nature it shall transmit the application to the head office for determination.

Screening

3. (a) Upon receiving the application the National Environmental Management Authority shall decide, within thirty days whether the project falls within the category of projects for which an Environmental Impact Assessment is required under the Act.
- (b) In coming to its decision the National Environmental Management Authority may consult any department or officer of government.
- (c) The decision of the National Environmental Protection Authority together with the reasons therefore shall be communicated to the applicant within thirty days of the application.
- (d) If the National Environmental Management Authority does not decide whether the project is one for which an environmental impact assessment is required under the Act within thirty days or such extended period as may be mutually agreed between it and the applicant, the applicant and any licensing authority shall be entitled to assume that no environmental impact assessment is required.
- (e) An applicant who is dissatisfied with the National Environmental Management Authority's decision that an environmental assessment is required may appeal against the decision to the Environment Tribunal within seven days.

Initial Environmental Assessment

4. In the case of projects requiring an environmental impact assessment the developer shall:-

- (a) Submit to the National Environmental Management Authority a project brief giving the following particulars
 - (i) the nature of the project;
 - (ii) the location of the project including the physical area that may be affected by the project's activities;
 - (iii) the kind of activities that shall be undertaken during the project and on decommissioning;
 - (iv) the design of the project;
 - (v) the materials to be used in the project, including during construction;
 - (vi) the products and by-products to be generated by the project, including disposal methods;
 - (vii) the environmental effects of the materials, methods, products and by-products, including potential mitigation methods;
 - (viii) any other information which Authority may require.
- (b) The National Environmental Management Authority shall transmit a copy of the project brief to the lead agency for comments.
- (c) If the lead agency does not give its comments within fourteen days of receipt or such extended period as agreed with the National Environmental Management Authority, the Authority may proceed to determine the project brief.
- (d) If the authority finds that the project will have significant impacts and that the project brief discloses no sufficient mitigation measures he shall require that the developer undertake an environmental impact study.
- (e) If the Authority is satisfied that the project will have no significant impact on the environment or that the project brief discloses sufficient mitigating measures he may issue a certificate of approval.
- (f) If the Authority does not give its decision within thirty days of receipt of the project brief or such extended period as may be agreed with the applicant the applicant and any licensing authority shall be entitled to assume that no certificate of approval under these regulations is required.

The Environmental Impact Study

- 5. (a) An environmental impact study shall be conducted in accordance with the Terms of Reference developed by the applicant in consultation with the National Environmental Management Authority.
- (b) The environmental impact study must
 - (i) identify the anticipated impacts of the project;
 - (ii) predict the extent and scale of the impacts;
 - (iii) identify mitigation measures including alternatives;
 - (iv) identify a monitoring and evaluation plan.
- (c) The applicant shall take appropriate measures to seek the views of the people who may be affected by the project during the study. Such measures shall include-

- (i) publicising the intended project and its anticipated effects in the local media;
- (ii) holding public meetings to consult the local people on their views of the project;
- (iii) incorporating the views of the local communities in the report of the study.

The Environmental Impact Report

- 6. (a) The developer shall submit to the Authority an Environmental Impact Report incorporating the following information:-
 - (i) A description of the project;
 - (ii) the proposed location, alternative locations considered and reasons for preferring the proposed location;
 - (iii) a description of the potentially affected environment;
 - (iv) the materials to be used in the project including at construction;
 - (v) the technology and processes to be used, alternative technologies and processes available and reasons for preferring the chosen technology and processes;
 - (vi) the products and by-products of the project;
 - (vii) the environmental effects of the project including the direct, indirect cumulative, short-term and long-term effects which are anticipated;
 - (viii) the measures proposed for eliminating, minimising or mitigating adverse impacts;
 - (ix) an identification of gaps in knowledge and uncertainties which were encountered in compiling the information;
 - (x) such other matters as the Authority may require.
- (b) The Environmental Impact Assessment Report shall be accompanied by a Non-Technical Summary stating the main findings of the study.

Review

- 7. (a) The Authority shall submit a copy of the Report to the lead agency and any other relevant agency for comments.
- (b) If the lead agency and any other agency to which a copy of the report is transmitted fails to give its comments within thirty days or such extended period as agreed with the Authority, the Authority may proceed with the determination of the application.
- (c) The Authority shall within thirty days of receiving the Report constitute a panel to review the Report.
- (d) The panel shall review the report for compliance with the Terms of Reference and for quality and shall give its opinions to the Authority.

Public Consultation

- 8. (a) The Authority shall within seven days of receiving the Environmental Impact Report, and if he is satisfied that the Report is complete, invite the general public to make written comments on the Report.

- (b) The public invitation shall be published in at least one newspaper having a national circulation and in at least one newspaper having a local circulation on two consecutive days in each case.
 - (c) The invitation shall state:
 - (i) the nature of the project;
 - (ii) the location of the project;
 - (iii) a brief summary of the anticipated impacts of the projects;
 - (iv) times and a place where the full report can be inspected and
 - (v) whether there is to be a charge for taking copies of the report and, if so, the amount of the charge.
 - (d) The comments under sub-regulation (a) shall be received by the Authority within thirty days of the publication of the notice or within such extended period as the Authority may by public notice grant.
9. (a) Upon receiving the comments of the public and the lead agency or other agency to whom a copy of the report was sent, or upon the expiry of the period stipulated for receipt of comments, and upon receiving the opinion of the Panel the Authority shall decide whether to hold a public hearing.
- (b) The Authority shall hold a public hearing if there is controversy about the project.
 - (c) The public hearing shall be presided over by a suitably qualified person appointed by the Authority.
 - (d) The public hearing shall be held at a venue which shall be convenient to the persons who are likely to be specifically affected by the project.
 - (e) The date and venue of the public hearing shall be published in at least one daily newspaper having a national circulation and one newspaper having a local circulation.
 - (f) On the conclusion of the Report the presiding officer shall make a report of the views presented at the public hearing and make factual findings.
 - (g) The presiding officer shall determine the rules of procedure at the public hearing although any person may attend and make an oral presentation at the hearing within time limits to be determined by the presiding officer.
 - (h) The applicant shall be given an opportunity to make a presentation and to answer presentations made.

Decision of the Authority

10. (a) The Authority shall give its decision on the application within three months of receiving the Environmental Impact Report or such extended period as shall have been mutually agreed with the applicant.
- (b) The Authority's decision shall contain reasons for the decision.
 - (c) The decision shall be communicated to the developer and a copy shall be available at the Authority's offices for public inspection.
 - (d) The Authority may -

- (i) approve the application unconditionally;
 - (ii) approve the application conditionally;
 - (iii) Refer the application back to the applicant for further study or submission of additional information;
 - (iv) reject the application.
- (e) Where the Authority approves the application it shall issue to the applicant a certificate of approval.

Access to Information

11. (a) Information or documents submitted to the Authority by any person in connection with an environmental impact assessment together with the Authority's decision and the reasons therefore shall be accessible to the public. On such reasonable terms and conditions as to payment of fees for copies and times of inspection as the Authority may impose.
- (b) A person submitting information to the Authority may at any time apply to the Authority to exclude the information or parts of it from access on the basis of commercial confidentiality or national security, giving reasons.
- (c) If the Authority grants the request the information or specified parts of it shall be excluded from public access, although an entry shall be made in a register to be maintained by the Authority indicating in general the nature of the information and the reason for which it is excluded from public access.
- (d) The Authority shall review the exclusion from access from time to time to determine whether the reasons for exclusion are still valid and whether the exclusion should continue.
- (e) Any person may appeal to the Tribunal against the decision of the Authority under this Regulation.

Inspections

12. (a) An inspector duly designated by the Authority as such may, at all reasonable times, enter on any land premises or facility related to a project for which an application for a certificate of approval of an environmental impact assessment has been made and carry out an inspection, examine records and require answers to questions.
- (b) The answers and records obtained in exercise of powers conferred under sub-regulation (a) shall not be given in evidence in court.
- (c) It shall be an offence to refuse to answer questions legitimately put or to disclose documents or give other information legitimately sought by the inspector.

Offences

13. (a) Notwithstanding any licence, permit or approval granted under the Act any person who commences, proceeds with, carries out, executes or conducts or causes to commence, proceed with, carry out, execute or conduct any project for which an approval is needed under the Act without obtaining such approval commits an offence and on conviction is liable to a penalty prescribed under the Act.
- (b) Any person who breaches a condition of approval of the environmental impact assessment commits an offence and on conviction is liable to a penalty prescribed under the Act.
- (c) The Authority may, in addition to any other penalty prescribed by law suspend or revoke the approval until the breach is remedied.

Fees

14. (a) The Authority shall be entitled to charge fees under a scheme of charges to be approved by the Minister.
- (b) The fees shall be no more than needed to enable the Authority recover its justifiable costs from year to year of administering the approval process.
- (c) There shall be a different scale of fees for applications for approval of a project which is determined not to require an assessment from one which does.
- (d) In drawing up the scheme of charges the Authority shall not be required to charge only the actual costs involved in approving each project but shall be entitled to impose average charges except that it may impose an additional charge for applications of particular complexity or demands of time and resources.

Appeals

15. (a) Any person who is aggrieved by a decision of the Authority may appeal to the Environment Tribunal within 14 days of the decision.
- (b) Except where the appeal is against a suspension or revocation of the approval under regulation 13(c), the appeal shall not of itself act as a temporary restraint on the Authority and the Authority may proceed to give effect to its decision which shall be valid unless and until overruled by the Environment Tribunal.

Immunity

16. (a) No civil or criminal liability in respect of an approval of a project or the consequences resulting from an approved project shall be incurred by any one acting in an official capacity on behalf of the Authority by reason of the approval, rejection or any condition attached to the approval.
- (b) The fact that an approval is made in respect of an environmental impact assessment shall afford no defence to any civil action or to a criminal prosecution under any enactment.

TANZANIA COUNTRY REPORT

LIST OF ABBREVIATIONS

AEA	-	Agency for Environmental Affairs
AFC	-	African Fishing Company
ANPE	-	Agence Nationale de Protection de L'Environnement
CAD	-	Computer Aided Design
CAMARTECH	-	Center for Agricultural Mechanization and Rural Technology
CCPT	-	Centre for Cleaner Production Technology
CEAA	-	Canadian Environmental Assessment Act
CEPA	-	Canadian Environment Protection Act
CEQ	-	Council on Environmental Quality
CEQA	-	California Environmental Quality Act
CSL	-	Comprehensive Study List
COSTECH	-	Commission for Science and Technology
DAWASA	-	Dar es Salaam Water and Sewerage Authority
DoE	-	Division of Environment
EAB	-	Environmental Assessment Board
EARP	-	Environmental Assessment and Review Process
EIA	-	Environmental Impact Assessment
ECAs	-	Environmentally Critical Areas
ECE	-	Economic Commission for Europe
ECPs	-	Environmentally Critical Projects
EMP	-	Environmental Management Plan
EPA	-	Environmental Protection Agency
EPD	-	Environmental Permit Decision
EIS	-	Environmental Impact Statement
EQO	-	Environmental Quality Objectives
EU	-	European Union
FEARO	-	Federal Environmental Assessment and Review Board
FEPA	-	Federal Environmental Protection Agency
GEF	-	Global Environmental Facility
GIS	-	Geographical Information Systems
GMP	-	General Management Plan
IIED	-	International Institute of Environmental Development
IMS	-	Institute of Marine Sciences
IPI	-	Institute of Production Innovation
IRA	-	Institute of Resource Assessment
LEAT	-	Lawyers Environmental Action Team
MUCHS	-	Muhimbili College of Health Sciences
MoU	-	Memorandum of Understanding
MTNRE	-	Ministry of Tourism, Natural Resources and Environment
NEA	-	National Environment Agency
NEMA	-	National Environment Management Agency

NEM Act	-	National Environment Management Act
NEMC	-	National Environment Management Council
NEAP	-	National Environmental Action Plan
NEPA	-	National Environmental Policy Act
NEP	-	National Environment Policy
NGO	-	Non-Governmental Organization
NSDS	-	National Sustainable Development Strategies
PER	-	Preliminary Environmental Review
RAPOCE	-	Regional Policy Committee on the Environment
REA	-	Regional Environmental Assessment
SEA	-	Strategic Environmental Assessment/Sectoral Environmental Assessment
SIA	-	Social Impact Assessment
SWRI	-	Serengeti Wildlife Research Institute
TAFIRI	-	Tanzania Fisheries Research Institute
TAFORI	-	Tanzania Forestry Research Institute
TANAPA	-	Tanzania National Parks Authority
TAT	-	Tanzania Automotive Technology
TBS	-	Tanzania Bureau of Standards
TIC	-	Tanzania Investment Centre
TOR	-	Terms of Reference
TNPP	-	TANAPA National Parks Policy
TNSRC	-	Tanzania National Scientific Research Council
TNRDC	-	Tanzania National Radiation Commission
TRC	-	Technical Review Committee
UCLAS	-	University College of Lands and Architectural Studies
UDSM	-	University of Dar es Salaam
UNCED	-	United Nations Conference on Environment and Development
UNDP	-	United Nations Development Programme
UNEP	-	United Nations Environment Programme
VPO	-	Vice President's Office
WCED	-	World Commission on Environment and Development

CHAPTER ONE

1.0 INTRODUCTION

1.1 Background to the Project

The East African Sub-Regional Project is a component of the UNEP/UNDP/Dutch Government Joint Project on Environmental Law and Institutions in Africa. Its main object is to support the national initiatives towards the adoption of laws that prescribe the appropriate normative demands, institutional arrangements and the procedural requirements for the enforcement of such laws. Under the Project, assistance was provided to Kenya, Uganda and the United Republic of Tanzania in the development and harmonisation of EIA Regulations and Guidelines.

This is a Country Report in respect of the United Republic of Tanzania concerning that project. This Report incorporates the recommendations of the Seminar that was held at Kisumu in February, 1998, as well as the suggestions of the Project's Task Manager. The recommendations of the participants at the National Consensus Building Workshop on Development and Harmonization of EIA Regulations and Guidelines which was held in Dar es Salaam in early November, 1998, have also been incorporated in the Report.

1.2 Structure of the Report

This Report comprises of seven Chapters. Chapter One is an introduction. What this Report is all about and the reasons for the desirability of harmonisation of EIA regulations and/or guidelines the within East African context is briefly explained.

Chapter Two gives a brief background to the concept of EIA, its definition, origins and functions, procedural requirements for, and constraints in its implementation.

Chapter Three examines briefly antecedents in regional harmonisation. The precise items that are identified for harmonisation are examined to determine if they offer analogies for the East African region.

Chapter Four reviews existing EIA laws or typologies in the laws. The existing normative prescriptions and the institutional frameworks that would operate the EIA requirements and procedures are examined, and the strategies for promoting efficiency and efficacy of the law are discussed.

Chapter Five outlines the principle features of the Draft EIA regulations which are annexed to this Report.

Chapter Six constitutes a detailed institutional arrangements and linkages. It outlines the arrangements for enforcement and implementation mechanisms, at national level and how the EIA objectives would be achieved at local and district levels. The Chapter also identifies and highlights the framework for harmonisation of the institutional arrangements and procedures at the regional level.

Chapter Seven provides a concise outline of the training needs as well as suitable programme for achieving it. It also summarizes the type and level of technology, both from the beginning or as a long-term objectives, which may be essential.

This Report contains annexes of draft environmental impact assessment regulations.

CHAPTER TWO

2.0 BACKGROUND TO ENVIRONMENTAL IMPACT ASSESSMENT

2.1 Integrating Environment and Development

The satisfaction of human needs and aspirations is the major objective of development. Human beings in their quest for development, however, have pursued development goals without paying heed to the “*ability of future generations to meet their own needs*”. Consequently, both environmental degradation and resource depletion have been increasing and environmental pollution is becoming a real life threat.

The World Commission on Environment and Development (WCED) released its report, *Our Common Future*¹ in 1987. Since then there has been a realisation that physical sustainability cannot be secured unless development policies, plans and programmes pay attention to such considerations as changes in access to resources, the distribution of costs and benefits and social equity between generations. The sustainable development strategy recognises the integration of environmental concerns in development; the importance of inter-sectoral linkages; the incorporation of traditional ecological knowledge in national policies and plans; public participation in decision-making; and, decentralisation of the management of resources.

The common theme throughout the strategy for sustainable development is the need to integrate economic and ecological considerations in decision-making. One of the

weaknesses that most of the Anglophone countries inherited from the British colonial policy, legal and administrative framework for resource management is institutional rigidity: the tendency to deal with one industry or sector in isolation, failing to recognise the importance of inter-sectoral linkages. Sectoral organisations tend to pursue sectoral objectives and to treat their impacts on other sectors as side effects, taken into account only if compelled to do so. Many of the environment and development problems that confront us have their roots in the sectoral fragmentation of responsibility². Sustainable development requires that such fragmentation be overcome.

Sustainability requires the enforcement of wider responsibilities for the impacts of decisions. This requires changes in the legal and institutional framework that will enforce the common interest. Some necessary changes in the legal and constitutional framework may start from the proposition that a clean and healthy environment is essential for all human beings – including future generations³.

The law alone cannot enforce the common interest. It principally needs community knowledge and support, which entails greater public participation in the decisions that affect the environment. This is best secured by decentralising the management of resources upon which local communities depend, and giving these communities an effective say over the use of these resources.

Some projects, however, require participation on a different basis. Public inquiries and hearings on the development and environmental impacts can help greatly in drawing attention to different points of view.

¹ Our Common Future, The World Commission on Environment and Development, Oxford University Press, 1987.

² Ibid. at p.63.

³ The right to a clean and healthy environment forms part of the human rights provisions in the Bill of Rights enshrined in the Constitution of the Republic of South Africa, 1996 and the Constitution of the Republic of Uganda, 1995 respectively. Section 6(1) of the Environmental Management for Sustainable Development Act No. 2 of 1996 of Zanzibar also provides for this right.

2.2 Environmental Planning and Environmental Management

The objective of both environmental planning and environmental management is to achieve the benefits of development whilst avoiding or minimising its adverse environmental effects and enhancing its environmental benefits. According to the World Bank Operational Manual, there is a range of instruments that can be applied to satisfy the Bank's environmental assessment requirement. Depending on the type of project, these instruments include environmental impact assessment (EIA)⁴, regional or sectoral environmental assessment⁵, environmental audit⁶, hazard or risk assessment⁷, and environmental management plan (EMP)⁸. For certain projects, the environmental assessment report may consist one of the instrument alone; in other cases, the instruments are part of the environmental assessment documentation.

Environmental Impact Assessment (EIA) is an *Environmental Planning* activity that is undertaken prior to the approval of a proposed project or programme or policy. It is an integral part of project preparation. EIA is undertaken at the feasibility study or planning stage and always considers details of both the project, programme, policy or plan and the environment in which it is to be developed or implemented. EIA takes into account the natural environment (air, water, and land); the physical environment (built environment); human health and safety; socio-cultural and trans-boundary aspects.

Environmental management refers to activities which are undertaken during the construction, operation or de-commissioning of the project, for example, statutory controls, monitoring or environmental auditing⁹. These activities are usually contained in the environmental management plan (EMP) instrument which covers mitigation measures, monitoring, and the actions required to implement the measures to be taken during the implementation and operation of a project to eliminate or off-set adverse environmental impacts, or to reduce them to acceptable levels. EMP forms part of the items which are to be included in the environmental assessment report.

Planners, managers and lawyers engaged in the formulation and implementation of laws and regulations affecting the environment would be aided by a good working knowledge of the environmental management principles affecting those plans. More particularly, they should be familiar with the principles of environmental law and environmental management tools and the policy, legal and administrative framework within which the environmental assessment is to be carried out. It is, however, beyond the scope of this Report to go into the details of environmental management principles.

2.3 Environmental Protection Paradigm

Environmental problems are found almost all over the world, and are not confined to any level of economic development, any legal system, or any set of economic or political institutions¹⁰. They are apparent in the degradation

* EIA is an instrument to identify and assess the potential environmental impacts of a proposed project, evaluate alternatives, and design appropriate mitigation, management, and monitoring measures.

⁵ Regional environmental assessment (REA) is an instrument that examines environmental issues and impacts associated with a particular strategy, policy, plan, or program, or with a series of projects for a particular region (e.g. an urban area, a watershed, or a coastal zone); evaluates and compares impacts against those of alternative options; assesses legal and institutional aspects relevant to the issues and impacts; and recommends broad measures to strengthen environmental management in the region. REA pays particular attention to potential cumulative impacts of multiple activities. Sectoral environmental assessment (SEA) on the other hand is an instrument that examines environmental issues and impacts associated with a particular strategy, policy, plan, or program, or with a series of projects for a specific sector (e.g., power, transport, or agriculture); evaluates and compares the impacts against those of alternative options; assesses legal and institutional aspects relevant to the issues and impacts; and recommends broad measures to strengthen environmental management in the sector. SEA pays particular attention to potential cumulative impacts of multiple activities.

⁶ Environmental audit is an instrument to determine the nature and extent of all environmental areas of concern at an existing facility. The audit identifies and justifies appropriate measures to mitigate the areas of concern; estimates the cost of the measures, and recommends a schedule for implementing them. For certain projects, the environmental assessment report may consist of an environmental audit along; in other cases, the audit is part of the environmental assessment documentation.

⁷ Hazard assessment is an instrument for identifying, analysing, and controlling hazards associated with the presence of dangerous materials and conditions at a project site. For example, when inflammable, explosive, reactive and toxic materials are present at a site. For certain projects, the environmental assessment may consist of the hazard assessment alone; in other cases, the hazard assessment is part of the environmental assessment documentation. Risk assessment is an instrument for estimating the probability of harm occurring from the presence of dangerous conditions or materials at a project site. Risk represents the likelihood and significance of a potential hazard being realised; therefore, a hazard assessment often precedes a risk assessment, or the two are conducted as one exercise.

⁸ Environmental management plan (EMP) is an instrument that details (a) the measures to be taken during the implementation and operation of a project to eliminate or offset adverse environmental impacts, or to reduce them to acceptable levels; and (b) the actions needed to implement these measures.

⁹ Environmental Protection Agency (EPA), *Environmental Assessment in Ghana: A Guide*, December, 1996, at p. 3.

¹⁰ Quah, E., et al., *Law and Economic Development: Cases and Materials from Southeast Asia*, 1993, at p. 326.

of natural resource productivity; in the material and health costs of pollution, in urban congestion; in the unforeseen adverse consequences of development projects; in the destruction of cultural and aesthetic amenities; in the loss of open spaces and park and recreational areas; in decreases in fish and wildlife populations; in the lack of adequate provision for treatment and storage of hazardous wastes and toxic substances; in increased worries of global climate changes; and in increased exposure to risks of unknown impacts of new chemical substances and technologies¹¹.

Many people believed, in times past, that attention to environmental matters add only to production costs, making countries less efficient and competitive, and that any outlays devoted to environmental control would be at the expense of development objectives¹²; however, this is clearly not necessarily the case any more. An action that adds one dollar of return to an economy but which imposes more than a dollar of environmental degradation costs - in the form of greater remedial health care requirements, increased costs to other producers, loss of visibility, increased flooding due to land clearing or loss of forest cover, or decreased fish populations, for example, is an economically inefficient change that detracts more than it adds to development.

In the same way it is also clear that it is not worth preventing all environmental disruption. Such a course of complete restraint is also unlikely to serve community goals. Development objectives are likely to be better served by curtailing marginally beneficial activities that cause costly environmental disruptions, and by implementing fewer restrictions on activities that make greater economic contributions and cause little environmental harm. In addition, they are also furthered not by eliminating pollution completely, but by reducing pollution to levels that strike a reasonable balance between the costs of reducing waste discharges and the costs which pollution imposes on others.

2.4 Environmental Protection Strategies

Means to mitigate harmful environmental impacts are largely directed at correcting the basic cause of people being able to pass costs on to others, and these measures take widely varied forms. They include private legal remedies to restrain others from engaging in activities that damage the environment, and public or collective actions to prohibit, regulate, tax, or penalise such activities.

The technical rules that permit some people to bring suits but deny access to the courts to others may, to the non-lawyer, seem unnecessary and unduly harsh. This feeling is particularly strong when a law suit is brought to protect the environment; and because of the large quantities of scientific and technical information required, it is very expensive to bring environmental protection law suits. Furthermore, because of the principle of separation of powers, it is argued that only when a *bona fide* law suit, brought by parties involved in a real controversy, is brought before it should a court engage in the judicial process. Otherwise, a court cannot on its own motion (*sua moto*) take up a case on behalf of the people. Thus, it becomes necessary to determine when there is a genuine (*bona fide*) law suit and a real controversy. To answer these questions the courts and the legislatures have established rules relating to standing to sue (*locus standi*), class actions, intervention and circumstances under which a government may be a plaintiff.

In considering environmental impacts, the term "environment" has to be broadly defined to include the aggregate of all of the external conditions and influences that affect the life and development of organisms¹³. Consequently, environmental law is concerned with the rights and liabilities of large numbers of persons who may be affected by such external conditions and influences. It is not therefore, surprising that in many occasions when environmental law suits are brought are on behalf of a large number, or class, of persons. Class actions, or lawsuits brought on behalf of a group or persons alleged to be injured by the defendant's actions otherwise called representative suits, can be a useful legal procedure. By combining the causes of action of many persons into a single suit it is possible to resolve the issue in one action rather than a multiplicity of suits. A class action may also provide the mechanism by which a few persons can arrange to pay the many costs of an expensive lawsuit on behalf of others who may not be willing to undertake the costs and obligations of a suit. These measures typically differ in effectiveness, efficiency, equity, and in the strength of behavioural incentives they provide to individuals.

The most common approach to environmental protection is the use of standards and the enforcement of those standards through regulations, commonly referred to as the command-and-control strategy. This strategy builds upon existing police powers of regulatory control and sanctions. Standards of acceptable conduct are established

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

and violators are compelled to conform. In practice most command-and-control strategies are implemented by regulations requiring waste dischargers, for example, to use particular control methods, which are typically determined on the basis of proven technical and economic feasibility.

Annex 1 of the Report of the World Commission on Environment and Development (WCED), *Our Common Future*, contains a *Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development*. Principle 4 thereof provides that

"States shall establish adequate environmental protection standards and monitor changes in and publish relevant data on environmental quality and resource use." Principle 5 thereof states that *"States shall make or require prior environmental assessments of proposed activities which may significantly affect the environment or use of a natural resource."*

Regulation is essentially a legal process since it implies an attempt to govern behaviour by the setting of rules or standards and the promulgation of principles¹⁴. Regulation can prescribe what shall be done, by whom, when, and where. It can also lay down the methods of enforcement and penalties for breach¹⁵. A control strategy of standards and regulations, however, is often a costly and ineffective alternative.

An alternative environmental control strategy to exclusive reliance on standards and regulations is to make use of economic incentives. To the extent that the cause of environmental disruptions is the failure of those responsible to bear such costs - that is, their ability to pass such costs on to others - economic disincentives establish a direct link, usually by requiring payments that vary with the extent of environmental harm created. This approach can be incorporated in environmental protection legislation. Alternatively transferable permits can also be used as an economic disincentives scheme.

Both common law and regulatory or quasi-criminal approaches to controlling environmental damage are almost entirely reactive. National and international law has traditionally lagged behind events. Today, legal regimes are being rapidly outdistanced by the accelerating pace and

expanding scale of impacts on the environmental base of development¹⁶.

Legislation can anticipate the hazards of a new industry or a new technology; it may authorise regulations to control their impacts or even prohibit their introduction; but before the courts become involved, damage must be done. Although there is a partial exception in the form of anticipatory injunction at common law, for example, of the type that plaintiffs may seek in hazardous or toxic waste pollution cases, courts are extremely reluctant to grant these, since doing so presupposes that damages cannot provide an adequate remedy.

In contrast, environmental assessment legislation is explicitly prospective in orientation. In some jurisdiction at least, for example, in Ghana and Uganda, the conduct of environmental reviews has been assigned to quasi-judicial bodies at least formally independent of executive control, as an alternative to litigation in the courts. In others, for example in the United States of America, the judiciary has played a critical role in defining the content of environmental impact assessment requirements.

In the following part the concept of EIA is discussed. To make sense out of environmental assessment as currently applied in Africa in general and in East Africa in particular, however, the EIA concept must be put in an historical perspective from which the factor(s) that have led to the introduction of environmental assessment in Africa and East Africa will then be examined.

2.5 The Concept of EIA Defined

The term "environmental assessment" (EA) or "environmental impact assessment" (EIA) escapes easy definition. It is a "public" mechanism or process for assessing the potential environmental impacts, both beneficial and adverse, of a proposed activity or undertaking¹⁷. "Public" here emphasises the fact that the process is conducted with varying degrees of public input, at different stages throughout the process¹⁸.

As a management and planning tool, EIA aid decision makers, by providing them with data on which to base their decisions concerning development activities. The main objective of EIA is to ensure that the best alternative is

¹⁴ Patricia Birnie, 'International Environmental Law: Its Adequacy for Present and Future Needs?' in Hurrell, A., et. al., *The International Politics of the Environment*, Clarendon Press, Oxford, 1991, at p. 51.

¹⁵ Ibid. p. 52.

¹⁶ World Commission on Environment and Development, *Our Common Future*, Oxford, 1987, at p. 330.

¹⁷ E.L. Hughes, et al., *Environmental Law and Policy*, Emond Montgomery Publications Ltd., Toronto, Canada, 1993, at p. 211.

¹⁸ Ibid.

selected and not to prevent development activities from being carried out. EIA is therefore, a process which is concerned with identifying, predicting and evaluating the foreseeable impacts, both beneficial and adverse, of public and private development initiatives.

The EIA process also considers alternatives and mitigating measures, and aims to eliminate or minimise negative impacts and optimise impacts. The broader term impact assessments is also used to describe a suite of different techniques, including EIA, social impact assessment (SIA), risk or hazard assessment and strategic environmental assessment (SEA), which include both regional and sectoral environmental assessment¹⁹.

A proponent of an undertaking may well carry private or internal assessments (environmental audits) of potential impact, but this activity falls outside the scope of this Study.

The results of environmental impact assessment or review are often presented in documents or reports known as environmental impact statement (EIS) that describes potential impacts. The EIS is therefore, the final "end product" of EIA. It is the process or way in which the document is created that is most important.

The word "process" highlights the fact that an environmental impact assessment is made up of a number of steps, ranging from pre-screening of proposed activities or undertakings to determining whether they should be subject to a detailed assessment of potential impacts, to a decision or recommendation from a hearing body²⁰.

At the project level, EIA should be seen as an integral part of the project cycle. Particular care is needed to ensure that as much emphasis is placed on the way that an EIA is undertaken as to the final "end product" (such as the EIS). For example, those responsible for the EIA should try to establish a positive dialogue with local people, with the project proponent, and with those who will be responsible for implementing and operating the project. EIA should also be multi-disciplinary, and involve expertise from different sectors. This should result in a better understanding of the linkages between ecological, social, economic and political systems.

2.6 The Origins and Development of the EIA Concept

The concept of environmental assessment as a distinctive activity originated in the United States federal jurisdiction in 1969, when the Congress enacted the National Environmental Policy Act²¹ (NEPA). NEPA passed both houses of Congress by large margins²². This extraordinary piece of legislation launched the United States down a very bumpy road toward environmental assessment. NEPA was intended to be means of requiring federal agencies to consider the environmental consequences of their actions. NEPA was not therefore, intended to provide a statutory basis for private law suits.

2.6.1 The National Environmental Policy Act (NEPA)

The most important provision of NEPA is the requirement for the preparation of an environmental impact statement (EIS). This provision has become the statutory basis for a private law suit designed to hold up governmental action that may have a detrimental environmental impact.

Section 102(2)(c) of NEPA provides that "*all agencies of the Federal government shall...*

(c) include in every recommendation or report or proposal for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by a responsible official on:-

(i) *the environmental impact of the proposed action;*

(ii) *any adverse environmental effects which cannot be avoided should the proposal be implemented;*

(iii) *alternatives to the proposed action;*

(iv) *the relationships between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and,*

¹⁹ See the Environmental Protection Agency (EPA), *Environmental Assessment in Ghana: A Guide*, December, 1996, at p. 3, and also The World Bank Operational Manual "Operational Policies", OP 4.01 of March 1997.

²⁰ Ibid.

²¹ 42 USC: 4321-4325.

²² Ted Schrecker, of *Invisible Beasts and the Public Interest: Environmental Cases and the Judicial System*, in Robert Boardman, ed. *Canadian Environmental Policy: Ecosystem, Politics, and Process*, Oxford University Press, 1992, at p. 95.

(iv) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.”

NEPA also creates a Council on Environmental Quality (CEQ), as part of the Office of the President that is given the responsibility of developing national environmental policies and reviewing the environmental consequences of federal programs. Under the *Presidential Executive Order*²³, CEQ was authorised to promulgate guidelines for the preparation of environmental impact statements²⁴.

The EIS provision in the NEPA was intended to accomplish two purposes: to provide a disclosure statement of the environmental consequences of proposed federal action; and, to force federal decision makers to consider rather than ignore the environmental consequences of a difficult decision. The EIS provision has provided the basis for law suits against federal agencies by private persons who seek to enjoin the proposed action by arguing that an EIS should have been, but was not, prepared, or that the decision to proceed with the project is unreasonable in view of the information brought forth in the EIS. The legal issues that arise in such a law suit are: (1) Is the preparation of an EIS required under the facts of the case? and, (2) To what extent will a court overturn an administrative decision to proceed with action that has detrimental environmental consequences as disclosed by the EIS?

The answer to the first question, whether an EIS is required under the facts of the case, depends on a number of sub-issues, such as: (1) Is there a federal action involved? (2) Is that action a major one? and (3) Does that action “significantly” affect the environment?²⁵ The second question, of the extent to which a court will overturn an administrative decision that appears to be made in disregard of detrimental environmental consequences, has brought a wide variety of decisions in the circuit Courts of the United States Court of Appeals.

The question of how much weight must be given to “environmental” factors is a continuing troublesome issue. In *Strycker’s Bay Neighbourhood Council v. Karlen*²⁶, the

Second Circuit Court of Appeals held that it was an error for a federal agency not to give “detrimental weight” to “environmental” factors. In the decision that follows the United States Supreme Court overturned the Second Circuit Court and reaffirmed its statement in *Vermont Yankee Nuclear Power v. NRDC*²⁷, that NEPA was designed to ensure a fully informed and well-considered decision but not necessarily a decision that members of a court would have made had they been decision makers of the administrative agency.

Legislators seem to have given little thought to NEPA’s implementation. No special tribunal or board was established; neither was any provision for public hearings. Litigation has emerged as virtually the only mode of public participation in the environmental assessment process, and NEPA’s implementation has relied almost entirely on judicial decisions in cases where environmental organisations challenged the executive agencies, decisions not to prepare impact statements, or argued that the quality of such statements was too poor or superficial to satisfy NEPA requirements. This result, in turn, came about only because of federal court’s general willingness to grant standing to sue for judicial review of administrative action.

2.6.2 State Environmental Protection Acts

Shortly after the adoption of NEPA at the federal level, several states in the United States, including California, Minnesota, Washington, Maine and Wisconsin, adopted NEPA-like statutes, sometimes called “baby NEPAs” or “state NEPAs”²⁸. The primary purpose of these statutes was to require the preparation of an EIS for state actions. The cases that have arisen under these statutes usually involve the question whether the action of the state involved is the kind of state activity for which an EIS is required under the statute. This issue cropped up in the landmark decision of *Friends of Mammoth v. Board of Supervisors*²⁹, in which the *California Environmental Quality Act (CEQA)* was being interpreted. The statute requires governmental agencies to file an EIS upon a finding that “any project they intend to carry out...may have a significant impact upon the environment.” In the *Friends of Mammoth* case, a private developer applied to the planning board for a conditional use permit for a mixed use development of

²³ No. 11, 514.

²⁴ See Lynch, The 1973 CEQ Guidelines: Cautious Updating of the Environmental Impact Statement Process, 11 CALIF. WESTERN L. REV. 297(1975).

²⁵ See Shea, “The Judicial Standard for Review of Environmental Impact Statement Threshold Decisions”, 9 ENVIRONMENTAL AFFAIRS 63 (1980) for a discussion of these issues.

²⁶ 444 U.S. 1307(1980).

²⁷ 435 U.S. 519 (1978).

²⁸ Jerome G. Rose (1983) Legal Foundations of Environmental Planning, Vol. 1, Center for Urban Policy Research Rutgers, The State University of New Jersey, at p. 91.

condominiums and commercial uses. The issue was whether it was necessary for the municipal planning board to submit an EIS under the CEQA. The answer to this question depended on the issue whether the word "project" as used in the statute includes private activities for which a governmental permit is necessary. The California Supreme Court held that such action is a "project" within the meaning of CEQA and that an EIS must be prepared by the planning board before granting a conditional use permit. In the dissenting opinion it was argued that the majority opinion disregarded the legislative history and well-established principles of statutory construction in arriving at such decision.

2.7 EIA in CANADA

(i) *The Environmental Assessment Review Process (EARP) Guidelines Order*

The first jurisdiction in the Americas to follow suit was the Federal Government of Canada. Fearful that a legislative process would spawn a barrage of civil suits, *a la* the U.S. experience, the federal government of Canada opted to proceed via a Cabinet directive³⁰. NEPA and the preliminary US experience with its implementation inspired many of the recommendations of a Canadian inter-departmental task force on environmental impact assessment. In its report, completed in 1972, the task force recommended legislation under which an independent Environmental Review Board would be established to administer environmental impact assessment procedures. No legislation was forthcoming. Instead of an Environmental Review Board, Cabinet established the Federal Environmental Assessment and Review Office (FEARO), with far more limited responsibilities; rather than proposing legislation, Cabinet established a set of guidelines known as the Environmental Assessment and Review Process (EARP), outlined in administrative directives in 1973 and 1977³¹. The most recent description of the process was published in the *Canada Gazette* in July, 1984, and has come to be referred to as the Guidelines Order³².

What the Canadian government tried to avoid, however, that is, law suits, started to emerge in 1989. In that year, two decisions concerning the environmental impact assessment procedure followed in provincially initiated dam projects

in Canada (the Rafferty/Alemada in southern Saskatchewan and the Oldman in southern Alberta), were brought before the courts. These two cases conflicted each other over the interpretation of the Guidelines Order. In one case, the *Canadian Wildlife Federation Inc. et. al. v. Minister of the Environment*³³, it was held that the federal EARP creates binding obligations. But Jerome A.C.J. decided in the *Friends Of The Oldman River Society v. Ministers Of Transport And Fisheries And Oceans and Her Majesty the Queen in Right of Alberta*³⁴ that the EARP is not binding on those federal ministers. Despite these two conflicting decisions, it is clear that the EARP was not a mere description of a policy or program, but could create rights which could be enforceable by way of mandamus. In the *Saskatchewan Water Corporation V. Canadian Wildlife Federation et. al.*³⁵, it was held that the "Guidelines Order" binds all to whom it is addressed, including the Minister of the Environment himself. It meant that the Guidelines Order was intended to bind all agencies, which were obliged to follow it just as they are obliged to follow any other law of general application.

The Guidelines Order had a number of short-comings. First, the Guidelines Order used the environmental effects, not to impose an environmental mandate on the regulating department, but to "order" that the project be referred to the Minister of the Environment for public review by a panel. While public concern about a proposal was to be grounds for a full public review, the Guidelines Order appeared to leave the initiating department as the ultimate judge of whether public concern made a public review desirable. This means that the Guidelines Order relied on self-assessment of environmental impacts of specific projects by the departments promoting them, without any external oversight (of the kind provided by the judiciary under NEPA).

Secondly, according to the Guidelines Order, if an environmental assessment review panel were appointed to hold public hearings, the panel would have recommendatory powers only. Furthermore, the Guidelines Order did not provide any clarification as to what would happen after the review.

Thirdly, the confusion exposed in the cases particularly on the binding nature of the Guidelines Order, and perhaps

³⁰ David Vanderzwaag and Linda Duncan, "Canada and Environmental Protection: Confident Political Faces, Uncertain Legal Hands", in Robert Boardman, (ed.) *Canadian Environmental Policy: Ecosystems, Politics, and Process*, Oxford University Press, 1992, at p. 3.

³¹ Ted Schrecker, op. cit. at p. 96.

³² SOR/84-467.

³³ (1989), 3 C.E.L.R. (N.S.) 288 at 300 (F.C.T.D.) (June 22, 1989).

³⁴ (1989) F.C.J. No. 904, Action No. T-865-89 (Oct. 1989).

³⁵ (1989), 4 C.E.L.R. (N.S.) 1 at 3 (F.C.A.D.).

whether a project qualifies as a federal one or not, showed the need for a comprehensive federal Assessment Act.

In contrast, the Ontario's Environmental Assessment Act³⁶ tried to avoid most of the pit-falls of the federal Guidelines Order. The Ontario Act requires the preparation and internal review of environmental assessments for all provincial government undertakings before they proceed, unless they are exempted by Cabinet. The Act also created an Environmental Assessment Board (EAB), which holds public hearings on the adequacy of such assessments in certain cases, and also holds hearings with a more restricted mandate on certain kinds of approvals under regulatory legislation. The Board operates as a *quasi-judicial* tribunal; its rulings are authoritative, in the first instance, with respect to undertakings considered under the Environmental Assessment Act; and its powers extend to the imposition of terms and conditions on project proponent.

There are, however, important limitations to the Environmental Assessment Board's powers. Cabinet can exempt any undertaking from the provisions of the Act "in the public interest." It may reject or vary a decision of the Board under the Act. The holding of public hearings on a project, even though it has not been exempted from the provisions of the Act, is at the discretion of the Minister of Environment. The Act, however, does not attempt to provide guidance as to what amounts to "public interest." Consequently, Cabinet exemptions of environmentally significant projects and the avoidance of public hearings at times may appear to trivialize the Act and the Board. The Act also establishes an intervenor funding program whose funds go into financing interventions in EAB hearings.

(ii) The Canadian Environment Protection Act (CEPA)

In 1985, Environment Canada and Health and Welfare Canada convened two task forces. One task force focused on difficulties with the Environmental Contaminants Act. At that time it was becoming clear that the Act, the federal government's primary piece of legislation to protect the environment from contamination by chemical substances, was inadequate to deal with the multiplicity of problems associated with toxic chemicals. The second task force focused on the management of toxic chemicals. In its report³⁷, the task force recommended that chemicals be

managed from "cradle-to-grave" and proposed the life-cycle concept as the key analytical tool for managing chemicals. The report also recommended that toxic chemicals should be controlled by specific regulations, standards or guidelines.

The preliminary legislative draft of CEPA, produced in the fall of 1986, was designed to address the recommendations of these two task forces. Public opinion was also considered during the drafting process. CEPA was intended to respond to the strong public support for more stringent environmental protection legislation, strong and effective enforcement of compliance, stiffer penalties, good environmental management, and more openness and public participation in environmental decision making.

Once the legislative draft was completed, the then Minister of Environment, Tom McMillan tabled it as a discussion bill in Parliament in December, 1986. The tabling was followed by approximately six months of consultation, public meetings and analysis of written briefs from over 300 organisations and individuals³⁸.

Bill C-74, the Canadian Environmental Protection Act (CEPA) was tabled on June 26, 1987, along with a draft Enforcement and Compliance Policy. Bill C-74 passed second reading on October 23, 1987. Third reading was completed on May, 1988, after extensive amending by the House of Commons Legislative Committee, and was passed as "an Act respecting the protection of the environment and human life and health." The introduction of this Act was a legislative initiative that was intended to strengthen the insipid federal Environmental Assessment and Review Process (EARP). Billed as the "environmental bill of rights, by the then Minister of Environment, Tom McMillan³⁹, CEPA was an attempt by the federal government of Canada to "entrench the federal government's obligations to integrate environmental considerations into all of its project planning and implementation", and thus, "ensure that no policy, programme, legislation or project of the federal government goes ahead without a proper accounting of the potential environmental consequences."

Through CEPA, the government of Canada brought together, in a comprehensive piece of legislation, environmental provisions of several other statutes administered by Environment Canada on behalf of the federal government.

³⁶ R.S.O. 1980, c. 140.

³⁷ From Cradle to Grave: A Management Approach to Chemicals, September 1986, Environment Canada, Ottawa.

³⁸ Resource Futures International, Evaluation of the Canadian Environmental Protection Act (CEPA), Final Report, December, 1993, Ottawa, at p. 13

³⁹ David Vanderzwaag and Linda Duncan, "Canada and Environmental Protection: Confident Political Faces, Uncertain Legal Hands" in Robert Boardman, ed. Canadian Environmental Policy: Ecosystems, Politics, and Process, Oxford University Press, Toronto, Oxford, New York, 1992, at p.3

According to ministerial and departmental statements made at the time the Act was being tabled in Parliament, the consolidation was intended to ensure a multi-media focus, to eliminate inconsistencies among the old pieces of legislation and to streamline reporting requirements. Environment Canada and Health Canada developed CEPA regulations and guidelines. Included in CEPA's structure are opportunities for governments and experts in relevant disciplines to consult and to coordinate their efforts. Mechanisms for this consultation include advisory panels. The Ministers of the Environment and Health appoint experts from interest groups, industry and the academic community to advisory panels. CEPA Part I, particularly Section 8, gives the federal government responsibility for a wide range of non-regulatory actions, such as the formulation of environmental quality guidelines and objectives and codes of practice, for example, the management of pesticides.

(iii) The Canadian Environmental Assessment Act (CEAA) and its Four Regulations

In 1990, a proposal for an environmental assessment Act was introduced in Parliament and passed as the Canadian Environmental Assessment Act (CEAA)⁴⁰. The CEAA establishes the Canadian Environmental Assessment Agency as the institution responsible for the federal EIA process.

The CEAA requires federal authorities to subject certain projects to environmental assessments (EAs) before initiating, funding, granting land, or issuing regulatory approvals. CEAA replaced the vague Environmental Assessment Guidelines Order (ERAP), which had prompted numerous court challenges, high costs and long delays. CEAA redressed these problems by providing greater legal certainty and the introduction of more efficient provisions, such as class screening, comprehensive study, mediation and federal-provincial harmonisation agreements.

In order to ensure that the CEAA works, four regulations were promulgated basing on a criteria created by a multi-stake-holder Regulatory Advisory Committee (RAC), expert advice by federal departments, and improvements proposed

during a public comment period⁴¹. The Regulations took effect about three months after the CEAA had come into force to ensure an orderly transition from EARP to CEAA. These Regulations are: the Exclusion List Regulations⁴², the Inclusion List Regulations⁴³, the Law List Regulations and the Comprehensive Study List Regulations⁴⁴.

The first three regulations determine CEAA's scope by specifying the projects subject to the Act and the federal permits or approvals that trigger an EA. The Comprehensive Study List (CSL) supplies greater certainty and efficiency by identifying which major projects will automatically be assessed more extensively.

CEAA's two-part definition of "project" covers physical works and activities. Physical works, except those on the Exclusion List, are projects under CEAA. The Exclusion List exempts from EAs projects with insignificant environmental effects. The Inclusion List prescribes the physical activities, covered by the Law List and a few items on the CSL, that are projects requiring environmental assessment. The Inclusion List Regulations prescribe physical activities and classes of physical activities not relating to physical works that may require an environmental assessment.

The Law List Regulations itemises the statutory and regulatory project approvals that trigger an environmental assessment before a project proceeds. The Law List provides certainty to regulators and proponents alike on which project approvals require an environmental assessment.

The CSL prescribes those projects and classes of projects for which a comprehensive study is required. The CSL, therefore, allows major projects to be fully assessed in a more predictable and timely manner.

CEAA empowers the Minister of the Environment to provide education to industry, departments, and other groups on their rights and duties under the Act and four regulations. Such education is an essential means to increase understanding and thus voluntary compliance with the reformed environmental assessment regime for federal projects.

⁴⁰ Bill c-13, S.C. 1992, c.37.

⁴¹ The Draft Regulations were subjected to public review for a 90-day period. The multi-stakeholder RAC played a central role by establishing selection criteria for the provisions of the regulations as well as by proposing the inclusion of specific provisions of the lists. The refined Regulations comply with RAC's criteria, include many of its recommendations and are widely supported by government departments.

⁴² SOR/94-639 of 7 October, 1994.

⁴³ SOR/94-637 of 7 October, 1994.

⁴⁴ SOR/94-638 of 7 October, 1994.

2.7.1 Conclusion

The concept of EIA which evolved in the 1970s in the USA, started simply but got very complicated over time, involving more people, values and conflicts, taking more time, costing more, being taken more seriously, becoming more relevant to decision-making, becoming slowly incorporated into planning and becoming more slowly applied to policy formulation.

2.8 Framework Environmental Laws and EIA Regulations in Africa

In Africa, legislation respecting environmental protection began to emerge only in the early 1980s. The very first African country to adopt framework legislation on environmental management was Libya, when in 1982, it enacted a legislation concerning protection of the environment⁴⁵. Other African countries including Algeria, Ghana, Senegal, and Tanzania followed suit. Until 1996, about twenty five African countries already had environmental management legislation in place, the latest being Zanzibar⁴⁶ and Malawi⁴⁷. Among the African countries with framework environmental legislation, only four, namely, Algeria, Congo, Nigeria and Tunisia, have specific EIA legislation⁴⁸.

2.8.1 EIA Law and Practice in Africa

The concept of EIA that originated in the Americas in the 1970s seems to have some following in some African countries albeit with some variations. The procedural steps in the EIA process in Africa, however, are similar to those found in other places and particularly as originated from the Americas. The scope and content of the EIA is the same. The EIA process largely applies to physical projects. Furthermore, as is the case in the United States of America and Canada, for those African countries that have the EIA as a requirement for development projects, the EIA process has been enshrined in the law either as part of comprehensive or framework environmental laws or

specific EIA legislation. Below is first, an examination of some of the EIA provisions in those African countries that have specific EIA legislation; then followed by a brief analysis of the EIA provisions stipulated in framework environmental laws.

2.8.1.1 EIA Enactments in Africa

Algeria

In Algeria, the EIA process is stipulated in regulations contained in the Official Journal of the Republic of Algeria.⁴⁹ This Regulation was made pursuant to Chapter V of the Algerian framework environmental legislation.⁵⁰ The Regulations contain an Annex of a mandatory list of projects that should be subjected to EIA. Apart from the Algerian law providing for the procedure to be employed in conducting the EIA process, neither of the two, that is, the framework law or the Regulations, stipulate in detail the institutional framework for the administration of the EIA process.

The Democratic Republic of Congo

The People's Republic of Congo also adopts the approach of "listing." Annex 1 of Regulations No.86/775 of 1986 has a list of environmentally critical projects that should be subjected to EIA. Annex two of the Regulations is a list of impacts that have to be considered when assessing projects. The Regulations do not provide the institutional set-up for administering the EIA process.

Tunisia

Tunisia also adopts the same approach as Algeria and Congo by providing in annexes the list of types of projects that are to be subjected to EIA. Law No.88-91 of 1988 as amended by Law No.92-115 of 1992, creates the National Environmental Protection Agency (Agence Nationale de Protection de L'Environnement (ANPE). The Agency has the overall mandate in the protection of the environment

⁴⁵ Legislative Act No. 7 of 1982. Libya had also earlier promulgated Legislative Act No. 2 of 1982 to regulate the use and avert the dangers of ionized radiation.

⁴⁶ The Environmental Management for Sustainable Development Act, 1996, Act No. 2 of 18th August, 1996. It is curious that although Zanzibar forms part of the United Republic of Tanzania, it has its own environmental protection law. This is so because environmental matters do not form part of the 'union matters' stipulated in the Constitution of the United Republic of Tanzania of 1977. The Revolutionary Government of Zanzibar has legislative competence over all 'non-union matters.'

⁴⁷ The Environment Management Act of 1996, Act No. 23 of 5th August 1996.

⁴⁸ This data was compiled from the COMPENDIUM of Environmental Laws of African Countries, Volume 1: Framework Laws and Regulations published by UNEP under the UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa. The Environmental Management and Sustainable Development Act, Act No. 6 of 1996 of Zanzibar has EIA provisions. This law does not appear in the Compendium.

⁴⁹ No. 10 of 1990.

⁵⁰ No. 83 - 03 of 1983.

in Tunisia. Decree No.91.362 of 1991 relates to the EIA process and confers on the Agency the responsibility for administering the process.

Nigeria

Of the four African countries that provide specifically for the EIA process, Nigeria has the most elaborate and comprehensive EIA legislation. The Environmental Impact Assessment Decree⁵¹ contains the general principles of environmental impact assessment; the procedural steps involved in the EIA process; and the institutional set-up for the EIA process. The task of administering the EIA process is left with the Federal Environmental Protection Agency (FEPA) which is established under Section 1 of the Federal Environmental Agency Decree.⁵² FEPA has powers to establish environmental criteria, guidelines and specifications or standards for air and water quality and to establish procedures for industrial and agricultural activities. It also has the responsibility to monitor and enforce environmental protection.

Under the Environmental Impact Assessment Decree, FEPA has the responsibility of reviewing EIAs; making decisions regarding activities to which an EIA has been produced; and, monitoring compliance with EIA conditions. The EIA Decree also make provision for mediation or review panel where a project is likely to cause significant adverse environmental effects that may not be mitigable. A schedule of activities that require a mandatory study is contained in the Decree.

It seems that the drafters of the EIA Decree of Nigeria were greatly influenced by the Canadian and American models legislation on environmental management and EIA. In fact the Federal Environmental Assessment Protection Agency Decree and the EIA decree are almost in *pari materia* with the Canadian Environmental Protection Act (CEPA) of 1987, and the Canadian Environmental Assessment Act of 1992, respectively.

2.8.1.2 Framework Laws with EIA Provisions

Apart from the countries discussed above, there are other African countries that provide for the EIA process generally in their framework environmental laws and whose laws are outlined briefly as follows.

(a) Ghana

In Ghana, the institution with powers to request for EIA is the Environmental Protection Agency (EPA), which is established under the Environmental Protection Agency Act.⁵³ The functions of the EPA include that of ensuring compliance with laid down environmental impact assessment procedures in the planning and execution of development projects, including compliance in respect of existing projects.

According to Section 12 of the Environmental Protection Agency Act, the EPA has powers to issue a written notice to any person responsible for any undertaking which in its opinion "has or is likely to have adverse environmental effect" to submit to the EPA an EIA in respect of the undertaking. Where such notice has been issued, any organ or department of government cannot issue grant permit, approval or consent in connection with the undertaking, unless it has been notified by the Agency that the notice has been complied with. The EIA permit therefore, becomes permit number one for the proposed undertaking and takes precedence over all other types of permits. This is particularly crucial where an undertaking requires cross-sectoral approval or consent.

Furthermore, under Section 13 of the Act, the EPA has powers to issue enforcement notice on a person responsible for an undertaking or activities which poses a serious threat to the environment or to public health. The notice will require the person to take steps which the Agency deems necessary to prevent or stop the activities undertaken.

Under the Act, the Minister responsible for environment, may on the advice of the Board of the EPA, make regulations to provide for, *inter alia*, the category of undertakings, enterprises, constructions or developments in respect of which environmental impact assessment or environmental management plan is required by the Agency. In 1995, the EPA issued EIA guidelines and procedures that provide for the institutional responsibility for the EIA process.

(b) Uganda

In Uganda, the institutional arrangement for environmental management is provided for in Part III of the National Environment Statute of 1995. The Statute establishes the

⁵¹ No. 86 of 1992.

⁵² No. 58 of 1988

⁵³ No. 490 of 1994.

National Environment Management Authority (NEMA), a corporate body as the principal agency in Uganda responsible for the management, monitoring and supervision of all activities in the field of the environment.

The Ugandan Statute is a comprehensive piece of environmental legislation. Under Section 7 of the Statute, the functions of NEMA include, *inter alia*, the initiation of legislative proposals, standards and guidelines on the environment, and to review and approve environmental impact assessments (EIA) and environmental impact statements (EIS). Part V of the Statute provides for the EIA process. The Third Schedule to the Statute contains a list of projects to be considered for EIA.

According to Section 20 of the Statute, a developer of a project described in the Third Schedule has to submit a project brief to the lead agency. An environmental impact study is required where the lead agency or the Authority is satisfied that the project will have significant environmental impact. The Authority in consultation with the lead agency will adopt guidelines with respect to environmental impact reviews and environmental impact evaluations, and environmental impact study. The details of the EIA process are to be provided for in Regulations.

(c) Zambia

Zambia also has a comprehensive environmental legislation, the Environmental Protection and Pollution Control Act⁵⁴, which establishes the Environmental Council. The Council is corporate body that is responsible for doing "*all such things as are necessary to protect the environment and control pollution, so as to provide for the health and welfare of persons, animals, plants and the environment*". One of the functions the Council in respect of EIA is to identify projects or types of projects, plans and policies for which environmental impact statements are necessary and undertaken. The Council may undertake or request others to undertake such assessments for its consideration. Apart from this general function, the Zambian law does not provide for the EIA procedure or the institutional set-up for its administration.

(d) Egypt

Another country in Africa that also has a comprehensive

environmental legislation with some aspects of the EIA process is the Arab Republic of Egypt. The Law Concerning the Environment⁵⁵ of Egypt as amended by Prime Minister's Decree.⁵⁶ The former law establishes the Agency for Environmental Affairs (AEA). One of the functions of the Agency is to set criteria and conditions which owners of projects and installations must comply with before establishing their projects, and during operation. The amending Decree of 1995 empowered the Board of Directors of the AEA to approve cases and procedures for the assessment of environmental impacts of projects. The Egyptian law, however, does not give details of the EIA process or the institutional arrangement for its administration. Annex 2 and 3 to the Executive Regulations of Law⁵⁷ contain a list of establishments subject to environmental impact assessment, and model register for the impact of establishment activities on the environment (register of environmental conditions), respectively.

(e) Gambia

In Gambia, the function of initiating legislative proposals, standards, guidelines, and regulations and reviewing and approving environmental impact assessments is placed with the National Environment Agency (NEA) which is established under Section 9 of the National Environment Management Act.⁵⁸ Section 5 of the Act establishes the National Environment Management Council. The Council has supervisory functions over the NEA and adopts the standards, guidelines and regulations proposed by the NEA. It is composed of all line-ministries.

The EIA procedure is provided for in Part V of the Act. Part A of the Schedule to the Act contains a list of projects to be considered for environmental impact assessment and Part B contains issues to be considered when conducting environmental impact assessments.

(f) Malawi

In Malawi, the Environment Management Act⁵⁹ bears a lot of resemblance to the Gambian law on environmental management. The Malawian statute establishes a Technical Committee on the Environment that is appointed by the Minister responsible for environment. The Act also establishes the National Council for the Environment (NCE).

⁵⁴ No. 12 of 1990.

⁵⁵ Law No. 4 of 1994.

⁵⁶ No. 338 of 1995.

⁵⁷ No. 4 of 1994.

⁵⁸ No. 13 of 1994.

⁵⁹ No. 23 of 1996.

The Technical Committee on the Environment is given the functions of carrying out investigations and conducting studies into the scientific, social and economic aspects of any activity, occurrence, product or substance referred to it by the Minister. It also recommends to the Council the criteria, standards and guidelines for environmental control and regulation, including the form and content of environmental impact assessment. Part V of the Act provides for the process of environmental impact assessment. The Director of Environmental Affairs, who is in the public service, is responsible for the administration of the EIA process.

(g) The United Republic of Tanzania

Tanzania, unlike its counterpart Kenya, has an environmental management legislation, the National Environment Management Act⁶⁰ (NEM Act), which deals with environment management and creates an advisory institution for that purpose, the National Environment Management Council (NEMC). NEMC has as one of its function, the specification of standards, norms and criteria for the protection of beneficial uses and the maintenance of the quality of the environment. The NEM Act, however, does not provide for the EIA process.

(h) The Revolutionary Government of Zanzibar

Zanzibar, the other part of the United Republic of Tanzania, has its own environmental management legislation, the Environmental Management for Sustainable Development Act.⁶¹ This Act is a comprehensive piece of legislation. Section 6 of the Act declares that every person has a right to a clean and healthy environment and that every person has a duty to maintain and enhance that environment. Section 9(1) of the Act establishes the Revolutionary Council on Environment as the highest decision-making body on environmental matters in Zanzibar. Section 17(2) envisages the constitution of an institution responsible for the environment by a presidential order. This institution will be a body corporate responsible for, among other things, the specifying of standards, norms and criteria for the protection of the environment and the managing and regulation of environmental impact assessment requirements and procedures.⁶²

The EIA process is enshrined in Part V of the Act. Section 61 of the Act stipulates that within six months from its

enactment, the Minister shall issue regulations on the procedure to be followed for environmental impact assessment. Unfortunately, that has not been done yet.

The Act invokes the "significant impact test" to subject activities to the EIA process. Section 38(1) of the Act stipulates that no activity which is "likely to have significant impact on the environment shall be undertaken without an EIA certificate." The EIA certificate also takes precedence over all other licenses. Sub-section (2) of Section 38 of the Act provides that "no licensing institution shall issue a license, permit, certificate, or other form of approval for an activity which is likely to have a significant impact on the environment unless an EIA certificate has been issued for the activity." Under the Act, however, an EIA certificate is required only for certain activities and is issued with certain conditions which have to be fulfilled by developers at pain of punishment in form of fines for non-compliance. Schedule 1 to the Act contains a list of activities that do not require an EIA certificate and Schedule 2 contain a list of activities that require an EIS. Section 56(2) of the Act provides specifically that an applicant for a Schedule 2 activity may proceed directly to the scoping stage.

The Environmental Management for Sustainable Development Act of Zanzibar, has also lumped together all activities relating to the EIA under the "institution responsible for the environment." The institution is responsible for reviewing project briefs or proposals and the EIS; approving or disapproving the activity; issuing EIA certificates; monitoring compliance with EIA certificate conditions; and, in collaboration with relevant persons, to carry out periodic environmental audits of each activity to ensure that conditions are fulfilled.

(i) The Republic of Kenya

Kenya does not have an environmental management legislation or specific EIA legislation yet; however, Kenya has already drafted a Bill for Environmental Management and Co-ordination (EMC). The Bill creates a National Environment Management Authority (NEMA). It also provides for a mandatory Environmental Impact Assessment (EIA). Following the drafting of the EMC Bill, the Kenya National Environmental Action Plan Secretariat (NEAP) which was inaugurated in November, 1994, drafted a Report on "Environmental Impact Assessment Guidelines and Administrative Procedures" in October, 1996. Kenya also

⁶⁰ Act No. 19 of 1983.

⁶¹ Act No. 2 of 1996. Legal Supplement (Part I) to the Zanzibar Government Gazette Vol. CVI No. 5743 of 31st May, 1997. Section 1 of the Act provides that the Act shall come into force upon assent by the President. The Act was assented by the President of Zanzibar on 18th July 1996.

⁶² Ibid. Section 19(1)(f) & (g).

has drafted the Physical Planning Act, 1996, to provide for the preparation and implementation of physical development plans. The Act, however, is not yet in force.

2.8.2 Conclusion

Emanating from the above discussion and as noted earlier, in some African countries, the EIA process is a direct legal requirement; whilst in others, it is enforced indirectly under general environmental, planning, health or pollution control powers. In some countries such as Uganda, Ghana and Egypt, EIA is a mandatory requirement for developers and existing projects. Some of the African environmental laws create national environmental protection institutions as principle agencies for the management of the environment with powers to coordinate, monitor, and supervise all activities in the field of environment. The institutions also have the function of reviewing and approving environmental impact assessments and environmental impact statements, submitted in accordance with the environmental management laws or any other law.

2.9 Objectives or Purposes of EIA Procedures

One of the main objectives of EIA is to ensure that potential environmental effects are predicted early at the designing or planning stage of programmes, policies, activities and developments projects so that they can be avoided. When predicting the consequences of a proposed undertaking and considering mitigation measures one has to compare alternatives. Environmental considerations are always supposed to take an upper hand in the EIA process. This does not mean, however, that social, cultural, and economic considerations should not also be considered.

Although there are no uniform international standard of EIA procedures, the practice and laws of many countries in the world where the EIA process is legally mandated, reflect the following main objectives of the EIA procedures:

- (i) to support the goals of environmental protection and management and sustainable development;
- (ii) to integrate environmental management and economic decision at an early planning stage of an undertaking so as to ensure that potential impacts are avoided;

- (iii) to predict the consequences of a proposed undertaking from the environmental, social, economic and cultural perspectives and to develop plans to mitigate any adverse impacts, resolve conflicts and enhance positive ones;

- (iv) to compare various alternatives which are available for a particular activity and determine the optimum mix of environmental and economic costs and benefits; and

- (v) to provide avenues for the involvement of the public, proponents, private and government agencies; interested as well as affected people in the assessment and review of the proposed undertaking in an open, transparent and participatory approach.⁶³

2.10 Some Benefits of the EIA Procedures

The experience of some African countries such as Ghana and Uganda which have successfully instituted EIA as an environmental planning and management tool, has shown that EIA has some very clear benefits. In a guide issued by the Environmental Protection Agency of Ghana in 1996⁶⁴, the EIA benefits are stipulated as follows:

- (i) Improve future project design and reduce present costs:

Development initiatives which incorporate EIA at an early stage tend to be more effective and cheaper. This is because, unforeseen issues can be identified and then addressed during planning and implementation. This can reduce capital and recurrent costs as well as avoid unnecessary environmental damage and social disruption. It is, however, quite tricky to build the aspect of EIA on improving project design in legislation, particularly at the feasibility stage. Most probably this would feature in planning laws as a condition for a building permit.

- (ii) Avoid conflict

EIA can provide guidance and information to help avoid conflicts between different objectives and interests (for example, social, cultural, economic and environmental). Public inquiries and hearings on the project development and environmental impacts can help greatly in drawing

⁶³ The objectives are also stipulated in the EIA Procedures which were prepared by the National Environment Management Council (NEMC) of Tanzania as a general guidance to EIA practice in the country.

⁶⁴ Environmental Protection Agency (EPA), *Environmental Assessment in Ghana: A Guide*, December, 1996, at pp. 7-8.

attention to different points of view. Free access to relevant information and the availability of alternative sources of technical expertise can provide an informed basis for public discussion.

(iii) Help project and avoid long-term problems:

Short-term needs and interests can jeopardise long-term development goals. EIA can help identify and reduce the risk of these problems arising.

(iv) Improve institutional co-ordination:

EIA provides a formal mechanism for inter-agency coordination and negotiation between stake-holder groups.

(v) Consider alternative projects and designs:

In the absence of EIA, project appraisal techniques tend to examine alternatives in terms of minimising financial costs and optimising financial returns. EIA broadens the boundaries of project appraisal so that considerations can be made of alternative approaches (such as community management of wildlife, rather than national parks), technologies (such as improving soil and pest management rather than practices that emphasise agro-chemical applications) and designs (such as re-routing roads to avoid damage to productive wetland systems).

(vi) Improve accountability and transparency:

EIA contributes to planning that is more transparent and accountable by providing a framework for sharing of information and dialogue.

2.11 The Structure of the EIA Process

The EIA process is made up of a number of steps. There is, however, no ideal type of EIA process in the world. Administrative procedures for EIA therefore, vary from country to country depending on the specific goals intended to be achieved. The EIA process is made up of a number of steps, ranging from pre-screening of proposed activities or undertakings, to determining whether they should be subject to a detailed assessment of potential impacts, to a decision or recommendation from a hearing-body.

2.11.1 Procedural Frameworks for EIA

Much as there is no "ideal type" or blueprint for the EIA process in the world, the EIA can as well be undertaken without a set of formal procedures. Generally, the EIA process involves at least the following basic procedural

steps:

(a) *Registration:*

involves a recording of all projects that may have potential impacts on the environment.

(b) *Screening:*

involves a determination of which proposed projects need to undergo an EIA. Screening helps decision of placing an undertaking at the appropriate level of assessment to be made.

(c) *Guidelines:*

are the Terms of Reference (TOR) for conducting EIA studies which are prepared by the proponent after scoping has been undertaken. The proponent will normally commission or undertake a scoping exercise of the proposed (alternative) site(s), then prepare a scoping report which would include the draft "Terms of Reference" (TOR) for the EIA study.

(d) *Report:*

analysing the potential negative and positive effects.

(e) *Review:*

the EIA report to determine the acceptability of the expected impacts.

(f) *Advice:*

to decision makers concerning the future of the project under review.

2.11.2 Logical Sequence of Tasks in an EIA Process

The EIA process involves the following logical sequence of tasks:

(1) project proposal or project brief;

(2) screening;

(3) scoping;

(4) preparing guidelines and terms of reference;

(5) carrying out EIA study;

(6) reviewing EIS;

(7) making a decision on the project;

(8) monitoring; and

(9) auditing.

(1) PROPOSAL – somebody wants to do something

After a project has been conceived it is supposed to be registered with the institution responsible for the administration of the EIA process. Not all projects, however, require registration, and it is only those projects which have the potential of causing significant impacts on the environment; although each country has its own criteria for determining which projects should be subjected to the EIA process. Normally, the official list of undertakings requiring registration will appear in the EIA regulations. The list may represent those projects that are known from previous experience to have the potential for significant effects on the environment.

(2) SCREENING – are there environmental problems?

Screening is the first procedure conducted by the institution responsible for the administration of the EIA process. Screening is undertaken using information given on a prescribed registration form that is issued by the environment management institution. The purpose of screening is to determine whether a proposed development should be subject to an assessment and the level of assessment that will be necessary. Projects that have the potential of causing significant impacts on the environment will require a preliminary environmental review (PER) followed by a comprehensive EIA. Environment impact statement (EIS) is mandatory for these projects.

A list of environmentally sensitive or critical areas will also have to be published by the environment management institution. These are areas that are known from experience to be fragile or valuable environments, and which can easily be harmed by the effects of unwise development. An EIA is also mandatory for projects to be developed within or near such areas.

For all other developments or undertakings (which are less likely to have serious adverse consequences) EIA will not be mandatory. In these cases, the environment management institution will conduct a screening process to determine whether EIA is required or not. This process will take account of the following criteria:

(a) Project type

(b) Affected area

(c) Potential impacts

(d) Scale of impacts

(e) Importance of impacts

Screening can therefore, be seen to be a logical and balanced review of all of the factors that influence the need whether or not to undertake a detailed EIA. At screening, the possible cumulative effects of several relatively small projects in close proximity and/or which may have synergistic effects will be able to be taken into consideration.

Although the scale of potential impacts, and their importance are issues which will be addressed within the EIA study, however, at the screening stage, some estimate of likely impacts should be made in order to be able to make an informed environmental permitting decision (EPD).

If the environment management institution responsible for the administration of the EIA process reaches an EPD that indicates that no further information is required beyond the registration proposal stage, then the proponent will be issued with an Environmental Permit for the undertaking. A no-objection decision means that the undertaking may proceed as stated in the project registration form, subject to relevant Acts, Ordinances, By-laws and (or regulations at any level of Government).

Having decided that a particular undertaking should be subject to a full EIA it is then the responsibility of the proponent to undertake a scoping exercise in order to determine the full scope or ToR for the EIA.

(3) SCOPING – issue identification (focus in on important problems)

Scoping is undertaken if the screening of the proposed development by the institution responsible for EIA results in a detailed EIA. The objective of scoping is to identify and narrow down potential environmental and social impacts, both beneficial and adverse, and to ensure the EIA focuses on the key issues for decision-making and of particular concern to local communities or institutions. At the same time, issues expected to be of little importance or concern can be excluded from the EIA. Scoping is therefore, the exercise of identifying and assigning priority to environmental and related social issues that might be examined in the assessment.

The purposes of scoping are therefore two-fold. The first purpose is to ensure that the issues to be studied in the

review and addressed in the EIS fairly represent those that the affected people believe should be so considered. The second purpose, which may conflict with the first, is that all issues considered in the review should, on their own merits, warrant study and presentation in the EIS. The main criterion for making such a decision may be stated thus: an issue should be addressed in the EIS if the information generated in studying that issue is likely to be essential to making a decision about the project.

The scoping process involves:

- background research on the proposed type of development and its likely environmental impacts;
- visits to the project sites and surrounding area to assess its existing use, value and susceptibility to change as a result of development;
- involvement of local communities, institutions and agencies to determine the environmental and social issues of most concern which should be included in the EIA and how the different local stake-holder groups can contribute to and participate in the EIA study.

A scoping report is prepared and should include:

- a description of how the issues raised during the consultation process will be addressed in the EIA;
- a description of how the proposed development will be undertaken and the need/justification for it; and,
- draft TOR for the EIA study.

A number of copies (to be specified in the EIA regulations) of the scoping report must be submitted to the institution responsible for the administration of the EIA process. The institution in collaboration with a cross-sectoral technical committee, will study the report and give their decision on the adequacy of the proposed EIA study to the proponent within a number of days (to be specified in the EIA regulations) of receipt of the scoping report.

After approval of the TOR in the scoping report, the proponent can start making arrangements for their consultants to carry out the EIA study.

(4) TERMS OF REFERENCE (TOR) (limits on the review) and GUIDELINES for the Study (reflect scoping)

The Terms of Reference (TOR) and boundaries of the EIA

study are determined in the scoping exercise. TORs are project specific. The TOR are prepared after a scoping exercise of the proposed (alternative) site(s) has been undertaken by the proponent. As stated above, the scoping exercise involve consultations with interested/affected parties such as government officials, (and relevant ministries, departments, local authorities, among others), local authorities and members of the public. The objective is to determine how their concerns and others will be addressed in the TOR for the EIA. Furthermore, the scoping process identifies all the key issues of concern to be addressed in the EIA.

After the scoping exercise is complete, the proponent then prepares a scoping report which would include draft "Terms of Reference" for the EIA study, and submits a specified number of copies (to be stated in the EIA regulations) to the institution responsible for the EIA process. The TOR must indicate that the EIS will include:

- Description of the proposed undertaking and an analysis of the need/reason for the undertaking.
- Objective of the undertaking.
- Other options for carrying out the undertaking.
- Alternatives to the undertaking.
- Description of the present environment that would be affected, directly, or indirectly.
- Description of the future environment, predicting its condition if the undertaking did not take place.
- Adverse and beneficial effects that may be caused to the environment by the undertaking.
- Proposed measures to prevent or mitigate all significant adverse impacts.
- Evaluation of opportunities and constraints to the environment of the undertaking.
- Proposal for environmental management programme (including monitoring) to cover constructional, operational and decommissioning stages of the undertaking.
- Proposals for a programme of public information.

The draft TOR will then be studied by the institution responsible for the EIA process and the cross-sectoral

Technical Review Committee (TRC) and, where necessary, a visit to the site(s) will be made. The outcome of the study on the TOR, which could either be a rejection or revision/modification or acceptance/approval, will be communicated to the proponent within a number of days (to be specified in the EIA regulations) of the receipt of the Scoping Report/TOR. On approval of the TOR, the proponent may start work immediately on the conduct of the environmental impact assessment (EIA).

(5) THE EIA STUDY

Once the institution responsible for the EIA has determined that a detailed EIA is required for a development, it is then easy for an inexperienced proponent to commission consultants simply to conduct a detailed EIA of the proposed project; however, an EIA is a complex piece of work that will be subject to critical review by the institution responsible for the EIA when complete. The EIA study must therefore, be properly structured and managed to ensure that the report is acceptable.

The EIA study will involve baseline survey and inventory, development proposal options, potential impact identification and prediction, mitigation considerations and commitments as well as a relevant environmental management programme and other requirements of the TOR. In the course of gathering data for the EIA, the proponent is required to initiate a public information programme for the area likely to be affected by the undertaking, so as to inform fully the local residents (to be able to make concerns known), of the nature of the undertaking and its effect on the environment.

In conducting the EIA study, many management issues can be covered by the use of a detailed contract between the proponent and consultants as well as sub-consultants. The composition of the EIA team will be determined by the nature of the project and the types of issues involved. These will be determined at screening and at scoping.

For most projects a multi-disciplinary team will be required. It is preferable to have specialists acting as generalists within the team.

The EIA should be conducted as part of the whole project planning process or feasibility study and not as an afterthought. Accordingly, the costing for EIA must be part of that package. The cost for undertaking the EIA study is normally borne by the proponent out of the funds of the project, and the EIA cost as a percentage of project capital value varies between projects.

After the EIA study has been conducted, an EIA report is prepared – the Environment Impact Statement (EIS). Although there is no standard form of the content of the EIA report, it may consist of the following:

- (a) A non-technical executive summary outlining the main conclusions and how they were reached.
- (b) A description of the proposed activity, the local environment and an analysis of the need for the activity.
- (c) A consideration of the alternatives to the proposed activity, including the alternative of not proceeding with the proposed activity.
- (d) An analysis of site selection procedures for the proposed activity, including a statement of the reasons why the proposed site was chosen and the consideration of alternative sites.
- (e) A description of existing baseline environmental conditions including socio-economic aspects and other areas of major concern.
- (f) A description of potential positive and negative impacts of the proposed activity from environmental, social, economic and cultural perspectives, for different phases of development (pre-construction, construction, operation, decommissioning) as appropriate.
- (g) An analysis of the importance of the potential impacts as identified under clause (f) above, particularly as they relate to human health.
- (h) The plans that have been or will be developed to mitigate the potential negative impacts as identified under clause (f) above, particularly as they relate to waste prevention, minimisation and recycling.
- (i) The plans that have been or will be developed to monitor environmental impacts that are predicted to occur and the plans that have been or will be developed to monitor proposed mitigation.
- (j) The contingency plans that have been or will be developed in order to respond to unpredicted negative impacts or accidents.
- (k) How the proponent implemented the agreed programme of public consultation in respect of the undertaking.

- (1) Any other information that the institution responsible for the EIA considers necessary to assess the proposed activity.
- (6) REVIEW - by all interested parties

Once an EIA report has reached the "final draft" stage, a number of copies (to be specified in the EIA regulations) of the EIS must be submitted to Minister responsible for environment. The Minister will then transmit the draft EIS to the environmental management institution responsible for the EIS review. The EIS will be reviewed according to a prescribed criteria (in the EIA guidelines) to be prepared by the institution responsible for the EIA process.

Tanzania could probably consider establishing a cross-sectoral Technical Review Committee (TRC), comprising a number of people, including a representative from the Ministry responsible for environment, representatives from the institution responsible for environmental management (one of whom will be the Secretary of the Committee) and other representatives from other Government institutions/agencies or organisations, to assist the institution or agency that will be responsible for reviewing the EIS, in the entire review, that is, screening, TOR evaluation, Draft EIS review and PER review process. The TRC may co-opt specialists in relevant disciplines to assist in the review process whenever required.

A public notice of the EIS publication will be served by the institution responsible for the EIA process for public information and reaction, through newspaper advertisement or posting at appropriate places as part of the review process. The institution responsible for the EIA process will collate public views and will undertake a field/site verification exercise if considered necessary.

If a strong public concern over the undertaking is indicated and impacts are extensive and far reaching, it is recommended that the institution or agency responsible for the EIA process will have to advise the Minister of the need to hold a public hearing relating to the assessment. The Minister will then appoint a Panel that will organise the public hearing on the proposed undertaking. It is suggested that the Panel should consist of at least five persons. A Chairperson who will not be a resident of the area affected by the undertaking. At least a third of the Panel's membership must reside in the geographic area where the undertaking is located. The information to be received at these hearings, together with the final report and any recommendations of the Panel, may be made public.

The review phase is an essential component of an effective EIA process and is usually carried out by the appropriate regulatory institution. It provides an impartial mechanism for assessing the quality of the EIA and its adequacy for decision-making.

Most countries have prepared guidelines to assist in the review of the quality of EIA, and to provide a framework for coherence and consistency of review quality. Tanzania might find it useful to adopt some of the review criteria developed by the UK Institute of Environmental Assessment, but with the necessary modifications and amendments to suit her particular situation and circumstances.

(7) MAKING DECISION ON THE PROJECT - Political

Where the draft EIS is found to be acceptable, the proponent will be notified to finalise the EIS and submit a number of copies (to be specified in the EIA regulations) to the institution or agency responsible for the EIA process, for onward transmission to the Minister. The Minister will then issue the proponent with an Environmental Permit for the proposed undertaking.

If the EIS is not acceptable, the proponent may be required to re-submit a revised statement at a later date or conduct further studies to modify the statement as necessary.

It is important, however, to note that there has to be a limit on the validity of the environmental decision by the Minister. It is being suggested that the decision should be effective for a period of one year from the date that the proponent is advised of the decision. If work has not commenced on the undertaking within that period, the original decision should therefore, become void and the undertaking must be re-registered.

In the event that a proponent is dissatisfied with an adverse decision by the institution or agency responsible for the EIA process at any stage of the EIA process, or has failed to determine an application within the period specified in the EIA regulations, the proponent should be given the right to appeal to the Minister responsible for the Environment. The Minister may appoint an Environmental Appeals Board that will hear the appeal and take a decision on the undertaking. A proponent who is aggrieved by the decision of the Minister may then apply to a court of law for judicial review.

Alternatively, the law can provide for an appellate process for dealing with matters pertaining to the EIA process outside that of the court system, as exemplified by the Environmental Management for Sustainable Development

Act of 1996⁶⁵ of Zanzibar (the Act). The Act establishes a two-step appellate process that can be invoked by a person dissatisfied with the decision of the institution responsible for the environment with regard to the EIA process. Below is a brief outline of the two steps.

(i) Appeal to the Minister

According to Section 50(1) of the Act, if an applicant for an EIA certificate or the licensing institution disagrees with the recommendation of the institution responsible for environment after it has reviewed the EIS; or consider the conditions included on the EIA certificate to be equivalent to disapproval of the activity, the applicant or the licensing institution has, within seven (7) working days, to notify the institution responsible for environment of the receipt of the decision. Upon receiving such notification, the institution responsible for environment through the Director must within fourteen (14) working days from the date of submission, refer the matter to the Minister for decision as provided under Section 50(2) of the Act. According to Section 50(3) of the Act, in referring the matter to the Minister, the institution responsible for the environment must forward all information compiled during the application process and the institution's recommendation. Section 51(1) of the Act enjoins the Minister to decide whether to approve the proposed activity and direct the Director to issue an EIA certificate and subject to any conditions deemed necessary or disapprove the proposed activity. Section 51(2) of the Act requires the Minister in making decisions to invite public comments as appropriate and to take into account the significance of the activity in other national policies.

(ii) Appeal to the Committee

The second appellate step in the EIA process that is enshrined in the Zanzibar law involves an appeal from the decision of the Minister responsible for the environment to the Revolutionary Council on Environment. The Council which is the highest decision-making body on environmental matters in Zanzibar has been designated as the Committee that is charged with powers to resolve conflicts among Government institutions about their respective environmental functions, duties, mandates, obligations or activities. Chaired by the Chief Minister (the equivalent of a Prime Minister) or his designated representative, the Committee is composed of members who are appointed by the President and the Principal Secretary responsible for environment as its Secretary.

Under Section 110(1) of the Act, any person who is dissatisfied with the decision of the Minister has the right to appeal to the Committee. Section 110(2) of the Act empowers the Committee to vary or quash any finding of the Minister, which decision is final.

(8) MONITORING - for compliance to recommendations

EIA should result in an improved design for the project, but all too often it is the only serious consideration given to environmental issues within the life-cycle of the project. In order to capitalise upon the work involved in the EIA, it is necessary to carry the environmental imperative forward from the planning stage into implementation and operation of the project.

It is now standard practice, and a requirement within some Commonwealth jurisdictions, such as Canada, Indonesia and Sri Lanka, to address the issue of carrying forward the environmental imperative by including in the EIS, recommendations for the monitoring of a project once it has been commissioned.

Monitoring determines the actual effect of the project on the natural and cultural environment. Inclusion of a framework for monitoring can significantly improve the effectiveness of EIA, since it can provide a mechanism for checking whether mitigation measures have been carried-out and whether predictions were accurate.

Monitoring the environmental performance of a project has a number of objectives, as follows:

- Determine the nature and scale of the actual impacts.
- Check compliance with effluent/emission standards and Environmental Quality Objectives (EQOs) developed during the EIA.
- Check the effectiveness of amelioration/mitigation measures.
- Specify changes in the environment which may affect the project.
- Identify any cumulative or synergistic impacts.
- Provide an early-warning system for impacts which require modification of the project.
- Provide a feed-back mechanism for future projects and EIAs.

⁶⁵ Act No. 2 of 1996.

Monitoring is often applied to the quality of environmental media, for example, river water quality down-stream of an effluent discharge or air quality in the vicinity of a thermal power station. It is, however, also important to monitor wider aspects of the environmental performance of projects. For example, methods of handling toxic chemicals and pesticides, or the secondary impacts on the environment due to unexpected in-migration at the project site.

(9) POST-PROJECT AUDIT - improve the process

The institution or agency that will be responsible for the EIA process in the country in collaboration with lead agencies, will undertake evaluation of positive and negative impacts of the development during implementation of project activities. This will allow compliance enforcement as well as learning from mistakes, facilitate impact management and handling unanticipated impacts to aid in the improvement of EIA process and practice.

Auditing provides a mechanism to learn from experience, and to refine project design and implementation procedures. Auditing also provides regulatory institutions with a framework for checking compliance with, and the performance of, an Environmental Management Plan (EMP). In most instances, the auditing process will depend heavily on the existence of relevant and good quality monitoring data.

2.12 Constraints in the Implementation of EIA

(i) The Narrow Scope of EIA

Initially EIA evolved to address environmental considerations at the project level; however, confining environmental assessment to the project level has a number of limitations. For example, it is inevitable that environmentally or socially damaging projects will emerge from policies that are unsustainable or inappropriate in environmental and social terms.⁶⁶ Furthermore, project-by-project processes are not able to address adequately the combined impacts of several projects on an ecosystem (for example, of several industrial facilities on water pollution in a river system), the so-called cumulative effects.

There is now a widespread recognition of the importance of ensuring that plans, programmes and policies are as environmentally and socially sound as possible. A number of approaches have been adopted to address these issues, and should be considered as a means of complementing

the role of EIA at the project level. Two such tools are described further below.

(a) Strategic Environmental Assessment

Strategic environmental assessment (SEA) provides the potential opportunity to avoid the development of inappropriate policies or projects and hence, reducing overall costs. Strategic environmental assessment also helps improve the identification and evaluation of project alternatives and identify the cumulative effects of projects undertaken as part of policy or programme initiatives. SEA is a relatively new and untested process of which there, as yet, only a small amount of experience world-wide.

According to the World Bank Operational Manual, OP 4.01 of March 1997, the Bank has sought to encourage two types of SEA, that is, Sectoral Environmental Assessment (SEA) and Regional Environmental Assessment (REA). SEA is applied when many new developments within one sector are anticipated, for example, the development of a new oil field. SEA can then be used to examine the cumulative impacts of the multiple projects planned for the sector. REA is applied when broad economic development is planned within one region, for example, several projects within one watershed.

(b) National Environmental Plans and Sustainable Development Strategies

Environmental planning is increasingly also being conducted at the national level. Preparation of National Environmental Action Plans (NEAPs) or National Sustainable Development Strategies (NSDSs) have been most favoured by the World Bank. Some other countries have favoured the preparation of a National Conservation Strategy.

The development of National Sustainable Development Strategies is one way in which many countries are trying to adopt the principles of Agenda 21 and the need for sustainable development. Agenda 21 was adopted at Rio de Janeiro, in addition to the Conventions on biodiversity and on climate, a statement of intent on forests and the "Rio Declaration on Environment and Development." Agenda 21 is a strategic document of forty sections, which is intended to be the framework for environmental and development policies for the whole world as it emerges into the twenty-first century.

Agenda 21 covers, amongst others, issues such as: combating poverty; promoting sustainable human

⁶⁶ Kikula, I., *The Environmental Consequences of the Villagization Programme in Tanzania*, DUP, 1997, et seq.

development; managing fragile ecosystems; combating desertification and drought; and promoting sustainable agriculture and rural development.

Tanzania signed up to Agenda 21 in 1992 and in early March, 1997, ratified the two Conventions that came out of the Rio Process, the Convention on Climate Change (CCC) and the Convention on Biological Diversity (CBD), respectively. Currently, the country is implementing, on a national scale, the principles laid out in the strategic framework document for world-wide development, that is, Agenda 21. The Government has already drafted specific legislation to implement the two Rio Process Conventions. The draft Bills are, however, yet to be tabled in Parliament.

(ii) Significant Adverse Impact on the Environment

In the practice of EIA, the question to where does the EIA process apply, becomes crucial. The very question that the EIA process is designed to answer is whether a proposed activity is likely to have significant impact. How then can one determine likely impact until the EIA process has been completed? It may mean that all activities should be subject to some form of assessment; however, limited resources, time and personnel mean that some mechanism is needed to pre-determine whether a proposed activity requires or demands a detailed environmental impact assessment. There is no point assessing activities that will have relatively little negative impact on the environment. Conversely, there is a real danger in not assessing those activities that are known or believed to cause a negative impact on the environment.

There are three approaches that may be applied to identify the potential environmental impacts of proposed activities.⁶⁷ The first is to adopt a decisional criteria. Those activities that meet or pass the criteria are assessed, and those that do not are not. A second approach is to develop exemption or designation lists. Application is then determined on the basis of whether or not a proposed activity is on one list or another. Finally, it may be possible to determine application on the basis of a case-by-case determination. Tanzania may decide to adopt two or all the three approaches.

(iii) Public Involvement

The EIA process comprises many steps. Generally, it involves an early determination of whether a proposed activity is subject to EIA as stipulated in law. This is followed by a series of discreet steps that were examined above. Whether

the EIA process is described as a planning or as an assessment process is not very crucial. What matters is that the EIA is mainly a public process. This means that the process will only be effective if the public has an opportunity to participate in all stages of the process. How to determine the "public" therefore, becomes crucial in the EIA process.

Public participation may take many forms - consultation with the proponent in preparing the EIA or EIS, party status at a formal public hearing to review the EIA, representation on a committee set up to monitor the approved activities, perhaps even guaranteed participation on the reviewing panel. What form public participation takes therefore depends largely on the EIA process itself.

In order to provide for an impartial process to review projects that will or may affect the natural resources of a certain locality, the law should provide for the establishment of an Environmental Assessment Board. The Board will conduct public hearings to determine whether a certain project is in the public interest, having regard for the social and economic effects of the project and the effect of the project on the environment.

The financial resources necessary to participate effectively in a hearing are considerable and for most participants limited. Who then is to pay for intervenor costs? This can be resolved either by creating funding awards, costs awarded by hearing panels and intervenor funding provisions of assessment statutes.

Ideally, individuals or groups of individuals who, in the opinion of the Board are or may be affected by a reviewable project should be eligible to apply for funding. A threshold for establishing how individuals or groups that are or may be directly affected by the proposed development are to apply for funding and should be provided for in the law. Particular attention should be paid when considering any requests for funding by groups with special legal status (for example, corporations or civil, society entities). The following should be required for one to qualify as "directly affected" by the proposed development:

- (a) A direct injury or effect (or potential injury affecting a party).
- (b) The injury or effect upon a party must be traceable to the project. There must be an element of factual causation between the project and the effect upon the intervenor.

⁶⁷ These approaches are discussed by D. Paul Bernard and William A. Tilleman in Chapter Six "Environmental Impact Assessment" in E.L. Hughes, et al. *Environmental Law and Policy*, second ed., Geometry Publications Ltd., Toronto, Canada, 1993 at pp. 241-242.

- (c) The injury or effect is not likely to be addressed or discussed by any other intervening party.

as well as bio-physical effects and their inter-relations, as well as cumulative impacts.

(iv) The EIS is too Technical

Information dissemination and documentation which is conventionally achieved through the compilation of an Environmental Impact Statement (EIS), have in the past had a reputation for being long and unwieldy, which has not helped the decision-making process. It is now recognised, however, that alternative and complimentary methods can also be used to overcome communication problems. These methods include local language, video, local radio programmes, meetings and workshops. These can be particularly effective in areas where literacy, social or cultural barriers prevent local people accessing the EIS. A summary of the EIS should also be made available, which should focus on issues most relevant to decision-making. This should also be made available in local languages where these differ from that used in the main statement.

- (4) In order for the EIA process to be adhered to, it has to be legally mandated.

- (5) The EIA process must apply clearly and automatically to all proponents of projects, programmes, plans and policies that may pose environmentally significant effects, so that all such proponents incorporate environmental considerations from the very beginning of their deliberations. Proponents who judge application of the process to be inappropriate may seek exemption, but must consider environmental factors at least to the extent necessary to prepare a persuasive request.

- (6) Proponents subject to the EIA process must be required to demonstrate that they have examined alternative means of satisfying the objectives of their proposed initiatives and meeting the public interest, in light of environmental as well as financial and technical considerations.

2.13 Conclusion

The following conclusions can be drawn from the preceding section:

(1) The EIA process:

- (a) is a management and planning tool devised to assist the traditional decision-makers (the proponent and the regulatory department or agency) to generate more and quality information about potential environmental impacts of proposed activities;
- (b) empowers the public and enables them to participate more effectively in the decision-making process;
- (c) restructures the way in which proponents make decisions about what to do, where to do it, and how to do it; and,
- (d) attempts to predict or anticipate potential environmental harm, where possible, mitigate or avoid the harm.

- (7) It should be the responsibility of the developer or proponent to carry out the EIA at his or her own expense and to meet the predetermined and justifiable costs of the review.

- (8) The EIA should be a scientific and technical procedure free from political influence.

- (9) The EIA process must ensure early and effective public involvement to allow for incorporation of public views, and to ensure independent scrutiny.

- (10) Public participation in all stages of the EIA process should be clearly stipulated in the law. Particularly, public hearings should be made mandatory and not discretionary.

- (11) Aggrieved parties should be afforded the right to a quasi-judicial and judicial review process. At the review stage the administrative system should include an independent and impartial institution from the decision-making body, such as an environmental tribunal.

- (2) In its broadest sense, the term "environment" for purposes of EIA, should include both the physical and human environment.

- (3) Environmental considerations must be defined broadly, and realistically, to include socio-economic

- (12) A quasi-judicial body should be established to hold public hearings on the adequacy of environmental assessments and its rulings should be authoritative, with respect to undertakings considered by it, and its powers should extend to imposing terms and conditions on project proponents.

- (13) The responsibility for review of the EIS should be distributed in such a manner that the institution responsible for environmental management in the country plays a coordinating role and the technical departments or lead agencies of government provide expertise in areas of their competence within given time-frames.
- (14) All parties, including the public, should have a right to information and full disclosure resulting from EIA, subject to the requirements of protection of proprietary information.
- (15) In the considering social costs of environmental litigation, an intervenor funding programme should be established to finance interventions in the public hearings.
- (16) There should be a requirement for professional accreditation, including inter-state accreditation, approval/registration, as well as the establishment of a harmonised code of conduct in order to ensure discipline and professionalism among EIA practitioners.

CHAPTER THREE

3.0 ANTECEDENTS IN REGIONAL HARMONIZATION

3.1 Introduction

The 1972 UN Conference on the Human Environment (the Stockholm Conference) brought the industrialised and developing nations together to delineate the “rights” of the human family to a healthy and productive environment. A string of such meetings followed: from addressing the rights of people to adequate food, to sound housing, to safe water, to access to means of choosing the size of their families.⁶⁸

Immediately after the Stockholm Conference, the United Nations Environment Programme (UNEP) was established by the UN General Assembly and was given a broad mandate to stimulate, coordinate, and provide policy guidance for environmental action throughout the UN System.⁶⁹

After the Stockholm Conference, it was also realised by the international community that it is futile to separate development issues from environmental problems, and this was the main concern behind the establishment in 1983 of the World Commission on Environment and Development by the UN General Assembly. The Commission was an independent body, linked to, but outside the control of governments and the UN system. The Commission released its Report, *Our Common Future*, in 1987.

In Part III of *Our Common Future*, there are some proposals for institutional and legal change. The Report enjoins that States have the responsibility to ensure that an adequate environment for present as well as future

generations. Particularly, states have a responsibility towards their own citizens and other states, among other things, to prevent or abate significant environmental pollution or harm; to establish adequate environmental protection standards; and to undertake or require prior assessments to ensure that major new policies, projects, and technologies contribute to sustainable development.⁷⁰

Annex 1 of *Our Common Future* contains a Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development. Section II of the Summary consists of some principles, rights and obligations concerning trans-boundary natural resources and environmental interferences.

Principle 12 provides that States shall enter into negotiations with the affected State on the equitable conditions under which the activity could be carried out when planning to carry out or permit activities causing trans-boundary harm which is substantial but far less than the cost of prevention.

Principle 13 states that States shall apply as a minimum at least the same standards for environmental conduct and impacts regarding trans-boundary natural resources and environmental interferences as are applied domestically.

Principle 16 provides that States shall provide prior and timely notification and relevant information to other States and shall make or require an environmental assessment of planned activities which may have significant trans-boundary effects.

⁶⁸ World Commission on Environment and Development (WCED) *Our Common Future*, Oxford University Press, Oxford, New York, at p. Xi.

⁶⁹ See General Assembly Resolution 2997 (XXVII) of 15 December, 1972 on ? Institutional and Financial Arrangements for International Environmental Cooperation?.

⁷⁰ *Our Common Future*, at p. 331.

Principle 18 states that States shall co-operate with the concerned States in monitoring, scientific research and standard setting regarding trans-boundary natural resources and environmental interferences.

History was made in several ways at the United Nations Conference on Environment and Development (UNCED) - the Earth Summit, which was held in Rio de Janeiro from 3 to 14 June, 1992. Not only was it the biggest ever UN conference at Summit level, it also tackled the largest tapestry of fundamental issues critical to our survival on this planet: our common home that transcends and outlives all our conflicts. The Summit's most important achievement was the recognition that environmental protection and economic development require global solutions cutting across national frontiers, economic or social systems, and ideologies. The Summit not only made sustainable development a household concept around the world but also accepted that it is fair and equitable for all countries to share the burdens of environmental protection. The outcomes of the Summit were new agreements, conventions, recommendations and steps. The Rio Declaration on Environment and Development was one of the new agreements that came out of the Summit. It is a series of principles defining the rights and responsibilities of States in the area of sustainable development.

The Rio Declaration on Environment and Development embodies several specific decisions reached for the first time at such a high level and on such a global scale, and which are relevant to this Report. These include decisions as mentioned below:

- Enshrine the sovereign right of each country to exploit its own resources in ways that do not cause environmental damage beyond its borders.
- Bring recognition of the trans-boundary liability principle, under which a country is held liable for environmental damage outside its borders caused, by a polluter based on its territory.
- Emphasises on the promotion of the internalisation of environmental costs and the use of economic instruments and that countries should take into account the approach that the polluter should, in principle, bear the cost of pollution.
- Insist on the precautionary approach in the protection of the environment and that lack of conclusive scientific evidence should not be a reason for postponing urgent measures to prevent environmental degradation.

- Encourage the undertaking of environmental impact assessment 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.

3.2 Recommendations by the Economic Commission for Europe (ECE) to Governments for Establishing EIA Procedures

The recommendations of the Economic Commission for Europe to governments for establishing EIA procedures are as follows-

- (i) According priority to the implementation of EIA through legislation which should: -
 - (a) in the case of separate legislation, provide for linkage with other legislation which governs, *inter alia*, land use planning and planning in different economic sectors, licensing and permit systems and environmental management;
 - (b) provide for the analysis and evaluation of possible environmental impacts of activities before a decision is taken, as well as in the construction and operation phases;
 - (c) contain provisions to promote the integration of environmental considerations into planning and decision-making processes;
 - (d) promote integrated environmental management in relation to sustainable economic development;
 - (e) allow for the necessary resources to be allocated to the EIA process.

3.3 Espoo (Finland) Convention on Environmental Assessment in a Trans-boundary Context

The ESPOO Convention was agreed in Espoo, Finland on 25th February, 1991, under the aegis of the United Nations Economic Commission for Europe (ECE) whose members include the European countries, Canada and the United States of America. Its aim is to enhance international cooperation in assessing environmental impact, in particular in a trans-boundary context. It is so far the only international convention on EIA, although it is not yet in force.

The ESPOO Convention imposes an obligation on State Parties, either individually or jointly, to take all appropriate and effective measures to prevent, reduce and control significant adverse trans-boundary environmental impact from proposed activities. Parties are required to take the necessary legal, administrative or other measures, *inter alia*, to establish an EIA procedure that permits public participation and preparation of stipulated environmental assessment document. The Convention lists in Appendices activities which should be subjected to EIA, and the documentation which should be prepared. The list is a list of activities likely to cause significant adverse trans-boundary impact.

At the initiative of any party, concerned parties shall enter into discussions on whether one or more proposed activities not listed in the Appendix is or are likely to cause a significant adverse trans-boundary impact and thus, should be treated as if it or they were so listed. Where these parties so agree the activity or activities shall be so treated. General guidance for identifying criteria to determine significant impact is set forth in an Appendix to the Convention.

The Convention requires that EIA shall, as a minimum requirement, be undertaken at the project level. It states also that parties shall endeavour to apply the principles of EIA to policies, plans and programmes.

The Convention protects the right of parties to implement national laws, regulations and administrative provisions or accepted legal practices protecting information, the supply of which would be prejudicial to industrial and commercial secrecy or national security. It also preserves the right of Parties to implement more stringent measures than those in the Convention.

3.4 EU Directions on the Assessment of the Effects of Certain Public and Private Projects on the Environment

The EU Directive on EIA introduces general principles for the assessment of environmental effects with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment.

The premise of the Directive is that principles for the assessment of environmental effects should be harmonised, in particular with reference to the-

- (a) projects which should be subject to assessment;

- (b) main obligations of the developers; and,
- (c) content of the assessment.

The Directive stipulates that development consent for public and private projects which are likely to have significant effect on the environment should be granted only after a prior assessment of the likely significant environmental effects of those projects have been carried out. This assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by people who may be concerned by the project in question.

The Directive stipulates that projects belonging to certain types of categories have significant effect on the environment and must as a rule be subject to assessment. Other projects that may not have significant effects on the environment in every case should only be assessed where the Member States consider that their characteristics so require. For projects that are subject to assessment a certain minimum amount of information must be supplied concerning the project and its effects.

The Directive stipulates that Member States shall adopt all measures necessary to ensure that, before consent is given projects likely to have significant effects on the environment by virtue of their nature, size or location, are subjected to an assessment with regard to their effects. It lists the classes of the projects in an Annex.

The Directive provides that the EIA may be integrated into the existing procedures for consent to projects in the Member States or, failing this, into other procedures or into procedures to be established to comply with the aims of the Directive.

The Directive allows Member States, in exceptional cases, to exempt a specific project in whole or in part from EIA. In that case it shall:

- (a) consider whether another form of assessment would be appropriate and whether the information thus collected, should be made available to the public;
- (b) make available to the public the information relating to the exemption and the reasons for granting it; and,
- (c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available where appropriate, to their own nationals.

The EIA needs to identify, describe and assess the direct and indirect effects of the project on:

- (a) human beings, fauna and flora;
- (b) soil, water, air, climate and the landscape;
- (c) the interaction between these factors; and,
- (d) material assets and the cultural heritage.

The Directive lists projects which must be subjected to EIA and projects which shall be assessed where Member States consider that their characteristics so require. It permits Member States to specify certain types of projects as being subject to an assessment, or to establish the criteria and/or thresholds necessary to determine which of the projects of the classes listed as subject to an assessment if Member States so decide, are to be subject to mandatory EIA.

The Directive requires that in the case of projects subject to mandatory assessment Member States shall adopt measures to ensure that the developer supplies information specified in an Annex to the Directive. The information shall include at least:

- a description of the project comprising information on the site and design of the project;
- a description of the measures envisaged in order to avoid, reduce and, if possible remedy significant adverse effects;
- the data required to identify and assess the main effects which the project is likely to have on the environment; and
- a non-technical summary of the information supplied.

In addition, the Directive requires Member States to ensure that any authorities with relevant information make it available to the developer.

Furthermore, the Directive requires Member States to ensure that authorities likely to be concerned by the project by reason of their specific responsibilities, are given an opportunity to express their opinion on the request for development consent. Member States shall designate the authorities to be consulted for this purposes in general terms or in each case, when the request for consent is made. The information gathered shall be forwarded to these authorities. In addition, each Member State shall ensure that-

- any request for development consent and any information gathered are made available to the public;
- the public concerned is given the opportunity to express an opinion before the project is initiated;
- determines the public concerned;
- specifies the places where information can be consulted;
- specifies the way in which the public may be informed;
- determines the manner in which the public is to be consulted; and,
- fixes the appropriate time limits for the various stages of the procedures in order to ensure that a decision is taken within a reasonable period.

The Directive stipulates that where a decision has been taken the competent authority shall inform the public concerned of-

- the content of the decision and any conditions attached to it; and,
- the reason for the decision.

The Framework Directive allows Member States to lay down stricter rules regarding the scope and procedure when carrying out EIA.

The Directive has been amended to deal with two problems that arose in its implementation. First, there was a wide variation in the requirements of the Member States regarding the thresholds defined for Annex II projects that are not subject to mandatory assessment. Some Member States set high thresholds, resulting in assessments in only a few cases while others set low thresholds, requiring assessment of projects with only limited impacts. The amendment clarifies the circumstances in which Annex II projects are required to undergo assessment, that is, in every case where the project is liable to have significant effect on special protection areas designated by member states.

A second weakness was that the content of information submitted by developers has varied greatly in the absence of minimum standards; most developers submit only a bare minimum of information. The amendment introduces the concept of scoping, enabling an indication to be given of the nature of information to be gathered.

CHAPTER FOUR

4.0 REVIEW OF EIA PROVISIONS/ TOPOLOGIES IN THE LAWS

4.1 EIA Provisions in the Laws of Tanzania

Environmental law in Tanzania is very much undeveloped and the management of environmental resources is conducted through a series of sectoral environmentally-related legislation. Furthermore, environmental litigation in Tanzania is conducted on the basis of sectoral statutes on natural resource conservation and common law principles, such as the tort of negligence, nuisance, strict liability and riparian water rights.

Tanzania does not have any framework legislation on environment management or specific EIA legislation or regulations; however, there are EIA provisions in the *Marine Parks and Reserves Act*⁷¹ and the *Mining Act*.⁷² These two Acts do not provide for the detailed procedure of the EIA process or the institution that will be responsible for managing and administering the process. The *Marine Parks and Reserves Act* provides only generally that an assessment of the environmental impact of proposed activities in marine parks or reserves will be conducted pursuant to legal requirements, policy, practice or general management plan or regulations.⁷³

The first specific legislation on environmental management in Tanzania was enacted in 1983 - the *National Environment Management Act*.⁷⁴ This Act preceded the environment policy, the National Environment Policy (NEP)

which was approved by Cabinet in December 1997. Apart from the NEP there are also sectoral policies which deal with the management and conservation of resources, some of which are either evolving or have already been approved by Cabinet.⁷⁵

The *National Environment Management Act* established the National Environment Management Council (NEMC). NEMC is the only environmental management institution in the country. NEMC has only an advisory role without regulatory or enforcement authority.

Discussed hereunder are some parts of the National Environment Policy (NEP) which are relevant to this Report.

4.2 The National Environment Policy: An Overview

The National Environmental Policy (NEP), which was approved by Cabinet in December 1997, contains details on instruments for environmental policy, institutional arrangement and institutional capacity-building.

4.2.1 EIA as a Planning Tool

The NEP recognises the importance of EIA as a planning tool. EIA will be used to integrate environmental considerations in the decision-making process, in order to ensure that "unnecessary" damage to the environment is avoided.⁷⁶

⁷¹ Act No. 29 of 1994.

⁷² Act of 1998.

⁷³ Ibid. Ss. 13 (3) and 16(2)(a).

⁷⁴ Act No. 13 of 1983.

⁷⁵ The Policy for Wildlife Conservation (1998); the National Industrial Policy (1997); the National Land Policy (1995); the National Water Policy (1991); the National Forestry Policy (1996); the National Agricultural Policy (1983); and the National Mineral Resources Policy (1996).

⁷⁶ The National Environment Policy (1997), para 65.

The NEP makes it emphatically clear that, *"It shall be a mandatory requirement to ensure that environmental concerns receive due and balanced consideration in reconciling urgent development needs and long-term sustainability, before a final decision is made."*⁷⁷ Guidelines and specific criteria for the conduct of EIA will be formulated as part of the strategy for implementing the Policy.⁷⁸

4.2.2 Environmental Law an Essential Environment Management Component

The NEP affirms that environmental law is an essential component of effective environmental management and improvement of the quality of life. The framework environmental legislation shall be designed to organise various agencies of Government charged with aspects of environmental protection to promote coordination and co-operation among them, and shall define environmental management tools of general scope that facilitate an even degree of policing and enforcement. NEP reiterates that sectoral legislation shall be designed in such a way as to factor environmental policy objectives in their area of coverage.⁷⁹

4.2.3 Importance of Environmental Standards

The NEP also recognises the importance of environmental standards and indicators as necessary management tools, and that these tools should have to be in place before or as a result of legislation.

According to NEP, the following tasks lie ahead for Tanzania:

- (a) Provide for an Environmental Impact Assessment process in the law.
- (b) Develop EIA regulations and guidelines.
- (c) Draft a framework legislation on environmental management and protection.
- (d) Develop binding Environmental Standards.

Apart from the National Environment Policy, there are also some sectoral policies which make provision for the EIA

process. These include: the Mining Policy; the Policy for Wildlife Conservation; and, the National Industrial Policy.

4.3 Environmental Impact Assessment in Tanzania

Tanzania has no formal requirements for an Environmental Impact Assessment.⁸⁰ There are few guidelines for reviewing development proposals and no consistent set of criteria against which proposals can be evaluated. Development proceeds in an *ad hoc*, unplanned manner because the approval process and review guidelines are unclear or non-existent. In the recent past, development projects that have been carried out in the country and decisions that have been made do not promote sustainable development. Despite this gap, however, several environmental impact assessments have been undertaken in the country in respect of certain strategic development projects. The most recent and controversial one being the Rufiji Prawns Project in Coast region.⁸¹

The Rufiji Prawns Project is a private initiative of the African Fishing Company (AFC) which is a joint venture between some Tanzanians and foreigners. The first company's sponsored EIA supported the project, ignoring the second one that was prepared by the National Environment Management Council (NEMC) that rejected it. The second EIA by NEMC indicated that there will be adverse significant environmental consequences if the Project was to proceed, but this expert advice was overridden by political and economic exigencies. The Tanzania Investment Centre (TIC), however, has refused to issue an investment certificate to the AFC to farm prawns in the Rufiji Delta, dashing rumours that the government had already given the go-ahead for the project to proceed.

The Rufiji Prawns Farming Project being an initiative of a private company, the African Fishing Company, clearly provides a test to the dominant concern of the EIA with "public" initiated or funded projects. The Project involves an area of about 10,000 hectares (100 square km) in the Rufiji Delta, one of the largest remaining unspoiled mangrove forests in the world. Of the 10,000 hectares the AFC applied for, 4,000 hectares were within gazetted forest area, while the remaining 6,000 hectares was used as paddy farmland by farmers shifting between fishing and cultivation. One of

⁷⁷ Ibid.

⁷⁸ Ibid para 66.

⁷⁹ Ibid., para 70.

⁸⁰ Tanzania here refers only to the Mainland part of the Union. Zanzibar which forms the other part of the Union has its own environmental legislation, the Environmental Management for Sustainable development Act, 1996, Act No. 2 of 1996. Part V of this Act (ss. 38 -62) deals with Environmental Impact Assessment.

⁸¹ "Rufiji prawns Project a hoax" JET NEWS, The newsletter of the Journalists Environmental Association of Tanzania, November, 1998 at p.1.

the burning issues surrounding the project is the displacement of people "estimated at 30,000 by a University of Dar es Salaam social scientist" to give way to prawn ponds.⁸²

The Project has created a lot of debate both at home and abroad. The Lawyers Environmental Action Team (LEAT) has already filed a representative suit in the High Court at Dar es Salaam challenging the Project. The crucial question in this case concerns the balance between the environment and development. The wisdom of clearing mangrove forests and displacing transhuman Rufiji farmers to pave way for prawn ponds by a privately owned joint venture is definitely being questioned in this case. The prawns that will be produced in the Project are not for local consumption but for the export market to generate the much needed foreign currency. The AFC has made claims that the Tanzania government would earn US 200-300 from the Project. This does not appear to be true. The truth is this amount of money would be the annual AFC turnover on its entire investment. Furthermore, AFC enjoys a tax-holiday for five years. So the issue of generating government revenue does not arise, in the first place.

The Rufiji Prawns Project is the climax of the *ad hoc* nature of the EIA process in Tanzania. The Project brought to the fore problems associated with the sectoral approach to resource management; lack of institutional linkages and coordination in environmental decision-making, lack of transparency and accountability; and lack of clear procedures on EIA and the institutional set up for its administration. For a Project such as this one that involved more than one decision-making body and cut across sectoral competencies, it impacts not only on the environment but the social, cultural, economical and political aspects as well; however, it seems that the first EIA on the Project concentrated more in justifying it rather than bringing out clearly its impact on each one of these aspects.⁸³

For the decision-makers who considered the EIA on the Project, environmental concerns seem to have been the last thing to be taken into consideration. There could be a number of reasons for the kind of policy, legal and institutional mess currently affecting environmental management in Tanzania, but the following could be singled

out as being the main ones:

- (a) Absence of comprehensive legal provisions to guide proponents to comply with EIA regulations.
- (b) Absence of comprehensive administrative procedures to ensure that EIA study recommendations are complied with and performance standards are monitored during implementation and decommissioning of projects.
- (c) Absence of, or inadequate policies and legislative framework for, integrating environment and development at the planning and management levels.
- (d) Lack of an administrative framework for co-ordination among decision-makers of natural resource management institutions in the country.
- (e) Lack of institutional linkages in resource management in the country.
- (f) Lack of political will to integrate environmental concerns in development plans, policies and programmes.
- (g) Laxity in fulfilling international obligations by not enacting national legislation implementing multilateral environmental conventions and protocols to which Tanzania is a party.

In the absence of any legal requirements or regulations for EIA in Tanzania Mainland, activities have been implemented through a variety of instruments including sectoral laws, policy statements, and other administrative means, for instance permits and licenses. The mining sector, banking loans, international finance institutions, such as the World Bank, TANAPA guidelines, among others, have a requirement for EIA to be conducted before consent to development is granted.

Some of the EIA procedures that are applied to certain types of activities have been developed as an in-house framework for carrying out EIAs. For example, the Tanzania National Parks Authority (TANAPA) National Parks Policy (TNPP) contains detailed Environmental Impact

⁸² Prof. Seth Chachage of the Department of Sociology, University of Dar es salaam during a TV Talk Show on Dar es Salaam Television (DTV) "The Hanza Kasongo Hour", which was aired on two consecutive Sundays, October 11 and 18, 1998. At the show, the AFC Executive, Reginald John Nolan, defended the project and stated that "The trouble is, people are judging us against failed projects elsewhere. We are going to use the most modern technology and adhere to international guidelines approved by the UN"

⁸³ The title of the EIS for the Project is "An Environmentally responsible Project for Prawn Farming in Rufiji" This report was a result of an EIA study that was conducted by a group of multi-disciplinary experts from the University of Dar es salaam that was hired by the proponent.

Consideration Check-list for development projects in national parks.⁸⁴ Projects supervised by the Ministry of Works often undertake EIAs mainly as a requirement of the financing agency.

The World Bank requires environmental assessment (EA) of projects proposed for Bank financing to help ensure that they are environmentally sound and sustainable, and thus, to improve decision making.⁸⁵

As stated earlier, it is only the *Marine Parks and Reserves Act* of 1994 and the *Mining Act* of 1998, which so far make some general provisions for the requirement for an assessment of the environmental impact of proposed activities in marine parks and reserves and in mining areas.

In order to ensure that the significant adverse environmental effects of undertakings receive careful consideration before responsible authorities take actions in connection with them, there is an urgent need for Mainland Tanzania to promote the widespread use of environmental impact assessment (EIA) procedures. The 1997, National Environment Policy (NEP) of Tanzania makes EIA a mandatory requirement and stipulates that specific criteria for the conduct of EIA will be formulated.

According to the National Environment Management Act, the National Environment Management Council (NEMC) has a mandate to "evaluate existing and proposed policies and the activities of the Government directed to control of pollution."⁸⁶ In fulfilling its statutory function of specifying standards, norms and criteria for the protection of the environment, in early 1996, NEMC prepared Environmental Impact Assessment Procedures, which are contained in a small document (to be referred to here as "the NEMC document").⁸⁷ These procedures are now being finalised for adoption as national EIA procedures.

The EIA procedures and guidelines initiated by NEMC comprises three parts. An introductory part; a part on the details of the EIA procedures; and other important

considerations as well as appendices. The procedures are to the standards, and therefore there is need to go into their detail. It is hoped that when finally adopted by the government and approved by Cabinet, the procedures will be promulgated as regulations under the proposed framework environmental legislation.

4.3.1 Recommendations for the EIA process in Tanzania

- (a) The EIA process should be enshrined in the law, preferably a framework environmental legislation, and compliance with its requirements and products must be legally enforceable.
- (b) The National Environment Management Act of 1983 should be substantially amended so as to provide for the institutional structure for the administration of the EIA process, and give enforcement powers to NEMC in relation to environmental management in general, and EIA process in particular.
- (c) The EIA procedures and guidelines which were initiated by NEMC should be finalised and approved by the Government as national EIA Procedures and Guidelines. Their compliance by all proponents should be mandatory.
- (d) The institution responsible for environment management should, from time to time, review the EIA procedures and guidelines.
- (e) The environmental management institution in the country, should in collaboration with lead agencies, prescribe environmental standards and procedures.
- (f) The environment management institution should ensure compliance with any laid down environmental impact assessment procedures in the planning and execution of development projects, including compliance in respect of existing projects.

⁸⁴ The Section was prepared by the IUCN/TANAPA Environmental Impact Assessment Workshop, June 15-18, 1993.

⁸⁵ The World Bank Operational Manual "Operational Policies" OP 4.01 March.

⁸⁶ NEM Act, s.4(c). The Act defines pollution to mean any direct or indirect contamination or alteration of any part of the environment, and "environment" means the land, water and atmosphere of the earth.

⁸⁷ The EIA Procedures initiated by NEMC are being referred to here simply as "NEMC document" because they are yet to be approved by the relevant government authorities as "national" EIA Procedures. The "NEMC document" has already been submitted to the Ministry responsible for environment and the Office of the Attorney General in the Ministry of Justice and Constitutional Affairs for comments and further action.

CHAPTER FIVE

5.0 PRINCIPAL FEATURES OF THE PROPOSED EIA REGULATIONS

5.1 Introduction

In this Chapter, the consultants have had to struggle with the formidable task of trying to discuss principal features of regulations in the absence of a principal legislation on the subject covered in the regulations. Despite this lacunae, the National Environment Management Council (NEMC) prepared Environmental Impact Assessment (EIA) procedures in 1996. These procedures have now been placed before the ministry responsible for environment and the Attorney General for comment and further action with a view to approving them as national EIA guidelines.

The Tanzania National Parks Authority (TANAPA) has also has prepared a Checklist for EIA in respect of developments in national parks;⁸⁸ however, they are not legally binding, because they do not form part of any legislative scheme. In the following section some of the aspects of the EIA procedures that have been developed by NEMC will be briefly examined.

Perhaps before we embark on analysing the procedures and guidelines initiated by NEMC, it is worth mentioning that the Regulations that are annexed to this Report comprising Environmental Impact Assessment and Hearing Regulations, have been drafted on the assumption that there will be in place very soon a framework environmental legislation as one of the implementation strategy of the National Environment Policy. That the principle framework environmental legislation will probably empower the

Minister responsible for environment to make that kind of regulations.

As we noted earlier, apart from the National Environment Management Act of 1983, Tanzania does not have any other legislation that directly addresses environment management. The main purpose of the proposed framework environmental legislation is to provide for the establishment of an environmental protection institution as the principal agency for the management and regulation, control and monitoring of environmental protection standards in the country. This will be in line with the need to encourage the utilisation of EIA as an essential tool for development planning and promotion of the concept of sustainable development.

It is felt that there is no need for Tanzania to enact a specific EIA legislation, as this could be easily taken care of by the proposed framework environmental legislation. The details of the EIA process, however, will have to be provided for in regulations. The proposed framework environmental legislation will, apart from providing for the EIA process, also provide for general matters relating to environmental protection and the coordination and institutional linkages in environmental management in the country.

Furthermore, given the sectoral nature of existing legislative and institutional set-up and lack of coordination and linkages among various sectors related with environmental issues in the country, there is also a need to establish a single environmental management institution with supervisory, advisory, coordinating, monitoring and enforcement, and control powers in all environmental

⁸⁸ Section IV of the TANAPA document contains Environmental Impact Assessment (EIA) Consideration Checklist which is intended to serve as a general guide for planning and development of any project in a national park.

matters and in administering the EIA process in particular as well as ensuring compliance with EIA procedures and guidelines and regulations.

Before we discuss the principal features of the proposed EIA regulations, below is a brief outline of the main parts of the proposed framework environmental legislation.

5.2 Main Parts of the Proposed Framework Environmental Legislation

The proposed environmental legislation should:

- (1) avoid lumping together all issues relating to environmental management, in order to avoid inter-sectoral institutional conflict between the institution that will be responsible for environment management and sectoral lead agencies;
- (2) stipulate that the EIA is mandatory, provide for its enforcement, the role of the environment management institution, government and lead agencies, compliance mechanisms, and violations, as well as fines and penalties;
- (3) Stipulate very clearly the institution that will be responsible for overseeing the EIA process.
- (4) empower the institution that will be responsible for environmental management with enforcement and monitoring powers so as to ensure compliance with laid down EIA procedures in planning and execution of development projects, including compliance in respect of existing projects;
- (5) provide for the institutional arrangement, the functions and roles of the various bodies involved in environmental management, and the functions, duties, and powers of the environmental management institution;
- (6) provide in a Schedule the different categories of undertakings for which EIA is mandatory and those which are exempted, the details of which will be provided for in the guidelines and procedures that will be developed by the institution and approved by the Government;
- (7) provide for the definition of various terms used in the EIA process;
- (8) state categorically clear in the law that an EIA permit should be permit number one and that no project

shall be commenced without an environmental permit or exemption issued by the institution responsible for the management of the environment. That proponents should consider overall environmental impacts of existing, planned and future development projects, and that there shall be issued only a one environmental permit for each project for each geographical area.

Below is a brief discussion of the basic features of the regulations that are annexed to this Report. The Regulations have been drafted on the assumption that the proposed framework environmental legislation will empower the Minister responsible for the environment to make such regulations.

5.3 Basic Features of the Proposed EIA Regulations

(1) Registration

The Regulations provide for:

- the process of registration by proponent of project proposal with the environment management institution.
- the requisite registration forms and their contents; prescribe the time and the manner in which registration is to be carried out;
- provide for the review of the project proposal by the environment management institution and the decision to be made thereon;
- deal with matters pertaining to notification of the proponent of the decision and reasons therefore within a prescribed time; and the consequences of withdrawal of registration.

The EIA procedures that were initiated by the National Environment Management Council state correctly that the proponent is required to register a project proposal or concept with NEMC in special application forms upon payment of a fee. The registration form is contained in an Appendix to the regulations.

The Regulations also provide for the time and manner in which the registration with the environmental management institution by every proponent of an undertaking and the publication of a notice of the undertaking containing the information prescribed in the regulations.

(2) Screening

The EIA procedures that were initiated by NEMC do not stipulate what will happen after the proponent has registered a project or concept. The Regulations provide for the procedure to be followed after an undertaking has been registered.

The Regulations provide that the environment management institution will have to examine the information that is provided respecting an undertaking by the proponent to determine whether:

- (a) additional information is required;
- (b) a screening report is required;
- (c) an environmental-assessment report is required;
- (d) the undertaking or an environmental-assessment report is not required, and the undertaking may proceed; or,
- (e) the undertaking or an environmental-assessment report is not required, and the undertaking may proceed; or,
- (f) the undertaking is rejected because of the likelihood that it will cause adverse effects or environmental effects that cannot be mitigated.

The Regulations also provide that the screening has to be done by the environment management institution with the assistance of a cross-sectoral technical committee.

The Regulations provide further that whatever decision that will be arrived at by the environmental management institution, the proponent has to be notified in writing of the decision, together with reasons for the decision, within a prescribed time. The Regulation provides for this to be done within twenty five (25) days from the time a registration form is received.

(3) Withdrawal of registration of an undertaking

The Regulations provide that the registration of an undertaking is deemed to have been withdrawn if:

- (a) the environmental management institution is not aware of any action taken by the proponent on the environmental assessment of the undertaking within the time period prescribed in the regulations;

(b) the environmental management institution has notified the proponent when no action has been taken within the time period prescribed by the regulations; and,

(c) the proponent has not given any reasonable explanation for the delay within the time period prescribed by the regulations.

The Regulations provide that if one year elapses from the time a decision was made on the undertaking, the proponent should not be allowed to continue with its development and should be required to re-register the undertaking.

(4) Scope of EIA

Initially, the EIA process addressed only the impact of pollution resulting from Government initiated or funded projects and activities, and not on policies, plans or programmes. Even with impacts of projects, cumulative impacts are not included in the assessment. Multiple privately initiated projects located near each other or discharging waste into a common body of water, may have a significant cumulative impact. For example, small-scale pig farms or fish ponds, or small scale textile dyeing plants (*batiki* shops) and automotive repair shops (*jua kali* garages) use hazardous materials in their operations and often are located in populated areas. These projects because of their mere size and location usually escape the "significant adverse environmental impact" test which could have justified their subjection to EIA.

The Regulations limit EIA for environmentally critical projects (ECPs) and establishes requirements for environmentally critical areas (ECAs).

The Regulations contain an appendix of environmentally critical projects (ECPs) and areas (ECAs) for which EIA is mandatory. Projects and/or developmental activities that are not listed as environmentally critical and are not located in environmentally critical areas are exempted from EIA.

(5) Environmental Permit Decision

The Regulations provide for the circumstances for issuing an Environmental Permit by the environment management institution.

If the environment management institution reaches an Environmental Permit Decision (EPD) that indicates that no further information is required beyond the registration proposal stage, then the proponent will be issued with an

Environmental Permit for the undertaking. A no-objection decision means that the undertaking may proceed as stated in the project registration form subject to relevant Acts, by-laws and/or regulations at any level of Government.

Where the undertaking is approved, the proponent will have to pay an evaluation fee prior to collection of the Environmental Permit. This evaluation fee will be determined by the environment management institution.

If the decision indicates that an EIA is required, then an Environmental Permit cannot be issued, and the proponent will accordingly be advised to initiate an EIA.

(6) EIA Procedural steps

The Regulations also provide for the procedural steps for the conduct of the EIA:

- the conduct of the EIA study;
- the submission of EIS and the fees that accompany it;
- the conduct of scoping, preparation of Scoping Report and Terms of Reference (TOR) for the EIA study, the number of copies required and the time limits thereof.
- the various decisions to be made in respect of various stages in the EIA process, permits to be issued and fees to be payable.

The Regulations stipulate that whenever the screening result of the initial project registration indicates that significant adverse environmental impact may result from the undertaking, the proponent will be required to submit an Environmental Impact Statement (EIS) resulting from a thorough Environmental Impact Assessment (EIA) study.

The proponent will commission or undertake a Scoping exercise of the proposed (alternative) site(s) by consulting interested or affected parties and then prepare a scoping report which would include draft Terms of Reference (TOR) for the EIA study and submit a number of copies which will be stipulated in the regulations, to the environment management institution. Ten (10) copies are recommended.

The draft a/t TOR will then be studied by the environment management institution and the cross-sectoral technical committee. Whatever decision is reached by the environment management institution on the TOR must be communicated to the proponent within a given number of days that will be stipulated in the regulations, of the receipt

of the Scoping Report/TOR; fifteen (15) days are recommended. If the TOR are approved, the proponent may start work immediately on the conduct of the Environmental Impact Statement (EIA).

Once the final draft of the Environmental Impact Statement is completed, the proponent shall submit a specified number of copies prescribed in the regulations (twelve copies), of the EIS to the environment management institution. A cross-sectoral technical committee including the Ministry responsible for environment and other lead agencies will then assist the environment management institution in the review of the EIS.

Copies must be made available at appropriate public places. A twenty-one (21) day notice of the EIS publication shall be served by the environment management institution for public information and reaction, through newspaper advertisement or posting at appropriate places as part of the review process. The environment management institution will collate public views.

(7) Public Participation

The Regulations provide for public participation in the EIA process and the conduct of public hearings, notices and intervenor costs.

The Regulations indicate the need for public consultations and public hearings that may accompany projects in environmentally critical areas and environmentally critical projects, respectively.

(8) Review Panel

The Regulations provide for a Review Panel; its appointment, composition and mandate.

If a strong public concern over the undertaking is indicated and impacts are extensive and far reaching, the environment management institution shall advise the Minister on holding a public hearing relating to the assessment. The Minister shall appoint a Review Panel that will organise the public hearing on the proposed undertaking.

The Review Panel will consist of five persons not interested in the matter which has been referred to it. The information received at these hearings, together with the final report and any recommendations of the Review Panel, may be made public. If a public hearing is held on an undertaking, the processing of the application may extend beyond the normal ninety (90)-day period for processing an application.

The Regulations propose that the cumulative period for the determination of an application at all stages by the environment management institution should be at least ninety (90) days. The 90-day period applies to the time that will be taken to make a decision on the undertaking and does not include the period that a proponent takes to fill a registration form, prepare an Environmental Impact Statement (EIS) or when an application goes to Public Hearing.

(9) Compliance monitoring system

The Regulations establish a compliance monitoring system.

(10) Arbitration

The Regulations provide for arbitration of cases involving complaints against projects and appeals relating to the EIA process.

The procedures that were initiated by NEMC envisage an appeal to the Minister by a proponent who is dissatisfied with the decisions reached at any stage in the EIA process. In addition, the Minister shall appoint a panel consisting of a High Court judge, two experts and two members from the general public and the results of the appeal are to be communicated to NEMC for action. This is rather too ambitious. It would be better that matters relating purely with the determination of the rights of an aggrieved person are left in the hands of the normal courts of law in the country rather than attempting to create a quasi-judicial body. NEMC or (the environmental management institution that will be established in the country) is a body corporate capable of suing or being sued. There is no reason why an aggrieved party in an EIA process should not be able to go to a court of law to vindicate his rights in the event NEMC or any institution infringes upon such rights. It should be noted, however, that the primary purpose of EIA legislation is not to create a right for private law suits but to assist development managers and planners in reaching an informed decision regarding a development activity.

It is, however, deemed that disputes relating to the EIA process are preferably handled administratively first. Then in case a proponent is dissatisfied with an adverse decision of the environment management institution at any stage of the process, or failure to determine an application within the proposed 90-day period, the proponent has the right of appeal to the Minister responsible for environment.

It is suggested that the Minister should appoint a Board that

will hear the appeal and take a decision on the undertaking; however, any proponent aggrieved by the decision of the Minister can apply to the courts for a judicial review of the administrative action of the Minister.

It should also be stipulated in the proposed framework environmental legislation that, any other aggrieved person apart from the proponent also has the right to file a complaint to the Minister against the manner in which the institution responsible for the environment has conducted the EIA process.

As is the case with the law pertaining to challenging administrative actions, the common law which is applicable in Tanzania does not prevent any person aggrieved by a decision of administrative bodies such as the institution responsible for the environment or the Minister to apply for judicial review in courts of law. This could serve as one of the means by which aggrieved members of the public who might be affected by the project or are dissatisfied with the way in which the institution responsible for environment or the Minister have handled the EIA process, could avail themselves. The only hurdle such persons will face is to prove that they have standing to sue. The conservative rules on standing that Tanzania inherited from the British are still applicable in the country. The law still retains a distinction between private and public actions and, except where a litigant is contesting the constitutionality of the legislation, has not favoured the private enforcement of public rights unless the issue of public rights is incidental to some private cause of action asserted by the plaintiff. The issue that usually comes up for consideration in environmental litigation actions is whether the plaintiff has a genuine interest in the matter before the court.⁸⁹ Most often a plaintiff would fail to establish that he or she has a direct, personal interest in the alleged matter, in the sense that he or she is concerned about the environment and environmental issues, so as to be afforded standing. In India this matter has been resolved by recognizing individuals and environmental groups as having "public interest" standing.⁹⁰

The other remedy is for the aggrieved members of the public to initiate a class suit by opening a case in a court of law against the proponent challenging the project. Concern with this mode of securing remedies, however, is the time, expenses and technical aspects of the suit. It is an indisputable fact litigation in general and environmental ones in particular take very long periods of time to resolve, are costly, and require the services of lawyers who might not be that cheap or easy to secure.

⁸⁹ The Court will have to determine whether the issue is justiciable and is serious and real; the applicant has sufficient interest in the matter; and that there is no person with a more direct interest than the applicant who would be likely to raise the issue as promptly.

⁹⁰ See *Vellore Citizens Welfare Forum v. Union of India*, Supreme Court of India, AIR 1996 SC 2715 and *Council for Enviro Legal Action v. Union India* (1996) 2 JT (196) (1996 AIR SCW 1069).

CHAPTER SIX

6.0 INSTITUTIONAL AND FUNCTIONAL ARRANGEMENTS FOR EIA

6.1 Introduction

At present there is no dedicated institutional arrangement for the management of EIA process in Tanzania. Consequently, the few EIAs that have been carried out in the country in the recent past have tended to be *ad hoc* and haphazard, without any legal back-up. Development planners are not legally mandated to ensure that EIA is conducted at the earliest stages of planning of undertakings either.

Chapter Five of the 1997 National Environment Policy, proposes the institutional arrangement for environmental management. The Policy recognises the need for effective coordination and cooperation among relevant organs of Government. The Policy reiterates also that it is imperative to recognize existing institutional mechanisms, and consider ways and means by which coordination of, and cooperation between institutionally distinct bodies with overlapping mandates might be enhanced, and their purpose and functions constructively aligned.⁹¹ It should be noted, however, that the institutional arrangement that is proposed in the Policy is only for the general management of the environment and not specifically for EIA. The Policy, however, provides a spring-board for the examination of the most appropriate institutional arrangement for the EIA process in Tanzania.

6.2 Existing Legal Framework and Institutions for Environmental Management in Tanzania

The only piece of legislation in Tanzania so far that refers

directly to environment management is the *National Environment Management Act*⁹² (NEM Act). The NEM Act establishes the National Environmental Management Council (NEMC). Hitherto, the Ministry of Lands and Urban Development was handling environmental issues. As environmental problems in the country increased and environmental awareness was growing, it was thought prudent to have in place an institution that would deal specifically with the co-ordination of and advice in environmental matters. Hence the establishment of the National Environment Management Council (NEMC) in 1983. According to the Act establishing the NEMC, NEMC is a body corporate under the Vice President's Office, the ministry currently responsible for the environment.

The NEM Act refers to a "Minister" and confers on him certain general powers in relation to NEMC business. The Act, however, does not specifically stipulate who that Minister is, or the relationship between NEMC and other lead agencies for that matter in general or the institutional structure for the EIA process. By the nature of doing Government business, at the time NEMC was established, the Minister of Lands and Urban Settlements was the one who was assigned the duty of taking care of the affairs of NEMC. This is so because as a public corporation, NEMC operates on government subvention. There has therefore, to be a Minister who would table its budget in Parliament and be accountable for its activities.

Following a change in the government institutional structure and division of functions in early 1990's, NEMC was placed under the Ministry of Tourism and Natural Resources and Environment (MTNRE). In 1995, NEMC was shifted from the MTNRE and placed under the Vice President's Office

⁹¹ NEP, para 86.

⁹² Act No. 19 of 1983.

(VPO).⁹⁵ This is the institutional arrangement currently in place and which has been retained in the 1997 National Environment Policy. It was thought that by placing environmental matters under a powerful office such as that of the Vice President would give them more political clout.

Apart from the NEM Act, there is no other legislation in the country that provides specifically for the management and protection of the environment. Despite this gap, there are well over a hundred pieces of sectoral legislation in the country that relates to various aspects of the environment.⁹⁶ It is, however, beyond the scope of this Report to review all of these sectoral legislations; but briefly, of the one hundred pieces of legislation, it is only two, the Marine Parks and Reserves Act of 1994 and the Mining Act of 1998, respectively, that make provision for the EIA process as a planning tool and a mandatory requirement for plans, programmes and development activities.

6.2.1 The Legal Framework for Environmental Management in Tanzania

The long title to the National Environment Management Act, the NEM Act, suggests that it is "an Act to provide for the establishment of the National Environment Management Council, to provide for its functions and for other matters related to and incidental to the establishment of that Council." The NEM Act is therefore, neither an umbrella nor a framework legislation for environmental management and protection in the country. A lot of environmental management issues have been left out of the Act. For example, apart from only a cursory mention that NEMC shall evaluate existing and proposed policies and the activities of Government directed to control of pollution,⁹⁷ the Act does not provide specifically for the EIA process and the institutional requirements for its administration, nor does it stipulate which institution is responsible for the enforcement and implementation of EIA procedures.

6.2.2 Proposed Institutional arrangement for environmental management in the National Environment Policy

In Tanzania, the institutional arrangement for the management of specific sectors of the environment is scattered across a number of sectoral Government ministries and departments with little or no co-ordination. The 1997 National Environment Policy (in this section to be referred to simply as the Policy) envisages the institutional arrangement for the future management of the environment in Tanzania. This is set out very clearly in Chapter Five of the Policy. The Policy delineates the various specific roles the different environmental management institutions will play in managing the environment. These institutions are: the Ministry responsible for environment, the Division of Environment (DoE), lead Ministries, the National Environment Management Council (NEMC), and local authorities. Below is a brief examination of each one of these institutions and the roles assigned to them in the Policy.

(1) The Ministry Responsible for Environment

At present the "Ministry" responsible for environment is the Office of the Vice President. Within that Office there is a Minister of State responsible for environment.

The Policy allocates to the Ministry responsible for environment a "pre-eminent" role in environment management in the country. As the "authoritative voice and catalyst for action on behalf of the entire Government", the Ministry "shall exercise overall policy, planning and implementation oversight mandate on environmental matters." "It shall be the source of overall policy guidance and advice on the development of strategic environmental vision, including formulation, analysis and appraisal of broad environmental goals, in conformity with such vision."⁹⁸

The Policy reiterates further that in its "pre-eminent role" and as "the policy guidance institution", the Ministry responsible for environment "shall exercise oversight mandate for the implementation of policies under the jurisdiction of line Ministries in fulfilment of their delegated authority", and "shall support and influence sector Ministries in carrying out their mandates."⁹⁹

⁹⁵ According to Presidential Instrument of Powers, GN No.720 published on 15/12/95, "Allocation of Business to Department and Assignment of Responsibilities to Ministers", made under section 55(1) of the Constitution of the United Republic of Tanzania, 1977, the Vice President is responsible for among other things, Environmental Policy, Environmental Protection, Environmental Sanitation, Beach Erosion Protection, National Environmental Management Council. The National Environment Management Act of 1983 which establishes NEMC has therefore to be read in the context of the Instrument of Power. The Instrument defines the institutional set up.

⁹⁶ See Laura, H. Environmentally Related Legislation, Ministry of Tourism, Natural Resources and Environment, Dar es Salaam, 1995, for a thorough discussion of these laws.

⁹⁷ Section 42 of the National Environment Management Act, 1983, Act No. 19 of 1983.

⁹⁸ The National Environment Policy, 1997, para 88.

⁹⁹ Ibid., para 90.

(2) The Division of Environment (DoE)

The Policy designates the Division of Environment as “the working cell of the Ministry responsible for environment”, which “shall provide policy and technical back-up, and execute the oversight mandate of the Ministry, as required.” The Policy provides further that the Division “shall undertake policy analysis; develop policy choices to influence decision-making; co-ordinate broad-based environmental programmes, plans and projects which go beyond single sector approaches; and facilitate meaningful involvement of civil society to broaden consensus and reduce insularity.”⁹⁸

In order to achieve the above mentioned objective, the Policy stipulates that the Division of Environment “shall promote the use of inter-agency co-ordination processes under the auspices of the Ministry responsible for environment, as well as under the auspices of relevant Government departments and other major actors for the primary purpose of sharing information and expertise, and ensuring that national policies and actions relating to the environment reflect the best scientific advice and broad social consensus.”

The Policy further reiterates that in order to implement environmental objectives in an even way, and to ensure systematic and consistent environmental administration, the Division of Environment “shall develop basic management tools, such as guidelines and criteria for Environmental Impact Assessment; Environmental Standards; National Action Plans, Strategies and Programmes; among others.”⁹⁹

(3) Lead Ministries

The Policy reiterates that sector Ministries represent the critical constituency for the Ministry responsible for environment and must have an informed voice and commitment to environmental outcomes. The Policy reiterates further that pockets of environmental activity found in each Ministry shall constitute the basis of more intensive, more effective environmental management and should therefore continue to carry out the bulk of operational functions for environmental management.¹⁰⁰

The Policy, therefore, advocates for the maintenance of the status *quo* as far as sectoral management of the environment is concerned. This means that the bulk of operational functions for environmental management such as public health, sewage disposal and water pollution control “should continue to be carried out by Government departments of the relevant sector Ministries at the national, regional and local levels.”

The only “reasonable” explanation for continuing with the sectoral environmental management competence could probably be the developed and substantial technical infrastructure and expertise lead ministries enjoy in their respective areas of competence. In order to implement Government objectives on environment in an even way, Policy reiterates that sector Ministries “shall be endowed with the proper legislative tools appropriate to the kind of work that devolve upon them, with well-delineated sphere of supervisory powers.”¹⁰¹

(4) Advisory Bodies

In the recognition of the need for reliable information base and monitoring and assessment of actions taken, the Policy envisages the establishment and/or designation of advisory bodies charged with the enhancement of targeted scientific research and information generation in the field of environment, and for monitoring and assessment of the effectiveness of actions taken.

(5) The National Environment Management Council (NEMC)

The Policy stipulates very clearly that the National Environment Management Council shall retain its advisory role. It shall enforce pollution control and perform the technical arbitration role in the undertaking of Environmental Impact Assessment.¹⁰²

(6) Local Authorities

The Policy recognises the importance of local authorities as environmental authorities. The Policy stipulates that local authorities shall be responsible for overseeing planning processes, and for establishing local environmental policies

⁹⁸ Ibid., para 91.

⁹⁹ Ibid para 92.

¹⁰⁰ Ibid., para 96.

¹⁰¹ Ibid., para 97 - 99.

¹⁰² Ibid., para 100.

and regulations. The Policy further states that at the level of governance closest to the people, local authorities are best placed to play the vital role of educating, mobilising and responding to their public to promote environmental objectives. The NEP states only that the role of local authorities as environmental authorities in their areas of jurisdiction shall be enhanced.¹⁰³

(i) Regional Policy Committee on the Environment (RAPOCE)

The Policy stipulates that "there shall be a Policy Committee on the Environment at the regional level (RAPOCE), composed of District Commissioners within the region, and chaired by the Regional Commissioner. This committee shall deal with matters of regional interest affecting the environment; and shall provide policy guidance or propose policy measures and action."¹⁰⁴

(ii) District, Ward and Village Committees on the Environment

The Policy provides that the work of the Regional Policy Committee on the Environment shall be facilitated by District, Ward and Village Committees on the Environment under the auspices of District, Ward and Village Councils, respectively.¹⁰⁵ These Committees shall be responsible for coordinating and advising on obstacles to the implementation of environmental policy and programmes; promoting environmental awareness; information generation, assembly and dissemination on the environment relating to the district, ward or village.¹⁰⁶

6.3 Institutional Requirements for EIA Generally

Much as there is no ideal type EIA in the world, there is also no blue-print either for the institutional arrangements for the administration of the EIA process. Each country may have its own kind of institutional arrangement to promote environmental planning and environmental management objectives.

Four alternative types of institutional arrangements however, may be adopted, namely:

- (i) adding environmental responsibilities to existing sectoral agencies, especially environment related agencies such as the Ministry responsible for the environment;
- (ii) creating environmental departments within sectoral agencies;
- (iii) establishing a central government agency in the form of either an inter-agency committee, a subsidiary part of a ministry, or an independent body placed in a government Ministry;
- (iv) creating a Ministry for Environment.

Perhaps it will be useful at this juncture to consider how the Zanzibar government went about in setting up the institutional structure for environmental management. In 1996, the Revolutionary Government of Zanzibar enacted a specific comprehensive environmental legislation, the Environmental Management for Sustainable Development Act. This Act is modelled on the National Environment Management Act of Uganda with some slight variations. For example, whereas the Ugandan legislation creates a monolithic institution, the National Environmental Management Authority (NEMA), as the sole body charged with the with supervision and regulation of all environmental matters in Uganda, the Zanzibar legislation places the highest decision-making powers on environmental matters in Zanzibar within a political body, the Revolutionary Council on Environment (the Committee).

Section 17(1) of the Act, however, envisages a wider spectrum of environmental management institutions which include the Ministry responsible for environment, Department of the Commission of the Government under the Minister responsible for the environment or a body corporate under the Minister responsible for the environment.

¹⁰³Ibid., para 106.

¹⁰⁴Ibid., para 103.

¹⁰⁵District Councils, Township Authorities, Ward Development Committees and Village Councils are established under the Local Government (District & Urban Authorities) Acts of 1982, Acts No.7& 8 of 1982 respectively. The Government has already drafted and tabled Bills for amending the local government authorities' laws. For the first time in the history of local government in the country, the Draft Bills expressly recognize the role of local government authorities in providing for the protection and proper utilization of environment for sustainable development. [See s.20 of the Bill for an Act to amend certain written laws pertaining to the local Government and related laws (the Local Government Laws (Miscellaneous Amendments) Act, 1998), amending section 111(2) of the principal Act, Bill Supplement No.8 of 9th October, 1998, to the Gazette of the United Republic of Tanzania No.41 Vol.79, Government Printer, Dar es Salaam].

¹⁰⁶Ibid., para 104.

Sub-section (2) of Section 17 of the Act, however, resorts to a more particular environment management institution by providing that the President may by order published in the Government Gazette, constitute and name an "institution responsible for the environment" as a body corporate for carrying out the powers and functions under the Act. Under Section 19 of the Act, the functions of the "institution responsible for the environment" are *inter alia*, to co-ordinate the activities related to the environment of all persons and manage and regulate environmental impact assessment requirements and procedures.

The existing institutional set-up in Tanzania Mainland consists of the Division of Environment within the Office of the Vice President under a Minister of State responsible for environment charged with the affairs of the environmental institution, NEMC. NEMC is a body corporate responsible for advising the Government on all environmental matters but without any supervisory, control or enforcement authority. Sectoral issues remain with line ministries and government departments without any form of coordination or linkage.

6.3.1 Some Basic Considerations for Institutional Arrangement for EIA

Whatever form of institutional arrangement that may be adopted by any country, it must be able to deal with:

- (i) type and effectiveness of the institution responsible for the EIA process;
- (ii) its relationship to focal points in government, especially sectoral or lead ministries and agencies;
- (iii) the mechanisms for coordination and cooperation among all agencies; and
- (iv) the nature and extent of involvement of actors in the EIA process.

6.3.2 Some Structural Problems in the EIA Process

The first structural question that arises in the EIA process relates to the multiplicity of functions inherent in such a broad-ranging inquiry: registration of project proposal or brief; investigation of impacts; evaluation of reports and of alternatives; review; public participation and reaction; and holding of public hearings. It seems, therefore, that there exists within a single process virtually every kind of decision-making.

Given the diversity of functions performed by the process,

the question of an appropriate structure arises. Should EIA fall within the exclusive domain of a single government ministry or division, such as the Ministry responsible for environment or the Division of Environment (DoE)? Should it exist within government, but as a separate and independent office or agency? Should it simply be part of the normal planning and regulatory functions of all government lead ministries and departments? Should it be carried out by an independent or *quasi*-independent board or tribunal? Or should it be some combination of the above?

It is suggested that in order for EIA procedures to be enforced and implemented, there has to be one institution charged with the responsibility of reviewing the EIA and another with approving and making decisions thereon. This will help to tackle one of the other structural problems of the EIA process which will occur if the Ministry responsible for environment will play both the role of a reviewer of the EIA, the facilitator, a party in any subsequent hearing that evaluates the EIS document and the decision-maker.

Review will inevitably involve a good deal of discussion and negotiation with the proponent. Proponents seek advice from the ministry on how to proceed, what to include in the EIS, on the appropriate degree of detail, and finally on the acceptability to government of the EIS and the proposed undertaking. When the matter reaches the hearing stage, the reviewing ministry, the same agency with whom the proponent "negotiated" an acceptable EIS, is cast not as a "facilitator" but as an advocate. It is therefore expected to be impartial. Potentially, however, this creates a departmental dilemma. If it supports the EIS, as it normally has to at this point in the process, "it is seen to be in "bed" with the proponent," without a view of its own and totally unable to speak on behalf of "the public." If it opposes the EIS, it undermines its credibility with this and future proponents as a facilitator. The result is departmental ambivalence. At the minimum level, the ministry's facilitating and reviewing functions must be separated so as to avoid or minimise the impossible conflict of interest role into which it is cast.

Public participation in the EIA process raises its own structural problems. Although both Legislation, regulations and policy may articulate loosely about "the public", the public is neither a discreet entity nor a homogenous group. With what public should the proponent communicate? How hard should it try to communicate with those who refuse to respond to a normal notice of an EIS? What weight should the proponent give to the input it receives? Public reaction varies from casual observation to sophisticated opposition or support for a proposed undertaking. How therefore, is

the proponent to know with whom to speak to what to do with the information received?

6.4 Institutional Linkages for Enforcement and Implementation Mechanism for EIA in Tanzania

The 1997 National Environment Policy (the Policy) does not envisage a monolithic environmental management institution with regulatory and enforcement powers on all aspects of the environment as is the case, for example, in Uganda or Ghana. The Policy, however, contemplates a system of co-ordination and collaboration in environmental management. The Policy leaves sectoral issues to be handled by the respective competent agencies responsible for the respective sectoral matters.

The Policy makes EIA a mandatory requirement, and provides that guidelines and specific criteria for the conduct of EIA will be formulated as a strategy in the implementation of the Policy.¹⁰⁷ The Policy places the task of developing basic management tools, such as guidelines and criteria for Environmental Impact Assessment, Environmental Standards, National Action Plan, Strategies and Programmes; among others on the Division of Environment.¹⁰⁸ The Policy stipulates that these are measures of implementing environmental objectives in an even way, and a way of ensuring systematic and consistent environmental administration. The Policy, however, does not state which institution will be charged with the responsibility of enforcing and implementing those management tools.

The Policy provides also that the broad range of areas covered under the field of the environment, the structure and division of Government functions, and the numerous number of major players necessitate the formulation of a framework environmental legislation and a related set of sectoral legislation “to provide the legal basis for effective and comprehensive environmental management.”¹⁰⁹

Furthermore, the Policy provides that “the framework environmental legislation shall be designed to organise various agencies of Government charged with aspects of environmental protection to promote coordination and cooperation among them, and shall define environmental management tools of general scope that facilitate an even

degree of policing and enforcement”; and that “sectoral legislation shall be designed in such a way to faster environmental policy objectives in their areas of coverage.”¹¹⁰

The National Environment Policy is a policy of a general nature. The details of institutional linkages for enforcement and implementation mechanism for EIA will therefore, have to be provided for in legislation. Sectoral policies also have to take into consideration the environmental goals, objectives and actions stipulated in the Policy. Furthermore, as environmental impacts of actions in one sector are often felt in other sectors, internalisation of environmental considerations in sectoral policies and programmes, and their coordination, is essential to achieve sustainable development.

6.4.1 Recommendations for Institutional Linkages for EIA in Tanzania

(I) National Level

(a) The Ministry Responsible for Environment

It has been suggested that the Ministry responsible for environment should continue to be “neutral”, as is the case at the moment, in the sense that it should not have any environmental stake to safeguard. As the highest decision-making body in all environmental matters, the Ministry responsible for environment should be beyond the narrow sectoral competencies enjoyed by line ministries such as for minerals, water, agriculture, wildlife, forestry, among others. It should have the kind of institutional impartiality required for it to be able to provide the kind of leadership required in environmental management issues and also act as an “arbiter” in environmental conflicts among Government departments and other institutions.

The particular functions of the Ministry responsible for environment will be to:-

- approve or disapprove EIAs;
- make EIA regulations and approve EIA guidelines and procedures; and,
- appellate body for appeals by proponents against the institution responsible for the environment.

¹⁰⁷The National Environment Policy, 1997, para 63, 64, 65, 66 & 67.

¹⁰⁸*Ibid.*, para 92.

¹⁰⁹*Ibid.*, para 69.

¹¹⁰*Ibid.*, para 70.

(b) EIA Units

Lead Ministries/Initiating Authorities and parastatal organisations should be EIA units and focal points of co-ordination and linkage in environmental management.

(c) The National Environment Management Council (NEMC)

The competence of the National Environment Management Council needs to be enhanced from merely being an advisory body for the Government in environmental matters to an institution with supervisory, co-ordination and enforcement mandate. As the national institution responsible for the environment, NEMC will, among other things, act as the EIA Directorate responsible for :

- initiating National EIA guidelines and procedures and reviewing them from time to time;
- registering and reviewing project proposals;
- issuing Environmental Permit after reaching an Environmental Permit Decision (EPD);
- examining and approving Guidelines/TOR review;
- EIS Review secretariat;
- issuing an EIA certificate or license after the Minister has approved the EIA;
- monitoring compliance with terms and conditions in the EIA license and to issue Environmental Compliance Certificate (ECC) containing a specific schedule under which the proponent has to submit a compliance report to NEMC or its "regional" office; and,
- Issuing exemption certificates.

(d) Technical Review Committee (TRC):

The TRC will be a cross-sectoral committee comprising representatives from the Ministry responsible for environmental matters, NEMC, lead agencies: ministries, government institutions, and parastatal organisations (government owned organisations and corporations) with environmentally related activities and some strategic environmental NGOs. For example, if a proposed project relates to wildlife areas then NGOs concerned with wildlife matters have to be included in the review.

The best arrangement is for the lead agencies to conclude and sign a Memorandum of Understanding (MoU), which will outline areas of inter-agency co-ordination. The purpose of this co-ordination is to streamline the EIA process and resolve the conflicting or overlapping requirements of different agencies.

The MoU will also create an inter-agency network to facilitate the regular exchange of information on procedures and guidelines, and continued review of the EIA process, documentation requirements, and forms for streamlining the overall environmental and government licensing and permit structures.

The TRC will be responsible for the entire review process, that is, screening, TOR evaluation, Draft EIS review and PER review. The TRC may enlist a number of professionals to assist it in its job.

The TRC will also form part of the multi-sectoral compliance monitoring team as a condition of the Environmental Compliance Certificate (ECC) that will be issued by NEMC. The multi-sectoral compliance team may include representatives of: NEMC, Ministry responsible for environment (MRE), NEMC "regional office", LGUs, NGOs, CBO, the media, academia, other government agencies represented at the regional or local level, and the affected communities.

(II) Local level

(e) Local Government Environmental Units (LGEUs)

Local government authorities, that is, City, Municipal, Township and Village Councils through their Technical Environmental Committees (TEC), will act as "regional" offices of NEMC.

As local government environmental units, local government authorities' offices will be responsible for:

- registering projects within their locality that are not environmentally critical or projects that are not located in environmentally critical areas as defined in the EIA regulations;
- processing Environmental Certificates for such projects;
- assisting NEMC in the conduct of public hearings for projects located within their area of jurisdiction, and in particular to select and invite affected parties to a public meeting to discuss and resolve pertinent issues

- related to the implementation of proposed project/activities;
- assisting the proponent when consulting the local community early in the EIA process, particularly when scoping environmental impact statements or project descriptions; and,
- assisting the proponent, Ministry responsible for environment, NEMC, TRC, NGOs in compliance monitoring.

6.5 Recommendations for a Framework for Harmonisation

The importance of harmonisation of EIA regulations in the Sub-region arises from the following factors:

- (a) The need for a “level playing field” in environmental regulation among the countries in the Sub-region. Discrepancies in EIA regulations may have the capacity to create discrepancies in investment between the countries. Consequently, there is a necessity for a common definition of the environment for the purposes of EIA process and EIA harmonisation is important in relation to scope, content and enforcement of EIA regulations.
- (b) The need for Sub-regional conformity with internationally agreed norms and practices such as the precautionary principle found in Article 15 of the Rio Declaration, 1992. EIA has been singled out as a significant procedure for achieving sustainable development in a large number of international instruments including the 1992 Rio Declaration.
- (c) There are advantages that accrue from regional political co-operation, the operationalisation of the principles of good neighbourliness and of conflict avoidance, the promotion of the “good-governance” agenda and the further development of the common legal heritage of East Africa.
- (d) Such harmonisation facilitates sustainable utilisation of shared resources, the capacity to address trans-boundary problems as well as a procedure for information sharing and dispute settlement.

6.5.1 Proposals for Harmonization in the EIA Process

- (1) The definition of environment for EIA purposes should be harmonised to include the physical and human environment.

- (2) There should be similar procedures for EIA assessment in the sub-region for basic steps such as screening, scoping and review. The use of guidelines should be reserved for the elaboration of detailed methodology and regulations for procedures and law.
- (3) There is a need to put in place a harmonised system of categorisation of criteria for the EIA process to ensure consistency among the three countries.
- (4) A methodology for regional and for policy EIAs should be developed to address cumulative impacts.
- (5) For projects with trans-boundary implications, opportunity should be afforded for prior consultations and information sharing at all levels among the three countries.
- (6) Public participation at all stages of the EIA process within the Sub-region should be clearly stipulated.
- (7) Comparable time-frames for the various stages of the EIA process including review should be provided.
- (8) Wider rights of standing (*locus standi*) be included in national laws for all citizens and residents. For trans-boundary issues, these rights should include the citizens and residents of neighbouring states under the principle of reciprocity.
- (9) A Sub-regional procedure for conflict avoidance and peaceful settlement of disputes should be established.

6.5.2 Framework for Harmonization

Development of a Sub-regional protocol/treaty on EIA under the auspices of the East African Co-operation framework as a means of ensuring a harmonised EIA legal process. It is recommended that an administrative Memorandum of Understanding (MOU) be prepared as a starting point.

6.5.3 Basic Principles for the Sub-regional Protocol/ Treaty on EIA under the Auspices of the East African Co-operation Framework

The Principles will most probably appear in the provisions of the Articles of Memorandum of Understanding (MoU) on Environment Management, under the auspices of the Treaty for East African Co-operation. This will be in line with the Draft Treaty which contains some aspects of trans-boundary natural resource and environmental management.

The Principles that are stipulated in this part have been drawn from some of the Legal Principles for Environmental Protection and Sustainable Development that were prepared in August, 1986, by the Experts Group on Environmental Law to the World Commission on Environment and Development,¹¹¹ that are relevant to trans-boundary environmental interferences. Let us now examine very briefly some of the principles.

(i) Prevention and Abatement

East African States are required to prevent and abate any trans-boundary environmental interference which could cause significant harm.

(ii) Prior Environmental Assessment

East African States must make or require environmental assessments of proposed activities which may significantly affect the environment.

(iii) Strict Liability

East African States may carry out or permit certain dangerous but beneficial activities provided they take all reasonable precautionary measures to limit the risk and ensure that compensation is provided should substantial trans-boundary harm occur. East African States shall also ensure that compensation is provided for substantial trans-boundary harm resulting from activities which were not known to be harmful at the time that they were undertaken.

(iv) Prior Agreements When Prevention Costs Greatly Exceed Harm

Every East African State which plans to carry out or permit activities causing trans-boundary harm which is substantial, but far less than the cost of prevention, shall enter into negotiations with the affected State(s) on the equitable conditions under which the activity could be carried out.

(v) Non-discrimination

Each East African State as a minimum shall apply at least the same standards for environmental conduct and impacts regarding trans-boundary environmental interferences as are applied domestically.

(vi) General Obligation to Co-operate on Trans-boundary Environmental Problems

East African States shall cooperate in good faith with each other to achieve effective prevention or abatement of trans-boundary environmental interferences.

(vii) Exchange of information

Every East African State which is the State of origin is obliged to provide timely and relevant information to the other States regarding trans-boundary environmental interferences.

(viii) Prior Assessment and Notification

Every East African State must provide prior and timely notification and relevant information to the other concerned States, and make an environment assessment of planned activities which may have significant trans-boundary effects.

(ix) Prior Consultations

Every East African State which is a State of origin shall consult at an early stage and in good faith with other concerned States regarding existing or potential trans-boundary interferences with the environment.

(x) Co-operative Arrangements for Environmental Assessment and Protection

Every East African State shall co-operate in monitoring, scientific research and standard setting regarding trans-boundary environmental interferences.

(xi) Emergency Situations

East African States are obliged to develop contingency plans regarding emergency situations likely to cause trans-boundary environmental interferences. State of origin must promptly warn, provide relevant information to and co-operate with concerned States when such emergencies occur.

(xii) Equal Access and Treatment

East African States shall grant all persons who are and may be affected by trans-boundary interferences, with their use

¹¹¹Experts Group on Environmental Law of the World Commission on Environment and Development, Munro, R.D., Chairman and J.G. Lammers, Rapporteur, *Environmental Protection and Sustainable Development: Legal Principles and Recommendations*, Graham & Trotman/Martinus Nijhoff, London/Dordrecht/Bodion, 1987.

of the environment with equal access, due process and equal treatment in administrative and judicial proceedings.

(xiii) State Responsibility

East African States are obliged to cease activities which breach an international obligation regarding the environment and to provide compensation for the harm caused.

(xiv) Peaceful Settlements of Environmental Disputes, Conciliation, or Arbitration or Judicial Settlements.

East African States shall settle environmental disputes by peaceful means. If mutual agreement is not reached within 18 months on a solution or on other dispute settlement arrangements, the dispute shall be submitted to conciliation and, if unresolved, thereafter to arbitration or judicial settlement at the request of any of the concerned State(s).

CHAPTER SEVEN

7.0 TRAINING REQUIREMENTS

7.1 Institutional Capacity-Building

Both human and technical capacity to carry out EIA is still very low in Tanzania. Greater institutional capacity is a prerequisite in administering the EIA process, particularly in carrying out baseline studies and in assessing environmental impacts. This involves capacity to analyse data and information and design alternatives.

The National Environment Policy (NEP) recognises the fact that building capacity for and competence in environmental management is a lengthy process. It takes time to train an appropriate cadre of professionals, and even longer for them to acquire the necessary experience. Particular attention will have to be paid to the establishment and strengthening of institutions responsible for systematic monitoring of the environment to cover for environmental information gaps.

7.2 Research and Training Institutions

Organised research in Tanzania can be traced back to the colonial period when Tanganyika was acquired by the Germans in 1884 after the Berlin Conference. The German government established a series of laboratories, stations and centers for sectoral needs of livestock and crop

improvement. After World War I, the British took over Tanganyika in 1919. In 1948, a number of services and organisations were set up by the British Colonial Office to conduct sectoral research for the benefit of Tanganyika, Kenya and Uganda.

In 1967, research activities were incorporated into the East African Community. In order to safeguard her own interests, Tanzania established the Tanzania National Scientific Research Council (TNSRC) in 1968,¹¹² as a national research co-ordinating mechanism. The TNSRC took over research activities that were under the East African Community following the break-up of the Community in 1977.¹¹³ This was followed by a number of initiatives that culminated in the establishment of the Ministry of Science and Technology (MST). A national research policy was also developed, that culminated in the establishment of the Tanzania Commission for Science and Technology (COSTECH) by an Act of Parliament¹¹⁴, thus replacing the TNSRC.

Currently, there is no clear or consistent government policy on environmental data and information. Information generation and use is still sectoral because of lack of a framework for environmental information. The different sectoral ministries and their agencies are not obliged by law or any other directives to share, transfer or report information to outside bodies.

¹¹²Vide Act No. 51 of 1968.

¹¹³Sectoral research and development institutions that were established after the collapse of the East African Community include: Institute of Marine Sciences (IMS); National Institute for Medical Research (NIMR); Tanzania Agricultural Research Organization (TARO); Tanzania Livestock Research Organization (TALIRO); Tropical Pesticides Research Institute (TPRI); Tanzania Forestry Research Institute (TAFORI); Tanzania Fisheries Research Institute (TAFIRI); Tanzania Industrial Research and Development Organization; National Construction Council; Tanzania Engineering Manufacturing and Design Organization (TEMDO); Serengeti Wildlife Research Institute (SWRI); Center for Agriculture Mechanization and Rural Technology (CAMARTECH); Institute of Production Innovation (IPI); Tanzania National Radiation Commission (TNRDC); and Tanzania Automotive Technology (TAT).

¹¹⁴Act No. 7 of 1986.

In Tanzania, there is no institution which is involved directly in Research and Training in EIA. Neither is there in existence information and data systems as projects in their own right to cater for EIA practitioners. Producers of data are scattered in a number of research institutions that act as sources of baseline information. The example of such organisations and units include: climatological stations (Directorate of Meteorology) which is concerned with meteorological measurements for temperature, rainfall, humidity and solar radiation; and resource research centres, for example, TAFIRI, TAFORI, IMS - which is a center for marine sciences education, research and training. The Dar es Salaam Water and Sewerage (DAWASA) could also act as a water pollution control and sewage discharge monitoring institution. The Tanzania Bureau of Standards (TBS) deals with the quality of industrial goods.

The practice has been that each sector develops its own baseline information sources for its own internal consumption without any legal obligation to pass it on to other interested users. It is crucial therefore, that a national mechanism be created through which data/information is managed and disseminated to users of such information in decision-making and planning and a provision be made in the laws concerning the protection of the right to access to information by the public.

Apart from research, there are a number of key institutions which offer some training in specialised courses that is relevant to EIA. The University of Dar es Salaam (UDSM) for example, offers a number of specialised courses in its various faculties and institutes and particularly:

- **Faculty of Science:**

- zoology, marine biology, oceanography, botany, earth sciences, physics and chemistry. The Faculty of Science currently offers courses in Environmental Law in the Master's programme, as well as Wildlife Law and Law of the Sea to under-graduate science students

- **Faculty of Law:**

- Environmental Law and Policy Making;
- Law of the Sea: management of the marine environment, marine resources and pollution;
- Natural Resources Law: Forestry Law, Wildlife Law, Fisheries Law, Water Law, Land Law, National Parks, Marine Parks and Reserves;

- Intellectual Property Law;
- Law of Tort (Risk/Harm Analysis, Nuisance, Negligence and Strict Liability);
- Law of Evidence in environmental actions;
- Environmental Litigation: Public Interest Litigation.

- **Faculty of Arts:**

- Sociological Aspects of Environmental Management;
- Public policy analysis: Integration, Coordination and Linkages;
- Politics of the Environment.

- **Faculty of Commerce and Management,)**

- Environmental Economics;
- Environmental Auditing and Accounting;
- Management Systems Analysis: Managerial Aspects and Environmental Management Institutions;
- Information Technology: Computer Applications in Environmental Management, Environmental Data Collection, Management, Storage and Exchange;
- International Economics: Trade and Environment;
- General Management Plans (GMP) and Environmental Management Plans (EMP)

The above courses can also be offered by the Institute of Development Management (IDM) and the Institute of Finance Management (IFM) respectively. These two institutions of higher learning offer advanced diploma courses and post-graduate degree courses in various management and financial related courses, that are relevant to environmental management.

- **Faculty of Engineering:**

- Environmental Engineering and Design; Computer Aided Designs (CAD)

- Cleaner Production Technology;
- Environmentally Friendly Construction Designs.

The above courses can also be offered by the Dar es Salaam Technical Institute, the Arusha Technical College and Mbeya Technical College, respectively. These three polytechnic institutes offer diploma courses in various engineering courses that could be relevant to environmental management.

- Muhimbili College of Health Sciences (MUCHS):
 - Environmental Health and Sanitation
- University College of Lands and Architectural Studies (UCLAS):
 - Environmental Engineering and Construction;
 - Survey and mapping;
 - Geographical Information Systems (GIS);
 - Land Resources: Planning and Use.
- Institute of Resource Assessment (IRA):
 - Resource conservation, resource data bank,
 - EIA practice: Procedures and Methodology;
 - Environmental and Natural Resource Policy Assessment.

The IRA of the University of Dar es Salaam has been involved in a number of EIAs, both in performing and evaluating them. The IRA also implemented the East Africa coastal biodiversity project during 1992-1995 with UNDP-GEF funding. The Project had three components: socio-economy of forestry, climate and hydrology, and mapping and database. Furthermore, the IRA in collaboration with the International Institute of Environmental Development (IIED) of UK have prepared three sets of EIA training manuals consisting of Awareness, Review and EIA Practitioners Guide components, which have already been tested in a series of Seminars and Workshops. The manuals are intended for use by any interested party and are available upon request at a minimal cost.

7.3 Constraints on Training for EIA

In Tanzania, as elsewhere in Sub-Sahara Africa, there is lack of sufficiently trained personnel in EIA methods. This

problem is not peculiar to EIA practice alone but is common in almost every sector of the economy. Lack of sufficient and appropriate equipment to collect and process information determined by users is another problem that EIA practitioners face in Tanzania. Inadequate financial resources preclude the acquisition of data storage, processing and dissemination equipment and budgetary allocations often overlook this requirement. In the majority of cases such equipment are secured through donor-supported sectoral programmes and projects.

Lack of awareness on the part of policy makers and administrators of the value and limitations of the technologies involved in information production and exchange is also a major constraint in the use of the little available information.

In a nutshell the major constraints on training can be summarised as follows:

- Lack of human resources in selected specialised fields related to EIA practice.
- The existing facilities at institutions that deal with EIA are inadequate.
- Lack of funding to train enough professionals in specialised fields.

7.3.1 Recommendations for Training for EIA

There is a need for Tanzania to develop a comprehensive training programme that will take care of the training requirements for an effective management of the EIA process. The programme could aim at training EIA practitioners involved at different phases of the EIA process; and may aim both at the short-term and long-term needs of the country.

(i) Short-term Training

A number of national and Sub-regional workshops, seminars and conferences could be organised to bring together people of different disciplines that are relevant to EIA. For example, it may aim at Natural Resource Scientists; Sociologists, Economists; Environmental Inspectors; Environmental Lawyers; Policy and decisions-makers, and, Judges.

(ii) Long - Term Training

The few Institutions/Colleges within the country which are involved in training of different disciplines should offer

tailor-made courses that meet the nation's manpower needs in EIA practice. The main purpose is to create capacity for handling issues that may arise from the practice of EIA.

7.4 Conclusion

Both at the national and Sub-regional level, the EIA as a process to assist decision-makers, is designed to empower the public and enable them to participate more effectively in the decision-making process. Under this model, whether or not a proposed activity with trans-boundary effects proceeds, and if so, on what terms and conditions, is the result of clash of interests - those for and those against a proposed activity. EIA facilitates decision making by providing opposed and other interests with a formal opportunity to participate in the "clash." Specific provisions to enhance public participation, such as intervenor funding, are simply mechanisms to level out the playing field and ensure that the sides in the clash are more evenly balanced.

The EIA process will help restructure the way in which proponents make decisions about what to do, where to do it, and how to do it. Under this model, harmonisation becomes very crucial. One country should not be seen by the others as being too easy to accept hazardous investment at the expense of the others due to low environmental standards or lack of EIA regulations. If all the three East African countries have harmonised EIA regulations, proponents will no longer be able to do as they wish, providing they comply with environmental and other regulatory standards. The existence of harmonised EIA regulations will help decision makers to determine whether a proposed undertaking is appropriate, and whether there are any more appropriate ways of satisfying the needs identified by the proponent. It may also contribute towards the prevention of the "migration" of polluting activities from countries with strict environmental standards to countries with lax standards.

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A GLOSSARY OF EIA TERMS

Environmental assessment (EA) or environmental impact assessment (EIA):

A public mechanism or process for assessing the potential impacts of a proposed activity or undertaking. It is a process designed to identify and predict the potential impacts of a proposed project, legislative proposals, policies, programmes and operational procedures on the biogeophysical environment and on human's health and well being, and to interpret and communicate information about the impacts, evaluate alternatives, and design appropriate mitigation, management, and monitoring measures. The EIA process, therefore, ensures that development programs and projects, are assessed early

in the planning process, that is, before irrevocable decisions are made, for potential adverse effects on the quality and functioning of the biophysical and social environment.

Activity or undertaking:

Narrowly defined it includes only physical projects, more broadly it includes plans, programmes and policies.

Environment:

The aggregate of all the external conditions and influences that affect the life and development of organisms.

Screening:

The first procedure that is conducted to determine whether a proposed development should be subjected to an assessment and the level of assessment that will be necessary.

Scoping:

It is the exercise of identifying and assigning priority to environmental and related social issues that might be examined in the assessment. It is a procedure that is undertaken if the screening of the proposed development results in a detailed EIA, to identify and narrow-down potential environmental and social impacts, and to ensure that the EIA focuses on the key issues of concern to be addressed in the EIA.

Terms of Reference (ToR):

These are terms of reference for the EIA study which are included in the scoping report that is prepared by the proponent *after the scoping exercise, outlining the content of the Environmental Impact Statement (EIS).*

Proponent:

The person proposing or initiating an undertaking or a project.

Environmental impact statement (EIS):

The document, normally voluminous, overly detailed and exhaustive, that is generated by a group of technical specialists who carry out the environmental impact assessment study.

Environmental monitoring:

The monitoring of the project once it has been commissioned to determine the actual effect of the project on the natural environment and its often applied to the quality of the environmental media.

Environmental media:

The media upon which monitoring is applied and comprises of water, air and soil.

Post-project audit:

A process which provides a mechanism for evaluating the

positive and negative impacts of the project during implementation and to learn from experience, to refine project design and implementation procedures, and a framework for checking compliance with, and the performance of an Environmental Management Plan (EMP)

Environmental Management Plan (EMP):

Environmental Management Plan (EMP) is an instrument that details (a) the measures to be taken during the implementation and operation of a project to eliminate or offset adverse environmental impacts, or to reduce them to acceptable levels; and (b) the actions needed to implement these measures.

Annex I

THE UNITED REPUBLIC OF TANZANIA

Government Notice No. ... 19_

DRAFT ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 19_

Made under section... of the

ENVIRONMENTAL PROTECTION ACT, 19_ Act No. ...19...

IN EXERCISE of the powers conferred on the Minister responsible for the Environmental Protection Act, 19... by Part... and section ... of the Act, these regulations are made this ... day of ...19...

Part I - Preliminary

Citation

1. These Regulations may be cited as the Environmental Impact Assessment Regulations, 19_ and shall come into operation on the date to be published in the Government Gazette.

Interpretation

2. In these regulations unless the context otherwise requires;

“Act” means the Environmental Protection Act and may, where the context so requires, include any other enactment;

“Board” means the Board established under section ... of the Act;

“Council” means the National Environment Management Council established under section... of the Act;

“commence” means implement or begin construction or site preparation activity of an undertaking or any part thereof;

“environment” has the same meaning as assigned to it under section... of the Act;

“environmental audit” has the same meaning as assigned to it under section ... of the Act

“Environmentally Critical Projects”, means any projects which fall under Schedule “B” of these Regulations.

“environmental impact assessment” has the meaning as assigned to it under section... of the Act;

“environmental impact study” means a study conducted to determine the possible environmental impacts of a proposed project and measures to mitigate their effects as provided under the Act and as described in these regulations;

“Environmental Inspector” means an inspector appointed under section... of the Act;

“guidelines” means the guidelines describing the methodology for implementation of environmental impact assessment requirements adopted by the Council under section ... of the Act;

“individual person” means the human person and excludes corporate entities;

“lead agency” means any agency on whom the Council delegates its functions under section... of the Act;

“Minister” means the Minister for the time being responsible for environment;

“mitigation measures” include engineering works, technological improvements, management measures and ways and means of ameliorating losses suffered by individuals and communities including compensation and resettlement;

“preliminary report” means a report that presents the results of a preliminary environmental assessment based on readily available information and in which certain essential subjects may be incompletely treated due to lack of data;

“project proposal” has the same meaning assigned to it in section ... of the Act and constitutes the first stage in the environmental impact statement process as described in section ... of the Act;

“proponent” means a person who carries out or proposes to carry out an undertaking, or is the owner or person having charge, management or control of an undertaking;

“proprietary information” includes without limitation a trade secret and know-how, information relating to any manufacturing process, trade mark, copyright, patent or formula protected by law or by international treaties to which Tanzania is a party, but does not include the environmental effects or associated mitigation measures of a proposed undertaking;

“report” means an environmental assessment report required or prepared pursuant to the Act;

“significant environmental impact” means the emission or discharge of any solid, liquid, gas, odour, heat, sound, vibration or radiation or a combination of any of them that is foreign to or in excess of the natural constituents of the environment; or a substantial utilization or alteration of any natural resource in such a way as to pre-empt or interfere with the use or potential use of that resource for any other purpose; or a substantial utilization or alteration of any natural resource in such a way as to have an adverse impact on another resource; or

(iv) the utilization of a technology that may induce environmental damage; or

(v) a significant detrimental effect on the social, economic, environmental health or cultural conditions that influence the lives of people or a community.

“trade secret” means any secret, commercially valuable plan, appliance, formula, process, pattern, device or information which is generally recognized as confidential or that might disclose a trade secret, including but not limited to the name and other identification of a chemical, substance or agent which is secret;

“undertaking” means any enterprise, activity, project, structure, work, policy, proposal, plan or programme that may, in the opinion of the Minister, have a significant environmental impact and includes a modification, an extension, an abandonment, a demolition and rehabilitation thereof;

3. Application of these regulations

These regulations do not apply:

- (a) to an undertakings that is not included within the list of undertakings mentioned in Schedule “B” of these Regulations unless the Minister otherwise determines; or
- (b) to routine maintenance or repair of existing facilities.

4. An undertaking that has commenced before these regulations come into force is exempt from these regulations.

Registration and Notification

5. (1) The proponent shall, before proceeding with the final design of implementing an undertaking, register and submit to the Minister information concerning the undertaking, in the form provided by the Council from time to time.
- (2) To assist in the assessment of the undertaking the proponent may provide information in addition to that required by the prescribed form issued by the Council.
- (3) The proponent may be required by the Council to provide additional copies of information included with a registration.
6. (1) Within seven days of registration of an undertaking the proponent shall cause a notice to be published in one newspaper having general circulation in the locality in which the undertaking concerned is situate and in one newspaper having country-wide circulation.
- (2) The notice referred to in subsection (1) shall include the following information:
- (a) name and address of the proponent;
 - (b) proposed location of undertaking;
 - (c) nature of undertaking;
 - (d) date of registration pursuant to the regulations;
 - (e) proposed commencement date and project schedule where applicable;
 - (f) such other information as the Council may require.
- (3) Copies of the published notice shall be filed with the Council within seven days of publication.
- (4) Failure to publish and file the notice in accordance with subsections (1), (2) and (3) shall render the registration of the undertaking null and void.
- (5) Notwithstanding subsection (1), where prior to registration of an undertaking, the proponent claims that public notice thereof may be detrimental to the undertaking, the proponent may apply in writing to the Minister for, and the Minister may grant, a delay in the publication of the notice for such period of time as the Minister may deem appropriate.
- (6) Where there is no newspaper having general circulation in the locality in which the undertaking concerned is situate, the notice shall be posted in the local municipal or township building, village council's office, ten-cell leader's house, post office or other public place in that locality.
8. The following criteria shall be used in the examination of proposed undertakings in order to determine whether an environmental assessment report is required:
- (a) the location of the proposed undertaking, and the nature and sensitivity of the surrounding area;
 - (b) the size and scope of the proposed undertaking;

- (c) concerns expressed by the public about the effect of the proposed undertaking on the environment;
 - (d) anticipated environmental effects of the technology to be used in the proposed undertaking;
 - (e) project schedules where applicable;
 - (f) planned or existing land use in the area of the undertaking;
 - (g) other undertakings in the area; and
 - (h) such other criteria as the Minister may determine.
9. (1) Not later than twenty-one days following the date of registration, the Council shall advise the proponent in writing of the Minister's decision whether:
- (a) the registration information is insufficient to allow the Minister to make a decision and a preliminary report is required;
 - (b) review of the registration information indicates that there is the potential for significant environmental impact and a report is required; or
 - (c) review of the registration information does not indicate a potential for significant environmental impact and the undertaking is approved subject to specified terms and conditions and any other approvals required by Act or regulation.
- (2) Where the Minister determines that an undertaking falls within Schedule "B", a report shall be required and the assessment process shall include public consultation.
10. (1) Where the Minister decides that a preliminary report or a report is required, the proponent shall not commence the undertaking or any part thereof whether or not such activity is subject to authorization pursuant to any other Act or regulation, until the undertaking has been approved under the Act.
- (2) Where a preliminary report is required pursuant to subsection (1) and is not submitted within two years of the date of the Minister's decision, the decision shall become null and void and the proponent shall re-register the undertaking.
- (3) Where a report requires studies which would cause the preparation of the report to exceed the two year period mentioned in subsection (2), the Minister may in his discretion extend the period by one year.

Preliminary Report

11. (1) Where a preliminary report is required, the proponent shall be provided with guidelines for its preparation within ten days of the date of the Council's letter referred in subsection (1) of Regulation 9.
- (2) The proponent shall prepare and submit the preliminary report to the Minister and shall provide twenty-five copies of the preliminary report to the Council.
- (3) The Council shall examine the preliminary report and make a recommendation to the Minister as to the need for a report.
12. Within twenty days of the Minister's receipt of the preliminary report, the Council shall advise the proponent in writing of the Minister's decision whether

- (a) a report is required; or
- (b) a report is not required and the undertaking may proceed subject to any terms and conditions specified by the Minister and subject to any other approval required by any Act or regulation.

Terms of Reference for Environmental Impact Assessment

13. (1) Within thirty days of advising the proponent of the need for a report, the Council shall prepare draft guidelines for the preparation of terms of reference for the report including the following:
- (a) a description of the proposed undertaking;
 - (b) the reason for the undertaking;
 - (c) other methods of carrying out the undertaking;
 - (d) alternatives to the undertaking;
 - (e) a description of the existing environment that would be affected, directly or indirectly;
 - (f) the effects that may be caused to the environment;
 - (g) an evaluation of advantages and disadvantages to the environment of the undertaking;
 - (h) actions that may be necessary to avoid or mitigate the negative effects and minimize the positive effects on the environment;
 - (i) a discussion of residual impacts or those effects which cannot or will not be avoided or mitigated through the application of environmental control technology;
 - (j) a programme to monitor positive and negative impacts produced by the undertaking during its construction, operational and abandonment stages;
 - (k) a programme of public information to explain the undertaking; and
 - (l) such other information as the Council may require.
- (2) A notice shall be published in the manner provided in Regulation 27 announcing where the public may obtain copies of the draft guidelines and requesting written comments on the draft guidelines within thirty days of publication of the notice.
- (3) The proponent shall hold consultations with interested/affected parties such as government officials, (and relevant ministries, departments, local authorities etc.), representatives of local communities and members of the public to determine how their concerns and others will be addressed in the terms of reference.
- (4) Within fourteen days of the final date for public comment, the Council shall provide the proponent with the guidelines for the preparation of the terms of reference for the report.
14. (1) The proponent shall supply ten copies of the proposed terms of reference to the Council.
- (2) The Council shall examine the proposed terms of reference to determine whether they are satisfactory.
- (3) Within ten days of receipt of the proposed terms of reference, the Minister shall either:

- (a) direct the proponent in writing to modify the proposed terms of reference and resubmit them; or
- (b) approve in writing the proposed terms of reference for the environmental impact assessment and direct the proponent to provide twenty-five copies thereof.

Environmental Impact Assessment Report

- 15. The proponent shall submit the report to the Minister when it is completed and shall provide ten copies of the report to the Council.
- 16. The Council shall examine the report to determine whether it adheres to the terms of reference.
- 17. (1) Within ten days of receipt of the report the Minister shall advise the proponent in writing that:
 - (a) the report does not adhere to the terms of reference or is deficient in any respect, and additional information as specified is required to complete the report; or
 - (b) the report adheres to the terms of reference and is acceptable.
- (2) The proponent shall submit the required additional information as an addendum to the original report and the procedures and requirements of Regulation 15 to 17 shall thereupon apply.
- 18. (1) Where the proponent is advised that the report is acceptable, the Minister may require the proponent to provide a maximum of fifty copies of the report and a non-technical executive summary of the report in a language understood by the people in the locality of the proposed undertaking for the purposes of the Act and these regulations.
- (2) If the supply of copies of the report and the executive summary of the report required pursuant to subsection (1) is exhausted within one year of the date of acceptance of the report, if directed by the Minister, the proponent shall provide to any person or group additional copies of the report and the non-technical executive summary in return for a sum not to exceed the cost of producing and handling such additional copies.

Public Consultation

- 19. (1) Within ten days of receipt of the copies referred to in subsection (1) of Regulation 18 the Council shall publish a notice in the manner provided in Regulation 27 announcing the release of the report to the public and inviting written comments to be submitted to the Council within forty days of the publication of the notice.
- (2) Where, in the opinion of the Minister, the forty day review period is insufficient the Minister may extend the review period and so advise the proponent in writing.
- (3) Within fourteen days of the final date for public comments, the Council shall submit to the Minister a summary of comments provided by government, municipal and local authority departments and lead agencies and the public together with a recommendation concerning the environmental acceptability of the undertaking.
- 21. Within fourteen days following the date of the Minister's acceptance of a report for an undertaking in Schedule "A", the Minister may refer the report to the Council or to an appointed committee.
- 22. Within fifteen days following the date of the Minister's acceptance of a report for an undertaking in Schedule "B", the Minister shall refer the report to the Council.

Reference to Council

23. (1) Where the Minister refers a report to the Council, the Council shall publish a notice announcing its schedules and procedures and shall submit its recommendation to the Minister not later than one hundred days from the date of referral.
- (2) Where the Minister refers a report to an appointed committee, the committee shall submit the results of its review to the Minister not later than one hundred days from the date of referral.
24. The Minister may extend the time periods mentioned in subsections (1) or (2) of Regulation 23 where the Minister deems it appropriate.

Ministerial Decision

25. Within fourteen days of receipt by the Minister
- (a) of a summary and recommendation by the Council or where the report is not referred to the Council or to an appointed committee;
- (b) of the results of a review by an appointed committee where the report is referred to an appointed committee; or
- (c) of a recommendation by the Council where the report is referred to the Council;

whichever last occurs, the Minister shall advise the proponent in writing whether the undertaking is approved subject to any other approval required by an enactment, is approved subject to such conditions as the Minister may determine or impose and other approval required by an enactment, or is not approved.

26. Where an undertaking is approved in writing by the Minister but is not commenced, the approval shall be effective for a period of two years, or for such longer period of time as the Minister may deem appropriate, following the date of the approval in writing, but thereafter the approval shall be null and void.

Notice

27. (1) Where the Minister or the Council is required by the Act or these regulations to publish a notice, the notice shall be published in the Government Gazette, in one newspaper having general circulation in the locality in which the undertaking concerned is situate and in one newspaper with country-wide circulation.
- (2) Where there is no newspaper having general circulation in the locality in which the undertaking concerned is situate, the notice shall be posted in the local municipal or township building, village council's office, post office or other public place in that locality.

SCHEDULE “A”

LIST OF UNDERTAKINGS REQUIRING REGISTRATION*

AGRICULTURAL AND RELATED SERVICES

- Livestock Farms and Fruit and Other Vegetable farms involving the clearing of land greater than 40 hectares in area or involving the clearing of land located in an Environmentally Critical Area (ECA).

FISHING AND TRAPPING

- Fish or shellfish farming in salt water, brackish water or fresh water, where the proposal includes the construction of shore-based facilities other than wharves;
- Permanent traps or weir fisheries, salt water
- Services incidental to fishing: fish or shell-fish breeding and propagating services, or fish or shell-fish hatchery services, where the proposal includes the construction of shore-based facilities other than wharves.

LOGGING AND FORESTRY

- Logging: management of forested land for the primary purpose of harvesting timber in a concession area.
- Forestry Services: application of pesticides
- Introduction of exotic species of animals, plants or microbial agents
- Establishment of forests in previously forested and unforested areas.

MINING (INCLUDING MILLING), QUARRYING AND OIL WELLS

- Metal Mines
- Non-metal Mines

CRUDE OIL AND NATURAL GAS

- Crude oil or petroleum production facilities
- Natural gas production facilities

QUARRIES AND SAND PITS

- Stone quarries where the total area is greater than 10 hectares or where any portion is to be located within an Environmentally Critical Area (ECA).

MANUFACTURING

- Meat and Poultry Products: abattoirs; meat, fat, oil and poultry processing facilities;
- Fish Products

- **Flours, Prepared Cereal Food and Feeds: feed mills**

BEVERAGES

- **Distillery Products**
- **Brewery Products**
- **Wines**

RUBBER PRODUCTS

- **Tyres and Tubes**
- **Rubber Hoses and Beltings**
- **Other Rubber Products**

PLASTIC PRODUCTS

- **Foamed and Expanded Plastic Products**
- **Plastic Pipes and Pipe Fittings**
- **Plastic Films and Sheetings**
- **Other Plastic Products**

LEATHER AND ALLIED PRODUCTS

- **Leather and Allied Products**
- **Leather Tanneries**

PRIMARY TEXTILES

- **Man-made Fibres and Filament Yarns**
- **Spun Yarns and Woven Clothes**
- **Broad Knitted Fabrics**

TEXTILE PRODUCTS

- **Natural Fibres Processing and Felt Products**
- **Carpets, Mats and Rugs**
- **Canvas and Related Products**
- **Other Textile Products**

WOOD

- Sawmill, Planning Mill and Shingle Mill Products Industries
- Veneers and Plywoods
- Other Wood Products: Wood preservation facilities which use hazardous chemicals or similar chemical processes; particle board or wafer board production.

PAPER AND ALLIED PRODUCTS

- Pulp and Paper
- Asphalt Roofing
- Other Converted Paper Products

PRIMARY METALS

FABRICATED METALS

TRANSPORTATION EQUIPMENT

- Shipbuilding and Repair: facilities engaged in building and repairing all types of ships above 4.00 tonnes displacement including marine production platforms for petroleum, natural gas or mineral resource extraction.

NON-METALLIC MINERAL PRODUCTS

REFINED PETROLEUM PRODUCTS

CHEMICALS AND CHEMICAL PRODUCTS

- Industrial Chemicals
- Agricultural Chemicals
- Plastics and Synthetic Resins
- Paints and Varnishes
- Soaps and Cleaning Compounds
- Other Chemical Products

OTHER MANUFACTURING

- Scientific and Professional Equipment: photographic films and plates manufacturing
- Other manufactured Products: floor tiles, linoleums and coated fabrics manufacturing

CONSTRUCTION

- Industrial Construction (Other than Buildings)

- construction of pipelines for the transmission of oil, natural gas and other related products from the source to the point of distribution, where: (a) any portion of the pipeline is to be located at a distance greater than 500 metres from an existing right-of-way, or (b) any portion of the pipeline is to be located in an Environmentally Critical Area (ECA).
- Diesel electric power generating plants having a capacity greater than 1 megawatt.
- Gas turbine electric power generating plants having a capacity greater than 1 megawatt.
- Nuclear electric generating plants
- Highways and Heavy Construction
- Roads
- Waterworks and Sewage System
- Construction of trunk pipelines for transmission of water from the source to the point of distribution.
- Construction of trunk sewer pipelines.
- Construction of trunk sewer pipeline outfalls.
- Hydroelectric Power Plants and Related Structures
- Construction of dams and associated reservoirs.
- Inter- or intra-basin water transfers.
- Construction of hydroelectric power developments.

COMMUNICATION AND OTHER UTILITIES

- Establishment of waste disposal sites.
- Establishment of facilities for the collection, storage or disposal of hazardous waste materials.

WHOLESALE TRADE

- Petroleum Products, Wholesale
- Establishment of petroleum products storage facilities.

OTHER PRODUCTS, WHOLESALE

- Waste Materials, Wholesale
- Establishment of facilities for the purpose of assembling, breaking up, sorting or wholesale trading of scrap, junk or waste material of any type.

SERVICES

- Economic Services Administration

- Resource conservation and management programmes involving introductions of exotic species of animals or plants for any purpose.
- Resource conservation and management programmes involving introductions of native species of animals or plants into areas where those species do not occur at the time of the proposed introduction.
- Designation of Land for cottage development or other recreational development.

ACCOMMODATION, FOOD AND BEVERAGE SERVICES

- Establishment of Recreation and Vacation Camps

OTHER SERVICES, AMUSEMENT AND RECREATIONAL SERVICES

- Commercial Spectator Sports
- Establishment of horse racetrack operations.
- Establishment of racetrack operations for motorized vehicles.
- Sports and Recreation Clubs and Services
- Establishment of facilities, including trails
- Establishment of outdoor firearm ranges
- Establishment of marina operations
- Establishment of facilities, including trails, for motorized recreational vehicles
- Other Amusement and Recreational Services

The List would be reviewed periodically

SCHEDULE "B"

LIST OF UNDERTAKINGS FOR WHICH EIA IS MANDATORY*

A. CRITICAL ENVIRONMENTAL PROJECTS (CEPs)

1. AGRICULTURE

- (a) Land development for agriculture purposes not less than 40 hectares.
- (b) Agricultural programmes necessitating the resettlement of 20 families or more.

2. AIRPORT

- (a) Construction of all airports or airstrips as well as the enlargement of existing airports or airstrips.

3. DRAINAGE AND IRRIGATION

- (a) Construction of dams and man-made lakes
- (b) Drainage of wetland.
- (c) Irrigation schemes

4. LAND RECLAMATION

- (a) Coastal land reclamation
- (b) Dredging of bars, estuaries.

5. FISHERIES

- (a) Construction of fishing harbours
- (b) Harbour expansion.
- (c) Land based aquaculture projects

6. FORESTRY

- (a) Conversion of hill forest land to other land use.
- (b) Logging or conversion of forest land to other land use within the catchment area of reservoirs used for water supply, irrigation or hydro-power generation or in areas adjacent to forest, wildlife reserves.
- (c) Conversion of wetlands for industrial, housing or agricultural use.

7. HOUSING

- (a) Human settlement
- (b) Housing development.

8. INDUSTRY

- (a) Chemical – Where production capacity of each product or combined products is greater than 100 tonnes/day.
- (b) Petrochemicals – All sizes or raw materials requirements of 100 tonnes/day or greater.
- (c) Non-ferrous “Smelting: Aluminium” all sizes; Copper – all sizes; Others – producing 50 tonnes/day and above product.
- (d) Non-metallic “Cement: Lime” 10 tonnes/day and above burnt lime rotary kiln or 50 tonnes/day above vertical kiln.
- (e) Iron and Steel
- (f) Shipyards
- (g) Pulp and Paper

9. INFRASTRUCTURE

- (a) Construction of hospitals.
- (b) Industrial estate development.
- (c) Construction of roads and highways.
- (d) Construction of new townships.
- (e) Construction of railways.

10. PORTS

- (a) Construction of ports
- (b) Port expansion involving an increase of 25 percent or more in handling capacity per annum.

11. MINING

- (a) Mining and processing of minerals in areas where the mining lease covers a total area in excess of 10 hectares.
- (b) Quarries: Proposed quarrying of aggregate, limestone, silica, quartzite, sandstone, marble and decorative building stone within 3 kilometres radius of any existing residential, commercial or industrial areas, or any area earmarked for residential, commercial or industrial development.
- (c) Sand dredging.

12. PETROLEUM

- (a) Oil and gas fields
- (b) Construction of off-shore and on-shore pipelines
- (c) Construction of oil and gas separation, processing, handling, and storage facilities.

- (d) Construction of oil refineries.
- (e) Construction of product depots for the storage of petrol, gas or diesel which area located within 3 kilometres of any commercial, industrial or residential areas.

13. POWER GENERATION AND TRANSMISSION

- (a) Construction of steam generated power stations.
- (b) Dams and hydroelectric power schemes.
- (c) Construction of combined cycle power stations.
- (d) Construction of nuclear-fuelled power stations.
- (e) Erection of Power Transmission lines.

14. RESORT AND RECREATIONAL DEVELOPMENT

- (a) Construction of coastal resort facilities or hotels with more than 40 rooms
- (b) Hill top resort or hotel development.
- (c) Development of tourist or recreational facilities in national parks.
- (d) Development of tourists or recreational facilities on islands in surrounding waters.

15. WASTE TREATMENT AND DISPOSAL

- (a) Toxic and Hazardous Waste
 - Construction of incineration plant
 - Construction of recovery plant (off-site)
 - Construction of wastewater treatment plant (off-site)
 - Construction of secure landfills facility
 - Construction of storage facility (off-site)
- (b) Municipal Solid Waste
 - Construction of incineration plant
- (c) Municipal Sewage
 - Construction of wastewater treatment plant
 - Construction of marine outfall
 - Night soil treatment

16. WATER SUPPLY

- (a) Construction of dams impounding reservoirs
- (b) Ground water development for industrial, agricultural or urban water supply.

17. ENVIRONMENTAL CONSERVATION MANAGEMENT

- (a) Decision to remove “designated” status from an area designated for wildlife conservation and management.
 - Construction of composting plant
 - Construction of recovery/recycling plant
 - Construction of municipal solid waste landfill facility
 - Construction of waste depots.
- (b) Decision of policy actions on:
 - Wildlife conservation and management;
 - Forest conservation and management;
 - Watershed conservation and management;
 - Commercial exploitation of fauna and flora.

B. ENVIRONMENTALLY CRITICAL AREAS

Any project proposed to be located within an environmentally critical area, that is, an area that meets any of the following characteristics:

- All areas declared by law as national parks, forest reserves, watershed reserves, wildlife preserves and sanctuaries including sacred groves;
- Areas set aside as of aesthetic and potential tourist spots;
- Areas which constitute the habitat of any endangered or threatened species of indigenous wildlife (flora and fauna);
- Areas of unique historic, archeological, or scientific interest;
- Areas which are traditionally occupied by cultural communities or tribes;
- Areas frequently visited and/or hard-hit by natural calamities (geologic hazards, landslides; floods, typhoons/ cyclones, volcanic activity etc.);
- Areas prone to bushfires;
- Hilly areas with critical slopes;
- Areas classified as prime agricultural lands;

- Recharged areas of aquifers;
- Water bodies (rivers, lakes, underground water) characterized by one or any combination of the following conditions:
 - Tapped for domestic purposes;
 - Within the controlled and/or protected areas;
 - Which support wildlife and fishery activities.
- Mangrove areas characterized by one or any combination of the following conditions:
 - With pristine and dense growth
 - Adjoining mouth of major river system;
 - Near or adjacent to traditional fishing grounds
 - Which act as natural buffers against shore erosion, strong winds and storm floods.
- Coral reefs area.

* The List will be reviewed periodically

THE UNITED REPUBLIC OF TANZANIA

Government Notice No....19..

DRAFT ENVIRONMENTAL ASSESSMENT HEARINGS REGULATIONS

Made pursuant to the

ENVIRONMENTAL PROTECTION ACT, 19.., Act No...19..

IN EXERCISE of the powers conferred on the Minister responsible for the Environmental Protection Act, 19.. by section ... of the Act, these regulations are made this day of19..

Part I - Preliminary

Citation

1. These Regulations may be cited as the Environmental Assessment Hearings Regulations and shall come into operation on the date of publication in the Government Gazette.

Definitions

2. In these regulations, unless the context otherwise requires;

“Act” means the Environmental Protection Act and may, where the context so requires, include any other enactment;

“Administrator” means the Director of Environment;

“Board” means the Board established under section ... of the Act;

“Council” means the National Environment Management Council established pursuant to the National Environment Management Act;

“Chairperson” means the person designated either by the Council or Chairman of the Council to preside over a hearing;

“Division” means the Division of Environment;

“Environmental Impact Assessment Regulations” means regulations made pursuant to the Environmental Protection Act and approved by the Minister;

“Executive Secretary” means the person appointed by the Minister pursuant to section... of the Environmental Protection Act;

“hearing” means the proceeding before the hearing panel;

“hearing panel” means the committee of Council appointed pursuant to Section ... of the Ac to conduct a hearing relating to the environmental assessment of an undertaking;

“formal presentation” means a written presentation by an intervenor who has registered with the Executive Secretary in accordance with these regulations;

"informal presentation" means an oral presentation by an intervenor who has registered with the Executive Secretary in accordance with these regulations;

"intervenor" means a person with an interest in or affected by the subject matter of a hearing who has registered with the Executive Secretary in accordance with these regulations;

"Minister" means the Minister for the time being responsible for environment;

"proponent" means a person who

- (i) carries out or proposes to carry out an undertaking, or
- (ii) is the owner or person having charge, management or control of an undertaking;

"public record" includes any correspondence, documents, submissions, transcript, exhibits, excluding confidential business information, filed with the Council after an environmental assessment report is referred to the Council and may include a report prepared by the Administrator, a report prepared by the hearing panel and the decision of the Minister.

"proprietary information" includes without limitation a trade secret and know-how, information relating to any manufacturing process, trade mark, copyright, patent or formula protected by law or by international treaties to which Tanzania is a party, but does not include the environmental effects or associated mitigation measures of a proposed undertaking;

"trade secret" means any secret, commercially valuable plan, appliance, formula, process, pattern, device or information which is generally recognized as confidential or that might disclose a trade secret, including but not limited to the name and other identification of a chemical, substance or agent which is secret;

PURPOSE OF A HEARING

- 3. The purpose of a hearing under these Regulations shall be to:
 - (a) receive submissions and comments from any interested party
 - (b) ask questions and seek answers respecting the environmental impact of an undertaking; and
 - (c) provide information which will assist the hearing panel to prepare its recommendations to the Minister.

GENERAL FORMAT OF HEARINGS

- 4.
 - (1) All hearings shall be non-judicial, informal and conducted in a non-adversarial format.
 - (2) A hearing before a hearing panel is not required to follow the strict rules of law, procedure and evidence required by a court of law.
 - (3) All hearings before a hearing panel shall be conducted in a structured manner so as to permit a fair and full examination by the hearing panel of all information presented.
 - (4) Any person may present his or her case to the hearing panel in the form of written submission.
 - (5) In addition to subsection (4), any person may present his or her case in person to the hearing panel.
 - (6) Any person may be represented by legal counsel at the hearing.

HEARING PANEL

5. (1) The Director General of the Council shall forward the names of the members of the hearing panel and the name of the Chairperson to the Minister upon appointment of the hearing panel.
- (2) Subject to subsection (3) and (4), the Chairperson shall conduct a hearing in accordance with the procedure established by these regulations.
- (3) Where the circumstances require, the Chairperson shall have the discretion to vary the procedure established by these regulations.
- (4) When a variation is made pursuant to subsection (3), the Chairperson shall forthwith make the same known to the Executive Secretary who in turn will communicate the same to any person participating at the hearing.
- (5) Subject to these regulations, prior to the hearing, a member of the hearing panel shall not communicate in private with anyone except another panel member, a technical advisor, the Executive Secretary and staff of the Division about the substantive issues under consideration by the hearing panel.
- (6) The hearing panel may retain a technical advisor to assist in the review process and the Executive Secretary shall make any report of such advisor available to any person upon request and may require that person to pay reasonable costs in connection with the copying.
- (7) A hearing may, through the Executive Secretary, permit consultations between a technical advisor retained by the hearing panel and participants in the review process.

EXECUTIVE SECRETARY

6. (1) All representations or inquiries concerning the hearing process shall be directed to the Executive Secretary.
- (2) The Executive Secretary shall maintain a file containing all correspondence, documents and submissions respecting an undertaking after an environmental assessment report is referred to the Council.
- (3) Subject to subsection (4), the file shall form part of the public record respecting the undertaking and shall be open for inspection by the public at all reasonable times at the head office of the Division in Dar es Salaam.
- (4) Confidential business information shall not form part of the public record.
- (5) The Executive Secretary may, upon request, make copies available to anyone of material in the file and may require any person requesting the same to pay reasonable costs in connection with the copying.

ON SITE VISITS

7. (1) The hearing panel may request one or more meetings with the proponent prior to the hearing for the purpose of visiting or inspecting the undertaking under review.
- (2) Where the undertaking under review is visited or inspected, the Executive Secretary shall record the visit or inspection including the date, time and identity of persons in attendance.

HEARING LOCATIONS

8. (1) The hearing panel may hold a hearing in various locations in the country depending on the nature of the undertaking.

- (2) At least one session of the hearing shall be held, if in the opinion of the hearing panel it is practical to do so, in the community located nearest to the site of the proposed undertaking.
- (3) Where sessions of the hearing are held in a number of locations the Chairperson may, in order to prevent undue repetition of evidence, decide that the official transcript of evidence previously presented at a different location shall be considered part of the evidence at a subsequent location.

NOTICE OF HEARING

9. (1) The form of Notice of Hearing shall be prescribed by the Executive Secretary and shall include the time, place and purpose or subject of the hearing.
- (2) The Notice of Hearing shall be signed by the Executive Secretary within fourteen days of referral of the environmental assessment report to the Council.
- (3) Unless directed otherwise by the Chairperson, the Notice of Hearing shall be issued no later than twenty one days before the hearing is to commence.
- (4) A Notice of Hearing shall be published
 - (a) once a week for two weeks in a newspaper having country-wide coverage;
 - (b) once a week for two weeks in a newspaper having general circulation in the locality where the proposed undertaking is to be located; and
 - (c) once in the Government Gazette.
- (5) Publication of the Notice of Hearing in the Government Gazette and the second publication in the newspapers noted in subsection (4) shall be made no later than seven days before the hearing is to commence.
- (6) The Executive Secretary may serve a Notice of Hearing upon any person, body or organization by ordinary mail and may invite any person, body or organization to make a presentation at the hearing.
- (7) The Executive Secretary may post a Notice of Hearing in a public building located near to the site of the proposed undertaking.
- (8) Service of any Notice of Hearing given in respect of a matter before the hearing panel shall be evidenced by an affidavit filed by the Executive Secretary setting out when and how service was effected.
- (9) The Chairperson may waive compliance with the time requirements provided in this Section.

PRE-SESSION CONFERENCE

10. (1) The Chairperson may arrange, in advance of any public hearing, a pre-session conference with participants to explain the rules of procedure for the hearing, to identify the participants, to define the issues, to estimate the length of hearing, to identify witnesses, to finalize agendas and schedules or to discuss any other matter that the Chairperson may consider appropriate.
- (2) The form of notice of a pre-session conference shall be given three days before the conference.
- (3) The Chairperson shall have the discretion to determine which participants shall be given notice to attend a pre-session conference.

INTERVENORS

11. (1) Any person with an interest in or affected by the subject matter of a hearing panel shall contact the Executive Secretary no less than seven days before the hearing is to commence to request a time period to appear personally or by counsel at the hearing.
- (2) Submissions to the hearing panel shall be in writing where possible.
- (3) Every intervenor shall be asked by the Executive Secretary whether that person intends to make a formal or informal presentation to the hearing panel.
- (4) The Chairperson may direct that copies of any submissions be delivered to any person or persons having interest in and affected by the subject matter of the hearing and may require any person to pay reasonable costs in connection with the copying.
- (5) The Chairperson may waive compliance with the requirement of this Section.

JOURNALS, STUDIES OR REPORTS

12. (1) To facilitate the expeditious conduct of a hearing, a person wishing to submit to the hearing panel written material including journals, studies and reports shall submit copies of the same to the Executive Secretary no later than five days before the hearing to commence.
- (2) Written material described in subsection (1) shall form part of the public record.
- (3) Unless directed otherwise by the Chairperson, a person who submits materials under subsection (1) shall, prior to the hearing provide copies of the same to the proponent and such other persons as the Chairperson deems appropriate.
- (4) Where written materials is submitted in accordance with this Section, any oral presentation in relation to that material shall be limited to highlighting essential features of the material and responding to questions on the material.
- (5) The Chairperson may waive compliance with the requirements of this Section.

SUMMONSES

13. (1) A summons to a witness or a summons for production of documents or things shall be issued over the signature of the Executive Secretary.
- (2) A summons to a witness may be in Form "A" and a summons to produce documents or things may be in Form "B" to these regulations.

OATH/AFFIRMATION

14. (1) Evidence at a hearing shall be presented only after the person gives an oath or affirmation that the evidence will be the truth and shall be otherwise received only at the discretion of the Chairperson.
- (2) An oath or affirmation by a person at a hearing shall be administered by the Executive Secretary, and in the absence of the Executive Secretary, by the Chairperson.
- (3) The Chairperson may waive compliance with the requirements of this Section.

PRESENTMENT BY PROPONENT

15. (1) The proponent shall provide at the hearing a person or group of persons who are knowledgeable about the undertaking and who are available to answer questions which are directed to the proponent.
- (2) The Chairperson shall grant a reasonable amount of time to the proponent to present its case to the hearing panel and to address issues raised in the environmental assessment report.
- (3) Subject to the procedure prescribed in Section 18, the Chairperson shall permit questioning of the proponent by the hearing panel, intervenors and other persons.

PRESENTATIONS BY INTERVENOR

16. (1) Intervenors who have requested to make formal presentations shall make their presentations following the initial presentation by the proponent.
- (2) Intervenors who have requested to make informal presentations shall follow those persons who are to make formal presentations.
- (3) Before commencing a presentation, the intervenor shall provide to the hearing panel the name, address and affiliation, if any, of the intervenor.
- (4) The Chairperson shall permit evidence to be given by a number of intervenors sitting as a group provided the hearing panel is satisfied that in the particular case the tendering of evidence in this manner will result in a full and fair hearing.
- (5) Intervenors making a presentation to the hearing panel shall limit their presentation to a duration of twenty minutes.
- (6) Any person who wishes to use more than twenty minutes is requested to give prior notice to the Executive Secretary who will forward the request to the Chairperson for consideration.
- (7) The Chairperson may limit or extend the duration of a presentation at a hearing.
- (8) Subject to the procedure prescribed in Section 18, the Chairperson shall permit questioning of an intervenor by the hearing panel, proponent or other persons.
- (9) The Chairperson may waive compliance with the requirements noted in this Section.

WRITTEN QUESTIONS

17. (1) Where written questions are submitted to the Executive Secretary to be answered by the proponent prior to the hearing, the proponent shall provide written answers to the same provided the questions have been submitted sufficiently in advance of the date of the hearing.
- (2) Any written questions and written response under this Section shall become part of the public record.

QUESTIONS IN GENERAL

19. (1) Every question at the hearing shall be directed to the Chairperson who may invite the appropriate person to respond to the question.

- (2) The Chairperson may exclude any intervention or question which, in the opinion of the Chairperson, is outside of the terms of the hearing panel as mandated by the Minister when the environmental assessment report is referred to the Council or is needlessly repetitive in nature.
- (3) The Chairperson may limit the questions asked and may limit persons in presenting arguments and submissions.
- (4) Questions addressed to a group of persons presented by the proponent or an intervenor may be directed to a specific member or the group, if available, in general.
- (5) Where a question is directed to a specific member and that person is unable to answer due to lack of knowledge or qualification, the Chairperson may permit another member of the group to provide the answer.
- (6) If the intervenor or the proponent is unable to answer the question without further consultation or research, the intervenor or proponent shall provide an undertaking to provide an answer on or before the close of the hearing or, if this is not possible, no later than seven days after the close of the hearing whereupon the Executive Secretary shall provide the response to the person who asked the question and to any other person upon request.

OPEN FORUM

19. (1) After the completion of presentations and questions by the proponent and of formal and informal presentations and questions by intervenors, the Chairperson may, time permitting, allow presentations or questions from other persons in attendance at the hearing.
- (2) Presentations or questions and responses under subsection (1) shall form part of the public record.

FINAL RESPONSE BY PROPONENT

20. Before the close of the hearing, the proponent shall be given the opportunity to make a final presentation to the hearing panel in response to matters raised at the hearing.

TRANSCRIPT OF HEARING

21. (1) The hearing panel shall maintain a record of all testimony presented at a hearing.
- (2) The hearing shall ensure that a draft copy of the transcript is made available at the head office of the Ministry and at the Regional or District Administrative Secretary's office which is located nearest to the site of the proposed undertaking for scrutiny by persons participating in the proceeding and any corrections, errors or omissions are to be reported to the Executive Secretary within fourteen days of the draft becoming available.
- (3) The Chairperson shall make a final ruling on any dispute as to the contents of the transcript after which it shall become part of the public record.
- (4) Final transcripts of the hearing shall be made available to the public within a reasonable time period and the Executive Secretary may require any person requesting a copy of the same to pay reasonable costs in connection with the copying.
- (5) Copies of the final transcript shall be available for scrutiny at the head office of the Ministry in Dar es Salaam and the Regional or District Administrative Secretary's office which is located nearest to the site of the proposed undertaking.

WRITTEN ARGUMENT/SUBMISSION

- 22 (1) A participant at the hearing may within ten days of the close of the hearing present written arguments and submissions through the Executive Secretary to the hearing panel.
- (2) Copies of any written arguments or written submissions shall become part of the public record and the Executive Secretary shall make these available upon request and may require the payment of reasonable costs in connection with the copying.

ADJOURNMENTS/EXTENSIONS

- 23 (1) Subject to subsection (2), the Chairperson may adjourn a hearing from time to time, may reopen a hearing and may grant such extensions of time as the Chairperson deems proper.
- (2) No hearing shall be reopened after the report of the hearing panel has been submitted to the Minister.

LEGAL COUNSEL

24. The Chairperson may arrange for the attendance and assistance of legal counsel during a hearing to advise the hearing panel on any matter pertaining to the hearing and provide liaison with the parties and their counsel.

MEDIA COVERAGE

- 25 (1) Subject to the terms and conditions outlined herein and any other terms and conditions stipulated by the Chairperson, radio and television recording of the hearings may be permitted by the Chairperson.
- (2) Where permission is sought under subsection (1), a request should be made to the Executive Secretary prior to the commencement of the part of the hearing sought to be recorded.
- (3) Work tables shall be provided to members of the media at the hearings.
- (4) Prior to the commencement of the hearings, camera shots may be taken of the hearing panel, the persons participating and the audience.
- (5) After the hearing commences, photographic lights shall be shut off and cameras left on fixed mounts.
- (6) Photographic and audio equipment shall be positioned unobstructively before the hearing begins in locations approved by the Chairperson and shall not be moved when the hearings is in progress.
- (7) Media personnel shall not move about while the hearing is in progress so as to distract the hearing.
- (8) Only photographic and audio equipment which does not produce distracting sound or light may be used in the room where the hearing is to be held.
- (9) Any media interviews of participants or members of the hearing panel shall be conducted at breaks in the hearing or outside the hearing room in a manner that will not interfere with the hearing.
- (10) The Chairperson may disallow the video taping or recording of all or portions of the hearing if, in the opinion of the Chairperson, such coverage would inhibit specific witnesses or disrupt the hearing process.

HEARING PANEL REPORT

- 26 (1) The Chairperson shall determine the style and format of the report of the hearing panel to be submitted to the Minister.

- (2) All reports shall be dated and bear the signature of the Chairperson and other members of the hearing panel.
- (3) The report shall contain the names of all witnesses or other persons, bodies or organizations who have made contributions to the hearings.
- (4) A bibliography shall be prepared of all documents and written materials submitted or referred to in the hearings.
- (5) The report submitted by the hearing panel to the Minister shall be confidential and shall not be released to or viewed by any person other than the Minister without the written approval of the Minister.
- (6) Subject to the Minister's approval being granted under subsection (5), copies of the report of the hearing panel shall be made available to the public within a reasonable time period and at a reasonable cost.

PERMANENT RECORD

- 27. The Ministry shall keep on permanent file at the head office of the Ministry in Dar es Salaam a copy of all documents forming part of the public record respecting a hearing and, subject to Section 26(5), a copy of the report of the hearing panel, the report of the Administrator as provided under the Environmental Impact Assessment Regulations and the decision of the Minister.

EFFECTIVE DATE

- 28. These regulations shall be effective, from and after the day of their publication in the Government Gazette.

FORM "A"

IN THE MATTER OF A HEARING before the National Environment Management Council pursuant to the provisions of the Environment Protection Act, 19..

SUMMONS TO WITNESS

TO: _____

ADDRESS: _____

You are required to attend before the Council in the Region of _____,

on the _____ day of _____ 19_____, at the of _____
o'clock in the _____

noon, and so on from day to day until the matter is heard to give evidence pertaining to:

(describe the nature of hearing as set out in Notice of Hearing)

Dated at _____, this _____ day of _____, 19____

Signed _____

Executive Secretary
National Environment Management Council

FORM "B"

IN THE MATTER OF A HEARING before the National Environment Management Council pursuant to the provisions of the Environment Protection Act, Act No. of 19____

SUMMONS TO PRODUCE DOCUMENTS

TO: _____

ADDRESS: _____

Take notice that you are hereby required to produce and show to the Council at a hearing

to be held at _____, in the Region of _____, on the

_____ day of _____, 19____. If books, letters and other writings and

documents in your custody, possession or power containing any entry, memorandum or

minute relating to the matter in question at this hearing in particular the following:

Dated at _____ this _____ day of _____, 19____

Signed _____
Executive Secretary
National Environment Management Council

UGANDA COUNTRY REPORT

LIST OF ABBREVIATIONS

APE	Action Programme for the Environment
DWD	Directorate of Water development
EAWS	East African Wildlife Society
IUCN	World Conservation Union
KARI	Kawanda Research Institute
KCC	Kampala City Council
LHPP	Land Housing and Physical Planning
MAAIF	Ministry of Agriculture Animal Industry and Fisheries
MOTI	Ministry of trade and Industry
MTWA	Ministry of Tourism Wildlife and Antiquities
MUIENR	Makerere University Institute of Environment and Natural Resources
MUK	Makerere University
NEMA	National Environment Management Authority
NWSC	National Water and Sewerage Corporation
UMA	Uganda Manufacturers Association
UNBS	Uganda National Bureau of Standards
UNSCT	Uganda National Council of Science and Technology
URA	Uganda Revenue Authority
UWA	Uganda Wildlife Authority

EXECUTIVE SUMMARY

The report provides a series of recommendations and draft EIA regulations for implementation by NEMA and other relevant authorities and individuals in Uganda. The recommendations and draft regulations were developed in consultation with all relevant agencies and to be completed prior to the completion of the report. The report and the draft regulations were presented at a national workshop on EIA Regulations and to the Sub-regional Workshop on Development and Harmonization of Environmental Impact Regulations held at Kisumu from February 2-3 1998. It takes into account the recommendations of the Workshop and a number of amendments were included to accommodate the various recommendations.

The report takes cognisance of the fact that during the National Environment Action Plan (NEAP) process - 1991-94, a comprehensive legal, policy and institutional review on all issues on environment management was made. The review identified weaknesses and gaps where recommendations for reform were made.

This report therefore found it not necessary to repeat work which had already been done at national level.

The above notwithstanding, the report provides a summary of the review of existing legislative definition of EIA provisions as provided in the National Environment Statute, 1995, plus a detailed EIA process which should be adopted at national level. The process of EIA has been adopted to suit national socio-economic set-up, especially the pro-investment climate in Uganda.

It should be noted that Uganda Government was keen to adopt EIA regulations in its laws. Therefore, once this report was completed and the regulations reviewed and accepted at sub-regional level, the instrument was promulgated and enacted into law in Uganda. That is why the full title and citation is provided herein.



REVIEW OF EXISTING LEGISLATIONS ON EIA

This report takes into account existing studies on environmental law and environmental management. These studies include the following:

1. John Ntambirweki: *Environmental Legislation in Uganda: Review of Existing Legislation and Formulation of an Appropriate Legal Framework for Present and Future Environmental Management*, Kampala, NEMA/TUCN 1992.
2. NEAP, 1993, Kampala: *"The Framework for Environmental Impact Assessment"*.

These two studies which were influential in the formulation of future legislation, found that by 1992, there was no legislative requirement for EIA in Uganda where EIA had been conducted. It was in most cases because of donor conditionalities especially in cases of projects financed by international financial institutions such as the World Bank, the African Development Bank and the European Development Bank. The above studies recommended that Uganda should adopt a legislative framework for EIA.

1.1 The Framework for EIA in the National Environment Statute

The National Environment Statute (1995) has followed closely the concept of EIA adopted in the UNEP Guidelines on EIA adopted by the Governing Council in 1987. These Guidelines in turn closely mirrored developments in certain national jurisdictions beginning with the USA (1969), Australia (1973), Canada (1973) New Zealand (1973) and France (1976).

The National Environment Statute also attempts to cover all the elements which have evolved in the four phases (see UNEP: EIA Training Resource Manual, Nairobi UNEP 1996

page 71) of the development of EIA namely:

- (a) The Initial phase (1970-1975): In this period the basic principles and institutional arrangements for EIA were introduced. The principal analytical techniques were also put in place.
- (b) Late 1970s - Early 1980s: The principal developments were to expand the scope of EIA to include social, risk, health and related factors. In the same period public participation in EIA was defined while the focus moved toward impact management.
- (c) Mid 1980s: EIA moved into the direction of addressing cumulative effects and integrating EIA with policy. EIA was included in planning and regulatory frameworks. The phase marked the evolution of follow-up procedures such as monitoring, audit and other procedures.
- (d) Since the mid 1980s: Under the influence of the Brundtland Commission's Report, and the 1992 Rio Conference, the dominant paradigm has been how to use EIA as a tool for achieving sustainable development by increasing the importance of strategic environment assessment.

EIA is now required as a precondition for various activities under International Conventions such as the 1992 Convention on Biological Diversity and the 1992 Framework Convention on Climate Change.

At the same time the United Nations Economic Commission for Europe (ECE) has developed the EIA in a Trans-boundary Context Convention (1991) which has a mandatory requirement for EIA in projects which may have trans-boundary environmental impacts. While the convention is not binding on Uganda, it is instructive of future trends.

CHAPTER 10

DEFINITION OF EIA IN THE STATUTE AND THE CONCEPT DEFINITION OF EIA IN THE STATUTE AND THE CONCEPT FOLLOWED IN THE REGULATIONS

Section 2 of the National Environment Statute provides/defines EIA as meaning:

“.....a systematic examination conducted to determine whether or not a project will have any adverse impacts on the environment”

A project is defined to include projects and policies that would lead to specific projects which may have an impact on the environment.

In this regard, the definition of EIA is in accord with the concept put forward by Y.J. Ahmad and G.K. Sammy¹¹⁵ in 1987, that EIA means:

- (a) A study of the effects of a proposed project on the environment.
- (b) The study constitutes the comparison of the various available alternatives in technology, design, or site; and identifying which alternative represents the best combination of economic and environmental costs and benefits.
- (c) The study predicts the possible environmental changes that a project could cause.

- (d) The environmental effects of a project are weighed on a common yard-stick with economic costs benefits.

From the above therefore, EIA is a tool for decision-making which enables the decision-maker to have various alternatives to choose from in developing projects. This choice ensures that decision-makers take into account environmental issues in the early stages of project conception and development. EIA does not eliminate projects that have adverse impacts on the environment altogether. It only avails both the developer and the national authorities (National Environment Management Authority) the opportunity to choose development projects with full knowledge of their impacts on the environment. This enables both the developer and the Authority to develop plans and policies for the mitigation of any adverse impacts of the project on the environment.

Another point to note at the outset is that EIA is a study of possible impacts. It does not necessarily emphasise the study of negative impacts. It is a prediction of all significant impacts whether negative or positive. It is only by considering both the negative and positive impacts that the true worth of a project may be determined. It should also be stated that what is considered positive impact currently may be considered negative in future depending on the state of and technology advancements or public perception.

¹¹⁵See Y.J. Ahmad and G.K. Sammy: *Guidelines to Environmental Impact Assessment in Developing Countries*, Nairobi. UNEP, Regional Seas Reports and Studies No. 85, 1987.)

CHAPTER THREE

RATIONALE FOR EIA

Current trends in environmental management are emphasising the need to enhance measures that lead to the prevention of degradation of the environment and promote the conservation of natural resources. The monitoring and control of *ex-post facto* pollution (pollution which has already occurred) while remaining an important issue in environmental management has, nevertheless, lost pride of place to these prophylactic measures.

The principal reason behind this change is the realisation that in environmental matters, preventing environmental degradation is more cost-effective than repairing environmental damage which has already occurred. EIA is now recognised as one of the most effective tools in this preventive approach to environmental degradation along with long term environmental planning.

EIA makes it possible to predict through study and therefore, with a degree of exactitude, the environmental effects of a project which can be foreseen within the limits of existing scientific and social knowledge. This prediction enables the choice of those alternatives that are compatible

with sustainable development and the ability of a given society to afford, such alternatives.

Seen in this context therefore, EIA lies at the centre of sustainable development by encouraging the development of projects that are compatible with their social development and environmental conservation surroundings; and which are at the same time economically viable. The need for EIA has been the subject of previous studies during the NEAP process, 1992-95. It, therefore, used not to be the subject of extensive justification here.

3.1 Legal Authority and the Appropriate Framework

The legislative authority of these regulations is found in Sections 20,21,22 and 108 of the National Environment Statute, 1995.

Section 108 authorises the Minister on the recommendation of any Minister, the Policy Committee or the Board to make regulations by statutory instrument for any matter that may be prescribed under the Statute or for giving full effect to the provisions of this Statute.



CONSIDERATIONS IN DESIGNING THE EIA REGULATIONS

In designing these Regulations, the Consultant had to take into account the following:

1. The National Environment Policy for Uganda, 1994, which contains valuable policy statements and directions on the appropriate system for EIA in Uganda. These statements were incorporated into the proposed Regulations where possible. In some cases, developments since 1995 dictated that the Consultant takes into account contemporary trends and experiences to design the appropriate system.
2. The NEAP process held various meetings and engaged Consultants to devise an appropriate framework for environmental impact assessment in Uganda. These recommendations were the basis for formulating the appropriate provisions of the Statute and have been taken into account in formulating these regulations; however, the Statute, had one particular drawback.

It recommended many levels of assessment which were bound to cause confusion. These Regulations provide a more simplified system as will be described below. Since coming into existence, NEMA has also retained a consultant for the purpose of formulating guidelines of EIA. These guidelines were found instructive and useful. Some of the forms developed by the consultant in that consultancy have been adopted for the purposes of these Regulations.

3. Uganda is a developing country and as such, it does not possess limitless financial resources for the management of the environment. Environmental management has to compete for the scarce resources with other essential goods and services and aspirations

of society, (education, health, transport, defence and personal security, economic well being among others). This means therefore, that the EIA framework designed must be within the means of the country to afford, and yet it should not compromise environmental security. In this regard, the framework provides for a simple three level assessment system; automatic exclusion; project brief; and, environmental impact study and statement. The system is also flexible by enabling the Authority to make crucial decisions on whether, when, where and how EIA and associated actions are implemented.

4. The system designed should maximise the use of available man-power resources not only in the Authority but also in the various specialised government departments and ministries, local authorities and public corporations, through institutional co-ordination. The Regulations attempt to create such a system of institutional co-ordination.

4.1 Levels of Assessment

The framework envisaged under the proposed Regulations has three levels of assessment for projects as outlined below:

(a) Level 1 : Automatic Exclusion:

There exist a number of projects which may be undertaken without the need for an environmental impact assessment (for example, constructing a house in a residential area or developing a farm in a farming area but the same activities may require an EIA if developed in a national park or forest reserve). The Third Schedule to the Statute lists all the categories of projects which require an EIA. The categories left out are automatically excluded from the EIA process unless the Authority decides otherwise. This Schedule therefore, provided for the automatic screening of projects.

(b) Level 2: Project Brief or Preliminary Assessment

All projects which fall under the First Schedule require the preparation and submission to the Council of a project brief describing the project and stating its possible impacts in a preliminary report (see Regulations 4 to 9 inclusive). It is the Authority which has the mandate to either approve the project for implementation or require the developer to undertake an environmental impact study.

It is hoped that many of the smaller and medium sized projects will be approved at the project brief level provided that the brief is exhaustive and indicative of the anticipated impacts. It is anticipated that at this stage the preliminary levels of assessment provided for under the Statute, the environmental impact evaluation (IE) and environmental impact review will be covered by the Authority requiring further information depending upon the nature of the project.

At this stage it is also necessary to determine whether the project will have trans-boundary impacts. Where trans-boundary impacts are determined to be likely, the involvement of those states whose environment may be affected becomes a necessity. However the level of the involvement of a foreign state must depend on the nature and the significance of impacts anticipated. Where the anticipated impacts are major, such a foreign state should be fully involved in the review of the environmental impact study. Where they are minor or ancillary, then only the comments of the state may be solicited. This is provided for in Regulation ...

Level 3: The Environmental Impact Study (EIS)

Where the project brief shows to the Authority that the project will have significant impacts on the environment, then the Authority may require that an EIS be undertaken. Projects often differ in the quantum of effects, territorial extent, or significance of effects (a small project may have more adverse impacts on the environment than a large one depending *inter alia* on the in-puts, outputs and technology used or the location of the project). This means therefore, that the EIS must differ from project, to project to take care of the specific circumstances and setting of the project.

The idea of institutionalising in the Regulations several levels of EIS was considered in the formulation of these Regulations and was rejected. Instead, what was accepted was that the duration, intensity and extent of each EIS should depend on the terms of reference which should be developed by developer in consultation with the Authority (see Regulation 10). This course of action ensures that there will be flexibility in EIS, and that each EIS will respond

to the needs of the particular project.

4.2 The Environmental Impact Statement

At the conclusion of the environmental impact study an environmental impact statement should be made by the developer. This statement is intended to be comprehensive and informative (see Regulation 13) for two reasons. First, to enable the Authority appreciate the choice of development alternatives made by the developer and to enable it make a decision whether to approve the project or not. Secondly, the Authority may use the statement as the basis for its post-assessment environmental audit. The statement is submitted to the Authority for consideration and decision.

4.2.1 Credibility and Reliability of the Study and the Statement

To ensure that the study will be conducted according to acceptable standards, the Statute and the Regulations employ a variety of mechanisms. The Authority is required to approve the names and qualifications of persons to undertake the study. These persons are required to sign the environmental impact statement before it is submitted to the Authority. These measures are intended to discourage the production of shoddy studies. It is expected that experts who are involved in this activity will ensure that work of commendable quality is produced and presented to the Authority. Shoddy work would carry the added sanction that the Authority may not certify such experts for future work. To augment these measures, the Regulations further require that the developer in the statement disclose how the information contained therein was generated (see Regulations 11, 16 and 14 (1)).

It should be noted here that in order to avoid conflicting accreditations of EIA experts in the region, the East African governments should agree on common standards of accreditations and registration. This is not a matter to be included in the regulations, but one of administrative practice to be evolved among the sister states.

4.3 Public Participation in EIA

The need for public participation in EIA does not require a lengthy justification. In contemporary conditions it is a given. It is already a mandatory requirement under Section 21(8)(a) of the Statute.

Democracy requires that all individuals should have a say in how their livelihood and surrounding may be affected by the actions of developers. These actions may be in the political, social, cultural and economic in nature. It necessarily follows

that anything which changes environmental quality must be subject to public discussion, debate and agreement. The imposition of change in environmental conditions without consultation and consent would be contrary to the generally accepted ethic of democracy.

The EIA framework, as provided for in the Regulations, conceives this public participation in environmental decision-making at two levels. At the first level is the actual public input into the study. The public, particularly those persons who would be specifically affected by the project, are required to be consulted after prior advertisements of such consultations (see Regulation 12). At the second level, public participation is provided for after submission of the EIS to the Authority. Public comments on each EIS may be invited by the Authority. Two types of public comments are envisaged. The comments of the general public entailing the recognition of the generality of environmental concerns and the unity of the environment of the country. The comments of the section of the public which is likely to be directly or most affected by the project are also provided for specifically.

This recognises the particularity of impacts and the fact that those whose lives or property are affected deserve particular attention. Where the Authority is of the view that there is need for further consultation, it may require that a public hearing be held. The Council may appoint a qualified person to conduct public the hearing. The qualifications of the person presiding at such a hearing would depend on the nature of the project and the issues in contention (see Regulations 19,20, and 22).

4.4 Decision Making

These Regulations illustrate the function of decision-making at two levels, which serve entirely different purposes.

- **Level 1: Decision-Making by the Developer**

The Regulations see the developer as being the person commissioning and meeting the costs of the EIA. Therefore, in the course of the EIA, the developer is required to make decisions regarding the terms of reference and the hiring of the study team in consultation with the Authority, and most importantly to make a decision regarding the alternative available for project development. The latter makes sense because the developer knows the means at his disposal and is therefore, best equipped to make this decision.

- **Level 2: Decision-making by the Authority**

The Authority is called upon to make certain decisions as the key environmental watch-dog for public policy. It determines whether or not an EIS is required and by participating in the making of terms of reference and selection of the study team, it determines the depth and extent of the study and therefore, its results.

The Authority is also called upon to make the vital decision whether to approve the project or require the developer to redesign it taking into account environmental factors or to reject the project altogether. The total rejection of a project is a measure of last resort which should not be reverted to easily.

It should be noted here that, there exist a number of academic works which would exclude this role given to the Authority, thereby making EIA purely a business decision of the developer. To do this would be to make it less relevant in a situation where central government control and direction is still desirable as the centre stage of the national development processes. The democratisation of decision making should not necessarily exclude social engineering by government to foster progress and the protection of the environment.

4.5 Grounds of Decision

Decision-making within the framework for EIA under the Regulations is premised on one fundamental factor, that the decision maker (the Authority or the developer) will be guided by sound economic analysis.

The economic analysis conceived in the Regulations is one whereby both environmental social, economic and other issues are measured on the same yard-stick.

The developer in choosing an alternative, will have to ensure that it is the alternative which will meet the approval of the Authority. In this way, the developer avoids the cost of redesigning the study or the cost of out-right rejection. The Authority's decision is predicated on more than the economic analysis. It has to inquire into the credibility of the study and the exactitude of the predictions. The Authority as a public watch-dog must also make a decision based on the welfare of the people and long-term environmental security.

There exist a number of methodologies for economic analysis of EIA. These have been the subject of extensive literature.¹¹⁶

¹¹⁶see, for example World Bank: Environmental Assessment Source Book. Vol-1, Chapter 4. Washington DC. The World Bank, 1991.

This report does not deem it necessary to include these methodologies of analysis in the Regulations. To do so would be to limit the employment of better methods of economic analysis when they become available in

future. It is hoped that the Authority will keep in constant touch with developments in economic theory in order to adapt its tools of analysis to emergent needs.

CHAPTER FIVE

CO-ORDINATION OF GOVERNMENT DECISION MAKING

The review of the EIA, whether at the project brief level or the environmental impact statement level, requires as wide a range of expertise as the projects themselves in a development situation. Neither is it anticipated, nor is it feasible, that at any one time the Authority will have all the necessary expertise to review each EIA. Yet it is also true that such expertise exists elsewhere in government within the specialized departments of the various ministries, the local authorities and the public corporations.

The Regulations respond to this dilemma by providing for a system of consultation between the Authority and the lead agencies (as these other agencies are styled in Section 2 and Section 7 of the Statute). The lead agency is required to make comments before the Authority approves the project brief or the EIS.

If the lead agency, however, fails to respond in the given time, the Authority may proceed to make a decision (see Regulation 18(3)). This latter provision is made to ensure that delays in review of EIAs do not become a bottleneck to investment decisions.

This co-ordination will ensure that the decisions of Government are harmonised and that unnecessary institutional conflicts are avoided.

5.1 Delegation of EIA Review Functions

The framework which has been devised in the Statute and the Regulations envisages a wide system of environmental impact assessments covering a considerable amount of

activities (see the Third Schedule to the Statute). To make the system effective, it may not be possible for the Authority to perform all the review functions provided for under the Statute and the Regulations. It may, in practice, be necessary for the Authority to delegate some of its functions to local authorities and to sectoral departments which have an environmental management bias.

A pre-requisite for delegation, however, is that the officers to whom functions are delegated should be trained in the techniques of analysis and review. A second issue to consider in delegation is the size or nature of the projects that will be delegated. Important projects with a great potential for affecting the environment should remain within the purview of the Authority.

5.2 Tiering of Projects

In determining whether or not EIA is required for a project, some issues constantly come up. The first of these issues relates to those projects where EIA has been conducted at the wider policy level and a specific project implementing the policy comes up. The Regulations state that such a general previous EIA should not exclude EIA on a specific project; however, the Authority in drawing up the terms of reference for EIA may exclude those aspects already covered under the general policy.

The second issue relates to similar projects; where each project should be taken as a separate entity and an EIA required for each, because nothing should be left to chance. The social, economic, cultural and ecological circumstances of the later project may be different (see Regulation 33).



TIME FRAMES FOR ACTIONS

The EIA involves serious business matters and an outlay of substantial sums of money. As a business matter, it is necessary that EIA decisions be made in reasonable time so that delay does not unfairly penalise the developer. The Regulations, therefore, provide specific time frames for the various actions required in the EIA review. Timely actions will ensure that the EIA process does not become a bottleneck to Uganda's investment climate.

It should be noted here that the Investment Code, 1991, provides that the Investment Authority shall issue an investor with an investment licence within seven weeks of application, with general or special incentives, (SS.15, 22-28), (Section 15 and 24).

In drawing up these Regulations, it was found that the seven weeks time limit in the Investment Code was too short a time in which to synchronise the EIA process with the requirements of the Code [S.19(2)(d)]. The Regulations do not hinder the issuance of an investment licence under the Investment Code. The Investment Code does not relieve the investor from carrying out EIA subsequently in accordance with these Regulations. It is recommended that in practice there should be close co-operation between the National Environment Management Authority and the Uganda Investment Authority, which will lead to a practice whereby EIA will be made a condition in the investment licence for appropriate projects.

6.1 Paying for EIA

The Regulations put the responsibility for the EIA in the hands of the developer. It therefore, follows that the developer bears the cost of the EIA as part of his normal business expenses. The issue or question is: who pays for

the review process of the EIA? This could be settled in two ways: the first option is to regard environmental management as a key public good and, therefore, require that the expense be met out of the public purse; and the second option is to require that the developer defrays some of the cost of reviewing EIA.

The Regulations, while regarding the environment as a key public good nevertheless, recognise the financial constraints within which the Authority has to operate. The Regulations require that certain fees be paid by the developer to defray some of the expenses of the Authority in the review process.

6.2 Timing of the EIA

The crucial question here is, when should an EIA be done? EIA should be done right at the inception of project design. If possible, it should be conducted at the same time as the economic feasibility study in order to enable both studies realise a synchronised output. It should be noted here obviously that, the economic feasibility study is a task the developer will undertake (if he wishes) to determine the economic viability of the project and is not synonymous with the EIA. The Regulations only require the latter. Therefore, where a feasibility study is not made, the EIA should be made during the period in which the project is being designed.

6.3 Institutional Arrangements within the Authority for Managing EIA

To date the Authority has made a number of decisions regarding the management of EIA within its structure. The Statute establishes a technical Committee of the Board.

The Regulations provide for the functions of this Technical Committee. The authority has a Technical Committee on

EIA in its Planning and Management Division. This is what is contained in the Authority's current organogram.

6.4 Appeals and Alternative Dispute Resolution

Under Section 105 of the Statute, appeals from one organ of the Authority may be made to another organ. Those decisions may not be appealed outside the organs of the Authority. The Authority is required to establish administrative procedures for appeals within its structure. Regulation 38 provides for appeals from the decisions of Executive Director regard EIA to the Board. It should be noted however that Section 105 (b) of the Statute recognises the supervisory jurisdiction of the High Court and therefore its inherent power to review such decisions if they are reached contrary to procedural justice requirements under the Constitution and the Common Law.

A further avenue is provided for under Regulation 38 which permits the organs of the authority and any aggrieved person to seek arbitration on any matter arising under the regulations. The procedure to be followed is that provided for under the Arbitration Act (Cap 55 laws of Uganda 1964 edition).

6.5 Human Resources for EIA Management

The proposed two-man team of experts in the Authority should be sufficient to deal with the administration of the proposed Regulations initially. This is because they will mainly co-ordinate a task into which the in-puts of the entire Authority staff are required, in addition to the in-puts of the sectoral departments. The future development of the team should depend on how the EIA functions pick up.

If the institutional co-ordination is achieved, it will be necessary to double the professional staff of the Unit. The team, due to its extensive need for correspondence, will need independent secretarial support when the Regulations come into force.

6.4.1 Training Needs

Training needs must be seen at three levels with regard to EIA processes. The first level is the training of the officials in NEMA who are required to have a day to day administration in the EIA process. In this regard these officers need to be familiarised with the actual operations

of a working system of impact assessment through serving internships in such organisations.

The types of organizations to be considered here:

- (i) national environmental organisations such as United States Environmental Protection Agency (EPA) or Britains department of Environment (DOE) or any of the other major countries with working systems where the language is English; and,
- (ii) these officers could serve internships with international organisations which review EIA such as the World Bank, the African Development Bank or the European Union.

In these organisations a body of expertise and case law has already been built-up which would assist with historical examples while on-going work would provide a hands-on experience.

The second level is the training of other officers in NEMA and the lead agencies who will be involved in the review of EIAs of certain relevant projects.

In this regard, it will be necessary to organise training seminars for these officials. This training will involve:

- (i) workshops for line ministries, local authorities parastatal bodies and other lead agencies;
- (ii) attachment of NEMA officials to observe the implementation process. In the case of some of the more specialized departments with large-scale projects, it will be necessary to attach officers in-charge of EIA to international bodies and also operational national environmental agencies; and,
- (iii) specific training will be required for judicial officers in the process of EIA and its legal implications for the public under this comparative analysis would be made to show how other countries' judicial systems have dealt with EIA.

The third level will involve the dissemination of information about EIA to the public. This would require the printing of brochures and posters explaining to the public EIA, especially the rights each one has in relation to the EIA process.

ANNEX I

STATUTORY INSTRUMENTS

SUPPLEMENT No. 8

8th May, 1998

**STATUTORY INSTRUMENTS SUPPLEMENT
to the Uganda Gazette No. 28 Volume XCI dated 8th May, 1998
Printed by UPPC, Entebbe, by Order of Government**

THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 1998

ARRANGEMENT OF REGULATIONS

PART I - PRELIMINARY

Regulation

1. Citation
2. Interpretation
3. Application of these regulations
4. Functions of the technical Committee

PART II - PROJECTS BRIEFS

5. Preparation of project brief
6. Submission of project brief.
7. Comments of the lead agency.
8. Consideration of the project brief
9. Approval of the project brief.

PART III - ENVIRONMENTAL IMPACT STUDIES

10. Terms of reference for environmental impact study.
11. Approval of persons to conduct assessment.
12. Public participation in making the study.

PART IV - THE ENVIRONMENTAL IMPACT STATEMENT

13. Environmental impact statement
14. Contents of the environmental impact statement.
15. Executive summary of statement.
16. Signature of statement.

PART V - REVIEW PROCESS OF THE ENVIRONMENTAL IMPACT STATEMENT

17. Submission of the environmental impact assessment.
18. Comments of the lead agency
19. Invitation for comments from public
20. Invitation for comments from persons specifically affected by the project.
21. Determination to make a decision or hold a public hearing.
22. The public hearing.
23. Persons eligible to make presentations at public hearings.

PART VI - DECISION OF THE EXECUTIVE DIRECTOR ON ENVIRONMENTAL IMPACT STATEMENTS

24. Basis of decision.
25. Decision of the executive Director.
26. Conditions of approval of a project.
27. Reasons for rejecting environmental impact assessment.
28. Cancellation of approved environmental impact assessment.

PART VII - ACCESS TO ENVIRONMENTAL IMPACT ASSESSMENT REPORTS AND INFORMATION

29. Documents deemed to be public documents.
30. Protection of proprietary information.

PART VIII - POST-ASSESSMENT ENVIRONMENTAL AUDITS

31. Self-auditing.
32. Audit by the Authority.
33. Mitigation measures.

PART IX - MISCELLANEOUS PROVISIONS

34. Environmental impact assessment of policies, projects and similar projects.
35. Effect of approval or rejection of project.
36. Offences.
37. Fees.
38. Appeals.
39. Delegation of powers.

STATUTORY INSTRUMENTS
1998 No. 13.

The Environmental Impact Assessment Regulations, 1998
(Under section 108 of the National Environment Statute, 1995, Statute No. 4 of 1995)

IN EXERCISE of the powers conferred on the Minister responsible for the National Environment Statute, 1995 by Part V and section 108 of the National Environment Statute, 1995 and on the recommendation of the Board, these regulations are made this 1 st day of May, 1998.

PART I - PRELIMINARY

Citation 1. These Regulations may be cited as the Environmental Impact Assessment Regulations, 1998.

Interpretation 2. In these regulations unless the context otherwise requires;

“Authority” means the National Environment Management Authority established under section 5 of the Statute.

“Board” means the Board established under section 9 of the Statute.

“developer” has the same meaning as assigned to it under section 2 of the Statute and includes, for the purpose of these regulations, any person who proposes to undertake a new project or to repair, extend or maintain an existing project which falls within the projects provided for in the Third Schedule to the Statute.

“Executive Director” means the Executive Director appointed under section 12 of the Statute and includes, for the purpose of these regulations, any person who has been authorized by the Executive Director to act on his behalf or has been delegated to perform the functions of the Authority under subsection (2) of section 7 of the Statute.

“economic analysis” means the use of analytical methods which take into account economic, socio-cultural, and environmental issues on a common yardstick in the assessment of projects;

“environmental audit” has the same meaning assigned to it under section 2 of the Statute and carried out as provided in section 23 of the Statute.

“environmental impact assessment” has the meaning assigned to it under section 2 of the Statute;

“environmental impact statement” means the statement described under sections 21 and 22 of the Statute and regulations 13, 14, 15 and 16 of these Regulations;

“environmental impact study” means the study conducted to determine the possible environmental impacts of a proposed project and measures to mitigate their effects as provided under sections 20, 21, and 22 of the Statute and as described in regulations 10, 11, and 12 of these Regulations;

“guidelines” means the guidelines describing the methodology for implementation of environmental impact assessment requirements adopted by the Authority under sub-section (8) of section 20 of the Statute;

“individual person” excludes corporate entities and means the human person;

“inspector” means an Inspector appointed under section 80 of the Statute;

“lead agency” means any agency on whom the Authority delegates its functions under subsection (2) of section 7 of the Statute;

“mass media” for the purpose of these regulations, includes publicly exhibited posters, newspapers, radio, television or other electronic media used for public communication;

“mitigation measures” include engineering works, technological improvements, management measures and ways and means of ameliorating losses suffered by individuals and communities including compensation and resettlement;

“project brief” has the meaning assigned to it in section 2 of the Statute and constitutes the first stage in the environmental impact assessment process as described in section 20 of the Statute. Without prejudice to the definition contained in the Statute, reference to a project proposal in any other enactment or guidelines shall be construed as reference to a project brief under the Statute;

“proprietary information” has the meaning assigned to it under sections 2 and the protection guaranteed under subsection (3) of section 86 of the Statute;

“Statute” means the National Environment Statute 1995 and may, where the context so requires, include any other enactment;

“Technical Committee” means the technical committee on Environmental Impact Assessment established under section 11 of the Statute;

“trans-boundary impacts” means impacts beyond the borders of Uganda.

*Application
of these
regulations*

3. (1) These regulations shall apply:
 - (a) to all projects included in the Third Schedule to the Statute;
 - (b) to any major repairs, extensions or routine maintenance of any existing project which is included in the Third Schedule to the Statute.
- (2) No developer shall implement a project for which environmental impact assessment is required under the Statute and under these regulations unless the environmental impact assessment has been concluded in accordance with these regulations.
- (3) Save as provided for in the Statute and these regulations, a licensing authority under any law in force in Uganda, shall require the production of a certificate of approval of environmental impact assessment before issuing a licence for any project identified in accordance with sub-regulation (1) of this regulation.
- (4) An inspector may at all reasonable times, enter on any land, premises, or other facilities to determine whether a project has complied with the requirements for environmental impact assessment under the Statute.

*Functions
of the
Technical
committee*

4. (1) The Technical Committee on Environmental Impact Assessment shall advise the Board and the Executive Director on technical issues related to the execution of environmental impact assessments as required under the Statute, and other relevant laws, and its specific shall include:
- (a) reviewing and advising on the implementation procedures for environmental impact assessment and making recommendations to the Board and the Executive Director;
 - (b) reviewing and recommending guidelines to be issued by the Authority to developers;
 - (c) reviewing and advising on the environmental impact statements, and audit reports;
 - (d) considering potential conflicts that might arise through competing requirements for environmental resources;
 - (e) recommending priority environmental controls, and management measures to be put in place during implementation of proposed projects;
 - (f) advising on harmonization of environmental impact assessment policy with sectoral policies on natural resources and environment;
 - (g) advising and recommending mechanisms for ensuring effective communication of environmental concerns associated with development projects in order to promote multi-sectoral and public participation in implementation of environmental policy;
 - (h) participating in public hearings related to adoption or modification of Uganda's environmental impact assessment process; and
 - (i) advising the Authority on any other issues related to environmental impact assessments.
- (2) The Technical Committee shall prepare and submit to the Board annual reports on its activities.
- (3) The meetings of the Technical Committee, which shall be held whenever necessary, shall be arranged in consultation with and facilitated by the Authority.
- (4) The Technical Committee may co-opt any member of the staff of the Authority or any other person whom the technical committee deems necessary for its proper functioning.

Part II - PROJECT BRIEFS

<i>Preparation of project briefs</i>	5. (1) A developer shall prepare a project brief stating, in a concise manner; (a) the nature of the project in accordance with the categories identified in the Third Schedule of the Statute; (b) the projected area of land, air and water that may be affected; (c) the activities that shall be undertaken during and after the development of the project; (d) the design of the project; (e) the materials that the project shall use, including both construction materials and inputs; (f) the possible products and by-products, including waste generation of the project; (g) the number of people that the project will employ and the economic and social benefits to the local community and the nation in general; (h) the environmental effects of the materials, methods, products and by-products of the project, and how they will be eliminated or mitigated; (i) any other matter which may be required by the Authority. (2) In preparing the project brief the developer shall pay particular attention to the issues specified in the First Schedule to these Regulations.
<i>Submission of project brief</i>	6. (1) The developer shall submit ten copies of the project brief to the Executive Director. (2) If the Executive Director deems the project brief to be complete, he may transmit a copy of the project brief to the lead agency for comments within seven working days of receiving the project brief.
<i>Comments of the lead agency</i>	7. (1) The lead agency shall make comments and transmit them to the Executive Director within fourteen working days of receiving the project brief. (2) Where the lead agency fails to make comments and transmit them to the Executive Director within the period specified in sub-regulation (1), the Executive Director may proceed to consider the project brief.
<i>Consideration of the project brief</i>	8. The Executive Director shall consider the project brief and the comments under sub-regulation (1) of regulation 7 made by the lead agency.
<i>Approval of the project brief</i> (2)	9. (1) If the Executive Director finds that the project will have significant impacts on the environment and that the project brief discloses no sufficient mitigation measures to cope with the anticipated impacts, he shall require that the developer undertakes an environmental impact study. If the Executive Director is satisfied that the project will have no significant impact on the environment, or that the project brief discloses sufficient mitigation measures to cope with the anticipated impacts he may approve the project. (3) Where the Executive Director approves the project under sub-regulation (2), he shall issue a certificate of approval on behalf of the Authority in the form provided for in the Second

Schedule to these regulations.

(4) Where the Executive Director requires that the developer undertakes an environmental impact study under sub-regulation (1), he shall notify the developer in writing within a period of twenty-one days from the date of the submission of the project brief under regulation 6.

PART III- ENVIRONMENTAL IMPACT STUDIES

*Terms of
reference for
environmental impact
assessment*

- 10 (1)** An environmental impact study shall be conducted in accordance with terms of reference developed by the developer in consultation with the Authority and the lead agency.
- (2) The terms of reference shall include all matters required to be included in the environmental impact statement provided for in regulation 14, and such other matters as the Executive Director may in writing provide.
- (3) An environmental impact study shall be conducted in accordance with the guidelines adopted by the Authority in consultation with the lead agency under subsection (8) of section 20 of the Statute.

*Approval
of persons
to conduct
assessment*

- 11 (1)** The developer, shall on the approval of the terms of reference under regulation 10 of these regulations, submit to Executive Director the names and qualifications of the persons who shall undertake the study.
- (2) The Executive Director may approve or reject the name of any person submitted under sub-regulation (1) of this regulation and require that another name be submitted within the period specified by the Executive Director in writing.
- (3) The persons undertaking the study shall conduct themselves in accordance with the guidelines, an established code of practice or the written directions issued by the Executive Director under sub-regulation (2) of regulation 10.
- (4) The code of practice established under sub-regulation (3) of this regulation shall be published in the *Gazette*.

*Public Participation
in making
the study*

- 12 (1)** The developer shall take all measures necessary to seek the views of the people in the communities which may be affected by the project during the process of conducting the study under these regulations.
- (2) In seeking the views of the people under sub-regulation (1), the developer shall:
- (a) publicise the intended project, its anticipated effects and benefits through the mass media in a language understood by the affected communities for a period of not less than fourteen days;
- (b) after the expiration of the period of fourteen days, hold meetings with the affected communities to explain the project and its effects; and
- (c) ensure that the venues and times of the meetings shall be convenient to the affected persons and shall be agreed with the leaders of local councils.

PART IV - THE ENVIRONMENTAL IMPACT STATEMENT

Environmental Impact Statement

13 (1) Where the Executive Director has, under sub-regulation 13 (1) of regulation 9 determined that an environmental impact study be made under these regulations, the developer shall make an environmental impact statement on completing the study.

(2) In making an environmental impact statement, the developer shall pay attention to the issues laid down in the First Schedule to these regulations.

Contents of the Environmental Impact Statement

14 (1) Without prejudice to the generality of the terms of reference specified under regulation 10, the environmental impact statement shall provide a description of:

- (a) the project and of the activities it is likely to generate;
- (b) the proposed site and reasons for rejecting alternative sites;
- (c) a description of the potentially affected environment including specific information necessary for identifying and assessing the environmental effects of the project;
- (d) the material in-puts into the project and their potential environmental effects;
- (e) an economic analysis of the project
- (f) the technology and processes that shall be used, and a description of alternative technologies and processes, and the reasons for not selecting them;
- (g) the products and by-products of the project;
- (h) the environmental effects of the project including the direct, indirect, cumulative, short-term and long-term effects and possible alternatives;
- (i) the measures proposed for eliminating, minimising, or mitigating adverse impacts;
- (j) an identification of gaps in knowledge and uncertainties which were encountered in compiling the required information;
- (k) an indication of whether the environment of any other State is likely to be affected and the available alternatives and mitigating measures;
- (l) of how the information provided for in this regulation has been generated;
- (m) such other matters as the Executive Director may consider necessary.

Executive Summary of Statement Signature of Statement

15. An environmental impact statement shall contain an executive summary stating the main findings and the recommendations of the study.

16. The environmental impact statement shall be signed by each of the individual persons making the impact study.

PART V - REVIEW PROCESS OF THE ENVIRONMENTAL IMPACT STATEMENT

Submission of the Environ- mental Impact Statement

- 17** (1) The developer shall submit twenty copies of the environmental impact statement to the Executive Director.
- (2) The Executive Director shall maintain a register of environmental impact statements submitted under sub-regulation (1) of this regulation.

Comments of the lead agency

- 18** (1) The Executive Director shall transmit the environmental impact statement to the lead agency and request the lead agency to make comments on the statement.
- (2) The lead agency shall make comments on the environmental impact statement and transmit them back to the Executive Director within thirty working days of receiving the environmental impact statement.
- (3) Where the lead agency fails to make comments within the period specified in sub-regulation (2), the Executive Director may make the decision under regulation 21.
- (4) The lead agency in considering the environmental impact statement under this regulation, may carry out any other procedures that the Technical Committee may consider necessary.
- (5) The lead agency shall not be required to make comments under sub-regulation (2) where that lead agency is the developer.
- (6) Where the lead agency is the developer, it shall be required to submit its environmental impact statement to the Executive Director who shall make comments or invite other lead agencies to make comments.

Invitation of general public comments

- 19** (1) The Executive Director shall within ten days of receiving the comments of the lead agency, and if he is satisfied that the environmental impact statement is complete, invite the general public to make written comments on the environmental impact statement.
- (2) The invitation of the general public to make written comments shall be made in a newspaper having national or local circulation and shall be exhibited in the newspaper for such period as the Executive Director considers necessary.
- (3) The invitation under sub-regulation (2) shall state:
- (a) the nature of the project;
 - (b) the location of the project;
 - (c) the anticipated negative and positive impacts of the project; and
 - (d) the proposed mitigation measures to respond to the negative impacts.
- (4) The comments under sub-regulation (1), shall be received by the Executive Director within a period of twenty-eight days from the date of the invitation issued under sub-regulation (2).

*Invitation for
comments
from persons
specifically
affected by
project*

*Act No. 1
of 1997*

- 20** (1) The Executive Director shall on receiving the comments of the lead agency under sub-regulation (2) of regulation 18 invite the comments of those persons who are most likely to be affected by the proposed project.
- (2) The invitation of the persons who are most likely to be affected by the project shall be made in a newspaper having local circulation in the area where the project shall be located and on other mass media and through the distribution of the necessary information through lower governments established under the Local Government Act, 1997 and shall be in languages understood by the majority of the affected persons.
- (3) The invitation under sub-regulation (2) shall state:
- (a) the nature of the project;
 - (b) the location of the project;
 - (c) the benefits of the project to the local community ;
 - (d) the anticipated positive and negative environmental impacts of the project; and
 - (e) the proposed mitigation measures to respond to the negative impacts.
- (4) The individual or collective written comments of the persons likely to be affected by the project shall be received by the Executive Director within a period of twenty one days from the date of the invitation issued under sub-regulation (2).

*Determin-
ation to
make a
decision
or hold a
Public
Hearing*

*The
Public
Hearing*

- 21** (1) The Executive Director shall consider the environmental impact statement and all the comments received under regulations 18, 19, and 20 and make the decision under regulation 25 or determine whether a public hearing be held under regulation 22.
- (2) The Executive Director shall call for a public hearing under these regulations where there is a controversy or where the project may have trans-boundary impacts.
- 22** (1) On the written request of the Executive Director, the lead agency shall hold a public hearing on the environmental impact statement if:
- (a) as a result of the comments made under regulations 18, 19 and 20, the Executive Director is of the opinion that a public hearing will enable him to make a fair and just decision;
 - (b) the Executive Director considers it necessary for the protection of the environment and the promotion of good governance.
- (2) The public hearing shall be held within such period as the Executive Director in consultation with the lead agency may determine but which period shall not be less than thirty days nor more than forty five days of receiving comments under regulations 18, 19 and 20.
- (3) The public hearing shall be presided over by a suitably qualified person known as a presiding officer, appointed by lead agency in consultation with the Executive Director.
- (4) The person appointed under sub-regulation (3) shall serve on such terms and conditions as the lead agency and the person so appointed may agree.

- (5) Notwithstanding sub-regulation (3), the scope of the public hearing determined in the terms and conditions under sub-regulation (4) shall be commensurate with the nature and size of the project.
- (6) The public hearing shall be conducted at a venue which shall be convenient and accessible to those persons who are likely to be specifically affected by the project.
- (7) The date and venue of the public hearing shall be advertised through the mass media, so as to bring it to the attention of persons most likely to be affected by the project and those persons making comments under regulation 20.
- (8) On the conclusion of the public hearing, the presiding officer shall make a report of the views presented at the public hearing and make factual findings to the lead agency and the Executive Director within thirty days from the day on which the public hearing was concluded.
- (9) The lead agency shall make a report to the Executive Director containing the findings and recommendations from the public hearing within twenty one days from the day the public hearing was concluded.

Persons eligible to make presentations at public hearings

- 23 (1) Any person may attend either in person or through a representative and make presentations at a public hearing provided that the presiding officer shall have the right to disallow frivolous and vexatious presentations which lead to the abuse of the hearing.
- (2) The developer shall be given an opportunity to answer to any presentation made at the public hearing and to provide further information relating to the project.
 - (3) The Technical Committee shall advice on the procedure for the making of presentations at public hearings under these regulations.

PART VI - DECISION OF THE EXECUTIVE DIRECTOR ON ENVIRONMENTAL IMPACT STATEMENTS

*Basis
of
decision*

- 24 (1)** In making a decision regarding an environmental impact assessment under these regulations, the Executive Director shall take into account;
- (a) the validity of the predictions made in the environmental impact statement under Part V of these regulations;
 - (b) the comments made under these regulations;
 - (c) the report of the presiding officer at a public hearing under regulation 22, where applicable;
 - (d) analysis of the economic and social cultural impacts of the project; and
 - (e) other factors which the Executive Director considers crucial in the particular circumstances of the project.
- (2)** The Executive Director shall make a decision under this regulation within less than one hundred and eighty days from the date on which the environmental impact statement was submitted under regulation 17.

*Decision
of the
Executive
Director*

- 22 (1)** The Executive Director in taking into account the whole review process may:
- (a) approve the project or part thereof;
 - (b) require that the project be redesigned including directing that different technology or an alternative site be chosen,
 - (c) refer back the project or part thereof to the developer where there is insufficient information for further study or submission of additional information as may be required to enable the Executive Director make a decision; or
 - (d) reject the project.
- (2)** A decision of the Executive Director under this regulation shall be communicated to the developer within fourteen days of the decision.

*Conditions
of
approval*

- 26** In making his decision to approve the project, the Executive Director shall:
- (a) give approval subject to such conditions as it deems necessary of a project;
 - (b) state the period for which the approval shall remain valid;
 - (c) issue a certificate of approval of the project in the form contained in the Second Schedule to these regulations.

*Reasons
for
rejecting
the project*

- 27 (1)** Where the Executive Director makes a decision to reject a project under paragraph (d) of sub-regulation (1) of regulation 25, he shall state the reasons in writing.
- (2)** The decision of the Executive Director in accordance with paragraph (d) of sub-regulation (1) of regulation 25 and sub regulation (1) of this regulation shall be communicated to the developer within fourteen days of the decision.

***Cancellation
of Approved
Environmental
Impact
Assessment***

28 (1) At any time after the issuance of a certificate of approval of the project, the Executive Director may revoke the approval where:

- (a) there is non compliance with the conditions set out in the certificate;
 - (b) where there is a substantial modification of the project implementation or operation which may lead to adverse environmental impacts;
 - (c) where there is a substantive undesirable effect not contemplated in the approval.
- (2)** Where a certificate of approval is cancelled under sub-regulation the developer shall stop any further development pending rectification of the adverse impact.

PART VII - ACCESS TO ENVIRONMENTAL IMPACT ASSESSMENT REPORTS AND INFORMATION

Documents deemed to be public documents

29 (1) Subject to article 41 of the Constitution and subsection (3) of section 86 of the Statute, any project brief, environmental impact review report; environmental impact evaluation report, environmental impact statement, terms of reference, public comments, report of the presiding officer at a public hearing or any other information submitted to the Executive Director or the Technical Committee under these regulations shall be public documents.

(2) Any person who desires to consult the documents described in sub-regulation (1) of this regulation shall, subject to section 86 of the Statute, be granted access by the Authority on such terms and conditions as the Authority considers necessary.

Protection of proprietary information

30 (1) Where at any stage of the process of implementing these regulations, the developer claims in writing that any information submitted to the Authority is, under sub-section (3) of section 86 of the Statute, proprietary;

(a) the Executive Director shall review such claim and take adequate precautions to prevent disclosure of such information, and

(b) no person shall copy, circulate, publish or disclose such information.

(2) The Executive Director after reviewing the claim, may request the developer to submit such additional information to determine whether the information is proprietary or not.

(3) Where the Executive Director determines that the information is proprietary, such information will be excluded from the project brief or the environmental impact statement, whichever the case it may be, but shall remain available to the Authority and the Authority shall take all measures to maintain the confidentiality of the information.

(4) Where the Executive Director rejects the claim that the information is proprietary, he shall communicate to the developer and request the developer to either;

(a) waive the claim and continue with the assessment and review process under these Regulations, or

(b) withdraw the information submitted from the assessment and withdraw from the review process under these Regulations.

PART VIII - POST-ASSESSMENT ENVIRONMENTAL AUDITS

Self-auditing

31 (1) In executing the project, after the environmental impact assessment has been approved by the Executive Director, the developer shall take all practicable measures to ensure that the predictions made in the project brief, or environmental impact statement are complied with.

(2) Within a period of not less than twelve months and not more than thirty six months after the completion of the project or the commencement of its operations, whichever is earlier, the developer shall undertake an initial environmental audit of the project, provided that an audit may be required sooner if the life of the project is shorter than the period prescribed under this sub-regulation.

- (3) The initial environmental audit under sub-regulation (2) shall be carried out by persons whose names and qualifications have been approved by the Executive Director for the purpose.
- (4) Subsequent to the initial environmental audit, the Executive Director may require the developer to carry out such other audits at such times as the Executive Director considers necessary.
- (5) An environmental audit report shall be prepared after each audit and shall be submitted to the Executive Director by the developer.

*Audit
by the
Authority*

- 31 (1) An inspector designated under section 80 of the Statute may, at all reasonable times, enter on any land, premises or other facility related to a project for which a project brief, or an environmental impact statement has been made under these regulations, to determine how far the predictions made in the project brief, or the environmental impact statement, whichever the case may be, are complied with.
- (2) An inspector acting pursuant to this regulation may examine and copy records and exercise all or any of the powers provided for under section 81 of the Statute.
- (3) A member of public, after showing reasonable cause, may petition the Executive Director, to cause an audit to be carried out on any project.

*Mitigation
measures*

- 32 (1) After studying the audit report made under regulations 31 and 32, the Executive Director that the developer takes specific mitigation measures to ensure compliance with the predictions may require made in the project brief, or environmental impact statement whichever the case may be.
- (2) The mitigation measures in sub-regulation (1) shall be communicated to the developer in writing, specifying the period within which the measures shall be taken.
- (3) Where a developer fails to implement the mitigation measures communicated under sub-regulation (2), an inspector may issue against such a person an improvement notice under Section 81 of the Statute and commence such criminal and civil proceedings provided for under the Statute as are appropriate.

PART IX - MISCELLANEOUS PROVISIONS

Environmental impact assessment of policies projects and similar projects.

- 34 (1) An environmental impact assessment of a policy under these regulations does not exclude the need to assess the environmental impact of specific projects proposed in accordance with the policy.
- 2) The Executive Director may, in approving the terms of reference (of an environmental impact study for a project under regulation 10, exclude those general matters which have already been covered in the assessment of a policy.
- (3) A previous environmental impact assessment of a similar project under these regulations does not exclude the environmental impact assessment of a later project.

Effect of approval or rejection of project (2)

- 35 (1) No civil or criminal liability, in respect of an approval of a project or consequence resulting from an approved project, shall be incurred by the Executive Director or any person acting on his behalf, by reason of the approval, rejection or denial or any conditions attached to the approval. The fact that an approval is made in respect of an environmental impact assessment shall afford no defence to any civil action or to a criminal prosecution under any enactment concerning the project or the manner it is operated or managed.

Offences

- 36 (1) Notwithstanding any licence, permit or approval granted under any enactment, any person who commences, proceeds with, carries out, executes or conducts or causes to commence, proceed with, carry out, execute or conduct of any project without approval from the Authority under the Statute or these regulations, commits an offence contrary to section 97 of the Statute and on conviction is liable to a penalty prescribed under the section.
- (2) Any person who:
- (a) fails to prepare and submit a project brief to the Executive Director contrary to regulations 5 and 6;
- (b) fails to prepare and submit an environmental impact statement contrary to regulations 13, 14, 15 and 16;
- (c) is in breach of any condition of approval of the environmental impact assessment; commits an offence contrary to section 97 of the Statute and on conviction, is liable to the penalty prescribed under the section.
- (3) Any person who:
- (a) fraudulently makes a false statement in a project brief, impact statement contrary to these regulations;
- (b) fraudulently alters project brief, or an environmental impact statement contrary to these regulations;
- (c) fails, in the development of a project, to abide by the conditions of approval under regulation 26;
- (d) fraudulently makes a false statement in an environmental audit contrary to these regulations; commits an offence contrary to section 97 of the Statute and on conviction, is liable to the penalty prescribed under the section.

Fees

- 37** (1) For the purpose of giving full effect of these regulations, and by virtue of subsection (1) of section 108 and paragraph (c) of subsection (2) of section 89, the Authority shall, depending on the size of the project in question and on the circumstances of each particular case, charge a fee on the developer for the following activities:
- (a) for a project brief or an environmental impact assessment the fees payable shall be as specified in Schedule Four to these regulations.
 - (b) access to records under subsection (1) of section 86;
 - (c) any other amount that is necessary.
- (2) The developer shall, in addition to the fees under sub-regulation (1) of this regulation, pay for any advertisements required under regulations 19, 20 and sub-regulation (5) of regulation 22.
- (3) The Minister may, on the recommendation of the Executive Director, amend the Schedule referred to in sub-regulation 1.

Appeals

- 38** (1) Notwithstanding the provisions of section 105, any person who is aggrieved by any decision of the Executive Director may, within thirty days of the decision, appeal to the High Court.

***Delegation
of powers
and functions.***

- 39** The Executive Director may, where necessary, delegate any of the functions and powers under these regulations to any other Officer of the Authority or to a lead agency.

- - - -

FIRST SCHEDULE

r.5 (2)

ISSUES TO BE CONSIDERED IN MAKING ENVIRONMENTAL IMPACT ASSESSMENT

The following issues may, among others, be considered in the making of environmental impact assessments.

(1) Ecological Considerations;

a) Biological diversity including:

- (i) effect of proposal on number, diversity, breeding habits, etc. of wild animals and vegetation.
- (ii) gene pool of domesticated plants and animals e.g. monoculture vs wild types.

b) Sustainable use including:

- (i) effect of proposal on soil fertility.
- (ii) breeding populations of fish and game.
- (iii) natural regeneration of woodland and sustainable yield.
- (v) wetland resource degradation or wise use of wetlands.

c) Ecosystem maintenance including:

- (i) effect of proposal on food chains.
- (ii) nutrient cycles.
- (iii) aquifer recharge, water run-off rates etc.
- (iv) a real extent of habitants.
- (v) fragile ecosystems.

2. Social considerations including:

- (i) effects of proposal on generation or reduction of employment in the area.
- (ii) social cohesion or disruption
- (iii) effect on human health
- (iv) immigration or emigration
- (v) communication - roads opened up, closed, re-routed.
- (vi) local economy.
- (vii) effects on culture and objects of cultural value.

3. Landscape:

- (i) views opened up or closed.
- (ii) visual impacts (features, removal of vegetation, etc.)
- (iii) compatibility with surrounding area.
- (iv) amenity opened up or closed, e.g. recreation possibilities.

4. Land Uses:

- (i) effects of proposal on current land uses and land use potentials in the project area.
- (ii) possibility of multiple use.
- (iii) effects of proposal on surrounding land uses and land use potentials.

SECOND SCHEDULE

RR.9 (3), 26

REPUBLIC OF UGANDA

THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

The National Environment Statute, No. 4 OF 1995

CERTIFICATE OF APPROVAL OF ENVIRONMENT IMPACT
ASSESSMENT*

(The Environmental Impact Assessment Regulations, 1997 regulation 9 (3), 26)

Certificate No. NEA/EA/1

This is to certify that the Project Brief/Environmental Impact Statement (EI)** received from:

M/S.....of
.....submitted in
accordance with the National Environment Statute to the National Environment Management Authority (NEA) regarding:

(Title of Project):

briefly described as

(Nature, Purpose)

located at.....

(District/sub county/City/town/ward):

has been reviewed and was found to:

** have no significant environmental impacts and was approved.

** have significant environmental impacts and the following appropriate mitigation measures were identified and made a condition precedent for
approval and implementation:

(Attach relevant details where necessary)

Dated at.....on.....19.....

Signed

Seal

Executive Director

NEMA

** To be issued in Quadruplicate: Original to Developer: Duplicate to Lead Agency: Triplicate to the Authority: Quadruplicate to any other relevant agency.*

*** Delete whichever is not applicable.*

SCHEDULE THREE

FEEs

Fees payable of project briefs and environmental impact assessment under sub-regulation (10 of regulation 37.

1. Where the total value of the project does not exceed Shs. 50,000,000/= the amount payable shall be Shs. 250,000/=;
2. Where the total value of the project is more than Shs. 50,000,000/= but does not exceed Shs. 100,000,000/= the amount payable shall be Shs. 500,000/=;
3. Where the total value of the project is more than Shs. 100,000,000/= but does not exceed Shs. 250,000,000/= the amount payable shall be Shs. 750,000/=;
4. Where the total value of the project is more than Shs. 250,000,000/= but does not exceed Shs. 500,000,000/= the amount payable shall be Shs. 1,000,000/=;
5. Where the total value of the project is more than Shs. 500,000,000/= but does not exceed Shs. 1,000,000,000/= the amount payable shall be Shs. 1,250,000/=;
6. Where the total value of the project is more than Shs. 1,000,000,000/= but does not exceed Shs. 5,000,000,000/= the amount payable shall be Shs. 2,000,000/=; and
7. Where the total value of the project is more than Shs. 5,000,000,000/=, the amount payable shall be 0.1% of the total value of the project.

.....
Gerald Sendaula

Minister responsible for the National Environment Statute, 1995

ANNEX I
UNITED NATIONS ENVIRONMENT PROGRAMME
PROGRAMME DES NATIONS UNIES POUR L'ENVIRONNEMENT
UNEP/UNDP JOINT PROJECT ON ENVIRONMENTAL LAW
AND INSTITUTIONS IN AFRICA

WORKSHOP ON DEVELOPMENT AND HARMONIZATION OF
WORKSHOP ON DEVELOPMENT AND HARMONIZATION OF
ENVIRONMENTAL LAW ON SELECTED TOPICS
IN EAST AFRICA

2nd to 10th February 1998

Venue: Sunset Hotel, Kisumu, Kenya

I. INTRODUCTION

This is a synoptic outline for a workshop to discuss the development and harmonization of environmental law on selected topics in the East African Region under the UNEP/UNDP/DUTCH Joint Project on Environmental Law and Institutions in Africa. The purpose is to provide a handy brief on the objectives of the workshop. A brief background, particularly how the workshop falls into the overall picture of the Joint Project, is provided. The section on participants indicates the mode of selection and the role to be played by the individuals. That is directly related to the schedule of the workshop, which outlines the procedure for the participation of those invited.

Finally, the section on the procedure for finalization of the report is outlined.

II. BACKGROUND

The East African Sub-Regional Project is a component of the UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa funded by the Dutch Government. Systematic and essentially national activities are being conducted in Burkina Faso, Malawi, Mozambique and in Sao Tome and Principe. Although South Africa was identified by the Project Steering Committee as a project country, no systematic activities have been done there and no firm decision has been taken by the Government as to whether they will, in fact, be so involved. This uncertainty is occasioned by the broad constitutional, policy and legislative reorientations which have been evolving in the country since 1994.

The activities of the Joint Project in East Africa (Kenya, Tanzania and Uganda) focus on matters of sub-regional character. The underlying presupposition is that the physical and historical situation in East Africa offered an opportunity to initiate and encourage dealing with environmental issues according to problem-sheds. The historical facts are that (a) there is a history of regional cooperation among the countries from colonial times; and (b) there is shared legal tradition which derives from common law origins. It was resolved by the Project Steering Committee that the two historical facts could be relied upon to support harmonized legislation on selected themes in the commonly shared environment.

Representatives of the three governments met in February 1995 to work out general principles and modalities for their cooperation. Their second meeting was in May 1995 to discuss the general terrain of topics amenable to development and harmonization of laws. The final decision on six priority topics was taken at their third meeting in February 1996.

The six topics which were selected for the Project's activities are: (i) Development and harmonization of EIA Regulations; (ii) Development and harmonization of laws relating to trans-boundary movement of hazardous wastes; (iii) Development and harmonization of the methodologies for the development of environmental standards; (iv) Development and harmonization of forestry laws; (v) Development and harmonization of wildlife laws; and (vi) Recommendation for legal and institutional framework for the protection of the environment of Lake Victoria. For each of the topics, the delegates

worked out generic terms of reference. However, each national team was subsequently to work out country-specific terms of reference to reflect national legal and institutional situations as well as existing priorities.

The respective national consultants were also selected by the National Coordinating Committees (NCC), working in consultation with an officer at the UNDP country office.

The national consultants have now completed their work. In each case, the reports have enjoyed review by the national panels constituted under the aegis of the respective NCCs. Draft reports, as they evolved, were circulated to the consultants in the three countries. In some cases, the consultants were able to take the reports of their counterparts into account in finalizing their reports. Therefore, some degree of harmonization of reports will, presumably, have been done.

The workshop which is proposed herein, will bring together the consultants for each topic for substantive discussions of their reports and to agree on recommendations as to what should be done next and by whom.

III. OBJECTIVES

The objectives of the workshop may be summarized as follows:

- (1) to ensure that the recommendations for policies and law for the respective topics are in harmony as far as possible;
- (2) to promote the development of legal and institutional machineries which are comparable in all the three East African countries in the absence of an over-arching sub-regional framework;
- (3) to harmonize the normative prescriptions and institutional machineries and therefore create an opportunity for harmonized enforcement procedures;
- (4) to create an opportunity for dealing with the respective environmental problems according to the problem-sheds, which are essentially sub-regional;
- (5) to make recommendations on how each country should proceed towards implementation of the recommendations.

IV PARTICIPANTS

There will be four (4) broad categories of participants, over a seven days period:

- (1) Consultants who worked on each respective topic. These will work as specific sub-regional teams of experts of reach topic and the number per topic varies by the subject and from country to country. The selection of consultants was done so as to ensure complementarity of expertise and, therefore, full coverage of the topic.

A list of consultants by the topics is attached.

- (2) National Coordinators for the project will attend from each of the three countries. Since they are in the picture of the project and how the consultancies were carried out at the national level, the coordinators will attend throughout the workshop. They are to carry the national spirit and ownership, ensuring that the workshop recommendations are consistent with national legislative procedures and policies. They can therefore suggest adjustment in the recommendations while maintaining the overall objectives.

The meeting of country representatives in February 1995 had suggested that the national coordinator, who would eventually attend this workshop, should ideally have legal training. However, where the coordinator has no legal training then he/she should be accompanied to this workshop by another government officer who is fully aware of this project and is legally trained.

The rationale for this position is that the coordinator (and such an associate) would be responsible for ensuring that the documents emanating from the workshop are consistent with the national legislative framework, procedures and policies.

This provision should explain instances where the one national coordinator may be accompanied by an additional officer. The national coordinator and his/her associate would also have two procedural functions at the workshop. First, they would be advisors to the meeting of permanent secretaries (see below) on the substance and procedures of the project. Secondly, they will present the status report on the evolution of the project at country level, to the meeting of permanent secretaries.

- (3) There will be two principal Facilitators at the Workshop. The two persons will have read all the six reports from the three countries and identified the main features/typologies which require (i) improvement for internal cogency and/or (ii) harmonization from normative, procedural or institutional point of view.

It is proposed here that while the foregoing preparation should ideally cover all the six topics from the three countries, it may be practical for the respective facilitator to read broadly, but prepare detailed comments on only three topics. We anticipate that two teams of respective consultants on each topic will run concurrently for a maximum of two days for each topic, making a total of three days for the consultants' sessions. Thus, a facilitator would work in details with one group on three teams for the respective three days.

The East African Sub-Regional Project has been an intriguing experiment not only for the project management but also for members of the Steering Committee. The latter group is keen to follow the procedure and see the quality of the outcome. For these reasons, the project management has deemed it fit that the facilitators for each team of consultants should be from the institutions and members of the Steering Committee.

It is with gratitude we record here that Professor David Freestone (The World Bank) and Mr. Jonathan Lindsay (FAO) have accepted to assist as facilitators for the workshop.

- (4) A meeting for Permanent/Principal Secretaries responsible for environment from the three countries, was proposed by the 1995 meeting, as a component of the sub-regional workshop. Therefore, there would be only one such officer from each of the three countries, making a total of three.

Their meeting will be attended by the national coordinators as discussed above.

The permanent/principal secretaries are the accounting officers and policy leaders in their ministries. It was deemed essential that they receive a full briefing on the aspirations and activities of the project. In this way they can discuss the deliverables and take decisions and assume actual ownership of the outcome.

Ultimately, their cooperation and support is essential for the national level adoption and enactment of the recommendations of this project.

This explains the necessity of a meeting of these senior officers together with their national coordinators, with pertinent legal backing. It is also essential that this meeting be held towards the end of the workshop, to receive the report or outcome of the sessions of consultants.

The meeting will comprise a briefing on the overall Joint Project by the management, and a report on the national activities by each of the three coordinators; workshop reports from the meeting of consultants on each of the project topics, given by the national coordinators. In other words, each national coordinator will assume the repertory role for two of the six topics.

- (5) The overall workshop Chair will be by Director, UNEP Environmental Law and Institutions, Programme Activity Centre.

V. PROGRAMME OF THE WORKSHOP

The Workshop will be divided into two broad categories:

1. Meeting of Experts/Consultants
2. Meeting of Permanent/Principal Secretaries

The duration is from 2nd to 10th February 1998. The daily schedule will be from 0830 hours to 1700 hours, subject to variation by necessity.

Although the records of the proceedings will be kept by the Secretariat, it is proposed that a representative/consultant from one of the countries be the official rapporteur, responsible to the workshops, for the accuracy of the reports. Subject to confirmation by the meeting of consultants, we propose that the country teams be designated as rapporteurs as follows: EIA Regulations (Uganda); Lake Victoria Environment (Tanzania); Hazardous Wastes (Tanzania); Environmental Standards (Uganda); Wildlife (Kenya); and Forestry (Kenya).

Daily meetings of the experts will run on two Tracks, as below:

<i>Dates</i>	<i>Track I in Topics</i>	<i>Track II Topics</i>
<i>2nd & 3rd February</i>	EIA Regulations	Lake Victoria Environment
4th & 5th February	Hazardous Wastes	Wildlife Legislation
6th & 7th February	Environmental Standards	Forestry Legislation

Consultants for each topic will arrive the day before their respective topics schedules on the programme and depart after the end of the second day. The Coordinators as described above will stay from 1st to 10th February 1998.

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|-----------------------|---|---|
| 8th February | - | Preparation of reports by the Coordinators |
| | - | Arrival of Principal/Permanent Secretaries |
| 9th and 10th February | - | Meeting of the Permanent/Principal Secretaries (with Facilitators from FAO and The World Bank and the National Coordinators). The six topics will be paced out over the two days and resolution adopted at the end of the deliberations. A detailed programme of work for the two days will be drawn in consultations with the national coordinators. |

VI. OUTLOOK

At the end of the meeting of the experts, each consultant will be expected to have a clear picture of what additional amendments or changes they need to do to effect the harmonization. It will be urged that such amendments are completed within approximately two weeks after the workshop.

Secondly, the national coordinators will advise on the approximate schedule for the national consensus-building workshops and implementation of recommendations.

Finally, the consultants will make such other adjustments as may be recommended by the workshop. The national coordinators will advise on when the final reports will be submitted and, therefore, the activities concluded.

The principal/permanent secretaries may, in instances where they deem it practical, advise on when the legislative actions might be taken at national level on each topic.

UNITED
NATIONS



UNEP/UNDP/Joint Project



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**UNEP/UNDP JOINT PROJECT ON ENVIRONMENTAL
LAW AND INSTITUTIONS IN AFRICA**

**EAST AFRICAN SUB-REGIONAL PROJECT MEETING OF THE
PERMANENT SECRETARIES RESPONSIBLE FOR
ENVIRONMENTAL MATTERS**

Nairobi, 15 April 1998

**REPORT OF THE MEETING OF THE PERMANENT SECRETARIES ON THE DEVELOPMENT
AND HARMONIZATION OF ENVIRONMENTAL LAW ON SELECTED TOPICS UNDER
THE EAST AFRICAN SUB-REGIONAL PROJECT**

Background:

1. The meeting of the Permanent Secretaries responsible for environmental matters in Kenya, Uganda and Tanzania met in Nairobi, Kenya at the UNEP Headquarters on 15 April 1998. The meeting marked a culmination of series of activities executed under the East African Sub-regional Project of the UNEP/UNDP/Dutch Joint Project on Environmental Law and Institutions in Africa which began in 1995. In particular, the Permanent Secretaries met to discuss, evaluate and assess the recommendations made by a series of six sub-workshops held simultaneously and back to back in Kisumu, Kenya from 2-10 February 1998.
2. The sub-workshops had reviewed and assessed the reports prepared by national consultants on the six priority areas identified earlier on, namely, Environmental Impact Assessment (EIA) Regulations, Hazardous Wastes, Environmental Standards, Lake Victoria Environment, Wildlife laws and Forestry laws. Furthermore, each sub-workshop had made a series of recommendations geared towards assisting the national consultants with mechanisms to strengthen their reports on the basis of discussions and comments made in the relevant sub-workshops.
3. Based on recommendations made by experts in the six sub-workshops, the meeting of Permanent Secretaries was convened as above stated to review the work of the experts and the recommendations for action. The one day meeting was followed by another day's meeting of the National Coordinators of the Project to finalize the documents, on the basis of instructions given by the Permanent Secretaries.

OPENING OF THE MEETING:

4. The meeting of the Permanent Secretaries was officially opened by Mr. Donald Kaniaru, Director, UNEP, ELU/PAC, at 9.10 a.m. on 15 April 1998 at UNEP Headquarters. The morning part of the meeting was chaired by Mr. Donald Kaniaru, while the latter afternoon part was chaired by Mr. Patrick Kahangire, Acting Permanent Secretary, Ministry of Natural Resources, Uganda.

5. In his opening remarks, Mr. Kaniaru expressed his hope that the intervening period had provided appropriate opportunities to the Permanent Secretaries to be briefed on the results of the sub-workshops by their National Coordinators, and that in turn, they had consulted their other colleagues in the relevant Government departments on the issues discussed. In that regard, he called upon the Permanent Secretaries to comment on each of the six areas, principally focusing on updates and actions taken since the sub-workshops in February 1998. He further requested them to endorse or modify or add to the recommendations or specific points made by the consultants to pave the way for targeted implementation.

6. He concluded by urging that the three Governments should advise the relevant departments dealing with the East African Co-operation Secretariat (EAC) of the evolving need to take up environmental policy coordination questions urgently, and the possibility of negotiating treaties or protocols to give legal effect to the recommendations made by the consultants. He assured the Permanent Secretaries that once EAC is advised by the Governments, UNEP would be ready to assist by making its expertise available to the EAC and the Governments.

BRIEF ON THE SCOPE OF THE JOINT PROJECT:

The Task Manager of the UNEP/UNDP Joint Project in Environmental Law and Institutions in Africa, Professor Charles O. Okidi, briefed the Permanent Secretaries on the scope, objective and status of the Joint Project including the sub-regional project. He clearly showed them what the Sub-Regional Project has achieved to date and where it stands in relation to the overall Joint Project.

STATEMENTS BY PERMANENT SECRETARIES:

The Permanent Secretaries made statements and, in particular, informed the other participants the role the Joint Project has played in their countries, in particular, in the field of the development of environmental law and institutions including building the capacities of their officials and institutions. Status of development of environmental legislation in each country were narrated in the statements including the constraints faced in the implementation of some of the activities.

The Permanent Secretaries appreciated the Joint Project efforts in organizing several capacity building workshops in the field of environmental law. They were also delighted with the efforts taken by the Project to utilize national experts to undertake review of the six priority areas. The exercise has succeeded in building a cadre of national expertise in the field of environmental law and ensures national ownership of the reports produced and laws and/or implementing regulations prepared.

7. All of them were thankful to the sponsor of the Joint Project, the Dutch Government, the implementors of the Project, UNEP and UNDP as well as all other supporting partner organizations, IUCN, FAO, and the World Bank. To this end, they unanimously recommended the extension of the Joint Project to permit them to complete the on-going activities and allow the Governments to develop regulations to implement the six areas. They emphasized that the extended period would equally permit them to focus on new priority areas identified by their experts.

PRESENTATION OF THE REPORTS OF THE SUB-WORKSHOPS:

8. On behalf of the National Coordinator from Tanzania, the National Coordinators from Kenya and Uganda officially presented to the Permanent Secretaries the reports which were adopted by the experts of each Sub-Workshop on the six areas discussed during their meetings held in Kisumu, Kenya from 2 to 10 February 1998. The presentation of each report was followed by discussion of the issues raised and recommendations made. As necessary, an update of the facts or situation since February 1998 in each country was made. For instance, Uganda reported that they had their national consensus building workshop to review the reports and the revised reports have already been forwarded to UNEP. Kenya reported that it was going to hold its national workshop from 26 April to 1 May 1998 to review the consultants' reports and recommendations. Tanzania on the other hand, reported that it held its national workshop on 11 April 1998 whereby the reports were reviewed and recommendations made. As the result of the national workshop recommendations, Tanzania had requested for extension of time to permit the consultant to prepare the report on EIA while the one dealing with the forestry legislation to rewrite it to the required standards.

9. The reports presented were on the development and harmonization on the following six areas-

- (i) Environmental Impact Assessment Regulations
- (ii) Forestry Legislation
- (iii) Trans-boundary Movement of Hazardous Wastes
- (iv) Methodology for the Development of Environmental Standards
- (v) Management of the Lake Victoria Environment
- (vi) Wildlife Legislation.

10. The presentation of each report was divided into four main sectors. They were namely-

- (i) General overview of the reports as presented by the national consultants in the sub-workshop.
- (ii) Reasons justifying the need for sub-regional harmonization of each area presented.
- (iii) Common elements to be considered by Governments during the preparation of national legislation in each of the six areas.
- (iv) Conclusions made by each sub-workshop, namely, requesting EAC to assist in the preparation of an overarching agreement on the environment with sectoral Protocols on each of the six areas. While requesting UNEP to facilitate the development of the agreement and the protocols, reports urged the donor to favourably consider extending the Joint Project.

RECOMMENDATIONS:

11. The Permanent Secretaries endorsed all the six reports of the sub-workshops together with the recommendations made with minor adjustments. They all acknowledged that the reports were a clear testimony of success of the capacity which the Joint Project has built in their countries during the execution of Joint Project activities. They expressed satisfaction with the good quality of the reports which were presented to them. While they agreed that the Joint Project has succeeded in organizing capacity building in a number of areas in environmental management, they recommended more training programmes to include the private sector. Of priority importance, the Permanent Secretaries emphasized a training programme on EIA for the private sector.

12. While requesting UNEP to assist in the implementation of all the recommendations made, the Permanent Secretaries promised to commit themselves to support implementation of activities at national level. In addition, they promised to ensure that the recommendations they have adopted are forwarded to the EAC for implementation as proposed. They recognized the need for an overarching treaty/protocol on the environment which will facilitate future development of sectoral protocols on different priority areas. To this end, they requested UNEP to facilitate and support EAC and the Governments in the development of the proposed protocols, at appropriate moments.

13. To synthesize their endorsement of the recommendations made by their experts, the Permanent Secretaries requested UNEP to assist and support them in the preparation of a Memorandum of Understanding (MOU) on Environment as a matter of urgency. Consequently, the Permanent Secretaries mandated and instructed their National Coordinators to commence preparation of the draft MOU for their consideration. After consultation, the meeting agreed that the first meeting of the National Legal Experts under the sub-regional project will be held from 25 to 26 May 1998 to discuss and review the draft text which would have by then been prepared and circulated to the national experts for their input. The Permanent Secretaries expects the text to be ready for adoption at the latest in July 1998.

14. Furthermore, as recommended by the experts, the Permanent Secretaries strongly requested the extension of the Joint Project to allow them to complete the activities already under way. Extension would also permit Governments to strengthen and reinforce the completed activities by developing implementing regulations. They hope that the extended period would equally permit them to focus on new priority areas to be identified.

FOLLOW UP:

15. The Permanent Secretaries instructed the National Coordinators who met for another extra day on 16 April 1998, to finalize and compile documents discussed in their meeting.

They were instructed to prepare the following from the recommendations of the experts on the six areas which had been endorsed and the new recommendations which emanated from the meeting:-

- (i) To identify from the reports of the Sub-Workshops recommendations which cut across and common to all the six areas and those recommendations specific only to certain areas. The identification of these issues are attached as *Annex IV*.
- (ii) To identify recommendations which are addressed to Governments for their implementation. These are attached as *Annex V*.
- (iii) To identify recommendations addressed specifically to EAC for their action and execution. These are enclosed as *Annex VI*.
- (iv) To identify those recommendations which requested the support and assistance of UNEP and its affiliates in their implementation. These are enclosed as *Annex VII*.
- (v) To prepare for their adoption and signature, by July 1998, a MOU on Environment. MOU, they emphasized, will be benchmark for the success of the activities under the East African Sub-project.

CLOSING REMARKS:

16. After usual exchange of courtesies and appreciations for the cordial and friendly atmosphere, the meeting was declared closed at 18.00 hours on 15 April 1998.

**RECOMMENDATIONS ON THE HARMONISATION OF RECOMMENDATIONS
ON THE HARMONISATION OF ISSUES FOR THE DEVELOPMENT OF
ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS**

The three reports of Kenya, Tanzania and Uganda were harmonized and the following are the major themes for the development of environmental impact assessment regulations.

1. The definition of environment for EIA purposes should be harmonized to include the physical and human environment.
2. EIA should be enacted into a legal instrument.
3. A harmonized system of categorization or of criteria for the EIA process should be put in place to ensure consistency among the three countries.
4. A methodology for regional and for policy EIAs should be developed to address cumulative impacts.

5. The responsibility of the developer/proponent to carry out the EIA at his/her own expense and to meet the predetermined and justifiable costs of the review.
6. EIA should be a scientific and technical procedure free from political influence.
7. Public participation at all stages of the EIA process within the sub-region should be clearly stipulated.
8. Aggrieved parties should be afforded the right to a quasi-judicial and judicial review process. At the review stage the administrative system should include an independent and impartial institution from the decision-making body, such as an environment tribunal.
9. Mitigation requirements should be established as a post-assessment strategy for approved developers (e.g. environmental performance bonding, etc.).
10. Post-assessment requirements should be effectively monitored and enforced.
11. The responsibility for review of Environmental Impact Studies should be distributed in such a manner that the national environment agency plays a coordinating role and the technical departments/lead agencies of government provide expertise in areas of their competence within given time-frames.
12. All parties, including the public, have a right to information and full disclosure resulting from EIA, subject to the requirements of protection of proprietary information.
13. Education, public awareness and training programmes to enhance understanding of EIA particularly for the judiciary, practitioners, regulatory authorities as well as proponents/developers should be articulated.
14. Comparable time-frames for the various stages of the EIA process including review should be provided.
15. The value of Alternative Dispute Resolution (ADR) should be recognized in cases of disputes over technical and scientific data and/or information.
16. Wider rights of *locus standi* should be included in national laws for all citizens and residents. For trans-boundary issues, these rights should include the citizens and residents of neighbouring states under the principle of reciprocity.
17. Requirement for professional accreditation, including inter-state accreditations, approval/registration, as well as the establishment of a harmonized code of conduct in order to ensure discipline and professionalism among EIA practitioners.

Harmonization at Sub-regional level

1. There should be similar procedures for EIA assessment in the sub-region for basic steps such as screening, scoping and review. The use of guidelines should be reserved for the elaboration of detailed methodology and regulations for procedures and law.
2. For projects with trans-boundary implications, opportunity should be afforded for prior consultations and information sharing at all levels among the three countries.
3. A sub-regional procedure for conflict avoidance and peaceful settlement of disputes should be established.
4. Development of a sub-regional protocol/treaty on EIA under the auspices of the East African Cooperation framework as a means of ensuring a harmonized EIA legal process. It is recommended that an administrative Memorandum of Understanding be prepared as a starting point.

**UNEP/UNDP/DUTCH JOINT PROJECT ON ENVIRONMENTAL LAW AND INSTITUTIONS
IN AFRICA EAST AFRICAN SUB-REGIONAL PROJECT WORKSHOP
ON HARMONIZATION OF DRAFT REPORTS AND LAWS**

February 2-10 1998

List of Participants by Subjects

Senior Government Officials

Permanent Secretary, Ministry of Environment and Natural Resources, Kenya

Principal Secretary, Office of the President, Tanzania

Permanent Secretary, Ministry of Natural Resources, Uganda

Coordinators

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Ms. Verdiana Macha*	-	Tanzania
Mr. Robert Wabunoha	-	Uganda

Consultants

Development of Forest Legislation

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Ms. Jane Anywar	-	Uganda
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Development of Wildlife Legislation

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Development of EIA Regulations

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