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# ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

REVIEW GUIDE FOR COMMUNITIES



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# LIST OF ACRONYMS AND ABBREVIATIONS

CBA	Cost Benefit Analysis
EA	Environmental Audit
EIA	Environmental Impact Assessment
EMCA	Environmental Management and Coordination Act
EMP	Environmental Management Plan
NEMA	National Environment Management Authority
PCC	Public Complaints Committee
NET	National Environmental Tribunal
PAPs	Project Affected Persons
RAP	Re-Settlement Action Plan
SEA	Strategic Environmental Assessment
WWF	World Wide Fund for Nature



# PREFACE/PREAMBLE

This review guide seeks to enhance public participation in the project cycle management under the Environmental (Impact Assessment and Audit) Regulations, 2003. The guide targets the communities falling in the project areas to assist them in reviewing and commenting on Environmental Impact Assessment (EIA) reports. The guide will give step by step guidance and direction on how communities can actively participate in the EIA process through provision of clear responses to public participation calls to ensure that their needs and aspirations are taken into account. It also enhances public understanding, appreciation and acceptance of the EIA process and its role in environmental management. The guide emphasizes on the importance of participatory approach in the EIA decision making process for promotion of sustainable development at County and National government levels.

This guide may be updated from time to time as the EIA process continues to evolve and the communities gain knowledge and experience on EIA process including preparation and review.



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# INTERPRETATION OF TERMS

In this community guide;

**Authority:** means the National Environment Management Authority established under section 7 of Environmental Management and Coordination Act (EMCA), 1999.

**Community:** means to the public affected or likely to be affected by or having an interest in the projects

**Environmental Impact Assessment (EIA) also known as Environmental Social Impact Assessment (ESIA):** means a systematic and critical examination of the effects of a project on the environment

**EIA Expert:** means an expert registered and licensed as per the EIA/EA Regulations 2003

**Lead Agency:** means any Government Ministry, Institution, Department, Parastatal, State Corporation or Local Authority, in which any law vests functions of control or management of any element of the environment or natural resource

**Scoping:** means the process of defining the extent and detail of an EIA or SEA, including the identification of issues and areas to be covered

**Proponent:** means a person proposing or executing project, programme or an undertaking specified in the second schedule of the Environmental Management and Coordination Act (EMCA), 1999.

**Decommissioning:** Means the winding up of a project and restoring the site as much as possible to its original state





# 1.0 INTRODUCTION

## 1.1 ENVIRONMENTAL IMPACT ASSESSMENT

Environmental Impact Assessment (EIA) is a systematic and critical examination of the effects of a project on the environment and making the information collected from the examination available for decision making by the National Environment Management Authority, which is the designated environmental management and regulatory agency in Kenya. It is conducted to identify impacts of a project on the environment, predict likely changes on the environment as a result of the development, evaluate the impacts of the various alternatives on the project and propose mitigation measures for the significant negative impacts of the project on the environment. EIA has become widely practised in Kenya since the year 2000 when the country's Environmental Management and Coordination Act (1999) came into force. The EIAs are of great significance not only to the environment but also to proponents of projects since no other licensing authority in Kenya may issue a license to a proposed project which is likely to have significant environmental impacts in the absence of an EIA license issued by NEMA.

EIAs consider various aspects of a the environment such as impacts on the social environment, impacts on landscapes, effects of the proposed project on land use and impacts on natural resources such as water and biodiversity.

The EIA's are commissioned by proponents of proposed projects or other interested parties and are conducted by multidisciplinary teams of independent environmental service providers known as EIA experts who are by law required to be registered and accredited by NEMA. The experts, acting on behalf of respective proponents submit the project report to NEMA after the EIA study, which among other details summarizes the proposed project, highlights the likely environmental impacts of the project and outlines an environmental management plan which proposes measures for eliminating, minimizing or mitigating the identified adverse impacts. The report also provides and elaboration of how the EIA study was carried out, including details of persons contacted for public consultation purposes and the dates during which the study was carried out.

The Authority on receipt of the EIA report submits the same for comment by relevant lead agencies after which it publishes a notice inviting the public (communities and interested individuals/citizens) to submit oral or written comments on the EIA/project report. The comments received by the Authority may lead to a public hearing to further



discuss the report before arriving at a decision to grant or deny a proponent or a developer the EIA license.

Once a project has been granted a license, the proponent is responsible in ensuring that the environmental management plan is adhered to during the life of the project. The law has set out a system of environmental audit to ensure compliance with the license requirements. Failure to adhere to this license requirement constitutes an offence and may lead to enforcement action being taken against the project owner or revocation of the license by NEMA.

EIA is therefore a very important process for the country as it strives to implement article 69 of the constitution and also towards the achievement of sustainable national development aspirations outlined under the Kenya Vision 2030 which when broken down consists of numerous projects of varied scales and scope. EIA is a requirement for all projects under taken by any person or institution who include the government of Kenya, the private sector, individuals, and community based organizations or faith based organizations.

## 1.2 JUSTIFICATION FOR PUBLIC/COMMUNITY PARTICIPATION IN THE EIA PROCESS

Public consultation is a key component in the EIA process since it;

- Ensures that the process is open and transparent
- Provides valuable sources of information on key impacts, potential mitigation measures and possible alternatives
- Ensures that the proposed project meets the community's needs
- Ensures that the project is legitimate and it is a way of ensuring that conflicts can be addressed before the Authority makes a decision.
- Assists in informed decision making
- Promotes better implementation of the project once the Authority has made a decision on the proposed project
- Enlightens the community on the opportunities and benefits arising



## 2.0 LEGAL FRAMEWORK FOR EIA AND COMMUNITY REVIEW OF EIA REPORTS

### 2.1 THE CONSTITUTION OF KENYA 2010

The main legal backing for environmental impact assessment in Kenya is the Constitution of Kenya 2010 which, in Article 42 provides that every citizen has a right to a clean and healthy environment.

The legal rationale for community participation in environmental impact assessment emanates from the Constitution of Kenya 2010 which provides that every Kenyan citizen has the right to have the environment protected for the benefit of present and future generations through legislation and other measures. Article 10 and 69 of the Constitution of Kenya respectively recognizes public participation as a principle of governance and also gives the state a responsibility to encourage public participation in the management, protection and conservation of the environment and also to establish systems for environmental impact assessment, environmental audit and monitoring of the environment. The article also places on every citizen the obligation to cooperate with state organs and other agencies to protect and conserve the environment and ensure the ecologically sustainable development and use of natural resources.

The Constitution in Article 232 further outlines transparency and timely provision to the public of accurate information as one of the values and principles of public service, going further to bind all state agencies at both national and County government levels and state corporations to these values and principles.

#### 2.1.1 THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT 1999

The Environmental Management and Coordination Act of 1999, Section 58 sets out the need for EIA for all projects listed on the second schedule of the Act. Section 58 states the time period within which oral or written comments from members of the public should be submitted to the Authority.

#### 2.1.2 ENVIRONMENTAL (IMPACT ASSESSMENT AND AUDIT) REGULATIONS 2003

The legal Notice no. 101 on the Environmental (Impact Assessment and Audit) Regulations of 2003 spells out the requirement for the Authority to seek views (oral or written) of the persons who may be affected or interested in the proposed projects based on anticipated environmental impacts. The Regulation also provides for the format and the content of the EIA Reports.



## 2.2 OBJECTIVES OF ENVIRONMENTAL IMPACT ASSESSMENT

Going by the definition of EIA provided above, and the legal rationale for prescribing the requirement for the EIA, the EIA is conducted to meet the following objectives;

- a. To identify the likely negative impacts of a proposed project
- b. To assist decision makers arrive at a decision whether to grant or deny a license to a proposed project
- c. To identify and plan for measures for the mitigation of identified negative impacts of a proposed project

It is important to note that EIA is a decision support tool which produces critical information to be considered by decision makers alongside other information when arriving at a decision to allow or disallow a proposed project. The participation of communities is important as it fulfils the requirement for public consultation in any public decision making process which is one of the principles of public service spelled out by the Constitution.

## 2.3 OBJECTIVES OF THE GUIDE FOR COMMUNITY REVIEW OF EIA REPORTS

The main objective of this guide is to assist communities to provide feedback to NEMA on EIA process and reports and assist NEMA make decisions that consider community views and also fulfil the requirements of the constitution and the laws of Kenya. This emanates from the concern that the levels of community participation have been low owing to a number of factors, among them limited capacity by communities to conduct meaningful review of the EIA reports availed to them and inability to provide clear documented responses to NEMA.

This guide in form of a booklet hopes to overcome this shortcoming by laying out a step by step guide to individuals, organized community groups and any interested parties on how to review and provide feedback or submissions on an EIA report where and when they wish to raise any issues or when responding to a public participation call by NEMA.



The objectives of the guide are:

1. Improve the level of participation of communities or interested parties in the review of EIA reports
2. Improve the quality of submissions on EIA reports made by communities to NEMA
3. Provide NEMA with more information that will support decision making on EIA licensing

Specifically, this guide is aimed at assisting you to;

- i. Understand the key steps in the EIA process
- ii. Understand the step by step process of reviewing an EIA report
- iii. Understand the basic legal requirements, impacts and mitigation measures related to EIA process.
- iv. Make an informed decision on the project
- v. Provide systematic feedback (oral and/or written) to NEMA on an EIA report

## 3.0 EIA REPORT PREPARATION

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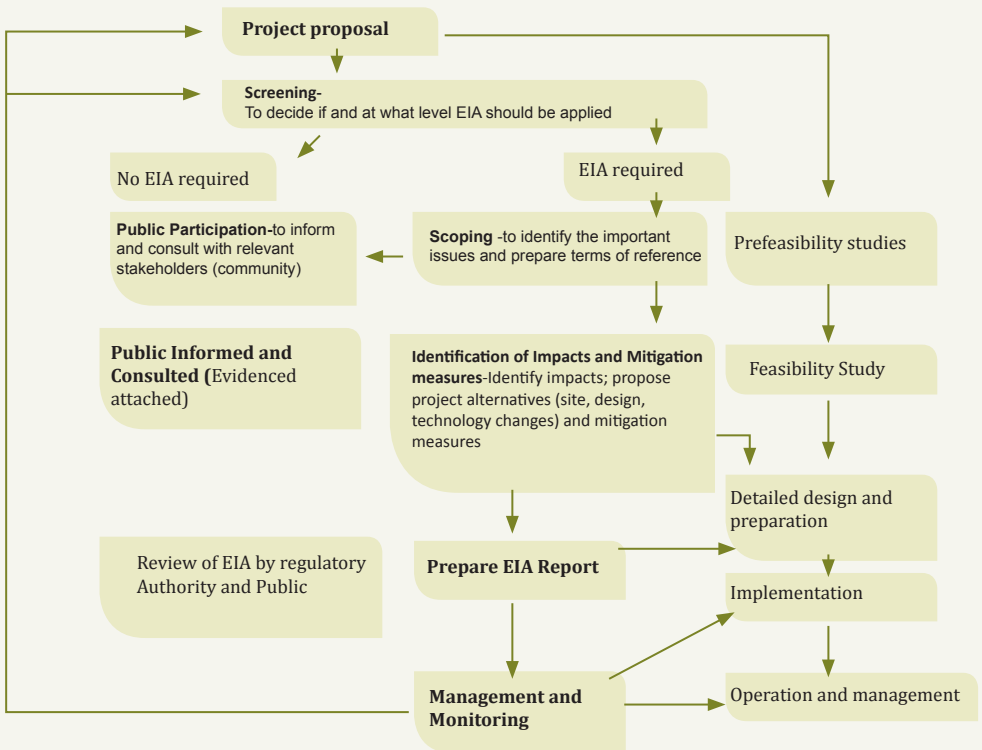
Projects that are likely to have significant environmental impacts must undergo the EIA Process as stipulated in EMCA, 1999

The EIA reports are prepared by experts who are registered and licensed by NEMA.

The figure below illustrate the EIA Report Preparation and Community involvement at the key stages

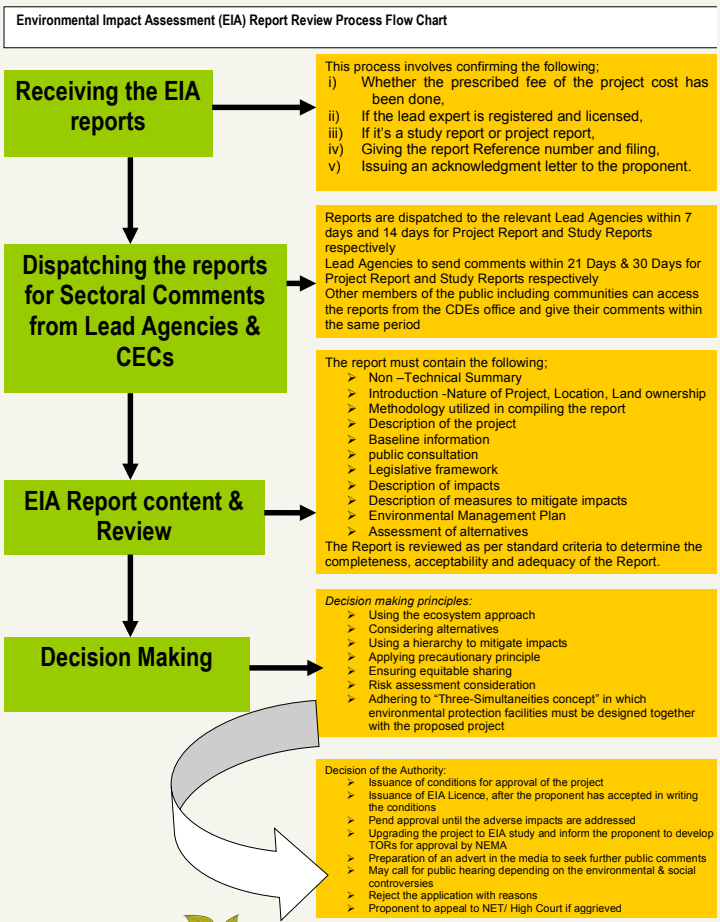


Figure 1: EIA Report Preparation Process



### 3.1 CONSULTATIONS AND PUBLIC PARTICIPATION IN THE EIA PROCESS

There are several ways of how to undertake consultation and public participation during the EIA process which include; holding public barazas, group discussions, administering questionnaires, oral and written interviews, Gazette Notices, Newspaper adverts, posters and radio announcements.



## 4.0 REVIEWING THE EIA REPORT

The following information will assist communities at all levels to review or contribute to the compilation of the EIA Reports

### 4.1.1 PRELIMINARY DETAILS

Does the report give a project brief where the following information is provided?

- Are there details of the Proponent including name, contact details and location?
- Details of the Consultant carrying out the Environmental Impact Assessment (EIA) Study including name, contact details and location?
- Is the Report Certified by the Consultant and Proponent?
- Has the report provided a brief description of the project detailing title of the project, objectives and scope of the project and description of the project activities?
- Is the project objectives, rationale /Justification clear
- Does the report have dates of the study?

### 1. WHETHER THE PROJECT SITE IS IDEAL FOR THE PROPOSED PROJECT? DOES THE REPORT ADDRESS THE FOLLOWING?

- ***Description of the project.***
  - The report provides for clear description (summary of the project)
  - The project conform to appropriate zoning requirement
  - Description of main characteristics of the implementation process e. nature and quantity of materials to be used, equipment's to be involved.
  - Estimate, by type and quantity, of expected residues (wastes) and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation etc. resulting from operation of proposed project.
- ***Project Location***
  - Land use requirement
  - zonation and land use planning
  - Who owns the land
  - Status of land ownership (e.g. freehold, leasehold, community land, private land)
  - Does the ESIA Report provide accurate location of the project?
  - Location coordinates in Geographic Coordinates or UTM Coordinates with the UTM Zone;
  - Map showing the location of the project area at appropriate scale – easy to identify on the ground.
  - Description of the project (map)





- ***Is the project area baseline condition (current status) well captured***
  - Population
  - Animals and plants
  - Soil, water, air, climate factors
  - Road network, power supply, water, communication
  - Administrative, geo-political,
  - Any other important or unique information of the area
  
- ***Is the project located near or within sensitive natural resources? For example!***
  - Surface Water (River, Lake, Ocean);
  - National Reserves, National Parks;
  - Wetlands and Springs;
  - Shallow groundwater (at ground surface to 6m below ground level);
  - Proximity to human settlement;
  - Archeological site
  - National heritage site
  - Sacred sites and cultural principles, believes
  
- ***Does the proposed project conform with the existing developments***
  - Does the report contain project area land use requirements
  - Is the proposed project similar to other developments in the project area?
  - Is the land where the project is to be located owned by the proponent;

## **2. HAVE THE APPLICABLE LEGISLATION BEEN CITED AND THEIR COMPLIANCE PLANS DISCUSSED?**

- ***Are the cited applicable legislations currently in force?***
- ***Do the cited legislation include:***
  - Constitution of Kenya 2010,
  - Environmental Management and Coordination Act (EMCA) 1999;
  - The Environmental (Impact Assessment And Audit) Regulations 2003;
  - NEMA Regulations on that relate to the project objectives
  - Sector Acts/ regulations
  - Contribution to key national policies and strategies



- **Has the compliance plan for the cited legislation been listed?**
- Each potential impact, the governing legislation that safeguards it and how the project fulfills/complies

### 3. DOES THE REPORT IDENTIFY POTENTIAL POSITIVE AND NEGATIVE ENVIRONMENTAL, CULTURAL AND SOCIAL IMPACTS?

#### NEGATIVE IMPACTS

- **Environmental Impacts**

- i. Impact on Soil (disturbance, pollution and siltation);
- ii. Impact on Geology (disturbance and pollution);
- iii. Impact on Surface and Groundwater (interference with river flow pattern, pollution of surface and groundwater);
- iv. Impact on Air (Pollution from dust, smoke and other emissions);
- v. Impact from excessive noise and vibration;
- vi. Impact on Flora (Removal of trees, crops and other important vegetation)
- vii. Impact on Fauna (Displacement of wildlife, interference with wildlife migratory corridors);
- viii. Landscape alteration causing visual intrusion;
- ix. Construction activity impacts (material storage, soil excavation, siltation and pollution);
- x. Solid, liquid and sanitary waste generated at the construction camp and project construction site;
- xi. Greenhouse Effects where the project will result in removal of forest vegetation from large area;
- xii. Safety Risk of Construction Workers.
- xiii. Existence of the project e.g. Visual Intrusion
- xiv. Use of natural resources
- xv. The emission of pollutants (air, soil, water)
- xvi. The creation of nuisances and generation of waste, noise, smells, dust etc.
- xvii. Waste e.g. Solid waste, Liquid waste, Effluent discharge

- **Social Impacts**

- Socio economic impacts ( Income, relocation, cultural, values, HIV-AIDS, etc)
- Geo-political impacts
- Trans boundary issues



- The description by developer of forecasting methods used to assess the impacts on the environment.
- Loss of historic sites;
- Impact on ancestral sacred land sites (graveyards, religious sites etc);
- Potential water borne, occupational and behavioral diseases (malaria, bilharzia, lung and chest infections from inhalation of polluted air and HIV);
- Potential interference with human settlements;
- Potential interference with income streams of project area community;
- Potential disruption of project area infrastructure (electricity, piped water supply, river and other surface water sources for domestic use)
- Potential impact of migration of human population to project area causing land degradation and competition for resources;
- Potential emergence of conflict between local and emigrant community over resources and job opportunities.
- Affect security negatively
- Creation of nuisances Noise, smell, dust
- Behavioral changes
- Cultural values changes
- Plan on how
- Consumption of resources

## POSITIVE IMPACTS

- **Environmental**
  - Potential project benefits to the environment (Soil, Water, Air, Flora and Fauna).
- **Social Impacts**
  - Provision of social amenities and infrastructure e.g. Water, power, schools, hospitals,
  - Improved security
  - Potential project positive impacts on culture and social fabric e.g. securing of public areas ,Safeguarding and pronouncement;
  - Potential job creation;
  - Potential enhancement of businesses;
  - Potential enhancement of livelihoods.
  - Evaluation of project area environmental status;
  - Evaluation of project area historic and cultural sites;
  - Evaluation of project area socio-economic activities;



- Availability and Sustainability
- Risks
- Health and Safety
- Does the report provide an analysis of potential impacts?  
Considers the category of impact, whether the impact direct/indirect, reversible/irreversible, temporary/permanent, major/Minor and the phase of occurrence (During Construction, During Operation or During Decommissioning.)

#### 4. HAS THE REPORT PROVIDED CLEAR AND CORRECT INFORMATION ON PUBLIC CONSULTATION DURING PREPARATION? DOES THE REPORT FOR PUBLIC PARTICIPATION AND CONSULTATION PROVIDE THE FOLLOWING?

- Extent of public consultation?
- Who was consulted?
- Nature of comments and their merits. What were the objections and the merit of objection and vice versa
- Has it incorporated the public concerns in mitigation measures
- Public consultation /meeting minutes and register.

#### 5. QUESTIONNAIRE ADMINISTRATION PROCESS AND ORAL INTERVIEWS

#### 6. HAS THE REPORT IDENTIFIED APPROPRIATE (INCLUDING INDIGENOUS/LOCAL) MITIGATION MEASURES FOR THE IMPACTS IN (3) ABOVE?

*Has the report described the measures envisaged to:*

- Prevent/avoid
- Reduce
- And where possible offset the negative impacts of the project?

*Have appropriate and sufficient mitigation measures been prescribed for each of the identified negative impacts of the various project phases (pre-construction, operation and decommissioning)?*



## **7. HAS THE REPORT ADEQUATELY CONSIDERED ALTERNATIVE PROJECT SITE, TECHNOLOGIES, MATERIALS, DESIGN, RE-ROUTING ETC? BEYOND WHAT IS PROPOSED.**

### **PROJECT ALTERNATIVES**

- Outline of main alternatives studied by the developer  
For example .design, materials, equipment, technology, site, project
- Indication of main reason for the preferred choice taking into account environmental effects
- No project alternatives  
What is the likely trend if the project did not take place? What would happen to the natural and social environment and the economy?  
Has the project provided cost benefit analysis for the above alternatives?

## **8. IS THE ENVIRONMENTAL AND SOCIAL MANAGEMENT PLAN (ESMP) ADEQUATE, EFFECTIVE/ EFFICACIOUS AND PRACTICAL, IS MONITORING OF THE PLAN ALSO PROVIDED FOR?**

- Has the report provided an ESMP Matrix Table?
- Does the Matrix Table consider all the potential Environmental and Social Impact Assessment (ESIA) activities, potential environmental and social impacts, mitigation measures, responsible persons or institutions and
- Does the EMP Matrix Table provide the following information
  - o Activity/ operation (for all the phases)
  - o Associated impacts
  - o Proposed mitigation measures
  - o Persons and institutions responsible for implementation
  - o Allocated budget
  - o Timelines for implementation
  - o Monitoring and reporting regime



Nr	Activity	Negative Impact	Mitigation Measure	Responsibility	Performance Indicators	Cost (KES)
<b>Pre-Construction Phase</b>						
1.						
2.						
<b>Construction Phase</b>						
1.						
<b>Operation Phase</b>						
1.						
2.						
<b>Decommissioning Phase</b>						
1.						

### 9. OTHER ISSUES OF CONCERN ON THE PROJECT.

- List missing notable issues of concern on the project ;
- Supporting documents like certificate of registration
- Designs (have they been annexed to the report)
- Land ownership documents
- Existing land disputes if any
- Other annexes e.g. hydrogeological survey reports.
- Supportive studies where necessary

### 10. ANY OTHER ISSUE THAT MAY ARISE FROM THE PROJECT?

- List any other issue (environmental or socio-economic) that from your view may arise during project implementation;
- Mention in which phase of the project (pre-construction, construction, operation or post-operation) is such an issue likely to arise.

### 11. DOES THE REPORT PROVIDE A DECOMMISSIONING PHASE AND SITE RESTORATION?

- Project decommissioning and demolition programme including relevant authorities to be consulted
- Demolition activities
- Removal, Transportation and Disposal of Demolition Waste
- Mitigation measures during demolition
- Site Rehabilitation and Restoration.



## 5.0 MONITORING

Environmental monitoring is an essential component for the entire project lifespan. Annual Environmental Audits throughout the lifespan of the project and other checks by the authority, lead agencies, communities and interested parties where and when need arises are critical towards a full implementation of an EMP. These forms of monitoring are undertaken to establish if the project implementation has complied or is in compliant with the set environmental management standards as articulated in the Environmental Management and Coordination Act (EMCA), and its attendant Environmental (Impact Assessment and Audit) Regulations, 2003.

The Kenyan communities are encouraged take a leading role and responsibility to monitor the project activities at all stages to ensure that the measures stipulated in the environmental management plan (EMP) are adequate to mitigate adverse impacts or are attaining or fulfilling the anticipated benefits from the project

## REFERENCES

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- Republic of Kenya (1999), The Environmental Management and Coordination Act
- Republic of Kenya (2003), The Environment (Impact Assessment and Audit) Regulations
- Republic of Kenya (2010), The Constitution of Kenya





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