



NEEDS ASSESSMENT REPORT ON ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT (ESIA) FOLLOW-UP IN EASTERN AFRICA

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EANECE looks forward to more collaboration in implementing the developed action plan/ strategic agenda for improved ESIA follow-up in Eastern Africa.

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LIST OF ACRONYMS

CSO	Civil society Organisation
EANECE	East African Network for Environmental Compliance and Enforcement
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
Gvt	Government
NCEA	Netherlands Commission for Environmental Assessment

SUMMARY OF KEY FINDINGS

This study focuses on assessing the needs of Environmental and Social follow-up processes undertaken within the Eastern Africa countries. Findings indicate that whereas all Eastern Africa countries with exception of South Sudan have regulations on environmental follow-up, their legal provisions are weak or ambiguous and they lack framework to address trans-boundary ESIA. The approval coordination framework amongst regulatory authorities and lead agencies as well as post ESIA approval linkages between developers and regulators are weak. Furthermore, the awareness level of ESIA follow-up among project proponents/developers and the community is low. Inadequate stakeholder engagement, vague licence conditions, inadequate monitoring and enforcement budgets, inadequate equipment and a lack of skilled personnel in ESIA monitoring and enforcement, unclear systems on environmental incident reporting and response coupled with governance challenges such as corruption and political interference inhibit the success of environmental follow-ups.

The report makes the following recommendations:

- a) development and enactment of legally binding laws/regulations on ESIA and ESIA follow-up in South Sudan;
- b) strengthen legal provisions for ESIA follow-up in all countries;
- c) establish a harmonised regional legal and institutional framework for transboundary ESIA administration and follow-up;
- d) strengthen institutional frameworks for better coordination and collaboration between regulatory authorities and lead agencies throughout the ESIA approval process and follow-up in all the countries;
- e) train journalists to not only bolster efforts on extensive education and awareness campaigns among project proponents/developers and communities on the importance of ESIA follow-up, but also contribute to enhance transparency and accountability;
- f) establish and implement a deliberate stakeholder engagement and community participation plan during environmental and social monitoring;
- g) build capacity to draft enforceable permits/licence conditions among technical staff in regulatory agencies by conducting training sessions;

- h) explore other financing models for supporting environmental monitoring and enforcement activities;
- i) recruit a sufficient number of qualified technical staff in regulatory agencies;
- j) develop and implement a responsive and innovative incident reporting system;
- k) build transparent and accountable governance systems for the administration of ESIA systems including follow-up.

CHAPTER 1: INTRODUCTION

1.1 Background

What is ESIA follow-up?

Environmental and Social Impact Assessment (ESIA) follow-up can be defined as the monitoring and evaluation of the impacts of a project that has been subject to ESIA for management of and communication about the environmental performance of that project or plan (Arts et al., 2001). The four elements of ESIA follow-up are monitoring, evaluation, management, and communication which is vital for experiential learning (Ross, Jos, & Angus, 2005). ESIA follow-up can be conducted at micro, macro and meta scales and involves monitoring and evaluation of ESIA activities, evaluation of ESIA systems and evaluation of utility of ESIA respectively (Morrison-Saunders & Arts, 2004). Its form can be proponent self-driven regulation, requirement imposed by regulators or public pressure driven initiatives.

What is the role of follow-up in an ESIA process?

ESIA is inherently uncertain since it predicts and makes proposals for the future, which is inherently uncertain. ESIA follow-up is necessary to determine ESIA outcomes. Follow-up enables learning on the effectiveness of mitigation measures proposed during ESIA. ESIA follow-up provides evidence regarding environmental outcomes, thus moving practitioners and regulators from predictions to understanding reality. Follow-up not only provides information about the consequences of an activity as they occur, but it also gives proponents and/or ESIA regulators the opportunity to improve the ESIA process and implement measures to mitigate or prevent adverse effects on the environment.

Ultimately it is not the predicted impacts, but rather the actual effects that are relevant for protecting the environment.

Context of the ESIA follow-up needs assessment in Eastern Africa

The East African Network for Environmental Compliance and Enforcement (EANECE) and the Netherlands Commission for Environmental Assessment (NCEA) have entered into a cooperation agreement with the long-term objective of strengthening Environmental and Social Impact Assessment (ESIA) follow-up in Eastern Africa (Burundi, Ethiopia, Kenya, Rwanda, S. Sudan, Tanzania, and Uganda).

All the Eastern Africa countries covered by this needs assessment (except South Sudan) have fairly well-established ESIA legislations and implementation systems. However, the overall performance and effectiveness of ESIA as an environmental management tool is characterised by mixed results in terms of environmental performance indicators. Strengthening ESIA follow-up is therefore critical to achieving greater integrity in the performance of ESIA in these countries.

This ESIA follow-up needs assessment was therefore carried out as one of the initial activities under the cooperation agreement between EANECE and NCEA in order to better understand the ESIA follow-up needs/challenges in the respective countries; and to have evidence that can support future ESIA follow-up strengthening activities within the context of the cooperation.

1.2 Objectives of the assessment

The objective of this exercise was to develop a needs assessment and strategic agenda/action plan for improving performance of ESIA follow-up in Eastern Africa. The specific objectives of the needs assessment included:

- (a) Undertake a review of literature on ESIA follow-up in development projects
- (b) Examine legal requirements for environmental follow-up in Eastern Africa
- (c) Assess challenges and opportunities in the environmental follow-up process and practice in Eastern Africa.
- (d) Develop a strategic action plan to improve performance of ESIA follow-up in Eastern Africa.

1.3 Scope of the assessment

The spatial scope of the assessment was the Eastern Africa countries participating in EANECE which include: Kenya, Uganda, Tanzania, Rwanda, Burundi, South Sudan and Ethiopia (figure 1).

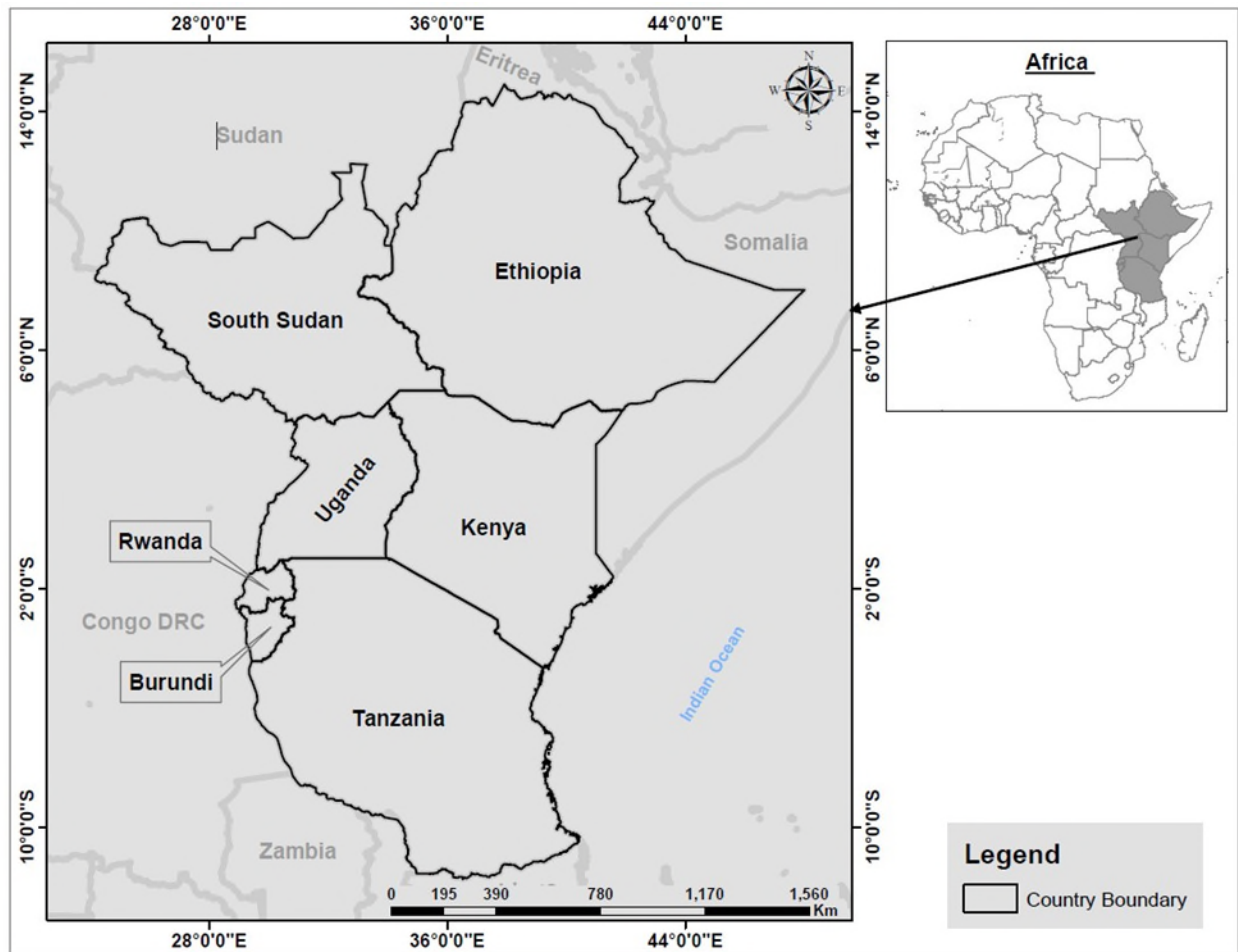


Figure 1: Spatial Scope of the assessment

The assessment was limited by the methodology applied, which is based on reviews and targeted interviews with key informants. This was determined by the funding available for the study.

1.4 Methodology

This assessment adopted the methods detailed in the subsequent paragraphs.

To review literature on ESIA follow-up, an iterative approach was used, where relevant abstracts were retrieved from data bases that covered environmental follow-up OR environmental audit OR environmental monitoring themes. The selected articles were reviewed thus providing a source of secondary information on environmental follow-up in development projects. This literature also provided a framework for needs assessment of environmental follow-up in development projects. In addition, the findings of the review were thermalised and triangulated with key informant interviews and feedback from webinars.

The examination of legal requirements for ESIA follow-up focused on reviewing relevant ESIA regulations in the Eastern Africa countries included in this assessment. This was supplemented with literature on ESIA follow-up to develop a summary and guidance on public participation in the ESIA follow-up process.

To assess the challenges and opportunities in the ESIA follow-up process in Eastern Africa countries, key informant interviews were conducted both physically and virtually. A semi-structured set of questionnaires was used to obtain responses from the interviewees. An actor was chosen as key stakeholder at least one of these criteria was met: (1) ensure effective collaboration by demonstrating strong commitment to ESIA follow-up implementation, (2) be able to influence the formation and implementation of ESIA follow-up related policies, and (3) would be directly affected by the ESIA follow-up policies and related practices. The key informants included representatives of environmental regulatory authorities in Eastern Africa, relevant representatives of national associations of environmental impact assessment and audit experts, representatives from relevant national associations of engineers, architects and contractors, representatives of relevant civil society groups, and representatives of relevant private sector associations.

selection of key informants in regulatory authorities considered an informant at national and county/ district/province level. The interview focused on both government and private ESIA follow-up project cases. In selecting key informants from ESIA Expert organisations a member that has experience in various scales of projects (low risk & high risk) was considered. Informants from national associations of engineers, architects, contractors, civil society and private sector who had an experience in ESIA follow-up process or had been affected by the process were also considered. Table 1 shows the sampling frame

Table 1: Sampling frame

Country	KE	UG	TZ	SS	ET*	RWA*	BurD	TOT
Key informants	(No)	(No)	(No)	(No)	(No)	(No)	(No)	(No)
National Ev. Regulation Authority	3	3	3	3	3	3	3	21
Impact assessment expert A	2	2	2	2	2	2	2	14
Association of engineers	1	1	1	1	1	1	1	7
Association of architects	1	1	1	1	1	1	1	7
Contractors	1	1	1	1	1	1	1	7
Private sector	1	1	1	1	1	1	1	7
Civil societies representatives	1	1	1	1	1	1	1	7
Total number of interviewees								70

KEY: KE – Kenya, UG- Uganda, TZ – Tanzania, SS – South Sudan, ET- Ethiopia, BurD – Burundi and TOT - Total

*Ethiopia and Rwanda were non-responsive to the interviews thus the total number of interviews conducted was fifty (50).

A dedicated webinar was organised to provide an opportunity for stakeholders from the target countries to provide feedback and input for the draft ESIA Follow-up Needs Assessment Report. Feedback and input received was considered in the finalisation of the Assessment Report.

CHAPTER 2: LITERATURE ON ESIA FOLLOW-UP

2.1 Overview of the Concept and Context of ESIA Follow-up

Environmental and Social Impact Assessment (ESIA) is a comprehensive process that takes into account the potential impacts of a proposed action on both natural and anthropogenic environments at various stages, including planning, design, decision-making, and implementation (Morrison-Saunders & Arts, 2012). The primary goal of ESIA is to serve as a decision-making tool, influencing project design, location, and other crucial considerations based on the feedback from its findings (Glasson et al., 2005). One distinctive characteristic of ESIA is its dealing with uncertainty, as it revolves around predictions and future scenarios (Mansurov, 2009). To address these uncertainties, ESIA follow-up becomes essential. The follow-up process is designed to bridge the gap between theoretical predictions and actual outcomes by examining events and impacts once the approved actions are put into practice (Morrison-Saunders & Arts, 2004). All permitting decisions on ESIA are typically based on the anticipated impacts, but considering the inherent uncertainty in most issues concerning the environment, ESIA follow-up provides a practical assessment of the real situation and actual project outcomes (Mansurov, 2009).

The focus of ESIA follow-up lies in understanding the actual outcomes and performance of projects after they have undergone the ESIA process. Therefore, Morrison-Saunders and Arts (2004) define ESIA follow-up as "The monitoring and evaluation of the impacts of a project or plan (that has been subject to ESIA) for management of, and communication about, the environmental performance of that project or plan." In essence, ESIA follow-up is a process that originates from pre-decision ESIA and utilises various post-decision activities like monitoring, evaluation, communication, and management in harnessing the collective efforts of multiple stakeholders to transform the initial ESIA into reality (Jha-Thakur, 2006). Through this comprehensive approach, ESIA follow-up ensures that projects remain in alignment with their intended environmental objectives and continue to be environmentally responsible (Partidário & Arts, 2005).

ESIA follow-up can be implemented at a micro (individual proposal level), macro (ESIA jurisdiction/system level), and meta (conceptual and/or multi-jurisdictional level) scale which involves monitoring and evaluation of ESIA activities, examination of the efficiency

and efficacy of the entire ESIA system, and evaluation of the overall utility of ESIA/SEA respectively (Morrison-Saunders & Arts, 2012). The key players involved in the implementation process are the proponent, the ESIA regulators, and the community (Ramos et al., 2004). The proponents are project developers, who are usually expected to perform most follow-up activities; the regulators represent government agencies tasked with administrating ESIA systems including making sure the proponents comply with ESIA approval conditions; and the community is members of the public with a specialized understanding of the local area who are interested in examining the performance of all parties engaged in the ESIA process (Marshall et al., 2005).

2.2 The Need, Relevance, and Rationale for the ESIA Follow-Up

Follow-up is an integral component of the broader domain of ex-post evaluation, which seeks to assess the effectiveness of these processes, their contributions to decision-making and environmental outcomes, and the key factors influencing their success or shortcomings (Saddler, 2012). The post-decision phase encompasses activities that occur after the approval decision, such as project implementation involving mitigation, management actions, impact monitoring, and reporting (Morrison-Saunders, et al., 2012). The notion of follow-up, in this context, revolves around what occurs after the decision is made. In the context of projects, follow-up is closely linked to project implementation, encompassing tasks like construction and operation, as well as entailing responsibilities for monitoring, evaluating, managing, and communicating observed impacts (Partidário & Arts, 2005).

According to Morrison-Saunders et al. (2001), follow-up plays a vital role in the ESIA process, as without it, ESIA could become a mere bureaucratic exercise aimed solely at obtaining project approval. The absence of some form of follow-up would lead to a complete lack of understanding of the consequences of pre-decision ESIA and the actual environmental outcomes resulting from development activities (Mansurov, 2009). In contrast, incorporating feedback through follow-up at the micro-scale allows for a comprehensive assessment of the impact assessment's effectiveness, promoting experiential learning (Morrison-Saunders & Arts, 2012). Furthermore, follow-up programs offer valuable insights into pre-decision ESIA activities, such as the accuracy of impact prediction approaches (Jha-Thakur et al., 2009). On a broader scale (macro or meta), learning about the outcomes of ESIA facilitates the evaluation of its efficacy and usefulness of its procedures, leading to potential improvements in future ESIA practices

(Morrison-Saunders & Arts, 2012). To guarantee the precision of ESIA, enhance the general quality of Environmental Impact Statements (EISs), sufficiency of proposed impacts management and mitigation techniques during project implementation and operation stages, and the efficiency of prediction measures, it is crucial to implement a formal mechanism for ESIA post-evaluation and follow-up (Arts et al., 2001; Ramos et al., 2004).

In order to achieve the objectives specified by ESIA, follow-up is essential (Jha-Thakur et al., 2009). By offering feedback to the ESIA operations, it has the potential to enhance ESIA practices (Arts et al., 2001). Follow-up aids in addressing questions like: How did the project's actual impacts compare to those predicted in the EIS? Has impact management and mitigation followed accepted guidelines established by decision-makers? Is there anything further that needs to be done to stop unacceptably negative environmental effects? How successful was the actual ESIA procedure? (Morrison-Saunders et al., 2001; 2012). By carrying out activities like monitoring, auditing, and evaluation, ESIA follow-up ensures the realization of expected benefits projected during the pre-decision stages of the process throughout project implementation and management (Marshall et al., 2005). Moreover, the knowledge gained from experience can be utilized to enhance future ESIA practices (Pinto et al., 2019). Arts and Morrison-Saunders (2012) add that the ESIA follow-up offers verifiable proof of environmental outcomes. The outcomes of the ESIA follow-up should show how effectively the assessment was used across the various stages of the process, from screening and scoping to stakeholder discussions and the final EIS negotiation with decision-makers (Morrison-Saunders, & Arts, 2004). The ESIA follow-up process is also highly helpful for evaluating how approval terms and recommendations were carried out and the value they brought to the project's general ecological performance (Dik & Morrison-Saunders, 2002; Arts & Morrison-Saunders, 2012).

2.3 The Nature and Elements of ESIA Follow-up Process

The ESIA follow-up is a complex process normally incorporating four key elements/activities namely monitoring, evaluation, management (mitigation), and communication (reporting) of environmental outcomes (Arts et al, 2001; Morrison-Saunders et al., 2003; IAIA, 2007). The initial activity in the follow-up process, monitoring, involves the collection of data and its comparison with set standards, forecasts, or expectations (Mansurov, 2009). Monitoring plays a central role in the follow-up process and represents the most continuous element (O'faircheallaigh, 2007). Base-line

monitoring is employed to gauge the initial condition of environmental indicators during the pre-decision phase, providing the essential groundwork for forecasting and evaluation in the Environmental Impact Statement (EIS) (Partidário & Arts, 2005). As the process moves into the post-decision phase, monitoring becomes crucial for ensuring compliance with the decision's conditions and evaluating its effects (IAIA, 2007). Additionally, IAIA (2007) observes that area-wide monitoring takes on the task of assessing the overall environmental state in a specific area, encompassing multiple projects and considering cumulative effects.

Evaluation as a second activity of the follow-up process entails analysis of the information collected during monitoring and checking its conformance with set standards, predictions, or anticipated outcomes, along with the environmental performance of the activity or project (Morrison-Saunders, & Arts, 2004). At this stage, the accuracy of predictions and the effectiveness of mitigation measures are put under scrutiny (Glasson et al., 2005). Evaluation has two dimensions: Ex-ante evaluation is forward-looking and predictive, focusing on pre-decision activities like EIS preparation while ex-post evaluation is backward-looking, assessing implemented policies or projects and their outcomes following a decision (Morrison-Saunders & Arts, 2012).

Management encompasses decision-making and the implementation of suitable actions in response to issues identified during monitoring and evaluation processes (Ndlovu, 2015). Both project proponents and ESIA regulators may be involved in ongoing management decisions (Jordaan, 2010). For instance, the proprietor may be involved in addressing unexpected impacts as the regulators review consent conditions and management requirements (Morrison-Saunders et al., 2007). The effective implementation of environmental protection measures can be achieved through the use of an environmental management system (EMS), a tool specifically designed to manage the ongoing impacts of development activities on the environment (Hollands & Palframan, 2014). Since the focus of ESIA follow-up is mainly on the post-decision stage, it is crucial to track the actual effects of project activities on the environment and the impact of decisions made during the ESIA process on the management of these development aspects through the EMS (Mansurov, 2009). Properly conducted ESIA follow-up serves as a strong foundation for developing the company's EMS (Glasson et al., 2005). The ESIA can provide valuable baseline information that can be used to formulate the EMS or assist in future similar projects (Palframan 2010). ESIA follow-up and

EMS, when linked together, not only allow for understanding the consequences of actions and decisions but also enables the implementation of corrective and mitigation measures to prevent negative impacts on the environment during the project's implementation (Hollands & Palframan, 2014).

Communication is the last step of the follow-up and it relates to informing both the stakeholders and the public about the outcomes of ESIA follow-up and the overall outcomes of the environmental performance of the project (Ndlovu, 2015). Both project proponents and ESIA regulators may participate in communication initiatives (Sadler, 2012). In some cases, follow-up programs go beyond mere communication and actively involve stakeholders in the monitoring, evaluation, and management processes (Jha-Thakur, 2006).

The objectives and complexity level of ESIA follow-up depend on the entity responsible for conducting the follow-up activities (Mansurov, 2009). The requirements differ between internal evaluations carried out by the project proponents (first-party follow-up) and external regulatory audits conducted by ESIA authorities (second-party follow-up) (Birk, 2009; Dik and Morrison-Saunders, 2002). If the community initiates the follow-up process, it becomes a 3rd party follow-up and can be executed through formal committees or individuals possessing specialized or local knowledge (Morrison-Saunders et al., 2007). Public involvement in the discussion significantly enhances the quality of the final EIS for three key reasons; expert knowledge undergoes public scrutiny, the participation of potentially impacted individuals ensures a fairer process for them, and it fosters a perspective of social learning (Webler et al., 1995).

A fundamental principle applicable to all follow-up programs involves clearly defining roles and responsibilities. The proponent should assume the responsibility for conducting ESIA follow-up, ensuring its implementation meets the agreed-upon standards and initial objectives. These objectives should be mutually agreed upon with state authorities responsible for supervising both ESIA and ESIA follow-up processes. The engagement of the community is vital at every stage of the process in ensuring the success of the follow-up programs. Transparent and open communication offers extra benefits through experience sharing and knowledge management, which, according to Morrison-Saunders et al. (2007), stands as one of the most significant advantages of ESIA follow-up.

2.4 Challenges for ESIA Follow-up

ESIA is a crucial process in determining the potential impacts of development projects on the environment and communities. However, despite its importance, ESIA follow-up remains the weakest stage in most jurisdictions where ESIA is practiced due to a variety of reasons (Arts & Morrison-Saunders, 2012). One of the primary challenges for ESIA follow-up is uncertainty during the pre-decision stages of ESIA (Morrison-Saunders & Arts, 2012). Uncertainties that arise during the initial assessment may persist during follow-up investigations, making it challenging to accurately measure and address the actual environmental outcomes of the development project (Partidário & Arts, 2005). A related challenge is the deficiencies in Environmental Impact Statements (EISs). Inadequate EISs, often plagued with vague and qualitative impact predictions or lack of rigorous project descriptions, can hamper effective follow-up (Morrison-Saunders & Arts, 2004). Monitoring and mitigating impacts during the ESIA follow-up stage highlight these deficiencies (Mansurov, 2009), making it essential to improve the quality of EISs to ensure better decision-making and environmental protection.

ESIA follow-up demands substantial staffing, time, and financial resources for both project proponents and regulatory agencies (IAIA, 2007). Until the long-term benefits of follow-up, such as cost savings and improved environmental management, are widely recognized, there may be resistance to allocating sufficient resources to this stage (IAIA, 2007). Raising awareness about the advantages of ESIA follow-up can help overcome this challenge and encourage investment in this essential aspect of environmental management (Nadeem & Hameed, 2010).

Establishing causality between identified conditions and specific project impacts poses another significant challenge (Partidário & Arts, 2005). Various factors can influence the environment, making it complex to isolate and monitor the exact impact of a project (Partidário & Arts, 2005). Collaborative monitoring and sharing of responsibility and costs across sectors could be a potential solution, allowing for broader-scale monitoring and analysis. However, implementing such large-scale collaboration remains challenging, particularly as ESIA tends to be project-focused (Glasson et al., 2005).

The absence of a formal legislative requirement for follow-up in many jurisdictions is another challenge. Without a formal mandate, the commitment and resources allocated to ESIA follow-up may be inadequate, hindering the achievement of its objectives (Arts & Nooteboom, 1999). Promoting the integration of follow-up requirements into ESIA legislation can enhance the significance of this stage in the environmental assessment process (Nadeem & Hameed, 2010).

2.5 The Assessment Framework

Inspired by the reviewed literature and set objectives, this assessment focuses on the policies, laws and regulations that guide ESIA follow-up within the region; established institutional frameworks, the practice of environmental follow-up processes including and not limited to stakeholder participation and compliance and enforcement.

The assessment addresses whether the various states in Eastern Africa have established policy, laws and regulation that guide ESIA follow-up - the gaps therein, overlaps and conflicts created by the established institutional framework and generally the extent to which the framework fosters integrity, seamless engagement among institutions at all levels. The availability of incident reporting guidelines and its associated infrastructure and their transparency, efficiency and effectiveness in the follow-up process has also been captured in this assessment.

In the practice of environmental follow-up within the countries of interest, the assessment addresses the extent to which findings from ESIA and their significant commitments in the entire life cycle of the project, key basis for the follow-up, are integrated into legally binding instruments that are enforceable by governments and relevant institutions. The capacity of regulatory institutions to ensure compliance and enforcement, is effective through strategies that are both preventive and remedial, discourage violation and interrogate transparency.

The empowerment of the public and other relevant stakeholders on ESIA follow-up through early and consistent involvement in the entire process, including but not limited to designing grievance redress mechanism and access to information and justice, has been interrogated (Appendix I-V).

CHAPTER 3: POLICY AND LEGAL REQUIREMENTS FOR ESIA FOLLOW-UP IN EASTERN AFRICA

3.1 Regional frameworks of co-operation on ESIA administration and follow-up

Whereas EANECE is a semi-formal regional collaborative network, all the EANECE participating countries (except Ethiopia) are members of the East African Community (EAC), a treaty-based regional organisation that promotes economic and political integration among the Partner States comprising of Burundi, Democratic Republic of Congo, Kenya, Rwanda, Somalia, South Sudan, Tanzania and Uganda.¹ Among other provisions, the [Treaty for the Establishment of the East African Community](#) obligates Partner States to cooperate in matters relating to the management of the environment and natural resources.² In this regard, EAC Partner States have developed the [East African Community Protocol on Environment and Natural Resources Management](#) as the overarching legal framework for cooperation in the management of the environment and natural resources within their jurisdictions including transboundary ecosystems and natural resources.³ However, the Protocol is not in force yet pending its ratification by all Partner States; only Kenya and Uganda have so far ratified the Protocol.

The other key legal instrument is the [Protocol for the Sustainable Development of the Lake Victoria Basin](#) signed by EAC Partners States to provide a framework for cooperation on the conservation and sustainable utilisation of the Lake Victoria Basin resources through, among others, environmental protection and management.⁴ The Lake Victoria Basin Commission (LVBC) is EAC's specialised institution that coordinates implementation of this Protocol. The EAC Treaty and its protocols cited above provide a strong foundation and framework for collaboration in environmental and social impact assessments for transboundary projects. However, the EAC Partner States are yet to put in place a legal and institutional framework for transboundary ESIA and ESIA-follow-up.

¹ For more information please refer to the East African Community website <https://www.eac.int/>.

² See Chapter 19 of the [Treaty for the Establishment of the East African Community](#), available at https://www.eala.org/uploads/The_Treaty_for_the_Establishment_of_the_East_Africa_Community_2006_1999.pdf

³ See full text of the East African Community Protocol on Environment and Natural Resources Management at <http://repository.eac.int/bitstream/handle/11671/1638/EAC%20PROTOCOL%20ON%20ENVIRONMENT%20AND%20NATURAL%20RES%20MGMT.pdf?sequence=1&isAllowed=y>

⁴ See full text of the Protocol for the Sustainable Development of Lake Victoria Basin is available at <http://repository.eac.int/bitstream/handle/11671/1640/PROTOCOL%20FOR%20THE%20SUSTAINABLE%20DEVELOPMENT%20OF%20THE%20LAKE%20VICTORIA%20BASIN.pdf?sequence=1&isAllowed=y>

Under the [Convention for the Development, Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean \(the Nairobi Convention\)](#), guidelines were developed for impact assessment in the Western Indian Ocean (WIO) Region. The purpose of these guidelines is to:

1. highlight the issues of concern in the WIO region, especially how transboundary impacts on coastal and marine ecosystems could foreclose future livelihood and development options;
2. provide guidance on how transboundary impacts should be assessed, using strategic environmental assessment (SEA) and environmental impact assessment (ESIA) tools;
3. advise on how best to develop and/or strengthen legal and administrative instruments in the WIO Region. However, the only Eastern Africa countries that are signatories to the Nairobi Convention are Kenya and Tanzania.

3.2 National policies and laws for ESIA administration & follow-up in Eastern Africa

The table 2 below summarises the status of national laws, regulations & guidelines on ESIA and follow-ups in Eastern Africa countries.

Table 2: Status of national laws, regulations & guidelines on ESIA and follow-ups in Eastern Africa

Country	ESIA policy & legal framework (including ESIA follow-up)
Burundi	<ul style="list-style-type: none"> • Constitution of the Republic of Burundi – The constitution advocates for environmental protection and intergenerational equity approach in the use of natural resources in Burundi. However, it does not specifically mention ESIA. • National Plan for the Development of Burundi 2018-2027 (PND BURUNDI 2018-2027) – This document sets the government's development vision for the period 2018-2027. It focuses on five strategic goals: <ol style="list-style-type: none"> 1. develop growth-promoting sectors for the structural transformation of the economy; 2. develop human capital; 3. ensure sustainable management of the environment, mitigate climate change and improve land use planning; 4. strengthen governance, security and the safeguard of national sovereignty;

Country	ESIA policy & legal framework (including ESIA follow-up)
	<p>5. mobilise resources, improve the management of public spending and develop regional and international cooperation.</p> <ul style="list-style-type: none"> • Environmental Code Law N ° 1/109 of May 25, 2021 – This code is an update of Burundi’s Environmental Code enacted in 2000. The code lays down the fundamental rules of environmental management and safeguarding natural resources, with chapter III focusing on the environmental impact assessment process. The code is integral to the national strategy for the environment in Burundi. The 2021 update revises the fundamental rules intended to allow the management of the environment and the protection against all the forms of degradation. It aims to safeguard and develop the rational exploitation of the natural resources, to combat the various forms of pollution and nuisance and to improve thus the human living conditions while respecting the balance of the ecosystems. • Decree N ° 100/240 of October 29, 2014 establishing, missions, organization and operation of the Burundian Office for the Protection of the Environment (OBPE) – The main function of the OBPE is to put in place systems and mechanisms for protection of the environment and natural resources, as well as mitigation of climate change in Burundi. Key activities carried out by the office include environmental education, environmental monitoring, climate change adaptation and resilience. • Decree n° 100/22 of October 07, 2010 on the enforcement of the Environmental Code in connection with the procedure for environmental impact assessment – the law provides the framework for administration of ESIA in Burundi and outlines the procedure for environmental impact assessment and the categories of projects that must undertake environmental impact assessment before implementation. However, the decree did not regulate the step of scoping and this was remedied through a Ministerial Order in 2013. ESIA follow-up is mainly covered in the context of environmental monitoring by the OBPE.

Country	ESIA policy & legal framework (including ESIA follow-up)
Ethiopia	<ul style="list-style-type: none"> <li data-bbox="391 264 1430 840">• Constitution of the Federal Democratic Republic of Ethiopia, 1994 – the constitution guarantees every person in Ethiopia the right to a clean and healthy environment. To attain this right, the constitution outlines the following four environmental principles: government shall ensure that all Ethiopians live in a clean and healthy environment; the design and implementation of development programmes and projects shall not damage or destroy the environment; people have the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them directly; and government and citizens shall have the duty to protect the environment. <li data-bbox="391 840 1430 1081">• Environmental Policy of Ethiopia, 1993 – The overall objective of the policy is to improve and enhance the health and quality of life of all Ethiopians and promote sustainable social and economic development through good management and the use of natural, man-made and cultural resources and the environment. <li data-bbox="391 1081 1430 1818">• Environmental Impact Assessment Proclamation, 2002 – This proclamation which is in the process of being updated, establishes the framework for assessment of possible impacts on the environment, prior to the approval, of social and economic development projects by providing an effective means of harmonising and integrating environmental, economic, cultural and social considerations into a decision-making process in a manner that promotes sustainable development. It obligates all persons engaged in any project that requires ESIA, as determined in a directive issued pursuant to this Proclamation, to seek authorisation from the federal EPA or the relevant regional environmental agency. The federal EPA or the relevant regional environmental agency is mandated with monitoring the implementation of an authorised project in order to evaluate compliance with all commitments made by, and obligations imposed on the proponent during authorisation.

Country	ESIA policy & legal framework (including ESIA follow-up)
	<ul style="list-style-type: none"> <p data-bbox="451 268 1422 304">• Environmental Impact Assessment Procedural Guidelines, 2003 – these guidelines provide stakeholders with a step-by-step exposition of the importance and procedures of ESIA administration in Ethiopia. The guidelines state that systemic follow-up activities are needed:</p> <ol style="list-style-type: none"> <li data-bbox="451 464 1422 548">1. to ensure that the anticipated impacts are maintained within the levels predicted, <li data-bbox="451 562 1422 646">2. to see that the unanticipated impacts are managed and or mitigated before they become problems; <li data-bbox="451 661 1422 697">3. to realise and optimise the benefits expected; <li data-bbox="451 711 1422 842">4. to provide information for a periodic review and alteration of impact management plan and enhance environmental protection through good practice at all stages of the project. <p data-bbox="451 856 1422 940">The guidelines recommend that the Environmental Management System, including:</p> <ol style="list-style-type: none"> <li data-bbox="451 955 1422 991">1. internal monitoring schemes established for approved projects; <li data-bbox="451 1005 1422 1041">2. external audit be conducted; and <li data-bbox="451 1056 1422 1140">3. a mechanism for regular risk communication designed within the project. <p data-bbox="451 1171 1422 1255">There are also environmental audit guidelines (2022) and ESMP guidelines (2022)</p> <p data-bbox="451 1287 1422 1566">• Environmental Pollution Control Proclamation, 2002 – The proclamation is issued with a view to eliminate or, if that is not possible, to mitigate pollution as an undesirable consequence of social and economic development activities. This proclamation is one of the basic legal documents, which need to be observed as corresponding to effective ESIA follow-up administration.</p>
Kenya	<ul style="list-style-type: none"> <p data-bbox="451 1602 1422 1881">• Constitution of Kenya, 2010 – Article 42 of the constitution guarantees every person in Kenya the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of both present and future generations. The constitution requires the government to take measures for the protection of the environment and for proper use of natural resources</p>

Country	ESIA policy & legal framework (including ESIA follow-up)
	<p>for the benefit of the present and future generations. Article 69(1)(f) obligates the State to establish systems of environmental impact assessment, environmental audit and monitoring of the environment. The people are also required by the Article 69(2) of the Constitution to work with the government and all other relevant actors in conserving and protecting the environment and natural resources. In addition, Article 35 and 69(1)(d) of the Constitution require the participation of the public in all decision-making processes, such as the Environmental Impact Assessment process and that accurate information regarding any intended decision, be provided to the public in a timely and open manner.</p> <ul style="list-style-type: none"> • National Environment Policy, 2014 – This policy establishes an overarching guiding framework for an integrated approach to environmental protection and sustainable management of Kenya’s natural resources. The objectives of the Policy include promoting and supporting research and capacity development as well as use of innovative environmental management tools such as strategic environmental assessments (SEAs), environmental impact assessments (ESIAs) and environmental audits (EA)). Part 9.1 of the policy envisages integration of environmental concerns in all policy, planning and development processes. In this regard, the Policy states that the government will institutionalise strategic environmental assessments approaches to all policies, programmes and plans; and ensures that all significant development projects are subjected to ESIA and regular environmental audits. • Environmental Management & Coordination Act, 1999 – Part VI of the Act outlines broad provisions for the conduct of SEA & ESIA. All policies, plans and programmes for implementation are subject to SEA, while all projects & activities listed in the Second Schedule are subject to ESIA (sections 57 – 67). Part VII of the Act outlines broad provisions for environmental audit and monitoring. This Act creates the National Environment Management Authority (NEMA) as the government agency responsible for supervising and coordinating all

Country	ESIA policy & legal framework (including ESIA follow-up)
	<p>matters related to environmental conservation and management in the country. Among many other functions, NEMA is responsible for reviewing all Environmental Impact Assessment reports and making decisions on whether to grant an environmental impact assessment licence for any project at the planning stage for which an Environmental Impact Assessment is required. NEMA is also responsible for registration and licensing of all environmental impact assessment experts (ESIA Experts) in the country. As well as the requirement that the National Environment Management Authority or its designated agents should carry out an environmental audit of all activities that are likely to have significant effect on the environment, there is also a requirement that the owner or operator of a project for which an environmental impact assessment report has been prepared, must keep accurate records and report annually to the Authority describing to which extent the project conforms, during implementation, to the statements made in the environmental impact assessment report submitted to the Authority (section 68). Part X of the Act provides for the appointment of environmental inspectors, to monitor and enforce compliance with relevant provisions of the Act, including ESIA requirements.</p> <ul style="list-style-type: none"> <li data-bbox="391 1241 1430 1866"> • Environmental Management & Coordination (Impact Assessment & Audit Regulations), 2003 – The regulations are intended at operationalising the general provisions of the Environmental Management and Co-ordination Act as relates to ESIA. Besides providing for the procedures for administration of ESIA in Kenya, the regulations make elaborate provisions for ESIA follow-up in terms of monitoring and audit. The regulations stipulate that an environmental audit study shall be carried out on all projects undertaken after completion of an environmental impact assessment report. In this regard, a project proponent is required to submit an environmental audit to NEMA within 12 months of the start of the project, and annually thereafter, based on the baseline information in the ESIA report. In addition, NEMA or a lead agency may, where there is public

Country	ESIA policy & legal framework (including ESIA follow-up)
	<p>interest or cause to believe that a project has or may have adverse impacts on human health or the environment: carry out an environmental enforcement audit; or instruct the developer to carry out an environmental compliance audit, within a specified period.</p> <ul style="list-style-type: none"> • Environmental Impact Assessment Guidelines & Administrative Procedures, 2002 – These guidelines were developed by NEMA to help project proponents, ESIA practitioners, members of the public and lead agencies understand and follow the ESIA process and to let them know at what levels and on what basis decisions on ESIA applications are made. • National Guidelines for Strategic Environmental Assessment, 2012 – These guidelines were developed by NEMA to assist stakeholders to understand SEA and its administration processes in Kenya.
Rwanda	<ul style="list-style-type: none"> • Constitution of the Republic of Rwanda – The Constitution guarantees every person in Rwanda the right to a clean and healthy environment. In addition, it places an obligation upon everyone in Rwanda to protect, safeguard and promote the environment. The State has a duty to ensure the environment is protected by undertaking various measures including the establishment of laws that outline the modalities for protecting, conserving and promoting the environment. This provides the basis for various environmental policies and laws, including those on ESIA. • Rwanda Environment Policy, 2003 – The policy lays the foundation for the establishment of a legal framework for improved management of the environment and natural resources in Rwanda. • Law N°48/2018 of 13/08/2018 on Environment – This law establishes the legal framework for environmental protection and conservation of Rwanda’s natural resources. Article 30 of the law provides for the list of activities or projects that are subject to ESIA. Article 31 stipulates that every policy, strategy, plan and programme must undergo a strategic environmental assessment. Procedures for ESIA and SEA are to be guided by a Ministerial Order. Article 32

Country	ESIA policy & legal framework (including ESIA follow-up)
	<p>requires that every project that may have significant impact on the environment must undergo an environmental audit during and after its implementation.</p> <ul style="list-style-type: none"> • Law No. 63/2013 Determining the Mission, Organization and Functioning of Rwanda Environment Management Authority (REMA) - This law outlines the functions, powers and administrative structures for the efficient functioning of REMA. It designates REMA as the national authority responsible for supervising and monitoring all environmental matters and ensuring that issues relating to environment are integrated in all national development programmes in Rwanda. • Among the many functions of REMA outlined in this law, the following are key ESIA and its follow-up - To monitor and assess development programmes in order to ensure compliance with the environmental laws; to participate in designing strategies to prevent risks and other phenomena which may cause environmental degradation and propose remedial measures; and to monitor and supervise environmental impact assessment, environmental audit, strategic environmental assessment and any other relevant environmental study.
South Sudan	<ul style="list-style-type: none"> • The Republic of South Sudan currently does not have a dedicated framework law for environmental protection. However, the country has prepared a draft law, the Environmental Protection Bill 2023, which is still under review. The Bill, if and when eventually enacted into law, will provide an overarching framework for environmental protection, including ESIA and its administration in South Sudan, including the establishment of relevant regulations and guidelines. In the meantime, the Ministry of Environment and Forestry is using the World Bank Environmental Safeguard Policies as a guide, as the mechanism for addressing environmental and social issues in development projects. <p>However, the laws governing the petroleum and mining sectors make specific reference to ESIA obligations in those sectors.</p>

Country	ESIA policy & legal framework (including ESIA follow-up)
	<ul style="list-style-type: none"> • The Petroleum Act 2012 regulates all petroleum activities in South Sudan. Regarding ESIA, section 59 of the Act provides that the Ministry of Petroleum shall, in consultation with the ministry responsible for the environment, coordinate ESIA being undertaken by a licensee or contractor for various petroleum activities including: reconnaissance, exploration drilling, development & production, construction of transportation system, decommissioning and any other petroleum activities likely to have adverse social and environmental impacts. However, the Act does not provide the procedure for carrying out ESIA. • The Mining Act, 2012 regulates the prospecting, exploration, development and production of minerals and mineral products in South Sudan. Section 121(2) of the Act provides that the applicant for a mining or retention licence shall submit a comprehensive ESIA study report as part of its business plan as required under the Act. This Act does not provide the procedure for carrying out ESIA either.
Tanzania	<ul style="list-style-type: none"> • National Environmental Policy, 2021 – The Policy establishes a national framework for planning and sustainable management of the environment in a coordinated, holistic and adaptive approach taking into consideration the prevailing and emerging environmental challenges as well as national and international development issues. The policy envisages mainstreaming environmental issues at all levels, strengthening institutional governance and public participation in an environmental management regime. Strengthening ESIA systems is mentioned in various sections of the policy. • Environmental Management Act, 2004 – The Act establishes the legal and institutional framework for sustainable management of the environment in Tanzania. Part VI of the Act outlines detailed provisions of the administration of environmental impact assessment. With regard to ESIA follow-up, section 101 of the Act states that the National Environment Act shall be responsible for carrying out audits on projects or undertakings that are likely to have a significant impact

Country	ESIA policy & legal framework (including ESIA follow-up)
	<p>on the environment. It further stipulates that an environmental inspector may enter any premises to determine its compliance with the Environmental Impact Statement. Part VII of the Act provide requirements for SEA for legislative proposals (bills & regulations), public policies and programmes.</p> <ul style="list-style-type: none"> <li data-bbox="391 506 1430 1423"> <p>• Environmental Management (Environmental Impact Assessment and Audit) Regulations, 2005 – These regulations outline the activities or projects, subject to an ESIA in Tanzania, and provide detailed procedures for the administration of ESIA and environmental audits in line with the requirements of the Environmental Management Act, 2004. The regulations prohibit any developer from implementing any project likely to have an adverse environmental impact or for which an environmental impact assessment is required under the Act unless an environmental impact assessment has been concluded and approved in accordance with the Regulations. With regard to ESIA follow-up, the regulations provide for environmental audits to: determine the extent to which a project complies with the approved environmental and social management plan of that specific project and environmental quality standards; provide a mechanism for learning from experience, and for refining project design and implementation procedures to mitigate adverse environmental impacts; and provide regulatory bodies with a framework for checking compliance with and the performance of an environmental and social management plan.</p> <li data-bbox="391 1430 1430 1717"> <p>• Environmental Management (Environmental Impact Assessment and Audit) (Amendment) Regulations, 2018, 2004 – The regulations outline the activities or projects subject to ESIA, and provide detailed procedures for the administration of ESIA and environmental audits in line with the requirements of the Environmental Management Act.</p> <li data-bbox="391 1724 1430 1866"> <p>• Environmental Management (Environmental Impact Assessment and Audit) (Amendment) Regulations, 2018 – These regulations amended the 2005 EIA/EA regulations described above with the</p>

Country	ESIA policy & legal framework (including ESIA follow-up)
	<p>intention of providing more clarity on the administration of ESIA in Tanzania. The regulations are intended to be read as one with the Environment Impact Assessment and Audit Regulations, 2005.</p> <ul style="list-style-type: none"> • Environmental (Registration Environmental Experts) Regulations, 2005 – These regulations establish a system for registration of environmental experts; provide for a system of nurturing competence, knowledge, professional conduct, consistency, integrity and ethics in the carrying out of environmental impact studies and environmental audits; and provide for a code of conduct, discipline and control of environmental experts. • Strategic Environmental Assessment Regulations, 2008 – These regulations provide for the system of administration of strategic environmental assessments in Tanzania.
Uganda	<ul style="list-style-type: none"> • Constitution of Uganda, 1995 – Article 39 guarantees every person in Uganda the right to a clean and healthy environment. Article 245 provides that it is the duty of Parliament to enact laws that protect and preserve the environment from abuse, pollution and degradation, that promote measures intended to manage the environment for sustainable development and that raise environmental awareness. Whereas there is no explicit mention of ESIA in the Constitution of Uganda, the above stated broad provisions establish a foundational basis for ESIA policies and legislation. • National Environment Act, 2019 – Part X of the Act outlines broad provisions for the conduct of ESIA, including: purpose of ESIA, responsibility of the developer, projects for which ESIA is required, mitigation and other offset mechanisms. Part XII of the Act outlines provisions for environmental compliance and monitoring. Section 122 (2) requires a developer to monitor the project to assess and mitigate its possible impacts on human health or the environment, and to ensure conformity with environmental laws, environmental standards and conditions in permits, licences and other approvals. Where an environmental management and monitoring plan is required as part of ESIA, the developer or operator is required to monitor the project against the measurable actions and targets of the environmental

Country	ESIA policy & legal framework (including ESIA follow-up)
	<p>management and monitoring plan. The developer/operator is also required to submit an environmental compliance audit report to NEMA and lead agency, and to undertake mitigation measures to address and rectify any non-compliance detected. Section 127 provides for the appointment of environmental inspectors to monitor and enforce compliance with relevant provisions of the Act, including ESIA requirements.</p> <ul style="list-style-type: none"> <li data-bbox="391 611 1430 1178"> <p>• National Environment (Environmental and Social Assessment) Regulations, 2020 – These regulations are intended at operationalising the ESIA provisions of the National Environment Act, 2019. They provide detailed procedures for the administration of ESIA in Uganda. On ESIA follow-up, the regulations stipulate that NEMA may, in liaison with the relevant lead agency, within 12 months of grant of a certificate of approval of ESIA, carry out on-site inspections and monitoring of the project to ensure compliance with the conditions in the certificate of approval of ESIA. The regulations also stipulate that after the period of 12 months from grant of certificate of approval of ESIA, the developer shall be subject to the requirements of the National Environment (Audit) Regulations, 2020.</p> <li data-bbox="391 1188 1430 1866"> <p>• National Environment (Audit) Regulations, 2020 – These regulations apply to an environmental audit for a project or activity for which ESIA has been undertaken and any other project or activity as may be prescribed by NEMA. The regulations require an environmental audit to be undertaken to ensure compliance by the developer with the Act, regulations and standards made under the Act, conditions in permits and licences and any other applicable law, environment management systems and the environmental management and monitoring plan of the developer. The regulations also provide that NEMA or a lead agency may, at its own instance or following a petition by any person, carry out an environmental enforcement audit for a project or activity that has or may have adverse human health, environmental, socio-economic or cultural impacts.</p>

Country	ESIA policy & legal framework (including ESIA follow-up)
	<ul style="list-style-type: none"> <li data-bbox="391 262 1430 934"> <p>• National Environment (Strategic Environmental Assessment) Regulations, 2020 – These regulations require all government ministries, departments or agencies to undertake a strategic environmental assessment for a policy, plan or programme in the strategic areas set out in Schedule 1 to the Regulations. The detailed procedures and processes for undertaking SEA are outlined in the regulations. On follow-up, the regulations stipulate that a ministry, department or an agency of government shall, in collaboration with NEMA and a relevant lead agency, monitor and evaluate the implementation of the recommendations of the final strategic environmental assessment report; and monitor the impacts that may arise during the implementation of the policy, plan or programme to identify unforeseen impacts, so as to undertake appropriate remedial action.</p> <li data-bbox="391 934 1430 1306"> <p>• Guidelines for Strategic Environmental Assessment in Uganda, 2020 – These guidelines are designed to support ministries, departments and agencies of Government as well as practitioners when undertaking SEA. The guidelines support operationalisation of the relevant provisions under the National Environment Act, 2019 and the National Environment (strategic environmental assessment) Regulations, 2020.</p>

CHAPTER 4: GAPS, CHALLENGES AND NEEDS RELATED TO ESIA FOLLOW-UP IN EASTERN AFRICA

4.1 Policy/Law/Regulation

The study established that all the targeted Eastern Africa countries except South Sudan have laws and regulations that govern ESIA follow-ups. South Sudan depends on an environmental inspection decree by the ministry in charge of environmental affairs and international environmental safeguards to implement ESIA follow-up where needed. About 46% of respondents from environmental regulatory authorities or ministries in charge of environmental affairs indicated that there are gaps in policy and legal frameworks on ESIA follow-ups in their respective countries. The gaps included lack of sector specific guidelines to ease environmental follow-ups, lack of policy actions to support capacity building, enhanced focus on social component with little focus on nature rights, no proper linkage between the developer and the regulator after the ESIA follow-up process and lack of or weak coordination frameworks between regulatory authorities and lead agencies in projects. About 67% of interviewed registered environmental experts affirmed existence of gaps in policy and legal frameworks.

"In Kenya, while the ESIA Licence normally has conditions, there is no clear mechanisms in the law to ensure that those conditions are complied with. In many cases, audits are done but to a large extent, the reports rarely show cases of non-compliance while on the ground the situation is different. This may also be attributed to inadequate implementation capacity of the Authority and overreliance on independent experts"
Respondent – Expert 2

"In Uganda, there seem to be some missing links between the developer and the regulator after the ESIA study. This hampers effective implementation of environmental follow-ups."
Respondent – Regulator 1

"Since the Environmental Bill is still in a draft form, the penalty of polluters pay is not legalised. So any impact that is seen as an offence has no solid legal basis in South Sudan."
Respondent – Regulator 11

With regard to undertaking environmental follow-up post commencement of the projects, respondents indicated that the reporting was done immediately, six months or

a year after commencement of the project implementation. In some cases, the reporting is dependent on the nature of the project where needed, sensitive projects are required to be frequently monitored.

Respondents from regulatory authorities or government ministries in charge of environmental affairs (73%) agree that there are demands in ESIA follow-up due to developments in international and national policies and legislation.

For instance, in Kenya, in the absence of ESIA regulations before the year 2003, some mining projects used international best practice in environmental follow-up which subsequently shaped the environmental follow-up regulations. A similar situation is observed in South Sudan which currently no regulations on environmental follow-up but uses best practices for monitoring and implementing the follow-up processes. The donors/funder's requirements on environmental safeguards were also seen as encouraging best practices in the follow-up process, which provides information for the revision of the respective regulations, thus ensuring continuous regulatory improvement.

"Some of the projects financed by multilateral financial institutions require regular follow up by the Environmental Protection Agency and all relevant state agencies failure of which funding is affected. This has informed review of our regulations or conditions of approval issued to proponents. In addition, the funded government agencies mainly dealing with major infrastructure projects have been obligated to establish departments that undertake continuous environmental follow-up as a condition for the funding. In some cases, they have training allocation fund vote for capacity development of their officers, funded by the project financier/donor, to undertake follow-ups" Respondent - Regulator 5

Respondents suggested that gaps in the policy and legal framework could be addressed by ensuring that robust policies and legislation are established in countries where they are absent. However, a more focused assessment is needed to clarify the gaps. In cases where there are uncoordinated agencies or actors due to the policy and legal framework, there is need for review to fill the existing gaps as indicated below by respondent 2 & 5. In addition, enhanced public participation in formulation of ESIA follow-up regulation and policies is needed, to ensure inclusion of diverse aspects.

“There is a gap occasioned by absence of specific regulation and policy governing ESIA process in the country, thus no framework and as such, gaps can only be identified when relevant laws are put in place.” Respondent – Regulator 2

“Supporting policy reviews and legal frameworks and building capacity of the agencies involved is key. This may include supporting them to developing checklists for use in following-up to ensure consistency in data collection.” Respondent – Regulator 5

1. Interviewed environmental experts, architects, engineers and civil societies highlighted several key points:
The need for institutional support to develop simplified sectoral guides for stakeholders on ESIA follow-up.
2. The importance of implementing robust policy actions to enhance public participation and policy gaps that affect implementation of ESIA follow-up procedures.

4.2 Institutional framework & coordination

In the Eastern Africa countries, ESIA follow-ups are either regulated, monitored, supervised and coordinated by semi-autonomous regulatory government agencies or by the ministry in charge of environmental affairs. These institutions work with other relevant lead agencies in the implementation of ESIA follow-up. However, it is worth noting that some countries have no clear guidelines for conducting the follow-up as affirmed by respondent – regulator 2.

“There is a department for ESIA in the Ministry, however no clear guidelines for the conduct of ESIA is put in place so this means that there is no institutional framework for ESIA that is in existence.” Respondent – Regulator 2

In the implementation of the ESIA follow-ups some regulatory authorities have adopted a multi-sectoral approach which is characterised by involvement of lead agencies responsible for a particular project, programme or plan and local governments such as district/county governments where the projects are located. However, it is noted that the monitoring inspectorate structure is established in the regulatory authorities, although it is inadequately equipped. When the follow-up implementing entity is a government

ministry, the monitoring inspectorate relies on the law enforcement arm of the government which is organised under a different government ministry or agency.

“In Kenya, ESIA follow-up is strictly within the Environmental Agency that uses its inspectorate structure to monitor.” Respondent – Regulator 8

Respondents from regulatory authorities (46%), environmental experts (75%) and civil societies (100%) indicated that the ESIA follow-up institutional frameworks are ineffective (Figure 2). Regulators cited as challenges to ineffectiveness:

1. a lack of sound legislation;
2. a lack of guidelines and procedures for conducting ESIA;
3. inadequate financing and staffing especially in ministries, agencies and local government;
4. inadequate capacity among staff responsible for follow-up; and
5. inadequate equipment; and
6. a lack of coordination among government agencies involved in ESIA follow-up process.

They acknowledged that an ineffective institutional framework hampers the effectiveness of ESIA follow-up in their countries to a limited (56%) and large extent (27%). whereas 18% of respondents were not sure.

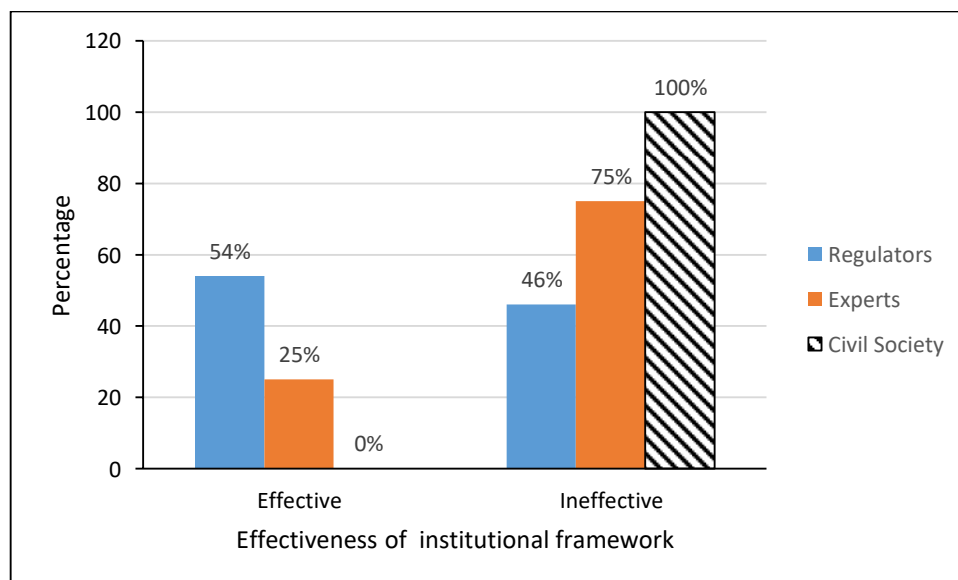


Figure 2: Response on effectiveness of institutional framework

On the other hand, environmental experts, contractors, proponents, engineers, civil societies and architects viewed the bureaucratic red tape within government agencies as a contributing factor to an ineffective institutional framework that drives up the cost of environmental follow-up. They attributed it to limited human and financial resources, lack of required technical knowledge among some officers, to deal with follow-up issues, and limited and ineffective environmental monitoring activities by authorities.

"The silo working modalities in government institutions is greatly affecting environmental follow-up process because it inhibits the horizontal coordination which enhances ineffectiveness." Respondent Regulatory 8

"There is limited attention given to ESIA follow up processes. No definite system/records of follow up of facilities/projects." _Respondent Regulator 10

While the responses of all respondents within regulatory authorities or focal points for the follow-up process of ESIA show that agencies are required to adopt a multi-agency approach in the process, they acknowledge that there is a weakness. This weakness may be exacerbated by power play amongst institutions caused by legal capacity and budget allocation.

"Some government agencies which are well resourced and are supposed to take significant role in ensuring success of environmental follow-up in their line projects, take a back seat and point fingers to NEMA who play the coordination role but with lesser resources. There is need of inter-ministerial, Agencies and departments engagement, sensitisation and training on ESIA follow-up" _Respondent Regulator 7

4.2.1 Experience of restructuring or establishment of institutions

All respondents from regulatory authorities indicated they experienced restructuring/ establishment of institutions as a response measure to address challenges in implementation of ESIA follow-up. The actions include:

1. formation of multi-agency committees;
2. establishment of regulatory authorities;
3. creation of memorandum of understanding with relevant agencies;

4. restructuring of directorates within the regulatory agencies and other government agencies to facilitate the follow-up process, some of which have enhanced efficiency to some extent as indicated in the comments below.

"In NEMA Kenya, the department of compliance and enforcement was restructured into two separate directorates of Compliance and directorate of Enforcement to avoid conflict of interest where the person who licenses is the same one conducting inspection. In addition, there are formations of a multi- agency committees to assess among other things compliance to conditions of impact assessment licence thus enhancing efficiency"
Respondent – Regulatory 1

"In Burundi, the Burundian office for Environmental protection (OBPE) was established in 2014 as a result of the merger of two general directorates to control, monitor and ensure sustainable management of the environment. The OBPE oversee environmental follow-up process. Before then, follow-ups were carried out by the OBPE only. Afterwards the authorities included other institutions of the ministry" Respondent – Regulatory 4.

"In South Sudan, currently the ministry has signed an MoU with the NCEA to establish ESIA system and the ministry has department for ESIA as well as Draft Environmental Protection Bill 2023" Respondent – Regulatory 2

"NEMA Uganda is currently undergoing institutional restructuring to provide more staff for ESIA to regional offices and other specialised departments for more effective implementation of the follow-up process. I think one of the best approaches is also having an automated data base that gives a trigger of the need to follow up on the timelines specified on ESIA approval certificate or licence" – Respondent - Regulatory 6

Responses from environmental experts interviewed indicate that application of ESIA follow-up to a new level and dimension of decision making, is to a limited extent with 75% of them indicate that ESIA follow-up has contributed to some extent to decision making, especially in setting conditions of approval.

"The monitoring of ESIA provides a clear understanding of incompatibilities and improvements in decision-making. Indeed, protected areas can benefit from the specific statuses due to the environmental monitoring of projects." Respondent – Expert 2

4.2.2 Suggested improvement measures on existing institutional framework

Suggestions to improve ESIA follow-up by respondents from regulatory authorities include capacity building, having enough staff and resources to do the follow-ups, establishment of a clear system and procedure for conducting follow-ups which are independent and free from political interference, formulation of sector specific environmental follow-up guidelines, automation of the follow-up tracking processes, adequate budget allocation to support the process and adoption of international and sub-regional safeguard policies such as those of the World Bank and the African Development Bank. In addition, there should be enhanced vertical and lateral coordination amongst department, agencies and ministries involved in the environmental follow-up process and the specified lead agencies in environmental and social management plans should be resourced and obligated to play their role effectively.

"Institutions whose mandates are captured in the licence conditions should have responsibility to follow up on compliance of the same to avoid there being a gap in implementation" Respondent - Regulator1

4.3 Prioritisation and utilisation of allocated resources

All respondents from regulatory authorities had the view that even though ESIA follow-ups had specified unit sections, they were less prioritised within the authorities. This is reflected in budget allocations that respondents felt were insufficient to meet demand. Follow-up activities require financial resources to facilitate them, while no specific fees are paid by project executives for follow-up, unlike processing ESIA licences. The authorities' departments dealing with follow-up have fewer resources and the disbursement of funds from the government treasury to the authorities is also characterised by delays. All respondents from regulatory authorities confirmed that the ESIA follow-up process faced budgetary and equipment constraints. This was also confirmed by all environmental experts interviewed in the region.

“Currently there is Human Resource that is dedicated for ESIA follow-up. However, equipment is greatly lacking. Inadequate funding also impedes the development and establishment of an effective process” _Respondent_2

“Not all the ministries, agencies and local governments prioritise ESIA follow-up in their planning due to financial constraints and they take it as an extra cost on their development projects.” - Respondent_6

“In my country, the government has not yet allocated a budget for the environmental follow-up. They assume it should be self-sustaining. This makes the whole ESIA process counterproductive.” Respondent- Expert_4

4.4 Compliance & Enforcement

4.4.1 Guidelines on incident reporting

Twenty-nine percent of respondents from the regulatory agencies indicated that in reality their regulatory authorities have weak or no guidelines on incident reporting, though some ESMPs or licence conditions generally refer to the need to quickly report incidents that contravene stipulated conditions. The weakness or absence of these guidelines inhibits the provision of information on environmental performance of the approved projects and the burden falls on the respective regulatory and lead agencies. In countries where there is no legislation to regulate follow-up, there exists a gap and thus a weaker process of incident reporting is exhibited. This has a negative impact on the ESIA follow-up process.

“The absence of impact reporting lines does not allow real-time monitoring of the environmental and social impact likely to be caused by the activities of the various development projects currently being implemented.” _ Respondent Regulatory 3

In countries where the regulatory authorities have established the reporting guidelines and desks, respondents indicate that this provides a guide on monitoring parameters, helps classify and prioritise follow up areas and allows regular monitoring of the state of the environment across the country thus improving the follow-up process, as stated by

Respondent 8. Any breach of licence conditions ascertained after incident reporting may lead licence revocation.

"The incident reporting by the public to the Authority and response on these incidents creates a deterrence of non-compliances on the ESIA licence conditions." Respondent – Regulatory 8

However, some respondents from regulatory authorities did indicate that the presence of guidelines does not necessarily translate to improved performance in environmental follow-up activities due to lack of transparency and an inclination towards mitigation measures suggested in the ESIA report, which sometimes do not correspond to actual impacts. This highlights the need to ensure the integrity of the reporting system for effective implementation of follow-up process – an aspect that can be greatly improved by adequate community engagement and sensitisation by informed journalism. Respondents noted that over-reliance on independent environmental experts hired by the proponent to carry out the monitoring aspect of follow-ups may be counterproductive if integrity is not assured. Ways in which the regulatory agencies with an incident reporting desk ensure integrity include: carrying out impromptu field visits for inspection and monitoring, secondment of Authority officer to the project – especially for sensitive projects, enforcement of the code of conduct and professional ethics of experts and clients and fighting corruption. Other measures include training of environmental inspectors on the course of basic enforcement and principles of compliance and enforcement, emphasis on consequences of non-integrity issues by the Authority, as well as raising public awareness about the incidents reporting mechanism.

Environmental experts (75%) rated regulatory authorities' response to incident reporting during the ESIA follow-up process as poor (figure 3). They associated the poor response with a lack of on-the-ground coordination and monitoring of mitigation measures, and if any response was made at all, it was selective – targeting only high priority incidents (with visible immediate adverse impacts). The integrity of compliance officers was also cited as a contributing factor to poor response. Similar sentiments were also expressed by respondents from civil societies and contractors/proponents.

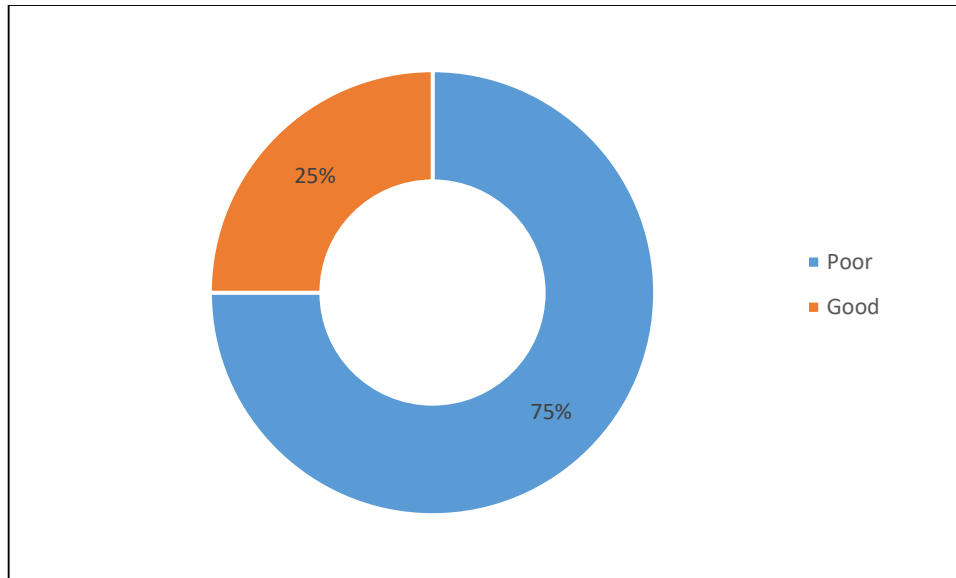


Figure 3: Environmental experts' rating of regulatory authorities' response to reported incidents

"In many cases, there is a lot of corruption, bribery and political interference which affects response to incident reporting. So, I am not sure about the effectiveness of incident reporting" Respondent- Expert 1.

"The projects proponents continue to implement activities contrary to the ESIA conditions because the Regulatory Authority sometimes may be compromised and subdued thus not stopping those activities especially in the oil and gas sector." Respondent-Civil Society 1

Interviewed environmental experts emphasised the need for stricter monitoring and the establishment of robust incident-reporting guidelines, facilitated by an efficient reporting system. This would potentially enable early detection and timely management of negative impacts that could have long-term adverse effects in the environment.

4.4.2 Effectiveness of implementation and enforcement of proposed mitigation measures/conditions of approval

Fifty-four percent of the respondents from regulatory authorities, indicate that implementation and enforcement of proposed measures/conditions of approval are cost effective (figure 4). In general, they hold the view that compliance with mitigation measures and licence conditions reduces pollution costs and ensures efficient use of resources which is a win-win situation. Moreover, approved ESMP and licence conditions are legally binding and the costs of compliance captured in the environmental and social

management plan (ESMP) gives the proponent time to mobilise the required resources to meet compliance costs. A view shared by 75%, 67% and 50% of environmental experts, civil societies and engineers & architects who responded to this survey. However, 46%, 25%, 33% and 50% of the respondents from regulatory authorities, environmental expert, civil societies and engineers & architects' categories respectively (figure 4), considered it cost-ineffective, generally noting that some of the mitigation measures proposed in ESIA reports are often ill-defined or poorly written to enable monitoring and auditing leading to ineffective follow-up process and thus not guaranteeing environmental protection. Moreover, the mitigation costs presented in some reports are not defined in the contract between proponents and contractors. They are "wise guesswork" hinged on the current situation and less focused on future financial requirement thus contributing to financial strain and inadequacies during the follow-up process.

"As a reviewer of ESIA reports, I have observed that the costs provided to address mitigation measures in the ESMP are not informed with clear valuation process. In my opinion most of those figures are guess work undertaken to meet the requirement of the regulation." Respondent – Regulator 9

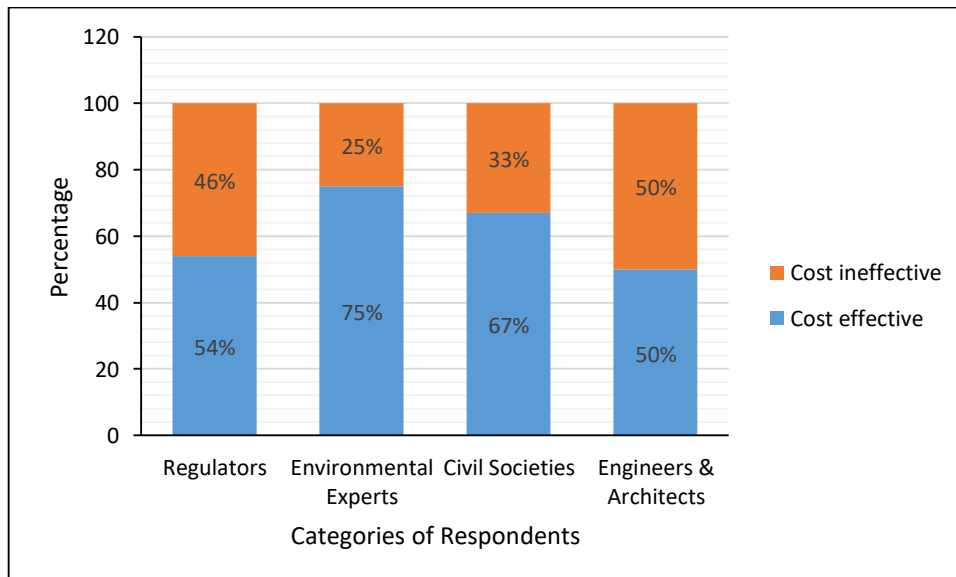


Figure 4: Cost effectiveness of implementing mitigation measures and ESIA conditions of approval

Interviewed environmental experts indicated that implementation of some conditions of approval, albeit to a limited extent, was not cost-effective for the proponent (their clients) and thus encourage non-compliance during project implementation. Deficiencies in the ESIA report, such as unclear monitoring parameters (75%), unclear implementation design of the follow-up process (100%), limited or no cost estimates for measures in the Environmental and Social Management Plan (100%) were also mentioned by them as factors affecting the ESIA follow-up process (figure 5). Omission or underestimation of mitigation costs in the implementation contract was also mentioned as one of the factors creating a situation of non-compliance with proposed mitigation measures and conditions of approval issued by the regulatory authorities.

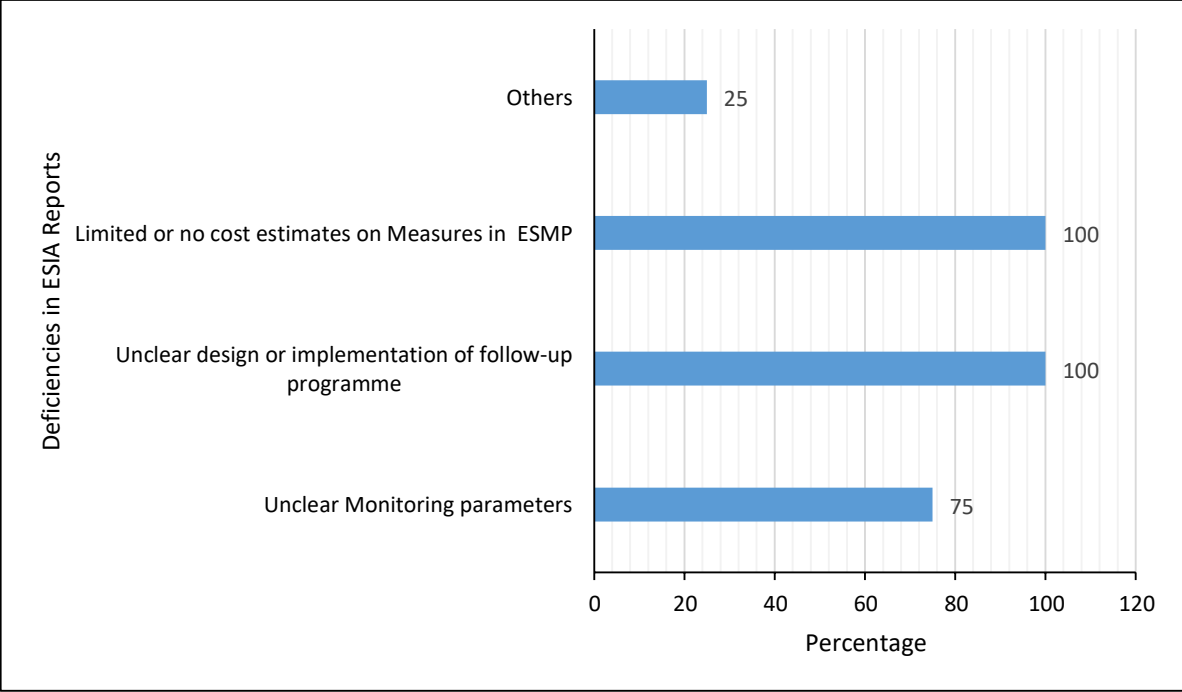


Figure 5: ESIA Experts' responses on deficiencies in ESIA studies that affect follow-up processes

Sentiments expressed by interviewed environmental experts, captured below, indicates how gaps in ESIA affect the follow-up process.

"Some mitigation measures are unclear and thus posing challenges during monitoring and auditing. What are the parameters to be measured? Are they even measurable? This is a major challenge in environmental auditing. Furthermore, some experts just copy and

paste the mitigation measures from previous reports without synthesis – aspect of plagiarism” Respondent-Expert 2

“I have realised in my practice on environmental auditing that most of the costing provided in the ESMP are inconsistent with reality- during project implementation. They are mostly under-estimated thus causing challenges on implementation especially when dealing with budget provisions in the contract.” Respondent-Expert 4

Environmental experts rated the extent to which the ESIA follow-up process – as implemented - ensured sustainability, as low (50%), neutral (25%) and greater (25%) (figure 6). The low score can be attributed to non-implementation of ESIA follow-up, due to lack of equipment, human resource and inadequate operation budget allocated to the authorities. These gaps have led to some proponents to continue to oppose the licence conditions and ESMP – which sometimes fails if integrity is not maintained. This situation is further reflected in the responses from environmental experts on the level of satisfaction with the environmental follow-up process in which 50% were dissatisfied.

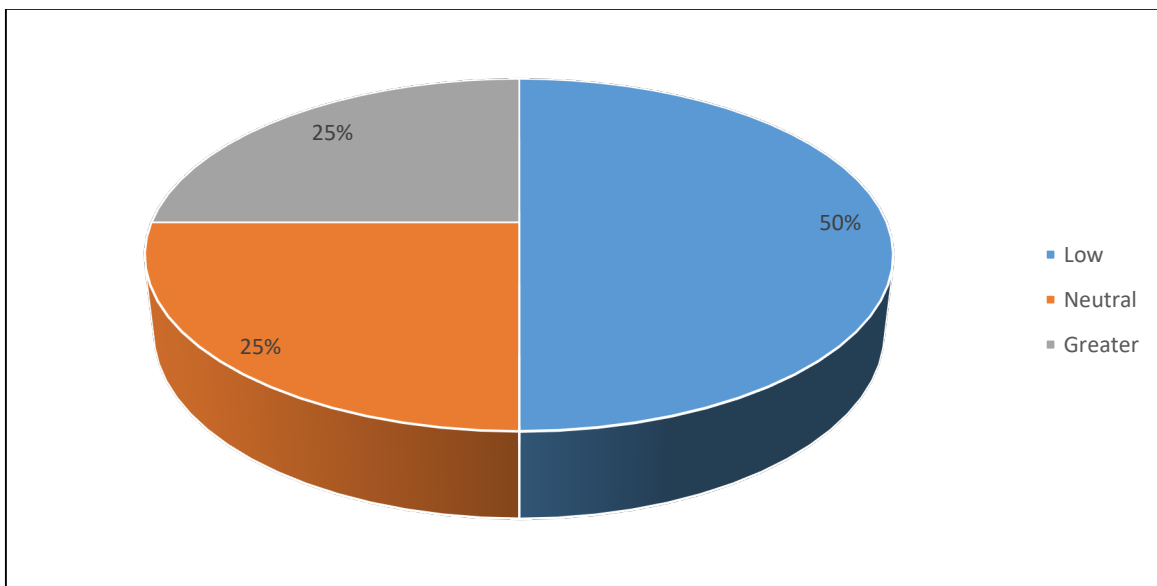


Figure 6: Environmental Experts’ rating the extent to which environmental follow-up ensures sustainability

Proponent related challenges experienced by experts that may contribute to ineffectiveness in implementation of environmental follow-up include: Lengthy certification procedures; insufficient technical capacity to develop projects in accordance

with environmental standards, financial capacity and socio-environmental sensitivity, weak technical capacity to elaborate the ESIA report, lack of support tools for the ESIA process, low capacity to identify negative impacts and mitigation measures, lack of information on relevant regulations, cost of some mitigation measures, inadequate public participation especially in cases where members of the public are always shy to disclose information or simply do not want to express their views.

With regard to public participation during the ESIA follow-up process, civil society respondents were of the opinion that community involvement very limited (67%) and in some cases avoided (figure 7). This situation persists unless the community is given capacity-building on their rights to participation and redress mechanisms to explore in case where they have been deliberately or tactfully denied their rights.

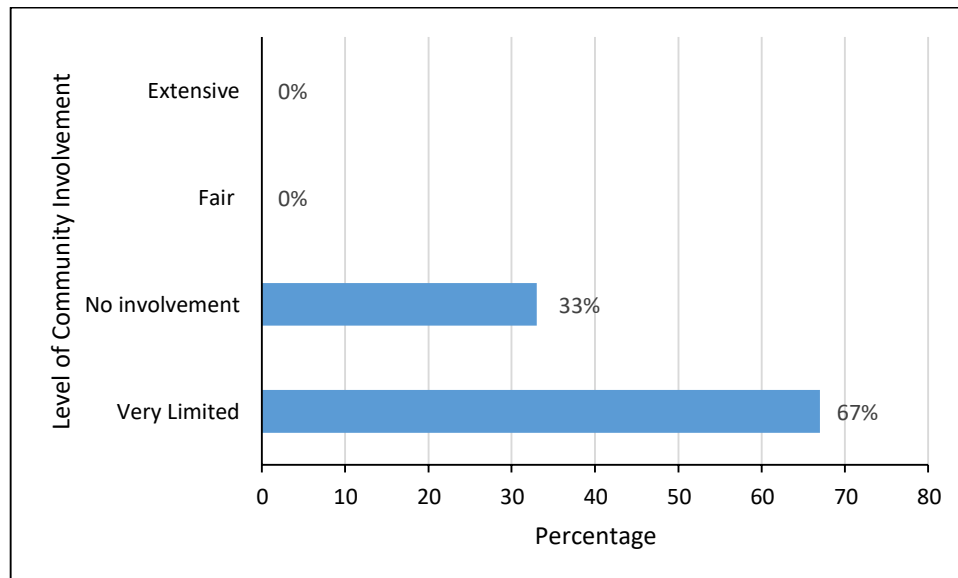


Figure 7: Level of community involvement in ESIA follow-up processes

Similarly, 82% of respondents from regulatory authorities rated the involvement of stakeholders in the ESIA follow-up process as inadequate. Reasons for this rating include:

- The involvement of stakeholders indirectly involved in the project while stakeholders directly affected by it are left out.
- Some of the proponent do not carry out an ESIA and for those who do, the ESIA is sometimes not made public with the exception of a few projects which are donor related projects (see quotes below).
- Proponent's lack of sufficient knowledge on environmental issues and related regulations.

- A tendency of involving institutional stakeholders more than the public and the affected communities.
- The assumption that the mandate of environmental follow-up is reserved only for regulatory authorities and the other stakeholders are merely available for consultation and are not extensively involved.
- The stringent budgets do not allow meaningful public participation and therefore most of stakeholders are not involved in the ESIA follow-up process.

"In Burundi, ESIA reports are not public, even though this is required by law. In addition, it is very difficult to obtain electronic versions for publication on the OBPE website, as the agency responsible for monitoring ESIA reports"- Respondent- Regulator 2

"In Tanzania reports can be accessed upon request and is only for viewing or reading. Copies of reports are send to District Environmental Officer to facilitate monitoring of ESMP" – Respondent – Regulator 3

"In Kenya EIA docs although they are public docs are not readily available to the public. Unless on request. Or for public hearing" – Respondent regulator 8

With regard to the proponent's knowledge and awareness of ESIA follow-up related laws and regulations, 64% of respondents from regulatory authorities indicated that their environmental audit guidelines require an environmental auditor to evaluate the proponent's knowledge and awareness of responsibility for applying relevant legislation in the implementation of the project. However, the extent of evaluation of this aspect in the environmental follow-up report varied from none to a limited extent (Figure 8).

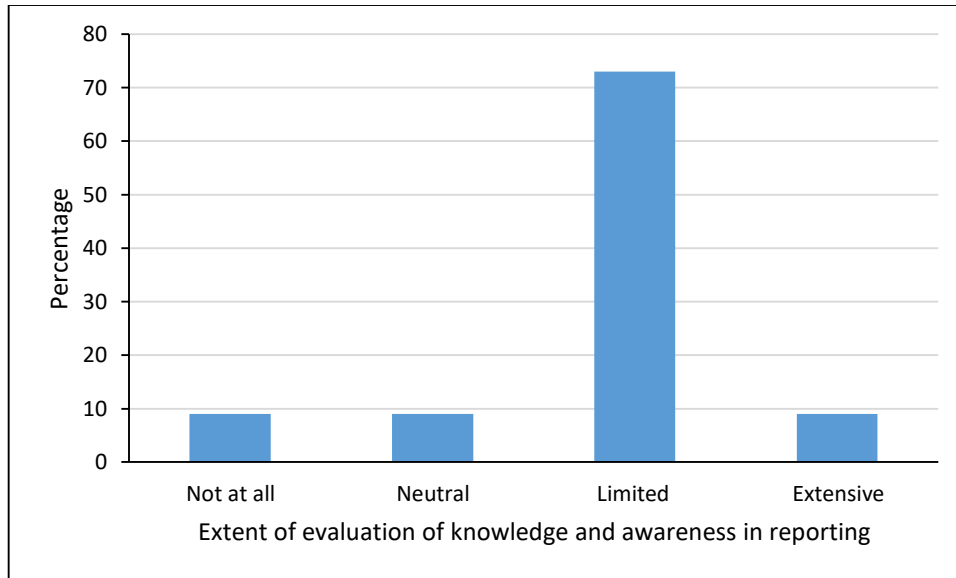


Figure 8: Extent of evaluation of proponent’s knowledge and awareness in follow-up reporting

This results indicate that the evaluation of the proponent’s knowledge and awareness of relevant legislation in the project follow-up reports is limited. This may imply that the proponents may fail to get the opportunity to be exposed to pertinent legal requirements which are inherent in nature and thus predisposed to breach of conditions. This is confirmed by the responses of interviewed environmental experts who rated the ESIA process as being unsuccessful in improving the environment due to lack of awareness among the proponents. They view obtaining a licence as key and inadvertently fail to observe conditions therein. This is a barrier to effective implementation and enforcement of conditions of approval and mitigation measures.

“ESIA follow-up in unsuccessful because of proponents aiming obtaining nema Certificate and shelving it. Some of them are unaware about the conditions and implication to their project” Respondent-Expert 7

4.4.3 Quality of Environmental follow-up reports

The majority of respondents from regulatory authorities (91%) rated the environmental monitoring reports reviewed by them as good, as they inform decision-making about a proposed project thus contributing to sustainability (figure 9). The reports furnish the reviewer with emerging issues, causes, effects, proposed remedial or improvement actions and responsibilities. However, most reports reviewed, provide minimum details and are generic in nature, presenting difficulties in decision-making, which implicates a need for

an ongoing capacity building programme for ESIA experts and reviewers. This action will address the challenges created by the evolving development landscape and gaps in existing ESIA follow-up guidelines.

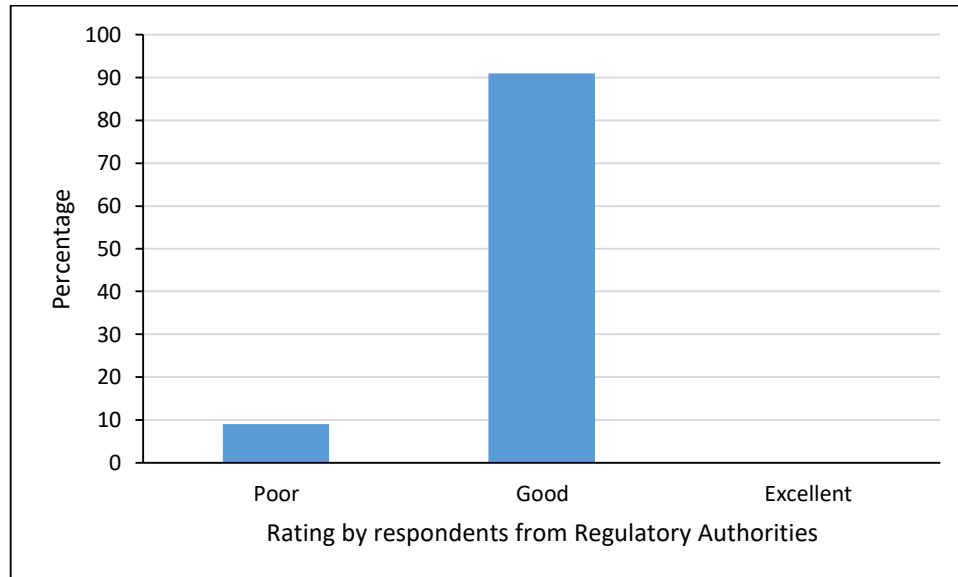


Figure 9: Quality of Environmental follow-up reports

4.4.4 Existing enforcement responses

The existing enforcement responses cited by respondents include issuance of improvement notices, review of conditions, stop orders, arrests, prosecutions, payment of fines or imprisonment.

4.4.4.1 Penalties related to violation of environmental follow-ups law/regulation

87.5% of respondents from regulatory authorities indicated that the policies/laws regarding penalties that relate to violation of environmental follow-up law/regulation are transparent and prescribed for violation of ESIA licence condition. 74% of these respondents also indicated that the consequences of penalties provided in law were sufficient to deter violation of ESIA licence/permit conditions. However, there were some cases where the enforcement of the law had little or no impact on changing the behaviour of violators, for instance when courts imposed fewer penalties and where on technicalities violators have gone scot-free. Respondents also alluded that in some instances, violators can afford to pay the fine or engage in corruption to frustrate the course of justice, leaving inspectors demotivated and vulnerable to threats or attacks from the offenders they prosecute.

"I was once a team leader who led a team to mitigate a chemical spill due to road accident, however in the due course of work, I was personally threatened and, the report on environmental restoration works was not published." Respondent – Regulator 4

"I have experienced a case where the complainants had a just complain on air pollution from a nearby industry but was not successful on technicalities. The complainants had built their residential in an industrial zone. A clear case of land use conflict which was not flagged out during approval of ESIA report." Respondent – Regulator 8

Political interference also contributes to impunity among "powerful" proponents who deliberately fail to comply with served restoration notices, especially with regard to local material extraction sites where proponents are required to undertake rehabilitation.

"Sometimes, penalty on petty offenses such as littering or carelessly handling of debris at construction site do not yield much return. The use of sensitisation, creation of awareness and engagement of public in knowledge exchange may be a better option." Regulator – Respondent 5

4.5 Incentives established to encourage undertaking of ESIA follow-up

Some of the incentives, established to encourage implementation of ESIA follow-up include: making it an annual objective with budgetary allocation, encouraging environmentally friendly project (e.g. recycling plants), meetings and workshops with the population, the government providing a small amount in its annual budget that contributes to environmental monitoring and awareness-raising for representatives of mining and quarrying cooperatives, access to loans and other financial facilities from financial institutions, especially banks that put environmental safeguards and reporting as conditions for financial support, rewards on environmental performance, through training for communities around the project areas.

CHAPTER 5: SUMMARY OF FINDINGS AND RECOMMENDATIONS

5.1 Summary of findings

The findings on challenges, needs or gaps in environmental follow-up in Eastern Africa are summarised below:

- All the targeted Eastern Africa countries except South Sudan have laws and regulations that govern ESIA follow-ups. Sudan is currently working on a draft environmental bill.
- Weak and/or ambiguous legal provisions on ESIA follow-up in countries with ESIA laws; absence of a legal and institutional framework for transboundary ESIA and ESIA-follow-up; weak coordination frameworks between regulatory authorities and lead agencies during ESIA approval and follow-up; weak linkages between developers and regulators during monitoring of ongoing projects.
- Low levels of awareness of ESIA follow-up among project proponents/developers and communities, therefore they cannot productively participate in environmental monitoring.
- Inadequate stakeholder engagement in ESIA follow-up processes.
- Poorly drafted (vague) ESIA permit/licence conditions that inhibit specific monitoring & enforcement action.
- Low or no budgets for ESIA follow-up, monitoring and enforcement.
- On self-monitoring, the costs of mitigation measures are usually “guess work” thus in most cases they are insufficient in supporting robust monitoring activities. Most technical expert, in both regulatory authorities and practicing positions, lack environmental or natural resource accounting skills to support the costs estimated in the environmental and social monitoring plans.
- Regulators have inadequate equipment for monitoring the performance of environmental indicators during follow-up.
- Regulators have insufficient number of skilled personnel to undertake ESIA follow-up, monitoring & enforcement.
- Most regulatory authorities lack clear systems on environmental incident reporting and response.
- Regulatory authorities are faced with governance challenges such as corruption, political interference among others.

- ESIA follow-ups in the region are characterised by inadequate stakeholder engagement. Most of engagement, especially after approval of a project are usually very passive in nature.
- In some cases, poorly drafted (vague) ESIA permit/licence conditions that inhibit specific monitoring & enforcement action. This is often in cases where the conditions are linked to unclear mitigation measures stipulated in the Environmental and Social Monitoring Plan.

5.2 Recommendations

- Develop and enact a coordinated legally binding law/regulations on ESIA and ESIA follow-up in South Sudan to improve from the current situation where ESIA/ EA are required by law through the Petroleum Act.
- All countries should strengthen legal provisions for ESIA-follow up to ensure ease of implementation, compliance and enforcement.
- Establish harmonised regional, legal and institutional frameworks for trans-boundary ESIA administration & follow-up in Eastern Africa.
- All countries should strengthen institutional frameworks for better coordination and collaboration between regulatory authorities and lead agencies throughout ESIA approval process and follow-up.
- All countries should strengthen capacity of regulators to follow up ESIA implementation at project sites, and establish a robust information technology systems for regular progress reporting with developers.
- Carry out extensive education and awareness campaigns among project proponents/developers and communities on the importance of ESIA follow-up. The training of journalists on environmental follow-up to bolster awareness campaigns on environmental follow-up through the media, should be prioritised in all the countries.
- Deliberately incorporate/enhance stakeholder engagement and community participation in environmental and social monitoring and reporting during the follow-up process.
- Build capacity of regulators on drafting enforceable ESIA permit/licence conditions. Provisions should be deliberately included in contract documents and reporting templates to ensure easy monitoring and enforceability.
- In cases where no fee or a low fee is charged for ESIA processing, a review should be undertaken and follow-up and monitoring costs be factored into the fees

payable at the time of approval. Alternatively relevant financing models should be explored, to ensure sustainability of regulatory monitoring activities. In addition, success of self-monitoring is depended on budget allocation within the project, thus need to build capacity of environmental experts on environmental accounting to inform costing of measures in ESMPS.

- Allocate sufficient financial resources to regulatory agencies or explore innovative funding models to enable them build technical capacity, recruit sufficiently qualified staff and put in place the necessary systems and equipment for monitoring and enforcement during ESIA follow-up.
- Develop and implement a responsive IT-based environmental incident reporting and response systems.
- Build transparent and accountable governance for administration of ESIA systems including but not limited to follow-up through capacity building of journalists, CSOs and community on environmental follow-ups to enhance their participation in the process intern promoting transparency and accountability.

CHAPTER 6: ACTION PLAN OR STRATEGIC AGENDA FOR IMPROVING ESIA FOLLOW-UP PERFORMANCE IN EASTERN AFRICA

The matrix below outlines the proposed action plan /strategic agenda for improving ESIA follow-up performance in Eastern Africa based on the gaps, needs and challenges identified through this assessment. The action plan/strategic agenda lays out possible actions to address the gaps, needs and challenges identified by this assessment.

The action plan/strategic agenda presents an opportunity for respective governments of the Eastern Africa countries covered under this assessment, together with ESIA stakeholders and development partners to establish appropriate entry points for interventions to support the strengthening of ESIA systems including ESIA follow-up.

Detailed Action Plan/Strategic Agenda

Goal: Improve the performance of Environmental & Social Impact Assessment (ESIA) follow-up in Eastern Africa							
Code	Issue/Challenge	Action	Responsible	Priority	Resources needed	Resource Options/Sources	Opportunity for linkage with other regional policies/plans/programmes
Policy/law/regulation							
A1	Absence of legally-binding national laws/regulations on ESIA and ESIA follow-up (South Sudan only)	Develop and enact legally-binding law/regulations on ESIA and ESIA follow-up (South Sudan)	Govt. of South Sudan	High	- Funds - Technical Experts	- Govt budget allocation - Development partners support	Benchmarking proposed ESIA policies/laws against those of other EAC countries.
A2	Weak and/or ambiguous legal provisions on ESIA follow-up in countries with ESIA laws	Strengthen legal provisions for ESIA-follow up to ensure ease of implementation, compliance and enforcement (all countries)	Govts of all Eastern Africa countries	High	- Funds - Technical Experts	- Govt budget allocation - Development partners support	Benchmarking against regional/international best practices.
A3	Absence of a legal and institutional framework for transboundary ESIA and ESIA follow-up	Establish harmonised regional legal and institutional frameworks for trans-boundary ESIA	Govts of all Eastern Africa countries	High	- Funds - Technical Experts	- Govt budget allocation	Ratification of EAC Protocol on Environment &

Goal: Improve the performance of Environmental & Social Impact Assessment (ESIA) follow-up in Eastern Africa

Code	Issue/Challenge	Action	Responsible	Priority	Resources needed	Resource Options/ Sources	Opportunity for linkage with other regional policies/plans/ programmes
		administration & follow-up in Eastern Africa.				- Development partners support	Natural Resources

Institutional framework and co-ordination

A4	Weak coordination framework between regulatory authorities and lead agencies during ESIA approval and follow-up	Strengthen institutional frameworks for better coordination and collaboration between regulatory authorities and lead agencies throughout ESIA approval process and follow-up.	Environmental regulatory authorities of all Eastern Africa countries	High	- Funds - Technical Experts	- Govt budget allocation - Development partners support	Strengthen formal national & regional collaboration forums & informal networks e.g. EANECE
A5	Weak linkage between developers and regulators after the ESIA approval.	Strengthen capacity of regulators to follow up ESIA implementation at project site, and establish systems for regular progress	Environmental regulatory authorities of all Eastern Africa countries	High	- Funds - Technical Experts	- Govt budget allocation - Development partners support	

Goal: Improve the performance of Environmental & Social Impact Assessment (ESIA) follow-up in Eastern Africa

Code	Issue/Challenge	Action	Responsible	Priority	Resources needed	Resource Options/ Sources	Opportunity for linkage with other regional policies/plans/ programmes
		reporting by with developers					

Compliance & Enforcement

A6	Low levels of awareness on ESIA follow-up among project proponents/developers and communities	Carry out extensive education and awareness campaigns among project proponents/developers and communities on the importance of ESIA follow-up Train journalists on ESIA follow-up process for enhanced and informed media coverage	Environmental regulatory authorities of all Eastern Africa countries Relevant CSO's and other training entities	High	<ul style="list-style-type: none"> - Funds - Technical Experts 	<ul style="list-style-type: none"> - Govt budget allocation - Development partners support 	Leverage on existing national/regional environmental education and awareness programmes
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Goal: Improve the performance of Environmental & Social Impact Assessment (ESIA) follow-up in Eastern Africa

Code	Issue/Challenge	Action	Responsible	Priority	Resources needed	Resource Options/Sources	Opportunity for linkage with other regional policies/plans/programmes
A7	Inadequate stakeholder engagement in ESIA follow-up process	Incorporate stakeholder engagement and community participation beyond ESIA processing to include ESIA follow-up	Environmental regulatory authorities of all Eastern Africa countries	High	- Funds	- Govt budget allocation - Development partners support	Leverage on existing national/regional environmental education and awareness programmes
A8	Poorly drafted (vague) ESIA permit/licence conditions that inhibit specific monitoring & enforcement action	Build capacity for better drafting of ESIA permit/licence conditions to ensure easy monitoring & enforceability	Environmental regulatory authorities of all Eastern Africa countries	High	- Funds - Technical Experts	- Govt budget allocation - Development partners support	Benchmark with best practices from other jurisdictions e.g. the Netherlands

Goal: Improve the performance of Environmental & Social Impact Assessment (ESIA) follow-up in Eastern Africa

Code	Issue/Challenge	Action	Responsible	Priority	Resources needed	Resource Options/Sources	Opportunity for linkage with other regional policies/plans/programmes
A9	Low/no budget for ESIA follow-up, monitoring and enforcement	<ul style="list-style-type: none"> - Review ESIA fees and build follow-up and monitoring costs into the fees payable at the time of approval; - Provide for follow-up and monitoring fees payable annually on submission of annual environmental audits. 	Environmental regulatory authorities of all Eastern Africa countries; National Treasuries/Ministries of Finance	High	<ul style="list-style-type: none"> - Funds - Technical Experts 	<ul style="list-style-type: none"> - Govt budget allocation - Development partners support 	Benchmark on best practices from other jurisdictions e.g. Nigeria, that have fee systems for environmental audits
A10	Inadequate equipment for monitoring the performance of environmental indicators during follow-up	Allocate sufficient financial resources for regulatory agencies to enable them to build technical capacity and put in place necessary systems and equipment for monitoring	Environmental regulatory authorities of all Eastern Africa countries; National	High	<ul style="list-style-type: none"> - Funds - Technical Experts 	<ul style="list-style-type: none"> - Govt budget allocation - Development partners support 	Leverage on existing national/regional development projects/programmes to obtain needed support

Goal: Improve the performance of Environmental & Social Impact Assessment (ESIA) follow-up in Eastern Africa

Code	Issue/Challenge	Action	Responsible	Priority	Resources needed	Resource Options/Sources	Opportunity for linkage with other regional policies/plans/programmes
		environmental indicators during ESIA follow-up	Treasuries/Ministries of Finance				
A11	Insufficient skilled personnel to undertake ESIA follow-up, monitoring & enforcement	Allocate sufficient financial resources for regulatory agencies for recruitment of sufficient qualified technical staff to support ESIA follow-up, monitoring & enforcement	Environmental regulatory authorities of all EANECE-participating countries; National Treasuries/ministries of Finance	High	<ul style="list-style-type: none"> - Funds - Technical Experts 	<ul style="list-style-type: none"> - Govt budget allocation - Development partners support 	Leverage on existing national/regional development projects/programmes to obtain needed support
A12	Lack of clear systems on environmental incident reporting and response	Develop and implement environmental incident reporting and response systems	Environmental regulatory authorities of all Eastern Africa countries	High	<ul style="list-style-type: none"> - Funds - Technical Experts 	<ul style="list-style-type: none"> - Govt budget allocation - Development partners support 	Benchmark with other jurisdictions e.g. US (EPA) for international best practices.

Goal: Improve the performance of Environmental & Social Impact Assessment (ESIA) follow-up in Eastern Africa

Code	Issue/Challenge	Action	Responsible	Priority	Resources needed	Resource Options/ Sources	Opportunity for linkage with other regional policies/plans/ programmes
A13	Governance challenges (corruption, lack of political support)	Build transparent and accountable governance systems for administration of ESIA systems including follow-up	Govts/environmental regulatory authorities of all Eastern Africa countries	High	<ul style="list-style-type: none"> - Funds - Technical Experts 	<ul style="list-style-type: none"> - Govt budget allocation - Development partners support 	Benchmark with other jurisdictions e.g. Netherlands for international best practices.

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Appendices

Appendix 1: Questionnaire for Regulators

NEEDS ASSESSMENT FOR ESIA FOLLOW-UP

REPRESENTATIVES FROM REGULATORY AUTHORITY/ BODY

Thematic areas:

1. Policy/Law/Regulation

- Does your country have a policy/law/ regulation that governs Environmental & Social Impact Assessment (ESIA) follow-up? YES [] No [] (1)
- Are there gaps in policy & legal framework on ESIA follow-up that you have noted as a regulator?
Yes [] No [] (2)
If yes, explain: _____
- After how long does your country law require environmental follow-ups to be undertaken post commencement of a proposed project? (3)
-
- Are there demands in ESIA follow-up that have been occasioned by developments in international and national policies and legislation? YES [] NO []
If YES, Kindly explain? (4)
- How can the gaps in policy & legal framework be addressed? (5)

2. Institutional framework & coordination

- What is the current institutional framework for ESIA follow up in your country? (1)
- Is the institutional framework effective? YES [] NO [] (2)
- If no, what are the challenges?------(3)
- Outline how the regulatory Authority co-ordinates with other entities of interest in ESIA follow-up process (4)
- Does the regulatory authority have guidelines on incident reporting? YES [] NO [] (5)
(b) How does this influence the ESIA follow-up process? (explain)
(c) How is integrity ensured?
- Any experience of restructuring/ establishment of institutions as an innovation to address challenge in implementation of ESIA follow-up? (Evidence of efforts to strengthen the methods and procedures for ESIA follow-up). YES [] NO []
 - If YES, share the experience- briefly- in writing.
- To what extent does the institutional framework impede effectiveness of ESIA follow-up in your country? (limited extent, neutral, great extent) (6)
- How can the institutional framework be improved for better ESIA follow-up? (7)

3. Resources

- What's your view on how the Authority prioritises the available resources (personnel, equipment, budget) for ESIA follow-up process?
- Comment on the budgetary allocation for ESIA follow-up process (At Authority's level)

4. **Compliance & Enforcement (including Incentives/ Disincentives/Sanctions/Penalties)**

- Is the implementation and enforcement of proposed mitigation measures/conditions of approval cost effective? YES [] No []
If Yes, explain
- Does an approved EMP and licence/permit conditions create legally binding commitments? (1)
- Are the permit/licence conditions drafted in enforceable language? (2)
- Is there a system for compliance monitoring for ESIA? (3)
- What are the existing enforcement responses? (4)
- Are policies/ laws regarding penalties that relate to violation of environmental follow-ups law/regulation transparent? YES [] No [] (5)
- Does your country's law prescribe penalties for violation of ESIA licence/permit conditions? YES [] No []....if yes....please provide details (of the penalty) (6)
- Are the consequences/penalties provided in law sufficient to deter violation of ESIA licence/permit conditions YES [] NO [] (7)
- Kindly give a case/example where as an inspector you felt that the law or the application of the law had very low or little influence on change Violator's behavior (8)
- What are some of the incentives established to encourage undertaking of ESIA follow-up
- How can monitoring & enforcement of ESIA requirements be improved? (9)

5. **Other/General**

- Does your environmental audit guidelines require an environmental auditor to evaluate proponent's knowledge, awareness of responsibility for application of relevant legislation in implementation of the project. Yes [] No []
- To what extent is this evaluation carried in the Environmental follow-up reports? (1. Not at all, 2.Limited, 3.neutral, 4. extensively)
- In practice, how would you rate stakeholder involvement in ESIA follow-up process in your country? (inadequately involved, Adequately involved)

Explain....

- Do you think the cultural context has a role in implementation of ESIA follow-ups? YES [] NO []
Share experience....
- What is the focus of environmental follow-up process in your Authority?
[] Prediction accuracy (assessing accuracy of prediction)
[] Compliance determination (Assessing compliance to law/conditions of approval)
[] Environmental Management objectives (assessing whether objectives are met)

Note that tailoring ESIA follow-up activities to management objective provides flexibility and eventuate adaptive management outcomes.

- In general rate quality of Environmental follow-up reports submitted by the experts to the authority (poor quality, good quality, Excellent quality) WHY?
- Outline measures that have been instituted by responsible Authority to address challenges faced in Environmental follow-up process.

Appendix 2: Questionnaire for Civil Societies

NEEDS ASSESSMENT FOR ESIA FOLLOW-UP

CIVIL SOCIETIES/NGO'S

Thematic areas:

1. Policy/Law/Regulation

- Does your country have a policy/law/regulation that governs Environmental & Social Impact Assessment (ESIA) follow-up? YES [] No []
- Are there gaps in policy & legal framework governing ESIA follow-up that you have noted as civil society? Yes [] No []
If yes, explain: _____

2. Institutional framework & coordination

- Rate regulatory authority's response to incident reporting during ESIA follow-up process (Very poor, Poor, good, very good)
(b) How does this influence the ESIA follow-up process? (explain)
- Rate effectiveness of ESIA follow-up institutional framework in your country? (Not effective, Less effective, effective, very effective) Why?
- From your experience, have you witnessed any government's effort to strengthen the methods and procedures for implementing ESIA follow-up? YES [] NO []
 - If YES, share the experience- briefly- in writing.
- What's your view on how the Authority prioritises the available resources for ESIA follow-up process

3. Implementation of ESIA follow-up

- Rate the level of community involvement in ESIA follow-up process (No involvement, Very limited, Fair, extensive) Why?
- The list below indicates some of the deficiencies in ESIA that affect EIA follow-ups. Tick those that you encounter in your day to day work.
 - (a) Inconsistencies or incomplete information on which components/aspects should be monitored during ESIA follow-up []
 - (b) Inconsistent information about the design and/or implementation of the follow-up programmes []
 - (c) Limited or no cost estimates of follow-up from the ESIA reports.

Any Other [] Explain

- The list below indicates some of implementation barriers for ESIA follow-ups. Tick those that you have observed in your day to day work
 - (a) Poorly defined conditions of approval resulting to unclear understanding of what monitoring entails []
 - (b) Unassigned responsibilities for follow-up implementation []
 - (c) Poor monitoring & enforcement mechanisms []
 - (d) Inadequate resources for those assigned responsibility for follow-up []
 - (e) Others [] Explain.
- Does ESIA follow-ups add value to decision making and setting of conditions of approval?
YES [] NO []
(b) Share brief experience

- (a) Can we consider the implementation and enforcement of proposed mitigation measures in ESIA reports effective in ensuring environmental protection?

YES [] NO []

(b) Explain

- Is the implementation and enforcement of proposed mitigation measures/conditions of approval cost effective? YES [] No []

If Yes, explain

- While considering your country's state of environment over years, how would you rate success of ESIA follow-up? (1. Not Successful, 2. Neutral, 3. Successful)

Why?

- Bearing in mind the local situation in your country, to what extent does ESIA follow-up ensure environmental sustainability? (1.Very low, 2.Low, 3.Neutral, 4.great, 5.greater).

(b) Explain?

- In your honest opinion, to what extent are you satisfied by the ESIA follow-up process? (Not satisfied, moderately satisfied, very satisfied)

- What are some of challenges you experience or have observed in ESIA follow-up process?

- Outline recommendations to address challenges you experience in undertaking ESIA follow-ups

Appendix 3: Questionnaire for Environmental Expert

NEEDS ASSESSMENT FOR ESIA FOLLOW-UP ENVIRONMENTAL EXPERTS

Thematic areas:

1. Policy/Law/Regulation

- Does your country have a policy/law/ regulation that governs Environmental & Social Impact Assessment (ESIA) follow-up?
YES [] No []
- Are there gaps in policy & legal framework governing ESIA follow-up that you have noted as an environmental expert?
Yes [] No []
If yes, explain: _____
- Does your country have ESIA follow-up guidelines? YES [] No []
- If YES, To what extent do you use you country's ESIA follow-up guidelines (Limited, Extensively)
- Are there gaps in the guidelines?
YES [] NO []
- Outline some of the gaps in the ESIA follow-up guidelines
- How can the gaps in policy, law & guidelines on ESIA follow-up be addressed?

2. Institutional framework & coordination

- Rate regulatory authority's response to incident reporting during ESIA follow-up process (Very poor, Poor, good, very good)
(b) How does this influence the ESIA follow-up process? (explain)
- Rate effectiveness of ESIA follow-up institutional framework in your country? (Not effective, Less effective, effective, very effective) Why?
- From your experience, have you witnessed any government's effort to strengthen the methods and procedures for implementing ESIA follow-up?
YES [] NO []
If YES, share the experience- briefly- in writing.
- What's your view on how the Authority prioritises the available resources for ESIA follow-up process?

3. Implementation of ESIA follow-up

- The list below indicates some of the deficiencies in ESIA that affect EIA follow-ups. Tick those that you encounter in your day to day work.
(a) Inconsistencies or incomplete information on which components/aspects should be monitored during ESIA follow-up []
(b) Inconsistent information about the design and/or implementation of the follow-up programmes []
(c) Limited or no cost estimates of follow-up from the ESIA reports.
Any Other [] Explain
- The list below indicate some of implementation barriers for ESIA follow-ups. Tick those that you have observed or encountered in your day to day work
(f) Poorly defined conditions of approval resulting to unclear understanding of what monitoring entails []
(g) Unassigned responsibilities for follow-up implementation []
(h) Poor enforcement mechanisms []
(i) Inadequate resource for those assigned responsibility for follow-up []

(j) Others [] Explain.

- Has ESIA follow-up been applied to new levels and dimensions of decision making? (e.g strategic, trans boundary, international lending, local lending by banks, assistance)
YES [] NO []
If YES, describe/provide example.
- Does ESIA follow-ups add value to decision making and setting of conditions of approval?
YES [] NO []
(b) Share brief experience
- If Yes, To what extent does ESIA follow-up influence establishment of terms and conditions for development approval? (Not at all, Very limited extent, to a great extent)
- (a) Would you consider the implementation and enforcement of proposed mitigation measures in ESIA reports effective in ensuring environmental protection?
YES [] NO []
(b) Explain
- Is the implementation and enforcement of proposed mitigation measures/conditions of approval cost effective?
YES [] No []
If Yes, explain
- While considering your country's state of environment over years, how would you rate success of ESIA follow-up? (1. Not Successful, 2. Neutral, 3. Successful)

Why?
- Bearing in mind the local situation in your country, to what extent does ESIA follow-up ensure environmental sustainability? (1. Very low, 2. Low, 3. Neutral, 4. great, 5. greater).
(b) Explain?
- In your honest opinion, to what extent are you satisfied by the ESIA follow-up process? (Not satisfied, moderately satisfied, very satisfied)
- What are some of the proponent's related challenges you experience in undertaking ESIA follow-ups?
- What are some of regulator's related challenges you experience in undertaking ESIA follow-ups?
- Outline recommendations to address challenges you experience in undertaking ESIA follow-ups.

Appendix 4: Questionnaire for proponent/ community

NEEDS ASSESSMENT FOR ESIA FOLLOW-UP: COMMUNITY/PRIVATE SECTOR/PROPONENTS

Questions

- Do you think ESIA follow-up activities are relevant for the ongoing development projects?
YES [] No []
- Does ESIA follow-up processes meet your expectation?
YES [] No []
- To what extent are the affected and concerned parties accommodated in the ESIA follow-up process? (very limited, Limited, Extensively involved). WHY?
- To what extent are the affected and concerned parties satisfied with the ESIA follow-up process? (Not satisfied, Less satisfied, Satisfied, Very satisfied). WHY?
- Rate efficiency of the ESIA follow-up procedures instituted in your country?(Not efficient, Less efficient, Efficient, Very Efficient). WHY?
- How efficient is the ESIA follow-up procedures in your country? (Not efficient, Less efficient. Efficient, Very efficient)
WHY?
- What are some of the gaps that you have identified in implementation of ESIA follow-ups in ongoing development projects?
- Rate involvement of community and other stakeholders in the processes of ESIA follow-up? (minimal involvement, meaningful involvement)
- What challenges have you encountered in your involvement as a stakeholders in ESIA follow-ups?
- From your experience, have you witnessed any government's effort to strengthen the methods and procedures for implementing ESIA follow-up?
YES [] NO []
If YES, share the experience- briefly- in writing.
- What's your view on how the Environmental Authority undertakes compliance and enforcement with regards to ESIA follow-up?
- Would you consider the implementation and enforcement of proposed mitigation measures in ESIA reports effective in ensuring environmental protection?
YES [] NO []
(b) Explain
- Is the implementation and enforcement of proposed mitigation measures/conditions of approval cost effective?
YES [] No []
(b) Explain
- While considering your country's state of environment over years, how would you rate success of ESIA follow-up? (1. Not Successful, 2. Neutral, 3. Successful) Why?
- Bearing in mind the local situation in your country, to what extent does ESIA follow-up ensure environmental sustainability? (1.Very low, 2.Low, 3.Neutral, 4.great, 5.greater).
(b) Explain?
- What could be done to address the gaps & challenges you have encountered in ESIA follow-up?

Appendix 5: Questionnaire for Engineers/Architects

NEEDS ASSESSMENT FOR ESIA FOLLOW-UP

REPRESENTATIVE FROM ASSOCIATION OF ENGINEERS/ARCHITECTS/CONTRACTORS

Questions

- Do you think environmental follow-up activities are relevant for the projects that you supervise?
YES [] NO []
- Rate efficiency of the environmental follow-up procedures instituted in your country?(Not efficient, Less efficient, Efficient, Very Efficient)
- How effective is the Environmental follow-up process ? (Not effective, less effective, effective, very effective)
- What are some of the gaps that you have identified in implementation of environmental follow-ups in your projects?
- Rate involvement of community and other stakeholders in the processes of environmental follow-up? (minimal involvement, meaningful involvement)
- What challenges are associated with involvement of stakeholders in environmental follow-ups in projects that you have been undertaking?
- From your experience, have you witnessed any government's effort to strengthen the methods and procedures for implementing ESIA follow-up?
YES [] NO []
If YES, share the experience- briefly- in writing.
- What's your view on how the Environmental Authority prioritises the available resources for ESIA follow-up process
- (a) Would you consider the implementation and enforcement of proposed mitigation measures in ESIA reports effective in ensuring environmental protection?
YES [] NO []
(b) Explain
- Is the implementation and enforcement of proposed mitigation measures/conditions of approval cost effective?
YES [] No []
(b) If NO, explain
- While considering your country's state of environment over years, how would you rate success of ESIA follow-up? (1. Not Successful, 2. Neutral, 3. Successful)
(b) Why?
- Bearing in mind the local situation in your country, to what extent does ESIA follow-up ensure environmental sustainability? (1.Very low, 2.Low, 3.Neutral, 4.great, 5.greater).
(b) Explain?
- In your honest opinion, to what extent are you satisfied by the ESIA follow-up process? (Not satisfied, moderately satisfied, very satisfied).
(b) Why?
- How would you address the gaps and challenges you have encountered in ESIA follow-up?