

Institutional and Regulatory Framework for Environmental Impact Assessment in Uganda:

A Strength, Weakness, Opportunities and Threats (SWOTs) Analysis.

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Abstract

This paper established the institutional, legal and regulatory framework for environmental impact assessment (EIA) in Uganda. The legal and regulatory framework included; the 1995 Constitution of the Republic of Uganda, the National Environment Act (NEA) 1995 (now NEA 2019), sector specific Acts with provision for EIA, the EIA Regulations, 1998 (now ESIA Regulations 2020) and the ratified UN Conventions with provision for EIA. The study used a Strength, Weakness, Opportunities and Threats (SWOTs) analysis based on findings generated through documentary analysis, systematic literature review and survey of key categories of EIA stakeholders using specifically designed semi-structured questionnaires for each category. Data was analyzed using descriptive and inferential statistics particularly regression analysis. The findings were used to establish the SWOTs of the EIA system in Uganda and recommendations made for the strategic direction of the practice.

1.0 Introduction

Environmental Impact Assessment (EIA) was first legislated through the National Environment Policy Act 1969 in the United States of America. The original objective of EIA was based on the positivist information provision model (Bond & Pope, 2012 pg.2) i.e. information generation to guide decision making. Since then, there has been increasing need to better understand how EIA and decision making interrelate (the post – positivism era) in order to guarantee its contribution to environmental protection and sustainable development.

The period between 1970 and 1990s witnessed rapid global spread of EIA to the extent that almost all countries adopted EIA. Uganda ratified all the 4 UN Conventions with provisions for EIA (Bekhechi & Mercier, 2002 pg. 49). Following the Rio Declaration (UNCED 1992) particularly Principle 17, Uganda enacted the National Environment Act (NEA) 1995 (now NEA 2019) which formally legislated EIA and established the National Environment Management Authority (NEMA) as the competent authority.

1.1 The Institutional Arrangement for Environmental Management in Uganda

The Policy Committee on the Environment (PCE) is the body responsible for environmental policies, ministry of water and environment is the line ministry, NEMA (semi-autonomous body) is the competent authority and is over seen by the Board of Director (BoDs). The BoDs established the technical committee for EIA. The directorate of monitoring and compliance is responsible for EIA. The institutional arrangement for environment management is represented in figure I. Other EIA stakeholders include the district environment officers (EOs) with the district and local environment committees, Environment practitioners designated by NEMA, the developers, civil society organizations such as the environmental non-governmental organizations (ENGOS) and the general public.

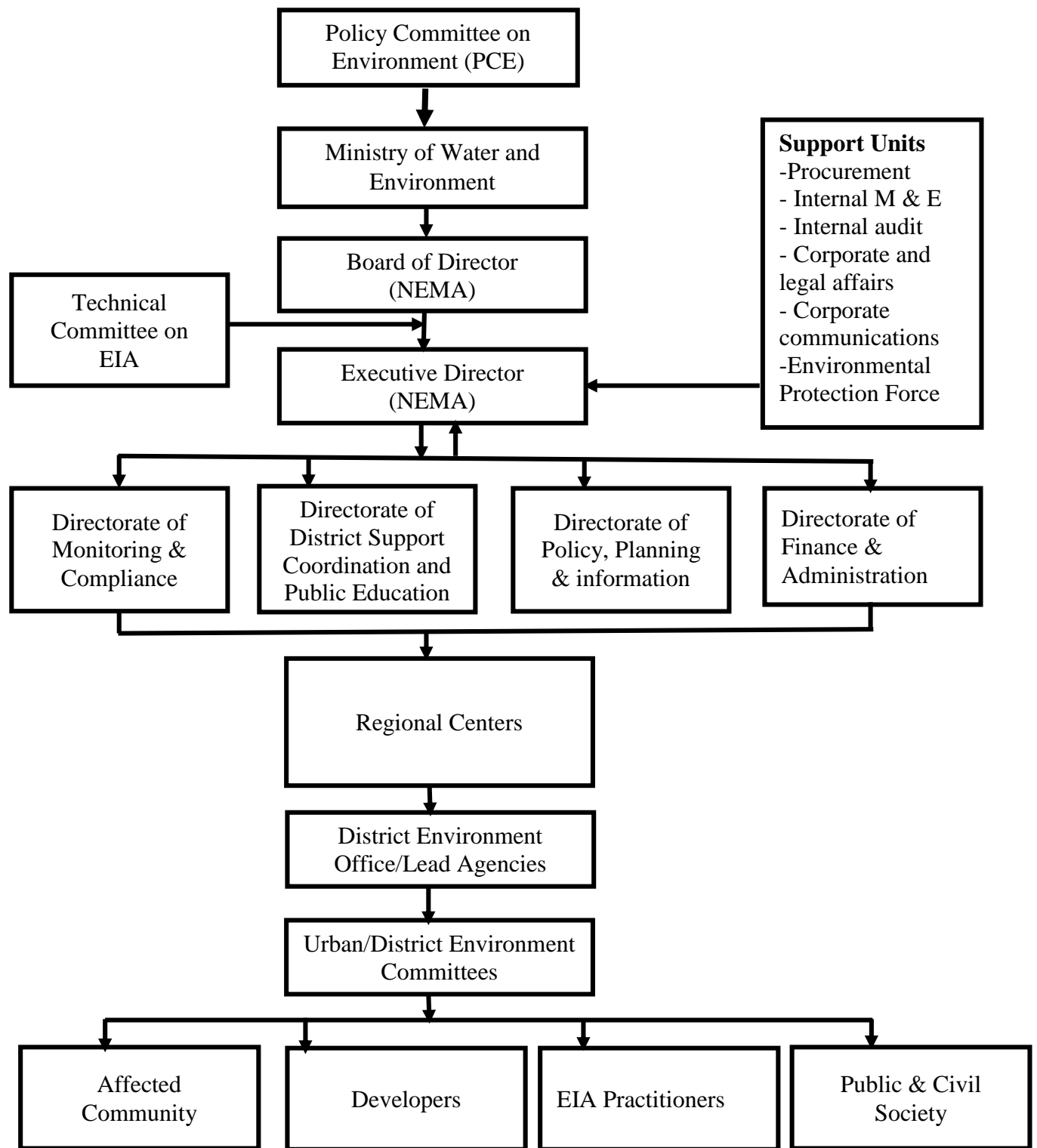


Figure 1: Adapted from the NEA 1995 and the Draft Organogram for NEMA 2018.

1.2 Legal and Regulatory Framework for Environmental Impact Assessment

The legal and regulatory framework for EIA in Uganda include;

- The 1995 Constitution of the Republic of Uganda which have reach provisions for environmental protection and conservation.
- The National Environment Act, 1995 (Now the National Environment Act, 2019)
- Sector specific Acts with provisions for EIA which include; the Uganda Wildlife Act (2019), the Water Act (1997), the Physical Planning Act (2010), the National Forestry and Tree Planting Act, the Mining Act (2003), the Petroleum (Exploration, Development and Production Act (2013) and the Investment Code Act (2019).
- The National Environment (EIA) Regulations, 1998 (now the Environmental and Social Impact Assessment Regulations, 2020) which laid down the procedures and defined the roles of key stakeholders in EIA process and over 13 EIA related regulations.
- The ratified UN convention with provisions for EIA.

The main stages in the EIA process in Uganda included screening, preparation of terms of reference (ToR), EIA study, reporting, review, decision making, implementation and follow-up as identified in a study (Edema et al., 2020 pg.8).

However, despite the existence of the many EIA legislations, regulations and EIA practice in Uganda for the last 24 years, studies such as (H Ochieng, 2010; Mbabazi et al., 2010; Oguttu et al., 2008; Pierre & Wondwosen, 2016; Scheren et al., 2000) report increasing pollution of lake Victoria (Africa's largest fresh water lake) which is a source of livelihood to large proportion of the population in East Africa and Uganda in particular.

1.3 The study objectives

The objectives of this paper were two fold; first to review the institutional, legislative and regulatory framework for EIA in Uganda. Secondly, to establish the strength, weakness, the opportunities and the threats so as recommend the strategic direction for the EIA practice.

2.0 Materials and Methods

The study used the SWOTs analysis which has its origin from business. But many studies (Bond & Pope, 2012; Glasson, 1999; Jha-Thakur & Fischer, 2016; Khusnutdinova, 2004; Paliwal, 2006) have used it to evaluate EIA systems with success. In this particular study documentary analysis, such as in-depth study of EIA legislations, environmental impact statements (EISs) or reports (36 reports for the period 2000 to 2017) were analyzed for quality and evidence of public and stakeholder involvement. Systematic literature review of EIA researches in Uganda and regionally was conducted. The findings of these studies were used to support the arguments in the SWOTs analysis.

Survey of key categories of EIA stakeholders. Informed by the expected role of key stakeholders as stipulated in the EIA regulations, 44 environment officers were administered specific questionnaire. 16 developers (production managers of manufacturing industries) were interviewed using a checklist containing mitigation measures derived from the EISs. They were asked yes or no questions to ascertain the status of implementation of the mitigation measures. 100 households adjacent (1 KM radius) to 4 manufacturing industries were administered separate questionnaire. The key issue raised in the questionnaire was whether they were already resident in the area when the industries were being established and if yes, whether they were involved in the EIA study. 30 ENGO staff from 17 ENGOs were also administered a questionnaire and were asked to rate their level of satisfaction with performance of a list of 12 roles in EIA on a Likert-scale of 1 – 5 where 1= neutral, 2 = very dissatisfied, 3= dissatisfied, 4 = satisfied and 5 = very satisfied. The 12 roles were derived from literature review of related studies. Mean percentage scores were used to determine level of satisfaction and were aggregated into a single variable (role of ENGOs in EIA) and treated as a dependent variable. The same was repeated to enlist responses on level of satisfaction with possession of selected 4 main capacity variables (measurement capacity, information capacity, networking capacity, institutional and regulatory capacity). These capacity variables were operationalized by certain attributes such as for measurement capacity, the attributes included; general knowledge of EIA procedures, EIA specific skills, knowledge of the domestic environmental laws, regulations and standards, availability and access to pollution monitoring equipment and skills to use the equipment.

3.0 SWOT ANALYSIS

3.1 Strength

EIA was well legislated and regulated in Uganda with over 27 EIA enabling laws, EIA laws and regulations. This has impacted on EIA application and certification according to key informants from NEMA. Between financial years 2002/3 and 2016/17, there were 6,182 projects approved and certified by the NEMA and this trend is represented in figure II.

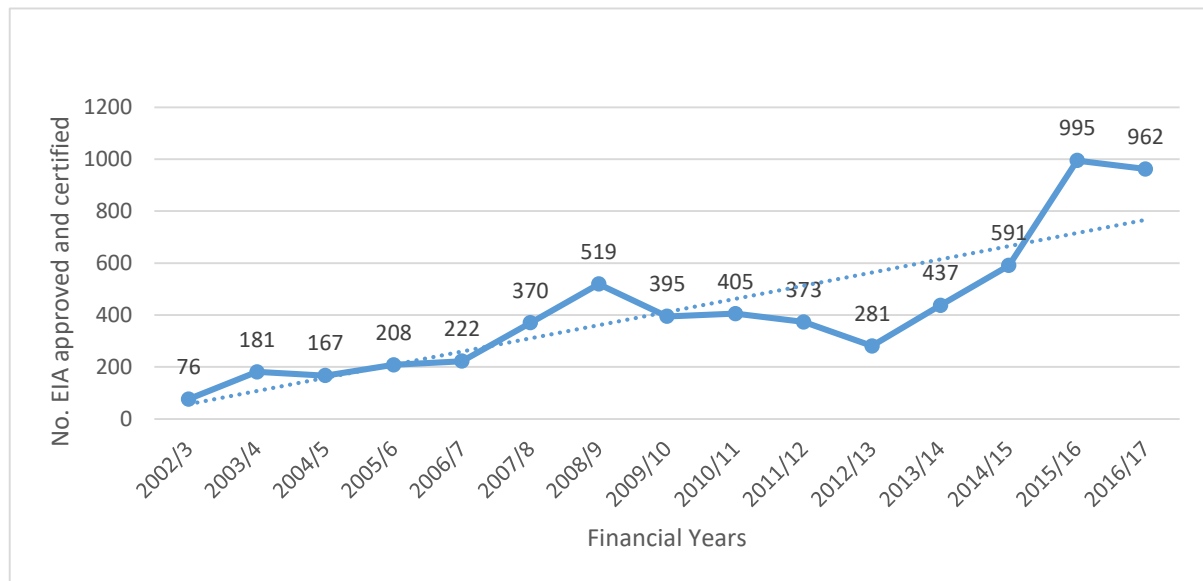
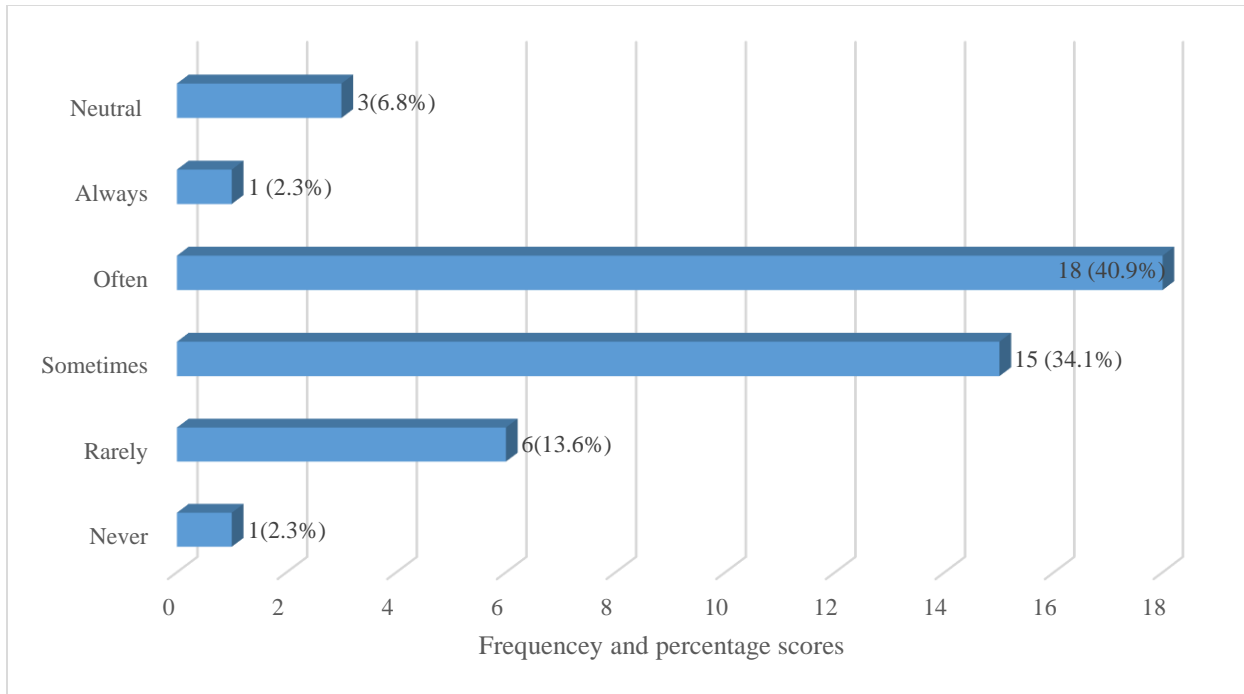


Figure II: Trends in EIA approval and Certification (NEMA Database 2020)

There was a well decentralized environment management structure inclusive of the district local governments. All the 113 districts and urban authorities at the time had environment officers (NEMA 2014). The 44 environment officers interviewed; majority 19 (43.2%) hold master's degree, 11(25%) hold postgraduate diplomas, 13(29.5%) hold bachelor's degree. Therefore, the environment officers were highly qualified in relation to EIA management at the district level.

Majority 38 (86.4%) of the 44 environment officers interviewed reported the existence of district environment committees (DECs) in their jurisdiction. We used the frequency of committee meetings as proxy factor to determine functionality of committees. Majority 18(40.9%) of the 44 EOs interviewed perceived the DEC often meet (see figure III) and the issues discussed related to waste management, charcoal burning and timber logging but not issues related to EIA.



FigureIII: EOs perception of frequency of DEC meetings.

3.2 Weakness

Project Screening was predetermined by the third schedule of the NEA 1995 and in accordance with sections 5 and 6 rather than on ecological and geographical peculiarities.

Scoping was used synonymous with preparation of ToRs which were prepared by the developers, in consultation with the ED, NEMA and the lead agency with no public participation. This implied that, the benefits of a well-conducted scoping phase identified (Rossana et. al., 2017 pg. 201) were missed in the EIA processes.

Majority of the 94% of the 100 households interviewed around the 4 manufacturing industries in central region of Uganda (the industrial hub) reported not to have participated in the EIAs of these manufacturing industries even the study revealed that they were present at the time of establishing the facilities.

Similarly, the ENGOS were dissatisfied with their role in EIA (mean = 3.29). Measurement capacity significantly constrained the ENGOS from performing their expected role in EIA. The results of the multiple regression analysis are represented in table 1.

Unstandardized	Standardized			
	Coefficients			
	Beta	Std. Error	Beta	t-ratio
Information capacity (X ₁)	-0.095	0.201	-0.11	-0.473
Measurement capacity (X ₂)	0.645***	0.192	0.592***	3.355
Networking capacity (X ₃)	-0.254	0.299	-0.159	-0.849
Institutional and regulatory capacity (X ₄)	0.354	0.25	0.307	1.414
Constant	1.57	1.119		1.402
F-Ratio	916			
F P-value	0.015			
R ²	0.377			
Adjusted R ²	0.278			

Significant coefficients are indicated with * p<0.1, ** p<0.05 or*** p<0.01.

Table 1: Regression results estimating the effect of the independent variables on the role of ENGOS in EIA

There was low level of implementation of mitigation measures contained in the EISs of the 16 manufacturing industries (only 30% to 40%). Most of the industries lacked waste water treatment plants even if they were included in the EISs. This is also reported in other studies (Banadda et al., 2009; Bateganya et al., 2015; Walakira et al., 2011). The reasons for this included poor urban sewerage network, plant functionality and limited monitoring by the regulator.

None of the 16 manufacturing industries conducted post environmental audit even when provided for in the Audit Regulations, 1998 (now Audit Regulations, 2020).

EIA was applied at project-level. No application of EIA at policy, program and plan level (Strategic Environmental Assessment) for the last 24 years.

There was limited application of EIA in a transboundary context. The important UN Conventions related to EIA in transboundary context such as Convention on EIA in a Transboundary Context (Espoo 1991) and Protocol on SEA in a Transboundary Context (2003) were not ratified.

3.3 Opportunities

Decentralized political governance system offers good administrative layers for decentralized environmental management which was also revealed in another study (Oosterveer & Van Vliet, 2010 pg.292).

Regional integration such as East African Community (EAC), Intergovernmental Authority on Development (IGAD) provides good platform for developing protocols for EIA in transboundary context.

Most developments are funded by UN development agencies such as UNDP, FAO, IFAD, Multi-lateral banks such as World Bank, ADB, and private bank such as the Exim Bank of China, the Asian Development Bank etc. which have internal processes for EIA. These guidelines can complement the domestic EIA laws if diligently applied with special attention to follow-up.

3.4 The threats

Majority 25(56.8%) of the EOs interviewed perceived that political influence/interference is a major factor negatively affecting the implementation of EIA laws in the country. This is represented in figure IV.

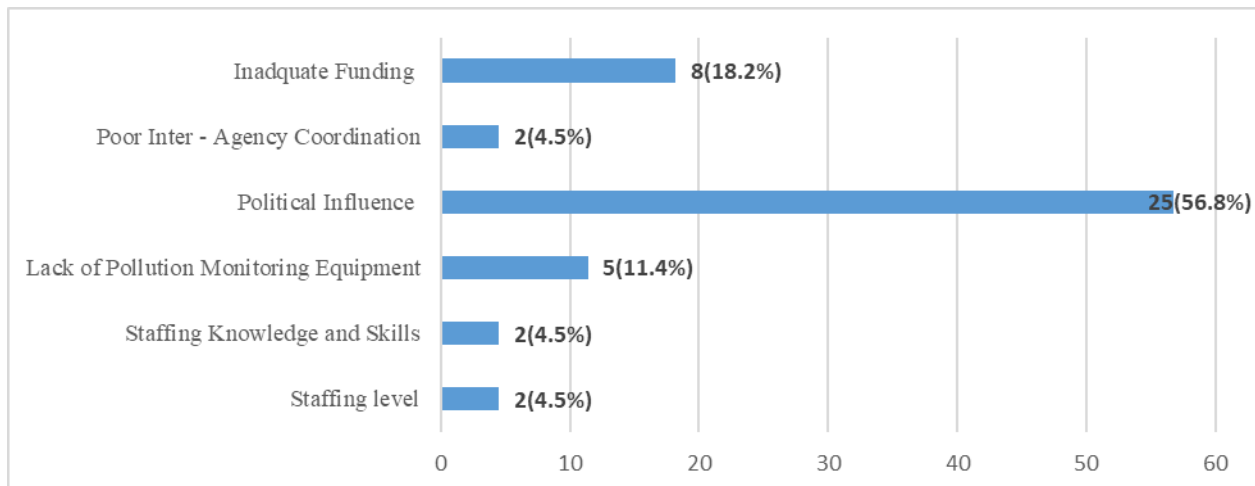


Figure IV: Perception of the EO about selected factors affecting implementation of EIA laws.

Poverty of 41.7% (UBOS 2016) and unemployment of 1.87% was found to be a threat to public participation and decision making in EIA. Projects (manufacturing industries) were seen by

communities as sources of income and employment. Likely negative environmental impacts were overlooked in EIA reports.

4.0 Conclusion and Recommendations

4.1 Conclusion

Good legislations, regulations and institutional set-up in a country do not necessarily guarantee environmental protection and sustainable development as was noted in the study. Contextual factors such the degree of environmental interest of the political regime in power, the governance system (centralization Vs decentralization) and legislation of all EIA phases in the EIA laws, and factors inherent in the EIA system such as capacity of key EIA stakeholders may facilitate or constrain EIA processes.

4.2 Recommendations

- There is need to smarten EIA by increasing access to pollution monitoring equipment for local governments, civil society organizations and communities. In order to influence EIA decision making, there is need for “scientific arguments” rather than “civic arguments” in EIA debates.
- Promotion of effective public participation in all key EIA phases by making EIA a “social contract” between developers and the potentially affected communities.
- There is urgent need to build national capacity for SEA now that SEA is formally introduced through the National Environment Act, 2019.
- Development of complementary infrastructure for implementation of mitigation measures particularly sewerage network in the urban and industrial parks.
- The regional bodies (EAC, IGAD) should develop protocols for the conduct of EIA in transboundary contexts for projects on or near transboundary resources such as lake and river basins. Globally countries should be encouraged to ratified important UN conventions and protocols related to EIA in transboundary context.
- UN development agencies, multilateral banks, private banks and finance institutions with internal EIA processes should do due diligence in the way borrowers apply these guidelines. This particularly so in the post-COVID – 19 economic recovery periods where application of national EIA laws and regulations are likely to be relaxed.

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