

Public Participation and Involvement in Uganda's EIAs for Processing and Manufacturing Industries.

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Abstract

This paper established the legal and regulatory provisions for public participation and involvement for the last 26 years of EIA practice in Uganda and established the actual practice of public participation and involvement particularly the potentially affected community. Data was collected using survey questionnaires, semi-structured interviews guide and exploration of EIA reports for processing and manufacturing industries and key informant interviews. The results revealed that, Uganda's legal and regulatory framework for EIA for the last 24 years had rich provisions for public participation and involvement, but the level of public participation and involvement remained low.

Key words;

Public, Participation, Environmental Impact Assessment, processing and manufacturing.

Introduction

In Uganda, EIA was formally introduced through the National Environment 1995 (GoU 1995) which was replaced by the National Environment Act, 2019. The EIA Regulations, 1998 which is replaced by the Environmental and Social Impact Assessment (ESIA), Regulations 2020 operationalised the National Environment Act, 1995 by stipulating the procedures for conducting EIA and defining the roles of different EIA stakeholders. In the Ugandan context (GoU, 1995), EIA is considered a broad process encompassing range of environment aspects (physical, biophysical and socio-economic) and this avoided a proliferation of impact assessment into different specialties as described in the study ((Morrison-Saunders et al., 2014 p.3). The prescribed stages in an EIA process differ between jurisdictions but generally include; screening, scoping, assessment, reporting, review, decision making and follow-up (Kahangirwe & Vanclay, 2022 p.76).

According to study (Edema et al., 2020 p.8), the EIA process in Uganda include; submission of project brief, screening, development of terms of reference (ToR), environmental impact study, reporting, review, decision making and follow-up. It is stated (Glucker et al., 2013 p.104), “even a cursory glance at the literature on EIA reveals that public participation is being considered an integral part of the EIA process. It is also stated that, public participation typically occurs at the scoping and review stages of the EIA process, but may also occur at any other stage of the EIA process (UNEP, 2002 p.158). One of the fundamental principle of EIA is that, the process should provide appropriate opportunities to inform and involve the potentially affected community and the interested public, and their inputs and concerns should be addressed explicitly in the documentation and decision making (IAIA & IEA, 2006).

In the Uganda’s EIA legal and regulatory framework, the term ‘Public’ describes the potentially affected community, the ‘interested’ public such as civil society organizations and the academia while public participation describes all forms of participation (consultation, public hearing and commenting on EIS etc.)

The Objectives

The objectives of this paper were twofold; (i) to assess the legal and regulatory provisions for public participation and involvement in the EIA process in Uganda and (ii) to assess the extent of public participation and involvement in the EIA process particularly the potentially affected community.

Method and Materials

Data was collected using survey questionnaires, semi-structured interviews guide and exploration of EIA reports for processing and manufacturing industries and key informant interviews for 5 staff of the National Environment Management Authority (NEMA). The processing and manufacturing industries were chosen because literature (Edema et al., 2020 p.2) reveal them as the leading cause of environmental pollution of lake Victoria, streams, aquifer and soils. 4 processing and manufacturing industries (pharmaceutical, iron sheet corrugation, plastic recycling and water bottling industries) were systematically selected from a list of processing and manufacturing industries issued permits by NEMA between 2000 and 2005. 25 households within the radius of 1 kilometer of each of the 4 processing and manufacturing industries were selected systematically. The households were selected systematically at an interval of two to the north, east, south and west of the processing and manufacturing industries. The household heads were interviewed and were first asked if they were present when the industry was being established before proceeding with the interview exercise. When the answer was not in the affirmative, the interviewer proceeded to the next household and the process continued until 100 households (52% female and 48% males) were interviewed.

Results and Discussion

There were good legal and regulatory provisions for public participation and involvement in EIA in Uganda for the last 26 years of EIA practice and they include;

Article 39, of the 1995 Constitution of the Republic of Uganda (GoU, 1995), which states that, “every citizen has a right to a clean and healthy environment” and Article 50 clause 2 states, “any person or organization may bring an action against the violation of another person’s or group’s human rights. This provides opportunity for individuals and civil society organizations (CSOs) to involve in enforcing compliances to EIA conditions through public interest litigation. On the other hand, according to Article 17(1)(j) every citizen has a duty to create and protect a clean and healthy environment. This justifies the participation of the citizens in all matters related to environmental protection and conservation including EIA as the key instrument for environmental management in Uganda.

Article 41 of the same Constitution guarantee the right of access to information and this is complemented by the Access to information Act, 2005. This offers an opportunity for CSOs such environmental non-government organizations (ENGOS) to play the role of information providers

as stated in a study (Khan et al., 2020 p.3). ENGOs can generate information through their survey and provide this information to the public to promote public participation in the EIA process.

The EIA Regulations, 1998 (GoU, 1998) Regulation 12 (now ESIA Regulations, 2020) provided for public participation during the assessment/study. Regulation 19 provided for invitation of the general public to comment on EIA reports. Regulation 20 mandated invitation of comments from persons specifically affected by the project and Regulation 22 provided opportunity for public hearing. Depending on the comments of the general public, the lead agency and the potentially affected community on EIA reports, the executive director of NEMA may cause the developer to conduct public hearing in the manner prescribed in the EIA Regulations, 1998 (now ESIA Regulations, 2020).

The legal and regulatory framework for EIA did not have explicit provision for scoping but development of terms of reference (ToR) was used synonymously with the scoping phase. However, ToR were prepared by the developer with the consultation of the executive director of NEMA and the lead agency. Globally, public participation typically occurs at the scoping and review stages of the EIA process, but may also occur at any other stage of the EIA process (UNEP, 2002 p.158). Literature (Borioni et al., 2017 p.201) suggests that through a well-conducted scoping phase, relevant issues will be scoped in for detailed assessment while minor issues will be scoped out, thus allowing for benefits such as more cost-effective assessments, avoiding excessive resources to be spent on minor impacts and directing data collection to obtain useful and relevant information etc. This implied that such benefits of a well conducted scoping phase have been missed in the Uganda's EIA system for the last 26 years of practice.

The National Environment (Audit) Regulations 2006 (GoU, 2006) Regulation 12, which is replaced by the National Environment (Audit) Regulations 2020, allowed an individual, group of individuals/CSOs to petition NEMA or courts of law for environmental audit to be carried out on a facility. This offered an opportunity for individuals or group of individuals to involve in enforcing post-environmental audits for post EIA audit using either the administrative procedures or legally. In spite of the above good legal and regulatory provisions for public participation and involvement in the EIA process, the survey revealed that, 94% of the 100 households (52% female and 48% males) interviewed within the neighborhood of 4 processing and manufacturing industries did not participate in their EIAs even when they were in the area when the EIAs were conducted.

The EIA reports for the selected processing and manufacturing industries had copies of attendance list for public participation which were attached. However, on further investigation, the lists were mainly members of the village Local Councils I (village or cell leaders) which were not representative of the population of the potentially affected communities.

The survey also revealed that, 48% of the respondents were aware of the potential environmental impacts of the processing and manufacturing industries and 52% were not aware. 97% of the respondents were aware of the potential social impacts of the processing and manufacturing industry and only 3% were not aware. Majority (75%) cited employment opportunities as the potential social impact of the processing and manufacturing industries. 39% of the respondents were aware of the potential health impacts of the processing and manufacturing industries and 61% were not. It was evident in the EIA reports for these selected processing and manufacturing industries that, the reports were emphasizing the positive social impacts of the processing and manufacturing industries which tantamount to stakeholders' (consultants) manipulation of EIA described in the study (Enríquez-de-Salamanca, 2018 p.11). The aforementioned results also revealed that, the potentially affected community were aware of the potential impacts of the industries in the order of social, environmental and health impacts.

Only 24% of the respondents reported that communities were involved in monitoring the activities of the manufacturers and 76% reported no involvement in monitoring the activities of the manufacturers. 87% of the respondents reported not to have received any information from the developer regarding their activities and only 13% reported they have received information from the developer. Again 87% of the respondents who had received information from the industries received them through community leaders. This implied that, public participation was mainly confined to the study/assessment phase and the review phase but not at all phases of the EIA process particularly the early phases of the EIA process (screening and scoping) and the later stages (monitoring and implementation of social and environmental management plans). Secondly, the industries mainly focus on engaging community leaders such as the local council members of the villages rather than reaching out to a representative population of the affected community.

Conclusions and Recommendations

Public participation and involvement remain a challenge in the EIA process in Uganda. Good legal and regulatory provisions for public participation and involvement in an EIA system does not guarantee public participation and involvement in the EIA process. The challenges that constrained

public participation and involvement included; difficulty in accessing timely EIA information and related documentation. Public participation is managed by the consultants with the consultation of the executive director of the regulatory authority (in this case, NEMA) rather than by an independent body or public participation advisory board. In addition, public participation does not start early in the EIA process, particularly at the scoping stage. CSO participation was not explicitly provided for in the legal and regulatory framework for EIA though for big donor funded projects EIA committees were established with the CSOs' membership. There was lack of transparency, legality and independence of public hearings (a form of public participation). The high level of poverty and unemployment makes the communities to perceive industries as solution for unemployment and negate the potential negative impacts of industries thereby, hampering meaningful and effective public participation and involvement. The EIA reports were not simplified and the legal and regulatory documents are not translated into local languages, making it difficult for the local person to understand.

To improve public participation and promote its effectiveness, there should be equitable and timely access to EIA information and related documentation using diverse media platforms including the use of the regulators' website. The legal and regulatory framework should be improved for public participation to start early in the EIA process particularly the scoping phase. The legal and regulatory framework should be improved by establishing independent advisory body to manage public participation rather the consultants who act on behalf of the developers. Formal guidelines for public participation should be developed and be functional to guide the conduct of the public participation. Public participation should be conducted in the local or community setting of the affected community rather than organizing forms of public participation such as workshops, consultative meetings and seminars in unfamiliar (luxurious hotels) that may intimidate the potentially affected communities and thereby increasing 'the power imbalance syndrome' among the stakeholders.

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