



Netherlands Commission for
Environmental Assessment

Advice on EIA and SEA in Rwanda's new Environment Law

RWANDA



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Advisory Report by the NCEA

To Ministry of Natural Resources – MINIRENA

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From The Netherlands Commission for Environmental Assessment (NCEA)

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1. Introduction

1.1 Request

Since April 2016, at the request¹ of the Rwanda Environment Authority (REMA), the Netherlands Commission for Environmental Assessment has been providing inputs for the draft SEA regulation that the REMA is to develop. Later in the year, Rwanda adopted a new Constitution. One of the consequences of the Constitution was the reduction of the number of Organic Laws, to be replaced by Laws. This includes the Organic Law on the Environment. The revision process is coordinated by the Ministry of Environment and Natural Resources (MINIRENA), with involvement of REMA.

The development of the SEA regulation was put on hold during the drafting of the new Environment Law. In August 2016, REMA and MINIRENA asked the NCEA to provide observations on the elements in the draft Environment Law relating to environmental assessment².

In the remainder of this chapter, the approach and the advisory process are described, as well as the resulting uptake and next steps. In Chapter 2, an overview of the NCEA's main recommendations is provided.

1.2 Approach and advisory process

When the NCEA was asked to provide observations on the draft Environment Law, a two-week consultation period on the draft had commenced in Rwanda. For the NCEA's recommendations to be taken into account, they had to be provided within that short timeframe. This meant providing textual observations only, without face-to-face discussions with relevant parties in Rwanda. The NCEA made available relevant expertise through Ms Gwen van Boven (EIA/SEA expertise) and Mr Gijs Hoevenaars (EIA/SEA and Legal expertise).

In the end, the advisory process turned out to take several months, allowing for some discussions through Skype, and included the following steps:

- On the 23rd of August 2016, the NCEA provided written comments to MINIRENA;
- On the 17th of November 2016, MINIRENA sent a second draft of the law to the NCEA, to which the NCEA provided a second round of written comments to MINIRENA on the 19th of December 2016. On the 22nd of December, an extensive discussion was held through Skype, to discuss each individual recommendation made by the NCEA;
- On the 19th of January 2017, the NCEA received the final draft Law that was submitted to the Law Reform Commission in Rwanda. This final draft was discussed during a Skype meeting on the 15th of February 2017.

¹ Email d.d. 25-4-2016 of Remy Duhuze of REMA.

² Email d.d. 12-8-2016 of Marshall Banamwana of MINIRENA.

1.3 Uptake and Next steps

Upon receiving the final draft Environment Law, the NCEA had to conclude that few of its recommendations had been taken into account. In the subsequent Skype meeting, MINIRENA explained the situation as follows:

- The recommendations had been discussed in detail with REMA and the Law Reform commission. Generally, the recommendations were considered technically valuable and applicable in the Rwandan context. The instructions of the law reform process however were to keep the Law as 'lean and mean' as possible, and to regulate technical details at a lower, legal level. It was therefore decided to retain the NCEA's recommendations for the development of regulations and guidelines on EIA and SEA;
- An exception was the recommendation to rename EIA into ESIA, to include 'social' in the name of the tool. While in practice, EIA in Rwanda does include social aspects, renaming the tool was thought to confuse people who had only recently started to know and work with EIA. It was therefore decided to retain the name EIA, but to clarify and stress in the new EIA guidelines that technically, this includes social aspects;
- MINIRENA stressed that the recommendations and the discussions with the NCEA had been enlightening to the revision process and how to proceed during the next stages;
- MINIRENA expressed the intention to ask the NCEA for those next stages and to remain available for the development of these regulations and guidelines. This is expected to commence as soon as the Environment Law is adopted and will most likely be in the next fiscal year (July 2017 onwards). A formal request will be made to the NCEA in due course.

2. Recommendations

2.1 Environmental Assessment

The new draft law contains an article dedicated to Environmental Assessments, in which EIA, SEA and environmental audit are regulated. The NCEA made the following recommendations to strengthen this chapter:

- The NCEA felt that this chapter is too short to feel confident that everything is securely regulated. Even if you want to delegate most things to lower level texts such as the EIA and SEA regulations, the law needs to ensure that the legal basis is secured. We therefore recommend to include three extra articles:
 - on the purpose of environmental assessment;
 - on the procedure: currently, the procedures for EIA and SEA are not specified at all in the draft law. Everything will be delegated to the regulations. The NCEA recommends mentioning at least the key elements of each environmental assessment procedure: it would provide more legal security if these elements were mentioned at the level of the law. It is suggested to mention the steps that shall minimally be included in any environmental assessment (notification, screening, scoping, review, public involvement/participation, decision-making and transboundary application). A ministerial order shall determine the specific procedures for these steps;
 - on content requirements: without including any content requirements, the law remains insecure. It is better to include some, and regulate the details at a lower level (in the EIA and SEA regulations). We recommend including one article on this. A concrete text suggestion has been provided.
- Ensure that EIA and SEA need to be done prior to authorisation of the project or adoption of the policy, strategy, plan or programme;
- Focus SEA on policies, strategies, plans and programmes that may have a significant impact on the environment, rather than on all of them. This would be consistent with EIA;
- Include a statement on motivation of the way in which the results of the environmental assessment are considered in the formulation of the policy, strategy, plan or programme (SEA), or the design of the project (EIA).

2.2 Definitions

The NCEA made some suggestions regarding the article on Definitions, of which the most substantial include:

- Experience in Rwanda shows that in practice EIA is often called Environmental and Social Impact Assessment (ESIA). The reports are called ESIA reports and include social impact assessment. Internationally, this is also more and more adopted. Our recommendation: adjust the name accordingly;
- Clarify the role of Environmental Audit in Rwanda: does it apply to projects that have an environmental permit without having conducted EIA? Or is it similar to environmental inspection and applicable to projects that have undergone EIA? Since Rwanda has already gained some experience with EIA it may be the second option;
- In the text, the terms state, minister and authority are used. These are not defined. This is confusing. Choose one term and define this in this list, and use it consistently throughout the text. In addition: it remains unclear who is the authority: MINIRENA, RNRA, REMA, RDB.