

Report on EIA mapping Uganda, 4-5 July 2011

The request

The National Environmental Management Agency (NEMA) in Uganda has asked whether the Netherlands Commission for Environmental Assessment (NCEA) could help with improvement and strengthening the EIA process. NCEA has offered to start this assistance with an EIA mapping workshop. EIA mapping assesses the quality of the regulatory framework for EIA, and the level of compliance with this framework in practice. At the heart of the tool is a questionnaire of about 500 questions, which is completed by a group of representatives of all stakeholders in EIA, in a two day workshop. In the course of the workshop, the EIA practitioners discuss the full range of EIA aspects. Their collective answers are processed in a spreadsheet, producing a range of diagrams that clearly display the strengths and weaknesses of EIA. NEMA agreed to this proposal and subsequently the workshop took place on 4-5 July 2011 in Kampala.

Participants

In total there were 17 participants:

- 6 of NEMA (Christine Kasedde, Margaret Aanyu, Keith Ahumuza, Tonny Kiwanuka, Alex Winyi and Waiswa Ayazika)
- 5 of line ministries (Caroline Korutaro, Min. of Energy (PEPD), Richard Kapere, Ugandan Wildlife Authority, Edrisa Tenyiwa and Robert Muyinda, Min. of Water and Env., Patrick Kamanda, Uganda Roads Authority)
- 1 private sector consultant, Barbara Nanukowe (Tullow oil)
- 2 local government, Anne Nakafeu and Phoebe Gubya
- 4 Ugandan Association of Impact Assessment, Olivia Namutosi, Raymond Katebaka and Peter Isamat

NGOs were not present. The reason for this was that representatives of the two NGO's that have good knowledge of EIA (World Conservation Society and WWF), were out of the country. Other NGOs were considered to be too activist-like or not familiar with EIA.

The session was facilitated by Ineke Steinhauer and Gwen van Boven from the NCEA.

Programme

The workshop started a little late (9.45) with a short introduction by Waiswa Ayazaki, director of Environmental monitoring and compliance of NEMA. He highlighted that since 1996 over 3000 EIAs have been done, but that the quality remains an issue which urgently needs to be addressed.

After this introduction, there was a round of introduction by the participants.

This was followed by a presentation on the role and tasks of NCEA and an introduction of the EIA mapping approach (power-point presentation). The EIA mapping key sheet was distributed. Specific attention was given to some aspects to inform the participants

on what to expect from the workshop and the role of the facilitators. Keith Ahumuza volunteered to take notes during the workshop (see appendix 1)

General observations

- While completing the questionnaire, observations have been added sometimes to highlight specific situations, or to reflect the discussion that took place. A copy of the map, once finalized, will be provided to NEMA and all participants. These observations form part of the questionnaire (NB make sure these are visible)
- The data processing is only half of the EIA mapping work. The other, equally important half are the discussions that lead to the scores. Discussions were lively with good participation of all stakeholders. In some cases it was noted that participants found it difficult to provide ‘honest’ data (providing a bit higher scores than reality would reflect).
- Statistical data provided on beforehand: these were received a couple days before the start of the workshop. It resulted to be difficult for NEMA to give a correct interpretation to the data required (which is indeed difficult if you are not familiar with the EIA mapping tool). Also data were required to be separated (e.g. national/international investors and government), whereas NEMA does not make this distinction; numbers therefore were estimates. During the workshop these data/figures were extensively discussed, which took a fair amount of time. It also however made clear that a **good data base** is lacking at the moment which makes it difficult to keep good track of EIA/project development. This was already considered to be an important outcome of the mapping
- Whereas all questions have been answered in the two-day workshop, there still remain a couple of facts/numbers/data that have to be checked again. These have been summarized in 2 pages (questions/issues for clarification) and were sent to NEMA. Data were received on Dec. 31 2011, which made it possible to finalize the questionnaire and the draft report (of July 2011).

Uganda specific observations, discussed per EIA mapping topic

(apart from observations made in the map itself)

Part 1, EIA law

- the term ‘monitoring’ is not used, instead the regulation provides for audits. During the workshop we also discussed the difference between monitoring of the decisions (e.g. in relation to whether impacts described in the EIA indeed were predicted correctly and if not, whether this should lead to a change in license conditions) and monitoring of the project implementation. The questionnaire is sometimes not making clear which kind of monitoring is asked for.
- guidance: Uganda has developed EIA guidelines, which are broadly used. These contain for example requirements for scoping. We will check whether these guidelines can be considered part of legislation. If so, the scores on the legal and regulatory framework for the EIA procedure will be a bit higher (Q. nr. 78, 82, 90-99 and 105). After checking with the author of the map, it was concluded that they can. These scores have therefore been adjusted accordingly.

- we had a discussion on what can be considered to be 'independent' Eg. Q. 97 is about lead agency involvement in the review of ToR. This is outside NEMA, so could be independent.
- funds: NEMA asks for fees to be paid for services they provide in EIA. However, these funds go to a basket fund for NEMA, of which only a small percentage flows back to the EIA department. The EIA regulation has very clear texts on this mechanism of fees (amounts etc.), but does not mention how the funds will be used within NEMA (e.g. earmarked for certain specific areas). These fees form the most important source of national income of NEMA (95%). 70% of NEMA funding is extern (donor funding). The question on funding generated quite some discussion: the funds are available, but not accessible. They come with many delays, and are unpredictable. This hampers the work of the EIA department greatly. Funds at local level are an even bigger problem

Part 2, EIA practice

- although there are 4 full time profs working on EIA, they also have other tasks
- there was a discussed on 'hired' experts: NEMA makes use of experts within other line ministries and in other NEMA departments. They are experts, but not hired (paid), so unclear how this would influence the scores After checking with the author of the map, the question focuses on external expertise
- discussion on the interpretation of 'public': what is meant here: passively available or actively distributed/announced. It concerns the first interpretation.
- discussion on mitigation of impacts; this is real problem currently in Uganda. The quality of mitigation in EIA reports is often very poor, let alone whether mitigation measures are then indeed implemented in practice and enforced.
- discussion on kind of improvements because of EIA: eg. leads to different way of thinking by the proponent right from the beginning (more awareness and attention for env.). Also petrol stations and telecom projects have become much better because of EIA. EIA has helped to establish new/better standards and new requirements. There is however room for improvement for issues like alternatives, enforcement and capacity building. In project of investors, sometimes because of alternatives, the project location has changed. However, this is rarely the case for government projects ('they have to happen anyway').
- discussion on particular situation in Uganda: license conditions do not change, however there is the mechanism of compliance agreement, which the proponent has to sign
- Approval of the EIA report automatically implies that a certificate will be awarded. Therefore we decided to consider in the remaining part of the questionnaire the approval of the EIA report to be the same decision as the decision on the license. However, NEMA made clear that in some situation they also do issue separate licenses, e.g. on wetlands, and on hazardous waste.

Part 3, Law on decision making

- power sharing: decision taking by NEMA, but with input from lead agencies. Screening decisions at local level are taken by local authorities.
- regarding the legal and regulatory framework it is with some questions not clear whether the answers should only be given for the EIA law and regulations or for a wider range of laws.

Part 4, Realities of decision making

- Especially because of the situation that in Uganda part of decision making is decentralized (e.g. on screening), this leads to very large amounts of decisions. The situation is very much different comparing local and national levels. The question is how this will influence the final results. Moreover, the local statistics are a very rough estimate: some districts perform very well, but are not representative for the whole of Ug.
- Statistics took a lot of time (also because the EIA system is partly decentralized) : it would be helpful if some data automatically is copied from one section to the other.
- Inspection is not necessarily related to projects for which EIA was done.

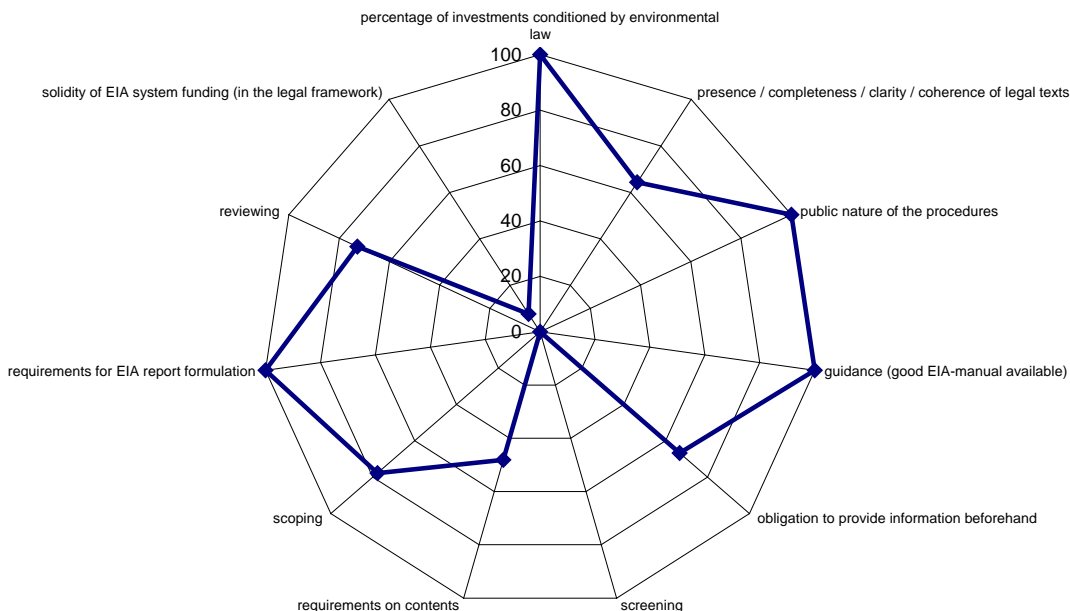
Presentation of the results (the so-called Amoebas)

The Amoeba-diagrams use scale of 0-100, whereby 100 represents a situation where all possible EIA best practice features have been incorporated in legislation or take place in practice. Each axis of the amoeba represents one aspect of the EIA regulation. Where the line cuts the axis: that is the score for that specific aspect. So a 100% score on a specific axis means that the Ugandan EIA regulation includes a very comprehensive set of requirements on that aspect. 100% is however often utopia and unrealistic and may not even be necessary given the ambition of politicians or practitioners.

First result: EIA law, with scores on 11 axes, some quick observations

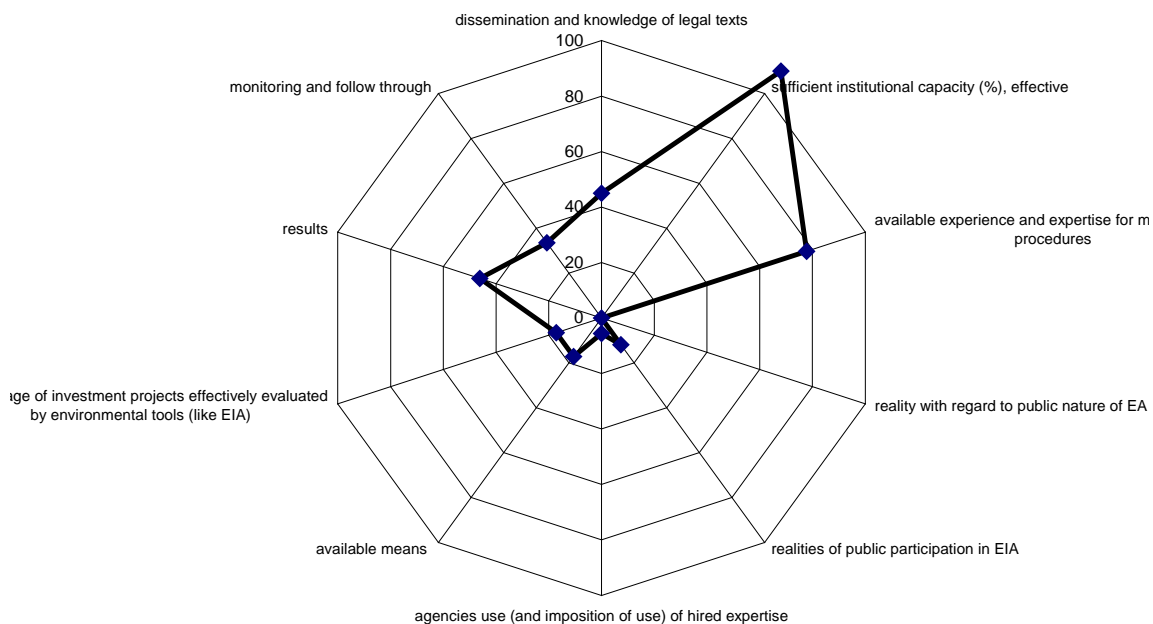
- all investments which potential impact are covered by environmental law
- the public nature of the EIA process has been regulated
- there is good guidance
- the obligation to provide information on beforehand shows a high score (this is about requirements for an EIA starting note or similar, ToR for content of such a starting note, and publication of starting note)
- the requirements for EIA reports score high (this is about certification of consultants and public input in drafting of the report)
- screening scores 0, but there is a mistake in the formula here, this will be corrected
- scoping scores high (consider the EIA guidelines as part of legislation)
- structural funding of the EIA system is a problem (this is about funding for staff and functioning of the agency, but also if provisions are adequate for hiring external experts, adequate funds for EIA for government projects).

Degree of perfection of EIA for environmental licensing (on the basis of existing legal texts)



Second result: EIA practice, 10 axes, some observations

Realities of EIA-system implementation

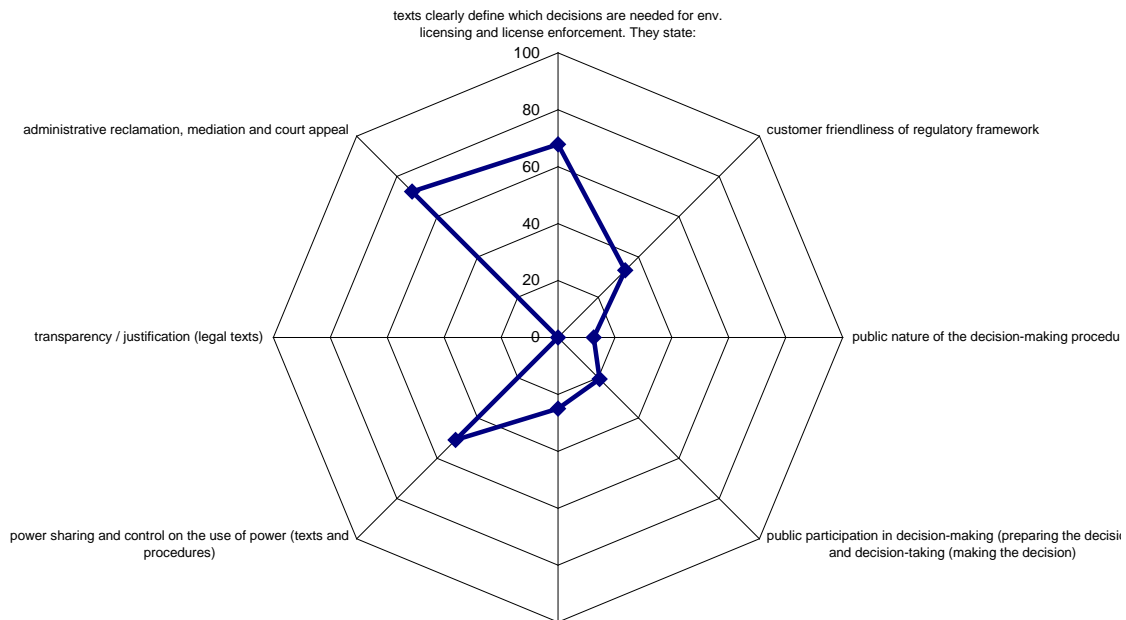


- dissemination and knowledge of legal texts score average (amongst Ministry of Environment, line ministries, investors and general public)
- institutional capacity, this represents the number of staff at authority available for processing EIA&IEE divided by number of EIA&IEE evaluated for a certain year/number of procedures that can be managed per staff member. The score apparently shows that there is over-capacity, but this does not match the impression of participants. The score would probably be different if the number of 4 full time professionals would have been corrected for the real time they have available for EIA (which is not full time in reality).
- available expertise scores satisfactorily. This reflects e.g. adequate basic education staff, adequate task related education staff, internet available/used, institutional memory available and kept updated, institutional memory easily accessible, institutional memory effectively used, internal learning mechanisms institutionalized, internal learning mechanisms functional, links to (inter)national networks available, and links to (inter)national networks utilized
- the public nature of the procedure in practice is much lower than law requires (both availability and accessibility is a problem in practice)
- the score on public participation in EIA is low, as a result of the low number of public meetings that were held
- independent expertise is scoring low, but this may be due to the strict interpretation we gave here to 'independent'. There is a provision to make use of a technical commission, but in practice this will only be called upon in controversial and complex projects according to NEMA
- available means appear not to be sufficient
- although the law and regulation cover all projects with potential impacts, in practice the score is only around 20%
- EIA results score average. This is about the performance of the agency regarding the processing capacity and quality (e.g. number of supplements asked, quality of review reports, quality of license conditions, influence in decision-making etc.
- monitoring and enforcement could be improved. This score reflects the periodicity of monitoring defined, percentage of cases in which monitoring report by the proponent is available, percentage of cases in which competent authority systematically evaluates proponent monitoring reports, percentage of cases in which monitoring report is available at the ministry of environment, percentage of cases in which competent authority gives follow up on monitoring, number of reformulations of license conditions undertaken upon monitoring.

Third result: law on decision making: 8 axes

This amoeba shows aspects such as public involvement in decision-making, transparency and accountability, appeal options against decision taken, and more. The effectiveness of the EIA-system increases when the scores are higher.

**Characteristics of the decision-making procedure on environmental licensing
(on the basis of existing legal texts)**



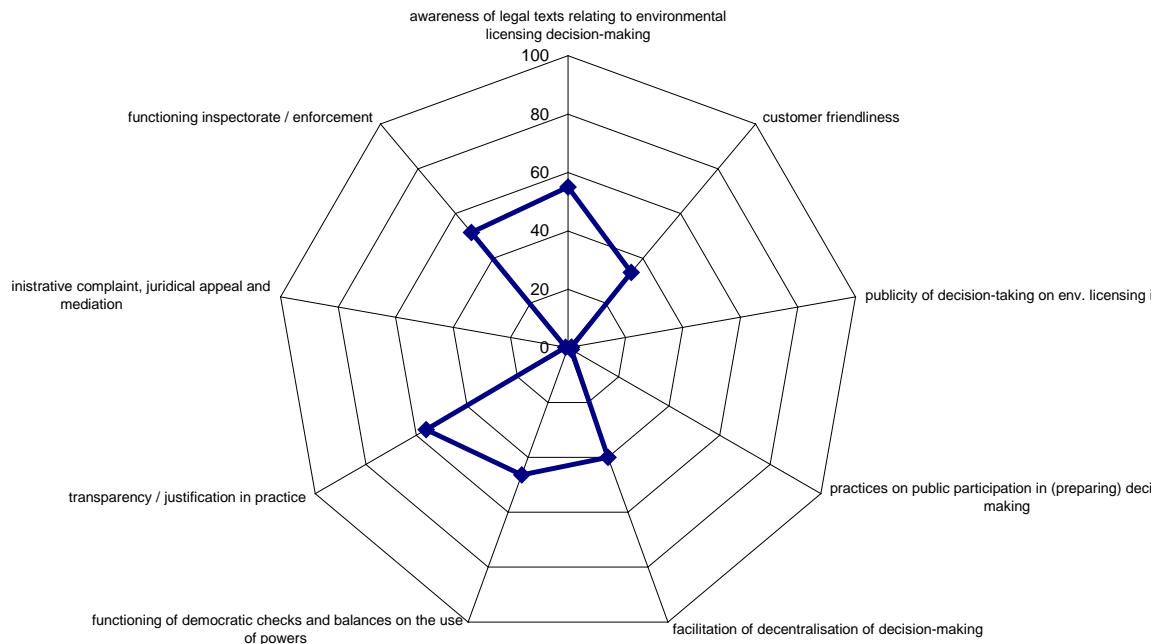
- the axes which has no text is on decentralization
- coherence and completeness of regulatory requirements for decision making score relatively well, as do the texts for appeal options (this is about availability, accessibility and costs of administrative reclamation, mediation and court appeal
- power sharing and control over power score an average. This score reflects the attribution of powers times the real powers times the control over powers times combined with the judgment by the participants whether they consider this logical and effective.
- three aspects leave room for improvement:
 - o customer friendliness reflects scores on one stop shop, red tape/bureaucracy, customer guidance, reasonable timeline, and provision of information at the right place, information package exhaustive, and quality of information.
 - o public nature of decision making is about whether decisions are made in a public meeting and whether these are published in the government gazette.
 - o public participation in decision making (right at and procedure for)
- the axe on transparency and justification of decisions scores 0. This score is about whether the law provides guidelines for transparency and asks for justification of the use of results of public participation and expert input in decision making.

Fourth result: practice of decision making, 9 axes (see next page)

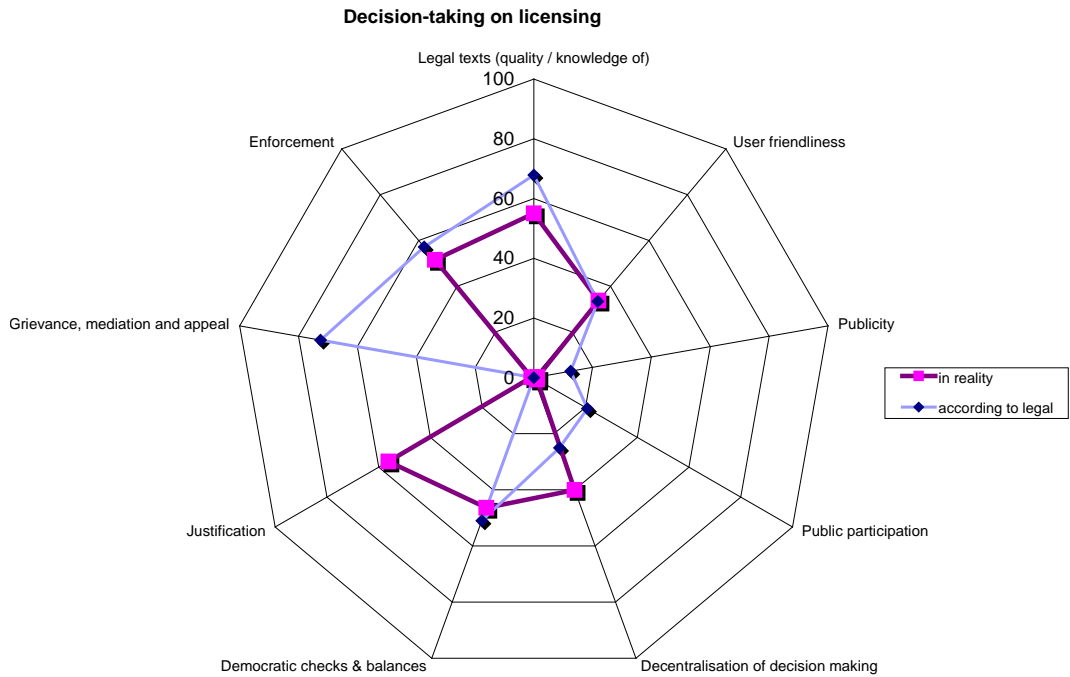
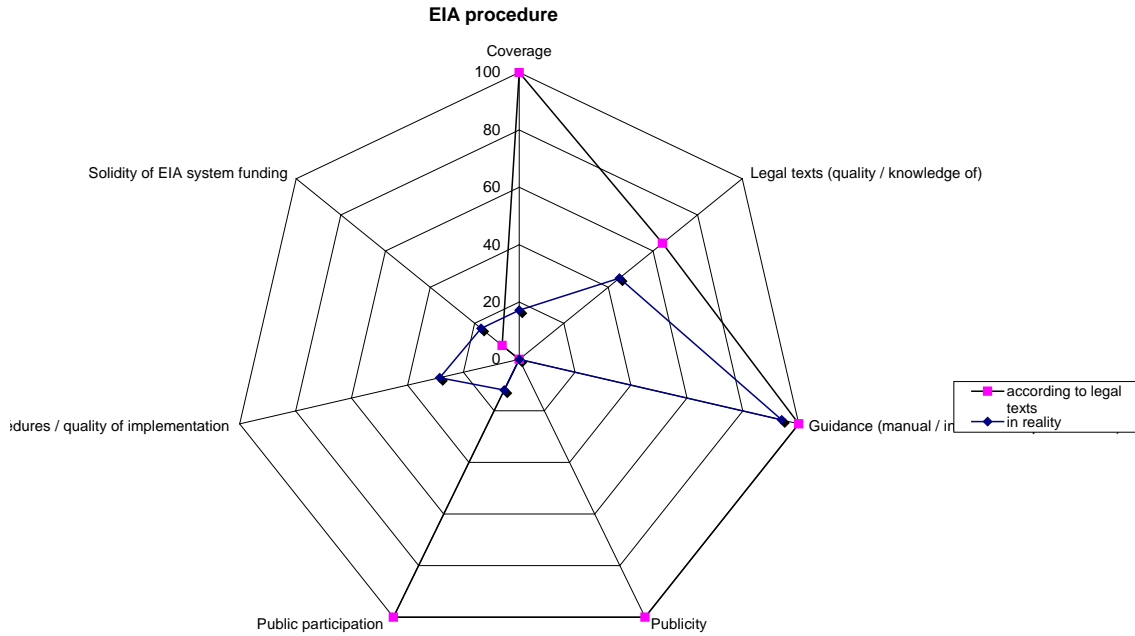
- awareness scores average
- customer friendliness score around 40% (reflecting the number of places to visit, the number of visits, the number of forms to be filled in for each decision and whether a help desk is available and the extent of service mindedness of NEMA
- publicity of decision making (= percentage of decision taken in a public meeting and percentage of decisions published) is 0

- participation in decision making also scores 0 (this is about decision making in a 'participatory way (voting rights)' combined with the average number of written communications received, public hearings organized and whether reports on public hearings are available).
- Decentralization scores 40%, which combines scores for financial means available to decentralized authorities, staff of adequate level available at decentral level, adequate task focused training of decentral authorities and external expertise available to decentralized authorities.
- Democratic checks and balances score average, which reflects the percentage of cases in which the competent authority has been questioned on a decision
- Transparency in practice scores average (much higher than law requires!!!!), which is about percentage of decisions with written justification, with written justification of the use of public participation input, and with written justification of the use of specific expertise taken.
- Appeal scores 0, which is about % of decisions which had complaint, judicial appeal or mediation and % of cases in which decision has been changed as a result of complaint, judicial appeal or mediation.
- Inspectorate and enforcement seems to function on an average level.

Realities of decision-making on Environmental Licensing



The map also has the possibility show two additional amoebas, which give a combination of EIA law and practice and decision making law and practice. These amoebas give an indication of how NEMA is performing in the implementation of the law and regulations



Next steps and follow up

On the basis of this report on the EIA mapping and its results, the stakeholders that participated in the workshop could do their own analysis, e.g. in a 1 day results workshop. The analysis could be done in a plenary session but also in 3 different stakeholder groups first (e.g. NEMA, line ministries, private sector/UAIA). Guiding questions could be e.g.:

1. How do you assess the Ugandan findings from your perspective?
2. What do you consider as five most important changes that are necessary?
3. Prioritize these five changes
4. Next steps short / long term

But also e.g.:

5. Would it be better to work on the regulatory framework and/or on EIA practice?
6. What are gaps between law and practice which require priority action: e.g. working on the biggest gaps or on the gap where improvement can be most easily reached?

Once priority actions have been agreed, one can refer back to the excell sheets which provides elements for improvement, e.g if public participation in EIA in Uganda would be identified as a priority action, the worksheet shows which options one could work on in an EIA strengthening program to have effective public participation in place.

Examples how EIA mapping was used in other countries/regions:

In Central Africa its application led to formulation of regional support program for EIA associations. In Ghana, mapping was the basis for an update of their EIA regulation and in Pakistan mapping allowed for comparison between national and provincial level.

Quick round of evaluation by participants

- this workshop was very timely, appreciation of the fact that everybody spoke very openly, sharing experiences was valuable
- gave good insight in functioning of EIA system in Uganda
- will results be shared amongst all participants or only NEMA? Yes, on basis of participants list all will get copy
- a comparison with result from other countries would have been interesting
- the questionnaire is a very systematic way of going through all steps of EIA (screening, scoping, EIA report, review etc). This is very helpful, but how does it provide us with tools to improve on the quality of EIAs in practice, which is an urgent problem
- highlighted the need for a good data base and EIA tracking system
- the emphasis of the tool is perhaps too much on the legal texts and how decision making works. More attention would be needed to improve on e.g. quality and effectiveness of mitigation measures, better alternatives etc., so how to improve on practice

Appendix 1 NOTES EIA MAPPING WORKSHOP, DAY 1 (4/7/2011) at HOTEL AFRICANA

Miscellaneous Aspects/ external factors

3. EIA decree - No EIA decree (No sufficient knowledge on a decree)

Participatory Genesis of the legal, Regulatory and Guidance framework

13. Not agreed on the verbal autonomy of the population. Members suggest that it depends on the topic of discussion. Their responses ranged between 50-80%.

16. Generally the judiciary can be influenced, making it dependent.

Considering the awareness of the judiciary on the environmental issues, the range of acceptance was 25-50%

EIA-procedure (Legal and regulatory framework)

2. Members had insufficient knowledge about the sectoral laws. They estimated it to 20

5. Insufficient knowledge about the regulations and information concerning their formulation, separate regulation-0%.

7. Most sectors have just drafted them but have not yet published them.

Clear and coherent texts with regard to EIA

10. it's clear in the text, but lacks more clarification at the different levels and are not clear for the different types of projects. Whether it should be done, and at which level for project briefs, EIAs

Left to the lead agencies and NEMA to make the decision

15. Not as clear. Under monitoring, there's no clarity for audits

Screening

31. Projects that don't require Light EIAs, screening is accepted to be done at the local government level. Some of the light projects are not included in text for screening.

Requirements with regard to substance

42. They don't specify which alternatives

88. Members were not sure (for further discussion)

Scoping

90. Regulation incorporated in the TOR. No further steps or if in the guidelines. Need for more expansion on it

96. The developer usually facilitates the consultants/agencies. Making it dependent

110. Not all agree. Insufficient knowledge from the participants.

Solidity of EIA system

114. No budget, but 100% acceptance by members.

Quality of implementation of the EIA procedure

1. Strong discussion by the members-50%

4. Considering the number of environmental officers hired or being used by the line ministries being too small either 2-3 and having too many projects makes it poor. (60%)

14. Poor data management and storage-50%

Data cannot easily be accessed for further utilization and references by other members of staff and department.

15. No. but they hold the departmental meetings at least quarterly but not regularly.

36. Insufficient knowledge about staff efficiency.
Current available percentage and what more is required.-50% in NEMA. members say they are under staffed.
55. 10% (mainly because of compensation issues)
62. Cannot easily agree on the percentage of quality of summary. Because of incompetence and poor quality of consultancy firms considering the technical summary. They basically just copy and paste from 1 project to another. Same template in the EIAs (most 25%)
106. Strong discussion. Agree on 25%
- 132, 134 and 136. Estimates of the statistics were used. The Authority was charged to get real statistics

WORKSHOP Day 2 (5/7/2011) at HOTEL AFRICANA

Opinion of members EA agency

173. Staff is extremely overloaded. Members agree to 20%
175. Strong discussion. 65%
178. The tool is very important for decision making though some sectors and projects, there's political interference.
181. Strong discussion. Funding from the Uganda government is not sufficient and there's always delayed release of the funds and always unpredictable.
- 182 and 183 were left to Mr.Waiswa for more information and clarification.
185. Members suggest that the question be improved and directed more to NEMA, since it's the one that basically deals with the reports and not the Ministry of Environment.

Characteristics of the procedures (Legal and Regulatory frame work)

6. Members were kind of confused about the question. It was not clear for the members. They would/will get back to it later.
17. Strong discussion. Insufficient knowledge by the members about the investment laws.
28. No response.
68. NEMA, They say that it has too much power but they agree that it keeps as coordinator of the other ministries as concerns the environment.
- 37, 38, 39 screening decision. Insufficient knowledge about what was required
- 65,66,67,68 Estimate statistics were given
- 69,70,71,72 Insufficient Statistics. Attributed to poor data base. Generally for all the statistical questions, it was noted that the members had insufficient information about the statistics. POOR DATABASE.

Closing Remarks

Appreciation from members and final contributions, Inadequacies were identified, achievements were also identified, Specific areas were identified, of weakness and strength, Improving of quality of the EIA system among the different sectors, System had limitations. Members believed it was based more on text than practical work, System is good for taking/ making decisions, System is good for comparing performance of EIA system between countries, Method is country specific.