

ENVIRONMENTAL IMPACT ASSESSMENT PROCESS IN KENYA

SIMPLIFIED HANDBOOK



TRANSPARENCY
INTERNATIONAL
KENYA

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ACRONYMS

EIA	Environmental Impact Assessment
EMCA	Environmental Management and Coordination Act
NEMA	National Environment Management Authority
NET	National Environment Tribunal
TI-Kenya	Transparency International Kenya

INTRODUCTION

This handbook has been prepared to enhance communities' and other interested non-technical persons' understanding of Environmental Impact Assessment (EIA) procedures in Kenya with a view to promoting openness and accountability through public participation in environmental decision-making processes.

1.1 Objectives of this Handbook

The objectives of this handbook are to:

- i. Provide a clear description of the Environmental Impact Assessment process to help community members and other stakeholders to better work together with the National Environment Management Authority (NEMA), the owners of the proposed projects as well as Environmental Impact Assessment Experts during Environmental Impact Assessment process;
- ii. Help community members to understand when and how to participate in the Environmental Impact Assessment process; and
- iii. Explain the options available to community members in the event they are aggrieved by any decision of NEMA in respect to the Environmental Impact Assessment process.

1.2 What is Environmental Impact Assessment (EIA)?

Environmental Impact Assessment (EIA) refers to the process of examining the likely positive or negative environmental, social and economic effects of a project that is being planned.

1.3 Who carries out Environmental Impact Assessment (EIA)?

Environmental Impact Assessment is usually carried out on behalf of the owner of the project being planned by a team of experts led by Environmental Experts registered and licensed by NEMA. The list of registered experts is kept and updated by NEMA. Other experts include engineers, sociologists, surveyors among others depending on the nature of the planned project. It can be accessed at any NEMA office or from the NEMA website (www.nema.go.ke). Once the assessment is carried out, the report is submitted to NEMA for processing. NEMA reviews the report and decides whether to allow or not allow the project to proceed.

1.4 Why is Environmental Impact Assessment carried out?


Environmental Impact Assessment is carried out for the following reasons:

- i. To identify the likely impacts (negative or positive) of a project being planned;
- ii. To assist NEMA in deciding whether to grant or deny a license to proceed with the project;
- iii. To identify and plan for measures that avoid, reduce or compensate for identified negative effects of the project under planning stage as well as maximize the positive impacts (benefits) of the proposed project

1.5 When is Environmental Impact Assessment required?

Under Kenya's environmental laws, Environmental Impact Assessment is required for all projects that are likely to have a negative effect on the environment. The law classifies these projects into three groups according to the seriousness of their likely effects, namely: Low Risk, Medium Risk, and High-Risk projects. The full list of projects classified under these three categories is outlined in the Second Schedule of the Environmental Management and Coordination Act.

Where a planned project does not fall in any of the three categories as outlined in the Second Schedule of the Environmental Management and Co-ordination Act, the owner of the proposed project may, where in doubt, write to NEMA for guidance on whether such a project requires an Environmental Impact Assessment or not. In case the project does not require Environmental Impact Assessment, NEMA will issue a clearance letter or letter of no objection to the project owner. The community or interested parties may request the owner of the proposed project to furnish them with this letter for avoidance of doubt. For the low and medium risk projects, the owner is supposed to submit a summary project report of the likely environmental effect of the project to NEMA.



EIAs help shape the management of environmental, social and human rights impacts for the life of the mine project.

Examples of projects that require an EIA

Low Risk

Sport facilities, stadia, social halls; community boreholes; dispensaries, health centres and clinics; livestock holding grounds and cattle dips; expansion or rehabilitation of markets; car and bus parks; cottage industry, jua kali sector and garages among others

Medium Risk

Artisanal and small-scale mining including quarrying of precious metals and gemstones; limestone and dolomite; harvesting of aggregate, sand, gravel, soil, clay, stone and slate; gypsum; pozollana and carbon dioxide tourism and related infrastructure; shopping centers, commercial centers and complexes, business premises, shops and stores not exceeding ten thousand square meters among others

High Risk

Artisanal and small-scale mining including quarrying of precious metals and gemstones; limestone and dolomite; harvesting of aggregate, sand, gravel, soil, clay, stone and slate; gypsum; pozollana and carbon dioxide tourism and related infrastructure; shopping centers, commercial centers and complexes, business premises, shops and stores not exceeding ten thousand square meters among others

Note: NEMA can upgrade or downscale a project from one category to another depending on its nature, location and magnitude.

1.6 Why should the public participate in the Environmental Impact Assessment process?

Public participation is an important element of good environmental governance. Public participation in the Environmental Impact Assessment process will:

- i. Ensure that the process is open and transparent;
- ii. Ensure that citizens' needs and concerns are considered in the proposed project;
- iii. Help to provide information on key impacts, potential preventive measures and possible options to the experts;
- iv. Make the proposed project more acceptable and reduce cases of community conflicts before NEMA approves any project;
- v. Assist NEMA in deciding whether to grant or deny an Environmental Impact Assessment license for a project; and
- vi. Ensure better implementation of the project once a license has been issued by NEMA.

Meaningful participation is undertaken at a time when proposals are still being developed and can be influenced because of participation. If it takes place when options are already closed, or the authorities have no intention of taking views of the public into account is not meaningful.

LEGAL BASIS FOR ENVIRONMENTAL IMPACT ASSESSMENT AND PUBLIC PARTICIPATION IN THE DECISION-MAKING PROCESS

2.1 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 for the benefit of the present and future generations.
- 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, the Article 35 and 69(1)(d) of the Constitution requires 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.

2.2 Environmental Management and Co-ordination Act (Chapter 387, Laws of Kenya)

- The Environmental Management and Co-ordination Act is the main environmental law of Kenya that governs environmental conservation and management in the country.
- This Act is the law that created the National Environment Management Authority (NEMA) as the government agency responsible for supervising and coordinating all 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 deciding whether to issue or not to issue the Environmental Impact Assessment license for any project under planning stage for which Environmental Impact Assessment is required.
- NEMA is also responsible for registration and licensing of all Environmental Impact Assessment Experts (EIA Experts) in the country.
- The Second Schedule of the Act lists the activities projects that require Environmental Impact Assessment.

2.3 Environmental Management and Co-ordination (Impact Assessment and Audit) Regulations, 2003

- These regulations outline in detail all the procedures related to Environmental Impact Assessment in Kenya
- The regulations require owners of all projects under planning for which Environmental Impact Assessment is required as well as NEMA to seek views of all persons that may be affected by the project being planned.
- These regulations are currently under review and are likely to be replaced by the draft Environmental Management and Coordination (Strategic Assessment, Integrated Impact Assessment, and Environmental Audit) Regulations, once passed.

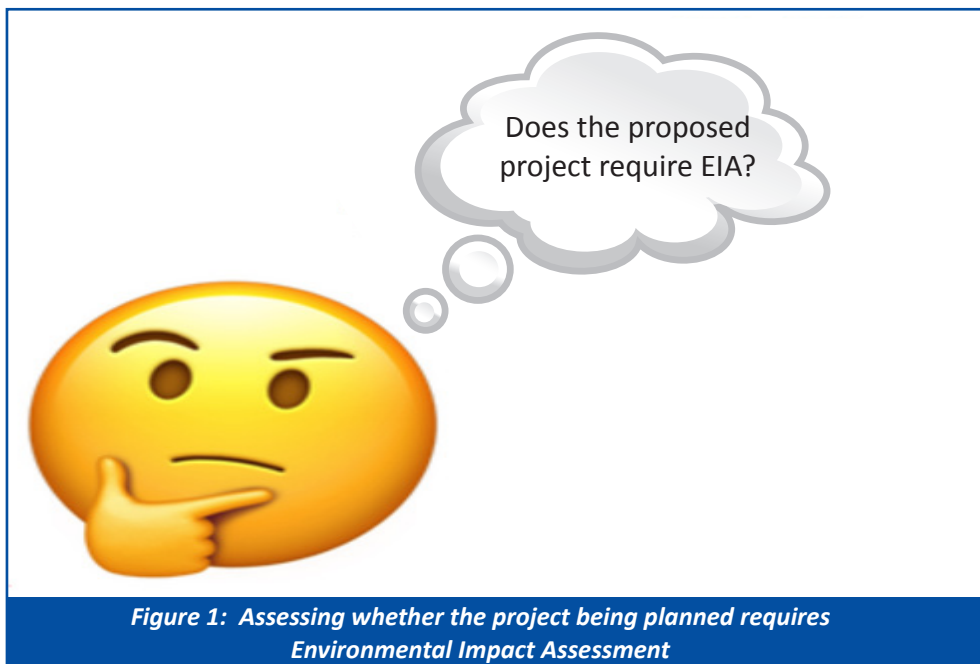
The significance of taking an environmental and human rights-based approach to mining governance is that this approach helps ensure that the public interest is the primary consideration in mining governance, grounded in the Kenya's environmental and human rights obligations.

OVERVIEW OF ENVIRONMENTAL IMPACT ASSESSMENT PROCESS IN KENYA

The Environmental Impact Assessment process and the opportunities that exist for participation by communities and other stakeholders are explained below:

Step 1: Assessing whether the project being planned requires Environmental Impact Assessment (Screening Process)

- The list of activities contained in the Second Schedule of the Environmental Management and Co-ordination Act provides guidance as to whether a planned project requires a full Environmental Impact Assessment or not. This list outlines projects that require an Environmental Impact Assessment.
- Projects with serious effects on the environment require Environmental Impact Assessment while those with less effects do not require a full study.
- Where a planned project does not require Environmental Impact Assessment, NEMA may, upon written enquiry by the project owner, issue a clearance letter or letter of no objection.



Step 2: Identifying key issues of concern at the planning stage of the project (Scoping)

- This stage involves gathering information to identify key issues and effects that should be considered in the Environmental Impact Assessment.
- This step provides a chance for the community to identify key issues to be considered in the assessment of the project and gives room for early agreements on any contentious issues.
- At this stage, the team involved in carrying out the Environmental Impact Assessment study is briefed on possible impacts of the project being planned. It provides them with possible options to be considered during the analysis of the possible impacts.
- In this step all affected interests are identified, the extent of the study and the methods to be used in judging possible effects that may arise from the project is established.
- The community is also made aware of the project being planned, and how the owner of the project intends to implement it. Key details of the project are shared at this stage.
- The concerns and issues raised by the community members and other interested parties are then considered in the scoping report that is prepared during this stage and submitted to NEMA for approval.



Figure 2: Identifying key issues of concern during the planning of a project

Step 3: Collection of information on the situation of the proposed project area (Baseline data Collection)

- At this stage, the Environmental Impact Assessment study team collects information on both living and non-living components of the environment. These include the vegetation, water, land and all that is in it, as well as the people's social and economic setting. This information is collected from both documents and by talking to the community and other key stakeholders through surveys or meetings.
- The information collected provides the current situation of the environment against which foreseen negative effects may be compared at the implementation stage of the project in order to know what has changed.
- The involvement of the community at this level is very important as it ensures an adequate description of the situation of the proposed project area since community members are best placed to provide information about their area.
- During this stage, the community members and key stakeholders are once more made aware of the details about the project being planned.
- The comments provided by the local community are usually informed by the level of disclosure on details of the proposed project.

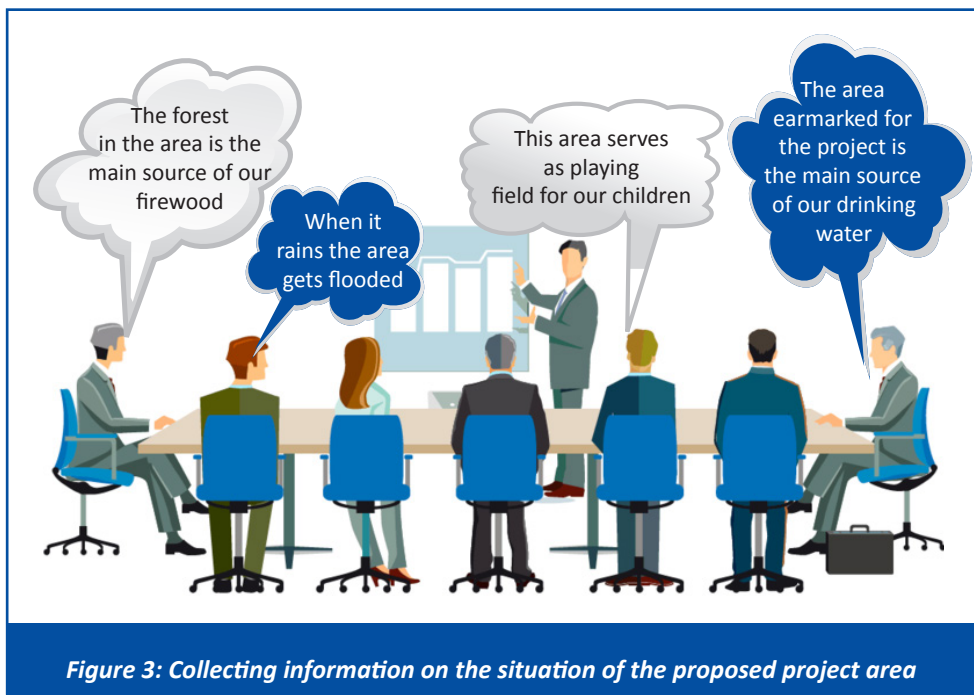
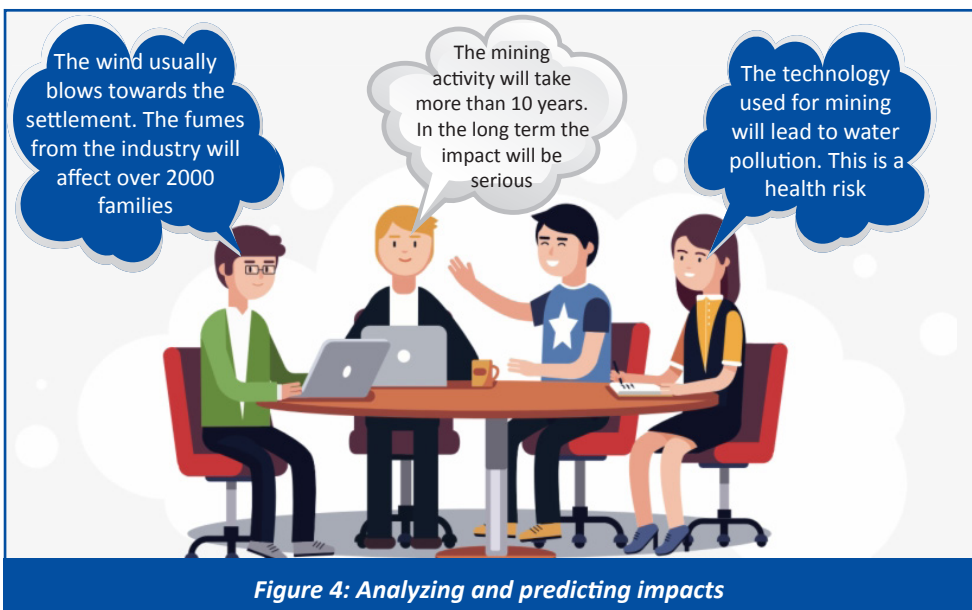


Figure 3: Collecting information on the situation of the proposed project area

Step 4: Analyzing and predicting the effects of the project

At this stage, the owner of the project being planned is required by the law **to hold at least two public meetings with the affected parties and communities** to explain the project and its effects, and to receive their **oral or written** comments. The notice for such meetings should be circulated for two consecutive weeks in two newspapers with national circulation and should be sent at least one week earlier to the community members and other stakeholders.

- This step involves scrutinizing and predicting the likely negative effects of the project being planned, how major the effects are likely to be and for how long they are likely to affect the environment.
- The predictions at this stage may be done by way of getting community views and complaints, looking at what the law requires, considering the cost of correcting or avoiding any foreseeable effects, considering which areas (e.g. villages, locations, sub-locations, or counties) will be affected, weighing the chances of the negative effects happening and the characteristics and number of people likely to be affected, among others.
- Information on the situation of the environment on the ground informs the analysis and prediction of the impacts of the project. **For this reason, active and extensive involvement of the community and key stakeholders during the description of the situation of the project area is very important.**



Step 5: Analysis of Project Alternatives

- This step is aimed at looking at any available options to the project being planned that are affordable, widely accepted by the community and those that have fewer effects on the environment.
- Active involvement of the community members in the identification of possible alternatives to the planned project makes the community accept the project and reduces conflicts with the community.
- The alternatives to be considered include the technology to be used in the implementation of the project, location of the project and general ways of implementing the proposed project. An alternative may also include **NO PROJECT** alternative.

The owner of the project being planned is required by NEMA to provide at least 3 options to the proposed project and give reasons for each in the report. The options may be technical or simple in nature.

Step 6: Management of potential effects of a proposed project

- This step involves providing corrective measures for the identified negative effects of the project being planned. These measures are informed by community and key stakeholders' consultations, professional judgment of the expert carrying out the Environmental Impact Assessment study and past experiences informed by science.
- Management of the negative effects may include avoiding and reducing the negative effects, returning the project area to its original condition as it was before implementation, as well as compensating the affected persons.
- Community members **must** be involved in the management of the effects since they live in the project area and they bear both negative and positive impacts of the project.
- Proposed corrective measures are usually outlined in a plan that covers environmental, social and economic issues raised about the project. The plan forms part of the Environmental Impact Assessment report that is submitted to NEMA.

Step 7: Review Process

- The review process starts once the owner of the project being planned has submitted the Environmental Impact Assessment report to NEMA.
- During this stage, the community and other stakeholders are provided with an opportunity to comment on the report submitted to NEMA.
- The report is circulated to relevant government agencies (Lead agencies), the relevant County government(s) and County Environment Committee(s). These agencies must make their written comments within 30 days. In addition, a notice is made in widely circulated newspapers and radio to inform the public about the availability of the report.
- The community can access the Environmental Impact Assessment reports at NEMA County Offices, NEMA headquarters, and NEMA website.
- Individuals, the community and any other interested persons or organizations may give their comments to NEMA directly or through the County Environment Committees that discuss Environmental Impact Assessment reports for projects to be implemented in the county.

An active local community should consistently engage their local administration and NEMA to ensure that their comments inform the review and decision making process.

Public Hearing

- NEMA may organize a public hearing after receiving written comments from the public and other stakeholders on a particular planned project. Public hearing notices are widely circulated through the media to enhance inclusivity.
- Public hearing provides another opportunity for verification of information on the Environmental Impact Assessment report submitted by the owner of the project.
- Public hearing ensures that the concerns of the community and other key stakeholders are addressed in the report, the failure of which a project maybe REJECTED (No issuance of a license by NEMA).



NEMA is required by law to hold a public hearing at a venue and time convenient to all community members and interested stakeholders and the notice for such a meeting communicated to the public one week earlier on at least one national daily newspaper and one local newspaper. NEMA is also required to make at least two announcements through the community radio in a local language and a national radio station. This critical process informs the review of the submitted EIA report.

Step 8: Decision Making

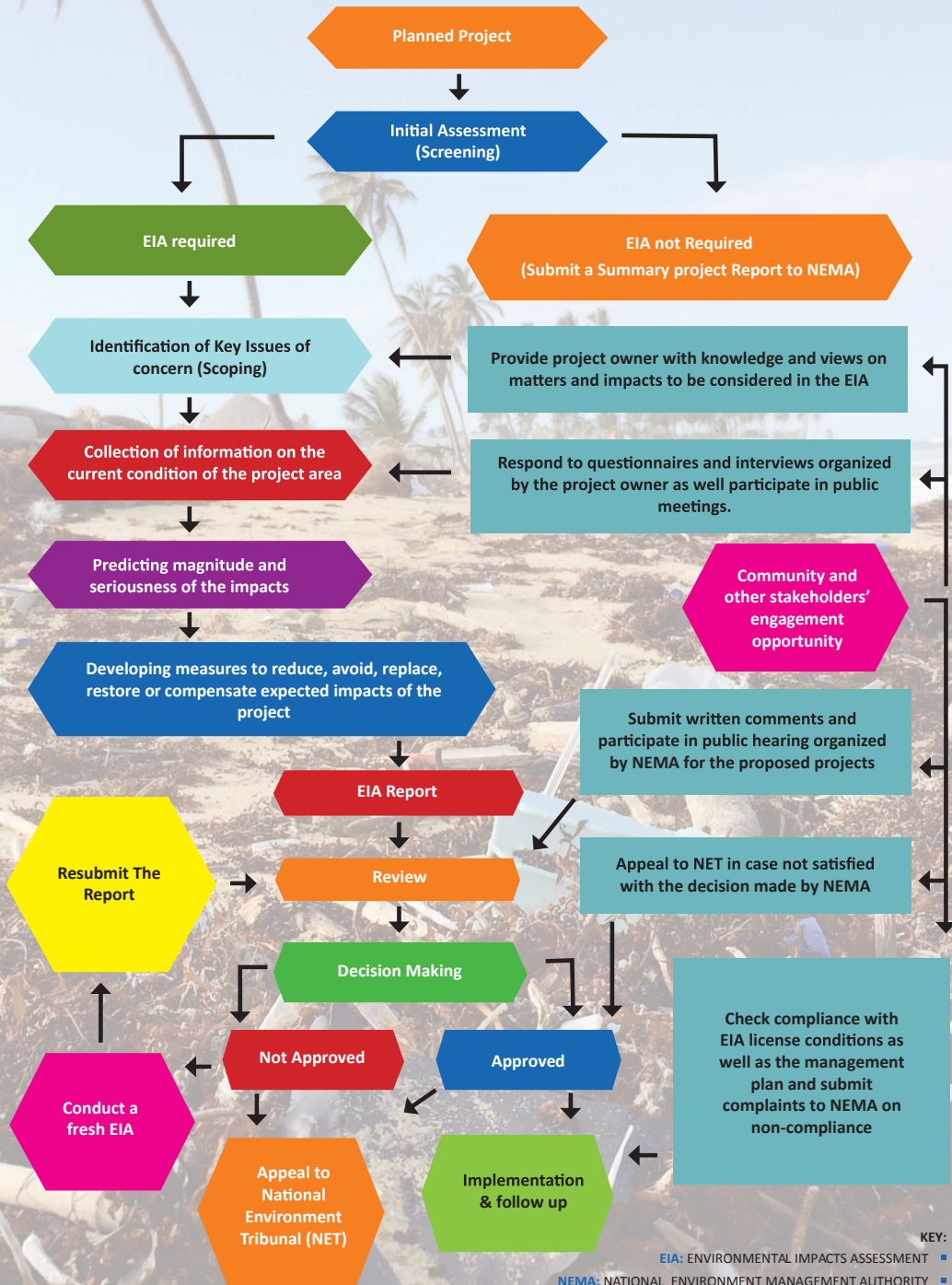
- Once NEMA has approved a project, it issues an Environmental Impact Assessment license with conditions that the owner of the project to be implemented must comply with. Among the conditions is the requirement that the owner of the project must comply with the Environmental Management Plan as per the Impact Assessment Report. Failure to comply with any condition will lead to action by the NEMA including suspension or cancellation of the license.
- NEMA may also refuse to approve any project that has very serious impacts on the people and environment or that has not complied with its requirements.
- When a project is approved and an Environmental Impact Assessment License is issued, any person including the host community, upon written request by filling the relevant application form, may obtain a copy of the licence from NEMA. Having a copy of the licence grants the community an opportunity during implementation of the project to check compliance with the conditions of the license as well as the Environmental Management Plan contained in the EIA report. The community should promptly report any cases of non-compliance by the owner of the project to the nearest NEMA office.

Step 9: Appeal on decision made by NEMA regarding a proposed project

- Where a person is aggrieved with approval or non-approval of a planned project by NEMA, the person may appeal to the National Environment Tribunal for hearing and determination of the case.
- Where a person is not satisfied with the decision of the National Environment Tribunal, he/she may appeal to the Environment and Land Court. The decision of the Court on such an appeal is final.

The steps of the Environmental Impact Assessment process and where the community and other interested stakeholders can provide their feedback are shown in Figure 4 below.

FLOW CHART OF ENVIRONMENTAL IMPACT ASSESSMENT PROCESS AND OPPORTUNITIES FOR COMMUNITY PARTICIPATION IN KENYA



KEY:
 EIA: ENVIRONMENTAL IMPACTS ASSESSMENT
 NEMA: NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY
 NET: NATIONAL ENVIRONMENT TRIBUNAL

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