



# The Planned Strategic Environmental and Social Assessment of the Oil & Gas Sector in Kenya

Knowledge Sharing  
Session Report

October 22nd, 2015  
Nairobi

Conference Report  
March 2016



Institute for  
**Human Rights and Business**



**BUILDING FLOURISHING COMMUNITIES**

# The Planned Strategic Environmental and Social Assessment of the Oil and Gas Sector in Kenya

Knowledge Sharing Session Report

## Table of Contents

<b>Introduction.....</b>	<b>2</b>
<b>Focus on Environmental and Social Impact Assessments.....</b>	<b>3</b>
Community Engagement during Environmental and Social Impact Assessments.....	3
Quality assurance and independence of ESIA's.....	4
Submission of comments on ESIA's.....	4
<b>Focus on SESA .....</b>	<b>5</b>
Understanding SESA and CSO participation .....	5
Key Issues for CSO consideration during the SESA process .....	5
CSOs participation before, during and after the SESA .....	6
<b>Conclusion .....</b>	<b>7</b>
<b>Agenda .....</b>	<b>8</b>

## Introduction

Significant discoveries in Kenya's emerging oil and gas sector have highlighted the importance of strengthening government capacity to manage the petroleum sector in ways that contribute to sustainable development. World Bank funding through the Kenya Petroleum Sector Technical Assistance Program (KEPTAP)<sup>1</sup> has spearheaded these efforts. Part of the assistance includes conducting a Strategic Environmental and Social Assessment (SESA) to identify and improve management, socio-economic and environmental impacts of the oil and gas sector in Kenya.

The National Environment Management Authority (NEMA), the government agency responsible for environmental protection, will lead the SESA process. The study aims to influence the development of policies, plans and programs, by identifying potential adverse impacts of the petroleum sector and developing an environmentally and socially sustainable policy and planning framework. The strategic policy and planning framework will be central in guiding decision-making and consideration of alternative options. It is through these frameworks that subsequent project level environmental and social impact assessments will be carried out including monitoring for both on-shore and offshore petroleum projects will be monitored. The Terms of Reference (TORs)<sup>2</sup> for SESA envision a more inclusive, consultative and robust process involving the participation of individuals and groups drawn from the six exploration regions in the country.

The Terms of Reference provide an opportunity for community participation and active engagement by civil society organisations (CSOs). CSO participation before, during and after the SESA will be central in ensuring that community concerns are taken on board to inform policy and legal frameworks for the oil and gas sector and also to streamline subsequent project level environmental and social impact assessments. Coming at a time of significant petroleum sector advances, SESA creates an opportunity to ensure improvements in the governance of the oil and gas sector in Kenya. It will help realign existing and proposed petroleum policies, plans and programmes in a manner that facilitates integrated, fair and consultative petroleum decision-making.

As a contribution to this process, Cordaid Kenya, through its Making Extractives Work for the People Programme, and the Institute for Human Rights and Business, through its Nairobi Process<sup>3</sup> initiative, held a one-day knowledge sharing session for the planned SESA on 22 October 2015. The session brought together CSOs and county government officials (Turkana County) in charge of environment and energy ministries. The knowledge sharing session sought to build understanding on the planned SESA while identifying opportunities and strategies for maximizing the participation of communities and CSOs at all process stages.

The knowledge sharing session was the first of its kind aimed at CSOs and county government officials. The session began with a focus on understanding environmental and social impact assessment (ESIA), differences between SESA and ESIA and opportunities to engage before, during and after SESA. The discussions raised a number of key concerns relating to the oil and gas sector and more specifically on the planned SESA. This set a good launching pad for scaling up

---

<sup>1</sup> <http://www.worldbank.org/projects/P145234?lang=en>

<sup>2</sup> Terms of Reference for Strategic Environmental and Social Assessment (SESA) of the Oil and Gas Sector. <http://www.nema.go.ke/index.php/media-centre/consultancy/kenya-petroleum-technical-advisory-project-tors>

<sup>3</sup> <http://www.ihrb.org/our-work/nairobi-process.html>

discussions around the study and information sharing on stakeholder engagement during and after the study.

The knowledge sharing session benefited from the presentations by NEMA, which is the lead agency on environmental issues in Kenya and the lead agency for the planned SESA. This was central in understanding the SESA process including the timelines and opportunity for CSO participation. It also helped in demystifying the differences between ESIA and SESA.

## Focus on Environmental and Social Impact Assessments

### Community Engagement during Environmental and Social Impact Assessments

CSOs in Kenya have traditionally been viewed as interlocutors for communities on development related issues. This role has however been brought into question in relation to the oil and gas sector. Of concern is whether CSO engagement actually benefits the community. This is because communities have a better understanding of local impacts related to development projects and only need facilitation to express their views and interests. Some question the extent to which CSOs effectively translate the knowledge they acquire after trainings and other forms of engagement in ways that benefit the community. Ensuring active community participation to put forth concerns and interests therefore strongly depends on how well community members are informed of issues and processes affecting them. Participants discussed how CSOs can contribute to improving community information and participation in the ESIA process and the related challenges and opportunities.

Community engagement during ESIA was seen as being deficient. Those carrying out such assessments often have incorrect views and limited understanding of the impacts resulting from failure to consult adequately with affected communities. This raises concerns over how well CSOs support communities in expressing their interests and perspectives during ESIA processes at the local level to influence project design. Government and investors have not proactively engaged communities in developing a shared understanding of the adverse impacts of oil and gas operations. For example, it was noted that in most instances investors and government view pastoralist land as free and uninhabited yet the affected communities view this as grazing land lost to pave the way for oil and gas projects.

Weak community engagement can be attributed in part to lack of clear guidelines on consultation. This is bound to change as NEMA is in the process of developing consultation guidelines aimed at ensuring a more proactive and inclusive consultative process during ESIA.

Some participants referred to the problem of several abandoned sites, which were part of petroleum exploration but that have not been subjected to proper closure as prescribed in ESIA. This is the case despite NEMA's requirement that companies develop decommissioning plans to improve sites as part of the ESIA. To enhance compliance by companies, NEMA has scaled up environmental audits and inspection of abandoned sites through county level NEMA offices and by working together with other agencies including CSOs. This as well seeks to mitigate any community concerns and ensure that companies are sensitive to environmental protection.

## Quality assurance and independence of ESIA's

Projects resulting in major changes in land-use are legally required to undergo an ESIA. Section 58-67 of the Environmental Management and Co-ordination Act 1999 (Act no 8 of 1999)<sup>4</sup> make provision for ESIA's. The requirement for companies to pay for ESIA's has raised concerns that companies seek to influence their outcome in order to ensure their projects are approved. How NEMA addresses this is critical in ensuring that ESIA's generate objective information on the actual state of issues on the ground and gain community confidence. This should extend to strengthening community engagement during assessments to provide assessors with the correct understanding of community concerns and interests.

Participants noted that ESIA reports often seem to be a 'copy and paste' process, which raises concern over their credibility and review by NEMA before approval. The role of CSOs in providing input to ESIA reports was questioned as most remain unresponsive to notices calling for submissions. Such lack of responsiveness suggests ESIA reports do not pass thorough scrutiny and that engagement with the process would barely inform project design action. NEMA officers are few and therefore rely mostly on lead agencies including CSOs to make informed decisions on ESIA reports. On the other hand, it is expected that assessors adhere to environmental due diligence and international best practices during ESIA's. Considering that EMCA has created County Environment Committees,<sup>5</sup> there is room for greater direct CSO participation in influencing quality assurance of ESIA reports and incorporation of community concerns.

Participants felt there is a need to consider conducting independent ESIA's to address the credibility of investor funded ESIA's. This however is a challenge considering that the law does not make provision for independent ESIA's thus making separate assessments difficult to justify. The Act includes ethics provisions to guide ESIA experts and permits investors to hire their own experts either internally or externally. In such situations, CSOs should be proactive in making submissions on ESIA's when open for comments. This is essential in ensuring ESIA's incorporate community concerns. There is also need to improve different governance aspects of the ESIA process, including lead agency participation, awareness about different roles and responsibilities of assessors, NEMA and other agencies involved in the process including the National Lands Commission and Water Ministry among others.

## Submission of comments on ESIA's

Access to notices for comments on published reports remains a challenge. Regulations limit notices to publication in two newspapers of wide national circulation. This excludes populations in remote regions of Kenya with limited access to newspapers. NEMA officials highlighted the important role of CSOs in creating awareness and mobilising communities about submissions processes as a

---

<sup>4</sup> EMCA is currently under amendment  
[http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2015/EnvironmentalManagementandCo-ordination\\_Amendment\\_Act\\_2015\\_No5of2015\\_.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2015/EnvironmentalManagementandCo-ordination_Amendment_Act_2015_No5of2015_.pdf)

<sup>5</sup> The county environmental committees will be gazetted by county governments and will consist of officials of county governments, representatives of NEMA, business communities, farmers' associations as well as Public Benefit Organizations. The amendments to the EMCA have created the county environmental committees:  
[http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2015/EnvironmentalManagementandCo-ordination\\_Amendment\\_Act\\_2015\\_No5of2015\\_.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2015/EnvironmentalManagementandCo-ordination_Amendment_Act_2015_No5of2015_.pdf)

central part of efforts aimed at ensuring that community interests and views were included in ESIA reports. CSOs can leverage their involvement in county environment committees to access information on time and mobilise communities to raise their concerns. There is however need to consider employing new modes of notifying communities considering the remoteness of some regions. It is hoped that county environment committees will ensure wider coverage and reach of information to remote regions at the county level.

## Focus on SESA

### Understanding SESA and CSO participation

While ESIA's are project specific, SESA focuses on high level cumulative impacts to inform plans, programs, policies and laws. Over the years, NEMA emphasised ESIA's at the expense of SESA. SESA acts as a safeguard and is a legal requirement in Kenya to inform strategic policy, plans and programs, and to guide massive sectoral development initiatives envisaged by government.

Participants raised concern over the relevance and timeliness of the proposed SESA considering the progress made in the oil and gas sector in Kenya. Current efforts to develop the petroleum law and policy were viewed as another challenge as these are likely passed before completion of SESA. The extent to which the SESA influences oil and gas sector policies, plans and programs will determine its implementation in all petroleum projects on-shore or offshore for the benefit of the Kenyan population within sustainable policy and planning frameworks.

Concern over investor and political (in this case national government) influence over the SESA is important. It was noted that it is vital to limit such influence given that the independence of ESIA's has been questioned as well as the importance of raising actual issues on the ground. It is essential to note that SESA's goal is to inform policies, plans and programs, and not necessarily to influence project level operations. The fact that SESA's focus is on higher level decision making relating to governance of the sector, was seen as posing a lesser risk of investor or political dominating influence. However, this does not rule out the possibility of undue influence by specific actors. It is therefore imperative that SESA is seen as an independent process in order to achieve desired results within set timelines. Doing so will result in enhanced public confidence as well as stronger policies and legal frameworks for the sector. Greater public participation and negotiation of policy choices, priorities and consultative strategic planning is expected to help balance these risks.

The impact of community involvement in the SESA study, which is scheduled to commence in February 2016, depends to a significant extent on how well CSOs are organised and prepared to contribute to the process. This includes ensuring that CSOs have the right information about SESA, as well as knowledge of impacts of the sector, community concerns, their interests and provision of correct information to community members themselves. Considering that CSOs are viewed as interlocutors for communities, they will provide views on behalf of communities given the focus on cumulative impacts and high level policies and legal issues rather than project level impacts.



## Key Issues for CSO consideration during the SESA process

CSO participation during the SESA process will be central to the incorporation of community views. It was thus noted that CSOs must pay attention to the following three key issues during SESA:

- 1. CSOs must be included as key stakeholders for consultation during SESA fieldwork:** This will be informed by how well CSOs are organised as well as informed. This poses a significant test for CSOs to strengthen their networks and ensure they are able to engage proactively including on technical aspects of the study.
- 2. CSOs must be adequately prepared to present community concerns:** The CSOs as interlocutors for communities would be better positioned to represent communities based on how well they understand community concerns and interests relating to oil and gas projects in Kenya. This calls for proper documentation and evidence based community concerns that have the capacity to influence policy.
- 3. Reference group:** The SESA activity will generate a wealth of data and reports at different stages of the assessment requiring quality assurance. Submissions by the consultants should be reviewed and audited by a team of people with technical expertise on various aspects of the study. This will ensure that the consultants and NEMA are well advised and that the assessment achieves its intended purpose. For instance, after 8 weeks the consultants will submit a scoping inception report, which NEMA on its own will not be in a position to audit. This therefore strengthens the idea behind a reference group that CSOs can use to ensure reports meet community expectations.

## CSOs participation before, during and after the SESA

CSOs have a good opportunity to engage before, during and after the SESA. How well the CSOs plan to engage will determine their influence and effectiveness during consultation with the relevant actors and the consultants. CSOs need to work strategically with communities and county governments in the six regions<sup>6</sup> the consultants will target. Communities should be well informed about SESA and document concerns they wish to address. It is important to ensure that county governments are well informed of the SESA as well. This will also ensure that they are supportive of communities and that they understand community concerns to inform policy and legal frameworks for the sector.

CSOs should also start pushing county governments to **prepare county environment committees in readiness for the SESA**. This is considering the critical role they are envisioned to play on both environmental and social issues at the county level. The committees will act as a good reference point for consultants on issues that should inform policies and legislation on the oil and gas sector.

It is also important that CSOs **identify their capacity gaps to benefit from KEPTAP technical support**. Identifying areas of limited capacity will help in ensuring that CSOs strengthen their

---

<sup>6</sup> The six regions include the four basins: Anza, Lamu, Mandera and the Tertiary Rift, Nyanza and Magadi

influence with respect to oil and gas sector standards. Further, it is important to interrogate the role of existing networks to access KEPTAP support for CSOs.

Effective CSO participation in the planned SESA will also depend on their timely input and the extent to which they are correctly informed of progress. Participants felt there is need **to develop a communication strategy** that will keep CSOs constantly informed. This strategy will especially support those operating in distant regions. Use of the existing network structures will be central to ensuring a more coordinated CSO platform for consultation.

**Participants highlighted the importance for CSOs to identify gaps in the different policies, plans and programs as well as how to influence laws and regulations at national and county level.** . Identified gaps should be raised with the consultants for inclusion in the SESA report.

Lastly, it was noted that there is generally weak linkage between national and county level CSO networks. Participants felt that it is important **to build stronger networks between national and county level CSOs to ensure greater impact.** More importantly, county level CSOs need support and assistance to help them stay informed of the current state of affairs in the sector. Further, there is a need to make the networks functional. This calls for individual CSOs to actively participate as network members.

## Conclusion

The knowledge sharing session provided an opportunity to increase CSO understanding of the planned petroleum SESA and helped identify how well CSOs can and should prepare to participate. The session was also important in highlighting the role of county governments in the SESA process. CSOs should take further steps to engage county governments in discussions on SESA. Such dialogue **will help build the relationship between CSOs and county government** and realise the support they need in the SESA process. It is important to note as well that SESA will contribute to strengthening CSO networks both at national and county level though constant communication and exchange of information. More efficient and effective feedback mechanisms will be central to successful engagement during the different stages of SESA. This calls for active CSO engagement during all stages of SESA.





## Agenda

### Preparing Civil Society Organizations to Participate in the Planned Strategic Environmental and Social Assessment (SESA) of the Oil and Gas Sector in Kenya

Knowledge Sharing Session

22 October 2015

Timeline	Share item	Facilitator
08.45 – 09.15	Arrival and registration	
09.15 – 09.45	Introductions and objective setting	Rose Kimotho, IHRB
09.45 – 10.45	Understanding Environmental Impact Assessments (ESIA)	Winstone Omondi, Cordaid
10.45 – 11.00	Health Break	
11.00 – 12.00	Understanding Strategic Environmental and Social Assessments (SESA)	Jeremiah Wahome, NEMA
12.00 – 13.00	SESA thematic areas <ul style="list-style-type: none"> <li>• Environment</li> <li>• Social</li> <li>• Economic</li> </ul>	Jeremiah Wahome, NEMA
13.00 – 14.00	Lunch break	All
14.00 – 14.30	Q&A	
14.30 – 15.30	What are the opportunities for engagement with the SESA process? · Before <ul style="list-style-type: none"> <li>• During</li> <li>• After</li> </ul>	Joseph Mbatha, CEMIRIDE
15.30 – 16.00	Wrap up, close, refreshments	Rose Kimotho, IHRB