



Supporting Inclusive Resource Development (SIRD)



Global Affairs
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TRAINING PROGRAM 2019

SESSION 5: NATURAL RESOURCE GOVERNANCE

TOPIC: **NATIONAL OBLIGATIONS FOR MINE CLOSURE AND REHABILITATION**

RESOURCE LIST

Item		Source	Notes
1	Constitution of Kenya	http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010	<p>This is the supreme law of the land and has various provisions on all matters related to Kenya. In respect to this presentation, Article 69 (1) of the Constitution of Kenya addresses the rights of the environment by providing that the State shall ensure the sustainable exploitation, utilization, management and conservation of the environment and natural resources and ensure equitable sharing of the accruing benefits.</p>
2	Environmental Management and Coordination Act, 1999	https://www.nema.go.ke/index.php?option=com_content&view=article&id=24&Itemid=163#	<p>The Environmental Management and Coordination Act (EMCA), 1999, is the framework law on environmental management and conservation. EMCA establishes among others the following institutions; National Environment Management Authority, Public Complaints Committee, National Environment Tribunal, National Environment Action Plan Committees, and County Environment Committees. The National Environment Management Authority (NEMA) was established as the principal instrument of government charged with the implementation of all policies relating to the environment, and to exercise general supervision and coordination over all matters relating to the environment. In consultation with the lead agencies, NEMA is empowered to develop regulations, prescribe measures and standards and, issue guidelines for the management and conservation of natural</p>

			<p>resources and the environment. The Act provides for environmental protection through;</p> <ul style="list-style-type: none"> • Environmental impact assessment • Environmental audit and monitoring • Environmental restoration orders, conservation orders, and easements.
3	<p>Environmental (Impact Assessment and Audit) Regulations, 2003</p>	<p>https://www.nema.go.ke/index.php?option=com_content&view=article&id=27&Itemid=167</p>	<p>Environmental Impact Assessment (EIA) is a critical examination of the effects of a project on the environment. Any proponent of a project should conduct an EIA and prepare a report and submit to NEMA. The EIA must be done by a registered and licensed EIA/EA expert by NEMA. The EIA must be conducted before the commencement of the project.</p> <p>The goal of an EIA is to ensure that decisions on proposed projects and activities are environmentally sustainable. It guides policy makers, planners, stakeholders and government agencies to make environmentally and economically sustainable decisions. It is therefore a legal requirement to carry out an EIA before commencement of the project. The EIA process requires that a proponent shall seek views of persons who may be affected by the project. The proponent shall be issued with an EIA license before commencement of the project.</p> <p>Environmental Audit (EA)</p> <p>Environmental Audit (EA) is the systematic documentation, periodic and objective evaluation of activities and processes of an ongoing project. . The purpose of EA is to determine the extent to which the activities and programs conform to the approved environmental management plan. An initial environmental audit and a control audit are conducted by a qualified and authorized environmental auditor or environmental inspector who is an expert or a firm of experts registered by NEMA. In the case of an ongoing project NEMA requires the proponent to undertake an initial environmental audit study to provide baseline information upon which subsequent environmental audits shall be based. The proponent shall be issued with an acknowledgement letter and an improvement order where necessary.</p>

4	Mining Act, 2016	https://portal.miningcadastre.go.ke/Downloads/Mining_Act_2016_Full.pdf	<p>Among other provisions, the Act expects mining operations to comply with laws on water rights and use the land in accordance with the terms of the permit or license. In addition to this, persons conferred with mineral rights are expected to comply with the Occupational Health and Safety Act.</p> <p>Before a person is granted a mining license, they are expected to obtain an Environmental Impact Assessment, Social Heritage Assessment and an Approved Environmental Management Plan. The EMP also entails a decommissioning phase which provides for closure and rehabilitation.</p>
5	The Environmental Management and Coordination (Deposit Bonds) Regulations, 2014	https://www.nema.go.ke/images/Docs/Regulations/EMC%20(Deposit%20Bonds)%20Regulations%202014-1.pdf	<p>This Regulation shall be applicable to the activities, industrial plants and undertakings which have or more likely to have adverse effects on the environment. The purpose of these Regulations is to ensure:-</p> <ul style="list-style-type: none"> • Good environmental practices; • Adequate remediation is achieved without adversely affecting economic viability; • Compliance with remediation obligations; • Availability of funds for remediation; and • Sustainable development. <p>Any person operating or proposing to operate an industrial plant and undertaking an activity as stipulated in the Deposit Bonds. Register shall be required to prepare a Deposit Bond Assessment Report.</p>
6	The Local Content Bill, 2018	http://www.parliament.go.ke/sites/default/files/2018-11/Local%20content%20Bill.pdf	A proposed framework to facilitate the local ownership, control and financing of activities connected with the exploitation of gas, oil and other petroleum resources; to provide a framework to increase the local value capture along the value chain in the exploration of gas, oil and other petroleum resources; and for connected purposes
7	Strategic Environmental Assessment Report for the Mining Sector in Kenya	https://www.nema.go.ke/images/Docs/SEA%20Reports/UNDP%20DRAFT%20SEA%20REPORT%20FOR%20THE%20MINING%20SECTOR%20IN%20KENYA.pdf	The policy SEA for the mining sector in Kenya was conducted with a focus on relevant policies, legal frameworks and regulations. The SEA also interrogated relevant strategic plans. The specific objectives for the SEA were to:- a) Determine whether the governance frameworks in the sector have effectively considered the national environmental

			<p>obligations, b) Establish whether the governance frameworks in the sector have effectively considered the national obligations for protection of human rights, and c) Determine whether there is adequate and effective capacity for ensuring environmental sustainability and protection of human rights in the mining sector. The SEA was expected to offer recommendations for: a) Improvements in the processes of environmental administration and governance in the mining sector so that the purpose and expectations of the various legislations are fully attained; b) Enhancements in the engagement of communities and wider society in environmental administration and governance in the mining sector, while incorporating rule of law and human rights principles; and c) Capacity strengthening for both government and community stakeholders to allow the processes of environmental administration and governance in the mining sector to be conducted in accordance with best practices, and with proper consideration of the underlying goals of the National Constitution, and human rights principles.</p>
8	Integrated National Land Use Guidelines, 2011	https://www.nema.go.ke/images/Docs/Guidelines/national%20landuse%20guidelines-nema.pdf	<p>The Integrated National Land Use Guidelines (INLUG) outlines land issues which should be taken into account throughout the country in all land use planning. These include requirements on the quality of the living environment, economic and ecological development of community structures, the preservation of natural values and the built heritage, utilization of natural resources and communication networks.</p> <p>The INLUG aims at the prevention and mitigation of land degradation, addressing land use conflicts and managing both natural and anthropogenic disasters through the promotion of sustainable land management. The relevance of the INLUG to other National Legislation; implementation of Regional Agreements and International Conventions; Medium Term Plan (MTP) and Vision 2030; and National Environment Action Plans (NEAPs) have been discussed in the Guidelines</p>