

**TRANSBOUNDARY ENVIRONMENTAL
ASSESSMENT GUIDELINES FOR SHARED
ECOSYSTEMS IN EAST AFRICA**

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FOREWORD

The three Partner States of the EAC namely, Kenya, Uganda and Tanzania share borders including many terrestrial and aquatic ecosystems. These ecosystems are primary assets and a store of wealth- wildlife, flora and fauna, which if well managed, could contribute to poverty alleviation as well as future incomes.

It is documented that the East African shared ecosystems face major threats, which include but are not limited to; depletion of natural resources due to the rising population pressure, expansion in human activities; over- exploitation, unsustainable agricultural practices; over- fishing; pollution including both point and non-point sources, rampant conversion and destruction of littoral wetlands in ecosystems such as Lake Victoria. These threats if not checked on time, may have significant negative ecological, environmental, and social impacts.

Tremendous efforts to review the policy, legal and institutional frameworks are being made for the management of the natural resource base and the environment in particular. However, those that affect the management of shared ecosystems are still wanting. The frameworks are inadequate or poorly enforced, not harmonized, and where harmonization attempts have been initiated, the pace is slow. Currently, important developments are beginning to take place in some of the shared ecosystems, and while they are important to the Partner States, it is essential that environmentally assessed for likely negative impacts to ensure that mitigation measures are provided for.

Though the Partner States have their own national environment assessment regimes, with some dynamics to consider transboundary issues, there is still need for the region to have common environment assessment regimes-policies, regulations, procedures and guidelines for shared ecosystems. This is provided for in the Treaty for the Establishment of the East African Community.

It is for this reason that the East African Community initiated a process to developing the Regional Environment Assessment Guidelines for Shared Ecosystems in East Africa. This process builds on an earlier initiative by the then East African Cooperation, where the Committee on Environment and Natural Resources made specific recommendations on shared ecosystems, particularly to develop Regional Environmental Assessment Procedures and Guidelines for shared ecosystems in East Africa.

These Guidelines will form a solid basis for *modus operandi* for all activities in or near shared ecosystems that are likely to cause significant ecological, environmental, health and social impacts. These Guidelines will also apply to all activities within the context of transboundary or cross-border areas between any or all of the Partner States and activities that may take place outside the geographical natural spatial area of the shared ecosystems but have direct/indirect impacts.

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Finally, these Guidelines are an important contribution that will complement national frameworks for environmental assessments, and depend on national systems for their implementation.

Hon Mushega Nuwe Amanya
Secretary General
East African Community

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ACRONYMS AND ABBREVIATIONS

EAC	-	East African Community
EMA	-	Environment Management Agency
ENR	-	Environment and Natural Recourses
CBD	-	Convection on Biological Diversity
CITES	-	Convention on International Trade of Endangered Species of Wild Flora and Fauna.
UNEP	-	United Nation Environment Programme
UNDP	-	United National Development Programme
TOR	-	Terms of Reference
EEZ	-	Exclusive Economic Zone
ACTS	-	African Center for Technology Studies
CBO	-	Community Based Organization
EIA	-	Environment Impact Assessment
SEA	-	Strategic Environment Assessment
LVEMP	-	Lake Victoria Environment Management Project
LVFRP	-	Lake Victoria Fisheries Research Project
LVFO	-	Lake Victoria Fisheries Organization
IUCN	-	International Union for the Conservation of Nature
ECOVIC	-	East African Common Organization for the Management of Lake Victoria Resources
LVRALAC	-	Lake Victoria Regional Local Authorities Co-operation
LVDP	-	Lake Victoria Development Programme
KWS	-	Kenya Wild Life Service

1.0 INTRODUCTION

Preamble

Article 112 of the Treaty for the establishment of the East African Community (EAC) endears the Partner States to cooperate in all issues of Environment and Natural Resource (ENR) Management. The Treaty requires the Partner States to cooperate to preserve, protect and enhance the quality of the environment and to ensure sustainable utilization of shared natural resources. In so doing the Partner States would develop jointly common policies and strategies to ensue sustenance and preservation of ecosystems. In particular the Partner States are to develop special strategies to manage fragile ecosystems including terrestrial and aquatic resources and to prevent negative trans-boundary impacts. The Partner States are expected to integrate environmental management and conservation measures in all their national development plans and activities. Further they are expected to institute measures to encourage public awareness and education; harmonize their policies, regulations and adopt common environmental standards and exchange information. The Treaty therefore provides the setting and premise for instituting regional environmental assessment Guidelines for the management of trans-boundary ecosystems in East Africa. The Partner States have initiated a number of processes and activities to implement these provisions.

A protocol on environment and natural resources management is being finalized. The protocol is intended to adopt a common vision in addressing challenges of sustainable development, make concerted efforts to prevent environmental degradation, take measures to control degradation and strengthen cooperation of the partner states. The Draft protocol therefore provides the basis for instituting regional guidelines for the management of transboundary environmental impact assessment in the Partner States. The guidelines provide for essential concepts in transboundary context and define how projects or activities undertaken in the core area, and areas of impact and influence would be handled. These guidelines form the first annex to the draft protocol.

In the development of the protocol, due regard was given to a number of international agreements on how states cooperate in environmental management and other matters of international cooperation. In the East African Community, precedent has already been created under the following recent protocols which take cognizance of the environment. These are the -

- (a) the Protocol for Sustainable Development of Lake Victoria Basin,
- (b) the Protocol on the Establishment of the East African Community Customs Union, and

The Protocol on the Establishment of the East African Community Customs Union under article 38 takes cognisance of the need to enter into a protocol on environment and natural resources management spelling out the objectives, scope of cooperation and institutional mechanisms. The most important aspect here is that environment and natural resources is the backbone for the sustainable development of the Community and as such a customs policy or activity will directly or indirectly impact on the management of those resources. The draft protocol therefore also creates a linkage with the Customs Union.

The Protocol for Sustainable Development of Lake Victoria Basin also has provisions that are directly relevant to the management of the environment and natural resources of the Community. As such, the draft protocol on environment and natural resources captures most of the principles that are obtained in the LVB protocol. It is important that there should not be conflicts in terminology, principles or any other provision of the LVB protocol as this would not create a harmonious relations between the two protocols.

The Guidelines are therefore a means to institute measures to harmonize the policies, guidelines, laws, standards and programs that will promote cooperation in the conservation and sustainable use of shared ecosystems.

1.1 What is Environmental Impact Assessment (EIA)

The United Nations Conference on Environment and Development (UNCED) in 1992 and Principle 17 of the Rio Declaration, and to which the Partner States subscribe, states:

"Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority".

The terms 'impact assessment' and 'environmental impact assessment' are umbrella terms frequently used to cover a broad range of techniques, e.g. social impact assessment (SIA), risk assessment (RA), and health impact assessment (HIA). To date, EIA in East Africa has been applied generally at the project level, but increasing attention is now being given to its role at the level of policies, plans and programmes - when it is known as strategic environmental assessment, (SEA).

1.2 Purpose of EIA

EIA is a process that can be used to improve decision-making and ensure that development options under consideration are environmentally, socially and economically sound and sustainable. It is concerned with identifying, predicting and evaluating the foreseeable impacts, both beneficial and adverse, of proposed development activities, alternatives and mitigating measures, and aims to eliminate or minimize negative impacts and optimize positive impacts.

The specific purposes for EIA include:

- (i) An important management tool for improving the long-term viability of projects.
- (ii) Its use can help to avoid mistakes that can be expensive and damaging in environmental, social and economic terms.
- (iii) EIA is used for early- warning planning of a wide range of resource use, development, and conservation initiatives in order to make the most of options for achieving sustainability.
- (iv) The use of EIA to choose the best project or option can help in the achievement of sustainable development.
- (v) EIA should be seen as a planning tool, an integral part of the project cycle, providing information to decision-makers in a clear and systematic way.
- (vi) EIA should result in a better understanding of the linkages between ecological, social, economic and political systems.

To achieve these objectives effectively, EIA needs to ensure:

- stakeholder involvement,
- multi-disciplinarity,
- Focus on the process, not just the production of an Environmental Impact Statement (EIS).

1.3 Strategic Environment Assessment

Strategic Environment Assessment (SEA) is a systematic, ongoing process for evaluating, at the earliest stage, the environmental quality and consequences, of alternative visions and development intentions incorporated in policy, planning or programme initiatives, to ensure full integration of relevant biophysical, economic, social and political considerations.

The main benefits of SEA are that it:

- Pro-actively informs stakeholders of forthcoming developments, plans and programs;
- Identifies the opportunities and constraints which the environment places on development; or vice versa
- Provides guidelines on how to ensure that development is within sustainable limits;
- Has the ability to integrate across areas, regions or sectors;
- Improves the way in which cumulative impacts are dealt with in environmental assessment, for example, through the use of thresholds and limits of acceptable change; and
- Focuses on the maintenance and enhancement of a chosen level of environmental quality, rather than on minimizing individual impacts.

- It aims to integrate the concept of sustainability into the formulation of plans and programs.

The approach of assessing the effect of environment on development is an important benefit of SEA. This is one of the differences between SEA and EIA, as EIAs focus on the effects of development on the environment.

Chapter One

THE REVISED GUIDELINES FOR CONDUCTING TRANS-BOUNDARY ENVIRONMENT ASSESSMENT IN SHARED ECOSYSTEMS IN EAST AFRICA

Part I

2.0 Introduction

These guidelines provide procedures for conducting trans-boundary environment assessment in shared ecosystems in East Africa and the roles for the key stakeholders and players during the implementation of the Trans-boundary Environment Assessment process in the Partner States. The trans-boundary environment assessment will therefore help to define whether a proposed policy, project or activity will have significant positive or adverse trans-boundary impacts, determine whether the adverse impacts can be avoided or mitigated and recommend such measures as to prevent or reduce adverse impacts and or propose alternatives to the proposed policy, project or activity.

2.1 Activities to be considered for Trans-boundary Environment Impact Assessments

Activities to be subjected to the Guidelines for Trans-boundary Environment Assessment include those that are implemented in the geographical area of the trans-boundary ecosystem. These shall include; policies, plans, programs or projects in one Partner State or activities out of character with their surroundings involving major changes in land use and which are likely to cause trans-boundary impacts in neighbouring countries. Such policies, plans, programs or activities could involve transportation and communication, mining, exploration for petroleum, hydropower stations, tourism, large scale agricultural projects, irrigation and diversion of water courses as well as large weed and pest control programs.

2.2 Criteria for Determining Trans-boundary Environmental Impacts

The criteria which shall be used to determine whether a project or an activity will have trans-boundary impacts or not include the following;

- The activity falling within a core area or area of immediate impact,
- The activity falling outside the core and the immediate impact area but has trans-boundary effects,
- A policy, plan, program or an activity whose objective is to promote regional Integration,
- An activity whose impact may promote regional integration or
- An activity with potential risks of any trans-boundary impacts.

- A policy, plan or program which will affect valuable or vulnerable areas including landscapes with a recognized national or international status.

Part II

DEFINITION OF AREAS OF IMPACT IN THE CONTEXT OF TRANS-BOUNDARY ENVIRONMENTAL IMPACT

Environmental Impact Assessment (EIA) guidelines are area specific. For the purposes of these Guidelines, the relevant area is referred to as the 'trans-boundary area' between any or all of the three Partner States. Determination of spatial boundaries of the impact area requires consideration of both the way in which development project activities are likely to impact on the surrounding environment, and to the way in which the environment is likely to impact on the projects. It is important to determine whether impacts are likely to occur at a local, regional, national or international level. Thus, for example, hydropower development projects within the impact area can have wide ranging spatial implications downstream and upstream while the project itself may be impacted by activities in the catchment area above the project site.

Under these Guidelines, the impact area is defined at three levels namely: **the core area, the immediate impact area and the area of influence.**

(a) The Core Areas

The Core Areas constituted under these Guidelines are aquatic and terrestrial ecosystems.

The terrestrial ecosystems comprise the areas demarcated as-

- (i) the Minziro-Sango Bay Swamp forests,
- (ii) the Eastern Arc Mountains (Pare and Taita Mts);
- (iii) Mount Elgon and Loima-Moroto hills and;
- (iv) The Serengeti-Mara, Kilimanjaro-Longido-Kajiado, and Tsavo West-Mkomazi/Umba ecosystems.

The Aquatic ecosystems comprise of the areas demarcated in-

- (i) the fresh water bodies of Lakes Victoria, Jipe, and Chala;
- (ii) the Minziro-Sango Bay Swamp and;
- (iii) The marine coastal strip of the western Indian Ocean of Kenya and Tanzania.

(b) The Immediate Impact Area

The Immediate Impact Area is defined to comprise catchment areas outside of the core area where human or natural activities are likely to impact directly or be impacted on by the Core Area. The watershed of the drainage basins of Lakes Victoria, Natron, Jipe and the Pangani River in Tanzania defines the outer limit of such areas in hydrological terms. Since surface runoff and eroded material from these catchments subsequently find their way into Lakes Victoria, Lake Natron and the Indian Ocean, the life of the lakes and coastal areas of the Indian Ocean is very much dependent on the hydrological regime and activities taking place in these catchments.

(c) The Area of Influence

The Areas of Influence is defined to include all areas likely to have indirect relationships and impacts with the core area. Examples include industries in distant towns and cities; policy decisions taken in far away, in administrative centres; trading activities between coastal and inland centres and upstream and downstream environmental impacts.

Chapter Two

Part I

STAGES IN TRANS-BOUNDARY EIA PROCESS

The stages in trans-boundary environmental assessment under these Guidelines are those processes that a project, policy or activity that has to undergo before it is approved by the competent authorities as provided hereunder. Failure to follow the stages may result in the project, policy or activity not being approved for non compliance with the treaty or the Protocol.

The stages for conducting transboundary environmental assessment are;

- a) preparation of a Project Brief, Screening and Scoping;
- b) preparation of the Environmental Impact Study;
- c) conducting Environmental Impact Statement Review;
- d) holding the public hearing;
- e) Decision making, and
- f) Monitoring and Auditing.

2.1 Stage 1: Preparation of Project Brief

The developer of a policy, programme, plan project or activity has the responsibility of preparing the project brief. The developer in the context of these Guidelines is a person or body that intends to carry out the development activity.

- (a) A project brief shall be required for all those projects in the Core Areas.
- (b) The developer is responsible for preparing the project brief which must provide the following information:
 - (i) The nature and location of the program or project area in relation to its trans-boundary characteristics;
 - (ii) The projected area of land, air and water that may be affected;
 - (iii) The activities that shall be undertaken during and after the development of the program or project;
 - (iv) The design characteristics of the program or project;
 - (v) The materials that the program or project will use for construction and inputs required for operation;
 - (vi) The possible products and by-products, including wastes generated by the project;
 - (vii) The number of people that the project will employ and the economic and social benefits to the local community, the nation and the East African region;

- (viii) The trans-boundary environmental effects of the materials, methods, products and by-products of the project, and how they will be eliminated or mitigated; and
 - (ix) Any other matter, which may be required by the Partner State proposing the activity.
- (c) The developer must comply with the national environmental assessment requirements. Where there are no national environmental assessment requirements or where the national requirements do not conform to the above transboundary environmental requirements for a preparation of a project brief. It shall be the responsibility of the Partner State, where the policy, programme, plan, project or activity is originating to ensure that either the national legislation is amended or that the developer conforms to the above guideline.
- (d) The developer shall submit ten copies of the project brief to the Head of the environment management agency of the country of origin of the proposal. The Head of the Environmental Management Agency of the country of origin will distribute copies of the Project Brief within 7 days of receipt as follows:
- (i) Nine copy(ies) to the Lead Agency and/or the Environmental Management Agencies in the country of origin and in the country of impact for comments;
 - (ii) One copy to the EAC Secretariat; and

2.2 Stage 2: Screening and Scoping

This part of the Guidelines require that scoping and screening for a trans-boundary environmental assessment is conducted by the developer in consultation with the Environment Management Agencies, Lead Agencies and other interested parties in the country of origin of the project as well as in the country of impact. The developer shall prepare a report summarizing the results of scoping and screening, and which report shall also constitute part of the terms of reference for the environmental assessment study..

2.2.1 Screening

The purpose of the screening phase is to determine whether a proposed project in a trans-boundary area will have or will not have significant impacts down stream or up stream of the location of the project.

- (a) Screening of a proposed project will result in either of the following:
 - (i) A detailed environmental assessment study,
 - (ii) No study.

- (b) Where the proposed project is found to have the potential for significant trans-boundary environmental impacts a full environmental assessment study is to be conducted.
- (c) Where in conducting the scoping and screening adequate mitigation measures are incorporated for the identified negative impacts, the proposed policy, programme, plan, project or activity may be approved by the environment management agency in the country of origin of the project.
- (d) Where, on the other hand, adequate mitigation measures are not identified, the project shall be subjected to a detailed study as provided below.

2.2.2 Scoping

Scoping is to be conducted where the screening reveals potential transboundary significant environmental impacts.

Scoping involves physically visiting the project site, assessing and consulting with potentially affected communities, relevant government agencies, and representatives of other interested parties including civil society organizations (NGOs), the private sector, independent experts and all other stakeholders including the general public. Scoping will include holding meetings to obtain their comments on what should be included in the assessment study and what alternatives should be considered in order that an adequate environmental assessment study is conducted.

- (a) In determining whether the proposed activity will have trans-boundary impacts or not, the developer, environment management agencies, Lead Agencies and the EAC secretariat may use some of the following criteria and any others as approved by the Secretariat.
 - (i) Nature of project and whether the proposed program/project will cause significant trans-boundary impacts or not;
 - (ii) Siting of the project and whether the proposed project is to be located within or near environmentally sensitive areas such as wild life areas, sources of water supply, areas of unique historic, cultural, archaeological, scientific or geological interest, and ecologically fragile ecosystems such as lakes, wetlands, forest reserves or mountain ecosystems;
 - (iii) Natural resources to be affected i.e. whether the proposed project, if implemented, will result in direct or indirect negative or positive impacts to the natural resources upstream or down stream of the location of the project in a trans-boundary area;
 - (iv) Natural resources demands of the project, such as energy demands;
 - (v) Waste and effluent production (if any) during operation of the project and how these will be managed; and
 - (vi) Relationship of the project and other future and related activities.

- (b) Where a Lead Agency is the developer, that Lead Agency shall prepare the terms of reference (TOR) for the study and these shall be reviewed and approved by the Environment Management Agency of the country of origin of the project.
- (c) After the potentially significant environmental impacts have been identified during scoping and screening, the developer shall identify appropriate mitigation measures, which will be incorporated into the project proposal design.

2.2.3 Key players and their roles during the scoping and screening

The key players and their roles during the scoping and screening stage may be as shown below;

- Review of Project Brief to Determine Trans-boundary Impacts and Level of Trans-boundary Environment Assessment - ***Lead Agency and Environmental Management Agency of the country of origin of the project;***
- To inform country or countries of impact when proposed policy, plan, program/project has potential for negative/positive Trans-boundary Impacts- ***Environmental Management Agency of the country of origin of the project;***
- Evaluate possible mitigation measures proposed by the developer and verify their adequacy for averting environmental damage- ***Heads of Environment Management Agencies of country of origin and country of impact of the project; and***
- **Arranging and holding stakeholder consultation meetings in country of origin and country of impact-** The developer in consultation with the Lead Agency and Environment Management Agency of both country of origin and country of impact;
- **Preparation of the TOR-** *The Developer in consultation with the Lead Agency and the Environment Management Agency of the country of origin of the proposal;*
- Review and approval of the TOR- ***The Environment Management Agencies of both the country of origin environment origin and the country of impact;***
- Identification of possible Mitigation Measures- ***The developer;***
- Integration of possible Mitigation Measures into the Project Design- ***The developer;***
- Identification of the Team of Experts- ***The developer; and***
- Approval of the Team of Experts to conduct the study- ***The Environment Management Agencies of both the country of origin and the country of impact;*** (The names and qualifications of the experts identified to undertake the Environmental Impact Study - to be approved by the Environment Management Agency of the country of origin in consultation with the environment management agency of the country of impact)

2.2.4 Time Frame for Screening and scoping Activities

- (i) The Environmental Management Agency of the country of origin to distribute copies of the Project Brief to key stakeholder reviewers including the Environment Management Agency of the country of impact within 7 working days of receipt;
- (ii) Lead Agencies to submit comments on the Project Brief to the Environment Agencies within 7 working days after dispatch;
- (iii) Environmental Management Agency of country of impact to submit aggregate national comments to the Environmental Management Agency of country of origin within 14 days from the date of receipt by the Environment Management Agency of the country of origin;
- (iv) The Environmental Management Agency of the country of origin to aggregate all comments, append its own concluding decision and submit the same to the Environmental Management Agency of the country of impact and to the EAC Secretariat within 24 days from the date of receipt of the project brief;
- (v) If the Environmental Agency of country of impact is not satisfied with the decision of the Environmental Agency of the country of origin, then it can refer the matter to the EAC Secretariat to resolve the matter within 5 working days of receipt of the decision from the country of origin of the project; and
- (vi) The EAC Secretariat will have 21 days to resolve the dispute through correspondence and or meetings and to inform the Environment Agencies accordingly through the Environmental Management Agency of country of origin.
- (vii) the developer must hold stakeholder consultation meetings in country of origin and country of impact;
- (viii) Preparation of the draft TOR which shall be approved by the environment management agency in the country origin and which should include possible mitigation measures;
- (ix) The Environmental Management Agency of the country of origin shall distribute copies of the TOR to key stakeholder reviewers including the environment management agency of the country of impact within 3 working days of receipt of the TORs;
- (x) Environmental Agency of country of impact to submit aggregate national comments to the Environmental Agency of country of origin within 7 working days from the date of receipt of the TORs by the environment management agency of the country of impact;
- (xi) The Environmental Management Agency of the country of origin to aggregate all comments, append its own concluding decision and submit the same to the Environmental Management Agency of the country of impact and to the EAC Secretariat within 24 working days from the date of receipt of the TOR;
- (xii) Identification and integration of possible Mitigation Measures which can be identified at this stage by the developer- *At the discretion of the developer after approval of the TORs.*

2.2.5 Stakeholders to be consulted during Scoping

- (i) Environment Management Agencies and Lead Agencies in the country of origin and in the country of impact;
- (ii) Trans-boundary communities in the country of origin and in the country of impact;
- (iii) District and local Authorities in the trans-boundary area of the country of origin and in the country of impact;
- (iv) Knowledgeable groups like researchers, academic institutions and other professionals from both the country of origin and in the country of impact;
- (v) Private sector, NGOs and CBOs from the country of origin and in the country of impact; and
- (vi) where necessary, special sections of the community like women, cultural and disadvantaged groups in the country of origin and in the country of impact

2.3 Stage 3: Transboundary Environmental Assessment Study (TEAS)

Based on the information from the screening and scoping exercise, the developer shall within 30 days of approval of the TORs, conduct an environmental assessment study. On completion of the Environmental assessment Study, the developer will produce an Environmental Assessment Statement (EAS) the contents of which shall include:

- (i) The project and the activities it is likely to generate;
- (ii) The proposed site, alternative sites and reasons for rejecting alternative sites;
- (iii) A description of the potentially affected trans-boundary environment including specific information necessary for identifying and assessing the environmental effects of the project;
- (iv) The material in-puts into the project and their potential environmental effects;
- (v) An economic analysis of the project;
- (vi) The technology and processes that shall be used, and a description of alternative technologies and processes, and the reasons for not selecting them;
- (vii) The products and by-products of the project;
- (viii) Wastes and effluent and how they will be handled and treated;
- (ix) Trans-boundary environmental effects of the project including the direct, indirect, cumulative, short-term and long-term effects and possible alternatives and residual effects;
- (x) The measures proposed for eliminating, minimizing, or mitigating adverse trans-boundary impacts;
- (xi) An identification of gaps in knowledge and uncertainties which were encountered in compiling the required information/data;
- (xii) An indication of whether the environment of any other State is likely to be affected and the available alternatives and mitigating measures; and
- (xiii) Other matters as may be consequential on the proposed activity.

The developer shall submit 5 copies and an electronic version of the EIS to the Head of the Environment Management Agency of the country of origin of the program/project. The latter will distribute, within 7 working days who shall distribute copies of the EIS to the following:

- (i) the Lead Agency in the country of origin of the proposal for comments;
- (ii) the EAC Secretariat; and
- (iii) the Head of Environmental Management Agency in the country of impact.

The environment management agency of the country of origin will notify the interested public in newspapers and mass media that the statement is available at designated locations accessible to the public. The project site should have a copy and another in a national public library.

2.4 Stage 4: Review of the Environmental Assessment Statement

The review of the environmental assessment statement seeks to establish whether the information provided is sufficient and complete and conforms to the study objectives. It will ascertain reliability of analysis and interpretation of data to find if it is consistent with the stated methodology and state of scientific knowledge. Further, it will establish the relevance of the findings in the EAS for decision-making. The review process will follow steps outlined below.

- (i) The Lead Agency (ies) in the countries of origin and impact shall concurrently review the EIS and provide comments to the Head of the Environment Management Agency of the country of origin of the project within 7 days of receipt;
- (ii) The Head (s) of the Environment Management Agency (ies) in the country (ies) of impact will review and submit comments on the EIS to the Head of the environment management agency of the country of origin with copies to the EAC Secretariat within 10 working days of receiving the EIS;
- (iii) Where there is no contention, the country of origin will approve the project and notify the country of impact and the EAC Secretariat
- (iv) Where the proposed project is contentious, the environment management agency of the country of origin of the project will call for a public hearing.
- (v) Where the countries of origin and impact cannot agree on whether an approval should be given or not, then the matter shall be referred to the EAC Secretariat for resolution by the country of origin or the developer.

2.5 Stage 5: The Public Hearing

- (a) Where the proposed project is contentious, then the environment management agency of the country of origin of the project shall call for a public hearing. The following criteria shall be used to determine whether or not project is contentious.
- (b) The procedure for calling and holding a public hearing shall be in accordance with these Guidelines.
- (c) The environment management agency of the country of origin shall inform the national environment management agencies the countries of impact and the Secretariat that the proposed project is contentious.
- (d) The public hearing shall be called and organized by the environment management agency of the country of origin in consultation with the environment management agency of the country of impact.
- (e) All interested parties shall be given 30 working days notice before the public hearing is held.

2.5.1 *Appointment and roles of the Presiding Officer*

- (a) There shall be a presiding officer at the public hearing who shall be appointed by The Environment management Agency of the country of origin in consultation with the Environment management Agency of the countries of impact;
- (b) The presiding officer shall, within 7 working days after the holding of the Public Hearing, submit a report of the public hearing to the environment management agency of the country of origin with copies to the environment management agency of the country of impact and to the Secretariat.
- (c) The environment management agency of the country of origin shall take into consideration the views expressed in the report of the presiding officer before taking a decision to approve, approve with conditions or reject the trans-boundary environmental impact statement.
- (d) The environment management agency of the country of origin shall, within 14 working days from the date of the public hearing, take approve, approve with conditions or to reject the statement and shall submit a copy its decision to the environment management agency of the country of impact and to the Secretariat.

2.5.2 Activities, and role players during the Public Hearing Process

- (a) Reviewing comments from all stakeholders and from the Lead Agencies and Environment Management Agencies and determining that the EIS is controversial-*environment management agency of the country of origin in consultation with the environment management agency of the country of impact;*
- (b) Taking a decision to call for a Public Hearing if the EIS is contentious- *The Environment management Agency of the country of origin in consultation with the Environment management Agency of the countries of impact;*
- (c) Giving notice and organizing the Public Hearing specifying the date and venues in the country of origin and the country of impact- *The Environment Management Agencies of the country of origin and the country of impact;*
- (d) Preparing and submitting a Report on the Public Hearings- *The Presiding Officer.*

2.6 Stage 6: Decision Making

Decision-making takes place throughout the trans-boundary environmental assessment process. The main decision in the process, however, is whether or not to allow the proposed project or activity to proceed. The decision is taken after the review of the environmental assessment study by all concerned stakeholders in both the country of origin and the country of impact.

The following guidelines provide the steps in the decision making process.

- (i) The Head of the Environment Management Agency of the country of origin will aggregate and summarize the views of all stakeholders including those from Lead Agencies and stakeholders from the country of origin and the Environment Management Agency (ies) and stakeholders of the country (ies) of impact;
- (ii) The Environment Management Agency of the country of origin will submit a report including recommendation to approve or not to approve the proposed project to the Environment Management Agency (ies) in the country (ies) of impact with copies to the EAC Secretariat;
- (iii) The Environment Management Agency(ies) in the country (ies) of impact will respond to agree or to dispute the findings and recommendation of the Head of the Environment Management Agency of the country of origin of the project with copies to the EAC secretariat;

- (iv) Where the country of impact disputes the recommendation, then the Environment Management Agency of the country of origin will call a meeting with the Environment Management Agency of the country of impact to resolve the disagreement;
- (v) The Head of the Environment Management Agency of the country of origin will inform the EAC Secretariat and the Environment Management Agency (ies) of the country (ies) of impact of the outcome of the meeting;
- (vi) Where Environment Management Agencies of the country of origin and the country (ies) of impact fail to resolve their position on whether the EIS of the proposed project should or should not be approved then the matter will be referred to the EAC Secretariat for resolution;
- (vii) The EAC Secretariat will handle and process the appeal in accordance with the laid down procedures of the Protocol for management of the Environment and Natural Resources; and
- (viii) The Environment Management Agency of the country of origin will inform the developer the conclusion and final decision taken on his proposal to implement the project.

2.7 Stage 7: Monitoring, Auditing and Enforcement

The responsibilities associated with monitoring, auditing and enforcement of trans-boundary EIA revolves around the design of an effective monitoring program involving a range of considerations and includes the following activities:

- (i) Defining scope and aspects of coverage (e.g. water, air, terrestrial systems);
- (ii) Establishing objectives and data requirements to meet them;
- (iii) Setting boundaries and comparison sites for observation and sampling;
- (iv) Identifying group and institutional responsibilities (including public involvement);
- (v) Selecting key indicators to be measured; and
- (vi) Deciding how the data gathered will be interpreted and applied, e.g., with regard to feedback to environmental management and to future improvements to EIA process and project planning, and draft monitoring proposals so that all parties are aware of requirements and responsibilities.

The developer is responsible for the production of a monitoring plan agreed upon at the project approval stage. It is therefore recommended that the developer will be responsible for monitoring. However, the Lead and Environmental Management Agencies in the country or origin and country of impact are responsible for the management of the monitoring process. Hence, the Environmental Management Agencies in the country of

origin and country of impact will co-ordinate monitoring activities in their respective countries.

2.7.1 Role Players during Monitoring in a Trans-boundary EIA

- (i) The developer will follow a monitoring plan agreed upon at the approval stage of the EIA;
- (ii) The Lead Agencies and Environment Management Agencies in the country of origin and country of impact will be responsible for monitoring of the management plan;
- (iii) The Environment Management Agencies in the country of origin and country of impact will coordinate the monitoring functions in their countries;
- (iv) .
- (v) Environment agencies in country of origin and country of impact will prepare monitoring reports and send copies to the EAC; and
- (vi) EAC will play a coordinating role at regional level during monitoring

2.7.2 Auditing

In trans-boundary EIA, auditing deals with the organization of monitoring data to establish the record of change associated with a project design and implementation and the comparison of actual and predicted impacts for the purpose of assessing the accuracy of predictions and the effectiveness of impact management practices and procedures.

The developer and in special circumstances, the Environment Management Agency and/or the Lead Agency (ies) in the countries of origin and impact are responsible for meeting the costs of auditing in their countries .

2.7.3 Enforcement

In trans-boundary EIA, enforcement means putting into force or implementing the monitoring and mitigation plans as agreed upon at the EIA approval stage. Environment and Lead Agencies of the country of origin and the country of impact are responsible for enforcing the monitoring and mitigation plans. The existing legal systems in the country of origin and the country of impact may be used for enforcing the monitoring and mitigation plans.

Chapter Three

MEETING THE COST OF A TRANS-BOUNDARY ENVIRONMENTAL ASSESSMENT

Undertaking trans-boundary environmental assessment raises cost related issues. The current practice in the Partner States is that it is mandatory for the developer to meet the costs of environment impact assessment. In a trans-boundary environmental assessment questions are raised as follows

- Who is the developer
- What are the costs? and
- Who meets the cost of a trans-boundary EIA?

3.1 The Developer

In trans-boundary EIA, the developer could be any of the following:

- Private sector including both local and foreign;
- Any of the national governments (through concerned sectoral agencies, ministries Environment Management Agencies and departments) of the Partner States;
- Two or all of the governments (through concerned sectoral agencies, ministries and departments of the Partner States).

3.2 Trans-boundary EIA Costs

The costs of a trans-boundary EIA include:

- Preparation of a project brief;
- Screening and Scoping;
- Environment Impact Study;
- Consultants' fees;
- Consultations and public participation;
- Production of EIA reports;
- Submission and Distribution of EIA reports;
- Conducting the Public Hearing.
- Monitoring, auditing and mitigation; and
- Appeals;

3.3 Who meets the costs of a Trans-boundary EIA

Under these guidelines, the costs for meeting a transboundary environmental assessment are as follows:

- i) The cost of undertaking the EIA in a trans-boundary context is unless otherwise provided in these guidelines, the responsibility of the developer;
- ii) Screening costs will be met by the Environment Management Agency of Country of origin of project;
- iii) Where the project is of national significance e.g. creates benefits such as employment opportunities, contributes tax revenue to the treasury, and is from the private sector, the costs of conducting the environmental impact assessment may, upon mutual agreement, be shared between the developer and the government of the country of origin of the project.
- iv) Where the environment management agency in the country of origin of the project is certain that the proposed project has no significant negative impacts and he/she is ready to approve **BUT** the country of impact is in serious doubt, then the Environment Management Agency in the country of impact must meet the cost of revisiting the EIA process in the country of impact;
- v) Where any of the governments of the Partner States initiates a project with trans-boundary impacts, then that government has the obligation to meet all the EIA related costs;
- vi) Where any two or Partner States jointly develop a project as developers or proponents, the costs of the environmental assessment shall be borne by the respective Partner States.
- vii) Since the Environment Management Agencies and Lead Agencies in the EAC Partner States are currently involved in auditing and monitoring activities as part of their obligations, they too will contribute towards the cost of monitoring, auditing and mitigation of trans-boundary activities in their respective countries.
- viii) Where the country of impact is not satisfied with decisions taken by the Environmental Management Agency of the country of origin and prefers to appeal, then it (country of impact) will meet all the costs arising from Appeals and Reviews of the EIS.

Annex 1

Potential activities and projects to be subjected to trans-boundary environment impact assessment

1. Crude oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 metric tons or more of coal or bituminous shale per day.
2. Thermal power stations and other combustion installations with a heat output of 300 megawatts or more and nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).
3. Installations solely designed for the production or enrichment of nuclear fuels, for the reprocessing of irradiated nuclear fuels or for the storage, disposal and processing of radioactive waste.
4. Major installations for the initial smelting of cast-iron and steel and for the production of non-ferrous metals.
5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20,000 metric tons of finished product; for friction material, with an annual production of more than 50 metric tons of finished product; and for other asbestos utilization of more than 200 metric tons per year.
6. Integrated chemical installations
7. Construction of motorways, express roads and lines for long distance railway traffic and of airports with a basic runway length of 2,100 meters or more.
8. Large-diameter oil gas pipelines.
9. Trading ports and also inland waterways and ports for inland waterway traffic which permit the passage of vessels of over 1,350 metric tons.
10. Waste-disposal installations for the incineration, chemical treatment or landfills of toxic and dangerous wastes.
11. Large dams and reservoirs.

12. Groundwater abstraction activities in cases where the annual volume of water to be abstracted amounts to 10 million cubic meters or more.
13. Pulp and paper manufacturing of 200 air-dried metric tons or more per day.
14. Major mining, on-site extraction and processing of metal ores or coal.
15. Offshore hydrocarbon production.
16. Major storage facilities for petroleum, petrochemical and chemical products.
17. Deforestation of large areas.
18. Projects for the restructuring of rural land holdings.
19. Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes.
20. Water management projects for agriculture, including irrigation and land drainage projects.
21. Intensive livestock installations (including poultry).
22. Initial afforestation and deforestation for the purposes of conversion to another type of land use.
23. Intensive fish farming.
24. Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors (except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kilowatt continuous
25. Construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of 15 kilometers or more and other projects for the transmission of electrical energy by overhead cables.
26. Industrial installations for the production of electricity, steam and hot water.
27. Industrial installations for carrying gas, steam and hot water.
28. Surface storage of fossil fuels and natural gas.
29. Underground storage of combustible gas.
30. Industrial briquetting of coal and lignite.

31. Installations for hydroelectric energy production.
32. Installations for the harnessing of wind power for energy production (wind farms)
33. Installations, if so far not included for example:
 - (i) For the production or enrichment of nuclear fuel;
 - (ii) For the processing of irradiated nuclear fuel;
 - (iii) For the final disposal of irradiated nuclear fuel;
 - (iv) Solely for the final disposal of radioactive waste;
 - (v) Solely for the storage (planned for more than 10 years) of irradiated nuclear fuels in a different site than the production site; or
 - (vi) For the processing and storage of radioactive waste.
34. Quarries, open cast mining and peat extraction, as far as not included already.
35. Underground mining as far as not included already.
36. Extraction of minerals by marine or fluvial dredging.
37. Deep drillings (in particular geothermal drilling, drilling for the storage of nuclear waste material, drilling for water supplies), with the exception of drillings for investigating the stability of the soil.
38. Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.
40. Integrated works for the initial smelting of cast iron and steel, as far as not included in already.
 - (i) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting.
 - (ii) Installations for the processing of ferrous metals (hot-rolling mills, smitheries with hammers, application of protective fused metal coats).
 - (iii) Ferrous metal foundries.

- (iv) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes, as far as not included already.
 - (v) Installations for the smelting, including the alloyage of non-ferrous metals excluding precious metals, including recovered products (refining, foundry casting, etc.), as far as not included in already.
 - (vi) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process.
 - (vii) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines.
 - (viii) Shipyards.
 - (ix) Installations for the construction and repair of aircraft.
 - (x) Manufacture of railway equipment.
 - (xi) Swaging by explosives.
41. Installations for the roasting and sintering of metallic ores.
 42. Coke ovens (dry coal distillation).
 43. Installations for the manufacture of cement
 44. Installations for the manufacture of glass including glass fiber.
 45. Installations for smelting mineral substances including the production of mineral fibers.
 46. Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.
 47. Installations for the production of chemicals or treatment of intermediate products, as far as not included already. Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides.
 48. Installations for the storage of petroleum, petrochemical, or chemical products, as far as not included in already.
 49. Manufacture of vegetable and animal oils and fats.
 50. Packing and canning of animal and vegetable products.

51. Manufacture of

- (i) Dairy products.
- (ii) Brewing and malting.
- (iii) Confectionery and syrup manufacture.
- (iv) Installations for the slaughter of animals.
- (v) Industrial starch manufacturing installations.
- (vi) Fish-meal and fish-oil factories.
- (vii) Sugar factories.

52 Industrial plants for the production of pulp, paper and board, as far as not included in already.

- (i) Plants for the pre treatment or dyeing of fibers or textiles.
- (ii) Plants for the tanning of hides and skins.
- (iii) Cellulose-processing and production installations.
- (iv) Manufacture and treatment of elastomer-based products.
- (v) Installations for the manufacture of artificial mineral fibers.
- (vi) Installations for the recovery or destruction of explosive substances.
- (vii) Installations for the production of asbestos and the manufacture of asbestos products, as far as not included in already.
- (viii) Knackers' yards. Test benches for engines, turbines or reactors.

53. Permanent racing and test tracks for motorized vehicles.

54. Pipelines for transport of gas or oil, as far as not included in already.

55. Pipelines for transport of chemicals with a diameter of more than 800 mm and a length of more than 40 km.

56. Construction of railways and intermodal transshipment facilities, and of intermodal terminals, as far as not included in already.

57. Construction of tramways, elevated and underground railways, suspended lines or similar lines of a particular type used exclusively or mainly for passenger transport.
58. Construction of roads, including realignment and/or widening of any existing road, as far as not included in already.
59. Construction of harbors and port installations, including fishing harbors, as far as not included in already.
60. Construction of inland waterways and ports for inland-waterway traffic, as far as not included in already.
61. Trading ports, piers for loading and unloading connected to land and Outside ports, as far as not included in already.
62. Canalization and flood-relief works.
63. Construction of airports and airfields.
64. Waste-disposal installations (including landfill), as far as not included in already.
65. Installations for the incineration or chemical treatment of non-hazardous waste.
66. Storage of scrap iron, including scrap vehicles.
67. Sludge deposition sites.
68. Groundwater abstraction or artificial groundwater recharge, as far as not Included in already.
69. Works for the transfer of water resources between river basins.
70. Waste-water treatment plants.
71. Dams and other installations designed for the holding-back or for the long-term or permanent storage of water, as far as not included in already.
72. Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defense works, excluding the maintenance and reconstruction of such works.
73. Installations of long distance aqueducts.
74. Programmatic Activities

- (i) Forest Management Plants
- (ii) Instituting Beach Management Units
- (iii) Creation of Protected areas
- (iv) Water allocation

75. Marinas and Industrial Estate Development Projects.

76. Holiday villages and hotel complexes outside urban areas and associated developments.

77. Permanent campsites and caravan sites.

78. Theme parks.

79. Urban development projects.

80. Reclamation of land from the sea.

81. GMO – related projects

82. Projects involving introductions of exotics

83. Tourism/ Ecotourism