

Public Involvement in Environmental Decision making in Nairobi County, Kenya

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Abstract

Public participation has become a significant and integral part of environmental management. It has been noted that regulation will be more effective when management of the various projects is constantly exposed to the publics' opinion and perspective. This study seeks to assess whether public participation in the Environmental Impact Assessment (EIA) process is sufficient and how this participation influences environmental decision making. This study also examines the barriers to public participation and consultation and seeks for ways to minimise these barriers. It is evident from the findings that there is a diverse list of constraints such as poor information sharing, technical language and jargon and political influence. There is a need to win over the public so that they can feel motivated to participate. This study recommends the use of other outlets in addition to the print media. Radio and television are much greater source of broadcast information in Kenya. Social media is also a platform that is quickly gaining popularity within the youth. The use of other languages in addition to English should be explored. There is also the need to strengthen the legal requirement for public participation and consultation.

Key Words: Public Participation, Barriers, Consultation, Information sharing

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1. Introduction

The Environmental Impact Assessment (EIA) process begins with submission of proposed project report to NEMA by the proponent. The proposal is then screened by an appointed agency in consultation with the Provincial and District Environmental Committees to determine EIA requirement (or not). Thereafter scoping determines the critical aspects of the required EIA and the Terms of Reference (TOR). An Environmental Impact Report is submitted to NEMA which reviews it together with the local government environmental committees and the public. Finally a decision is made whether to issue an EIA license or reject the proposal. The decision is based on environmental, socio-economic, cultural impact as well as public concerns. (Source; EMCA 1999) Do the public get to view the reports as it's supposed to be? This is a question that the study seeks to find an answer to.

Not much research has been done on public involvement in environmental decision making in Kenya, the majority of which has focused on the barriers to public participation and consultation (as stated in the Legal notice 101 and EMCA 1999). This study seeks to determine whether public participation in the EIA project has improved with the adoption of the new constitution and if there are variations in participation in the different projects of the different economic sectors in addition to the barriers of public participation. Also while Legal Notice 101 and EMCA 1999 state the importance of public participation, they do not articulate the sanctions for non-compliance.

2. Literature Review

Over the last two decades, public consultation and participation has gained increased attention in environmental decision making processes in Kenya, but its full potential has yet to be realized. Legislation such as the Water Act of 2002 and the Forest Act of 2005 have emphasized the need to devolve power to local communities for resource management.

Public participation does not seem to influence decision making as expected. Previous research on this topic has merely acknowledged importance of public participation but has never questioned why public participation is not more vigorous or more productive in final decision making. Lack of coordination between NEMA and other newly created independent environmental bodies has also been a barrier in effective decision making. Although EIA legal framework in Kenya is enabling, the public is still inadequately aware of their role and are unsatisfactorily involved in EIA practice. There is no major improvement in the practice of public participation in Kenya almost one decade after the inception of the EMCA in 1999 (Okello et al, 2012). (Onyango and Namango, 2005) report participation in EIA practice usually remains at the level of consultation and does not often reach the higher ranks of citizen empowerment.

In NEMA's 2013-2018 strategic plan, the value of local participation and the abundance of indigenous knowledge in environmental management are recognized. Environmental democracy requires that environmental issues must be addressed by all, not just by governments and leading private-sector actors (Mumma, 2002). It is based on the principle of equal rights for all (Hansel, 1998). In all this, the study aims to find out if the challenges that are highlighted in this study are valid and if there are more challenges that have not been documented.

The Ministry of Environment, Water and Natural Resources in Kenya has raised concern on the lack of adequate public participation and consultation in environmental impact assessment. The process is often results in poor sharing of information, as well as weak partnerships with among interested parties (Kameri-Mbote, 2000). However, the integration of such knowledge must improve in practice. Local participation may be enhanced by distributing information in easily accessible ways (e.g. local radio) and in indigenous languages (Okello et al. 2009). Participation may also improve by providing participant incentives, holding meetings in convenient locations, ensuring the inclusion of the most vulnerable members of communities, and using participatory approaches and techniques.

3. Conceptual Framework

3.1 Causes of Inadequate Participation

Time: When the notice for public participation is given over a short period of time. When there is little time for participation and consultations during the meetings.

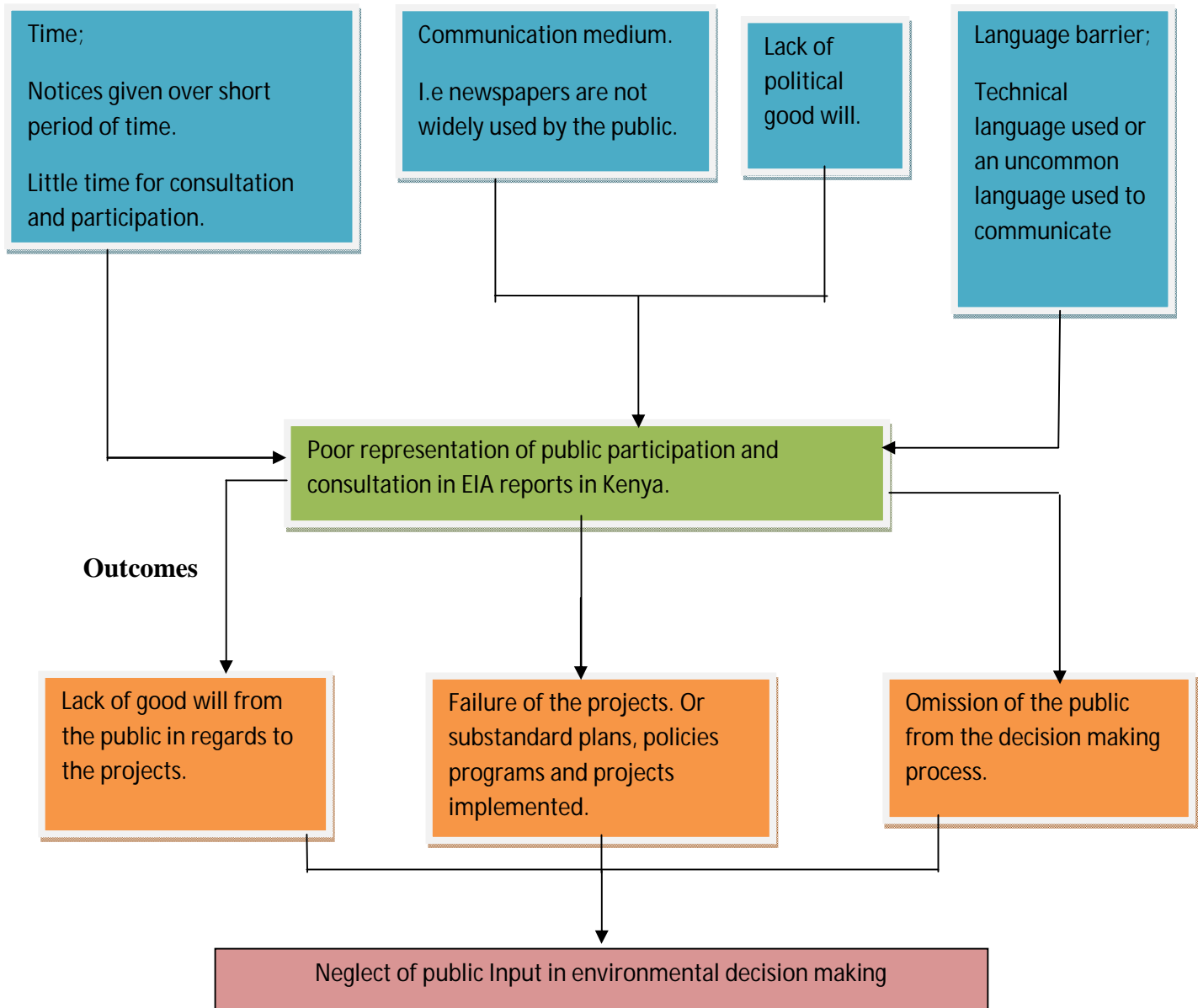
Communication medium: When communication medium used e.g. newspapers are not widely used/ bought by the general public.

Lack of political good will: When the project is politically inclined and doesn't directly benefit the public, the public might not turn up for the meetings.

Language Barrier: When the language used in the project literature is too technical for public or the language used is not common in that community.

Table 3.1.1

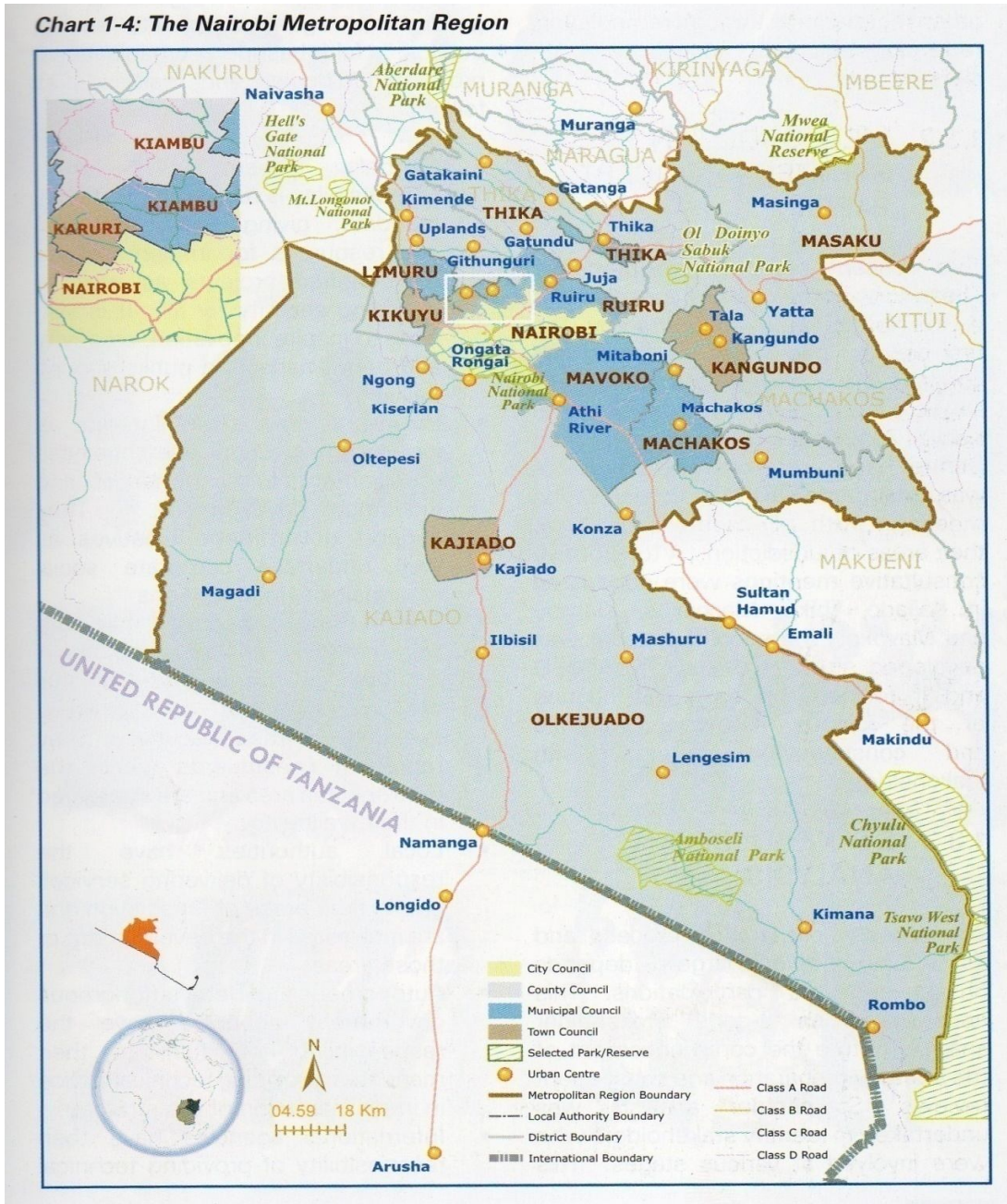
Causes of Inadequate Participation



3.2 Study Area

Nairobi County houses the country’s largest city. The growth rate of Nairobi is currently 4.1% an astronomical figure fuelled mostly by rural urban migration. The current population of Nairobi is slightly above 4.1 million who live in an area of 696km² and the city accounts for up to 60% of Kenya’s GDP. Because of the large population and the fact that Nairobi is the country’s capital,

there are very many projects being carried out in Nairobi. Most of these projects are in housing and construction of business premises (this includes malls). This study also looks at some projects outside Nairobi County but within the Nairobi Metropolitan, because some of these projects directly affect the county of Nairobi. This makes it a suitable area to study whether public participation takes place and whether it's sufficient.



Map 1: Nairobi Metropolitan Region. Source: Ministry of Nairobi Metropolitan Development; Nairobi metropolitan service improvement project 2011.

3.3 Materials and Methods

3.3.1 Type of Data

The data used in this study was of primary and secondary types. The primary data were from the questionnaires administered to the EIA experts that were registered as at October 2014. Questionnaires were administered to 65 of the EIA experts who are practising in Nairobi. The secondary data were from the EIA files obtained from the NEMA offices in Nairobi. These files were grouped in different economic sectors namely; Housing, infrastructure, tourism (hotel, resorts), commercial buildings, industrial and energy. Out of the 30 targeted files, only 18 were obtained and out of the 18, 13 were analysed. This is because there were cases still going on in the tribunal and the files were needed.

3.3.2 Methods

For the primary data, slovin's formula was used to obtain the population of the EIA experts to be interviewed. 186 experts were obtained and 25% (65 EIA experts) of that population was interviewed. Simple random sampling was used while administering the questionnaires to the lead experts.

Stratified random sampling was used in the secondary data where most files were in the housing stratum. The Smith Scheme of Public participation (Smith 1984) was used to analyse EIA reports obtained from NEMA. The table below shows a model for evaluation of public participation.

Table 3.3.1

Model of evaluation of public participation

| CONTENT | PROCESS | OUTCOME |
|--|---|---|
| <ul style="list-style-type: none"> • Historical background • Institutional framework • Political structure and awareness and process • Legislative provisions and regulations • Administrative set up • Agency features • Administrative status • Functions • Teams of reference • Financial resources | <ul style="list-style-type: none"> • Goals and objectives of participation • Mandate of participation by concerned agency • Objectives of participants • Number and nature of public involved • Who the participants are • How organized they are • Methodology adopted • Techniques of participation • Access to information • Availability of resources | <ul style="list-style-type: none"> • Results of participation exercise • Effectiveness of participation • Focus on issues • Representative of participant • Appropriateness of process • Degree of awareness achieved • Impact and influence of participation • Time and cost |

Source: Adapted from Smith 1984

Table 3.3.2

| | Factors | High | Medium | Low |
|---|--|-------------|---------------|------------|
| 1 | Notification/ mobilization | | | |
| 2 | Identification of objectives/ Goals of meeting | | | |
| 3 | Identification of relevant stakeholders and community | | | |
| 4 | Techniques/ process of conducting meeting | | | |
| 5 | Inputs and efforts of stakeholders | | | |
| 6 | Evaluation of the success of public hearing | | | |
| 7 | Time and cost | | | |

Source: Adapted from Smith 1984.

Ranking of factors

High=3, Medium=2, Low=1, None=0

3.4 Results and Discussion

One of the objectives of the study was to establish the level of public participation in the EIA process. Most of the respondents (93.7%) were of the opinion that public participation and consultation is necessary. Data from the case files were also used to study this objective. The data below was obtained from the questionnaires administered. The level of participation from the files was derived from the public meetings and the documentations inform of emails and letters from the public voicing their opinions about the project. There was more participation from the public on projects that directly affect them and that are in close proximity to them. For example; building of an office block in a residential area, or multi-storeyed building in an area where the zoning is only meant for single dwelling units. But for huge projects like the standard gauge railway, only the key stakeholders' views were documented. E.g. Kenya forest service, Kenya wildlife service. There were no views documented from the locals that the railway line was passing through their land.

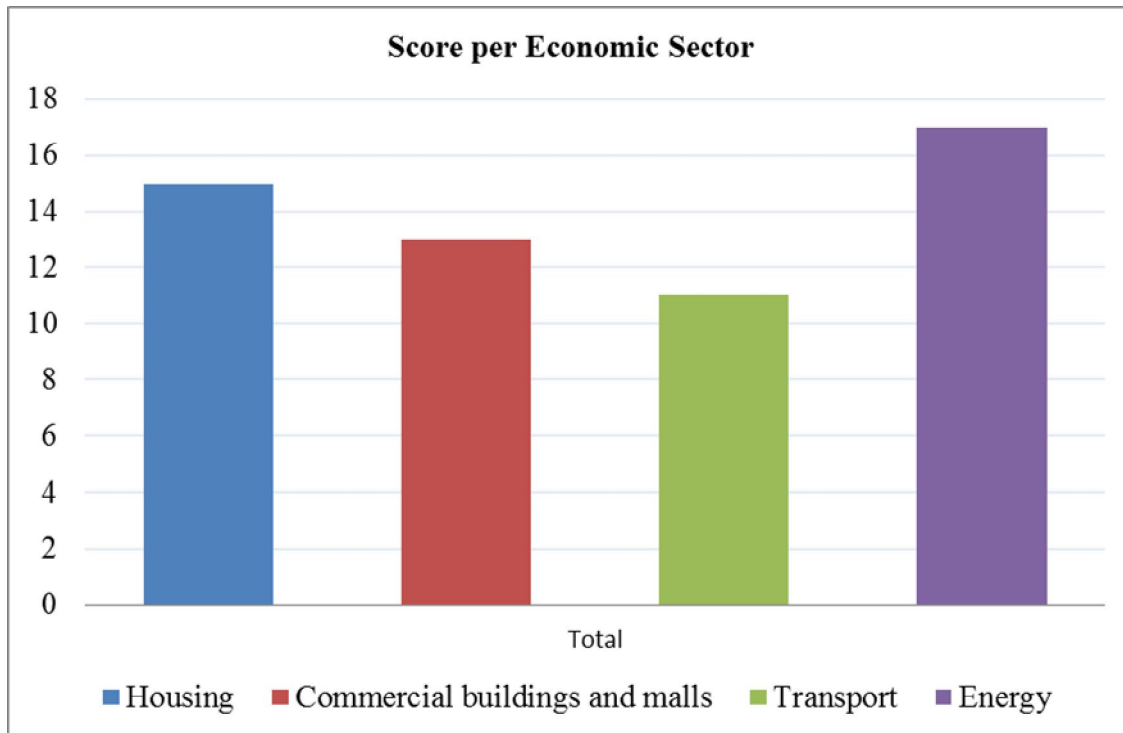
There were some variations in public participation in the different economic sectors. There is more public opposition in commercial building projects in residential areas - for example, Proposed Hotel and Conference Centre in Gigiri, Office Park and Hotel in Lower Kabete Road, Office Block in Village Market. This was because the public or neighbourhood in those places were organised in residential associations and therefore they were stronger that way. Out of the three larger projects funded by the county and the national governments, two had a relatively high score of public

participation. The Nairobi southern by-pass had a more or less high public activism because of its route since it was due to pass close by Nairobi national park. This although doesn't relate to a high score as there was no documentation inviting stakeholders to a public meeting and no minutes were available as evidence that a meeting occurred. Many NGOs dealing with conservation voiced their opinions on this including Madaraka and Langata residents associations who were concern about air and noise pollution. The Ruai land fill had the highest score on public participation because of the nature of the project and how it was going to affect the residents of Ruai even though it was being constructed for the residents of Nairobi. The scores in table 3 below were obtained by getting the sum of the scores of the cases in each sector the getting their averages.

Table 3.4.1
Averaged scores of case files divided into Economic Sectors

| Economic sector | Score |
|--------------------------------|-------|
| Housing | 15 |
| Commercial buildings and malls | 13 |
| Transport | 11 |
| Energy | 17 |

Source: Field data 2015.



| Scoring Scale | | |
|---------------|-------|-------|
| Below 10 | 10-16 | 17-23 |

Figure 1: Scores per economic sector. Source: Field data 2015.

Poor communication was mentioned as the most important barrier across board with 51.4% of the experts citing it. This was partly due to technical language and jargon being lost in translation. Unwillingness to participate followed with 34.3% of the respondents citing it. Most projects; especially big projects are not well understood by the public, while some do not see the need to be involved in the public meetings. The least quoted barrier was political influence. This is shown in table 4 below.

Table 3.4.2

Comparison of Background Factors and Barriers to Public Participation

| | | Grouped barriers experienced in public engagement | | | | | Total | |
|---------------------------|----------------|---|----------------------------|------------------------|----------------------------|-------------------|-------|------------|
| | | Bribe ry | Communicati on barriers | Political influence | Low turnout in meetings | Unwilli ngness | | |
| Type of respon dent | EIA experts | N | 2 | 18 | 1 | 2 | 12 | 35 |
| | | % | 5.7% | 51.4% | 2.9% | 5.7% | 34.3% | 100.0 % |

Source: Field data 2015.

4. Conclusions and Policy Recommendations

Many times the announcement of public hearings in major newspapers goes un-noticed until site-works begin. Stakeholders may also lack the resources to hire professional representation during these hearings therefore putting them at a disadvantage against a prospective developer. Legal notice 101 merely mentions public participation and consultation. It curiously remains silent on the penalty for not failing to do so. NEMA should also actively use social media such as “Facebook” and “WhatsApp”. Statistics show that more than 4 million Kenyans use social media regularly. Larger projects should have more time to run their notices both in the Kenyan gazette, the newspapers, and other media outlets to allow the public enough time to interact with the projects report. NEMA and the proponents should also be required to use Swahili especially in the public participation forums to increase the level of understanding and participation.

Policy restructuring of the roles and duties of the various environmental bodies will reduce excessive bureaucracy and make it easier for the public views to be included, avoid overlapping of duties and enhance collaboration. There is a need to review the revenue collecting role that these regulators play as this may directly conflict with their principle role as regulators.

The level of public participation in some cases influence decision making but this relationship is much weaker than one would imagine. Environmental agencies have become both regulators and major revenue collectors and sometimes this brings about a conflict of interest - there is probably a strong incentive to issue licences without due diligence. As shown in the case-files much of public participation involves active opposition to approved projects as opposed to any meaningful

participation. Therefore there is need to explore the possibility of separating the “collection of revenue part/function” and the “regulation part/function” of NEMA.

References

1. Amombo, A O (2006). *EIA as a tool to support Sustainable Development: a case study of water related development projects in Kenya*. MSc Thesis. UNESCO-IHE, Delft.
2. Angwenyi, A (2004). *Environmental legislation and domestication of international environmental law in Kenya*. Presented at the Sesei Programme Sub-regional Legal Workshop, Nairobi, 13th–17th December 2004. NEMA, Nairobi, Kenya
3. The Growing & changing landscape of Nairobi’s Metropolis. (March 2016) (<http://www.greenspanestate.com/blog/the-growing-changing-landscape-of-nairobis-metropolis/>)
4. Kakonge, J O and Imevbore, A M (1993). *Constraints on implementing environmental impact assessment in Africa*. *Environmental Impact Assessment Review*; 15(3):299–308.
5. Kameri-Mbote, P (2000). *Strategic Planning and Implementation of Policies involved in Environmental decision-making as they relate to Environmental Assessment in Kenya*. IELRC working paper
6. Mumma, A. (1999). *Environmental Law in Kenya*, A paper presented at the ICJ (K) members conference
7. Mugenda, O. & Mugenda A. (2003). *Research methods: Quantitative and qualitative approaches*. African Centre for Technology Studies.
8. NEMA (2008). (viewed March 2016) <http://www.nema.go.ke/default2.asp>
9. Okello N. , Beevers L., Douven W. & Leentvaar J. (2009). *The Doing and Un-doing of Public Participation during Environmental Impact Assessments in Kenya*. *Impact Assessment and Project Appraisal*, 27 (3) 217-226
10. Onyango & Namango (2005). *The Need for Strategic Environmental Assessment in Kenya* 2005. Edited Schmidt et al. Springer-Verlag
11. Smith L.G (1984). *Public Participation in Sustainable Policy Making*. *Geioforum* 15(2);253-259.