

Full Length Research Paper

Governance challenges in Tanzania's environmental impact assessment practice

Hussein Sosovele

Institute of Resource Assessment, University of Dar es Salaam, P.O.Box 35097, Dar es Salaam, Tanzania.
E-mail: sosovele@ira.udsm.ac.tz. Tel: +255 22 2410144, +255 784 471 686. Fax: + 255 22 2410393.

Accepted 10 January, 2011

Tanzania has had an interesting history of Environmental Impact Assessments (EA). Few assessments were conducted prior to 2004 leading to a process of voluntary compliance without explicit laws to enforce the process. Even without a comprehensive legal and institutional framework, those EIAs generated useful policy decisions. Fundamental changes came after 2004 when Tanzania adopted the first ever-comprehensive legal and institutional framework – that is, the Environmental Management Act Cap 191. This Act promotes Environmental Assessment, gives it the legal support and defines the institutional set up for the management of the environment. However, Tanzania still grapples with EIA ineffectiveness in guiding development decisions and environmental management arising from various projects. Numerous studies on the effectiveness of EIA have explored governance issues such as stakeholder participation, legislating EIA process, capacity building and institutional arrangement. Few studies have looked at governance issues such as accountability of responsible institutions in enforcing environmental assessments and procedures. This article discusses accountability challenges in enforcing laws for EIA by exploring the experiences of selected development decisions in the post 2004 in Tanzania. The article argues that, inadequate or lack of accountability in enforcing the Environmental Management Act is a governance failure that renders the EIA process ineffective. The article calls for a re-assessment of the theoretical arguments used to understand effectiveness to include sociological and psychological factors that influences accountability actions by environmental agencies and planners.

Key words: Accountability, governance, effectiveness awareness, courage.

INTRODUCTION

The subject of effectiveness in Environmental Impact Assessment (EIA) has dominated debates on impact assessment for quite some time. The discussions have covered a range of issues including an assessment of the effectiveness of the EIA process, practice, performance and outcome, particularly in influencing best practices at macro (system levels) and micro (individual application levels) (Cashmore et al., 2009). Many scholars have discussed various theoretical frameworks in explaining effectiveness in the EIA. The debates were prompted by the assumptions underpinning EIA and the results to be achieved through the use of EIA. The assumption is that EIA will be used to inform decision makers and influence designs, increase project benefits and reduce environmental effects associated with the proposed project. Many of the critics of EIA for its lack of effectiveness are disillusioned by the limited nature of the EIA practice and

the failure of the systems that are supposed to support it to work effectively.

Some of these theoretical perspectives include institutional frameworks, which suggest that EIAs effectiveness is affected by institutional behaviour such as governance and public participation (Vog, 2008). Others have advanced the argument that, lack of ownership (Stoeglehner et al., 2009) and embeddedness (van Buuren and Nootboom, 2009) may explain problems associated with effectiveness in impact assessment. The main issue is that, the introduction of impact assessment has rarely been accompanied by capacity development, necessary to prevent it from being manipulated.

Kolhoff (2008) and others have argued that, EIA are effective in western countries and limited in effectiveness in developing countries, leading to the conclusion that, the country specific context has greater influence on the

performance of the EIA system. While this is an interesting argument, it assumes that EIA is effective in all western countries and less effective in all developing countries, thus ignoring for example, the reality in the implementation of the EU directives, diversity and historical context in how EIAs have been adopted in different countries. This argument also ignores the fact that, EIA process is a universal procedure that calls for having some generic criteria and conditions in place, in order to make it work.

Individual countries' specific context need to be adapted to the universality of the EIA process to give it meaning, so that practitioners all over the world, are able to conclude that an EIA process in a certain country is effective and useful or not. The concept of effectiveness in EIA is not without ambiguity. Several authors have discussed various perspectives on what effectiveness is or what it should focus on (Cashmore et al., 2009; Elling, 2009). What is involved to achieve effectiveness is also a contested and contextual issue, suggesting lack of consensus in the literature about what effectiveness ought to be.

In this article, the perspective of effectiveness as proposed by Elling (2009) is adopted. Elling notes that effectiveness in environmental assessment means setting the right targets and meeting them with the right means, in the process of implementing a project or plan with environmental caretaking. To him, effectiveness refers to the outcome of the effects to implement the project and to protect the environment, namely to meeting established targets - targets for the process as such or targets for the environmental outcome from it (Elling, 2009). Targets may vary from one country to another, but it is generally recognized by several EIA practitioners, that the main purpose of an EIA is to enable decision makers make informed and appropriate decisions on the proposed project, so that environmental issues are minimized through planned environmental and social management actions. In order to meet those targets, it is important for an EIA process to define the objectives of undertaking EIA and the means and criteria of meeting those objectives. These means and criteria are explained in various ways including policies, legal frameworks, institutional arrangements and the necessary steps.

However, it is also important to note that environmental impact assessments are conducted within specific sociological and cultural contexts, which will influence their outcome and effectiveness. Therefore, it is crucial to reflect not only on procedures, but also on institutional capacity, norms and culture (Cashmore et al., 2009) that will be upheld in order to make this process effective. Norms and culture in their broad sense would include not only professional ethics for environmental assessments but also, the recognition and respect for the rule of laws, procedures and the values and relationships that support those systems. The recognition of, respect for rules,

norms and to ensure that these are implemented accordingly is a crucial component of the accountability processes.

In this article, accountability is treated as an integral part of governance, the failure of which is an indication of weaknesses in the EIA system, which can also render the EIA process ineffective. It is unlikely that any system will be effective if laws, including environmental laws, rules or norms are not respected, or no serious steps are taken when such rules are broken. EIA effectiveness in this research was measured in terms of the extent development activities that require EIAs, are actually subjected to this process prior to their start. It is recognized that, just by having a project subjected to EIA is not enough to make the EIA process effective; however, it is a crucial first step in the process of ensuring compliance to the laws, which would result in making sure the EIA process follows through all the necessary steps including enforcing the approved Environmental and Social Management Plan as conditions for project implementation. In this research, factors such as institutional frameworks, legal regimes, stakeholder participation and capacity development are important but not sufficient to explain EIA effectiveness. Governance issues such as accountability provide additional explanations, as to why some EIA system in a particular context is not effective.

Tanzania started the EIA processes in the early 1980s, albeit without clear laws and institutional frameworks. By 1998, a detailed study to explore the performance of the EIA in Tanzania was conducted (Mwalyosi and Hughes, 1998). This assessment, which is still the most comprehensive study of the EIA effectiveness in Tanzania, addressed the question whether EIA is being applied in a way that is relevant to decision making processes in Tanzania and looked at the process and institutional issues, such as legal and institutional framework, public participation, the conduct of the EIA itself and its effect on decision making processes. The main conclusions from this study was that, EIA performance in Tanzania has been extremely poor, to the extent that it had only marginal impact on decision-making and planning, and that EIAs could contribute to greater consideration of environmental and social issues in developing planning if major changes are done to the process (Mwalyosi and Hughes, 1998).

The main recommendations from the Mwalyosi and Hughes study included introducing legislations for EIA application in developing planning. The lack of laws was a major criticism for the pre 2004 EIA processes in Tanzania, that prompted many calls for the urgent need to establish the laws (Soso vele, 2002). Other critics were harsher and called the then National Environment Management Council established by the 1983 law, as an advisory body to the Government of Tanzania as "a toothless watch-dog" that failed to bite because it lacked stringent laws (Kulindwa et al., 2001). To those and others, that situation eventually rendered the EIA practice

at that time, ineffective. It is six years now since the Environmental Management Act – Cap. 191 (EMA) came into being in 2004. A research was conducted to look at the extent the EIA process has become effective with focus on accountability in the implementation of that law. The main question this research addressed was whether by having the law in place; the EIA process has become more effective than the period prior to 2004. The paper attempts to answer this question by looking at to what extent and how accountable are the institutions mandated with the responsibility to ensure compliance of the environmental law in performing their duties. Are those institutions following up the implementation of the EIA laws as stipulated in the Act? Are projects from private and public sector that require mandatory EIA subjected to this process? Is having a law sufficient enough in making the EIA practice in Tanzania effective or are there other necessary factors, that must be developed and enhanced in tandem with having the law? This research focused on accountability as a governance issue.

In many previous studies on effectiveness, governance (accountability) has not been adequately treated. However, elements of governance such as institutional framework, legislation and stakeholder participation have been addressed in some effectiveness studies (Cashmore et al., 2009). Accountability is an important governance issue, which may explain some of the factors and actions that undermine the effectiveness of an EIA process.

MATERIALS AND METHODS

This assessment was conducted in Dar es Salaam covering its three municipalities of Ilala, Kinondoni and Temeke. It involved consultations and discussions with city leaders, planners, construction firms and boards, as well as the National Environment Management Council (NEMC) to explore awareness and adherence to legal requirements, especially for construction projects that are mushrooming in the city. The methodology used in this study is broadly defined as an assessment of environmental impact assessment, which included several processes activities. First was a desk review of EIAs effectiveness studies which was conducted in order to help guide the development of this research. Through literature review, issues that were addressed by other scholars in the numerous effective studies were examined (Sadler, 1996; IAIA, 2009; Mwalyosi and Hughes, 1998).

Interviews and meetings with several types of actors and stakeholders were conducted. These included broad range of organizations and individuals with the responsibility to decide on development/investment issues; to enforce the Environmental Management Act and the EIA regulations and procedures in Tanzania. The individuals and organization that were involved in the interviews were selected randomly based on a purposive sampling technique, in which targeted groups were identified, selected and interviewed using a checklist of questions. The questions explored knowledge of the environmental laws, institutional responsibilities and mandates; whether decision about development projects were informed by EIA as required by the law and if there has been any follow up to ensure compliance with Environmental and Social Management Plans. The face-to-face

interviews were most useful and indicated numerous accountability challenges and provided insights into practical issues associated with the effectiveness of the EIAs in Tanzania. To complement information from the interviews, case study approach was also used by focusing and analysing few examples to demonstrate accountability challenges. The information gathered was analysed, in order to explain how accountability as a governance issue affect the performance of the EIA practice in Tanzania.

RESULTS AND ANALYSIS OF FINDINGS

Results from this assessment shows that, the number of EIAs and EIA certificates had increased tremendously in the post EMA period. Although, data on the number of EIAs conducted prior to the 2005 is scant, economic changes that took place in the late 1990s, have stimulated the growth of investments in Tanzania, that coincided with the emerging awareness on EIA which resulted in undertaking such studies, even in the absence of guiding comprehensive law. The growth in the EIAs further reflected the increasing role of the private sector in some sectors of the economy. For example, about 112 EIAs were conducted between 2005 and 2009 in Tanzania. During this period, about 30% of all the EIAs conducted were in the energy sector; 21% in tourism and manufacturing sectors and 18% in mining sector. Other sectors that invited more EIAs include infrastructure and communication that had 17% of total EIAs (especially mobile phone towers); construction industry including roads that attracted about 8% of the total EIAs, while forest and fisheries attracted only 3% of all the EIAs conducted during that time.

This study found that the number of building permits issued by Dar es Salaam municipal authorities between 2005 and 2009 for construction projects that would have required mandatory EIAs was very high. For example, about 576 construction permits were issued in Ilala; 2,843 in Kinondoni and, 467 in Temeke Municipal Councils albeit without any EIAs being conducted for those projects. Those administrative decisions were contrary to the provisions of the First Schedule of the EIA Regulations on the category of projects that require mandatory EIA.

Item 14 (i) and (ii) of the First Schedule refers to industrial and housing estates and major urban projects such as multi-storey buildings, motor terminals and markets as projects that require mandatory and participatory EIAs prior to construction. An interesting case for Ilala Municipal Council is the controversial “Machinga Complex”- a multi-storey commercial complex that is intended to accommodate several street hawkers. The complex is built close to a football pitch and at a very busy road junction without consideration of traffic effects, parking space, security, waste management and convenience in doing business. Launching of the complex has been postponed several times due to its technical problems and the challenges it may cause should it start to operate. The decision to build the complex was

perhaps more of a political push but it was not subjected to rigorous environmental assessment as required by the law.

This study also found that even the central government was implementing construction projects that fell under mandatory EIA list, without subjecting them to the EIA process. For example, several government owned multi-storey buildings were built in Dar es Salaam between 2005 and 2009 without having EIAs done prior to their construction. These include: (i) The National Tourism College that took large part of the only remaining botanical garden in Dar es Salaam. (ii) The Headquarters of the Ministry of Natural Resources and Tourism, built along a very busy road and too close to one of the Dar es Salaam squatters. (iii) The expansion of the National Museum in Dar es Salaam. (iv) The Headquarters of the Prisons Departments. (v) The controversial Bank of Tanzania Twin Towers and related structures around the Ministry of Finance, and (vi) the Headquarters of the Minister of State, President's Office – Public Service Management are some of the government multi-storey buildings implemented without EIAs as required by the environmental law.

DISCUSSION

Several EIAs have been conducted since the Environmental Management Act Cap 191 came into force; however, it has been observed that the increasing number of EIAs did not correlate well with the level of effectiveness and quality of EIA and awareness of the EMA requirements for EIAs among different decision makers in the Dar es Salaam City. Awareness on legal requirement was low among decision makers at the level of the municipality where most decisions on development projects took place. For example, in all the municipalities in Dar es Salaam, up to 40% of those interviewed admitted to have no basic knowledge of the Environmental Management Act and its requirements on EIAs for various projects. This lack of knowledge is indeed a governance issue, that is closely related to lack of accountability on the part of the authorities. The responsible officers in the municipalities are expected to know and be aware of the various laws because these are their guiding tools in their operations. The authorities are expected to implement these laws as part of the Government collective responsibilities. Giving such excuses reflects badly on the part of the government officers, who are expected to know more than the ordinary citizen. The making of the environmental law involved various stakeholders including the municipal leaders; therefore, such a situation is an indication of the governance challenges in the EIA process in Tanzania.

The tendency to implement project without EIA, even where these are required by the law is common not only among some private investments done through Dar es

Salaam Municipal Councils but also, and more critically development projects that the central government itself, as the custodian of the law is permitting. In addition, issuing of permits for construction of multi-storey buildings or large-scale housing estates and other investments that are developed without EIAs is not confined to Dar es Salaam alone, similar trends are taking place in other parts of the country involving private and public investments.

In Dar es Salaam, the number of multi-storey building collapsing or threatening human life and other properties is increasing. Most of those multi-storey buildings are located in congested areas with little provisions for parking, safety issues, and solid and liquid waste management systems. Had the EIA process been effective, assessment for those projects could have been done, some critical issues about their location, size, waste management issues, energy, water, traffic, building materials and safety issues could have been addressed and mitigation measures included in the designs and enforced through the implementation of management plans and monitoring. Most of those projects were implemented without EIAs, and according to Municipal Councils officials, Engineers' Registration Board as well as National Environment Management Council, the reasons include lack of involvement during planning for those projects, inadequate awareness of the Environmental Management Act and its provisions on the part of those institutions. However, since most of these projects are engineering in nature, character, and scope it is critical to note that some of the engineers are not involved or not aware of the provisions of the environmental laws with respect to construction projects. This lack of awareness suggests a fundamental accountability problem within those institutions.

Accountability problems associated with inadequate awareness of the environmental laws were also reflected in an interesting case involving contradictory decisions municipal leaders made on development projects along the north-east Dar es Salaam beach. Municipal authorities allowed developers to open up beach areas for various developments including construction of multi storey buildings in areas, where the environmental law prohibits any development within 60 m from the highest watermark. While, residents in those areas contested such decisions, the National Environment Management Council directed the developers to conduct EIAs, in order to determine the environmental implications of the proposed developments. These decisions were controversial and reflected weaknesses in the EIA system. The Environmental Management Act predetermined where development is allowed in beach areas - namely beyond 60 m from the highest watermark. Therefore, there was no need to issue any permit for investment inside the prohibited areas or to demand an EIA from the developers because no development was allowed in such areas. This was a simple screening decision, which

should have been taken at the municipal level to prevent further loss of time and resources.

This assessment on governance issues in EIA in Tanzania has attempted to show how accountability – that is, the process of ensuring adherence to laws, norms, rules and procedures can be used to explain EIA effectiveness problems. Several previous studies have looked at EIA effectiveness from the perspective of legal frameworks, stakeholder participation, clarity of institutional mandates, adequate human and financial resources to perform EIAs, clear definition of objectives and purpose of EIA etc (Sadler, 1996). However, it is apparent from this assessment that, all those issues can be obtained but still EIAs may not be effective due to inadequate accountability on the part of those entrusted with the responsibilities to ensure that the law is adhered as required. It is therefore important to explore other factors that can explain why there are governance problems (as poor or lack of accountability) in enforcing EIAs. The arguments about lack of awareness or capacities explain only part of the problem; this assessment shows that, in order to be able to explain weaknesses in accountability issues, there is also a need to look at the cultural and sociological-psychological context in which the EIA process is taking place.

This understanding may shed more lights into theoretical discussions on EIA effectiveness. The cultural and sociological-psychological situation explains the behaviour of the decision makers, planners and those mandated to enforce the law. Part of the problem, noted in the EIA process in Tanzania is the inability of the National Environment Management Council and the municipal; councils to have the courage to tell investors and the Government that certain decision cannot be taken before EIAs are done for those projects. This lack of courage cannot be explained by inadequate manpower or awareness of environmental laws. It can be explained by cultural and sociological and psychological factors, that defines the relationship between those institutions and the central Government. For example, part of the problem associated with inadequate accountability in this study is raising the relationship between NEMC and the Government, in which NEMC appears to have no strong will to make unpopular decisions, for fear of being seen as anti-development. This situation questions the independence of NEMC as watchdog, while it is part of the government structure. NEMC is a fully fledged government agency depending on government allocation of resources. Can it be strong enough in enforcing EIA and thus, making it effective even for projects implemented by the government? Others scholars on the EIA effectiveness have explored this issue as the context in which EIA is undertaken and suggested that, it must be understood in explaining effectiveness of the EIA process.

The Environmental Management Act of Tanzania contains provisions that provide powers to the National

Environment Management Council to act decisively when need be however, it is evident from this study that not only project are developed without EIA but even when law is clear about certain project is specific sites NEMC has been noted to call for EIAs. The lessons we can draw from the Dar es Salaam case studies shows that, effectiveness studies need to focus on the root cause of the problem of EIA effectiveness beyond what is already common knowledge and explore various issues, including cultural, sociological and psychological factors influencing decision making processes.

ACKNOWLEDGEMENTS

The author wishes to thank Mr. Roland Mushi and Anselm Peter Silayo who collected most of the preliminary data, that forms a large study and Ms. B. Mchome for encouragement and support and to several anonymous reviewers and editors.

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