

**ENFORCEMENT OF ENVIRONMENTAL LAWS AND POLICIES  
IN KENYA  
CASE STUDY: NEMA**

**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT FOR  
THE AWARD OF BACHELOR OF LAWS LL.B DEGREE**

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**DECLARATION**

**I MURIITHI A. M DO DECLARE THAT THIS IS MY ORIGINAL WORK AND HAS NOT BEEN SUBMITTED, NOR IS IT PENDING SUBMISSION FOR A DEGREE IN ANY OTHER UNIVERSITY OR INSTITUTION. ALL SOURCES OF INFORMATION HAVE BEEN DULY ACKNOWLEDGED.**



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**THIS DISSERTATION HAS BEEN SUBMITTED FOR EXAMINATION WITH MY APPROVAL AS A UNIVERSITY SUPERVISOR.**

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**PROFESSOR ALBERT MUMMA**

## **DEDICATIONS**

To my family, for their unwavering support as I undertook this endeavor. Thanks for believing in me.

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First, I would like to thank the almighty God for giving me the strength to go through with this project and being able to finish it.

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God Bless You

**LIST OF STATUTES USED**

Constitution of Kenya 2010

Environmental Management and Coordination Act (EMCA) 1999

Kenya Wildlife Act Cap 376

Kenya Forest Act of 2006

Water act of 2002

## **ABBREVIATIONS AND ACRONYMS**

NEMA: National Environmental Management Agency

EMCA: Environmental Management and Coordination Act

EIA/EA: Environmental Impact Assessment/ Environmental Audit

KFS: Kenya Forestry Service

KWS: Kenya Wildlife Service

CSO/NGO: Civil Society Organization/ Non- Governmental Organization

NRMP: National Resource Management Plan

DANIDA: Danish International Development Agency

ODS: Ozone Depleting Substances

EABL: East African Breweries Limited

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## PROPOSAL

### 1.0 INTRODUCTION

The **environmental sector in Kenya** is one of great importance. However, attention in its protection and conservation from a legal point of view came to prominence a decade ago with the enactment of the **Environmental and Management Coordination Act of 1999** and the subsequent formation of the **National Environmental Management Authority under section 7 of the act.**

Prior to the enactment of the EMCA, there was no framework environmental legislation and no central agency to enforce all these laws.

Kenya's environmental law was contained in about **77 sectoral statutes that were in line with natural resource sectors.** This sectoral approach had entrusted enforcement responsibility in various government departments which created jurisdictional overlaps and conflicts.

This created a lot of confusion and it was realized that there was need to have a focal point within the government to coordinate policies and activities and to advise the government on environmental management issues.<sup>1</sup>

Enforcement was also difficult as the environmental regulations were scattered across the various sectors thus impeding a coordinated approach to environmental management.<sup>2</sup>

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<sup>1</sup> Environmental governance in Kenya(implementing the framework law) C.O. Okidi

<sup>2</sup> Ann Angwenyi- an overview of the EMCA PAGE 143(environmental governance in Kenya)

Further, the legislative framework vested enforcement discretion in government officials who did not always act to enforce the law with the result that public interest litigation to protect the environment was discouraged.<sup>3</sup>

The various environmental laws were generally punitive in nature dealing largely with the detrimental effects of the environment by fixing criminal penalties or liability. In most cases there was hardly any provision for the perpetrator to pay for the abatement of the injuries to the environment caused by their acts. The penalties were paltry and did not act as a sufficient deterrent against environmental degradation.

Thus **the EMCA** was formulated and enacted in parliament in 1999. It was enacted as the framework law to provide for the establishment of a framework environmental legislation that would establish an appropriate legal and institutional framework for management of the environment. This was necessary in order to improve legal and administrative coordination of diverse sectoral initiatives in order to improve the national capacity for management of the environment.<sup>4</sup>

The EMCA calls for management of practically all natural resource sectors thus covering them all under one umbrella law.

It ranges from protection of the coastal zone, lakes and wetlands, protection of hilltops and hillsides and mountains, protection of forests, protection of the ozone layer and conservation of biodiversity among others.

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<sup>3</sup> Ibid. see footnote 6

<sup>4</sup> Preamble to the EMCA

The Environmental Management and Coordination Act of 1999 is the main statute that deals with the environment. It was established to provide for the establishment of an appropriate legal and institutional framework for the management of the environment.<sup>5</sup>

To ensure the formulations in its provisions are carried out, the EMCA establishes a very important authority; the **National Environmental and Management Authority (NEMA)** which acts as the principal instrument of the government in the implementation of all policies relating to the environment. It is the main enforcer of the provisions contained in the EMCA.<sup>6</sup>

The purpose of NEMA as stipulated in the act is to ensure sustainable management of the environment through exercising general supervision and coordination over the matters relating to the environment.

The scope of mandate accorded to NEMA by the EMCA is very wide. NEMA's role cuts across almost all aspects and sectors of the environment as it is meant to ensure that all the sectors dealing with the environment for example, forestry, water, mining, agriculture align their policies and in a manner that takes the conservation of the environment into consideration.

Its enforcement role is clearly provided for in various provisions of the EMCA is a highlight as to the importance of NEMA in the protection of the environment.

The objective of this paper is therefore to assess the extent to which NEMA has carried out its enforcement responsibilities as stipulated in the EMCA.

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<sup>5</sup> Preamble EMCA

<sup>6</sup> Section 7 EMCA

## **1.1 PROBLEM STATEMENT**

For any law to be effective its enforcement and implementation is necessary. Most laws normally establish enforcement agencies to enable the implementation of their provisions. In the case of the EMCA which is the framework environmental law in Kenya, its main enforcer is the **National Environmental Management Authority** as set out in section 7 of the act.

Thus the enforcement role played by NEMA is of great importance as its success ensures that the environment is protected as a whole.

Most environmental enforcement strategies are derived from legal requirements that must be met by individuals, facilities or companies whose activities or operations cause or may cause undesirable environmental impacts. Compliance is also an important aspect to the enforcement strategy. This is because without compliance, the legal requirements will not achieve the desired results. Achieving compliance usually involves efforts to encourage and compel behavioral changes in those governed by a particular law. This is where enforcement comes in.<sup>7</sup>

The enforcement approach of any enforcement agency, determines the level of compliance towards a certain law.

The most frequently used enforcement strategy is the one of command and control where compliance is based primarily on fines, forfeiture and imprisonment. However it has been realized with time that it may not be effective at all times.

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<sup>7</sup> Ann Angwenyi, An overview of the EMCA(Page 173)- environmental Governance in Kenya.

Hence rational strategic mechanisms to maximize compliance have been applied. These enforcement approaches may range from inspections and monitoring, awareness creation through education, taking legal action where necessary to compel compliance, compliance promotion among regulated community through incentives or economic instruments<sup>8</sup> self regulation and inspections in pursuing compliance with environmental laws<sup>9</sup>

The traditional use of the command and control method is no longer sufficient to enforce laws. Thus a mixture of various approaches may be used.

NEMA has a couple of enforcement options at its disposal as set out in various provisions of the EMCA.

**First**, it has the option of **prosecution of violators and issuance of penalties** through the courts. This is in relation to pollution of the environment. Section 72 states that a person who is found guilty of emission of wastes into aquatic environment is liable to imprisonment for two years or a fine of 2 million shillings or both. Further there is the aspect of polluter pays principle where the violator pays for the cost of removal of toxic matter and cost of restoration of damaged environment. In relation to air pollution the violator faces 2 years imprisonment or a fine of 500,000 shillings or both. He also bears cost of removal of pollution and further third parties may take him to court and seek, reparation, restoration, restitution, or compensation. NEMA needs to exercise prosecution with fervor to ensure maximum compliance from others who might contemplate violating

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<sup>8</sup> Ibid. see footnote 7

<sup>9</sup> Benson Owuor Ochieng- Institutional arrangements for environmental management in Kenya (environmental governance in Kenya) page 185

environmental laws. Those punished should act as sufficient deterrents; hence the punishment must be effective and heavily felt by the violator.

**Secondly**, by virtue of section 57 of the EMCA **fiscal incentives and disincentives** may also be used to induce or promote the proper management of the environment. Tax incentives may include rebates to industries or other establishments that invest in plants, equipment and machinery for pollution control, recycling of wastes, water harvesting and conservation. There is also the option of tax disincentives to deter bad environmental behavior that leads to depletion of environmental resources or causes pollution. This encourages compliance as there are benefits drawn from it.

**User fees** may also be introduced to ensure that those who use environmental resources pay proper value for utilization of such resources.

**Thirdly**, compliance may be achieved through environmental impact assessments and environmental audits. Environmental impact assessments enable the authority to ensure that any development projects proposed to be carried out are environmentally sound.<sup>10</sup> Further under section 68 of the EMCA, NEMA is responsible for carrying out of environmental audits through its inspectors, of all activities that are likely to have a significant effect on the environment.

**Self regulation** is another important enforcement that has come up recently. The EMCA under section 68 provides that the owner of premises shall make annual reports to NEMA describing how far the project conforms with the statements made in the Environmental

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<sup>10</sup> Section 58 EMCA

Impact Assessment study report and shall take all reasonable measures to mitigate undesirable effects on the environment.

**Education of the public** may also go a long way in ensuring compliance. This is through enlightening the public of the importance of conserving and keeping the environment clean and their right to a clean environment. Thus when an environmental offence is committed, they may report it to the authority or commence proceedings in court which plays a role towards enforcement.

This paper therefore **seeks to find out to what extent NEMA** has used the various enforcement options available to it to ensure maximum compliance with the provisions set out in the EMCA and other environmental laws.

Further it seeks to find out the capacity that NEMA has to carry out the functions mandated to it by the EMCA.

## **1.2 HYPOTHESIS**

1. NEMA's enforcement capacity needs to be strengthened so as to fully perform its functions.
2. NEMA needs to use the various enforcement options available to it to ensure to strengthen the level of compliance.
3. NEMA needs to include other stakeholders for example courts, private sector, non- governmental organizations.

### **1.3 ISSUES ARISING FROM PROBLEM STATEMENT**

#### **1. ENFORCEMENT THROUGH CRIMINAL LAW/ PROSECUTION**

The command and control approach of enforcement which is characterized by fines and imprisonment has with time been rendered as lacking in innovation in the environmental arena. These measures scarcely met their intended purpose of punishing or deterring the offenders.<sup>11</sup>

However, criminal enforcement of environmental law is necessary to protect the integrity of the regulatory system, prevent harm to the environment and punish culpable violations.<sup>12</sup> Reasons why criminal law should be used to enforce environmental law are the inadequacy of the civil law to adequately deter violations. Criminal sanctions therefore punish the responsible party and make it clear that non-compliance is a crime.<sup>13</sup>

There is also an economic rationale for using criminal law sanctions because an effectively enforced criminal statute raises the cost of certain kinds of conduct and therefore encourages compliance with the laws and regulations that would be otherwise largely ignored. This must however be accompanied by effective mechanisms for apprehending offenders and deterrent punishment. Thus it is important to synchronize criminal penalties with economic value of an activity to ensure that the penalty is more expensive than the gains made out of criminalized conduct<sup>14</sup>

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<sup>11</sup> Benson Owuor Ochieng- institutional arrangements for environmental management in Kenya(environmental governance in Kenya ) page 202

<sup>12</sup> Patricia Kameri Mbote-The use of criminal law in enforcing environmental law(environmental governance in Kenya) page 111

<sup>13</sup> Ibid.12

<sup>14</sup> Ibid.12



## **2. ENFORCEMENT THROUGH INCENTIVE MEASURES/ ECONOMIC INVESTMENTS**

The substance of environmental law is technical and the enforcement mechanisms are varied and diverse, ranging from command and control mechanisms where the acceptable standard is established and the consequences of non-adherence set. However, establishment of incentives to elicit acceptable behavior are also used.

Instead of mandating the desired behavior, as in the regulatory approach, incentive/economic measures aim to affect the operator's decision behavior by changing estimates of costs and benefits of various alternatives, thereby motivating them to choose more options that tend to produce more desirable environmental conditions. Companies involved may get tax incentives where they pay a lower tax if they exercise their activities in an environmental friendly fashion.<sup>15</sup>

This could act as an effective enforcement tool where companies and industries and individuals exercise self regulation to ensure that they abide by the laws put in place as they know that they will benefit from compliance.

## **3. ENFORCEMENT THROUGH EDUCATION/ AWARENESS RAISING**

Education of the public and raising its awareness as regards the environment could be of great help. Most citizens are unaware or ignorant of the fact that it is right to have access to clean environment and that they can seek redress in a court of law if they feel that that right has been threatened, infringed or violated.

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<sup>15</sup> Compliance models for enforcement of environmental laws and regulations-(Vol. II)- Ling Fang, Keith W. Hipel, D Marc Kilgour

In empowering the public with knowledge on the importance of maintaining a clean environment, this might help in compliance as citizens may act as whistleblowers whenever any action that involves an environmental crime is engaged in. This way they can be involved in environmental enforcement.

Further, for compliance to be felt on a national scale, it has to be felt first and foremost at the grassroots level as it moves upwards to the national level. Thus in the case of NEMA there is need to empower the district and provincial environmental officers with adequate resources to as to ensure that they engage in thorough public education. Further enforcement agencies may liaise with communities where they are encouraged to apply indigenous knowledge as to the conservation of the environment is applied. This way, public participation is enhanced ensuring compliance with the law.

#### 1.4 THEORETICAL FRAMEWORK

The objective of any law is to ensure that its provisions are followed. However, the mere existence of laws is rarely sufficient to ensure their success. Compliance to laws does not come automatically in most cases and thus most laws include enforcement provisions or form agencies that will ensure the enforcement of those particular laws.

The goal of enforcement played by these agencies is thus to achieve a degree of compliance with the rule of proscribed behavior required and as set out in a particular law. Further the extent of enforcement depends on the amount of resources devoted to the task. The agencies must be given more than a mandate to enforce the statute in question; they must also have incentives to enforce the law sufficiently<sup>16</sup>

However, enforcement problems arise in virtually all areas of human endeavor – wherever there are rules, laws or standards to regulate the behavior of independent decision makers.

Thus, enforcement may be done in two ways:

1. Through punishment- in the case of non compliance.
2. Through persuasive or cooperative approach.

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<sup>16</sup> Optimum Enforcement of laws, George J. Stigler(university of Chicago and National Bureau of Economic Research)

## **A) PUNISHMENT**

Punishment is one of the devices to which society resorts to, to restore harmony or to repair damage done by violation of the law.<sup>17</sup> The aims of punishment may be; retribution, deterrence, incapacitation, rehabilitation or reformation. There are several theories that try to explain why punishment is imposed as a way to enforce laws.

### **1. Just Deserts**

This theory's states that, people who have broken the law deserve to be punished and that the punishment should be proportionate to the harm. The task of the punisher is therefore to assess the magnitude of the harm and devise a punishment that is proportionate in severity.

Andrew von Hirsch<sup>18</sup> stated that "to realize their own freedom, members of the society have the reciprocal obligation to limit their behavior so as not to interfere with the freedom of others. Thus when someone infringes on other's rights, he gains an unfair advantage over others in society, and since he has failed to constrain his own behavior, the punishment meted on him restores the equilibrium. Thus after the punishment, the violator ceases to be at an advantage over his non- violating fellows."

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<sup>17</sup> Crime and deviance, Tibamanga Mwene Mushanga- page 158

<sup>18</sup> Doing justice- the choice of punishments(1976) pp. 45-49

## 2. Deterrence Theory

Deterrence theories are forward looking in that they are concerned with the consequences of punishment. Their aim is to reduce further crime by the threat or example of punishment.<sup>19</sup>

It therefore has two aims:

- To restrain the wrongdoer from repeatedly indulging in crime
- To act as an example for others in a bid to deter and prevent them from committing crimes for violating laws

This theory states that an offender's punishment should be sufficient to prevent future instances of the offence.

The deterrence theory is grounded in the assumption that the potential criminal like other citizens is a rational actor.

Proponents of deterrence believe that people choose to obey or violate the law after calculating gains and consequences of their actions.

According to Jeremy Bentham,<sup>20</sup> if the magnitude or value of the pain is greater than the apparent magnitude of pleasure, then the offender will be absolutely prevented from performing it.

Thus, most forms of punishment that fit this description for example; fines, imprisonment, capital punishment, induce all individuals to comply and generally inhibit them from perpetrating the harm in the first place.

Publicity is an element important to the deterrence theory. When a perpetrator is caught, it is desirable to ensure that others learn the consequences of violating the rule.

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<sup>19</sup> Clarkson and Keating: criminal law, 6<sup>th</sup> edition page 34

<sup>20</sup> (1962) pp. 396

Accordingly, it is important that wrongdoers be punished publicly and severely so that other potential criminals learn by example. From a deterrence perspective therefore, a private punishment serves no purpose.

The deterrence theory of punishment can be traced to early works of classical philosophers. Some of their thoughts on punishment are highlighted below:

### **THOMAS HOBBS**<sup>21</sup>

He stated that people generally pursue their self interests and that conflicts may arise in the course of this. Thus humans engage in a social contract with the government so that it protects from conflict. The role of the state is to enforce the social contract. However crimes may still occur. Hobbes therefore argues that to prevent crime, the punishment for crime must be greater than the benefit that comes from committing the crime.

Deterrence is the reason are punished for violating the social contract and it serves to maintain the agreement between the state and the people in the form of a workable social contract.

### **CESARE BECCARIA**<sup>22</sup>

He stated that laws should be judged by their propensity to afford the greatest happiness shared by the greatest number of people.

Since people are rationally self- interested, they will not commit crimes if the cost of committing crime prevails over the benefits of engaging in them.

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<sup>21</sup> Leviathan 1651

<sup>22</sup> On crimes and punishment(1764)

Beccaria suggests that punishment should be swift and certain and that to have a deterrent effect, punishment should be proportionate to the crime committed and the seriousness of crimes should be based on the extent of harm done to the society.

### **JEREMY BENTHAM**<sup>23</sup>

He stated that, the duty of the state was to promote the happiness of the society by punishing and rewarding. It stated that in meting punishment, it must not be excessive as punishment in excess of what is essential to deter people from violating the law is *unjustified*.

Deterrence is commonly thought to operate in three levels:<sup>24</sup>

#### **i. General deterrence**

Here it is the threat of punishment that deters people from committing crimes.

It is aimed at the general population. The state's punishment of individuals serves as an example to others in the general population who have not yet participated in criminal acts.

General deterrence believes that actors in crime are rational beings who calculate the risks involved in their actions, and calculate chances of being apprehended and punished and weigh this against the benefits to them in committing the crime.

General deterrence is defined by J. Andenaes<sup>25</sup> as the ability of criminal law and its enforcement to make citizens law abiding. He states that if general prevention were 100% effective there would be no more crime at all. General prevention may rely on the mere

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<sup>23</sup> Introduction to principles of morals and legislation(1961)

<sup>24</sup> Clarkson and Keating, Criminal Law, 6<sup>th</sup> edition page 34

<sup>25</sup> The general preventive effects of punishments(1966) 114

frightening or deterrent effect of punishment. The risk of discovery and subsequent punishment outweighs the temptation to commit crime.

For Andenaes, punishment has three sorts of preventive effects. It may have a deterrent effect, may strengthen moral inhibitions and may stimulate habitual law abiding conduct.

**ii. Individual/ Specific deterrence**

It is designed to deter the individual offender from committing crime in the future. It is hoped that the experience of punishment on the individual will be so unpleasant that the offender will not reoffend.

The task of the sentence is therefore to look to the future and select the sentence which is likely to have most impact on the individual.

**iii. Educative deterrence**

Punishment of criminals builds up in the community over a period of time, the habit of not breaking the law. It creates unconscious inhibitions against committing crimes and therefore serves to educate the public as to the proper distinction between good and bad conduct. Every time one is punished for a certain crime, the public morality that crime is wrong is strengthened and reinforced.



## SEVERITY, CERTAINTY AND CELERITY OF PUNISHMENT

The more severe a punishment, it is thought, the more likely that a rationally calculating human being will desist from criminal acts. To prevent crime therefore, criminal law must emphasize penalties to encourage citizens to obey the law. However, punishment that is too severe is unjust and punishment that is not severe enough will not deter criminals from committing crimes.

Jeremy Bentham<sup>26</sup> states that punishment is evil and if it ought to be admitted it should be done in as far as it promises to exclude some greater evil.

However, according to Andrew Von Hirsch<sup>27</sup> he states that the level of punishment should be proportionate to the seriousness of the crime.

**Certainty of punishment** on the other hand means making sure that punishment takes place whenever a criminal act takes place. Theorists like Beccaria believe that if individuals know that their individual acts will be punished, they will refrain from offending in the future. Certainty is a very important aspect of the deterrent theory.

Moreover, the punishment must be **swift** to deter crime. The closer the application of punishment is to the commission of the offence, the greater the likelihood that offenders will realize that crime does not pay.

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<sup>26</sup> Ibid. see note 29

<sup>27</sup> Past or future crimes: deservedness and dangerousness in sentencing of criminals(1985) pp 35-36

Deterrence theorists believe that if punishment is severe, certain and swift, a rational person will measure the gains and losses before engaging in crime and will be deterred from violating the law if the loss is greater than the gain.

## B) PERSUASIVE/ COOPERATION THEORY

In the 1980s regulatory scholars began to question the value of deterrence alone in regulating behavior. They thus began to focus their attention on researching compliance rather than deterrence and began to realize the importance of aspects such as persuasion and cooperation in enforcing laws and as regulatory tools for gaining compliance.

Persuasion is typically defined as human communication that is designed to influencing others by modifying their beliefs, values and attitudes<sup>28</sup>

It involves a goal and intent to achieve that goal. The communication is the means to achieve that goal and the recipient must have free will, ensuring voluntary compliance.

In relation to law, the persuasive approach aims to establish a collaborative relationship between the regulator and the regulatee.<sup>29</sup>

**Tyler**<sup>30</sup> shows that people value respectful treatment by authorities and view those authorities that treat them with respect as more entitled to be obeyed. Further he argues that if regulators are prepared to first engage in dialogue and fair treatment with those

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<sup>28</sup> Persuasion in the legal setting- john C. Reinard

<sup>29</sup> Grabosky and Braithwaite- crime, shame and reintegration (1986)

<sup>30</sup> Why people obey the law(1997)

they regulate, then this will serve to encourage support for the law and lower the rate of re-offending.

He further states that if people view compliance with the law as appropriate because of their attitude about how they should behave, they will voluntarily assume the obligation to follow legal rules. They will personally commit to obey the law irrespective of whether they risk punishment for breaking the law. They have an internalized obligation to follow their personal sense of what is morally right or wrong.

This normative commitment may involve personal morality or legitimacy. Normative commitment through personal morality means obeying a law because one feels the law is just. Commit through legitimacy on the other hand is because one feels that the authority enforcing the law has the right to dictate behavior. In both instances ensuing compliance is voluntary.

In both these normative factors, the citizen voluntarily complies with the rules rather than respond to the external situation.

From the perspective of authorities in a legal system, legitimacy is a far more stable base on which to rest voluntary compliance because its scope is more flexible. In the case of morality, one person's sense of morality may be totally different from another person's.

When it comes to legitimacy, its concept rests on the conception of obligation to obey any commands an authority issues so long as that authority is acting within appropriate limits.

In the process of enforcement, Braithwaite<sup>31</sup> distinguishes between two forms of disapproval shown in the instance of non compliance. One is re-integrative in nature and the other is stigmatizing in nature where the offender is treated as an outcast.

Braithwaite is in favor of the former.

According to him disapproval that is re-integrative in nature is carried out in a respectful and healing nature. Here the disapproval of an act is communicated with respect and special effort is given to avert labeling and to terminate disapproval with rituals of forgiveness and reconciliation. This form of disapproval can be most closely associated with an accommodative style of regulatory enforcement.

An accommodative enforcement approach may include communicating with an offender about the circumstances that led to their offending, cooperating with offenders and working with them in a collaborative effort to ensure that their compliance is long term.

According to **John T. Scholz**<sup>32</sup> the optimal standard for voluntary compliance depends greatly on the level of enforcement resources available to the agency.

Further he states that enforcement strategies that encourage voluntary compliance can improve regulatory efficiency by reducing unnecessary enforcement and compliance costs. For example, an arena in which minimum monitoring is needed to ensure that the voluntary compliance is met can set a higher standard than an arena in which even cooperative enforcement routines will require considerable monitoring resources.

He asserts that in order to maximize cooperation, a voluntary compliance strategy should maximize the difference between cooperation and confrontation (in the case of non-

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<sup>31</sup> Crime shame and reintegration(1986) page 207

<sup>32</sup> Voluntary compliance and regulatory enforcement- department of political science; state university of New York

compliance) payoffs by reducing costs for those who cooperate while increasing them for evaders.

Further, cooperative routines are concerned with social goals of the regulatory policy being enforced. One tactic of cooperation is self monitoring by those being governed by a particular law be they individuals or entities. Thus the enforcement agency's task is reduced to ensuring the reliability of private inspection schemes. This helps increase the incentive to comply in lowering costs of inconvenience of cooperation in comparison to confrontation.

Further, cooperative enforcement should be enough to detect and punish cheating. If it is so lax that evasive actions are seldom discovered, people will have little incentive to avoid breaking of laws.

In my opinion punishment would be the best deterrent factor against non compliance with environmental laws. The person or entity that goes against the law should be personally liable to pay for the environmental crime that they have committed. Punishment may range from imprisonment if the crime is severe or payment of heavy fines. Further the severity of the punishment should be of such a nature that deters others from committing the same crime.

However the enforcement agency should not rely on punishment alone. It should use methods such as educating the public and other stakeholders of the effects of their activities on the environment and encouraging them to abide by the law.

They should also apply incentive measures, where citizens and other stakeholders are awarded for their compliance. This way, they won't be complying with the law out of

obligation but rather because they will benefit from it. Incentives could include giving of awards to compliant organizations in recognition of laws, or awarding companies or organizations that run their activities in an environmental friendly manner. Incentives may also be fiscal in nature where compliant entities have their taxes reduced in instances where their activities are environmentally friendly.

## **1.5 OBJECTIVES OF THE RESEARCH**

1. Assess what NEMA has done in fulfillment of its functions under EMCA and the challenges it has met while carrying out these functions
2. Assess the modes of enforcement used by NEMA in carrying out its functions
3. Give recommendations on what it can do to effectively carry out these functions.

## **1.6 RESEARCH QUESTIONS**

1. To what extent has NEMA performed its enforcement mandate as set out in the EMCA?
2. What can be done to overcome these hurdles thus enabling it to be more effective in its enforcement activities?
3. How has it involved other key players in the environmental sector in helping with enforcement?
4. How has NEMA utilized the resources allocated to it?

## **1.7 METHODOLOGY**

I shall use various methods of study for my research as the law covering the environment and its protection and conservation is wide ranging.

I shall therefore use the following:

1. Statutes relating to the environment where relevant
2. Journals and articles written as concerns NEMA and its enforcement capacity
3. Textbooks
4. Interviews

## **1.8 CHAPTER BREAKDOWN**

Chapters of my dissertation will be as follows:

Chapter 1: proposal

Chapter 2: NEMA's enforcement capacity and challenges met in carrying out this function and modes of enforcement used by NEMA

Chapter 3: role of other actors in the environmental sector in enforcement.

Chapter 4: recommendations and conclusion.



## **CHAPTER 2**

### **2.0 ENFORCEMENT CAPACITY OF NEMA**

The enforcement capacity of NEMA is of great importance as it ensures that it carries out its mandate in the best way possible and meets its targets as regards safeguarding of the environment.

Capacity building is important as it ensures that an entity is up to task with its responsibilities.

NEMA's enforcement capacity may be found in the various departments under it which play an enforcement role in one way or another. They are as highlighted below:<sup>33</sup>

### **2.1 COMPLIANCE AND ENFORCEMENT DEPARTMENT**<sup>34</sup>

It ensures compliance to environmental legislations and regulations among all stakeholders. It especially makes sure that Environmental Impact Assessment and audit are conducted as regards development activities.<sup>35</sup> Some of its other functions include:

- To ensure enforcement of environmental regulations and standards
- To formulate regulations, standards and guidelines on environmental management (and evolve procedures and safeguards for the prevention of accidents which may cause environmental degradation and evolve remedial measures where accidents occur.) Some of the regulations established by NEMA which require compliance are:

- i. EIA & EA regulations of 2003

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<sup>33</sup> NEMA at a glance by Mrs. Betty Nzioka (2007)

<sup>34</sup> Information gathered by interview on Ms. Salome Machua, Deputy Director Compliance and Enforcement Department

<sup>35</sup> NEMA at a glance, Mrs. Betty Nzioka(2007) pge 14

- ii. Waste regulations of 2006
- iii. Water Quality regulations of 2006
- iv. Biodiversity regulations of 2006
- v. Controlled Substances regulations of 2007
- vi. Noise pollution regulations of 2009
- vii. Wetland areas regulations of 2009

The budget needed by the department so as to meet its needs for the 2012/2013 year is **396 million shillings**.

The compliance and enforcement department has **36 staff members**, the most staffed of all the departments and the most funded of the departments after the finance department. It has **5 vehicles** for enforcement.

Further there is **at least one compliance and enforcement officer** in every county and their offices are based at the county headquarters.

These officers develop work plans for every year and they report progress on a monthly basis on the progress they have made as regards as carrying out the work plans.

They also carry out inspections of regulated facilities and licensing of Environmental Impact Assessment for low impact projects at the county level and license noise and waste transportation.

They carry out investigations for any commission of environmental offences and may act as witnesses in case the case proceeds to the prosecution stage.

The **enforcement cycle at the county level** first begins with **awareness raising** where the officer informs the various stakeholders of the laws, regulations or guidelines that apply to the activities they are engaging in and what they should do to abide by those laws or regulations. This might vary from a requirement of them to get licenses for their activities or an environmental impact assessment.

If the parties involved do not abide by this, a **warning** may be given. If further they don't adhere to the warning, a **restoration order** is given where they are supposed to right the environmental wrong they have committed.

If they don't adhere to the restoration order, then **prosecution** may be resorted to.

However, prosecution is not done by the county officer but is instead referred to the prosecutors based at the NEMA headquarters.

**These prosecutors are trained and the training is normally done at the CID offices.**

The offenders are then prosecuted at the magistrate courts. However with the formation of the land and environmental court under article 162(2)(b) of the constitution, which shall have the same jurisdiction as the high court, changes will need to be made as regards prosecution of environmental offences so as to be in line with constitutional provisions.

**Presently, the department has six active prosecutors though 40 have been trained.**

These 6 prosecutors prosecute on behalf of NEMA throughout the country. They are inadequate thus they are constantly on the move from one magistrate court to the other throughout the country.

In a year, there are approximately 50- 60 cases that are prosecuted by NEMA.

Further, there are also **inspectors** under the department who are trained in house.

These inspectors upon successful completion of their training are then gazetted and may begin their work as set out in section 117 of the EMCA. Some of their functions include:

- monitor compliance with the environmental standards established under EMCA
- monitor the activities of other sector-specific environmental inspectorates
- monitor the pattern of use of environmental resources
- conduct environmental audits

The inspectors are also mandated by the EMCA to enter into any land or premises to make examinations and queries in whether the activities being carried out in those areas comply with provisions of the EMCA.

Further they are required to carry out periodic inspections of all establishments within their jurisdictions which, manufacture, produce, store or sell substances that are likely to have an impact on the environment to ensure they comply with provisions of the EMCA.

With the permission of the Director General of NEMA, the inspectors may order the closure of plants which pollute the environment and make require the owner to undertake remedial measures.

Prior to the formation of counties, the EMCA provided for the formation of Provincial and District Environmental Committees under section 29 who were responsible for the proper management of the environment within the province or district in which they were appointed. The committees were very effective at the grassroots level under the

chairmanship of the Provincial and District Commissioners. Further their membership incorporated members of the community such as representatives of farmers, pastoralists, business community, NGO'S engaged in environmental management in the area, and regional development authorities in the area. This was a very sure way to ensure compliance to relevant laws were adhered to as all stakeholders had a say and could participate in the management of the environment.

There were also District and Provincial Environmental Officers as provided for under section 29 who reported to the Committee.

These officers manage NEMA operations on the field and implement all technical functions of NEMA in the field thus taking environmental services closer to the public.<sup>36</sup>

They play a very big role and connected NEMA to the grassroots.

Under the new dispensation, there are no provinces or districts. There are now counties.

Under the counties, their respective governments shall constitute executive committees of 10 members one of whom shall be responsible for environmental matters. He shall be the chair of the County Environmental Committee.

A draft amendment Bill of the EMCA has been put forward but it is still at the Ministry level. The amendment Bill seeks to replace District Environmental Committee with County Environmental Committee, and by replacing District Environmental Officer with County Director of Environment.

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<sup>36</sup> NEMA strategic plan 2010- 2013 pg 23

## **CHALLENGES**

The Department in exercising its mandate experiences a number of **challenges**.

Despite being the most funded department, the **funding is still inadequate** as it caters for 10% of its activities only. This greatly hampers the capacity of the department and of NEMA as a whole.

The **court proceedings** especially the criminal ones normally **take a long time** to get completed by which time enforcement may be to no avail as the damage to the environment may already have been done.

**Human Resource** is also a challenge. The department only has 6 active prosecutors who are constantly on the move around the country with some in charge of regions that are very big. Plans by NEMA to set up a prosecution unit would go a long way in remedying this.

The **mandate accorded to the department is too broad**, thus putting them at pains on which mandate to put most of its resources both financial and human, into. Thus there is need for the mandate to be more specific to avoid confusion.

## **2.2 EDUCATION DEPARTMENT**<sup>37</sup>

It addresses provisions of the EMCA as contained in section 9 which mandates NEMA to undertake cooperation with lead agencies; programs intended to enhance environmental management as well as enlisting public support and encouraging the efforts made by other entities regarding the same.<sup>38</sup>

The department is divided into the following sections:

- Environmental education and information
- Awareness and public participation.

The budget needed by the department to meet its needs for the 2012/2013 year is **466 million shillings**.

**The education department has officers in other areas of Kenya. However, these officers are only in four regions and they are overstretched thus making their work very hard.** They therefore do not have officers in all counties which would be of great advantage as the education disseminated will be localized according to the aspect of environment in a particular area that people need to be educated about.

The education department plays a very important role in enforcement.

Once regulations and laws are established, they inform the relevant stakeholders about the regulations. They do these through forums where they call the stakeholders to be governed by the particular regulations and inform them about the laws and what is expected of them as stakeholders.

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<sup>37</sup> Information gathered through interview on Mrs. Catherine Mbaisi, Chief Environmental Awareness and Public Participation Coordinator at NEMA

<sup>38</sup> [www.nema.go.ke](http://www.nema.go.ke)

Due to the technicality of the laws the department explains to the stake holders in a simple manner that is understandable to laymen. They may prepare brochures or booklets with an abridged and simplified version of the laws and regulations that is written in a manner that is simple and understandable to the common man.

This education of the stakeholders is done in the 6 month window period before a law comes into force.

In undertaking its mandate, the department categorizes the stakeholders depending on the role they play as regards safekeeping the environment.

**For example in the case of EIA regulations,** the department may look at the **trainers who train the experts that will qualify to conduct EIA matters.** NEMA develops a curriculum on how the experts should be trained. These trainers get from the curriculum the best way in which to train the experts such that once they get to the field they are able to enforce that which they are regulating in a knowledgeable manner and in a manner that achieves the enforcement and compliance goals of NEMA.

These experts must be authorized by NEMA before they can prepare EIA reports.

The curriculum is handed to accredited institutions with the right resources and with qualified lecturers to ensure that the experts in EIA training get the best possible education on how to carry out their work.

Examples of such institutions are, Kenya School of Government, University of Nairobi, Kenyatta University, and Technical University of Kenya.



When it comes to **review of EIA reports**, such reports may be sent to **lead agencies** concerned with the project in question. These lead agencies must be government agencies. In such cases, NEMA trains the lead agencies on how to review the reports. This increases capacity and through the awareness of the lead agencies they are able to align their enforcement objectives with those of NEMA and subsequently with the EMCA provisions.

They also partner with lead agencies and advise them on standards that need to be met thus helping further with their capacity building.

Despite being in the education department, the officers in this department along with other NEMA officers undergo **a basic enforcement course in collaboration with the police department where they are taught on how to conduct investigations, gather evidence**. In this way they also build capacity contribute towards the enforcement capacity of NEMA.

**When it comes to the public** who are the most affected by activities on the environment, the department engages in educating them through public forums, campaigns through the media where they are hosted in radio stations and engage the public in questions that they might have as regards the environment. They also dish out pamphlets with simplified versions of laws and regulations that might affect the public.

They further inform the public of their **rights and responsibilities** as regards the environment.

Indeed many violations as regards violation of environmental laws and regulations are brought forward to NEMA by the public as they the ones in close proximity to any activity that may have a detrimental effect on them, and may be directly or indirectly affected by that activity.

The above scenario is one given in the case of EIA regulations. However the same procedure is applied in relation to all the other regulations set up by NEMA. The Education department will use the same procedure by categorizing the stakeholders and advising them accordingly.

Once the laws or regulations have come into force, then the mantle is passed over to the Compliance and Enforcement department

## CHALLENGES

They have **inadequate resources** both **financial** and **human** which are very important if they are to fully carry out their functions. They need finances to hold forums as well as means to take them to the public at large so as to engage them in discussion as regards the environment as well as other stakeholders.

Further, they need adequate staff to help them traverse the country. At times there might be need to educate stakeholders as regards different laws that may apply in the same region and due to lack of adequate resources, they are forced to concentrate on one regulation at a time which may take a long time due to the number of stakeholders that need to be educated.

However, they have managed to do their best and work with what they have and have seen the fruits of their work as some of the stakeholders actually follow the advice they have been given and even act as examples to others as regards compliance to the rules without being forced or threatened with sanctions.

### **2.3 LEGAL SERVICES DEPARTMENT**<sup>39</sup>

It advises on legislative measures for management of environment and their implementation.<sup>40</sup>

It also drafts and prepares legislations, regulation and guidelines that facilitate proper implementation of the EMCA.

As regards case, its coordinates litigation and prosecution of cases for or against the authority and collaborates with various departments and institutions of NEMA, lead agencies and the Civil Society in increasing awareness of environmental law in the country.

The budget needed by the department to meet its needs for 2012/2013 year is **270 million shillings.**

The **staff at the legal department is meant to be 10 in number but they are now at 5 which greatly hamper their capacity.**

Further, **there are no legal officers at the county level** who would help a lot in sensitization as regards the legal aspect of environmental matters.

The role the department plays in enforcement depends on whether the case is civil or criminal.

In the case of **civil litigation**, the department sues on behalf of NEMA or represents NEMA when sued due to the decisions it has made.

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<sup>39</sup> Information gathered through interview on Mr. Erastus Gitonga, Advocate and Principal Legal Officer at the legal Department in NEMA

<sup>40</sup> Ibid. see note 15

These 5 legal officers who are all advocates criss-cross the country either representing NEMA or suing on behalf of it in the courts or at the National Environmental Tribunal.

As regards **criminal prosecution**, the role of the department is mainly advisory. They do not directly prosecute as for one to be a prosecutor approval and gazettelement is needed by from the DPP's office.

The prosecutors are advised directly by the legal department.

The department also offers advice to the various departments in NEMA on legal matters and also advises the Director General and the Ministry of Environment and proposes review of various environmental laws.

They have currently drafted an amendment bill of the EMCA 1999 so that it can be in line especially with the constitutional provisions as regards protection of environment by constitution, and devolution matters under the constitution 2010.

## **CHALLENGES**

The department faces a number of challenges:

**Inadequate funding** is a great deterrent towards the department achieving its mandate.

The laws are enabling. However, their enforcement and implementation are greatly hampered by lack of resources.

**Lack of human resource** is another challenge facing the department. There are very few legal officers in the department and they are constantly on the move around the country litigating. Part of the reason of the inadequacy of staff is due to the high rate staff

turnover at the department. Staff turnover is the rate at which an employer gains or loses his/her employees. In the present scenario staff leave at a very high rate and after a short period of time at the department in search of greener pastures but are not replaced fast enough such that the department is always short of staff. This greatly hampers productivity of the department as training has to be done frequently to accommodate newcomers once they replace those who have left.

## 2.4 MODES OF ENFORCEMENT USED BY NEMA<sup>41</sup>

NEMA's preferred mode of compliance is negotiated compliance where the parties involved comply voluntarily without being influenced by threats of sanctions and where the offender is given a chance to remedy his wrong(s) before civil litigation or criminal prosecution is resorted to.

This mode has to some extent served to be effective as some parties prefer to comply rather than go against what the laws and regulations state thus preventing them from the headache of civil and criminal suits.

In the draft amendment of the EMCA<sup>42</sup>, there is a provision which calls for adding a definition of the term voluntary environmental management to mean the principle of encouraging voluntary compliance in conserving the environment which is a cost effective and efficient mode of attaining compliance with environmental regulations.

NEMA first **begins with education** of the relevant stakeholders that are going to be affected by a particular law. They are taught on the components of the law in question and what is expected of them by the law.

NEMA strives to simplify the law in question in a manner that will be understood.

This education is normally done during the window period before a law comes into force.

Once the law comes into force and the parties involved choose not to abide by its provisions, and engages in activities likely to have detrimental effect on the environment,

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<sup>41</sup> Information gathered by interview on Ms. Salome Machua, Deputy Director Compliance and Enforcement Department

<sup>42</sup> Section 2(s) of the Bill

**a warning is given** that legal action will be taken if they don't cease and desist from their detrimental activities.

If further, they don't heed to the warning NEMA is empowered to give a restoration order by virtue of section 108 of the EMCA.

The restoration serves several purposes:

**First**, it orders the person on whom it has been served to restore the environment as near as it may to the state in which it was before its detrimental action.

**Second**, it prevents the person on whom it has been served from taking any action which is or likely to cause harm to the environment.

**Third**, it may call for the award of compensation paid by the offender to those harmed by his actions.

Finally, if the offender does not heed to the restoration order, then **criminal proceedings** may be instituted against him at the magistrate courts where if found guilty may have a fine imposed on him or imprisoned for a period of time, be it 1 or 2 years.

Prosecution is therefore used as a measure of last resort to enforce and ensure compliance to the laws and regulations in question.

Another enforcement measure that would go a great length in helping in the enforcement role of NEMA would be the use of **incentive measures**.

Although section 57 of the EMCA<sup>43</sup> calls for use of incentive and economic measures to induce or promote proper management of the environment, attempts by NEMA to

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<sup>43</sup> Minister responsible for finance may propose to Government tax and other fiscal incentives, disincentives or fees to induce or promote the proper management of the environment and natural resources or the prevention or abatement of environmental degradation.



institute got stuck at the Treasury level as the government was not ready to waive taxes which are a great source of its revenue.

Despite the negotiation approach that NEMA uses to enforce compliance, they still end up taking many cases to the prosecution stage.

“Between 2012 and 2013 they have had between 50- 60 cases. This is not good for NEMA as criminal cases take some time to be completed and at most times, by the time the case is completed the conviction by the court may serve little or no purpose as the wrong may have been already completed.”<sup>44</sup>

Further, it has made a number of restoration orders even to public entities. An example is a restoration order made to the roads ministry as regards to the Mbita causeway has permanently blocked a secondary connection between Rusinga channel and the off shore waters of Lake Victoria. NEMA has ordered the roads ministry to demolish the causeway and finance the demolition<sup>45</sup>

Another example is where NEMA sued the Kiambu clerk for using a road side in a residential area as a dumping site for garbage. The decision by NEMA followed a warning to residents to stop unauthorized garbage dumping which they did not heed.<sup>46</sup>

Another scenario, is where NEMA sued the vice chancellor of Kenyatta University for failing to heed to an earlier order to cease discharging unhealthy effluent in the form of sewage to the environment. The university was sued for criminal negligence, especially for flouting EIA rules and emitting effluent without a permit.

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<sup>44</sup> Salome Machua, Deputy Director, Compliance and Enforcement Department ,NEMA

<sup>45</sup> <http://www.facebook.nema.org>

<sup>46</sup> <http://www.standardmedia.co.ke/ktn/video/watch/2000066376/-nema-suing-a-kiambu-clerk-for-dumping>

## **CHAPTER 3**

### **3.0 ROLE OF OTHER ACTORS IN ENFORCEMENT OF ENVIRONMENTAL LAWS**

NEMA acts the main government agency that ensures that environmental laws are enforced and implemented by the people to whom those laws apply.

The sectoral nature of the environment in Kenya means that many players/stakeholders are involved in the management of the environment. These range from government agencies, to civil society organizations, to the private sector and finally the public. All these play a role in the sustainable management of the environment.

Most of these stakeholders have a role to play as they share issues of common interest as regards the environment the main one being sustainable development.

Their roles are highlighted below:

#### **3.1 GOVERNMENT LEAD AGENCIES**

As regards government lead agencies, NEMA is required to coordinate the various environmental management activities being undertaken by the agencies<sup>47</sup>.

These sectoral ministries, departments and agencies which range from fisheries, water, energy, wildlife, physical planning among others, play an important role in natural resource management.<sup>48</sup>

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<sup>47</sup> Anne N. Angwenyi, An Overview of the EMCA, Chapter 6 ,Environmental Governance in Kenya, pg 147

<sup>48</sup> Benson Owuor Ochieng, Institutional Arrangements for Environmental Management in Kenya, chapter 7 Environmental Governance in Kenya pg 184

To show the seriousness of the need for supervision of lead agency activities as regards sustainable environmental management, NEMA requires Ministries, Departments and Agencies to submit quarterly reports on their environment sustainability efforts.<sup>49</sup>

This will keep them in check and ensure their promptness in dealing with their mandates.

They are meant to liaise with NEMA in their day to day activities so as to ensure that they perform their mandates and act according to the provisions of the EMCA which states how different environmental aspects should be managed.

Some of the government agencies and their enforcement roles are outlined below:

**i. Kenya Forestry Service**

This agency is created by the Forest Act<sup>50</sup> and it is responsible for overseeing the sustainable development of forests.

The current forest cover of Kenya is at 1.7% way below the required standard of 10%.

The reason for this is encroachment by local communities, overexploitation by commercial loggers, and generalized unsustainable harvesting of indigenous trees which take long to mature.

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<sup>49</sup> Morton Saulo, Government joins forces to conserve the environment, pg, 1, NEMA Publication July-September 2012

<sup>50</sup> Act No. 7 of 2006, Laws of Kenya section 4

Some of their enforcement roles include<sup>51</sup>:

- Formulating for approval of the Board, policies and guidelines regarding the management, conservation and utilization of all types of forest areas in the country;
- Promoting forestry education and training
- Enforcing the conditions and regulations pertaining to logging, charcoal making and other forest utilization activities;
- Promoting the empowerment of community association in the control and management of forests. In pursuance to this, KFS has partnered with government institutions not in the environmental sector in tree planting exercises. An example is a partnership between KFS, RBA, CMA & IRA to increase the tree cover in Ngong Road forest station<sup>52</sup>. It also includes the community by planting trees in primary schools.
- Enforcing the provisions of the Forest Act and any forestry or land use rules and regulations made pursuant thereto or to any other written law;
- In consultation with the Attorney-General, train prosecutors from among the forest officers for purposes of prosecuting court cases under this Act in accordance with any other law relating to the prosecution of criminal cases.

The forest act also makes elaborate provision a system of incentives for ensuring compliance as opposed to the meager fines and punitive sanctions.<sup>53</sup>

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<sup>51</sup> Section 5 Forest Act of 2006

<sup>52</sup> <http://www.kenyaforestservice.co.ke>

<sup>53</sup> Benson Owuor Ochieng, Institutional Arrangements for Environmental Management in Kenya, chapter 7 Environmental Governance in Kenya pg 192

The meagerness of the fines and sentences may be found in section 57 of the forest Act which states that any person found guilty of an offence or offences under the act is liable to a fine not exceeding 10,000 shillings or imprisonment of not more than 3 months. This punishment is paltry and it is no way proportionate to the crime committed and is not deterrent enough as the offender does not experience any inconvenience through paying the fine as the proceeds from the crime are very profitable.

There is therefore need to revise this provision for it to play a more significant role in enforcement.

The Kenya Forest Service has an Enforcement and Compliance Division which is charged with the provision of security for forest resources in the country through enforcement of the Forest Act.

The department is headed by a commandant with 2,500 rangers and officers serving in various stations across the country.

The roles of the department include forest protection, arrest and prosecution of offenders and investigation of forest offences.

## ii. Kenya Wildlife Service

The Kenya Wildlife Service (KWS) conserves and manages Kenya's wildlife for the Kenyan people and the world. It is a state corporation established by an **Act of Parliament Cap 376**<sup>54</sup> with the mandate to conserve and manage wildlife in Kenya, and to enforce related laws and regulations. Its enforcement role includes<sup>55</sup>:

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<sup>54</sup> Wildlife(Conservation and Management) Act section 3(1)

<sup>55</sup> Wildlife(Conservation and Management) Act section 3A

- Formulating policies regarding the conservation, management and utilization of all types of fauna and flora within the parks
- Sustain wildlife to meet conservation and management goals
- Provide wildlife conservation education and extension services to create public awareness and support for wildlife policies

In regard to the last point there is the **community wildlife program of Kenya** which encourages biodiversity conservation by communities living on land essential to wildlife, such as wildlife corridors and dispersal lands outside parks and reserves.

Community wildlife conservation is based on the principle that local communities shall participate in and benefit from wildlife conservation. This approach stems from the recognition that protected areas in Kenya as a developing country will survive in so far as they address human concerns and that the future of protected areas that do not have the support of local people is insecure.<sup>56</sup>

KWS has an established network through KWS offices across the country to address issues of wildlife outside the protected area system. Some of the functions of the Community Wildlife Program include creation of education awareness programs as well as planning, coordinating, implementation and monitoring of community based conservation projects.

This goes a long way in integrating the community in sustainable management of the environment around them.

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<sup>56</sup> Community Wildlife Service, <http://www.kws.org>

Another, project aimed at creating of funds for education purposes is the “*To Hell’s Gate on Wheelbarrow*” race through which KWS partners with corporate organizations for construction of an ultra modern education centre. Part of the funds has been used to purchase education equipment used to enhance the outreach program of KWS to communities.<sup>57</sup>

KWS officers and rangers normally undergo training where they learn among other things matters regarding the Criminal Procedure Code and other general laws<sup>58</sup>

This enables them to know how to help in the prosecution of those who do not abide by the laws or those who they suspect to have broken the law.

Hence another of their functions especially as regards enforcement is the right of an authorized wildlife officer to stop or detain any person whom he finds doing any act for which a license or permit is required and he has none. In such a scenario, the officer may arrest such a person.<sup>59</sup>

Further, if the officer has reasonable grounds to believe that a person has committed an offence under the Wildlife Act, he may inspect the goods in the person’s possession or order a search on the dwelling of the suspect. He may seize that which is connected to an offence under the act. However, in relation to inspection of a dwelling, a search warrant must be produced.

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<sup>57</sup> To Hell’s Gate on a Wheelbarrow, <http://www.kws.org>

<sup>58</sup> KWS law enforcement Academy, <http://www.kws.org>

<sup>59</sup> Wildlife(Conservation and Management) Act section 49(1)

He may also arrest and detain the suspect if he has reason to believe that they will abscond court during the reading of their charges.

Punishment under this statute is paltry as an offender is liable to pay a fine of 10,000 shillings or twelve months in prison or both. It is not deterrent enough as the benefits accrued from the offending activity far outweigh the punishment meted out for the offence.

### iii. Water Sector

The water sector is very important and management of water infrastructure and management of waste water are of priority.

Here are some water agencies that play a major role in water management in Kenya.

- Water Resources Management Authority

It is established by section 7 of the Water Act of 2002.

Some of its functions as outlined in section 8 of the Water Act include development of principles, guidelines and procedures for allocation of water resources.

It also monitors and enforces conditions attached to permits for water use and regulates and protects water resource quality from adverse impacts

It is also meant to liaise with other bodies for better regulation and management of water resources.

The authority may also with the consent of the Attorney General given under the Criminal Procedure Code undertake prosecution of any offences under the Water Act.



- **Water Services Regulatory Board**

It is established by section 46 of the Water Act.

Some of its functions include:

- Determining the standards for provision of water services to consumers
- Monitoring and regulating licensees and enforcing licence conditions
- Developing guidelines and providing advice on the operation of water services
- Promoting water conservation and demanding for management measures by the relevant stakeholders in the water sector
- Liaising with other bodies for better regulation and management of water services

The regulatory board may with the consent of the Attorney General prosecute offences made against the Water Act or arising from the performance of its functions.<sup>60</sup>

There are many bodies regulating the water sector under the water act and sometimes their functions overlap and this creates confusion as to who should do what. There is therefore need to sort this out so as to enhance capacity.

The new dispensation of devolution brought about by the constitution of Kenya 2010 will also play a big role in the enforcement of environmental laws by the various county governments. They also have a big role to play in the sustainable management of the environment. The decentralization of functions will make monitoring easier as it will be done from county to county.

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<sup>60</sup> Section 47(2) Water Act

Some of the functions devolved to the counties include:

- Control of air pollution, noise pollution, other public nuisances and outdoor advertising
- Implementation of specific national government policies on natural resources and environmental conservation, including—
  - (a) Soil and water conservation; and
  - (b) Forestry.

Water and sanitation services are also the mandate of the county government. In this way they will play a big role in environmental management.

Cooperation between the different lead agencies and NEMA will go a long way in wholesome management of the environment.

An **example** of the benefits of such cooperation can be seen in the recent seizure of illegal Ozone Depleting Substances (ODS) at Mombasa port due to **collaboration between NEMA and customs department**. Customs were doing a routine check to inspect whether the items in question were in accordance with NEMA regulations as regards export and import of ODS. The consignment was found to possess a banned CFC. The customs department then notified NEMA about this and NEMA subsequently carried out a verification exercise of the results of the customs department. It found the results.

It then ordered the offending company to re-ship at its own cost, the consignment to the country of origin and is considering revoking its license once the consignment is shipped

out.<sup>61</sup>

Another example is the **impounding by NEMA and KWS** of illegally harvested aloe species. The suspects were charged with accessing genetic material without a NEMA permit and attempting to export the same without a license from KWS. The two agencies worked on intelligence reports they had received as regards the illegal consignment.<sup>62</sup>

### 3.2 CIVIL SOCIETY ORGANISATIONS/ NON GOVERNMENTAL ORGANISATIONS

Civil Society Organizations also have a big role to play in the sustainable management of the environment. Their main roles are public awareness creation, advocacy and resource mobilization for environmental management.<sup>63</sup>

CSO's have played an important complimentary role in pursuing sustainable development since independence<sup>64</sup>

An area where these CSOs have been active especially the Kenyan ones is in the area of rural afforestation. A notable organization is the late Wangari Maathai's Green Belt Movement which played a major role in championing for the protection of Kenya's forests.

Her organization kept a check on the government in place which was then notorious for issuing land in forest areas or water towers to individuals.

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<sup>61</sup> NEMA publication for July to September 2012, Gerphus Opondo, Collaboration between NEMA and customs: illegal ODS seized at Mombasa port, pg 20

<sup>62</sup> NEMA publication for July to September 2012, Morton Saulo, NEMA and KWS impound illegal aloe species in Nairobi, pg 21

<sup>63</sup> NEMA Strategic Plan 2010-2013, pg. 44

<sup>64</sup> Benson Owuor Ochieng, Institutional Arrangements for Environmental Management in Kenya, chapter 7 Environmental Governance in Kenya pg 197

The organization also fought against encroachment into forests by citizens for agricultural purposes.

The Green Belt Movement has engaged in many programmes that raise awareness to the public and engage the public in environmental conservation activities. Some of their activities include, engaging in tree planting for watersheds, engaging in advocacy on climate change matters, and community empowerment.<sup>65</sup>

Many of the organizations have found their niches on various environmentally relevant initiatives and networks.<sup>66</sup>

Some like the **African Centre for Technology (ACTS)** have made significant contributions in promoting understanding of the role of science and technology in sustainable development policy.

Others like the **Resources Conflict Institute (RCI)** work in the arid and semi arid areas on resources related conflicts, livestock development and water conservation issues.

The **Institute for Law and Environmental Governance (ILEG)** was established to conduct policy research, advocacy and training with a view to generating new knowledge and influencing the development and implementation of appropriate laws and policies that support sustainable and equitable management of the environment and natural resources in Kenya.

It pioneered research and capacity development initiatives linking environmental management, governance and the search for sustainable development in Kenya.

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<sup>65</sup> <http://www.greenbeltmovement.org>

<sup>66</sup> Ibid. 26

Universities and national research institutes are also making important contributions as regards the environmental sector. Universities both public and private in Kenya have in their curricula environmental courses.<sup>67</sup>

The creation of the **Centre for Advanced Studies in Environmental Law and Policy (CASELAP)** is a joint initiative of University of Nairobi's School of Law and Institute of Development Studies.<sup>68</sup>

CASELAP offers an academic programme focused on environmental law, policy and diplomacy to promote scholarship and capacity building in environmental governance at both national and international levels<sup>69</sup>

International nonprofit organizations have also played a role in sustainable environment management in Kenya especially through advocacy and resources mobilization.

An example of such an organization is **USAID**<sup>70</sup>

**USAID's** environment and natural resource management program supports sustainable growth in three key sectors of the economy – tourism, forestry and agriculture – as well as through the global climate change initiative which supports adaptation, mitigation and clean/renewable energy.

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<sup>67</sup> Ibid. 26 pg 198

<sup>68</sup> Ibid. 29

<sup>69</sup> <http://www.caselap.uonbi.ac.ke>

<sup>70</sup> <http://www.usaid.org>

USAID's environment program invests in an array of 'tools and technologies' which improve natural resource management (NRM) while providing incentives for biodiversity conservation, addressing of climate change, and sustainable forest conservation through:

- i) reforms in policies, laws and regulations governing wildlife, forests and land management;
- ii) training and organizational development across the array of conservation and environmental management entities (Government of Kenya, NGOs and community groups);
- iii) conservation planning and ecosystem monitoring;
- iv) climate change adaptation and mitigation activities; and
- v) nature-based enterprises, including eco-tourism

In the **wildlife sector**, USAID collaborates with the Kenyan government, internationally and nationally renowned NGOs and community-based organizations (CBOs) to maintain wildlife migration corridors and dispersion areas. USAID works with the Kenya Wildlife Service (KWS), particularly to improve its revenue collection system and in the decentralization of wildlife management operations.

In the **forestry sector**, USAID is supporting the Kenyan government in protecting its valuable forests and promoting sustainable land use through activities such as:

- Technical assistance to the nascent Kenya Forest Service (KFS).
- Support to the Kenyan government's Task Force on the Conservation of the Mau Forest Complex

Other activities include; farm-forestry, carbon financing, support for Kenya's initiatives in Reducing Emissions from Deforestation and Forest Degradation (REDD+), reforestation of water catchments and forest-based tourism.

Another example is **DANIDA**.<sup>71</sup>

It plays a big role in Natural Resource Management in Kenya which has various components in it:

### **NATURAL RESOURCE MANAGEMENT PROGRAMME**<sup>72</sup>

Together with the Kenyan government, DANIDA has supported the National Resource Management Programme (NRMP) and contributes to sustainable management of Kenya's resources.

This programme is being implemented from 2010 to 2014 with a budget of 5.33 billion shillings. It has various components in it.

#### **i. Environmental Policy and Management**

The programme plans to support the policy, strategy and institutional frameworks for natural resources management the Ministry of Environment, NEMA and the now defunct Prime Officer's office in realizing the objectives of their strategic plans through joint financing of agreed elements of their annual work plans and budgets. The collaboration between DANIDA and the institutions in question is demand- driven and performance-based. This is meant to keep them in line and ensure they fully perform their functions under the agreement.

Under this component, there is further an environmental management sub- component which acknowledges the role of NEMA as the government agency with the role of

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<sup>71</sup> Danish International Development Agency

<sup>72</sup> <http://kenya.um.dk>

enhancing the quality of the environment through coordination and supervision of stakeholders for sustainable development.

The programme will therefore support NEMA's functions of enhancing environmental education, public participation and awareness, coordination of lead agencies and other stakeholders in environmental management, and strengthening NEMA's capacity to enforce its mandate.

**The programme pledges to donate 376.4 million shillings to NEMA for this.**

## ii. Arid Land Resource Management

The programme also plans to support improved natural resource management in Kenya's Arid and semi- arid lands. It aims to improve the livelihood of Kenyans living in such areas.

Special focus is paid to:

- Promoting, planning, coping and investment strategies for climate change adaptation by communities, private sector and government agencies
- Promoting renewable energy strategies and technologies that are affordable, practical and environmentally sustainable
- Promoting private sector involvement in productive investment opportunities

This project has a **budget of 2 billion shillings.**



**iii. Civil Society and Private Sector Management**

This component addresses the roles of civil society and private sector in natural resource management in order to underpin initiatives undertaken by the Kenyan government.

It also supports community based environment and natural resource management initiatives as well as private sector participation in providing investment services related to renewable energy, water and natural resources management.

This component is divided into two sub- components:

- **Community based** environment and natural resources management whose main function is to capacitate CSO's and local communities to support and influence natural resource management.
- **Private sector** participation in natural resource management whose aim is to support the private sector to provide services for investments in small scale management of water resources and renewable energy.

From the above it is clear that CSO's both national and international play an important role in environmental management.

Their initiatives have helped a great deal towards meeting perennial budgetary and human resource shortfalls that mar government institutions responsible for environmental management.<sup>73</sup>

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<sup>73</sup> Ibid. 26

### **3.3 PRIVATE SECTOR ROLE**

The involvement of the private sector in environmental management has not always been an encouraging one especially during prior years. This is partly because there was little appreciation of sustainability principles by businesses.<sup>74</sup>

The fact that laws were weak as far as regulation and compliance by the private sector was concerned. Sustainable management of environment was not top on the bucket list of most private enterprises. Profit came first at the expense of any other thing.

However, recent developments have pointed to great progress by the private sector as regards environmental management.<sup>75</sup>

The success of private enterprises is no longer calculated by the profits they make alone, matters like Corporate Social Responsibility have played a great role in encouraging the private sector fraternity to take more consideration of other factors one of them being the environment. Many private enterprises have started to support environmental projects in response to this corporate responsibility paradigm which is now a major agenda in the corporate world.

In Kenya, the private sector now plays an important role in sustainable environmental management.

The recent agreement by Kenya Association of Manufacturers (KAM) an NEMA to partner in environmental related issues shows the seriousness with which the private sector is approaching the environmental issue.

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<sup>74</sup> Ibid. 26 at pg 198

<sup>75</sup> Ibid. 38

KAM pledges to seek to inform and aid its members to know and to do what is expected of them as regards obedience to environmental policies, laws and regulations.<sup>76</sup>

NEMA has a *green list* where it acknowledges entities and companies in the private sector for the role they play in environmental management.

Contributions by some of these acknowledged entities are highlighted below:

**Safaricom**, a mobile service provider has played and continues to play a big role in sustainable energy management especially through provision of financial resources that go towards such efforts.

Through the Safaricom Foundation which directly sponsors community activities, projects and events that make positive contributions to Kenyans, the company has been able to fund the water sector and the environmental sector.

In **the water sector**, Safaricom recognizes the need to protect Kenya's water towers and seeks through its Water is Life programme to support projects that conserve water sources and explore new methods of harvesting rain and underground water.<sup>77</sup>

Safaricom has aided projects that drill and set up boreholes, purchase of water tanks to give to communities, in various parts of Kenya. They do this in partnership with organizations existing in the communities where they seek to give aid.

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<sup>76</sup>NEMA publication for July to September 2012, Jacqueline Marita NEMA to collaborate with the Kenya Association of Manufacturers in addressing environmental matters, pg 11

<sup>77</sup><http://www.safaricomfoundation.co.ke>

In the area of **environmental conservation**, Safaricom acknowledges the urgent need for intervention so as to restore balance within the environment and its eco-systems. The Millennium Development Goals as regards the environment call for ensuring environmental stability by increasing forest cover and protecting water catchment areas, among other actions.

The Foundation's support in environmental conservation entails supporting innovative community projects. Some of the projects the Foundation supports include protection and fencing of forests, tree planting, protection and conservation of wildlife, mitigation against human/wildlife conflict and community clean-up campaigns.<sup>78</sup>

Safaricom has partners in the environmental conservation area. Safaricom and its environmental conservation partners seek to save Kenya's wildlife, forests, water catchment areas, reduce poaching as well as clean-up campaigns within communities.

They engage in tree planting activities, sponsoring of environmental friendly waste management projects, supporting community led agro forestry projects, encouraging use of renewable sources of energy like biogas through sponsoring community projects that aim to do so and purchase of waste bins to help keep the environment clean.<sup>79</sup>

Safaricom also initiated an E-Waste recycling programme in collaboration with Waste Electrical and Electronic Equipment centre (WEEE)<sup>80</sup> in October 2012 which enables customers to deposit disused electronic equipment in any of the 36 Safaricom retail centers and offices countrywide. To sensitize citizens of this, it has put up the information

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<sup>78</sup> Ibid. 41

<sup>79</sup> Ibid. 41

<sup>80</sup> A WEEE centre was established in Kenya in 2008 with a view to provide e waste management services

on social media as well as carrying out of road shows to inform Kenyan's of the new initiative.<sup>81</sup>

Once this is done WEEE will then collect the equipment from Safaricom, disassemble the gadgets and use what can be recycled locally to make plastic chairs and poles. What cannot be recycled locally will be shipped out of the country to other partners to be disposed of in an environmental friendly way.<sup>82</sup>

This is a good idea as it supplements NEMA's initiative to dispose E-Waste in an environmental friendly manner. NEMA also has an E-Waste management programme.

Safaricom has also unveiled a sustainability report one of whose 8 pillars is environmental impact. This is in line with Global Reporting Initiative (GRI)<sup>83</sup> and in line with requirements set by **the UN Global Compact**.<sup>84</sup> In this report it makes a pledge to safeguard the environment for future generations.

Another private entity worth noting is the **East Africa Breweries Limited (EABL)** which is a manufacturer of major beer brands in Kenya. It has a foundation which has water and environment as some of its focus areas.

In the area of **water**, the foundation responds to the needs of very many people in Kenya who lack access to safe water for drinking and domestic use. In response to this the EABL foundation has teamed up with various agencies in the provision of safe, reliable

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<sup>81</sup> <http://www.safaricom.co.ke>

<sup>82</sup> Ibid. 45

<sup>83</sup> A nonprofit organization that promotes economic, environmental and social sustainability by providing all companies and organizations with a comprehensive sustainability reporting framework that is widely used around the world.

<sup>84</sup> An initiative that encourages businesses around the world to adopt sustainable and socially responsible policies, and to report on their implementation. It has the environment as one of its 10 principles.

and sustainable water to supply communities living in the Water of Life Programme support projects that help combat water poverty by improving access to clean drinking water and sanitation. They have invested in water projects that have had a positive impact on thousands of people by reducing the incidence of water borne diseases.<sup>85</sup>

According to EABL 1.5 million people in Kenya have benefitted from this programme.

As regards **the environment**, EABL's involvement through its foundation includes the participation of employees, other corporate bodies, government bodies and the communities around the areas that need help as well as the public at large.

EABL as a company seeks to achieve continuous improvement in environmental performance by concentrating their efforts on areas that have a great impact in their manufacturing and distribution points. They have therefore invested in the construction of effluent treatment plants in their plants in Kenya.

Further, as part of its environment agenda, the company has a staff- driven programme called the E-Green Team that is specifically focused on environmental conservation through tree planting.<sup>86</sup>

This provides an opportunity for the staff to own, develop and manage a key area in the company's social responsibility agenda. The team plants indigenous trees in areas where deforestation is evident. They also engage in education of the community as to the importance of trees and the need for their preservation.<sup>87</sup>

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<sup>85</sup> <http://www.eabl.foundation.com>

<sup>86</sup> Ibid. 44

<sup>87</sup> Ibid. 44

Another notable contributor is **Nakumatt Supermarkets**, whose most notable contribution is the *Think Green Go Blue campaign* unveiled in 2007 which encourages the use of reusable bags by shoppers as opposed to the plastic ones which take long to decompose and have a detrimental effect on the environment.

Nakumatt has also engaged in tree planting campaigns as well as funding the Nairobi City Council bins project which aims to ensure that there are bins in every part of the city to avoid dumping.

### **3.4 ROLE OF THE PUBLIC**

The public have an important role to play in environmental management. This is because they are the ones most affected where there is environmental degradation. Further, the fact that most Kenyans rely on natural resources as a source of their livelihood further alleviates the need for sustainable management of the environment.

Their **foremost role** is that of **obeying and complying** with environmental laws in place as it is for their benefit. However, for them to comply there is need for education on the part of the enforcement agency to ensure that the public are aware of the laws governing them and the importance of obeying them.

**Secondly**, by virtue of section 3(1) of the EMCA, every Kenyan is entitled to a clean and healthy environment and has the duty to safeguard and enhance the environment. The same is echoed in article 70(1) of the constitution of Kenya.

When an individual feels that his right to a clean and healthy environment has been infringed, violated or about to be violated, he has the right by virtue of the above statutes to seek redress in a competent court of law. With the establishment of the Land and Environment court which has the status of the High Court, the claimant may seek redress there and according to the merits of the case, the court will decide accordingly. Thus citizens may play a role in environmental management through this way.

Further, citizens may also report to NEMA when they witness that acts that threaten the environment are being undertaken. Once they report to NEMA then NEMA as the enforcement agency will act accordingly.

**Thirdly** the public may participate in environmental management by engaging themselves at the local community level in community based projects that are aimed at encouraging sustainable development of the environment. This will go a long way in sustaining the environment.



## CHAPTER 4

### 4.0 RECOMMENDATIONS AND CONCLUSION

Below are some of the factors that NEMA should consider in building and improving of its enforcement capacity:

#### Alternative Sources of Funds

NEMA mostly relies on the government for its funding. However, this funding is rarely enough to meet all their costs. Some of the challenges it faces are lack of personnel, lack of infrastructure for example cars, labs, and lack of financial resources to run their daily activities efficiently.

They should therefore seek alternative sources of funding to supplement that which they get from the government.

They can do this through **lobbying** for funds from both Civil Society Organizations whether Kenyan or international. They may also **seek grants** as a way to increase their finances.

They may also **partner** with other organizations and companies in the private sector that deal with environmental management or those that are seeking to engage in environmental initiatives even though they are not environmental agencies.

They should especially seek partnership with international environmental organizations like UNEP, IUCN who will play a big role especially in resource mobilization and advocacy as well as education of the public.

**Lobby for Environmental Studies to be Included in School Curricula**

NEMA in a bid to improve its capacity especially as regards education and awareness of the public may lobby to have environmental studies incorporated in the school curriculum in Kenya which should start from the lower primary level right to the institutions of higher learning such that the importance of sustainable management of the environment is inculcated in Kenyans all through their life.

Further, with the new counties in place, NEMA officers at the county level with the help of the county environmental committee may hold symposiums whereby they invite schools and colleges and universities in the county in which they are posted and encourage them to participate in environmental activities as well as raise awareness by acting as environmental ambassadors.

**Include Traditional Knowledge of environmental management in its enforcement strategies**

“Concern as regards the environment in Kenya dates back to the pre-colonial times. The cultures and traditions of these communities were replete and still are with important rules as regards ecological stewardship and protection of natural resources.

These rules were enforced by various institutions at different levels of the community organization starting with the individual family clan and tribe.

The council of elders in these communities played a huge role in so far as allocation and use of natural resources was concerned. They paid attention to indicators of biodiversity

and resource sustainability as they deliberated on resource use, making sure the ecosystem on which the community depended on was in a good state.

The elders exercised oversight on compliance with rules regarding to resource extraction and use. This was so especially with common or shared resources.”<sup>88</sup>

It is thus clear that these traditional institutions provided and may still provide today important mechanisms for formulating and enforcing the elaborate rules and customs relating to the environment.

Even though the role of council of elders is very minimal now due to other formal sources of enforcement, they are still respected within their communities and may be used in the enforcement of environmental laws through their traditional knowledge.

The importance of traditional knowledge in environmental management is acknowledged by **article 69(c) of the constitution** which states that the state shall protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities.

NEMA can therefore engage indigenous knowledge in environmental management by working closely with community elders who are conversant with these practices and encouraging them to impart those practices to other community members.

### **Develop Other Enforcement Modes apart from the ones in place**

NEMA uses **negotiated compliance** as its main mode of enforcement whereby it first starts by educating the stakeholders of the law in question and what to do so as to abide by it, if a violation is done, they issue a warning, if warning is not heeded they issue a

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<sup>88</sup> Ibid. 26 at pg. 195-196

restoration order and if the offender does not heed to it then they resort to criminal prosecution.

The problem with criminal prosecutions is that they take too long to be completed and may be of no use when judgment is made. Further, the punishments meted out in relation to some of the environmental offences are not proportionate to the harm done such that the benefits accrued from the offence in question far outweigh the effects of the punishment meted out.

Thus, NEMA should seek other sources of enforcement other than the one they constantly use.

One would be the use of **incentive measures** whereby tax incentives to induce or promote the proper management of the environment and natural resources or the prevention or abatement of environmental degradation. This is provided for under section 57 of the EMCA which states that tax and other fiscal incentives, disincentives or fees to induce or promote the proper management of the environment and natural resources.

This may be through:

i) Customs and excise waiver in respect of imported capital goods which prevent or substantially reduce environmental degradation caused by an undertaking;

ii) Tax rebates to industries or other establishments that invest in plants, equipment and machinery for pollution control, re-cycling of wastes, water harvesting and conservation, prevention of floods and for using other energy resources as substitutes for hydrocarbons;

iii) Tax disincentives to deter bad environmental behavior that leads to depletion of environmental resources or that cause pollution

iv) User fees to ensure that those who use environmental resources pay proper value for the utilization of such resources

NEMA had put up a proposal to the ministry of finance about the use of incentives as a way to encourage compliance, but it stalled at the treasury level as the government was not ready to reduce taxes which form a significant source of government revenue.

If approved, this would go a long way in sustainable environment management as well as enhancing Clean Development Mechanism.

#### **4.2 Conclusion**

NEMA's role in the sustainable management of the environment is inarguably one that cannot be taken for granted. Its contributions towards environmental management have been significant ever since it was established as it has made the public at large more aware of the importance of safeguarding the environment.

It has also acted as a watchdog for the environment to make sure that projects that have a detrimental effect on the environment are not carried out.

Its supervisory role over other government agencies that deal with environmental aspects means that NEMA's capacity should be at all times at a level that allows it to carry out its functions efficiently and expediently.

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