

# THE ROLE OF NEMA IN ENFORCING STANDARDS FOR SUSTAINABLE REAL ESTATE DEVELOPMENT IN KENYA

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INFRASTRUCTURE AND FINANCE CONFERENCE ON 8<sup>TH</sup> TO 10<sup>TH</sup> JULY 2015 AT  
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BY

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*Seminar Theme: The Eastern Africa Real Estate Development and Finance*



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# Introduction

National Environment Management Authority was established in 2002 with the main mandate of:

1. Coordinating and supervising matters relating to environment.
2. Implementing Government policies relating to environment.

These are the main entry points for NEMA in regulating the real estate development Kenya. It is notable here that Real estate development is a leading consumer of Environmental Assets



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# The Presentation Highlights

- General environmental challenges facing Kenya
- Environmental challenges associated with the Real Estate development and Infrastructure
- Effects of Real estate Developments and infrastructure on environment in Kenya
- Introduction to the provisions of the Constitution of Kenya and Environmental Management and Co-ordination Act (EMCA) 1999
- key policies, legislations, guidelines, standards and regulations relevant for sustainable real estate development in Kenya
- Operational framework and environmental licensing regimes currently in place in NEMA.



# Environmental challenges facing Kenya

- Kenya is facing a myriad of environmental challenges including but not limited to the following:
  - Huge demand on environmental resources – Agriculture, Manufacturing, Transport and communication, Construction, Energy, etc. This is expected to increase as the population increases- projected to hit 70Million by 2030 (15 years away
  - Widespread Poverty estimated 46.6% of the population- and it's correlation with environmental degradation (charcoal burning, diminishing bio-diversity, conflicts etc)
  - Climate Change and its impact on Agriculture and food security, water resources, human settlement, health, infrastructure etc



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# Environmental challenges in the Real Estate developments

- Rural -urban Nexus
  - There are lots of change of use of rural/agricultural land into “urban settlement” – Technically know as urban sprawl under Mixed Urban Development (MUD) Programs all over the country- Longonot gate, Migaa, Tatu City, Thika Greens, Two Rivers, Sergoit e.t.c
  - Challenges are:
    - a. How to stop environmental degradation while allowing this necessary development-Maintain “ruralness” in urban setup? Where is the balance?
    - b. What Green technologies can we embrace in order to make development sustainable?



# More Environmental challenges in the Real Estate development

- Urban populations Increase.

In 2011, the urban population was estimated at below 30% about 12Million (70% living in slums). This is projected to rapidly grow to 50% by 2030 or a population of 35 Million souls.

## -Key challenges

- a. More pressure on land, need for more; roads, housing, energy, water, waste water management, solid waste management, Health facilities
- b. Cultural conflicts, increased insecurity, disease outbreaks etc

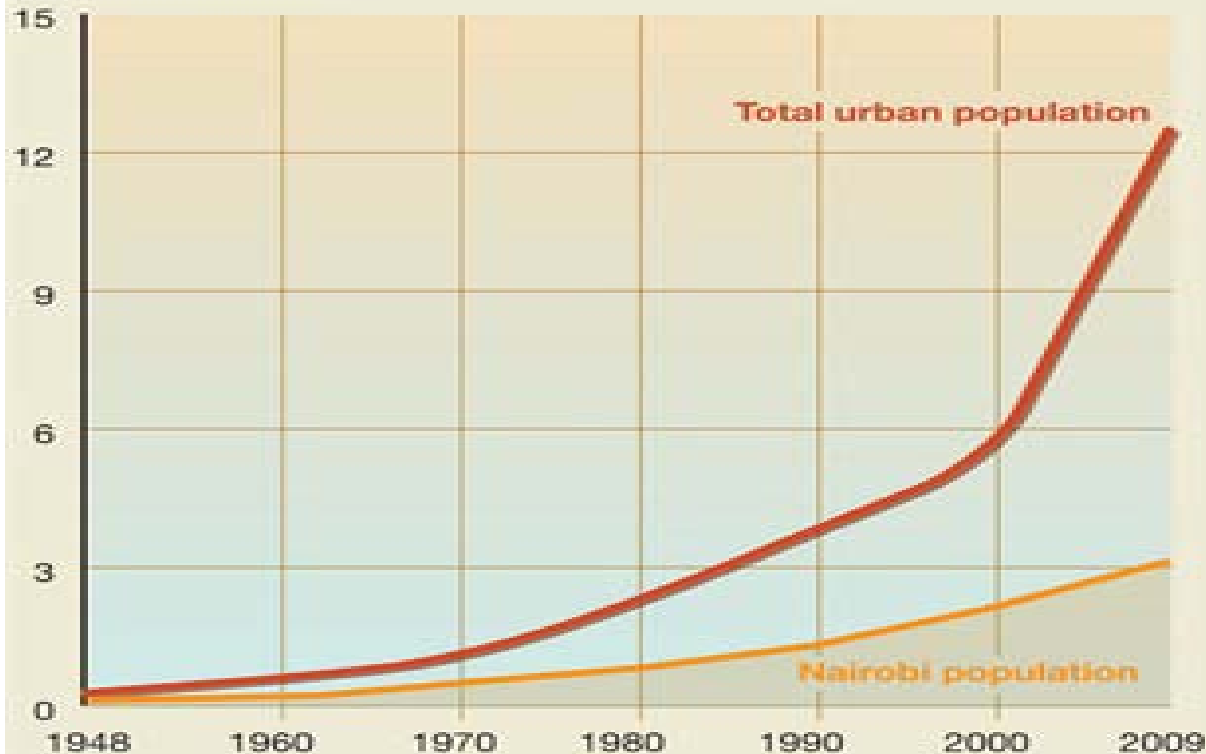


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# Urban Population Trends

## Urban population trends, Kenya and Nairobi

Million inhabitants



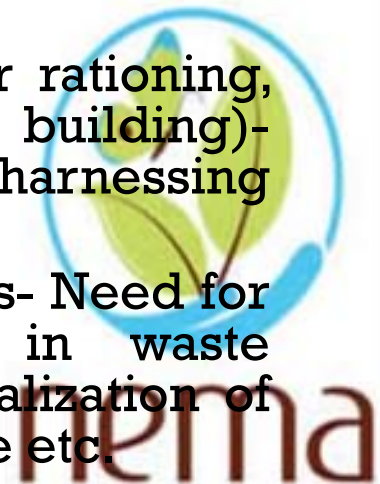
Source: Kenya Population Census, various years.



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# Effects of Real Estate Development and Infrastructure on Environment

- **Demand for more infrastructure and transport systems** –Mombasa Road nightmare!! Its already here-Need for more investments in infrastructure and alternative mass transport systems-strain on government resources (SGR)-More Taxation on the citizens
- **Value of land** -It is increasing in urban areas while soils are being depleted in farmlands-Need for a plan to decongest cities; Need policies to ensure availability of land for development
- **Higher demand for Energy** – Need for Clean energy, Efficient distributions etc –green building concepts in real estate development.
- **Water availability-** Quality and Quantity-Water rationing, Higher demand for boreholes (almost in every building)-Need embrace Water Re-cycling and water harnessing methods and other green technologies.
- **Waste management** –Waste streams and its uses- Need for Reduce, Reuse, Recycle and other “Rs” in waste management, waste segregation and commercialization of waste products, energy Co-generation from waste etc.





# Effects of Real Estate Development and Infrastructure on Environment

- **Increasing Depletion of resources;** More steel, more energy, more timber, more cement, more quarries etc.–Need for alternative technologies
- **Pollution and Climate Change** -Increased carbon emission- Use of cement, based products-Need for green building designs , National reward and section strategy on developments
- **Loss of biodiversity:** capacity for food generation and long-term resilience challenges. Resorts are replacing farmland- Thika greens, Tatu city, Migaa, Vipingo ridge etc
- **Natural resource flow** -What are the alternative technologies? Can we embrace it? What policies and regulations should be in place? Who should absorb the costs associated with alternative technologies? Is it the Developers?, Governments?, Scare resourced Authorities? Real estate developers and institutions like ISK need to spear head a process towards embracing the use of alternative technologies in the real estate Sector.
- NEMA is always ready to guide in such endeavours.



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# **The Constitution of Kenya, Environmental Laws and Regulations**

- The aim of any good law and regulation is to promote sustainable management and use of the Physical, Cultural, and environmental assets at community, county and national level.
- To ensure success in any regulation, stakeholder involvement is mandatory under a term known as “Public participation” which is enshrined in the Constitution.
- The Constitution of Kenya recognizes the importance of the environment from the spirit of the preamble, Article 10, 42, 69 and 70 on environment.
- Bill of Rights provides all citizens of Kenya with right to clean and health environment
- All laws have been aligned to the constitution.



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# **The Role of NEMA in enforcing standards for sustainable Real Estate development**

NEMA is the National Authority charged with the responsibility of enforcing laws as defined under EMCA 1999 and its subsequent regulations.

## Pre- EMCA 1999 Period

- Pre-EMCA era: e.g.. Public Health Act, Penal Code, Agriculture Act, etc.
- 1972 – United Nations Conference on the Human Environment (UNCHE) in Stockholm
- 1992-United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro



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# **Journey through Policies and Framework Law**

- RIO Conference adopted Agenda 21 - action plan for countries to implement recommendations of the Conference.
- Sessional Paper No. 6 of 1999 on Environment and Development.
- The Environmental Management and Coordination Act, 1999 (EMCA).
- Constitution of Kenya, 2010.
- Vision 2030.
- Bill of Rights –The right to clean and healthy environment



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# **Institutional Framework under EMCA 1999**

- The National Environment Management Authority (NEMA). *Sec. 7 to Sec 9 sets out the objects and the functions of the Authority respectively.*
- National Environment Council (NEC). Sec . 4
- Lead agencies and other stakeholders – County Environment Committees Sec. 29
- Public Complaints Committee (PCC). Sec 31.
- Technical Advisory Committee (TAC). Sec 61
- Standards and Enforcement Review Committee (SERC). Sec. 70.
- National Environment Tribunal (NET). Sec 125.
- National Environment Trust Fund. Sec 24.
- National Environment Action Planning Committee. Sec 37 EMCA.



# Gazetted Regulations & Licensing Regimes

No.	Regulation	Licenses Issued
1.	Environmental impact Assessment and Audit regulations, 2003	<ul style="list-style-type: none"> <li>- EIA License</li> <li>- EIA/EA Experts Licenses/ Certificates</li> <li>- EA Improvement Order Notice</li> </ul>
2.	Waste Management Regulations, 2006	<ul style="list-style-type: none"> <li>- Waste Transport License</li> <li>- License to Operate a Disposal Site/ Treatment Plant</li> <li>- License to Operate Incinerator/ Recyclers</li> </ul>
3.	Water Quality Regulations, 2006	Effluent Discharge License (for 9 specific sectors)
4.	Conservation of Biological Diversity and Resources, Access to Genetic Resources & Benefit Sharing Regulations, 2006	Access to Genetic Resource Permit
5.	Controlled Substances Regulations, 2007	Permit to Transport Hazardous Materials
6.	Wetlands, Riverbanks, Lakeshore and Seashore Management Regulations, 2009	Resource Use Permit
7.	Noise and Excessive Vibrations Pollution Control Regulations, 2009	<ul style="list-style-type: none"> <li>-Excessive Noise and Vibration License</li> <li>-Permit for Excessive Vibrations</li> </ul>
8.	The Environmental Management and Co-ordination (Air Quality Standards) Regulation, 2014	Air Quality Standard License

# Regulations Pending gazettelement

- The Environmental Management and Co-ordination (Chemical management) Regulations



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# Key Regulations enforceable in the Real Estate Development

## 1. **Environmental Impact Assessment and Audit Regulation of 2003**

Outlines the processes and procedures for an EIA license from:

- Application
- Processing
- Grant
- Transfer
- Revocation
- Suspension
- To Cancellation

## 2. **Environmental Audit & Monitoring**

Outlines the:

- Powers of NEMA with respect to environmental Audits.
- Duty of owners of premises to present Environmental Audits regularly.
- Role of NEMA and Lead Agencies with respect to Environmental Monitoring.



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# Key Regulations enforceable in the Real Estate Development

## 3. Waste Management Regulations, 2006

- Waste Transport License

## 4. Noise and Excessive Vibrations Pollution Control Regulations, 2009

- Permit for Excessive Vibrations

## 5. Water quality regulations



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## Other Relevant Sectoral Statutes

- **Water Act, 2002.**
- **Physical Planning Act (CAP 286).**
- **Land Laws.**
- **Occupational Health and Safety Act, 2007**



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# Aligning EMCA to the Constitution

- Revised EMCA has been aligned to the provision of the Constitution.
- County Environment offices-47 Counties



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# **Decentralization of Licensing Regimes to The Counties to enhance service delivery**

Exercise commenced from 1st July 2012

The EIA for low impact projects are submitted and processed at respective County Offices under the supervision of County Director of Environment.

Gazette notice was issued on the affected facilities and regulations

NEMA is represented in all 47 Counties of Kenya



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# Way Forward

There is need for;

- Sustainable development in all aspects especially in real estate Infrastructure development in Kenya
- Robust Environmental laws to cushion against the discussed environmental challenges
- Need for Stakeholder involvement and Public participation-with ISK and other institutions of good-will to enhance awareness, inclusivity and ownership of matters environment.
- Harsher Penalties to be meted against environmental offenders- Polluter pays principle.
- Consistency , transparency, targeted and proportional approaches in enforcement of environmental laws and regulation
- Implementation of the Constitution from the spirit of the preamble, Article, 10, 42, 69 and 70 on environment by all stakeholders



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# Conclusion

- ISK is a major player in the Real Estate Infrastructure Development and Financing in Kenya and East Africa Region.
- Real Estate developers and developments play an important role in environmental management,
- There is therefore need for collaboration between NEMA and ISK in areas such as awareness creation to institute members, developers, Architects, estate agents, risk assessors, economists
- Sustainable development is not business as usual anymore, sustainability is transformative. It calls for a radical shift of all Kenyans and particularly the Real Estate developers. It will cost us dearly if we do nothing.



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**THANK YOU**



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