

**Legal Aspects of Strategic Environmental  
Assessment and Environmental  
Management**

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**Abstract**

*This discussion mainly focuses on the legal aspects of Strategic Environmental Assessment (SEA) with particular reference to the international legal framework on environmental management and Kenya's legal and regulatory framework on environmental management. The same has been motivated by the debate on whether SEA should be founded in legislation or left as a non-statutory administrative tool. It therefore seeks to establish the position on the ground especially with reference to Kenya.*

**1. Introduction**

Strategic Environmental Assessment (SEA) has been hailed as a key means of integrating environmental and social considerations into policies, plans and programs, particularly in sector decision-making and reform, and the World has even demonstrated its commitment to promoting the use of SEA as a tool for sustainable development.<sup>1</sup> Notably, since the inception of SEA in the early 1990s, it has globally received adoption for environmental assessment of strategic decisions – Policies, Plans and Programs, (PPPs).<sup>2</sup> However, one of the contentious issues in SEA amongst environmental law scholars is whether it should be founded in legislation or left as a non-statutory administrative tool.<sup>3</sup> Despite this lack of common ground on the legal status of SEA, many developed and developing countries have either national legislative or other provisions for SEA, *e.g.* statutory instruments, cabinet and ministerial decisions, circulars and advice notes.<sup>4</sup>

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<sup>1</sup> The World Bank, 'Strategic Environmental Assessment,' September 10, 2013, available at <http://www.worldbank.org/en/topic/environment/brief/strategic-environmental-assessment> [Accessed on 25/11/2016].

<sup>2</sup> Mutui, F.N., 'The Development and Practice of Strategic Environmental Assessment (Sea) In Kenya,' *European Scientific Journal*, October 2013, vol.9, No.29, pp. 165-185, p. 166.

<sup>3</sup> Brown, A.L. & Thérivel, R., 'Effective methodologies: Principles to guide the development of strategic environmental assessment methodology,' *Impact Assessment and Project Appraisal*, vol. 18, No. 3, September 2000, pp. 183–189, at p. 184.

<sup>4</sup> Organisation for Economic Co-Operation and Development, 'Applying Strategic Environmental: Assessment Good Practice Guidance for Development Co-Operation,' *DAC Guidelines and Reference Series*, 2006, p.25. Available at <http://www.oecd.org/environment/environment-development/37353858.pdf> [Accessed on 25/11/2016].

It is also noteworthy that increasingly, developing countries are introducing legislation or regulations to undertake SEA – sometimes in EIA laws and sometimes in natural resource or sectors laws and regulations.<sup>5</sup> This development illustrates the fact that SEA has become an important part of both international and domestic legal framework on environmental management. This paper examines the legal aspects of SEA and environmental management and highlights the prominent provisions from both international and domestic environmental law framework.

### **2. Strategic Environmental Assessment- A Definition**

One of the conceptual definitions of SEA is a process directed at providing the proponent (during policy formulation) and the decision-maker (at the point of policy approval) with a holistic understanding of the environmental and social implications of the policy proposal, expanding the focus well beyond the issues that were the original driving force for new policy.<sup>6</sup>

The *Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context* defines strategic environmental assessment to mean the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.<sup>7</sup>

Thus, it may be said that Strategic environment assessment is all about ensuring that public policy, programmes and plans are compliant with sound environmental management.

### **3. Locating Strategic Environmental Assessment Within the Environmental Assessment Continuum**

Environmental Impact Assessment (EIA) is one of the tools for environmental management, a procedure for evaluating the likely impact of a proposed activity on the environment. Its object is to provide decision-makers with information about the possible effects of a project before authorizing it to proceed.<sup>8</sup> It can be defined as a process which

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<sup>5</sup> Ibid, p.25.

<sup>6</sup> Brown, A.L. & Thérivel, R., 'Effective methodologies: Principles to guide the development of strategic environmental assessment methodology,' op cit, at p. 184.

<sup>7</sup> United Nations Economic Commission for Europe, *Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context*, Art. 2(6). Available at [https://treaties.un.org/doc/source/RecentTexts/27\\_4bE.pdf](https://treaties.un.org/doc/source/RecentTexts/27_4bE.pdf)

<sup>8</sup> Birnie, P. & Boyle, A., *International Law and the Environment*, (2<sup>nd</sup> ed., Oxford University Press, 2002), p.131-132.

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produces a written statement to be used to guide decision-making, which provides decision-makers with information on the environmental consequences of proposed activities, programmes, policies and their alternatives; requires decisions to be influenced by that information and ensures participation of potentially affected persons in the decision-making process.<sup>9</sup>

The need for EIA was succinctly expressed in Principle 17 of the *1992 Rio Declaration on Environment and Development* which affords the strongest evidence of international support for EIA in the following terms;<sup>10</sup>

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

It has been argued that since policies, plans and programmes (PPPs)<sup>11</sup> are more “strategic” as they determine the general direction or approach to be followed towards broad goals, SEA is applied to these more strategic levels while Environmental Impact Assessment (EIA) is used on projects that put PPPs into tangible effect.<sup>12</sup> Strategic environmental assessment (SEA) is undertaken much earlier in the decision-making process than project environmental impact assessment (EIA).<sup>13</sup> However, SEA is not a substitute for EIA or other forms of environmental assessment, and should be seen as a complementary process and one of the integral parts of a comprehensive environmental assessment tool box.<sup>14</sup> In the *Gabcikovo-Nagymaros Case*<sup>15</sup> it had

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<sup>9</sup> Sands, P., *Principles of International Environmental Law*, (2<sup>nd</sup> edn, Cambridge University Press, 2003), pp.799-800

<sup>10</sup> 1992 *Rio Declaration on Environment and Development*, UN Doc. A/CONF.151/26 (vol. I) / 31 ILM 874 (1992)

<sup>11</sup> Policy has been defined as a general course of action or proposed overall direction that a government is or will be pursuing and that guides ongoing decision making; Plan is defined as a purposeful forward looking strategy or design, often with co-ordinated priorities, options and measures that elaborate and implement policy; and Programme is defined as a coherent, organised agenda or schedule of commitments, proposals, instruments and/or activities that elaborate and implement policy. (Organisation for Economic Co-Operation and Development, ‘Applying Strategic Environmental: Assessment Good Practice Guidance for Development Co-Operation,’ *DAC Guidelines and Reference Series*, 2006, p.31.)

<sup>12</sup> Organisation for Economic Co-Operation and Development, ‘Applying Strategic Environmental: Assessment Good Practice Guidance for Development Co-Operation,’ *DAC Guidelines and Reference Series*, 2006, pp. 30-31. Available at <http://www.oecd.org/environment/environment-development/37353858.pdf> [Accessed on 25/11/2016].

<sup>13</sup> United Nations Economic Commission for Europe, ‘Introduction,’ available at [http://www.unece.org/env/eia/sea\\_protocol.html](http://www.unece.org/env/eia/sea_protocol.html) [Accessed on 25/11/2016].

<sup>14</sup> Organisation for Economic Co-Operation and Development, ‘Applying Strategic Environmental: Assessment Good Practice Guidance for Development Co-Operation,’ *DAC Guidelines and Reference Series*, 2006, op cit., p. 32.

<sup>15</sup> *Ibid.* ICJ Rep. (1997),7

been alleged that an adequate EIA had not been carried out before proceeding with a hydro-electric project. The Court's view was that EIA is a continuum which will operate throughout the life of a project.

Thus, whereas EIA concerns itself with the biophysical impacts of proposals only (e.g. effects on air, water, flora and fauna, noise levels, climate etc), SEA and integrated impact assessment analyze a range of impact types including social, health and economic aspects.

#### **4. Need for Strategic Environmental Assessment**

SEA is believed to provide the potential to incorporate new objectives and constraints in policy formulation, the substitution of alternative objectives, policy instruments and implementation strategies, and the identification, clarification and resolution of conflicts, compromises and interlinkages.<sup>16</sup> Further, it provides an opportunity to internalize externalities often not adequately considered in much sectoral policy formulation and decision-making.<sup>17</sup> Thus, the intention of SEA is moving policy (and PPP generally) towards sustainable outcomes.<sup>18</sup>

Overall, it is arguable that the main rationale for applying SEA is to help create a better environment through informed and sustainable decision making.<sup>19</sup> Further, SEA helps to ensure that many of the environmental issues of global importance are considered in policies, plans and programmes at different administrative levels (i.e. national, regional, local).<sup>20</sup>

### **5. Legal Framework for Strategic Environmental Assessment**

#### **5.1 International Legal Framework for Strategic Environmental Assessment**

##### **a. Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context**

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<sup>16</sup> Brown, A.L. & Thérivel, R., 'Effective methodologies: Principles to guide the development of strategic environmental assessment methodology,' op cit., at p. 184.

<sup>17</sup> Ibid, p.84.

<sup>18</sup> Ibid, p.84.

<sup>19</sup> Fischer, T.B., 'Strategic environmental assessment in post-modern times,' *Environmental Impact Assessment Review*, Vol.23, 2003, pp.155–170 at p. 162.

<sup>20</sup> Ibid, p. 162.

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Article 1 thereof provides that the objective of this Protocol is to provide for a high level of protection of the environment, including health, by: (a) Ensuring that environmental, including health, considerations are thoroughly taken into account in the development of plans and programmes; (b) Contributing to the consideration of environmental, including health, concerns in the preparation of policies and legislation; (c) Establishing clear, transparent and effective procedures for strategic environmental assessment; (d) Providing for public participation in strategic environmental assessment; and (e) Integrating by these means environmental, including health, concerns into measures and instruments designed to further sustainable development.

Article 3(1) also makes it clear that each Party should take the necessary legislative, regulatory and other appropriate measures to implement the provisions of this Protocol within a clear, transparent framework.

Article 4 thereof specifically defines the field of application concerning plans and programmes and provides that each Party should ensure that a strategic environmental assessment is carried out for plans and programmes referred to in paragraphs 2, 3 and 4 which are likely to have significant environmental, including health, effects.<sup>21</sup>

Article 8 thereof also calls for early, timely and effective opportunities for public participation, when all options are open, in the strategic environmental assessment of plans and programmes.

### **b. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention), 1998**

The Aarhus Convention provides that each Party should make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes

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<sup>21</sup> 2. A strategic environmental assessment shall be carried out for plans and programmes which are prepared for agriculture, forestry, fisheries, energy, industry including mining, transport, regional development, waste management, water management, telecommunications, tourism, town and country planning or land use, and which set the framework for future development consent for projects listed in annex I and any other project listed in annex II that requires an environmental impact assessment under national legislation.

3. For plans and programmes other than those subject to paragraph 2 which set the framework for future development consent of projects, a strategic environmental assessment shall be carried out where a Party so determines according to article 5, paragraph 1.

4. For plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and for minor modifications to plans and programmes referred to in paragraph 2, a strategic environmental assessment shall be carried out only where a Party so determines according to article 5, paragraph 1.

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relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. To the extent appropriate, each Party should endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.<sup>22</sup>

This Convention affirms the central role of the principle of public participation in SEA.

### **c. The Convention on Biological Diversity**

Article 6b of the *Convention on Biological Diversity* provides that each Contracting Party should, in accordance with its particular conditions and capabilities, inter alia, integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

Article 14 (1) (b) thereof also provides that each Contracting Party, as far as possible and as appropriate, should, inter alia, introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account.

## **5.2 National Legal framework for Strategic Environmental Assessment: Kenya**

It has been posited that the establishment of Strategic Environmental Assessment (SEA) in Kenya was ostensibly in recognition of the fact that the existing Environmental Impact Assessment (EIA) tool was unable to respond to environmental integration needs at strategic levels of decision-making.<sup>23</sup>

### **a. Constitution of Kenya 2010**

Before the promulgation of the current Constitution of Kenya 2010, there was little or inadequate formal and systematic integration of environmental considerations into Kenya's decision-making for developmental activities was generally. Notably, the Constitution treats environmental matters as central to decision-making processes especially with regard to the national development agenda. This is in line with the global environmental agenda of promoting

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<sup>22</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Art. 7.

<sup>23</sup> Mutui, F.N., 'The Development and Practice of Strategic Environmental Assessment (Sea) In Kenya,' op cit, p. 166.

sustainable development in all spheres of development. Most of the post-Constitution 2010 policies and legislation on environment are required to incorporate the Constitutional provisions.

The Constitution of Kenya 2010 saw a paradigm shift in environmental management in Kenya by dedicating substantive provisions on the conservation and management of the environment and natural resources in Kenya. To begin with, there is the preambular declaration which partly affirms the people's respect of the environment, being their heritage, and the determination to sustain it for the benefit of future generations. One of the national values and principles of governance as outlined in the Constitution is sustainable development.<sup>24</sup> The values and principles of governance are to bind all State organs, State officers, public officers and all persons whenever any of them—applies or interprets this Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions.<sup>25</sup>

Sustainable development encompasses social, economic and environmental management, amongst other elements and the import of the foregoing values and principles is that environmental considerations must be central to enactment, application or interpretation of any law; or making or implementation of public policy decisions. It has been pointed out that, applied as a systematic process, SEA leads to more pro-active decision making in support of sustainable development, ensuring that ethical principles are considered in policy, plan and programme making and different paths on how to achieve overall goals and objectives can be mapped out.<sup>26</sup> Furthermore, it is noteworthy that over the past decade, an important rationale for applying SEA has been planning for sustainable development.<sup>27</sup> Besides considering environmental and socio-economic aspects and pro-active objectives-led decision making, this also includes the consideration of the quality of life of future generations.<sup>28</sup>

This, therefore, means that SEA finds its way in some of these governance decisions and it becomes an indispensable part of these processes, considering that it concerns itself with public programmes, plans and policies.

Art. 42 thereof provides for the right of every person to a clean and healthy environment, which includes the right— (a) to have the environment protected for the benefit of present and

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<sup>24</sup> Constitution of Kenya 2010, Art. 10(2) (c).

<sup>25</sup> Ibid, Art. 10(1).

<sup>26</sup> Fischer, T.B., 'Strategic environmental assessment in post-modern times,' op cit, at p. 163.

<sup>27</sup> Ibid, p. 163.

<sup>28</sup> Ibid, p. 163.

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future generations through legislative and other measures, particularly those contemplated in Article 69; and (b) to have obligations relating to the environment fulfilled under Article 70. SEA is one of the tools to be used for the protection of the environment.

Of particular relevance to this discussion are the State obligations to, inter alia—(a) ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources; (d) encourage public participation in the management, protection and conservation of the environment; (f) establish systems of environmental impact assessment, environmental audit and monitoring of the environment; and (g) eliminate processes and activities that are likely to endanger the environment.<sup>29</sup> Environmental assessment is expressly recognised under this provision alongside the principle of public participation which is central to such processes. It has been observed that public participation in SEA provides a crucial [political] view of people’s ways of understanding problems connected with policy, plan and programme making and can rationalise the decision process.<sup>30</sup> This is because it can make the whole planning process more efficient and reliable, improving the possibility of reaching formal agreement.<sup>31</sup>

With regard to eliminating processes that are likely to endanger the environment, it has been argued that SEA should apply the precautionary principle: if the value of development and its impacts are uncertain there should be a presumption in favour of protecting what exists.<sup>32</sup> It is suggested that impact mitigation in SEA could include changing aspects of the strategic action to avoid the negative impact, influencing other organizations to act in certain ways, or setting constraints on subsequent project implementation.<sup>33</sup>

Article 70(1) provides that if a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter. On application under clause (1), the court may make any order, or give any directions, it considers appropriate— (a) to prevent, stop or discontinue any act or omission that is harmful to the environment; (b) to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment;

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<sup>29</sup> Constitution of Kenya, Art. 69(1).

<sup>30</sup> Fischer, T.B., ‘Strategic environmental assessment in post-modern times,’ op cit, at p. 163; See also Therivel, R., *Strategic Environmental Assessment in Action*, (Earthscan, London and VA, 2004), p. 17.

<sup>31</sup> Ibid, at p. 163.

<sup>32</sup> Therivel, R., *Strategic Environmental Assessment in Action*, (Earthscan, London and VA, 2004), p. 8.

<sup>33</sup> Ibid, p.8.

or (c) to provide compensation for any victim of a violation of the right to a clean and healthy environment.

While it is NEMA that is obligated to carry out SEA, where it fails to carry out its mandate on SEA, any person who is dissatisfied with the manner in which the same has been done or where it has not been done can approach the court to have them compelled to fulfill their statutory obligations for environmental management. This provision read together with Regulation 43(2) of Legal Notice 101 of 2003 which requires incorporation of summary of views of key stakeholders consulted into an environmental analysis suggests that one can challenge the validity of such PPPs.

Considering that the Constitution provides environmental obligations for both the national and county levels of government, differing and inconsistent goals and objectives can be a major challenge to decision making for sustainable development. These include goals and objectives of: different administrative tiers, the three main systematic decision making levels (i.e. policies, plans and programmes), and different sectors.<sup>34</sup> As such, it has been argued that SEA application helps reconciling differing goals and objectives through integration, thus uncovering inconsistencies and providing a platform for suggestions on how to achieve sustainable development.<sup>35</sup> Furthermore, SEA application at the regional level allows reconciling national and local levels of decision making.<sup>36</sup>

### **b. The Environmental Management and Coordination Act 1999**

The *Environmental Management and Coordination Act (EMCA) 1999*<sup>37</sup>, is the framework law on environmental management and conservation in Kenya. EMCA establishes among others the National Environment Management Authority. The National Environment Management Authority (NEMA) was established as the principal instrument of government charged with the implementation of all policies relating to the environment, and to exercise general supervision and coordination over all matters relating to the environment. In consultation with the lead agencies, NEMA is empowered to develop regulations, prescribe measures and standards and, issue guidelines for the management and conservation of natural resources and the environment. The

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<sup>34</sup> Fischer, T.B., 'Strategic environmental assessment in post-modern times,' op cit, at p. 164.

<sup>35</sup> Ibid, p. 164.

<sup>36</sup> Ibid, p. 164.

<sup>37</sup> *Environmental Management and Co-ordination Act, 1999*, No. 8 of 1999, Revised Edition 2015 [1999].

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Act provides for environmental protection through inter alia, Environmental impact assessment (EIA) and Environmental audit and monitoring.

While the parent Act (EMCA) was initially silent on SEA, the same was introduced via the *Environmental Management and Co-ordination (Amendment) Act, 2015* (Amendment Act 2015).<sup>38</sup> The Amendment Act 2015 introduces a definition of SEA under section 2 thereof to mean a formal and systematic process to analyse and address the environmental effects of policies, plans, programmes and other strategic initiatives. The Amendment Act also amended EMCA by introducing section 57A (1) which provides that all Policies, Plans and Programmes for implementation should be subjected to Strategic Environmental Assessment.<sup>39</sup> Specifically, it provides that the said plans, programmes and policies are those that are- (a) subject to preparation or adoption by an authority at regional, national, county or local level, or which are prepared by an authority for adoption through a legislative procedure by Parliament, Government or if regional, by agreements between the governments or regional authorities, as the case may be; (b) determined by the Authority as likely to have significant effects on the environment.<sup>40</sup> Further, all entities are to undertake or cause to be undertaken the preparation of strategic environmental assessments at their own expense and should submit such assessments to the Authority for approval.<sup>41</sup>

The Amendment Act 2015 requires the Authority, in consultation with lead agencies and relevant stakeholders, to prescribe rules and guidelines in respect of Strategic Environmental Assessments.<sup>42</sup>

### **c. The Environmental (Impact Assessment and Audit) Regulations, 2003, Legal Notice No. 101**

These Regulations provide for SEA and interprets it to mean the process of subjecting public policy, programmes and plans to tests for compliance with sound environmental management.<sup>43</sup>

Regulation 42 (1) thereof obligates lead agencies in consultation with the Authority to subject all proposals for public policy, plans and programmes for environmental implementation to a strategic environmental assessment to determine which ones are the most

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<sup>38</sup> *Environmental Management and Co-ordination (Amendment) Act, No. 5 of 2015*, Laws of Kenya.

<sup>39</sup> S. 42, *Environmental Management and Co-ordination (Amendment) Act, 2015*.

<sup>40</sup> s. 57A (2), *Environmental Management and Co-ordination Act, 1999*, No. 8 of 1999, Revised Edition 2015 [1999].

<sup>41</sup> *Ibid*, s. 57A (3).

<sup>42</sup> *Ibid*, s. 57 A (4).

<sup>43</sup> *Environmental (Impact Assessment and Audit) Regulations, 2003*, Legal Notice No. 101, Regulation 2.

environmentally friendly and cost effective when implemented individually or in combination with others. This has to consider the effect of implementing alternative policy actions taking into consideration: the use of natural resources; the protection and conservation of biodiversity; human settlement and cultural issues; socio-economic factors; and the protection, conservation of natural physical surroundings of scenic beauty as well as protection and conservation of built environment of historic or cultural significance.<sup>44</sup> The Regulations also require the Government and all the lead agencies to incorporate principles of strategic environmental assessment in the development of sector or national policy.<sup>45</sup>

The content of a strategic environmental impact report are provided under Regulation 43 (1) thereof.

### d. Access to Information Act, 2016

Notably, Principle 10 of the **Rio Declaration** states that environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, it states that each individual should have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. Accordingly, States are to facilitate and encourage public awareness and participation by making information widely available. It also provides that effective access to judicial and administrative proceedings, including redress and remedy, should be provided.

In light of the foregoing, *Access to Information Act 2016*<sup>46</sup> was enacted to, inter alia, to give effect to Article 35 of the Constitution of Kenya on the right of access to information. The Act provides that subject to the Act and any other written law, every citizen has the right of access to information held by — (a) the State; and (b) another person and where that information is required for the exercise or protection of any right or fundamental freedom.<sup>47</sup>

The term ‘information’ is interpreted to include information which is of significant public interest due to its relation to the protection of human rights, the environment or public health and safety.<sup>48</sup>

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<sup>44</sup> Ibid, Regulation 42(2).

<sup>45</sup> Ibid, Regulation 42(3).

<sup>46</sup> *Access to Information Act*, 2016, Laws of Kenya (Government Printer, Nairobi, 2016).

<sup>47</sup> Ibid, S. 4(1).

<sup>48</sup> Ibid, s.2.

## **6. Future of Strategic Environmental Assessment**

While strategic environmental assessment can be a powerful tool for fostering progress towards sustainability, effective implementation involves confronting a set of substantial challenges. It has been observed that an important reason for applying SEA is the expectation that if socioeconomic and environmental effects are properly considered on top of the decision making hierarchy in a publicly accountable fashion, there should be less friction and fewer problems at decision making levels further down the decision making hierarchy.<sup>49</sup> There is a need to ensure that SEA is not just an option in development policies, plans and programmes but is mandatory. Capturing SEA requirements and clearly defining what it entails, as demonstrated in both international and national frameworks discussed in the previous section will ensure that the public does not get shortchanged or they are not placed in harm's way by the relevant authorities through negligence.

The Constitution captures all the elements of SEA such as public participation and sustainable development and calls for an integrated approach to environmental and development agenda.

## **7. Conclusion**

It is evident that the elements of SEA have slowly but surely found their way into the international legal instruments on environmental management as well as national laws and constitutions. This means that they can no longer be carried out as matter of choice but law. The debate as to whether the same should be founded in legislation or left as a non-statutory administrative tool is also weakening in favour of legal backing of SEA as countries embark on making it a more prominent feature of their environmental legal framework on ensuring that all their plans, policies and programmes are compliant with the international and national environmental goals for realisation of the global agenda on sustainable development. This is, for instance, supported by the fact that Kenya achieved this position after formally recognizing SEA in the EMCA Amendment Act 2015 which makes SEA mandatory in particular plans, policies and programmes.

It is hoped that as more countries embrace SEA and integrate environmental management and national development goals, SEA will be as tool to complement EIA and even meet the shortcomings that might have existed with the use of EIA alone in environmental management.

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<sup>49</sup> Fischer, T.B., 'Strategic environmental assessment in post-modern times,' op cit, at p. 162.

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