



Office of the Environmental Commissioner
Department of Environmental Affairs (DEA)
Ministry of Environment and Tourism (MET)

Proceedings of the Workshop on the Review of the Implementation of the Environmental Management Act

Date: 30th May 2013

Windhoek Namibia

Acronyms

DEA	Department of Environmental Affairs
EA	Environmental Assessment
EAP	Environmental Assessment Practitioner
EAPAN	Environmental Assessment Practitioners Association of Namibia
EC	Environmental Commissioner
ECC	Environmental Clearance Certificate
EIA	Environmental Impact Assessment
EPL	Exclusive Prospecting License
EMA	Environmental Management Act
EMP	Environmental Management Plan
IAP	Interested and Affected Parties
MME	Ministry of Mines and Energy
MET	Ministry of Environment and Tourism
ML	Mining Licence
MRLGHRD	Ministry of Regional Local Government Housing and Rural Development
NAMPAB	Namibia Planning Advisory Board
NITRP	Namibia Institute of Town and Regional Planners
OEC	Office of the Environmental Commissioner
SEA	Strategic Environmental Assessment

1. INTRODUCTION

1.1 Background

The Environmental Management Act, 2007, (Act No. 7 of 2007) and the Environmental Impact Assessment (EIA) Regulations No. 30 of 2012 came into effect in February of 2012. Over the past 15 months the regulators and administrators in the MET, the Environmental Assessment Practitioners (EAP) and proponents have experienced some constraints in their respective areas of operation. There was a need to review the progress made to date with respect to the implementation's challenges and opportunities.

In order to undertake the review, a workshop was held on the 30th May 2013, jointly organised by the Office of the Environmental Commissioner, Department of Environmental Affairs (DEA), Ministry of Environment and Tourism (MET) and the Environmental Assessment Practitioners Association of Namibia (EAPAN). The workshop was held at the Hiltons Hotel in Windhoek.

1.2 Workshop Purpose and Objective

The following are the summaries of the purpose and objectives of the workshop:

- ✓ **Purpose:** To bring together key players such as regulators, Environmental Assessment Practitioners (EAP), proponents and other Interested and Affected Parties (I&AP) stakeholders in order to identify the challenges and constraints that they are facing and jointly explore solutions;
- ✓ **Objective:** To improve the implementation process of the EMA and the regulations covering legislations, administration and procedural frameworks.

2. OPENING REMARKS

Dr. Sindila Mwiya the workshop facilitator welcomed everyone and acknowledged the attendance of Dr. Chris Brown a member of the Sustainable Development Advisory Council, formed through an Environmental Management Act (EMA).

On opening the workshop, the Environmental Commissioner, Mr. Teofilus Nghitila, proceeded to discuss the importance of the Environmental Management Act. He emphasized that the implementation of the EMA is the responsibility of all Namibians and that it should be done in line with the National Development Policies. The commissioner acknowledged the challenges experienced with the implementation of the EMA, however, he emphasized that the implementation would not be deferred, as he believed in learning as moving ahead. He went on to acknowledge the support received from different stakeholders particularly those helping MET to identify the discrepancies in the EMA and its regulations. In conclusion he encouraged the workshop participants to conduct fruitful discussions that would lead to the identification of solutions to the challenges experienced with the implementation of the EMA.

Dr. Chris Brown welcomed everybody on behalf of EAPAN. In his welcoming remarks he emphasized that the purpose of the workshop was to help promote long-term sustainable development in Namibia. He emphasized that the EMA is a tool that can be used to promote sustainable development. He continued to stress the importance of Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA) that also act as tools meant to contribute to sustainable development. He concluded by stating that all stakeholders' activities regardless of their area of specialization, that their client is the environment. In his concluding remarks, he encouraged the participants not only to focus on the challenges and shortcomings, but to concentrate more on finding solutions.

3. PRESENTATION BY THE MINISTRY OF ENVIRONMENT AND TOURISM ON THE IMPLEMENTATION OF EMA AND ITS REGULATIONS

The MET presentations focused on the detailed overview of key sections of both the Environmental Management Act, 2007, (Act No. 7 of 2007) and the Regulations No. 30 of 2012. The presentation started by giving the purpose of the EMA, which includes the following:

- To promote the sustainable management of the environment and the use of natural resources by establishing principles of decision making on matters affecting the environment
- To provide for the process of assessment and control of activities which may have significant effects on the environment among others.
- The presentation emphasized the Principles of Environmental Management, which are crucial for sustainable development. The participants were also taken through the list of activities that cannot be undertaken without an environmental clearance certificate. The presentation continued further to highlight the SEA and EIA and the processes followed. The presentation get into further details of the EMA, such as what constitutes the offences and what leads to suspension of environmental clearance certificate. The presentation concludes by stating that EAP and Proponents are among the role players in the EMA implementation and thus should ensure that their activities are promoting sustainable development.

Following the MET presentation a number of questions and concerns were raised, such as the screening process in order to make clients aware of the time and costs of their application processes before they commence their projects. Questions continued to seek clarity regarding the ability of the Environmental Commissioner to acquire electronic copies of all reports and to make them more readily available? Clarity was sought to find out if the EIA and EMP reports are

public documents that can be fully accessed by the public once they are approved? Additionally, clarity was sought to find out if there is an appeal or a rejection by the DEA, and the reports have to be revised, do they go back to the DEA for resubmission or must it be submitted to the minister first and ask for a resubmission?

MET has indicated that depending on the activities, the proponent would want to undertake, there is a list of activities that cannot be undertaken without an environmental clearance certificate in the EMA regulations that can serve as a guide. Additionally the MET offices are open for assistance in the event that a proponent or practitioner is not sure if the proposed activities fall within the listed activities or not. MET is currently working on a new system which will include electronic copies and a whole electronic system. MET continued further to state, that it was emphasized in the presentation that the documents can be made available to the public on request, although the act emphasizes more on the information being made available to the organs of state only. Members of the public can have access to the reports if they provide good reasons as to why the report is needed. However, documents will not be allowed to leave the MET offices. MET clarified that if the correspondence received to update the report has come from the Environmental Commissioner the resubmission must be made to the Office of the Commissioner.

4. IDENTIFICATION OF CHALLENGES IN THE IMPLEMENTATION OF EMA AND ITS REGULATIONS FROM THE PERSPECTIVE OF THE COMPETENT AUTHORITY

4.1 Presentation by Ministry of Mines and Energy

Mr. Itaveleni Joseph Mupewa from the Directorate of Geological Survey, Ministry of Mines and Energy gave the presentation. The focus of the presentation was the challenges the Ministry is experiencing with the implementation of the EMA and its Regulations, which include:

- Lack of regulations on abandoned mines;
- Inability of small scale miners to conduct EIA;
- Lack of guidelines on how licenses should be issued in sensitive areas;
- No clear indication of who should monitor the rehabilitated mines;
- No guidelines on decommissioning rehabilitation;
- No guidelines on monitoring compliance;
- The Phosphate Mining Issue and exploration and mining in sensitive areas;
- Regulations to address legacy sites are required.

The presentation concluded by emphasizing the following:

- ✓ Continuing Environmental Education for Stakeholders;
- ✓ More Funding of environmental initiatives that hamper the enforcement of environmental law is needed.

4.2 Presentation by Ministry of Regional Local Government Housing and Rural Development

Peter Genis from the Ministry of Regional, Local Government, Housing and Rural Development (MRLGHRD) presented. The overall focus of the presentation was to demonstrate the negative influence of the EMA and regulations to national planning requirements and procedures associated with NAMPAB, Townships Board, Local Authorities, Regional Authorities, Coordinating committees as well as Housing & Habitat related decision-making processes.

The presentation highlighted the MRLGHRD mandate as well as taking participants through MRLGHRD's (NAMPAB, Townships Board, Local Authorities, Regional Authorities, Coordinating committees as well as Housing & Habitat) applicable bodies. The presentation continued to highlight development demand that showed that NAMPAB applications to Minister for period May 2012 to May 2013 = 138 and the Townships Board applications to Minister for period February 2012 to December 2012 = 248;

The constraints associated with the implementation of EMA and the regulations involve the lengthy procedures to services delivery of NAMPAB, Townships Board, Local Authorities, Regional Authorities, Coordinating committees as well as Housing & Habitat such as:

- Process starts at local authority with public participation and local authority decision ($\pm 6-12$ months);
- Process continues at Townships Board (± 2 to 6 months); or prior to that;
- Process requires Minister's approval through NAMPAB ($\pm 4-12$ months);
- Process for surveying and registration follows ($\pm 6-12$ months).

Taking the above into consideration EMA will inevitably cause further (unnecessary) delays, thereby impacting on efficient service delivery.

The presentation concluded by giving the following recommendations centered on possible solutions that will improve service delivery:

- ✓ NITRP should be allowed to input on amending EMA & Regulations;
- ✓ MET should compile an SEA for Namibia;
- ✓ MET to engage further discussion on environmental management, especially sub-national governments;
- ✓ MET to budget for financial assistance to compile SEA's for local and regional structure plans.

After the presentation a number of questions were raised which included, if one has a listed activity but no clearance how does one obtain it from the DEA office and what is the process to be followed? The clarification was further sought on the scale of the assessment process (scoping or full assessment) to be followed e.g. lengthy of power lines. However, it was cleared that it is not an issue of how long the line is, but an issue of *where* the line passing and crossing.

It was stated that the MET has provision within the current structure for an inspection division, to ensure that the implementation of the projects is in accordance with the law. It was further stated that MET expects that for listed activities there must be an Environmental Clearance for each project to be undertaken, therefore, an EIA report must be submitted. When a scoping report is submitted, the DEA looks at the key issues identified and the content of the EMP in order to issue the Clearance Certificate.

The MET has acknowledged the discrepancies in the EMA and its regulations and as a result has appointed a consultant to look into these discrepancies.

The concern was also raised with regard to the time allowed for project phases between the Ministry of Mines and Energy (MME) and MET, who want a proper full EIA to be done in a shorter period. It was further stated that MET is fully aware of the challenges associated with EPLs being granted by MME with a condition to obtain Environmental Clearance within 30 days. With new MET requirements for submitting Scoping and EMP for all new EPLs granted, either it is in parks or outside parks, it is impossible to prepare a Scoping and EMP reports with public consultation within 30 days. However, the MET has engaged MME on this matter and both Ministries are aware of the challenges and currently evaluating possible solutions.

5. Identifying challenges in the implementation of the EMA and its regulations from the perspectives of

5.1 Presentation by the Institute for Town & Regional Planners

The presentation by the Institute for Town & Regional Planners covered a discussion with respect to the planning concerns about the provisions of the environmental management act regulations. The presentation was given by Mr. Edwin Fontlich, President of the Institute for Town & Regional Planners. The presentation covered the following key areas that are critical to the Institute, such as understanding the EIA process; highlight and discuss the problems they are facing and exploring solutions;

The key problems that have been identified by the institute for Town and Regional Planner with respect to the implementation of the EMA and the regulations are listed below:

- ✓ Lack of definitions of the listed activities;
- ✓ Duplication of processes or applications within different legislative frameworks;
- ✓ Inclusion of activities which have no environmental impacts in the listed activities, such as rezoning;
- ✓ Omission of important planning processes which should require environmental clearance such as the proclamation of new settlement areas and township establishment;
- ✓ Compatibility issues once new urban planning Bill is passed by Cabinet – more duplicate processes and incompatibility;
- ✓ Omission of screening from the regulations is a concern – shortens time when environmental impacts are in fact zero;
- ✓ Three year time period of clearance certificates not relevant to activities such as construction of public roads.

The Institute for Town & Regional Planners also presented possible solutions as follows:

- ✓ Listing the process of proclamation of new settlements and township establishment;
- ✓ Delisting and amendments to the listed activities such as rezoning applications which in the views of the Institute have zero environmental impacts – the actual zoning of land and process for clearance does not regulate an activity which may occur on an Erf. - Remove

all rezoning (except POS & Conservation area). However, some of the workshop participants particularly practitioner did not agree with this proposal.

- ✓ Addition of screening process to regulations and act;
- ✓ Addition of definitions;
- ✓ Identification of competent authorities. NITRP: Recommend to declare the Townships Board and Namibian Planning Advisory Board as Competent Authorities.
- ✓ Amend the EMA regulations and listed activities as soon as possible.

5.2 Legal Perspective by Engling, Stritter and Partners

Alet Louw and Axel Stritter from Engling, Stritter and Partners made the presentation on legal perspectives. The overall presentation centered on the following key areas with respect to the EMA and the regulations:

- ✓ Strength,
- ✓ Weaknesses;
- ✓ Opportunities;
- ✓ Threats;

The following presents the key issues that were highlighted in the presentation focusing on strengths, weaknesses, opportunities and threats that were highlighted in the presentations:

- (i) **Weakness:**
 - No explicit provisions to environmental right and environmental obligation;

- Environmental management principles (s 3) does not provide for project life cycle analysis;
- Sustainable Development Advisory Council (Part IV) provide the only advisory, whereas a Sustainable Development Commission would have more significant role to play;
- Access to environmental information (s 47) only provides rights to the public sector not civil society.

(ii) **Threats:**

- Vague wording i.e. Reg 4(a) “EAP must have ... knowledge of and experience in conducting assessments, ... the Act, regulations and guidelines ”;
- Lack of access to environmental information;
- 100% legal compliance impossible;
- Legal uncertainty with respect to time periods, contradictory procedures, conditions in ECC, lack of criteria to grant or refuse ECC, prospecting & exploration and existing authorizations;
- Strict time periods and the effect of non-compliance;
- Contradictory procedures - Act vs. regulations. Regulations cannot regulate beyond the ambit of the act or deviate from the act;
- Conditions in ECC in terms of the conditions and Clearance = conditional.
Example: *“In view of the risks and environmental sensitivity of the area, the MET*

reserves the rights to attach further regulatory conditions during the operational phase of the project. From this perspective, we issue the clearance with the following condition: all key stakeholders, including Regional and Local Authorities concerned, must be properly consulted and their consent taken into account prior to any exploration activities.”

- Lack of criteria to grant or refuse ECC, Section 33(2)(b)(iv);
- Prospecting & exploration and in this case it's the EMA vs. Minerals Act with respect to consistency, Scoping + EMP or EIA + EMP as well as in- or outside protected area issues;
- Existing authorizations, Section 57 and no predecessor to EMA = no such thing!

(iii) **Strength:**

- Section 5 – Prohibition re waste;
- S 18 –Provisions for Environmental officers;
- Section 45 – Appointment of external specialists.

(iv) **Opportunities:**

- Section 33(2)(b)(iv) – “may take into consideration principles of environmental management”
- Section 53 – Piercing the corporate veil.

Following the presentation the following questions were raised:

“If you have done an impact assessment and you have consulted everybody is that not implicit that you already consulted everybody and they have given their input of everything, why a condition to consult all the stakeholders is attached to the ECC?”

Clarity was also sought that an Environmental Certificate is issued for an EIA or SEA or an EMP reports, but for EPLs a proponent also have to sign a Pro- Forma Environmental Contract which is signed by MET and MME and the proponent. What is the purpose of the Pro- Forma Environmental contract?

Clarity was given regarding the purpose of the contract that the contract is a pro-forma that stays the same. One can argue that they have Environmental rights according to the contract. Lawyers will be able to peruse those rights and as a member of the public a person will gain certain rights. Clarity was also sought as to whether the conditional issues with the clearance, are legally binding and in conformity with international trends? It was stated that the conditions are implicit.

The concern was also raised regarding the exploration and mining activities in sensitive areas, because if the exploration company is allowed to explore for minerals it is very difficult to stop them from mining if the exploration was successful. It was stated that Mining companies are usually granted exploration rights (EPL) under the Mineral Act in order to undertake exploration. In an event of a discovery, the company will apply for Mining License in compliance with all other requirements such feasibility study, EIA and EMP and proof of financial resources to develop the mine.

5.3 Presentation by EAPAN

The presentation by EAPAN was divided into two parts and presented as follows:

- (i) Regulation challenges relating to the environmental management process presented by Simon Carter from SLR, and;
- (ii) A presentation on administrative considerations presented by Stephanie Van Zyl.

The presentation by Simon Charter covered the discrepancies between the EMA and the regulations, which include among others:

- (i) Listed activities:
 - Its too broad
- (ii) Process:
 - Screening, scoping and full assessment are not clear
- (iii) Timeframes not clear and honored with respect to:
 - Public participation / comment periods;
 - Notification periods;
 - Authority review.

The presentation by Stephanie Van Zyl covered administrative issues that focused on the following key issues:

- ✓ Screening: The availability of MET is crucial to provide guidance on the scale of the assessment process to be followed, at the screening level;
- ✓ Feedback and consistency: Feedback and consistency from MET is needed at different stages of the assessment process;
- ✓ Document management: Document control system is needed in MET;
- ✓ Delegation: MET should delegate some activities to competent authorities;
- ✓ Correspondences: Too generic;
- ✓ External review: Proponents must be provided with terms of references for external review.

5.4 Presentation by Practitioners – Environmental Assessment Practitioner (EAP)

The presentation on improving EA practice and implementation was presented by Dr. Chris Brown, president of EAPAN. The following is the summary of the key issues

- ✓ Overall standard of EIAs in Namibia:
 - Very few are excellent (<5%);
 - Maybe 10% are good;
 - Maybe 50% are satisfactory;
 - Maybe 30% are inadequate;
 - At least 5% are poor.

- ✓ Ethics covering independence, honesty and integrity;

- ✓ Stakeholder engagement should be responsive to the environment in which it is taking place;

- ✓ Environmental Assessment and the team: Gather the EIA specialists to suit the scale of the project

- ✓ Integration of specialist reports in the main EIA Reports e.g. social and economic issues;

- ✓ Deferring by leaving key thorn issues to the EMP instead of tackling them at EIA level;

- ✓ Message delivery, clarity of the EIA report is important;

Following the presentation a number of questions and concerns were raised as follows:

The concern was raised regarding the competency and capacity of competent authorities in case the power is delegated to them. The recommendation has been made to centralize all those people in the DEA office and not use different authorities.

The further concern regarding the fact that proponents often see the EIA and EMP as hurdles to get over with regards to their projects; they don't even read the reports, resulting in the question of what would happen when they get clearance but they don't implement the EMP? What is the role of the environmental practitioner and what can be done to report it without fear of reprisal?

It was stated that it depends on the contract that the EAP has with the proponent. If one has not been appointed to manage the EMP one can't be held accountable for lack of implementation of the EMP. Additionally, one can always contact the Environmental Commissioner or other law enforcement agencies and report the non-compliances.

Furthermore concern was raised that if an EIA goes wrong, what are the consequences? It was stated that usually when issued with a clearance certificates there is a clause that states that all liability lies with the proponent.

A question was also posed regarding rehabilitation of the exploration sites for EPL as to what does it entail? Proponents are urged to monitor the projects throughout from the start to the end.

The concern on rehabilitation of mining sites was also raised and MET involvement was questioned. Information was shared that MME does have a framework for environmental rehabilitation, where an inspector comes in and inspects the site and possibly issue the certificate if satisfied. MET is exploring different ways regarding how to better manage rehabilitation related issues within the frameworks of EMA and the regulations.

6. ANALYSIS OF KEY ISSUES

6.1 Analysis

Despite the limited time, the workshop agreed to undertake an evaluation of the key issues grouped in the following categories:

- ✓ Legislation (EMA and Regulations);
- ✓ Administration;
- ✓ EA process and implementation.

As part of the analysis process each of the workshop participants was provided with three (3) cards and requested to write at least three (3) key issues that they thought were important and needed to be addressed with respect to improved implementation of the EMA and the regulations. However due to limited time, the exercise could not be completed during the workshop and all the completed cards were collected and sorted after the workshop.

6.2 Results

The results of the various cluster allocations of the completed cards showed very high concerns related to the legislation (EMA and Regulations) provisions and in particular issues related to the screening process to be clarified. Issues related to the EA process and its implementation, were followed by administration issues and others that could not be allocated to any of the three categories (Legislation EMA and Regulations), Administration, and EA process and implementation.

6.3 Written Submissions

The following written submissions have been submitted as part of the ongoing process of reviewing the legislation and implementation of the Environmental Assessments in Namibia for consideration by the Environmental Commissioner in the review and possible amendment of both the EMA and the Regulations:

- (i) A submission by Barrie Watson TRP was given to the facilitator during the workshop. The key issues of concern include the following:
 - Listed activities not distinguishing the scale, intensity location and geography of the proposed activities. If these attributes could be distinguished it would be possible to designate certain activities scale, intensity, on location as being exempted from regulatory requirements.
 - There should be activities that in advance are:
 - Fully exempted;
 - Require light screening;
 - Require full screening;
 - Require EIA and;
 - Delegated to competent authorities.
- (ii) The Namibian Institute of Town and Regional Planners submitted a written submission through the facilitator. The submission covers in very details challenges and solutions towards the amendment of the EMA and the Regulations;

- (iii) The Gobabeb Research and Training Centre submitted their written comment on 16th June 2013. The comments has the following key focal areas;
- The focus of the Act and its Regulations is too much on the start of a project;
 - Transparency and access to information;
 - Data quality;
 - Rehabilitation and restoration.

7. WORKSHOP CLOSURE AND WAY FORWARD

The workshop facilitator thanked everyone for their great contributions and invited Dr. Chris Brown, President of EAPAN to say a few closing remarks. Dr. Brown thanked everybody and in particular the DEA for co-organizing and sponsoring the event and emphasized the need to protect the environment.

Mr. Teofilus Nghitila thanked all the participants for their active participation. He also thanked EAPAN for working very closely with his office and looking forward to this great relationship. Mr. Nghitila indicated to the workshop participants that all the presentations, questions and submissions made will be reviewed as part of the ongoing process of amending both the EMA and Regulations and key critical issues will be incorporated in the amended regulation. The proceedings / minutes of this workshop will also be made available to all the stakeholders. All the stakeholders will be informed of the process of amending the legislation and look forward to a similar workshop in the future.

