RESEARCH DISCUSSION PAPER
Number 34
September 1999

Namibia's Environmental Assessment framework :- the evolution of policy and practice

by
Peter Tarr and Michaela Figueira

Directorate of Environmental Affairs
Ministry of Environment and Tourism
Private Bag 13306
Windhoek, Namibia

Table of contents

List of abbreviations

CA – Competent Authority
EA – Environmental Assessment
ECom – Environmental Commissioner
EMA – Environmental Management Act
EMP – Environmental Management Plan
MAWRD – Ministry of Agriculture, Water and Rural Development
MET – Ministry of Environment and Tourism
MFMR – Ministry of Fisheries and Marine Resources
MLRGH – Ministry of Local and Regional Government and Housing
MLRR – Ministry of Lands, Resettlement and Rehabilitation
MME – Ministry of Mines and Energy
MWTC – Ministry of Works, Transport and Communication
NDP1 – First National Development Plan
PPP – Policies, plans and programmes
SDC – Sustainable Development Commission

Abstract:

Namibia is the last African country to have gained independence from colonial rule. It has inherited a weak, skewed, resource-based economy and an administrative and regulatory framework that reflects a colonialist approach to management and planning. A century of unsustainable practice has resulted in environmental degradation and opportunity costs. The challenges facing the current generation include democratising decision making, protecting the country's fragile ecosystems, and institutionalising an approach towards planning that promotes sustainable development. It is widely recognised that environmental assessment is a useful planning tool in promoting sustainable development. Namibia's first post-colonial government has embarked upon an ambitious programme to institutionalise environmental assessments at all levels of development planning. To this end a five-year participatory process has culminated in the development of legislation that encompasses what could be to be one of the region's most innovative approaches to development planning. The Environmental Management Act provides for a comprehensive system of environmental assessment at both a project and at a strategic level that is binding both on the state and on private individuals.

This paper describes the need for, and the development of Namibia's Environmental Management Act and gives a brief overview of environmental assessment practice in the country.

Introduction

After gaining independence from South Africa in 1990, Namibia began the long process of developing a new system of government, diversifying its small, natural resource-based economy and redressing the injustices of a century of colonial rule. The transition from an inequitable, unsustainable past to a sustainable future poses a formidable challenge to the government and all sectors of society. It similarly provides unique opportunities for Environmental Assessment (EA) to contribute towards sustainable development.

Prior to independence, responsibilities for land use planning and natural resource management in Namibia were forcibly transferred from Namibians to a succession of colonial governments. The current post-independence government has inherited this power, and formal land use planning in the country remains centrally controlled and highly sectoral. However, government has embarked on a process of transferring more responsibilities to the regions, traditional authorities and communities through a process of decentralisation, thereby re-empowering the people.

In its first national development plan (NDP1), government committed itself to “follow integrated land-use planning techniques involving all sectors so as to support long-term sustainable development for all Namibians”. The absence of a clear land policy and persistent sectoralism are the most serious constraints in implementing sustainable development in the communal areas. The lack of clarity on the status and

powers of traditional authorities and the absence of land tenure has created a contextual vacuum, which is exploited by individual, local and sector interests.

Planning at the local level is very weak in Namibia but efforts are underway to improve the capacity of the regions to engage in forward planning and management. To this end, a number of local level planning and resource management institutions have been established. Unfortunately, most local institutions mirror the problems experienced at the national level, namely sectoralism and a lack of integration.

The impacts of development activities

All development activities, including the "no development option", have potentially positive and negative impacts on the environment. While each activity has a unique set of circumstances, it is possible in the Namibian context to make some generalisations as regards to sector impacts (table 1).

Namibia's disproportionate reliance on primary resource production and the fact that most Namibians depend on the land and its meagre resources for survival, make water, land (soil) and vegetation the most valuable but also the most vulnerable resources in the country. Thus, the industries that promote their exploitation have the greatest potential to cause significant adverse environmental impacts and opportunity costs that could undermine sustainable development. These include the damming of rivers, irrigation schemes and stock farming. Similarly, activities that alter ecological processes or rely on natural resources to sustain them, cause severe impacts. These include mining, hydro-electric power projects and the unsustainable abstraction of groundwater resources.

In addition to the formal sector, Namibia's environment is affected by an escalating and largely unregulated informal sector. Colonial policies of land-alienation, disempowerment and the creation of "homelands" have resulted in vast areas being over-populated, over-grazed and deforested; a trend which seems to be continuing today. The provision of land, water, mineral rights and occupation rights, often without proper planning and accountability, is cause for concern. Furthermore, Namibia's desire to attract foreign investment in the manufacturing industry requires constant maintenance of and improvements to, existing infrastructure. Since independence, hundreds of kilometers of new roads have been built and many gravel roads have been resurfaced with bitumen. The country's two harbours are being deepened, towns and cities are expanding, new power-supply projects are underway, and canals and pipelines are required to meet escalating demands for water.

Table 1 : Summary of impacts caused by various sector development activities.

	Positive Ecological Impacts	Negative Ecological Impacts	Positive Socio-economic Impacts	Negative Socio-economic Impacts
Mining	* Cash incomes reduces the need for people to "live off the land" & thus deplete natural resources * Coastal salt mines create wetland habitats for birdlife	* High water use * Pollution (air, soil, water, noise & aesthetics) * Habitat destruction during earthworks & ancillary works * Loss of habitat & biodiversity results from the above * Disturbance of marine life (offshore diamond dredging) * Unrehabilitated mines are eyesore & danger to wildlife	* Creation of employment * Promotion of secondary industries * Facilitates social upliftment programmes * Poverty alleviation * Stimulate investment & economic growth * Provide training & skill development	* Migrant labour * Family tensions * Loss of traditions * Unsustainability * Unrehabilitated mines pose danger to humans & livestock
Dams and canals (bulk water supply)	* Create habitat for birds, fish, etc	* Alter river flow & ecological processes * Inundate land & habitat * Disrupt wildlife movement / migration * Canals trap animals and / or cause drowning * Aquatic animals & plants sometimes escape from one system to another * Can result in spread of alien invasive vegetation	* Provide employment during construction * Reliable & safe water supply * Flood control * Enable irrigation & food production	* Spread of water-borne diseases * Can result in undesirable linear settlement patterns
Boreholes (formal programmes)	* Can improve range management options and strategies	* Groundwater depletion due to unsustainable abstraction * Above causes salinisation of groundwater and soil * Allow for permanent stocking of arid (marginal) areas * Above situation promotes desertification & habitat loss * Above situation increases human/ wildlife conflicts	* Reliable & safe water supply * Increases areas available for ranching * Provides opportunities for communities to take responsibility for their own water management	* Can cause dependency * Alters migration & land use traditions
Agricul-tural projects (cultivation)	* Additional food availability reduces the need for people to "live off the land" and deplete natural resources	* Use of pesticides and agrochemicals causes pollution * High use of water due to evaporation * Requires clearing of large areas of natural vegetation * Monoculture reduces biodiversity * Attract wildlife thus causing conflicts with humans	* Creation of employment * Increased food production, exports & income * Provide training & skill development * Stimulates secondary industries * Conserves foreign currency by reducing imports	* Limited ownership amongst locals
Roads, railways and airports	* Road kills provide forage for scavenging birds and other wildlife * Water run-off promotes dense vegetation growth in road reserve	* Restrict water flow through shallow drainage systems * Habitat destruction through creation of borrow pits * Road kills of wildlife by vehicles, esp. nocturnal species * Barrier effect deters some species from crossing	* Creation of employment during construction & maintenance * Easier transportation improves trade & economic growth * Public convenience (incl. Tourism) * Enhanced safety for travellers	* Can result in undesirable linear settlement patterns * Loss of life through vehicle accidents
Manu - facturing industries	* Availability of jobs and cash reduces the need for people to "live off the land" and deplete natural resources	* Pollution (air, soil, water, noise and aesthetics) * Creation of waste * High use of water in some cases * High use of energy in some cases	* Creation of employment * Provide training & skill development * Improved investment and economic development * Adds value to raw materials	* Potential health threats through pollution
Cities, towns & harbours	* City / town gardens provide habitat for birds * Concentration of people in cities / towns reduces pressure on rural areas	* High use of water during construction & maintenance * High pollution (household, industrial, car, noise, etc) * Clearing of natural vegetation for cities & towns * Introduction of alien vegetation, cats, rodents, etc. * Oil spill and other fuel & chemical pollution in harbours * Seals & seabirds vulnerable to mortalities in harbours * Dredging of harbours alters sediment dynamics	* Convenient living conditions for people * Creation of employment due to concentration of industries and other economic activities * Good infrastructure stimulates investment & growth	* Attracts criminals * Health threats (pollution) * Attracts squatters, causing unhealthy conditions * Urban expansions encroach on agricultural land and peri-urban dwellings
Land Reset-tlement Schemes	* Feeling of "ownership" amongst some settlers promotes caring for the land & the natural resources * Reduces squatting elsewhere	* Lack of ownership generally, so most settlers have short term perspective and generally use the land and resources unsustainably (wood, water, grazing, wildlife) * Above situation exacerbates environmental degradation	* Creates self-employment opportunities * Could generate cash and therefore reduce poverty	* Due to lack of tenure, settlers are insecure, lack initiative, show little economic progress & social problems increased (e.g. alcohol abuse & crime) * Many men leave to become farm labourers (wage earners) * Unscrupulous entrepreneurs exploit settlers by selling goods on credit & demanding livestock as payment.
Power supply projects (bulk)	* Access to power can reduce reliance on wood (if affordable) * Reliable & affordable power can stimulate economic development and thus contribute to alleviating poverty * see dams …..	* Hydro-electric schemes alter river flow regimes and transform vast riverine areas where dams are built * Above threatens ecological processes and biodiversity * CO2 & other emissions from coal power-stations * Transmission lines require vegetation clearing and constitute visual pollution * see dams…….	* Essential for economic development * Provides convenience & comfort * Facilitation of other activities, e.g. provision of health services, education, manufacturing, food storage (e.g. refrigeration), agriculture, etc. * see dams……	* Mega-schemes (e.g. Epupa) will displace thousands of people, alter land use and lifestyles, destroy graves & ancestral sites and threaten traditional culture of Ovahimba tribespeople * see dams…..

The past and current application of Environmental Assessment

The use of EAs was minimal prior to independence, with only five being conducted in the ten years between 1980-1990 (table 2)

Table 2 : Number of EAs completed per sector in Namibia between 1980 – 1998

Sector	1980-1990	'91	'92	'93	'94	'95	'96	'97	'98	Total	Sector % of total
Mines	3	-	1	-	-	1	3	13	7	**28**	**49.1**
Oil & gas exploration	-	-	-	2	1	2	-	1	1	**7**	**12.3**
Roads & harbours	2	1	1	-	-	-	-	1	2	**7**	**12.3**
Power supply	-	-	-	-	-	-	-	2	3	**5**	**8.7**
Water	-	1	1	-	-	-	-	2	-	**4**	**7**
Agriculture	-	-	-	-	1	-	-	-	1	**2**	**3.5**
Waste Management	-	-	-	-	-	-	-	1	1	**2**	**3.5**
Tourism	-	-	-	-	-	-	-	-	1	**1**	**1.8**
Forestry	-	-	-	-	-	-	-	-	1	**1**	**1.8**
Total per year	**5**	**2**	**3**	**2**	**2**	**3**	**3**	**20**	**17**	**57**	**100**

Source : P.Tarr (unpublished PhD thesis)

The majority of EAs have been for the mining sector (61.4% - including offshore oil and gas exploration) followed by infrastructure projects such as roads and harbours. The main reason for this is that section 50 of the Minerals (Prospecting and Mining) Act No.33 of 1992 and section 12 of the Petroleum (Exploration and Production) Act No.3 of 1991 require proponents to conduct EAs.

Furthermore, the majority of mining and petroleum companies are foreign-owned and thus operate within the parent-company's codes of conduct, which include adhering to environmental standards and conducting EAs. Many mining EAs were *post facto*, having been conducted a number of years after the mine was established. This accounts for the escalation of EAs during 1997 – the year in which the diamond mining company, Namdeb, published a series of EAs/Environmental Management Plans for its terrestrial and offshore operations.

Large infrastructure projects, which usually require foreign funding, have also generally been preceded by an EA. This has been at the insistence of the lending agencies rather than driven by a desire to do so on the part of the responsible ministry. An exception has been the government-owned power-utility (NAMPOWER), which has, on its own initiative, commissioned extensive EAs for its major projects over the past two years.

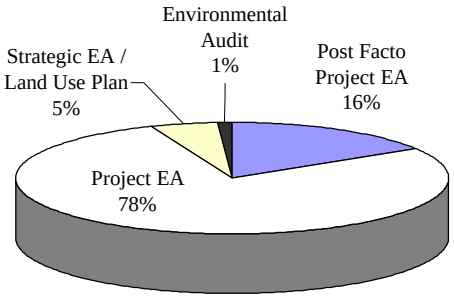
In spite of the size and importance of the agriculture and water sectors, they collectively account for only 10.5% of all EAs done. The paucity of EAs (even *post facto*) in the agricultural sector is alarming, particularly as most of the country is under some form of agriculture. Furthermore, the existence of various small to

medium scale irrigation projects in an arid country such as Namibia raises a number of fundamental questions. These include the use of precious water resources on low-value crops, the liberal application of fertiliser and agrochemical supplements to control pests and boost poor soils, and vulnerability to climate variability and future climate change. Indeed, the country pins its hopes on agriculture for its future, but little has been done to assess the appropriateness or sustainability of current practice. Similarly, no EAs have been done for activities in the fisheries sector, which is extremely vulnerable to both environmental factors and management practices.

Only one EA has been conducted in the country's fastest growing industry, namely tourism, even though tourist facilities are often located in some of the more sensitive environments, including game reserves, along river banks and near waterfalls, in the desert and in areas inhabited by rare and endangered species and disadvantaged local communities.

As is the case elsewhere in the world, the vast majority of EAs conducted in Namibia have been for projects, most having been completed some time after a project had been implemented (*post-facto*) and very few at the strategic level (figure 3)

Figure 3 : Categories of EAs conducted in Namibia between 1980 – 1998



The path to sustainability

Namibia's independence in 1990 was the trigger for the nation to re-define itself as a country and as a member of the international community. Prior to this, the territory was subjected to colonial governance and unsustainable resource exploitation.

The government's policy of national reconciliation encouraged co-operation between people from various backgrounds and national consensus began with the adoption of the Constitution . Article 95(l) of the Constitution declares that "*The State shall actively promote and maintain the welfare of the people by adopting policies aimed at … the maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilisation of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future…*"

Based on this foundation, the Ministry of Environment and Tourism (MET) initiated an extensive process of in-country, intersectoral dialogue on the subject of environmental management and sustainable development. This resulted in the drafting of Namibia's Green Plan which was presented at the Rio Earth Summit in 1992.

The Green Plan emphasised the reciprocal relationship between environmental health and living standards and the link between the state of the economy and the state of the environment. The Green Plan recorded consensus on the need for an EA policy to "*ensure that independent environmental impact assessments form part of the pre-feasibility study of all development projects and subjecting all such projects to long term regular environmental monitoring*". In a reference to reducing opportunity costs, the Green Plan states (optimistically) that government should "*permit only those developments that do not restrict the developmental options of future generations of poor people*".

The evolution of an Environmental Assessment policy and legislation

Namibia's need to create jobs and stimulate a stagnant economy is paramount, as is the need to maintain a balance between development and the environment. It was thus essential to achieve the necessary level of consensus before asking the country's politicians to approve an EA policy and legislation. For this reason, a lengthy process of stakeholder consultation was followed in the development of the policy and legislation.

Over 60 delegates representing government ministries, parastatals, private business, NGOs and specialists attended the first workshop held in 1992. The result was consensus on the need for a national policy, although there were divergent views on how it should be administered. The most important achievements of the workshop were as follows:

- a greater understanding of the definition of EA, and what benefits the effective implementation of EA might have for Namibia,
- constructive interaction between people representing diverse backgrounds, interests and areas of responsibility,
- consensus on the meaning of the term "environment", namely that it includes the biophysical, social, economic, cultural and political components. This realisation comforted many people who have traditionally equated "environment" with "nature preservation",
- agreement that the draft policy developed during the workshop provided a useful starting point in the development of a policy,
- agreement that EA's should be applied to policies, plans, programmes and projects, and
- agreement on the need for an Environmental Commissioner (Ecom) and the establishment of a Sustainable Development Commission (SDC - previously referred to as the Environmental Board) to administer and oversee EA's in the country.

However, there was no consensus on what powers should be vested in the ECom, or on the mandate, role and composition of the SDC. While the debates continued, four petroleum companies began an oil exploration programme off Namibia's coast. On the basis of Namibia's new Mining and Exploration Act, these companies each produced an EA prior to oil prospecting. The experience gained during this process showed that EAs could be concluded within a reasonable time period, and that the costs were acceptable to investors. NAMCOR (a parastatal under the Ministry of Mines and Energy) was responsible for administering the oil exploration programme. This included facilitating the EA process within this sector – effectively fulfilling the role envisaged for a future ECom. NAMCOR liased with the line ministries and other stakeholders, which met regularly to discuss the EA process and ultimately, review the completed Environmental Impact Statements (EISs). This *ad hoc* committee performed a similar function as that envisaged for the SDC. The positive lessons learnt during the oil exploration programme convinced sceptical officials and politicians that Namibia's draft EA policy could work in practice. However, before the MET submitted the EA policy to Cabinet, it produced a one-page popular format brochure, which was circulated to all Cabinet members. Letters of support were solicited from key line ministries, private sector institutions and international organisations such as UNEP.

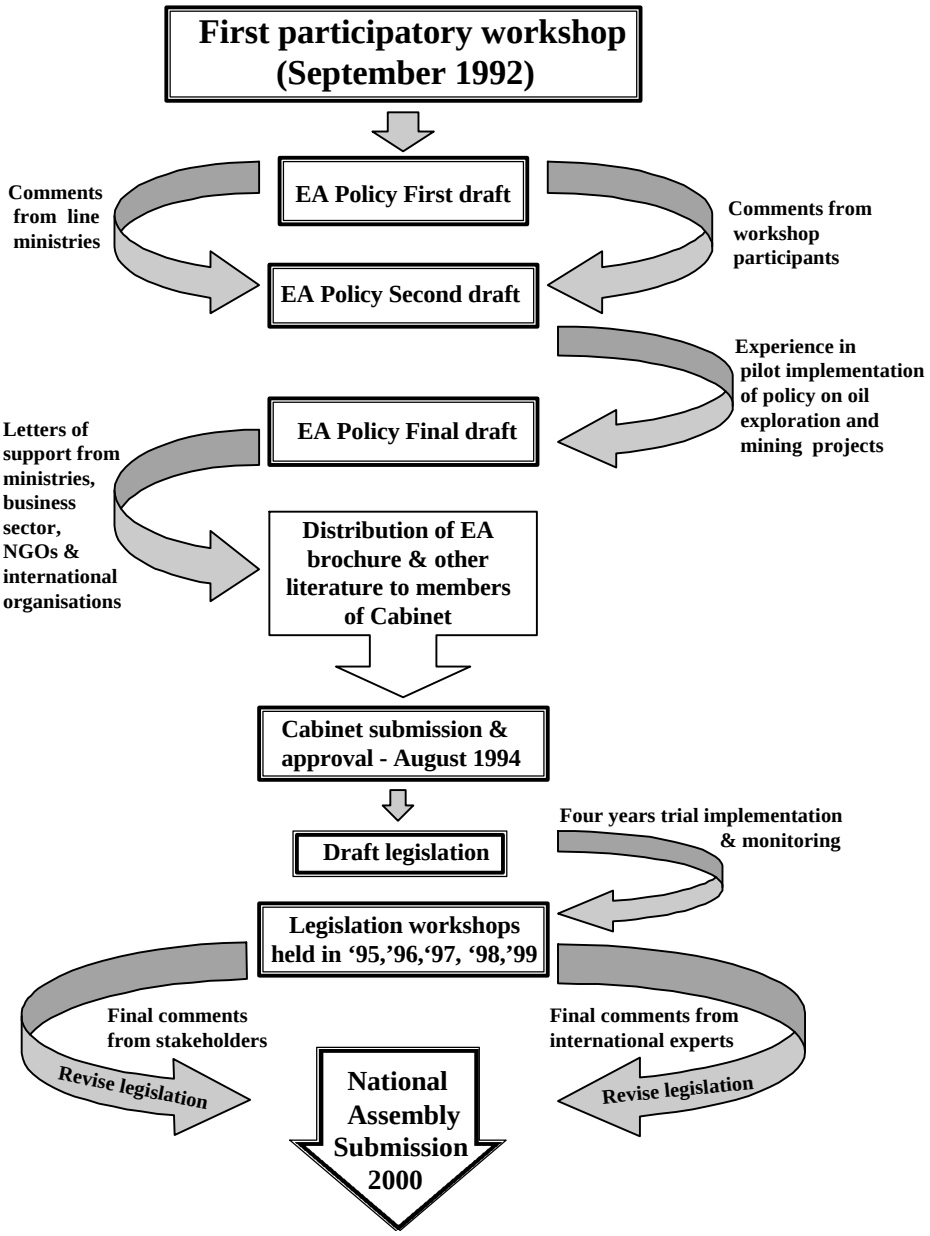
Cabinet approved the policy in August 1994 on the following conditions:

- that it be implemented for a trial period of one year,
- that the Commissioner be appointed only after his/her job description was established through stakeholder consultation, and
- that the Commission be constituted and begin its work as soon as its Terms of Reference had been agreed to by the relevant stakeholders.

Four years have elapsed since this Cabinet decision, and over forty EAs have been concluded, most following the draft policy. Each EA has been guided and reviewed by a small group of officials from the appropriate institutions, who have worked closely with EA consultants, NGOs, members of the public and, in many cases, EA experts from overseas donor and development agencies. While standards may have been variable, opportunities for public input inadequate and political pressure distracting on occasions, the experience gained has de-mystified EAs and has been invaluable in building consensus. Once the policy was adopted by Cabinet, work began on the drafting of the Environmental Management Act (EMA) to give legislative effect to the policy. As in the case of the development of the EA policy, the process of drafting the EMA was a consultative one (figure 4). Each draft was distributed to stakeholders for their input and was subjected to a series of meetings and workshops.

By December 1998, a sixth and final draft of the Environmental Management Act had been successfully negotiated with the key stakeholders and preparations are underway to submit it to Parliament for approval.

Figure 4 : The process followed in the development of Namibia's EA policy and Environmental Management Act



Description of legislation

The purpose of Namibia's Environmental Management Act (EMA) is to "*give effect to Article 95(l) and 91(c) of the Namibian Constitution by establishing general principles for the management of the environment and natural resources; to promote the co-ordinated and integrated management of the environment; to give statutory effect to Namibia's Environmental Assessment Policy; to enable the Minister of*

Environment and Tourism to give effect to Namibia's obligations under international environmental conventions; to establish certain institutions in particular to provide for a Sustainable Development Commission and Environmental Commissioner".

The main difficulty faced in drafting the legislation was accommodating diverse sectoral interests, especially in the field of pollution control and waste management. Currently at least five ministries have some statutory responsibility for pollution control. In addition, local authorities (municipalities) have their own by-laws and yet another institutional layer for management. Each institution has staff, laboratories and a line budget to issue permits, carry out inspections, issue fines and set standards. They are not obliged to co-ordinate or liase with each other, resulting in inadequate, fragmented enforcement. In addition, the current legislation is outdated and fragmented.

Namibia faced two choices, either to consolidate all the expertise, infrastructure, administration and enforcement into one body (an Environmental Protection Agency model) or to create a mechanism to facilitate and ensure integration and co-operation between the respective agencies. The problems of sectoralism precluded pursuit of the first choice, leaving little option but to opt for the second. As a result, the draft Act attempts to consolidate the previously fragmented sectoral legislation and to promote a standardised environmental approach towards development planning. The key institutions created by the Act are the office of the ECom and the SDC (table 3).

Table 3 : A summary of the proposed functions of the Environmental Commissioner and Sustainable Development Commission.

Environmental Commissioner	Sustainable Development Commission
• Maintain a register of all EAs conducted in Namibia and of all decisions taken under the EMA. • Provide secretarial functions for the SDC. • Supervise EA process & liase with Proponent and Competent Authority. • Review EA reports and make recommendations to the SDC. • Respond to environmental complaints and refer these to the SDC where appropriate. • Co-ordinate the compilation of State of Environment Reports.	• Promoting co-ordination and co-operation within government, amongst NGOs, CBOs, the Private Sector and donors on environmental issues relating to sustainable development. • Reviewing and advising on the development of policy and strategy for achieving sustainable development. • Promoting the integration of environmental considerations in all aspects of development. • Monitoring compliance by all government institutions. • Advising government on the implications of existing or intended legislation on the environment and promoting legislative reform. • Making proposals on the use of financial incentives and disincentives as well as user fees in order to promote sound environmental management. • Reviewing & commenting on Proposals (PPPs). • Reviewing EA reports and recommending conditions to be imposed should the development proceed. • Co-ordinating pollution control & waste management & co-ordinating setting of standards & monitoring. • Advising on development constraints & options, and recommending mitigatory actions & action plans. • Investigating environmentally-related complaints & recommending remedies • Hearing appeals. • Acting as a focal point for international conventions.

Part 1 of the Act sets out various **Environmental Rights and Duties**, including the right of current and future generations of Namibians to "an environment conducive to health, well being and security" (inter-generational equity) and equitable access to resources. A duty is placed on all people and on government to protect and conserve Namibia's environment (section 2).

The EMA also extends the traditional concept of *locus standi*. The main obstacle in the past to the use of civil actions for the enforcement of environmental law has been the requirement that the person who brings the action must have an interest in the relief claim. To establish the required interest it must be shown that the plaintiff or applicant is personally adversely affected by the breach of the statute. A person who does not have such an interest has no *locus standi*. Environmentalists often want to take action in the interests of the environment or in the public interest, rather than in their own interest. They are, however, barred from doing so because of the fact that they do not have a personal interest in the relief claimed and thus do not have standing. To address this problem and to ensure that the law extends maximum protection to the environment and to communities whose health and welfare is dependent upon a sound environment, the standing clause in the EMA has extended *locus standi* as broadly as possible.

The EMA also provides that "every person has access to publicly held information relating to the implementation of this Act and to the state of the environment and actual and future threats to the environment, including any emissions to water, air or land as well as the disposal and storage of hazardous waste". The only circumstances in which a request for information can be refused is "a) if information to be given would involve the supply of unfinished documents, data or internal communications, or where the request is manifestly unreasonable or formulated in too general a manner; b) if the public order or national security would be affected thereby; or c) for the reasonable protection of trade or industrial secrets".

Part 1 of the Act thus ensures that proponents and decision makers can be held accountable to the public, who in turn, have ample opportunity to inform themselves and to exercise their citizens rights.

The 13 **Principles of Environmental Management** set out in Part 2 are applicable to government institutions and private persons. They are as follows:

1. renewable resources shall be utilised on a sustainable basis for the benefit of current and future generations of Namibians,
2. community involvement in natural resource management and sharing in the benefits arising therefrom shall be promoted and facilitated,
3. public participation in decision making affecting the environment shall be promoted,
4. fair and equitable access to natural resources shall be promoted,
5. equitable access to sufficient water of acceptable quality and adequate sanitation shall be promoted and the water needs of ecological systems shall be fulfilled to ensure the sustainability of such systems,

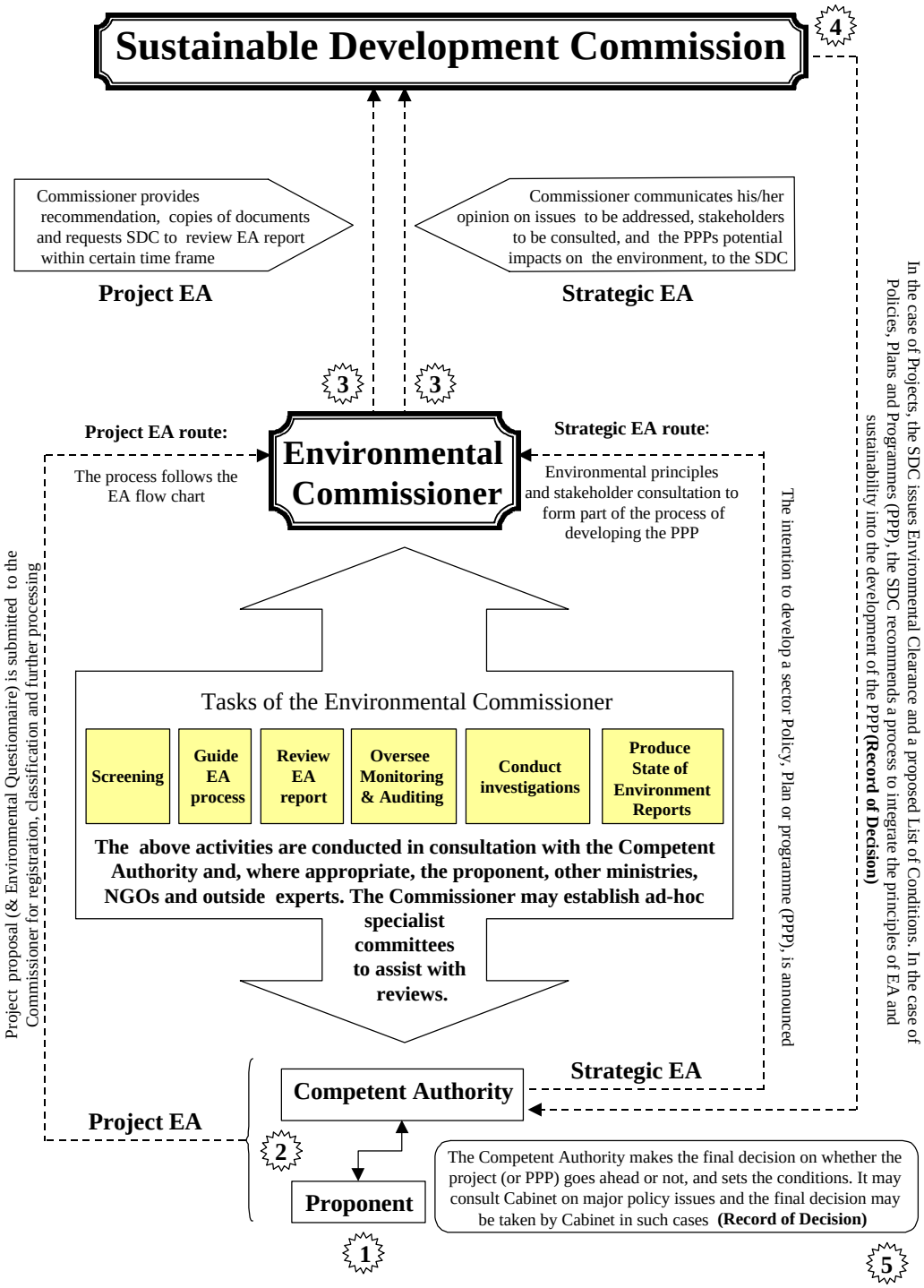
6. the precautionary principle and the principle of preventative action shall be applied,
7. there shall be prior environmental assessment of projects and proposals which may significantly affect the environment or use of natural resources,
8. sustainable development shall be promoted in land use planning,
9. Namibia's movable and immovable cultural and natural heritage including its biodiversity shall be protected and respected for the benefit of current and future generations,
10. generators of waste and polluting substances shall adopt the best practicable environmental option to reduce such generation at source,
11. the polluter pays principle shall be applied,
12. reduction, re-use and recycling shall be promoted, and
13. there shall be no importation of waste into Namibia.

A comprehensive system of EA is provided for in the EMA, which defines EA as "*a process of identifying, predicting and evaluating the actual and potential biophysical, social and other relevant effects on the environment of projects prior to their authorisation, or in the case of proposals prior to their implementation, as well as the risks and consequences of projects and proposals and their alternatives and options for mitigation with a view to minimising negative impacts on the environment, maximising benefits and promoting compliance with the principles of environmental management*"

The definition thus differentiates between projects and proposals (the latter being policies, plans, programmes and new or revised legislation). The most important difference is the level of assessment afforded to project EA compared to the system applied to strategic EA (figure 5). In both cases, the ECom and the SDC are the key institutional structures in the process.

From an EA perspective, the main function of the ECom will be to guide the EA process whilst the SDC will be responsible for reviewing EAs, issuing environmental clearances for projects and making recommendations to competent authorities on conditions to be imposed in respect of the implementation of projects.

Figure 5 : A schematic representation of the roles of the SDC, the ECom and the proponent, in both project and strategic-level EA in Namibia.



The Ministry of Environment and Tourism (MET) will chair the SDC and its membership will be half government and half non-government. The other ministries on the SDC will be Mines and Energy (MME), Agriculture, Water and Rural Development (MAWRD), Fisheries and Marine Resources (MFMR), Local and Regional Government and Housing (MLRGH), Lands, Resettlement and Rehabilitation (MLRR), Works, Transport and Communication (MWTC) and the National Planning Commission (NPC). The Private Sector will be represented by the Chamber of Mines, the Chamber of Commerce, the Institute for Town and Regional Planners, the National Union of Namibian Workers, and two persons appointed by the Minister on the basis of their special expertise in the field of sustainable development. Three NGO representatives brings the total to 16 members. Provision is made for the possibility of co-opting additional (but non-voting) members. Since the members of the SDC will be at a senior level and fully employed within their own institutions, the EMA provides for the creation of smaller, technical committees which, under the chairmanship of the ECom, will deal with individual EAs. The SDC will thus rely substantially on the recommendations of the ECom and technical sub-committees.

The composition of the SDC has always been controversial, especially since it was originally intended to have the final say over EAs *and* whether a development proposal would be allowed to proceed or not. As soon as its power was diluted to an advisory role, making recommendations rather than final approval, opposition to its being chaired by the MET disappeared and a more prominent role for NGOs and the private sector was accepted. While the SDCs power may thus be limited, every recommendation it makes will be recorded and made public. Thus, if the Competent Authority chooses to ignore the SDCs recommendations, it may be asked to justify its decision publicly. The advantage of this power balance is that it promotes accountability within line ministries and encourages them to internalise environmentally related decision-making. Ministries will be required to develop some environmental capacity within their institutions, which is preferable to the country relying on a limited number of experts concentrated in the MET only.

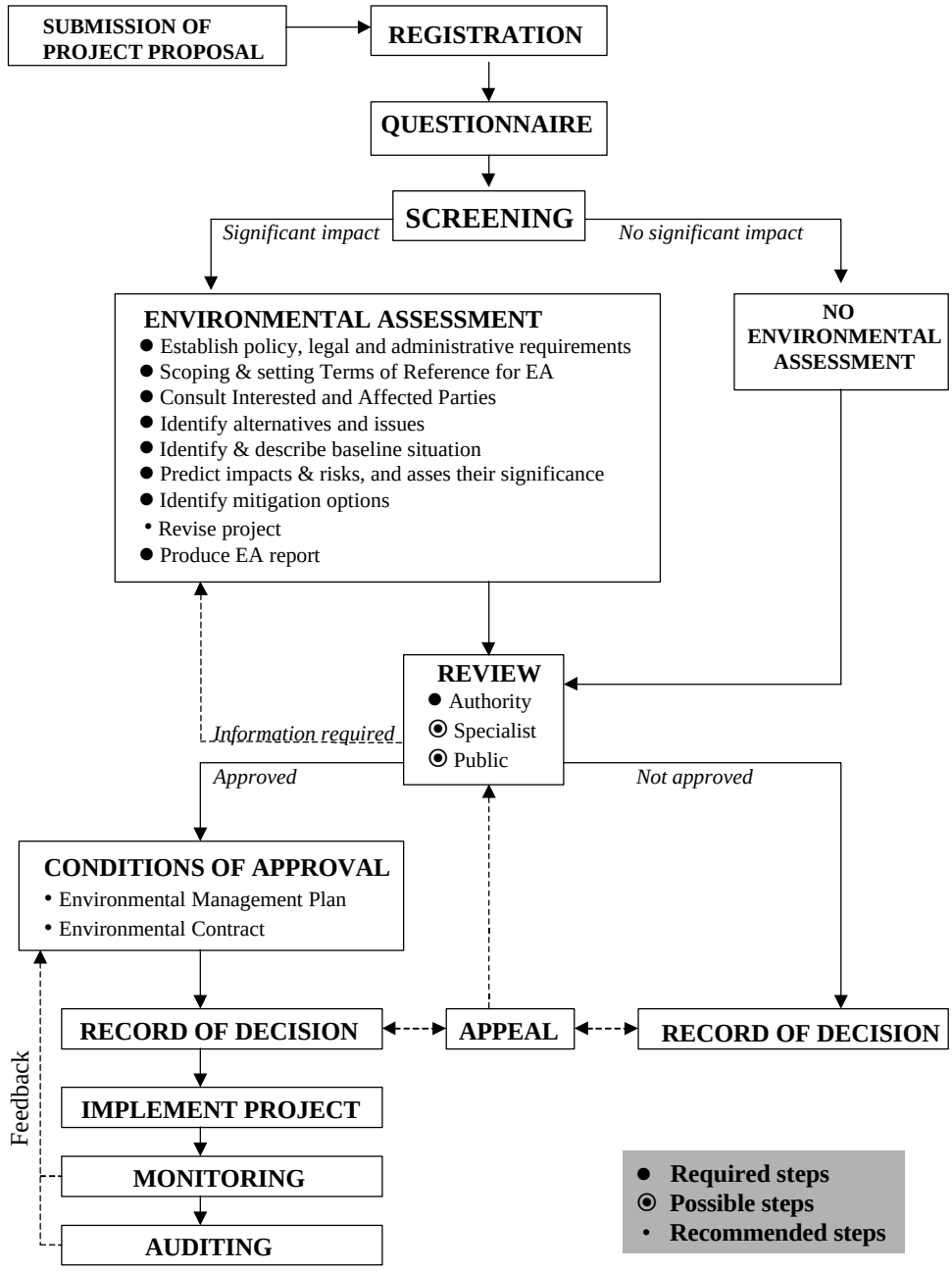
The SDC will have the authority to monitor compliance and if, for example, a government institution is not adhering to the environmental management principles set out in the EMA, it may recommend that the Minister of MET request his/her counterpart Minister to remedy the situation, Should the counterpart Minister fail to do so, the matter may be referred to the Ombudsman for further action. Article 91 of the Namibian Constitution empowers the Ombudsman to "*investigate complaints concerning the over-utilisation of living natural resources, the irrational exploitation of non-renewable resources, the degradation and destruction of ecosystems and failure to protect the beauty and character of Namibia*".

The Minister has the power to order the cessation of an activity which is or may seriously damage the environment and to order that such damage be rehabilitated.

Project-level Environmental Assessment

Project level EA in Namibia follows a similar system to that found in most jurisdictions (figure 6). In this regard, the proposed EMA is based on Namibia's EA policy that has been implemented in the country for a number of years.

Figure 6 : The Environmental Assessment process for projects in Namibia



Source : Government of the Republic of Namibia (1995)

Schedule 1 of the EMA specifies a positive list of over 30 activities that require an EA. They are grouped under four headings, namely:

- **Construction and related activities**, which include roads, dams, factories, pipelines and other infrastructure,
- **Land Use Planning and Development Activities** which include re-zoning and land use changes,
- **Resource extraction, manipulation, conservation and related activities** such as mining and water abstraction, and
- **Other Activities** (e.g. pest control programmes).

Since the EMA avoids stipulating the size or quantity below which an EA is unnecessary and above which it is required, there is concern amongst decision makers that insignificant development activities, like a short farm road, the widening of an existing small bridge, a borehole or adding on a few rooms to a hotel. will require a comprehensive EA. The current situation is that developments such as those mentioned above, require in any event some form of planning approval and persons generally need a permit from the appropriate (or more than one) ministry before they may proceed. Concerns about an EA being required for insignificant development activities are catered for by the inclusion in the EMA of a fast-track process.

The EMA stipulates in Part 4 that any proposal for an activity stipulated in Schedule 1 be accompanied by a completed Environmental Questionnaire when it is submitted to the relevant ministry or competent authority (CA). If the CA intends permitting the activity it liases with the ECom and together they decide if an EA is required or not (figure 6). This decision is based on their collective judgement of the nature and significance of the impacts the activity is likely to cause. In the event that an EA is not required, the ECom issues an Environmental Clearance (with or without conditions) and the activity may commence once it is approved by the relevant CA. The SDC only becomes involved in this screening process if the ECom and the CA do not concur or if the proponent appeals against their decision. This fast-track process ensures that time and resources will be used efficiently and the SDC spared unnecessary work.

Once the ECom and the CA have agreed that an EA is required, the process illustrated in figure 6 is followed. The EMA provides opportunities for public comment and hearings in addition to the requirement that Interested and Affected Parties be consulted during the EA. It further allows the ECom to subject the EA report to external review at the proponents' expense or to convene an *ad hoc* committee of experts to assist with the review. Thereafter, the ECom makes a recommendation to the SDC, which is ultimately responsible for the review process. The SDC must thus consider the recommendation of the ECom in the light of their own understanding of the report. Ultimately, the SDC must issue a conditional or unconditional environmental clearance for the project, or refuse to grant such clearance. A clearance indicates that the SDC has approved the EA report and the project, subject to an

appropriate Environmental Management Plan (EMP) or set of conditions, being implemented. The CA takes the final decision regarding the project and on the conditions to be imposed on its implementation. It is also responsible for ensuring compliance and monitoring. The EMA specifies a maximum time period within which the ECom and the SDC (30 days respectively) must make their decisions, and it requires each decision to be recorded.

Strategic Environmental Assessment

Policies, plans, programmes and proposed new legislation (PPPs) are not assessed in the same way as projects (figure 5). In virtually all cases, PPPs will originate from within government, and usually from a ministry that is a member of the SDC. The ministry (CA) is obliged to inform the ECom that a new PPP is envisaged and/or provide the ECom with a first draft and an explanation of how "the principles of environmental management have been taken into account".

Once the ECom receives a PPP from a CA, he/she may invite public comment or arrange for the proposal to be subject to public hearings. This step is consistent with past practice in terms of which the MLRR hosted the Land Conference and the MME held a public debate on the topic of its intended Energy Policy. The key difference is that the ECom initiates the peer review process, rather than the CA. This may be a weakness, given the fact that in project EA, the proponent and CA are obliged to internalise the process and provide opportunities for public input, with the ECom and SDC "looking over their shoulder". The advantage of the ECom running the Strategic EA peer-review process is that a CA has fewer opportunities to manipulate the process. Either way, it is significant that the public have ample opportunity to provide input on intended development actions ranging from new legislation and policy, to individual projects.

As is the case in project EA, the ECom provides the SDC with his/her comments, together with a summary of comments received from the public. The SDC is then obliged to review the PPP within 30 days and to make recommendations to the CA. In the case of Bills, draft regulations and amendments to existing legislation, the SDC may advise Cabinet directly. The CA is ultimately responsible for pursuing its line functions and for considering the opinions of stakeholders.

The EMA provides for a simple appeal process, in terms of which any person can appeal to the SDC against a decision taken by the ECom or to the Minister against a decision of the SDC. In all cases, the EMA makes provision for a prescribed appeal process and time frame for appeals.

Since the process envisaged by the EMA is modelled on Namibia's EA policy, the experience gained over the past seven years provides some security in that local EA practice has generally been successful. The same cannot be said for the enforcement of EA. To date, no proponent or CA has been charged under mining or petroleum legislation for not doing an EA or for not abiding by certain conditions attached to the

implementation of an activity. The EMA includes a comprehensive section on offences, penalties and forfeiture, some of which are summarised below (table 4).

Table 4 : A summary of some of the offences and penalties in the EMA

Offence	**Prison (years)**	**Fine (N$)**
Failure to do an EA	15	100 000
Failure to comply with conditions imposed by the CA	1	10 000
Unauthorised dumping of waste in a public place	5	50 000
Forging or altering a license, EA report, certificate, etc	2	20 000
Obstruct/hinder any investigation of the ECom or SDC	2	20 000

N$ 10 = an average of £ 1 in 1999

While the fine for failing to conduct an EA is modest at N$ 100 000 this is approximately the cost of an average size EA. The fine and the possibility of a 15-year prison sentence are probably sufficient deterrent in this case. In addition to the above fines, the Minister may "repair damage" or rehabilitate a site and recover the costs from the proponent. In cases where an unlawful action (e.g. a major pollution event) has afforded the proponent a significant advantage (e.g. resulted in better market competitiveness), the court is empowered to impose a fine equal to the money gained as a result of the offence being committed. Furthermore, the Court may declare the vehicle, machinery or "thing by means whereof the offence was committed", forfeited to the State.

The EMA provides the Minister of the MET with a range of general powers including, *inter alia* the right to stop a person from "performing any activity or failing to perform an activity as a result of which the environment or any component thereof is, or may be seriously damaged, endangered or detrimentally affected". The Minister may also direct a person to rehabilitate damage, failing he/she will affect the required rehabilitation at the expense of the proponent. In addition, the Minister may "prohibit any person from taking, disturbing, harming, or damaging any environment or part of an environment, living or non-living, that the Minister declares to be part of the natural, archaeological, or aesthetic heritage". The EMA thus provides Namibia with a practical framework within which to administer and guide EAs in the country. While it falls short of establishing an all-powerful EA agency, it is perhaps better in the long term to encourage all ministries to develop their own "environmental conscience". In any case, the current situation within government precludes an EPA equivalent for the foreseeable future if at all.

Conclusion

The Namibian governments policy to "follow integrated land-use planning techniques involving all sectors so as to support long-term sustainable development for all Namibians" has not yet been fulfilled. Similarly, its goal of "creating an integrated land-use planning capacity which co-ordinates land-use planning at all levels" remain an elusive ideal. However, protracted but successful inter-sectoral negotiations have led to the finalisation of the EMA and opportunities to create new institutional

structures. The fact that the new institutions reflect collective thinking on the basis of consensus building over a considerable period of time, should promote their sustainability. It is very likely that this firm foundation will prove vital to the future success of EA in Namibia.

References :

Brown, C.J. (ed) (undated – circa 1992): Namibia's Green Plan. Directorate of Environmental Affairs (DEA), Ministry of Environment and Tourism (MET).Government of Namibia.

Corbett, A. and Glazewski, J. (1996): An overview of Namibia's environmental legislation. Namibia Environment vol.1, 1996. Ministry of Environment and Tourism, Windhoek, Namibia.

Government of the Republic of Namibia (undated): The Namibian Constitution, Windhoek.

Government of the Republic of Namibia (1991): The Petroleum (Exploration and production) Act No. 3 of 1991.

Government of the Republic of Namibia (1992): The Minerals (Prospecting and Mining) Act No. 33 of 1992.

Government of the Republic of Namibia (1995): Namibia's Environmental Assessment Policy. Directorate of Environmental Affairs. Ministry of Environment and Tourism.

Government of the Republic of Namibia (1999): Draft Environmental Management Act (in prep).

Katjavivi, P.H. (1988): A history of resistance in Namibia. Unesco Press, UN.

National Planning Commission (NPC) (1995): Namibia's First National Development Plan (NDP1), Windhoek.

Tarr. P.W. (1999): The potential role of environmental assessment in promoting sustainable development in Namibia. Unpublished PhD thesis, University of Aberdeen, Scotland, U.K.