

## Public Participation in Environmental Impact Assessment: Review of 2005 to 2010 Legislative and Policy Framework and its Compatibility to International Best Practice

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### Abstract

Public participation (PP) is an integral aspect of Environmental Impact Assessment (EIA) process. PP in EIA process facilitates environmental protection and sustainability of development projects. The study from which this paper is derived was conducted from 2008 to 2010. The paper focuses on a component of the study that used qualitative data to assess the adequacy and effectiveness of EIA legislation and policy in Botswana from 2005 to 2010. Documented data and key informants interviews were the principal methods used to gather the data used in the paper. The study established that there were useful mandatory provisions for public participation in the Botswana 2005 EIA Act (which was repealed in 2011). It was also established that the legal and policy framework in Botswana was consistent with international best practice principles of effective public participation drawn from the literature. The conclusion drawn is that the provisions for public participation in the EIA system based on the 2005 EIA Act were generally effective.

### Introduction

The paper aims to evaluate the effectiveness of the public participation process in the Botswana EIA system based on the EIA Act of 2005. The study was based on a mega coal mining development project at Mmamabula and a small quarry project at Tshwaane. According to Stewart and Sinclair (2007) despite consensus among scholars and EIA practitioners on the essential elements of meaningful public participation, often enshrined in laws, regulations and policies, the actual participation practice does not reflect this. Most of the participation procedures remain largely discretionary thus adversely affecting the value and effectiveness of public participation in EIA. Earthcare Africa (1994) and Wood (2003) assert that to ensure that EIA process becomes effective, public participation should be backed by the force of law, specifying the role of the public in the EIA process. In the period 2005 when Botswana enacted its first EIA law and 2010 Botswana has been in transition to adopting the EIA legislation. Therefore, the 2005 Act was repealed in 2011 and replaced with the Environmental Assessment Act (EA) of 2011. Although it could be important to make reference to the EA Act of 2011, the paper focuses strictly on the 2005 to 2010 era because the study was conducted from 2008 to 2010.

In Botswana, prior to the Mathope's 2010 study from which this paper is derived several scientific studies had been conducted on various aspects of EIA on EIA monitoring (Aniku 2003), public information, consultation, and participation (Chigodora (2003), mitigation in EIA (Matale 2001), and on comparative effectiveness of EIA on an abattoir, a shopping centre, and road construction (Moletsane 2006). Some previous studies on EIA and public participation in Botswana revealed some inherent limitations. For example, Chigodora (2003) established that lack of EIA legislation contributed to ineffective participation by members of public. Chigodora (2003) also found that there were limited opportunities for public participation in the EIA process, lack of social profiling of the public, and limited information was availed beforehand to the public or participants prior to their expected involvement in EIA. Boko and Keatimilwe (2005) reviewed existing EIA laws, regulations, and guidelines in

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Botswana and concluded that although some form of public participation or consultation has always been undertaken levels of participation were low partly due to obscure roles of various stakeholders in the EIA process. Some potential costs of insufficient public participation in the EIA process included protracted conflicts and costly delays, marginalisation of potentially valuable stakeholders in decision making process, failure to garner local support as well as possibilities to overlook locally specific, social, environmental and health impacts in project design, implementation and monitoring (DEA 2009).

The foundations of the EIA process were established around 1969 when National Environment Protection Agency (NEPA) of the United States of America (USA) government was set up (Glasson et al 1994). During the 1970s only a handful of countries had introduced EIA (Sadler, 1996, and Stewart and Sinclair, 2007). Today, it is estimated that more than 100 countries across the world have national EIA systems in place, with detailed legislation. In Botswana the first EIA law was the EIA Act of 2005. Therefore, the formal EIA process is relatively new as the legislative procedures follow the enactment of the EIA Act No 6, 2005. Research on the subject is still not substantial to help elucidate fully the national experiences, but a number of studies have been undertaken on various aspects of the process (Mathope 2010; Moletsane 2006; Boko and Keatimilwe 2005; Aniku 2003; Chigodora 2003 and Matala 2001). Aniku (2003) identified a number of weaknesses in the EIA process, some of which are still relevant today, namely:

- Lack of institutional capacity exists in the coordination of the sectoral environmental responsibilities;
- Lack of adequate environmental education and public awareness;
- Weak institutional arrangements for decision making in natural resource management;
- Low number of high quality of EIAs;
- Centralized administration of EIA (only at DEA with no offices in districts delays processing of EIA's);
- There is a widely held unfortunate view, even among some policy and decision makers, that EIA process delays the implementation of projects and that it adds to costs. This argument should be qualified. The flip side of it is that like all professional services to facilitate economic and physical development in countries, such as engineering, legal, architectural services etc., EIA as an environmental protection service for sustainable development also comes with a financial cost, but that the cost should not be so prohibitive as that would discourage investment and economic development.

The EIA process aims to provide information about the likely environmental impacts of developments to the developers or investors, to the public and to decision makers so that better decisions can be made. Glasson et al (1999:200) posit that consultation and participation can be useful at the following stages of EIA process:

- Determining the scope of EIA
- Providing specialist knowledge about site
- Evaluating the relative significance of the likely impacts
- Preparing mitigation measures
- In ensuring that the EIA is objective, truthful and complete
- In monitoring conditions of development agreements

According to Andre *et al* (2006:2) public participation as a process revolves around certain basic and generic principles as listed in Table 1 below:

**Table 1: Basic Principles of Public Participation**

<p>Public participation should be:</p> <ul style="list-style-type: none"> <li>• <i>Adapted to context:</i> Understanding and appreciating the social institutions, values, and culture of the communities in the project area; and respecting the historical, cultural, environmental, political and social backgrounds of communities which are affected by a proposal.</li> <li>• <i>Informative and proactive:</i> recognizing that the public has a right to be informed early in a meaningful way in proposals which may affect their lives.</li> <li>• <i>Adaptive and communicative:</i> recognize that the public is heterogeneous according to their demographics, knowledge, power, values and interests. The rules of effective communication among people, in respect of all individuals and parties should be followed.</li> <li>• <i>Inclusive and equitable:</i> ensuring that all interests, including those not represented or underrepresented are respected regarding the distribution of impacts, compensation and benefits.</li> <li>• <i>Educative:</i> Contributing to mutual respect of all impact assessment stakeholders with respect to their values, interests, rights and obligations.</li> <li>• <i>Cooperative:</i> promoting cooperation, convergence and consensus building rather than confrontation. Engaging conflicting perspectives and values as well as trying to reach general acceptance of the proposal towards a decision that promotes and supports sustainable development.</li> <li>• <i>Imputable:</i> improving the proposal under study, taking into account the results of the public participation process; including reporting and feedback about the results of the public participation process, especially how their inputs have contributed to decision making.</li> </ul>
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Source: Andre et al (2006:2)

### **Methodology**

The paper is culled from a wider study where the research methods used were documentary analysis, key informant interviews and a social survey. The principal methods used to gather the data used in the paper were qualitative comprising of documentary analysis complimented by key informant interviews. The EIA Act No 6, 2005 was reviewed as the key document. In addition, the General Environmental Impact Assessment Guidelines of 2009 published by the Department of Environmental Affairs in the Ministry of Environment, Wildlife and Tourism was reviewed. The review of these documents was guided by an integrated framework based on the Stewart and Sinclair (2007) and Andre et al (2006) frameworks for identification of elements of effective public participation in EIA process as shown in Table 2 below:

**Table 2: Elements of Meaningful Public Participation in EIA Process**

Stewart & Sinclair framework (2007)	Andre <i>et al</i> framework (2006)
<b>Similar Elements</b>	
<ul style="list-style-type: none"> <li>• <b>Informative and proactive:</b> recognizing that the public has a right to be informed early in a meaningful way in proposals which may affect their lives.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Fair notice and time:</b> fair notice includes making genuine effort to engage interested and impacted people public, encouraging them to participate. It includes consideration of amount of time taken by participants to develop a level of understanding of what’s being presented before they can respond meaningfully.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Adaptive and communicative:</b> recognize that the public is heterogeneous according to their demographics, knowledge, power, values and interests. The rules of effective communication among people, in respect of all individuals and parties should be followed.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Multiple and appropriate methods:</b> refers to using multiple methods of engagement, designing an appropriate program to situation and participants involved. This is important to giving people opportunities to participate at the level of their interest.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Inclusive and equitable:</b> ensuring that all interests, including those not represented or underrepresented are respected regarding the distribution of impacts, compensation and benefits.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Inclusiveness and adequate representation:</b> Involves identifying all of the potentially impacted and interested public so that the program can effectively engage participants. This helps avoid hearing from segments of public that can lead to distorted image of public opinion.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Educative:</b> Contributing to mutual respect of all impact assessment stakeholders with respect to their values, interests, rights and obligations.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Informed participation:</b> participants should have a high level of understanding of the issue, situation and alternatives and of various perspectives and views of participants.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Imputable:</b> improving the proposal under study, taking into account the results of the public participation process; including reporting and feedback about the results of the public participation process, especially how their inputs have contributed to decision making.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Influence:</b> participants need to have genuine opportunity to be heard and influence decisions. This may relate to problem definition, consideration of alternatives and their evaluation and selection.</li> </ul>
<b>Varying Elements</b>	
<ul style="list-style-type: none"> <li>• <b>Adapted to context:</b> Understanding and appreciating the social institutions, values, and culture of the communities in the project area; and respecting the historical, cultural, environmental, political and social backgrounds of communities which are affected by a proposal.</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Cooperative:</b> promoting cooperation, convergence and consensus building rather than confrontation. Engaging conflicting perspectives and values as well as trying to reach general acceptance of the proposal towards a decision that promotes and supports sustainable development.</li> </ul>	

	<ul style="list-style-type: none"> <li>• <b><i>Fair and open dialogue:</i></b> means having a forum that involve a two way flow of information and promote open discussion and debate.</li> </ul>
	<ul style="list-style-type: none"> <li>• <b><i>Adequate and accessible information:</i></b> access to information and how information is presented does impact on the quality of participation process. Support needs to be available to assist the public to understand, interpret and use information.</li> </ul>
	<ul style="list-style-type: none"> <li>• <b><i>Integrity and accountability:</i></b> deals with the manner in which the participation process is facilitated and how input derived from the process is incorporated into decision making process. It involves transparency, sincerity of lead agency, and clear process intentions and feedback to participants.</li> </ul>

Source: Mathope (2010)

## Results and Discussion

The key objective is to examine the adequacy and relevance of the legislative framework for public participation in the EIA system of Botswana. Discussions in this section trace the ‘mandatory’ requirements for effective public participation process as prescribed in legislation. The focus is on the review of the EIA Act and the 2009 Guidelines (henceforth the 2009 Guidelines). Information presented is also obtained from officials from government regulating departments (Department of Environmental Affairs, Department of Mines, and Department of National Museum and Monuments). The provisions for public participation are discussed along the parts of the legislation where they exist and the associated themes under each part.

### Review of Policy and Legal Provisions for Public Participation in the EIA System

The EIA Act No 6, 2005 was divided into five (5) parts as we illustrate in Table 3 below. Under each part there were specific sections each dealing with specific issues. In this paper the sections constitute the themes. The presentation follows the structure of the EIA Act. The provisions for public participation begin in Part II of the Act.

**Table 3: Arrangement of the EIA Act No 6, 2005**

<p>PART II <i>Preparation of environmental impact assessment documentation</i></p> <p>6. Requirement for authorisation 7. Public participation and scoping exercise 8. Terms of reference 9. Environmental impact assessment and statement 10. Form and content of statement 11. Registration and qualifications of consultants</p> <p>PART III <i>Review process of environmental impact statement</i></p> <p>12. Public review of statement 13. Conduct of public hearing 14. Approval of statement 15. Appeals</p> <p>PART IV <i>Authorisation of a statement</i></p> <p>16. Validity of an authorisation 17. Revocation or modification of authorisation 18. Transfer of authorisation 19. Decision making by competent authority</p> <p>PART V <i>Post environmental impact assessment of implemented activities</i></p> <p>20. Monitoring programme and evaluation report 21. Environmental audit by competent authority</p> <p>PART VI <i>Miscellaneous</i></p> <p>22. Enforcement of provisions 23. Public documents and register 24. Confidentiality 25. Protection from personal liability 26. Powers of entry 27. Power to require information 28. Trans-boundary environmental impact 29. General penalty 30. Regulations 31. Transitional 32. Act to bind state</p>
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Source: EIA Act No 6, 2005

*Preparation of environmental impact assessment documentation*

Under this theme, Section 7 (2) of the EIA Act No 6, 2005 outlined the need to undertake scoping exercise to seek the views of communities which are likely to be affected by the activity. The procedures involved included firstly publicising the intended activity in the mass media for a period of not less than

21 days; and secondly holding public meetings with the affected communities to explain the activity and its effects after the expiry of 21 days.

*Terms of reference*

The EIA Act of 2005 and the 2009 Guidelines indicated that the Scoping Report and Terms of Reference were documents to be submitted to the Competent Authority (Department of Environmental Affairs) for review and approval.

*Public Participation and Scoping Exercise*

Under this theme, Section 7 (2) of the EIA Act No 6, 2005 outlines the need to undertake Scoping Exercise to seek the views of communities which are likely to be affected by the activity. The procedures involved include:

- (a) Publicising the intended activity in the mass media for a period of not less than 21 days; and;
- (b) Holding public meetings with the affected communities to explain the activity and its effects after the expiry of 21 days.

The EIA regulators highlighted the ambiguous interpretation of the provisions of Section 7 (2) (a) as it requires the applicant to publicize the intended activity. This is reflected in the following comments:

There were some concerns among some sections of the community that Section 7 required 21 advertisements to be published prior to holding public meetings. The Attorney General's Chambers also confirmed ambiguity of this Section by clarifying that it could have been interpreted to mean publicizing the intended activity once, or 21 times. This section was revised to explicit in the 2011 Act to state explicitly that a minimum of one advertisement is required.

As a result of the ambiguity that obtained in Section 7 (2) some applicants only resorted to publishing notifications only once for the entire 21 days period, thus in some instances limiting outreach to the public.

Scoping is generally intended to afford the interested and affected parties the opportunity in: focusing the scope of the EIA study so that only relevant and important issues are addressed; identifying possible effects of the proposal; and organizing, focusing, and communicating the potential impacts and concerns. It is also intended to assist further analysis and decision making (DEA, 2009). If not well undertaken, the resulting Scoping Report and Terms of Reference may be inadequate resulting in possible delays in approval period.

The General Environmental Impact Assessment (EIA) Guidelines provided an outline for undertaking the Scoping Exercise. Section 4.4 of the Guidelines stated that the interested and affected parties (IAPs) varied from project to project and included the project developer, the competent authority, other government agencies, environmental experts and practitioners, local authorities, and the wider community. This view is consistent with the definition of Scoping in the EIA Act and demonstrated consistency between the Act and the Guidelines.

Section 4.4.2 of the General EIA Guidelines provided for the development of a Public Participation Plan for every EIA. When developed, the Public Participation Plan indicated the method that was to be used for consultation and the venues and times. It is emphasized that in every Public Participation Plan the applicant should consider different methods for consulting various stakeholders. The methods may include questionnaires, polls, surveys, advertisements, mass media, leafleting, community presentations, personal contacts, public meetings and public hearings (DEA, 2009).

### *Form and content of statement*

Under this theme Section 10 of the EIA Act 2005 was relevant to promoting public participation in environmental impact assessment. This section outlined what should constitute contents of the report submitted following approval of Scoping Report and Terms of Reference and undertaking of detailed studies. The prescription included the following:

- the name of the applicant;
- a description of the proposed activity and its purpose;
- an outline of alternative sites of the proposed activity including the non-action alternative;
- a description of the likely environmental impact on local environment and socio-economic consequences;
- an environmental management plan;
- the time period for which environmental impact is predicted;
- an account of the predicted environmental impact and an assessment of each kind of environmental impact;
- a discussion of the distribution of the expected environmental impact;
- a description of mitigating measures to keep adverse environmental impact to a minimum;
- a description of residual environmental impact;
- a proposed monitoring programme and evaluation exercise;
- the potential uses to be prevented or impaired by the proposed activity;
- the possible effects of an environmental impact of an activity;
- the potential trans-boundary environmental impact of an activity;
- a brief, non-technical or executive summary; and
- such other relevant information as the Minister may consider necessary.

In some countries such as Pakistan, it is requirement that the summary should be in such a form that it can be easily translated into other languages where this would help people to understand the proposal (Nadeem and Hameed 2006).

### *Public review of the environmental impact statement (EIS)*

Section 12 of the EIA Act dealt with public review of the statement submitted in accordance with the requirements of section 10 of the EIA Act. The procedure was to place notification in the newspapers and 'Government Gazette' for four consecutive weeks inviting comments or objections of those people who were likely to be affected by the proposed activity and other interested persons. The reports were also placed at strategic places for accessibility by members of the public. Electronic copies of the reports were also posted on the website of the Competent Authority for review by people with access to the electronic media. The measures outlined above indicate efforts to promote review, however, the limiting factor to their full usage was that they required members of the public to be literate and supply written comments to the regulating authority. This mechanism constrained effectiveness of public participation.

### *Conduct of a public hearing*

Section 13 of the EIA Act 2005 provided for conduct of a public hearing by the Competent Authority. Public hearings were not compulsory and could be held if the Competent Authority, at its own discretion, was of the opinion that the proposed project was of the nature and scale that the public needed to be given the opportunity to make submissions.

*Approval or rejection of the statement*

Any environmental statement that was considered adequate in identifying the likely impact and prescribing mitigation measures was approved in terms of Section 14 of the EIA Act 2005. There was no requirement for notifying the public about approval of the statement. This is despite the expectation that public would have commented on the report in terms of Section 12 of the EIA Act. A comparative review of South Africa EIA Regulations revealed that in that country it was mandatory for the interested and affected persons (IAPs) to be notified about the approved activities.

*Authorization of the EIS*

Approval of statement in the 2005 Act was granted with specific conditions of conduct during operation of an activity. Where such conditions were not implemented the authorisation granted under Section 14 of the EIA Act could be revoked or modified by the Competent Authority in accordance with Section 17 of the EIA Act in instances where there was unanticipated irreversible adverse environmental impact, or when the developer failed to comply with any conditions subject to which the authorisation was issued.

*Implementation of development activities post environmental EIA*

Section 20 of the EIA Act 2005 required relevant Technical Departments or Local Authorities to monitor the implementation of the development activity to determine compliance with the agreed mitigation measures. Monitoring authorities were expected to submit monitoring reports to the Competent Authority. There was no explicit provision for the general public to participate in the monitoring activities and some key informants thought that status quo should be maintained.

*Miscellaneous issues*

Under this citation Section 23 of the EIA Act 2005 declared any terms of reference, statement, report, decision and any other documentation produced under the EIA Act as public documents. An EIA resource centre had been created at the Department of Environmental Affairs (DEA) as a library for all EIA documents. At the time of the study in 2010 the DEA was also at an advanced stage of developing a web based EIA Report Tracking and Document Management System (ERTDMS). Once developed, the system was expected to enhance accessibility of the EIA documents by providing a web based access.

**Observations**

Discussions held with EIA regulators and the review of the EIA Act No 6, 2005 and the 2009 Guidelines revealed vital provisions for early public participation in the EIA process existed in the EIA legislation. The EIA Act 2005 and the 2009 Guidelines identified Interested and Affected parties that needed to participate in the EIA process for specific activities. Despite this, there were numerous provisions that excluded the general public from participating in some essential public participation processes.

*Alignment of Public Participation in EIA Process in Botswana to International Best Practice*

The discussion is mainly based on the application of the combined elements and indicators of meaningful public participation from Stewart and Sinclair (2007) Essential elements for meaningful participation and Andre *et al* (2006) on the International Association of Impact Assessment (IAIA) public participation best practice principles to the EIA Act 2005 and the 2009 Guidelines. This approach was complemented by information obtained from officers from regulating government departments.

Information generated through review and analysis of the EIA Act 2005 and the 2009 Guidelines was verified by expert opinions of EIA regulators who had also participated in the development of EIA legislation. Discussions are structured according to the 13 elements of the Stewart and Sinclair (2007) essential elements for meaningful participation and Andre et al (2006) Principles for Public Participation in EIA. Conclusions are drawn at the end based on the application of the two frameworks.

### **Stewart and Sinclair's Essential Elements for Meaningful Participation and Andre's IAIA Principles for Public Participation in EIA**

The indicators under the 10 elements of meaningful participation presented earlier were applied to the EIA Act and Guidelines. An indication of performance of the EIA Act and the 2009 Guidelines against these indicators is provided under discussions for each combined element.

#### *Informative and proactive/ fair notice and time*

The EIA Act 2005 provided for open public participation in an EIA process. Public participation started early at the Scoping Phase of the EIA cycle to assist in the identification of issues that the detailed study should address. This helped to ensure that people who were likely to be affected by the development activities participated in the identification of possible effects. Section 7 of the EIA Act served as reference point of the specific procedure to be followed and specified a 21 day notification period for the public prior to their consultation. Section 7(1) emphasised the need to encourage the public to participate by stating that '*an applicant shall take all necessary measures to seek the views of the public or communities which are likely to be affected by the activity*'.

The various ways of encouraging the public to participate included advertising the activity in mass media, placing notification at strategic points and using public address systems. These measures outlined details in Section 4 of the 2009 Guidelines. The performance rating according to Stewart and Sinclair's (2007) and Andre et al (2006) principles for effective public participation in EIA was Excellent. This is according to the following rating scale that was used: 1) poor/not effective (has fundamental flaws or inadequacies); 2) satisfactory/slightly effective (has significant omissions or inadequacies); 3) good/moderately effective (some omissions or inadequacies); 4) very good/effective (has minor omissions and inadequacies); 5) Excellent Very Effective (is comprehensive; no important aspects left out).

#### *Adaptive and communicative/multiple and appropriate method.*

The 2009 Guidelines discuss various approaches that can be adopted for consulting the public. Emphasis is placed on devising a consultation plan that is responsive to the heterogeneity of the stakeholders identified. The public participation plan constitutes part of the Scoping Report and Terms of Reference that are submitted after undertaking a Scoping Exercise. This administrative arrangement creates problems as the Competent Authority, technical departments and local authorities only got the opportunity to comment on the plan after it had been implemented. Key informants indicated that this often resulted in delays in the completion and approval of Scoping Report in instances where additional stakeholders were identified at the time of review of specific report.

The provisions for the use of *multiple and appropriate methods* in EIA legislation require opportunities to be made for the public to participate at their level of interest. The performance rating on this aspect according to Stewart and Sinclair (2007) and Andre *et al* (2006) principles for effective public participation in EIA was satisfactory.

#### *Inclusive and equitable/inclusiveness and adequate representation*

By emphasizing the need for the applicants to develop distinct public participation plans for specific

EIA projects, the EIA Act 2005 and the 2009 Guidelines were proactive in ensuring that all IAPs were identified and consulted. This is essential for preventing the applicant from hearing from certain sections of the public which could also contribute to delays once additional stakeholders were identified. Possible sidelining of some stakeholders and the associated possible confrontations were also preempted. The performance rating according to Stewart and Sinclair (2007) and Andre et al (2006) was excellent.

#### *Educative/ informed participation*

The key indicator for the combined elements are deliberate provisions for efforts that sought to ensure high level understanding was created about an intended development activity among participants before they were consulted. Section 7 of the EIA Act provided for a developer to publish notification an activity 21 days prior to initial consultation at Scoping Phase. Respondents indicated that it was difficult for them to have a good understanding about intended project activities and their likely impacts at that stage. The performance rating according to Stewart and Sinclair, and Andre was excellent.

#### *Imputable/Influence*

The EIA Act 2005 required a public participation plan to be developed in every EIA study. A key attribute of the plan is provision for meaningful opportunities for the IAPs to express opinions about the activity under consideration. Once initial comments are obtained at a public meeting, the draft Scoping Report should document these comments and illustrate how the initial project concept is modified in response to the outcome of consultation. The EIA regulators suggested that the EIA guidelines provide an orderly direction of feedback to the public. The performance rating according to Stewart and Sinclair, and Andre was excellent.

#### *Adapted to context*

By emphasizing that a specific consultation plan should be developed under each EIA study the 2009 Guidelines emphasized the need to adapt a consultation programme to context. Such a place may exhibit respect of social values, selective choice of meeting places and timing of consultation. Respondents were agreeable to the notion that the development of a public participation plan in accordance with the set guidelines should result in a programme that appreciated social values and traditions. The performance rating according to Stewart and Sinclair, and Andre was excellent.

#### *Cooperative*

There were no explicit provisions in the EIA Act that formed the basis for avoiding confrontation in the public participation process. Nevertheless, the requirements for developing a comprehensive public participation plan that was inclusive of all IAPs can contribute to avoiding confrontations by IAPs that may otherwise be left out. Similarly it was a common belief among EIA regulators that provisions for open public meetings and public hearings had potential to promote a cooperative approach to participation. The performance rating according to Stewart and Sinclair, and Andre was poor.

#### *Fair and open dialogue*

A fair and open dialogue exists where stakeholders are able to comment freely on a development activity and obtain adequate responses to their questions. The use of public meetings and public hearings as provided for in the EIA Act 2005 was expected to make the public participation process fair and open. A two way flow of information was expected at these meetings as the developer and/or Competent Authority exchanged opinions about proposed activities. However, the use of public hearings has inherent restrictions on how discussions occur, thus limiting open dialogue. For instance, speakers were required to register in advance for them to speak at the public meeting (DEA 2009). In

other instances the speakers are timed thus resulting in non-response to some questions raised (Innes and Booher 2000). The performance rating according to Stewart and Sinclair, and Andre was excellent.

#### *Adequate and accessible information*

The key indicators are adequate provision of information and support to participants to understand, interpret and use information provided. Section 7 of EIA Act requires information about an activity to be published in the media before the public meeting is convened. Similarly, Section 12 of the EIA Act requires an environmental statement to be availed for public comments. Section 23 of the EIA Act is perhaps the most prominent on access to information. It declares all EIA documents as public. Consequently all EIA documents should be availed to the public for inspection

The EIA Act 2005 was not explicit in providing for support to the participants. Despite this, it could be inferred that by requiring contact details of the developer in the published public meeting notice there was a requirement to support the public contact person with the means of accessing additional information. There was no requirement for financial support to be provided to other participants. The performance rating according to Stewart and Sinclair, and Andre was very good.

#### *Integrity and accountability*

Integrity and accountability exist where there is transparency and respect for participants in the EIA process. The provisions for open public participation procedures in the EIA legislation (Sections 7 and 13) promoted transparency. The maintenance of the public register for scrutiny in terms of Section 23 of the EIA Act 2005 went a long way in facilitating transparent EIA process in Botswana. There were, however, no explicit provisions for guaranteeing sincerity of the lead agency in the EIA Act. The performance rating according to Stewart and Sinclair, and Andre was satisfactory.

### **Conclusion**

The EIA system from 2005 to 2010 in Botswana provided for public participation at various stages of the EIA process. The public was consulted early in the EIA process at scoping phase. Similarly the public was allowed opportunity to comment on the environmental impact assessment report. These were backed by relevant provisions in the EIA Act 2005 and the 2009 Guidelines. In this way the study established the existence of mandatory provisions for public participation in EIA legislation and associated guidelines. Despite the existence of mandatory provisions in legislation, there were processes that excluded the general public from participating fully in some key stages of the EIA process. For instance, there was no provision in the EIA Act 2005 for the public to be involved in the review of the Scoping Report and Terms of Reference. Similarly the 2005 EIA Act did not provide for public notification on the outcome of detailed EIA reports (despite having provision for public review of the environmental impact assessment report). The general public can play an important role in the monitoring of the implementation of approved management activities (World Bank 2001). In Botswana the institutional frameworks for monitoring the implementation of approved activities in the 2005 to 2010 era remained weak due to lack of capacity (Aniku 2003). Public involvement in monitoring activities, when supported by timely notification of approvals, has the potential of enhancing public stewardship and complement limited monitoring capacity by state agencies.

The frameworks for effective public participation applied include the Stewart and Sinclair (2007) Essential Elements for Meaningful Participation and Andre et al (2006) IAIA Principles for Public Participation in EIA. The study established that the provisions for public participation in the EIA Act No 6, 2005 and the 2009 Guidelines were generally aligned to the conventional frameworks for effective public participation. For instance, there were provisions in the EIA Act and the 2009 Guidelines for early, informed, and inclusive participation. Furthermore, there were explicit provisions

for transparency in the EIA process. The EIA Act No 6, 2005 declared all EIA documents as public documents, thus making them available for public scrutiny. There was however some limitations. Notable is that although funding was an integral component for effective public participation (Wood 2003; Stewart and Sinclair 2006), it was not provided for in the EIA system of Botswana. The benefits of funding participation include the ability for interested and affected parties to hire specialists to assist them in the review of technical reports, and the enhanced ability to travel and attend projects' related meetings.

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