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A Snapshot View of this Chapter

ROLES AND RESPONSIBILITIES

Roles: Government departments and officials can have a range of roles within an environmental assessment process. You could be the primary decision maker on the assessment. You could have an interest in the development as a department that needs to give an approval on an issue related to the development, such as a water permit. You could be in a department that is the developer. Be clear about your role, and the consequent responsibilities.

The focus of this chapter falls on government decision makers. If this is your role you must:

- Ensure that the public participation process is satisfactory;
- Keep yourself informed about what happens in the process;
- Consider the views and input of all stakeholders without giving preference to any one;
- Co-ordinate with other government departments; and,
- Show respect for the outcome of the process when you need to take a decision.

See **4.1.1** for more information.

Relationships: As the decision maker you cannot favour any of the parties involved in the environmental assessment. See **4.1.2** for more information.

Principles of Behaviour: Behave well and follow good behaviour principles:

- Commit to the process and respect its outputs;
- Actively listen to all stakeholders in the process;
- Treat all stakeholders and their inputs equally;
- Be transparent in your decision-making; and,
- Keep your word and deliver what you promise.

See **4.1.3** for more information.

DECISION MAKING FRAMEWORKS

Policy: Develop a policy on public participation in environmental assessments that will guide you in taking decisions. The policy should give you a baseline to work from, and assist you to evaluate the process. See **4.2.1** for more information.

Set Rules for the Process: As a decision-maker you need to provide clear guidance on the process in terms of your legislation and policies. You need to be flexible and respond to requests from stakeholders when they think the process is inadequate. See **4.2.2** for more information.

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Assessing the Process: Before the process starts you have a responsibility to verify the what is proposed is adequate. Does it meet legal requirements? Is it socially and culturally appropriate? Does it allow for good participation? See the annexures on communication and involvement techniques, as well the review template for guidance on appropriate approaches. See **4.2.3** for more information.

Communicating with other Government Agencies: Communicate well with other agencies so that you are clear about your respective roles in the process. See **4.2.4** for more information.

Transboundary Projects: Check whether there are appropriate inter-governmental bodies that you can work through. Liaise directly with your counterpart in the other governments who have an interest in a project. See **4.2.5** for more information.

INFORMING

As a decision maker you will need to communicate with a wide range of stakeholders in the process. Follow the rules of good communication. Annexure B contains tips and guidelines on communication. See **4.3** for more information.

ENGAGING

Meeting with Stakeholders: Ensure that when you meet with stakeholders in the course of an environmental assessment process, you follow good meeting procedure groundrules. See **4.4.1** for more information.

Manage Conflict: Be aware of the positive potential in managing conflict within environmental assessment process. See **Chapter 6** for more information.

DECISION MAKING

Adequacy of Public Participation Process: In evaluating the environmental assessment process draw a conclusion on whether the public participation process was adequate. The Review Template in Annexure C provides guidance. See **4.5.1** for more information.

Communicating your Decision: Make sure that all stakeholders learn about your decision in good time. Follow the rules of good communication in getting out information on the decision. See **4.5.2** for more information.

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Legislation on environmental assessment in the Southern African Development Community differs significantly between the different countries of the region. As a government official, you need to check what your powers are with respect to environmental assessment. You may be empowered in terms of specific environmental legislation, the constitution or laws regulating administrative decision making in your country. You may not act beyond the mandate conferred by enabling legislation in your country.

The government may also be involved in an environmental assessment as a developer, for example in the development of new water supply infrastructure. In this case, you should also look at the chapter for developers.

This chapter is intended mainly for government officials who have to take on the basis of an environmental assessment. It provides:

- ◆ An overview of your roles and responsibilities in the public participation process, as a decision maker in the environmental assessment process;
- ◆ A detailed guideline on setting a framework in which public participation should occur;
- ◆ Guidelines and tips on communication and engagement activities; and,
- ◆ Factors to consider during decision making.

4.1 Roles And Responsibilities

4.1.1 Roles

As a government official, you could have one of several roles in an environmental assessment process. These can be broadly divided into three roles:

- You could be the **primary decision maker** in terms of legislation that specifies an environmental assessment must be undertaken. In other words, you will be required to approve or turn down the proposed development on the basis of the environmental assessment process;
- You could be an official of a government agency with an **interest** in the proposed development as it either requires approval in terms of other legislation or is relevant to your function. You will not be taking a decision on the basis of the environmental assessment; or
- You could be an official of a department undertaking a development. In this case, government is acting as a **developer/s**.

Examples of Government Roles

A new dam may require:

- Approval in terms of environmental assessment legislation;
- A dam safety permit;
- Approval in terms of water legislation.

In this case, the government agency responsible for implementing the environmental assessment legislation would be the primary decision maker. It would be taking a decision on the outcome of the environmental assessment. The agencies responsible for issuing the safety permit and the approval in terms of the water legislation, would be interested parties in the environmental assessment but would not be making a decision on the basis of the environmental assessment, unless specifically required to in terms of their enabling legislation. Other government agencies that do not have to issue permission may however, also have an interest in the environmental assessment. For example, the social, housing or welfare department may wish to provide input into the process if people need to be relocated. The government department or agency responsible for building the dam will be the developer.

As a **decision maker** your responsibility in terms of the public participation process and environmental assessment is to:

- Ensure that the public participation process is adequate, undertaken correctly and meets policy and legal requirements;
- Keep yourself informed as to what occurs in the public participation process;
- Consider the views, inputs and opinions of all stakeholders in the process, including other government agencies;
- Co-ordinate with other government agencies who may have decision making authority or an interest in the development; and,
- Respect the outcome of the environmental assessment and public participation process in making your decision.

Decision Makers Involvement - Interested Observer

As a primary decision maker, you may not 'pre-judge' your decision until you have all the information from the environmental assessment and public participation processes in front of you.

One of the practical implications is that you may as a result not participate in the public participation process as an interested party and raise issues and concerns. You may attend events and inform yourself as to what is occurring, but may not contribute to the debate and discussion. You can provide information to participants but be careful about the information you provide. Stick to providing information on the legislative requirements of your enabling legislation. Other information could be misinterpreted as an instruction or decision in respect of the process, which would be premature if the process is not complete.

If you are a **government agency** with an **interest** in the development, it is your responsibility to ensure that you provide input to the process as required. Your department may have concerns, requirements or issues that should be addressed by the environmental assessment process. Raise these in the formal public participation process. Ensure that any decisions you may need to take are co-ordinated with that of the decision maker for the environmental assessment.

As a government agency who is the **developer**, it is your responsibility to ensure that the environmental assessment and public participation processes are undertaken. You may need to appoint consultants to undertake these processes and will need to provide resources to enable the development to occur. Chapter 5 provides further advice on these aspects.

Caution:

Be aware of the potential for a conflict of interest. If the same government agency is the developer and the primary decision maker this would constitute a conflict of interest. In cases where a conflict of interest is possible, consider using an external reviewer to provide an impartial opinion and assist in decision making.

4.1.2 Relationships with Various Roleplayers

As a decision maker, you must carefully manage your relationship with the other stakeholders. Ensure that you show no bias towards any party during the environmental assessment process and remain objective. Do not place the interests and issues ahead of civil society's interests.

The environmental assessment practitioner and public participation practitioners are facilitators of the process. One of their key responsibilities is to provide you, the decision maker, with information on which you can make a decision.

Caution:

Do not take information provided to you by practitioners, developers or civil society groups for granted. Verify information you receive by checking with other participants in the process, local communities or through ground truthing – visiting the site.

TIP:

If you are a government official, it is not appropriate to accept gifts and donations from developers. They could be constituted as bribery and compromise your independence. In certain cases, a proposed development may represent a new technology or industry. The developer may offer a fact finding trip to decision makers. In such cases, you could insist that representatives from credible and relevant civil society organisations also be afforded the opportunity to attend.

4.1.3 Principles of Behaviour

Let the following key principles govern your conduct as a decision maker or interested government agency in relation to the public participation process:

- Commit to the process and respect the outputs and results of the process;
- Actively listen to all the stakeholders in the process;
- Treat all stakeholders and their inputs equally;
- Be transparent in your decision making; and,
- Keep you word and deliver what you promise.

Politicians

Guard against interference from politicians who are not mandated decision makers in terms of the environmental assessment. Public participation is guaranteed in most SADC countries. Good governance can enhance the effectiveness of a process. Interference can, on the other hand, invalidate a process in extreme cases. Politicians are important stakeholders and should be treated equally alongside other important stakeholders in the assessment process.

Case Study

There was no political interference in the process for the proposed Popa Falls hydropower project in Namibia. This was in contrast to a previous process undertaken by NamPower, where there was extensive political interference. The Popa Falls process was thus more legitimate and the outcome and recommendations of the environmental assessment reflected the results of the public consultation.

4.2 Public Participation Approaches

As the government agency responsible for decision making you need to set the direction and framework in which the environmental assessment and public participation process will be occur. You need to:

- Inform developers, practitioners and civil society of your requirements for public participation;
- Inform all stakeholders where and when decisions will be made, and the anticipated timeframes for these decisions;
- Evaluate the proposed public participation process; and,
- Ensure that communication channels with other government departments are set up.

Develop a policy on public participation in environmental assessment that clearly sets out your governments requirements and interprets the legislative requirements. This will provide you with a sound basis on which to provide direction to practitioners and proponents as well as evaluate public participation processes.

4.2.1 Developing Policy

A well developed policy on public participation processes in environmental assessment will:

- Provide a benchmark or baseline as well as guidance for developers and practitioners;
- Assist you in evaluating processes proposed by developers and practitioners.

The policy should be a clear statement of the principles which you would like public participation processes to adhere to.

In developing your policy consult with a broad range of stakeholders. These could include other government officials and departments, practitioners in your country, prominent NGOs and civil society groups.

Warning:

Your policy should not provide a checklist or 'recipe' for a public participation process. Each process will be unique and is dependent on the particular project context and nature of the particular affected stakeholders.

4.2.2 Process Requirements

You need to provide clear guidance to all the stakeholders involved in a public participation process of your requirements as determined by your policies and legislation.

These will provide stakeholders with a framework or set of non-negotiable 'minimums'. The developer or practitioner may wish to have a public participation process that goes beyond these requirements, which should be encouraged. Civil society may also request a public participation process that goes beyond your requirements.

Sometimes representatives of civil society will request you to instruct developers or practitioners to extend a public participation process. When you consider these requests you need to:

- Consider the request against the principles set out in your policy;
- Consider the circumstances and reasons for the request;
- Be flexible – public participation processes are not static and may change or need to be adapted as circumstances in a project change; and,
- Consider all interests in the process and balance these in an appropriate manner.

Discuss the request with the developer and practitioner – you may find that they were unaware of problems but are willing to extend the process.

CAUTION:

Be consistent in your requirements. You should not change your requirements too frequently as this can lead to poor process and frustration on the part of stakeholders. Communicate your requirements and decisions clearly. Respect the independence of the practitioners and do not interfere unless it is clearly warranted.

4.2.3 Determining the adequacy of a proposed public participation process

As a decision maker, you need to verify that the public participation process proposed by a developer or practitioner:

- Meets legal and policy requirements;
- Is appropriate to the circumstances of the project and affected environment; and,
- Makes adequate and appropriate provision for the involvement of stakeholders.

This verification should occur *prior* to the initiation of the process, and not at the end of the environmental impact assessment when it is too late to rectify problems.

Annexure C provides a template that can

TIP:

Legal sufficiency should not be your only test of a public participation process. Processes that attempt to incorporate elements of best practice and go beyond legal compliance can deliver more effective and sustainable results than the legally required minimum.

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be used as a checklist to review the public participation process. Outlined below are some key issues.

In verifying the proposed public participation process you need to meet with the practitioner and/or developer and discuss:

- The nature of the project in the context of the area;
- The nature of the stakeholders; and,
- What the practitioner or developer plans to do.

A good way of ascertaining whether the practitioner or developer has planned an adequate process is to discuss their planning process with them. The planning process for practitioners is outlined in Chapter 2 of this handbook.

In evaluating a public participation process, remember that in certain cases time and financial resources may be limited, and it may not always be possible to have the 'ideal' public participation process. The process should, however, meet the principles as outlined in this handbook and meet your policy requirements.

Outlined below are a series of prompts for questioning the practitioner and/or developer to gain information on whether the process is sufficient.

What is the project context? Consider:

- Whether the project will result in widespread or localised impacts;
- The nature of the potential impacts and benefits. For example, could they result in significant impacts on stakeholders livelihoods?
- The context of the area. Is it sensitive from a cultural perspective? Are there social problems? Is it biologically significant with many rare ecosystems or species?

In general, the more significant and widespread the potential impacts, the broader and more intensive the public participation process should be.

Who are the identified stakeholders?

Consider:

- Has the practitioner undertaken some form of social profile?
- Are the right stakeholders involved?

Caution:

Poor public participation processes compromise decision making. You could have inadequate information on which to base a decision if the public has not been consulted correctly. In addition, if the process upon which you base your decision is flawed, this could invalidate the decision.

Poor public participation process compromises good governance, as the true opinions of the public have not been exposed and addressed.

Tip:

The context of a project is an important to determine the nature of the public participation process. For example, a small project may have highly significant localised impacts on a small group of stakeholders. These stakeholders should be intensively involved in the public participation process.

Case Study

In the Sasol Natural Gas Project in Mozambique it was agreed with government officials that only stakeholders down to the district level would be involved in the public participation process. This was due to concerns that unreasonable expectations might be created with stakeholders at a lower level.

- Does the process make provision for the involvement of marginalised groups?

Communication and Techniques. Consider

- Has sufficient time been provided for stakeholders to comment?
- Are sufficient opportunities provided for stakeholders to actively participate?
- Are the proposed communication techniques appropriate to the nature of the stakeholders?
- Do the proposed engagement techniques take into account the nature of the identified stakeholders?

Annexure A and Annexure B provide information on engagement and communication techniques.

Verifying stakeholder information

You need to verify information provided by the practitioner or developer. You can:

- Contact local government agencies or tribal authorities to verify stakeholder information;
- Request contact details for stakeholders in local communities and speak to them directly;
- Visit the area yourself or discuss the process with a colleague who may have experience of the area.

4.2.4 Communication channels with other government agencies

Decision makers and other government agencies involved in the environmental assessment need to consult with one another and co-ordinate their decision making processes.

Ensure that you clarify your respective roles and set up good communication channels. Although the public participation practitioner should consult with all government agencies, you may need more intensive interaction with other government agencies who are also responsible for taking decisions on the proposed development.

Set up meetings with other government agencies. Also agree on the time frame to receive comment from other agencies if this occurs outside the formal public participation process.

4.2.5 Transboundary Projects

In certain cases, a development may have transboundary implications. The public participation process for such a development will need to engage stakeholders from more than one country.

As a government official, check whether there are existing institutions which can be consulted about transboundary impacts. In the SADC region, there are many institutions which have been set up between different countries to address specific issues. For example, issues related to the Okavango river are discussed between Namibia, Botswana and Angola at the Okavango River Basin Water Commission (OKACOM).

In certain cases there may be no institution. In such cases, it may be valuable to form a transboundary committee with government officials from the other relevant countries to

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discuss the issues. Even though there may be no transboundary implications, coordinate your approaches as far as possible with neighbouring government officials.

4.3 Informing

Other stakeholders in the process need to be informed of:

- The legal and policy requirements as well as any decisions that are made;
- The concerns, issues and requirements of government agencies other than the decision maker.

Keep your communications accessible. Avoid technical jargon and provide an explanation of concepts that may not be understood.

Follow the tips and guidelines on accessible communication provided in Annexure A. Section 4.5 below provides tips on the communicating of decisions.

4.4 Engaging

4.4.1 Your Engagement Activities

As outlined above, as a decision maker, you cannot engage directly in the public participation process without compromising your ability to make a decision.

You will, however, need to engage directly with the practitioners and developers at the outset of the process or with civil society stakeholders who may request advice and assistance.

When you hold meetings with stakeholders, keep the following in mind:

- Agree to an agenda before commencing the meeting;
- Agree to ground rules;
- Agree on the way forward and respective responsibilities for actions you agree on;
- Record the meeting and ensure that all participants receive a record of the meeting.

Ground rules for meetings

- Be honest and polite
- Listen to what others have to say. Do not assume you know what they will be saying
- Be flexible and responsive – be open to solutions

If possible, you should attend public participation events to keep yourself informed of the issues raised and the progress of the public participation process.

4.4.2 Conflict Management

Conflict can arise during a public participation process. In such cases, you may be called upon, as the decision maker, to intervene. Follow the advice on conflict management in Chapter 6.

4.5 Decision Making

When you make a decision on whether to approve or turn down a development application, there is a wide range of factors to consider. Advice on how to make decisions as a whole is beyond the scope of this handbook. Guidelines are, however, provided on:

- Public participation process issues to consider in decision making;
- Communicating your decisions

4.5.1 Review on the Public Participation Processes

In making your decision you need to consider the adequacy of the public participation process.

Overall

Consider whether the public participation process was undertaken according to the plan you reviewed and approved initially. The public participation review template provided in Annexure C can assist you in reviewing the adequacy of the public participation process.

If you did not have an opportunity to review the proposed public participation process prior to the commencement of the process, read through Sections 4.2.3 and 4.4.2 of this handbook. They set out prompts and guidelines, which will assist you in determining the adequacy of the process.

Also consider the adequacy of the process in relation to your policies.

Engagement Techniques

Public participation practitioners will use a variety of engagement techniques to interact with stakeholders, identify their issues and concerns and solicit their inputs during the public participation process. Annexure B provides further information on the engagement techniques used by practitioners.

As a decision maker, you need to be aware of the strengths and weaknesses of these various participation techniques. Issues you should consider include:

TIPS:

- Have a look at the list of stakeholders provided by the practitioner – are there any gaps?
- Read through the records of meetings and comments submitted by stakeholders. Are there any complaints about the public participation process?
- Consider whether these complaints are justified in relation to the process as recorded by the practitioner.
- Were complaints about the process addressed?
- Were issues and concerns raised by stakeholder adequately addressed in the environmental assessment report?

Caution:

Certain techniques may result in a distorted view of public opinion, unless there is an extremely skilled facilitator. For example, open public meetings may result in a few individuals dominating a discussion. Alternatively, in certain cultures, people may be reluctant to speak up in a public forum. In these circumstances other techniques such as focus groups or individual meetings may yield more complete information for decision making.

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- How broad will the range of views be that are elicited by the technique? Will the opinions of more empowered groups tend to dominate?
- If required, have techniques been used which help the participation of more marginalised groups such as women?
- Do the techniques used help stakeholders to gain an adequate understanding of highly complex technical issues? Has an effort been made to build the capacity of stakeholders to understand the issues?
- Are the techniques used appropriate to the cultural and social nature of the stakeholders?

Warning on Open House Events

Public participation processes should not be reduced to open house events only. These are information events and do not provide opportunities for debate. They do not enable stakeholders to raise issues and concerns in a public dialogue.

4.5.2 Communicating Decisions

Decisions will be read by many different people – they are often the culmination of a long process and formalise the results of a process that involved many different stakeholders.

In communicating your decisions:

- Keep them simple and clear.
- Communicate the decision broadly to all stakeholders;
- Provide reasons for your decisions.

In many cases a decision maker will only inform the practitioner or developer of their decision. Other stakeholders may not be directly informed. There are a variety of communication methods (see Annexure A) which you can use to inform stakeholders of your decision. Press conferences may be useful if there has been intense media interest in the proposal. You can contact local leaders or use radio. Alternatively, you could make it a condition of the decision that the developer informs all stakeholders of the decision.