

**AN OPINION SURVEY OF ETHICAL
CONCERNS IN ENVIRONMENTAL DECISION-
MAKING IN CAPE TOWN AND SURROUNDS:
THE BASE LINE OF 2002**

**FINAL REPORT
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EXECUTIVE SUMMARY

In this opinion survey, the object of investigation was ethical concerns about the process of environmental decision-making in Cape Town and surrounds. The perceptions of a wide range of key stakeholders were canvassed in a qualitative questionnaire survey that was based on a series of focus group discussions.

In this report, the results of this questionnaire survey is presented, and discussed against the background of firstly, a number of initial focus group discussions, and secondly, a series of further workshops with key stakeholder groups that were held to discuss and interpret the data that was captured.

The key stakeholder groups that participated in this survey included:

- Government officials
- Politicians
- Consultants
- Developers
- Activists.

The wide range of ethical concerns that were recorded within the framework of this survey cannot be summarized in a few lines without the real danger of distorting them by taking them out of context or simplifying them beyond recognition. However, it can be stated here that this study indicates that the main source of ethical concerns about environmental decision-making in Cape Town and surrounds is not so much lack of integrity and personal commitment of individuals, but rather a complex interaction between a number of institutional and structural factors through which a framework is created that makes it easy for unscrupulous individuals to get away with ethically unacceptable behaviour.

The main factor that was identified as a cause of ethical concerns in environmental decision-making was that of a lack of enforcement of environmental legislation, although other factors such as a series of problems in public participation in EIAs, troublesome relations between stakeholders in the decision-making process, real and perceived conflicts of interest, general governance and institutional issues, competency and capacity problems, underdeveloped areas in professionalism, as well as a general inability to address value issues were also singled out by participants as further contributing factors to the troublesome framework discussed in the pages that follow.

Nineteen recommendations are made with a view to address the ethical concerns that were identified. These recommendations basically focus on two areas:

- The need for structural and institutional transformation
- Capacity building and training, especially in the area of recognizing and addressing value issues in the process of environmental decision-making.

GLOSSARY OF KEY CONCEPTS

Common morality:

In society common morality represents a thin consensus about the moral principles and standards that should guide decision-making in private and public matters.

This report is based on the assumption that such a common morality indeed exists in society in so far as it captures a set of values and principles that are shared by the majority of well-meaning people in society, guiding their behaviour and judgements. As such, common morality does not represent extreme views, but a core of values that can be shared by a wide spectrum of people from different religious, political and cultural persuasions.

This core of common morality is often captured in principles such as respect for persons, cause no harm, do good, and justice. Although this notion of a common morality does not completely rule out subjectivity, it at least provides a point of reference in terms of which the contents and results of this survey can be interpreted.

Values:

Values are the notions of worth or importance that people ascribe to objects or subjects in their world. In the context of this report we focus specifically on how environmental decision-makers value the environment. Do they value the environment as a resource or do they believe that the environment has intrinsic value, i.e. it is valuable regardless of whether it has any use for human beings.

Ethics:

An ethic (or ethics) is a system of values that people use to guide their conduct in specific situations. There are many areas of ethics, for example personal ethics, corporate ethics, medical ethics etc. In the context of this report we deal specifically with environmental ethics, i.e. the system of values people use to guide their conduct within and towards the environment.

Environmental decision-making:

This term is used in its broadest sense in the report to include all decisions that affect the environment. Thus, environmental decisions are decisions that might be taken in government departments or other institutions that are not explicitly concerned with the environment.

GLOSSARY OF KEY ABBREVIATIONS

NEMA: National Environmental Management Act

LUPO: Land Use Planning Ordinance

ECA: Environment Conservation Act

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1. INTRODUCTION

1.1 Preliminary remarks

During the course of 2002, the Unit for Environmental Ethics of the University of Stellenbosch conducted an opinion survey of the ethical concerns about environmental decision-making in Cape Town and surrounds. This opinion survey was conducted among key stakeholders and role players in the process of environmental decision-making in this area. The groups that were engaged in this process were activists, developers, politicians, government, researchers and consultants.

The main objectives of this study were to determine the levels of confidence in the process of environmental decision-making in Cape Town and surrounds; to determine the possible causes of these concerns; and to make recommendations about addressing these.

In this report, the methodology of the survey is discussed, as well as its structure. Detailed discussions are given of the responses of participants to five main areas of concern that were covered in the survey. These areas of concern are (1) legislation and policy, (2) public participation in the EIA process, (3) troublesome relationships that create conflicts of interest, (4) general governance issues and the (5) competence and capacity of environmental decision-makers. Recommendations are made to address the ethical problems that were identified in these areas. These recommendations were formulated after a series of workshops were conducted in which the findings of the survey were discussed with the major stakeholder groups that initially participated in the survey.

1.2 Methodology

1.2.1 General procedure

An ethics opinion survey entails as a matter of course a large proportion of qualitative data. Accordingly, the first requirement was to identify areas of ethical concern about environmental decision-making as these were articulated from first hand experience by a broad range of stakeholders and role players. For this purpose, nine homogenous groups were constituted, representing particular stakeholders or sectors in the process of environmental decision-making, including community based NGOs, politicians at provincial level, businessmen and developers, consultants, researchers and scientists, officials from local authorities, provincial officials predominantly dealing with environmental matters, and provincial officials primarily responsible for development planning. In order to observe the interaction between stakeholder groups, one further heterogeneous group was constituted from all these sectors.

Between 8 and 12 persons participated in the respective discussions, each taking between one and one and a half hours to complete. In each case the participants were asked to comment on the aspects of environmental decision-making in Cape Town and surrounds that were of ethical concern to them. A working definition of ethical concern was introduced at the start of each session, referring to it as those grey areas in the decision-making process where people can, and therefore tend to take chances or cut corners. This open ended definition of an ethical problem

was given with a view to allow participants to freely communicate what they perceived as ethical problems. This left the door open to different interpretations of what constitutes unethical behaviour, but this was done intentionally – to also capture different views on ethics. All of the discussions were taped, and subsequently transcribed into typescript. These transcripts were then analysed with a view to identify issues and areas of concern that could be further scrutinised in the questionnaire survey that was conducted during the second part of 2002.

This questionnaire consisted of a wide variety of questions that covered broad areas of concern, including the extent to which role-players in environmental decision-making took ethics seriously and adhered to legislation, their competency and effectiveness, the nature and causes of unethical behaviour within this sphere, professionalism, personal values, environmental values, environmental legislation, impact assessments, and measures suggested to overcome the problems that were identified.

1.2.2 Three phases

This study was conceptualized to be conducted in three phases. The first phase was dedicated to the gathering of data and writing the first preliminary report. The second phase consisted of workshopping the findings of the study with the stakeholders that participated in the first phase. The main purpose of these workshops was to share the information gathered in our study, and to solicit further inputs from the stakeholders about possible responses. As such, this second phase of our survey entailed a process of verification. The third phase of the study entailed the finalization of the report, and where appropriate and if needed, will culminate in assisting stakeholders in the implementation of recommendations.

1.2.3 Questions regarding interpretation, objectivity, assurances and confidentiality

With the view of not imposing the prejudices of the researchers on the responses of the participants in the preliminary focus group discussions, and with a view not to frame the discussion from a particular perspective about the nature of what an ethical problem is, each discussion was started by an invitation to the participants to air their views on what they perceived to be the grey areas in the process of environmental decision-making in Cape Town and surrounds. The term "grey areas" was deliberately chosen to identify areas where people differ from one another about the principles or standards of decision-making that should prevail, and thus is open to either different interpretations and therefore heated discussions, or to abuse and exploitation. Accordingly, "grey areas" in decision-making were further referred to as areas or opportunities for taking short-cuts, for doing things that should rather not be done.

Participants were furthermore reassured that, although the proceedings of each focus group discussion would be transcribed, none of the material would be made public in a manner that would link any individual to any particular statement made. It was explicitly stated at the beginning of each focus group discussion that the transcriptions would be kept confidential, and that there would not be open access to the transcriptions. It was emphasized in each case that the researchers were interested in the ethical issues that were identified, and that these would be referred to in a generic manner, protecting the identity of our informants.

The effect of these two points of departure, the open-ended invitation to raise issues and the assurance of confidentiality, had the result of participants in focus group discussions speaking freely, openly raising their concerns without fear of reprisal. In fact, many focus group discussions assumed the function of venting, and as researchers we allowed this to take its natural course. If someone expressed extreme views, there would usually be someone else in the group who would tone things down, or express the same point in more moderate terms.

It should be noted that the focus group discussions with the various interest groups were conducted in 2002 during the time when the Department of Environmental Affairs and Development Planning of the Western Cape was in the process of being formed. The Department of Development Planning and the Department of Environmental Affairs (DECAS) respectively previously functioned separately from one another. This means that there could have been, and indeed has been significant shifts in the functioning of decision-makers in the new department (DEA & DP) since the commencement of this research.

Well aware of the fact that homogenous focus group discussion could lend them to all kinds of group-think or sectoral biases, the researchers analysed and interpreted all of the transcriptions to identify areas of concern that should be probed further. Thus, a follow-up questionnaire was designed on the basis of the results of the focus group discussions that covered a wide range of topics. In hind-sight, this questionnaire was in all probability too long, expecting a substantive investment in time and thinking from respondents to complete it.

The length of the questionnaire, herewith attached as Addendum A, was in all probability one of the major contributing factors in a fairly low return rate. From the 1164 questionnaires that were distributed to individuals, and an additional 24 that were distributed to firms, only 89 (or 7.5%) were received back, constituting too low a sample to extrapolate in a statistically valid fashion to the whole of the population of the Cape Town metropolis, or for that matter, to the whole population of stakeholders and role players in the process of environmental decision-making in Cape Town and surrounds. There was a 1% margin of error in that one of our 89 respondents came from outside the Cape Town area.

The number of individual respondents representing particular interest groups or biographical features were also too small to really make statistically significant comparisons between them. However, the quantitative data emerging from the questionnaire (the raw form of which is represented in Addendum B), provides a general picture of the ethical concerns that were raised by a significant number of respondents.

Given the fact that about 40% of the respondents in the quantitative survey have indicated that they were affiliated to local government, and that another 34% indicated that they were either researchers (24% in total) or consultants (10% in total), we took responses indicating that more than 60% of the respondents shared a major concern about an issue, as a clear indication that that issue should be taken very seriously.

The fact that 83% of the respondents indicated that they had tertiary qualifications at the level of a first bachelor's degree or higher indicate that our respondents were highly educated. In fact, 42% of the participants indicated that they had a Master's degree, while an additional 12.4% indicated that they had an honours degree, and 12.4% indicated that they had a doctoral degree.

A further important point to bear in mind, is that ethical judgement is per definition always based on the commitments and convictions of the one making the judgement. Thus, all ethical judgements could be characterized as subjective. However, to address the problem of subjectivism and relativism in ethical matters, applied ethicists acknowledge the existence of a common morality¹ in society that represents a thin consensus about the moral principles and standards that should guide decision-making in private and public matters.

This report is based on the assumption that such a common morality indeed exists in society in so far as it captures a set of values and principles that are shared by the majority of ordinary, decent, well-meaning people in society, guiding their behaviour and judgements. As such, common morality does not represent extreme views, but a core of values that can be shared by a wide spectrum of people from different religious, political and cultural persuasions. This core of common morality is often captured in principles such as respect for persons, cause no harm, do good, and justice. Although this notion of a common morality does not completely rule out subjectivity (in the sense of personal commitment and conviction), it at least provides a point of reference in terms of which the contents and results of this survey can be interpreted.

With regards to the issue of subjectivity, it should also be taken into account that labelling an ethical position or argument as "subjective" is not to refute it or to undermine its possible validity. For the purpose of this study, ethics was rather taken (in addition to the points made above) as a matter of public debate – in which every ethical point of view, judgement or argument can be, and indeed are subjected to a process of rigorous scrutiny in which the rational grounds for that point of view, judgement or argument are tested, as well as their implications and consequences. Thus, ethics was not taken as a purely personal and private matter, but as an inter-subjective, public enterprise in which we insist on proper justification for our choices and actions, and in which we can enter into rational debate about the standards we set for what counts as proper justification.

1.3. Status of this study

It is not the purpose or the spirit of this report to conduct a witch hunt into the roles of particular individuals or institutions in the process of environmental decision-making in Cape Town and surrounds, but rather to conduct an opinion survey of what key role players identified as the central causes and areas of ethical concern.

Accordingly, this study was also not conducted as a forensic audit, but should rather be interpreted as a probe into the general trends and broad areas of ethical concern about environmental decision-making in Cape Town and surrounds, all of which could be investigated in more depth. This does not mean, however, that the trends and concerns identified in this report are trivial and could be dismissed. On the contrary, ethical issues can never be decided on the basis of numbers alone. An ethical concern raised by only one person can be of great significance to a process of deliberation in which the purpose is to find out what we should do if we take certain values and principles seriously.

¹ See Harris et al. 1988.

Accordingly, this report will not merely dwell on numbers and percentages, but instead endeavour to “read between the lines” with a view to identifying and interpreting the values, principles, and considerations that form the basis of the many concerns that were raised about the ethical quality of environmental decision-making in Cape Town and surrounds.

1.4. The structure of the report

In the first section of the main body of the report, a short overview will be given of the demographics of the participants in the survey. This will be followed up by a discussion of the ethical concerns that surfaced in our study, particularly within the areas of:

- Legislation and policy
- Public participation in EIAs
- Troublesome relations and conflicts of interest
- General governance
- Competency and capacity
- Addressing value issues.

Under each one of these headings we first discuss the general question as to why that area could be an object of ethical concern, and then we proceed to a presentation and analysis of our findings about the ethical concerns that were raised about environmental decision-making in Cape Town and surrounds. On the basis of this we then proceeded to discuss the recommendations about possible responses to these ethical issues that were formulated by participants in our study. In the recommendations that we make ourselves, we were at pains to formulate them in a manner that leaves room for debate. This is because it is not the purpose of this opinion survey to impose our insights on participants but rather to stimulate discussion about possible appropriate responses to the dilemmas identified.

2. PRESENTATION AND INTERPRETATION OF DATA

2.1. Demographics

The first section of the questionnaire survey was devoted to biographical information. This is presented and discussed below. In order to expedite the focus group discussions, no biographical details were captured at these meetings.

On the question about their professional or organizational affiliation, the following data was captured from respondents to the questionnaire:

Table 1: Professional affiliation

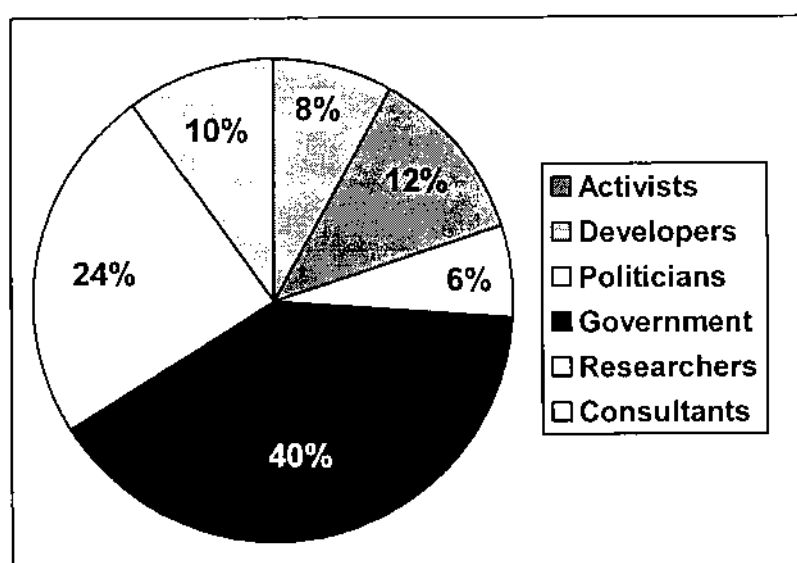
	Frequency	%
Provincial Dept of Housing	2	2.2
Provincial Dept of Local Government	3	3.4
Provincial Dept of Environmental Affairs and Development Planning	3	3.4
Municipalities	26	29.2
Western Cape Nature Conservation Board	1	1.1
National Portfolio Committee on Environmental Affairs and Tourism	1	1.1

Western Cape Standing Committee on Local Government, Environmental Affairs and Development Planning	4	4.5
Council for Scientific and Industrial Research (CSIR)	14	15.7
International Association of Impact Assessors in South Africa (IAIA)	8	9.0
Environmental Justice Network Forum (EJNF)	2	2.2
Wildlife and Environment Society of South Africa (WESSA)	4	4.5
National Botanical Institute	4	4.5
University staff / Academic	2	2.2
Developers and Planners	8	9.0
Other/ Unspecified	7	7.8
Total	89	100.0

Comparable numbers of responses were received from developers, planners and members of the International Association of Impact Assessors of South Africa, 8 responses in each case, but given the small number of responses in each case does not reflect a representative sample of these stakeholder groups, it was decided not to use these responses to make any deductions about the views of these stakeholder groups. The only other significant groups that were represented in terms of professional and institutional affiliation were that of municipalities (29.2% of respondents) and the CSIR (15.7%). It should be noted, however, that in our interpretation of data, views are not ascribed to any profession or organisation as such. Our focus rather was on the content of the ethical concerns that were raised, and the reasons / grounds for doing so.

Respondents to the questionnaire were asked to define their present role in their profession or organisation, the following data about sector affiliations was obtained:

Figure 1: Sector affiliation (N = 88)



Gender and age variables among the respondents to the questionnaire were as follows:

Table 2. Gender and age

Variable	Frequency	%
Gender (N = 88)		
Female	25	28
Male	63	72
Age (N = 88)		
34 years or younger	22	25
35 – 44 years	23	26
45 – 54 years	24	27
55 years or older	19	22

The ages of respondents ranged between 25 and 71 years, with a mean of 45 years (Standard deviation = 10.96).

In Table 3 the highest formal qualification of respondents are represented:

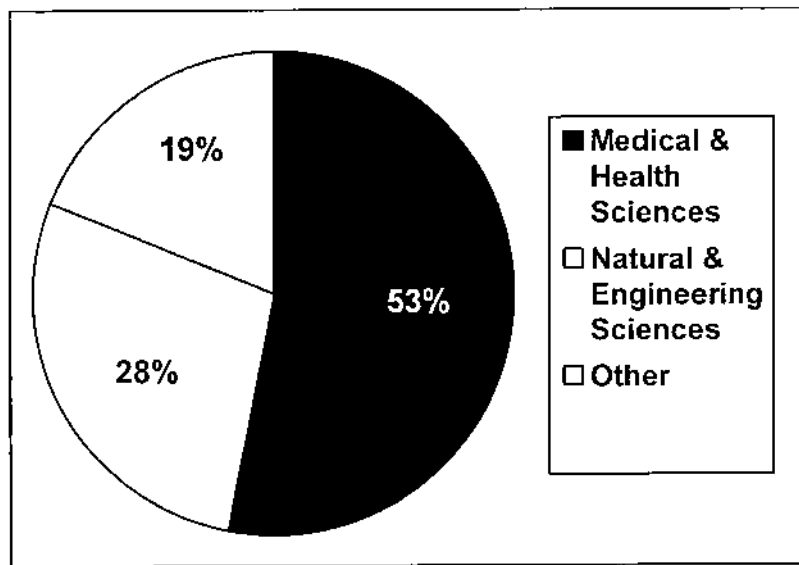
Table 3: Highest formal qualification

	Frequency	Percent
Grade 11/ Standard 9 or less	2	2.2
Matric	3	3.4
First university degree (BA, BSc etc.)	14	15.7
Honours	11	12.4
Masters	38	42.7
PhD or DPhil	11	12.4
First technikon degree/ national diploma/ national higher diploma	5	5.6
Advanced technikon degree/ masters diploma/ Laureatus	3	3.4
Other/ Unspecified	2	2.2
Total	89	100.0

It is significant to note that 92.4% of the respondents in the questionnaire survey have indicated that their highest qualification was a first tertiary qualification or higher. This indicates that the majority of respondents in this survey belong to an elite group of well-educated people. Another way to put this, is that the results of this survey comes from a sector in society that can be characterized as well-informed and thinking critically about matters, and accordingly that their perspectives should be taken very seriously.

Looking closer at those with tertiary qualifications, the following general fields of science were indicated as those within which participants obtained their qualifications:

Figure 2: Broad science field of those with university degree or technikon degree/diploma (N = 83)



(Other = Fire Science, Fire Technology, Urban and Regional Planning, Town Planning, etc.)

As it can be expected in a survey about environmental decision-making, the Medical and Health Sciences, and the Natural, Engineering, and Planning Sciences constituted the main fields in which respondents had tertiary educational qualifications. It is significant, however, to note the virtual absence of the Social Sciences and the Humanities among the respondents. This could be an indication of the fact that people from the Social Sciences and Humanities are not involved in the structures or stakeholder groups involved with environmental decision-making in Cape Town and surrounds.

We do not want to speculate about the reasons for this under-representation, nor do we suggest that this has any bearing on the nature or quality of environmental decisions made in Cape Town or surrounds.

However, we do wish to flag this as an area that can be further investigated – with a view to determining if there is a place for those qualified in the Social sciences and Humanities in the structures dealing with environmental decision-making, and if there is, what difference that would make.

That such an investigation could be of importance, is underlined by the fact that national environmental policy objectives is placing more and more emphasis on the principle of sustainable development, which requires that environmental, economic and social factors should be balanced with one another in environmental decision-making. The virtual absence of role players trained in Social Sciences or Humanities, and the suspected predominance of role players trained in the Natural Sciences, therefore begs the question whether environmental decision-making in general is characterized by an objectivist, positivist bias. Another way to formulate the question in this regard, is to ask whether those trained in the Natural Sciences are competent enough, or confident enough, to deal with the complexity of the interpretive issues involved in the balancing of clashing interests and moral values in environmental decision-making.

development proposals. In fact, 97% of the respondents indicated in their personal capacity that it was unethical to proceed with a development project without proper approval, while a comparable 96% indicated the same in their professional capacity.

It is revealing to note that NGOs and consultants (if the two columns representing “large” and “some” extent are added together) scored higher regarding the question whether they adhered to legislation or not than government officials, and that the lowest scores were allocated to politicians and developers – in this order. These results are summarized in Table 5 below:

Table 5: Perceptions about the extent to which role players in Cape Town and surrounds are adhering to legislation (in their decision-making activities) to protect the environment

ROLE PLAYERS	LARGE EXTENT	SOME EXTENT	LITTLE EXTENT	NOT AT ALL	DON'T KNOW	N
WILDLIFE AND ENVIRONMENT SOCIETY OF SOUTHERN AFRICA (WESSA)	37%	36%	1%	1%	25%	87
THE NATIONAL BOTANICAL INSTITUTE OF SOUTH AFRICA	34%	33%	8%	0%	25%	86
OFFICIALS IN PROVINCIAL DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING	25%	30%	13%	9%	23%	87
OFFICIALS IN NATIONAL DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM (DEAT)	22%	35%	9%	3%	31%	87
ENVIRONMENTAL JUSTICE NETWORKING FORUM (EJNF)	17%	28%	1%	3%	51%	87
CONSULTANTS	13%	47%	21%	9%	10%	87
PROVINCIAL MINISTER OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING	13%	24%	15%	16%	32%	87
NATIONAL PORTFOLIO COMMITTEE ON ENVIRONMENTAL AFFAIRS AND TOURISM	12%	16%	10%	3%	59%	87
OFFICIALS IN MUNICIPALITIES	11%	22%	31%	14%	22%	87
NATIONAL COUNCIL OF PROVINCES (SELECT COMMITTEE ON LAND AND ENVIRONMENTAL AFFAIRS)	9%	12%	6%	6%	67%	87
OFFICIALS IN PROVINCIAL DEPARTMENT OF LOCAL GOVERNMENT	8%	21%	22%	14%	35%	86
WESTERN CAPE STANDING COMMITTEE ON LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING	5%	17%	9%	3%	66%	87
DEVELOPERS	2%	21%	37%	29%	11%	86
OFFICIALS IN PROVINCIAL DEPARTMENT OF HOUSING	1%	16%	27%	14%	42%	87
LOCAL GOVERNMENT POLITICIANS	1%	16%	39%	22%	22%	87

The Provincial Minister, who at the time was Mr. David Malatsi, received a 13% score. The questionnaire for this survey was filled out from October 2002 to January 2003, at a time when the scandal about the Roodefontein Golf Estate and Mr. Malatsi's alleged involvement in accepting a bribe on behalf of the New National Party and influencing the approval process, started to break into the newspapers. These circumstances may also explain why 25% of the respondents were confident that the officials in the Department of Environmental Affairs and Development Planning were adhering to a large extent to environmental legislation to protect the environment. During the time of the scandal, it became evident how some officials were bullied about when they took a stand.

Over regulation

There, however, were also concerns about over-regulation that were raised. Some respondents pointed to comparatively "insignificant" environmental changes – like adding a cell phone mast in an already built up area – that were couched in cumbersome legal procedures that were perceived as unnecessary.

However, only 20% of the respondents indicated that there is excessive environmental legislation on a municipal level. This statement, however, needs to be qualified with the observation that environmental legislation is a national competency, enforced by the provinces and not by municipalities.

Content of legislation

That there are indeed problems with the "content" of environmental legislation was indicated by the fact that only 49% of the respondents agreed or strongly agreed with the statement that national environmental legislation is sufficient to adequately protect the South African environment, while only 42% agreed or strongly agreed that provincial legislation is adequate to protect the environment. (In qualification of the latter point it should be noted that there exists no significant provincial environmental legislation because environment is a national legislative competency. However, the figure of 42% could indicate a lack of satisfaction with the enforcement of legislation on a provincial level.)

Vagueness, confusion and ignorance about legislation:

On questions that covered issues of vagueness of legislation, or confusion or ignorance about it:

- 51% of respondents complained of vagueness in national legislation
- 55% complained of loopholes making prosecution difficult
- 66% of the respondents indicated that widespread confusion exists about how to implement the National Environmental Management Act (NEMA).

There were also respondents who complained that there was confusion and perhaps over regulation with regards to the enforcement of the Environmental Conservation Act (ECA) and the Land-Use Planning Ordinance (LUPO).

Ignorance about environmental law among the key environmental decision-makers

On questions covering this issue:

- 65% of the respondents felt that consultants are often ignorant about all the relevant legislation impacting on environmental impact assessments
- 52% of the respondents felt that officials are often ignorant about all the relevant legislation impacting on environmental impact assessments
- 51% of respondents indicated that industry is ignorant about environmental regulations.

The significance of these figures are underlined when one takes into account that there was not much confidence amongst the respondents about taking environmental disputes to the courts for resolution, since 61% of them agreed or strongly agreed with the statement that judges are not sufficiently informed about environmental issues, while even more, namely 88%, felt that magistrates were not well informed about environmental issues.

Legal costs

With regards to ethical concerns raised about legal costs:

- 73% of the respondents felt that legal opinion on environmental matters is too expensive for the poor to access
- 62% of the respondents felt that municipalities are reluctant to take legal action against transgressors of environmental legislation because they fear costly court battles. (Again it should be pointed out that this survey response could be seen as misleading, because the enforcement of environmental legislation is in fact a provincial competency. Notwithstanding, the perception remains that municipalities don't take legal action when the environment is under threat.)

Respondents' comments

With regards to the source or the nature of the confusion about the interpretation or implementation of environmental law, the following statements were made by respondents to the questionnaire and by participants in the focus group discussions:

- With regards to the approval of development proposals, it is not always clear what the roles and functions of local and other environmental departments are. Which authority or which department should apply which legislation? What is the role and function of local authorities, for instance, in relation to that of the different departments of the Unicity structure, for instance, or with relation to provincial departments?
- Ignorance about how government departments and the legal system functioned was one of the main causes of confusion, said some officials. They also pointed out that the system was confusing only to those who did not understand it.
- A wide definition of "the environment" leads to a wide range of laws that should be considered. A wide range of activities could therefore be interpreted as affecting the environment. Even productive labour, which is normally considered as a positive in economic terms, can be interpreted as detrimental to the environment.

- People had no experience of how to work with all the environmental legislation.
- Too many different environmental initiatives (or policies) that are required to be implemented– for instance within the jurisdiction of the Unicity (of Cape Town).
- Legislation is often indecisive (i.e. not specific enough), so officials do not know how to interpret it. Legislation, for instance, does not give enough direction in some areas of responsibility, such as waste management, biodiversity and air quality management. Similarly, “definitions of listed activities” that are supposed to be subjected to EIAs before they can be approved, are often inadequate, leading to endless debates whether an activity is actually “listed” or not.
- There is inadequate communication around legislation, especially NEMA.
- Legislation was constantly changing and no environmental planner or consultant could keep up to date with new legislation.
- Lack of coordination between different acts related to land use. NEMA, for instance, provides more protection for interested and affected parties than planning regulations and there was nothing to force the planning department to take NEMA into account. However, some officials pointed out that NEMA was in fact for the application of all departments not only the environmental departments at provincial and national level.
- Developers were expected to follow one set of time-frames and processes under NEMA and another under the Land Use Planning Ordinance (LUPO).
- There was existing emergency legislation for housing which could be used to fast-track development on a site and eliminate the need for an EIA. This made a joke of EIAs, claimed an environmental official. However, not all respondents shared this opinion with others claiming that the Law being referred to was Act 113 of 1991 and it was not applied in the manner suggested above.
- Departments in local authorities that are required to take care of environmental affairs on a local level, are often located within an administrative framework that serves other functions, for instance health, or the enforcement of building regulations.
- Too much legislation and over-regulation caused capacity problems when it comes to implementation.

Respondents’ comments regarding the application of environmental legislation included:

- Environmental legislation was complicated and there were different interpretations of what was harmful to the environment.
- There are too many loopholes in the legislation. Loopholes made prosecution difficult.
- Lack of alignment between different laws relevant to environmental decision-making. An example that was referred to was that current town planning legislation is out of date and required revision to be more relevant and in line with NEMA.
- Ignorance about how government departments and the legal system functioned created application problems, said some officials. There was sometimes a confusion between planning and environmental legislation.
- There were too many environmental policies or initiatives. More policies meant that resources were to be spread even more thinly to try and enforce them.
- Too much apathy. There is often a reluctance of authorities to take matters to court; they prefer to settle out of court. This may have to do with a general lack of commitment in society about environmental issues. People are sometimes more worried about violence in communities than they are about environmental legislation.

- Municipalities often do not, or cannot allocate resources and staff to police environmental legislation and regulations.
- Political interference in the process of prosecution. One respondent, for example, pointed out that there were times when a provincial department had a case for prosecution but was forced to talk “reasonably” to the people being prosecuted when it landed in the political arena.
- Some respondents claimed that developments and decisions were politically motivated or backed. Others said this was seldom the case because there was a documented procedure when officials and political decision-makers had a difference of opinion over the merit of a development.
- Differences between provinces regarding their legal and administrative capacity to enforce environmental legislation.
- Environmental legislation in many cases lacked teeth. The implementing of punishment and sentencing was too minimal to be a sufficient deterrent. Some of the respondents mentioned that it was sometimes cheaper for mining companies to forfeit their deposit than pay for the environmental degradation they had caused. Similarly, an activist complained that penalties simply were not effective enough.
- The lack of successful prosecution by the relevant provincial department.
- Departments in municipalities that are required to take care of environmental affairs on a local level are often not administratively empowered to effectively protect the environment on a local level. They are often under-staffed or under-skilled, or work within the framework of departments with other functions than environmental protection.
- Cumbersome internal processes to embark on litigation in order to protect the environment.
- Cases are often thrown out of court because information was not well-enough presented.
- Testing of environmental legislation is very much in its infancy stage with few precedents having been set.
- Rules did not seem to apply to everyone. One developer might build according to the rules and down the road someone else did as they pleased.
- Officials were sometimes bullied into submission by developers and their consultants, effectively neutralizing environmental legislation. This was described as nonsense by some officials in a feedback session on the report. Notwithstanding, it should be borne in mind that this comment reflects a perception among the public that officials are prone to be manipulated by developers and consultants.
- Developers who spent money on developments were sometimes allowed to continue simply because they had already started, said one member of a focus group discussion.
- Over-legislation caused unethical behaviour because of the long processes involved.
- Insufficient resources, skills or funding to create an enabling environment that would allow the proper implementation of all the legislation that had been promulgated in South Africa.

Respondents’ suggestions

A number of proposals were made by respondents to overcome these concerns:

- A stock-take of all environmental legislation was needed to understand what was required in what instance, by which piece of legislation – with a view to providing a legal and administrative framework for the consideration of development proposals that is

streamlined and well-coordinated.

- An enabling environment was needed to resource, skill and fund an effective system of administration around the implementation of environmental legislation.
- Better education and communication of the public of the departmental and legal system governing environmental decision-making.

Some remedies that were proposed by respondents to address the lack of application of environmental legislation included the following:

- 99% of respondents indicated that an enforceable penalty system for environmental transgressions was needed as a solution.
- 94% of respondents said that an environmental protection agency that was able to prosecute environmental offenders was needed.
- A combining of the Land Use Planning Ordinance (LUPO), the National Environmental Management Act (NEMA) and the Planning and Development Act processes into one streamlined development application process would facilitate improved implementation, a total of 83% respondents indicated.
- Increased co-operation between departments in the Cape Town City Council on the issues of environment/planning policy and legislation was needed.
- Since political intervention in legal processes could create all kinds of problems, including the impression that authorities were discriminating between projects, a closer look needed to be taken of the relationship between legal processes and ministerial instruction.

Discussion of suggestions

Key to the effective functioning of environmental legislation is clear legislation, an effective institutional mechanism to carry it out and political support of that process. The suggestions above indicate that there is a need to improve not only co-ordination of legislation but also the institutional framework in which it is carried out. At present, the plethora of legislation that impacts on the environment spans different departments and different levels of government with insufficient co-ordination between them to ensure a consistent or authoritative approach to environmentally sustainable development. This results in poor communication between levels of government, within departments in government and between government and other stakeholders.

The political domain in which environmental legislation is enforced is also in need of revision if it is to adequately facilitate the sustainable development of Cape Town. To a large extent, the current political framework for decision-making leans towards addressing the needs of people first, before environmental issues are addressed. This is perfectly comprehensible against the background of South Africa's historical legacy. Accordingly, as a rapidly developing city with a large number of unemployed, Cape Town indeed has an obligation to expand the economy in such a way that more jobs and opportunities are provided for its citizens. As a result, politicians, most of whom are sensitive to this reality, are under pressure to support development proposals that appear to provide more opportunities for its electorate. However, in order to protect the environment, which has no vote in the political process, it is important that the relationship between politicians and the enforcement of environmental law remain transparent, and that a political framework is created in which social and environmental challenges are not seen as separate items on separate agendas that can be traded off against one another. The frameworks should rather be one of addressing

social development and environmental protection in an integrated manner.

RECOMMENDATION 2

On the issue of providing an adequate institutional framework in which environmental legislation can be enforced it is suggested that:

- The possibility of developing an environmental protection agency that is able to prosecute environmental offenders (supported by 94% of the survey respondents) deserves detailed research.

On the issue of confusion and ignorance about environmental legislation, it is suggested that:

- A stock-take of all environmental legislation in all government departments at different levels of government be completed with a view to providing a legal and administrative framework that is well-co-ordinated.

At a municipal level it is suggested that:

- Increased co-operation between departments in the Cape Town City Council on the issues of environment/planning policy and legislation is needed.

Regarding the relationship between political and legal processes, it is suggested that:

- A thorough stock-take needs to be done into the relationship between legal processes and ministerial or other political instruction.

2.3 Public participation in Environmental Impact Assessments.

Public participation in environmental impact assessment becomes an ethical problem when it is, for a variety of reasons that will be discussed below, no longer recognised as a legitimate vehicle by participants for their interaction with the development process. In the survey, public participation was one of the most serious issues of ethical concern. This is despite much legal progress having been made since 1994 in setting guidelines for public participation in EIAs. (The Environmental Impact Assessment (EIA) guidelines as set out by DEAT in 1997 and the National Environmental Management Act (Act 107 of 1998) principles being evidence of this.)

Findings:

A general problem that was highlighted in the opinion survey, was that because no standards had been set for public participation, it had left a gap for developers, consultants and government to conduct sham public participation processes and to only in effect "pretend" that they were committed to the process. In the survey, a total of 48% of respondents were of the opinion that

consultants conducted sham participation processes that did not allow for adequate public engagement with environmental issues

Respondents in the opinion survey and the focus groups raised a number of technical issues relating to public participation:

1. *Information transfer was ineffective:*

In the survey as little as 15% of respondents believed that advertising EIA procedures in newspapers was effective.

Respondents' comments:

- Public participation was dependent on accessibility to information. In some cases the general public did not have access to newspapers and modern media.
- Libraries were often used as a main source of information distribution when many people in communities did not use the library.
- There was no feedback or endeavour to gain support from the public in matters of environmental issues.
- Some interested and affected parties were simply not contacted.
- Community-based organisations are not given adequate recognition in the public participation process

Respondents' suggestions:

A prescribed public participation policy or process was necessary for municipalities.

Discussion:

In response to these above concerns and suggestions, the principles of NEMA state clearly that not only must access to information be provided in accordance with the law but the participation of all interested and affected parties must be promoted, especially vulnerable and disadvantaged people. This suggests that more than information distribution in a library and in a newspaper might be necessary in disadvantaged communities where illiteracy and lack of a culture of reading is common.

The 1997 EIA Guidelines of DEAT also state that interested and affected parties have to participate in the identification of issues and alternatives during scoping and have to comment on the findings of any environmental investigation as contained in its scoping and EIA reports. They are also asked to verify that interested and affected parties' interests have been captured both during the scoping phase and the impact assessment phases. Moreover, the principles of NEMA state that decisions must take into account the interests, needs and values of all interested and affected parties (Greyling 2003: 3).

Similarly, one of the core values of the International Association for Public Participation identifies the public participation process as providing the participant with the information

they need to participate in a meaningful way. Another core value states that the process should communicate to participants how their input affected the decision (Greyling 2003: 4).

Therefore, in order to claim that a company's scoping report or EIA report is adequate in terms of NEMA, EIA guidelines and international public participation standards it must be demonstrated that feedback from the public has been obtained. These principles and guidelines leave no room for doubt that if a consultant wishes to ensure adequate information transfer to take place they must at least ensure that the concerns mentioned above are adequately addressed.

RECOMMENDATION 3

- a. Public participation practitioners have no choice, according to the law and DEAT regulations, to make every effort – in whatever means is most suitable – to transfer and gather information from interested and affected parties in EIAs. Each development proposal might require different ways of gathering and distributing information. This needs to be resolved by public participation practitioners in conjunction with the community or individuals involved.
- b. There seems to be a real need for procedures and structures that authorities can follow to reassure the public that environmental decisions have been made on a sound basis. This perhaps go beyond the procedures and structures that exist in terms of current EIA regulations, and will require further investigation.

2. *Skewed weighting of issues*

A total of 42% of respondents believed that developers dominated public participation in EIA procedures. While, according to EIA regulations, it is not possible for developers to directly take part in public participation it is understood that respondents linked the consultant's viewpoints with those of the developers.

Respondents' comments

- The weighting of concerns in public participation processes was often skewed towards the concerns of developers.
- The role of community based organizations in public participation is undervalued.

Discussion:

As discussed in the previous issue, it is legally imperative to ensure that the concerns of interested and affected parties are included in the scoping and EIA reports (Greyling 2003: 3). If meetings are dominated by developers, it is very likely that some interested and affected party is being silenced. While this might make for speedy process completion, it is likely to result in complications further down the line.

RECOMMENDATION 4

Consultants are according to the EIA guidelines expected to verify that interested and affected parties' interests have been captured in EIA and scoping reports. There can be no excuse for such omissions.

The role of community-based organisations in public participation processes should be recognised and formalised.

3. Time and meetings:

- A total of 24% of respondents to the survey believed that NGOs deliberately delayed EIA procedures so that it became too costly for development to continue.
- Some public participation meetings were held at inappropriate times such as around November or early January when people were on holiday.

Respondents' comments:

- People were too tired to attend public participation meetings after work.
- Time frames were sometimes inappropriate. The first public participation meeting had on occasion being held six weeks before a decision was taken to start building. This made the process a sham.

RECOMMENDATION 5

If interested and affected parties' interests are to be adequately reflected in EIAs, then times that are set and agreed upon by the community will have to be found if the principles of NEMA are to be upheld.

Interested and affected parties should be given the opportunity (including adequate time) for comment on assessments of impacts and proposed mitigation measures. Similarly, interested and affected parties have the responsibility to submit their contribution within the agreed-upon time period.

4. Language of public participation processes is inaccessible:

42% of respondents believed that the public were unable to understand the language used in EIA public participation processes.

Respondents' comments

- The language of public participation was English and therefore some people struggled to understand.
- The language at public participation meetings was also too academic and technical.

Respondents' suggestions

- A capacity building fund should be established to ensure that communities are adequately prepared to engage in public participation.
- Capacity needed to be built in communities before they could meaningfully engage in public participation processes.

Discussion

In a multi-cultural society like South Africa it is imperative that stakeholders be allowed to participate meaningfully in a language they understand. Language differences can create serious problems for information transfer especially when documents are technical.

In attempting to overcome language barriers that originate from a lack of understanding of technical jargon, it would appear that the moral obligation would lie in the hands of the developer and their public participation practitioner to ensure that their development plans are presented in jargon-free language. The EIA guidelines are clear that whoever is conducting the public participation process in an EIA must produce readable reports (Greyling 2003: 3). If the public are unable to understand the documents but they are literate, a case could be made that the documents are not readable.

To what extent consultants are able to bridge the language gaps and technical jargon seems to depend to a large extent on their level of skill and rapport with interested and affected parties as well as the amount of time that is available for them to build capacity. How this capacity building should be funded would need to be researched.

RECOMMENDATION 6

If communities lack basic English language skills then interpreters should be hired for public meetings.

Consultants should use at least one or two dominant local languages in addition to English in written communication. While this might be too costly for technical discussion documents, they could convert these into short simplified versions before being translated.

The possibility and viability of creating a capacity building fund for the education of members of the public in preparation for, and during public participation processes could be further investigated.

5. *Deliberate misleading of the public*

There was concern expressed in the opinion survey and the focus group discussions that developers were not fully transparent about the implications of their development proposals. Many respondents felt that this amounted to deliberately misleading the public.

Respondents' comments

- The public is mislead when developers bring forward one project when they are actually promoting another. For example, the promotion of a wind energy project when the real aim is to promote nuclear energy.
- People can be mislead by enticing them with jobs (sometimes only temporary ones), especially in communities like Khayelitsha and Mitchell's Plain.
- A lack of transparency by government and consultants leads to a culture of secrecy.

Discussion

When development proponents or authorities in a public participation process have not placed all their cards on the table or declared all their interests then they are creating a culture of secrecy which is bound to lead to flawed decision-making. Similarly, when big promises are made to the public so as to divert attention from having to answer public concerns then developers/authorities are creating problems that are likely to erupt after the process is completed or during construction.

Despite the guidelines, principles and international values that are in place to inform consultants, government and communities of the proper standards that should be upheld in public participation programmes, there remains inadequate monitoring of the standards maintained by consultants who are conducting public participation processes in environmental impact assessments. The Certification Board of Environmental Assessment Practitioners of South Africa with its 14 point code of conduct is a useful tool to begin addressing this problem.

However, training in ethical analysis to better assist them to deal with the moral complexities involved in implementing these codes would also be helpful.

RECOMMENDATION 7

It would be advisable for the Certification Board of Environmental Assessment Practitioners of South Africa to monitor adherence to their codes of conduct stringently to protect the good standing of their members.

It would be advisable for the Certification Board of Environmental Assessment Practitioners of South Africa to offer training in ethical analysis to better equip their members to deal with the moral complexities involved in EIAs.

6. *Legal/Institutional problems*

Respondents in the opinion survey and the focus group discussions raised some issues regarding the financial relationship between parties in EIAs. Concern was also expressed about the implementation of some legislation.

Respondents' comments

- Public participation guided by an independent consultant who, though independent, was still paid by the developer resulted in consultants perceiving their role as being to present the views of the developer, rather than playing a role of encouraging debate around the development. This led to numerous conflicts of interests.
- Another public participation meeting might be needed but was not arranged because the client, who was paying for the process, could not be persuaded to do so.
- The slow implementation of the Planning and Development Act which was passed in 1999 was raised as part of the problem.

DISCUSSION & RECOMMENDATIONS

Recommendations regarding the independence of consultants and developers will be dealt with at length in the next chapter on "troublesome relationships" that create conflicts of interest.

7. *Delayed or zero public participation:*

Public participation could be slow and there were times it was non-existent.

Respondents' comments

- No input from the general public sometimes forced developers to rely on competent officials. One respondent was concerned that this might make officials open to getting bribed.
- The public was slow to respond. Sometimes six months after everything had been approved someone would complain that developers were interfering with a wetland.
- Some NGOs were simply anti-development. Some non-governmental organisations or stakeholder groups used environmental issues to prevent any development near them.

Discussion:

Clearly, when there is no participation from the public, this does not give developers permission to bribe competent officials. It is not the subject matter of this report to deal specifically with suggestions of bribery and corruption, but here it suffices to mention that the onus lies, in terms of the principles of NEMA and the EIA guidelines (Greyling 2003:

3), on the developer/consultant to prove that every effort has been made to engage the public in the environmental decision-making process.

Deliberate delays to decision-making should not be tolerated within environmental impact assessments. The EIA guidelines are clear on this. They state that interested and affected parties have the responsibility to submit their contribution within the agreed-upon time period. Therefore if participants want to participate fairly they must familiarise themselves with the documentation, submit their comments on agreed upon dates and not wait until the end of the process before contributing (Greyling 2003: 9).

On the other hand, an argument could be presented that environmental concerns by definition are dynamic and that we are not always aware of the immediate effects that a development could have on an area, and that there will always be unforeseen consequences which interested and affected parties might want to bring to the table. It is for this reason that the public participation processes in environmental impact assessment can't be seen as once-off procedures.

Finally, environmental decision-making by its very nature is not confined to any one government department but instead touches on many different sectors. Therefore, in order for public participation processes to become an effective part of environmental decision-making, as stipulated by NEMA and the EIA guidelines, it is imperative that these guidelines are included in other legislation where public engagement on environmental issues is necessary.

RECOMMENDATION 8

If no progress is made in the public participation process, then reasons should be supplied by the consultant as to why the public did not become involved in the process.

Active public participation should be encouraged and permanently built into environmental management procedures. While a consultant's brief and responsibility may come to an end at a stipulated time, the community's relationship to the development continues and structures which allow for constructive future engagement should be in place at the end of an EIA. Research into which laws currently have these guidelines included into regulations needs to be investigated, and where not, such guidelines need to be developed and promulgated.

8. *Lack of a common goal*

Even when consultants, communities and governments set out to follow agreed upon procedures, when technical documents are readable and consultants go to great lengths to build capacity, some EIAs still derail and result in less than satisfactory decision-making.

Respondents' comments

- Some NGOs are simply anti-development. They use environmental issues to prevent any development near them, said one government official.
- "Decisions in principle are taken before public participation, which accordingly has to be managed and shaped to produce conforming results," said an activist. (Some officials claimed this was definitely not the case.)
- Another activist complained that they ended up legitimising a process they did not believe in and only paying lip-service to public participation with the developer's interests remaining paramount.

Discussion

These polarised viewpoints often occur because there is no common goal in the public participation process. However, if a common goal of sustainability is sought during public participation, then it is likely to be more successful (Greyling 2003: 3).

If stakeholders from different perspectives of society deliberate the issues together with the authorities and technical specialists with a common goal of sustainability in mind the process is likely to bring more success than a more dogmatic approach of each stakeholder trying to convince others of their viewpoint.

Each stakeholder in the public participation process has in essence a part of the picture in hand, and it is together that a sustainable solution has to be found. It is unlikely that many consultants would disagree with this description. However, if this process is not effectively handled, it amounts to stakeholders imposing their concept of sustainability on others.

RECOMMENDATION 9

Stakeholders in environmental decision-making should explore ways and means to establish and to pursue sustainable development as the common goal that should guide the process of public participation. How to do this will require further investigation.

2.4 Troublesome relationships and conflicts of interest

What are the troublesome relationships in environmental decision-making that lead conflicts of interest – something that is generally regarded as morally unacceptable?

In the survey, we discovered a number of "troublesome" relationships that gave rise to what respondents perceived as moral problems in environmental decision-making. The moral dilemmas in these relationships arose from the fact that they involved direct conflicts of interest. The relationships under scrutiny included:

developers and consultants
contractor and environmental control officers
developers and politicians
developers and government officials
officials and politicians

The conflicts of interest in the case of the developer and consultant arose from the fact that consultants were being paid for their services by the developer of whom they were expected to give an independent assessment. Similarly so with the contractor and the environmental control officer. In the last three relationships listed, the ethical dilemmas arose from the unhealthy influence that a too close relationship could have on environmental decision-making.

1. *Relationship between developers and consultants*

The relationship between the developer and the consultant was one of the most prominent areas about which ethical concern was raised in the focus group discussions. Many respondents in the survey and the focus group discussions were of the opinion that the relationship of financial dependence between the consultant and the developer discredited the EIA process by introducing an element of bias. They were of the opinion that because the developer paid the consultant, this compromised the ability of the consultant to produce impartial reports in EIAs and made them vulnerable to manipulation by the client. It was felt by some that the relationship between the developer and the consultant also resulted in skewed public participation.

Findings

A total of 96% of respondents in the survey supported the view that consultants should be appointed by an independent third party. Only 4% of respondents disagreed.

Respondents' comments

- "Consultants that do the EIA are paid by the developers and so are the consultants that do peer review. This can only result in recommendation(s) that are not neutral", said one municipal respondent.
- One developer admitted that because the developer paid the client, this could influence the report: "The developer per se appoint that person who, even in the best world always comes under pressure from his employer to (a) get the decision to go in the employer's favour and (b) to speed it up as much as possible. I personally feel that if the process can be simplified so that the process is shorter, we will be less under pressure and have less opportunity for cutting corners."
- "I think part of the ethics is tied to the need and the way to be independent but being paid directly by the developer ... there are EIRs where consultants are put in positions because it is an outgoing client and you like to keep the business ...," said one consultant.
- "I think we are vulnerable because clients insist on a fixed price. That is it – we have R20 000 and we want the EIA process done for that ... The goals shift and so on and then the consultants are locked in that", said a consultant.

Respondents' suggestions

There were several suggestions about who that third party should be that should take responsibility to appoint consultants. They included the municipality, the province, an Environmental Protection Agency or the community themselves. Some officials, however, were sceptical of the idea of an independent third party and stated that there were enough checks and balances in the system already.

Discussion

There is a direct conflict of interest where the consultant finds themselves having to go against the preferences of the very company that is paying them their salary. This is clearly not a very effective or healthy way of ensuring compliance. While bigger consultancy companies with several well-paying clients on their list might be able to be frank about their clients lack of legal compliance, it is unlikely that smaller consultancy companies who are dependent on the income of single clients for survival are likely to have much ability to enforce environmental legislation. By allowing the consultant to be dependent on the developer for income, we are creating a structural conflict of interest that encourages subjective monitoring of environmental protection and at worst, possibly even bribery and corruption.

In order to avoid this kind of blanket discreditation of consultants, it would seem necessary to make structural changes to the way in which they are appointed and receive payment. This structural change would give consultants the opportunity to conduct themselves in a more independent manner, in principle at least, whereas at present many find themselves compromised, not so much because of personal inclination, or lack of integrity, for that matter, but because of structural reasons.

But, just who that independent third party should be is a question that respondents were not unified on. One suggestion was that government should pay the consultants and environmental control officers from a fund that would be financed by developers who have to pay a levy for each Environmental Impact Assessment Application. There is one danger that this in itself might create a closer than necessary relationship between consultants and government officials. However, there is no doubt that this would be an improvement on the present situation where there is a direct conflict of interest.

RECOMMENDATION 10

It is suggested that the possibility of appointing consultants by an independent third party should be investigated by national government.

2. *The relationship between contractors and environmental control officers*

The relationship between environmental control officers and the contractor was also perceived to result in a conflict of interest by some survey respondents, especially those in the municipal sector.

Findings

A total of 54% of all respondents in the survey were of the opinion that on-site environmental control officers were employed by contractors and therefore could not give impartial evaluations. Only 26% of the respondents stated that they trusted ECOs to give impartial evaluations of on-site environmental impacts.

Discussion

The environmental control officer finds themselves in a similar predicament to the consultants in that they have to police the contractor that pays them. By allowing the environmental control officer to be dependent on the contractor for income, we are creating a structural conflict of interest that encourages the subjective monitoring of environmental protection and at worst, possibly even bribery and corruption.

RECOMMENDATION 11

It is suggested that the possibility of paying environmental control officers by an independent third party should be investigated.

3. *The relationship between developers and politicians*

The relationship between politicians and developers was another area of ethical concern in the survey and the focus group discussions.

Findings

- 85% of respondents in the survey thought that development decisions were politically motivated rather than environmentally informed.
- 86% of respondents thought that political pressure caused hasty development decisions to be made which had negative environmental consequences.
- 51% of the survey sample felt that the appeals of developers to the provincial minister were too easily upheld.
- 96% of respondents indicated that political decision-makers need to be made more accountable for environmental decision-making.

Respondents' Comments

Our focus group discussions indicated a strong concern about a too close relationship between developers and political decision-makers. One government official expressed it in this manner:

"... I think another problem is that a lot of developers are linked to the Cape Town municipality in a financial way. [They] offer support for various political parties. This is an open statement. I don't know it factually. They bring business to Cape Town, and I think that needs to be looked at."

Discussion

An effective code of conduct for public officials needs to be in place that can guide them in their responses to circumstances that can entail conflicts of interest. This almost goes without saying, and the response of officials could be that there already is such a code of conduct in place. The question that then arises, is whether every official follows that code of conduct, and whether there are adequate structures of governance in place to ensure that they comply. A further question is whether failure to comply to such a code of conduct currently entail any effective sanctions.

RECOMMENDATION 12

It is suggested that the content and effectiveness of codes of conduct for politicians in municipal, provincial and national government relating to environmental matters be investigated as well as how often failure to comply has lead to prosecution and whether the sanctions applied are really effective.

4. *The relationship between developers and government officials*

Concern was expressed about some government officials being linked to developers and not serving the public interest when it was their job to do so. Revealing comments made in our focus group discussions and received in response to the questionnaire indicated grounds for serious concern in the relationship between officials responsible for environmental decision-making and developers.

Respondents' comments

- Some officials are said to have repeatedly advanced the interests of particular developers, while references were also made about "numerous rumours about the links of certain senior officials in the department to particular developments and particular developers".
- In certain cases it was claimed that this led to the "fast tracking" of certain development proposals, and this, it was pointed out, created "severe problems with public participation and the other steps that are meant to be taken" in a proper process

of environmental decision-making.

- Other respondents claimed that former employees of government departments are now employed by consultants or developers with a view to act as links with the departments.
- Activists complained of developers lobbying officials to get what they wanted.
- Officials complained that there was pressure to "jump the queue" and that when a particular development application had a very powerful lobby behind it they would get pressurised to hurry up with the decision.
- Municipalities were accused of being very development orientated. "But watch out for it. As you go through these environmental assessments you will often find the role being played by municipalities often to the detriment of sound environmental assessment," said one provincial official.

Discussion

The truth of these above comments would have to be verified with further investigation and some of them could indeed be seen by some respondents as merely unsubstantiated perceptions. Notwithstanding, however, it is obvious that an effective code of conduct for government officials needs to be in place that can guide them in their responses to circumstances that can entail conflicts of interest. And as it has been pointed out above, for such a code of conduct to be effective, it will have to entail effective sanctions.

RECOMMENDATION 13

It is suggested that the content and effectiveness of codes of conduct for officials in municipal, provincial and national government relating to environmental matters be investigated as well as how often failure to comply has lead to prosecution and whether the sanctions applied are really effective.

5. *The relationship between government officials and politicians*

Officials expressed concern that they were put under pressure by politicians to sometimes make unsound environmental decisions because the politicians felt they needed to deliver to the public or score political points.

Findings

- 86% of respondents were of the opinion that political pressure caused hasty development decisions to be made which had negative environmental consequences.
- 95% of respondents expressed the need for political decision-makers to be made more accountable for environmental decision-making
- 12% of respondents to the survey claimed that they had been put under pressure by a politician to approve/support a project that they knew did not comply with regulations

Discussion

The public's lack of trust in the relationship between government officials and politicians does not augur well for sound environmental decision-making, or confidence in the integrity of the decision-making process.

RECOMMENDATION 14

A full investigation needs to be undertaken of the effectiveness of current environmental decision-making procedures with specific reference to an assessment of the influence that politicians can exert on government officials. Such an investigation needs to be conducted on all three tiers of government.

2.5 General governance issues

How can governance issues pose ethical problems in environmental decision-making?

Governance issues raise serious ethical considerations when the structure of organisations and the levels of co-operation between different organisations and institutions don't allow for the effective management of ethical risks in the process of environmental decision-making. Such an effective management would not only entail that certain structures and procedures are in place to prevent any ethical risks or to detect them at a very early stage, but also to appropriately respond to them. Governance further entail appropriate procedures of reporting and control, and very specific responsibilities of those in positions that exercise management and control.

Besides structural impediments and issues of conflict of interest discussed above, serious ethical concerns were also raised about governance issues in the process of environmental decision-making. In our questionnaire the topic of governance was covered with questions whether appropriate legislation is in place to enable effective environmental decision-making, whether this legislation was followed, whether officials from different departments of government effectively co-operate with one another, and whether there is inappropriate interference from politicians or those in higher authority in the decision-making process.

Findings

In the following table a summary is given of responses on key questions regarding the issues mentioned above. The figures indicate to what extent the respondents agreed or strongly agreed with the statement in the left-hand column. Some of the questions in this table were discussed in previous sections, but they are given here once again to make a point that we return to below.

Table 6: Framework and governance issues

GENERAL QUESTIONS	Agree
Political pressure causes hasty development decisions to be made which have negative environmental consequences	86%
Politicians promote development decisions that are politically motivated rather than environmentally informed	85%
Municipalities and provincial departments do not co-operate effectively in the environmental decision-making process	85%
Heads of departments within provincial government do not work effectively together in environmental decision-making	80%
LEGISLATION	Agree
Penalties for the enforcement of environmental legislation are not severe enough	77%
There is widespread confusion about how to implement the National Environmental Management Act (NEMA)	66%
Consultants are often ignorant about all the relevant legislation impacting on environmental impact assessments	65%
Judges are not sufficiently informed of environmental issues	64%
Officials are often ignorant about all the relevant legislation impacting on environmental impact assessments	62%
Current national environmental legislation is full of loopholes that make prosecution difficult	55%
Current national environmental legislation is too vague to be properly implemented	51%
There is sufficient legislation available on a national level for adequate protection of the environment	49%
There is sufficient legislation available on a provincial level for adequate protection of the environment	42%
Environmental impact assessments are unnecessarily delayed because of a clash between the Land Use Planning Ordinance (LUPO) and the National Environmental Management Act (NEMA) processes	31%
There is excessive environmental legislation on a local government level	20%
Magistrates are well-informed of environmental issues	12%

Discussion

Given that there is some overlap with the issues mentioned in this section and the discussion of legislation and policy above, there is no need to discuss these figures at length. They speak for themselves. It should be noted, though, that the disturbingly high figures in this table across so many issues clearly indicate that a comprehensive approach should be followed in addressing them, instead of singling out one area while neglecting others. We argue that Table 6 indicates a system-wide problem related to the whole of the legal and institutional framework currently in place for environmental decision-making. This calls for a systemic transformation, the details of which fell outside the scope of our survey. It should also be noted that the problems highlighted in this Table have a direct bearing on the capacity of role-players working within this framework to deliver on their respective role expectations. To use a hypothetical example, it is impossible for a provincial official to perform her job effectively if the framework within which she works characterised by too much political

interference, inadequate co-operation from municipalities, and ineffective interdepartmental communication at a provincial level.

RECOMMENDATION 15

It is suggested that a comprehensive audit of environmental decision-making procedures at different levels of government in different departments be done to ascertain where the bottlenecks and ineffective procedures are located.

2.6 Competency and capacity issues

How does the competence and capacity of role players in environmental issues lead to ethical problems in decision-making?

When role players in environmental decision-making are not in a position to fulfil the roles they are assigned because they are not properly qualified or experienced, or don't have enough time, important environmental decisions are not effectively handled. This leads to inadequate care and protection of the environment.

Findings

In the opinion survey, a total of 53% of respondents were of the opinion that a lack of awareness among roleplayers about what constituted ethical behaviour was one of the causes of unethical behaviour in environmental decision-making in Cape Town.

It should be noted that there were some respondents who indicated that some of the questions in the survey, especially those regarding ethical behaviour had been too open-ended and this had resulted in either/or choices that were inaccurate. For example, when asked whether they had ever compromised their personal principles at work, it had not been stipulated whether this was in the current work place or previous work place. This kind of ambiguity in the questioning lead to inaccurate information, they said. However, bearing this qualification in mind, as well as the aim of this study, which was not to conduct a forensic audit on a particular institution, the responses to this question was still very revealing, as will be shown below.

In the sections that follow, we will examine six different sectors namely government, consultants, developers, activists, the public and politicians in terms of their own perceptions as well as the perceptions of others regarding their ethics, competency and capacity to make effective environmental decisions.

1. Government departments

1.1 National government

In the survey, national government compared favourably to the other sectors regarding perceptions about their ethics and competency.

- 58% of respondents were of the opinion that they took ethics seriously
- 50% thought that national government officials were competent
- 56% believed they adhered to legislation

Respondents' comments

The National Department of Environmental Affairs and Tourism themselves indicated that they lacked the capacity and capital resources to implement the decision-making framework they desired. This was supported by provincial politicians who claimed that there was no-one to check if the conditions for developments set by the National Environmental Management Act (NEMA) were adhered to. Similarly, one municipal authority claimed that some national departments simply did not have sufficient capacity to deal with the issues that were put before them.

1.2 Provincial government

The Provincial Department of Environmental Affairs and Development Planning (DEA & DP) was perceived along with the national department officials to be among the most competent, the most likely to take ethics seriously and the most likely to adhere to legislation.

- 59% of respondents believed they took ethics seriously
- 56% were of the opinion they were competent
- 55% agreed they adhered to legislation

Respondents' comments

Some officials stated that the perception of "fast-tracking" certain development proposals above others was not always due to bribery or pressure from politicians or developers. In some cases this merely had to do with emergencies or extremely pressing issues that required one to give priority to some developments. They also commented that there were some parties that used environmental issues as a veto right against development in their area.

Capacity problems were a concern among officials themselves. One official indicated they had to deal with 60 or 70 more applications on their desk as well as phone-calls and meetings. There were times when officials were unable to stick to their scheduled priority list. Officials also sometimes relied on consultants to make them aware of issues that were significant in EIAs. Information was occasionally withheld, sometimes on purpose or due to ignorance. However, it was simply not possible for officials to apply their minds to the things at hand, if information was left out. The department was trying to rectify this by issuing guidelines for scoping reports.

There was a complaint about the lack of consistency with the manner in which provincial officials dealt

with projects. One consultant said that officials were moved around, the processes changed rapidly and different officials treated the same sorts of projects differently, leaving consultants confused. A consultant also claimed they had to first educate officials and then ironically, get feedback from them.

Some officials themselves also indicated that there was a lack of experienced staff. They said there were very few middle managers and young graduates were faced with high caseloads. The Department of Environmental Affairs and Tourism (DEAT) agreed that there was insufficient training of provincial and municipal government officials. A proper analysis should be done of all training needs, suggested a member of the national department.

It was maintained that better co-ordination was required to ensure that what is expected by national legislation was translated into proper training programmes by various institutions and then made accessible to officials on provincial and municipal level. However, it was also pointed out that some authorities did not want to allow their officials time off for training.

Not everyone felt that there were too many young staff members on a provincial level. Some were of the opinion that where there were young staff members there were also often senior managers with experience who provided checks and balances.

DEAT officials called for training for the provinces that included:

- NEMA and other policies and legislation
- The implementation of international conventions
- Biodiversity and conservation
- Environmental Impact Assessments (EIAs)
- Waste management and pollution control
- Coastal management
- Sustainable development issues, as well as how to integrate environment with specifically economic and social issues.

It is significant to note, however, that when respondents were asked to mark the effectiveness of officials in implementing principles of environmental management, only 27 to 36% of the sample based their responses on first hand knowledge. Limited experience and perceptions accounted for the rest. It is obvious that perceptions alone cannot be acted upon, but need further investigation. However, even if they are only perceptions, they require improved communication in order to restore the public image and trust of the general public in officials.

1.3 Local government

Respondents in the survey had considerably less confidence in the competency and capability of municipal government officials than provincial and national officials. This is also significant given that municipal government officials represent 29% of the respondent sample size.

- 43% of respondents were of the opinion that officials in local government took ethics seriously.
- 38% of respondents thought local government officials were competent
- 33% were of the opinion that they adhered to legislation

Respondents comments

Some respondents commented that the workload at a municipal level was too heavy and this left insufficient time for municipal officials to attend relevant staff training courses. Respondents further pointed out that some training in environmental management had been done, but felt that this had not been sufficient.

Respondents also pointed to significant capacity problems in rural areas. They commented that the capacity of municipal authorities to handle environmental issues was seriously lacking. They said the absence of the green lobby group in these areas left many problems unchecked and one activist claimed that rural municipalities had no idea about what processes had to be followed for development proposals.

Respondents questioned the degree to which municipalities took environmental issues seriously. One activist claimed that municipalities spent money for the sake of spending it. Within the City of Cape Town itself, an official claimed environmental issues were not taken seriously enough. The respondent said that the environment was seen as an emotive issue and that environmental officials were not seen as professionals and their opinions are not respected.

1.4 Consultants

Concerns on the quality of work being produced by consultants, in the past had prompted officials to issue guidelines for EIA assessment. In the survey, however, there was some confusion about how confident respondents were about the capacity of consultants:

- 56% of respondents thought that consultants took ethics seriously
- 63% of respondents thought they were competent
- 60% of respondents believed that consultants adhered to legislation.

This while other indicators, in the opinion survey, regarding the professionalism of consultants showed that:

- 48% of all respondents were of the opinion that consultants conducted sham participation processes that did not allow for adequate public engagement with environmental issues
- 42% of respondents were of the opinion that competition between consultants resulted in cheap and superficial environmental impact assessments
- 95% of all respondents were of the opinion that environmental consultants working on environmental impact assessments should ascribe to a professional code of conduct.

Respondents' comments

Respondents highlighted in comments that they were not convinced of the trustworthiness of all consultants. One claimed that consultants took advantage of the ignorance of the people at public participation meetings. Another complained that consultants failed to bring anything new to the EIA process and they were prone to cheating. They were of the opinion that environmental organisations could do a better job than consultants.

Some were of the opinion that a critical review of consultants' work was necessary. One consultant admitted there was not nearly enough questioning of what is actually going on in the field and certainly not enough training exposure. Another said that consultants generally were not prepared to critically review other consultants. However, it was thought that if this review happened it might be able to set some limits to unethical behaviour.

(Just how openly critical all respondents were prepared to be towards colleagues was also revealing. In the survey 76% of the respondents reported that they would not report a colleague to superiors if they noticed the colleague behaved unethically, and 79% indicated they would not report that colleague to authorities. Instead of whistle-blowing, the option rather seemed to approach the colleague privately and explain the problem.)

Two other issues raised in the survey regarding the competence of environmental officials included the issue of professional confidence and specialisation. A researcher commented that clients always expected a scientist to be confident about their findings when as a scientist one knew that the only view of confidence could be statistical. There was also concern within the organisation that consultants were commissioned to do work that they were not qualified to do. For example, a person who specialises in rivers might comment on estuarine environment and pressurised officials might let something unprofessional and unethical like this slip through.

1.5 Developers

Developers inspired some of the lowest levels of confidence in environmental decision-making.

- Only 11% of the respondents to the survey believed that developers were likely to take ethics seriously
- 17% of the respondents thought developers were competent in environmental decision-making
- 23% believed developers adhered to legislation
- 51% of respondents thought that industry was ignorant about environmental regulations.

Other general opinions regarding developers that were gleaned from the survey included:

- 84% of respondents to the survey were of the opinion that developers seldom fully considered all the alternatives that are required by environmental impact assessments
- 31% of respondents believed that ethical problems in environmental decision-making in Cape Town and surrounds mainly had to do with the fact that developers were more interested in profits than environmental protection
- A total of 42% of respondents were of the opinion that developers dominated public participation in EIA procedures.

Respondents' comments

- A planner commented that there had not been enough time to build solid relationships between administrators and developers.
- An official claimed that business could be opportunistic. They lobbied senior management in their individual capacity and took advantage of the length of time it took council to act on

legislation.

- One environmental official said business had their advertising billboards up for a year by the time the City of Cape Town acted, underlining the opportunism of some businesses to exploit the inaction of officials.
- Activists said developers sometimes approached "ignorant politicians" with proposals. These politicians wanted to be seen to be doing something for the community, and were sometimes not aware of the need for public participation processes.

In the focus group discussion with developers, the issue of needing to improve standards and training was raised. There was a need expressed to improve environmental standards in business with tools like ISO 14 000. Another participant complained of the problems of an unskilled building industry. They said that many contractors hired people off the street with no environmental awareness. Responsible developers, however did induction courses for tradesman on-site.

1.6 Politicians

Confidence in the competency of politicians was very low. General comments on the competency of politicians were as follows:

- 86% of respondents were of the opinion that political pressure caused hasty development decisions to be made which had negative environmental consequences
- 85% of respondents believed that politicians promoted development decisions that were politically motivated rather than environmentally informed
- 51% of respondents were of the opinion that appeals of developers were too easily upheld.

Respondents' comments

In the focus group discussions some concern was expressed about the lack of knowledge of politicians and their resulting lack of capacity to make informed decisions. One activist said that some politicians, eager to be seen doing something for the community, jump at developers' proposals without being aware of the fact that there was a need for public participation processes. Capacity building among counsellors was needed.

Officials at all levels of government were concerned about capacity problems among politicians. A municipal environment official said that politicians did not make decisions consistent with their pledge and appeared to give in under pressure. They claimed that politicians supported issues where the most voting power lay, and because people were more interested in housing, sewerage and water this lead to less emphasis on the environment. One provincial official was of the opinion that politicians did not understand the difference between a political decision and an administrative appeal.

2. Activists and the general public

There was some discrepancy between how the two activist organisations, the Environmental Justice Network Forum (EJNF) and the Wildlife and Environment Society of South Africa (WESSA) were perceived in the survey. The discrepancy between the confidence expressed in WESSA and

EJNF could be due to a lack of knowledge about the latter, especially since WESSA is a member of the umbrella organisation EJNF. Many people were ignorant about EJNF's activities.

WESSA was perceived by:

- 76% of respondents in the survey to take ethics seriously
- 77% of respondents found them competent in environmental decision-making
- 72% were of the opinion that they adhered to legislation.

EJNF was perceived by:

- 42% of respondents to take ethics seriously
- 41% to be competent in environmental decision-making
- 45% to adhere to legislation.

Other general comments on communities, activists and members of the public found in the survey were the following:

- 67% of respondents were of the opinion that the general public was not informed about EIA legislation
- 57% of respondents believed that environmental activists deliberately delayed development projects. (This was repeatedly confirmed by discussions in the focus groups and follow-up workshops)
- 50% of respondents were of the opinion that activists made uninformed statements about environmental issues.

Respondents' comments

- People did not know how the different government departments worked and needed to be informed about that
- Information about meetings in community newspapers was not an effective means of communication to all community members
- Limited numbers of people, skills and capacity within EJNF meant they were not always able to attend all the EIA meetings or always able to receive and respond to information on time
- People in Khayelitsha were not empowered to engage in issues like objecting to rezoning.

A provincial planning official was critical of the competence level of people in non-governmental organisations. They said very few had training in environmental studies. They said that NGO activists were "struggle people" who had now turned their attention to the environment. These activists were working with money which they had got for nothing and they had, none to little, responsibility about how they spent that money or what actually happened on the ground. Similarly, other government departments had concerns about communities' ability to look after the environment. There was concern that land with endangered species should not be given over to communities without careful consideration because species might be lost.

Discussion

It is clear from the above analysis that no one sector is without a need to increase their competency and capacity, as well as their public image, for that matter. This should be understood in South Africa against the background that environmental legislation, policy and enforcement is an area of relatively new importance in government. This is apparent when one compares our levels of environmental awareness in government with that of Europe and the United States of America. Environmental awareness in South Africa, although given a boost by NEMA, remains still in its infancy.

This is also understandable given our country's history of oppression which has resulted in a sharp focus on human rights rather than environmental issues. However, this concern about HIV/Aids, poverty alleviation and human rights cannot be addressed without taking environmental issues into consideration. All of these responsibilities and needs are interlinked and have an impact on environmental concerns. It is therefore necessary, if we are serious about providing for the needs of present and future generations, to begin addressing this lack of competency and capacity within the various sectors.

RECOMMENDATION 16

Government

There is a need for increased training at all levels of government but especially at municipal level. Exactly, in what form this training and capacity building would need to be, would have to be further researched in collaboration with the departments concerned. It is further recommended that some kind of training in environmental ethics, as a tool to assist with complex environmental dilemmas, become part of these modules.

Politicians

Parliament could commission research units and institutes that specialise in environmental education to assist in the training of committees tasked with environmental portfolios. Committees such as the National Portfolio Committee on Environmental Affairs and Tourism, the National Council of Provinces Select Committee on Environmental Affairs and Tourism, the Provincial Portfolio Committee on Environment Affairs, and the Western Cape Standing Committee on Local Government, Environment Affairs and Development Planning could all undergo training in ethics to assist them to better respond to the moral complexities of environmental decision-making.

Activists

Similarly, perceptions of a lack of understanding and competence in the activist and public sector needs to be addressed through more effective public participation components in EIA procedures. Present public participation procedures are too superficial, leaving communities and activists confused and ignorant about the technical and bureaucratic procedures of some development projects.

It is the duty of government and developers to inform the public of environmental hazards that specific projects might bring about. The public needs to be made aware of the dangers they might face so that they are in a position to make informed decisions. The possibility of funding an education component in public participation administered by government through a public participation levy imposed on development projects therefore needs to be researched.

Consultants

It is suggested that the code of conduct of the Certification Board of Environmental Practitioners in South Africa's 14-point code of conduct be supported by training courses in environmental ethics to better equip consultants to cope with the moral complexity of their role in EIAs.

Developers

It is recommended that developers build awareness by exposing their staff to the variety of courses and training available on environmental safety and health. It is also recommended that developers create and adhere to environmental codes of conduct within their companies to distinguish themselves in the market place from those with a "bad reputation". A grasp of the tools of environmental ethical analysis would go a long way to assisting this sector to better understand the points of view of other roleplayers in environmental decision-making.

2.7 Professionalism and personal integrity

The previous section on the competence and capacity of environmental decision-makers has already introduced the theme of professionalism. The link of the theme of professionalism to the general thrust of our survey becomes evident when the definition of a professional is taken into account. This definition states that a professional is someone with a high level of certified competency in a field of knowledge that is essential for the functioning of society, who is expected to further develop that knowledge, and is accorded very high levels of autonomy in the use and application of that knowledge, provided it is to the advantage of society. Professionalism also entails self-regulation, in the first place by individuals themselves with regards to their personal conduct, but also from the side of the professional field as a collective. It is especially in the latter regard that professional bodies are formed that, among other things, put in place control measures such as certification, registration or accreditation procedures, as well as codes of conduct in which standards are set for good practice in terms of service delivery and the ethical integrity of that service. Professionalism, integrity and self-regulation in terms of an explicitly espoused set of

values thus can establish a firm basis for ethical behaviour. In our survey some questions were included to determine how firm this basis was when it came to environmental decision-making in Cape Town and surrounds.

The discussion in the previous section was devoted to an analysis of responses about the levels of competency of environmental decision-makers, as well as their willingness to adhere to legislation, and their commitment to take ethics seriously. All three of these indicators are involved when the professionalism of environmental decision-makers is discussed. Further questions that probed the professionalism and integrity of environmental decision-makers in our survey, had to do with the extent to which they:

- Supported certain environmental principles
- Were able to act on these environmental principles
- Were prone to pressure to compromise their principles and codes of conduct
- Were prepared to address issues of ethical concern themselves and blow the whistle on it when necessary
- Were prepared to proceed with a development project without proper approval by authorities.
- Were doing work or making decisions in areas outside their field of competency
- Used personal contacts instead of proper procedures to get approval for certain development proposals
- (Officials) "walked" reports through the environmental decision-making process for developers
- Delayed a project on purpose so that it becomes too expensive to proceed.

Findings

Very interesting and revealing results emerged from the sections of the survey dedicated to the themes of professionalism and integrity.

Confidence in levels of knowledge

Besides the points that were made about confidence in the levels of competence, commitment and conviction of the various role players in environmental decision-making, the response to a general question in the survey was that a total of 46% of respondents were of the opinion that unethical behaviour in environmental decision-making was caused by a lack of training among government staff who were implementing environmental policy. Other sectors, however were also the targets of concern in this regards, as it has been pointed out above:

- 65% of respondents were of the opinion that consultants were ignorant about all the relevant legislation impacting on environmental impact assessments
- A total of 62% of the respondents believed that provincial officials were ignorant about relevant legislation.

Preparedness to cut corners

It was very encouraging to see that there was a blanket rejection among the respondents of behaviour that amounted to compromising personal and professional integrity:

- 86% of respondents reported that they never compromised their personal principles to

- satisfy their clients or applicants (9% admitted to more than once, and 5% to once).
- Only 5% admitted that they more than once withheld information to get a project proposal approved (with 2% admitting to doing it only once)
- 95% indicated that they never have broken the law to satisfy a client/applicant.
- 98% reported that they have never withheld information to get a project proposal rejected.
- 94% of respondents reported that they have never compromised their professional code to satisfy a client or applicant
- 96% of respondents found it unacceptable to proceed with a development project without proper approval by authorities.

Support for environmental principles

Very high support in their personal capacity was expressed by respondents to the survey for the four environmental principles that were referred to in the questionnaire:

- 96% of respondents expressed support for the polluter pays principle
- 93% supported the precautionary principle
- 94% supported sustainable development
- 96% supported the principle of environmental justice.

Self-regulation and peer review

While the points discussed in this section thus far augers well for the professionalism of environmental decision-makers, our survey also indicated that there are some concerns about standard setting and peer review in environmental decision-making. Throughout our research it was suggested that there was a real need for a critical review of the work and roles of officials and consultants involved in environmental decision-making. One consultant admitted there was not nearly enough questioning on what was actually going on in the field and not enough training exposure. Another said that environmental consultants were not prepared to critically review others. They were of the opinion that if this review happened it might be able to set some limits to unethical behaviour. Strong supporting evidence in this regard was found in the survey when 76% of the respondents reported that they would not report a colleague to superiors if they noticed that that colleague behaved unethically, and 79% indicated they would not report that colleague to authorities. Instead of whistle-blowing, the option rather seemed to approach the colleague privately and explain the problem.

Role expectations

Some concerns were also expressed by respondents about the lack of clearly defined roles, particularly in the case of consultants – and this, many felt, was another possible cause for unethical behaviour in environmental decision-making. The classic tension in any profession between the objective of running a business in competition with other businesses, and primarily being of service to the public, was the basis for an observation by 42% of respondents that competition between consultants resulted in cheap and superficial environmental impact assessments.

The professionalism of consultants were also questioned by 48% of respondents who were of the opinion that consultants conduct sham participation processes that did not allow for adequate

public engagement with environmental issues. Similar doubts were expressed by respondents who highlighted in comments that they were not convinced of the trustworthiness of all consultants. One claimed that consultants took advantage of the ignorance of people at public participation meetings. Another complained that consultants failed to bring anything new to the EIA process and they were prone to cheating. They were of the opinion that environmental organisations could do a better job than consultants.

This general scepticism about the professional role of consultants was underlined by 95% of all respondents who were of the opinion that environmental consultants working on environmental impact assessments should ascribe to a professional code of conduct.

Our research, however, also revealed a flipside to this coin. Some consultants said they were in a tight spot with the public and officials as well as developers because:

- The public had no capacity to understand the limitations of the "game" that consultants were "playing". A consultant said: "They expect us to solve the worlds' problems, but I mean we cannot do that."
- Officials suffered from capacity problems themselves and sometimes consultants had to educate officials and then get feedback from them, said one consultant.
- Consultants were sometimes confused when officials from the Provincial Department of Environmental Affairs and Development Planning were moved around from project to project because different officials treated the same sort of projects differently.
- Inexperienced officials with little experience were put in authority positions where they made decisions about other people's impact assessments.

Accordingly, we conclude that further investigation is called for to ascertain to what extent consultants in the environmental field are indeed prone to unprofessional behaviour, and whether measures such as accreditation and codes of conduct will improve matters.

Discussion

The figures represented above are, generally speaking, fairly encouraging with regards to the personal convictions and integrity of environmental decision-makers, but they contrast starkly with the very low levels of confidence that were recorded when local, provincial and national government were rated in terms of their effectivity to implement the polluter pays and precautionary principles, as well as the principles of sustainable development and environmental justice. The figures regarding this set of perceptions are shown below in Table 7.

Table 7 : Effectivity of government in implementing environmental values

Effectivity of provincial, local and national government in implementing principles of environmental management	Highly Effective	Effective	Ineffective	Highly Ineffective	N
Provincial Dept of Environmental Affairs and Development Planning					
The polluter pays principle	5%	33%	46%	16%	78
The precautionary principle	3%	42%	44%	11%	78

Sustainable development	4%	33%	54%	9%	77
Environmental justice	5%	28%	51%	16%	76
Local Government (Municipalities)					
The polluter pays principle	7%	22%	42%	29%	79
The precautionary principle	0%	24%	49%	27%	78
Sustainable development	1%	24%	44%	31%	78
Environmental justice	1%	20%	55%	24%	79
National Government					
The polluter pays principle	8%	26%	43%	23%	77
The precautionary principle	5%	25%	44%	26%	77
Sustainable development	1%	25%	52%	22%	77
Environmental justice	0%	30%	47%	23%	77

From these figures we conclude that the perceptions of non-delivery on the implementation of these principles should not be ascribed to the lack of personal integrity or intentions of the various *individuals* in these departments (given the qualification that this was reported by the role-players themselves), but rather, as indicated above, to possible flaws in the general framework of environmental decision-making, or to lack of capacity, training, or experience.

It is furthermore significant to note that in all cases, strong points of view on the lack of effectiveness to implement environmental values were only based on the first hand knowledge of between 27 and 36% of the respondents. Limited experience and perceptions accounted for the rest. From both perspectives, the levels of confidence in government to uphold environmental principles seems to be very low, although it must be pointed out that first hand experience and perceptions clearly require different responses to rectify problems. Further investigation is therefore recommended to determine whether it is indeed only perceptions that lie at the root of these low levels of confidence, or whether it is indeed framework issues, capacity problems or lack of training that are the causes. However, both scenarios seems to require urgent action, whether it be structural transformation, capacity building or training, or whether it be working on the better communication of a positive public image of government in these matters, or both.

Recommendation 17

Further investigation is called for to ascertain to what extent role players in environmental decision-making are indeed prone to unprofessional behaviour, and whether measures to institutionalize professionalism will improve matters.

Recommendation 18

Further investigation is recommended to determine whether it is indeed only perceptions that lie at the root of the low levels of confidence in government institutions to protect environmental values, or whether it is framework issues, capacity problems or lack of training that are the causes. Such an investigation will clarify whether a general structural transformation of environmental decision-making procedures and structures is required to address concerns, or whether better communication between government structures and the public about environmental decision-making will improve perceptions, or whether both strategies are required.

2.8 Addressing value issues

How can ignorance about environmental ethics cause unethical conduct in environmental decision-making?

When environmental decision-makers see ethics in its narrow definition, that is, as a purely personal and private matter that is not open for discussion, they fail to grasp how people may differ in their interpretation and implementation of environmental regulations, processes and complex concepts like sustainable development.

Findings

While conducting the opinion survey it became apparent that there was a great deal of ignorance and confusion about what the words "ethics", "values" and moral conduct meant. This level of confusion led to some participants claiming that morals and ethical conduct were largely "personal" matters that were not something that were of consequence in the work place. According to this view, as long as one followed the company's code of conduct, or the official government code of conduct or stuck to constitutional norms one was acting ethically. While participants in the survey understood what it meant to "value" the environment on a personal level, many struggled to translate or understand how this affected their actions in the work place. It was not understood that people could value the natural environment in different ways, and accordingly, that people could have differing conceptions about how to formulate, implement or even enforce environmental legislation and policy.

With this theme we venture into one of the most difficult areas of environmental decision-making: that is, to actually make a justifiable choice between diverging and often clashing values and interests. This clearly takes the issue of ethical conduct within the process of environmental decision-making to a deeper level of analysis than all the others mentioned above, since the focus here falls on the ethical quality of the decision reached. This begs the question what an ethically acceptable choice is, i.e. what the criteria are that should be applied in this regard, and how they should be applied. Which in turn confronts us with the problem of the lack of consensus in society about the standards that should be used in order to differentiate between what is ethically acceptable and what not.

This issue was touched upon in the survey in a number of questions. In response to one of the earlier questions in the survey, only 14% of respondents claimed that there was agreement among environmental decision-makers about what constituted ethical behaviour. This was confirmed by the distribution of responses when it was asked to what extent certain specifically formulated value-laden statements could be supported. This distribution is represented in Table 8, where it should be noted that the difference between strong and moderate support, whether positive or negative, is highly significant, since it indicates whether a certain value position is ascribed to in a strong or a moderate fashion. This is further important since strong or moderate support for a value position can lead to serious debates among role-players in environmental decision-making about which policy or course of action to choose, let alone serious debates with moderate or strong supporters of the opposite side. And to further complicate matters, different positions can

be adopted with regards to different values, leading to an almost insurmountable number of permutations of possible and actual relationships between value positions.

Table 8: Agreement with value laden statements

Extent of agreement with the following value-laden statements	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	N
Natural life is valuable in itself, regardless of its use for human beings	45%	28%	7%	14%	6%	84
Economic activity should stay within the confines of the supporting eco-systems of an area	33%	43%	16%	8%	0%	83
It is impossible to place an economic value on biological diversity	16%	20%	11%	39%	14%	85
Development that involves land-use change is often not compatible with sustainability	8%	38%	21%	26%	7%	85
Environmental issues are rich people's concerns; poor people have to worry about jobs	6%	16%	5%	35%	38%	85
The way in which we currently live in South Africa will ensure that our children inherit a clean and healthy environment	4%	4%	2%	54%	36%	85
Environmental benefits like clean air can always be traded like other economic benefits	3%	8%	11%	40%	38%	85
Ownership of land gives me the right to do anything on it	3%	0%	1%	29%	67%	85
Wilderness will have to be sacrificed to satisfy basic human needs in South Africa	2%	11%	5%	36%	46%	85
Technology will always come to the rescue in the solution of environmental problems	1%	2%	14%	51%	32%	85

Bearing in mind that the figures corresponding to the last three entries in this table should be read in reverse order to those above (following from the formulation of the statements), a significant aspect of this table is the clear "splits" between the categories of "strong", "moderate" and "neutral". These splits indicate well-defined differences between the participants in this survey, and if this is true of those who are professionally or in the role of advocacy involved in environmental-decision making, i.e. working in the same sector, it would not be surprising to find even deeper splits if other sectors or the broad public were involved.

Discussion

We draw attention to this, since environmental decision-making would, in the eyes of interested and affected parties, as well as the public, not be regarded as legitimate if it cannot be demonstrated that value issues and clashing interests have been addressed adequately. To adequately address value issues, we argue, would, in the first place, require the capability of

identifying and conceptualizing not only each value position, but also the differences between them in terms of assumptions, content, structure, implications and consequences. In addition, it would require competency in relating these value positions to specific contexts, and to deliberate in an accessible, transparent and justifiable manner what the merits and demerits of relevant value positions are: relevant, that is, to the context.

Lastly, it will require a clear demonstration through a process of lucid argumentation, of the grounds (including the value assumptions) and considerations of how a certain decision was reached. What these ground considerations are, should be clearly spelled out, and also how they were used.

This kind of ethical sensitivity becomes necessary when the issues regarding legislation and policy, public participation, structural relationships, governance, professional roles and functions, and effective service delivery in many cases might not be the core problems in a particular environmental decision but, that it is rather an issue of differing value orientations. In many cases there exists no capacity among role-players in the process of environmental decision-making to address this kind of problem. Special training, exposure and capacity building in this regard, seems expedient. However, if it is already difficult to reach a well-deliberated, justifiable decision, this difficulty of adequately addressing value issues and clashing interests, we further argue, is raised to the level of almost an impossibility if legislation, policies, structure, framework, procedures, governance, professionalism, roles, functions and service delivery themselves are at issue. The irony of the matter is that a flawed system only adds to the extreme challenge of making ethically justifiable public decisions. And yet, we have to make decisions, whether we have a perfect system or not.

The importance of this observation is underlined if we consider further that an environmental value such as sustainable development has a core meaning, but that this core meaning is often neglected or ignored in some circles, and, as a matter of fact, interpreted differently from different value positions. This is not the place to argue for the distinctions in this regard, or to give lists of them, except to point out (with Jacobs)² that at least eight different interpretations of sustainable development can be given without exhausting the list, and that they tend to polarize in radical and conservative points of view. And if we assume that the same is also true of other principles of environmental decision-making such as the polluter pays, precaution, and environmental justice, it is clear to us that environmental decision-makers are faced here with a serious problem that will require urgent attention.

To address the challenge of really dealing with value conflicts that force decision-makers to make value judgements, requires a kind of deliberation that is qualitative in nature rather than quantitative. We thus argue for a new kind of thinking within environmental decision-making that is open to value analysis and what it can bring to the process.

² Jacobs 1999.

2.2 Legislation and policy

RECOMMENDATION 2

On the issue of providing an adequate institutional framework in which environmental legislation can be enforced it is suggested that:

- The possibility of developing an environmental protection agency that is able to prosecute environmental offenders (supported by 94% of the survey respondents) deserves detailed research.

On the issue of confusion and ignorance about environmental legislation, it is suggested that:

- a stock-take of all environmental legislation in all government departments at different levels of government be completed with a view to providing a legal and administrative framework that is well-coordinated.

At a municipal level it is suggested that:

- increased co-operation between departments in the Cape Town City Council on the issues of environment/planning policy and legislation is needed.

Regarding the relationship between political and legal processes, it is suggested that:

- A thorough stock-take needs to be done into the relationship between legal processes and ministerial or other political instruction.

2.3 Public participation in Environmental Impact Assessments

RECOMMENDATION 3

a. Public participation practitioners have no choice, according to the law and DEAT regulations, to make every effort – in whatever means is most suitable – to transfer and gather information from interested and affected parties in EIAs. Each development proposal might require different ways of gathering and distributing information. This needs to be resolved by public participation practitioners in conjunction with the community or individuals involved.

b. There seems to be a real need for procedures and structures that authorities can follow to reassure the public that environmental decisions have been made on a sound basis. This perhaps go beyond the procedures and structures that exist in terms of current EIA regulations, and will require further investigation.

RECOMMENDATION 4

Consultants are according to the EIA guidelines expected to verify that interested and affected parties' interests have been captured in EIA and scoping reports. There can be no excuse for such omissions.

The role of community-based organisations in public participation processes should be recognised and formalised.

RECOMMENDATION 5

If interested and affected parties' interests are to be adequately reflected in EIAs, then times that are set and agreed upon by the community will have to be found if the principles of NEMA are to be upheld.

Interested and affected parties should be given the opportunity (including adequate time) for comment on assessments of impacts and proposed mitigation measures. Similarly, interested and affected parties have the responsibility to submit their contribution within the agreed-upon time period.

RECOMMENDATION 6

If communities lack basic English language skills then interpreters should be hired for public meetings.

Consultants should use at least one or two dominant local languages in addition to English in written communication. While this might be too costly for technical discussion documents, they could convert these into short simplified versions before being translated.

The possibility and viability of creating a capacity building fund for the education of members of the public in preparation for, and during public participation processes could be further investigated.

RECOMMENDATION 7

It would be advisable for the Certification Board of Environmental Assessment Practitioners of South Africa to monitor adherence to their codes of conduct stringently to protect the good standing of their members.

It would be advisable for the Certification Board of Environmental Assessment Practitioners of South Africa to offer training in ethical analysis to better equip their members to deal with the moral complexities involved in EIAs.

RECOMMENDATION 8

If no progress is made in the public participation process, then reasons should be supplied by the consultant as to why they did not become involved in the process.

Active public participation should be encouraged and permanently built into environmental management procedures. While a consultant's brief and responsibility may come to an end at a stipulated time, the community's relationship to the development continues and structures which allow for constructive future engagement should be in place at the end of an EIA. Research into which laws currently have these guidelines included into regulations needs to be investigated, and where not, such guidelines need to be developed and promulgated.

RECOMMENDATION 9

Stakeholders in environmental decision-making should explore ways and means to establish and to pursue sustainable development as the common goal that should guide the process of public participation. How to do this will require further investigation.

2.4 Troublesome relationships and conflicts of interest

RECOMMENDATION 10

It is suggested that the possibility of appointing consultants by an independent third party should be investigated by national government.

RECOMMENDATION 11

It is suggested that the possibility of paying environmental control officers by an independent third party should be investigated.

RECOMMENDATION 12

It is suggested that the content and effectiveness of codes of conduct for politicians in municipal, provincial and national government relating to environmental matters be investigated as well as how often failure to comply has lead to prosecution and whether the sanctions applied are really effective.

RECOMMENDATION 13

It is suggested that the content and effectiveness of codes of conduct for officials in municipal, provincial and national government relating to environmental matters be investigated as well as how often failure to comply has lead to prosecution and whether the sanctions applied are really effective.

RECOMMENDATION 14

A full investigation needs to be undertaken of the effectiveness of current environmental decision-making procedures with specific reference to an assessment of the influence that politicians can exert on government officials. Such an investigation needs to be conducted on all three tiers of government.

2.5 General governance issues**RECOMMENDATION 15**

It is suggested that a comprehensive audit of environmental decision-making procedures at different levels of government in different departments be done to ascertain where the bottlenecks and ineffective procedures are located.

2.6 Competency and capacity issues

RECOMMENDATION 16

Government

There is a need for increased training at all levels of government but especially at municipal level. Exactly, in what form this training and capacity building would need to be, would have to be further researched in collaboration with the departments concerned. It is further recommended that some kind of training in environmental ethics, as a tool to assist with complex environmental dilemmas, become part of these modules.

Politicians

Parliament could commission research units and institutes that specialise in environmental education to assist in the training of committees tasked with environmental portfolios. Committees such as the National Portfolio Committee on Environmental Affairs and Tourism, the National Council of Provinces Select Committee on Environmental Affairs and Tourism, the Provincial Portfolio Committee on Environment Affairs, and the Western Cape Standing Committee on Local Government, Environment Affairs and Development Planning could all undergo training in ethics to assist them to better respond to the moral complexities of environmental decision-making.

Activists

Similarly, perceptions of a lack of understanding and competence in the activist and public sector needs to be addressed through more effective public participation components in EIA procedures. Present public participation procedures are too superficial, leaving communities and activists confused and ignorant about the technical and bureaucratic procedures of some development projects.

It is the duty of government and developers to inform the public of environmental hazards that specific projects might bring about. The public needs to be made aware of the dangers they might face so that they are in a position to make informed decisions. The possibility of funding an education component in public participation administered by government through a public participation levy imposed on development projects therefore needs to be researched.

Consultants

It is suggested that the code of conduct of the Certification Board of Environmental Practitioners in South Africa's 14-point code of conduct be supported by training courses in environmental ethics to better equip consultants to cope with the moral complexity of their role in EIAs.

Developers

It is recommended that developers build awareness by exposing their staff to the variety of courses and training available on environmental safety and health. It is also recommended that developers create and adhere to environmental codes of conduct within their companies to distinguish themselves in the market place from those with a "bad reputation". A grasp of the tools of environmental ethical analysis would go a long way to assisting this sector to better understand the points of view of other roleplayers in environmental decision-making.

2.7 Professionalism and personal integrity

RECOMMENDATION 17

Further investigation is called for to ascertain to what extent role players in environmental decision-making are indeed prone to unprofessional behaviour, and whether measures to institutionalize professionalism will improve matters.

RECOMMENDATION 18

Further investigation is recommended to determine whether it is indeed only perceptions that lie at the root of the low levels of confidence in government institutions to protect environmental values, or whether it is framework issues, capacity problems or lack of training that are the causes. Such an investigation will clarify whether a general structural transformation of environmental decision-making procedures and structures is required to address concerns, or whether better communication between government structures and the public about environmental decision-making will improve perceptions, or whether both strategies are required.

2.8 Addressing value issues

RECOMMENDATION 19

It is suggested that all environmental decision-makers receive training in environmental value analysis to better cope with the complexity of the environmental dilemmas they encounter.

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