

**An Evaluation of the Effectiveness of Public Participation in
Environmental Impact Assessments: A Namibian Case Study**

by

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Declaration

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Abstract

Public participation plays an important role in the Environmental Impact Assessment (EIA) process in allowing the public an opportunity to be involved in the process and to provide input regarding proposed developments. However, in practice it is not clear whether public participation is being effectively conducted such that it allows the public to actually influence decision making. This research evaluates the effectiveness of public participation conducted as part of the EIA process, using the Namibian policy framework and four Namibian projects as a case study. The research objectives of this study included conceptualising effective participation and developing a theoretical framework that could be used to evaluate the effectiveness of public participation against. The study then used this framework to assess the Namibian legislation to determine whether it sufficiently provides for effective participation in EIAs. Thereafter the framework was used to evaluate the four EIA projects. Lastly the study provides recommendations for improvement of public participation as part of EIAs in Namibia.

The research design adopted an evaluation design to determine whether public participation in practice is effectively implemented. The research is based on a multiple case study methodology and made use of case studies consisting of four projects that required EIAs. The case studies were evaluated against the theoretical framework for effective public participation developed. The case study research made use of a mixed method approach of both qualitative and quantitative methods to collect and analyse data. A literature review, questionnaires with open ended questions, and document review were used in the research to collect qualitative data. Supplementary quantitative data was also collected by the questionnaires, which were administered to Interested and Affected Parties (I&APs), Environmental Impact Assessment Practitioners (EAPs) and Ministry of Environment, Forestry and Tourism (MEFT) officials. The qualitative data was analysed using thematic content analysis and the quantitative data using Microsoft Excel.

The case studies revealed that the participants became involved at relatively late stages within the development process and thus opportunities to influence the decisions of decision makers were more limited. The case studies emphasised the need for obtaining Free, Prior and Informed Consent (FPIC), particularly within projects in which indigenous people were affected. It also revealed that participation must be culturally appropriate and should be tailored to the particular cultural context of the affected communities. The barriers identified that prevented participants from participating meaningfully included language barriers, ineffective media used for communicating information, inappropriate timings and venues of meetings, lack of education coupled with highly technical information being presented, short review and comment periods, and poor access to information in general. The research additionally demonstrated that in some cases public comments and inputs were not incorporated into decision making and are merely provided as an appendix to the EIA report provided to decision makers, instead of being fully incorporated and addressed. The legal requirements were however mostly adhered to within the cases, illustrating that the legal requirements are not adequate.

This study thus recommends that it is necessary to review the Namibian EIA regulations with regard to the provisions pertaining to public participation to ensure that they allow for effective participation. The legislation should be prescriptive as to the different participation requirements for small-scale and large-scale projects. Guidelines should be developed which can be implemented to address the gaps within the legal framework and particularly with regard to consultation with indigenous communities. Lastly, there should be stricter provisions within the legislation that relate to the consideration of comments made during participation and the degree to which they are considered in decision making.

Keywords:

Public participation, Environmental Management, Environmental Impact Assessments, Participation Assessment Criteria, Sustainable Development

Opsomming

Openbare deelname speel 'n belangrike rol in die omgewingsimpak-evaluering (OIE) proses om die publiek 'n geleentheid te gee om by die proses betrokke te wees en insette te lewer rakende voorgestelde ontwikkelings. In die praktyk is dit egter nie duidelik of openbare deelname effektief uitgevoer word sodat dit die publiek in staat stel om werklik besluitneming te beïnvloed nie. Hierdie navorsing evalueer die doeltreffendheid van openbare deelname aan die OIE - proses, deur die Namibiese beleidsraamwerk en vier Namibiese OIE-projekte as 'n gevallestudie te gebruik. Die navorsingsdoelwitte sluit in die konseptualisering van effektiewe deelname en die ontwikkeling van 'n teoretiese raamwerk om die effektiwiteit van openbare deelname te evalueer. Die studie gebruik dan hierdie raamwerk om te beoordeel of die Namibiese wetgewing voldoende is om effektiewe deelname aan OIEs moontlik te maak. Daarna word die raamwerk gebruik om die vier OIE-projekte te evalueer. Laastens gee die studie aanbevelings vir die verbetering van openbare deelname as deel van OIEs in Namibië.

Die navorsingsontwerp het 'n evalueringontwerp aangeneem om te bepaal of openbare deelname aan die praktyk effektief geïmplementeer word. Die navorsing was gebaseer op 'n veelvoudige gevallestudiemetodiek en het gebruik gemaak van vier gevallestudies bestaande uit vier OIE-projekte. Die gevallestudies is geëvalueer aan die hand van die teoretiese raamwerk vir effektiewe openbare deelname wat ontwikkel is. Die gevallestudie navorsing het gebruik gemaak van 'n gemengde metode benadering van beide kwalitatiewe en kwantitatiewe metodes om data te versamel en te analiseer. 'n Literatuuroorsig, vraelyste met oop vrae en dokumentoorsig is in die navorsing gebruik om kwalitatiewe data te versamel. Kwantitatiewe data is versamel deur vraelyste wat aan belanghebbende en geaffekteerde partye, omgewingsimpak -assesseringspraktisyns en amptenare van die Ministerie van Omgewing en Toerisme gerig is. Die kwalitatiewe data is ontleed met behulp van tematiese inhoudsanalise en die kwantitatiewe data met behulp van Microsoft Excel.

Die gevallestudies het aan die lig gebring dat die deelnemers in relatiewe laat stadiums van die ontwikkelingsproses betrokke geraak het en die geleentheid om besluite deur besluitnemers te beïnvloed, dus meer beperk was. Die gevallestudies het die behoefte aan die lig gebring om vrye, voorafgaande en ingeligte toestemming (FPIC) te verkry, veral binne projekte waarin inheemse mense geraak word. Dit het ook aan die lig gebring dat deelname kultureel toepaslik moet wees en aangepas moet word by die spesifieke kulturele konteks van die geïmpakteerde gemeenskappe. Die struikelblokke wat geïdentifiseer is wat deelnemers verhoed om sinvol deel te neem, sluit in taalhindernisse, ondoeltreffende media wat gebruik word om inligting te kommunikeer, tydsberekening en onvanpaste ontmoetingsplekke, 'n gebrek aan opleiding, gepaardgaande met hoogs tegniese inligting, kort hersienings- en kommentaarperiodes en swak toegang tot inligting. Die navorsing het verder getoon dat openbare kommentaar en insette dikwels nie by besluitneming ingesluit word nie, aangesien dit slegs as 'n aanhangsel by die OIE-verslag aan besluitnemers verskaf word, in plaas daarvan dat dit volledig opgeneem en aangespreek word. Die wetlike vereistes vir publieke deelname is egter meestal in hierdie gevalle nagekom, wat illustreer dat die wetlike vereistes nie voldoende is nie.

Die navorsing beveel dus aan dat die OIE-regulasies hersien moet word ten opsigte van die bepalings rakende openbare deelname om te verseker dat dit effektiewe deelname verseker. Die wetgewing moet voorskriftelik wees ten opsigte van verskillende deelnamevereistes vir kleinskaalse en grootskaalse projekte. Riglyne moet ontwikkel word wat geïmplementeer kan word om die leemtes binne die wetlike raamwerk op te los, en veral met betrekking tot konsultasie met inheemse gemeenskappe. Laastens moet daar strengere bepalings in die wetgewing wees wat betrekking het op die oorweging van kommentaar wat tydens deelname gemaak is en die mate waarin dit in ag geneem word by besluitneming.

Steutelwoorde:

Openbare Deelname, Omgewingsbestuur, Omgewingsimpakstudie, Assesseringskriteria vir Deelname, Volhoubare Ontwikkeling

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List of Acronyms and Abbreviations

AOI	Area of Interest
BBVA	Banco Bilbao Vizcaya Argentaria
BID	Background Information Document
CIPP	Context, Input, Process, Product
CNFA	Confederation of Namibian Fishing Associations
COP	Conference of Parties
COVID-19	Coronavirus Disease of 2019
DEA	Department of Environmental Affairs
DOI	Digital Object Identifier
EA	Environmental Assessment
EAP	Environmental Assessment Practitioner
EAPAN	Environmental Assessment Professionals of Namibia
EC	Environmental Commissioner
ECC	Environmental Clearance Certificate
ECE	Economic Commission for Europe
ECLAC	UN Economic Commission for Latin America and the Caribbean
EEZ	Exclusive Economic Zone
EHS	Environmental, Health and Safety Guidelines

EIA	Environmental Impact Assessment
EIB	European Investment Bank
EMA	Environmental Management Act
EP	Equator Principles
EMP	Environmental Management Plan (or Programme)
EPFI	Equator Principle Financial Institution
ESHIA	Environmental, Social and Health Impact Assessment
FPIC	Free, Prior and Informed Consent
GIIP	Good International Industry Practice
GDP	Gross Domestic Product
Ha	Hectare
I&APs	Interested and Affected Parties
IAIA	International Association on Impact Assessments
IAP ²	International Association on Public Participation
ICT	Information Communication Technology
IDP	Integrated Development Plan
IEM	Integrated Environmental Management
IFC	International Finance Corporation
IIED	International Institute for Environment and Development
IPCC	Intergovernmental Panel on Climate Change
IRR	Issues and Response Record

KAZA TFCA	Kavango-Zambezi Transfrontier Conservation Area
KDDP	Kuiseb Delta Development Project
kV	Kilovolt
MET	Ministry of Environment and Tourism
MEFT	Ministry of Environment, Forestry and Tourism
MFMR	Ministry of Fisheries and Marine Resources
MME	Ministry of Mines and Energy
MW	Megawatt
NACOMA	Namibian Coast Conservation and Management
NamPower	Namibia Power Corporation Pty (Ltd)
NatMIRC	National Marine Information and Research Centre
n.d.	No date
NGO	Non-Governmental Organisation
NDP	National Development Plan
ODG	Operational Directives and Guidelines
<i>OIE</i>	<i>Omgewingsimpak-evaluering</i>
PCDP	Public Consultation and Disclosure Plan
PEL	Petroleum Exploration Licence
PPAH	Pollution Prevention and Abatement Handbook
PPP	Public Participation Process

RoD	Record(s) of Decisions
RSA	Republic of South Africa
SAIEA	Southern African Institute for Environmental Assessment
SDG	Sustainable Development Goals
SEA	Strategic Environmental Assessment
TAC	Total Allowable Catches
UN	United Nations
UNDIRP	UN Declaration on the Rights of Indigenous Peoples
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environmental Programme
UNEP FI	United Nations Environment Programme Finance Initiative
UNFCCC	United Nations Framework Convention on Climate Change
WSSD	World Summit on Sustainable Development
WLC	Women's Leadership Center

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Chapter 1 Introduction

1.1 Introduction

Besides developmental problems such as extreme poverty and inequality, Namibia experiences environmental challenges similar to those in other African countries which include climate change, land degradation, soil erosion, deforestation, insufficient water management, waste and pollution which points to the need for legal and non-legal measures to ensure environmental protection (Ruppel & Ruppel-Schlichting, 2016:24-27; Byers, 1997:24–30). Environmental Impact Assessments (EIAs) are one of the legislated tools used to ensure that development projects identify their potential social, economic, and environmental impacts, both positive and negative, with the aim of avoiding or minimising these impacts on the environment. Most authors agree that public participation is an essential part to ensuring an effective EIA (Hughes, 1998:2; Doelle & Sinclair, 2006:188; Kanu, Tyonum & Uchegbu, 2018; Glucker, Driessen, Kolhoff & Runhaar, 2013:108). It is argued that public participation should be seen as more than just a process of collecting inputs, but as an important aid in ensuring that EIAs promote sustainable development (Doelle & Sinclair, 2006). EIAs which involved meaningful participation have been found to result in developments with more environmental and social benefits (Hughes, 1998:2). Concerns have however grown with regard to the success of public participation due to its lack in performance and the inability to achieve desired goals (Wesselink, Paavola, Fritsch & Renn, 2011:2).

Public participation within EIAs often come under public scrutiny and are criticized for not being effective and as a result not enabling the public to meaningfully influence decision-making. To improve participation, Wesselink *et al.* (2011:13) believe it is important to ask questions such as “What are we trying to achieve? Is this legitimacy, effectiveness, efficiency, or representation? Do all relevant actors agree? Is participation necessarily the best way to realise these goals? What if actors have different purposes and resources?”.

Thus, it can be seen that it is difficult to reduce effectiveness in participation to a single definition. Public participation is believed to be effective when the inputs of the public are actually considered and incorporated into project design and decision-making (Doelle & Sinclair, 2006:189). Effective public participation is additionally believed to be linked to ensuring the sustainability of projects. The aim of EIA is to ensure that development proceeds in a sustainable manner as a sustainable outcome cannot be achieved without public participation (Bynoe, 2006:36). Furthermore, at the heart of participation lies the concepts of democracy, human rights and empowerment (Marzuki, 2009:127), thus ensuring that the public be heard, their rights exercised and protected and that they are able to influence decisions.

Bynoe (2006) noted that public participation is a complex process, and it is often questioned who should participate and what should be included to ensure effective participation. Due to this complexity, it is important to determine what constitutes effective public participation. As such, this study aims to firstly conceptualise effective participation in order to develop a set of criteria for public participation which will be used to assess the effectiveness of the public participation processes in EIAs in Namibia. The research will also assess the Namibian legislation with regard to public participation in EIAs to determine whether it is sufficient to ensure effective participation. The research will make use of four Namibian case studies to evaluate the effectiveness of the public participation undertaken against the criteria developed. This would then enable recommendations to be made as to how the process can be improved so that it reaches the desired goals.

1.2 Rationale for the Study

Public participation plays a central role within the EIA process (Kanu *et al.*, 2018) in ensuring that the public has the opportunity to influence the decisions which they are affected by (Glucker, *et al.*, 2013:106). The principle of participation has been outlined within the Namibian Environmental Management Act No 7 of 2007 (EMA) as essential to ensuring Integrated

Environmental Management (IEM). Public participation is thus seen as crucial to ensuring effective EIAs in Namibia (Glucker *et al.*, 2013:109; Hughes, 1998). An important part of sustainability includes the public being involved in decision-making with regard to development which affects their lives (Morrison-Saunders & Early, 2008:29; United Nations (UN), 1992; United Nations Economic Commission for Europe (UNECE), 1998). Thus, if effective public participation is lacking within the EIA process, the decisions which result will not be informed in a way that would ensure sustainable outcomes.

There is a large body of literature which focuses on public participation (see for instance Glucker *et al.*, 2013; Hughes, 1998; Wesselink *et al.*, 2011; Fitzpatrick & Sinclair, 2003). However, most of this literature is focussed on different countries. Not much research has been conducted with regard to public participation within EIAs undertaken within the Namibian context. Furthermore, no research has been conducted to determine how effective, just, and equitable the public participation processes within EIAs in Namibia are. Without such research it would be impossible to determine whether public participation within EIAs is merely complying with legal requirements or whether it provides Interested and Affected Parties (I&APs) a genuine opportunity to influence the decisions which affects their lives. This research thus was crucial in order to ensure that public participation is not merely a “ticking of the boxes” exercise but that it is rather a reflection of a true, authentic participative process.

1.3 The Research Problem

A research problem refers to an area of concern which needs to be investigated (Creswell, 2014:20). There are varying levels or forms of participation outlined within theory (Arnstein, 1969; International Association for Public Participation (IAP²), 2018) and thus in practice, a similar case is unfolding with varying levels and forms of participation in different countries or projects. In Namibia public participation plays an important role in the EIA process and this is reinforced by the provisions outlined in the legislation. However, it is not certain whether public participation is conducted in a way which allows meaningful participation

to take place or such that it enables decision-making to be influenced. It is not good enough to merely provide the public with an opportunity to share their ideas and opinions regarding a project, they need to be able to influence the decision and thus their ideas and opinions need to be seriously considered by the decision makers (Glucker *et al.*, 2013:108).

Due to the lack of research conducted on public participation in EIAs in Namibia, there is little empirical evidence available relating to the effectiveness of the implementation of the process or whether public participation influences decision-making. Thus, there is no certainty regarding the legitimacy of the process. For the process to be legitimate, public participation should influence decision-making. An apparent lack of legitimacy may lead to resistance to a decision (Glucker *et al.*, 2013:108). It is important to determine the legitimacy of the process by examining to what extent input from participants influence decisions and what considerations and criteria the decision makers use to make their decisions (Glucker *et al.*, 2013:108). It is also important that the decisions and how they were made should be transparent and clear (Glucker *et al.*, 2013: 108), allowing the involved public to be certain that their opinions and interests have been taken into account.

1.4 Research Objectives

The goal of this study was to evaluate the effectiveness of public participation in EIAs by drawing on case studies of EIAs undertaken in Namibia. The research addressed the following specific objectives:

- To conceptualise effective public participation in EIAs through a literature review and develop a theoretical framework for assessing effective public participation in EIAs in Namibia.
- To assess the Namibian legal framework for public participation in EIAs to determine whether it is sufficient to ensure effective participation, by additionally comparing it to international treaties, declarations and other provisions.
- To evaluate the public participation processes undertaken within relevant case studies in Namibia against the theoretical framework

developed for effective public participation in EIAs, as well as the input of research respondents involved in EIA public participation.

- To provide recommendations for improving the performance of public participation processes in EIAs in Namibia.

1.5 Research Design, Methodology, Sampling and Methods

1.5.1 Research Design

The detailed research design, methodology and methods employed in the research are elaborated on in more detail in Chapter 4. The research design is that of an evaluative design in which the researcher wants to determine whether public participation in practice is effectively implemented and to what extent the outcome from the participation is integrated into the decision taken by authorities. Evaluation research (also called programme evaluation or policy evaluation) is concerned with determining whether a particular policy or social intervention resulted in the desired outcomes (Bryman & Bell, 2011:93, Mouton, 2010:2). As such, this research was focused on whether public participation processes were effectively implemented in that it enabled the outcome of the EIA processes to be influenced by the public participation.

This evaluative research made use of case study research. Case studies enable an in-depth description of a particular phenomenon (Flyvbjerg, 2011:301). It is often used in research which aims to ask questions related to “how” and “why” (Yin, 2009:27) in relation to a social issue. The research more specifically makes use of a multiple case study design in which several case studies are utilised and evaluated within the research. The multiple case study design enables the researcher to compare cases with regard to what is exceptional and what is shared across the cases (Bryman & Bell, 2011:104).

The research will have a non-empirical and empirical component, and both primary and secondary data, as well as quantitative and qualitative data, will be utilised to achieve the research objectives.

1.5.2 Research Methodology and Methods

The research is based on a case study methodology to evaluate the effectiveness of public participation within EIAs. The research makes use of four EIAs which were used to evaluate the public participation processes undertaken against the theoretical framework for effective public participation in decision-making which will be developed as part of the research.

The research also made use of a mixed method approach of both qualitative and quantitative methods to collect and analyse data. The mixed method was used based on the assumption that it will provide a better understanding of the research problem as opposed to employing each method separately (Creswell, 2014:4). As a result, the quantitative methods will be used to supplement the qualitative methods within the research. The mixed method approach enabled the researcher to obtain both numerical and descriptive data which could be used to address the research objectives. Secondary data about the multiple case studies was obtained through document review of EIA reports, Records of Decisions (RoD), Environmental Clearance Certificates (ECCs), newspaper articles and online data sources, while primary data has been collected via questionnaires.

The research methods refer to the specific methods that are employed during the research for data collection and analysis (Mouton, 1996:36). A combination of qualitative and quantitative data collection and analysis methods have been utilised. A literature review, questionnaires with open ended questions, and document review were used in the research to collect data. The qualitative data was analysed using thematic content analysis in which the themes within the qualitative data was identified, grouped, and interpreted based on overarching themes. Thematic content analysis is a form of content analysis which involves the process of objectively and systematically assigning specific items of the content into categories or themes (Bryman & Bell, 2011:289). The research results were analysed and presented in various ways, including using direct quotes from respondents and documents, categorised according to the most important themes identified in the literature review. The quantitative data was

analysed using Microsoft Excel. Visual methods of presentation of results were also used in the form of tables and charts.

1.6 Ethical Considerations

Research ethics refers to what is considered to be right and wrong when conducting research (Brynard, Hanekom & Brynard, 2014:94). Due to the fact that the research directly engaged people during data collection, participants were potentially inconvenienced during participation. The research aimed to reduce the inconvenience to the respondents by making the questionnaire an online questionnaire which made it easier to access and complete.

Emails were sent to participants (Environmental Assessment Practitioners (EAPs) and I&APs) requesting their participation in the study via a new email address which was created by the researcher specifically for this research. The email invited participants to participate and requested their consent via the informed consent form, which was attached to the email, which the participants returned prior to or at the same time of completing the questionnaire.

The questionnaires were created online using Google Forms. The link of the online questionnaire was included in the email to the participants. Email addresses for the EAPs were obtained online on the Environmental Assessment Professionals of Namibia (EAPAN) web page in which the email addresses for all registered EAPs are publicly available as well as on an email mailing list which the researcher was part of. The email addresses of the I&APs were obtained in the EIA reports which were available online. No personal information was requested in the questionnaire, thus reducing the likelihood of the respondents being identified and ensuring the anonymity of the respondents.

Furthermore, the research required access to government documentation for each case study, such as the EIA documents and RoD of the Environmental Commissioner (EC) who is tasked with receiving applications, determining the scale, scope and reviewing assessment reports and issuing of ECCs. As such, written consent and permission to utilise this documentation for research

purposes was obtained from the Ministry of Environment, Forestry and Tourism: Department of Environmental Affairs (MEFT: DEA) (previously known as the Ministry of Environment and Tourism) in a letter dated 14 February 2020. However due to the fact that no copies were allowed to be made of the documents and the researcher was not allowed to remove the documents from the facility, the reports were also obtained online where available.

Ethical consideration was also given to how the researcher would store and handle the data which was collected. The returned informed consent forms were saved on the researcher's personal computer in a password protected folder which only the researcher and her supervisor has access to. A separate email address was created from which the emails were sent to the participants and to which the participants returned the signed informed consent forms.

In light of the ethical considerations for the proposed research, ethical clearance was obtained prior to any data collection from the Research Ethics Committee of the University of Stellenbosch as per letter dated 28 April 2020 (Annexure C).

1.7 Research Limitations

The research was limited by a number of factors. These included the willingness of participants to participate in the research which resulted in a limited number of responses received on the questionnaires which were administered. Furthermore, the questionnaires were only administered online and as such could only be sent to participants with an email address. This limited the study participants to those who have access to the internet and who have valid email addresses recorded. However, the research focused more on the qualitative data collection and analysis and as such the questionnaires mainly served to supplement the data collected via the main methods, such as secondary data and document analysis.

The sampling technique was based on non-random sampling which may be biased. The researcher selected the samples based on the availability of information for the research and of participants. Participants did not have an

equal chance of being included in the study and thus may not be a true representation of all the EIAs conducted as only four case studies were considered during the research. Therefore, it made it difficult to generalise from the research findings.

1.8 Chapter Outline

Chapter One provides an introduction and background to the research. It furthermore describes the reason why the research is needed. It additionally provides a summary of the research problem, research objectives, ethical considerations, and limitations of the research.

Chapter Two provides an overview of public participation and its role within EIAs. It conceptualises public participation and outlines why it needs to be undertaken. It discusses the criteria derived from the literature required to ensure effective participation and develops the evaluation framework for the effectiveness of public participation in EIAs. It furthermore details some of the challenges faced in participation.

Chapter Three reviews the international agreements and Namibian legislation which relates to public participation. It focuses on the Environmental Management Act of 2007 as the guiding legislation for EIAs and the subsequent public participation processes in Namibia. It also evaluates the Namibian EIA regulations and whether they provide for effective participation in EIAs in practice.

Chapter Four discusses the research design, methodology and methods employed during the research. It further outlines the methods of data analysis as well as the sampling techniques used in the research.

Chapter Five unpacks the relevant Namibian case studies utilised within the research, making use of the various sources of data as mentioned. The chapter further analyses the case studies against the evaluation framework developed and provides a discussion and analysis of the findings of the results of the research.

Chapter Six discusses how the research objectives were addressed in the research. Furthermore, the conclusions and recommendations of the research are discussed in this chapter.

Chapter 2 Public Participation in Environmental Impact Assessments

2.1. Introduction

The mainstream approach to environmental decision-making in the past was largely focused on a top-down approach with the governing body having the power to make the final decision. This approach often lacked participation (Kapoor, 2001:269). The cumulative impact of projects on the ground is supporting the need for EIAs to ensure sustainable outcomes. Decision-making within the EIA process can thus not solely rely on the government. Kapoor (2001:269) holds that there has emerged great support for a more inclusive and participatory approach to the environment in order to ensure socially all-encompassing and environmentally sustainable decisions. Similarly Richardson and Razzaque (2004:165) argue that public participation has become a significant part of many environmental regulations across the globe. An important part of sustainability thus includes the public participating in decision-making with regard to development which affects their lives (Morrison-Saunders & Early, 2008:29). This literature review interprets public participation by defining and conceptualising it and discussing its role within environmental decision-making. It will further discuss the rationale for public participation in EIAs. Lastly it will discuss the criteria proposed as necessary for ensuring effective public participation in EIAs as well as the challenges faced.

2.2 Environmental Management and Sustainable Development

The importance of understanding and managing the interaction between the natural world and human beings has long been identified as being integral to ensuring the sustainable utilization and management of nature. This can be seen in increased environmental challenges faced in the world which has led to growing concern over the way and extent to which human beings utilise natural resources. Due to increasing environmental problems faced in the world, environmental management which is both considerate and accountable

is essential in supporting sustainable development (Mikulčić, Duić & Dewil, 2017: 867).

Sustainable development is a key concept which has been defined and interpreted in many different ways. Most commonly sustainable development is defined in the Brundtland Commission Report as “development which meets the needs of the present generation without compromising the ability of future generations to meet their own needs” (World Commission on Environment and Development, 1987). Sustainable development has also been defined to be “the maintenance of a constant stock of (natural) capital” (Blewitt, 2008:5), where natural capital refers to natural resources and ecosystem services. The need to manage the environment in a sustainable manner is always increasing due to the fact that the human population is constantly increasing as the finite natural resources are being depleted (Mensah, 2019:6). Nooteboom (2007:646) has argued that a system develops sustainably if the development allows the system to maintain its entirety while also maintaining the parts on which the system depends. The earlier definitions of sustainable development had predominantly anthropogenic views of the environment in that it is only viewed to be important in terms of how much it can be used to meet human needs (Hattingh, 2001:6). More recent debates on sustainable development focus on the intrinsic value of nature and not how it relates to human needs.

Sustainable development has thus more recently been believed to be development that focuses on maintaining the balance of three interconnected pillars, specifically economic, social, and environmental sustainability, collectively known as the triple bottom line. Social sustainability entails providing a platform that enables people to meet their needs (Mensah, 2019:10). Environmental sustainability relates to “the natural environment and how it remains productive and resilient to support human life” (Mensah, 2019:10). The earth has limits or boundaries within which a state of balance is maintained and in order to ensure environmental sustainability the utilisation of natural resources must remain within these limits (Mensah, 2019:10). Economic sustainability involves a system of production and consumption that does not hinder the ability to meet the needs of future generations (Mensah,

2019:9). Critics of the triple bottom line as outlined above suggest that sustainable development should not try and strike a balance between the social, environmental and economic aspects but should rather focus on satisfying human needs, ensuring social equity and respecting environmental limits (Holden, Linnerud & Banister, 2017:214).

In more recent years a fourth pillar has been added namely governance, which speaks to the need for good governance to allow for the integration of the aforementioned three pillars (Glasson & Therivel, 2019:10). The EIA is seen as an instrument for sustainable development (Roos, Cilliers, Retief, 2020:1) in that it must ensure that projects produce a sustainable result.

There is a debate between authors on what sustainable development actually means in reality. Sustainable development is a dynamic process and not a static state of being (Gallop, 2003:21). Gallop (2003:22) argues that to achieve sustainable development the interlinkages between the social, economic, and environmental dimensions need to be understood. This understanding can be achieved by adopting a systems approach to the world.

Within the concept of sustainable development, the importance of participation, access and equity is emphasised through the need for social sustainability. Participation is thus considered to be a key theme for sustainable development (Holden *et al.*, 2017:216). In order to ensure social sustainability, the public needs to participate in such a manner that they can express what needs to be done to ensure that their needs are met. Decisions that relate to the environment in which communities live and base their livelihood on cannot be made solely by authorities: communities need to not only be able to influence the process, but also direct, control and own it.

2.3 Public Participation Defined

The principle of public participation has developed over time and different authors have varying definitions of the concept. Arnstein (1969:216) defined public participation to be a redistribution of power from those that have the decision-making authority to those minority groups which are often excluded

from decision-making, consequently linking public participation to the empowerment of communities or groups. Empowerment involves allowing people more control over their lives or circumstances (Kyamusugulwa, 2013:1268). It thus calls for an understanding of the power relations within a community in order to empower community members to bridge the gap between those who have the power and those who do not.

Wesselink *et al.* (2011:2) understand participation to be any form of inclusion of non-state actors, public members or stakeholders, in stages of government policy making which may include implementation, thus interpreting public participation from a more strategic level. Kanu *et al.* (2018:8) define public participation as the process in which an organization consults with those interested and affected by a decision prior to decision-making with the aim of ensuring improved decision-making. The International Association for Impact Assessment (IAIA) ((2006:1), as cited in Glucker *et al.*, 2013:105) defines public participation as “the involvement of individuals and groups that are positively or negatively affected, or that are interested in, a proposed project, programme, plan or policy that is subject to a decision-making process”. Most definitions point to the ability of the public to influence decision-making as key for public participation. The definition by Kanu *et al.* (2018:8) more specifically focuses on the involvement of potentially affected persons by a decision, and that participation should have an influence on decision-making and as such is the definition which is used within this research.

2.4 The Various Levels of Public Participation

Public participation is not one-dimensional in that there is not only one clear way for participating and thus different authors refer to different levels of participation. Arnstein’s Ladder of Participation (Arnstein, 1969) outlines the different levels of participation that allows for varying degrees at which the public participates. At the bottom of the ladder there is “manipulation” which Arnstein equates with non-participation as it only aims to educate participants, thus this level can be described as the lowest level of participation and is not considered the desired level for participation. The opposite end of the ladder is

what Arnstein believes to be the ultimate level of participation, referred to as “citizen control”. At this level the decision-making power is transferred to participants and does not solely rest with those in power. This ultimately results in the empowerment of the participants. This desired level of participation is however not always reached in the EIA process as the authority is the final decision-maker and participants often do not have much impact on the decisions made. Thus, participation within the EIA process can be described as at most “placation” in terms of Arnstein’s ladder in that the public can advise the decision-maker but the ultimate decision still vests with the authority. From the various levels it becomes clear that if public participation is conducted it does not necessarily mean that it will result in the participants influencing the decisions made within that process. The eight hierarchical levels of participation as outlined by Arnstein are summarised in **Table 2-1** below.


Table 2-1: Arnstein’s Ladder of Participation (Adapted from Arnstein, 1969:217)

Level of Participation	Description
8. Citizen Control	Most of the decision-making rests with those who do not have the power i.e., participants
7. Delegated Power	
6. Partnership	Enables participants to negotiate and engage in trade-offs with those in power.
5. Placation	Higher level of tokenism. The participants can advise the decision-makers, but the final decision still rests with those in power.
4. Consultation	Participants are informed and their opinions may be heard, however there is no guarantee that their opinions are considered by those in power.
3. Informing	
2. Therapy	Non – participation. It does not aim to allow for participation but enables those in power to “educate” or “cure” the participants
1. Manipulation	

The level of participation is often additionally determined by the role that the public should play via participation. The International Association for Public Participation (IAP²) outlines a spectrum of participation which defines the role

of the public at the different levels of participation and what they can expect from the participation process (International Association for Public Participation, 2018). **Table 2-2** below is adapted from the IAP² Spectrum of Public Participation and highlights the theory that increased participation leads to increased impact on the decisions made.

Table 2-2: IAP² Spectrum of Public Participation (adapted from International Association for Public Participation, 2018)

	Inform	Consult	Involve	Collaborate	Empower
Public Participation Goal	To provide information to the public	To obtain feedback from the public	To work in conjunction with the public throughout the process	To partner with the public and work on all aspects of the decision	To allow the public to make the final decision
Increased influence on decision 					
Promise to the public	The public will be informed	The public will be informed and provided with feedback on how they influenced the decision	Decision makers will work with the public and provide feedback on how they influenced the decision	Advice will be sourced from the public	Public's decisions will be implemented

Of additional importance to the development and implementation of public participation are the IAP² Core Values for Public Participation. According to IAP² “These core values were developed over a two year period with broad international input to identify those aspects of public participation which cross national, cultural, and religious boundaries” (International Association for Public Participation, 2021). The core values as developed by the IAP² are stated as follows:

1. “Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.

2. Public participation includes the promise that the public's contribution will influence the decision.
3. Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers.
4. Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
5. Public participation seeks input from participants in designing how they participate.
6. Public participation provides participants with the information they need to participate in a meaningful way.
7. Public participation communicates to participants how their input affected the decision” (International Association for Public Participation, 2021).

Based on the above, it can be seen that the level of participation achieved is closely linked to the outcome that those making use of participation wish to achieve. Similarly, the core values of participation aim to ensure that participant’s inputs are received, considered, and allowed to influence decision making and that participants also be provided with evidence of how their inputs influenced a decision.

Moreover, in determining the level of participation required to yield the best results it is important to know what the purpose of participation will be. There is no consensus over the specific goals of public participation (Glucker *et al.*, 2013:104). This may be due to the fact that the goals of public participation is often not detailed but generally involves engaging society and improving the quality of decisions made (Morrison-Saunders & Early, 2008:33). As such, ensuring participatory decision-making in decisions that affect the participants’ environment and possibly their lives have certain benefits not only to those who participate but to the broader society. It is therefore essential to ask, ‘why do participation?’ which will be discussed in the section below.

2.5 The Rationale for Public Participation

Petts (2003:271) argues that the need for public participation stems from the need for the public to influence decision-making which results from the declining trust in scientific professionals. Hence, increased participation is equated with higher levels of trust. The more trust the public has in a process the more they will be willing to participate and feel that their opinions would be heard and possibly considered. Marzuki (2015:23) supports this notion by arguing that the purpose of public participation is to allow the public the opportunity to influence decision-making regarding development which affects their lives. Saab, Bermejo, Garcia, Pereira and e Silva (2018:796) agree that the main aim of public participation is to enable people to participate in decision-making and to obtain a better understanding of their true needs and main concerns. This supports the notion of not leaving decision-making solely in the hands of the authorities or those in power but affording the public the opportunity to have a say in these decisions.

Public participation is often equated with democracy (Lowry, 2013:1). Democracy aims to produce decisions which are just and fair to all members of society. Similarly, public participation aims to ensure that decisions that are made minimise injustice and ensure just and fair decisions to those who are potentially affected by a decision. Consequently, to ensure democracy succeeds and that decisions are made in a fair, just, and equitable manner, effective participation needs to take place.

Public participation further plays an important role in achieving sustainable development as the decisions made with regard to development will be shaped by public input (Marzuki, 2015:22). As a result, participation aims to allow for socially inclusive and environmentally sustainable decision-making (Kapoor, 2001:269). The shift to participatory methods of environmental management is supported by the concept of sustainability (Kapoor, 2001:271). Participatory decision-making addresses the social aspects within sustainable development such that not only environmental or economical aspects are considered within projects.

Environmental justice is additionally closely linked with the aims of public participation. The concept of environmental justice emerged in the west when it became increasingly apparent that low-income and disadvantaged communities were more likely to be exposed to environmental risks and harms created by development. It is becoming more apparent that the poor and marginalised are increasingly affected by environmental degradation and often lack access to environmental justice (Ruppel & Ruppel-Schlichting, 2016:499). Communities who carry the load of environmental dangers often result because they are excluded from environmental decision-making (Cole, 1995:449).

Environmental justice aims to ensure equal distribution and use of natural resources and the reduction of environmental damage (Ruppel & Ruppel-Schlichting, 2016:499). Ruppel and Ruppel-Schlichting (2016:500) outline that there are substantial and procedural aspects to environmental justice. In terms of procedural aspects, it includes “the right to information, the right to participate in decision-making, and the right of access to justice in environmental matters” (Ruppel & Ruppel-Schlichting, 2016:500).

To promote environmental justice, people, community organisations and others seek to preserve the environment and to secure the relationship between them and the environment through environmental advocacy (Ruppel & Ruppel-Schlichting, 2016:500). Those that may potentially be affected by a development in terms of social and environmental aspects require advocacy to ensure that their environmental rights are reinforced (Ruppel & Ruppel-Schlichting, 2016:500). It is however most often that those who are adversely affected by environmental degradation are unable to exercise and ensure environmental justice. Hence, public participation is a means of trying to close that gap by ensuring that those who are likely to be affected by a development can be part of the process, thus promoting the exercise of their right to environmental justice. It is therefore argued that in order to ensure environmental decisions that are just and fair, meaningful and effective participation must prevail (Lowry, 2013:4).

The purpose of participation is an important aspect to be considered (Stirling, 2008:268). Stirling (2008:268), Gucker *et al.* (2013:106), and Wesselink *et al.*

(2011:4) summarised the rationales or reasons for participation as developed by Fiorino (1989) under three overarching objectives namely: instrumental rationales, normative rationales and substantive rationales. Wesselink *et al.* (2011:4) hold that these rationales are exclusive whilst it is also believed that participation should simultaneously achieve all three. Wesselink *et al.* (2011:5) further introduced an additional rationale referred to as legalistic which was not discussed by the other authors. The rationales for participation are summarised below:

- Instrumental (also known as procedural) rationale – Holds that participation will legitimize the decision-making process, resolve conflict and is a tool to make the EIA process more effective (Glucker *et al.*, 2013:108) without consideration of the outcome (Stirling, 2008:268).
- Normative rationale – Participation shall enable those who are affected by a decision the opportunity to influence that decision, it enhances and actively enables participants to exercise their citizenship and additionally enable deliberation and social learning among participants (Glucker *et al.*, 2013:106).
- Substantive rationale – Participation aims to enhance the quality of decisions made by providing decision-makers with relevant environmental, social, experimental and value-based knowledge (Glucker *et al.*, 2013:107). Improving the outcome of participation is considered essential (Stirling, 2008:268).
- Legalistic rationale - Participation is undertaken to meet the legal requirements (Wesselink *et al.*, 2011:5).

It can therefore be argued that public participation is not merely an instrumental process which enables a policy to be approved (Muller, 2009:9) or simply a legal process to be followed. If that had been the case, then participation would not be associated with ensuring sustainable outcomes or allowing citizen democracy to be exercised. Participation is and should be so much more than that. Therefore, there is a strong link between public participation and the decisions which result and thus a focus on the extent to which participation

influences decisions are essential. As such public participation does and should play a major role in EIAs as elaborated within the next section.

2.6 The Role of Public Participation in EIAs

The environment and the well-being of the public are increasingly threatened due to human development activities resulting from improvements in science and technology (Yakubu, 2018:1). Consequently, the EIA was developed as a tool to “ensure that the activities which may have a significant effect on the environment follow the principles of environmental management planning and development processes” (Ruppel & Ruppel-Schlichting, 2016:119). The EIA process includes public participation which aims to provide I&APs an opportunity for participating in considering the environmental impact of a project (Ruppel & Ruppel-Schlichting, 2016:119). The information provided during an EIA enables participant’s perceptions of a development to be influenced (Cashmore, Gwilliam, Morgan, Cobb & Bond, 2004:302). Subsequently, allowing the public the opportunity to engage within the EIA process is believed to allow for improved decision-making as different ideas and understanding is combined with the information available in the assessment (Fitzpatrick & Sinclair, 2003: 161).

Public participation is often used as a means to gather information from people which otherwise would have been difficult to obtain (Bobbio, 2019:42). Participation thus becomes a resource for “information, practical knowledge and insights”, resulting in informed decision making. It further allows consensus to be obtained from the participants in order to avoid distrust, conflict and dissatisfaction from the public during project implementation (Bobbio, 2019:42).

The literature additionally outlines that there is a large debate as to what the true purpose of public participation within the EIA process is. O’Faircheallaigh (2010:21) states that one of the purposes of public participation is to provide decision-makers with the necessary information in order to make an informed decision. As previously mentioned, I&APs often hold knowledge which would otherwise not have been known, for example the location of indigenous graves within a proposed project area. Public participation thus allows I&APs the

opportunity to share that information which can then be shared with the decision maker for consideration.

Cashmore *et al.* (2004:298) support this viewpoint, as they believe that the EIA is a tool for influencing outcomes and not just an information session. Additionally, the information gathered during the EIA process contributes to the environmental design of the project as well as the terms under which the project will be allowed to commence with particular reference to mitigation and management measures which should be outlined for the project during implementation. It is thus necessary to ensure that all relevant information is made available to the decision-makers in order to allow for informed decisions (Morrison-Saunders & Early, 2008:39). Without the necessary information being made available to the decision makers it could lead them to taking a different decision which could result in unexpected consequences. It can therefore be seen that public participation plays a central role in and is an essential element of the EIA process (Hartley & Wood, 2005:319; Yakubu, 2018).

2.7 Conceptualizing Effective Participation

It is difficult to define effective participation due to the various motivations for public participation which may influence the outcome (Chess & Purcell, 1999:2685). Additionally, public participation is considered a loose concept in that it involves an array of participants with varying backgrounds, levels of education and interests (Bobbio, 2019:41). Furthermore, public participation is conducted in varying contexts as projects differ and thus how participants are to be included in the process would also differ. Public participation also takes place at various levels and thus there are so-called soft and hard forms of participation which results in different outcomes.

There is no clear way to correctly conduct public participation. For some, public participation is considered successful if it has obtained the desired outcome whereas for others it may be successful if the process was followed accordingly (Chess & Purcell, 1999:2685). It is difficult to confidently state what the recipe for successful participation is due to a lack of empirical research and the varying

criteria for success (Chess & Purcell, 1999:2690). Public participation processes are thus designed on the assumption that if the process is presented to the public and they are made aware of it, then the public will participate in a meaningful way and that the resultant decisions will be influenced such that they are better (Doelle & Sinclair, 2006:186; Irvin & Stansbury, 2004:55).

Although not always the case in practice, practitioners and those in charge of public participation processes often strive to ensure effective participation forms part of the EIA process. It is thus believed that effective participation requires thorough planning and should have a clear goal (Krishnaswamy, 2014:247). It can additionally be deduced that effective participation is participation that is “inclusive”, fair, just and efficient (Krishnaswamy, 2014:248). Effective participation thus allows for more sustainable, efficient and equitable outcomes (Krishnaswamy, 2014:245). For participation to be effective the process must not only listen to people’s concerns, but participant’s concerns and insights must be adopted and included in the project design and decision-making (Doelle & Sinclair, 2006:189). Participation has not become less important over the years but due to the complexity of managing it to ensure that it is effective, it has led to a need to evaluate participation in order to improve it (Maiello, 2014:500).

2.8 Historical Measures of Effective Public Participation

It is problematic to find one way to measure public participation in EIAs (Palerm, 2000:580; Lowry, 2013:33). Research pertaining to the effectiveness of public participation often focus on different aspects. Some focus on the procedure followed during participation and how effectively the process was conducted, whereas others evaluate participation based on whether the participants were able to influence the decisions made such that the desired outcome was achieved. Others used a broader measure such as the need for social learning in determining the effectiveness of participation. Furthermore the evaluation of public participation has been largely done on a country specific basis and has thus been difficult to adapt to other contexts (Palerm, 2000:581). Similarly, Wesselink *et al.* (2011:13) found that criteria for participation evaluation are

context specific in their rationales and often within a specific case study, country or programme.

When evaluating the effectiveness of public participation there are two benefits which are considered, the process and the outcome (Irvin & Stansbury, 2004:56). Additionally, when public participation is measured it often considers the legal requirements and opportunities for participation. However, Palerm (2000:589) states that for the evaluation to be precise it should also consider whether the participants have the ability and are willing to make use of the opportunity to participate.

From the above it is clear that the evaluation of participation is closely linked to what one actually wants to achieve with participation. In terms of International Association for Public Participation (2018) public participation can either inform, consult, involve, collaborate with, or empower project beneficiaries. What is promised by participation should be considered when evaluating the process. Such that if participation delivers on these promises, then it can be considered to be effective within a specific context. For this reason, it becomes essential to develop a set of measures which will be context and country specific.

2.9 Criteria for Effective Public Participation

Effective participation is thought to be achieved when there is consideration regarding the role of the public and their level of input and influence (Wouters, Hardie-Boys & Wilson, 2011:18). Hartley and Wood (2005:339) alternatively suggest that by placing more emphasis on the details of how the public participation is to be implemented, i.e., the process, it can meaningfully enhance the effectiveness.

There still exists some uncertainty as to exactly how public participation should be conducted to ensure that it is carried out effectively. Du Plessis (2008:176) argues that there is a limited amount of real-life guidelines on how to engage the public meaningfully. Brown (2014:2) and Chess and Purcell (1999:2685) further outline that previous research was often focused on either the process or the outcome of participation. The research thus held that the success of the

participation process was either determined by the means of participation or by the results. Some researchers are stuck in the middle of the process-outcome debate and thus believe that a balance should be achieved between the process and outcome of participation for it to be successful (Chess & Purcell, 1999:2686). Because of this, it has become more apparent that for an evaluation of the effectiveness of participation one needs to consider both the process and the impact on the decisions that result as participation is more than just the process itself.

In the literature there are two methods identified for selecting effectiveness criteria. These include theory based criteria, as well as criteria based on the rationale and satisfaction of the participants (Chess & Purcell, 1999:2686). Theory based criteria are grounded in a specific theoretical point of view which enables the results to be compared between studies. Theory based criteria provide the ability to compare research by the use of consistent criteria (Chess & Purcell, 1999:2686).

Criteria based on the goals and satisfaction of the participants do not consider criteria derived from theory and thus emphasise the real-world experience of participants. As such criteria based on the participants' goals and perceptions vary between different cultures, historical and social contexts and would also vary depending on the environmental issues being assessed. These criteria are based on the assumption that the effectiveness of public participation can be influenced by the attitudes and perceptions of the participants (Palerm, 2000:589).

The two approaches to selecting criteria are not considered to be mutually exclusive. Chess and Purcell (1999:2686) thus advocates for "methodological pluralism" by applying both methods at the same time. Subsequently, evaluation research for public participation success can combine both the perceptions of the participants with the theory related to the participation criteria to be able to assess the success of the process.

The section below draws on the literature to identify the criteria believed to be required for ensuring that public participation is conducted effectively within the EIA process.

2.9.1 Timing of Public Participation

It is essential to know at what point within the EIA process it would be best to engage the public to ensure that they are effectively informed and can contribute in a meaningful way. Public participation is often only legally required once projects have moved past the planning stages (Doelle & Sinclair, 2006:189) thus not leaving much room for changes or adjustments based on public input. Kapoor (2001:274) argues that for participation to be significant it should allow for all stakeholders to be involved throughout the different phases of decision-making. It is agreed that early engagement with the public is best to ensure that the public is actively involved in the process (Hughes, 1998) and it should be ongoing throughout the entire process (Sinclair and Diduck, 2016:5). This is further supported by Richardson and Razzaque (2004:180) who believe that involving the public within the screening stage during which the initial consideration of the project takes place would enable them to identify potential impacts of the proposed development early on.

Early involvement of the public would additionally reveal public support for a project or alternatively resistance to a project early enough for the proponent to know whether to proceed or to halt the project (Doelle & Sinclair, 2006:191). Petts (2003:273) additionally holds that public participation is not a process that is conducted alongside the EIA process but that it should form part of the assessment process and thus the assessment should continue through the participation. As a result, the public should not merely be engaged at certain stages of the assessment but should have early and continuing participation throughout the EIA process.

2.9.2 Equal Ability to Participate

People and groups potentially affected by a project should not be excluded from participating even though it may be considered by society that they are not

capable of participating. People may not be equally able to participate based on language, gender, income, and age, to name but a few criteria. For example, participants belonging to an indigenous group who do not speak English should not be excluded from participating in the process when they could potentially be impacted by a project being undertaken in their proximity. As such Palerm (2000:588) argues that “Linguistic non-competence should not be an excuse for exclusion”. Participants should therefore not be excluded from participating based on their cognitive or linguistic ability (Palerm, 2000:9). Older people may not be able to attend meetings due to illness or being unable to travel. Women may not be able to participate as they have to look after the children and household.

In such cases where it is known that participants have barriers to ensuring that they are able to participate, additional efforts should be made by the consultants conducting the participation to include everybody. Such methods would include for the arrangement of translation of information into local languages to ensure that the correct information is distributed to the affected people and that they are able to understand it; to engage women and ensure that participation meetings are held at times that children are at school and women would be able to leave their homes to attend.

2.9.3 Equal Opportunity to Participate

Richardson and Razzaque (2004:192) reason that if the best argument is to triumph, then people should be afforded an equal opportunity to participate. This refers to allowing participants similar occasions to participate, tailored to the particular context within which the participation takes place. This is not always the case as not all role players have equal opportunities to use participation reforms (Richardson & Razzaque, 2004:192). Some individuals may not have the financial means to get to a public meeting or it may be held at a time during which some people are unable to attend.

Additionally, legislative requirements for public participation does not allow people equal opportunity to participate in all instances. An example is the legislated requirement for notification in the newspaper to inform the public of

the proposed project. People within remote areas do not have access to newspapers and are consequently not informed of the process and resultantly not afforded a fair chance to participate. Once again, the onus would be on the consultant to realise this and ensure that the necessary information is distributed to the communities through the best means such as via their traditional leaders.

Due to the highly technical information often presented in EIAs it is important to provide beneficiaries with ample time to access and review the documentation so that meaningful contributions can be made (Economic Commission for Latin America and the Caribbean (ECLAC), 2018:92). Particularly with regard to community consultations ample time should be provided for reviewing documents such that if they need to consult with someone to explain or translate the information before commenting, then there would be sufficient time for that.

Capacity-building is an important component to ensuring participants are provided an equal opportunity to participate. I&APs need the capability to participate in EIA processes (SAIEA, 2005). The success of a project depends on how well communities understand the process being undertaken (Kakonge, 1996:310). Capacity-building can help participants and in particular indigenous communities to understand the participation process and what is required from them. It will additionally help them understand the highly technical information and consequently enable them to make a meaningful contribution.

Empowerment of communities would not be possible if they do not have the capacity to participate meaningfully. It is thus necessary to recognise the power relations within a community in order to bridge the gap between the powerful and those with less power within a community. Participation should as a result promote empowerment (Kyamusugulwa, 2013:1274).

2.9.4 Context Appropriate Participation

Some development projects may often influence indigenous people adversely and resultantly conventional participation strategies may not allow for effective

participation. The World Bank defines indigenous people as “distinct social and cultural groups that share collective ancestral ties to the lands and natural resources where they live, occupy or from which they have been displaced” (World Bank, 2021). As such participation must be designed and implemented to include appropriate strategies that would enable indigenous people to meaningfully participate in the process (ECLAC, 2018:93). Certain public participation strategies may not work within a rural context such as using social media or emails to distribute information. It would be more appropriate to make use of radio announcements in local languages as a strategy for disseminating information.

Due to Namibia being a culturally diverse nation, it is important that public participation strategies should be adapted to the social, economic, cultural and geographical characteristics of the area in which the proposed project is being assessed (ECLAC, 2018:93). This will ensure that local communities participate in a meaningful way in the process as they understand the information that is presented to them.

2.9.5 Equal Opportunity to Influence

Even though people may participate in the process it does not necessarily guarantee an ability to influence the decision. Hughes (1998) notes that illiterate groups are often marginalised during the EIA processes when written media are used to communicate information. Similarly, those participants who are not literate and less knowledgeable also have a lower chance of significantly contributing during the participation process. The use of highly technical information which is not translated into lay language also makes it difficult for people to understand the information presented to them.

Within communities there are varying power roles at play and community members are often not afforded a chance to express their opinions as the traditional leaders may feel that it is solely their responsibility. Thus, participants should be encouraged to express their opinions freely without coercion. Furthermore, community members may not be afforded an opportunity to participate due to these power relations. Participation should ensure that every

person within an affected community participates, thus allowing them the opportunity to make a contribution in the process and not only providing that opportunity to those in power.

Technical information is often presented as part of the EIA process which is difficult to understand by rural communities. Simplifying highly technical information is essential to ensure that people understand what the project is about and how they can be affected.

Equal opportunity to influence would also require all participation inputs and comments to be discussed and shown how they were incorporated into the EIA report, or reasons given why they were rejected.

2.9.6 Equal Access to Information

For people to be able to make significant contributions during public participation engagements, they need to be adequately informed. This involves knowing and truly understanding the information presented to them. According to Fitzpatrick and Sinclair (2003:172) “Strong public involvement activities rely on sound information exchange”. Participation is often a challenge for people living in remote areas which may not have access to the media or who may not, due to levels of education, be able to understand the highly technical information presented to them. Regardless, all participants should be able to access the information and, in a format, or language that enables them to be able to interpret and understand what is presented to them.

2.9.7 Participation through Deliberation

Public participation should not merely be an information giving exercise. Participation should enable relationships to develop within communities and form part of a practice of communication and collaboration (Muller, 2009:9). It should allow for two-way communication and collaborative problem solving with the ultimate aim of providing better and more acceptable decisions (Kanu *et al.*, 2018:8). Authentic deliberation should enable participants to not only consider their own opinions, but also those that are different from theirs (Hourdequin, Landres, Hanson & Craig, 2012:39). Deliberation allows for compromise

between similar meanings or beliefs in order to allow participants to reach a consensus (Walker, 2007:102). Within participation people should thus not only want to push their own interests and agendas. The bigger picture should be kept in mind, which is to allow for the protection of the environment and consideration for the affected communities. Therefore, effective deliberation assumes that public input improves decisions and that people should not merely pursue their own interests (Hourdequin *et al.*, 2012:39). Dialogue, deliberation and social learning are emphasised as essential for pluralistic public participation (Walker, 2007:101).

2.9.8 Incorporation of Public Inputs into Decision-making

Whilst the inputs received during participation may not directly result in a decision, it should allow for the decision to be shaped in a meaningful way if it is to have the power of affecting the decision. The Namibian EIA Regulations (2012) thus indicate that all information that may have an influence on the decision taken by the competent authority should be disclosed and provided to allow for an informed decision. Public participation should not merely be about the process itself and ensure that all the boxes are checked from a procedural aspect, but should play a role in deciding the outcome.

Wesselink *et al.* (2011:3) believe that the frustrations regarding participation result due to the minimal incorporation of the outcomes in the policy-making process. As such, if the inputs from the public are not considered within the decisions taken, people will lose faith in the process and this could in turn harm the quality of environmental decisions and thus the environment in itself (Richardson & Razzaque, 2004:193). In order to ensure an effective process, the concerns raised by the project beneficiaries should not merely be heard but should be adopted, addressed and incorporated into the decisions throughout the project life cycle (Doelle & Sinclair, 2006:189).

2.9.9 Shared Commitment

For public participation to be successful, all parties involved must have a shared commitment to the common goal. This may be to ensure a fair, just, equitable

and effective participation process and to allow for informed decision-making. Partnerships are thus important in participation as it is a two-way process.

Accordingly, the participants and the decision-makers should equally agree to the goals of the deliberation process. The decision-makers thus need to consider all the comments received from the participants and similarly the participants must engage constructively in the decision-making process (Hourdequin *et al.*, 2012:39).

It is just as much the public's responsibility to participate in the participation process and to encourage fellow community members to do the same. Very often there is a lack of interest from the public's side, and this creates a barrier to ensuring effective participation within the EIA process.

2.9.10 Free, Prior and Informed Consent

The concept of Free, Prior and Informed Consent (FPIC) was developed to ensure the protection of the rights of indigenous people with regard to the developments that may impact their lives, culture, ancestral land and resources (Doyle & Cariño, 2013:11). Free implies that indigenous people should not be coerced to engage in consultation with a third party. Additionally, whether to engage in consultation is not an obligation and thus indigenous communities have the right to give or withhold FPIC (Doyle & Cariño, 2013:12). Within projects where the rights of indigenous people's will be impacted, they must be consulted prior to any project being commenced and consultation should not only be once-off but proceed throughout the project life cycle. By engaging indigenous communities before any activities related to the project have commenced, proponents should also refrain from investing in a project where the FPIC of indigenous communities was not obtained.

Consultation processes in order to obtain FPIC must be conducted in a culturally appropriate manner and thus must consider the ways in which the indigenous people want to be consulted. The unwritten procedures, laws and practices within communities must be respected during consultation. FPIC underpin that indigenous people have the right to give or refuse consent and

the resultant decisions made should be accepted without further consultation or negotiation. FPIC is not merely a consultation process but a process of deliberation in which the aim is to build consensus. Thus, it is not a process by which the decision is made based on majority or by those in power in the community. Subsequently, it is essential that in order to allow for an informed decision to be made by the community as a whole, all necessary information must be made available, in a language understood by the community. It must also be ensured that the community understands the details of the information presented to them regarding the proposed project.

2.9.11 Participation and Justice

Participation must consider the social and environmental injustices that are experienced within different social settings to ensure that all people are included. Economic and social inequalities create barriers to participation and thus limit people from different economic levels from equally participating (Blue, Rosol & Fast, 2019:365). Arnstein (1969) recognised this power imbalance between those which she refers to as the haves and have-nots. It should be understood that the playing field for participation is not equal for all and that this fact needs to be recognised and considered by those who are calling for participation.

Blue *et al.* (2019:364) proposed to enhance Arnstein's Ladder of Participation by simultaneously considering Nancy Fraser's Model of Justice. Fraser combined three dimensions of justice which include "redistribution (put simply, who gets what), recognition (who is included and heard), and representation (How do we decide who gets what, and where does this take place?)" as being essential in overcoming injustices and ensuring effective participation (Blue *et al.*, 2019:364). Blue *et al.* (2019:364) furthermore argue that without consideration of the above-mentioned dimensions, justice, parity, and meaningful participation would not be realised.

Furthermore, with technological advancements providing new possibilities for participation, it also allows for new challenges that relate to existing social divides and the potential to enhance these inequalities amongst different social

groups (Blue *et al.*, 2019: 367). Social and cultural settings play a major role in the ability of participation to reach its desired outcome (Baker & Chapin, 2018).

Table 2-3 below provides a summary of the evaluation criteria developed from the literature to measure the effectiveness of public participation in EIAs. The discussion of each criterion follows in this section.

Table 2-3: Summary of the Evaluation Criteria for the Effectiveness of Public Participation in EIAs

Criteria	Questions	Explanation
Timing of Public Participation	<p>At what stage of the EIA did participation with the public take place?</p> <p>Was participation ongoing throughout the EIA process?</p> <p>Was participation part of implementation of the project?</p>	The public must participate early in the process and the participation should extend throughout the process and during implementation.
Equal ability to participate	<p>Were different groups invited to participate, regardless of their competency level?</p> <p>Was the language used to communicate during the meetings easily understood?</p>	People and groups potentially affected by a project should not be excluded from participating even though it may be considered by society that they are not capable to participate.
Equal opportunity to participate	<p>Was enough time provided to review the information provided and to submit comments?</p> <p>Were adequate opportunities provided for participation?</p> <p>Was the timing of the meetings convenient?</p> <p>Was the venue for the meetings accessible and convenient?</p>	Participants should be afforded equal opportunities to participate in the process.

Criteria	Questions	Explanation
Context appropriate participation	Was the public participation adapted to the social, economic, cultural, and geographical characteristics of the area?	It is important that the participation strategy be adopted to the social, economic, cultural, and geographical characteristics of the area.
Equal opportunity to influence	<p>Was the information provided easily understandable?</p> <p>Were the participants encouraged to express their opinions?</p> <p>Could the participants express their values and opinions freely?</p> <p>Were opportunities provided to include those unable to participate e.g., illiterate, or disabled people?</p> <p>Were all inputs discussed and shown how they were incorporated into the EIA report, or why the comments were rejected?</p>	Participants should be afforded equal opportunities to be able to meaningfully be involved in the process to be able to influence decision making.
Shared Commitment	Was it important for the public to be involved in the EIA process?	For public participation to be successful, all parties involved must have a shared commitment to the common goal.
Free, Prior and Informed Consent	<p>Were consultations held with indigenous communities prior to, or early on, in the process?</p> <p>Was FPIC requested and obtained from indigenous communities?</p>	FPIC must be obtained from indigenous communities who are potentially affected by a proposed project.
Deliberation	<p>Were I&APs frequently updated regarding the progress of the process?</p> <p>Were I&APs provided with feedback on comments made in a timely manner?</p>	Participation should not merely be an information exchanging process. It should allow for the exchanging of opinions and ideas.

Criteria	Questions	Explanation
	<p>During meetings, were communities provided an opportunity for exchange of opinions and ideas?</p>	
<p>Incorporation of public input in decision-making</p>	<p>Were comments provided by I&APs incorporated into the EIA document submitted to the authorities?</p>	<p>The inputs provided by the public should influence the decision made in a meaningful way.</p>
<p>Access to information</p>	<p>Were the need and purpose of the project clearly stated when the EIA process commenced?</p> <p>Was adequate information provided to I&APs throughout the process?</p> <p>Was the public granted access to all relevant information regarding the project?</p>	<p>It is important that participants are adequately and meaningfully informed regarding the project to enable them to meaningfully contribute to the process.</p>
<p>Justice</p>	<p>Was consideration given to issues related to cultural, political, and economic aspects?</p> <p>Was consideration given to social and environmental injustices experienced by communities and how the project would influence that?</p>	<p>The economic, cultural, and political dimensions of participation and of the project should be considered in order to ensure meaningful participation.</p>
<p>Legal Requirements</p>	<p>Was a notice board fixed at a place conspicuous to the public at the boundary or on the fence of the site where the activity to which the application relates is or is to be undertaken?</p> <p>Was written notice given to -</p> <p>(i) the owners and occupiers of land adjacent to the site where the activity is or is to be undertaken or to any alternative site</p>	<p>Participation should meet the minimum legal requirements.</p>

Criteria	Questions	Explanation
	<p>(ii) the local authority council, regional council, and traditional authority, as the case may be, in which the site or alternative site is situated;</p> <p>(iii) any other organ of state having jurisdiction in respect of any aspect of the activity?</p> <p>Was the application advertised once a week for two consecutive weeks in at least two newspapers circulated widely in Namibia?</p> <p>Did the notice board affixed to the site contain and clearly state the following information?</p> <ul style="list-style-type: none"> - details of the application which is subjected to public consultation; - that comments and representations on the application is to be submitted to the Environmental Commissioner in terms of these regulations; - the nature and location of the activity to which the application relates; - where further information on the application or activity can be obtained. -state the manner in which and the person to whom representations in respect of the application may be made. <p>Was information containing all relevant facts in respect of the application made available to I&APs?</p> <p>Was consultation by potential I&APs facilitated in such a manner that all potential</p>	

Criteria	Questions	Explanation
	<p>interested, and affected parties were provided with a reasonable opportunity to comment on the application?</p> <p>Were the application and notification completed within at least 21 days?</p> <p>Was a register opened and maintained of all I&APs?</p> <p>Were I&APs provided with an opportunity to comment on all documents submitted to the authority?</p> <p>Were all comments received from I&APs included and/or attached to the report submitted to the authorities?</p> <p>Were I&APs informed of the decision of the authority?</p> <p>Were I&APs provided an opportunity to appeal the decision of the authority?</p>	

2.10 Challenges in Ensuring Effective Public Participation in EIAs

Whilst in theory there exist criteria needed for effective public participation as outlined in the section above, there are still many stumbling blocks which do not allow for successful public participation. Public participation is often more focused on the process itself rather than the outcome (Doelle & Sinclair, 2006:186). Similarly, the EIA process, which public participation forms part of, is seen as a time consuming and resource intensive process which does not bring much benefit to the proponent or society at large (Doelle & Sinclair, 2006).

This may be attributed to the problems with public participation which is not conducted in a meaningful way, thus often resulting in a lack of influence on the outcome of the EIA process. The public is not encouraged to participate and when they do, their inputs are often seen as a burden instead of being regarded as valuable contributions (Doelle & Sinclair, 2006:190).

The actual practice of public participation in environmental decision-making often differs markedly from theoretical models (Richardson & Razzaque, 2004:191) and thus results in what Arnstein (1969:216) refers to as an “empty ritual of participation” which does not allow for decisions to be influenced. Wesselink *et al.* (2011:12) support the notion that participation since its establishment as an essential requirement, still has much to work on to ensuring its implementation in practice. Some of the constraints to effective participation are listed below:

- Public participation still lacks a true deliberative process and mostly consists of asking people about their opinions regarding the development thus not enabling them the opportunity to truly influence decisions (Petts, 2003: 270).
- A lack of time and financial resources often constrains participation in the EIA processes (Hughes, 1998).
- Costly and highly technical procedures of participation may hamper meaningful participation (Richardson & Razzaque, 2004:193).
- Insufficient access to information and technical support can hinder the people’s ability to make meaningful contributions during participation (Richardson & Razzaque, 2004:193).
- Low levels of education and literacy among certain communities make it difficult for community members to understand the technical information often provided to them and thus not enabling them to meaningfully contribute (Hughes, 1998:5).
- Lack of the recognition and need for early and ongoing participation (Doelle & Sinclair, 2006:189).
- Lack of openness to change project details as a result of contributions made by the public during participation (Doelle & Sinclair, 2006:189).

- Public participation is seen as a burden and an additional regulatory hurdle for proponents rather than a resource for knowledge and influence for improvements to project design and implementation (Doelle & Sinclair, 2006:190).
- Cultural differences often create communication barriers which make participation more difficult. Additionally, communication is more challenging with indigenous groups who have different cultural beliefs and traditions (Hughes, 1998:5).
- Economic interests often override environmental issues (Wesselink *et al.*, 2011:11), thus participation is not viewed as a priority but merely done as a legal requirement.

In practice it has become evident that public participation is seen as a financial and time constraint for a project to commence. As such, project proponents mainly comply with the minimum legal requirements in terms of participation. They are not concerned with allowing project beneficiaries to meaningfully participate in the process, thus reducing their ability to influence the decision. This is problematic for the participation process as it will ultimately not result in the desired outcome for the project beneficiaries.

There is still a general debate regarding how public participation should be conducted. This is due to the fact that issues such as when it is to take place, who should participate and when it should commence, are still not clear (Hartley & Wood, 2005:320). In many EIA processes public participation is conducted merely as a requirement under the law and not much thought goes into how it can be conducted to ensure its success. Kapoor (2001:273) thus argues that participatory approaches require investment in time and resources to ensure effective participation by project beneficiaries. Wesselink *et al.* (2011:2) conversely state that too much emphasis on strategy selection may be overvalued in explaining the discrepancy between expectation and implementation. Nevertheless, careful consideration and planning is required to ensure that the process allows for an informed and participative outcome.

2.11 Summary

The chapter focused on providing a review of the literature on public participation and its effectiveness within the EIA process. It aimed to define public participation as a process and the role it plays within ensuring sustainable development. It was found that public participation within the EIA process is necessary to allow for transparent and open decision-making on development which may affect people's lives. It is additionally essential in ensuring that projects are sustainable.

The chapter furthermore evaluated the different levels of participation which outlined the various stages at which people can be engaged. The levels ranged from a mere information providing session to allowing participants to be empowered such that they are able to influence and direct the decisions that affect their lives.

From the literature it became clear that the purpose or role of participation is very important in understanding what its effectiveness means. For some the participation process is effective if all the legal steps were followed, whereas for others the effectiveness of the process is linked to ensuring that the desired outcome is achieved. It was thus found that for public participation to be conducted in an effective, fair, and just manner careful consideration should be given to the process to ensure that it produces the desired outcome.

The chapter further considered various literature and developed criteria which are required to ensure that the participation process is effective. The challenges faced in ensuring effective participation were also discussed. It was concluded that there is no clear answer as how participation should be conducted, but that careful planning and consideration is the answer to moving towards a truly effective participative process.

Chapter 3 Legislative Framework

3.1 Introduction

The EIA is a legislated process in several countries around the world including in Namibia. Because public participation plays a central role within the EIA process it is only natural that legal provisions exist for ensuring how and when public participation be conducted. The section below first outlines the international agreements and conventions relating to public participation, after which it presents Namibian legislation that is applicable to public participation within EIAs.

3.2 International Agreements and Conventions relating to Public Participation and Sustainability

The importance of public participation has been promoted on an international scale. Through the UN or other bodies, numerous countries have signed various international treaties (with names such as conventions, charters, protocols and agreements), and declarations to ensure sustainable development in which public participation plays a central role. Treaties are binding international law instruments that create rights and duties for countries that have ratified these treaties (by having their parliaments adopt them), while declarations are usually non-binding, but since they were adopted by a consensus of countries, it shows a strong commitment to their implementation (UN, n.d.). Declarations are sometimes followed by further treaties on the same subject, and countries can also include them in their own national legislation.

The section below outlines the international treaties and declarations applicable to public participation.

3.2.1 The Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (The Aarhus Convention), 1998

The Aarhus Convention (UNECE, 1998) emphasises the role and importance of public participation in environmental decision-making (Hartley & Wood,

2005:320). Although this convention is mainly applicable to countries in the European Union, it has influenced policy on public participation in many other countries. The convention aims to ensure the right of each human being to live in an environment that is not harmful to their well-being (UNECE, 1998). It furthermore provides direction regarding the role that public participation plays in decision-making and the significance of it (Morrison-Saunders & Early, 2008:31).

Article 6 of the Aarhus Convention specifies the manner in which public participation should be conducted to ensure that it is effective and results in the desired outcome. It outlines that, sufficient timeframes should be provided during the notification of participants of the intended activity and additionally allowing them sufficient time to prepare to participate in the process. It thus emphasises participation early in the EIA process whilst there is room for changes prior to any decision-making. It furthermore emphasises the provision of access to information relevant to decision-making (UNECE, 1998). The need for public participation is further emphasised by affording them an opportunity to submit written comments on the activity and these are to be considered during decision making (UNECE, 1998). Public participation after the decision is taken additionally highlighted by ensuring that the participants are informed of the decision and the reasons for the decision.

3.2.2 Principle 10 of the Rio Declaration on Environment and Development, 1992

Principle 10 of the 1992 Rio Declaration was signed by over 175 countries, including Namibia, whose parliament also subsequently ratified the Declaration. It is based on the premise that participation is the best way to deal with environmental issues. It further outlines that those participating need to have access to all relevant information concerning the environment (UN, 1992:3) and the best way to allow people to be informed is to engage them and provide them with the necessary information. It further calls for governments to develop policies which "...encourage the active participation in decision-making of those

affected groups that have often been excluded, such as women, youth, indigenous people and other local communities...” (UN, 1992: 4). It goes further to encourage the involvement of people after decision-making by emphasising the need for administrative and judicial procedures which will allow those aggrieved by any decision that could affect their lives or their environment to challenge that decision.

3.2.3 Johannesburg Declaration - World Summit on Sustainable Development, 2002

The Johannesburg Declaration which was adopted at the World Summit on Sustainable Development (WSSD) in 2002, reaffirmed a commitment to promoting sustainable development as expressed within the Rio Declaration. It aimed to strengthen the implantation of existing promises and commitments made in the Rio Declaration (La Vina, Hoff & DeRose, 2003:2).

In terms of participation it emphasised the importance of participation in decision-making by ensuring wide consultation with stakeholders (UN, 2002:3). There was an emphasis on participation within sustainable development as it called for “broad based participation in policy formulation, decision-making and implementation at all levels” (UN, 2002:3). The need for the inclusion of indigenous people in sustainable development was also highlighted.

3.2.4 Rio+20 Declaration: ‘The Future We Want’, 2012

Twenty years after the original 1992 Rio Declaration, the Rio+20 Agreement ‘The Future We Want’, was adopted, which further highlighted the need for wide public participation, access to information and fair judicial administrative procedures to ensuring the promotion of sustainable development (UN, 2012:11). “Sustainable Development requires meaningful involvement and active participation of regional, national and subnational legislatures and judiciaries, and all major groups...” (UN, 2012:11). In this agreement the UN (2012:11) additionally committed to engaging with stakeholders and

encouraging participation in decision-making, planning and implementation of policies and programmes.

3.2.5 The Paris Climate Agreement, 2015/2016

The Paris Climate Agreement (adopted December 2015 and signed January 2016) emphasised the importance of developed and developing countries strengthening themselves for response towards climate change. The Agreement stems from the United Nations Framework Convention on Climate Change (UNFCCC) of 1992 and the Kyoto Protocol of 1997. The main goal of the Agreement was to “keep the global average temperature to well below 2 °C above pre-industrial levels” (UN, 2015a:3) by providing developed and developing countries to set their own nationally determined contributions to emission targets (updated every 5 years) and to enhance their mitigation efforts (UN, 2015a:4). It identifies the importance of “...public participation, public access to information and cooperation at all levels on the matters addressed in this Agreement” (UN, 2015a:2). Article 12 identifies the need for public participation and public access to information to assist in undertaking the actions outlined within this Agreement (UN, 2015a:16).

3.2.6 The 2030 Agenda for Sustainable Development, 2015

The 2030 Agenda for Sustainable Development was adopted by the United Nations in 2015 to replace the Millennium Development Goals. It recognised poverty eradication as one of the most important global challenges at the heart of achieving sustainable development. It aims to ensure the achievement of the three pillars of sustainable development: economic, social and environment (UN, 2015b). As such 17 Sustainable Development Goals (SDGs), as depicted in **Figure 3-1** below, were outlined under the Agenda which aim to drive the world’s nations towards sustainable development by 2030.



Figure 3-1: Sustainable Development Goals

(Source: UN, 2015b)

Out of the 17 goals, two focus on participation and collaboration, namely goals 16 and 17 which speak to peace, justice, and strong institutions, as well as partnerships to achieve the goals. Goal 16 aims to “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels” (UN, 2015b). The strengthening of multi-stakeholder partnerships globally for sustainable development is emphasised in Goal 17. The SDGs thus supports the link between sustainable development and participation and how economic, social, and environmental sustainability cannot be achieved by a top-down approach.

3.2.7 Espoo Convention on Environmental Impact Assessment in a Transboundary Context, 1991

The Espoo Convention was adopted at the fourth session of the UNECE Governments on Environmental and Water Problems of the Economic Commission for Europe, which was held in Espoo, Finland in 1991. The Convention outlined the obligations of the signatory parties for assessing the impacts on the environment of certain activities early within the project life cycle.

It additionally called for participation and consultation between states regarding projects that may have transboundary environmental impacts (UNECE, 2017) .

3.2.8 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992

The Water Convention was adopted in 1992 and came into force in 1996. It is a legally binding agreement that emphasises the protection and use of transboundary watercourses and international lakes. It promotes the “sustainable management of shared water resources, the implementation of the Sustainable Development Goals, the prevention of conflicts, and the promotion of peace and regional integration” (UNECE, 2021). The protection of these water resources is seen as essential and to be achieved through cooperation between member countries. These transboundary water resources are to be used in a way which aims to prevent, control and reduce transboundary impacts and use transboundary waters in a reasonable and equitable way and ensure their sustainable management (UNECE, 2021).

3.2.9 The Declaration on the Rights of Indigenous Peoples, 2007

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) is a legally non-binding resolution passed by the United Nations in 2007, setting out agreed standards on individual and collective rights of indigenous peoples. The UNDRIP "promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development" (UN, 2007).

Article 10 of the UNDRIP holds that FPIC should be obtained prior to any relocation of indigenous people. Furthermore, FPIC prior to any legislative or administrative decision-making is encouraged in Article 19. With regard to projects that are undertaken within the lands of indigenous people, FPIC must be obtained particularly with the development, utilization or exploitation of mineral, water, and other resources. Article 18 additionally states that indigenous people have the right to participate in decision-making which affects their lives.

Namibia is a signatory to the UNDRIP to ensure the protection of rights and empowerment of indigenous populations living within the country. Due to many projects being undertaken within areas occupied by indigenous people, it is essential to ensure that participation is conducted in a manner which ensures that the indigenous groups participate in the process and that their rights are protected.

3.3 International Banking Requirements about Sustainability

Banks and International Financing Institutions have an important role to play in promoting and enhancing public participation during project development. Within developed countries EIAs are often already a legal requirement. However, not all developing countries have EIAs as a legal requirement, and as such international banking requirements enable EIAs to be conducted when project funding is required for certain developments within developing countries. The sections below discuss some of these requirements.

3.3.1 International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability

The IFC is an international financial institution that is part of the World Bank group. The IFC has set performance standards which are adapted to many projects in Namibia as several projects are often funded by the IFC. Projects are thus required to meet the requirements as set out by the IFC performance standards if they wish to be funded by the IFC. The IFC outlines eight performance standards that any project funded under the IFC should comply with throughout the project life cycle. These include the following:

- Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts
- Performance Standard 2: Labour and Working Conditions
- Performance Standard 3: Resource Efficiency and Pollution Prevention
- Performance Standard 4: Community Health, Safety, and Security

- Performance Standard 5: Land Acquisition and Involuntary Resettlement
- Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources
- Performance Standard 7: Indigenous Peoples
- Performance Standard 8: Cultural Heritage (IFC, 2012)

Public participation forms an integral part of the requirements for a project funded by the IFC. The IFC holds that public participation is the key to “building strong, constructive, and responsive relationships that are essential for the successful management of a project’s environmental and social impacts” (IFC, 2012:12). As has been outlined within the literature, there is more than one way to conduct public participation; as such the IFC similarly holds that participation will vary depending on the context of the project (IFC, 2012:12).

Performance Standard 1 not only highlights the necessity for EIAs to identify and mitigate potential impacts but further outlines the importance of effective public participation. It also emphasises the need to consult with local communities who are potentially affected by a project (IFC, 2012:3). The objectives of performance standard 1 thus include the following which relates to public participation:

- “To ensure that grievances from affected communities and external communications from other stakeholders are responded to and managed appropriately.
- To promote and provide means for adequate engagement with affected communities throughout the project cycle on issues that could potentially affect them and to ensure that relevant environmental and social information is disclosed and disseminated” (IFC, 2012:6).

The IFC additionally holds that the EIA process should be equitable. It states that environmental risks of projects should not significantly disadvantage those that are identified as vulnerable groups. Thus, in order to ensure that environmental impacts consider all groups, the EIA should consider the outcome of public participation conducted during the process (IFC, 2012:9).

The IFC performance standards additionally outline that participation is a two-way process that should include the following:

- (i) “begin early in the process of identification of environmental and social risks and impacts and continue on an ongoing basis as risks and impacts arise;
- (ii) be based on the prior disclosure and dissemination of relevant, transparent, objective, meaningful and easily accessible information which is in a culturally appropriate local language(s) and format and is understandable to Affected Communities;
- (iii) focus inclusive engagement on those directly affected as opposed to those not directly affected;
- (iv) be free of external manipulation, interference, coercion, or intimidation;
- (v) enable meaningful participation, where applicable; and
- (vi) be documented” (IFC, 2012:14).

Ensuring effective participation is not an easy task and as such the IFC outlines the following as the minimum requirements that need to be met in order to ensure that effective participation is achieved:

- Stakeholder analysis and planning – identifying those potentially affected by a project and what would be the best way to communicate to them regarding the proposed project details.
- Development of a Stakeholder Engagement Plan/ Framework – dependant on whether the project details are known or not.
- Disclosure of relevant project information to affected communities and relevant stakeholders.
- Consultation with affected communities – enabling them an opportunity to express their views and concerns regarding the proposed project. This may result in a more in-depth consultation approach (informed consultation and participation), should it be found that the affected

community will be adversely affected by the project. This will ensure that community views and concerns are considered within decision-making.

- Indigenous people are to be consulted in an in-depth manner if they are found to be adversely affected by a project. Their FPIC is to be obtained in certain circumstances (outlined in detail in Performance Standard 7).
- External communication is to be managed and maintained to ensure that information obtained from external stakeholders are recorded and addressed.
- A grievance mechanism should be set up to ensure ongoing communication with affected communities. This allows for continued consultation throughout the project life cycle that does not end once the authorisation is obtained.

The requirements for public participation as outlined by the IFC is often adopted in EIAs in Namibia regardless of whether the project is being funded by the IFC or not. This is due to the lack of strict guidance in terms of public participation within the environmental legislation. This points to a need to improve public participation regulations as outlined in the legislation to offer true guidance on how to conduct the process effectively and achieve the desired outcomes.

3.3.2 The Equator Principles (EP)

The EP were developed to ensure that projects funded by loans from banks are developed in a manner that is socially responsible and reflects sound environmental management practices. It emphasizes that negative impacts on project-affected ecosystems, communities, and the climate should be avoided where possible. If these impacts are unavoidable, they should be minimised and mitigated, and where residual impacts remain, clients should provide remedies for human rights impacts or offset environmental impacts as appropriate. “The Equator Principles are intended to serve as a common baseline and framework for financial institutions to identify, assess and manage environmental and social risks when financing Projects” (Equator Principles Association, 2020:3).

Principle 5 of the EP outlines the importance of effective public participation for projects. This is particularly emphasised for projects which demonstrate that it may have adverse environmental and social impacts on the affected communities. Public participation during project implementation is further ensured through Principle 6 which outlines the need for grievance mechanisms. These grievance mechanisms aim to address the concerns of affected communities and workers during project implementation.

3.3.3 IFC Environmental, Health and Safety Guidelines (EHS)

The EHS Guidelines are technical reference documents with general and industry-specific examples of Good International Industry Practice (GIIP). The EHS Guidelines contain the performance levels and measures that are generally considered to be achievable in new facilities by existing technology at reasonable costs. Application of the EHS Guidelines to existing facilities may involve the establishment of site-specific targets, with an appropriate timetable for achieving them. The applicability of the EHS Guidelines should be tailored to the hazards and risks established for each project on the basis of the results of an environmental assessment in which site-specific variables, such as host country context, assimilative capacity of the environment, and other project factors, are taken into account (IFC, 2007:1).

3.3.4 Principles for Responsible Banking, 2019

The Principles for Responsible Banking are promoted by the United Nations Environmental Programme (UNEP) and were developed by 30 banks and made known at the Climate Conference of the Parties (COP25) in 2019. It has now been adopted by over 240 banks from all over the world. According to the Banco Bilbao Vizcaya Argentaria (BBVA) (BBVA, 2019): “One of the fundamental goals of the Principles is to define the banking industry’s role and responsibilities in creating a sustainable future, aligning it to the United Nations Sustainable Development Goals (SDGs) and the Paris Agreement”. The United Nations Environment Programme Finance Initiative (UNEP FI, 2019) describes them as follows: “The Principles for Responsible Banking are a unique

framework for ensuring that signatory banks’ strategy and practice align with the vision society has set out for its future in the Sustainable Development Goals and the Paris Climate Agreement”.

Six principles are outlined which the signatory banks must comply with as depicted in **Figure 3-2** below. Principle 4 specifically provides guidance on stakeholder engagement which aims to “proactively and responsibly consult, engage and partner with relevant stakeholders to achieve society’s goals” (UNEP FI, 2019: 17).


 <p>PRINCIPLE 1: ALIGNMENT</p> <p>We will align our business strategy to be consistent with and contribute to individuals’ needs and society’s goals, as expressed in the Sustainable Development Goals, the Paris Climate Agreement and relevant national and regional frameworks.</p>	 <p>PRINCIPLE 2: IMPACT & TARGET SETTING</p> <p>We will continuously increase our positive impacts while reducing the negative impacts on, and managing the risks to, people and environment resulting from our activities, products and services. To this end, we will set and publish targets where we can have the most significant impacts.</p>	 <p>PRINCIPLE 3: CLIENTS & CUSTOMERS</p> <p>We will work responsibly with our clients and our customers to encourage sustainable practices and enable economic activities that create shared prosperity for current and future generations.</p>
 <p>PRINCIPLE 4: STAKEHOLDERS</p> <p>We will proactively and responsibly consult, engage and partner with relevant stakeholders to achieve society’s goals.</p>	 <p>PRINCIPLE 5: GOVERNANCE & CULTURE</p> <p>We will implement our commitment to these Principles through effective governance and a culture of responsible banking.</p>	 <p>PRINCIPLE 6: TRANSPARENCY & ACCOUNTABILITY</p> <p>We will periodically review our individual and collective implementation of these Principles and be transparent about and accountable for our positive and negative impacts and our contribution to society’s goals.</p>

Figure 3-2: Principles for Responsible Banking

(Source: UNEP FI, 2019)

3.3.5 European Investment Bank (EIB) Environmental and Social Principles

The EIB Principles outline the social and environmental requirements for all projects financed through the bank with a particular focus on climate change, biodiversity, and ecosystems considerations in projects. Moreover, the EIB Principles focus on the need for participation and public disclosure in line with the Aarhus Convention. It emphasises the value-add that the knowledge and ideas from stakeholders can bring to the sustainability of the project. It also specifically holds that evidence should be provided that concerns raised by

stakeholders during participation have been considered which points to the need for stakeholders' contributions to not only be provided but to be reviewed and included (EIB, 2009:20).

3.4 Namibian Legislation and Policies Applicable to Public Participation in EIAs

Emanating from the international provisions for public participation, Namibian legislation emphasises the importance of and need for public participation. However, to what extent the legislation allows for effective participation is up for debate. Richardson and Razzaque (2004:192) note that many shortcomings within public participation can be traced to the enabling legal and institutional framework. Thus, it is necessary to first determine what the legislation says with regard to public participation to be able to determine if there are shortcomings in practice.

3.4.1 The Constitution of the Republic of Namibia, 1990

Environmental protection is an important aspect in Namibia and has thus been incorporated within the Namibian Constitution. The Constitution contains three key environmental clauses which relate to the sustainable use of natural resources (Ruppel & Ruppel-Schlichting, 2016:30). Article 100 places ownership of all natural resources in the hands of the state (Ruppel & Ruppel-Schlichting, 2016:30). Article 95 (1) of the Namibian Constitution outlines the need to promote human welfare by ensuring the:

“maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future” (Government of the Republic of Namibia, 1990).

This implies that the government is obliged to protect the environment and promote the sustainable use of natural resources (Ruppel & Ruppel-Schlichting, 2016:30). Article 91(c) further gives the Ombudsman the duty to investigate any complaints with regard to the unsustainable use of natural resources and non-renewable resources and any “degradation and destruction

of ecosystems and failure to protect the beauty and character of Namibia” (Government of the Republic of Namibia, 1990). For the protection of the environment to be achieved, legislation need to be put in place in order to give effect to the provisions outlined within the Constitution. As such the Environmental Management Act No 7 of 2007 was enacted to support the Constitution in ensuring that human welfare is promoted, and that sustainable development is ensured.

3.4.2 Vision 2030 and the National Development Plans (NDP)

Vision 2030 is the long-term plan for the country’s development and was launched in June 2004 by the founding president, Dr Sam Nujoma. Accompanying Vision 2030 are the 5 yearly NDPs which acts as the vehicles which will assist in achieving Vision 2030. The first NDP, which encompassed the period 1995/1996 to 1999/2000, outlined the national and sectoral development objectives and strategies for the country. Shortly thereafter, NDP 2 was drafted which spanned the period of 2001/2-2006/6. NDP 2 considered the environmental and sustainability aspects in development due the fact that Namibia relies heavily on natural resources for economic growth. NDP 3 was drafted for the period 2007/8-2011/12. The NDPs up until the 2011/2012 period did not recognise the need for environmental management per se and the link that it should have with the public. NDP 4 was drafted as a higher-level plan with more strategic objectives. It outlined three overarching goals which were focused on the logistics, tourism, manufacturing, and agriculture sector:

- High and sustained economic growth
- Increased income equality
- Employment creation

There is mention of the environment in NDP 4 in that development should be considerate in terms of contributions to climate change, environmental responsibilities, and environmentally friendly technologies. Following this, in the 2011/2012 NDP 5 was adopted for the period 2017/18 to 2020/21 which is the current NDP in force in Namibia. NDP 5 sets out the roadmap for achieving

rapid industrialisation whilst adhering to the four pillars for sustainable development: economic progression, social transformation, environmental sustainability, and good governance. Recognition is also afforded to the fact that development will not be attainable if a top-down approach is considered. As such public participation is recognised as being essential for development.

3.4.3 Namibia Environmental Assessment Policy for Sustainable Development and Environmental Conservation, 1995

The Environmental Assessment Policy was approved by cabinet in 1994. It recognises the importance of EIAs in order to ensure sound environmental policy such that Integrated Environmental Management (IEM) can be achieved. The policy holds that EIAs are required for both government and privately initiated projects to ensure that the environmental risks are identified and understood (MET, 1995). Within the policy a list of policies, programmes and projects are identified which require environmental assessments. Public participation is identified within the policy as being central to the EIA process in that it aims to allow for:

- informed decisions by decision-makers and increased accountability for the decisions made;
- comprehensive public participation of communities.

The environmental assessment procedure is outlined in **Figure 3-3** below. From the figure it can be seen at which points in the process the public participates. In the policy the environmental assessment process is broken down into three stages, namely Scoping, Investigation and Reporting. During the scoping phase public participation is emphasised the most. This is where the authorities and the beneficiaries which are likely to be affected by the impacts of a project are identified, informed, and participate in the process. Furthermore, the public is afforded access to the Record of Decision (RoD), allowing the public access to the reasons of why an Environmental Clearance Certificate (ECC) was granted or not, as well as the opportunity to appeal any decision made by the Environmental Commissioner (EC), should they feel aggrieved by a decision made. The policy does however not mention the public

participation during the monitoring and evaluation of the implementation of the conditions of the ECC after the ECC has been granted. It thus points to the lack of the need for ongoing public participation within the entire life cycle of the project and not merely during the application for authorisation.

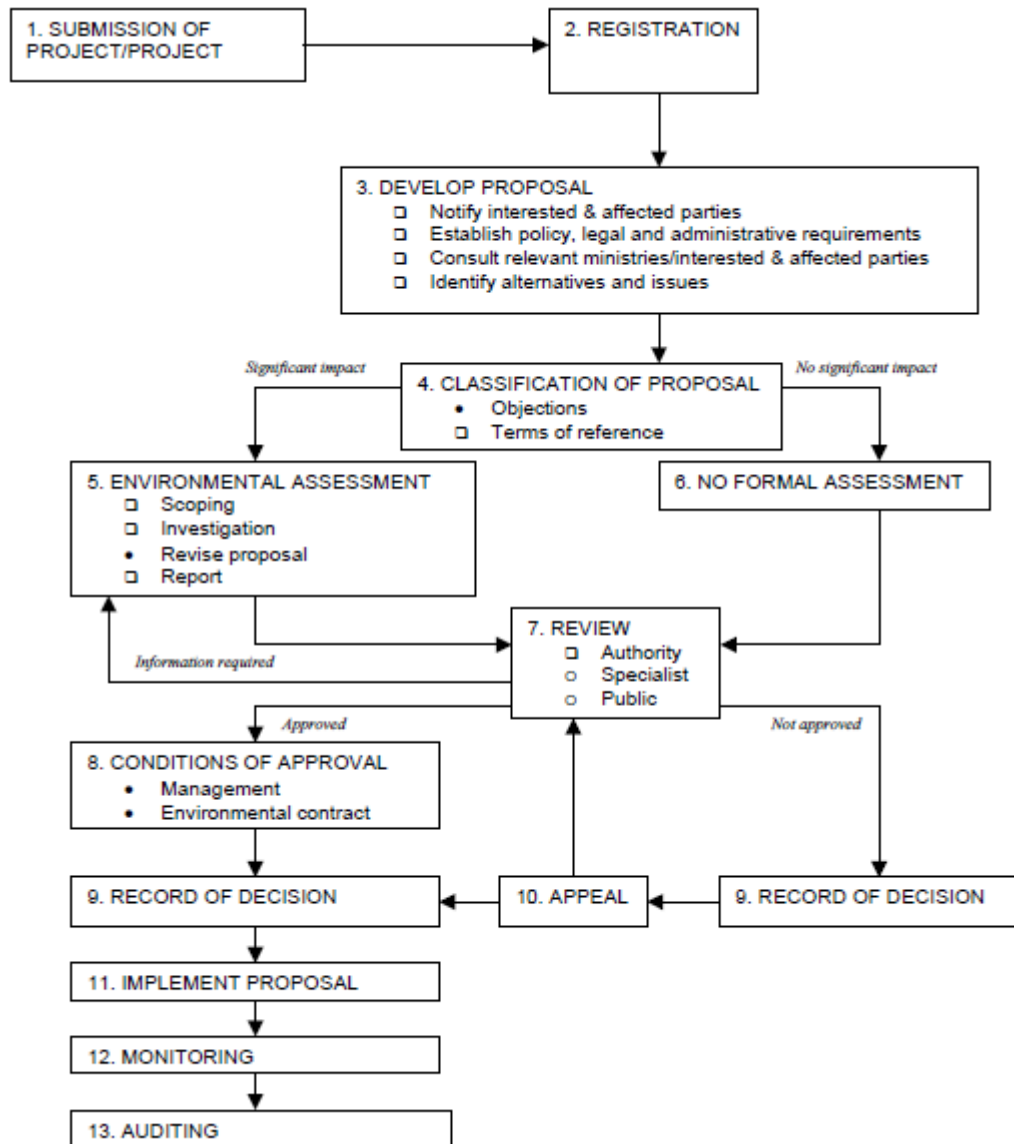


Figure 3-3: The Environmental Impact Assessment Process
(Source: MET, 1995)

3.4.4 The Environmental Management Act of 2007 (Act No 7 of 2007) (EMA)

The EMA is considered a vital instrument for ensuring the protection of the environment (Ruppel & Ruppel-Schlichting, 2016:42). The EMA came into force in 2007 and is the national environmental legislation for Namibia, thus enabling the enforcement of Article 95 (1) of the Constitution. The EMA thus aims to “promote the sustainable management of the environment and the use of natural resources by establishing principles for decision-making on matters affecting the environment” (Government of the Republic of Namibia, 2007). It outlines the provisions and designates responsibilities to the relevant authorities pertaining to EIAs and the resultant environmental decision-making. Whilst the EMA mainly focuses on the environment and ensuring the sustainable development thereof, it recognises the need for public participation in these processes. The objectives of the Act are thus as follows:

- “(a) ensuring that the significant effects of activities on the environment are considered in time and carefully;
- (b) ensuring that there are opportunities for timeous participation of interested and affected parties throughout the assessment process; and
- (c) ensuring that the findings of an assessment are taken into account before any decision is made in respect of activities” (Government of the Republic of Namibia, 2007).

The second objective of the EMA speaks specifically to the need for public participation. It outlines that there should be opportunities presented to those interested in or affected by a project to participate in the process. Additionally, it outlines that participation should not be once-off but should proceed throughout the assessment process. Lastly it also mentions that the findings of the assessment should be considered in the decision made. Although it does not mention the findings of public participation must be considered, it can be assumed that the outcomes of the participation are included to be considered as public participation form part of the assessment.

The Act furthermore outlines the principles of environmental management which aim to guide the implementation of the act. With regard to public participation the following principles are stipulated:

“...(b) community involvement in natural resources management and the sharing of benefits arising from the use of the resources, must be promoted and facilitated;

(c) the participation of all interested and affected parties must be promoted and decisions must take into account the interest, needs and values of interested and affected parties;...” (Government of the Republic of Namibia, 2007).

This in principle places public participation at the heart of the EIA process in Namibia. It emphasises the importance of participatory management of natural resources, such that these are not administered via a top-down approach. It additionally underscores the need for the participation of those interested in and affected by a project and being able to influence the decisions that may affect their lives and their environment.

The functions of the EC were established under the Environmental Management Act No 7 of 2007. The EC is tasked with receiving applications, determining the scale, scope and reviewing assessment reports and granting or declining of ECCs. The EC is thus the decision-making authority in terms of EIAs undertaken in Namibia. In order for an informed decision to be made, the Act outlines that the EC must consider comments received during consultations, impacts of an activity on the environment and the nature and extent of the project. The decision taken by the EC is to be held within a RoD which should be available to the public for inspection to ensure transparency and accountability for the decisions made.

3.4.5 Environmental Impact Assessment Regulations, 2012

The EIA regulations for the EMA were promulgated in 2012 and provide the detailed prescriptions of how and when to conduct an EIA and further outlines the guidelines of how the public participation process should be conducted. The

specific activities which require environmental clearance prior to commencing are outlined within the regulations. The regulations also provide guidelines in ensuring that the outcomes of the public participation process are considered during the decisions made by the EC as the decision-making authority for EIAs. The relevant legislation thus incorporates public participation within the EIA and decision-making process.

In terms of the regulations public participation refers to the “process referred to in regulation 21, in which potential interested and affected parties are given an opportunity to comment on, or raise issues relevant to, specific matters;” (Government of the Republic of Namibia, 2012). The public participation process follows after the initial application for an ECC has been submitted to the competent authority. Regulation 21 of the regulations outlines the detailed steps that need to be undertaken during the public participation process for an EIA. These focus mainly on the public participation process and what needs to be done procedurally to ensure that I&APs are informed of the intended EIA to be undertaken. Thus, it includes the strategies to be used to engage the public such as advertising in two local newspapers for two consecutive weeks, placing notices on site and providing written notification to the surrounding landowners. In Namibia, public meetings are not a requirement in terms of the regulations, although many EAPs do conduct public meetings for most EIAs undertaken.

From the regulations it can be seen that the public participates during the notification phase through the various means of engagement such as newspaper advertisements, written notification and site notices. The regulations require that initial notice must be given to all potential I&APs through the following means:

- Fixing a notice on the subject site which is visible to the public.
- Giving written notice to adjacent landowners, relevant authorities (local, regional and traditional) and any organ of state having a jurisdiction with regard to the proposed project.
- Advertising the application once a week for two consecutive weeks in two local newspapers.

A register must be kept of all I&APs by the applicant containing the names and addresses of all I&APs who submitted written comments, attended meetings, requested to be registered and all organs of state having a jurisdiction with regard to the proposed project. The regulations further attempt to ensure that I&APs participate in the scoping and detailed assessment process of the EIA by requiring that all written documents and submissions be made available for public review. All registered I&APs are allowed 7 days to submit written comments upon receiving access to the scoping or assessment report. The applicant is further required to submit any comments received by registered I&APs on any reports when submitting the reports to the EC. Upon submission the comments must be recorded in the report and may be attached to the report without recording the comments in the report itself. There is further a requirement that all comments and objections received by I&APs should be considered prior to decision-making.

As part of the EIA process an Environmental Management Plan (EMP) is to be developed for each project. The EMP refers to a plan that describes how activities that may have significant effects on the environment are to be mitigated, controlled and monitored (Government of the Republic of Namibia, 2012). The EMP is submitted to the EC as part of the application for an ECC.

3.5 Namibian EIA Legislation and Public Participation Effectiveness

Although participation is provided for within the Namibian legislation, the question is to what extent it ensures effective participation in practice. The section below attempts to assess the Namibian EIA legislation against the criteria required to ensure effective public participation.

With regard to the timing of participation, the legislation seems to only require commencement with participation during the scoping stage of the project. This is very late as during this time the layout and design of projects may already have been completed, thus not allowing I&APs much opportunity to influence certain project aspects. There are also no provisions within the legislation that relate to participation during project implementation. Participation throughout all stages of the project life cycle is important to ensure that beneficiaries' needs

and concerns expressed during the EIA process are addressed as the project progresses.

The legislation makes no particular mention as to how indigenous or vulnerable groups should be prioritised in participation. This is provided for in international provisions such as the IFC PS and the Equator Principles, which are applied to some projects in Namibia. However not all projects are required to be conducted according to IFC and World Bank standards. In relation to the concept of FPIC (as required by the IFC Performance Standard 7), this requirement became part of Namibia's undertaking when it signed the UNDRIP in 2007.

Only 7 days are provided to registered I&APs to submit written comments on documents. Most practitioners do allow for a longer review period than the legislated time as it is generally considered to be too short to expect I&APs to make a meaningful contribution. This would particularly be true for I&APs who find it difficult to understand the information or if the information presented is technical and would need more time for I&APs to consult with someone who would be able to explain it to them.

Public meetings are not legislated, as such it is not a requirement in an EIA. This is problematic as public meetings, or any form of face-to-face engagement are a valuable strategy for allowing deliberation with I&APs, and especially with illiterate communities who would not benefit from written forms of participation.

Although it is required that the comments received must be included in the reports submitted, the fact that the comments may be merely attached to the report without being recorded within the report gives the impression that the comments do not necessarily need to be addressed in the report. It thus can make any comments submitted redundant if they are not to be incorporated and addressed in the report.

The legislation does not make provision for participation during project implementation. These provisions should then in principle be outlined in the EMP of the project with regard to stakeholder engagement during project implementation.

In light of the above it can be seen that although the Act prioritises public participation within the EIA process, the successful implementation thereof is debatable. The regulations do not meet all the required criteria for effective participation to take place and as such requires some improvement.

3.6 Summary

The chapter focused on the various international and national agreements, conventions, requirements, legislation, and policies related to public participation. It started from an international perspective and trickled down to the national legal requirements for public participation.

The chapter revealed that from an international perspective it is recognised that public participation is necessary in order to enable varying groups within society to be represented and be able to influence the decisions which may possibly affect their lives. Public participation is much more than merely informing people and affording them an opportunity to voice their opinions or concerns. It is an opportunity to ensure that the decisions that could potentially impact people's lives or the environment they live in, proceeds in a fair, just, and equitable manner.

However, although provision is made within the legislation for public participation to influence decision-making, it may not always be the case in practice. Furthermore, public participation within the EIA process does not typically provide a direct role for the participants in the actual decision-making. The degree to which the comments are considered during the decision-making is often left to the discretion of the decision-making authority (Richardson & Razzaque, 2004:180) and also depends largely on decision-making frameworks and the culture of the institutions and decision makers (Petts, 2003:270). It has resultantly been found by Husselmann (2016) that improvement in public participation in Namibia is needed.

Many challenges are still faced in the implementation of public participation in EIAs in Namibia and the extent to which it influences decision-making. What is then needed in order to ensure that meaningful participation takes place?

Chapter 4 Research Design, Methodology and Methods

4.1 Introduction

This chapter expands on the research design which guided the research. It further elaborates on the research methodology and methods employed in order to collect data. It additionally outlines the ethical aspects and the research limitations considered.

4.2 Research Design

The research design refers to the strategy the researcher will employ to conduct the research (Auriacombe & Schurink, 2012:156). The research design guides the researcher to the methods to be used to conduct the research (Creswell, 2014:12). It provides the researcher with the plan on how to proceed with the research and is thus referred to as “strategies of inquiry” (Denzin & Lincoln, 2011, in Creswell, 2014:12).

An evaluative design is followed in which the researcher determines whether public participation in practice is effectively implemented and to what extent the outcome from the participatory process is integrated into the decision taken by authorities with regard to project implementation.

There are two main paradigms in evaluation theory, namely quantitative and qualitative. The quantitative paradigm is rooted in an experimental tradition and is focused on measurement and statistics.

There exist different types of evaluation research in theory. Of importance is the CIPP (Context, Input, Process, Product) model which was developed by Daniel Stufflebeam which provides a comprehensive framework for conducting and reporting evaluations. Context evaluation is concerned with defining goals and priorities, input evaluation with plans, and process evaluation with actions (Mouton, 2010:34). Product evaluations is more closely related to what this research is trying to achieve in that it aims to identify intended and unintended outcomes to determine effectiveness (Stufflebeam, 2000:279).

Evaluation research is concerned with determining whether a particular policy resulted in the desired outcome (Bryman & Bell, 2011:93). According to Babbie (2013:382) “Evaluation research is by nature interwoven with real-world issues”. As such the research is focused on how effectively the public participation process is in influencing the outcome of the decision. Babbie (2013:362) also states that “To conduct evaluation research we must be able to operationalize, observe and recognise the presence or absence of what is under study”.

The research furthermore makes use of case study research. A case study provides an in-depth study of an individual case and it thus provides a detailed and comprehensive description of a particular unit of study (Flyvbjerg, 2011:301). A case study provides an understanding and aims to answer questions related to “how” or “why” with regard to social phenomenon in its real life context (Yin, 2009:27). A case study allows the researcher to use different forms of evidence such as documents, interviews and observations (Yin, 2009:36) to describe a particular case, thus allowing the researcher to present data collected using various strategies to provide a comprehensive description of the situation (Neale, Thapa & Boyce, 2006:4). Case study research is grounded within evaluation research as the researcher develops an in-depth understanding of a process to be evaluated (Creswell, 2014:14).

The research makes use of a multiple case study design in which multiple case studies are utilised and evaluated within the research. Multiple case studies have advantages over using a single case study in that the research is considered to be more robust. The multiple case study design enables the researcher to compare cases with regard to what is exceptional and what is shared across the cases (Bryman & Bell, 2011:104). Multiple case studies are undertaken simultaneously to investigate an overall problem (Bryman & Bell, 2011:60) which in this case is the effectiveness of public participation in EIAs.

Case study research aims to provide an in-depth understanding and thus it becomes difficult to focus on different case studies at one time. “The only way of increasing the number of cases to some substantial level would mean sacrificing the in-depth and contextual nature of the insights inherent in using

the case study method in the first place” (Yin, 2013:325). As such, a smaller number of cases (four) was selected based on a set of criteria that the cases had to meet in order to be selected.

Case studies have been found to be difficult to generalise to the larger population as they rely on information from a single case (Flyvbjerg, 2011:302). It has also been believed to be loaded with bias, often confirming the researchers predetermined beliefs (Flyvbjerg, 2011:302). According to Yin (2009:30) a misconception exists that case studies are only useful in the exploratory phase and that quantitative methods are more useful in the descriptive phase. Neale *et al.* (2006:4) state that “case studies have been viewed in the evaluation and research fields as less rigorous than surveys or other methods”. This is due to the potential for bias by the researcher and lack of a methodical approach within a case study.

Within this research the case studies do not aim to only describe the cases but to explore the subject being researched which supports Yin’s notion as discussed above. Yin (2009:31) further states that a pluralistic approach is more appropriate to differentiate among the various benefits and shortcomings of the different research methods.

4.3 Research Methodology

Research methodology provides guidance on how to conduct research (Igwenagu, 2016). It provides the methodological framework for carrying out the research in order to solve a particular problem (De-xin, 2018:197). There are two criteria outlined for research methodology. Firstly, it should be the most effective methodology to produce the best results and secondly, it should be replicable. As such the methodology does not only comprise of the methods but also the reasons that underpin their selection (De-xin, 2018:197).

Qualitative research focuses on unearthing the value and understanding that people attribute to certain complex situations (Creswell, 2014:4). Qualitative research is non-numerical research which aims to interpret phenomenon and provide a better understanding and identify patterns (Babbie, 2013:390). This

type of research generates themes which the researcher interprets to provide meaning to a particular topic. Qualitative research is often undertaken when not much is known about the topic of study and thus there is a need to delve into the topic.

Quantitative research takes a more objective approach. It involves testing theories through investigating the correlation between variables (Creswell, 2014:4). Quantitative research is more concerned with analysing numbers to test theories (Creswell, 2014:4).

Qualitative and quantitative research, although very different, should not be viewed as opposites competing against each other. They are rather to be viewed as opposites on a spectrum (Creswell, 2014:3). As such researchers often utilise both approaches at the same time which is referred to as the mixed method approach. The mixed method approach allows for a combination of quantitative and qualitative data and methods to gain an increased understanding of the research problem.

This research makes use of a mixed method approach, using both quantitative and qualitative methods to collect and analyse data. The mixed method approach was used based on the assumption that it will provide a better understanding of the research problem as opposed to employing each method separately (Creswell, 2014:4). The qualitative research method was utilised and focused on to answer questions related to 'why' and 'how' , not only 'what', in order to get a better understanding of these phenomena (Auriacombe & Schurink, 2012:151), whereas the quantitative research was utilised to supplement the research and aimed to get an overall idea of the attitudes and perceptions of the selected sample with regard to the research question (Neuman, 2006:43). The mixed method approach enabled the researcher to obtain both numerical and descriptive data which can be used to address the research objectives. The detailed research methods employed are elaborated on in section 4.4 below.

4.4 Research Methods

The research methods refer to the specific methods that are employed during the research for data collection and analysis (Mouton, 1996:36). The types of methods chosen for the study are determined by the objectives of the research. For example the methods chosen would depend on whether the data to be collected is known and defined at the start of the research or whether it will emerge after engaging with the participants (Creswell, 2014:17).

The data collected from the various research methods can either be numerical data (quantitative) or nonnumerical data (qualitative). Qualitative data allows for the development of themes which can be analysed and interpreted. Qualitative research methods aims to provides value and in-depth insight of the subjects being researched (De-xin, 2018:201). Qualitative research methods are used in the following instances:

1. “When the researcher wants to learn about the views of the subjects;
2. assess a process over time; and
3. obtain detailed information about a few people or research sites” (De-xin, 2018:201).

Quantitative research methods are used to explain the links between variables (De-xin, 2018:201). These types of methods allow for results that can easily be generalised but require a large number of data points to be able to do so. Quantitative research methods are used when the researcher wants to test existing theories, rather than developing new theories, however it requires a large number of data points.

The methods of data collection and analysis used in the study are discussed below.

4.4.1 Literature Review

A literature review of relevant journal articles, reports, completed theses and books from various databases was conducted to conceptualise effective participation and its influence on decision-making. Phrases such as public

participation Namibia, effective public participation, public participation in EIA, sustainable development and participation, public participation legislation, public participation evaluation were searched for in the online databases. The literature was further used to develop a theoretical framework for effective participation which was analysed against each case study to determine the effectiveness of participation based on the evaluation criteria. Furthermore, the literature review was used in critiquing the legal framework for public participation within EIA in Namibia and provisions made for influencing decision-making.

4.4.2 Document Review and Analysis

A number of documents were used as part of the research, such as academic journals, books, international treaties and declarations, legislation, EIA reports, RoD, and newspaper articles. In particular, the EIA reports of the relevant case studies were studied in order to describe and assess the public participation process undertaken within each case study. The EIA reports were used to assess the effectiveness of the public participation process against the theoretical framework for effective participation. The EIA reports were analysed against the effectiveness criteria developed as part of the literature review, in order to ascertain which criteria have been met and which have not. Furthermore, the recommendations within the EIA reports were studied in order to determine whether public comments/inputs were provided as recommendations or conditions for approval or rejection of the ECC. This was done to ascertain whether inputs influenced the decision.

4.4.3 Questionnaires

Semi-structured questionnaires were developed and consisted of closed-and open-ended questions to allow the participants to elaborate on their answers. The questions were focused on public participation and particularly with an emphasis on the effectiveness criteria. A Likert scale questionnaire was used to determine the perceptions of EAPs and I&APs of public participation (See Annexure A).

Questionnaires were administered to the following participants:

- I&APs who participated in the EIA case studies – A total of 309 questionnaires were sent out via email and 16 questionnaires were returned;
- Environmental Assessment Practitioners (EAPs) who are involved in or have previously been involved in conducting EIAs in Namibia – A total of 150 questionnaires were sent out via email and 13 questionnaires were returned;
- Ministry of Environment, Forestry and Tourism (MEFT) officials who are responsible for reviewing EIAs in Namibia – A total of 7 questionnaires were sent out via email and 2 questionnaires were returned.

4.4.4 Data Analysis

Content Analysis was used to analyse the qualitative data obtained from the open-ended questions in the questionnaires as well as all relevant documentation (EIA reports, RoD, public participation documents (such as comments received), newspaper articles) pertaining to each of the case studies. Content analysis involves the process of objectively and systematically assigning specific items of the content into categories (Bryman & Bell, 2011: 289). Content analysis is used in the analysis of written or spoken communication (De-xin, 2018:204), and in the case of this research, written content was analysed. Content analysis can be either quantitative or qualitative. Quantitative content analysis is a deductive approach in which the themes are decided on beforehand and the text then categorised accordingly (Gheyle & Jacobs, 2017). Qualitative content analysis takes a more inductive approach in which the themes emerge as the text is analysed (Gheyle & Jacobs, 2017). Qualitative and quantitative content analysis thus differs in terms of coding and categorisation (Gheyle & Jacobs, 2017). Within qualitative content analysis the meaning behind the text is interpreted rather than the occurrence of words (Gheyle & Jacobs, 2017). It thus allows the researcher to make sense of subject matter within a particular context (Gheyle & Jacobs, 2017).

A process of content analysis was undertaken of the EIA documents for the case studies with a particular focus on the comment section of each report. The researcher grouped the comments which related to the public participation process into categories after which the categories were then grouped under overarching themes. The EIA documents were analysed against the effectiveness criteria to determine which criteria from the theoretical framework for effectiveness have been met within the cases.

Content analysis was also undertaken of the responses received from the open-ended questions in the questionnaires. The researcher grouped similar responses into categories and related categories were grouped into themes which relate to the effectiveness criteria of public participation.

The analysis of the qualitative data aimed to determine the strengths and weaknesses of the public participation process in Namibia, the relevant legislation and the authorities decision-making process and suggestions for improvement.

The quantitative data collected from the online questionnaires was analysed using Microsoft Excel and were converted into charts and tables. This enabled the analysis and interpretation of numerical data that pertains to the study in order to supplement the qualitative data obtained.

4.5 Sampling

Sampling aims to provide a representative collection from the research population (Mouton, 1996:132). Due to the various participants who are usually consulted within an EIA, the participants can be stratified into the following groups: government officials, project proponents, the local community who are interested or affected by the project (thus I&APs), Non-Governmental Organisations (NGOs) and environmental assessment practitioners (EAPs). Within each stratum purposive sampling was utilised to select the sample size for the participants to be administered the questionnaires. Purposive sampling enables the researcher to use their judgement in choosing the participants who

are likely to provide the necessary information in achieving the research objective (Ranjit, 2011:339).

The cases selected for the study were selected based on a set of criteria which had to be met in order to be able to address the research objectives. The criteria which had to be met, are as follows:

- EIA conducted in Namibia and submitted to the relevant authority for decision-making.
- Public participation at a project level.
- Different public participation methods employed in the EIA process.
- Varied I&APs consulted during the EIA process.
- Availability and accessibility to the relevant documentation pertaining to the EIA.

Considering the above criteria four EIAs were chosen as case studies to be focused on during the research, each of which presents a unique case regarding the public participation process undertaken during the EIA.

4.6 Ethical Considerations

The research directly engaged people during data collection, which might potentially lead to people being inconvenienced by the fact that they contribute their time and effort to complete the questionnaires. The research aimed to reduce the inconvenience to the respondents by making the questionnaire an online questionnaire which made it easier to access and complete. As such the respondents did not have to print out the questionnaires to complete them as they were available online.

Written informed consent was requested from all participants prior to answering the questionnaires via an informed consent form. Emails were sent to participants (EAPs, government officials and I&APs) requesting for their participation in the study via a new email address which was created by the researcher specifically for this research. The email invited participants to participate and requested their consent via the informed consent form which

was attached to the email. The online link to the questionnaire was included in the email. Email addresses for the EAPs were obtained online on the Environmental Assessment Professionals of Namibia (EAPAN) web page in which the official email addresses for all registered EAPs are publicly available as well as on an email mailing list which the researcher was a part of. The email addresses of the I&APs were obtained in the EIA reports which were available online. The email addresses of the government officials were obtained at MEFT: DEA.

Participation in the research was entirely voluntary. The participants who wished to participate were requested to return the signed informed consent form to the researcher prior to or at the same time as completing the questionnaire. No personal information was requested in the questionnaire, thus reducing the likelihood of the respondents being identified and ensuring the anonymity of the respondents.

Furthermore, the research required access to government documentation such as the EIA documents and RoD of the EC for each case study. As such written consent and permission to utilise this documentation for research purposes was obtained from the Ministry of Environment, Forestry and Tourism: Department of Environmental Affairs (MEFT: DEA) in a letter dated 14 February 2020. However due to the fact that no copies were allowed to be made of the documents and the researcher was not allowed to remove the documents from the facility, the reports were also obtained online where available.

Ethical consideration was also given to how the researcher would store and handle the data which was collected. The returned informed consent forms were saved on the researcher's personal computer in a password protected folder which only the researcher and her supervisor have access to. A separate email address was created from which the emails were sent to the participants and to which the participants returned the signed informed consent forms.

The questionnaires were created online using Google Forms. The link of the online questionnaire was included in the email to the participants. Participants completed the questionnaires online. The answers given on the online

questionnaire were anonymous and did not ask any personal information which may identify the participants. The participants are not revealed to the researcher once the questionnaire is submitted; as such the answers remain anonymous.

In light of the ethical considerations for the proposed research, ethical clearance was obtained prior to any data collection from the Research Ethics Committee of the University of Stellenbosch as per letter dated 28 April 2020 (See Annexure C).

4.7 Research Limitations

Additional factors play a role in decision-making which the research does not necessarily account for such as political will, the attitude, and values of the decision-maker. These factors are not known and thus cannot be accounted for within the study.

The research was limited by the willingness of the participants to participate in the research. As participation was completely voluntary, the research relied on the willingness of participants who may be interested in the research to participate. The research results could potentially be limited due to a limited number of responses received on the questionnaires administered. There was a lack of participation from the I&APs to which the questionnaires were distributed. This may be due to a lack of interest or lack of time and availability to participate. However, the research focused more on the qualitative data collection and analysis and as such the questionnaires mainly served to supplement the data collected via the main methods, such as secondary data and document analysis.

The research involved sending out emails to participants which were involved in the EIA case studies, asking them to answer an online questionnaire. As such the online questionnaire could only be distributed to those participants who had registered email addresses at the time that the EIA was undertaken. This limited the study participants to those who had access to the internet and thus participants living in rural areas were excluded. Furthermore, some of the

email addresses registered by the participants were no longer working or may have been recorded incorrectly and thus the emails were undelivered.

The sampling technique was based on non-random sampling in order to gather specific information from the participants and as such it may be biased. This is due to the fact that the researcher selected the samples based on the availability of information for the research and of participants. Thus, the sample was not randomly selected, and all participants did not have an equal chance of being included in the study. Furthermore, it may thus not provide a true representation of all the EIAs conducted as only four case studies were considered during the research. Therefore, it made it difficult to generalise from the research findings.

With regard to decision-making processes, besides public participation, a number of additional factors play a role in decision-making, which this research does not necessarily account for, such as political will and the attitude and values of the decision maker. These factors are not known and thus cannot be accounted for within this study.

4.8 Summary

The chapter described the research design, methodology and methods employed in collecting and analysing the research data. The research design is an evaluation research design. It utilises multiple case study research in order to provide an in-depth understanding of public participation in EIAs. The research is predominantly qualitative through the use of case studies, open-ended questionnaires, documents and is supplemented by quantitative research methods. The qualitative data obtained from the open-ended questions in the questionnaires as well as all relevant documentation was analysed using content analysis. The EIA documents were analysed against the effectiveness criteria developed in Chapter 2 to determine which criteria have been met from the theoretical framework for effectiveness within the cases. The quantitative data collected from the online questionnaires was analysed using Microsoft Excel and were converted into charts and tables. This

data was used to supplement the qualitative data obtained and provided numerical data.

The chapter additionally evaluated the sampling techniques used to select the samples for administering the questionnaires and selecting the cases. The ethical considerations as they relate to the research were discussed as well as the limitations which the researcher considered in the study.

Chapter 5 Case Studies of Public Participation in EIAs in Namibia

5.1 Introduction

Based on the criteria for selection of the case studies as discussed in Section 4.5, four case studies were chosen to be focused on during this research. Each of the case studies present a unique case regarding the public participation process undertaken during the EIA for a proposed project. Before these individual case studies are explored, a range of environmental and socio-economic challenges faced in Namibia will be unpacked.

5.2 Challenges in Namibia

5.2.1 Environmental Challenges in Namibia

Namibia is considered one of the most arid countries in southern Africa (Ruppel & Ruppel-Schlichting, 2016:25). The low rates and variability of rainfall coupled with high evaporation contributes to the fragility of the water resources in the country. As such, managing the water resources sustainably to ensure sufficient supply within the country is one of the major challenges faced within the country (Ruppel & Ruppel-Schlichting, 2016:25). Water resources in the country are further threatened due to the pollution of surface and groundwater by various developments.

Land degradation in Namibia is caused by various factors among which include climatic conditions and anthropogenic activities (Ruppel & Ruppel-Schlichting, 2016:24). However the main cause of land degradation is unsustainable practices such as overstocking and overgrazing (Ruppel & Ruppel-Schlichting, 2016:24). The majority of the land in the country is used for agricultural purposes which exacerbates the problem as it is often practiced in environmental damaging ways. Klintonberg and Seely (2004:7) argue that deforestation, soil erosion and bush encroachment are some of the most disturbing effects of land degradation.

Increased land made available for agricultural practices and other developments, as well as the increased tree felling, are major threats to forests in Namibia (Ruppel & Ruppel-Schlichting, 2016:30). Forests are an important resource in that they are the home to rich biodiversity and serve as resources for varied uses to the rural communities such as wood for cooking, medicines, etc. (Ruppel & Ruppel-Schlichting, 2016:30). However, the unsustainable use of forests result in increased deforestation.

Bush encroachment refers to “the invasion and/or thickening of aggressive undesired woody species, resulting in an imbalance of the grass:bush ratio, a decrease in biodiversity, a decrease in carrying capacity and concomitant economic losses” (De Klerk, 2004:2). Bush encroachment is part of the process of desertification in which land is degraded such that the productivity of the land is significantly reduced by natural or human processes.

Despite Namibia not being a major contributor to climate change, it is considered to be significantly vulnerable to the effects that climate change may have on the environment. This is due to the fact that Namibia is an arid country with varying climatic conditions (Keja-Kaereho, *et al.*, 2019:1). Major climate events such as floods and droughts are expected to result which will negatively impact the livelihoods of the rural communities of the country. This resultantly threatens food security and leaves affected communities in poverty.

Marine resources are one of the most important resources within the country. Namibia’s once rich pelagic fish resources became overexploited by South Africa in the late 1960s and early 1970s due to overfishing (Byers, 1997:28). The declaration of the Exclusive Economic Zone (EEZ) aimed to ensure that fishing within this zone was reserved for Namibians only (Byers, 1997:21). The Namibian government additionally set strict quotas on fishing for marine resources to ensure that fish stock can recover as a result of past overexploitation. However environmental variability as a result of climate change poses as a threat to marine resources. Additionally, overexploitation, depletion and degradation of water and aquatic resources is a major threat to the sustainable management of the country’s resources (Byers, 2003: 9).

In terms of freshwater fishing there are no regulations or legislation applicable within the communal areas to regulate these activities. Freshwater fisheries are very important to the food economy of northern Namibia (Byers, 2003:5). The Okavango and Zambezi region communities rely on fish as a major source of protein in their daily diets. Of the two freshwater systems, the Okavango is under greater pressure because it is smaller and has a relatively larger population (Byers, 2003:5).

5.2.2 Socio-Economic Challenges in Namibia

Environmental problems are often accompanied by social problems and as such issues of the environment cannot be addressed without considering people affected by these problems. Participation is thus an essential tool in engaging with affected individuals and communities to gain more insight into environmental issues and to find suitable ways to address these problems.

The Namibian population is relatively small at approximately 2.5 million people and the country is sparsely populated. Namibia is classified as an upper-middle income country. However, unemployment within the country remains high; exacerbated by socio-economic inequalities inherited from the past apartheid system (World Bank, 2021). The country's poor, measured by the upper middle income poverty line, has reached an alarming high of 1.6 million in 2020 (World Bank, 2021). According to the World Bank (2021) Namibia is still a very unequal country though inequality has very slowly been decreasing, with "The consumption Gini index declined from 64.6 in 1993/94 to 60.1 in 2004; to 59.5 in 2010, and further to 57.6 in 2015" (World Bank, 2021).

Socio-economic challenges are often worsened by environmental issues such as droughts, floods, etc. Agricultural activities over the last 5 years account for just over 4% of economic activity in the country and is a major source of employment and livelihoods for the Namibian people (International Trade Administration, 2021). Most of the population are rural and thus relies on subsistence farming and natural resources for survival. Due to the varied rainfall the capacity for crop production is very limited and as such the majority of the farming activities consist of livestock farming (Byers, 1997:12). Droughts

experienced in 2019 severely constrained agricultural output and resulted in a decline in harvests (World Bank, 2021). Furthermore, the low levels of rainfall experienced led to water and electricity scarcity which negatively influenced industrial production. Thus access to water is a major limiting factor to development in Namibia (Byers, 2003:4) .

The Namibian economy is reliant on the mining sector, which accounts for 8% of the Gross Domestic Product (GDP) and provides more than 50% of foreign exchange (Japan International Cooperation Agency, 2010:6). The mining industry in recent years however has been negatively influenced by falling commodity prices and reduced demand which resulted in challenges for economic growth (World Bank, 2021).

5.3 EIA Case Studies

This section provides a description of the case studies which have been selected for the research. As discussed in Chapter 4, a set of criteria was used to select the case studies to be used in the research. The EIA case studies are presented in **Table 5-1** below:

Table 5-1: Subject Case Studies

Case Study	Public Participation Process/ Methods/ I&APs	Country	Level of EIA	Accessibility of Documentation
Oil and Gas Exploration	Varied	Namibia	Full EIA	Available online
Marine Phosphate Mining	Varied	Namibia	Full EIA	Available online
Biomass Project	Varied	Namibia	Full EIA	Available online
Baynes Hydropower Project	Varied	Namibia Angola	Full EIA	Available online

The research focused primarily on the oil and gas exploration case study and the additional case studies were used to supplement and to allow for comparison.

Within the sections to follow, a summary of the proposed development and locality of each project is outlined, then the EIA process and resultant public participation process undertaken as part of the EIA is discussed. Any issues with regard to the public participation which was highlighted during the EIA process are additionally discussed.

5.3.1 Case Study 1: Oil and Gas Exploration in the Kavango West Region

5.3.1.1 Introduction

The proponent obtained a 90% interest in a petroleum exploration right under the Petroleum Exploration Licence (PEL) granted to it by the Ministry of Mines and Energy (MME) as the competent authority for mining and exploration activities. The proponent intends to undertake petroleum exploration activities on the subject PEL in order to explore for hydrocarbons in the hope of uncovering oil and gas. Due to the nature of the activities an ECC is required to be approved by the Ministry of Environment, Forestry and Tourism (MEFT) prior to commencement of any exploration activities. The EC is tasked with receiving applications, determining the scale, scope and reviewing assessment reports and issuing of ECCs. The function of the EC is established under the EMA No 7 of 2007. The EC is the decision-making authority in terms of EIAs undertaken in Namibia. A Record of Decision RoD contains the decision and its conditions, as well as the reasons of why an ECC was approved.

5.3.1.2 Locality

The PEL No 73 is located within the Kavango Sedimentary Basin (which is an area underlain with thick sedimentary rock within which hydrocarbons are believed to be present) within the Kavango West and East Regions in north-western Namibia as depicted in Figure 5-1. The subject area falls within the

communal areas of the Ncamangoro and Mashare Constituencies (highlighted in yellow on **Figure 5-1**) of the Kavango West and East Regions respectively. These communal areas fall within the boundaries of the Mbunza and Sambyu Traditional Authorities (highlighted in red on **Figure 5-1**).

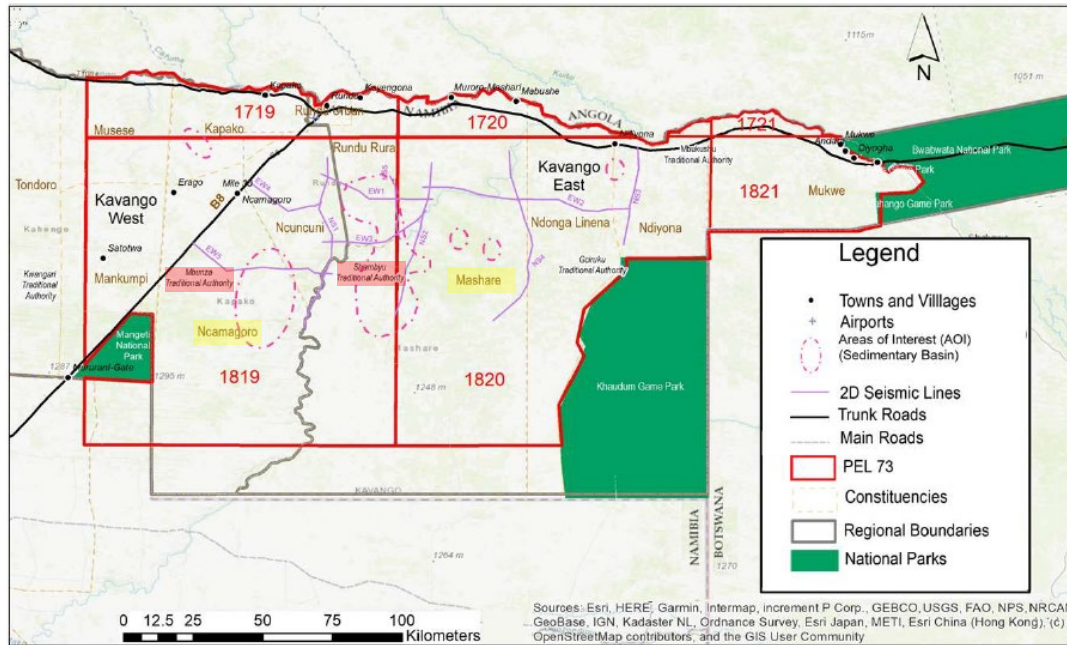


Figure 5-1: Locality of PEL 73

(Source: Risk-Based Solutions, 2021:4)

The entire PEL covers an area of approximately 25 341.33 m². According to the EIA, although the PEL covers a very large area, the key Area of Interest (AOI) indicated within the red stippled area on **Figure 5-1** is localised and is the area that will be affected during exploration. Only once a commercial discovery is made following the drilling and testing will the final key AOI be delineated (Risk-Based Solutions, 2021:8). As such the EIA report mentions that the specific AOI for the proposed exploration activities does not fall within an environmentally sensitive or proclaimed national park. It further outlines that the exploration activities will be conducted within the AOI and not throughout the entire PEL.

In contrast to what is outlined within the EIA report, the key AOI identified does however fall within the Kavango-Zambezi Transfrontier Conservation Area (KAZA TFCA). The KAZA TFCA covers areas within Angola, Botswana, Namibia, Zambia, and Zimbabwe and stretches from the Khaudum National

Park in Namibia in the west to Lake Kariba in Zimbabwe to the east as depicted in **Figure 5-2**.

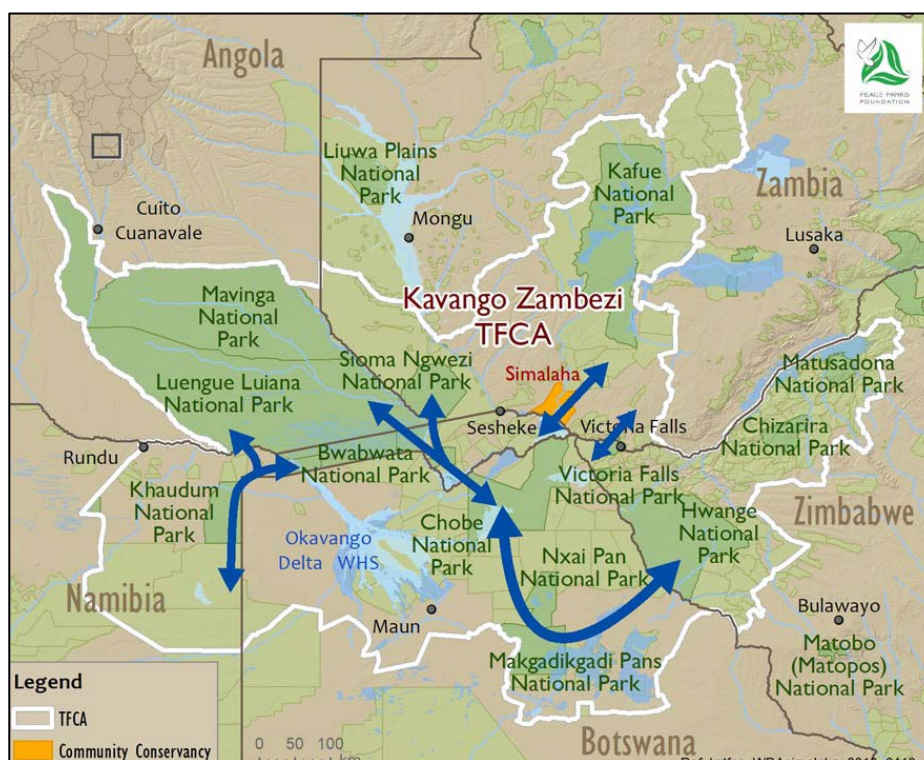


Figure 5-2: Locality of the Kavango Zambezi Transfrontier Conservation Area (Source: Kavango Zambezi Transfrontier Conservation Area (KAZA TFCA), 2019)

The KAZA TFCA is an international transboundary conservation initiative with a common vision of promoting and supporting sustainable livelihoods through coexistence and utilisation of natural resources for the benefit of local communities of the member states. The area includes at least 3 000 species of plants, 100 of which are endemic to the sub-region, as well as more than 600 bird species and also includes the largest elephant population in Africa (MET, 2021). The KAZA TFCA is additionally an important area for tourism for the member states as it promotes cross border tourism. Thus, the area in which the development is proposed is an area of ecological and tourism importance which should not be considered for oil and gas exploration.

Of importance to note is that the key AOI additionally lies within the Omatako, Cubango-Cuito and Okavango surface water basins whose locality is depicted

5.3.1.3 *Project Description*

The proponent identified the Kavango Sedimentary Basin as a key exploration AOI based on the available geophysical, geological, and historical well data. The exploration activities were proposed to be undertaken in phases with an ECC to be obtained for each phase of exploration. The first phase of exploration activities for which an application for an ECC was applied for and obtained, involved the drilling of a number of stratigraphic wells within the licence area which aimed to evaluate the subsurface geology and petroleum systems for the potential of oil and natural gas occurrences. The second phase of exploration activities for which an application for an ECC has been submitted and granted, involves 2D seismic surveys within the AOI to determine the presence of reservoirs potentially housing hydrocarbon resources. **Figure 5-4** below illustrates the proposed exploration process to be undertaken on the AOI and the footprint covered within the PEL.

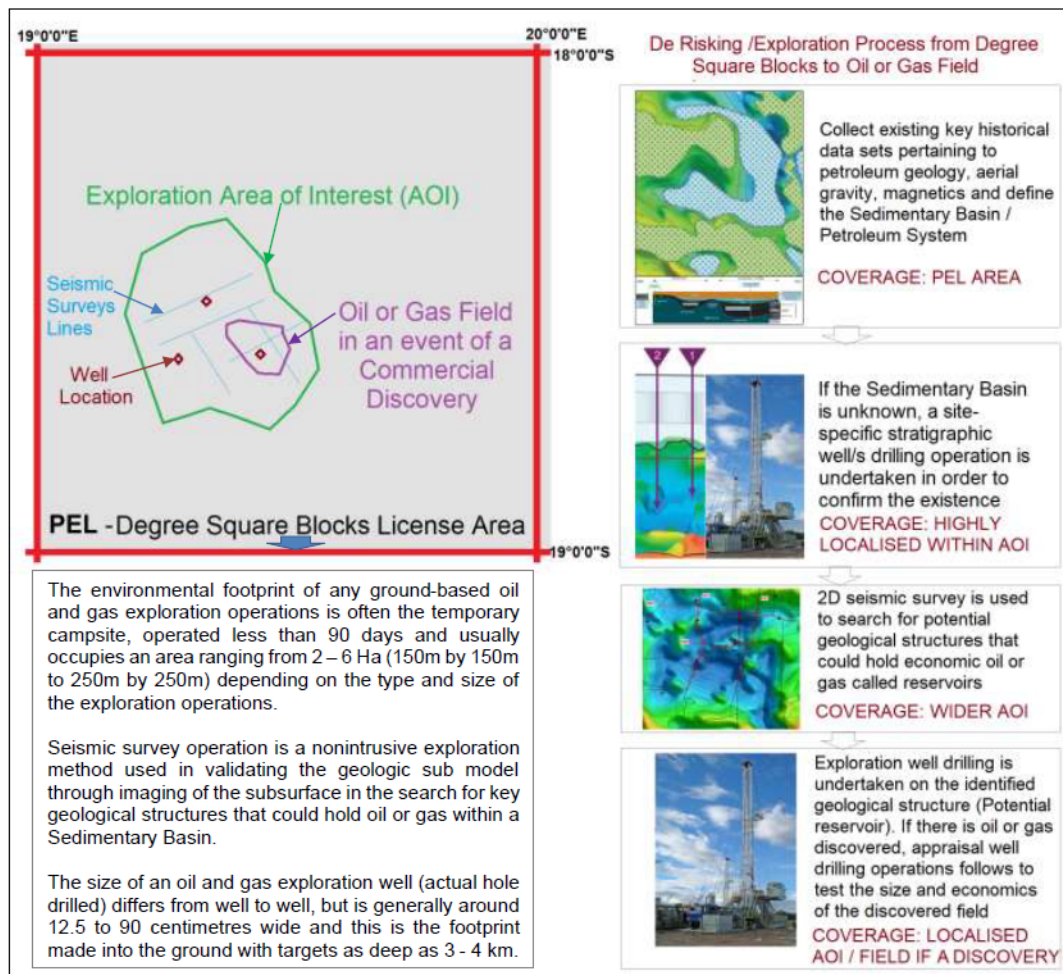


Figure 5-4: Size and exploration footprint of exploration activities over PEL (Source: Risk-Based Solutions, 2021)

The proposed drilling operations were found to be localised and temporary impacts on the environment was found to be of low significance by the EIA Report. An EMP was developed and submitted as part of the EIA which outlines the mitigation measures to address the impacts identified in the EIA. It was thus recommended that the ECC be issued by MET on the following conditions:

- The proponent must adhere to the provisions of all national legislation, regulations, policies, procedures, and permits / authorisation requirements;
- The proponent shall adhere to all the provisions of the EMP, and mitigation measures must be implemented and monitored as detailed in the EMP, and;

- Villages / settlements and communal crop fields shall be avoided when choosing the access route, camp site, water well location and actual drilling location. A distance of 500 meter to 1 kilometer is recommended between any local villages / settlements and the campsite / drilling locality (Risk-Based Solutions, 2019).

The ECC was issued by MET with the following conditions:

1. The environmental clearance is valid for a period of 3 (three) years, from the date of issue unless withdrawn from this office.
2. This certificate does not in any way hold the MET accountable for misleading information, not any adverse effects that may arise from the activities. Instead, full accountability rests with the proponent and its consultants.
3. This Ministry reserves the right to attach further legislative and regulatory conditions during the operational phase of the project.

The proposed drilling is currently underway in the subject area as depicted in **Figure 5-5** below. The location of the area where the drilling is taking place is delineated by a red circle in **Figure 5-6**.



Figure 5-5: Current drilling activities in the Kavango West Region
(Source: Environmental Investigation Agency, 2021)

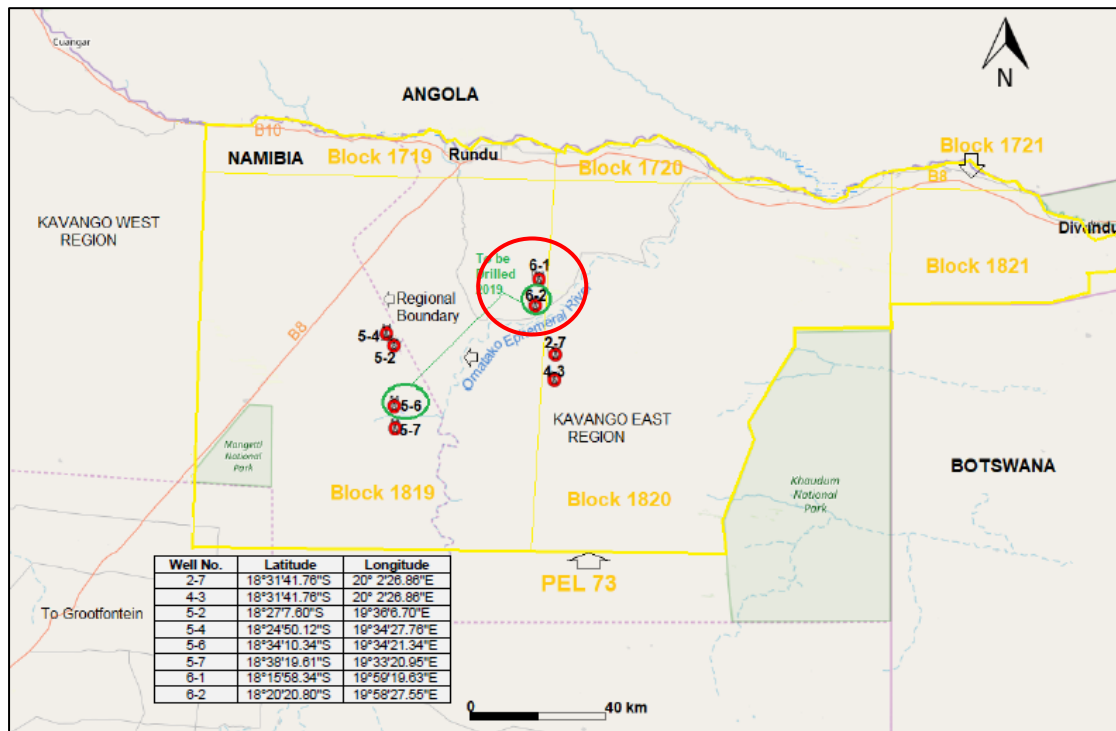


Figure 5-6: Well locations to be drilled
(Source: Risk-Based Solutions, 2019:5)

According to the EIA Report the proposed 2D seismic survey will have positive impacts on the socio-economic environment at a national, regional and community level. The overall environmental impacts were assessed to be of a low magnitude, temporal duration, localised extent, and low probability of occurrence due to the limited scope of activities proposed to be conducted along existing roads and tracks.

The EIA report made the recommendation that the ECC be issued for the intended 2D seismic survey on the following conditions:

- The proponent must adhere to all national legislation, regulations, policies and procedures and permits/authorisations required for the project.
- The proponent must ensure that the provisions outlined in the EMP are implemented and monitored.
- Prior to commencement of the proposed activity the proponent is to consult with the local community/owners of the communal land which may be affected by the proposed project activities through the relevant councillors and traditional authorities.
- Written consent must be obtained from the affected landowners and local community regarding the proposed project activities (Risk-Based Solutions, 2021).

The ECC was issued by MET with the following conditions:

1. The environmental clearance is valid for a period of 3 (three) years, from the date of issue unless withdrawn from this office.
2. This certificate does not in any way hold the MET accountable for misleading information, not any adverse effects that may arise from the activities. Instead, full accountability rests with the proponent and its consultants.
3. This Ministry reserves the right to attach further legislative and regulatory conditions during the operational phase of the project.

4. Mitigation measures stipulated in the approved EMP must be adhered to, particularly with respect to management of ecological aspects.
5. The ECC is issued jointly with the RoD as per Section 37 (92) (c) (d) of the EMA and conditions of authorisation under Section E of the Record of Decision must be taken into consideration.

It should be noted that ordinarily the ECC is issued only as a single certificate with the conditions of approval outlined on the back of the certificate, which was the case for the ECC issued for the drilling activities. It is only recently that the RoD is attached to the ECC and provided to the proponent. In the case of the 2D Seismic survey EIA further conditions of approval were outlined in the RoD with an additional 21 conditions being outlined for the proposed activity. Due to the public attention received by the project it appears that the EC saw a need to provide additional conditions of approval as well as to provide a more thorough explanation of why the development received authorisation.

As the ECCs has been granted for the proposed exploration activities, the exploration activities are currently underway within the subject area but is still opposed by local communities and several civil society organisations. The project has gained international interest with celebrities such as Leonardo Di Caprio expressing their concerns with regard to the project. The Namibian government has however expressed their support for the project. Resultantly, civil society representatives published a petition against the proposed exploration in July 2021 which was supported by 52 civil society organisations. The project is thus still very controversial and prevalent in the media.

5.3.1.4 The EIA and Public Participation Process (PPP)

An EIA was required for the intended exploration activities in terms of the EMA due to the proposed activities triggering a listed activity which may not be undertaken without an ECC. The EIA was conducted in accordance with \ Namibian laws, regional and international environmental and petroleum exploration requirements.

As previously mentioned, the EIAs for the proposed exploration activities were undertaken in a phased approach. Consequently, an EIA was conducted separately for each phase of exploration. The first EIA conducted was for the proposed drilling of the stratigraphic wells, for which environmental clearance was granted in August 2019 and the second EIA was for the proposed 2D seismic surveys for which the ECC was approved in July 2021.

a) EIA and PPP for Drilling of Stratigraphic Wells

The EIA process for the drilling of the stratigraphic wells was commenced in November 2018 with the screening process and was completed in June 2019 upon submission of the final EIA report to MET for review and decision-making. The ECC was granted for the proposed exploration activities which had commenced in the subject area.

The PPP was undertaken during the period of March 2019 to May 2019. The EIA report was made available for review to key stakeholders mentioned to be the Governors of the Kavango West and Kavango East Regions as well as the Ministry of Safety and Security in both regions. Additionally, the reports were also distributed at public libraries in Windhoek, the Kavango West and Kavango East Regions. Public notices were published in the local newspapers dated 21 May 2019 and 27 May 2019 inviting all I&APs to register as I&APs for the project. Public meetings were held in Nkurenkuru in the Kavango West Region and in Rundu in the Kavango East Region on the 9th and 10th of May 2019 respectively. The meeting in Nkurenkuru was mostly attended by authority representatives such as regional council officials, the Namibian police, Ministry of Health and one farmer. The meeting in Rundu was similarly attended by authority representatives such as Town Council officials, Ministry of Health officials as well as a representative from the University of Namibia and local church members. No meetings were held with the affected communities directly. It is outlined in the EIA report that the consultant mainly communicated with the local, regional, and traditional leaders who are responsible for communicating the information to their respective communities, thus indicating that the actual communities affected were not directly engaged with. I&APs

were then provided until 31 May 2019 to provide written comments on the proposed activity.

The main issues identified by the I&APs which were highlighted in the EIA report included the following:

- Water boreholes are to be drilled to supply water for the exploration activities which will be handed over to the Regional Councils once drilling is ceased to allow for rural water supply.
- If financially able, the proponent is to add cattle drinking points and a veterinary vaccination fence to at least one of the water boreholes drilled in support of the local subsistence rural farmers; and
- Access to the well 5-6 location (circled in green in **Figure 5-6**) particularly for the movement of equipment from Windhoek to site could use the sandy track road turn-off just after Mangetti National Park along the tarred B8 Road to Rundu. This will require de-bushing and widening of this track and such a move will greatly benefit the local communities in long run, in terms of improved road access and connectivity to the national road network.

These comments received were translated into recommendations provided to the proponent within the EIA report.

b) EIA and PPP for 2D Seismic Surveys

The EIA process for the proposed 2D seismic surveys was undertaken during the period of November 2020 until March 2021. The process commenced with the project screening process and was completed with the submission of the final EIA report to MET for review and decision-making in March 2021.

A PPP was undertaken for the EIA in accordance with the EMA during the period January 2021 to March 2021. The public was afforded opportunities to participate in the process and to provide comments/inputs. These opportunities included invitations/notices which were issued to the general public via newspaper advertisements, direct emails which were sent to key stakeholders. Furthermore, public meetings were held for the project as follows:

- Public Meeting in Nkurenkuru, Kavango West Region in the Nkurenkuru Community Hall on 20 January 2021;
- Public meeting at AMTA Rundu, Kavango East Region on 22 January 2021;
- Community meeting held at Sivaradi 1 and 2 on 23 January 2021;
- Community meeting held at Gcara, Kavango West Region on 23 January 2021;
- Community meeting held at Ncuncuni, Kavango West Region on 25 January 2021;
- Community meeting held at Ncaute, Kavango East/West Region on 26 January 2021;
- Community meeting held at Makandina, Kavango East Region on 27 January 2021;
- Public meeting held in Windhoek on 2 February 2021;
- Community meeting held at Mutwegombahe, Kavango East Region on 8 February 2021;
- Community meeting held at Mbambi, Kavango East Region on 8 February 2021;
- Community meeting held at Cuma, Kavango East Region on 8 February 2021;
- Community meeting held at Omega 1, covering Omega 1, Chetta, Mangarangandja, Mutjiku, Mushashani and Mshashi Villages in Bwabwata National Park in the Western Zambezi Region on 18 March 2021;
- Community meeting held at Masambo Community, covering Masambo, Poca, Omega 3, Chetto, Muteik, Pipo and Ionxei villages in Bwabwata National Park, Western Zambezi Region on 18 March 2021.

Authority meetings were held as follows:

- Ministry of Environment, Forestry and Tourism, Kavango East Region on 18 January 2021.

It is outlined that “appropriate meeting delivery methods and materials were adapted for each of the public/stakeholder and community meetings...” (Risk-Based Solutions, 2021:xxi). Community meetings were held in areas where communities would normally gather for example under a tree as opposed to within a formal public meeting venue. The comments, meeting minutes and all written submissions made regarding the EIA were attached to the report. An Issues and Response Record (IRR) was attached to the report detailing all comments received from I&APs and the relevant response provided as well as the section within the report addressing the respective comment. Due to the locality of the project being within a predominantly rural area alternative participation strategies were considered and implemented to ensure that local communities are effectively engaged. For example, during informal meetings it would not be useful to have a PowerPoint presentation filled with technical information as most people may find it difficult to understand.

Following the initial participation activities, the draft EIA report was made available to I&APs for comment via electronic means for the initial period of 7 January 2021 until 29 January 2021. The comment period was then further extended via email until 12 February 2021. Hard copies of the report were made available to the public from 15 January 2021 at the following venues:

- Ministry of Mines and Energy Library in Windhoek
- Windhoek Library

I&APs were informed of the submission of the final reports to MET via an email dated 26 March 2021. I&APs were afforded an additional review period of 14 days to make submissions regarding the reports to MET directly via the online portal. The ECC was officially issued on 2 July 2021. However, I&APs were not informed of this decision by the consultant.

5.3.1.5 Discussion

Once the proposed exploration activities became known to the public, concerns were expressed with regard to various aspects of the proposed activities. Initially it was mentioned that there is the possibility of using the method of hydraulic fracturing, commonly known as fracking, as part of the proposed exploration activities. This raised grave concerns due to the potential impacts that fracking could have on such an environmentally sensitive area. Barbee and Neme (2021) note that “Fracking in particular is of ecological concern because it requires large amounts of water and has been known to cause earthquakes, pollute water, release greenhouse gases, and lead to cancers and birth defects, among other problems”.

The fact that an incremental approach to the environmental assessments was being undertaken for the exploration activities was furthermore questioned as it creates the impression that the proponent aims to obscure the full scale of impacts that could result from the exploration activities and does not consider the cumulative impacts associated with the project. Potential environmental impacts that could result from the proposed exploration activities include the overuse of water within a water scarce country. Oil and gas drilling also has the potential to contaminate and pollute underground water resources which is the main source of water for people living within the area. In light of these concerns, it was requested during a public meeting held in Windhoek that the proponent conduct a Strategic Environmental Assessment (SEA) for the proposed oil and gas exploration to provide a holistic assessment of the potential impacts the proposed activity could have on the environment, the affected communities, and the country at large.

The EIA itself has been questioned due to the use of mainly desktop specialist studies without any fieldwork to support the assessments undertaken (Barbee & Neme, 2021). Furthermore, with the world trying to move away from fossil fuels in response to addressing climate change it is alarming that the Namibian government would allow investment in oil and gas exploration as opposed to promoting and investing in renewable energy. Namibia has great potential for

wind and solar energy which activists and environmentalists believe should rather be explored as opposed to fossil fuels.

Another major concern was the lack of public consultation undertaken for the project which will be based in a predominantly communal area that is likely to affect several communities, including indigenous people such as the San community. Mongabay reports that “critics say the consultations offer only limited public participation, preventing members of affected communities from attending or understanding the unfolding process” (Tan, 2021). The San community is a marginalised, impoverished, minority community which was once hunter gatherers and makes up about 2% of the Namibian population (Suzman, 2001:1). The San community in the Kavango region is not a large population and constituted approximately 1.8% of the region’s population in 1991 (Suzman, 2001:26). The San experience many socio-economic problems such as a lack of land tenure, lack of food security, lack of education and very low literacy rates (Suzman, 2001:1) and are consequently vulnerable to development which may threaten or impact their survival. The EIA report does not mention the need for, or any attempt made to obtain FPIC from the indigenous San community which could be affected by the proposed development due to their dependence on the natural resources and tourism activities in the area for survival. As such there was no FPIC requested or obtained from the San community with regard to the development. The Women’s Leadership Center (WLC), a human rights organisation that works with marginalised groups of women of Namibia, including the women of the San community in the Kavango West, are leading a campaign to stop the project from proceeding. In a talk held on Facebook on 15 July 2021 a representative from the WLC expressed that one of their main concerns was the lack of consultation that was undertaken for the proposed development with an additional focus on consultation with women from these communities. She reiterated the fact that no FPIC was obtained from the San community and as such the community opposed the proposed activities (Jones, 2021).

Consultations during the EIA process were held during periods when COVID-19 restrictions were in place in the country, thus limiting the number of people

allowed to attend meetings to only 50 people, as well as the time duration of the meetings which was restricted to 2 hours. Therefore, it did not allow sufficient circumstances to engage the affected communities in a meaningful and effective way. The regulations with regard to COVID-19 created an avenue for proponents to cut corners as it enabled them to override certain requirements with regard to public participation. In many countries environmental legislation regulations have been “loosened” in the wake of the pandemic, with certain requirements being waved in the United States and Australia for example in order to assist in economic recovery (Hasan & Megantara, 2021: 3). The pandemic has also introduced the need for the use of Information Communication Technology (ICT). Whilst online platforms may be useful in urban societies, it is not a useful means of participation within rural communities who do not have access to these platforms.

This case illustrated the shortcomings within participation, particularly participation that is undertaken within rural settings. Although participation in EIA is regulated by law it needs to be tailored to the specific community that needs to be engaged with. When indigenous, marginalised communities are affected, it is important to consult and obtain FPIC. These communities are the custodians of the land and the natural resources and could in fact offer resistance to the development, which in this instance is the case. Furthermore, the COVID-19 pandemic runs the risk of offering excuses for proponents to dilute participation efforts and may also exclude certain communities from participation due to its reliance on ICT techniques for participation.

5.3.2 Case Study 2: Marine Phosphate Mining Project

5.3.2.1 Introduction

The proposed Marine Phosphate Project in Namibia had uncovered phosphate mineral resources ranking the seventh largest in the world (Midgley & Associates; Enviro Dynamics, 2012:iv) . The proposed project aims to allow Namibia to participate in the phosphate market which in turn aims to support the farming output and resultantly improve food security (Midgley & Associates;

Enviro Dynamics, 2012). Phosphorus is an ingredient used in the development of fertilizers and animal feed and has no way of being replaced by artificial means. An EIA was required to be conducted in order to obtain an ECC for the proposed activity as per the EMA. Any type of mining or resource extraction is a listed activity and requires environmental clearance from the MET prior to commencing.

5.3.2.2 Locality

The proposed project is located on the Namibian continental shelf approximately 120 km southwest of Walvis Bay as depicted in **Figure 5-7** below. The mining licence covers an area of approximately 2 233 km². The mining licence area falls within the Benguela Current Ecosystem which is an important ecosystem in terms of marine biodiversity and food production. Additionally, this important marine area with its rich biodiversity in both living and non-living resources plays an important role in the Namibian economy.

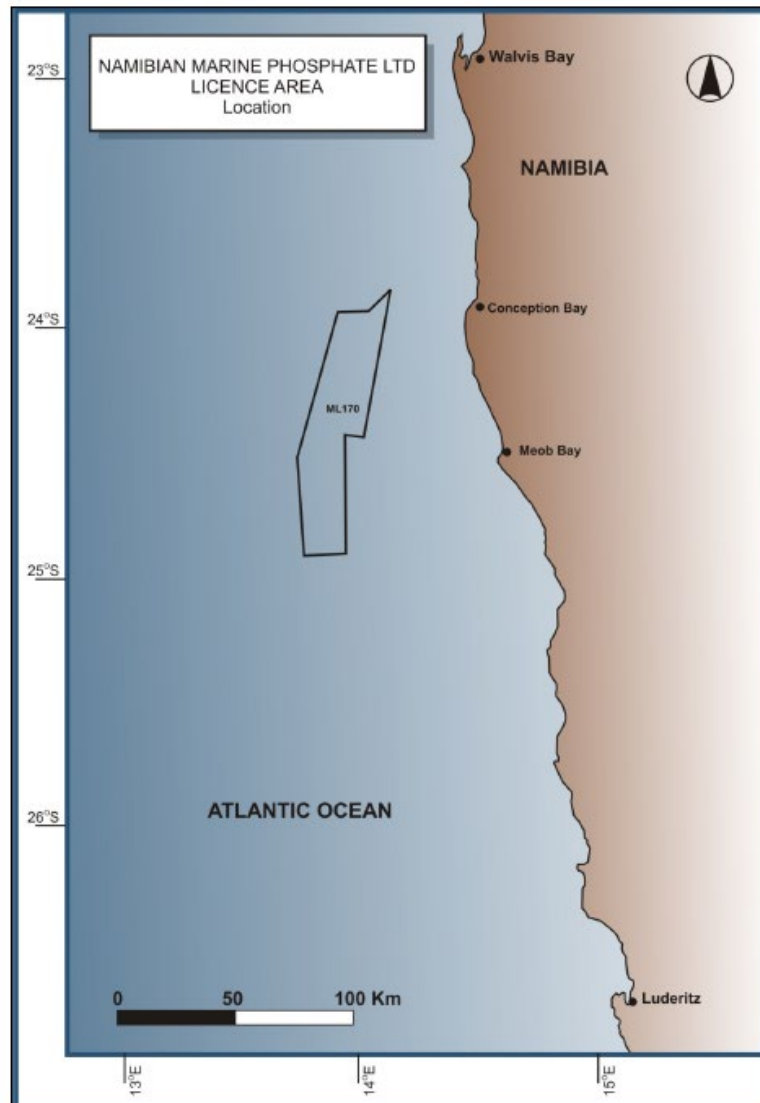


Figure 5-7: Location of Mining Licence Area
(Midgley & Associates; Enviro Dynamics, 2012:1–5)

5.3.2.3 Project Description

The proposed project involves the mining of phosphate mineral deposits with the use of dredging techniques and the transport of the deposits to Walvis Bay for mineralisation and material separation, after which the phosphate is proposed to be exported to the international markets.

The proponent was granted a mining licence by the MME in 2011 for the exploration of the marine phosphate deposits subject to the undertaking and approval of an EIA for the proposed activities.

The EIA was conducted and submitted to MET for decision-making in January 2012. According to the EIA report for the project, the process to be followed for the mining of the deposits was summarised as follows: “The proposed dredging will remove sediments up to a depth of 3 meter below the sea floor over an approximate area of up to 3 km² annually which represents a total of approximately 60 km² for a 20 year life of mine (which is the current term of the ML tenure)” (Midgley & Associates; Enviro Dynamics, 2012:xi).

As a result, the mining of the phosphate deposits is believed to potentially have a significant impact on the affected seabed, with the marine life within the affected area being disturbed and potentially destroyed. However, the EIA conducted for the proposed activities concluded that no major environmental impacts would be experienced and that more importantly, the project would be beneficial to Namibia from an economic point of view.

5.3.2.4 EIA and Public Participation Process

The EIA was undertaken for the proposed project as two separate integrated components which included the marine and terrestrial components of the proposed project. The EIA aimed to identify the potential problems of the project through consultation with “the Authorities, the public (both interested and affected parties), and the specialist consultants” (Midgley & Associates; Enviro Dynamics, 2012:1-4). It further aimed to identify and assess the environmental impacts which may result from the proposed dredging and to recommend additional studies which must be undertaken to assess these impacts. Lastly, it aimed to provide mitigation measures and monitoring programmes to be implemented prior to and during the proposed dredging.

The proposed phosphate mining would result in the disturbance of the seabed as the seabed would need to be excavated in order to retrieve the desired phosphate. The environmental impacts identified within the EIA included “the removal of benthic organisms, changes in near-bottom conditions, the potential release of toxic substances in the water column and the occurrence of sediment plumes leading to smothering and increased turbidity” (Leeuwerik, 2018:75). The marine organisms which will potentially be disturbed by the proposed

activities carry out essential ecological functions which if disturbed can have significant impacts on the larger marine environment. Furthermore, fish populations and food resources stand to be affected as well as fishing operations due to potential safety zones around vessels. Sediment plumes could potentially be generated during excavations which stand to increase the turbidity of the water and potentially introduce toxic substances into the ocean.

Of equal concern were the potential socio-economic impacts of the proposed phosphate mining activities, such as impacts on the fishing industry. The marine component provided a small section of the socio-economic impacts whereas a full Socio-Economic Impact Assessment was resolved to be undertaken for the EIA of the terrestrial component.

Within the marine component the impact on the fishing industry was highlighted as important. Fisheries is an important industry within Namibia as it is home to various fish stocks which has enabled the fishing industry to grow over the past 50 years (Midgley & Associates; Enviro Dynamics, 2012:5-6). Particularly important to the fishing industry are the hake and horse mackerel with smaller fisheries for pilchard, and monk. The fishing resources are managed through the introduction of Total Allowable Catches (TAC) and fisheries management mechanisms. In relation to the proposed mining area and based on historical catch data, hake and horse mackerel fisheries did not overlap extensively within the proposed project area, while for monk fisheries more overlap existed (Midgley & Associates; Enviro Dynamics, 2012:5-8).

The Socio-Economic Impact Assessment which was to be undertaken did not form part of the scoping report which was available online. Only some of the socio-economic features which were identified to be sensitive to change were outlined and can be grouped in the following themes:

- Employment
- Expertise and skills
- National income
- Fishing industry

- Aquaculture
- Conservation
- Recreation
- Tourism
- Road users
- Health
- Economics
- Existing in-migration trends
- Existing services.

A public participation process was undertaken as part of the EIA for the proposed project for the marine and terrestrial components separately.

a) Public Participation Process for the Terrestrial component

Participation with I&APs for the terrestrial component commenced during the scoping phase, prior to the development commencing. According to the EIA report the public participation process was conducted in line with the relevant Namibian legislation (the EMA) as well as international standards such as the IFC Performance Standards. At the time when the EIA was undertaken, the EMA had not come into force yet and as such the participation was carried out in line with the Environmental Assessment Policy which was approved in 1994.

A Public Consultation and Disclosure Plan (PCDP) was prepared for the participation for the terrestrial component and presented in the scoping report. Notices were placed in three newspapers over a period of two weeks. The Background Information Document (BID) was circulated to all I&APs. Posters were erected around town and radio announcements were made to invite the local community to the scheduled meetings. Public and authority meetings were conducted in Walvis Bay and Windhoek. Separate meetings were held with the following institutions:

- Walvis Bay Municipality

- Namibian Coast Conservation and Management (NACOMA)
- Kuiseb Delta Development Project (KDDP)

The comment period was open from 23 November 2011 until 10 December 2011 in which the public could provide comment on the project. The scoping report was made available via email and hard copies were made available in Windhoek and Walvis Bay libraries to I&APs, but the duration of the review period was not mentioned in the report. All issues identified during participation was collated in an Issues and Responses Trail which was attached as an appendix to the report. A summary of the key issues that were raised during the public participation was also provided in the report.

b) Public Participation Process for the Marine component

For the marine component, EIA consultations took place with authorities, sectoral groups, and the public in three towns namely Windhoek, Walvis Bay and Swakopmund during 20 to 23 September 2011. Additionally, on 1 November 2011, consultations were had with the Confederation of Namibian Fishing Associations (CNFA) and the National Marine Information and Research Centre (NatMIRC). There were five meetings conducted during the public participation process, these consisted of three meetings with authorities in Walvis Bay and Windhoek, one public meeting in Walvis Bay and one public meeting in Windhoek. A meeting was also held with the KDDP in Windhoek. The meetings were held in English as no translation was requested by the participants in attendance at the meetings. The public meetings followed the typical procedure of a public meeting in which the consultant explained the proposed project, EIA process and potential environmental impacts, followed by a question-and-answer session.

After the initial participation phase, the draft scoping and EIA report was made available for comment to the registered I&APs for a period of two weeks. The key issues raised during the public participation process was summarised in the scoping report and presented in full within the issues and responses trail document which was made available on the consultant's website. The comments received on the EIA report were compiled into the report as an

appendix. The final EIA report was again made available to registered I&APs on the consultants' website, in public libraries in Windhoek and Walvis Bay and was provided to MET, MME and the Ministry of Fisheries and Marine Resources (MFMR).

5.3.2.5 Discussion

The proposed project attracted a significant amount of opposition from local and international environmental groups (Benkenstein, 2014:3). There were several groups involved in the participation process during the EIA which included environmental organisations, NGOs, the public and the country's fishing sector (Benkenstein, 2014:3). I&APs felt that they were not significantly involved in the process and were not provided enough opportunities to provide their input (Leeuwerik, 2018). The groups were opposed to specific elements within the project. It was believed that the EIA presented a lack of primary data and focused mainly on secondary data, thus not enabling a true assessment of the potential environmental impacts of the project (Benkenstein, 2014:3). The project was not considering the effects of the proposed activity in its entirety as the EIAs were conducted for the marine and terrestrial components separately. The need for a broader, more holistic assessment of phosphate mining in Namibia was thus called for.

The significant opposition received to the proposed project resulted in a decision by cabinet to place an 18-month moratorium on all marine phosphate mining activity in September 2013 which was set to expire in March 2015. However, the moratorium was never legally gazetted. Nevertheless, once the moratorium had lapsed the proponent resubmitted the application for an ECC. In September 2015, the ECC for the proposed marine phosphate mining was granted following the submission and review of the full EIA. After the issuing of the ECC there was a severe public outcry based on the decision. An appeal was submitted by an I&AP which resulted in MET's decision to set aside the ECC which was issued to the proponent by the EC in November 2016, based on the fact that the EC did not adequately consult the public and I&APs. This

demonstrates how informal means of participation, such as campaigns in the media or petitions, may influence decisions (Glucker *et al.*, 2013:105).

Following the Minister's decision to withdraw the ECC, the proponent submitted an appeal against this decision. The proponent based the appeal on the fact that the Minister did not provide them with a fair hearing for the appeal. As such, the judgement within the appeal hearing found that the Minister's decision to withdraw the ECC was not legal and it was set aside on 11 May 2018.

Furthermore, an appeal was submitted to the High Court by fishing companies against the mining licence issued to the proponent in 2011. It was then found by the judgement in the High Court on 30 June 2021 that the mining licence of the proponent was valid on the condition that they obtain a valid ECC prior to commencing with the proposed activities.

Whilst the EIA conducted was found to be scientifically credible and of high quality based on several independent reviews undertaken, it appears that there were some issues and concerns with regard to the public participation conducted during the assessment. Some of the issues of concern which relate to the public participation process of the EIA for the project are as follows:

- The degree of influence the public input can have on the outcome of the EIA was questioned.
- Brainstorming that happened between scientists and marine practitioners was not considered.
- Draft reports were submitted to the authorities without public review.
- The issues raised during the scoping phase were not included in the terms of reference for the EIA, as the specialist studies were commissioned prior to the completion of the scoping phase.
- Public participation undertaken during the scoping phase was deemed to be inadequate as public meetings were held only during the initial scoping phase and no follow up meetings prior to the submission of the draft scoping report.

- Comments provided during the public meetings were not addressed in the EIA report. These comments related to the following:
 - The potential impacts and mitigation measures related to collisions with seabirds that may result due to lighting at night.
 - The request for baseline studies to be conducted by the proponent which were to be included in the EIA.
 - The need for relevant specialist studies by suitably qualified professionals.
 - Relevant studies obtained from the authorities were not included in the report.
- Public participation was not completed for the EIA phase.
- The competence of the consultants conducting the public participation process was questioned (Midgley & Associates; Enviro Dynamics, 2012).

It should be noted, as previously mentioned, at the time that EIA was undertaken the EIA regulations had not been promulgated yet. Thus, public participation conducted within the EIA process was based on the Environmental Assessment Policy of Namibia. The Environmental Assessment Policy of Namibia does not offer any guidelines which relates to public participation. The EIA regulations at the time were in draft format. It can be seen from the public participation undertaken that the proponent did to some extent strive to implement the regulations which would have been promulgated under the new act. Thus, the EIA did meet some requirements although they were not legally implemented yet.

It can however still be questioned whether the legal requirements are sufficient in the case of the marine phosphate mining EIA as the proposed activities influence the whole country and consequently it can be argued that the project should have been more widely consulted. The EIA regulations which speak to public participation only outlines the minimum requirements for participation at a project level. These regulations thus stipulate how the proponent, and its

consultant must engage with I&APs in order to give them an opportunity to comment on or raise any issues with regard to the project during the EIA process. These regulations are thus applied to all projects that require an EIA ranging from small to large scale projects.

What makes this problematic in the case of large-scale projects is that proponents can stick to only implementing the minimum legal requirements for participation and have no reason to go beyond what is legally prescribed, even if it would mean that their participation process would be less effective. This results in participation being a mere “ticking of the boxes” exercise rather than an opportunity to involve all relevant sectors of the public which can add value to the process and ultimately to the project.

Within the EMA and its regulations, I&APs are defined as people, group of persons or organisations who are either interested or affected by an activity and also includes the organs of state who have jurisdiction over any aspect of the activity (Government of the Republic of Namibia, 2007). Identifying who these I&APs are who must be consulted during the EIA process is the responsibility of the EAP conducting the assessment, which can result in cases where not all who are interested and affected by a project are consulted, particularly in an instance where the project affects the entire country.

In light of the above, the researcher argues that there is a need for review of the legal requirements for participation to address the issues identified mentioned here, as well as others.

5.3.3 Case Study 3: Baynes Hydropower Project

5.3.3.1 Introduction

The Baynes Hydropower Project proposed the construction of a hydropower station to utilise the Kunene River to produce electricity for Namibia and Angola in order to address the future energy demands for both countries. An EIA was required as the construction of facilities for the generation and transmission of electricity is a listed activity in terms of EMA.

5.3.3.2 Locality

The Kunene River is 1 100 km long and is located on the northern border of Namibia and separates the country from Angola. The EIA for the proposed hydropower station focused on 340 km of the lower Kunene River. The project area to be assessed commenced at the Epupa falls and stretched to the Kunene River mouth. **Figure 5-8** below depicts the locality of the proposed area of influence.

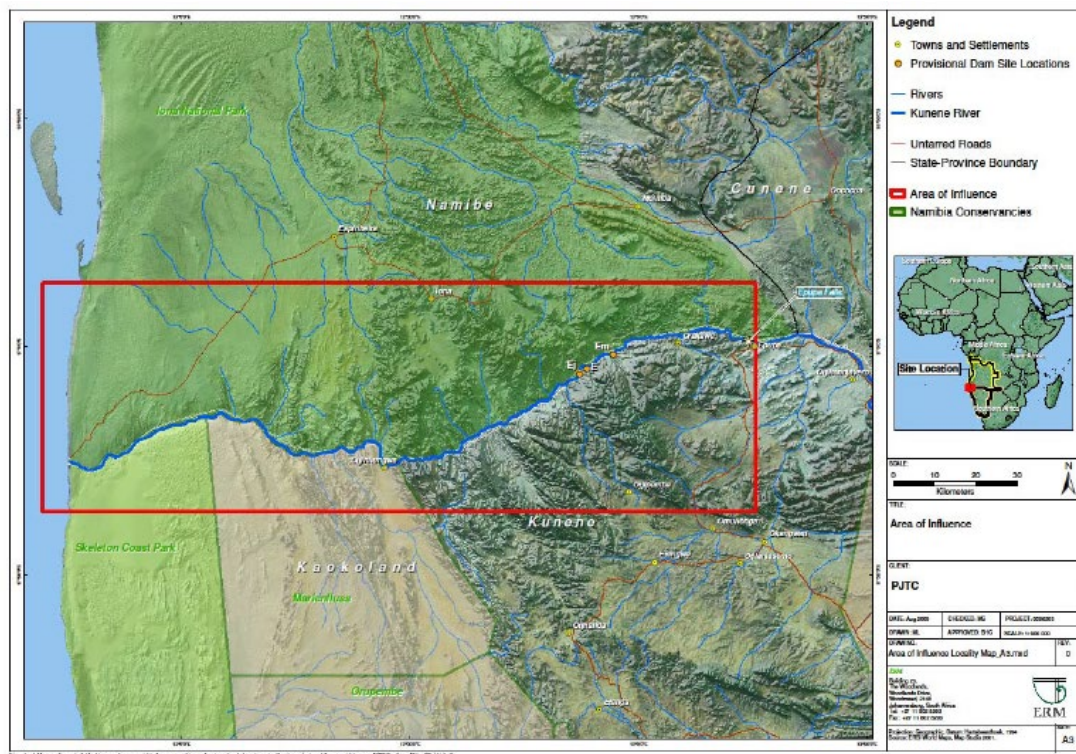


Figure 5-8: Locality map of proposed project area
(Source: Environmental Resource Management, 2009)

5.3.3.3 Project Description

Namibia imports more than half of its electricity from neighbouring countries, primarily from South Africa. Due to the scarcity of electricity within these neighbouring countries, the ability to continue to import a stable supply of electricity is becoming less likely. This, coupled with an increased local demand for electricity, necessitated the need for Namibia to evaluate local energy generation projects. The Baynes Hydropower project has long been tabled by

Namibia Power Corporation (Pty) Ltd (NamPower). A feasibility study was conducted in 1998 and as such an EIA was required in order to assess the environmental, social and health impacts of the proposed project.

The proposed project had seen strong resistance from the local people within the area, the Ovahimba. The Ovahimba are indigenous pastoralists who still live a very traditional, semi-nomadic lifestyle. During the 16th century the Ovahimba crossed the Kunene River from Angola to settle in Namibia (Living Culture Foundation of Namibia, 2021). There are about 50 000 Ovahimba which constitute about 2,5% of Namibia's population (Kamaku Consulting Services, 2011). Their financial autonomy is directly associated with their land and livestock (Mota, 2020).

The potential environmental concerns of the project include impacts on river flow, groundwater levels, sedimentation and erosion, water quality, vegetation loss, displacement of fauna, and potential inundation of homesteads, cattle posts, and grazing land (Environmental Resource Management, 2009). Social impacts that were identified included loss of land and natural resources, resettlement of inundated homesteads, disruption to social networks and cultural change, loss of cultural heritage, pressure on social infrastructure, impacts on community health such as spread of TB, HIV and malaria, impacts on fishing, and impacts on the local economy (Environmental Resource Management, 2009).

There was a perception that the proponent was trying to take advantage of the people and their resources as the proposed power station was planned to be constructed within the land inhabited by the Ovahimba. Furthermore, the Ovahimba believed they were not properly consulted during the process (New Era, 2015). The area proposed for the power station and dam is believed to house holy mountains and graves belonging to the Ovahimba ancestors (Sommer, 2014). Furthermore, a summary document of the EIA report indicated that effective consultation with the affected communities was not conducted for the EA process due to a number of reasons (MME, 1998:3). The project has resultantly been on hold since 2015. However, in 2018 the proponent commissioned a Gap Analysis review against the IFC Performance Standards

in order to update the EIA report for resubmission to the authorities for consideration. The updated EIA has not been submitted to MET to date. Nevertheless, the construction of the power plant is expected to commence after the end of 2022.

5.3.3.4 EIA and Public Participation Process

The Baynes EIA was conducted in line with the EMA of 2007 but was conducted prior to the promulgation of the Namibian EIA regulations of 2012. In addition to the local Namibian environmental legislation, the Baynes EIA had to comply with international standards to ensure international best practice. These included compliance with the IFC, “the Equator Principles, Convention on the Protection and Use of Transboundary Watercourses and International Lakes and National Laws and Guidelines” (Environmental Resource Management, 2009: 187).

Participation in the Baynes EIA commenced several years prior to the EIA being conducted. Participation formed part of the feasibility study which was undertaken for the project. However, the participation conducted during the feasibility study was criticised for being largely ineffective and not considerate of the local communities likely to be affected by the project (Environmental Resource Management, 2009: 183). It was reported that during the consultation the then Deputy Minister of Mines and Energy made a public claim which gave the local people the impression that the decision to build the dam had already been made (Legal Assistance Centre Namibia, 1998). As such the Ovahimba community felt that their input was irrelevant. This additionally led to mistrust and lack of confidence in the process from the Ovahimba side as they felt that their interests were ignored, they were treated disrespectfully and were consulted only after the fact (Environmental Resource Management, 2009).

Furthermore, the government failed to appoint a local liaison officer to facilitate communication between the government and the local communities. The following flaws with regard to the participation undertaken during the feasibility study were cited in the EIA report:

- A perception by the directly affected community that undue pressure was placed on them by the government to endorse the project.
- Disrespect towards the communities during consultations.
- Intimidation tactics used by the police to placate those that opposed the project (Environmental Resource Management, 2009: 192).

The comments received during the consultation which relate to public participation include:

- Access to information was poor and needs to be improved.
- A local contact should be identified who can assist with the distribution of information to the people.

In light of the above concerns which were raised during the initial consultation process during the feasibility study. A PCDP was developed prior to commencing with the public participation for the Baynes EIA to ensure that the participation proceeds in a culturally appropriate way (Environmental Resource Management, 2009:184). A local liaison officer was appointed for the duration of the EIA and acted as the local contact within the project area and facilitated communication between the EIA team and the local leadership and/or representatives.

A list of stakeholders was identified and compiled, comprising international, Angolan, and Namibian representatives to be consulted during the process. A BID was prepared in English and translated into Portuguese and was distributed within Angola and Namibia. The details of the public meetings were published in local newspapers in Namibia and Angola. Seven meetings were held in Angola and Namibia at the central, regional, and local levels.

The public meetings for the Baynes EIA were not merely an information providing session. It consisted of a card-writing workshop where participants could record their opinions regarding the potential negative and positive impacts that could result from the project. At the end of the meeting the cards were grouped into themes and discussed amongst the attendees.

The subject area is very remote and represents sparsely populated area, thus making travel for the local people very difficult. As such a budget was allocated for transport of beneficiaries to meetings, as well as for food at the meetings. Furthermore, the area lacks modern communication media and the dissemination of information to communities was challenging. A local liaison officer who resides within the area was appointed and was responsible for disseminating project information to the local communities on behalf of the project team. The project made provision for 5 local Ovahimba community members to attend the meetings in other localities, such as the public meeting held in Windhoek, to ensure that they are not excluded from attending all meetings.

The Ovahimba should be requested to provide their FPIC before the proposed development can proceed. As such the EIA outlines the international conventions and guidelines which relate to participation with indigenous communities such as the EP. As outlined within the EP “for projects with significant adverse impacts on affected communities, the process will ensure their free, prior and informed consultation and facilitate their informed participation as a means to establish, to the satisfaction of the EPFI whether a project has adequately incorporated affected communities’ concerns” (Equator Principles Association, 2020). The EP further emphasises the need for participation to be conducted in a culturally appropriate manner.

5.3.3.5 Discussion

The Baynes EIA presents a case in which the importance of obtaining FPIC can be seen. The initial consultation which were held during the feasibility study led to increased mistrust and non-acceptance of the project by the Ovahimba community. Once that trust is breached it is often very difficult to gain it back. This can be seen in the fact that although the proponent attempted within the EIA to amend the errors which were made in the consultations previously carried out, the Ovahimba community was still resistant to the proposed development.

In the researcher's experience proponents often only conduct participation to ensure that the minimum legal requirements are met. Proponents do not see the importance of participation and the knowledge and value that participants can add to the process and its outcomes. As such the participants do not have trust in the process as they are not considered as an essential contributor to the process. Which is what has transpired in this case.

In light of the above discussion, the researcher argues that there is a need to develop a policy relating to participation of indigenous communities, in line with the requirements of UNDRIP and EP. Such a policy should address issues such as:

- Culturally appropriate strategies of participation with indigenous communities;
- Requesting and obtaining FPIC from indigenous communities;
- Language barriers to participation and how to overcome them;
- Means of ensuring that communities understand the information regarding proposed projects for example translation of materials and reports into local languages;
- Understanding and respecting the lines of communication within indigenous communities.

5.3.4 Case Study 4: Encroacher Bush Biomass Power Project

5.3.4.1 Introduction

The need for alternative sources of energy has become important in Namibia due to the uncertainty of future power supply. Namibia imports more than 50% of its energy supply from neighbouring countries. As such renewable energy sources has increasingly been explored in Namibia in order to ensure a more stable supply of energy in the country.

NamPower implemented the Encroacher Bush Biomass Power Project as part of their generation projects which were implemented under their Corporate and Strategic Business Plan for the period 2019 to 2023. The project aims to align NamPower with the commitments under the energy and renewable energy policies of the country (Shiwaya, 2019).

An EIA was required due to the fact that the construction of a facility for the generation or transmission of electricity and the harvesting of bush are listed activities in terms of the EMA which may not be undertaken without an ECC. The project triggered the need for a full EIA to be conducted and an application to be submitted to MET for approval and issuing of the ECC.

5.3.4.2 Locality

The Biomass plant is proposed to be located in the Oshikoto Region approximately 6km from the town Tsumeb. Three sites were identified as depicted in **Figure 5-9**. However, the final site was yet to be selected.

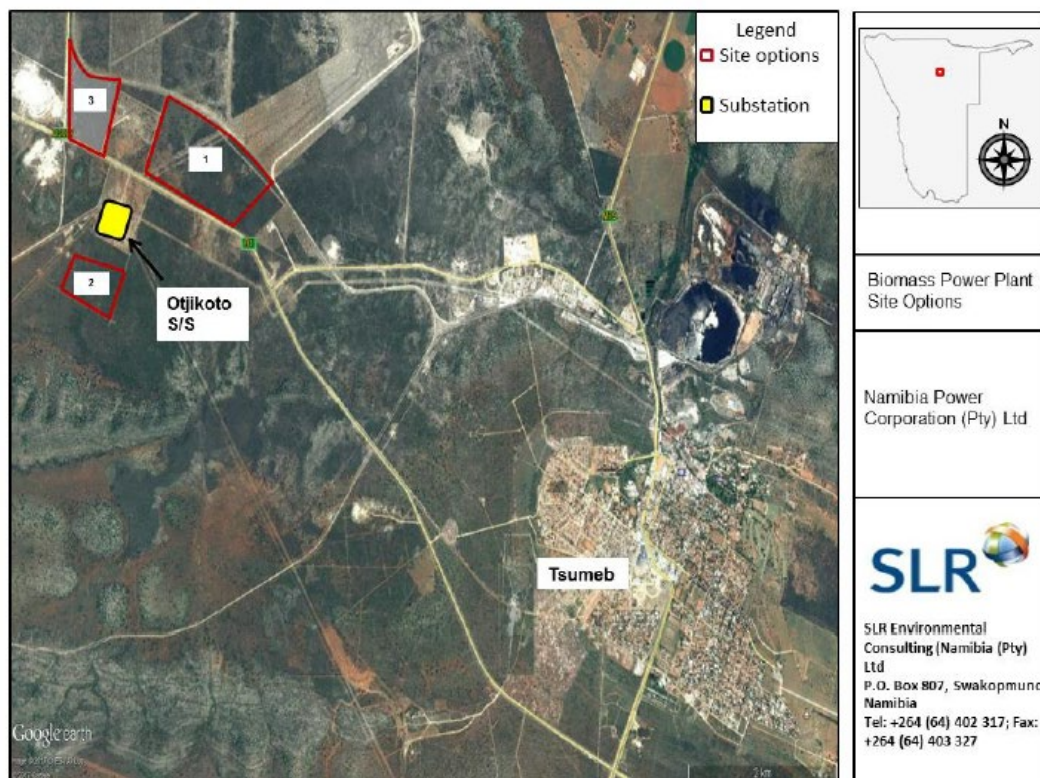


Figure 5-9: Three site options for Biomass Power Plant
(Source: SLR Environmental Consulting (Namibia), 2017:vii)

5.3.4.3 Project Description

The project involves the use of encroacher bush to generate electricity. Bush encroachment is defined as “the invasion and/or thickening of aggressive undesired woody species, resulting in an imbalance of the grass:bush ratio, a decrease in biodiversity, a decrease in carrying capacity and concomitant economic losses” (De Klerk, 2004:2). As such, woody plant species spread at a rapid rate at the expense of indigenous plant species thus reducing the productivity of the land. It is estimated that 26 million hectares of land in Namibia is affected by encroacher bush. According to NamPower (n.d.) “This imbalance in the proportion of grassland to bush leads to a deteriorating biodiversity, a low carrying capacity of the farmland and a decrease in the recharge of Namibia’s aquifers”.

Due to the abundance of encroacher bush and the need for energy generation in Namibia, the bush-to-energy scenario creates an economic opportunity from these two national problems. The proposed development therefore involves the construction and operation of a biomass power plant which will generate electricity through the combustion of encroacher bush found within the surrounding area of the proposed plant.

The power plant is expected to have a net electricity generating capacity of up to 40 megawatt (MW) and will be connected to the National grid at an existing substation via a new overhead power line of maximum 132 kilovolt (kV). The proposed plant is estimated to have a footprint of approximately 20 Hectare (ha) including storage.

5.3.4.4 The EIA and Public Participation Process

The Biomass EIA was conducted to comply with the EMA and the 2012 EIA regulations. Furthermore, due to the project potentially requiring international funding it was conducted to ensure compliance with international standards such as the IFC Performance Standards, European Investment Bank (EIB) Environmental and Social Principles and Standards, IFC’s Environmental, Health and Safety (EHS) Guidelines, World Bank’s Pollution Prevention and

Abatement Handbook (PPAH), World Bank Operational Directives and Guidelines (ODG) and the EP.

Consultation with authorities commenced prior to the scoping phase for the Biomass EIA as the pre-application meetings and consultations were held with the competent authorities prior to submitting the application for environmental clearance to the authority. The aim of the public participation for the project was to “ensure that I&APs were notified about the proposed project, given a reasonable opportunity to register on the project database and to provide comments” (SLR Environmental Consulting (Namibia), 2020:25).

Several consultation meetings were held for the Biomass project which included public, one-on-one and focus group meetings. The meetings were held in English which is the national language for the country. There seemed to be no need for translation due to the locality of the meetings being in towns in which most people are able to speak and understand English. Focus group meetings were held during the EIA phase with representatives of the marginalised groups located within the harvesting area, such as the San people.

The scoping and EIA reports for the Biomass EIA was made available for comment for a 30-day period, which in the researcher’s experience is not common practice in Namibia and is quite a long review period. As such it was noted by one of the I&APs in their comments that “We appreciate the time of one month given for evaluation. This is very welcome and quite unusual in Namibia” (SLR Environmental Consulting (Namibia), 2020).

The Biomass project focused on meetings a lot during the participation process by having various types of meetings with different stakeholders. The public meetings were held in the towns to allow the general public an opportunity to participate. One-on-one meetings were also held with affected farmers. Focus group meetings were held with the authorities.

Within the Biomass EIA it was mentioned that public participation aimed to provide an opportunity for I&APs to influence the project design (SLR Environmental Consulting (Namibia), 2017:2-3).

The project was initiated with an application for environmental clearance which was submitted to the competent authority which was MME in May 2017. The scoping phase followed during which the environmental and social impacts were identified and the terms of reference for the detailed EIA was established.

A public scoping phase was undertaken by the consultants. The aim of public scoping was to notify I&APs of the proposed project and provide an opportunity for I&APs to register on the database and provide initial comments (SLR Environmental Consulting (Namibia), 2017:viii). Public participation was undertaken as part of the EIA process. The consultants for the EIA were appointed by a foreign investment bank and thus needed to comply with international standards for executing the EIA and the relevant public participation process in addition to the Namibian legislation. The public participation process was undertaken as follows:

- The identification of I&APs which would need to be consulted for the proposed project.
- A meeting was held with MET and MME to notify them of the proposed project.
- BIDs were circulated to the identified I&APs.
- Notifications were placed in two local newspapers
- Site notices were affixed at the six sites.
- Pamphlets were distributed to immediate community members.
- Radio announcements were made to provide more information on the project and invite the public to the scheduled public meetings
- During the scoping phase, various public and focus group meetings were held in Gobabis, Windhoek, Okahandja, Otjiwarongo, Otavi and Tsumeb.
- The scoping report was made available electronically to the authorities and registered I&APs. Hard copies of the reports were also made

available in the various affected towns. Comments were requested for a period of 30 days.

All issues raised during the public participation process was summarised within the report. The comments were detailed within the issues and response report which was added as an annexure to the report.

After the public participation was undertaken, the scoping report was finalised and submitted to MME, and it was forwarded to MET for decision making. The EIA phase then commenced in March 2018. During the EIA phase detailed specialist studies were conducted in order to assess the environmental and social impacts of the proposed project. Further public consultations were held to present the findings of the EIA. The draft EIA report was made available for a period of 4 weeks (from 23 October 2020 to 20 November 2020). The availability of the report was published in three newspapers. The report was made available on the consultant's website. The venues at which the hard copies of the report were available included:

- Tsumeb Public Library;
- Tsumeb Municipality;
- National Library in Windhoek;
- NamPower Head Office.

Information sharing meetings with focus groups and key stakeholders were also held in Tsumeb during the review period of the EIA report, as follows:

- Focus group meetings with the relevant Regional Councils' Representatives;
- Focus group meetings with the Tsumeb Municipality representatives;
- Focus group meeting with representative bodies of the San and other marginalised groups within the harvesting area; and
- Focus Group meeting with representative Farmers Association(s) within the area.

The EIA report was then finalised and submitted to the competent authority for review and decision-making, after which the application was approved.

5.3.4.5 Discussion

The Biomass EIA presents a case in which wide consultation with various stakeholders allowed for project acceptance and resulted in limited resistance from affected communities.

Furthermore, offering longer review periods provided I&APs with sufficient time to review largely technical documents. By offering longer review periods, there were opportunities to consult with people who could explain the information to them, if they were unable to understand the technical information.

Within this case the San community was also affected. However, in contrast to the other two case studies (the oil and gas exploration and the Baynes project), the San community was accepting of the proposed project and even mentioned at one of the meetings that they were so thankful that they had been consulted, as in the past they were not consulted for some big projects which had commenced in the area. The consultations held with the San communities were held with the relevant San Traditional Authorities representing the communities, which is often considered the preferred means of communication within a traditional set-up. Within the EMP it is outlined that the project would need to develop strategies for FPIC engagement, and not assume that existing laws or practices in Namibia recognize or respect indigenous peoples or their rights, as such ensuring culturally appropriate means of consultation is essential in gaining the trust and acceptance from affected communities. This case study thus presents an outcome in which the participation process can be viewed as successful.

5.4 Data Analysis and Discussion of Findings

The focus of the research and the research goals and objectives relate to assessing the effectiveness of public participation undertaken within the EIA process, inter alia through the four case studies just discussed, as well as the inputs of the research respondents in relation to the questionnaires. One of the

objectives of the research was to assess the public participation process undertaken within the relevant case studies against the theoretical framework which was developed in Chapter 2.

This objective guided the thematic content analysis which was undertaken of the EIA reports and supporting documentation. In addition, questionnaires were administered to I&APs, government officials from MET as well as EAPs by asking questions related to the effectiveness of public participation processes undertaken within EIAs. The criteria which form the basis against which the effectiveness of the public participation processes will be analysed (as discussed in Chapter 2) includes the following:

- Timing of the participation
- Equal ability to participate
- Equal opportunity to participate
- Context appropriate participation
- Equal opportunity to influence
- Deliberation
- Equal access to Information
- Incorporation of public input in decision making
- Shared commitment
- Free, prior and informed consent
- Participation and justice
- Legal requirements

The section below presents the findings obtained from the thematic content analysis undertaken of the relevant documentation (EIA reports and appendices, newspaper articles, website articles etc.) for each case study, as well as the results from the questionnaires which were returned by 16 I&APs, 2 MEFT officials and 13 EAPs are additionally presented and discussed. The

themes or categories used for the content analysis were those identified as the most important issues through the literature review.

This section thus draws on the documentation available for each case study in combination with the responses obtained from the questionnaires. The section further outlines the findings and provides a discussion of the analysis of public participation against the effectiveness criteria developed in chapter 2 (Section 2.9).

5.4.1 The Importance of Public Participation in EIAs

It is important for the researcher to understand why public participation forms an essential part of the EIA process. According to Hughes (1998:2) public participation is important to ensure an effective EIA. EIAs without extensive participation leads to less influence in project planning and implementation and thus more negative environmental and social impacts (Hughes, 1998:2). From **Figure 5-10** it can be seen that most of the reasons presented as options to be selected to the respondents were believed to be important to motivate why public participation in EIAs is important. The majority of the EAP respondents (12 out of 13) believed that public participation is important in order to influence decision-making. Furthermore, 9 EAP respondents believed public participation was important in order to make the EIA process more effective. This was followed by 'legitimising the decision-making process', and 'enabling it to enhance the quality of the decision made'; each answer was found important by 8 of the EAP respondents.

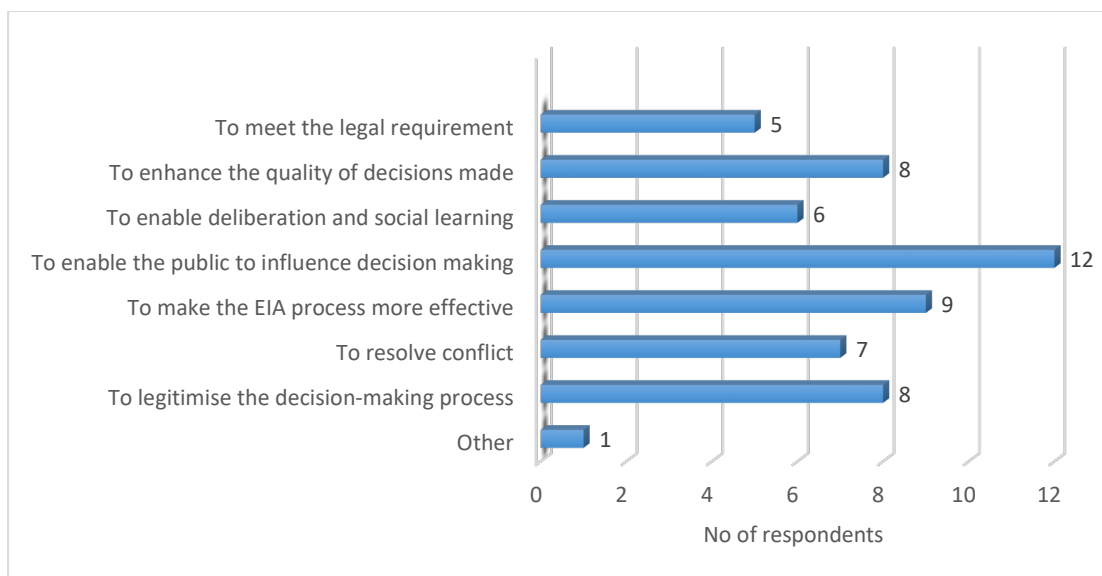


Figure 5-10: Responses by EAPs regarding why it is important to conduct public participation during EIAs

Moreover, when asked why it is important to conduct public participation during the EIA process, the answers provided by the EAP respondents can be grouped under the following rationales. The categories used were discussed in the literature review under par. 2.5:

Table 5-2: Responses from EAPs regarding the rationale for public participation in EIAs

Rationale for public participation	Category	Responses
Instrumental (also referred to as procedural)	To improve the EIA process.	Without public inputs in development activities, it may as well be unnecessary to undertake EIAs. Because what is the point; EAPs may well as just complete EIA reports and submit directly to MEFT/DEA Without public participation the exercise becomes a one-sided, potentially subjective activity
Normative	To include the public in decision-making.	Apart from public participation as a requirement of the EIA Regulations but to also make the affected (directly or indirectly)

Rationale for public participation	Category	Responses
	To enable the public to influence project outcomes.	members of the public feel included in the decision-making regarding their communities.
Substantive	To assist in improving decision-making.	Public inputs are crucial in EIA process, contribute to the effectiveness of decisions
Legalistic	To meet the legal requirements	Public participation as a requirement of the EIA Regulations

The MEFT officials however felt that making the EIA process more effective and meeting the legal requirement is the most important reasons to undertake public participation. As such the instrumental and legalistic rationales were most important to them.

Participation is experienced at varying levels, with some levels of participation allowing for more effective and meaningful participation than others. According to Arnstein (1969) the ultimate level of participation should be one in which participants have control of decision-making, thus empowering them within the process.

With regard to the level of participation of the public during public participation in EIAs in Namibia, the results show that only 3 out of the 13 EAP respondents believed that the public adequately participated in the EIA process as shown in **Figure 5-11** below. Even in such a small sample, it is significant that so few consultants who work with public participation in EIAs believe that the public is adequately involved in participation.

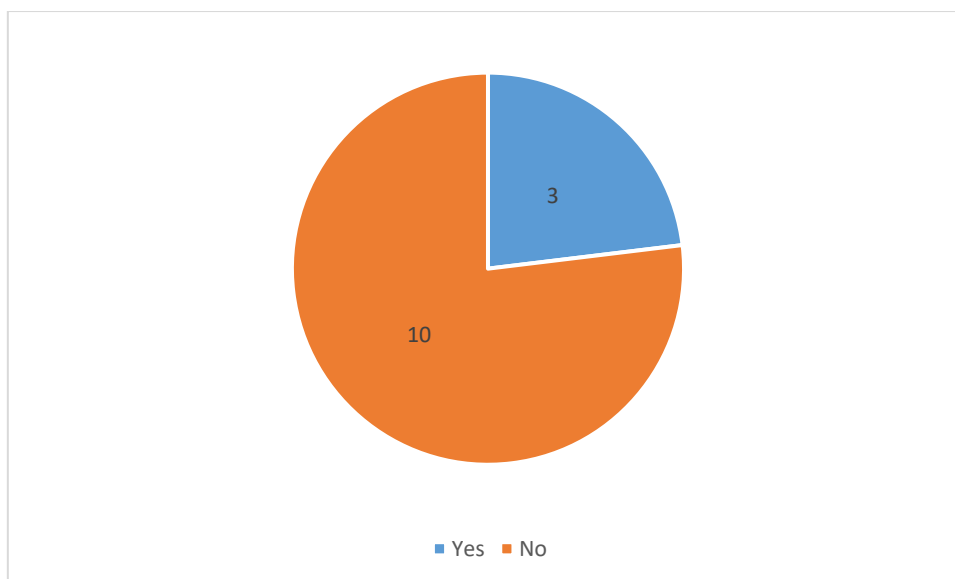


Figure 5-11: Responses by EAPs on whether the public adequately participated in the EIA process in Namibia

A summary is provided below for the motivations received from the EAP respondents who believed that the public did not adequately participate in the EIA process:

- *“Even though the public is engaged there is still poor public involvement. This is either due to poor attendance or a lack of engagement”* (EAP Respondent 1).
- *“Public participation is treated as a legal requirement and thus EAPs do not go beyond what is legally required to engage the public”* (EAP Respondent 2).
- *“The public often does not understand the information presented to them or they are not provided with enough information and can thus not contribute meaningfully to the process”* (EAP Respondent 3).
- *“The legal requirement does not allow for sufficient participation. EAPs are often also inexperienced in effective public participation”* (EAP Respondent 4).
- *“The legal requirements for public participation have room for improvement to allow improved participation”* (EAP Respondent 6).

- *“Public participation is undertaken merely as a legal requirement”* (EAP Respondent 7).
- *“There is no proper consultation done, or the public is not provided with sufficient time to participate”* (EAP Respondent 10).
- *“The public has lost faith in the participation process and thus do not participate”* (EAP Respondent 11).
- *“Legally required public participation methods often exclude certain population groups from participating”* (EAP Respondent 13).

In light of the above, it becomes clear that in practice different levels of participation as per Arnstein’s ladder is taking place. From the motivations given above it appears that the highest level which equates to empowerment is not the level of participation that is being achieved. Participation in the researcher’s experience more often equates to placation and consultation in terms of Arnstein’s ladder, in which no real influence in decision-making is taking place.

One of the MEFT officials indicated that not all participants have an equal opportunity to participate due to *“language barriers, some because of the project knowledge and others are being left out deliberately”*. The motivations above illustrate that many EAPs see the legal requirements as problematic, and also that capacity-building might be required for both EAPs and I&APs to improve the legitimacy of the participation process.

5.4.2 An Evaluation of Public Participation Process in EIA

The main goal of the research was to evaluate the public participation processes undertaken in the EIAs of the case studies against the effectiveness criteria developed in Chapter 2. Field data and the relevant documentation and EIA reports for the case studies were analysed and are discussed under each criterion in the sections that follow below.

5.4.2.1 Timing of Participation

Figure 5-12 below indicates the various stages at which I&APs were first informed of the EIA during the public participation process. **Figure 5-12** shows

that 6 out of the 16 I&APs reported that they became involved only after the first notification of the EIA process.

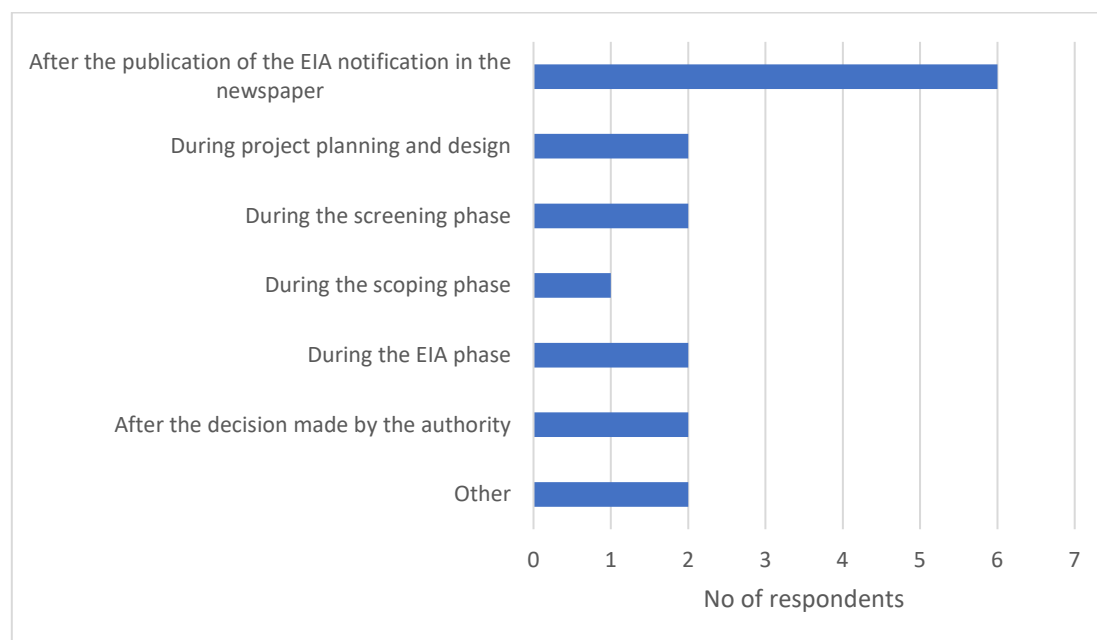


Figure 5-12: When I&APs received information regarding the EIA

The timing as to when people were first informed of the project in the EIA process is important as early notification allows participants the opportunity to participate early on and ideally throughout the process. Based on the researcher's experience I&APs are only notified during the scoping phase of the EIA process once project designs have already been completed. In case study 1 a participant expressed their wish that the participation process had commenced earlier, thus enabling them to receive the correct information for the intention of the project early on.

“We wished this information was available or presented earlier on as our communities have been misled whereby we identified the operation as an actual mining operation as opposed to an exploration drilling and proposed 2D Seismic Survey” (Risk-Based Solutions, 2021).

This is supported by Chess and Purcell (1999: 2691) who noted that participation should commence early and should thus be planned in advance, to allow for influence in design and decision-making of projects. In addition, Kapoor (2001:274) argues that in order to allow for meaningful participation

participants should participate throughout the entire process, from design through to execution of the project.

5.4.2.2 Equal Ability to Participate

Case studies 1, 3 and 4 included indigenous communities as possibly being affected by the proposed developments. In case study 1 the language used during the public participation process was questioned, as most of the communication with I&APs was conducted in English. Newspaper articles were published in English newspapers and meetings held with communities were conducted in English, with all presentation material being in English as well. Additionally, it was not mentioned in the EIA report whether a translator was used during the public meetings. This is problematic as many of the I&APs, particularly the communities that would be directly affected, are not able to understand English. Palerm (2000:587) holds that language barriers should not result in the exclusion of participants from being meaningfully engaged.

In case study 3 the illiteracy of the Ovahimba participants was raised as a concern as per the quote from the minutes of the public meeting below.

“...He again brought up the issue of illiteracy, requesting that concerns should therefore be raised verbally” (Environmental Resource Management, 2009).

Written submissions are often requested to have some form of record of the comments received. As such, meetings with I&APs become important in the case of illiterate participants, as they would then be better able to provide verbal submissions. However, in order to make a meaningful contribution, the information presented to them should be in a format and language that would enable them to understand.

5.4.2.3 Equal Opportunity to Participate

In order to effectively participate in the process participants should be afforded enough time to submit comments or concerns with regard to the project. In case study 1 it was evident that the participants were concerned that they were

not afforded enough time to provide feedback following the public meetings that were held. This was expressed in several instances where I&APs requested that the comment periods be extended:

“I am concerned about numerous conservation factors connected to this project. However, a more immediate concern is the fact that today, 29 Jan 2021, is the final date for the public to register their comments/objections...How do these meetings have any validity if they are being held after the EIA application cut-off date.”

“I add my voice to those requesting for an extension to the consultation process for this project.”

“Please extend the time for comment for a further 30 days given the impacts of the holiday season and complications caused by the Covid-19 pandemic.”

“My concerns deepened when I saw the call for objections that is required for the purposes of providing an ECC- with a very short time lapse between the public meetings (place and time still to be advised) and the deadline for objections” (Risk-Based Solutions, 2019).

In practice many EAPs however often extend the review periods to allow I&APs with more time, such as in case study 4 where 30 days were provided for I&APs to comment on the reports as opposed to the legislated 7 days. In case study 4 it was noted that ample time was provided for I&APs to review the draft reports made available to the public for review. One of I&APs noted in an email:

“We appreciate the time of one month given for evaluation. This is very welcome and quite unusual in Namibia” (SLR Environmental Consulting (Namibia), 2020).

The researcher thus contends that there is a need to consider adjusting the legislated timeframes offered for public review of EIA documents to allow I&APs ample time for review and providing comments. This is supported by the ECLAC (2018:92) which advocates for ample time to access and review the documentation so that meaningful contributions can be made by participants.

The appropriateness and accessibility of the meeting locations play a vital role in allowing participants a fair chance to participate in the process. In case study 1 a suggestion was made at one community meeting with regard to the location of future meetings to engage with the community. It was suggested to meet at an area within the community which is considered to be a “central area” between the communities, which would thus make it easier for the community members to travel.

The EAP respondents expressed that there are reasons why the public is not always provided an equal opportunity to participate. Respondent 2 indicated that sometimes the public does want to participate but due to limitations in the opportunities provided to express their views, they end up not participating. More than one respondent pointed to the fact that there are some groups within the public that are often excluded from being able to participate due to the strategies used for inviting the public to participate such as digital and print media which can only inform those members of the public who have access to these media, thus excluding those who do not. Respondent 9 also indicated that public meetings are often held during weekdays at times when people are at work and unable to attend.

EAP Respondent 3 expressed that within projects undertaken in marginalised communities the community members are often only consulted as a formality without acknowledging their lack of understanding regarding the project. This points to the need for capacity-building of communities in order to ensure that they understand the project and the technical information related to it. Furthermore, a meaningful participation process should aim at empowering community members and thus enable them to influence decision-making as per Arnstein’s ladder of participation (1969). If no effort is made to empower the participants and they are only being consulted and involved as a formality, then no transformation will occur.

5.4.2.4 Context Appropriate Participation

In case study 3, a PCDP was also developed for public participation to be undertaken during the EIA for the project. This plan was developed to ensure

that the most effective means of engagement are used in order to ensure that the affected parties, with particular emphasises on the indigenous populations, are effectively engaged. This was done after the ineffective participation which was undertaken during the feasibility study of the project. By recognising power differences within participation, the exclusion of certain participants can be avoided by introducing certain measures to ensure that representation of disadvantaged groups are in place from the start (Kapoor, 2001: 275).

Chess and Purcell (1999: 2691) note that modifying traditional means of public participation may lead to more successful participation. This includes, in cases where local communities will be most affected, conducting community meetings using alternative communication methods as opposed to formal public meetings with presentations. The PCDP “seeks to define a technically and culturally appropriate approach to and programme for public consultation and disclosure” (Environmental Resource Management, 2009). In case study 3 consideration was given to the cultural context by aiming to achieve the following:

- Effective management of cross-cultural issues;
- Ensuring that all who wish to participate are able to do so;
- Ensuring that there is adequate capacity within the directly affected communities to participate meaningfully;
- Ensuring that there are adequate resources within the directly affected communities to participate effectively; and
- Focusing on the correct consultation area (Environmental Resource Management, 2009).

The appointment of a local liaison officer in case study 3 aided in ensuring that communication proceeds through the correct channels and through a representative that is familiar with the local requirements for public participation. The liaison officer was also able to communicate in the local language to the community members thus ensuring that the information presented to them is understandable.

In case study 1 there was no specific plan outlined in terms of how the consultant will ensure that the participation is culturally appropriate. This is emphasised by a comment raised by an I&AP below:

“The Report fails to indicate that any meaningful consultation has taken place with indigenous/vulnerable/marginalised communities to understand their concerns and to assess impacts relating to heritage and culture” (Risk-Based Solutions, 2021).

The meetings with the communities were said to be arranged via the regional, local and traditional leaders who is then responsible for informing the local communities of the proposed activities. Doyle and Cariño (2013:18) assert that in communities where there are multiple levels of authority, engagement must follow through all levels of authority. According to an article written by Ossenbrink (2021), a representative from the Conservancy and Community Forest Association, and published on the Aljazeera web page, the consultant did not follow due process with regard to community engagement, the proponent only met with one of the three traditional authorities in the area and some were only informed after the drilling had already commenced.

5.4.2.5 Equal Opportunity to Influence

In case study 1 it was indicated by I&APs that the report and presentations included highly technical information which would be very difficult for lay people to understand. Tan (2021) reports that critics have indicated that the presentations were “overly complicated” and thus the information presented was not clear to the communities.

It was additionally reported that sufficient time for participation was not provided during the meetings. Due to the COVID-19 restrictions meetings were allowed to only have 50 attendants and were restricted to 2 hours. As such only 15 minutes were allowed for questions from participants. It was mentioned by one of the I&APs that these limitations which affected the participation process was not outlined in the EIA report:

“In its stakeholder consultation plan, the Report fails to acknowledge and adapt to the constraints on public gatherings caused by the current COVID-19 crisis” (Risk-Based Solutions, 2021).

In light of the above, participants were not afforded an equal opportunity to influence the project as no effort was made to ensure that they understood the highly technical information and they also did not have enough time to request clarification.

One of the MET respondents stated that *“some of the comments are being left out by the consultant with fears that it might influence the decision of the Department of Environmental Affairs”*, which if true can be very problematic and unethical. This is in conflict with what the IAP² core values outline public participation should be.

Moreover, an appropriate mix of participation methods is thus essential in ensuring that participants influence decision-making. As per the IAP² core values (2021) participation includes the promise that the contributions made by participants will influence the decisions made.

5.4.2.6 Equal Access to Information

In case study 1 there were comments raised with regard to the dissemination of information. It was alleged that project beneficiaries were obtaining information of the proposed project through the media rather than as a result of public participation via the project. One of the comments raised during a public meeting was as follows:

“The general public is quite concerned due to the circulation of information from various media channels highlighting the proposed Oil and Gas Exploration project will have adverse environmental impacts on the groundwater, the Kavango river banks and flora, can this be clarified” (Risk-Based Solutions, 2021).

Furthermore, concerns were expressed relating to the resistance by consultants in sharing information with I&APs. Upon a request by an I&AP to

gain access to the scoping and specialist reports for the proposed project, the consultant responded:

“The Draft Scoping Report has been provided to you and it is not for you to come back to me and demand reports and documents that have been cited. Many other documents have been reviewed as part of the EIA process for the proposed 2D seismic survey and I am under no obligations whatsoever to now send you all the documents that have been reviewed...”(Risk-Based Solutions, 2021).

It was furthermore noted by MET Respondent 1 that information may be purposefully withheld from I&APs in fear that they might jeopardize the implementation of the project. For participants to make significant contributions during public participation engagements, they need to be adequately informed. As a result, information regarding projects should be made freely available to I&APs and should not be withheld.

5.4.2.7 Participation through Deliberation

Public participation should not merely be an information sharing process but should allow for the exchange of opinions and ideas. Sinclair and Diduck (2016:3) argue that people need to be brought together to talk about and work together on the material being made available to them. As such, I&APs should be provided with timely responses on the comments they submit or raise during the process. When asked whether I&APs were frequently updated regarding the progress of the EIA, 7 out of 16 I&APs respondents indicated that they agreed or strongly agreed with the statement and similarly 7 out of 16 I&APs indicated that they disagreed or strongly disagreed with the statement as depicted in **Figure 5-13** below.

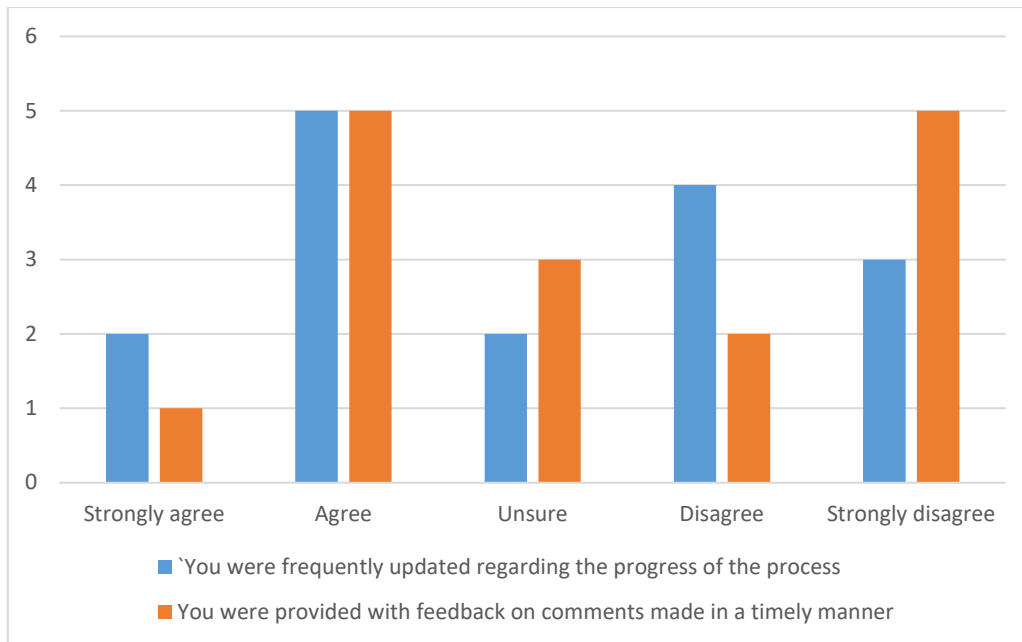


Figure 5-13: Responses by I&APs regarding deliberation

The I&AP responses in **Figure 5-14** below indicate that 6 out of 16 I&AP respondents indicated that I&APs were informed of the project and was provided with feedback as the EIA process developed, thus indicating that they were responded to during the process.

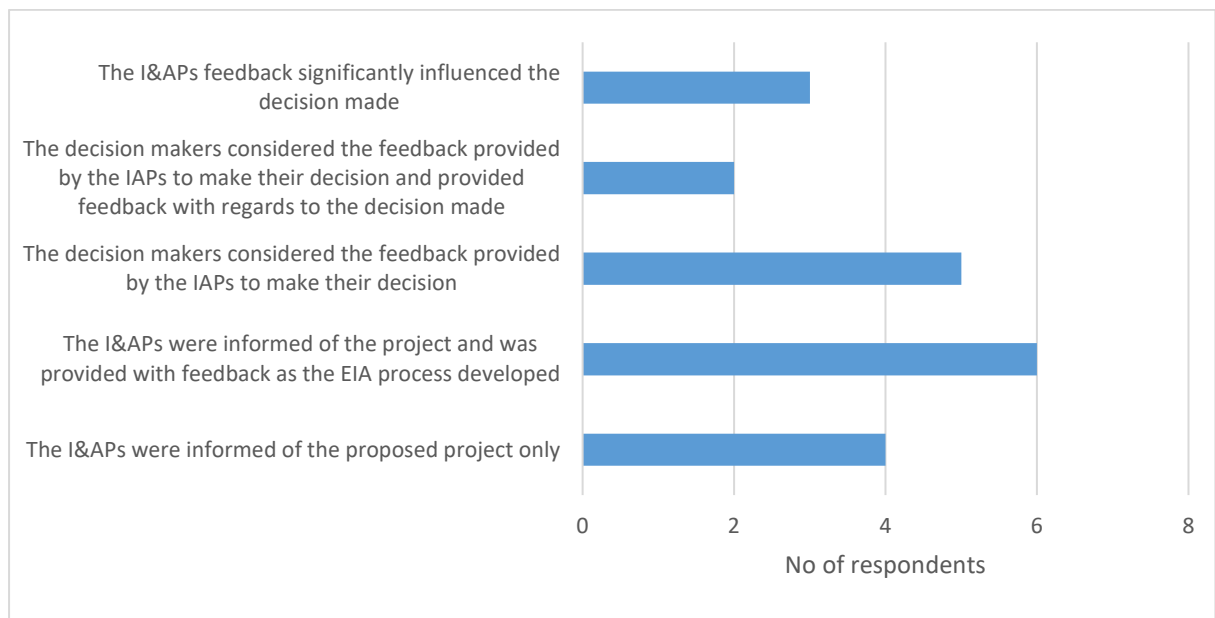


Figure 5-14: Responses by I&APs regarding the category of participation

5.4.2.8 Incorporation of Public Input in Decision-making

In case study 2 it was evident that comments raised during participation was not included in the final scoping report submitted to the authorities. This is supported by the quotes below:

“No mention has been made of the effects of the effect of ship lighting at night on seabirds (collision risk), as raised during the scoping phase, nor have any mitigating factors on this issue been outlined in either the specialist report or the Environmental Management Plan” (Namibia Marine Phosphate (Pty) Ltd, 2018).

“During public meeting it was specifically requested that a baseline study be conducted by the proponent – this was not done” (Namibia Marine Phosphate (Pty) Ltd, 2018).

“The deadline for public participation comments (on the scoping report) was on the 2 Dec 2011 and the draft EIA was handed in on the 13 January 2012. How would any additional raised concern or threat be investigated during those six weeks (especially during the festive season)” (Namibia Marine Phosphate (Pty) Ltd, 2018).

In case study 1 concerns were raised by I&APs with regard to whether their comments were included and addressed in the scoping report:

“An Environmental Impact Assessment (EIA) is incomplete until you had all questions from the Interested and Affected Parties (IAPs) answered and built into the EIA report. The EIA for the stratigraphic well drilling and seismic survey are incomplete because they haven’t had the questions raised and haven’t yet answered them. They need to be built into the final EIA with the list of questions and answers” (Risk-Based Solutions, 2021).

The final report submitted to the authorities did however include an IRR which included all comments received from the public, registered stakeholders, and community meetings during the period January to March 2021, including submissions made by stakeholders on the draft scoping report. The IRR was

drafted in a table format indicating the comments received and responses given as well as the corresponding chapter in the EIA/EMP in which the comment was addressed.

Figure 5-15 shows that 8 out of 13 EAP respondents believed that the comments expressed by the public are adequately considered during decision making, whereas 5 respondents disagreed. The reasons for disagreeing with the statement includes the following:

“I have participated in a number of projects as an I&AP where the comments were ignored” (Respondent 5).

“Public comments are ignored” (Respondent 6).

“...If comments are not well presented (for e.g., if they appear in appendices) it is hard for them to influence decision-making...” (Respondent 7).

“Not always, late submission of public comments are always excluded” (Respondent 10).

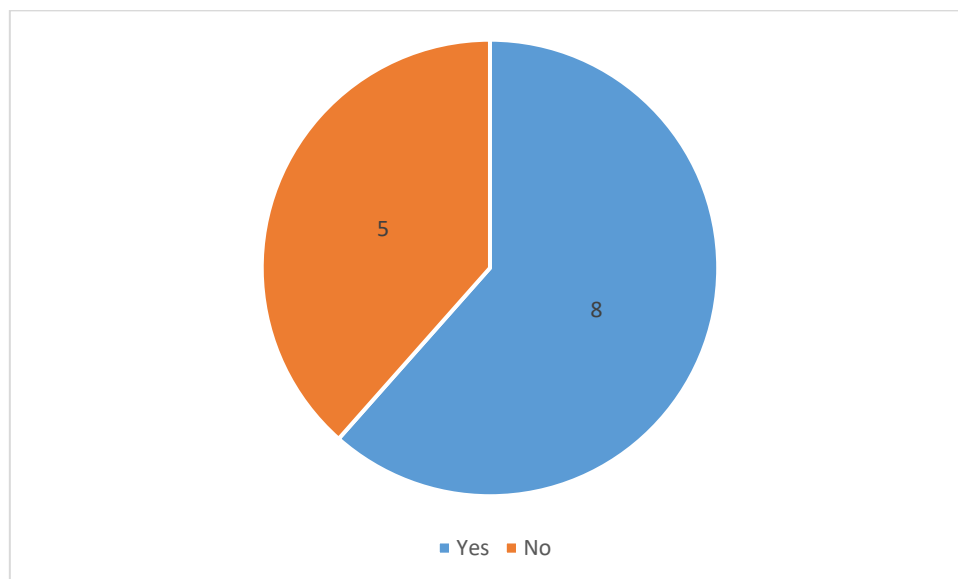


Figure 5-15: Responses by EAPs on whether comments received from the public are adequately considered during decision-making

5.4.2.9 Shared Commitment

Out of the 16 I&AP respondents, 12 outlined that it is important for the public to participate in the EIA process. Participation should aim to promote a common understanding between stakeholders and should foster “local ownership, commitment and accountability” (Kapoor, 2001:272). This becomes difficult in cases where communities are opposed to developments due to a lack of appropriate consultation such as in case study 3.

I&APs expressed various reasons as to why it was important for them to participate in the public participation process of a particular EIA. The reasons expressed can be categorised as follows: to ensure the protection for the environment, concern for the environment, to ensure legal compliance of the process, because they are interested in the project, to gain information related to potential impacts, to ensure effectiveness of the EIA process and to allow for informed decision-making by the authorities. The categories of reasons and a summary of the elaborations on these reasons are provided in **Table 5-3** below.

Table 5-3: IAP reasons for participating in the EIA process

Rationale	Theme	No of times mentioned	Summary of Explanations Provided
Normative	Environmental Protection	6	Protection of cultural and natural resources Pollution prevention Biodiversity protection Ensure mitigation of impacts General concern for the environment
	Interest/ Involvement	3	Personal interests Personal experiences shared
Substantive	Obtaining information	2	Information pertaining to potential impacts of the project Information regarding the technical aspects of the project

Rationale	Theme	No of times mentioned	Summary of Explanations Provided
	Allow informed decision-making	3	Concern with regard to decisions previously made by governments thus ensuring informed decisions are made by authorities Enhance the quality of decisions made
Instrumental	Effectiveness of EIA process	1	Improve the effectiveness of the EIA process
Legalistic	Legal compliance	1	Ensure compliance of process to legal requirements

5.4.2.10 *Free, Prior and Informed Consent*

As mentioned above, case studies 1, 3 and 4 all involved indigenous communities which were identified as being affected by the proposed projects. The participation undertaken in case study 1 was criticised publicly as no FPIC was requested or obtained from the San community.

Within case study 3 the initial consultation held with communities were criticised in that the process was not “culturally appropriate”. No community liaison was appointed and this made communication with the affected community difficult due to cultural and language barriers. Furthermore, the government had seemingly placed pressure on the communities to accept the project, which is against the principles of FPIC in which the participants should not be coerced or forced to accept the project in any way (UN, 2007). This additionally led to mistrust from the community which can be very difficult to regain once lost.

In case study 4 the San people were engaged in a focus group meeting. Within the meeting minutes it was noted by the representative that:

“We thank you for coming to speak to us because in the past we were never consulted, especially for some of the big projects in the area” (SLR Environmental Consulting (Namibia), 2020).

Although the San community in case study 4 were thankful for being consulted, it is not clear whether they were meaningfully engaged and/or whether their inputs were truly considered. However, within the EMP for the development a provision was outlined with regard to FPIC and upholding human rights and interests of vulnerable people and labour which is to be considered during the planning phase of the project.

5.4.2.11 Legal Requirements

The EAP respondents were asked their opinion on whether they believed that the current Namibian environmental legislation and policies in practice provide for effective, efficient, just and/or inclusive public participation. From **Figure 5-16**, 7 out of the 13 EAP respondents believed that the current legislation is effective, whereas 6 respondents believed that it is not.

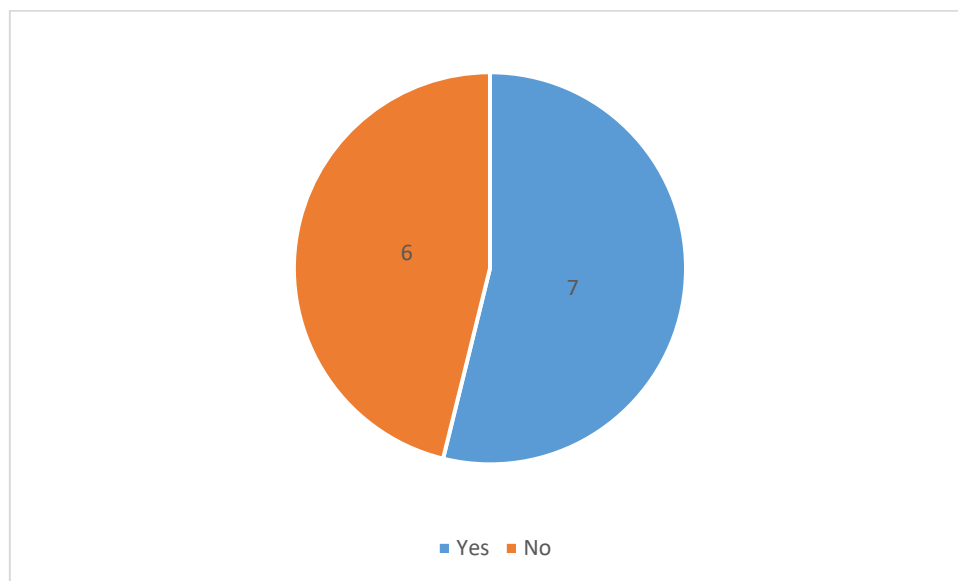


Figure 5-16: Responses by EAPs on effectiveness of current Namibian environmental legislation (EMA) in practice

Some of the reasons provided by the participants as to why the legislation does not allow for effective, efficient, just and/or inclusive public participation in practice, included the following:

- *“Other means of notifying less-fortunate members of the public are required to be included (such as radio notices and timely delivery of*

letters in local languages to community leaders who can then convey the message to the local affected community members)” (Respondent 2).

- *“It does not cater for the regulated body for Environmental Practitioners and this is a challenge that we currently have. Everyone is doing EIAs in Namibia”* (Respondent 3).
- *“They need to be updated to address the current situation brought about by the Covid-19 pandemic and 2007 is far back; certain components need to be revised to speak to the demands of the times”* (Respondent 4).
- *“Need to be revised. The EIA process not clearly defined e.g., time frame for scoping, terms of reference for scoping, EIA review guidelines are lacking”* (Respondent 11).
- *“The Act should be explicit and benchmarked to the South African NEMA, e.g., and other international best-practice tools”* (Respondent 12).

The above reasons point to the inadequacy of the public participation strategies, vagueness of the provisions and lack of implementation.

In all the case studies it is evident that the EIA processes and resultant public participation were mostly undertaken in compliance with the legal requirements in terms of the Namibian environmental law. The legal requirements and corresponding compliance for each case study are summarised in the table below. Case study 2 was not assessed below as it was conducted prior to the promulgation of the EIA regulations.

Table 5-4: Legal compliance of public participation for case studies

Legal requirement in terms of the Environmental Management Act No 7 of 2007 and EIA Regulations of 2012	Compliance Yes/No		
	Case study 1	Case study 3	Case study 4
Was a notice board affixed on site?	No	Not indicated in report	Yes

Legal requirement in terms of the Environmental Management Act No 7 of 2007 and EIA Regulations of 2012	Compliance Yes/No		
	Case study 1	Case study 3	Case study 4
<p>Was written notice given to -</p> <p>(i) the owners and occupiers of land adjacent to the site where the activity is or is to be undertaken or to any alternative site</p> <p>(ii) the local authority council, regional council, and traditional authority, as the case may be, in which the site or alternative site is situated;</p> <p>(iii) any other organ of state having jurisdiction in respect of any aspect of the activity?</p>	Yes	Yes	Yes
<p>Was the application advertised once a week for two consecutive weeks in at least two newspapers circulated widely in Namibia?</p>	Yes	Yes	Yes
<p>Was a register opened and maintained of all I&APs?</p>	Not included in report	Yes	Yes
<p>Were I&APs provided with an opportunity to comment on all documents submitted to the authority?</p>	Yes	Not indicated in the report	Yes
<p>Were all comments received from I&APs included and/or attached to the report submitted to the authorities?</p>	Yes	Yes	Yes
<p>Were I&APs provided an opportunity to appeal the decision of the authority?</p>	Not known	Not known	Not known

5.4.3 Improving the Public Participation Process

The IAP and EAP respondents were questioned as to what can be done to improve the public participation process. Some of the recommendations made by the respondents are outlined below:

- *“Depending on the level of education and interest each project has to the community, it is very important that the language is well understood by the targeted participant”* (IAP Respondent 3)
- *“Get more qualified people to do EIA's, the ones used by the biomass were very professional and took your appeals seriously. They also visited me personally to discuss my appeal in person. All projects have to be done on same way, also with things like sand mining, building new roads, putting up dams, etc. Everything involving Nature and discomfort for third party should be done on a EIA way”* (IAP Respondent 4)
- *“More advanced notice of meetings”* (IAP Respondent 5)
- *“Involve people at low level to understand the importance of EIAs and educate them also to have influence to those might have no chance or interest to attend. Also meetings should be translated in local languages”* (IAP Respondent 6).
- *“The public need to be educated on the important role that they can play in the EIA process”* (EAP Respondent 1).
- *“Other means of notifying the public about new EIAs should be explored. These include mandatory radio announcements in proposed projects in rural areas and effective communication through local community leaders (by using letters in a language that is understood by the local leaders and their communities)”* (EAP Respondent 2).
- *“Embrace the digital age and adapt to the new way of doing things and give the comments provided online the same weight as those that could be otherwise voiced in a public meeting. Include social media platforms for an even more transparent participation process and there is need to protect the proponent from abusive and hateful language and only allow for constructive criticism from the targeted I&APs and stakeholders who must register accordingly”* (EAP Respondent 4).

- *“There is a need to strengthen GRN's capacity to implement these policies more than there is a need to amend or formulate policies”* (EAP Respondent 7).

5.5 Summary

The chapter provided a discussion of the various environmental and related socio-economic issues faced in Namibia. It presented the details of the four case studies and also provided a discussion of the public participation processes undertaken for each case. The qualitative and supplementary quantitative results from the questionnaires administered to the I&APs, MET officials and EAPs, were presented. It discussed the importance of public participation within EIAs and then evaluated the public participation process undertaken within each case study against the effectiveness criteria developed in Chapter 2. The chapter concluded by considering what the research participants believed would be required in order to ensure that public participation in EIAs is effectively undertaken.

Chapter 6 Conclusions and Recommendations

6.1 Introduction

The purpose of the research was to evaluate the effectiveness of public participation in EIAs by drawing on case studies of EIAs undertaken in Namibia. Four case studies were used to achieve the aim of the research. This chapter presents the summary and conclusions of the research findings. A discussion is provided which aims to address the research objectives of the study.

6.2 Addressing the Research Objectives

The research objectives aimed to assist in evaluating the effectiveness of public participation in EIAs in Namibia. The research objectives were outlined and addressed as follows in the research and will be summarized in the sub-section to follow:

- To conceptualise effective public participation in EIAs through a literature review and develop a theoretical framework for assessing effective public participation in EIAs in Namibia – in Chapter 2.
- To assess the Namibian legal framework for public participation in EIAs to determine whether it is sufficient to ensure effective participation, by additionally comparing it to international treaties, declarations and other provisions – in Chapter 3.
- To evaluate the public participation process undertaken within relevant case studies in Namibia against the theoretical framework developed for effective public participation in EIAs, as well as the input of research respondents involved in EIA public participation processes – in Chapter 5.
- To provide recommendations for improving the performance of the public participation processes in EIAs in Namibia – in this chapter.

6.2.1 Research Objective 1

The first objective was to conduct a literature review in order to develop a theoretical framework which could be used to assess the effectiveness of public participation in EIAs in Namibia. A literature review was undertaken in Chapter 2 in which a theoretical overview of public participation was provided by addressing literature focusing on public participation and their role in EIAs.

The literature review explored the various definitions of public participation. It further evaluated the different levels of participation that can be undertaken. Effective public participation is a difficult concept to define. There are different reasons why participation is undertaken and thus varying motives for it. Participation entails various participants and is undertaken within different contexts, thus making it difficult to generalise. The role of public participation in EIAs was also explored, as well as why it is important to undertake participation in the EIA process.

Historical means of evaluating effective participation was also elaborated on. For some, public participation is effective if it has achieved a desired outcome, whilst for others its effectiveness is based on whether the process was correctly conducted. A lack of empirical research thus makes it difficult to pinpoint exactly what makes for effective participation. Effective participation has been found to be participation that is carefully planned, inclusive, efficient, and fair. It also allows for improved and more sustainable outcomes. As such effective participation incorporates and not merely includes participants' opinions and concerns in project design and decision-making.

There still exists uncertainty as to how public participation should be conducted in order to ensure that it is effective. This can be attributed to the lack of real-life evidence as well as lack of research on how to engage the public meaningfully. Researchers are either focusing on the process of the participation or on the desired outcome to determine whether the process is effective or not. However, it is found that a consideration of both the process and the outcome will produce the most effective result.

The literature review was used to conceptualise effective participation and to develop a theoretical framework consisting of various criteria which can be used to measure effective public participation. These criteria were then summarised in Table 2-3 and is used in Chapter 3 to assess the legislation, as well as in Chapter 5 to assess public participation as used in the four case studies.

6.2.2 Research Objective 2

The second research objective was to assess the Namibian legal framework for public participation in EIAs to determine whether it is sufficient to ensure effective participation, by additionally comparing it to international treaties, declarations and other provisions. Chapter 3 illustrates that the need for and importance of public participation is widely emphasised in international treaties and declarations (many signed and ratified by the Namibian government), as well as in Namibian legislation. The EMA, which is the national environmental legislation for Namibia, recognises the need for public participation in EIAs. It calls for opportunity to be provided for timeous participation with those interested and affected by a proposed project. It also calls for participation throughout the EIA process, thus implying that it should not only be a once off consultation. It furthermore outlines that the interests, needs and values of I&APs need to be considered in decision-making.

The public participation process to be followed during EIAs conducted in Namibia is outlined within the EIA regulations. It outlines the process to be followed and the strategies to be used to engage with I&APs. The legislated participation does not allow for early and ongoing participation. The public first becomes involved during the notification stage through an invitation in the newspaper, or written notification to affected and neighbouring landowners. This is often after project designs have been completed, thus leaving little room for I&APs to influence the project in any way. Public participation during project implementation is not provided for in the legislation and thus is not a legal requirement. Thus, there is a lack of ongoing participation in the project life cycle.

The strategies of engagement to ensure that indigenous and vulnerable groups are meaningfully engaged are not included in the legislation. It is essential, particularly in a country like Namibia which is culturally diverse, that these strategies be specifically outlined and should be in line with the UN Declaration on the Rights of Indigenous Peoples of 2007, as signed by Namibia (UN, 2007). As per the UNDRIP, FPIC must be obtained from affected communities particularly with the development, utilization or exploitation of mineral, water, and other resources. Consequently, FPIC and the strategies to obtain that must be included within the legislation related to public participation in EIAs.

The comment period allowed for written submission is only 7 days which allows for a very short time for an I&AP to be able to understand a highly technical document and provide meaningful input on it. Although in practice often used, public meetings are also not legislated and thus not a legal requirement, which is a problem within a country with many communities with low levels of education. These communities would benefit much more from face-to-face engagements rather than written forms of public participation.

The legislation is additionally not very clear as to at what level the comments received should be incorporated and considered into the EIA process. Provision is made for comments to be included and attached to the report, but there is no need to discuss the comments within the report, which is problematic. Therefore, the onus would be on the decision-maker to read the comments and consider them within the final decision. In light of the above it is clear that some adjustments are required to the Namibian legal framework to ensure effective participation.

6.2.3 Research Objective 3

The purpose of this objective was to assess the public participation process for each case study against the effectiveness criteria developed in the research, as well as the input of research respondents engaged in EIA public participation processes. Chapter 5 began by providing a description of each case study based on secondary data from various sources, including the EIA reports. The case studies included the oil and gas exploration in the Kavango Region, the

Marine Phosphate Mining project, the Baynes Hydropower project, and the Bush to Biomass project. Each case required an EIA to be undertaken prior to commencing and consequently required a public participation process to be undertaken as part of the EIA process.

Chapter 5 outlined the importance of public participation in EIAs, as well as presented the results of the level of participation of the public during public participation in EIAs in Namibia. From the questionnaires returned by the EAPs, only 3 out of 13 of the respondents believed that I&APs adequately participate in the EIA process. This points to the fact that the consultants who work with public participation in EIAs believe that the public is not adequately engaged in the participation process. Although it was a small sample it is still a significant observation.

Thereafter, the criteria generated in Chapter 2 were applied to assess the case studies, with the following outcomes, categorised according to the identified criteria:

6.2.3.1 Timing of Participation

The responses from the questionnaires revealed that participants become involved at a relatively late stage of the development i.e., only once the EIA process has commenced. As such it does not allow for influence in the design of the project, since most decisions with regard to design, location etc. has already been taken by then. This was also the case within the case studies, except for case study 3 in which participation commenced during the feasibility study of the project prior to the commencement of the EIA.

6.2.3.2 Equal Ability to Participate

It was found within case study 1 that language barriers were not considered within information dissemination during participation. Meetings did not have translators present and newspaper articles were all published in English. This made it difficult, particularly within rural and indigenous communities to be able to participate in the process. Furthermore, in case study 3 levels of literacy of

community members were not considered, as written media were the dominant form of communication of information within the EIA process.

6.2.3.3 Equal Opportunity to Participate

In case study 1 the comment periods provided to participants were found to be insufficient, which resulted in participants requesting more time to review reports made available to them. It was additionally revealed that some EAPs took initiative to extend the comment period beyond the legislated 7-day period to allow participants more time to provide comments, which was the case in case study 4 in which 30 days were provided for comments. The responses received from the EAPs revealed that some of the barriers to ensuring that people are afforded an equal opportunity to participate included ineffective methods used when inviting the public to participate, such as mainly using digital and print media in areas which are mostly rural. Having public meetings during work hours when most people are at work was also cited as excluding people from being able to participate.

The need for capacity-building within local communities was pointed out by an EAP respondent who mentioned that communities are often consulted only as a formality but no real effort is made to ensure that they understand what the project is about and why they are being consulted.

6.2.3.4 Context Appropriate Participation

Participation must consider the cultural context within which it is being undertaken. As such, careful planning and consideration must be undertaken particularly within projects where indigenous communities are to be consulted. In case study 3 a PCDP was developed which allowed for the planning of culturally appropriate means of participation after the ineffective participation which was undertaken during the feasibility study of the project. In contrast, in case study 1 there was no specific plan outlined in terms of how the consultant would ensure that the participation be culturally appropriate despite also affecting indigenous communities. The research thus revealed that by tailoring participation to the appropriate cultural context, by for example by adjusting the

strategies being used to consult communities', participation can be made more successful.

6.2.3.5 Equal Opportunity to Influence

In case study 1 highly technical information was presented to local community members. Furthermore, limited time was provided during public meetings for clarifications due to the COVID-19 restrictions at the time. Further opportunities to influence were not provided to the participants.

6.2.3.6 Access to Information

The dissemination of adequate information during the participation process is essential to allow participants to be informed in order to make meaningful contributions. The research indicated that poor access to information from the consultants conducting the process may result in the public obtaining misinformation from other platforms such as social media and newspapers, as was the case in case study 1. Furthermore, consultants should freely provide the public with information on the project upon their request and not as in some cases mentioned, withhold information.

6.2.3.7 Deliberation

Participation must be a two-way communication process of sharing ideas and opinions and not merely a one-way communication process. Although the research illustrated that timely feedback on submissions was made and progress of the process was provided to participants, it is not clear whether the participation processes were truly deliberative.

6.2.3.8 Incorporation of Public Input in Decision-Making

In case study 1 and 3 concerns were expressed with regard to whether the comments and submissions made by I&APs were included in the EIA reports. Furthermore, it illustrated that public comments were at times ignored and not presented well, as they are often included only as appendices to the EIA report, and not discussed by the EAP. From the I&APs responses there were some

which believed that in some instances comments made are not considered within decision-making.

6.2.3.9 Shared Commitment

The research revealed the various reasons cited as being important for participants to participate in the process, which included: to ensure the protection for the environment, to ensure legal compliance of the process, because they are interested in the project, to gain information related to potential impacts, to ensure the effectiveness of the EIA process and to allow for informed decision-making by the authorities. A shared understanding and common goal of participation are also required to ensure that participation is successful.

6.2.3.10 Free Prior and Informed Consent

Case studies 1, 3 and 4 all involved indigenous communities which were identified as being affected by the proposed projects. In case study 1 no FPIC was sought or obtained from the indigenous communities and as such the project was criticised by the public. In case study 3 the initial consultations undertaken during the feasibility study were criticised as not being sufficient and not culturally appropriate. In case study 4 the affected indigenous community was consulted and provision was made in the EMP to obtain FPIC and consider their rights during project planning. The research thus points to the need to engage indigenous communities in a culturally appropriate manner. It also revealed that FPIC is often not obtained for projects affecting indigenous communities, which results in resistance by communities to projects.

6.2.3.11 Legal Requirements

Public participation is a legal process and as such should be followed and executed as per the requirements in terms of the law. Whilst all cases were found to follow the legal requirements for participation, the research revealed that there are some gaps within the legislation which need to be filled in order to allow for more effective public participation.

The gaps in the legislation cited by the EAP respondents pointed to the inadequacy of the public participation strategies, vagueness of the provisions and lack of implementation.

6.2.4 Research Objective 4

Research objective four states that recommendations for improving the performance of the public participation process in EIAs in Namibia will be provided. The recommendations based on the research are discussed below in section 6.3.

6.3 Recommendations

The following recommendations are suggested to improve public participation in Namibia's EIA processes:

- It is necessary to review the EIA legislation and regulations with regard to the provisions pertaining to public participation to ensure that they allow for effective participation as per the criteria required for ensuring effective participation.
- The legislation and regulations should clearly outline the participation process to be undertaken within each phase of the EIA process i.e., scoping, detailed assessment, and monitoring and evaluation of implementation.
- Provisions within the legislation and regulations should also be made prescriptive as to the different participation requirements for small-scale and large-scale projects. Large-scale projects need to be more widely consulted than small scale projects which would have localised and less significant impacts.
- Provisions within the legislation and regulations should provide an appropriate and context specific mix of public participation strategies for EIAs in Namibia.

- Adjustment is required of the document review periods from the current very short 7 days provided for. In South Africa the scoping report must be subjected to a public participation process of at least 30 days, and it is recommended that this time period be followed in Namibia.
- There should be stricter provisions within the legislation that relate to the consideration and incorporation of comments made during participation and the degree to which they are considered in decision-making. It should *inter alia* be required that all comments and the suggested manner in which they will be addressed, be discussed in the EIA Report.
- The development of a guideline document is recommended to support the legislation and fill the gaps within the legislation pertaining to the public participation process, which would serve as a best practice guideline to be followed. The criteria for effective participation developed in Chapter 2 of this study (in **Table 2-3**) can be used as the framework for developing such guidelines.
- Develop guidelines or regulations which can be implemented particularly with regard to participation of indigenous communities. These guidelines or regulations should, at a minimum, address the following issues:
 - Addressing the need for culturally appropriate participation, which include translations of documents into languages accessible to communities, as well as appropriate strategies, such as meetings.
 - Requesting and obtaining FPIC prior to project implementation in accordance with UNDRIP.
 - Incorporating the provisions within the UN Declaration on the Rights of Indigenous Peoples of 2007 (which Namibia is a signatory to) into the EIA process.
 - Prescribing how ongoing communication will be facilitated with indigenous communities during project implementation.

- Providing for capacity-building of communities during participation to improve their understanding of the project, the process and what is expected of them.

This chapter concludes the research, by showing how each of the research objectives were achieved. A theoretical framework was developed for what effective participation would entail. This framework was then used to evaluate the Namibian legal framework, as well as four case studies of participation in EIAs. Shortcomings were identified in the participation methods, strategies and processes and recommendations made to address these shortcomings.

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Annexures

Annexure A: Questionnaires

Annexure B: Informed Consent Form

Annexure C: Ethical Clearance Letter

Annexure D: Approval letter from the Ministry of Environment, Forestry and
Tourism

Annexure A: Questionnaires

MEFT Questionnaire

1. Do you think public participation is important in EIAs?

Yes	No
-----	----

2. Why is it important to have public participation in EIAs?

		SELECT RELEVANT ANSWERS
1	To legitimise the decision-making process	
2	To resolve conflict	
3	To make the EIA process more effective	
4	Enable the public to influence decision-making	
5	To enable deliberation and social learning	
6	Enhance the quality of decisions made	
7	To meet the legal requirement	
8	Other: Please expand	
9	Other: Please expand	

3. Motivate your answer to question 2 above

4. Do you think that the public is adequately involved in the EIA process in Namibia?

Yes	No
-----	----

5. Motivate your answer to question 4 above

6. Do you feel that the various groups that make up the public are provided an equal opportunity to participate in the EIA process?

Yes	No
-----	----

7. Motivate your answer to question 6 above

8. Do you feel that the timing of the participation (e.g. comment periods, timing of notifications etc.) is adequate to ensure that the public is effectively involved in the EIA process?

Yes	No
-----	----

9. Please elaborate on your answer to question 8 above.

10. Do you think that the public participation strategies used (e.g. public meetings, newspaper adverts, formal letters, site notices etc.) are adequate to ensure the public is effectively informed and involved in the EIA process?

Yes	No
-----	----

11. Please elaborate on your answer to question 10 above.

12. Do you think that the public is provided with enough information to make a meaningful contribution to the EIA process?

Yes	No
-----	----

13. Please elaborate on your answer to question 12 above.

14. What do you think public participation adds to the EIA process and decision-making?

15. What do you think the role of the public in the EIA process is (or should be)?

16. Do you think the public understands their role in the EIA process?

Yes	No
-----	----

17. Please elaborate on your answer to question 16 above.

18. Do you feel that public comments expressed during the EIA process is adequately considered during decision-making?

Yes	No
-----	----

19. Please elaborate on your answer to question 18 above.

20. There is a view that public participation in EIAs is often not conducted effectively. Do you have any comments on this viewpoint?

21. What do you think are the challenges faced in ensuring an effective, efficient, just and/or inclusive public participation process in EIA?

22. Do you feel that the current Namibian environmental legislation (EMA, 2007) and regulations and policies provide for effective, efficient, just and/or inclusive public participation in practice?

Yes	No
-----	----

23. Please elaborate on your answer to question 22 above.

24. Do you think policy changes are needed for more effective, efficient, just and/or inclusive public participation, and if so, what would you suggest?

25. Please describe the internal review process for EIA review prior to decision-making.

26. Is there a division within MET that specifically deals with public participation? Please elaborate,

27. Who within the DEA reviews the public participation documentation?

28. Have they received formal training on public participation? Please elaborate.

29. Is there a prescribed checklist to evaluate the public participation conducted within an EIA?

Yes	No
-----	----

30. Please elaborate on your answer to question 29 above.

31. Do you review the following when reviewing an EIA?

a. Was the public participation process inclusive and were the various groups of the public provided with an equal opportunity to participate in the EIA process?

Yes	No
-----	----

b. Was the timing of the participation adequate to ensure that the public is adequately and efficiently involved in the process?

Yes	No
-----	----

c. Were the public participation strategies used adequate to ensure that the public was widely and effectively informed and involved in the process?

Yes	No
-----	----

d. Was the public provided with all the necessary information to make a meaningful contribution to the process?

Yes	No
-----	----

e. Did the level of participation in EIAs enable the public to meaningfully contribute to the outcome of the EIA?

Yes	No
-----	----

f. Did the ability of the public participation process add to the EIA and decision-making?

Yes	No
-----	----

g. Was the extent to which public comments were expressed during the EIA process incorporated within the EIA report?

Yes	No
-----	----

32. Do you think the current methods for reviewing public participation in EIA are effective to ensure public participation influenced decision-making?

Yes	No
-----	----

33. Motivate your answer to question 32 above.

EAP Questionnaire

1. Do you think public participation is important in EIAs?

Yes	No
-----	----

2. Why is it important to have public participation in EIAs?

		SELECT AS MANY AS RELEVANT
1	To legitimise the decision-making process	
2	To resolve conflict	
3	To make the EIA process more effective	
4	Enable the public to influence decision-making	
5	To enable deliberation and social learning	
6	Enhance the quality of decisions made	
7	To meet the legal requirement	
8	Other: Please expand	
9	Other: Please expand	

3. Motivate your answer to question 2 above

4. Do you feel that the public is adequately involved in the EIA process in Namibia?

Yes	No
-----	----

5. Motivate your answer to question 4 above

6. Do you feel that the various groups that make up the public are provided an equal opportunity to participate in the EIA process?

Yes	No
-----	----

7. Please elaborate on your answer to question 6 above.

8. Do you feel that the timing of the participation (e.g. commenting periods, timing of notifications, etc.) is adequate to ensure that the public is effectively involved in the EIA process?

Yes	No
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9. Please elaborate

10. Do you think that the public participation strategies used (e.g. public meetings, newspaper adverts, formal letters, site notices etc.) are adequate to ensure the public is effectively informed and involved in the EIA process?

Yes	No
-----	----

11. Please elaborate

12. Do you think that the public is provided with enough information to make a meaningful contribution to the EIA process?

Yes	No
-----	----

13. Please elaborate

14. What do you think public participation adds to the EIA process and decision-making?

15. What do you think is the role of the public in the EIA process?

16. Do you think the public understands their role in the EIA process?

Yes	No
-----	----

17. Please elaborate on your answer to question 16 above.

18. Do you feel that public comments expressed during the EIA process is adequately considered during decision-making?

Yes	No
-----	----

19. Please elaborate on your answer to question 18 above.

20. There is a view that public participation in EIAs is often not conducted effectively. Do you have any comment on this viewpoint?

21. What do you think are the challenges faced in ensuring an effective, efficient, just and/or inclusive public participation process in EIA?

22. Do you feel that the current Namibian environmental legislation (EMA, 2007) and regulations and policies provide for effective, efficient, just and/or inclusive public participation in practice?

Yes	No
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23. Please elaborate on your answer to question 22 above.

24. Do you think policy changes are needed for more effective, efficient, just and/or inclusive public participation, and if so, what would you suggest?

IAP Questionnaire

Part A: Personal Information: Select one or more of the following by making a cross in the relevant boxes.

1. Gender

1	Male	
2	Female	

2. Highest Qualification achieved

1	No qualification	
2	Primary School	
3	Grade 12	
4	Certificate/Diploma	
5	Bachelor's Degree	
6	Post-graduate degree (Honours, Masters, PHD)	
7	Other (specify)	

3. Employment

1	Self-employed/Business Owner	
2	Unemployed	
3	Full-time employment	
4	Part-time employment	
5	Student	
6	Pensioner	
7	Other (specify)	

Part B: Participation in EIA

1. Did you participate in the EIA for the project? Yes/No

1	Yes	
2	No	

2. How did you find out about the project?

1	A public notice in the newspaper	
2	A public notice displayed in a public venue	
3	A radio announcement	
4	Television announcement	
5	Community gatherings	
6	Received a letter directly from the EAP	
7	Other (specify)	
8	Other (specify)	

3. How did you participate in the process?

1	I attended a public meeting	
2	I submitted written comments to the EAP/Proponent	
4	I provided comment telephonically	
4	Other (specify)	

5	Other (specify)	
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4. Would you have wanted an opportunity to participate in the EIA process in any other way?

1	Yes	
2	No	

5. If yes, in what way would you have wanted to participate?

6. Why is it important to have public participation in EIAs? Select as many as relevant.

1	To legitimise the decision-making process	
2	To resolve conflict	
3	To make the EIA process more effective	
4	Enable the public to influence decision-making	
5	To enable deliberation and social learning	
6	Enhance the quality of decisions made	
7	To meet the legal requirement	
8	Other	

7. Why was it important to you to participate in the EIA for the project?

8. When did you receive information regarding the EIA?

1	After the publication of the EIA notification in the newspaper	
2	During project planning and design	
3	During the screening phase	
4	During the scoping phase	
5	During the EIA phase	
6	After the decision made by the authority	
7	Other	

9. Did the information provided during the EIA process enable you to meaningfully contribute to the process?

Yes	1
No	2

10. Please elaborate on your answer above.

11. Please indicate your level of agreement with the following statements

Strongly agree=1

Agree=2

Unsure=3

Disagree=4

Strongly disagree=5

	Strongly agree	Agree	Unsure	Disagree	Strongly disagree
Timing of participation					
You were consulted early during project planning and design	1	2	3	4	5
You were allowed to be involved throughout the EIA process	1	2	3	4	5
You were engaged to be involved during the implementation of the project	1	2	3	4	5
Equal opportunity to participate					
Enough time was provided to review the information provided and to submit comments	1	2	3	4	5
Adequate opportunities were provided for you to participate	1	2	3	4	5

The timing of the meetings was convenient	1	2	3	4	5
The venue for the meetings was accessible and convenient	1	2	3	4	5
The language used to communicate during the meetings was easily understood	1	2	3	4	5
Equal opportunity to influence					
The information provided was easily understandable	1	2	3	4	5
The participants were encouraged to express their opinions	1	2	3	4	5
The participants could express their values and opinions freely	1	2	3	4	5
Opportunity was provided to include those unable to participate e.g., illiterate or disabled people	1	2	3	4	5
Shared commitment					
It is important for the public to be involved in the EIA process for projects	1	2	3	4	5
Deliberation					
You were frequently updated regarding the progress of the process	1	2	3	4	5
You were provided with feedback on comments made in a timely manner	1	2	3	4	5
Influence on decision making					

Your comments were incorporated into the EIA document submitted to the authorities	1	2	3	4	5
Access to information					
The need and purpose of the project was clearly stated when the EIA process commenced	1	2	3	4	5
Adequate information was provided throughout the process	1	2	3	4	5
The public was granted access to all relevant information regarding the project	1	2	3	4	5

12. What were your expectations for public participation in the EIA process?

13. Were your expectations met during the EIA process?

1	Yes	
2	No	

14. Motivate your answer to question 13 above.

15. Do you agree that public participation allows for the influencing of decisions made by the authorities?

1	Yes	
2	No	

16. Under which category below would you place public participation undertaken for the EIA?

1	The I&APs were informed of the proposed project only	
2	The I&APs were informed of the project and was provided with feedback as the EIA process developed	
3	The decision-makers considered the feedback provided by the IAPs to make their decision	
4	The decision-makers considered the feedback provided by the IAPs to make their decision and provided feedback with regard to the decision made	
5	The I&APs feedback significantly influenced the decision made	

17. How do you think the public participation in EIAs can possibly be improved?

Annexure B: Informed Consent Form



UNIVERSITEIT • STELLENBOSCH • UNIVERSITY
jou kennisvennoot • your knowledge partner

STELLENBOSCH UNIVERSITY CONSENT TO PARTICIPATE IN RESEARCH

You are invited to take part in a study conducted by Stephanie Junitha Strauss from the School of Public Leadership at Stellenbosch University. You were approached as a possible participant because of your profession as an Environmental Assessment Practitioner in Namibia.

1. PURPOSE OF THE STUDY

The study aims to evaluate the effectiveness of public participation within the Environmental Impact Assessment (EIA) Process. Public participation forms an essential part of the EIA process as it aims to inform the Ministry of Environment and Tourism decision making and additionally allows those who are interested and affected by a decision to be a part of the process and ultimately influence the decision. This study aims to evaluate the effectiveness of public participation in EIA in Namibia by looking at relevant Namibian case studies.

2. WHAT WILL BE ASKED OF ME?

If you agree to take part in this study, you will be asked to answer questions that relate to the effectiveness of public participation in EIA in Namibia in general. You will be asked to draw from your experience when conducting public participation for the EIAs in Namibia. The questions will be formulated in a questionnaire which will be distributed to you electronically which you will have to complete and return to the researcher. The results obtained from the questionnaire will be analysed and presented in the final thesis document to be submitted to the University of Stellenbosch in partial fulfilment of the Master of Philosophy in Environmental Management.

3. POSSIBLE RISKS AND DISCOMFORTS

Participants may experience inconvenience due to the time needed to complete the questionnaire. It is anticipated that it will take approximately 15-20 minutes to complete the questionnaire. The participant may feel discomfort when expressing their opinions. However, all responses are confidential and will be treated as such. No personal information will be requested from participants that can identify them at any time. Specific procedures outlined in Section 6 will be used to protect confidentiality of participants during the research.

4. POSSIBLE BENEFITS TO PARTICIPANTS AND/OR TO THE SOCIETY

Participants will not benefit directly in any way from the intended research. The research aims to evaluate the public participation process in EIA such that recommendations can be provided in order to improve the process in practice.

5. PAYMENT FOR PARTICIPATION

Participants will not receive any payment for costs incurred due to their participation in the research.

6. PROTECTION OF YOUR INFORMATION, CONFIDENTIALITY AND IDENTITY

In addition to the research being anonymous, any information you share with the researcher during this study and that could possibly identify you as a participant will be protected. This will be done by storing data on a private computer. The consent forms returned to the researcher as well as the completed questionnaire and email addresses will be kept separate so as to allow the participants information to remain anonymous. Access to the data will only be available to the researcher and their supervisor and the examiner if required. At no point will you be asked to identify yourself when answering the questions. Should the information need to be shared in future for any reason permission would have to be obtained from the participant prior to releasing the information. The participant would have the option to decline the sharing of the information at that time.

7. PARTICIPATION AND WITHDRAWAL

You can choose whether to be in this study or not. If you agree to take part in this study, you may withdraw at any time without any consequence. You may also refuse to answer any questions you don't want to answer and still remain in the study. The researcher may withdraw you from this study if the participant does not answer any questions or returns the questionnaire unanswered.

8. RESEARCHERS' CONTACT INFORMATION

If you have any questions or concerns about this study, please feel free to contact Stephanie Strauss at straussresearch397@gmail.com and/or the supervisor Anneke Muller at

9. RIGHTS OF RESEARCH PARTICIPANTS

You may withdraw your consent at any time and discontinue participation without penalty. You are not waiving any legal claims, rights or remedies because of your participation in this research study. If you have questions regarding your rights as a research participant, contact Ms Maléne Fouché [] at the Division for Research Development.

DECLARATION OF CONSENT BY THE PARTICIPANT

As the participant I confirm that:

- I have read the above information and it is written in a language that I am comfortable with.
- I have had a chance to ask questions and all my questions have been answered.
- All issues related to privacy, and the confidentiality and use of the information I provide, have been explained.

By signing below, I _____ (*name of participant*) agree to take part in this research study, as conducted by Stephanie Strauss.

Signature of Participant

Date

DECLARATION BY THE PRINCIPAL INVESTIGATOR

As the **principal investigator**, I hereby declare that the information contained in this document has been thoroughly explained to the participant. I also declare that the participant has been encouraged (and has been given ample time) to ask any questions. In addition I would like to select the following option:

	The conversation with the participant was conducted in a language in which the participant is fluent.
	The conversation with the participant was conducted with the assistance of a translator (who has signed a non-disclosure agreement), and this "Consent Form" is available to the participant in a language in which the participant is fluent.

Signature of Principal Investigator

Date

Annexure C: Ethical Clearance Letter



NOTICE OF APPROVAL

REC: Social, Behavioural and Education Research (SBER) - Initial Application Form

28 April 2020

Project number: 12944

Project Title: An Assessment of the Effectiveness of Public Participation in Environmental Impact Assessments: A Namibian Case study perspective

Dear Ms Stephanie Strauss

Your response to stipulations submitted on 16 April 2020 was reviewed and approved by the REC: Social, Behavioural and Education Research (REC: SBE).

Please note below expiration date of this approved submission:

Ethics approval period:

Protocol approval date (Humanities)	Protocol expiration date (Humanities)
26 November 2019	25 November 2022

GENERAL COMMENTS:

- 1) There is currently a **postponement of all research activities at Stellenbosch University**, apart from research that can be conducted remotely/online and requires no human contact, and research in those areas specifically acknowledged as essential services by the South African government under the presidential regulations related to COVID-19 (e.g. clinical studies).
- 2) Remote (desktop-based/online) research activities, online analyses of existing data, and the writing up of research results are strongly encouraged in all SU research environments.

Please take note of the General Investigator Responsibilities attached to this letter. You may commence with your research after complying fully with these guidelines.

If the researcher deviates in any way from the proposal approved by the REC: SBE, the researcher must notify the REC of these changes.

Please use your SU project number (12944) on any documents or correspondence with the REC concerning your project.

Please note that the REC has the prerogative and authority to ask further questions, seek additional information, require further modifications, or monitor the conduct of your research and the consent process.

FOR CONTINUATION OF PROJECTS AFTER REC APPROVAL PERIOD

You are required to submit a progress report to the REC: SBE before the approval period has expired if a continuation of ethics approval is required. The Committee will then consider the continuation of the project for a further year (if necessary).

Once you have completed your research, you are required to submit a final report to the REC: SBE for review.

Included Documents:

Document Type	File Name	Date	Version
Research Protocol/Proposal	20902034_S Strauss _Research Proposal	25/10/2019	1
Data collection tool	Permission letter from MET	14/02/2020	1
Default	20902034_Response to ethics committee 17 Feb 2020	17/02/2020	1
Data collection tool	20902034 MET Interview Schedule	17/02/2020	2
Data collection tool	20902034 EAP Questionnaire	17/02/2020	2
Data collection tool	SStrauss IAP Questionnaire	17/02/2020	2
Proof of permission	Permission letter from MET	16/04/2020	1
Informed Consent Form	Informed Consent for Questionnaires EAPS 16 April	16/04/2020	3
Informed Consent Form	Informed Consent for Questionnaires IAPs	16/04/2020	3
Informed Consent Form	Informed Consent for Questionnaires MET officials	16/04/2020	3
Default	20902034_Response to ethics committee 16 April 2020	16/04/2020	1

If you have any questions or need further help, please contact the REC office at cgraham@sun.ac.za.

Sincerely,

Clarissa Graham

REC Coordinator: Research Ethics Committee: Social, Behavioral and Education Research

National Health Research Ethics Committee (NHREC) registration number: REC-050411-032.
The Research Ethics Committee: Social, Behavioural and Education Research complies with the SA National Health Act No.61 2003 as it pertains to health research. In addition, this committee abides by the ethical norms and principles for research established by the Declaration of Helsinki (2013) and the Department of Health Guidelines for Ethical Research: Principles Structures and Processes (2nd Ed.) 2015. Annually a number of projects may be selected randomly for an external audit.

Annexure D: Approval Letter from the Ministry of Environment and Tourism



REPUBLIC OF NAMIBIA

MINISTRY OF ENVIRONMENT AND TOURISM

Telephone: 061 2842701
Private Bag 13306
Windhoek

Enquiries: Mr. Damian Nchindo

Date: 14 February 2020

Ms Stephanie Struss
P. O Box 26071
Windhoek
Namibia

Dear Ms Strauss

SUBJECT: PERMISSION TO ACCESS INFORMATION ON ENVIRONMENTAL IMPACT ASSESSMENT REPORTS WITHIN THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

The above subject matter bears reference.

Kindly be advised that reports will be made available to you in terms of section 38 of the Environmental Management Act, Act No. 7 of 2007. Hence you may visit our office on Monday the 17th of February 2020 or contact Mr Damian Nchindo at Telephone no. 2842717 for further arrangements.

Thanking you in advance for your usual cooperation and understanding

Yours sincerely,

Saima Angula
Deputy Director: DEAWMPC

