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THE EFFECTS OF ENVIRONMENTAL IMPACT ASSESSMENT ON SERVICE DELIVERY

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A research report submitted to the Faculty of Management, University of the Witwatersrand, in partial fulfillment of the requirements for the degree of Master of Management (in the field of Public and Development Management).

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Abstract

Environmental Impact Assessment evolution is one of the landmark inventions of the twenty first century. The purpose of this exploratory study was to investigate the effects of applying the environmental impact assessment practice on service delivery programmes of State Owned Entities. Over the last two decades, questions have been asked about environmental impact assessment impacts and effectiveness. In SA, there is a growing perception and concern that environmental impact assessment hinders service delivery. Critics of EIA have questioned the role of EIA in development and service delivery; arguing that the fact that projects have to undergo environmental impact assessment first simply means that the environment is given a higher priority over economic considerations. Some critics have bluntly asserted that environmental impact assessment promises more and delivers little; and is a hurdle to service delivery. The research approach that was used was qualitative and the research design was exploratory. The participants in the study were selected purposefully based on convenience. One of the main findings of the study is that there is poor EIA governance and administration which results in delays in finalizing decisions on applications. This was exacerbated by long time frames applicable to competent authorities. The study also established that there is poor planning, fragmentation of environmental legislation and lack of intergovernmental coordination and integration in general. The study further highlighted a serious concern about the abuse of the EIA process by the interested and affected parties; and revealed the increasing concern regarding the financial cost mainly at project level as a result of complying with the EIA process and the environmental legislation in general. The report ends by making recommendations based on the findings to among others; review the applicable time frames, the public participation provisions, the schedule of listed activities and to improve intergovernmental coordination.

DECLARATION

I declare that this report is my own, unaided work. It is submitted in partial fulfillment of the requirements of the degree of Master of Management (in the field of Public and Development Management) in the University of Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in any other University.

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Date: **2 August 2012**

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ABREVIATIONS

BA	Basic assessment
CA	Competent Authority
DAFF	Department of Agriculture, Forestry and Fisheries
DEA	Department of Environmental Affairs
DG	Director General
DPE	Department of Public Enterprise
DWA	Department of Water Affairs
EA	Environmental Authorization
EAP	Environmental Assessment Practitioner
EIA	Environmental Impact Assessment
EIAR	Environmental Impact Assessment Report
ECO	Environmental Control Officer
EIS	Environmental Impact Statement
EMF	Environmental Management Framework
EMP	Environmental Management Plan
EMS	Environmental Management System
ISO	International Standard Organization
NEMA	National Environmental Management Act
NIMBY	Not in my back yard
NEPA	National Environmental Policy Act
PPP	Public Participation Process
PBMR	Pebble Bed Modular Reactor

SEA	Strategic Environmental Assessment
SID	Strategically Important Development
SMME	Small Medium Enterprise
SOE	State Owned Entity
SA	South Africa
SOE	State Owned Entity
UNEP	United Nations Environmental Programme
UK	United Kingdom
USA	United States of America
WUL	Water Use Licence

CHAPTER 1: BACKGROUND AND INTRODUCTION

1.1 Introduction

The purpose of this study is to investigate the effects of applying the practice of environmental impact assessment (EIA) on service delivery. The EIA practice dates back in 1969 in the United States of America (USA). In South Africa (SA), it became mandatory only in 1997. The first section of this chapter will discuss the evolution of EIA practice and its different roles. The second section outlines the problem statement, purpose statement and the research questions. It concludes by presenting the significance of the study, the limitations experienced and the structure of the report.

1.2 The dawn of environmental impact assessment

Environmental impact assessment is the systematic identification and evaluation of the potential impacts (effects) of proposed projects, plans, programmes, or legislative actions relative to the biophysical, cultural, and socioeconomic components of the natural environment (Canter, 1996). According to Sadler (1996), EIA is a process of identifying, predicting, evaluating and mitigating the biophysical, social, cultural and other relevant effects of proposed projects and physical activities prior to major decisions and commitments being made. In addition to being a systematic process, Sheate (1996), suggests that, EIA is inherently procedural, informational, preventative and iterative to ensure that environmental considerations are taken into account before decisions are made about proposed projects.

According to Glasson (1999), Hollick (1986), the National Environmental Policy Act (NEPA) of 1969 was the first legislation requiring EIA for significant projects, and has been referred to as one of the most seminal developments in environmental law. According to Sheate (1996), EIA evolution is a major consequence of the environmental thinking that took place between 1960 and 1970. During this period, there was a growing concern worldwide that the deterioration of the environment was increasing. For example, loss of biological diversity was alarmingly high;

and Gowdy (1999) cited in Becker and Jan (1999) asserted that it was the most serious of the myriad of environmental threats mankind faced at the time.

Following the 1972 declarations of the United Nations Conference on the Human Environment held in Stockholm, the importance of environmental protection became important in global policies and plans towards development (Alemagi, Sondo and Ertel, 2007). Amongst other things that resulted from the Stockholm Conference, was the establishment of United Nations Environmental Programme (UNEP). According to Sheate (1996), the primary purpose of UNEP was to monitor the environmental changes on the planet. Environmental Impact Assessment, as a multi-purpose process for environmental protection and management, planning, resource management, decision-making and sustainable development was to play a critical role in ensuring that the UNEP achieved its goals.

By 1973, EIA systems were being adopted in many developed countries. According to Benson (2003); Weaver, Pope, Morrison-Saunders and Lochner (2008), by 1996, EIA had spread to more than 100 countries in six continents. Sadler (1996) explained the rationale for EIA eloquently.

In a review of environmental impact assessment effectiveness, Sadler (1996) stated that:

> *"The environment matters more than ever before. Human activities are altering natural cycles and ecosystems on an unprecedented scale. Risks and impacts are more significant than ever before. The impact of human activities on the biosphere is reaching critical thresholds, with the consequent threat of ecological breakdown and social conflict. Environmental impact assessment is more important than ever before".*

Sadler's thinking then is as relevant now as it was in 1996. Despite the current sustainable development dogma, there remains an antagonistic relationship between economic development and environmental protection (Alemagi et al., 2007). This is because decision-

makers still face significant challenges when trying to create a balance between natural processes and human aspirations and between the costs of environmental management versus the provision of basic services to ensure quality of life (Petts, 1999), cited in (Alemagi et al, 2007).

1.3 The different roles of environmental impact assessment

The main purpose of the EIA is to ensure that human impacts upon the environment arising out of projects, programmes and policies are fully assessed by ensuring that their economic, social, and environmental costs are fully disclosed before choices are made (Gillespie, 2008). Grainger (1997) contends that EIA is fundamentally an environmental assessment, and its ability to cover socio-economic impacts in an integrated way is rather limited. According to Hollick (1986), the fundamental purpose of EIA is to protect the environment from damage which might result from decisions. Hollick's use of the concept of the environment poses a problem. The problem comes from the fact that the definition of the environment is crucial to the scope of EIA, but there is no consensus on the definition of the concept of the environment (Hollick, 1986); as a result, it may mean different things to different people.

Environmental Impact Assessment was also seen as a planning tool that would integrate EIA procedures with planning and decision making; and eliminate the duplication of State procedures (Hollick, 1986). In Australia and Canada, EIA was used as an instrument to improve public participation in government decisions (Hollick, 1986). Environmental Impact Assessment by its nature generate a lot of information, hence it is also logical that it has been used as an educational tool to make sure that decision makers are more responsive to environmental issues when decisions are made (Hollick, 1986). When it was introduced in Canada, it was intended to minimize regulatory duplication, in that EIA was going to be used to coordinate decision making between agencies to avoid incremental approval (Hollick, 1986). This would ensure that the issuing of permits was coordinated, thus making sure that the developers did not have to deal with a fragmented regulatory system. Alemagi et al., (2007)

have argued that if well implemented, EIA is a fundamental tool that can help in the integration of the environment into developmental projects. Environmental Impact Assessment has been recognized the world over as a fundamental tool to achieving sustainability especially within the development arena; by endeavoring to facilitate economic growth while overcoming environmental problems (Alemagi et al., 2007).

Sheate (1996) noted that, for conservationists, EIA has been seen as an important tool because it brings the environment into decision-making where previously it was disregarded. It goes without saying that it is in everyone's interest to use EIA legislation to strengthen existing conservation legislation. Sheate (1996) also points out that EIA has to provide information on the existing environment, as well as the likely significant effects a proposal may have on the environment. This simply means that any other form of environmental protection legislation which applies to a particular area should be identified through the EIA process and therefore be taken into account in the decision making process.

As the practice of EIA spread across the world, it was modified and evolved (Hollick, 1986). Initially, there was a lot of focus on procedural issues. The focus has now shifted, and there is now more concern about the effectiveness of EIA in reducing environmental impacts, the efficiency of the process in terms of its costs in time, money, and manpower (Hollick, 1986). This appears to be a global concern.

1.4 Problem statement

There is a growing perception and concern in SA that EIA hinders service delivery. Skeptics of EIA such as Feng and Wang (2007) have questioned the role of EIA in development; arguing that the fact that projects have to undergo EIA first simply means that the environment is given a higher priority over economic considerations, tend to lead to a situation where environmental impacts and economic impacts are not evaluated on an equal basis. The National

Environmental Management Act (NEMA), Act 107 of 1998 as amended and EIAs have been criticized for being onerous and restrictive. The politicians, in particular former Minister Shiceka and Premier Zille have both joined in the criticism of the EIA regime in SA; and thus sparking public interest and debate. The Independent online property (30 March 2010) reported that former Minister Shiceka contended that, "legislation forcing adherence to strict environmental regulations is radically slowing down and even restricting development and should be relaxed". This prompted the State President to mandate the Minister to consult municipalities and stakeholders across the country to ascertain which legislation is impacting on service delivery and holding up development. Similar concerns were raised by Premier Zille. According to Donnelly (2010), Premier Zille conceded that while "red tape is necessary to prevent corruption; 'but the extent to which measures make it impossible to apply any initiative, or judgment or discretion is frustrating beyond belief". The Premier also lamented the onerous requirements of NEMA on service delivery; and referred to this as "a brick wall of bureaucracy" which makes it "unbelievably difficult" for provinces and municipalities to meet their housing target under the current EIA legal framework. Accordingly, the Premier petitioned the President to fix the laws and remove all the legislative constraints. The Mail and Guardian (30 July to 8 August 2010) reported that the Presidency set up a task team to examine where laws need to be changed to remove over bureaucratic compliance requirements (Donnelly, 2010).

These calls come under the backdrop of the South African EIA regime that has undergone recurrent changes since 1997 to improve efficiency and effectiveness. Between 1997 and August 2010, three sets of EIA regulations were implemented. The NEMA has been amended at least 5 times since 1998. This begs the question, have the recurrent changes in the EIA regime had any effect on service delivery improvement. Benson (2003) has questioned whether EIA delivers what it is intended and argues that it may be a case of promising more but delivering less. The lengthy delays have aggravated the situation thus making EIA an economic burden, a development nightmare and a scapegoat for failed development and poor service delivery. This study scrutinizes the South African EIA regime and how it affects service delivery programmes of selected State Owned Entities (SOE) in Johannesburg.

The effects and effectiveness of EIAs have been dealt with in several investigations (Glasson et al., 1997; Heuvelhof and Nauta, 1997; Barker and Wood, 1999; Ahmed and Wood, 2002; Wende, 2002; Sadler, 1996). Despite being broad in scope, these investigations primarily looked at the quality of the environmental impact statements, the EIA process, comparing the effectiveness in various institutional set-ups and recently the cost of EIA in SA. It is unfortunate that the impact of EIA on service delivery does not seem to occupy the mainstream academic writing as it should. This study seeks to narrow and reverse this knowledge gap and trend by contributing in an academic discourse in an area of increasing significant interest that does not appear to be widely reported and debated in academic circles. The period under review is April 2006 which coincides with the coming into effect of the previous 2006 EIA regulations. This study was conducted in an urban setting in Johannesburg (Gauteng province). The findings of the study may have national importance due to the geographical spread of the selected entities and their service delivery programmes. The entities were selected based on their record in driving massive service delivery infrastructure programmes for government. With regard to the relationship between the researcher and the topic, the researcher has served as an employee for the competent authority responsible for processing and administering applications for environmental authorizations from SOEs including those selected in the study.

1.5 Purpose statement

The purpose of this exploratory research is to investigate the effects of EIA regime on service delivery programmes of SOEs in Gauteng and make recommendations.

1.6 Research questions

a) What informs the perception that the EIA regime affects service delivery programmes of SOEs?

b) What aspects of the EIA process are commonly understood to inhibit service delivery of SOEs and which one are facilitative?

c) What interventions could be implemented to mitigate against the perceived negative impact of EIA on service delivery?

1.7 Significance of the research

South Africa has over the past years experienced recurring episodes of protests. These protests, which sometimes became violent, have recently intensified. According to Ndletyana and Muzondidya (2009), the main cause of these protests was inadequate and or the absence of service delivery. Some public figures have defended themselves when confronted with poor service record and blamed the EIA regime as the root cause for non service delivery. Most service delivery programmes often require an environmental authorization before they can be undertaken. Given the criticism on EIA regime, the implications of EIA on service delivery must be known so that the system can be enhanced. The research investigated if these claims were fair and justified and made valuable contribution and recommendation towards the enhancement of the system. The study will also stimulate and contribute to academic on the impact of EIA on service delivery in general.

1.8 Limitations and ethical considerations

The criterion-based approach was used to select and sample the participants. This approach is not considered to be statistically representative. Furthermore, the sample size was small. According to Babbie and Mouton (2001), the shortcoming of exploratory study is that it seldom provides satisfactory answers to research questions, though it can hint at the answers and can give insights into the research methods that can provide definitive answers. Bearing this in

mind, the perceptions and the views expressed may not necessarily be representative or represent the reality.

Having said that, this must not be construed to suggest that the opinions and perceptions raised should be considered to be isolated and be dismissed as such. It simply means that caution should be taken when interpreting the findings, taking into account the scope of the study. The study was undertaken under serious time and financial constraints. This in turn limited the scope of the study, the number of participants and the extent to which the study would otherwise have been taken, had these limitations not existed. It may therefore be necessary to conduct a similar study on a bigger scale with sufficient time and financial resources to obtain representative results. Despite the limitations, appropriate ethical considerations were observed. The respondents participated voluntarily, there was no deceit and dishonesty; and everything was done to protect the integrity of the study. Anonymity and confidentiality of respondents was respected.

1.9 The structure of the report

The rest of the report is structured as follows. Chapter two presents the key themes and theoretical background relevant to the study. Chapter three discusses the research methodology that was used. Chapter four present the findings of the study based on the keys themes that emerged. Chapter 5 provides the analysis and interpretation of the findings. Chapter six summarizes the key findings and presents the recommendations. The reference list is presented in Chapter seven.

CHAPTER 2: LITERATURE REVIEW

2.1 An overview of literature on EIA evaluation

The concept of assessing the impact on the environment from projects was first put into law in 1969 in the United States (Stampe, 2009). Since then, it has widely been introduced across the globe. According to Benson (2003); Weaver et al. (2008), by 1996, EIA had spread to more than 100 countries in six continents. The main purpose of the EIA is to ensure that human impacts upon the environment arising out of projects, programmes and policies are fully assessed by ensuring that their economic, social, and environmental costs are fully disclosed before choices are made (Gillespie, 2008). Since the inception of the EIA practice, questions have been asked about the impact of impact assessments (Cashmore, Bond and Sadler, 2009). This has prompted scholars and practitioners alike to pay more attention on the evaluations of effectiveness of processes, practice and performance at both macro (assessment systems) and micro (individual applications) levels (Cashmore et al., 2009).

Investigations of the effects of EIA have not been easy for a number of reasons. Firstly, Christensen, Kornov and Nielsen (2005), notes that investigations on the effects of EIA often have a very broad scope, looking at the quality of Environmental Impact Statements (EIS) or the EIA process or comparing the effectiveness in different institutional set-ups. Furthermore, they note that the evaluation of EIA can relate to three aspects; these are the procedures and how they relate to provisions and principles, the substantive content and the efficiency of the EIA process.

Secondly, Christensen et al. (2005) contends that the EIA process can potentially have a range of effects that are different in nature. As a result, they argue that the effects of EIA can be very hard to determine. Thirdly, it is hard to establish whether these effects have a real impact or whether they would have occurred anyway (Christensen et al., 2005). Research on this field has found that the effects of EIA may result in any of the phases of the EIA process;

sometimes these may be influenced by the preceding events prior to the EIA process. According to Christensen et al. (2005) in a study conducted in Europe, it revealed that 17 out 18 projects drawn from the United Kingdom (UK), Spain and Germany were modified as a result of EIA. In the UK, most of the changes were of major significance, while in Germany and Spain, they were lesser respectively.

The analysis provided by Christensen et al. (2005) highlights the focal areas in EIA evaluation in the past and some challenges of these studies. It is apparent from their analysis that the impact of EIA on service delivery and or economic growth has been neglected and as such not reported adequately. There is also suggestion that previous studies have been more biased to environmental protection. The problem with this approach is that it takes a narrow view of the concept of the environment which is seen as purely biophysical as opposed to a more holistic view which incorporates human, cultural and socio-economic dimensions (Chadwick, 2002).

Chadwick (2002) analyzed the debate among scholars in the UK on whether EIAs should consider socio-economic factors. There were two opposing schools of thought. Those who were against the inclusion of socio-economic factors in EIA process argued that the socio-economic factors should be considered elsewhere in the decision-making process. They argued that if this was done, EIA would risk downplaying the adverse biophysical impacts when compared with beneficial impacts (Chadwick, 2002). Those in favour of the integration of socio-economic effects argued that it would minimize adverse socio-economic effects and maximize beneficial benefits. They also contended that it would act as a balance to the adverse biophysical impacts (Chadwick, 2002). It is the author's considered view that turning a blind eye on this critical issue would be ill informed, hence the need to investigate the effect of EIA on service delivery. It is for this reason that Smith (1995) has cautioned that if one cares about the environment, one has to care about population growth, economic growth and the alleviation of poverty. Smith (1995) further contends that no society can surely flourish and be

happy, of which the far greater part of the members are poor and unhealthy. Environmental Impact Assessment therefore should facilitate than be seen to be hampering service delivery.

In SA, Retief and Chabalala (2009) conducted a study to look at the cost of EIA. Retief and Chabalala (2009) observed that the wide adoption of EIA internationally was implicitly or explicitly based on an assumption that the benefits of EIA outweigh the costs. In some instances, this has not been the case in practice. Environmental Impact Assessment practice in SA has raised serious questions about unjustified and unnecessary time delays and monetary costs; and a desperate need for improved efficiency and effectiveness. Middle and Middle (2010) concurs with this view, but have gone further to suggest that environmental regulation including EIA process may sometimes be an economic burden on companies. This is particularly a problem for developing countries where economic growth and social stability are at the forefront of the sustainability discourse; contrary to developed countries where environmental protection is a primary concern (Weaver et al., 2008). Similar trends were raised in Australia recently. According to Middle and Middle (2010) EIA in Western Australia is under similar pressure to be more efficient and timely. As a result, the government has had to intervene to deal with the issues with a view to expedite approval processes.

Similarly, industry experts in Australia have also been critical. They are worried about the deterioration of the EIA process. According to Middle and Middle (2010), EIA takes too long, is too costly, too bureaucratic, process driven rather than being focused on outcomes and not always representing the objectives of the elected government. The same sentiments are emerging in SA from politicians given the service delivery problems and mounting pressure on government to meet the Millennium Development Goals. Previously, the former Minister of the then Environmental Affairs and Tourism (Minister Martinus van Schalkwyk) conceded that government was concerned about any EIA delay, cost and associated impacts on economic growth (Retief and Chabalala (2009). Retief and Chabalala (2009) have argued that the debates on EIA cost invariably raise basic fundamental and controversial questions on the

need for EIA, its value and ultimately if EIA is worthwhile pursuing. These sentiments cannot be ignored any longer given causal link they may have on service delivery.

2.2 The nitty-gritty of environmental impact assessment process

Environmental Impact Assessment is essentially about optimizing resources through an allocation of all resources, to achieve a balance between sustainable development and environmental protection. The EIA system comprises a number of core elements that fundamentally forms a foundation of an EIA process. While these may differ from country to country, there exist a common series of stages for project level environmental assessment (Harrop and Nixon, 1999).

> *"these begin with a determination of the need for EA (screening), followed by an initial analysis of the proposal to establish what are the main issues for inclusion in the study (scoping). More detailed assessment then involves the collection and analysis of information (baseline prediction and impact prediction and evaluation) and the views and concerns of stakeholders (public involvement), leading to the production of the report which describes the nature of the project (and possibly a range of alternatives), its environmental setting, the impacts considered to be potentially significantly adverse (impact mitigation)".*
>
> (Harrop and Nixon, 1999)

It must be noted that while there appear to be a series of stages in the framework for EIA, EIA is an iterative process (Harrop and Nixon, 1999), (Sheate, 1996). For the purpose of this report and without discounting other equally important aspects of the EIA process, the discussion focuses primarily on the consideration of the alternatives, project impact mitigation and public consultation and participation. These will be discussed individually below.

2.2.1 Consideration of alternatives

Scholars such as Hollick (1986); Glasson, Therivel and Chadwick (1994) are in agreement that the analysis of alternatives should be at the heart of the EIA process. Gillepsie (2008) has also concurred that a thorough discussion of alternatives is often considered to be one of the most basic requirements for impact assessments. This entails ensuring that options are studied in similar depth until a choice is made between them following a detailed comparative evaluation. According to Gillepsie (2008), consideration of alternatives is inherently preventative in nature and as such a decisive factor within an impact assessment which should not only be used to project the potential impacts but also recognize alternative options. Glasson et al. (1994) have conceded that consideration of alternatives ensures that other approaches to the project are explored as well as the means to prevent environmental damage. This is essential to ensure that there is synergy and integration between convergent planning and the EIA process. According to Hollick (1986), convergent planning has clear cost advantage since the cost of keeping many options open to an advanced stage of design can be very high.

The notion of considering the alternatives implies that after consideration of all the factors, there must be willingness to reconsider earlier decisions about the design, location or even technology if unforeseen problems are unearthed during the evaluation of alternatives. Hollick (1986) has suggested that this would require a continuous and interactive process quite early in the process; during which a wide range of alternatives would be screened, followed by a detailed assessment of the most attractive and feasible alternatives. It has however been observed that there is a tendency to use alternatives to determine suitable mitigation measures as opposed to evaluating the most practicable environmental option.

Failure to consider alternatives defeats the very purpose of undertaking an EIA process; and implies that the proponent is given the sole discretion to decide on the preferred alternative; thus limiting the role of the public to make a meaningful contribution on the best and well

considered option of the proposed development. According to Gillepsie (2008), the benefit of considering alternatives is to create a win-win situation whereby the proposed project can proceed without having the same level of significant environmental impact as originally envisaged.

2.2.2 Project impact mitigation

Central to the EIA process is the prediction and identification of impacts, both positive and adverse effects of proposed development (Glasson et al., 1994). According to Fortlage (1990), adverse effects comprise those effects that are expected to cause destruction or deterioration of those sectors of the environment which will be affected by the development, either directly or indirectly. These may either be temporary or permanent; similarly, they may be irreversible or reversible depending on the significance of the impact; hence the importance of mitigation measures. Mitigation refers to the methods proposed by the developer for reducing, obviating or otherwise ameliorating the effects of the project which would have some undesirable effect on the environment (Fortlage, 1990).

Mitigation seeks to improve the environmental performance of the development by minimizing the identified adverse effects of the development on the environment. This may include measures to avoid, reduce, remedy or compensate for the various impacts associated with projects (Glasson et al., 1994). For example, this could entail measures to minimize job losses that may result from the proposed development or even concealing the intrusiveness of the proposed development. There is however a debate about how far the mitigation measures should go in reducing adverse effects. According to Fortlage (1990), some scholars believe that mitigation should be total, while others are willing to settle for a reasonably practical level of mitigation. Gilpin (1995) has cautioned that projects rarely become entirely innocuous as a result of EIA processes. Furthermore, Gilpin (1995), contends that mitigation measures do not necessarily protect all sections of the community; thus implying that it is impractical to achieve

total mitigation. For example, Gilpin cites the construction of an airport which may introduce noise element not previously experienced.

2.2.3 Public consultation and participation

Public consultation has long been regarded as a cornerstone of environmental assessment (Stewart and Sinclair, 2007); and one of the underlying principles of the EIA concept (Poder and Lukki, 2009). Public consultation is a process for involving the public in the decision making process (Robinson and Bond, 2003). According to Wood (2002), cited in Alemagi et al. (2007), EIA is not EIA without consultation and participation. It must be noted from the onset that throughout literature as noted by Robinson and Bond (2003), many terms are used interchangeably to refer to public involvement; despite the fact that they have different meanings. These include participation and consultation. Likewise, this report will use them interchangeably to describe a process of involving the public in decision making process. Robinson and Bond (2003), Glasson et al. (1994), Yang (2008) have noted that in an EIA, the public changes overtime and between proposals; thus signifying the need to identify all the stakeholders.

Primarily, the public can be categorized into two main groups. According to Robinson and Bond (2003), Glasson et al. (1994) the first group consists of voluntary groups, public watchdog committees or issue based groups, with an interest in a particular aspect of the environment or the whole environment. The second group consists of those people that are directly affected by the proposal. According to Glasson et al. (1994), this group usually lives near the proposed development. There is a sharp and noticeable contrast between these two groups. The former one is organized and well resourced while the latter is not; and their interests are not always the same. According to Glasson et al. (1994), “the organized groups may have extensive financial and professional resources at their disposal, may concentrate on specific aspects of the development, and may see their participation as a way of gaining political points or national publicity”. The opposite is true with the local community which quite

often lacks financial and professional resources and the ability to understand processes so that they can be heard; and yet they are the one who often bear the brunt of the direct impacts of the development. These dynamics play themselves out during the EIA process and have a potential to render the process disruptive and dysfunctional; and yet there is an obligation to treat all the stakeholders fairly and equally. On the contrary, Glasson et al. (1994) warns that diverse stakeholders and divergent views may hold the project at ransom and the vocal groups may set the agenda rather than the public that is directly affected.

Public consultation and participation has inherent benefits. Those that advocate for public consultation such as Parenteau (1988), Wood (2002), Petts (2003) and others argue that it gives effect to the fundamental principles of democracy, and strengthens the democratic fabric of society (Stewrat and Sinclair, 2007). Scott and Oelofse (2005) have gone further to suggest that it is a tool used to achieve environmental justice. This is because; it gives the public the channel through which it can choose to participate directly in the decisions that affect them. Importantly, public participation helps in access to local and traditional knowledge from diverse sources, broadens the range of potential solutions, provides a more balanced decision making and avoids costly and time consuming litigation (Stewart and Sinclair, 2007).

There is however a contentious debate about the design of the public participation programme in order to derive all these benefits. Among others, it must include adequate notice, access to information, participant assistance, public comment periods, and public hearings (Stewart and Sinclair, 2007). Research done in Canada confirmed this but went further to suggest that integrity and accountability, ability to influence, inclusiveness and adequate representation, fair and open dialogue and participant funding were among the crucial elements of a meaningful participation.

The challenge though is that public involvement risks becoming influenced by the most vocal groups and fail to represent the full spectrum of the public (Robinson and Bond, 2003). Sometimes, it is riddled with bias against the minority groups, gender bias and language barriers. Public participation processes have been criticized by participants as dissatisfying; while the proponents have lamented the fact that they are costly and time consuming (Stewart and Sinclair, 2007). Government authorities have questioned the efficiency of the process. It is for this reason that Glasson et al. (1994) have noted that developers do not usually favour public participation because of the inherent risks involved which may ultimately balloon the cost in time and money.

Robinson and Bond (2003) have suggested that some developers argue that allowing the public access to a proposal during the EIA may result in breaches of confidentiality. There is also a fear that it may lead to an EIA becoming disorganized (Robinson and Bond, 2003). Sometimes, it is perceived as a hindrance to the process for instance when the public refuses to cooperate due to a "not in my backyard" (NIMBY) attitude (Robinson and Bond, 2003). Be that as it may, they concede that only the local public is truly capable of placing the proposal's limitations in a local context; and Alemagi et al. (2007) explains that failure to involve the public in the EIA is tantamount to treating the public with contempt. According to Stewart and Sinclair (2007), the basic legitimacy of an environmental assessment process is questionable if it does not provide for meaningful participation.

In exceptional cases, public participation has been associated with extremism, confrontation, delays and even blocked development (Glasson et al., 1994). Experience according to Glasson et al. (1994), is that in the USA for example, NEPA related lawsuits stopped major development projects, in Japan, riots delayed construction of the Narita airport by five years; while in the UK, "perhaps the most visible forms of public participation involved protesters wearing gas masks at nuclear waste disposal and power station sites, and people threatened to lie down in front of the bulldozers working on the M3 motorway". South Africa has had its fair

share of problems with the public participation; and the case in point is the delayed construction of the N2 wild-coast highway in the Eastern Cape and the Pebble Bed Modular Reactor (PBMR) which were both overturned by the high court following the application for a legal review by the vocal stakeholders. Such extremes inherent in the public participation process may provide a legal means for intentionally obstructing development; protracted delay of a project can be an effective method of defeating it (Glasson et al., 1994). It has been noted by Glasson et al. (1994), Yang (2008), that early public participation can prevent the escalation of frustration and anger, thus helping to avoid the possibility of more forceful participation, thus saving cost and time.

2.2.4 The overview of the South African EIA system

According to Wood (1999), SA has a proud history of EIA. The South African EIA system conforms to the international practice. The consideration of alternatives, impact mitigation and public participation and consultation are also central in the South African EIA system. The NEMA is the principal legislation that makes provision for EIA. This Act is based on a number of principles which guide the interpretation and the implementation of the Act. According to NEMA section 4 (a), NEMA principles places high premium on sustainable development which must consider all relevant factors. This principle emphasizes that impact must be avoided and prevented, where it cannot be avoided and prevented altogether, it must be minimized and remedied. Clearly, to be able to avoid the impacts, they must first be anticipated and identified so that they can be prevented (Section 4 (c). Section 4 (f) encourages participation of all interested and affected parties in environmental governance and the open and transparent decision making. Everything done during the EIA process must give effect to these principles.

The South African EIA system has a strong emphasis on public participation and consultation. Any decision that will negatively affect the rights of other people must first undergo a public participation and consultation process. In SA, EIA system goes further and provide for an appeal process by any interested and affected party. This is in line with Wood's (2002) cited in

Yang (2008) thinking who advocate that the right to appeal is an essential criteria for evaluating public participation. It also recognizes the need for sustainable development.

2.3 Sustainable development

Sustainable development is a widely used, but indescribable concept. As a result, Springett (2005) has noted that it has resulted in strong contestation and even repudiation. This concept dates back in 1972 (Ho, 2006), and yet there is still no consensus among scholars (Murombo, 2008), because it is being used in a variety of ways (Redclift, 2005). Ho (2006), questioned whether human beings are capable of reconciling economic growth with environmental pressure. Despite all the contradictions of the concept, Redclift cited in Ho (2006) contends that it is difficult not to approve it.

The concept though loosely used has succeeded to place development and environmental debate on the centre stage in international discourse. According to Ho (2006), the main reason for this, despite all its flaws is that, sustainable development has evolved into the single most dominant idea that combines our conceptualization of development processes with environmental change. The environmental skeptics argue that, "we simply do not know whether sustainable development is possible or not" (Ho, 2006). According to Springett (2005), some critics associate it with the power of capitalist business while others link it with capitalist means of production and consumption. Irrespective of the school of thought that one subscribes to, the nexus between development and environment is indisputable (Ho, 2006).

The famous and widely used definition of sustainable development was popularized by Brundtland report in 1987. This report defined sustainable development as, "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (Murombo, 2008), (Pawtowski, 2008). Various themes of sustainable

development have emerged. There are those who believe in the win-win solution where environment and development can co-exist. The pessimist believes in the opposite, zero-sum (Ho, 2006).

Redclift (2005) argues that the needs of the 1987 generation are different to the needs of the future generations. Similarly, different cultures have different needs. Culture is crucial, given the north-south divide in development debate; as well as the perceived dominance of one culture over the other. There has also been a debate that questioned who has the authority to decide which course of action is more sustainable? Redclift (2005) has questioned whether development or economic growth should determine the changing needs. Similarly, environmentalists, academics and business have different perspectives of sustainable development.

South Africa is no different, though there is a legal president. Murombo (2008) argues that the Constitutional Court has dispelled the growing perception that the EIA regulations are overly informed by an environmentalist paradigm that negates the idea of sustainable development. However, Field (2006) argued differently. What emerged from the Court ruling was the importance of the integration of social, economic and environmental consideration. Pawtowski (2008) has stressed the need for the integration of different spheres of human activity that had mostly been seen as separate.

Pawtowski (2008) has broken integration further into a number of dimensions. These are moral, ecological, social, economic, legal, technical and political dimensions. These raise questions of ethical responsibility, customs and traditions, culture and ethics in development of new technologies. Integration in the context of sustainable development is problematic as it is seen to be 'inherently incompatible' (Murombo, 2008). Both Murombo (2008) and Ho (2008) have highlighted the difficulty of attaining sustainability because development thrives by

exploiting natural resources. The notion of integration under the circumstances seems to be almost irreconcilable.

In view of this inherent tension, Murombo (2008) argues that the Constitution expressly sought to guide sustainable development by incorporating section 24 (b) (iii) in the Constitution. This section direct that legislative measures be put in place to achieve sustainable development. The NEMA is a product of this Constitutional obligation. The NEMA's definition of sustainable development also includes the concept of integration (Murombo, 2008).

Murombo (2008) noted that the aim of environmental rights in the Constitution is to protect the environment, but simultaneously, allow justifiable socio-economic development, thus striking a balance between the two extremes. This is what makes sustainable development more challenging. According to Murombo (2008), other important themes that emerged from the Constitutional court ruling were the principle of sustainable use of natural resources and inter-generational equity. There is some level of consensus among scholars that these principles underpin sustainable development (Murombo, 2008).

2.4 Conclusion

It is clear from the literature studied that a lot of work has been done in different countries to evaluate the EIA regime. There are inherent difficulties in conducting these investigations. For instance, most of the investigations tended to have a very broad scope. Determining the impacts was also problematic given the presence of exogenous factors. It is also evident that the focal area of interest has been in the area of environmental protection, effectiveness, quality and comparative assessment of different institutional set-ups from various countries. There is however a glaring omission on the impacts of EIA on development, economic growth and service delivery which suggests that there has been a bias towards environmental

protection at the expense of socio-economic factors. There has been a notable emerging trend of concerns and criticism emanating from EIA process delays as well as the cost of EIAs, both direct and indirect costs. This has prompted some critics to question the need and the value of EIA and criticized it for promising more and delivering less. Some of the problems attributed to EIA may perhaps be attributed to some of the processes involved during the EIA.

Literature suggests that EIA system is inherently iterative and repetitive, comprising of a number of elements which vary from country to country; but there are also common stages that are universal across the board. The consideration of alternatives is one such element considered to be universal in all EIA systems and at the heart of the EIA process. Also central in the EIA process is the mitigation of impacts of proposed developments which is often preceded by the identification and quantification of those impacts. However, there are different opinions on the extent to which mitigation of impacts must be pursued. This is partly because Weston (2006) has argued that significance in EIA is a wholly subjective concept because the environment is experienced and valued subjectively. The other central feature in EIA is public consultation and participation and Wood (2002) suggests that EIA is not EIA without consultation and participation. Public consultation and participation is an inherently complex process which involves diverse stakeholders with divergent views, values and orientation. As such, despite all its benefits, it does tend to have risks depending on the nature of stakeholders involved. It is for this reason that government authorities have criticized it for its inefficiencies while developers do not quite favour it. With regard to the South African EIA system, literature suggests that SA has an impressive EIA regime that conforms to international standards. It is founded on NEMA which among others seeks to foster sustainable development. Sustainable development has lately gained currency globally even though it remains highly contested, thus prompting others to question whether human beings are capable of reconciling economic growth with environmental protection. Be that as it may, irrespective of the school of thought, it is clear from the literature that the concept of sustainable development will be with us for many more centuries.

CHAPTER 3: RESEARCH METHODOLOGY

3.1 Introduction

The research methodology of this study was based on the combination of an approach adopted by Dagher and Ross (2004) and Waddington (2005). The focus of Dagher and Ross study was to investigate the approaches of a group of fifteen traditional healers toward the treatment of cleft lip and palate. This was an exploratory-descriptive, qualitative research design that used standardized, semi-structured interviews with purposefully selected key informants (Dagher and Ross, 2004). Closed ended questions were analyzed using descriptive statistics and open ended questions were subjected to thematic content analysis (Dagher and Ross, 2004). According to Babbie (1995), content analysis is a technique that allows researchers to highlight the common themes and categories expressed by participants and describe responses in a systematic and quantified mode (Dagher and Ross, 2004). This technique allowed them to immerse in the data to capture and discover meanings, extract themes and motifs. Ripat and Booth (2005) used a similar methodology in their study. This is in line to a process suggested by Miles and Huberman (1994) for analyzing qualitative data, which this research used (Herremans, Herschovis and Bertels (2008).

The next section discusses in detail the adaptation of Dagher and Ross (2004) methodology to suit the context and settings of this study. The main difference between Dagher and Ross (2004) study and this research is that they used interviews to collect data; while this one used both a structured questionnaire and interview techniques. They also used an independent review to avoid subjectivity in the analysis of data to establish the trustworthiness of the analysis. To enhance validity and reliability, this study used a combination of triangulation and extensive field notes. The discussion covers the research design, data collection and analysis tools, the nature of primary and secondary data that was used and how the respondents were selected.

3.2 Research approach

The research approach was qualitative. The advantage of this approach among others is that it is based on insider perspective and naturalism. The insider perspective implies that the research involves the actors with the first hand information with a view to describe and understand in their context while naturalism is significant in that it seeks to ensure that the attitudes and behaviors are studied within their natural setting rather than artificial settings common in other approaches. Importantly, qualitative approach provides in-depth and thick descriptions and understanding of events and actions (Babbie and Mouton, 2001). Holloway (1997) refers to qualitative research as a form of social enquiry that focuses on the way people interpret and make sense of their experiences. This means that the study explored and took perspectives and experiences from key respondents that were purposefully selected.

3.3 Research design

According to Babbie and Mouton (2001), Holloway (1997), research design is a plan or blue print of how the researcher intend conducting the research. It includes strategies and methods that will be followed such as the collection and analysis of data. The research study was exploratory. Primary data was collected from 14 respondents purposefully selected from SOEs. The structured questionnaires and interviews were used to collect data; this was complemented by the review of the existing literature. Of the 14 respondents, at least three respondents' data was collected using face to face interviews. Babbie and Mouton (2001) suggests that exploratory studies are also more appropriate for more persistent phenomena (Babbie and Mouton, 2001). Balancing environmental protection and service delivery in SA is a persistent phenomenon that is difficult to pin down.

3.4 Data collection

3.4.1 Primary data

A structured questionnaire and interview methods were used to collect data. The questionnaires had structured and semi-structured components that were self administered

because the respondents were literate. Face to face interviews were conducted with senior officials using the same structured questionnaire. The benefit of semi-structured questionnaire is that it allows both open-ended and closed questions. Open-ended questions enabled respondents to communicate their experiences and opinions without being restricted while closed questions were useful where definite and unambiguous answers were needed. According to Miles and Huberman (1994), open ended questions focus on naturally occurring, ordinary events in natural settings. The respondents were requested to participate in the study prior to sending the questionnaires.

3.4.2 Secondary data

The research used both primary and secondary data. The primary data is the data that was collected by the researcher from the respondents (Babbie and Mouton, 2001). The questionnaire was used to collect data from purposefully selected respondents. The secondary data largely comprised existing research and published journal material in the field of study and existing policy and legislative framework. The secondary data sources also formed part of the literature review.

3.4.3 Sampling

According to Babbie and Mouton (2001), sampling is the process of selecting observations. There are two main sampling techniques; these are probability and non probability. This research, being qualitative in nature used non probability sampling techniques; in particular purposive sampling. May (1993) refers to this form of selection as a criterion of 'fit for the purpose', implying that only the respondents that are suitable for the research must be selected to participate in the study. According to Creswell (1994) a key requirement in qualitative research is to select respondents that fit the purpose of the study. Sometimes, sampling is informed by availability of respondents and convenience. This also influenced the selection criteria for respondents. After all, Palys (1997) warns that sometimes, "kneeling before the gods of randomness" impedes rather than facilitates understanding. Respondents

were selected from primarily SOEs performing government development mandate. These included ESKOM and TRANSNET.

3.4.4 Data analysis

The analysis of data was underpinned by interpretive analytical framework which involved familiarization and immersion, inducing themes, coding, elaboration, interpretation and checking. According to Terre Blanche, Durrheim and Kelly (2007), interpretive analysis provides thick description by thoroughly describing characteristics, processes, transactions and contexts that constitute the phenomenon being studied. This approach was ideal for this study and was strengthened by the fact that it prescribes that the researcher must stay as close as possible to the data and be able to interpret it from a position of resounding understanding; thus making it possible what Terre Blanche calls, " making the strange familiar and the familiar strange".

Furthermore, interpretive analysis is by its nature iterative and requires one to go through the data repeatedly between the strange and the familiar, break the data down (thematization and categorization) and build it up again in novel ways (elaborating and interpreting (Terre Blanche et al., 2007). According to Terre Blanche et al. (2007), the benefit of this approach is that it ultimately provides a compelling account of the phenomenon being studied close enough to context so that other people familiar with the context would recognize it as true while far enough away so that it would help them to see the phenomenon in a new perspective.

Immersion entailed revisiting the field notes and interview transcripts; reiteratively going through it so as to be thoroughly familiar with it and to have an early understanding of the likely interpretation that is likely to emerge from the data. Inducing themes entailed categorizing data into themes and labeling it as such, using the language of the respondents while mindful of the research question and the objectives. Importantly, Terre Blanche et al. (2007) have cautioned against merely summarizing content but also to consider processes, functions, tensions and contradictions. The themes were explanatory, and were organized into various aspects of the

EIA process. These were then rearranged into main themes and subthemes. The emerging views from the responses were then checked against the themes and concepts that were discussed in the literature review.

Parallel to the thematization was the coding of data which essentially broke up the data in analytically relevant ways (Terre Blanche et al., 2007). This entailed colour coding relevant phrases, sentences and paragraphs to highlight different concepts that matched existing or new themes that were evolving all the time. This was followed by elaboration. Elaboration is a form of an intervention that breaks down the sequence and chronological order of how things may have been said by the respondents. This allowed the researcher to have a fresh look at the data and to carefully compare sections of text that appeared to belong together. This ultimately allowed the researcher to revisit the themes and rearrange them as required. Terre Blanche et al. (2007) contend that this is essential to capture the finer nuances of meaning not originally captured by quite crude coding system. This explains the need to recognize thematization and coding as an evolving process as more thorough analysis takes place. Once all this was done, there was the interpretation and the checking of data with a view to fix the weak points, identify contradictions and correct areas that would have had exaggeration and or understated due to various factors including prejudices arising from the researcher's involvement.

3.5 Concluding summary

This chapter presented the research methodology that was used during the study. The research approach was qualitative and it used structured questionnaires to collect primary data. This was complemented by secondary data based on existing research and published journals. The respondents were selected purposefully using non probability techniques in order to enrich the study with first hand information relevant to the study. The data analysis was underpinned by interpretive analytical framework.

CHAPTER 4: PRESENTATION OF FINDINGS

4.1 Introduction

The purpose of the study was to investigate the implications of EIA on service delivery. As indicated in Chapter 3, purposive sampling was used to identify and select potential respondents. A total of 21 questionnaires were sent out to potential respondents. Of these, 14 were returned, representing 67% return rate. Questionnaires attached as Appendix 1 were sent to respondents using email in the first week of May 2011. The email explained the purpose of the study and requested them to participate in the study. Prior to this, all respondents were called informing them to participate in the study. Respondents were given two weeks to return the questionnaires. Interviews were also scheduled with selected respondents. After the 14 day interval, follow up requests were sent to respondents that had not returned the questionnaires. Questionnaires were accepted from respondents until the end of May. Data capturing began as and when questionnaires were received from respondents. This chapter presents the results of the study from fourteen respondents that took part in the study purposefully selected from ESKOM and TRANSNET employees.

The composition of the respondents was diverse and consisted of three Environmental Managers, one Environmental Compliance Manager, one Chief Environmental Advisor, three Senior Environmental Advisors, one Senior Risk Manager, two General Managers, one Senior Manager, one Senior Environmental Specialist and one Senior Corporate Specialist. As can be seen from the designation of the respondents, all respondents were either middle managers or senior managers. The respondents were first asked to indicate their level of understanding of the EIA regime in SA. All respondents indicated that they have a thorough understanding of the EIA system.

4.2 Emerging themes and subthemes

All the data received was captured and analyzed. A number of themes and subthemes speaking to the question emerged from the data analysis. These themes are: delays in EIA

and service delivery, poor planning, concerns about the EIA process (with five subthemes), impact of EIA (with five subthemes) and EIA special dispensation. The next section presents the results under each theme.

4.2.1 Delays in EIA and service delivery

One of the recurring themes from the data centered around the delays in EIA and service delivery. This theme largely came from the question that sought to ascertain from the respondents what they thought are the unintended consequences of the EIA regime. There was a general consensus among respondents that EIA takes a long time, which in turn, results in delays in service delivery particularly where there is conflict between service delivery and environmental protection. To illustrate this point, Field (2006) observed the following remark by a prominent politician:

> *"We cannot forever be held hostage by butterfly eggs that have been laid, because environmentalist would care about those things that are important for the preservation of the environment, while we sit around and wait for them to conclude the environmental studies".*

As a result of this frustration, there were reports that top politicians were planning to delay the finalization of the 2006 EIA regulations (Field, 2006). According to Retief (2007), this was because EIA is sometimes seen as an obstacle to development and unduly obstructs government's delivery programmes. These perceptions have continued seemingly unabated and similar complaints have been noted in other countries. Similar observations have been noted in Australia. According to Middle and Middle (2010), the Australian EIA system has also deteriorated and is characterized by long delays. These delays have led to critics questioning the efficiency and effectiveness of the EIA system. Benson (2003); Cashmore, Gwilliam, Morgan, Cobb and Bond (2004) accused the EIA for promising more but delivering less. One respondent from ESKOM expressed these sentiments as follows:

> "If service delivery is used here in its broader context of all service delivery in SA, then it could be said that EIAs have lengthened the timeframes for delivering services to the people due to the prescribed and lengthy EIA process that is required. Delays in EIA process is a problem. It puts some restriction on how one implement service delivery. EIA implies that one requires an environmental authorization to start a project. This must be done early in the process. EIAs inhibit the ability to continuously find better ways of doing things. Once an environmental authorization is issued, it becomes difficult to change and therefore it is restrictive to innovation".

In SA, due to the growing criticism, a study was commissioned by the then Department of Environmental Affairs and Tourism to evaluate and review the effectiveness and efficiency of EIA in 2008. This was followed by a National Conference attended by industry experts and practitioners held in the same year. The study concluded that on average, authorities took 158 days to evaluate the EIA documents and to reach a decision. According to this study, the longest time it took to evaluate and decide on an application was 1128 days. Clearly, these facts are disappointing and make it difficult to rebut some of the criticism leveled against the EIA system; and therefore this does not bode well for an EIA system that is under pressure to be efficient.

Having said that, it was noted that some respondents felt that the problem with service delivery largely lie with the actual implementation of the regulations and not so much the system. As a result, it was felt that service delivery projects such as housing, water provision, electrification and waste water treatment plants are the hardest hit by these delays and often they affect people that are most vulnerable. Hemson, Carter and Karuri-Sebina (2008) rightly or wrongly attributed service delivery related problems to the failure of the capacity of the State to implement its policies and the rapid transition immediately after the democratic dispensation in 1994. They argue that rapid transition led to brain drain by skilled personnel. This is further discussed in detail later in Chapter 5.

4.2.2 Poor planning

The respondents were asked their views on the inherent conflict between the environmental protection and development and whether or not the perceived conflict can be reconciled. This was necessary to ascertain because of the mounting calls that environmental legislation should be relaxed as it is perceived to slow down development and service delivery. The respondents felt that while there may be perceived conflict between environmental protection and development; this can be reconciled provided there is proper planning by project proponents and integration of EIA with planning. This appears not to be happening, for instance, Todes, Sim and Sutherland (2009) have noted that there is fragmentation and overlapping legal frameworks which makes integration between planning and EIA rather difficult. Todes et al. (2009) have also acknowledged that the competing divide between planning and environmental impact management is problematic from developmental and sustainability perspective.

The respondents also acknowledged that where development takes place, it is expected to have some form of impact to the natural environment. One respondent from TRANSNET remarked as follows:

> "Strictly defined any development will have some form of impact on the natural environment but the impact of EIA on service delivery come with the lack of strategic policy direction and the under utilization of other environmental management tools which are aimed at addressing environmental issues at a high level. The use of Strategic Environmental Assessment (SEA) tool has a potential to limit the time required to undertake project level Environmental Assessment and thus result in timely implementation of the planned development".

This highlights the problem of poor planning and the impact thereof on service delivery. The respondents felt that the problem is exacerbated by the failure to use strategic planning tools such as the SEAs and EMFs. The respondents recommended the mandatory application of these strategic tools at policy, plan and programme levels to address the perceived delays associated with EIA process at a project level. This would ensure that approval of individual development projects is made easy as negative environmental consequences of such policies, plans and programmes would have been dealt with at higher level and communicated to all rather than being dealt with at the EIA project level. While this call is welcome, Retief (2007) has cautioned that SEA in SA has so far failed to inform or influence decision making and therefore is deemed to be ineffective. Retief (2007) has also argued that SEA practice in SA does not conform to the main international effectiveness criterion and therefore it is not achieving its objectives. As a result, calls have been made by practitioners to either redefine the purpose of SEA or fundamentally rethink the way in which SEA is being applied (Retief, 2007).

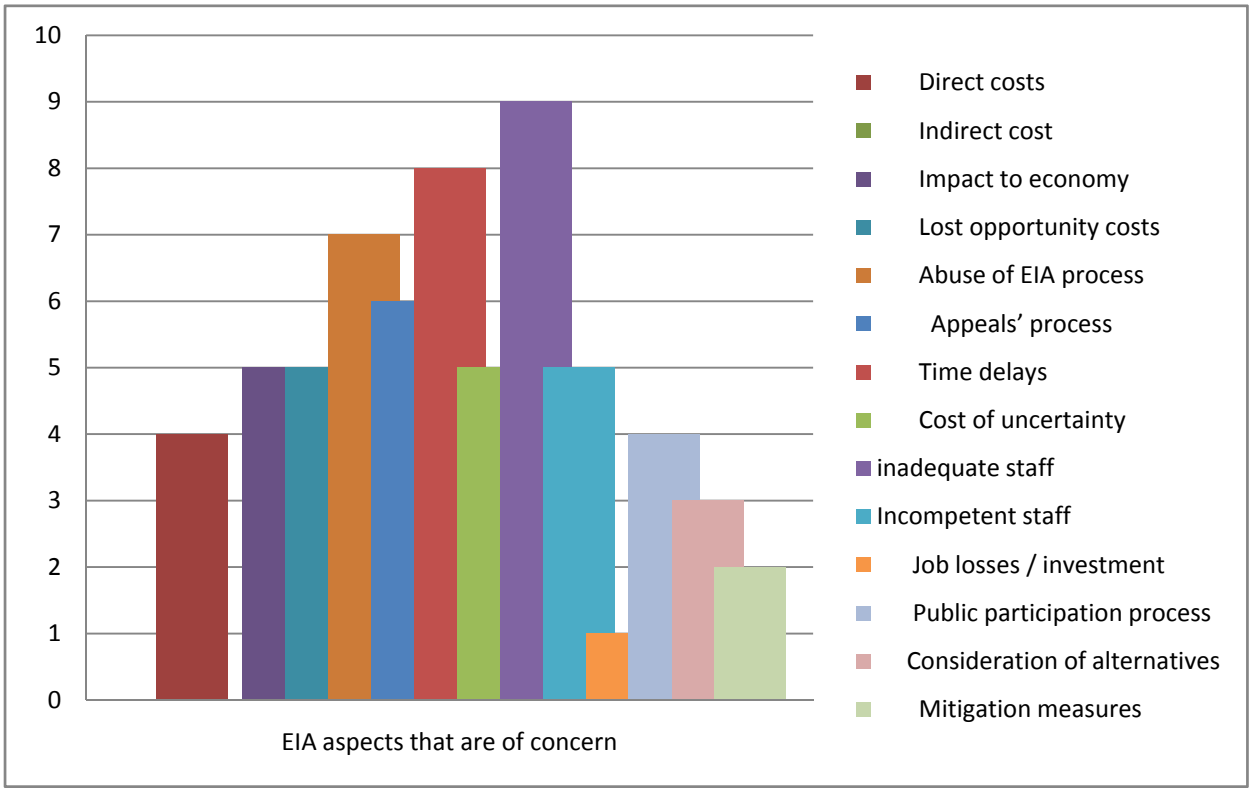
It is clear from this discussion that there was a strong view that service delivery could be enhanced with more coordination and planning and this would eliminate potential problems. In view of this, one respondent applauded the recently promulgated EMF regulations (2010) as a step in a right direction because it ensures the integration of land use and planning. Despite Retief's skepticism of SEA, it is apparent from the responses that proper planning and the use of strategic tools such as SEAs and EMFs are presented as tools that could solve some of the problems associated with the EIAs and improve service delivery.

4.2.3 Concerns about the environmental impact assessment process

The graph in figure 4.1 depicts what respondents considered to be EIA aspects that are of concern from a list that was provided to them. It is noted from the graph that the inadequacy of staff was the area of most concern from the respondent because it was ranked highest. There

was unanimity that the capacity of government is stretched and thin on the ground. The depth of knowledge and institutional knowledge was found to be limited, which is problematic because the regulations need well experienced officials in order to be implemented optimally and to achieve quick turnaround times. This was followed by the time delays which was a recurring feature from the respondents' concerns. The third most area of concern was the abuse of the EIA process. This was followed by the appeal process which is related to the abuse of the EIA process as some abuse takes place in the form of appeals. The rest of the other categories were rated more or less the same with the exception of job losses which was the least area of concern from the respondents. This is shown in figure 4.1.

Figure 4.1 Ranking of aspects of EIA that are of concern



4.2.3.1 Bureaucratization of environmental impact assessment

In general, most respondents conceded that the EIA process has become too bureaucratic, too administrative, mechanistic, tedious, onerous, and cumbersome; and is characterized by poor administration and governance. It is perceived to have become more of a checklist and applicants are penalized if some boxes have not been ticked. This approach unfortunately pays less attention to outcomes. One respondent used the analogy of paying taxes which is perceived to be a grudge exercise and yet a necessary thing to do. The following remarks from the respondents reinforce this point.

> "EIA Process is tedious, onerous and cumbersome and delays certain projects which are of critical importance to our economy and or service delivery which cannot wait for the process to be finalized".
>
> "The passage of the entire process is marred by bureaucratic delays in the form of new legislation and laborious regulations, particularly the National Environmental Management Act (NEMA), and authorization has become a tedious process due to unnecessary duplication of policy processes. This obviously delays service delivery".

Kleynhans and Kotze (2008) have observed this phenomenon notably in environmental sphere. Even though respondents felt that some improvement has been observed, there is still a long way to go in order to deal with the bureaucratization of the EIA process. Over-reliance on the EIA process by competent authorities was seen to be a problem as this is sometimes abused by stakeholders to frustrate the process. The respondents also felt that the bureaucratization of the EIA process hinders innovation given the fact that project feasibility should be an ongoing process and EIA does not allow the project to evolve. One Senior Manager from ESKOM was so concerned with the bureaucratization of EIA process and commented as follows:

"Adherence to legislation is not an issue, the issue is the process. What it takes to adhere is problematic and makes development plans non-viable".

On the contrary, some respondents felt that the criticism of EIA regime is harsh and probably comes from someone who has no intention of protecting the environment. They argued that if going through an EIA process for two years means that the environment can be saved for the next 50 years, it is worth some red tape. While this make some sense, perhaps it is not realistic and informed because it belittles the importance of operational efficiency and effectiveness.

4.2.3.2 Inflexibility of the EIA process

Respondents were asked to indicate whether they thought that the EIA regime is flexible or not to suite practical implementation on the ground. Largely, respondents felt that the EIA regime is not flexible particularly when it comes to the consideration of alternatives. The respondents felt that the alternatives are not always available and sometimes it becomes difficult to get viable and reasonable alternatives.

According to some respondents, there are cases where alternatives are found to be environmentally viable but not economically and or technically feasible. The respondents felt that, due to this being mandatory, this results in unrealistic alternatives being fabricated for the sake of complying with the regulations. For example, to ask for the alternative location for the expansion of an existing facility would neither be possible, reasonable and feasible. The respondents felt that this defeats the purpose and intent of having alternatives which should be preventative in approach (Gillespie, 2008). The challenge with this is that the respondents felt that it may lead to the escalation of the project cost due to the high prices associated with alternative sites and or alternatives.

Furthermore, the respondents argued that this defeats the perceived win-win situation that follows from the consideration of alternatives. The respondents were of the view that alternatives mean that there is a winner and a loser. This is because win-win implies that you are winning in all aspects. Ultimately, some respondents felt that it boils down to who is the loudest specialist during the EIA; and that specialist becomes the winner. Robinson and Bond (2003) warned of the danger of being influenced by the most vocal groups which do not represent the full spectrum of the public.

The respondents were concerned that the consideration of alternatives has given so much power to stakeholders which results in stakeholders adopting a NIMBY attitude. Consequently, project proponents are sometimes moved from one alternative to the next with considerable time delays and financial implications. Robinson and Bond (2003) have conceded that NIMBY is definitely a problem where the community has to bear the disadvantages of a development for the good of a society as a whole. Service delivery programs by their nature are designed to benefit the greater good of the society and as such are vulnerable to the NIMBY effect.

It seems from these responses that this kind of inflexibility is undesirable and deprives the EIA process to apply discretionary mechanisms and common sense as advocated by Weston (2006). While the application of commonsense is welcome, it must be used with caution because it is informed by a particular perspective which may vary from individual to individual. Even this would be difficult to implement given the fact that the regulations are sometimes ambiguous and can be interpreted in many ways, thus resulting in regulatory uncertainty that is onerous for applicants. Officials themselves have varying degree of knowledge and expertise which would potentially create more problems. According to Skinner (1994), this would result to heterogeneity which is often caused by performance inconsistency and variation.

4.2.3.3 The EIA process and public participation

All respondents strongly felt that the EIA process is being abused by the public to satisfy other motives different from those intended by the EIA process. They suggested that the scope of public participation must be clarified; and the roles and responsibilities in public participation be defined. The respondents raised a number of issues with regard to public participation and the 'hijacking' of the process by the public. There was also a feeling that the CA places a lot of emphasis on public participation, hence it ends up addressing irrelevant issues and subjected to abuse.

Despite its perceived flaws, in 2001, public participation received a major boost when the Arhus Convention came into force. This Convention requires early participation of the public in environmental decision making (Robinson and Bond, 2003). According to Oughton (2004), this was described by Kofi Annan (former Secretary General of the United Nations) as the most ambitious venture in the area of environmental democracy so far undertaken. The respondents highlighted the frustration arising from public participation.

> "… the current EIA regime actually encourages the vocal groups to disrupt the EIA process. … it is easy for an EIA to be hijacked to address irrelevant issues, and the EIA is made to incur huge costs. For example, where the stakeholders demand long and additional time to provide their comments; and where stakeholders demand translation of specialist reports to all official languages. Landowners sometimes refuse to cooperate and thus delay the project particularly at the time when they were expected to sign consent forms (2006 EIA legislation)".

Some respondents felt that there must be a limit on how one needs to consult and implied that there is no criterion that defines how much is adequate participation. As a result, public

participation can be protracted because there are no clearly delineated parameters of adequate public participation. There was a feeling that EAPs tend to be scared to say 'NO' even where it is warranted as this could be used during the appeals process, which Woods (2002) has described as a right. One respondent suggested that EAPs must be in a position to deal with the hijacking of the EIA process especially those that are well resourced. The respondents suggested that the challenge of dealing with this stakeholder group is that they tend to use the media to victimize, threaten and vilify both developers and EAPs resulting in considerable harm to their reputation and integrity.

Oughton (2004) suggested that participation must be guided by the principles of justice, equity and utility maximization. He argues further that the affected people must feel that they have some form of control and influence over what people do to their environment and well-being through empowerment. They must also feel that they have a democratic right to take part in decisions affecting them (democratization). The public must have important knowledge of relevance to the decision making process so that they can put the range of issues that might otherwise be overlooked, undervalued or underutilized (efficiency) (Oughton, 2004). Oughton (2004) further suggest that participation should be underpinned by success which acknowledges that the public has the capacity to halt projects thus ensuring that the developers acknowledge the needs and desires of people and strive to achieve consensus and common goals.

The abuse of public participation to raise other socio-political issues and self-serving interests particularly those which should be addressed through other means and which fall outside the mandate of the competent authorities was a recurring and worrying concern. There was however a respondent who justified the abuse by suggesting that sometimes the developers and experts are not interested in genuine consultation because of deficiencies in information available and resort to what Robinson and Bond (2003) call tokenism to meet the requirement but with no genuine intent to involve stakeholders. Wood (2002) has observed that in SA,

public suspicion of facilitators, regulators and certain developers is one of the reasons limiting public participation. As a result, Oughton (2004) has criticized the top-down approach where developers use the Decide-Announce-Defend (DAD) model which is more technocratic and less democratic. Accordingly, Oughton (2004) has recommended a bottom up or deliberative democracy approach which uses Meet-Understand-Modify (MUM) approach.

One respondent suggested that eliminating abuse is almost impossible.

> "It is difficult to completely eradicate the abuse of the EIA process because of the subjectivity of environmental issues. There needs to be a move towards much more professional liability, the same way other professions are treated such as engineers, lawyers. If consultants are professional and treated as such, abuse would reduce (professional liability)".

It was argued that the abuse of the process is inherent in public participation but it is also indicative of how the NGO sector behaves in general to promote themselves using an activist approach. As a result, it was suggested that there must be an endeavor to ensure that there are other processes that would allow the kind of platform that EIAs give to people to raise their issues and to streamline the appeals process.

The respondents further suggested that the stakeholders must be educated of their roles and responsibilities during public consultation. Oughton (2004); Poder and Lukki (2009) have argued that if stakeholders have the right knowledge, the process becomes efficient. The respondents also recommended that there is a clear need to analyze all areas of potential abuse with a view to amend the regulations to close the gaps and cautioned against the use of experts and academics that discredit technical solutions and the EIA process and thwart any efforts to enrich it.

In China for example, Yang (2008) found that government officials are often doubtful about the quality of the public opinions received and they usually believe the experts from the universities and research institutes and therefore regards experts' opinions as public opinions. According to Poder and Lukki (2009) this is problematic because the impartiality of experts cannot be guaranteed. The respondents suggested that government needs to play a more proactive role to ensure that the public do not 'hijack' the process; however, government only gets involved after the public participation process has been completed, and perhaps this should be looked at. It was also suggested that perhaps more access must be given to affected parties rather than interested parties. Despite the challenges of abuse of public participation, the respondents conceded that it is a necessary tool hence Stewart and Sinclair (2007) asserted that participation actualizes fundamental principles of democracy and strengthens the democratic fabric of society.

4.2.3.4 Appeals

In general, the respondents agreed that an appeal is a constitutionally guaranteed right that must be respected. However, there is suspicion that some appeals are not genuine and that they are not lodged in good faith. The respondents were concerned that appeals are handled inefficiently because they take a long time to consider and finalize, thus resulting in unnecessary escalation of costs for project execution and service delivery.

The respondents viewed the lodging of appeals as one way of venting dissatisfaction with administrative decisions taken by government, and as long as it is done with good intentions, there is nothing wrong with it. In view of this, it was felt that the right to appeal decisions should not be taken away as it is based on constitutional rights. However, appeal processes should not result in project delays and decisions on appeal applications need to be expedited. According to one respondent's experience, the public delayed electricity generation infrastructure by between one to four years as a result of appeals, only to be dismissed later by

the Minister. The respondent expressed the view that the Minister must be more firm and decisive with the public in responding to appeals and must be supported by a dedicated team of experts to offer advice and expedite the finalization of appeal decisions. Failure to act firmly by the Minister unduly add cost for the development due to prolonged delays and additional specialist studies that may have to be undertaken to help the Minister make a decision. The Minister's firmness would ensure that it reduces politicking and personal agendas through the lodging of appeals. It was recommended that appeals should be reviewed on receipt by experts in that area, so as to advise the Minister on their validity. It must be noted that Wood (2002) included the right of appeal as one of the evaluation criteria for public participation.

The respondents identified unchecked appeals as a gap in the EIA system that must be remedied because there appears to be a trend to target projects that are of a strategic nature to the country. For example, the much needed Kusile and Medupi power stations critical to augment power shortages were appealed to the detriment of the security of supply of electricity. This raised a concern from some respondents who suggested that such appeals should not be considered. This appears to be a real concern, but it is important to highlight that such a move would not be in line with the Promotion of Administrative Justice Act of 2000 (PAJA). This Act seeks to:

i. Give effect to the Constitutional rights (S33) to lawful, reasonable and procedurally fair administrative action, and to the right to be given reasons for administrative action;
ii. Requires administrators to follow fair procedures when making decisions;
iii. Requires administrators to give adequate reasons, when asked to do so, for decisions they have taken;
iv. Requires administrators to inform people about their rights to review or appeal and to request reasons; and
v. Gives members of the public the right to challenge administrative decisions in Court on a number of grounds.

4.2.3.5 Independence of environmental practitioners

There is a perception that environmental practitioners and specialists in the field of EIA have become mouthpieces of developers and are at times partial. As a result, it has been alleged in some quarters that they conform for the sake of meeting the legislative requirements; but they have no interest in constructive dialogue. Some respondents argued that it is not possible to have independent environmental practitioners and specialist because they are paid by the project proponents and there is no professional body that regulates their professional and ethical conduct. In view of this, it was suggested that their impartiality cannot be guaranteed because ordinarily they would first and foremost have the interests of their clients. It was stressed that the practitioners must be independent in providing their professional advice and must endeavor to provide the best mitigation measures failing which government must have its own experts that can rebut the developers' expert opinions.

One respondent from ESKOM criticized the requirement to appoint an independent EAP as a serious burden over and above having to undertake an EIA process for listed activities. The basis for the criticism was that it deprives applicants in particular SOEs to use internal expertise and capacity that ordinarily would understand the industry better and for which SOEs have invested and developed overtime. Consequently, developers incur huge cost appointing EAPs that at times may not have a good understanding of the industry.

The other issue that the respondents raised related to the actual autonomy itself because it implies that the EAPs must be neutral. It was felt that this needs to change because it creates an unrealistic expectation. The EAPs can play a far better role by promoting a project in the manner that is least impactful to the environment; the same way a professional engineer would promote a project within the set parameters of the professional body for the sector. The respondents felt that the formation of the professional body for the EAPs needs to be accelerated.

The problem with the autonomy of the EAPs also comes from the fact that they get paid by the developers. It can therefore be argued that this create a conflict of interest which may compromise their judgment. Given the fact that future business prospects may depend on the recommendations they make, it may be difficult for them to be autonomous; and largely have no choice but to build a strong business case preferred by their client even though this may not be a sound and rational advice. Poder and Lukki (2009) have raised similar concerns with regard to impartiality of impact assessors because in some way, it provides a false sense of security; hence the public view them with suspicion and distrust.

4.2.4 The Impact of environmental impact assessment

4.2.4.1 The financial and economic implications of EIA

The respondents were asked to indicate the financial implications of undertaking EIA to their organizations and the impact to the economy in general. The majority of respondents tended to suggest that EIA does have financial implications to their organizations and this seems to be increasing. According to Retief and Chabalala (2009), experience in SA over the last decade of mandatory EIA practice has raised serious questions about unjustified and unnecessary time delays and monetary costs and a desperate need for improved efficiency and effectiveness. Kleynhans and Kotze (2008) made similar observations and concluded that the cost of complying with environmental legislation may be a barrier particularly for small businesses.

A respondent from ESKOM suggested that if ESKOM is delayed, it impact negatively on its customers especially in cases where the cost of a power line for example is borne by the customer. For instance, there are cases where a company like a mine would approach ESKOM to strengthen a power line to a mining area. Delays in finalizing the application would invariably affect the operations in the mine and associated industry which may cause knock-on effects to the economy.

According to a respondent from TRANSNET, the increasing cost is partly attributed to indecisiveness by government to make decisions, prolonged processes, lengthy specialist study requirements and scarcity of consultants in certain fields which creates demand which result in them being able to ask for any price. It was felt that to minimize the cost, the EIA process must be shorter and appropriate environmental management tools must be used which can deliver similar or better results rather than rely on EIA as the only tool. NEMA section 24 (5) (bA) makes provision for this, but unfortunately, these tools have been underutilized and largely unexplored in SA. It was further suggested that self regulation mechanisms with proper incentives could be helpful to mitigate the high costs of hiring the environmental consultants. One respondent felt that perhaps it would be appropriate to consider subsidizing small businesses or change the current framework of relying on EAPs and make it government responsibility to conduct EIAs especially for small businesses.

4.2.4.2 Cost benefit analysis of environmental impact assessment

There was a general consensus among respondents that the benefits of EIA outweigh the costs even though the benefits are realizable in a long term. Unfortunately, long term benefits may not be appreciated by indigent people whose immediate needs would not have been met due to environmental considerations. According to Wood (2003) cited in Retief and Chabalala (2009), although it has been stated that the aim of any EIA system should be to maximize environmental benefits, minimize environmental cost, and minimize the cost to the project proponent, some have argued that it would be impossible to establish precisely either the benefit or the cost of EIA. Despite this, the respondents felt that the environment should be treated as priceless because its benefits far outweigh the costs particularly where EIA and planning are integrated. Retief and Chabalala (2009) have cautioned that this is not a simple exercise because comparing the benefits and costs of EIA is ultimately a matter of judgment which depends on how they are weighted.

There was also a feeling that proper implementation of EIA could save money in the long term. One respondent from TRANSNET cited the incident that led to the flooding of the coastal properties in 2007 in KwaZulu Natal by unusually high swells in the ocean. The respondent argued that had that development undergone through the EIA process, appropriate investigation would have been done to determine the suitability of the site and the impact of the high ocean swells on the properties. The same argument was made for the Johannesburg old derelict mines that have cost the State millions of rands to rehabilitate. Both these cases were cited to demonstrate that failure to consider the environment could have long term financial costs.

The irreplaceability of environmental resources raises the issue of the worth of the environment and its services. There is a tendency by environmental economists who are sometimes tempted to put a price to the environment. According to Munier (2006), they think it should be treated as a commodity and argue that some part of the natural world can be substituted by man-made options. The environmental scholars including but not limited to Thomas Malthus have dismissed the cornucopian school of thought and have argued that environmental and ecosystem services cannot be replicated by men (Munier, 2006). Environmentalists have also affirmed the respondents' sentiments that the environment is priceless and must not be treated as a commodity. They have cited the Kuznet's curve, which has proven that with the increasing economic growth, there is an escalation in the environmental degradation, which reaches a top limit and then begins to descend, suggesting that after a certain limit, increasing economic growth corresponds to a diminishing environmental degradation (Munier, 2006).

However, another respondent suggested that each case needs to be looked at differently. It was argued that where essential services are required, people will not care about the environment if their basic needs are not met. Persadie and Ramlogan (2005) rightly pointed out that the majority of people in developing countries are overwhelmed by poverty and the need for development and therefore, it is expected that before they can even think of the

environmental interests, ameliorating the quality of life and improving living standards through economic growth prospects and development would be their primary concerns. Because of this, they argue that the unfortunate reality is that the issue of the environment is a low priority one in developing countries as they have other problems to look after; and this reality cannot be ignored. In view of this, it can be inferred that the pursuit of a better life may sometimes be in conflict with environmental considerations. The conservative interpretation of the EIA legislation does not make things any easier in this regard.

4.2.4.3 Environmental impact assessment score card

The respondents were asked to give an indication of the level of their satisfaction with the EIA system in SA. While the respondents indicated that they were satisfied, however, a number of concerns were raised. There was a view that the legislation is interpreted conservatively and the description of the listed activities is problematic. Furthermore, the schedule of listed activities that triggers the need for an EIA is unnecessarily long and broad in scope. As a result, the developers are sometimes forced to undertake EIA where it would not be required if the listed activities were not defined broadly and undeservedly listed. This waste time and resources because it does not appear to accrue any benefits and advance what is intended by the legislation. The changes that have occurred in the legislation do not always provide clear transitional arrangements which create confusion whether or not additional authorizations would be required with the new regulations.

Furthermore, it was argued that the regulations provide no room for discretion and the application of common sense by officials which is unfortunate. For example, the EIA process is too prescriptive and deviation from the prescribed process can be challenged and can form the basis for an appeal on procedural grounds. According to Au (2006) EIA is not a rocket science and most problems can be solved simply through the application of a good dose of common sense. This approach however becomes problematic in a pluralistic society as there are bound

to be different perspectives on different issues. Au (2006) argued that in many cases, the question is not a matter of whether common sense is exercised, but on what basis and from what perspective. For instance, Au (2006) contended that what might be regarded as insignificant to project proponents could well be quite significant to those who might be adversely affected by the proposed development. Therefore, given the different values from diverse stakeholders, it becomes very difficult to make judgment based on common sense. However, there was recognition that if discretion were to be allowed, that would require knowledgeable and well experienced officials which is not always the case. The respondents felt that the EIA system can be improved in that competent authorities need to be able to take quick and better decisions.

While the respondents were mostly satisfied with the current EIA regime, however, Field (2006) on the other hand has been very critical and this sparked a fierce and interesting academic debate with Murombo (2008). Field (2006) contended that the statutory EIA regime in SA has moved towards an environmentalist paradigm as opposed to a sustainable development paradigm which is preferable in SA. Field (2006) further argued that given the historical context framing environmental issues in SA, the environmentalist paradigm is vulnerable to claims that environmental concerns impede social and economic development, and show that this paradigm obscures the critical linkages between economic growth, social development and environmental protection. The argument by Field is informed by the contention that the South African regime as currently framed in terms of Chapter 5 of NEMA does not serve as a site of sustainable development thinking and is really only aimed at considering the impacts of activities on the natural environment (Field, 2006).

On the contrary, Murombo (2008) dismissed claims made by Field (2006) and asserted that the highest Court dispelled the growing, and legitimate perception that South African environmental laws, particularly the EIA regulations are overly informed by an environmentalists' paradigm that negates the idea of sustainable development. Murombo

(2008) argued that the Constitutional Court judgment clarified in detail the nature and scope of the concept of sustainable development. Murombo (2008) cautioned against the propensity however coincidental, of the development-minded to masquerade as environmentalist while protecting only unsustainable commercial interest.

4.2.4.4 Project specific impacts of EIA and sustainability

When asked whether their organizations have had to abandon the projects as a result of EIA requirements, there were very few cases that were cited where service delivery projects had to be abandoned. It was clear from the responses that EIA does affect the scope of projects and designs are mostly changed as a result of EIA. According to Cashmore et al. (2004), the modification of projects as a result of EIA is expected; however, available evidence suggests that the modifications are relatively minor in many instances.

According to Cashmore et al. (2004), environmental analyses appear to result predominantly in fine tuning of designs and proposals for impact mitigation rather than fundamentally affecting such issues as location. There is also empirical evidence that most design changes occur after the publication of the EIA report in a significant number (50%) of cases; and these design changes have a potential to render obsolete mitigation measures made as a result of the EIA process (Cashmore et al., 2004). However, they have also acknowledged that there is not enough data to quantify the actual EIA influence on projects; and even where it is available, it could be subjective (Cashmore et al., 2004). As a result, Mcdonald and Brown (1995); Barlett and Kurian (1999) have criticized EIA for being a predominantly passive tool for information provision and, as such, is relatively inefficient and ineffective at proactively and substantially influencing environmental decision-making.

The experience of the respondents showed that there are cases where different options and or alternatives were abandoned as a result of EIA studies and investigation of alternatives undertaken to inform the decision. One respondent from ESKOM indicated that the Vaal South power station was abandoned due to environmental reasons and the company had to look for other options to address the need. Another respondent from TRANSNET indicated that a new railway line had to be built at huge cost because the existing railway line could not be upgraded due to heritage concerns from stakeholders.

This is not a uniquely South African phenomenon. For example, in Netherlands, Pellenbarg (2002) found that sometimes, business locations are prohibited altogether for environmental reasons. Where this occurs, it has a potential to force companies to undertake additional investment, which may make a project less remunerative or even uneconomic. It is clear from this discussion that the project may be impacted both positively and negatively by the EIA. For example, where a project is to be completely abandoned, the impact would be negative; however, there are cases where the project impact is positive as a result of better design and or location alternatives emanating from the EIA process.

4.2.4.5 Balancing environmental protection and service delivery

The respondents were asked to express their views whether or not the EIA regime has succeeded in balancing the need for environmental protection and service delivery and addressing the perceived conflict between the two. It was implied by the respondents that the current EIA regime is eurocentric and is largely suitable for a developed country. It was further argued that SA must decide what comes first between service delivery and environmental protection. Field (2006) suggested that:

"In SA, in light of the past and of the current state of socio-economic development, it is therefore better to urge a broad based appropriation and institutionalization of sustainable development thinking than it is to call for the strengthening of environmental protection measures: the environment stands a better chance of being valued, respected, conserved, protected, restored and enhanced if the focus is on sustainable development".

Field (2006)

This implies that the EIA regime seems to be failing to find the right balance given the urgency for service delivery and the crucial task of protecting the environment. According to Persadie and Ramlogan (2005), on the one hand there is a need for environmental protection as advocated by the developed world and, on the other; there is the fundamental need for development and service delivery. Munier (2006) has noted similar debate which argues that the expression of sustainable development involves opposite terms such as fire and water; and economic growth cannot be achieved without environmental deterioration.

Rees (2003) has noted that while economists and the sanguine technocrats insist there is no inherent conflict between the economy and the environment, many symptoms of ecological decay are spreading unabated as the economy grow. The respondents were concerned about the euro-centricity of the current EIA regime. As a result, the inappropriate internationalization and or transferral of models without due consideration of prevailing local conditions which is common in most developing countries has been criticized. McCourt (2001); Turner and Hulme (1997) cited this as one of the main reasons that have led in some cases in policy implementation failures. As proponents of the contingency theory, they have warned against this practice. In view of this, SA would need a special kind of EIA regime as a developing country. Such EIA regime must take into account that SA is still a young country and recognize

that as long as development takes place, it will cause some level of environmental degradation.

One respondent warned against developers who externalize the environmental costs and are hell-bent to develop at all cost often for short term gain and do not think of sustainability. To deal with such developers, the respondents felt that it would require strong government intervention. Government would also need to strengthen its compliance monitoring so that developers can take all reasonable measures to mitigate and comply with conditions of authorizations. It was felt that a lot of the perceived conflict could be resolved by proper integration of EIA and planning; and both environment and development need to give and take so that there is a win-win situation.

On the question regarding how far mitigation measures should be taken, the respondents tended to agree that we:

> "We cannot pursue mitigation at all cost because if that happens, cost and benefit would not balance out. The key issue is what is reasonable in terms of mitigation. If you take mitigation too far, it would become so onerous to development for example, the concept of off-sets. Off-sets could make the project non-viable. As a developing country, it is not possible to investigate mitigation measures at all cost".

This was informed by the recognition that some mitigation measures are almost impossible to achieve. Where this is the case; the extent to which one can go must be determined by the receiving environment, what is being protected and the nature of the impacts. One respondent argued that if the project has serious environmental implications and too many unknowns, a

precautionary principle[1] must be applied and the project must be stopped rather than try to mitigate in vain. Section 2 (4) (vii) of NEMA demands that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions. Another important consideration would be the tolerance level and threshold of the receiving environment and its resilience to recover. While one respondent argued that the developers must do whatever it takes to mitigate, the majority view was that mitigation should seek to achieve environmental efficiency and acknowledge that development cannot be completely innocuous.

4.2.5 Environmental impact assessment special dispensation

The respondents were asked to comment on calls for a special EIA dispensation for development projects that are of strategic importance and to indicate the type of special dispensation they envisaged. The purpose of such a dispensation would be to have an approval process that is less onerous with quick turnaround time. The respondents highlighted three main issues. The first issue related to potential abuse of the special dispensation and its related problems. Secondly, the industry norms and standards and risk assessments were proposed as the potential solutions. There also seemed to be unanimity that a special dispensation would speed up service delivery but cautioned that if it was done recklessly, it could be disastrous in the long term to the environment.

Despite its perceived benefits, most respondents tended to argue against the call for a special dispensation. Firstly, they questioned the criteria that would be used to qualify such projects for a special case in order to avoid potential misuse. Another issue of concern pertained to potential abuse particularly in those applications where politicians have vested interest. The

[1] *Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation (United Nations, 1992 -Rio declaration)*

respondents argued that strategic developments are by their nature loaded with political pressures and it would be difficult to avoid political interference. They argued that proclamations would lead to unknown environmental consequences as decisions would probably be taken at the spur of the moment. This would potentially send the wrong message that government is not serious about protecting the environment and its sustainability.

While those opposed to the idea conceded that service delivery would improve as a result of EIA special dispensation, but they also felt that the environmental protection must not be sacrificed at the altar of expediency and or political correctness on the basis of speedy service delivery with grave long term consequences years later. This approach was seen not only to be unsustainable, but also inconsistent with section 24 of the Constitution and the NEMA principles. However, one respondent argued that:

> "we would need to decide whether we build a hospital or save the wetland and these are the difficult choices that must be made and weighed properly. If special dispensation through Ministerial proclamations were to be considered, it would have to be in the public interest".

In view of the fact that there is no easy solution to deal with the competing but equally important priorities of environmental protection and the need for development and service delivery; it was suggested that perhaps the solution would be to fix the current system rather than re-inventing the wheel for short term success and introduce other tools that can achieve the same results. With regard to the question that sought to determine how else should listed activities be authorized other than through the EIA process, the respondents were concerned that EIA is unfortunately being used as a one size fit all tool which has resulted in small developments having to go through the process before they can be undertaken. However, some respondents argued that even the so called small projects can have serious

environmental consequences and further asserted that the mere fact that an activity is listed means that it must be authorized through an EIA process and therefore to deal with them otherwise would be problematic.

The opposing view was that a duty of care principle[2] in section 28 of NEMA places an obligation on companies to make sure that the environment is protected and therefore the concerns could well be addressed here. Further, projects with defined industry codes which take into account environmental management considerations should be sufficient. They further suggested that the International Standard Certification of environmental management system would justify exemption from EIA. There are also activities that only need to be subjected to risk assessment for them to proceed and not EIA. For instance, the cleaning of asbestos contaminated land was cited as one good example.

4.2.6 Conclusion

The purpose of the EIA regulations (regulation 2) is to regulate the procedure and criteria relating to the submission, processing and consideration of, and decision on, applications for environmental authorizations for the commencement of activities in order to avoid detrimental impacts on the environment, or where it cannot be avoided, ensure mitigation and management of impacts to acceptable levels, and to optimize positive environmental impacts. In principle, the respondents were in agreement with the spirit of the regulations and there was no insinuation to suggest otherwise. However, it appears from the findings that the implementation and the administrative system of the EIA regime leave much to be desired. As

[2] *According to NEMA section 28, every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorized by law or cannot reasonably be avoided or stopped, to minimize and rectify such pollution or degradation of the environment.*

a result, this seems to be working against the noble goals of having the EIA system. There was a strong indication that the problems are multifaceted ranging from poor planning and integration and failure to use other equally important tools to enrich EIA governance and administration. It was apparent as well that the interested and affected parties during the EIA process often make the implementation rather difficult and perpetuates 'the us and them' attitude which is undesirable. All these challenges make the implementation virtually impossible. Given the multiplicity of challenges, no one solution can help but rather a multidimensional approach would be needed to address the identified flaws. These will be discussed in Chapter 5 in detail and be summarized in Chapter 6 as recommendations to the relevant authorities.

CHAPTER 5: ANALYSIS AND INTERPRETATION

5.1 Introduction

Service delivery has become a major issue for government over the last few years. As a result, the pressing need to improve service delivery by government became a key focus of public sector reforms in 1997 and beyond. This resulted in the adoption of the White Paper on Transformation of Public Service Delivery (1997). Urgency on service delivery also received attention from politicians; and this resulted in concepts such as "the peoples' contract" and recently "together we can do more", seemingly both intended to highlight the urgent need for speedy and responsive service delivery. It seems therefore that service delivery is a general and widespread problem in government; hence the intolerable increase of the public's patience with poor service delivery. When confronted with this dilemma, the developers and politicians have in many cases complained that delays in service delivery are caused by inhibiting regulatory framework and the EIA regime has not been spared of this criticism. Having said that, pressures to the EIA system are not unique to SA, for example, EIA in Australia is under similar pressure to be more efficient and timely (Middle and Middle, 2010). At the height of this problem in Australia, the industry remarked as follows:

> *"We can no longer boast of our approval system being the best in Australia. It has deteriorated to where it is criticized for taking too long, being too costly, too bureaucratic, process driven rather than being focused on outcomes, and not always representing the objectives of the elected government".*
>
> Industry Working Group (2009) in Middle and Middle (2010)

These sentiments have similarly been expressed by South African industry, recently with more vigor than before suggesting the increasing impatience with the ineffectiveness of the EIA system.

5.2 The aptitude of competent authorities

Retief (2007) has noted that the frustration with environmental impact assessment has fueled the perception that it is an impediment to development and is responsible for delaying project implementation. This has put EIA administration and the aptitude of the CAs in the spotlight. Against this backdrop, EIA administration and governance and inherent delays thereof in the processing of the EIA applications must be understood in the context of the capacity of the State to deliver effectively and efficiently; and the changes implemented by the State in particular after 1994 first democratic elections. According to Hemson et al. (2008), government has acknowledged that there are certain weaknesses in the way it is organized, in the capacity of key institutions, including some of those providing economic services. Furthermore, they have claimed that there is indecisive leadership in policy development and implementation which constrains the country's growth potential and service delivery. Hemson et al. (2008) have suggested that these sentiments are a clear indication that the capacity of the State to manage existing competencies and to take on increasing number of tasks that are assigned by policy and legislation are limited. Inefficient application of the EIA regime is increasingly being seen as a problem from all quarters as it impact negatively on service delivery. The respondents expressed similar sentiments and criticized inadequate capacity as part of the problem.

With regard to capacity, Hemson et al. (2008) argue that a key measure of capacity should be the outcomes that are visible in terms of improved service delivery and greater State responsiveness to basic needs. They further argue that service delivery, including the delivery, maintenance and continued smooth operation of supporting infrastructure, is the most useful measure of capacity. Clearly, delays in the processing of EIA applications fall short of this criteria. One need to add that in addition to capacity, adequate resources are fundamental in implementing policies; but these too must be supported by the right tools and systems. For example, government must be able to deal with the problem of staff attrition as noted by Kleynhans and Kotze (2008), which is prevalent in the environmental sector and its tendency

to deprive government of the requisite skills and experience. It is therefore argued that even the adequate number of staff would not necessarily solve the problem of capacity if the majority is of the wrong caliber, inexperienced and lack the depth of knowledge to implement the EIA regulations. Similarly, officials must have requisite tools at their disposal to help accelerate the review of applications and aid decision making; without which it takes longer to make sense of the EIA reports. For example, a geographical information system that is linked to various land parcels and land uses would ensure that officials get firsthand knowledge of the sites involved, the current and preferred land uses in the affected sites and the presence sensitive environments without having to go on site which cost time and money. It is submitted that the absence of these critical elements have a tendency to hinder the smooth provision of EIA service by government officials.

Apart from the problem of capacity, Kleynhans and Kotze (2008) have contended that sometimes, time delays are caused by the fact that the relevant authorities do not comment in time when asked to do so; and sometimes they do not respond at all. The observation by Kleynhans and Kotze highlights two problems. The first one relates to poor and or lack of intergovernmental coordination. The second one questions the capacity of other government departments to provide support to the CA when asked to do so during the EIA process particularly in the context of Chapter three of the Constitution which places cooperative governance at the centre of the functioning of government machinery. According to section 41 (h) of the Constitution, government departments must cooperate with one another by assisting and supporting each other, coordinating their actions and legislation with one another and adhering to agreed procedures. The failure by some government departments to adhere to these Constitutional prescripts and to comment on EIA reports is an indication of poor cooperative governance; and perhaps constitutes a violation of these Constitutional provisions. But also, it raises a fundamental question of whether or not government departments have the right capacity to cooperate and help one another as required by the Constitution.

Section 24 O of NEMA read with regulations 6 (4), 56 (7), (8) and (9) makes it evidently clear that cooperative governance is vitally important during the EIA process. This NEMA provision places a mandatory obligation on the CA to consult with every State department that administers a law relating to a matter affecting the environment during the consideration of an application for an environmental authorization. In return, the State departments consulted in terms of NEMA have an obligation to submit their comments within 40[3] days from the date on which the CA requests such State departments in writing to submit comment. As Kleynhans and Kotze (2008) have asserted, sometimes they simply do not comment which makes it extremely difficult for the CA to make a final decision without these crucial comments. Clearly, there is either a problem with capacity, failure to appreciate the importance of making those comments or pure lack of proper intergovernmental coordination framework that must guide the smooth coordination.

There are other challenges stemming from this provision of NEMA. Firstly, the 40 and 60 day comment periods respectively are not in line with the normal public consultation period of 30 days and yet this has to be done at the same time as part of public consultation. Secondly, the NEMA provision places an obligation on the CA and not the EAP entrusted with public participation and consultation to request comments from State departments. This simply means that the CA must immediately on receipt of EIA reports from the EAP write to other relevant State departments asking for comments in order to minimize the time lag between the consultation of the public and the State departments.

It is the view of the researcher that this places an additional administrative burden on the CA which in many instances may not be readily available. Given the fact that ordinarily, competent authorities are only required to acknowledge the EIA reports within 14 days from the date of receipt, there is a danger of being tempted to ask for comments as and when the EIA reports

[3] According to Regulation 56 (9), in the case of the Department of Water Affairs (DWA), the comment period must be 60 days for waste management licences

are acknowledged. Ideally, the system would work much better if the time frames for consulting stakeholders were uniform and aligned; and the EAP made responsible to consult all stakeholders including affected State departments. These are practical problems experienced by the competent authorities which if inappropriately managed can cause delays in approval processes.

5.3 Environmental impact assessment administration and governance

Apart from the issues raised concerning the aptitude of the CAs, the respondents implied that the problems of delays in EIA are structural due to a bureaucratic nature of government. Unfortunately, for many years, bureaucracy has been associated with negative connotations such as delays, red tape, unresponsiveness, sometimes gross inefficiency and others. Kleynhans and Kotze (2008) have alluded to the same problems and argued that bureaucracy as a system of governance has rightly or wrongly been known for its stereotypical conception which advocates the public perception that government officials are bureaucrats who are inefficient, overtly regulatory and incapable of promoting the public good. Firstly, there is a problem with the statutory prescribed time frames. The time frames for the competent authorities appears to be longer than necessary; and therefore deemed problematic given the already high concerns about delays caused by the EIA process.

The total time frame for a basic assessment (BA) process is 60 days including both considering the report and making a final decision. The consideration of the report may result either in the acceptance, rejection or request for additional information. In addition to this, there is a 14 day period within which the CA must acknowledge the receipt of the EIA report. Even the application form must be accepted by the CA before the applicant can proceed with the EIA process. It may well be argued that these additional layers of bureaucracy are not warranted at all. Once the CA accepts the BA report, it has an additional 30 days to review it and make a decision. With regard to the full EIA process, the CA has 30 days to consider the

scoping report, 60 days to consider the environmental impact assessment report (EIAR) and an additional 45 days to review and make a decision on the EIAR. In the event a report is rejected or additional information is requested by the CA, upon resubmission, it is subjected to the same process as if it had not been evaluated and the time frames apply afresh.

It is the researcher's considered view that this does not appear to be reasonable and rational. Subjecting the same report to the same time frames to ascertain if the basis for rejection has been addressed is flawed and unduly waste time for applicants. Surely, the CA should be able to consider the report and make a decision on the report within the first sixty days (in the case of the EIAR); and there seem to be no justification for an additional 45 days. From a practical implementation point of view, there is nothing that suggests that the CA would be inhibited from making the decision at the same time. The cogent assumption is that for the CA to be able to consider the report, it must review it which makes the additional time allocated for decision making somewhat futile and a convenience for the CA.

The same principle could apply to a BA process. On the contrary, the regulations prescribe an automatic extension of the applicable time frames by an additional 60 days (regulation 9 (2)) in the event the CA is unable to meet its time frames. This is a clear indication that the regulations anticipates that there will be delays in processing applications. It can be inferred that this provision seems to encourage mediocrity by the CAs and does nothing to try and address the issue of delays perhaps by penalizing the CA and hold it more accountable and responsive to the demands of the applicant. This does not appear to be in line with the spirit of the batho pele principles and the customer centeredness it advocates.

It seems therefore that the prescribed time frames are not equitably balanced and somewhat disadvantages the applicants. The potential solution to this problem would be to review the administratively and bureaucratically intense process and collapse the additional time given to

competent authorities to make decisions. If the proposed changes were to be implemented, potentially it could drastically reduce the delays caused by the EIA process. The already lengthy time frames could even be more difficult to attain if delegations on decisions by the CA are not assigned at an appropriate level. For instance, if the Director General (DG) has to approve the decision, it means the draft decision must pass at least no less than five hierarchical levels from the officer that would have drafted the decision before it reaches the DG. In an ideal situation, this should not be a problem, however, given the busy schedule of some of the senior managers in the hierarchy and the competing priorities, the quality control that must be done within the hierarchy which may necessitate to send the draft decision back for further consideration; this can take a considerable amount of time and cause delays in approving the recommendations. Ideally, one would advocate for a decentralized system that ensures that decision making is delegated at an appropriate level and build the necessary capacity if needed at those levels.

Practices such as the centralization of power and over reliance on hierarchy have partly resulted in the criticism of bureaucracy. Scholars such as Kreitner (1995) and Arnold and Feldman (1986) have bluntly criticized bureaucracy and accused it of 'bad management practices'. Overwhelmed by this perception, Godsell (1985) admitted that to many, the word 'bureaucracy' in itself means bad public administration; and to defend something that is admittedly 'bad' would be difficult to say the least. It is unfortunate that the EIA system is also seen in this context. Kleynhans and Kotze remarked as follows:

> *"Factors that may give rise to the perceived unflattering character of government officials include inter alia officiousness and frailty, administrative self promotion, procedural rigmarole and subjectivity, rigidity, the notion that government officials are inclined to evade decision-making in order to avoid responsibility and lack of accountability".*
>
> *Kleynhans and Kotze (2008)*

This observation by Kleynhans and Kotze says a mouthful; and one would be seriously naïve to ignore this at a time when there are mounting calls to create post bureaucratic organizations that are more responsive, result oriented, adaptable to changing environments, transformative, accountable and citizen driven as opposed to top down approach. Similarly, one cannot ignore the fact that bureaucratic organizations must have strong and effective structures not plagued by capacity constraints; hence the importance of the enabling institutional framework. One cannot say with certainty that CAs entrusted with EIA administration are at the right level of sophistication and competency to effectively implement what appears to be a complex policy; therefore to have a system that is heavily reliant on bureaucracy seems fundamentally flawed and undesirable.

Godsell (1985) has cited another problem with bureaucracy. He argues that the challenge with unchecked bureaucracy is that sometimes, it is vulnerable to abuse and officials may use it as a "power instrument of the first order". Kleynhans and Kotze (2008), shares these sentiments and further assert that the driving force behind government officials' conduct is often power to govern. They contend that public officials who wield power may abuse such power to the disadvantage of the community they are meant to serve, to government as a whole and to the disadvantage of other public officials who are tasked with governance functions. One of the results of power abuse results in turf protection which may lead to inefficient governance practices (Kleynhans and Kotze, 2008). The EIA regulations give officials wide ranging powers and can potentially be abused by the officials. For example, the officials have the power to ask for specialist studies, accept reports, reject reports, ask for additional information, impose authorization conditions to mention a few.

For example, regulation 9 (3) in its current form with all its good intentions is vulnerable to such abuse. It states that upon lapsing of the extended time frame discussed earlier, the CA must base its decision on the available information irrespective of whether or not the information is adequate. The regulations empower the applicants to approach the high Court in terms of

PAJA to request the Court to force the CA to make a decision. While this makes sense in theory, in practice, it is problematic. To force the CA to make a decision where it would have failed in the first place would most probably be inviting trouble; and perhaps a negative decision irrespective of the merits of the application. There is always a possibility that the officials could reject the application on the basis that the information available was inadequate for informed decision making. Clearly, engaging in a legal battle with a CA that must still decide on the application would not serve the best interest of the applicant.

It is crystal clear that this course of action would be very risky to the applicant apart from the financial burden of going to Court. This could unfairly jeopardize the applicants' prospects to get authorized. Where authorization is granted, project execution could be made unfeasible by imposing onerous conditions. This clearly demonstrates the potential abuse of the regulations and the inequitable balance of the regulations that appears to be in favour of the CAs and not the applicants it is supposed to serve. However, the greatest risk lies with regulation 68 which states that no applicant may submit an application which is substantially similar to a previous application which has been refused unless the new application contains new or material information not previously submitted to the CA or a period of three years has elapsed since the refusal. This makes it very crucial that the applicant maintains a healthy and cordial relationship with the CA to avoid placing its application in jeopardy. While this may seem farfetched and generalized, the reality is that in practice, the seemingly implausible assertions have the potential to happen and be justified as a normal EIA process.

The foregoing discussion also highlights a problem with a system that is rule bound and inflexible. Merton (1957) cautioned that obsession with rules can be as problematic as having no rules at all. Merton (1957) argued that when rules become an end in themselves, rather than the means to an end, they somewhat become ritualistic rather than rational in character. There is a legitimate concern that the EIA regulations in its current form are too prescriptive which result in implementation challenges. From a policy implementation point of view, this is

problematic because it implies that bureaucrats become so obsessed with rules as opposed to implementing the policy and its outcomes; hence the rampant failure in policy implementation. It is against this backdrop that Merton further warned that adherence to rules and procedures seriously undermine attaining the very same goals for which the organizations were created, in this instance why EIA is conducted. Merton (1957) cautioned against this practice of the 'displacement of goals'. Beside the displacement of goals, it can lead to malicious compliance from applicants that do not serve the interests of the EIA system.

The other problem created by the inflexible EIA regime is that it tends to ignore the use of other appropriate alternative tools which could otherwise yield the same results. This could be achieved without necessarily making environmental legislation ineffective. Once again, the inflexibility of the EIA regime cannot be seen in isolation of the bureaucratization of the system. Clearly, the bureaucratization of the EIA system, its rigidity and inflexibility as observed by the respondents has all the hallmarks of an EIA regime highly influenced by a bureaucratic dispensation under which it is regulated.

Unfortunately, inflexibility and over reliance on rules has a tendency to hinder innovation and creativity and takes away discretion from officials which in many cases is necessary in reviewing EIA applications. This seems to be detracting from the very purpose for which EIA seeks to achieve; hence the notion of the displacement of goals. According to Kreitner (1995), the real challenge is keeping bureaucratic characteristics within functional limits. Kreitner (1995) further argues that a moderate degree of bureaucratization can enhance efficiency, but taken too far, each dimension of bureaucracy can hinder efficiency. This is an important lesson that the EIA system must learn and guard against the application of bureaucratic tendencies as a panacea to all problems of EIA governance and administration.

5.4 Integration of environmental impact assessment in planning

Poor planning by developers was identified as one of the inherent problems that hinder service delivery. Todes et al. (2009) have suggested that the problem of poor planning can also be attributed to a highly divided but also overlapping legal and institutional system of planning and environmental management. They have also suggested that although the general trend is towards greater integration between planning and environmental management, tensions can persist which sometimes result in overlooking environmental considerations during planning. According to Todes et al. (2009), questions have been raised about whether the scope of planning is sufficient to carry the sustainability agenda inherent in environmental management.

The respondents tended to concur with Todes et al. (2009). They felt that developers do not use EIA as a planning tool and tend to involve EIA at the end of the planning process. As a result, EIA becomes an afterthought after planning has been completed, thus increasing the potential of EIA being seen as the cause of the delay in the execution of projects. The respondents also lamented the fact that developers do not always use the strategic tools such as the SEA and EMFs at policy and programme levels to address environmental issues that may arise during project execution. Herrera (2007) has noted that the SEA by its nature is the systematic process of studying and anticipating the environmental consequences of proposed initiatives at high level decision making. The benefit of this tool is that it integrates environmental considerations from the beginning as an element of decision in all sectors and degrees of planning.

On the other hand, Retief (2007) has observed that the reluctance to use SEA is due to the fact that there is a lack of empirical research to evaluate and learn from this wealth of practical experience. Retief (2007) has asserted that this remains the single biggest hurdle in the quest to improve SEA practice and view this as a lost opportunity for the development of understanding of SEA. Retief (2007) has warned that the expansion of SEA practice without

performance evaluation could stifle continuous improvement and ultimately damage the reputation of environmental assessment over the longer term. Despite the shortcomings pointed out by Retief, it is fair to point out that the use of SEA was not mandatory in SA and therefore has been used as a voluntary instrument based on good practice. In view of this, it seems the 2010 EMF regulations are intended to bridge this gap by making them a legally binding instrument that can be used at a strategic programme level, albeit with no incentives.

The analysis of the problem seems to be broader than this. Perhaps the greatest challenge is the fragmentation of the environmental regulatory requirements from different State departments. It is an untenable situation that the environmental regulatory requirements are fragmented in a manner resulting in the regulated community being subjected to various processes and with various watchdogs looking after the same issue, just out of different angles. For example, applications in the mining, water, air quality and biodiversity sectors to mention a few are plagued by fragmentation challenges and unnecessary duplication of processes. While the NEMA and the EIA regulations recognize this shortcoming, there is a problem with implementation.

Regulation 6 (1) of the EIA regulations (2010), state as follows:

> *"where an application in terms of EIA regulations must also be made in terms of other legislation and that other legislation requires that information must be submitted or processes must be carried out that are substantially similar to information or processes required in terms of the EIA regulations, and where an agreement has been reached in order to give effect to Chapter 3 of the Constitution and sections 24 (4)(a)(i), 24K and 24L of NEMA, the application must be dealt with in accordance with such agreement".*

Unfortunately, as discussed earlier, there appears to be no integration and coordination among departments not only during the development of the various legislative frameworks, but also

during implementation which results in the duplication of processes in some instances. For example, while applications for Air Emissions Licence under the National Environmental Management: Air Quality Act, Water Use Licence under the National Water Act, and others may require the same information generated by the EIA process; authorization processes from various authorities are not aligned. In some cases, time frames are not even regulated which makes alignment and integration difficult.

As a result, applications are lodged at different times and often, EIA is used as a basis for granting other licences and therefore makes EIA the first and most critical area in the licensing chain. This unfortunately has an effect of putting undue pressure on the EIA process and as such vulnerable to unwarranted criticism even where it has not faltered. The problem with this is that if the EIA process is delayed, it inevitably in most cases delays other licensing that might be required and therefore pushes the project implementation even further. Considering these challenges, it can be argued that the fragmentation of the environmental legislation and misalignment is one of the greatest burdens confronting applicants and service delivery. Regrettably, it has financial implications for applicants because similar processes quite often have to be duplicated to satisfy regulatory requirements by other government authorities. This could well be avoided by harmonization of legislative and regulatory frameworks. Failure to do so is indicative of lack of intergovernmental coordination and obsession with turf protection.

5.5 Concerns about stakeholder engagement

Public participation is a cornerstone of EIA, unfortunately, its need and usefulness has been tainted by negative connotations emanating from tendencies by some stakeholders to abuse it. There is a growing perception that the public participation and the appeals process are being abused during the EIA process. This negative perception also came out from the respondents who felt that the EIA process is sometimes used to advance selfish interests and renders the public participation ineffective. The regulations seem to have anticipated this potential abuse.

For instance, while regulation 56 guarantees the registered and interested parties to comment on all written submissions, it also places an obligation on them to disclose any direct business, financial, personal or other interests which they may have in the approval or refusal of the application. Unfortunately, there is no mechanism to control and enforce this provision which leaves the participation process at the mercy of the stakeholders. Ideally, both the EAP and the CA must be empowered in some way to put a stop to abuse either during public participation or appeals process where there are strong grounds and suspicion that the EIA process is being abused.

Given this challenge, the regulations must endeavor to strike a balance and fairness; and not rely heavily on public participation as this may create a fertile ground for abuse by stakeholders. These sentiments have similarly been observed by Stewart and Sinclair (2007). These scholars established that public participation processes are frequently criticized as dissatisfying by participants, costly, and time consuming, by proponents, and inefficient by government officials. Similarly, Poder and Lukki (2009) came to the same conclusion. The implementation of regulation 56 (2) is a case in point. This regulation prescribe that before the EAP managing an application for environmental authorization submits a final report compiled in terms of the EIA process, the EAP must give registered interested and affected parties access to, and an opportunity to comment on the report in writing. At face value, this seems rational.

However, the implication of this provision is that every time the substantially new information is introduced to the EIA report, the stakeholders must have their say before it is submitted for consideration and decision by the CA. There appears to be no check and balance mechanism in the regulations to manage deliberate attempts to introduce issues on a piecemeal basis in order to frustrate the EIA process. As a result, the public participation may be protracted and result in delays and sabotaging the project. In extreme cases, this can sabotage the project. For example, an application by ESKOM to construct a nuclear power plant (Nuclear 1) has

been going forth and backwards as a result of the public consultation process since 2008. Clearly, consultation cannot go on indefinitely and the regulations must be clearer to assist EAPs and CAs to determine the adequacy of public consultation without necessarily limiting the right of stakeholders to provide their valuable and constructive comments. Even the Bill of Rights in the Constitution allows for limitations of rights as long as it is reasonable and justifiable; and therefore having what appears as unfettered rights to public participation is problematic. While one empathizes with applicants in this frustration, one must also consider the fact that there is cause for concern as a result of the bias from applicants and the EAPs during the EIA process which breaks down the public trust. Studies in the USA showed that government officials, industry and hired consultants command the lowest trust level while the media and NGO command more trust (Poder and Lukki, 2009).

The lack of trust creates suspicion that there is no genuine desire by the authorities and practitioners to involve the public in decision making; resulting in the process being used as a tool to manipulate and provide information rather than seek to consult and empower stakeholders in good faith. Robinson and Bond (2003) have warned against this practice of tokenism. This seems to be a global phenomenon as the same seems to be the case in SA. As a result, the interested parties tend to treat EIA as a tool that can serve their objective to obstruct the implementation of a project (Poder and Lukki, 2009).

5.6 The economic quandary of environmental impact assessment

The challenges in the EIA system have resulted in some practitioners questioning the value of the EIA versus the cost. The cost and benefit of EIA must be understood in the broader context of environmental legislation in general and how this affects the industry and the provision of services. All these issues unfortunately have inherent costs to project execution and to the economy as a whole. While some respondents felt that problems with the EIA system have cost implications to the economy, they conceded that such impact cannot be quantified. Some

respondents have questioned whether the resources used in EIA are worth the effort in terms of benefits and whether or not the system is yielding the required outcome.

Recently, questions on the cost implications of regulatory compliance in general and EIA in particular, have been at the forefront of high-level political debate within SA (Retief and Chabalala, 2009). It has been estimated that regulatory compliance costs South African business a massive R796 billion, which is considered a substantial burden hindering national development targets (Home, 2000) cited in (Retief and Machabalala, 2009). This is an untenable situation for a developmental State that is grappling with the need for more resources to provide basic services.

Be it as it may, environmental protection is a fundamental right in the Constitution in terms of section 24 and this provision forces the State to take reasonable legislative and other measures to conserve and protect the environment. Similarly, it forces the State to secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. The key issue here is who has the moral authority to determine what is justifiable economic development and whose perspective must be considered whether or not the EIA cost are excessive. The either or approach could well make things worse. This is a dilemma of sustainable development; to try and strike that delicate and equitable balance without having to compromise one pillar over the other.

According to Kleynhans and Kotze (2008), the South African industries often claim that environmental legislation is to their disadvantage as it decreases their international competitiveness. Empirical evidence suggests that several industrialists perceive environmental legislation in SA to be either absent, unclear and or costly to comply with and that it restricts their international economic competitiveness (Kleyhans and Kotze, 2008). They argue that this is aggravated by the fact that various authorities are involved in regulatory

compliance and the problem of red tape and the costs associated with bureaucracy (Kleyhans and Kotze, 2008).

These scholars concluded that experience at the firm level in SA perceive the costs to comply with environmental legislation to be between fair and high. In excess of 77% of the manufacturers surveyed felt the costs involved are reasonably high, and of these, more than half consider it to be absolutely too high and detrimental to their international economic competitive position (Kleynhans and Kotze, 2008). While Retief and Machabalala (2009) conceded that very little research exists on the cost of EIA in developing countries except the data provided by the World Bank, quoted estimates on direct EIA costs in SA suggests that costs vary between 0.2% and 4.0% of total project cost. These figures are based on international experience and are dependent on level of project complexity, impact size and the sensitivity of the receiving environment (Retief and Machabalala, 2009). While this percentage range may look insignificant, for SOEs whose mandate is to drive huge government infrastructure programmes such as power stations and ports, this could be a huge financial burden.

Clearly, something must be done to alleviate this burden. Lack of service delivery and insufficient growth is a reality that SA must confront head-on. Firstly, the question of environmental fragmentation discussed earlier is relevant to this discussion. Secondly, not every environmental problem and or impact requires EIA to solve it. For example, the excessively long list of listed activities that requires environmental authorizations must be revisited; and broad definitions in the EIA regulations seemingly designed to list development activities by default be reviewed. This would reduce the number of EIAs that are conducted sometimes unnecessarily so because of the broad interpretation of listed activities and the regulations. There are tools such as ISO standards and industry approved codes that could well achieve the same result without having to undertake an EIA process. The strengthening of the mitigation measures and improved compliance monitoring warrants mentioning. The

question of spatial planning and land use management and zonation is crucial. This would ensure that development zones that are not environmentally sensitive are identified at broader scale; demarcate areas that need protection and identify those that could be developed without necessarily worsening environmental degradation. Ideally, these would be areas that are already degraded. In return, environmentally sensitive areas would be guaranteed continued protection. The contentious issue of the cost of hiring EAPs to conduct EIA process must be interrogated with a view to cap the fees as deemed appropriate. Surely, if it can be done in other disciplines, there is no reason to suggest that it could not work in the environmental sector.

Despite the concerns about the costs and other perceived problems associated with EIA, scholars such as Cashmore et al. 2004) are correct in suggesting that it remains the preferred and most widely used tool for project-level assessment and the key sustainable development oriented tool in many countries. Saddler (1999) cited in Cashmore (2004) referred to EIA as a 'frontline instrument of sustainability'. While there are challenges with regard to striking the balance between economic growth and environmental protection; the pessimist claims by Reece (2003) that advocates the either or approach in that economic growth and sustainable development cannot take place at the same time appears to be irrational.

The key challenge is creating a system that works better to achieve both ends and create the much needed certainty. According to Weaver et al (2008), this raises both substantive and procedural issues of EIA effectiveness. Substantive level effectiveness asks the question whether it achieves its purpose while procedural effectiveness asks the question whether EIA is undertaken according to established expectations (Cashmore et al., 2004). Clearly, the latter seems to be the main area of concern not only from the respondents but also from experts in the field. Irrespective of the school of thought, Munier (2006) asserted that while a dichotomy exist between sustainable development and economic growth; however, equilibrium can be reached between both concepts. Munier (2006) further suggests that where a project results in

an environmental damage that cannot be avoided, measures must be taken to remediate and mitigate as far as possible. Despite its flaws and imperfection, EIA remains the best we have to achieve sustainability.

5.7 Conclusion

Having said all of this and the seemingly harsh criticism of the EIA system, it is not all doom and gloom. There is a need for a frank and honest assessment of the EIA regime if it has to improve rather than try to defend it which does not help in any way. As unsympathetic as it may seem, it is the researcher's opinion that if this frank assessment would be taken to heart with all its good intentions, the benefits of embracing and internalizing the criticism would be colossal and would go a long way in addressing the identified problems. This would require bold and decisive action from government to address these concerns which by no means were exhaustive, hence the call to analyze all areas of potential abuse, provisions that are deemed restrictive to service delivery and development. It is this kind of decisive leadership that is required that will think out of the box with a new approach to thinking and appreciate the urgency of service delivery and the fact that EIA should facilitate rather than hamper service delivery. Experience suggests that SA may not be at that level of sophistication to be able to implement what seem to be complex regulations. There is a pressing need to simplify the regulations to suit the local context and the administrative capacity of the State.

CHAPTER 6: CONCLUSION AND ECOMMENDATIONS

6.1 Introduction

The purpose of this study was to investigate the effects of applying the practice of EIA on service delivery. Firstly, the study sought to determine what informs the perception that the EIA regime affects service delivery programmes particularly for SOEs. Secondly, it sought to establish what aspects of the EIA process are commonly understood to inhibit service delivery. Thirdly, the study investigated the interventions that can be implemented to mitigate against the perceived negative impact of EIA on service delivery. The participants in the study were selected purposefully based on convenience. These respondents had good knowledge of EIA and most of them drive service delivery programmes for the selected SOEs. Being at the coal face of service delivery and EIA, they provided valuable input based on their experiences. The purpose of this chapter is to provide a summary of the findings and conclusions; and make recommendations.

6.2 Summary of findings and conclusions

Earlier in the report, reference was made to the founding principles and different roles of EIA to contextualize the study. Some insight on literature on EIA evaluation was provided to highlight the successes and challenges in EIA effectiveness. This was followed by providing a synopsis of EIA aspects deemed to be fundamental in EIA including the consideration of alternatives, project mitigation and public consultation and participation. Then there was an overview of the South African EIA system relative to international practice and some highlights of the sustainable development debate.

Chapter four presented the findings of the study based on the themes that emerged. These were later interpreted and contextualized in chapter five. The study has noted some shortcomings with the EIA regime and as such these shortcomings have been identified as the

key areas that would need attention from all stakeholders involved in EIA process in order for the EIA regime to be responsive, effective and efficient. The key findings are presented below:

i. Overall, there was a concern with regard to delays in finalizing EIA approval processes by the competent authorities which impact negatively in the execution of projects and service delivery programmes. It was established that this delay is partly caused by long time frames applicable to CAs and poor EIA administration. This manifests itself mainly by making the EIA process highly bureaucratized, administratively intense and inflexible. This coupled with insufficient staff; it was established that this undermines the capacity of the competent authorities to implement the EIA regulations.

ii. The study also established that there is poor planning and lack of integration in environmental licensing requirements in general. The study also revealed the challenges caused by the misalignment and fragmentation of environmental legislation and requirements. The failure to utilize the strategic environmental management tools and other licensing mechanisms compounded the problem which often manifests itself in unnecessary delays in completing EIA approvals and project execution.

iii. The study revealed that the schedule of activities for which EIA must be undertaken is unnecessarily long coupled with broad application. Furthermore, the interpretation of the legislation was found to be conservative and problematic.

iv. The study further highlighted a serious concern about the abuse of the EIA process by the interested and affected parties. This brought to light the public's lack of trust of the EAPs in conducting their duties professionally, unbiased and with integrity. The study recognized that it would be very difficult to eliminate all potential abuse and acknowledged the right of stakeholders to participation and consultation during the EIA process. This however highlighted the need to analyze all areas of abuse with a view to find remedial action to close the gaps in legislation as deemed appropriate.

v. The study revealed the increasing concern regarding the financial cost mainly at project level and the economy in general as a result of the EIA regime and complying with environmental legislation in general. It however noted that it is difficult to quantify the exact financial and economic impact. Despite these problems, there appeared to be unanimity that the benefits of conducting EIA largely outweigh the costs and EIA is by far the best tool that can be used to achieve sustainability.

6.3 Recommendations

The following recommendations are based on the findings of the study, the literature review and the observations made. Furthermore, reflecting back to the initial research questions, a number of gaps and weaknesses were identified in the EIA legislative framework. The recommendations are aimed at bridging the identified gaps and weaknesses.

i. On the question that asked what informs that the application of EIA regime affects service delivery, the study established that it takes a long time for the CAs to make decisions on applications partly due to long time frames and bureaucratic EIA process. In order to close this weakness in the legislation, the applicable time frames must be reviewed and the EIA process shortened in order to optimize faster decision making by removing the additional administrative layer of bureaucracy that is inherent in the regulations during the consideration and decision making phases by the CAs.

ii. On the question that sought to understand what aspects of the EIA process are commonly understood to be inhibitive, the study found that public participation is susceptible to abuse by interested and affected parties. In light of this finding, it is recommended that the public participation provisions in the regulations must be strengthened in order to provide clearly definable and identifiable parameters of

adequate and reasonable public participation with a view to control what appears to be unfettered right to participation during the EIA process that is prone to exploitation.

iii. Furthermore, the study identified poor planning, lack of integration and coordination as problem areas that inhibit smooth and effective implementation of EIA. It is recommended that measures must be undertaken to ensure that there is harmonization and alignment of planning and environmental regulatory requirements. There must also be improved intergovernmental coordination in order to facilitate integrated authorization to minimize the duplication of regulatory processes.

iv. With regard to the interventions that could be implemented to mitigate against the perceived negative impacts; the study concluded that the schedule of listed activities is unreasonably long and the activities are broad in scope and application. In light of this, it is recommended that the listed activities must be amended in order to make them more precise, explicit and unambiguous to minimize broad application and overlaps. The conservative and reckless interpretation of both the listed activities and legislation in general which sometimes result in triggering the requirement to undertake EIA gratuitously must be revisited.

v. Furthermore, mandatory project screening must be introduced in the regulations for certain listed activities in specific predetermined development zones and geographical areas to determine the necessity for undertaking full scale EIA early enough during planning and project feasibility stages.

vi. The study established that not every environmental problem can be solved and or licensed through an EIA process. The use of other alternative licensing mechanisms with a potential to have the same effect other than the EIA must be investigated, explored and sanctioned to ameliorate the burden placed on the EIA process.

vii. The increasing costs associated with complying with EIA regulations were found to be affecting the image of the EIA application negatively. The government must explore and assess the need and the impact of prescribing and or regulating the service fees charged by EAPs to mitigate the high costs of complying with the EIA regulations. Such a framework must also prescribe a legally binding code of good practice for the industry to enhance the professionalism and integrity of practitioners

In conclusion, it must be noted that the respondents were not completely unanimous and the size of the sample was small and therefore the conclusions must be read with caution and understood as generalized findings.

CHAPTER 7: REFERENCES

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Environmental Laws Holding Back Development must be Relaxed, says Minister 30 March 2010

http://www.iolproperty.co.za/roller/news/entry/environmental_laws_holding_back_development

ANNEXURE A: KEY STAKEHOLDER QUESTIONNAIRE

****STRICTLY CONFIDENTIAL****

You are kindly requested to complete the questionnaire. Please tick the provided relevant boxes, fill in the dotted lines and explain where you are requested to give reasons for your answer.

QUESTIONS ABOUT RESPONDENTS

Title: Mr. [ ] Mrs. [ ] Dr. [ ] Prof. [ ] other, state ----------

Name of respondent (optional) ----------

Name of company ----------

Designation ----------

SECTION A: PERCEPTIONS ABOUT EIA AND SERVICE DELIVERY

QA1: Kindly indicate how familiar you are with the environmental impact assessment (EIA) regime in SA.

QA2: It is widely accepted that there is inherent conflict between development and environmental protection. What do you think is the effect of this conflict on service delivery in relation to EIAs in general?

QA3: What consequences do you think this has on the provision of services in the country?

QA4: Do you think that this conflict can be reconciled? Please explain.

QA5: Please explain how would you rate the effect of EIA regime on service delivery?

QA6: A government minister recently said, "legislation forcing adherence to strict environmental regulations is radically slowing down and even restricting development and should be relaxed". What are your opinions on this statement?

QA7: EIAs have been criticized for being onerous, cumbersome and creating a red tape for development and investment. What is your view on this criticism?

QA8: What do you think in your opinion are the unintended consequences of EIA regime on service delivery?

QA9: The wide adoption of EIA internationally was implicitly or explicitly based on an assumption that the benefits outweigh the costs. What has been your experience in this regard?

QA10: To what extent do you think EIA process requirements have become an economic burden to organizations like yourself and the economy?

QA11: Given this, does it add any value and would you say it is worthwhile conducting the EIA?

QA12: Which of the following categories concerns you about the EIA?

Please rank them from 1-14, 1 signifying most concern and 14 signifying less concern.

a)	Direct costs	[ ]
b)	Indirect cost	[ ]
c)	Impact to economy	[ ]
d)	Lost opportunity costs	[ ]
e)	Abuse of EIA process	[ ]
f)	Appeals' process	[ ]
g)	Time delays	[ ]
h)	Cost of uncertainty	[ ]
i)	Inadequate staff (competent authorities)	[ ]
j)	Incompetent staff (competent authorities)	[ ]
k)	Job losses / investment	[ ]
l)	Public participation process	[ ]
m)	Consideration of alternatives	[ ]
n)	Mitigation measures	[ ]

Other (Please specify)

QA13: Of the selected categories, please highlight any five that most concerns you.

QA14: Has your organization had to abandon a development project due to environmental considerations? If so, please explain how this affected your organization.

QA15: Industry experts in Australia have criticized EIA for taking too long, being too costly, too bureaucratic, process driven rather than being focused on outcomes (and not always representing the objectives of the elected government). What is your view to these sentiments?

QA16: What do you think works well with EIA in relation to service delivery?

QA17: How would you describe the effect of EIA on service delivery?

QA18: Do you think the EIA regime has succeeded in balancing the need for service delivery and environmental protection?

SECTION B: ASPECTS OF EIA THAT ARE COMMONLY UNDERSTOOD TO INHIBIT SERVICE DELIVERY

QB1: The consideration of alternatives is central to the EIA process and the EIA regulations make it mandatory. Do you think the EIA regime is flexible enough with regard to the consideration of alternatives in practice?

QB2: it is believed that the consideration of alternatives creates a win-win situation whereby the proposed project can proceed without having the same level of significant environmental impact as originally envisaged. What is your view on this statement and what implications this may have on the project?

QB3: Projects rarely become entirely innocuous as a result of EIA processes. How far should we take mitigation measures? Should they be pursued at all cost?

QB4: There is a growing concern about the abuse of the EIA process by some stakeholders. What do you think must be done to minimize this problem?

QB5: do you think the current EIA regime provides enough checks and balances to avoid the "hijacking" of the public consultation and participation process by the vocal groups.

QB6: there is a perception that some stakeholder groups use their participation to gain political points and national publicity. How do you feel about this in the context of a right to appeal the decision of a competent authority?

QB7: Experts have become mouthpieces for developers rather than impartial advisors who should attempt to establish a balance between the developers' business interest and the interests of the public at large. Please share your experience in this regard.

QB8: experience in other countries suggests that developers and experts conform merely to meeting the minimum requirements of the publication requirements stipulated by the legislation, while themselves lack any interest in inviting the public to a constructive dialogue. What is your view on this allegation?

SECTION C: INTERVENTIONS TO MITIGATE PERCIEVED NEGATIVE IMPACTS

QC1: How would you describe and rate your satisfaction with the current EIA regime?

QC2: There have been calls for a special dispensation for development projects that are of strategic importance. What are your views on these calls.

QC3: What kind of special dispensation do you envisage?

QC4: Some industry players have argued that it is not worth pursuing EIA for small developments and must be generally authorized. Do you think this is worth considering?

QC5: Do you think that a proclamation by the Minister for projects of strategic nature would be worthwhile than conducting EIA to improve service delivery? Please explain.

QC6: What consequences do you think this would have on (environmental protection and service delivery)?

QC7: The EIA regulations and NEMA have undergone recurrent changes. Would you agree that this has helped simplify the process and improve service delivery?

QC8: How else do you think listed activities should be authorized other than through the EIA process?

QC 9: NEMA makes provision for exemptions but this excludes an exemption to obtain an environmental authorization. Do you not think that this provision must also apply to environmental authorization?

QC10: Do you think there is excessive application of EIA in cases that do not necessitate assessment at all?

QC11: what is your experience with regard to the ability of the competent authority to implement the regulations?

Additional comments

Thank you very much for taking part in this research. If necessary, further comments can be sent to dumi2001us@yahoo.com OR fax 0866063033, mobile 072 9293781

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