

**UNIVERSITY OF WITWATERSRAND**

**AN INVESTIGATION INTO THE ROLE OF PUBLIC  
PARTICIPATION IN ACHIEVING SOCIAL JUSTICE: A CASE  
STUDY OF EIAs UNDERTAKEN (UNDER OLD AND NEW  
REGULATIONS) IN SOUTH DURBAN**

**2010**

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REGULATIONS) IN SOUTH DURBAN**

**By**

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Submitted in partial fulfillment of the requirements for the degree of  
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## DECLARATION

The study described in this thesis was carried out in Johannesburg from August 2008 to November 2009 with fieldwork undertaken in Durban from March 2009 to May 2009, under the supervision of Dr Zarina Patel of the School of Geography, Archaeology and Environmental Sciences, University of Witwatersrand (WITS).

This thesis represents original, unaided work by the author and has not been submitted before in any form, in part or in whole, for any degree or examination in any other University. It is being submitted for the Degree of Masters in Arts: Human Geography in the University of Witwatersrand, Johannesburg. The use of work done by others has been duly acknowledged in the text.

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## ABSTRACT

Post-apartheid South Africa has included the concepts of environmental and social justice in its environmental policy agenda so as to address the injustices of the past. Environmental assessment tools like the Environmental Impact Assessment (EIA) have been adopted to address environmental impacts. Participation is an important process of an EIA, which seeks to include the marginalized in environmental decision-making. With the scaling down of the EIA process in 2006, recent debates have highlighted the implications for effective and informed public participation. Further highlighted in these debates are a number of handicaps with regard to the practice of effective and influential public participation in EIAs. Firstly, there has been no further guidance on the process as compared to the 1997 EIA regulations. Secondly, the public are not provided the opportunity to play a role in project design, resulting in participation being a mere formality. Thirdly, the public are not included after the completion of the EIA hence the public do not have a say on compliance to environmental management plans. This study has argued based on evidence from four EIAs in South Durban that there is no effective and influential role played by the public participation process as there was little to no representivity of the actual 'public' at public meetings in EIAs in South Durban. This is highlighted by the fact that contrary to what is stipulated in the 2006 EIA regulations; public participation is seen and implemented as a rigid one size fits all process especially in the South Durban region. Public meetings were the only technique used other than those prescribed by the regulations in three out of the four EIAs. To an extent the public participation process of EIAs under the 2006 regulations has fallen back a notch in including the voices of the actual 'public' as conservative methods of participation are being used as compared to those EIAs under the 1997 regulations. However, this has less to do with the actual techniques used but more to do with the objective of the participation process itself. The local context of South Durban has also played a vital role in hindering participation with environmental and community organizations in South Durban dominating public meetings and distancing the actual 'public' from influencing the decision-making process. The extent and quality of participation in the 2006 regulations shows a shift away from an environmental justice approach as the views of the actual 'public' and their representivity in influencing the decision-making process was not achieved. Therefore, more emphasis needs to be placed on participatory democratic methods of participation as compared to the current representative democratic structures used in the environmental decision-making process in South Africa.

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## ABBREVIATIONS

BA	-	Basic Assessment
DAEA	-	Department of Agriculture and Environmental Affairs
DCC	-	Durban City Council
DEAT	-	Department of Environmental Affairs and Tourism
DMA	-	Durban Metropolitan Area
EAP	-	Environmental Assessment Practitioner
ECA	-	Environment Conservation Act
EIA	-	Environmental Impact Assessment
EIR	-	Environmental Impact Report
EM	-	Ecological Modernisation
EMP	-	Environmental Management Plan
I&APs	-	Interested and Affected Parties
IEM	-	Integrated Environmental Management
KSEMS	-	Kerry Sepping Environmental Management Specialists
KZN	-	Kwa-Zulu Natal
LSO	-	Low Sulphur Oil
M&E	-	Monitoring and Evaluation
NEMA	-	National Environmental Management Act 197 of 1998
NGO	-	Non-Governmental Organization
PCC	-	Precipitated Calcium Carbon
ROD	-	Record of Decision
SAB	-	South African Breweries
SDCEA	-	South Durban Community Environmental Alliance
SDIZ	-	South Durban Industrial Zone
SEA	-	Strategic Environmental Assessment
SMO	-	Social Movement Organisation
SR	-	Scoping Report
UIC	-	Umbogintwini Industrial Complex
WCED	-	World Commission on Environment and Development
WESSA	-	Wildlife and Environment Society of South Africa

# **CHAPTER 1**

## **RETHINKING THE ROLE OF PUBLIC PARTICIPATION**

In South Africa the parameters and level of public participation are shaped not only by the legal and institutional framework, but also by other variables like the social and economic status of the citizens or interested and affected parties (I&APs).

(Murombo, 2008:4)

Easy to preach but difficult to practice, effective public participation in planning and public management calls for sensitivity and technique, imagination and guts.

(Forester, 2006:447)

Post-apartheid South Africa has for the first time allowed for socio-economic issues and quality of life to be included in the environmental policy agenda. The concepts of social and environmental justice (Wiseman and Rossouw, 2004) have also been included to address the injustices of the past. Environmental assessment tools like the Environmental Impact Assessment (EIA) have been adopted to address environmental impacts, which are broadly defined to include the economic, social, cultural and natural environment. Participation is an important process of an EIA, which seeks to include the marginalized in environmental decision-making (Republic of South Africa, 2006). Despite the promotion of social justice principles in environmental legislation like the National Environmental Management Act (NEMA) of 1998, EIAs undertaken under this Act have concentrated primarily on the biophysical and the technical aspects and hence fall far too short in addressing social issues and in including the voices of the poor and marginalized in shaping environmental decisions (Scott, et.al, 2001; Scott & Oelofse, 2005; Scott, 1999; Hoosen, 2005).

This study builds on previous research conducted in 2005. One of the key finding of this study undertaken by the researcher in 2005 in South Durban has found that the voices of the marginalized were not included in the participation process of a sample of EIAs. The finding of this 2005 study and other studies undertaken provides the context and the opportunity for further research to be undertaken in South Durban and in the country as a whole. Furthermore, as argued

by Patel (2006), this has weakened the credibility of the actual implementation of social justice principles outlined in policy, and raises further concerns for its implementation in the public participation process of EIAs undertaken under the newly revised 2006 regulations.

The recent revisions of the EIA process in the form of the 2006 EIA regulations came at a time when there were backlogs of incomplete EIAs in the country (Swanepoel, 2008). The streamlining of the regulations hence took into consideration these backlogs and streamlined the public participation process (listed activities and timelines) to provide for more effective participation. However, this scaling down is said to hinder the incorporation of the views of I&APs in the decision-making process of an EIA (Murombo, 2008). These implications have been the recent topic of debate amongst environmental scholars (Murombo 2008; Patel 2006) and there is currently not much evidence to support these debates.

This study is therefore an attempt to determine whether the participation processes of EIAs under the new EIA regulations (2006) as compared to those under the old EIA regulations (1997) are being played out differently, and the likely effects of this on the decision-making process. It further seeks to determine the extent to which the public participation process of EIAs under the 2006 regulations gives precedence to the public in influencing the decision-making process and whether this signals a shift to an environmental justice approach as compared to EIAs under the 1997 regulations,

It has been argued that there is little consensus on what is meant by social and environmental justice and its translation into practice (Patel, 2006). Therefore this study seeks to provide further evidence to show whether the translation of social justice principles as depicted in environmental legislation is practiced on the ground, especially through the incorporation of views of I&APs in influencing the decision-making process, whilst adding to current debates on the 2006 EIA regulations. Furthermore, the way in which environmental democracy influences social justice will also be examined. Looking at the streamlining of the 2006 regulations and the current debates on the effectiveness of public participation it can be deduced that EIAs are falling short overall of achieving the principles of environmental and social justice, which is reason for investigating a question of this nature and to provide evidence in this regard.

## **1.1 Aims and Objectives**

The overall aim of this study is to investigate the extent to which public participation is achieving social justice in the EIAs undertaken under the new regulations in South Durban. In order to achieve this aim the study has five research questions: -

1. To determine the role and extent of the quality of public participation in EIAs undertaken under the 2006 regulations;
2. To compare the role and extent of public participation (of I&APs to influence the decision-making process) of EIAs under the old (1997) and the new (2006) regulations;
3. To assess the extent to which the changes in the new regulations signal a shift to an environmental justice approach;
4. To examine the broader implications of environmental democracy for social justice.

## **1.2 The Research Lens**

In order to achieve the above objectives it is necessary to frame them within the South African environmental context especially the local environmental context as EIAs are situated at the project level. The South African environmental scene is one that has enabled participatory processes within environmental assessment. However, the proper implementation of democratic decision-making has not been adequate, thus framing environmental assessment practice within the dominant ‘neo-liberal’ paradigm (Scott & Oelofse, 2005). This has led to inadequacies in achieving democracy and social justice through the proper inclusion of poor and marginalized communities “who remain excluded from environmental and other forms of decision-making despite the promise of democratic equality” (Scott & Oelofse, 2005: 2).

This is played out at the local level with the South Durban area raising substantial interest in this regard. The South Durban area is used as a case study due to its environmental context. The level of influence on the decision-making process and its implications for achieving social justice (which is much required) is assessed through the public participation processes of EIAs undertaken under the 1997 and 2006 regulations.

This report takes on the following structure: -

Chapter two provides a brief background and historical context of the South Durban Industrial Zone (SDIZ) as well as community resistance and public participation. An overview of environmental awareness in South Durban with the formation of an environmental organization is outlined as well as environmental law in post-apartheid South Africa so as to set the context within which all environmental issues and decision-making can take place.

Chapter three consists of a review of all relevant literature, which makes up the theoretical framework for this study. Literature on public participation in environmental decision-making is highlighted and the debates on the constraints on public participation are reviewed. Current forms, types and techniques of public participation are outlined and discussed. These would provide a set of criteria, which will be used when reviewing and assessing the appropriateness of the public participation processes of these EIA's. Current debates on the handicaps of public participation as stipulated in the 2006 regulations will be discussed and provide a theoretical context for this study. The theory of environmental and social justice and its principles provides a further conceptual framework for this study so as to understand the link between decision-making and the achievement of social justice. The context of environmental democracy as a mechanism for including the voices of the marginalized will assist in analysing participation in South Durban.

Chapter four outlines the methods adopted for the collection and the analysis of data for this study. A qualitative and intensive research method is followed and is described. Qualitative methods of data collection such as purposive sampling, open-ended interviews and focus group discussions were used in this study. Analysis of data followed a qualitative approach and is presented in the following two chapters.

Chapter five and six consist of the analysis and discussion that addresses the objectives of this study. Chapter five focuses on determining the effectiveness and the quality of public participation in South Durban EIAs using the criteria used by White (1996) and Fell and Sadler (1999) outlined in chapter three. Thereafter, this criterion will be used to compare EIAs undertaken under the 1997 regulations to the current EIAs so as to ascertain the role and extent of

participation. Perspectives of I&APs and EAPs will provide evidence to show the extent and effectiveness of public participation of the South Durban EIAs.

Chapter six aims to discuss evidence of handicaps of public participation that stem from the regulations, themselves, as well as the South Durban participatory context. The extent to which I&APs influence the decision-making process and whether this signals a shift to an environmental justice approach will be interrogated. The implications of this and environmental democracy for achieving social justice will be touched upon. Recommendations on the revisions of the regulations to address public participation made by I&APs and EAPs will be outlined.

Chapter seven presents the conclusions of the study in achieving its objectives and finding evidence to support the theoretical debates on public participation in its step towards achieving environmental justice in South Africa.

## **CHAPTER 2**

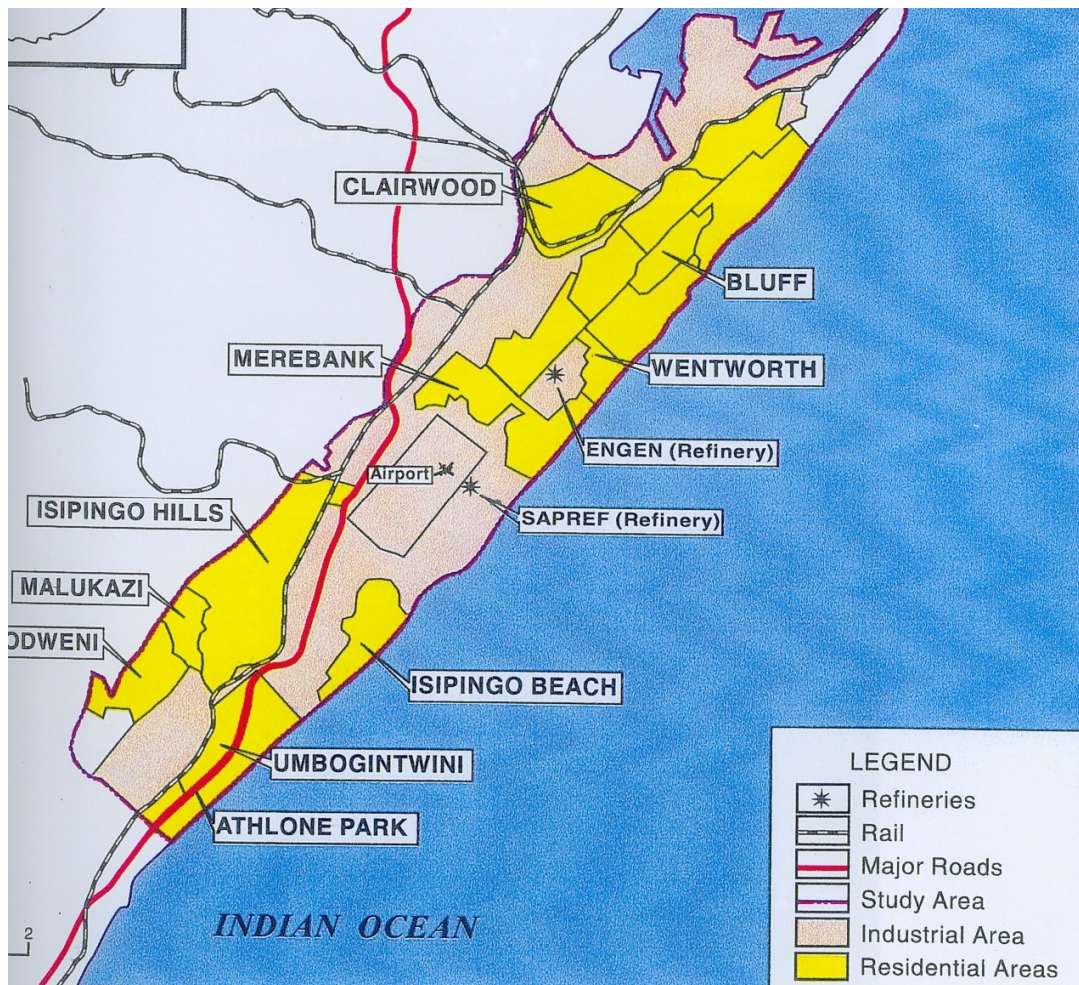
### **ENVIRONMENTAL CONTEXT: SOUTH DURBAN AND REGULATORY FRAMEWORK**

#### **2.1 Introduction**

This chapter seeks to provide the environmental context that will assist in framing the theoretical framework in Chapter three. The environmental context is three fold. Firstly, it seeks to provide the environmental and participatory context of the South Durban study area as well as its historical background in terms of social and environmental injustice. This paints the picture of the suitability of this area for a study of this nature. Secondly, the environmental regulatory framework, specifically environmental policies for the adoption of environmental assessment tools will be outlined with a specific focus on participation. Lastly, a description of the South Durban EIAs to be analysed for this study will be outlined so as to provide a background on the type and nature of these EIAs.

#### **2.2 History of the South Durban Industrial Zone**

The South Durban Industrial Zone (SDIZ) is well known for its past and current experiences of environmental injustice due to pollution from noxious industries situated in close proximity to communities (Peek, 2002). As can be seen in Figure 2.1 below, industries and the community in South Durban are intertwined thus leaving some pockets of residential area like Wentworth, Clairwood and Merebank surrounded by industries. Due to its long history of industrial development in the area, South Durban has achieved the status of being the “largest industrial node in the Durban Metropolitan Area (DMA) and in the province of KwaZulu-Natal, and the second largest industrial node in South Africa” (Scott, 2003: 237). This development has brought about an infringement of environmental justice and ultimately social justice in the area. This has come at the expense of local black communities who were located close to polluting industries due to the spatial restructuring of residential areas in Durban as a result of apartheid laws like the Group Areas Act of 1950.



**Figure 2.1: Map of the South Durban Area** (Source: Patel, 2001)

Within this context, the radical transformation of the South Durban area towards an Industrial Zone was achieved. With supporting apartheid legislations (Group Areas Act, the 1934 Planning Ordinance), South Durban saw, “large scale land alienation and relocation programmes that were instituted to make way for industry” (Scott, 2003: 238). Areas such as Clairwood were totally rezoned with the assistance of apartheid laws and plans. Communities such as Wentworth and Merebank were located close to polluting industries during the 1960’s, as residents were seen as a cheap source of labour (Scott, 2003). Many environmental and social injustices were caused and are still being experienced by the communities in the area. Health issues are one of these currently being experienced by communities as a result of high levels of noxious pollutants being emitted by industries. This high level of environmental and social injustices being experienced by communities has led to widespread community resistance to the expansion of industries in the area.

### **2.2.1 Community Resistance and Public Participation**

Since the 1960's the South Durban community have resisted and campaigned against the apartheid municipality for the planning of and expansion of industries in the area. Due to the community facing a common issue of fighting for social and environmental justice and eradicating environmental racism by challenging industries, a unified voice was sought through the development of a community environmental justice organization. The South Durban community was provided with an opportunity to be heard and to redress past social injustices by being included in environmental decision-making, which had been made possible by post-apartheid environmental policies. Therefore, awareness of the community has been raised on their rights and the importance of participating in addressing the social and environmental impacts of industrial development through the public participation process of an EIA.

Presently, the South Durban community is still resisting the expansion of industries that are located at their doorsteps. Majority of developments in South Durban are industrially related, therefore due to their hazardous nature, EIAs are required. EIAs are used as an avenue for communities to minimize environmental impacts of developments by providing input and alternatives on development projects through the public participation process. Past research studies on EIAs in South Durban and in the country as a whole have shown that the marginalized continue to be excluded from processes of environmental assessment in the new democratic South Africa despite policy and legislative reform (Scott and Oelofse, 2005; Hoosen, 2005).

This is also due to the fact that majority of industrial EIAs are dominated by scientific and technical data hence, sidelining social issues and reinforcing the top-down nature of policy, which are characteristics of environmental decision-making being embedded in a strong ecological modernization discourse (Scott and Oelofse, 2005; Hoosen, 2005; Eden 1996). Furthermore, the dominant public participation technique used in industrial EIAs which is public meetings, showed to hinder the incorporation of social issues in an EIA, thus resulting in not empowering the marginalized in considering options in the decision-making process (Hoosen, 2005).

Since a decade ago there have been only a few interactions between industries and the surrounding residential communities (Clark, 2004). Thus there has been a poor relationship between the industries and the communities, which further emphasizes the low level of public participation that was achieved. The community environmental justice organization currently plays an active role representing the needs of the community with regard to activities that affect the well being of the community.

### **2.2.2 The South Durban Community Environmental Alliance (SDCEA)**

The South Durban Community Environmental Alliance (SDCEA) was established in 1996 (Peek, 2002). SDCEA is a non-profit organization based in South Durban that consists of fourteen affiliate organizations (Community News, 2004). As an environmental justice organization, SDCEA secured a single community voice in South Durban that strengthened the communities' chance of being heard by industries and environmental authorities through the use of advocacy and lobbying.

During the apartheid period, poor black communities were not educated about the negative and positive impacts of industries in South Durban. Also, local people were not involved in the decision-making process as their interests were not beneficial to the overall development interests of the then apartheid Durban Metropolitan Area. Therefore, the turn towards a democratic government in 1994 motivated environmental movements, especially in South Durban to mobilize local people. A participatory democracy was further emphasized by environmental movements and made previously disadvantaged communities aware of their rights to participate in decision-making. Also, in addressing the impact of development on the environment (through the EIA), I&APs (the public) have the right to participate.

The SDCEA is to date fighting to redress the burdens of environmental stress and public health costs placed on communities. The SDCEA has played a vital role over the years in raising the community's awareness of environmental health hazards in the area as well as their right to be involved in decision-making at the project, plan and programme level. This has led SDCEA to become known as what has been said to be "the 'certified' voice of environmental expertise amongst local communities" (Barnett & Scott, 2007: 2622). Through the use of tools such as advocacy and lobbying including "confrontational styles of oppositional activism" (Barnett &

Scott, 2007: 2626) the SDCEA tries to achieve environmental justice and better air quality in the area as well as transparency and effective decision-making (Community News, 2004). These forms of participatory strategies used by SDCEA are at the opposite end of the spectrum to the formal styles of participation as used by the EIA procedure (Barnett & Scott, 2007). Furthermore, the EIA specifically the public participation process is one of the avenues used by the SDCEA as they represent the views of the community by commenting on developments to minimize the negative and enhance the positive impacts on the environment and their well being.

The environmental legislative framework therefore provides opportunities for I&APs to participate so as to address past injustices. In this regard it is necessary to outline the current environmental laws and procedures so as to further understand the provision of social justice principles that have been made possible to redress these past social injustices. Environmental laws present in South Africa that stipulate the legal procedure and rules that need to be followed during a decision-making process is outlined below. These laws also stipulate the inclusion of previously disadvantaged people through public participation and participatory democracy.

### **2.3 Environmental Law in South Africa**

Environmental law has been widely developed in post-apartheid South Africa. The National Environmental Management Act (NEMA) (No. 107 of 1998) and the Environment Conservation Act (ECA) No. 78 of 1997, provides broad environmental assessment regulations. The NEMA explicitly lists social and environmental justice as guiding principles in environmental management so as to redress social and environmental injustices of previous apartheid laws like the Group Areas act being pertinent in this case.

The Constitution of the Republic of South Africa (1996) provides for environmental rights for South African citizens in Section 24, the most generally important one, which states that “everyone has the right to an environment that is not harmful to their health and well-being” (Republic of South Africa, 1996). Furthermore, there is a whole host of important rights in the Constitution that compliments not only the environmental right but others as well. These are; the right to freedom of expression; right to participate in political activity; promotion of access to information, promotion of public involvement in all decision-making processes and procedures; the promotion of just administrative action that leads to the provision of administrative action that

is lawful, reasonable and procedurally fair (Republic of South Africa, 1996). All of these rights seek to achieve social and environmental justice for its people.

Public participation is used as a tool to allow for those previously disadvantaged people to be part of the decision-making process. Therefore, the adoption of public participation in the principles of NEMA allows previously disadvantaged communities to be a part of the decision-making process at the plan, programme and project level and to ultimately achieve social justice. The principles of the NEMA need to be complied with when undertaking and making all decisions in an EIA process. Social, environmental justice and public participation apart from others are outlined in NEMA principles. These are outlined as follows: -

- c) Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons.
- d) Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination.
- f) The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation and participation by vulnerable and disadvantaged persons must be ensured.
- g) Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognizing all forms of knowledge including traditional and ordinary knowledge.
- j) Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law (Republic of South Africa, 1998: 5-6).

The NEMA principles need to be taken into consideration when undertaking any form of environmental assessment so as to ensure that informed environmental decision-making has taken place. The principle of promoting effective participation is therefore required to inform decision-making tools, like the EIA, so as to achieve the remaining principles of environmental and social justice. Hence, these principles are intertwined and are imperative for effective environmental decision making.

## **2.4 Environmental Impact Assessment (EIA)**

The implementation of environmental assessment is stipulated in Chapter 5, Section 24 of the NEMA. The objective of the EIA “is to provide the competent authority with adequate information to make decisions which ensure that activities which may impact negatively on the environment to an unacceptable degree will not be authorised, and that activities which are authorised are undertaken in such a manner that the environmental impacts are managed to acceptable levels” (DEAT, 2006).

EIAs are widely used at the project level to minimise and mitigate environmental impacts of proposed developments. However, as a tool for assessing impacts (biophysical, social, economic and cultural) on the environment an EIA is also a tool used to achieve sustainable development (Glasson, et.al, 1994; Patel, 2000) with the Strategic Environmental Assessment (SEA) being used at a more strategic level. Public participation however, is a core component of environmental tools in post-apartheid environmental regulations so as to achieve the concept of sustainable development (Macnaghten & Jacobs, 1997).

This study seeks to compare participation processes of EIAs in South Durban under the 1997 and 2006 EIA regulations. Hence, it is necessary to provide a description of both the old (1997) and the new (2006) regulations especially with regard to the EIA and participation process.

### **2.4.1 Old EIA Regulations – 1997**

The minimum requirements for the investigation, assessment and communication of the potential impact of activities that should be adhered to, are outlined in Section 24 (7) (a)-(i) of NEMA. These requirements need to be taken into consideration when undertaking an EIA (Republic of South Africa, 1998).

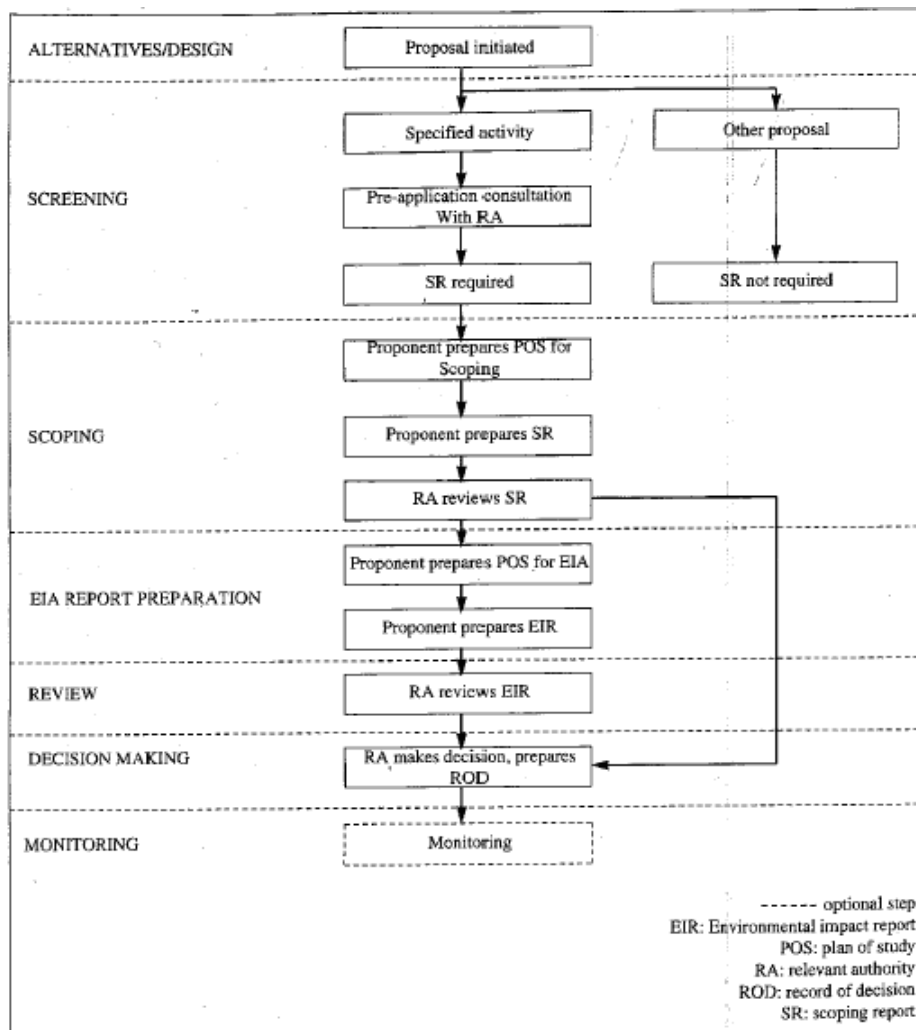
The Environment Conservation Act (ECA), 1989, provides EIA procedures, which are incorporated into the regulation. This Act indicates in Section 26 (a) that an Environmental Impact Report (EIR) should identify the economic and social interests that may be affected by an activity and an estimation of the nature and extent of the effect of the activity on these interests (Republic of South Africa, 1998). This regulation however, does not specify the criteria that need

to be used to estimate the nature and extent of the effects of an activity. The 1997 EIA regulations is supplemented by EIA guidelines (DEAT, 1998) that assist in the implementation of sections 21, 22, and 26 of the ECA (Wood, 1999: 53). This guideline stipulates that the undertaking of an EIA is compulsory for a development or activity that will affect the environment before any decisions regarding the development are taken. It supplements the regulations by providing the description of listed activities that requires an EIA to be undertaken. This guideline therefore, outlines the application for authorisation to undertake an activity, and specifies each step of the EIA process right down to the appeal process (DEAT, 1998).

The Environmental Conservation Act (1987) and the National Environmental Management Act (1998) outlined the EIA process, which is widely used in South Africa and is seen as a process to alleviate the impacts of development on the environment. Therefore, there is a need to understand the EIA process to understand the way in which it enables the incorporation of social issues in the decision-making process.

#### **2.4.1.1 EIA Process (1997)**

The following figure (Figure 2.2) outlines the main steps in the South African EIA process according to the 1997 NEMA regulations. As it can be seen, a development subject to an EIA may go through a scoping assessment if it is small in nature in which a decision can be taken or it can be subject to a full Environmental Impact Assessment if further information is required for the development. Hence, this process is a fairly linear process with a few feedback loops in the form of appeals, or if the development requires further assessment in order for a decision to be made by the competent authority.



**Figure 2.2: Main Steps in the South African EIA Process** (Source: Wood, 1999: 54)

### 2.4.2 New EIA Regulations – 2006

With the amendments to the 1997 EIA regulation in 2006, the EIA process above was revised substantially to not be such a linear and rigid process. A reason for this was due to the fact that there was a large number of EIAs that were being subject to the full EIA process. This was due to there being no specified criteria in place to determine the scope of an EIA. Hence, amendments made were with regard to providing criteria to determine the scope of a listed activity that aims to separate the environmental assessment process into minor and major developments. A Basic Assessment (BA) would be undertaken for developments that are characterized as having a minor impact on the environment and provides “a mechanism for the complete but concise assessment of activities” (DEAT, 2006: 8). A full scoping and EIA comprises of a “comprehensive

assessment of activities that are likely to have more significant environmental impacts” (DEAT, 2006: 8).

This amendment resulted in fewer EIAs that have a minor impact on the environment to go through the full EIA process thus minimizing the number of EIAs undertaken. Specified timeframes on the commenting period has also accelerated the completion of EIAs. Furthermore, this assisted and eliminated the current backlog of EIAs that required authorisation, which was seen to be slowing down development in South Africa as a whole (Swanepoel, 2008). These amendments although were seen for the immediate good, had further repercussions for the public participation process. Even though one of the aims of the regulations is said to provide for “more effective public participation in the EIA process” (Murombo, 2008: 3) the scaling down of the EIA process resulted in a scaling down of the extent to which public participation can be undertaken in a BA, scoping and full EIA process. Specified commenting timeframes were stipulated as compared to the 1997 EIA regulations as well as specifics in terms of advertising were also stipulated.

It should be mentioned that the 2006 regulations is currently being amended with regard to “improving the efficiency and effectiveness of the EIA system, and to diversify the environmental impact management toolkit beyond EIAs only” (Swanepoel, 2008: 2). However, this study is comparing the 2006 regulations, as it stands, to the 1997 regulations.

#### **2.4.2.1 EIA Process (2006)**

The EIA process as stipulated in the 2006 EIA regulations is as follows. The process is required for a Basic Assessment (BA) and a Scoping/EIA. However, the following steps as outlined in regulation 22 of the NEMA need to be adhered to for an application that is subject to a BA:-

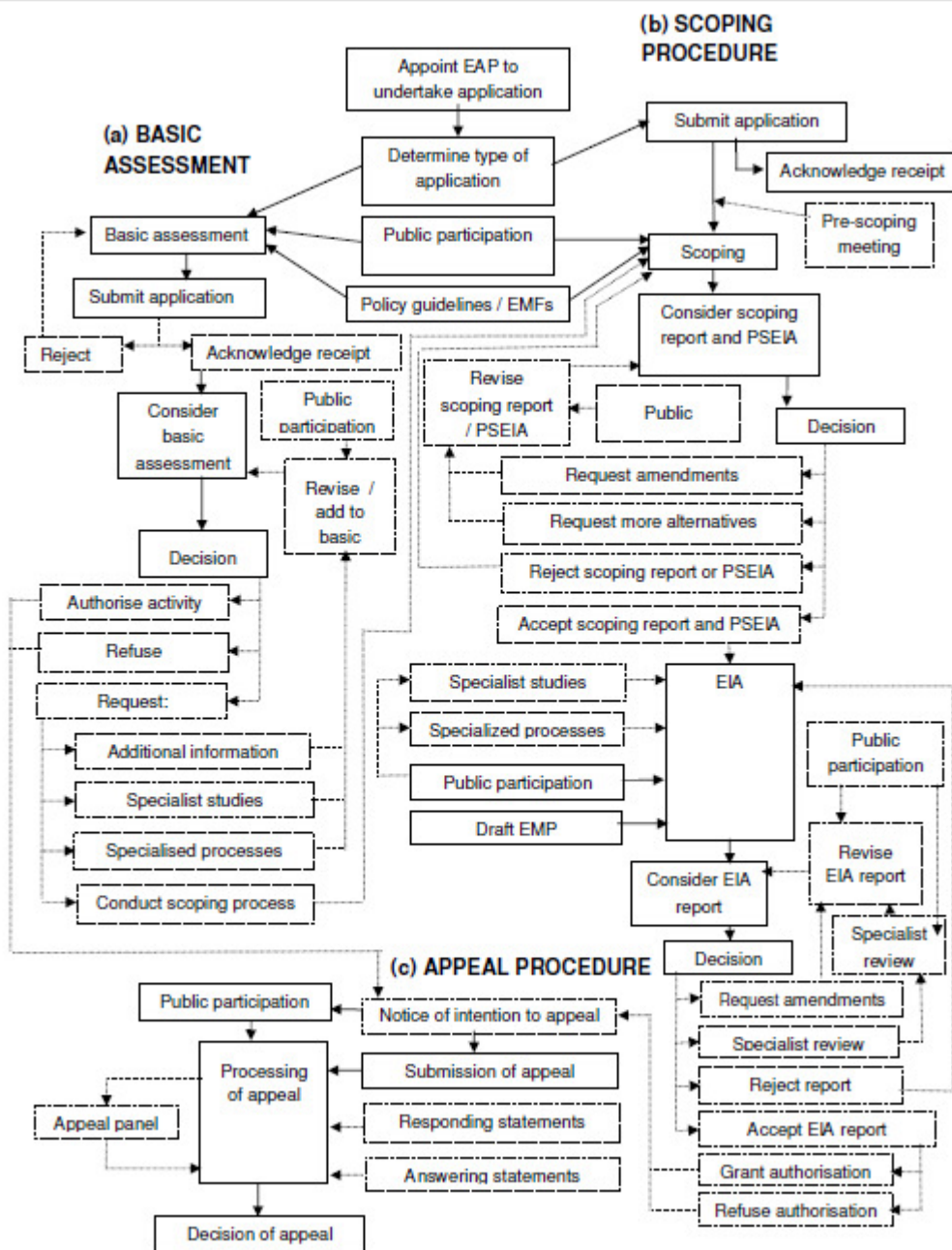
22. If basic assessment must be applied to an application, the EAP managing the application must before submitting the application to the competent authority –

- a) conduct at least a public participation as set out in regulation 56;
- b) give notice, in writing, of the proposed application to –
  - (i) the competent authority; and

- (ii) any organ of state which has jurisdiction in respect of any aspect of the activity;
- c) open and maintain a register of all interested and affected parties in respect of the application in accordance with regulation 57;
- d) consider all objections and representations received from interested and affected parties following the public participation process conducted in terms of paragraph (a), and subject the proposed application to basic assessment by assessing –
  - (i) the potential impacts of the activity on the environment;
  - (ii) whether and to what extent those impacts can be mitigated; and
  - (iii) whether there are any significant issues and impacts that require further investigation;
- d) prepare a basic assessment report in accordance with regulation 23; and
- f) give all registered interested and affected parties an opportunity to comment on the basic assessment report in accordance with regulation 58.

(Republic of South Africa, 2006)

The above regulations required to undertake a basic assessment is similar for a scoping and EIA. However an application for a scoping or EIA needs to be submitted to the competent authority before the above steps can be undertaken. Furthermore, a scoping or EIA is subject to a scoping assessment which is more detailed than a BA. The following detailed diagram illustrates this new EIA process as described above:-



**Figure 2.3: Detailed process flow of EIAs under the 2006 EIA regulations** (Source: adapted from DEAT, 2006:7)

## 2.5 Public Participation in EIA

For the purpose of this study it is important to outline the requirements of the public participation process in both the 1997 and 2006 regulations. This is required as the public participation processes of EIAs on South Durban will be assessed to determine whether implementation of the regulations assisted in achieving effective participation. Even though the regulations have been

amended, the NEMA principles are still guiding the implementation of environmental assessment. The NEMA principles outline public participation in section 2(f) and (g) as follows: -

- f) The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation and participation by vulnerable and disadvantaged persons must be ensured.
- g) Decisions must take into account the interests, needs and values of all interested and affected parties, and this ordinary includes recognizing all forms of knowledge including traditional and knowledge.

(Republic of South Africa, 1998: 5-6)

### **2.5.1 Old EIA Regulations – 1997**

Public participation is incorporated into many stages of the EIA process in the 1997 EIA regulations. This is through the pre-application consultation process, advertising of an EIA, participation of I&APs in the scoping and the full EIA, reviewing and commenting on reports by I&APs and lastly through the appeal process. The description of the public participation process in scoping and EIA reports may include the following, as outlined in the guidelines:

- the identification of parties that will be affected by the proposed activity or development;
- the identification of parties that have an interest in the proposal(s) or the environment(s) under consideration;
- the establishment and record of the procedure by which the identified and non-identified interested and affected parties were afforded the opportunity to participate at all appropriate stages of the preparation of the environmental Scoping Report;
- the provision for interested and affected parties to express their views of the scope of the Environmental Impact Report, including alternatives and issues that were investigated;
- a list of issues that were identified as being of concern to interested and affected parties;

- notification criteria, which entails the reason for their participation in the various stages of the process, where the report can be obtained, where it can be examined (libraries), where and to whom the comments on such reports should be sent to, the specified period for receiving comments, and
- a record of all the views of and correspondence with interested and affected parties is to form an addendum to the report.

(DEAT, 1998: 20)

This process is very broad as it allows for reporting on all aspects of the participation process. Therefore, this broadly stipulated participation process of EIAs under the 1997 regulations ideally provided for the inclusion of the marginalized in the environmental decision-making process. This process was amended in the 2006 regulations so as to provide more defined requirements for public participation that the 1997 regulations did not provide.

### **2.5.2 New EIA Regulations – 2006**

The 2006 regulations went a step further to amending the participation process by providing minimum requirements for participation that needs to be followed for an EIA, despite the size of an EIA. This is stipulated in regulations 56 (2) of the 2006 NEMA regulations as follows:

56.

(2) the person conducting a public participation process must take into account any guidelines applicable to public participation and must give notice to all potential interested and affected parties of the application which is subjected to public participation by –

(a) fixing a notice board at a place conspicuous to the public at the boundary or on the fence of –

(i) the site where the activity to which the application relates is or is to be undertaken; and

(ii) any alternative site mentioned in the application;

(b) giving written notice to –

(i) the owners and occupiers of land adjacent to the site where the activity is or is to be undertaken or to any alternative site;

- (ii) the owners and occupiers of land within 100 meters of the boundary of the site or alternative site who are or may be directly affected by the activity;
  - (iii) the municipal councilor of the ward in which the site or alternative site is situated and any organisation of ratepayers that represents the community in the area;
  - (iv) the municipality which has jurisdiction in the area; and
  - (v) any organ of state having jurisdiction in respect of any aspect of the activity;
- (c) placing an advertisement in –
- (i) one local newspaper; or
  - (ii) any official Gazette that is published specifically for the purpose of providing public notice of applications or other submissions made in terms of these Regulations; and
- (d) placing an advertisement in at least one provincial newspaper or national newspaper, if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or local municipality in which it is or will be undertaken: Provided that this paragraph need not be complied with if an advertisement has been placed in an official Gazette referred to in sub regulation (c) (ii).

(Republic of South Africa, 2006)

From the above regulations it can be seen that the public participation process is similar to that stipulated in the 1997 regulations. However, the 2006 regulations emphasizes in regulation 57 that a register of I&APs needs to be opened and maintained as well as in regulation 58 (5) were comments may be made on final reports submitted by a specialist reviewer (DEAT, 2006: 48). The public participation process of an EIA under the 2006 regulations stipulates minimum requirements for public participation. This entails specified advertising requirements, commenting and decision-making timeframes as well as responsibilities of all role players, which are set out in chapter 6 of the regulations. The main components as outlined in the EIA guidelines is as follows:

- notifying I&APs of the application and informing them of all relevant facts;
- keeping a register of the names and contact details of all I&APs;
- providing all I&APs with a reasonable opportunity to comment on the application; and
- reporting the comments made by I&APs and the applicant's responses to those comments to the competent authority.

(DEAT, 2006: 13)

Therefore, reporting of the public participation process in EIA reports is limited to the above participation requirements, thus resulting in a summary of the participation process being provided. The public participation process outlined above seeks to provide a more structured participation process as compared to the participation process of the 1997 regulations that would ideally provide for effective participation and completion of EIAs if implemented properly. The effectiveness of the participation process will be analyzed so as to determine the extent and quality of the process undertaken as stipulated above and the likely effects of this in allowing I&APs to influence the decision-making process of the EIA. The South Durban EIAs that will be analysed are described below so as to provide a background on the nature of the developments undertaken and the scope and type of EIA undertaken.

## **2.6 South Durban EIAs**

Majority of developments that take place in South Durban are industrially related and have a medium to major hazard. Recently there have been very few developments that have been subject to an EIA process under the 2006 NEMA regulations. Majority of those that have been subject to the process have been small in nature. This is contrary to the 1997 regulations that broadly categorised listed activities that allowed for too many activities to be subject to a full EIA process (Swanepoel, 2008). This in turn added to the large number of EIAs being undertaken and the backlog of EIAs that required authorisation.

Under the 2006 regulations developments are categorised according to listed activities. The criteria used to determine listed activities are the type; severity, level of hazard and sensitivity of a development. These specified listings of activities has limited the number of developments requiring a scoping or a full EIA to be undertaken but are rather subject to a concise BA process.

The participation process as part of these assessments is therefore streamlined in this regard with minimum participation requirements specified as described earlier. Majority of EIAs in the country and in South Durban specifically, that would have been subject to a full EIA process under the 1997 regulations have been subject to a Basic Assessment (BA) under the 2006 regulations. To these we now turn.

### **2.6.1 Description of Sampled EIA's**

For the purpose of this study each of the sampled EIAs will be described in turn so as to outline the proposed activity, the EIA process undertaken and the current status of the EIA including where relevant, the conditions outlined in the ROD. The public participation process and main public participation technique used will also be outlined.

The four EIAs for this study were chosen according to set criteria; the location, type, size and public sensitivity of the EIA. The study focused on industrial EIAs of varying sizes that fell within a medium to high level of public sensitivity. These EIAs are described as follows:

#### ***2.6.1.1 Sample 1 – South African Breweries Ltd (SAB)***

##### ***Proposed increase of the carbon dioxide (CO<sub>2</sub>) storage system***

This EIA was undertaken in 2007 by the Environmental Consulting firm, Bohlweki Environmental (Pty) Ltd. The applicant, South African Breweries (SAB) had proposed to increase the Carbon Dioxide (CO<sub>2</sub>) storage system at their SAB Prospection Brewery premises located in the South Durban Basin. This entails increasing the capacity of the existing storage system/process (Bohlweki, 2007), which is situated next to the existing tanks. This development was required to undertake a BA along with a public participation process as this was seen as small in nature as it was an extension of an existing development.

The BA report outlined the need and desirability of the development as part of the motivation for the project. This was outlined as allowing for the reduction of CO<sub>2</sub> greenhouse gas into the atmosphere, which has an overall environmental and specifically an atmospheric benefit, through the use of “Air Pollution Control Technologies” (Bohleki, 2007). Furthermore, societal benefits outlined in the report were that it would have “a positive impact on the highly polluted air quality environment within the Durban industrial area (local) as well as the cumulative effects on global

warming (international)” (Bohleki, 2007). Furthermore the expected yearly income the activity was to generate for SAB was fairly high, which also proved to be a good motivation for this development.

Public participation as outlined in the 2006 regulations and guidelines were followed, with a public meeting being the main technique undertaken to encapsulate the views and concerns of I&APs. A list of registered I&APs were included in the appendix of the BA report. A comments and response report was submitted as part of Annexure E in the BA report. This EIA was completed with a favorable Record of Decision (ROD) given in 2008 by the competent authority, the KwaZulu Natal (KZN) Department of Agriculture and Environmental Affairs (DAEA).

### ***2.6.1.2 Sample 2 - S1 Group - South Africa***

#### ***Proposed new tank storage facility***

S1 Group, South Africa Ltd proposed to undertake the development of new mini-bulk storage tanks on their premises in 2007. A BA was required for this EIA and the BA report was compiled by the environmental consulting firm, Lombard and Associates. Considering it was a new development the positive impacts outweighed the negative environmental impacts. This was reflected as a motivation as outlined in the BA report that the development allowed for reduced handling of the product through using tanker loads of the product as well as spillage and increased workplace safety (Lombard & Associates, 2007). A favorable ROD was given by the competent authority in 2008 for this EIA with a minor requirement for plans of the development of the mini-bulk containers to be submitted and approved by the DAEA before construction.

The minimum participation process was followed. A list of all registered I&APs were included as part of the appendix of the BA report as well as a summary of responses in a comments and response sheet. Apart from advertising of the EIA, an on-site public meeting was undertaken with I&APs in which comments were captured and taken into consideration.

### ***2.6.1.3 Sample 3 - Sasol Gas Ltd***

#### ***Proposed extension of the Sasol Gas pipeline to supply Isegen***

Sasol Gas Ltd, proposed to extend an existing 4 inch low pressure gas pipeline in 2008 so as to supply Isegen (Pty) Ltd in Isipingo. Due to the highly hazardous nature of this development and

due to the capacity of the proposed pipeline exceeding 50 tons, this activity had been listed under notice 2 under activities described under 27 to 36 of the EIA regulations. Hence, a full EIA inclusive of a SR and EIR were recommended and was undertaken by the appointed consultants, Kerry Sepping Environmental Management Specialists (KSEMS). This EIA therefore, has a high public sensitivity considering the size of the EIA. This EIA has been completed and is currently being reviewed by the DAEA. Hence a ROD has not been provided as yet.

As part of the description of the social environment, the SR outlined that the pipeline is a social gain as it improves the air quality in the area which is a major social concern (KSEMS, 2008). Furthermore, the pipeline will reduce the number of vehicles associated with the use of the Low Sulphur Oil (LSO) gas. The EIR comprised of specialist studies, a Geotechnical Stability Study and Low Pressure Pipeline Risk Assessment, along with plans ranging from Preventative Maintenance Plan, an Emergency Preparedness and Response Procedure and Plan, as well as an EMP.

The minimum participation process was followed with a list of all registered I&APs included as an appendix. The SR and EIR specified the timeline for the participation process, a table of communication with authorities and I&APs including a summary of issues raised. A public meeting was to be scheduled but due to a low interest by I&APs this meeting never took place (KSEMS, 2008). Hence, individual communication with I&APs were provided as appendices and captured as a summary in the comments and response sheet.

#### ***2.6.1.4 Sample 4 - Divfood***

##### ***Proposed installation of an additional monobloc line***

DivFood in Mobeni, South Durban applied for an EIA application for the installation of an additional Monobloc line on their site to the already 3 existing tanks. Due to this activity being listed according to above ground storage of a dangerous good that is 'more than 30 cubic metres but less than 1000 cubic metres at any one location or site' (KSEMS, 2007) required a BA to be undertaken. A BA report was compiled by the appointed consultants, Kerry Seppings Environmental Management Specialists. Due to there being emissions in the atmosphere and generation of noise due to the activity, specialists input were required in contributing to the BA report. As outlined as an activity motivation, temporary and permanent employment will be

created with approximately 50 people employed during the development phase of the monobloc line and 7 new permanent positions being created during the operational phase of the activity (KSEMS, 2007). Growing demand of DivFood products were also regarded as a motivation for the activity.

This EIA was exempted after the submission of the BA report as was identified by the EAP (Interview 3&4 2009). A list of all registered I&APs were also included. The minimum public participation process was also followed, which included a public meeting with comments captured in a comments and response sheet. Issues by I&APs were presented as a summary in the BA report and all correspondence with I&APs were included in the Appendix.

## **2.7 Conclusion**

This background has outlined the environmental context of the South Durban Basin as well as of the current policy framework. Past history of the SDIZ with its development through the use of apartheid planning, rezoning and relocation programmes that resulted in strong community resistance since the 1960's has lead to the development of a single community voice championed by the SDCEA. The SDCEA's active role in not only representing the concerns of the community especially against developments that are harmful to the health and well-being of the community but also by an increasing awareness of communities to the environmental, social, economic and cultural impacts of industries on their well-being. Along with the reduced protest by communities as seen in the past, the community represented by SDCEA, are raising their concerns on development projects through the public participation process of an EIA.

The 1997 NEMA regulations outline procedures to undertake an EIA including public participation. The amendments to the NEMA regulations in 2006 revised the regulations in the aim of achieving effective participation and streamlining the process as a whole including specific criteria to determine the scope of a development for an EIA as well as commenting timeframes. The public participation process as stipulated in the 2006 regulations will be analysed according to the extent and quality of participation taking place. Furthermore, influence of I&APs on the decision-making process as allowed by the participation process will be assessed and whether this shows a shift to an environmental justice approach will be unpacked further. The literature engaged with so as to assess the above will be unpacked in the following chapter.

## **CHAPTER 3**

### **THEORETICAL FRAMEWORK**

#### **3.1 Introduction**

The literature review consists of the concepts and debates that set the analytical framework for this study. Debates on public participation in environmental decision-making and environmental assessment provide the theoretical scene and has shaped the focus of this study. These debates have opened the gap for further research to be undertaken on public participation in environmental assessment especially in revising the current NEMA regulations. Public participation constraints highlighted in these debates are further emphasized through environmental democracy literature especially with regard to the role of science in the decision-making process.

Social and environmental justice principles outlined in NEMA are integral to identifying environmental impacts with public participation as a tool allowing for the achievement of these principles by including the views of the marginalized in influencing the environmental decision-making process. Theories on environmental and social justice will be discussed in this regard setting the scene as constraints/handicaps of public participation will have implications for social justice as stipulated in regulations.

#### **3.2 Public Participation in Environmental Decision-making**

As described in the background chapter, public participation in environmental decision-making is a legal requirement. This section therefore, outlines and discusses public participation within environmental decision-making in South Africa and further highlights various public participation implications and issues. The various forms, types and techniques of public participation are outlined so as to provide a set of criteria to determine the role and extent of the public participation process and the appropriateness of the process in both EIAs under the old (1997) and new (2006) regulations.

Environmental policies and procedures in South Africa make vast reference to the role and importance of public participation as a tool in environmental decision-making (Eden, 1996) especially with it being a focal component of sustainable development (Macnaghten & Jacobs,

1997). This has come at a time in South Africa so as to address apartheid policies that have prevented any form of participation in decision-making processes especially by black people that has led to their marginalization and to grave injustices (Wiseman & Roussouw, 2004). Hence there is a need for including 'invisible' stakeholders and marginalized communities to enhance democracy and improve environmental outcomes (Scott & Oelofse, 2005).

The term public participation has been and is currently widely used as part of the environmental decision-making process in post-apartheid environmental policies as it is seen as an important component of achieving sustainable development (Macnaghten & Jacobs, 1997). Hence it is important to provide a brief background of sustainable development as environmental law in South Africa has been shaped by this concept (Patel, 2000). Environmental academics have argued that there is seen to be a disjuncture between environmental decision-making and its tools (EIA, SEA) and sustainable development (Murombo, 2008; Patel 2000). This stems from a strong critique of the definition of sustainable development and its inability to achieving what it ultimately portrays in the environmental arena. (Patel, 2000)

Sustainable development is defined by the Brundtland Commission of 1987 as "development that meets the need of the present without compromising the ability of future generations to meet their own needs" (WCED, 1987). However, despite this well known definition amongst other definitions of sustainable development, it is argued that it is up for interpretation which, if not sensitized to context may have severe implications in its implementation in a given setting (Patel, 2000). Further critique of sustainable development is the mere fact that it does not take into account the uneven costs and benefits in society hence there is differing interpretations of the term. This leads to no consistency in policy and the institutional framework in South Africa in its approach to practicing sustainable development. Contradictory approaches thus lead to counter-productive outcomes (Patel, 2000).

Further evidence from South Durban suggests that there is much cynicism to what sustainable development actually means in the context of environmental management. This is due to a disjuncture between the rhetoric and actual reality of how sustainable development is actually played out (Patel, 2001). It was concluded that sustainable development "served as little more than a rhetorical device within the SEA" (Patel, 2001: 166). This is worth highlighting as a lack

of the proper implementation of the sustainable development rhetoric may have severe implications for achieving effective public participation or vice versa as both ideally speaks to one another.

However, there is said to be no agreed definition of what constitutes public participation (Murombo 2008). This also stems from the fact that the concept of sustainable development has differing interpretations. Greyling's (1999) definition of public participation will be used in this study which is outlined as a "process leading to a joint effort by stakeholders, technical specialists, the authorities and the proponent who work together to produce better decisions than if they had acted independently" (in DEAT, 2002: 6). From this definition it can be realized that participation is seen as a decision-making process and aims to include the views of stakeholders at all levels of the process. Therefore, this process enables the views of all to be heard and influence the outcomes of the process, which would address any potential or existing social as well as environmental issues the development may pose. However, it is agreed by environmental practitioners that "genuine public participation constitutes more than mere consultation, and that it incorporates the public as an equal partner in decision-making" (Khan, 1998:74). Therefore more emphasis needs to be placed on participatory democracy in environmental decision-making in South Africa.

### **3.2.1 Public Participation in Environmental Assessment**

Public participation is one of the most important aspects of an EIA and allows I&APs the opportunity to provide their viewpoints as well as influence the process and decision being made (Republic of South Africa, 2006). However, public participation varies in the degree to which stakeholders are involved and influence the decision-making process. Therefore, there are different levels and types of participation that take place.

Public participation is outlined in the principles of the National Environmental Management Act (NEMA) of 1998 that highlights the importance of public participation in environmental assessment and the emphasis to include public participation at all levels in decision-making (policy, plan and programme levels). The adoption of a participatory process is evident in South Africa's post-apartheid legislation, however in order to involve marginalized communities in

decision-making, more emphasis needs to be placed on participatory and environmental democracy.

The term public participation has been and is currently widely used in environmental assessment. However, as stated earlier there is no agreed definition of what constitutes public participation (Murombo, 2008). Public participation as outlined in the principles of NEMA allows for I&APs in environmental governance to be promoted and provided with “the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation” (Republic of South Africa, 1998: 5-6). Furthermore, all environmental decisions need to reflect the interests, needs and values of all I&APs (Republic of South Africa, 1998). The NEMA principles outline the role of public participation even though it is very broad in its explanation and has room for multiple interpretations.

‘Consultation’ and ‘participation’ are regarded as producing the same outcome however; they are not the same. Public participation is referred to as building partnerships whereby the public are regarded as partners. This is more than just a ‘two-way’ form of communication. Decisions can be made through a joint decision-making process. “In global EIA practice ‘consultation’ is probably the most common type of consultation and public participation” (Lee and George, 2003: 150). This type of process is limited, in the sense that the public are not involved in a shared decision-making process but are engaged in a ‘two-way’ process of exchange and their comments are not adequately considered. This is also evident in current EIA practice in South Africa, where effort (with the use of more participatory methods of involvement) has not been put into adequately involving marginalized communities in the decision-making process. Dalal-Clayton (1993) highlights this by stating: -

Admittedly, EIA’s carried out in the last few years - what we might call ‘new generation’ EIA’s – giving more attention to social issues. But, whilst public consultation is now a recognized norm in full EIA’s, EIA’s are rarely involved in a truly participatory way, and project beneficiaries are seldom involved adequately in the process.

(Dalal-Clayton, 1993: 4)

As a result many different forms and types of public participation have been used in South Africa and abroad in achieving the most inclusive decision-making process.

### 3.2.2 Forms and types of Public Participation

There have been various attempts at determining the level of participation and the various intentions and meanings associated with these on the final outcome. These vary from very rigid categorizations of the level or extent of participation to much less rigid attempts. Some of these are Whites (1996) types of participation, Fell and Sadler’s (1999) forms of participation and Arnsteins (1969) ladder of citizen power, which will be used in this study.

Forms or types of participation as outlined by White (1996) are much less rigid as compared to other models of participation and are characterized as nominal, instrumental, representative and transformative. *Nominal*, being the least participatory and *transformative* being the most participatory that leads to empowerment whereby individuals make decisions and take action to fight injustice (White, 1996). A participation process can therefore be categorized into any one of these forms or types of participation as represented in Table 3.1 below that show the extent to which the process allows individuals to shape the decision-making process.

**Table 3.1: Types of Participation** (Source: after White 1996, 8 in Freeman, 2000: 35)

<b>Category</b>	<b>Description</b>
Nominal	Legitimation and inclusion with the main function of display
Instrumental	Government funding for infrastructure and services reduced leading to public involvement for efficiency and cost sake, in order to instrumentally achieve a local facility or service.
Representative	Public ensured a voice to provide sustainability and support, and where people are able to express their own interests.
Transformative	Empowerment takes place, where the public have the practical experience of being involved in considering options, making decisions and taking action to fight injustice.

Each of these categories are explained in more detail as follows:

### **3.2.2.1 Nominal Participation**

Nominal participation refers to participation that is uni-dimensional and exists in name only, thus seen as a form of ‘window dressing’ (Freeman, 2000). Its main function is display and does not actually provide value. It may just go as far as being informative. This participation is the furthest away from being transformative.

### **3.2.2.2 Instrumental Participation**

Instrumental participation is not transformative, for although people are acting to provide services, they are not necessarily being given a voice or making decisions about the options or actions taken” (Freeman, 2000: 36). People are thus not allowed the opportunity to influence the procedure being undertaken.

### **3.2.2.3 Representative Participation**

Representative participation differs from instrumental in the sense that the public are ensured a voice during the process (Freeman, 2000). People are given the opportunity to represent their views/interests on issues and impacts. This can lead to a transformative process if the public’s views are taken into consideration during the decision-making process.

### **3.2.2.4 Transformative Participation**

The empowerment of the public is achieved through transformative participation and fights for the principles of environmental and social justice. Empowerment is when the public’s views and interests are seen as important to the process (Freeman, 2000). Capacity building mechanisms equip the public with practical skills, which allows an active and holistic participation process. This enables for an equitable and socially just decision-making process.

The level of a public participation process of an EIA can be determined according to the above categories and assist in determining the extent to which public participation has included and influenced the decision-making process. Each public participation process is unique and therefore need to be categorized, keeping in mind the specific context in which it took place. Therefore,

public participation tools and techniques are used and differ in the extent to which it includes the voices of I&APs.

There are various tools and techniques for public participation. Each technique provides a different level or form of participation. Public participation techniques are categorized according to different levels so as to measure the quality and effectiveness of public participation as described by Fell and Sadler (1999). Hence this analysis of the quality of public participation will assist in determining the impact of the decisions made in these EIAs. These are outlined below as well as the advantages and disadvantages of each level of participation: -

- The first level of participation provides *education and information*; these are leaflets, newsletters, unstaffed exhibits, local newspaper articles, national newspaper articles and site visits.
- A second level provides *information feedback* and consists of five techniques. These are referred to as staffed displays, staffed telephone lines, the Internet, public meetings and surveys, interviews and questionnaires.
- The third level is one of *involvement and consultation* and suggests the technique of workshops, focus groups and open houses.
- The last level consists of techniques that provide *extended involvement* are; community advisory, citizen juries and visioning (Fell & Sadler, 1999).

Public participation can be categorized into any one of these levels depending on the specific context, the aims and objectives of the participation process. Hence these techniques are not confined to these levels only and differ according to the context. Therefore, using the same technique for different EIAs within the same context may not result in the same level of participation. Some of these techniques as outlined by Fell and Sadler (see Appendix A) like public meetings can also fall anywhere on Arnsteins ladder of citizen participation (1969) from being merely consultative to totally empowering.

**Table 3.2: Arnstein’s ladder of citizen participation** (Source: adapted from Arnstein, 1969: 217)

8)	<b>Citizen Control</b>	<b>Degrees of Citizen Power</b>
7)	<b>Delegated Power</b>	
6)	<b>Partnership</b>	
5)	<b>Placation</b>	<b>Degrees of Tokenism</b>
4)	<b>Consultation</b>	
3)	<b>Informing</b>	
2)	<b>Therapy</b>	<b>Non-participation</b>
1)	<b>Manipulation</b>	

According to Arnsteins (1969) ladder of citizen participation, there are various levels at which engagement and power is exerted in a participation process. Arnsteins ladder aims “to evaluate forms of public participation and to examine the power the public can exercise over decision-making processes” (Sinclair & Diduck, 1995:225). This model of participation is much more rigid than Whites forms of participation. The various rungs on Arnsteins ladder as illustrated in Table 3.1 below, outlines extreme control and power by citizens on the highest rung with the lowest rung representing non-participation in the form of ‘manipulation’ (Arnstein, 1969). The middle rungs represent degrees of tokenism that allow for the sharing of information but are limited in the degree to which citizens have control and influence the decision-making process. This ladder of participation shows the importance of citizen power in a participation process in ultimately influencing the decision-making process.

By using Whites (1996) and Fell and Sadler’s (1999) categorization of the forms and types of participation to determine the different levels and extent of participation, it will assist in identifying the level of power citizens have in the participation process to influence decisions according to Arnsteins (1969) ladder of participation. This will provide a holistic form of analysis in firstly determining the extent of public participation and the quality of the process and secondly identifying according to the quality of the process whether there is a positive influence on the decision-making process by citizens themselves. This will assist in thereafter comparing the public participation of EIAs undertaken under the 1997 Regulations to those undertaken under the 2006 Regulations.

A study conducted in 2005 that aimed at investigating the extent of the incorporation of social issues into EIAs undertaken in South Durban partly assessed the public participation processes of EIAs in South Durban undertaken under the 1997 Regulations. This study had found that “total empowerment of marginalized people whereby the stakeholders have the opportunity to consider options in the decision-making process was not achieved” (Hoosen, 2005: 80). This study provides a context as outlined in the background chapter and framework within which current public participation of EIAs in South Durban will be analysed.

The finding of a 2005 study along with other studies that have added to this debate (Scott & Oelofse, 2005; Scott, 1999; Hoosen, 2005) have also shown that the marginalized have become excluded from the environmental decision-making process as social issues are sidelined due to the dominance of scientific and technical knowledge. A study undertaken by Hoosen (2005) that investigated the extent of the incorporation of social issues into EIAs undertaken in South Durban, found that the total empowerment of the marginalized in influencing the decision-making process was not achieved due to the extent of public participation adopted. The objectives of the study included; reviewing the processes of public participation; determining the extent of social assessment in EIAs; examining the extent to which Social Impact Assessments (SIA's) have been undertaken as specialist reports and whether there has been a shift in the public participation and SIA techniques used over the last five years; and lastly examining the extent to which community interests and concerns have been addressed by EIAs under the 1997 Regulations in South Durban (Hoosen, 2005).

In order to determine the extent of influence of the public in the decision-making process of EIAs in South Durban, especially to determine whether there has been a step forward or backward, it is necessary to compare EIAs undertaken under the 2006 and 1997 Regulations. Hence, the 2005 study undertaken by the author (Hoosen, 2005) that analyzed from a different angle (looking through a lens of social assessment) the extent and role of public participation using Whites, Fell and Sadler's and Arnsteins categorizations of public participation will be used as a comparison.

Recent debates by environmental scholars (Murombo, 2008) on the handicaps and implications of the participation process of EIAs under the 2006 regulations will form the basis to determine whether there has been a shift in the public participation process. These handicaps have been

further argued to have weakened the credibility of the actual implementation of social justice principles outlined in policy, and raises concerns for its implementation in the public participation process of EIAs (Patel, 2006). Therefore it is necessary to outline the current and common problems identified with public participation in environmental assessment so as to determine the role of public participation in achieving social and environmental justice.

### **3.2.3 Common Problems and Implications of Public Participation**

There are common problems identified in the undertaking of public participation within an EIA process. These are extremely relevant problems especially experienced in the South African context. McDaid and Kruger (2004) unpack these problems (outlined in table 2), which may hinder the extent to which the process achieves a decision that is reflective of the views of majority of participants. Some of the problems that have an impact on the final outcome of a participation process that are worth mentioning for the purposes of this study are as follows: -

- the long process of an EIA delays the final decision;
- conflict within a participation process;
- lack of capacity of participants;
- and lastly the commitment of financial resources to the project ahead of an EIA.

**Table 3.3: Common Problems Associated with Public Participation Activities within the EIA Process** (Source: after McDaid and Kruger, 2004: 20)

<b><i>OVERVIEW OF THE PROBLEMS OF PUBLIC PARTICIPATION</i></b>
<p>Long process delays the final decision:</p> <ul style="list-style-type: none"> <li>• Difficulties of involving and informing everyone (collecting comments and responding to submissions is time consuming).</li> <li>• Perception that NGOs deliberately delay process.</li> </ul>
<p>Costs:</p> <ul style="list-style-type: none"> <li>• The tender process results in the least cost option rather than the most appropriate PP process.</li> </ul>
<p>Superficial public participation, with a formulaic approach that alienates stakeholders.</p>
<p>Raised levels of conflict:</p> <ul style="list-style-type: none"> <li>• Key stakeholders withdraw from or sabotage process;</li> <li>• Consultant and government fail to agree on PP process amendments; and</li> <li>• Dispute over specialist findings.</li> </ul>
<p>Lack of capacity to make informed input:</p> <ul style="list-style-type: none"> <li>• Language or technical issues alienate public and prevent participation.</li> <li>• Consultants have the opportunity to manipulate the process such that it benefits the developer.</li> <li>• Unethical behavior leads to ineffective process.</li> </ul>
<ul style="list-style-type: none"> <li>• There is no standard way of proceeding with respect to PP within an EIA.</li> <li>• The public become easily confused as to their rights and the nature of their involvement.</li> <li>• Inexperienced PP practitioners facilitate meetings.</li> </ul>
<ul style="list-style-type: none"> <li>• The public become weary of continuously being asked to participate, when their comments are repeatedly ignored.</li> <li>• Lack of public at meetings.</li> </ul>
<p>The objective of the EIA, from the developer's point of view, is one of justifying the development to the public, rather than one of real development choices. This is because financial resources are often committed to projects ahead of an EIA.</p>

These common problems have been identified generally from EIAs undertaken under the 1997 regulations. Furthermore, the 1997 EIA regulations have created a backlog of EIAs (Swanepoel, 2008) and a slowing down of the delivery of infrastructure across the country. In light of this the new 2006 EIA regulations has witnessed the streamlining of the EIA process including that of the public participation process. Within this context public participation is said to have fallen far

short of its public expectation and the new EIA regulation does not provide for effective participation (Murombo, 2008).

Handicaps of the scope and procedures of public participation as outlined by Murombo (2008) of EIAs under 2006 Regulations are as follows: -

1. There is no definition of 'public participation' (Murombo, 2008);
2. There is no further guidance other than the size, contents and place of publication of notices on advertising in the 2006 regulations that will assist in its implementation;
3. "The public does not play any role in project design or conception or formulation" (Murombo, 2008) as well as the suggestion of alternatives. Furthermore, design and conception of the project is left to experts (Murombo, 2008),
4. Lastly, there seems to be no provision in the regulations for the inclusion of public views after the EIA has been authorized even in the monitoring and evaluation process and in the development of the Environmental Management Plan (EMP).

(Murombo, 2008)

These handicaps re-emphasizes that public participation conforms to the reactive nature of environmental impact assessments, which the EIAs under the old regulations have been criticized for along with focusing on the scientific and technical aspects of environmental impacts that sidelines the equally important social impacts as alluded to earlier (Eden, 1996; Blowers, 1997). Hence, power relations amongst stakeholders within a public participation process is extremely important in understanding the outcome of the final decision and the influence of this for achieving social justice for especially the least powerful in society.

These handicaps have severe implications for the actual implementation and outcome of the public participation process in including the voices of the marginalized in the decision-making process and in influencing the final decision rendered for an EIA. Therefore, these public participation issues undermine the ability of taking into account "the distributional consequences of decisions" that are required in achieving social justice (Patel, 2009). Furthermore, the role of power in affecting the ability of the public to influence the decision-making process and in ultimately achieving social and environmental justice has been strongly debated within environmental assessment (Patel, 2009). This study will also seek to highlight the role of power

relations in its assessment of the public participation process of South Durban EIAs and its implications for the achievement of social justice.

Overall evidence will be found to determine whether these handicaps are evident in EIAs under the 1997 and 2006 Regulations and compared and their implications for achieving social justice. The public participation process of the EIAs will also be categorized according to Arnsteins ladder (1969) of participation and Whites (1996) types of participation so as to determine the role and extent of participation in influencing the decision-making process. Thereafter these current debates on the effectiveness of participation and of power dynamics in shaping of the decision-making process, and the various forms and levels of participation would inform the analysis of the South Durban EIAs in achieving social justice.

### **3.3 Social and Environmental Justice in South Africa**

Theories of justice have been developed from as far back as Aristotle and differ with regard to exactly what people deserve. Aristotle has claimed “that justice requires treating equals equally” (Des Jardins, 2001: 238) and Rawls (1971) has referred to his main idea of ‘Justice as Fairness’. Principles of justice such as social and environmental justice have been introduced in post-apartheid policies and are relatively a new discourse in South Africa. Due to this study focusing on the outcomes of an environmental assessment process, which are embedded in the social realm, there is a need to distinguish between the concepts of social and environmental justice even though these are closely entwined (Patel, 2009).

In order to unpack the concepts of social and environmental justice there is a need to outline the role of public participation as a tool in achieving these in the environmental policy realm. Social and environmental justice has been included in policies in post-apartheid South Africa as a way of re-dressing the injustices brought about by the apartheid government. Environmental legislation, like the NEMA has adopted public participation as a key aspect within the EIA process so as to promote the implementation of these principles. Therefore, the public participation process is ideally seen as a tool that aims to provide informed (Republic of South Africa, 2006) and better decisions (DEAT, 2002) in a democratic way that was not previously the case. Furthermore, by allowing those previously marginalized individuals to contribute to the

decision-making process, public participation ideally seeks to achieve social and ultimately environmental justice.

Therefore, the principles of social and environmental justice are embedded in environmental policy and its implementation has been debated since its inception in the country and around the world (Smith, 1995; Low & Gleeson, 1998; MacDonald, 2002; Young, 2005; Patel, 2009). In South Africa it has been debated that there has not been much evidence on the ground in achieving these principles, which emphasizes a severe gap between policy and practice in environmental assessment (Patel, 2006). The reason for institutional participation not being practiced as stipulated within municipal planning structures is also currently being debated (Benit-Gbaffou, 2008b).

As outlined by Smith (1995), social justice “concerns the distribution of a society’s benefits and burdens and the institutional arrangements involved” (Smith, 1995: 1). From this definition it can be seen that social injustices experienced in South Africa due to apartheid, needs to be addressed through the redistribution of risks and benefits in society. This redistribution involves the way in which procedures unfold including the role of actors in the process and its influence on the final outcome. However, the concept of social justice shifted, as discussed by Smith (2004), into a cultural direction due to Young’s (2005) debate on the difference that exists within societies in contemporary cities.

As outlined by Young (2005) “a just polity must embrace the ideal of a heterogeneous public” (Young, 2005: 91). This emphasizes that group differences like gender, age, sexuality, which are all associated with class and knowledge, need to be taken into account when including the citizenry in a decision-making process. Hence, procedures that are sensitive to these factors would not only achieve “social differentiation without exclusion” (Smith, 2004: 2) but will ultimately result in equality that would lead to social justice. Furthermore, this would assist in unpacking the existing politics within a society to understand the way in which decisions are made and that influence the achievement of social justice. Social injustice, which is partially a result of different forms of risks like hazardous waste and pollutants caused by noxious industries that are distributed unevenly, raises an issue of environmental justice. This shows that “environmental injustices are typically manifest in the social justice realm” (Patel, 2009) and

hence, emphasizes that social and environmental justices are closely entwined, including the struggle and fight for either one.

Environmental justice is characterized as anthropocentric, (MacDonald, 2002) situating people before the environment. However, there is a strong link between environment and society as environmental justice looks at a good environment for the benefit of society. Low and Gleeson (1998:102) have defined environmental justice as “fairness in the distribution of environmental well being”. Therefore the distribution of environmental goods and bads is the main focus of environmental justice and hence affects social well being raising issues of social justice. With its roots in the United States, environmental justice in South Africa has recently focused more on the quality of and value of decisions taken, which is the same with social justice (Patel, 2009). It has been stated that the “the post-apartheid era has seen environmental justice become part of the national policy agenda, as an integral feature of social justice broadly defined” (MacDonald, 2002 in Smith, 2004: 4).

As with environmental justice, the distributive paradigm of understanding social justice has been criticized (Smith, 2004) on the grounds that is limited and hence focuses on the procedures/social processes to provide a broader perspective (Smith, 2004). In this sense there is a need to ensure that equitable and ‘just’ procedures and policies are put in place to achieve a fair distribution of environmental quality. It therefore seems legitimate to say that ‘just’ procedures would lead to ‘just’ outcomes (Tano, undated). Even though there is dispute as to what a just procedure Bulkeley & Walker (2006:4) have outlined that “dispute remains as to what a ‘just’ procedure might entail and whether their purpose is to ensure a more just outcome”. However, recent understandings of social justice issues, as mentioned earlier, have redirected to answer questions of quality and value inherent (Patel, 2009) in a (decision-making) process and how it unfolds (Scott & Oelofse, 2005) so as to achieve social and environmental justice.

Furthermore, social justice in environmental assessment is dependent on the role and extent of participation as reiterated by Schlosberg, “full participatory democratic rights are integral demands for justice as well, and cannot be separated from distributional issues” (in Bulkeley & Walker, 2006: 4). Moreover, environmental assessment tools like EIA inclusive of the participation process have a role to play in the distribution of environmental goods and bads

(Patel, 2008). Therefore the aspect of value and quality of participation processes of EIAs are critical in understanding the outcomes of a public participation process. Hence power dynamics may have a strong influence on the value and quality of any decision-making process, (Patel, 2009; Benit-Gbaffou, 2008a; Tano, undated) which effects democratic practice and in ultimately achieving the principles of social justice. The role of power relations within a participation process would be examined so as to assist in unpacking the implications of participatory democracy for social justice.

From the above review of social and environmental justice theory it can be seen that current debates are complex, encompassing aspects of distributional equity, power relations, process, as well as quality and value in the struggle toward understanding the creation of injustices within the environmental assessment arena and the fight to redress this through democratic processes. However, within these debates a critical tension exists between policy intentions of achieving social and environmental justice and the actual outcomes being felt on the ground. It is within this current context, which this paper aims to assess the implications for achieving social justice in the public participation process in a sample of South Durban EIAs, by unpacking any power relations evident and highlighting constraints within participation processes.

### **3.4 Environmental Democracy**

Environmental democracy allows for public interest groups to form and provide input into environmental aspects of decision-making. Public interest groups or environmental bodies have over the years developed an understanding of environmental issues affecting citizens and have sensitized citizens on these issues. Comparative studies in Canada and the United States have confirmed that that environmental groups “play the central role in interpreting and making available technical environmental information to citizens” (Fischer, 2000: 113). However, there is a concern that these ‘interest groups’ are usually environmental groups and organizations that are said to be hierarchical and are “frequently quite removed from the citizens for whom they speak” (Fischer, 2000: 113).

Furthermore, these groups become more professional in their operation and with their weight begin to talk the language of science and whom they are against. This results in the use of conservative strategies of interaction and participation with the citizen whom they represent. A

concern of the degree to which the views of majority of the public are represented in regulatory compromises made between environmental groups and industry had already been experienced in the United States (Fischer, 2000). This emphasizes the role of science in environmental decision-making, which has been widely debated to dominate the decision-making process in the environmental arena. Science has played a large role in ‘enlightenment’, shaping and contributing to current understandings of the environment. However, the dominance of science has been shown and largely debated especially the “technocratic emphasis on scientific decision making that has dominated environmental policy making, not to mention industrial society more generally” (Fischer, 2000: 119).

Furthermore, the environmental politics that has been shaped is moving towards the use of less participatory democratic strategies being adopted in environmental decision-making. These international concerns of the representativeness of environmental and social groups have been recently been raised at the national level especially within the South Durban region. This region as discussed earlier has been a site of what has been said to fraught with democratic contention (Barnett & Scott, 2007). Within this context environmental and social organizations (SDCEAs) role have been questioned with regard to the legitimacy as representatives of the residents as a whole, especially those of the African townships. This lack of representation is said to be due to a strong perception by these communities that “environmental organisations in South Durban have an antigrowth agenda” (Barnett & Scott, 2007: 2617).

Environmental organisations like SDCEA use both, formal or what can be called deliberative methods of participation through the EIA process as well as informal or more contentious forms of participation. Environmental politics in South Durban specifically with regard to formal methods of consultation (by SDCEA) has shown that inclusion in this form of participation “can conceal the ways in which structural inequalities skew deliberative practices in favor of powerful actors” (Barnett & Scott, 2007: 2629). This lack of proper representation due to differing interests and a lack of trust and legitimacy between SDCEA as an environmental organisation and other organisations and citizens that results in a favoring of those that have power (scientific and technical knowledge) should be kept in mind when unpacking the participation process of EIAs in South Durban.

### **3.5 Conclusion**

This chapter has outlined the conceptual framework for this study using secondary data sources to understand the extent and quality of public participation and the influence of I&APs on the decision-making process. Public participation is seen to be a tool aimed at achieving social justice through the inclusion of views of I&APs in the decision-making process. The principles of social justice outlined in NEMA can be achieved through the incorporation of I&APs views in the public participation process to influence the decision-making process.

Through different techniques, types and forms of public participation views of I&APs can be captured and this renders a different level of participation considering the context of the EIA. By assessing the extent of public participation using three different categorizations (White (1996), Fell and Sadler (1999) and Arnstein (1969)) to assess this, the overall quality of the participation process can be determined.

These theories and debates on the constraints of public participation will guide the method of data collection as well as provide the framework of analysis for this study in chapter 6. Environmental democracy theory will assist in unpacking the constraints of public participation and contextual issues surrounding decision-making in the environmental arena in terms of power dynamics and the role of science.

The following chapter will firstly discuss the methods of data collection and data analysis adopted and the reasons for its adoption.

## **CHAPTER 4**

### **METHODOLOGY**

#### **4.1 Introduction**

This chapter aims to outline the research methods adopted for this study, the reasons as to why these specific methods were chosen in obtaining and interpreting data, including emphasizing the appropriateness of these methods for this study. Methods of primary data collection are vital in obtaining appropriate information to answer key research questions in this case, objectives. For this study data collection was guided by the qualitative nature of the study and the intensive research style adopted. Hence primary and secondary data were collected through the use of qualitative data techniques. Data was collected through the sampling and reviewing of EIA documents, interviews and focus group discussions.

Ethical issues experienced during the collection of data within the South Durban region that were recorded are highlighted and further regarded as constraints that limited to an extent the scope of the research. Lastly, the method of qualitative data analysis adopted from Kitchen and Tate (2000) known as the ‘omelette approach’s was used and is unpacked.

#### **4.2 Qualitative Research**

This study has allowed a qualitative research approach, which entails the use of qualitative techniques of data collection and data analysis (Kitchin and Tate, 2000). This form of research is suitable for this study as it poses questions on environmental and social justice issues, which is a socially embedded discourse and will be best understood using qualitative methods of data collection and analysis. Therefore, quantitative techniques of data collection and analysis were inadequate for the purpose of this research as it would not allow for social experiences and expressions to be captured.

#### **4.3 Intensive Research**

This study also conforms to an intensive research style due to the use of qualitative forms of data collection and analysis. Intensive research is referred to by Cloke, et.al (2004) as research that “pursues specific processes with a small number of people using interactive interviews and ethnographies for data construction, and qualitative analysis as the strategy for data

interpretation” (Cloke, et.al., 2004: 127). Therefore, this study aimed to provide a causal explanation of certain objects or events and not provide generalizations of objects, which an extensive research style outlines (Sayer, 1984: 222). Data collection for this study ranged from purposive sampling, un-structured interviews and focus group discussions.

#### **4.4 Data Sources**

##### **4.4.1 Primary Data**

Primary and secondary data were sourced for this study. Primary data sources, which are raw and un-analyzed data, were in the form of official EIA documents and their appendices, interview and focus group discussion transcripts, policy documents as well as newspaper articles.

##### **4.4.2 Secondary Data**

Secondary data sources, which are analyzed and constructed data, were based on journal articles, literature from books, which provided the relevant theoretical framework that informed and assisted in the analysis of this study.

#### **4.5 Primary Data collection**

##### **4.5.1 Sampling**

A purposive non-probability sample of industrial EIAs in the South Durban area was chosen. Other sampling methods were not appropriate in achieving the aim of this study, as they were quantitative in nature. Industrial EIAs undertaken under the old (1997) and new (2006) regulations were sampled. A list of EIAs undertaken under the 2006 EIA regulations was obtained from the responsible authority, the Department of Agriculture and Environmental Affairs (DAEA). No prior permission was required in obtaining a list of EIAs including EIA reports, as these are public documents and accessible to the public. It is identified that a sample of 2 EIAs undertaken under the new (2006) regulations and 2 EIAs undertaken under the old (1997) regulations will be analyzed. Therefore, a total of 4 EIAs were identified due to the intensive nature of the research as well as due to time constraints.

The sample of two EIAs under the old regulations that were to be analyzed was based on a previous study undertaken by the researcher in 2005 (Hoosen, 2005). This study was an intensive analysis of a sample of EIAs in South Durban, which found that the public participation

processes of majority of these EIAs hindered the incorporation of the views of the marginalized, whilst the remainder had included to an extent the voices of the marginalized in the participation process. The latter finding will constitute as one of the key sampling criteria for this study since this study seeks to analyze the extent of the participation process in including the voices of the marginalized in influencing the final decision as well as determining whether there is a shift to an environmental justice approach. Thus based on the finding of the previous study, the criterion (as shown below), which is the type of public participation that is to an extent inclusive of the voices of the marginalized, would be used. Other than this criterion an additional three criteria (as shown below), based on the scope and context of the study were used.

The EIAs to be analyzed were sampled according to the following criteria identified: -

1. Type of public participation ('instrumental' or 'transformative' as defined by White (1999) and to this extent includes the voices of the marginalized)
2. Location of the EIA (All industrially related EIAs in the South Durban Basin)
3. Size (those EIAs, which required scoping or a full EIA)
4. Public sensitivity (those with a medium to high level of public sensitivity)

However, this original sample frame based on the above criteria was changed due to unforeseen circumstances encountered when approaching relevant individuals to be interviewed. There was resistance by an environmental consultant and proponent to be interviewed as they raised concerns with regard to the sample frame chosen. This concern was that the EIA in question was too large compared to other EIAs within the sample frame and this would be biased when looking at the decision-making process. It was suggested that it would be useful to look at EIAs of a similar scale, despite an attempt made by the researcher to address this concern through an explanation of the criteria used in choosing the sample frame. This resulted in the researcher changing the sample frame such that it allowed for the research questions to be answered so as to achieve the aim and complete this research within the respective timeframe. Another concern raised by the environmental consultant and proponent was the high level of sensitivity of environmental and social justice issues in South Durban. Environmental and social justice issues will be discussed further in section 4.7.

Therefore, four EIAs undertaken under the 2006 Regulations were chosen in the sample frame with interviews and focus groups undertaken focusing on the public participation process using the following three sampling criteria:

1. Location of the EIA (All industrially related EIAs in the South Durban Basin)
2. Size (those EIAs, which required scoping or a full EIA)
3. Public sensitivity (those with a medium to high level of public sensitivity)

EIA's that were large to medium in size and, which had a medium to high sensitivity were considered including industrial projects that were in close proximity to residential areas. In addition, EIA's that had already been undertaken and with a status of complete was considered. The DAEA register consisted of all EIAs undertaken in the province. The researcher used the above criteria of location to locate all South Durban EIAs that were industrial in nature. Eighteen industrial South Durban EIAs were identified. Since these EIAs were undertaken under the 2006 regulations it was found that only two of these eighteen had a status of 'complete' in the register. Another two EIAs were chosen according to the other criteria; however were not 'complete' on the register. However, it was found after some consultation with the DAEA that one of the two EIAs was infact complete but was not reflected in the register. The fourth EIA was still in the process of awaiting a decision by the DAEA. Therefore, projects were chosen according to the defining criteria, above.

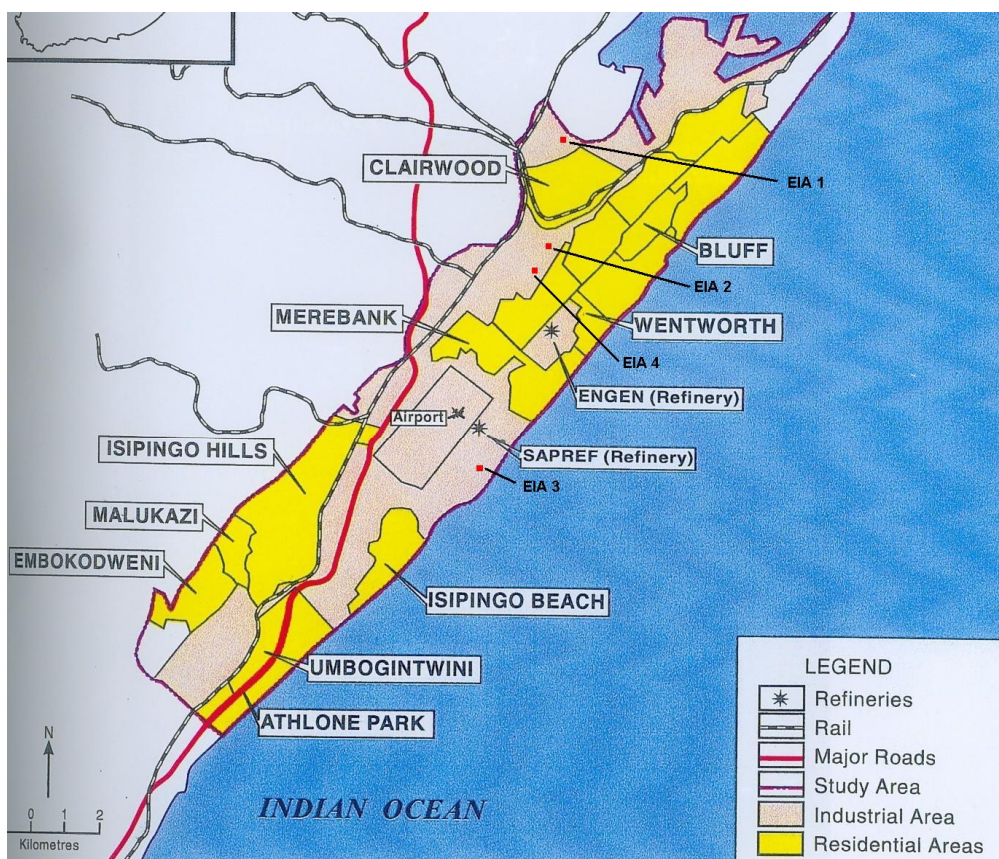
This sampling method used can also be defined as quota sampling. Quota sampling is defined as a method where sampling elements are selected according to a predefined quota control. This method is regarded as a non-probability and non-random method of sampling. The sample size was determined according to the analysis required for each EIA and the bounds within which EIAs in South Durban presented. Out of the 18 industrial EIAs from the DAEA EIA register from the year 2006 to date, only four EIAs met and were chosen according to the set criteria.

The four sampled EIA's under the 2006 regulations, as shown in the sample frame in Appendix B is as follows: -

- 1) **EIA 1** - South African Breweries Ltd (SAB), DM/0175/07, Proposed increase of the carbon dioxide (CO<sup>2</sup>) storage system
- 2) **EIA 2** - S1 Group South Africa, DM/0042/07, Proposed new tank storage facility

- 3) **EIA 3** - Sasol Gas Ltd, DM/0082/08, Proposed extension of the Sasol Gas pipeline to supply Isegen
- 4) **EIA 4** – Divfood, DM/0165/07, Proposed installation of an additional monobloc line

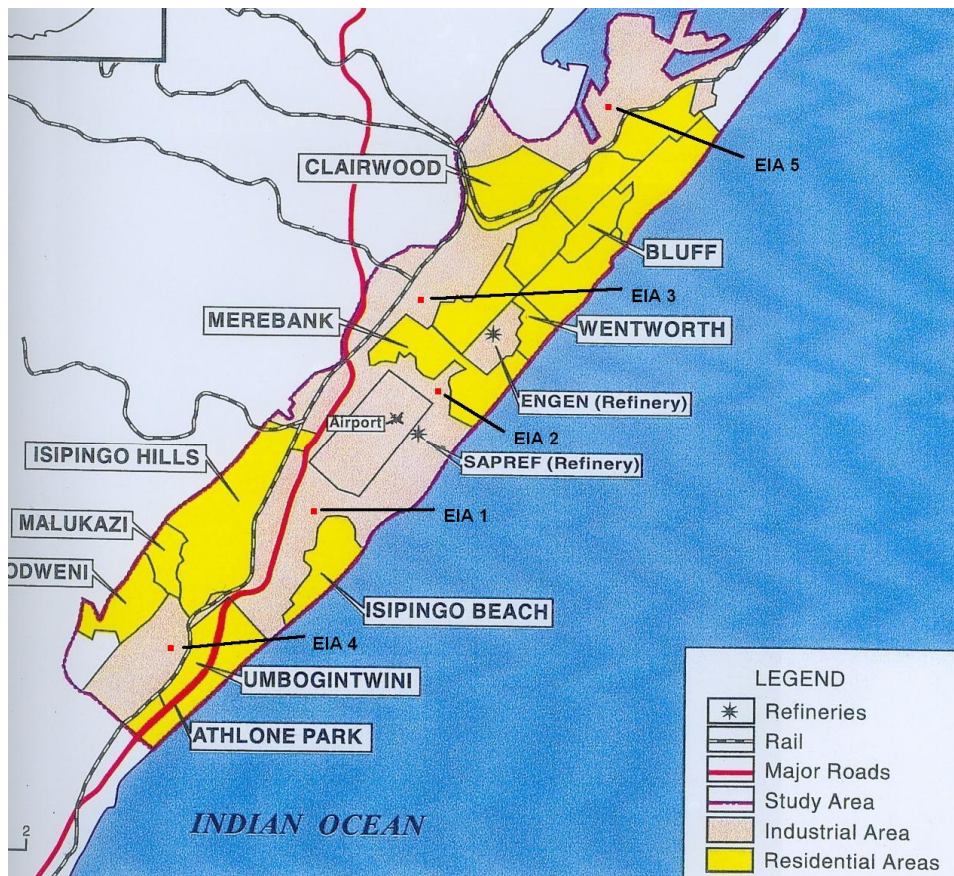
The approximate location of these EIAs is shown on the following map (Figure 4.1) within the South Durban region. This shows that two of the four EIAs are located in dense industrial areas like EIA 1 and 3. However, EIA 2 and 4 are located in an industrial area but are relatively closer in proximity to residential areas than EIA 1 and 3. This has an affect on the level of public sensitivity hence influencing the public participation process of these EIAs. The impacts of the location of these EIAs will be discussed further in chapter 5 when unpacking the extent of public participation of these 4 EIAs.



**Figure 4.1: Map showing the approximate location of EIAs in South Durban** (Source: adapted from Patel, 2001)

The public participation processes of EIAs under the 1997 Regulations as analyzed in the 2005 study is compared to the 4 EIAs under the 2006 Regulations so as to determine whether the extent of participation has been a way forward or backward. These EIAs were sampled according to very similar criteria as used in this research, which are according to the description of activity (industrial), location, size, sensitivity and status of the EIA (completed). These 5 EIAs under the 1997 regulations from Hoosen's (2005) analysis to be used for a comparison are as follows:

- 1) **EIA 1** - Easigas (PTY) Ltd – EIA 3654 - Proposed Easigas LPG filling Plant.
- 2) **EIA 2** - Mondi Paper – EIA 4356 - Upgrading of Mondi Paper.
- 3) **EIA 3** - Specialty Minerals South Africa – EIA 4712 - Proposed Phase 4 expansion of Precipitated Calcium Carbonate Plant.
- 4) **EIA 4** - Dyefin Textiles – EIA 3851 - Proposed Installation and operation of a fabric dyeing operation.
- 5) **EIA 5** - Island View Storage Ltd – EIA 5108 - Proposed installation of three additional Berth lines and one vapor return line.



**Figure 4.2:** Map showing the approximate location of EIAs under the 1997 regulations as analysed by Hoosen (2005) (Source: adapted from Patel, 2001)

The location of EIAs under the 1997 regulations in South Durban and the proximity of the developments to residential areas are shown in the above map (Figure 4.2). As can be seen, all five EIAs are in close proximity to residential areas with EIA 1 and 2 being in closer proximity to the residential area as compared to the EIA 3, 4, and 5. Therefore, all EIAs those undertaken under the 1997 regulations and the 2006 EIA regulations are in a fairly close proximity to residential areas hence have a medium to high level of public sensitivity (one of the criterion when choosing the sample frame) that would have an influence on the participation process of these EIAs. In this regard a comparison of these EIAs under the 1997 regulations to those under the 2006 regulations would be ideal in determining the extent and quality of participation of EIAs in South Durban.

### 4.5.2 Interviews

Un-structured interviews were undertaken with relevant environmental practitioners for each EIA with one interview undertaken for each of the four EIAs. Interviews were regarded as the most suitable data collection technique as it allowed for qualitative data to be captured and for “a more thorough examination of experiences, feelings or opinions that closed ended questions could never hope to capture” (Kitchin and Tate, 2000: 213). Each interview followed unstructured open-ended questions in an interview schedule so as to guide the interviewer and is attached as Appendix C in this report. Un-structured questions were chosen so as to provide room for the interviewer to prompt interviewees. However, questions were grouped within themes on the interview schedule, framed by the theoretical framework so as to assist in the analysis of the data. These themes are EIA Regulations, Public Participation and the Decision-making process. Therefore, this provided for the organization of data in a formal manner and for easier analysis of data (Cloke, et.al., 2004). Each interview was recorded and transcribed to form part of the analysis. Table 4.1 below, outlines the interviews conducted for this study.

**Table 4.1: Un-structured Interviews conducted for this study**

<b>Interviews</b>	<b>Environmental Consultancy</b>	<b>Position</b>	<b>EIA Project</b>	<b>Interview Type</b>	<b>Date of Interview</b>
Interviewee 1	Bohlweki Environmental (Pty) Ltd	Senior Environmental Consultant	South African Breweries Ltd (SAB)	Un-structured	27/03/09
Interviewee 2	Lombard and Associates	Environmental Consultant	S1 Group	Un-structured	27/03/09
Interviewee 3	Kerry Seppings Environmental Management	Senior Environmental Consultant	Sasol Gas Ltd	Un-structured	20/04/09
Interviewee 4	Kerry Seppings Environmental Management	Senior Environmental Consultant	Divfood	Un-structured	20/04/09

### 4.5.3 Focus Groups

Focus groups were undertaken with I&APs (community members, community organizations (SDCEA) and other NGOs) who attended public meetings undertaken during the participation process of each EIA. Focus groups are beneficial for this study, especially with I&APs of an EIA

process as it provided an environment that enabled people to express themselves better and as compared to a one-on-one interview (Hoggart, et.al., 2002).

Focus group discussions therefore, add weight to the individual interviews undertaken as it is said to “offer conversation, argument and debate through interaction” (Hoggart, et.al, 2002:214). This would allow the researcher to have valuable insight into the power relations that were present in the South Durban context and the role that this played (including other factors) in influencing the decision-making process. Furthermore, focus groups are said to allow for a large number of people’s views to be obtained within a comparatively short time period and expense (Hoggart, et.al., 2002). Therefore, focus group discussions assisted in obtaining data within the short time period for this study.

Practical difficulties as emphasized by Hoggart, et.al (2002), were considered when locating I&APs and agreeing upon a suitable time and location when conducting focus groups. This was taken into account with a large amount of time being taken in setting up suitable times and confirming availability of participants so as to obtain the most number of participants of the public participation process of each EIA to participate in the focus group discussions. This stretched the data gathering period over six weeks coupled with other constraints, which will be discussed as a limitation in section 4.9. Due to these difficulties only three focus groups were secured with I&APs with two being similar to small group discussions as this was only a group of two to three participants.

One of the EIAs did not undertake a public meeting hence environmental organizations and groups that provided comments on the EIA were contacted individually and questioned. Furthermore, some participants could not be reached due to change of employment and relocation and due to time constraints were not pursued by the researcher. However, remaining participant’s views were obtained through small group discussions. Table 4.2 below outlines the focus groups, small group discussions and one on interviews undertaken. From this table it can be seen that the number of focus group participant’s were very small. This is due to the fact that each EIA did not have a high number of I&APs that participated in the public meeting, which will be unpacked further in the analysis of the extent of the public participation processes of these EIAs.

**Table 4.2: Focus Groups conducted for this study**

<b>Focus Groups</b>	<b>EIA Project</b>	<b>Participants</b>	<b>Number of I&amp;APs</b>	<b>Date of Focus Group</b>
Focus Group 1	South African Breweries Ltd (SAB)	Representatives: SDCEA, Merebank Residents Association	4	27/03/09
Small Group Discussion 2	S1 Group	Winspec CC.	3	27/03/09
Interviews (One-on-one & Telephonic)	Sasol Gas Ltd	WESSA, DWAF, SDCEA	1, 1	20/04/09
Small Group Discussion 4	Divfood	SDCEA	2	20/04/09

However, a total of eleven individuals participated in the focus group, small group discussions and one on one interview, as seen above. A focus group schedule was developed to guide the researcher, which is Appendix D in this report. Focus groups were recorded and transcribed to form part of the data to be analysed.

#### **4.6 EIA Reports**

EIA's were in the form of reports (Background Information Documents (BID), Scoping Reports (SR), Environmental Impact Reports (EIR), its appendices and Record of Decisions (ROD)). EIA reports are regarded as public documents (ECA, 1989), which do not require special permission to gain access. All completed EIA reports in the region are archived at one location, which is at the DAEA headquarters. EAPs and the proponent also have records of EIA reports. Secondary data sources have been characterized by Scott, according to access. Therefore, these reports can be classified as open-archival, whereby no permission is required to obtain access to these documents and sources are archived at one site (in Kitchen and Tate, 2000). However, these reports were not obtained from the DAEA but were obtained from relevant environmental consultants who were responsible for undertaking each EIA. Determining the accessibility of and the correct procedures to gaining access to a document is an ethical issue, which will be discussed further below.

#### **4.7 Ethical Issues**

The topic of 'justice' or aspects of it like in the case of this study of environmental and social justice is a very sensitive issue. Due to this, care was taken in the structuring and phrasing of interview questions and sensitivity of interviewees and focus group participants.

In the undertaking of any type of research it is important to take account of confidentiality and anonymity. Therefore, in conducting interviews and focus groups for this study, participants were made aware that any information provided would remain confidential and they would remain anonymous. Interview consent and recording consent forms were presented to participants in order to guarantee confidentiality and anonymity in the use of information provided. The above was taken into account as the due ethical procedure was adhered to with the submission of all data gathering documentation like interview/focus group schedules to the ethics committee of the University of Witwatersrand (WITS) where this research was undertaken. Ethical clearance was granted before fieldwork could be undertaken in South Durban.

Due to South Durban's history being embedded in social and environmental justice issues (as shown in the background chapter), concerns were raised by participants (EAPs and proponent) when approached to be interviewed for one of the EIAs. Part of their concerns raised touched on ethical implications of the research. This concern was due to the high level of sensitivity of environmental and social justice issues in South Durban and the implications of stirring these emotions of all stakeholders and role players of an already completed EIA process. The researcher assured these participants that the South Durban history of social injustice is the ideal context for exploring issues of social justice and whether the public participation process in EIAs has made progress in addressing environmental and social concerns of I&APs; hence this context is ideal for the research being undertaken. Furthermore, with regard to obtaining the EIA report for this EIA from these consultants in question the researcher was not provided with it but only on permission being requested from and granted by the proponent (developer). This highlighted a sense of non transparency, considering the fact that an EIA document is a public document and permission is therefore not required to obtain this document as stipulated in the Environmental Conservation Act (1989) under the requirement for access to environmental information and protection of whistle-blowers. This is stated in Chapter 7, 31 (1) as follows:-

a) every person is entitled to have access to information held by the State and organs of state which relates to the implementation of this Act and any other law affecting the environment ...

(Republic of South Africa, 1998)

From the above statement it can be seen that an EAP should provide access to an EIA document as it is a public document and pertains to the implementation of the Act itself. Therefore, this was an unforeseen circumstance faced by the researcher that was and is unique to the South Durban area, given its context of past injustices and environmental sensitivity.

#### **4.8 Qualitative Data Analysis**

Qualitative data analysis that entails the organization of data through transcribing of interviews and focus group discussions had been used. This allowed for data to be analyzed in a qualitative manner due to the qualitative nature of data collected. The qualitative form of analysis chosen is similar to Dey's (1993 in Kitchin & Tate, 2000) 'omelette' approach and what he refers to as the core of qualitative analysis (Kitchin & Tate, 2000) that consists of data description, classification and interconnection. This iterative process (Kitchin & Tate, 2000) assists in unpacking and efficiently analyzing both interviews and focus group discussions undertaken according to specific themes.

Description entails describing the situational context of data collected from transcripts so as to provide a more thorough and comprehensive description of the settings and the timeframe of data, which is known as 'thick' description (Kitchin & Tate, 2000). Classification involves using interpretive analysis in unpacking and understanding the data. This is done through categorization of data according to suitable themes identified. These themes are defined according to the theoretical framework identified in the literature review including debates that emerge from interviews and focus group discussions.

Therefore, classification of data is regarded as the 'splitting and splicing' of data, which refers to "reassessing the organization and data management of data within sorted categories" (Kitchin & Tate, 2000: 245) to assist in analysis. The connection of data seeks to link and find relationships between different categories/themes of data through the comparison and interrogation of data,

(Kitchin and Tate, 2000) which may support the theoretical framework or bring new knowledge to light. Therefore, the 'omelette approach' was the best method of analysis adopted to achieve the objectives of this research.

#### **4.9 Limitations/Constraints of this study**

Due to the intensive nature of this research and time constraints the sample of EIAs used for this study may not be a reflection of all South Durban EIAs. However, it is representative of industrial South Durban EIAs at the specific point in time in which this research was undertaken. This concern was raised by environmental consultants at the International Association of Impact Assessment (IAIAsa) Conference where the preliminary findings of this research was presented in August 2009. An environmental consultant highlighted that an EIA undertaken by their consulting firm in South Durban had included an extensive and inclusive public participation process and this EIA should be considered in this analysis. However, as emphasized earlier this study is representative of industrial related EIAs within the criteria chosen and undertaken during the specific time period of this study that provided a snapshot of public participation in South Durban EIAs., which this EIA would not have satisfied.

Furthermore, securing time and availability of I&APs to participate in focus group discussions took a considerable amount of time, which stretched data collection over a period of six weeks. This was further impacted by the national elections being undertaken in the month of April as fieldwork was extended and fell within this period. Hence, it was difficult to secure ward councilors (I&APs) participation in focus group discussions due to their involvement in political campaigning. The non- transparency and concerns raised by an environmental consultant regarding the EIA sample chosen as discussed earlier was a further limitation as this forced the researcher to re-look and choose a new sample frame that further delayed data collection.

Another constraint that stemmed from the data collection and analysis that is important to highlight, is the dominance of a few participants at focus group discussions that hindered to an extent comments to be made by other participants. This highlighted an exertion of power that is unpacked at a later stage as part of the analysis of this study.

#### **4.10 Conclusion**

This chapter has outlined that this study has adopted a qualitative and intensive research design. The methods of data collection are therefore, qualitative in nature using a purposive non-probability method of sampling of EIA's. Un-structured interviews were undertaken along with focus group discussions. Despite unforeseen limitations and constraints encountered in the field, data was collected with minimal ethical impacts. However, constraints are expected when undertaking intensive case study, context specific research.

The qualitative analysis of data was undertaken using an approach similar to that of the 'omelette approach' outlined by Dey (1993 in Kitchin & Tate, 2000). This analysis consisted of the description of data, including transcription and note taking, classification of data using themes and linking and connecting of data. Data analysis assisted in the interpretation and understanding of data in relation to the relevant literature, which will be presented in the form of analysis in the following two chapters.

## CHAPTER 5

### EFFECTIVENESS OF PUBLIC PARTICIPATION IN SOUTH DURBAN EIAs

#### 5.1 Introduction

In order to introduce this chapter there is a need to outline the discussions in the previous chapters, as this chapter draws on all that has been outlined thus far. Chapter Four, outlined primary data in the form of EIA reports and secondary data collected through interviews and focus group discussions. This chapter aims to discuss the results obtained during the analysis of each EIA report, the respective interviews and focus group discussions. In order to achieve the aim of this study, data was analyzed and categorized according to themes, which were in line with the objectives of this study, outlined in Chapter One. These themes will be discussed in this chapter and linked with relevant theory discussed in Chapter Three. As stated in the methodology, Dey's (1993 in Kitchin & Tate, 2000) 'omelette' approach to data analysis was used that entails description, categorization and the linking of data. This chapter will focus on description, categorization and to an extent linking of data with the main focus of the following chapter being the latter.

The structure of this chapter is as follows. Section 5.2 presents a description of the sampled EIA's with regard to the EIA and public participation process and the main public participation technique used. Section 5.3 addresses the first objective of the study by providing a review of the extent and quality of the public participation process in accessing and incorporating the views of I&APs of each EIA by assessing the techniques used. These public participation processes will be categorized according to Fell and Sadler's (1999) and Whites (1996) types and forms of public participation so as to determine the extent of these processes in including the voices of I&APs. Public participation issues are thereafter outlined in section 5.3.1 emphasizing the main issues resonating from the participation processes of these EIAs. Section 5.3.2 goes on to provide a comparison of public participation process of EIAs under 2007 and 2006 regulations. This aims to show whether there has been a step forward in the extent in terms of quality and effectiveness of public participation of EIAs in South Durban.

Section 5.4, outlines the public participation perspectives of those who participated in the public participation process or specifically for the case of this research the public meeting undertaken.

The differing perspectives will be further unpacked and discussed so as to determine the factors that affect the extent and effectiveness of public participation. This will be further unpacked in Chapter 6 to determine the level of influence I&APs have in the public participation process in shaping the decision-making process of EIAs in South Durban. Constraints of Public Participation put forward by McDaid & Kruger (2004) are lastly verified in section 5.5, according to evidence presented from interviews and focus group discussions undertaken. These constraints will be further unpacked in Chapter 6, so as to answer the remaining two objectives of the study.

## **5.2 Characteristics of sampled EIA's**

Each of the four EIAs had to follow the specified steps outlined in regulations 22 and 28 of the EIA regulations (Republic of South Africa, 2006) as outlined in the background chapter. These steps are similar for applications that are subject to a basic assessment (BA) and a scoping or environmental assessment with the only difference in the level of assessment. Therefore, all EIAs are outlined in Table 5.1 according to the specified steps required to be followed. Firstly these development proposals were identified as a listed activity according to Section 21, 22 and 26 of the ECA, and required an assessment of environmental (biophysical, social, economic, cultural) impacts before the commencement of that activity.

**Table 5.1: General Characteristics of EIA Process of Sampled EIAs**

<b>EIA Process</b>	<b>SAMPLE 1 SAB</b>	<b>SAMPLE 2 S1 Group</b>	<b>SAMPLE 3 Sasol Gas LTD</b>	<b>SAMPLE 4 Div Food</b>
1. Followed EIA guidelines	√	√	√	√
2. Positive Environmental Impact	√	√	-	-
3. Negative Environmental Impact	-	-	√	√
4. BA Report Completed	√	√	-	√
5. SIR Report Completed	-	-	√	-
6. EIR Report Completed	-	-	√	-
7. ROD	√	√	-	-
8. Documents under revision by competent authority	-	-	√	-
9. Appealed	-	-	-	-
10. Exempted	-	-	-	√

As can be seen three of the four projects (SAB, S1 Group SA and Divfood) were required to submit a BA report as identified by the EAP and specified by the competent authority (DAEA). Therefore, these proposals did not require a further assessment through the submission of a SR or EIR. Only the Sasol Gas EIA required a full EIA, with a SR and EIR to be submitted, due to the large scale and size of the project. The other three proposals by contrast did not have a significant impact on the environment as compared to the Sasol Gas EIA. However, the SA Breweries and S1 Group EIA showed that the development had a significant positive environmental impact as well as social impacts, which in a sense had a lower public sensitivity as compared to the Sasol Gas and Divfood EIAs.

Two out of the four EIAs (SAB and S1 Group) have been completed with a favorable ROD obtained from the DAEEA. Only the Sasol Gas EIA is still under revision by the DAEEA. None of the four EIAs had been appealed. However, the Divfood EIA was exempted of the EIA and public participation process after the submission of the BA report as confirmed by the EAP (Interview 3&4, 2009).

The EIA guideline that outlines the public participation process of an EIA was followed by all EIAs. The following section will provide a review of participation techniques used and the extent of this in including the voices of I&APs in these EIAs.

### **5.3 Review of Public Participation Process**

It has been identified that public participation aims to include the views of I&APs in the decision-making process of an EIA and to allow the competent authority to make informed decisions (Republic of South Africa, 2006). However, a review of the public participation processes of these four EIAs need to be undertaken so as to determine the extent of the quality of the public participation processes undertaken in including the views of I&APs. Furthermore, if public participation is a mechanism that is seen as a means to address social injustice through the proper incorporation of people's views in decision-making, then current public participation techniques in environmental management need to be reviewed according to environmental and social justice principles (procedural, distributive, intergenerational equity) to determine whether these processes, techniques and the way in which they are played out are indeed appropriate. This would allow for the quality of public participation processes to be determined by identifying the extent of the inclusion of I&APs views in the decision-making process.

Firstly, there is a need to outline the specified steps of public participation that are required by law in the EIA Guidelines (Republic of South Africa, 2006). Chapter 3 of the Regulations outlines the general steps the applicants for these EIAs are required to follow if they compiled a BA, SR or EIR. These are simply outlined as follows: -

- The steps taken to notify and inform I&APs of the proposed application need to be outlined in the document;
- Proof of public advertisement, posters and notices of the proposal is required, at least in one local or regional newspaper;

- A list of all persons, organizations and organs of state that were identified and registered as I&APs need to be provided;
- A summary of the issues raised by I&APs, date of receipt and response of the EAP to those issues;
- Copies of minutes of meetings, any representations, objections and comments received in connection with the report and any responses made by the EAP to these;
- A reasonable amount of time for I&APs to comment on the draft report before sent to the competent authority.
- The final report also needs to be given for commenting before sent to the competent authority.

In order to review the level of public participation, the actual participation process undertaken for each EIA that conform to the above steps will be individually outlined.

As can be seen the public participation process of each EIA adopted techniques so as to obtain the views of I&APs. This assists in assessing the extent of views of I&APs included in the EIA and decision-making process. From a review of the public participation process, Table 5.2 shows the participation techniques used in each EIA categorised according to Fell and Sadler's (1999) levels of participation.

**Table 5.2: The public participation techniques used in each EIA (2006) according to Fell and Sadler's (1999) levels of public participation: -**

<b>Public Participation Techniques</b>	<b>Sample 1 SAB</b>	<b>Sample 2 S1 Group</b>	<b>Sample 3 Sasol Gas</b>	<b>Sample 4 Divfood</b>
<b><u>Level 1 - Education and Information Provision:</u></b>				
Leaflets/brochures/fliers				
Site Notice	√	√	√	√
Notification of Neighbors (100m of the site)	√	√	√	√
Distribution of Notices (door to door)				√
Local/ regional Newspaper Articles	√	√	√	√
National Newspaper Articles			√	√
Making BA available for review	√	√	√	√
Disseminating BA report				
Making SR, EIR available for review		√	√	
Disseminating SR, EIR				
Posters				
Site Visits				
<b><u>Level 2 - Information Feedback:</u></b>				
Staffed exhibit displays				
Staffed telephone lines				
Internet				
Public/Authorities Meetings	√	√		√
Door-to-door social surveys				
<b><u>Level 3 - Involvement &amp; Consultation:</u></b>				
Workshops				
Focus Groups/Forums				
Open days				
<b><u>Level 3 - Extended Involvement:</u></b>				
Community Advisory/Liaison Group				
Citizen Juries				
Visioning				

All EIAs have complied with the public participation requirements as outlined in NEMA. When asked whether the public participation guidelines were followed for these EIAs all environmental consultants outlined that this was followed. These guidelines outline that proof of general public participation undertaken should be outlined in EIA documents. Proof of advertising, issues raised in comments and response sheet as well as a register of all I&APs who participated in the EIA (as outlined in the discussion chapter) should be provided. Some of the techniques outlined

above that are required to be undertaken according to the EIA regulations are; the fixing of a site notice, the written notification of neighbors within 100 metres of a site, advertising in a local, regional or national newspaper as well as making the EIA documents available for review. As can be seen all of these techniques prescribed in the regulations fall under *education and information provision*, which is the lowest level of public participation that can be undertaken according to Fell and Sadler (1999).

As can be seen, the SAB EIA has undertaken all the required public participation requirements as outlined in the 2006 regulations as outlined above that provide *education and information*. A public meeting was also undertaken that seeks for *information feedback*, which is the highest level that this public participation technique achieved. The S1 Group EIA also followed the same public participation process as that of the SAB's. A public meeting was also undertaken to capture the views of I&APs thus also reaching a level of *information feedback*.

The Sasol Gas EIA undertook the basic requirements of the regulations that enabled *education and information* sharing. A public meeting was planned for this EIA but the scoping report outlined that I&APs were invited to attend. However, as stated in the EIR, I&APs were informed of the lack of interest in the project as there was a very low number of I&APs interested in participating in the public meeting (KSEMS, 2008). Comments from those who registered as I&APs were taken into account and were part of the comments and response form of the SR and EIR. However, it should be kept in mind that this EIA was the largest in size but failing to secure a public meeting. The Divfood EIA also followed the requirements of the regulations as SAB and the S1 Group EIA but advertised in both a local/regional and national newspaper and further undertook the distribution of notices as recommended by I&APs. As can be seen all of these techniques provide *education and information*, except for the public meeting undertaken that went to the extent of providing *information feedback*.

With regard to the overall extent of public participation it can be seen according to Fell and Sadler's (1999) categorisation that these EIAs have not extended to the level of 3 and 4, which is *involvement and consultation* and *extended involvement*. Despite all of the public participation techniques used in these four EIAs majority of these were required as part of the 2006 NEMA regulations. This shows that no other techniques were used to incorporate the views of I&APs

other than through the use of public meetings. Overall three out of the four EIAs undertook public meetings with a public meeting being planned but not undertaken in the Sasol Gas EIA as shown in the table above. Therefore, public meetings are seen to be the most common and dominant participation technique currently used in these EIAs especially in industrial EIAs in South Durban. Public meetings may be appropriate at times but may not always be appropriate for the specific context of an EIA. Therefore, the public participation process of these South Durban EIAs reached a level of *information feedback*.

Due to the 2006 streamlined EIA process, public meetings are seen to be used more often as compared to the wide range of techniques outlined in the guidelines as seen from these four EIAs. As emphasized by an SAB EAP the reason for a public meeting being undertaken as compared to other techniques was due to this EIA being firstly in an industrial area along “with the South Durban Community Environmental Alliance, it’s a requirement to go through a public meeting” (Interview 1, 2009). This shows that the techniques used are determined by the current context and type of I&APs present in an area. This however, can be both beneficial and non beneficial at times as it depends on who decides which participation techniques are appropriate.

Another EAP reinforced that undertaking public meetings is not cast in stone and further mentioned that public participation is not one size fits all, with there being more flexibility of the public participation process of a full EIA and scoping as compared to a BA (Interview 3&4, 2009). This led to the argument that the EIA regulations is frustrating for consultants in what it can include in the public participation process especially with regard to a basic assessment (Interview 3&4, 2009). However, public meetings, as a technique is so commonly used in EIAs especially in South Durban that it leads to public participation fatigue, which is emphasized by an I&AP as follows:

I don’t want to even go to these things because I have come to the realization that I am ... wasting my time, wasting my money, wasting my effort.

(Focus Group 1, 2009)

This fatigue is disadvantageous to participation and constrains the decision-making process, especially in the South Durban Basin, which has a high rate of industrial development.

Furthermore, public meetings are said to provide a pedestal for a dominating stakeholder to air their views thus hijacking the process (Fell and Sadler, 1999). This is reinforced by an EAP who emphasized that public meetings are “not the way to go as people use it as a soap box” (Interview 3&4, 2009). On the other hand I&APs outlined that public meetings provide an opportunity for environmental practitioners to ‘sell their product’ (Focus Group 1, 2009).

These statements reinforce that public meetings are only used at the level of *information feedback* as categorised above, as there is not much engagement taking place during these meetings. This shows that public meetings are generally played out as a one way flow of information that results in one stakeholder to dominate over the other by providing information or trying to impose their agenda. This is further emphasized by EAPs when asked what they were hoping to achieve from the participation process of each EIA. EAPs responses range from merely informing people and letting them know about the development to obtaining feedback from and addressing concerns of I&APs to wanting the “broadest range of public to attend our meetings” (Interview 1, 2009). This reinforces that *information feedback* is the highest level consultants hope to achieve from participation processes of these EIAs especially from public meetings. The disadvantages of public meetings and participation touched on here will be discussed further when I&APs and EAP’s perspectives of these public meetings and other public meetings of EIAs attended are unpacked.

Each public participation technique used in these EIAs was outlined in table 5.2, identifying the extent of participation that was provided. Whites (1996) categorization of the types of public participation assists in further determining the extent of each public participation technique used, and the quality of the overall process. Table 5.3 provides a classification of the public participation techniques used in each EIA as specified above. These are classified according to Whites (1996) categories of nominal, instrumental, representative and transformative (as described in the literature review chapter).

**Table 5.3: The type of public participation of each EIA (2006) according to White (1996)**

Category	Sample 1 – SAB	Sample 2 – S1 Group	Sample 3 – Sasol Gas (Isegen)	Sample 4 – Divfood
Nominal	-	-	-	-
Instrumental	<ul style="list-style-type: none"> <li>• Site Notice</li> <li>• Local/regional Newspaper Articles</li> <li>• National Newspaper Articles</li> <li>• Dissemination of BID</li> <li>• Public Meeting</li> </ul>	<ul style="list-style-type: none"> <li>• Site Notice</li> <li>• Local/regional Newspaper Articles</li> <li>• BID available for review at local library and development site</li> <li>• Dissemination of BID, SR and EIR</li> <li>• Public Meeting</li> </ul>	<ul style="list-style-type: none"> <li>• Site Notice</li> <li>• Leaflets/brochures/fliers</li> <li>• Local/regional Newspaper Articles</li> <li>• National Newspaper Articles</li> <li>• EIR available for review</li> <li>• Dissemination of BID, SR</li> </ul>	<ul style="list-style-type: none"> <li>• Site Notice</li> <li>• Local/regional Newspaper Articles</li> <li>• National Newspaper Articles</li> <li>• BID available for review at local library and development site</li> <li>• Dissemination of BID</li> <li>• Public Meeting</li> </ul>
Representative	-	-	-	-
Transformative	-	-	-	-
Type of Public Participation Process	Instrumental & Representative	Instrumental & Representative	Instrumental & Representative	Instrumental & Representative

From the above categorization of the public participation processes of the four EIAs, it can be seen that all of the participation techniques that fell under Level 1 of *Education & Information Provision*, according to Fell and Sadler (1999), also fall under Whites (1996) category of *instrumental*. This was ascertained by a revision of the participation processes outlined in the interviews and focus groups undertaken. As outlined in the literature review chapter, White (1996) defined *instrumental* participation as involving people in the process but does not allow their voices or they are not allowed the opportunity to make decisions regarding the decision taken.

Furthermore, although public meetings provide *information feedback* according to Fell and Sadler's (1999) categorization it is also seen to be *instrumental* according to White (1996). Public meetings are seen as *instrumental* as it did not allow for the public to have a voice to the extent of

making decisions about the actions taken as there was mainly a one way flow of information as confirmed by majority of EAPs comments. Hence, there was information feedback during these public meetings but not to the extent of influencing the decision taken and options chosen. The experiences and perspectives of I&APs and EAPs will be further unpacked and provide further evidence to support the above categorization.

Even though the above categorizations of the public participation techniques outlined the extent of these techniques; the actual quality of the techniques used need to be interrogated. Common public participation issues identified from these EIAs can provide a further understanding of the level of quality of public participation.

### **5.3.1 Public Participation Issues**

Public participation issues that resonated from all four EIAs was firstly the fact that there was a very low turn out at public meetings undertaken, and in terms of general comments from the South Durban public. Reasons for the low turn out at public meetings and the low levels of comments from those I&APs who attended the SAB and S1 Group was the overall benefits of the developments. This overall will influence the extent and quality of participation. The Divfood EIA also had a low turn out at the public meeting despite the distribution of notices to the hostel located within 100 metres east to the development site that was only at a later stage recommended by SDCEA. This actually shows that initially not all I&APs were made aware of the EIA process or public meeting taking place.

The actual number of participants especially the number of I&APs that attended the public meeting of each EIA are tabulated below. The SAB EIA had in total 9 participants with 5 out of the 9 participants consisting of the proponent and EAPs with the remaining 4 consisting of I&APs. This is a similar situation in the S1 Group public meeting, with 10 participants and half (5) of these consisting of I&APs. The Divfood public meeting also had 5 I&APs participating.

**Table 5.4: Number of participants at Public Meetings of South Durban EIAs**

<b>South Durban EIAs</b>	<b>Size/Scope</b>	<b>Environmental Impact</b>	<b>Public Meeting</b>	<b>Number of Participants</b>
<b>1. South African Breweries Ltd (SAB)</b>	Basic Assessment (BA)	Positive	Yes	11 (5 I&APs)
<b>2. S1 Group - South Africa</b>	Basic Assessment (BA)	Positive	Yes	10 (4 I&APs)
<b>3. Sasol Gas Ltd - Isegen Pty (Ltd),</b>	Scoping & Environmental Impact Report (EIR)	Significant Negative	No	N/A
<b>4. Divfood</b>	Basic Assessment (BA)	Significant Negative	Yes	5 (5 I&APs)

This shows that overall participation at EIA public meetings is very low. All public meetings were attended by the proponent, environmental assessment practitioner (EAP) and representatives of environmental, community organizations. There has also been no attendance hence limited input from the South Durban public/community. The use of the term I&APs from this point forth will therefore refer to representatives of environmental and community organizations. The highest number of participants at a public meeting were 11 with almost half of this number consisting of the proponents and the EAP with the remaining being I&APs (representatives). Therefore, low single digit numbers, ranging from 4 to 5 (as shown in table 5.4 above) of I&APs participating in the EIA process is a cause for concern, especially with regard to the credibility of the public participation process in being effective in allowing input from the public to influence the decision-making process. This in turn will have an impact on the quality of the overall public participation process.

Limited representation at public meetings is therefore regarded as insufficient by I&APs as this leads to what can be seen as a privatization of participation. One of the SDCEA officials who participated in a public meeting emphasized the point below:-

Also there is a privatization of public participation. We see that industries are not willing to have public meetings and the reasons for that is that they are scared off the public confronting them with serious issues ... They rather have focus group

meetings ... so the people don't know the full impact of that development

(Focus Group 4, 2009)

The lack of interest of the 'public' to attend public meetings as outlined by EAPs is used as a reason to justify the low number of 'public' attending meetings, whereas I&APs outline that this is due to a lack of informing the public of public meetings. Furthermore, I&APs see these public meetings to be deemed sufficient by EAPs and is reinforced by EAPs when they emphasize that complying with the regulations is enough. Therefore, the number of actual 'public' attending meetings of an EIA in South Durban is insufficient and the regulations is also limited to the extent of representivity of the 'public'. As can be seen, the perspectives of EAPs and I&APs with regard to the use of public meetings differs and as unpacked further will show hindrances to public participation and the influence of the 'public' on the actual decision-making process.

Reasons for low turn out and lack of representivity of the 'public' at these meetings range from, as outlined earlier, to be the fact that these EIAs were small in nature and had potential positive impacts on the environment. However, the Sasol Gas EIA, which was a full EIA with significant negative impacts on the environment, had not sufficiently secured a public meeting. Environmental consultants again outlined the reason for non-participation as the fact that there was no interest by the public of the development. As stated in the SR and EIR "registered I&APs were contacted with regard to the public meeting, and informed of the lack of interest in the project" and "all I&APs agreed to continue receiving documentation on the project in lieu of the public meeting" (KSEMS, 2008, 13).

From this it can be determined that there is a strong sense of public participation fatigue being experienced especially of public meetings in the South Durban Basin as reflected in the very low number of participants. Furthermore, a public meeting is a very common technique used within the South Durban Basin. I&APs and EAPs outlined their perspectives of the public participation process especially the public meeting participated, which provides potential reasons for the lack of participants at public meetings will be discussed later on in this chapter. Furthermore, this lack of participation could also be due to and stem from handicaps or constraints of the participation process outlined in the regulations, as argued by Murombo (2008).

The lack of representivity of the ‘public’ at meetings reinforced that public meetings were far from being ‘representative’ according to White (1996) as it did not ensure the public a voice to provide sustainability and support, and for them to express their own interests (White, 1996). Hence, public meetings were categorized as ‘instrumental’ as people are not given the voice to make decisions about the options taken (White, 1996) as the quality of participation is low. A comparison of the participation process of these four EIAs to EIAs undertaken under the old (1997) regulations is therefore imperative to determine whether participation in these EIAs has made a step forward or backward in including the voices of the public in shaping the decision-making process and furthermore, moving toward an environmental justice approach. To this we now turn.

### **5.3.2 Comparison of public participation process of EIAs (1997 and 2006 regulations)**

This section compares the four EIAs undertaken under the 2006 EIA regulations to the five EIAs undertaken under the 1997 EIA regulations. A study undertaken by Hoosen (2005) analyzed five industrial EIAs in the South Durban Basin and categorized these EIAs using both Fell and Sadler’s (1999) and Whites (1996) levels and types of participation. This study used similar sampling criteria as this previous study, which was outlined in the methodology chapter. A comparison of the participation process and techniques used of these four EIAs to these five would provide some differences or similarities with EIAs undertaken under the different regulations that would assist in determining whether participation has taken a step forward or backward.

Firstly, by comparing table 5.2 to table 5.5 that categorizes the five EIAs analyzed by Hoosen (2005) it can be seen that the current four EIAs have only used participation techniques that reached the level of *information feedback* as compared to the five EIAs that have used level 3 techniques that include *involvement and consultation*. Hence, it can be seen that EIAs in South Durban undertaken under the 1997 regulations allowed for more inclusive involvement of I&APs through the use of more appropriate and time-consuming techniques as compared to the 2006 EIAs that use only public meetings that are conventional and conservative, which are generally less time consuming. This furthermore links to the legitimacy of the aim of the 2006 regulations which is that off streamlining the participation process.

**Table 5.5: The public participation techniques used in each EIA (1997) according to Fell and Sadler’s levels of public participation (Source: adapted from Hoosen, 2005)**

<b>Public Participation Techniques</b>	<b>Sample 1</b>	<b>Sample 2</b>	<b>Sample 3</b>	<b>Sample 4</b>	<b>Sample 5</b>
<b><u>Level 1 - Education and Information Provision:</u></b>					
Leaflets/brochures/fliers		√	√		√
Newsletters					
Local/ regional Newspaper Articles	√	√	√	√	√
National Newspaper Articles	√	√	√	√	√
Dissemination of BID, SR	√	√	√	√	√
Dissemination of EIR		√			
Posters					
Site Visits	√	√			
<b><u>Level 2 - Information Feedback:</u></b>					
Staffed exhibit displays					
Staffed telephone lines					
Internet					
Public/Authorities Meetings	√	√	√		√
Door-to-door social surveys		√			
<b><u>Level 3 – Involvement &amp; Consultation:</u></b>					
Workshops	√				
Focus Groups/Forums					
Open days		√			
<b><u>Level 4 - Extended Involvement:</u></b>					
Community Advisory/Liaison Group					
Citizen Juries					
Visioning					

A distinguished difference between the participation processes of EIAs under the different regulations is with regard to the dissemination of EIA reports. As can be seen from both tables 5.2 and 5.5 that the dissemination of EIA reports are required to be undertaken in both regulations. However, as can be seen from the review of and categorisation of the participation process and techniques used according to Fell and Sadler (1999), that making EIA reports available for review as shown in table 5.2 was undertaken by all the four EIAs under the 2006 regulations other than the dissemination of EIA reports, which was undertaken under the old (1997) regulations. This emphasizes that the participation process as stipulated in the 2006 regulations is therefore more conservative as compared to the 1997 regulations, which is a result

of streamlining of the participation process. The making of EIA reports available for review under the 2006 regulations is justified by EAPs, as stated by one EAP as follows:

... if you have their email address you email them saying the project that you have been involved in has been authorized and if you want a copy of the ROD ... So we have gotten objections from people, why are you emailing me the stuff. You get these angry responses and we like sorry, we just trying to let you know what's happening, so you can't please everybody ... We say if you want the copy of the ROD please let us know then we will forward it onto you

(Interview 2, 2009)

Objections by I&APs are used by EAPs as a reason for non-dissemination of EIA reports. The reasons may also be due to participation fatigue experienced in the South Durban Basin due to the many EIAs being undertaken in the area that have not counted in the favor of I&APs.

By further comparing the different EIAs using Whites (1996) categorization (Table 5.6) it can be seen that three out of the five EIAs under the 1997 regulations went to the extent of being *representative* in the public participation process adopted. However, when comparing this to table 5.2 of EIAs under the 2006 regulations, the public participation process of the four EIAs only reached the *instrumental* level. This reinforces that public participation in South Durban under the 2006 regulations have fallen back a notch in terms of the level and the extent to which participation includes the voices of the marginalized as there was no representivity of the actual 'public' in the participation process. Public representatives from SDCEA and community organizations cannot provide adequate representation of the broader majority of the public as the 'public' change and their priorities change over time as well as that of those representing them.

**Table 5.6: The type of public participation of each EIA (1997) according to White (1999)**

(Source: adapted from Hoosen, 2005)

Category	Sample 1	Sample 2	Sample 3	Sample 4	Sample 5
Nominal	-	Public Meeting	Public Meetings	-	-
Instrumental	Local/ regional Newspaper Articles National Newspaper Articles Dissemination of BID, SR	Leaflets/ brochures/ fliers Local/ regional Newspaper Articles National Newspaper Articles Dissemination of BID, SR and EIR Posters	Leaflets/ brochures/ fliers Local/ regional Newspaper Articles National Newspaper Articles Dissemination of BID, SR	Local/regional Newspaper Articles National Newspaper Articles Dissemination of BID, SR	Leaflets/ brochures/ fliers Newspaper Articles National Newspaper Articles Dissemination of BID, SR
Representative	Public Meetings Focus Group Meetings	Open Days - Mill Tours Telephone Calls	-	-	Public Meetings
Transformative	-	-	-	-	-
<b>Type of Public Participation Process</b>	<b>Instrumental &amp; Representative</b>	<b>Instrumental &amp; Representative</b>	<b>Nominal &amp; Instrumental</b>	<b>Instrumental</b>	<b>Instrumental &amp; Representative</b>

Furthermore, the use of public meetings in the four EIAs under the current regulations cannot be regarded as a ‘public’ meeting as there was firstly a low number of I&APs attending with no actual ‘public’ attending. This is reinforced by comparing Whites (1999) categorization of the EIAs undertaken under the 1997 EIAs to that of the EIAs undertaken under the 2006 regulations. This showed that public meetings of EIAs under the 1997 regulations were categorised as representative as compared to public meetings undertaken for EIAs under the 2006 regulations that were categorised as instrumental. Hence, the current quality of public meetings as compared to those public meetings undertaken under the 1997 regulations is much lower as the public are not ensured a voice.

Therefore, it can be seen that the participation processes of EIAs under the 2006 regulations reached the extent of *information feedback* as well as *instrumental* that does not allow for voices to be heard. This emphasizes the one way flow of information that does not encourage further participation. The participation processes of EIAs under the 1997 regulations go to a further extent of *involvement and consultation* symbolizing a two-way flow of information as well as being *representative* of views of I&APs.

From the above categorisations, it can be seen that EIAs undertaken under the 1997 EIA regulations went a step further in consulting and engaging with I&APs in informing the EIA thus providing the ‘public’ with more of an opportunity to voice their concerns as compared to EIAs undertaken under the current 2006 regulation. Therefore, the extent in terms of the quality of the participation process in capturing and including comments from I&APs has less to do with the techniques used but more to do with the objective of the participation process than techniques itself. Furthermore, the role of representatives of the public need to be further analysed in hindering the voices of the ‘public’ in the participation process and in influencing the decision-making process. This is further highlighted in I&APs and EAP perspectives of the participation process, especially of the public meeting undertaken in the four EIAs and adds further weight to the extent and the level of quality of participation demonstrated above.

#### **5.4 Public Participation Perspectives**

From the interviews and focus group discussions undertaken, differing perspectives were shown by EAPs of the objective and I&APs on their expectations of the public participation process, including of each other. Table 5.7 below, summarizes these perspectives, which also provides reasons for the low turn out of the actual public at public meetings.

**Table 5.7: Perspectives of I&APs and EAPs of the public participation process (public meeting) of EIAs**

<b>THEMES</b>	<b>I&amp;APs PERSPECTIVES</b>	<b>EAPs PERSPECTIVES</b>
<b>Trust</b>	1. Do not trust EAPs and proponent as no respect is given by EAPs and proponent	1. I&APs are against the proponent and project & bring in other agendas
<b>Lack of Participation</b>	2. There is no definition of participation and overall there is no participation taking place in EIAs in South Durban	2. Low comment response from public is assumed that there is less interest in the project.
<b>Participation Agenda</b>	3. Feel the agenda is already set and is a rubber stamping process 4. Public participation is privatized - not all I&APs informed	3. Feel that if they comply with PP procedures (regulations) then this is enough.

#### **5.4.1 Differing perspectives of public participation**

It can be seen that different stakeholders (consultants, industries and community members) all feel that the other stakeholder has a hidden agenda in South Durban. From the perspectives shown above it can be seen that these are differing. There is evidence to show through the statements made by I&APs and EAPs that due to the context there has been and there still is a long history of mistrust and defensiveness amongst industries, consultants and community organizations in the area that are played out during the public participation process especially the public meetings of the four EIAs analysed. This can be seen when I&APs were asked what their expectations of the participation process were, the following responses were provided:

... our expectation is that we are going to put an input and we expect them to respect the input.

You see although we are going into the EIA process meeting. We also, I know I am going there with really a clouded mind. Because we know what to expect ... they are biased they are going to sell their product.

(Focus Group 1, 2009)

From the above statements it can be seen that I&APs expect their views to be respected in public meetings. However, at times their minds are clouded as the process is seen to be biased and EAPs are seen to be ‘selling’ the development. Therefore, there is a sense of mistrust and lack of

respect felt especially by one I&AP that emphasized what is required for this expectation to be achieved as follows:

I must know that I can trust an EIA consultant to be as independent as they could possibly be under the situation knowing as a paid consultant that's not going to happen. What chances have I got to expect other than a bias, a prejudice, a covering up promise that could never be fulfilled.

(Focus Group 1, 2009)

The above statement reinforces the fact that I&APs feel that public meetings are biased as their expectation of the public meetings carried out are not met. This is further reinforced by the following:

... our expectation of what we can achieve is basically wasted. And it's becoming for me more and more a case. Look I don't want to even go to these things because I have come to the realization that I am wasting my time, wasting my money, wasting my effort.

(Focus Group 1, 2009)

I&APs went to the extent to say that their expectations of what can be achieved during the participation process were wasted. This shows their conviction that they feel that their participation and time is wasted that results in them not even attending public meetings. However, it should be kept in mind that I&APs were representatives of environmental and community organizations in the area. The following statement highlights this further by a community representative who participated in a public meeting:

... you have their [I&APs] expectation that the ideas that come to the floor will be taken into consideration, but these expectations are usually whitewashed by the ideologists that put the process together so we going to make money, we just got to go through the legal process.

(Focus Group 1, 2009)

Here again these very same expectations were outlined and in the same breath it was stated that these are whitewashed. The main aim is to go through the legal process just to get the process completed thus making it a rubber stamping process. This reinforces that the agenda of the participation process especially of the public meetings of these EIAs were rubber stamped and was therefore instrumental as categorised according to Whites (1996) categorisation. This was further highlighted by another I&AP who stated, “In this one [EIA] I think they said, well lets get it over quickly” (Focus Group 1, 2009).

These above perspectives have sowed the seeds of mistrust in the minds of I&APs, of EAPs as just merely selling the project as stated earlier. On the other hand, EAPs outlined when asked whether the objectives of the process were achieved, the answer was a resounding yes with information being given on the development. This objective is in line with the categorization of *information feedback* in which public meetings were characterized. Another EAP stated the following:

... first of all we wanted a broadest range of public to attend our meetings cos we wanted in all our EIAs we aim to get the highest number ...

(Interview 1, 2009)

This shows that EAPs are willing to involve a broad range of I&APs as well as obtain their feedback on the project. Furthermore, EAPs outlined that following the regulations is sufficient when undertaking public participation as they feel that no matter how much is done it is never enough for someone (Interview 3&4). This therefore, has an influence on setting the agenda for public meetings as it satisfies the regulations, which has been mentioned earlier to be conservative in nature. Apart from achieving this in the public participation process what is outlined by EAPs is that I&APs are against the proponent and bring in other agenda's. This is already seen from the statements made by I&APs that this is due to a lack of trust on they part with EAPs and the proponent. This is reiterated by EAPs when asked whether there was any conflict experienced in the public meeting undertaken. EAPs outlined the following:

I guess there is a lot of conflict when we have public meetings, people tend not to focus on the environmental component and they just think it is a public meeting

about the organization.

(Interview 1, 2009)

These personal matters arising in public meetings are therefore a sign that those participating do not trust the actions of those concerned hence raising other matters of concern related to the proponent. Furthermore, this is also influenced by the long history of industrial developments and EIAs in the South Durban area that has fueled this mistrust as I&APs in the focus group discussion kept on referring to examples from past and current EIAs undertaken by familiar EAPs as well as proponents. From a lack of trust to the differing perspectives that shows differing agenda's for undertaking a public meeting by EAPs and I&APs shows that this will not lead to a concrete outcome for any of the parties participating.

### **5.5 Constraints of Public Participation**

From the above, constraining factors of the public participation process of these four EIAs can be drawn. These resonate with McDaid & Kruger's (2004) constraints of public participation outlined in the literature review. The following are those that are seen:-

- The public become weary of continuously being asked to participate, when their comments are continuously ignored.
- Lack of public at meetings.
- Lack of capacity to make informed input – language or technical issues alienate public and prevent participation.
- The objective of the EIA, from the developer's point of view, is one of justifying the development to the public, rather than one of real development choices. This is because financial resources are often committed to projects ahead of an EIA.

There is evidence as shown from the above quotes discussed to ground McDaid & Kruger's (2004) constraints of public participation. The most important of these is there being a lack of 'public' at public meetings, which the low numbers has confirmed. Mistrust coupled with public participation fatigue as concerns are not adequately taken into account as well as the agenda already being set in the eyes of the public are reasons for the low turn out of the 'public' at public meetings. Furthermore, the context of South Durban with regard to participation in EIA processes

in the past show that voices of the marginalized are not adequately included in the processes (Hoosen, 2005; Scott & Oelofse, 2005) hence fuelling participation fatigue. However, there could be current underlying contextual reasons that could also constrain participation in these South Durban EIAs and that would have an impact on the public influencing the decision-making process, which will be unpacked further in the following chapter.

## **5.6 Conclusion**

Based on the above perspectives of I&APs and EAPs, further weaknesses of public participation as highlighted by participants resonate with the current debates on the handicaps of the public participation process outlined in the 2006 regulations enforced by Murombo (2008). From the above analysis it can be seen that there are handicaps and constraints of public participation evident in the four South Durban EIAs. There is a very low turn out of the actual public at public meetings thus showing the extent of participation and hence the quality is very low. Furthermore, the comparison of the 2006 EIAs to the 1997 EIAs showed that the public participation process has gone a step backward in being inclusive of I&APs views. as conservative methods of participation are being used as compared to those EIAs under the 1997 regulations. Therefore, the quality of participation is not heavily linked to the techniques used but the objective of the process itself. From both the interviews and the focus groups undertaken, many examples of other EIAs were used to highlight these handicaps. With regard to each of the public participation handicaps outlined by Murombo (2008), there is evidence to show whether these are infact taking place or not in EIAs in South Durban. Evidence to support each of these claims by Murombo (2008) as well as the hindrances of the South Durban context will be unpacked and discussed in the next chapter.

## **CHAPTER 6**

### **HANDICAPS OF PUBLIC PARTICIPATION: ENVIRONMENTAL POLICY AND SOUTH DURBAN CONTEXT**

#### **6.1 Introduction**

This chapter aims to discuss the underlying issues that may have resulted in the lack of the ‘public’ actually participating in the public meetings of the South Durban EIAs. These underlying factors are two fold and stem from the current environmental policy framework in place as well and the South Durban context. Environmental democracy literature as well as evidence from I&APs and EAPs will be sourced to unpack these issues that are cause of concern in hindering public participation of the actual ‘public’ in EIAs, and their opportunity of influencing the decision-making process.

#### **6.2 Hindrance of the EIA Regulations for Public Participation**

As outlined in interviews with environmental practitioners and focus group discussions with I&APs, there were many instances as seen from the differing perspectives of I&APs and EAPs in which evidence of hindrances of public participation were outlined due to the current 2006 EIA regulations. These hindrances will be discussed further individually and are; the lack of a clear definition of public participation, hence differing objectives of participation; insufficient advertising of EIAs and the participation process; public participation reported as a summary in EIA reports; insufficient advertising and public meeting times, no involvement in the actual project design phase as well as in M&E and the EMP. These will be addressed individually as follows:

##### **6.2.1 Lack clear definition of ‘Public Participation’**

The lack of a clear definition of the term public participation in the 2006 regulations is emphasized by I&APs in South Durban as outlined by one focus group participant, “we have not defined public participation in the sense that we know what everybody is talking about” (Focus Group 1, 2009). When asked what are the differences of public participation in terms of the 1997 regulations as compared to the 2006 regulations, the participant emphasized “not much has changed, they [Regulations] have not defined participation, in terms that we [public] would accept it” (Focus Group 1, 2009). Therefore, the lack of a clear definition and the difficulty of

actually defining the term public participation to suit all is a major obstacle and hindrance that could not be eradicated as a broad definition will lead to ambiguity and a specific definition will not be conducive to a particular context.

This furthermore, leads to differing objectives of a participation process and of a public meeting by EAPs and I&APs as it is open to interpretation. Hence, majority of the time objectives of I&APs are not met as EAPs are the ones controlling and have the power of setting the scope of a participation process and the agenda of a public meeting, which are mainly to inform participants and provide them with information on the development.

### **6.2.2 Insufficient advertising of EIAs and participation process**

I&APs are not satisfied with the way in which EIAs and the participation process of these EIAs are advertised. Firstly, they outline that the newspapers in which these adverts are placed are not suitable, as well as the language in which it is advertised, as they do not reach the majority of the disadvantaged people that are likely to be affected by the EIA. This is emphasized by one of the focus group participants, as follows:

so for us that get the paper delivered and can afford to pay for the paper were able to access and find out what, which companies are advertising EIAs and developments ... But for the majority of ordinary citizens and black people in this country, who don't buy the paper the mercury, they are left out of the process ... the companies and consultants are short changing these people by not putting it in the language that they understand better.

(Focus Group 4, 2009)

Therefore, the above shows that there is currently insufficient advertising that has also been experienced in EIAs under the 1997 regulations that is still a cause for concern. The 2006 regulations even though specified specifics in terms of advertising, is not seen as adequate as it has failed to address these very concerns that are hindering access of the public to information about developments and hindering the opportunity for them to participate in EIAs. Hence, the regulations have not provided further guidance on advertising as emphasized by Murombo (2008).

### **6.2.3 Inappropriate times of Public meetings**

It was outlined by those that participated in the public participation process of EIAs in South Durban, especially by the representatives of SDCEA that public participation in the new regulations is just undertaken as a window dressing, and that public meetings especially, are not achieving its purpose.

Having said that there is a lot of apathy though, because the consultants don't go out of their way to provide the necessary, you know cos people sometimes come back late at night from work and so consultants deliberately hold meetings during the day or in the evening from 4 to 5 and beyond that is very difficult. And I think there is this time factor that plays a crucial role when people can participate.

(Focus Group 4, 2009)

This reinforces that the regulations have streamlined the participation process so as to allow the EIA process to be fast tracked, which has been achieved at the expense of the quality of the public participation process taking place. This is partly due to few 'public' attending meetings and limited to no concerns being raised. Environmental consultants emphasized their commitment to adhering to the regulations as they have emphasized that the participation process outlined in the regulations is sufficient (Interview 3 & 4, 2009) and adequate. Therefore, this flaw in the regulations is used as a justification by EAPs to conduct inappropriate and ineffective participation processes.

### **6.2.4 Lack of feedback and information from participation processes**

Furthermore, I&APs (environmental and community organizations) outlined that their views are captured in public meetings but no feedback on comments are provided. This is expressed by I&APs of the undertaking of the participation process:

The same we had in the Breweries case, this is now finished, we got nothing to say anymore, your input has been recorded and now it's finished.

(Focus group 1, 2009)

The above statement shows that I&APs regard public participation as a once off process that is finished, not warranting any feedback on comments or issues raised. Lack of feedback on comments can be linked to the limited commenting timeframes allocated, hence the use of conservative participation techniques like the making of EIA reports available as stressed earlier as compared to previously disseminating such reports. This reinforces the fact that I&APs views are not addressed, hence influencing the final decision-making outcome of an EIA with their full essence of concerns not completely reflected in the summary in EIA documents sent through to the relevant authority.

### **6.2.5 Summary of Public Participation in EIA reports**

The public participation process is outlined in the BA, SR or EIA report with the major comments highlighted in the comments and response sheet and the details of the process attached as Appendix E. Furthermore, this is emphasized to be “basically a synopsis of the public participation process” (Interview 1, 2009). As outlined by all environmental consultants when asked how the views of I&APs from the public participation process were captured in the EIA report, all provided the same answer conducive to that stipulated in the regulations, which is as follows:

... the consultant follows the process of going through the proper process recording the comments and but I don't think that the responses are properly given in those reports for the authorities to make a decision.

(Interview 1, 2009)

This is reinforced by another EAP who stated that “the summary helps but is not sufficient” (Interview 3&4, 2009). It was further outlined that according to the regulations it was basically sufficient and they had done exactly what was required (Interview, 3&4, 2009). Furthermore, in terms of including the voices of all I&APs it was highlighted by an EAP that “everything was recorded, everything according to the regulations were followed”. This shows that the EAPs are adhering to the regulations on the grounds that it assists in streamlining the EIA and specifically the participation process. Adherence to the 2006 regulations in terms of public participation is outlined as there are checklists in place making the process much better and does not allow for

I&APs to attack the process or development, which the 1997 regulations had room to allow (Interview 3&4, 2009).

Therefore, the regulations in terms of participation are adhered to by EAPs as outlined above but inputs are not adequately captured in the form of a summary for the competent authority to make an informed decision. This further reinforces one of Murombo's (2008) handicaps of participation, which is that there is no further guidance on public participation as compared to the previous 1997 regulations that also stipulated public participation to be in the form of a summary in EIA reports. I&APs when asked about the public participation process highlighted the fact that their views were captured and presented as a summary is a big hindrance to the whole process. This is highlighted by one participant to be "biased, it is prejudiced in the extreme that is the executive summary" (Focus Group 1, 2009). Therefore, this is regarded as a hindrance by I&APs to the process. These were expressed by I&APs using examples of other current EIAs in South Durban as follows:

We had a pile of rejections and you know what, what goes to the DEAT is an executive summary, don't tell me he looked through ten thousand pages, he looks at the executive summary and that summary is okayed by the applicant.

(Focus Group 1, 2009)

This shows that I&APs are aware that decision makers are not making an informed decision, due to the correct amount of public input not being adequately represented in the reports in the form of a summary. Furthermore, the summary is also seen to be biased as it is only reviewed by the applicant before it is sent to the competent authority. This raises the question whether I&APs are infact reviewing the final EIA reports, which is required as part of the regulations. Due to this lack of I&APs views being represented in reports concludes that public participation in EIAs in South Durban is not fulfilling its role. All of these handicaps culminate to the point where all I&APs are not satisfied with the 2006 regulations in providing effective participation as highlighted by one focus group participant:

... the legal process doesn't justify the effort that we put in it, because they [EAPs] run through the process ... then the input from the public or the participants is just ignored.

(Focus Group 1, 2009)

Due to this regulatory and institutional context, shaped by these handicaps of participation, has contributed to changing the public participation environment. These changes have been highlighted as having the potential to intentionally further hinder effective participation within the South Durban region. These changes are seen in the legitimacy of environmental and community groups in representing the public as a whole, and the creation of a knowledge differential amongst I&APs in South Durban.

#### **6.2.6 No involvement in the actual project design phase**

As outlined by Murombo, the public are only informed of the implementation of a project after an application for authorization has been made. This shows that the decision to go ahead with the project has already been made prior to the public's knowledge of such a project and any participation thereafter is undertaken as a mere formality that will not have any bearing on the decision (Murombo, 2008). All EAPs showed evidence to support Murombo's claim that there is no involvement of the public in the actual project design. As outlined by one EAP below:

Ja, they (I&APs) didn't design the public participation process because we more follow according to the regs but they guided the process through South Durban SDCEA they give their input into it and, so they add and they guide the process but I don't think they involved in the design of it because the regs determine that.

(Interview 1, 2009)

As stated above that I&APs were not involved in the design phase of the project this being due to following the regulations, and emphasizes the point made by Murombo (2008) that the 2006 regulation does not allow for I&APs to be part of the design of the development. This allows for the agenda to be set upfront before the EIA takes place and for public participation to be undertaken as a legal procedure, which I&APs highlight is taking place at the moment in these

four EIAs and generally across EIAs in South Durban. Another EAP highlighted that “to a degree they were but not to a great extent” (Interview 3& 4, 2009).

### **6.2.7 Provision of views after completion of EIA and M&E of the project**

There are no provisions in the regulations for the inclusion of public views after the EIA has been authorized including the monitoring and evaluation and development of the EMP (Murombo, 2008). There is evidence to show that I&APs infact complained in the focus groups undertaken about the lack of compliance and enforcement of the actual EIA. It has been stressed that the community has been playing the industry watchdog for too long when infact it is the responsibility of the local authority.

Participation fatigue experienced in South Durban, as discussed earlier, is a symptom of a none functioning EIA regulatory framework as shown in the handicaps above that hinder achieving effective public participation. This is emphasized by I&APs as follows:

the problem with the EIA system is that is has raised the expectations of the community beyond what the EIA system can deliver.

(Focus Group 1, 2009)

The above evidence has supported in a large part the handicaps of the regulations in terms of achieving effective participation as outlined by Murombo (2008), further evidence obtained also show other underlying issues that may have contributed to hindering participation at the local level. This context specific hindrance, which is not unique to South Durban but is being currently played out in South Durban affects and has changed the role of what participation actually means and more importantly for whom.

## **6.3 Hindrance of the South Durban Context for public participation**

### **6.3.1 Legitimacy of Environmental and Community organizations in South Durban**

Since I&APs consisted of only representatives of community organizations, it prompts the question as to why this is occurring especially in an area that has a history of community involvement in environmental activism. The reasons for this were highlighted by EAPs and I&APs, which provokes questions of legitimacy of environmental and community groups in

representing the views of the public. One EAP emphasized that the competent authority prefers comments from community groups rather than individual I&APs concerns. This is expressed as follows:

... on the authority's point of view they take more of the comments you get from the KZN Wildlife, like from your big organizations basically rather than the public participation process. So basically if you address those comments you (EAP) fulfil your commitments and they make a decision on that ... I think with South Durban the public participation process is taken big because SDCEA is regarded as an organization like DWAF, it's not just a community organization so if they have any concerns they are fulfilled.

(Interview 1, 2009)

From the above statement, it can be seen that comments from big community or environmental organizations carry more weight than that of the general public. The competent authority focuses on bigger organisations concerns and if these are addressed in the EIA reports then it is seen by the authorities that participation has taken place. This shows that there is a 'corporatization' of public participation, which is non-inclusive of all those who are interested or affected by the development. Furthermore, there is consensus amongst environmental practitioners and I&APs that the competent authority do take bigger organizations comments to mean that participation has taken place. This concern is reinforced by a SDCEA official as follows:-

DEAT officials tell the consultants go to SDCEA and you will get a response from them and I think that we want to get rid of that myth that SDCEA represents all people and that the public is not generally SDCEA only and the public must be consulted in a proper way and so they views can be taken on board.

(Focus Group 4, 2009)

This reinforces the point that the competent authority has succeeded in 'privatizing' or 'corporatizing' the public participation process as they encourage environmental consultants to inform and address big organizations concerns that clearly marginalize majority of the public. This has serious implications on individual I&APs and their views in influencing the decision-

making process, and reinforces what has been argued by Barnett & Scott (2007: 2629) that deliberative (formal) methods of consultation and participation like the EIA “can conceal the ways in which structural inequalities skew deliberative practices in favor of powerful actors”. In this sense powerful actors are those environmental groups that have the scientific expertise to engage with issues of this nature, like SDCEA. Furthermore, this concern was highlighted by the SDCEA themselves as follows:-

The danger is that the SDCEA has created also a one stop shop, in the sense that people can rely on us to do their work for them. I think that is a huge danger that people must realize that the more the public participate the more enlightened people are about EIAs the more better it is.

(Focus Group 1, 2009)

Therefore, the SDCEA recognized and have acknowledged that their role and knowledge is currently hindering effective participation of the South Durban community and general public and that the views of a whole community can never be effectively represented by one or two individuals, who are obligated to attend as stressed by another SDCEA representative by saying that, “I represent maybe 200 or 300 or 10 people makes no difference. I stand up as one voice and I am allowed only 3 questions” (Focus Group 1, 2009). Furthermore, representatives are not provided with adequate time to engage with the public prior to attending public meetings and there is no guarantee that written comments provided at a later stage are taken into account in the decision-making process.

Furthermore, environmental consultants obligation to adhere to the regulations that outlines a very fast-tracked (due to set time frames) participation process creates an ideal situation for contacting and noting concerns of dominant environmental and community organizations, which is less time consuming, which further reinforces that formal procedures of consultation have allowed the powerful in society to be part of the process. Hence, the very participatory structure stipulated in the 2006 regulations is inclusive in the manner of allowing the majority of citizens to engage in matters that affect them. This links to just merely following the legislation and abiding by this that leads to a great bias that is hindering the value and changing the role of public participation.

Overall these participation processes cannot be regarded as democratic as environmental organizations are supposedly representing the views of the public, which is representative democracy. This shows that environmental democracy in South Durban is taking place in a representative form, which is not the highest level of democracy. It can be seen from the South Durban case that more emphasis needs to be placed on participatory democratic methods of participation as compared to the current representative democratic structures used in the environmental decision-making process in South Africa.

### **6.3.2 Existence of a knowledge differential**

The legitimacy of environmental and community groups is also linked to the existence of what can be called a knowledge differential. This stems from the fact that EIAs have been seen as a very scientific, technical and reactive method of assessing the impacts on the environment that requires expert knowledge especially in gaining specialist input in compiling specialist reports (Scott & Oelofse, 2005). Furthermore, the analysis of impacts on the biophysical environment is predominantly science based, and used by scientists to determine pollution levels and cumulative impacts. Decision-makers in the environmental domain trust and are dependent on the judgment of scientific experts, thus providing these experts with a great deal of power in society, (Blowers, 1997) especially in providing input that can influence the decision-making process. Scientific and technical language is seen as a tool to gain power over the less knowledgeable community.

This shows that the EIA is biased towards those knowledgeable in scientific and technical aspects of the development process as compared to those who lack this type of knowledge. As outlined by a SDCEA official with regard to SDCEA's role in the area is that as an organization they have the experience and required scientific and technical know how gathered over the years that equips them to provide considerable inputs on EIAs (Interview 4, 2009). This can be seen to be one of the main reasons why the South Durban public relies on SDCEA as they lack this type of knowledge. Upfront this looks like a positive participatory environment but over time it has turned into a barrier for achieving effective 'public' participation. This knowledge differential is what is distancing those that are interested and affected by developments from participating in EIAs in South Durban. The lack of the public from participating may be due to public participation fatigue felt due to their concerns raised not influencing the final decision as it is

sidelined as concerns from bigger organizations are regarded as more important and summarized as such within EIA reports. Furthermore, total trust by the public in environmental organizations like SDCEA in representing their views may be actually distancing the public from the participation and environmental decision-making domain.

### **6.3.3 EIAs and Environmental Consultants in South Durban**

The knowledge differential discussed above has fueled public participation fatigue as it has partially led to the mistrust of EAPs experienced by I&APs. As discussed in the background chapter, EIAs have been part of South Durban history for a long time as industrial development shaped the history of the region. EAPs or environmental consulting firms have also developed a history and reputation by I&APs in South Durban as they are assigned to conducting impact assessments by industries themselves. Three of the four EIAs were undertaken by consulting firms that have conducted EIAs in South Durban in the past; hence have engaged on some level with representatives of environmental and community organizations, like SDCEA. I&APs make constant reference to EAPs who have undertaken EIAs and have a long history in undertaking EIAs in South Durban. Past experiences with these consulting firms have led to and aggravated I&APs to not trust EAPs as past EIAs have not included the voices of the marginalized in the participation process (Hoosen, 2005).

Therefore, the history of environmental consultants and consulting firms in an area and the reputation developed in the area, especially by I&APs based on past experiences of public participation sets a context that is one of mistrust and disrespect that is not conducive to achieving effective public participation.

### **6.4 Extent of Influence on the Decision-making process**

The principle of public participation outlined in NEMA (2006) is therefore lost as I&APs no longer “have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation” and has further not assured that “decisions must take into account the interests, needs and values of all interested and affected parties” (Republic of South Africa, 2006) as outlined in NEMA. The public participation process does include the voices of those that participated in the process, which are representatives of the public but not all

concerns are taken into account at the decision-making level, as a summary of responses and comments are inadequate to capturing concerns of I&APs.

The voices of bigger organizations more than the ordinary public are considered by the competent authority that creates a bias that stems from a clear knowledge differential that is one factor amongst others that define who are I&APs of an EIA process in South Durban. This shows that power to influence the decision making process is in the hands of a few organizations and representatives of these organizations. Therefore, public participation in EIAs in South Durban is hindered by the 2006 regulations that further hinders the incorporation of and level of influence that I&APs have in influencing the final decision making process of an EIA.

### **6.5 The way forward on Public Participation**

As can be seen from the evidence outlined it can be safely said that there is no effective and influential role played by the public participation process in incorporating the views of the public in influencing the decision-making process of EIAs in South Durban. Furthermore, all of the evidence shows that the regulations are hindering the inclusion of voices of I&APs and thus need to be re-looked at the role of the public participation process of EIAs so that an informed decision can be made by competent authorities.

Therefore, the main aim of revising the EIA regulations should be to achieve effective participation by all I&APs. This can be done through providing specific guidance with regard to advertising of the EIA as well as stipulating compulsory EIA techniques to be used for different scopes of developments, for example knock and drop to all within a 100 metre of the site. Adverts should be placed in more local newspapers that reach the people and should be in the respective language of those in the area. Other sources of advertising like the radio should also be considered as viable options. Furthermore, a quota system should be enforced for the approximate number of people that are required to participate in the public participation meeting based on the scope of the EIA so as to ensure that effective participation has taken place and the actual 'public' are being represented. This was a recommendation enforced by I&APs with one of the representatives of SDCEA stating the following:-

But you see we have this problem and we go back to our people, and our people that come to the meeting could only at best be 10% of your total membership. We still have not consulted the public in the sense that we should have. 10% while it might be statistically okay does not reflect the feelings of the people.

(Focus Group 1, 2009)

From the above it can be seen that representatives emphasize that their role is not sufficient and adequate in informing the 'public' of a development as the number of people informed are not half of the people that need to be informed. A further recommendation by both I&APs and EAPs for efficient public participation in order to make an informed decision on EIAs is that the competent authority should appoint one official to partake in the full process of an EIA especially the public participation process. As stated by an EAP "the case officer who was involved in the beginning of the process should be the one that goes onsite and learn about the process and should also make sure that they are involved with the monitoring" (Interview 2, 2009). This would firstly, ensure that EAPs are independent in their compilation of the EIA reports and secondly, ensure that all I&APs concerns are taken into account and addressed.

The regulations should also provide a longer period of time for the reviewing and commenting of EIA documents. Furthermore, as outlined by both EAPs and I&APs, a certifying body should be appointed or government should choose and appoint consultants and assign a set fee and pay consultants on behalf of developers (Interview 3&4, 2009) as this will formalize current environmental structures and processes and create more independent consultants. This comment highlights that both environmental consultants and I&APs pointed out a common solution to the betterment of the regulations and in bettering the decision-making process through the public participation process.

Considering these points when re-looking at the 2006 regulations would certainly be a step forward in ensuring that decisions do take into account the interests, needs of the public that are much required. This would be further achieved during the implementation of these policies that is coupled with context specific factors that hinder public participation, (as seen in the South Durban case), which needs to be effectively minimised such that it enables participation and the inclusion of the actual 'public'. The above discussion of hindrances of public participation that

are two fold provides evidence to support Murombo's (2008) argument especially for South Durban EIAs, which states that "in South Africa the parameters and level of public participation are shaped not only by the legal and institutional framework, but also by other variables like the social and economic status of the citizens or interested and affected parties (I&APs)" (Murombo 2008: 4).

This reinforces that environmental policies are not only inadequate but that the implementation of it is also influenced by the social and historical context of an EIA as seen in South Durban, which is characterized by knowledge differentials (science and technical aspects) and the legitimacy of representation by environmental and community organizations. Therefore, the role of environmental and community organizations need to be questioned in adequately representing the majority they claim to represent. This representative form of democracy as shown in this case does not provide adequate representation in environmental decision-making and hence cannot achieve environmental democracy. Therefore, more emphasis needs to be placed on participatory democratic methods of participation as compared to the current representative democratic structures used in the environmental decision-making process in South Africa so as to move towards a social justice approach.

## **6.6 Conclusion**

From the above discussion it can be seen that the EIAs in South Durban has provided evidence to support Murombo's (2008) debate that the current public participation process stipulated in the NEMA regulations hinders the incorporation of the views of the actual public in the process, as well as in influencing the decision-making process. EIAs are undertaken more as a mere formality as was the case under the old 1997 regulations. Furthermore, evidence supports Murombo's (2008) claim that the 2006 regulation hinders public participation and is a step backwards in effectively achieving participation as compared to the 1997 regulations. Therefore, the extent of participation in the 2006 regulations shows a shift away from an environmental justice approach as the views of the actual 'public' and their representivity in influencing the decision-making process was not achieved.

Furthermore, the hindrance of the regulations coupled with the specific South Durban context that is plagued with (as are other communities) a strong knowledge differential provides a further

handicap. This knowledge differential provides a few in society (representatives in this case) with the power to provide input, which may have implications on representivity of those who are affected.

EIAs have not moved away from the use of science and technical knowledge and have succeeded in making communities being more open to it, which was not the case previously. However, this process has only capacitated a few being environmental and community organizations that have the capacity, skills and networks to understand scientific and technical information as seen in South Durban and may be the case in other communities. This has however, resulted in the widening of the gap between the actual community and ‘public’ from actually participating in public meetings placing their trust on environmental and community groups like the SDCEA. This ultimately distances the actual ‘public’ from participating in EIAs as well as the decision-making process that does not have an influence on the final outcome of an EIA.

Therefore, the initial aim of participation to provide the opportunity to develop understanding, skills and continuously capacitate the public on the issues at hand and on scientific and technical matters as emphasized in the NEMA (Republic of South Africa, 2006) is lost, thus channeling power of knowledge (scientific and technical information) to only a few (EAPs, specialists and environmental/community organizations) that hold the decision-making power of the majority who are directly affected by developments. This has strong implications for the ‘public’ who are still marginalized in achieving social and environmental justice, which is the aim of the NEMA regulations as a whole. The 2006 regulations is therefore not providing sufficient opportunities to achieve effective public participation as outlined in the NEMA principles as emphasized by evidence provided from EIAs in South Durban.

## CHAPTER 7

### RETHINKING POLICY & INCORPORATING CONTEXT FOR EFFECTIVE PARTICIPATION

This study aimed to investigate the role of public participation in achieving social justice in EIAs in South Durban. This was undertaken through a comparison of EIAs under the new (2006) regulations and the old (1997) regulations. A set of four objectives were outlined to achieve this aim, as well as a set of literature on current constraints and handicaps of public participation, environmental democracy and environmental justice to guide the achievement of these objectives. The objectives of this study were unpacked and discussed in the previous two chapters.

Chapter 5 addressed the first two objectives of the study by firstly reviewing the extent of the participation process by categorising these according to Fell and Sadler's (1999) public participation techniques and Whites (1996) types of public participation. The extent of participation and the quality of the process was then determined for the four South Durban EIAs through a comparison of EIAs under the new (2006) regulations to those undertaken under the old (1997) regulations. The results of this study in addressing the first two objectives is summarised below.

The extent of participation from a review of the techniques used in each EIA and categorized according to Fell and Sadler (1999) are low as it only reached the level of *information feedback* with the majority of techniques used (those prescribed in the 2006 regulations) being categorized at the lowest level of *education and information provision*. Public meetings were the only technique used other than those prescribed by the regulations in three out of the four EIAs.

With regard to the extent of participation and the quality of the process according to Whites (1996) forms of participation it can be seen that all the techniques fell within *instrumental* participation that involves people in the process but does not allow their voices or they are not allowed the opportunity to adequately influence the process before a decision is taken. Public meetings were the main form of participation used other than the prescribed techniques in the

regulations. There was clearly a low turn out (with single digit numbers) of I&APs at public meetings thus showing limited to no representivity of the actual 'public'.

The comparison with EIAs under the 2006 regulations with those undertaken in 1997 as reviewed by Hoosen (2005) showed that three out of the five EIAs under the 1997 regulations went to the extent of being *representative* in the public participation process adopted, whilst the four EIAs under the 2006 regulations only reached the *instrumental* level. This showed that public participation techniques used in the 2006 regulations were more conventional and conservative as compared to those used in the 1997 EIA regulations.

Evidence showed that as compared to the 1997 EIAs, the extent of the quality of the participation process of the 2006 EIAs in capturing and including comments from I&APs had less to do with the techniques used but more to do with the objective of the participation process. The objective of the participation processes as seen from the perspectives of I&APs and EAPs is that it is undertaken as a mere formality and if it complies with what is stipulated in the regulations then it is adequate. However, this is insufficient and does not lead to effective and influential public participation in influencing the environmental decision-making process of EIAs in South Durban.

Therefore, South Durban EIAs under the 2006 regulations have fallen back a notch in terms of the level and extent to which participation includes the voices of the 'public' as there was little to no representivity of the actual 'public' at public meetings. Public participation perspectives of EAPs and I&APs confirm the strong existence of constraints of participation in the South Durban EIAs as outlined by McDaid & Kruger (2004) that range from a lack of public at meetings, to public participation fatigue and a set agenda at public meetings. Lack of trust of EAPs by I&APs stem from underlying contextual factors that further hinders participation.

The above findings go on further to assist in answering the remaining two objectives in Chapter 6 that link to the broader theoretical framework of environmental democracy as well as the current policy context. This evidence supports Murombo's (2008) claim that the 2006 regulations hinders public participation and is a step backward in effectively achieving participation. This is confirmed through the comparison with EIAs under the 1997 regulations. The local context of South Durban has also played a vital role in hindering participation, with environmental and

community organizations (SDCEA) in South Durban dominating public meetings and distancing the actual 'public' from influencing the decision-making process. Therefore, the extent and quality of participation in the 2006 regulations shows a shift away from an environmental justice approach as the views of the actual 'public' and their representivity in influencing the decision-making process was not achieved.

It can be concluded from the above evidence from the South Durban EIAs that the changes made in the regulations has therefore changed the role of public participation in South Durban, especially in the way the 'public' perceive public participation in EIAs on the ground, which stems from the very unique context of South Durban that influences opportunities for effective participation. Hence, it is evident that there is a lack of proper implementation of public participation on the ground that is influenced by the inefficiencies of the regulations itself as well as the local context that influence the level of achieving the broader goal of environmental and social justice. This lack of proper implementation on the ground shows that there is infact a severe gap between policy & practice in environmental assessment as emphasized by Patel (2006).

The above evidence suggests that a rethinking of the regulations is required as the current regulations are not achieving effective participation as it supposedly aimed to achieve but mainly aimed at streamlining the total EIA process at the expense of public participation. Therefore, the main aim of revising public participation should be to achieve effective participation by all I&APs. This can be done by creating more avenues for participation (in terms of advertising, timeframes and reporting) in the decision-making process of an EIA, with the competent authority undertaking proper analysis of the level of participation undertaken in informing their decision. The current revisions to the regulations have not targeted the participation process in this regard but only with a minor amendment to the extension of the December commenting timeframe.

The regulations therefore need to be specific in what the public participation process should entail especially in the techniques used for advertising and should hold EAPs responsible in this regard. The competent authority should be responsible for ascertaining whether the 'public' have been effectively represented in an EIA process with the ultimate authority of holding EAPs

accountable for the outcome of a participation process. A step towards addressing the trust issue between I&APs and EAPs can be addressed in the regulations with the creation of an independent environmental certifying body that nationally regulates EAPs through assigning of consultants to developers as well as facilitating payment of consultants that would allow EAPs to be more 'independent' and not linked directly to developers they represent.

Ultimately this study has shown evidence from the case study of South Durban EIAs that the public participation process of EIAs under the 2006 regulations is still to show evidence of moving toward an environmental justice approach. The South Durban context has played and is still playing a role in influencing the level at which the 'public' influence the decision-making process coupled with the hindrances of the regulations argued by Murombo (2008) that has shown to limit a shift to an environmental justice approach. Any revisions to the regulations in future should make sure that it ultimately aims at achieving effective public participation, which is required in achieving the principles of environmental and social justice for all citizens.

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## **APPENDICES**

## APPENDIX A

Table: Showing Examples of Tools and Techniques for Public Participation in Environmental Decision-making (after Fell and Sadler, 1999, 38, in Freeman, 2001, 42)

Technique	Description and Use	Advantages	Disadvantages
Leaflets/Brochures	Used to convey information. Take care in distribution. May involve a series of publications.	Reaches a wide audience, or be targeted. Ongoing contact, flexible format.	Information not understood or misinterpreted. Not everyone will read.
Newsletters	Care should be taken in distribution.	Addresses changing needs and audiences.	Multi-lingual needed.
Unstaffed Exhibits/ Displays	Set up in public areas to convey information.	Viewed at a convenient time and, at leisure. Graphics help visualize proposals.	Information may not be understood or misinterpreted.
Local Newspaper Article	Conveys information about a proposed activity.	Potentially cheap publicity. Reaching local audience.	Circulation may be limited.
National Newspaper article	Conveys information about a proposed activity.	Potential to reach a very large audience.	Activity needs national profile, or will be of limited interest.
Site Visits	Provides first hand experience of an activity and related issues.	Issues brought to life through real examples.	Difficult to identify a site which replicates all issues.
Staffed Exhibits/Displays	Set up in public areas to convey information. Staff available.	Viewed at a convenient time, at leisure. Graphics help visualize proposals. Groups targeted.	Requires a major commitment of staff time.
Staffed telephone lines	Can phone to obtain information/ask questions/ make comments regarding proposals/issues.	Easy for people to participate and provide comments. Promotes a feeling of accessibility.	Not as good as face-to-face discussions. Staff not able to respond to all questions.
Internet	Provides information or invites feedback. On-line forums and discussion groups can be set up.	Potential global audience. Convenient method for those with access.	Not all parties will have access to the Internet.
Public Meetings	Used to exchange information and views.	Can meet with other stakeholders. Demonstrates proponent willing to meet with other interested parties.	Can be complex, unpredictable and intimidating. May be hijacked by interest groups.
Surveys, Interviews and Questionnaires	Used to get information and opinions. May be self-administered/conducted face-to-face/by post/telephone.	Confidential surveys may result in more candid responses. Can identify existing knowledge and concerns.	Response rate can be poor. Responses may not be representative and opinions change.
Workshops	Used to provide background information, discuss issues in detail and solve problems.	Provides an open exchange of ideas. Can deal with complex issues and consider issues in-depth. Can be targeted.	Only a small number of individuals can participate. Full range of interests not represented.
Focus Groups/Forums	Gauge response to proposed actions/understand people's perspectives, values and concerns.	Provides a quick means of gauging public reaction.	Some sectors of the community may be excluded, groups require facilitation, time-consuming.
Open-House	Location provided for people to visit, learn about a proposal and provide feedback.	Can be visited at a convenient time and at leisure.	Preparation for and staffing of the open house require considerable time and money.
Community Advisory/Liaison Groups	People representing particular interests or areas of expertise meet to discuss issues.	Consider issues in detail/highlight the decision-making process/complexities involved.	Not all interests may be represented. Requires on-going commitment from participants.
Citizen Juries	Citizens brought together to consider an issue. Evidence received from expert witnesses. Report produced, setting out the views of the jury.	Can consider issues in detail and in a relatively short period of time.	Not all interests may be represented. Limited time may be available participants to fully consider information received.
Visioning	Used to develop a shared vision of the future.	Develops a common view of future needs.	Lack of control over outcome. Use early in decision-making.

## APPENDIX B

### Samples Frame from the South Durban EIAs

#### Purposive Sampling: Criteria Used Type of Public Participation, Location, Size, Public Sensitivity

Sample	EIA No	Date received	Applicants name	Consultant	Description	New.Dev	Upgrade	Location
1	DM/0175/07	31/08/2007	South African Breweries Ltd (SAB)	Bohlweki Environmental (Pty) Ltd	Proposed increase of the carbon dioxide (Co <sup>2</sup> ) storage system	No	Yes	at the Prospection Brewery, on Lot No's 3168 & 2298 of Isipingo South of Durban
2	DM/0042/07	03/06/2007	S1 Group - South Africa	Lombard and Associates	Proposed new tank storage facility	Yes	No	on Erf 2330 Isipingo No. 12, Durban
3	DM/0082/08	03/06/2008	Sasol Gas Ltd	Kerry Seppings Environmental Management	Proposed extension of the Sasol Gas pipeline to supply Isegen	No	Yes	on Lot 15219 of erf 409, in Isipingo, eThekwini
4	DM/0165/07	14/08/2007	Divfood	Kerry Seppings	Proposed installation of an additional monobloc line	No	Yes	on Rem Extent Portion 3 of Erf 790, 6,27,58,94 &95, Dunn's Grant in Mobeni in Durban

**Appendix B Continued...(From Left to Right)**

Size	Sensitivity	Responsible officer	Status	Prelim. Require	Approval	Date Completed
S	S		completed - environ authorized	Basic Assessment	Yes	13/03/2008
S	M		completed - authorised	bar+appli sent to M Moses	Yes	08/02/2029
L	M		EIR received 04/03/2009			
S	S		Completed			

**APPENDIX C**

**MASTERS RESEARCH PROJECT**

**INTERVIEW SCHEDULE**

**ENVIRONMENTAL CONSULTANT/  
PUBLIC PARTICIPATION PRACTITIONER**

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**Name & Surname:** .....

**Male/Female:** .....

**Designation:** .....

**Qualification:** .....

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**EIA REGULATIONS**

1. Please outline your views on the 2006 EIA regulations in contributing to achieve better decision-making in environmental assessment? What are your views on the public participation process of the 2006 regulations?
2. In looking at the 2006 regulations has the approach to public participation been a step forward or backward? Please elaborate
3. If you had to compare the 1997 EIA regulations with the 2006 EIA regulations, what similarities and differences would you outline, especially in improving the decision-making process for the environment?

**PARTICIPATION PROCESS**

1. Can you explain at what stage were interested and affected parties (I&APs) first made aware of the undertaking of this EIA process? Do you think that this was appropriate?
2. Can you please outline at what stage did the public participation process take place in this EIA? Do you think that this was appropriate?
3. Were the public participation guidelines developed for the 2006 regulations used in developing and undertaking the public participation process? If yes, elaborate, if no, why?
4. What is the role and use of the register containing details of I&APs and maintaining this for the public participation process? Elaborate
5. Describe a public participation process you would undertake for an EIA?

6. Could you describe the unfolding of the proceedings of the public participation process specifically for this EIA? Why was this approach undertaken as compared to other approaches, as highlighted earlier?
7. Were I&APs involved in designing of the public participation process? If yes how and to what extent? Elaborate
8. What were you hoping to achieve in the public participation process of this EIA?
9. Was the extent of engagement in the public participation process adequate? If yes, elaborate, how? If no, please could you suggest what could have been done?

## **DECISION-MAKING PROCESS**

10. To what extent did the public participation process include the views of I&APs (community members, industrial organizations, etc)?
11. Were there any decisions taken during the participation process? Could you please briefly outline these?
12. Were some I&APs more active in the participation process? If yes, from which sectors were these active I&APs and what would you say was the reasons for this?
13. Are there ways of bringing the less vocal into the discussion? Were these used in this participation process? Explain
14. From the participation proceedings, to what extent would you say the views of I&APs influenced the final outcome of the public participation process of the EIA?
15. Please outline the implications of this on the final decision-making process of the EIA?
16. Was there any form of conflict present during the public participation process? If yes, how was this managed or resolved?
17. Do you have a mechanism to obtain feedback from I&APs on their level of satisfaction with the public participation process and the outcome of the process? Elaborate
18. How were the views of I&APs from the public participation process captured in the EIA report or scoping report? Elaborate
19. How is feedback provided to I&APs on the outcome of the participation process and on their views incorporated in EIA/scoping report? Elaborate
20. Would you say that the objectives of the public participation process were fulfilled? Substantiate. Would all stakeholders (I&APs) hold the same view? Substantiate

21. Are there any other ways in which I&APs can influence the decision/final outcome of an EIA other than through the public participation processes of the EIA? Were any of these used in this EIA process? Elaborate
22. Did this public participation process achieve in minimizing environmental and social impacts for those who participated, which is the broader goal of social and environmental justice principles outlined in NEMA and the Constitution?
23. What is your understanding/experiences of the role of public participation as a decision-making process in achieving social and environmental justice? Elaborate

## **APPENDIX D**

### **MASTERS RESEARCH PROJECT**

#### **FOCUS GROUP SCHEDULE**

##### **PUBLIC PARTICIPATION STAKEHOLDERS**

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1. What were your key expectations from the public participation process of this EIA? Was this expectation achieved? Please provide reasons and elaborate.
2. Can you outline at what stage and how you were first made aware of an EIA and public participation process being undertaken? Do you think this was appropriate? Please elaborate.
3. In what form did the public participation process take place (e.g. Public meetings, Open days, Forums, etc)? Do you think that this was the most appropriate technique to be used? If yes, why, if no, substantiate?
4. What were the reasons for your participation in the public participation process of the EIA? Elaborate
5. Can you outline what you liked and disliked about the participation process? Please elaborate.
6. Could you briefly describe the unfolding of the participation process and any decisions taken during the process? Were your views incorporated and reflected in the final decision/outcome of the EIA process? Please elaborate.
7. Do you feel that your views made a difference/influenced the final outcome/decision of the participation process and the EIA? If yes, how and if no, what did you do? in what ways did you contest this?
8. Do you think the process was democratically conducted and that views of all participants were taken into account and contributed to the final decision? If, yes how, and if no, why?
9. Were some participants more active in the discussion? From which sectors were these active participants? Please provide reasons and elaborate on what unfolded?
10. Were there ways in which you could provide feedback on your level of satisfaction with the public participation process and the outcome of the process? If yes, how, explain? If no, what other ways were taken by you to express your level of satisfaction? Elaborate
11. In what ways were you provided with feedback on the outcome of the public participation process and decisions taken on the EIA? Was this adequate/ appropriate? Elaborate

12. Are there any other ways in which the decisions of an EIA can be influenced other than through the public participation process? Were any of these used in this EIA process? If yes, how and if no, why you think this was so?
13. Did this public participation process achieve in minimizing environmental and social impacts and incorporating your views to influencing the final decision of the EIA?
14. What is your understanding/experiences of the role of public participation as a process to influence the final outcome? And in achieving social and environmental justice? Elaborate