



12 April 2013  
 AfriForum  
 Po Box 17216  
 Lyttelton  
 0140

Ms Tyhileka Madubela  
 Committee Section  
 Parliament of RSA  
 Po Box 15  
 Cape Town  
 8000

Dear Ms Madubela,

**COMMENTS ON THE EFFICACY OF SOUTH AFRICA'S ENVIRONMENTAL  
 IMPACT ASSESSMENT REGIME: A CALL FOR RESPONSES TO  
 GOVERNMENT'S LEGISLATIVE AND POLICY FRAMEWORK TO STRENGTHEN  
 ENVIRONMENTAL GOVERNANCE AND THE SUSTAINABILITY OF OUR  
 DEVELOPMENTAL FUTURE**

**Compiled by Julius Kleynhans, Head of Environmental Affairs, AfriForum**

AfriForum would like to thank Parliament for the opportunity to comment on this essential tool to ensure the most effective legislation be drafted to increase best decision making principles for a sustainable South Africa.

We as a Civil Rights organisation have addressed various issues in relation to the act on several occasions through our mandate to empower communities through their constitutional rights to develop an environment which is not harmful to their health or wellbeing.



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 F.J.D. de Klerk, D.P. Goosen, G.R. de Vries en L.G.J. Trichardt • Reg. no. 2005/042861/08 • 054 - 590 - NPO

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We would like to recommend the following improvements on the Environmental Impact Assessment (EIA) under the National Environmental Management Act 107 of 1998 (NEMA):

1. We suggest that the EIA must also take include the environmental infrastructure as a definition to make informed decision-making;
2. The environmental authorisation process must remain with the Department of Environmental Affairs (DEA) to avoid a monopoly forming in those departments who are chasing economic development like the Department of Minerals (DMR), it seems like the DMR is trying to issue as much licenses as possible not having any sympathy with the environment. The DEA specialises in these laws and these specialists must manage the licenses issued to avoid ecologically irreplaceable and sensitive areas;
3. The relevant communities must be included into the public participation phase. The problem we face however is the diversity of cultures and languages. If a public participation process is done in a specific language, it must be followed through accordingly. The general language is English, but research has shown that different cultures respond more efficiently in their own languages. The National DEA must provide proper translation services to include each person's comments accurately into the EIA process. Lack in capacity is somewhat understandable, however, it is unacceptable to send a document back to a community from National department, informing that community that they don't understand and that the community must translate it;
4. The capacity and expertise of the DEA must be broadened to cater for the ever increasing market to ensure environmental compliance in all sectors and sustainable development for the future. There is insufficient personnel and high staff turnover within the Departments;
5. The DEA must issue directives where needed, follow them through and enforce the law where non-compliance occurs;
6. Environmental practitioners must be affiliated with a national body to ensure high quality standards, compliance to policy, transparency with projects and

communication and to ensure that both parties, the applicant and Interested and Affected Parties (I&AP's) are equally serviced by in a neutral EIA environment;

7. The reliability of information is a critical issue. This is also why a proper public participation process needs to be implemented, not at minimum requirements but to ensure a proper investigation that contains all the relevant factors in that community. Economic, social and environmental. The adequacy of methods for assessing impacts and placing appropriate weight on negative impacts in relation to the developmental factors is an issue of which we believe the community can contribute a fair amount to remedy the situation on negative impacts on the environment;
8. We believe that many developments take place without proper environmental authorisation. These companies have financial power and don't mind paying a fine of even a couple of million rand, due to the profit the development proposes to make. Legislation must be adapted to address issues like this to ensure that these companies do not take advantage of a system which does not affect them due to their financial positions;
9. Various developments are pushed for job creation; in fact, we feel that the proposed shale gas mining in South Africa is one of these. Environmental authorisation is granted due to the "economic growth and job creation possibility it poses", the problem is however that job creation is not in the high quantity as proposed and that it is a short term solution which will scar a natural, irreplaceable environment in such a effect that it won't be reparable;
10. The fight between Governments is an issue. South Africa in a whole needs to sustainably manage and protect its natural resources, especially water. The Department of Minerals focusses on developing as much mines as possible where the DEA and DWA tries to protect the most sensitive areas in our country. Yes, mining and other developments must take place, but not to the expense of all our natural capital and infrastructure. We need to provide more no-go zones. If these issues are not addressed as a matter of extreme urgency, we might be left with a couple of stones but no water or food. We need long-term economic solutions which protect that natural environment;

11. Constitutional rights must form a guideline in the EIA process. Section 24 of the Constitution of South Africa clearly indicates that everyone has the right to an environment that is not harmful to their health or well-being;
12. The DEA and all other departments must follow through and transparently implement their policies and missions to ensure a sustainable future in a healthy environment;
13. The DEA must ensure, through proper investigations and site visits, that environmental management plans are continuously sustained and implemented by successful applicants;
14. Areas in which Environmental Authorisation (EA) is applied for, must be mapped specifically to direct where the EA is effective to avoid future further expansion and ecological degradation due to uninformed, legal manipulation;
15. The environmental management principles must be implemented into the EIA's at all times, especially "Sustainable Development", "Cradle to Grave" and "Polluter Pays";
16. All NEMA listed activities must apply to mining areas, these are to many unresolved views around the topic.
17. At the inception of the application process, the landowner must be addressed and notified of the application before the process starts. It does not seem to be ethical to do a study on someone else's property without them knowing. Written notice must also be provided and Public Participation and other notifications should take place;
18. During the application process notice must be given to the owner and occupier of the land and any other party required by the competent authority;
19. PPP must be properly promoted to ensure everyone who are interested or affected can lodge their comments. These notifications must also include a guideline document to inform these parties on how the PPP works, what it means and why they must be involved. To ensure better participation, meetings must be held in a location which accommodates everyone. Information must be promoted through the current mediums, but also through schools to increase distribution. We also suggest that all mediums be used;



20. No PPP may take place between 15 December to 2 January, exceptional circumstances is not acceptable;
21. Compliance monitoring must be sustainable through audits and site visits;
22. This legislation must be state bound and all compliance enforcement, criminal liability and penalties must be bound to state to ensure that the law is respected by all and implemented democratically;
23. Duplication of Reports must be checked and avoided; and
24. EIA in its design is aimed at informing project planning and design, unfortunately, often used to justify what is already planned instead.



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