

Chapter C: Findings

1. Introduction

The findings in this section represent a summary of the most important findings in respect to the effectiveness and efficiency of EIA. The full results of the project are available in separate volumes that are available in the formats in which it was captured as well as in graphs in certain instances.

Unless otherwise indicated, results reflect the results for NEMA applications that are statistically more accurate than the results for the ECA applications due to the larger sample size.

This chapter has been subdivided into the following sections:

- Results of the case evaluations;
- views and perceptions;
- important strategic issues;
- international comparisons; and
- other instruments.

2. Results of the case evaluations

The results of the case evaluations have been subdivided into the following sub-sections:

- Quality of EIA documents;
- authority review of applications and documents;
- estimation of effectiveness;
- relative effectiveness of EIA in terms of the ECA and the NEMA;
- relative performance of EIA for selected categories of activities;
- relative performance of specific instruments used in EIA; and
- time efficiency of the EIA process.

The summaries of the findings of the case evaluations are provided in tables below. The percentages in these tables do not always add up to 100% due to

rounding and the fact that “unsure” and “not applicable” responses are not included.

2.1 *Quality of EIA documents*

The criteria for evaluating the quality of EIA documents, as defined in Appendix B was used to compile the table below. It shows the results of the assessment in respect to the criteria for good average and poor performance. The results of cases that were not applicable for any of the criteria (for whatever reason) are not shown in the table and in such cases the percentages will not add up to 100%. In a few cases the percentages shown may add up to 101% due to rounding.

The evaluation of the quality of EIA documents is important because it reflects the process and content of what was assessed and how it was done. It is important to note that the results presented here reflect what is recorded and kept in the files and any consideration or activity that is not reflected in the files were not taken into account. This also applies to the other sub-sections of the evaluations. Several officials for example indicated that they had discussions with the applicant or their representatives in respect to options or process issues that were not captured. For that reason the findings should be considered as conservative, i.e. the performance of several cases against the criteria may have been slightly better than reflected, but it was not possible to take it into account because it was not reflected in the files.

Table C1: Quality of the assessment documents submitted

Criteria (Please refer to Appendix B for the full description of the criteria)	Good (G), Average (A), Poor (P)	NEMA (354 cases)	ECA (148 cases)
Consideration of alternatives	G	34%	23%
	A	29%	30%
	P	15%	26%
Assessment of direct impacts	G	54%	47%
	A	33%	39%
	P	11%	14%
Assessment of indirect impacts	G	33%	26%
	A	44%	40%
	P	22%	34%
Assessment of cumulative impacts	G	20%	5%
	A	24%	11%

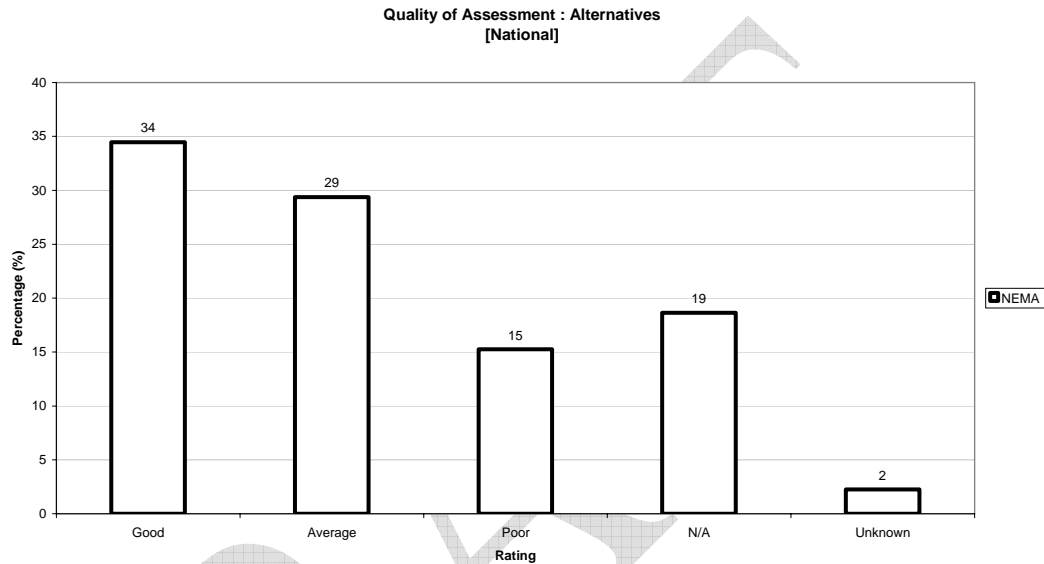
Criteria (Please refer to Appendix B for the full description of the criteria)	Good (G), Average (A), Poor (P)	NEMA (354 cases)	ECA (148 cases)
	P	44%	66%
Consider policies, plans, guidelines	G	29%	24%
	A	47%	41%
	P	22%	34%
Avoidance of impacts	G	38%	34%
	A	42%	37%
	P	19%	28%
Minimization of impacts	G	45%	32%
	A	42%	49%
	P	12%	19%
Maximization of positive impacts	G	31%	15%
	A	36%	42%
	P	31%	42%
Meeting basic legal requirements	G	58%	47%
	A	32%	43%
	P	9%	8%
Independence of practitioner	G	68%	66%
	A	25%	28%
	P	5%	4%
General quality of work	G	58%	39%
	A	32%	51%
	P	8%	9%
Public participation	G	69%	39%
	A	22%	34%
	P	7%	24%
Advertising	G	70%	47%
	A	21%	24%
	P	7%	26%
Comments and responses	G	50%	29%
	A	23%	20%
	P	19%	47%
Role of comments in formulating alternatives	G	44%	25%
	A	19%	22%
	P	28%	47%

(a) Consideration of alternatives

Alternatives were considered in 79% of cases. In 34% of cases there were clear comparative assessments between two or more alternatives, excluding the no-go option. In 29% of the cases there were non-comparative assessments of alternatives and in 15% of the cases there were at least mention of alternatives, although it is unclear how it was assessed.

There is a significant variance in the requirement for the assessment of alternatives between the competent authorities. DEAT and the North West Province have exempted applicants from considering alternatives in more than

45% of the reviewed cases. In Gauteng and the Northern Cape less than 5% of applications exempted applicants from considering alternatives. In the instance of DEAT this may reflect the high level types of activities (with a degree of strategic inevitability) it evaluates and may be indicative of the fact that consideration of alternatives without a wider strategic environmental context for such activities is of limited value.



(b) Assessment of direct impacts

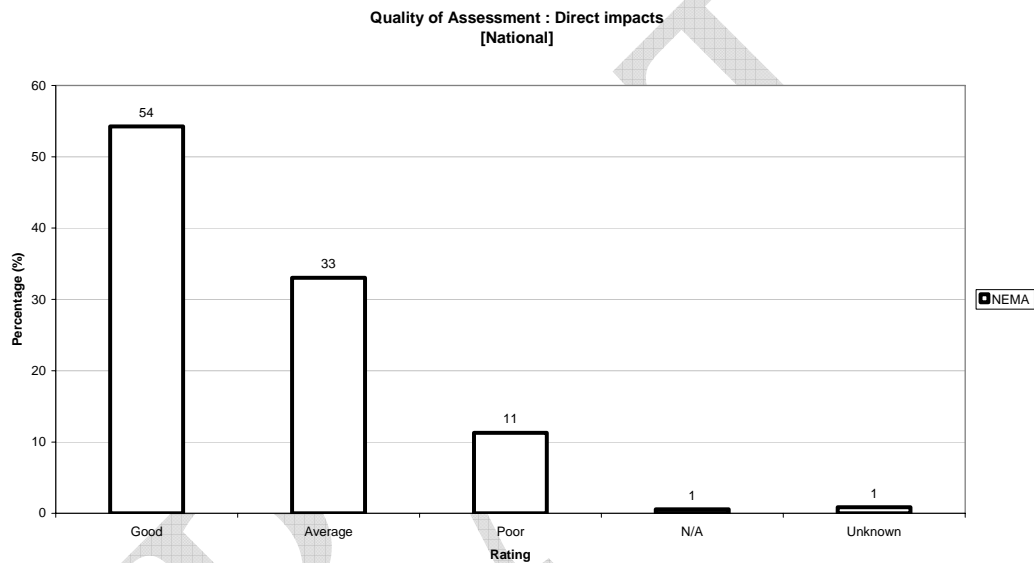
Direct impacts were assessed in almost 100% of the cases that were evaluated. In 54% of the cases direct impacts were assessed by:

- Using methodologies that indicated source (origin or cause) of each impact, the nature of the impact, the magnitude of the impact, the significance of the impact and affected stakeholders;
- considering impacts for all environmental elements on or surrounding the site(s), including at least physical, biological, historical and social elements;
- describing the activity in enough detail to identify potentially impacting aspects; and
- describing the environment in enough detail to enable the identification of potential negative effects.

In a further 33% of the cases direct impacts were assessed but in ways in which the methodologies are not clear.

In approximately 11% of the cases assessment of direct impacts were done poorly to the extent that one cannot determine the accuracy of the assessments from the documentation provided.

This result indicates that the consideration of direct impacts is relatively effective although there is still some room for improvement.



(c) Assessment of indirect impacts

Indirect impacts were assessed in almost 100% of the cases evaluated. In 33% of the cases indirect impacts were assessed by:

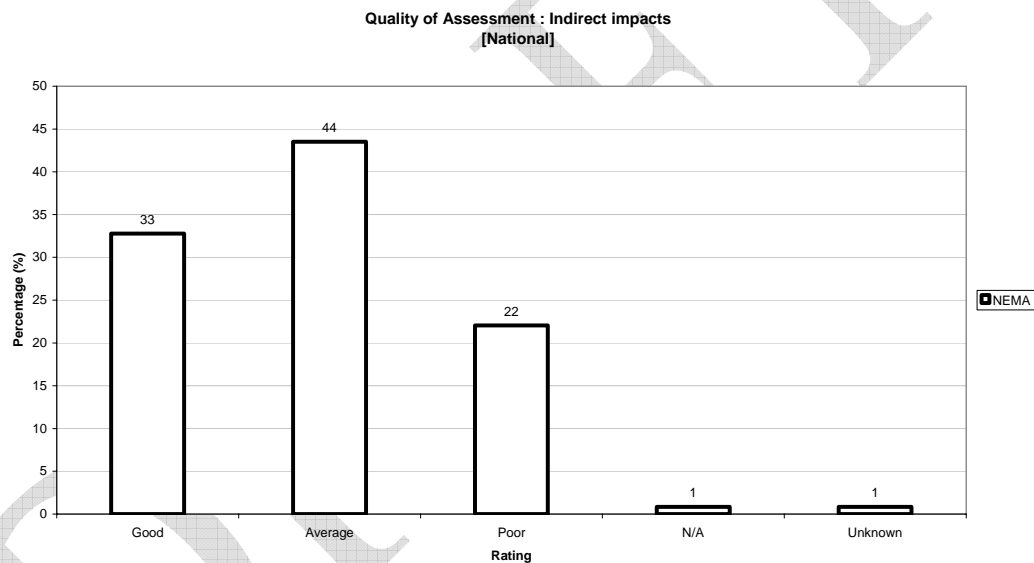
- Using methodologies that indicated source (origin or cause) of each impact, the nature of the impact, the magnitude of the impact, the significance of the impact and affected stakeholders;
- considering impacts for all environmental elements on or surrounding the site(s), including at least physical, biological, historical and social elements;
- describing the activity in enough detail to identify potentially impacting aspects; and

- describing the environment in enough detail to enable the identification of potential negative effects.

In 44% of the cases indirect impacts were assessed but in ways in which the methodologies are not clear.

In approximately 22% of the cases assessment of alternatives were done poorly to the extent that one cannot determine the accuracy of the assessments from the documentation provided.

This result indicates that EIA is currently not as effective as it could be in identifying and assessing indirect impacts. There is significant room for improvement.



(d) Assessment of cumulative impacts

Cumulative impacts were assessed in almost 88% of the cases evaluated. In 20% of the cases cumulative impacts were assessed by:

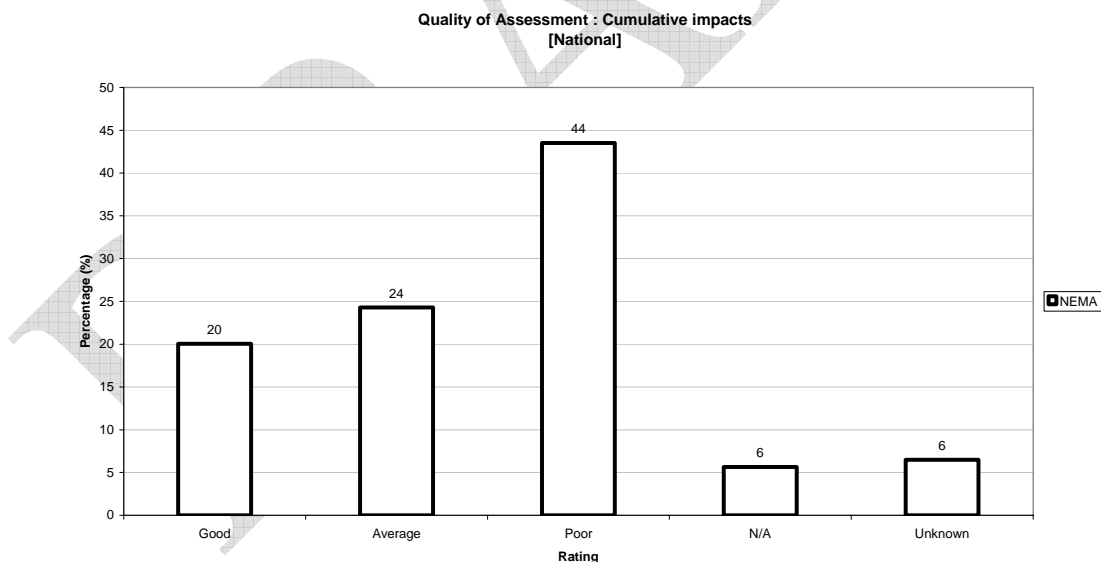
- Including it in a separate section or summary;
- using methodologies that indicated source (origin or cause) of each impact, the nature of the impact, the magnitude of the impact, the significance of the impact and affected stakeholders;

- considering impacts for all environmental elements on or surrounding the site(s), including at least physical, biological, historical and social elements;
- describing the activity in enough detail to identify potentially impacting aspects; and
- describing the environment in enough detail to enable the identification of potential negative effects.

In a further 24% of the cases cumulative impacts were assessed but in ways in which the methodologies are not clear.

In approximately 44% of the cases assessment of cumulative impacts were done poorly to the extent that one cannot determine the accuracy of the assessments from the documentation provided.

The result indicates that cumulative impacts are generally not considered effectively and that there is a lot of room for improvement in this respect.



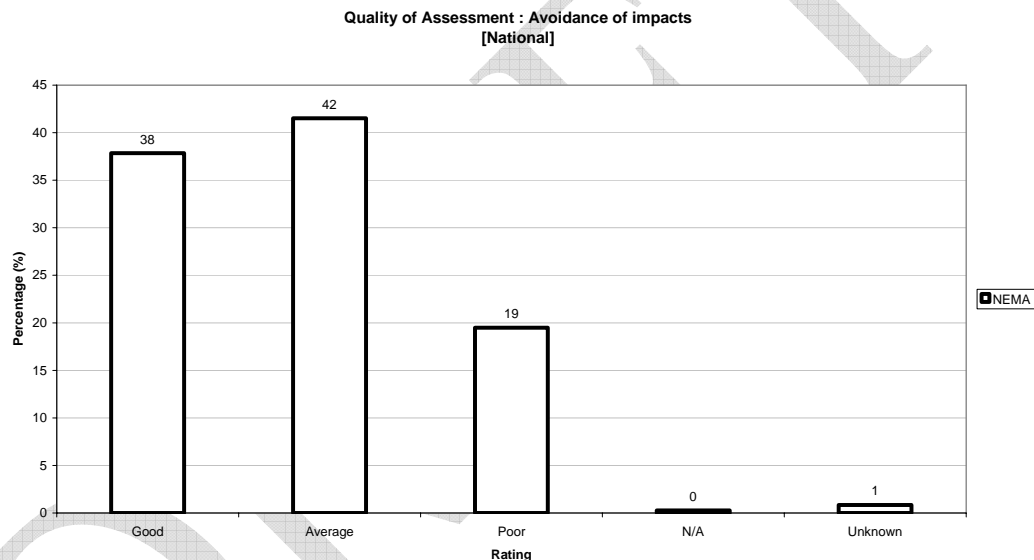
(e) Avoidance of impacts

In 38% of the cases evaluated there were clear indications that the potential negative impacts that were identified have been avoided to the extent possible.

In 42% of the cases evaluated there was at least an indication that some of the more significant negative impacts that have been identified, have been avoided

and in almost 20% of cases there were little or no attempt to avoid identified negative impacts. The worst performers in this regard were the Free State, Northern Cape and Eastern Cape, where in between 33% and 47% of cases there was little to no attempt to avoid identified negative impacts. KwaZulu-Natal faired the best with more than 95% of cases where there were attempts to avoid identified negative impacts.

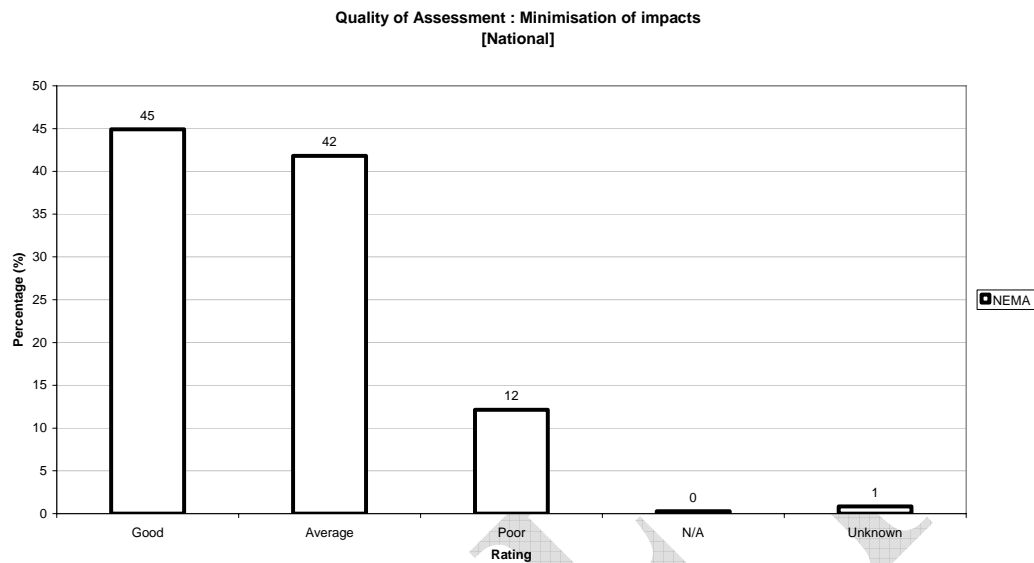
This variance in results across authorities indicates that the approaches of some authorities are much more effective in avoiding potential impacts than the approaches of others. There are significant opportunities for authorities to learn from each other in this respect.



(f) Minimization of impacts

The EIA cases that were evaluated were relatively effective in the minimization of impacts. There were clear indications in 45% of the cases that the magnitude and significance of impacts that could not be avoided have been minimized to the extent possible. In a further 42% of cases there were at least indications that some of the more significant impacts that could not have been avoided have been minimized to some extent. In 12% of the cases there was little or no attempt to minimize negative impacts.

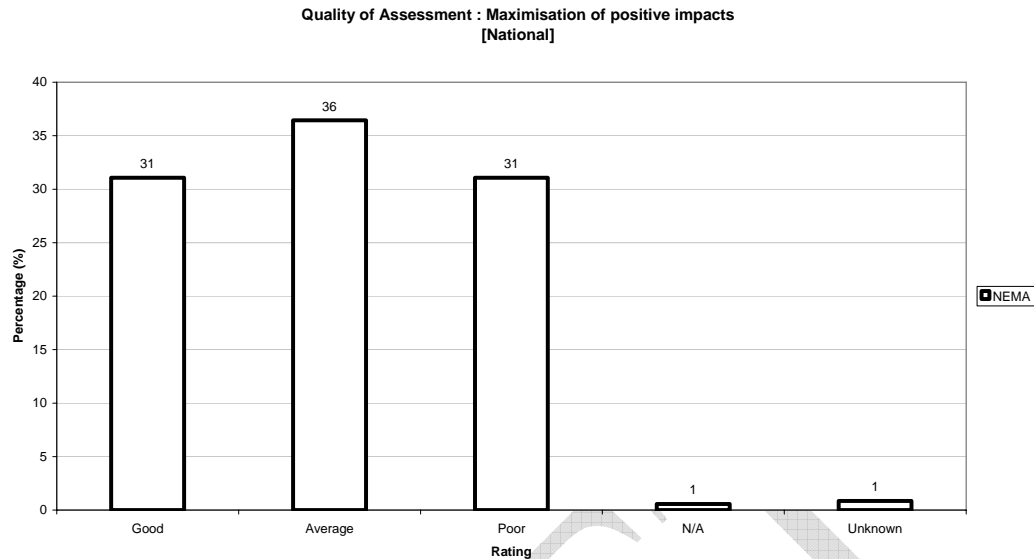
This result indicates that the minimization of impacts is relatively effective and that EIA in South Africa seems to focus on this aspect to a large extent.



(g) Maximization of positive impacts

In general the maximization of positive impacts is limited. Only in 31% of cases evaluated were there clear indications that positive impacts were maximized to the extent possible while in a further 36% of cases there were at least some mention of positive impacts and how these have been maximized. In 31% of cases there were little to no indication that positive impacts were addressed. The Northern Cape and the Eastern Cape performed the best under this criterion which may be a reflection of an emphasis on the need for development and the maximization of its benefits in the poorer provinces.

This result indicates that the maximization of positive impacts is not as effective as it should be and that there is significant room for improvement. This aspect is often dealt with as an afterthought instead of being incorporated as an integral part of the development process of proposals.



(h) Meeting legal requirements

From a national perspective, including all competent authorities, the basic legal requirements for EIA as required by NEMA and the EIA Regulations are not met in approximately 7% of the EIAs surveyed. There seems to be a significant improvement under NEMA. Under the ECA Regulations the basic legal requirements were not met in approximately 24% of the EIA cases surveyed¹⁸. Only the Eastern Cape did not meet the basic legal requirements in more than 10% of the cases.

This result indicates that the legal requirements of EIA is met effectively, although there is still some room for improvement.

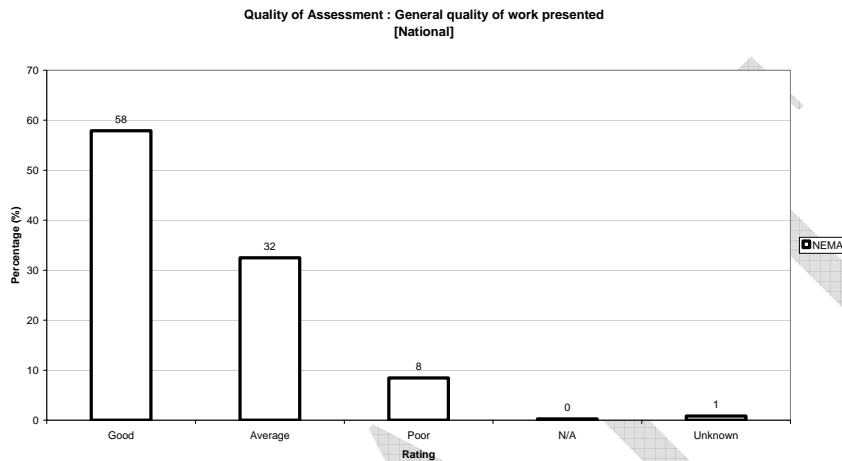
(i) General quality of documents

In 58% of the cases evaluated the general quality of the documents presented was good, clear in their purpose, complete, well structured, easily readable and reflected the findings of specialist reports in a way that synthesized the work into one document. In a further 32% the general quality of the documents presented was acceptable, complete, structured and at least attempted to reflect the findings of specialist reports.

¹⁸ Due to the sample size that was not big enough there may be a significant fault in this ECA figure.

In 8% of the cases evaluated the reports were poor to the extent that it made evaluation of the documents by officials very difficult.

The Western Cape and the Northern Cape faired the best in this respect, both with no documents in the poor category. In the Free State 20% of documents fall into the poor category which is reason for concern.

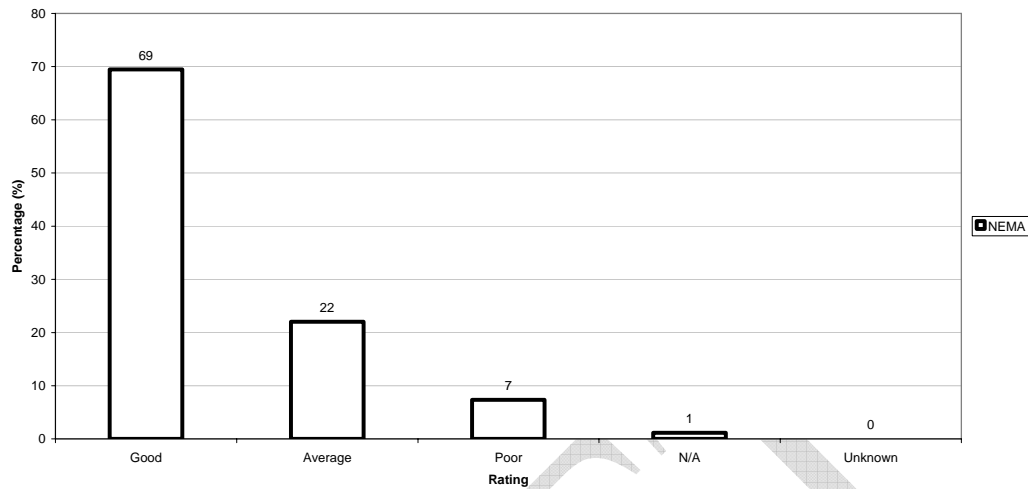


(j) Public participation

Public participation processes are generally well performed in EIAs in South Africa and in almost 70% of the cases evaluated the legal requirements have been met and presented in a clear and structured manner. In a further 22% of cases the legal requirements have been met as far as can be ascertained from the available documentation. In approximately 7% of cases it is not clear whether the legal requirements have been met based on the documentation presented. The Western Cape is the best performer in this respect with a 100% of cases that met the legal requirements.

Public participation in EIA is effective.

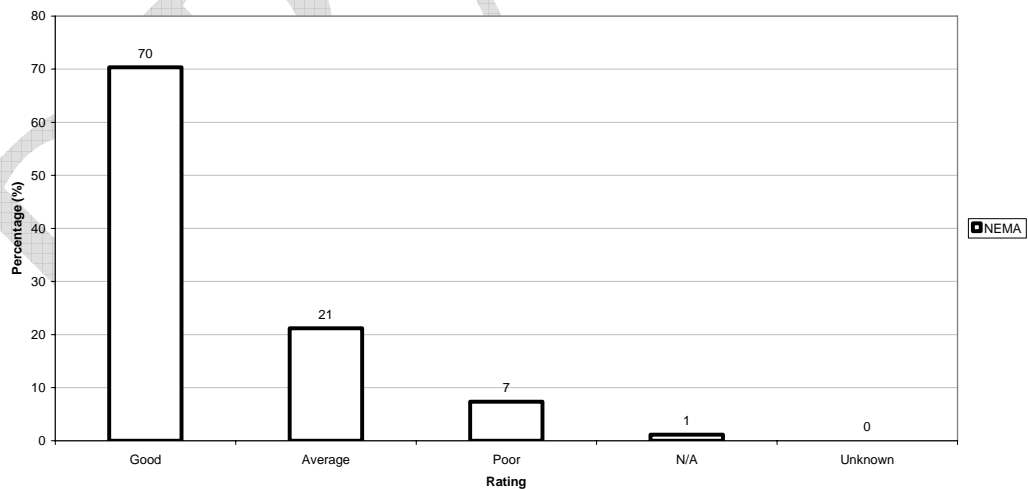
Public Participation : Meeting of basic EIA legal requirements
[National]



A similar high standard is prevalent with the advertisement of EIA processes, with the Western Cape once again performing the best with a 100% of cases that met the requirements.

Advertisement of EIA is as effective as it can be.

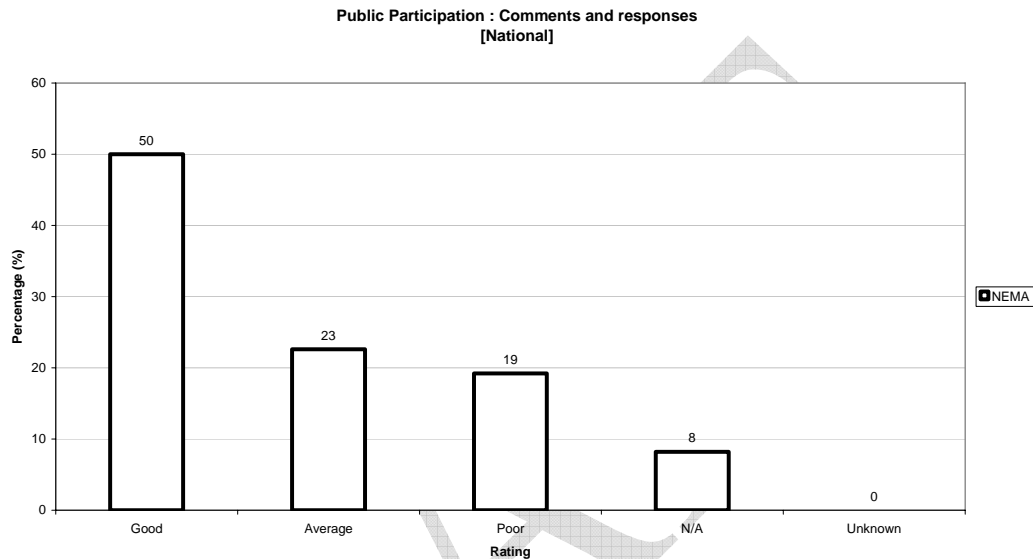
Public Participation : Advertisements
[National]



Comments and responses are also generally dealt with adequately, with 88% of cases containing at least a comments and responses report or section as well as an indication of how it was considered in the assessment process with a clear indication of participants and their contact details. A further 6% meet the basic

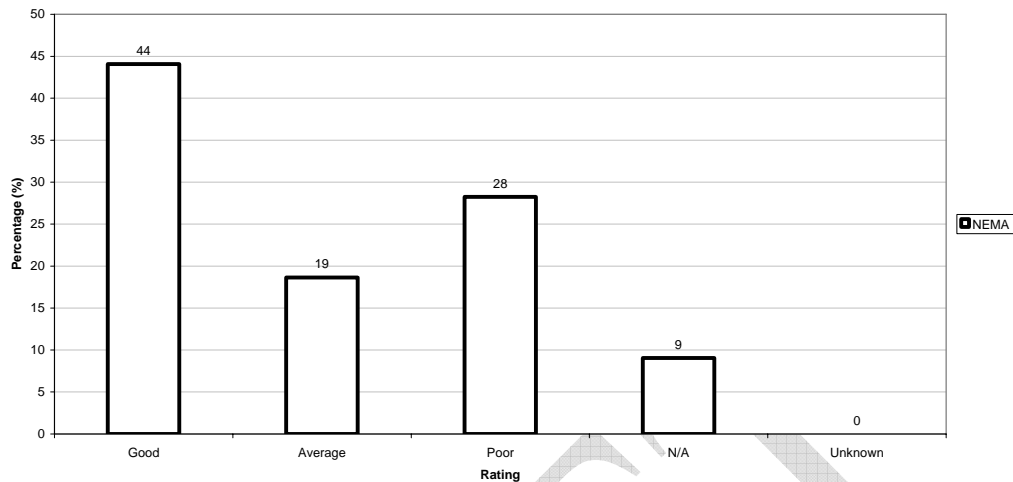
requirements although failing to indicate how the comments were taken into account. In 6% of the cases the requirements were not fully met.

This result indicates that comments and responses are relatively effective although there is still some room for improvement.



The public participation processes were less successful in identifying impacts and formulating alternatives. Only in 44% of the cases were there clear indications in the documentation of how specific inputs from interested and affected parties have contributed to the identification of impacts or the formulation of alternatives and in a further 19% of cases there were indications that inputs from interested and affected parties contributed to the identification of impacts or alternatives. In 28% of the cases evaluated there is no or little evidence that the public participation process contributed to the identification of impacts or alternatives. DEAT, Western Cape and Northern Cape performed the best on this criterion.

Public Participation : Role of comments and responses in formulating alternatives
[National]



2.2 Authority evaluation of applications and documents

The criteria for evaluating the authority evaluation of EIA documents, as defined in Appendix B was used to compile the table below. It shows the result of the authority evaluation in respect to the criteria for good average and poor performance. The results of cases that were not applicable for any of the criteria (for whatever reason) are not shown in the table and in such cases the percentages will not add up to 100%. In a few cases the percentages shown may add up to 101% due to rounding.

The consideration of the authority evaluation of EIA documents is important because it reflects the process followed by authorities to make decisions.

Table C2: Authority evaluation of EIA documents

Criteria (Please refer to Appendix B for the full description of the criteria)	Good (G), Average (A), Poor (P)	NEMA (354 cases)	ECA (148 cases)
Taking account of the information in the EIA documentation	G	66%	53%
	A	31%	34%
	P	3%	11%
Taking account of policies affected by the application	G	52%	41%
	A	37%	32%
	P	4%	11%
Taking account of the quality of the EIA documentation	G	53%	35%
	A	38%	53%
	P	8%	9%
Making an informed decision	G	65%	53%

Criteria (Please refer to Appendix B for the full description of the criteria)	Good (G), Average (A), Poor (P)	NEMA (354 cases)	ECA (148 cases)
	A	32%	41%
	P	3%	5%
Setting conditions	G	68%	61%
	A	29%	32%
	P	3%	5%
Monitoring and enforcement of conditions	G	13%	14%
	A	12%	14%
	P	74%	71%

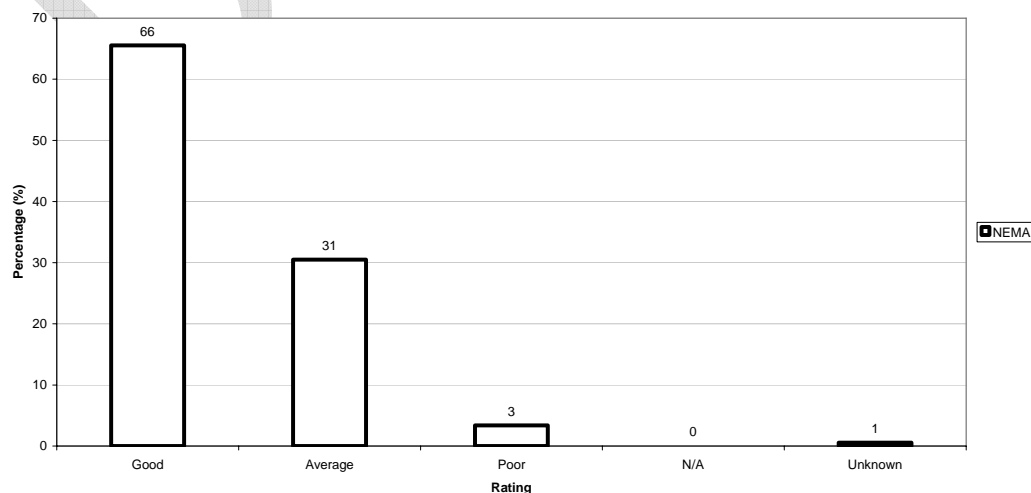
(a) **Taking account of the information in the EIA**

In 66% of the cases reviewed the decisions clearly indicated how it took the results of the assessment as well as issues raised by interested and affected parties into account, and in a further 31% of cases the decisions indicated that the results of the assessment and the issues raised by the interested and affected parties have been considered in the making of the decisions. In 3% of the cases it is not clear that the assessment and issues raised have been considered in the making of decisions.

The Western Cape, Mpumalanga, North West and Northern Cape fared best with no cases in the last category.

The consideration of information in the EIA documents is effective to the extent that it normally informs decisions.

Authority Interpretation : Taking account of information in the EIA [National]

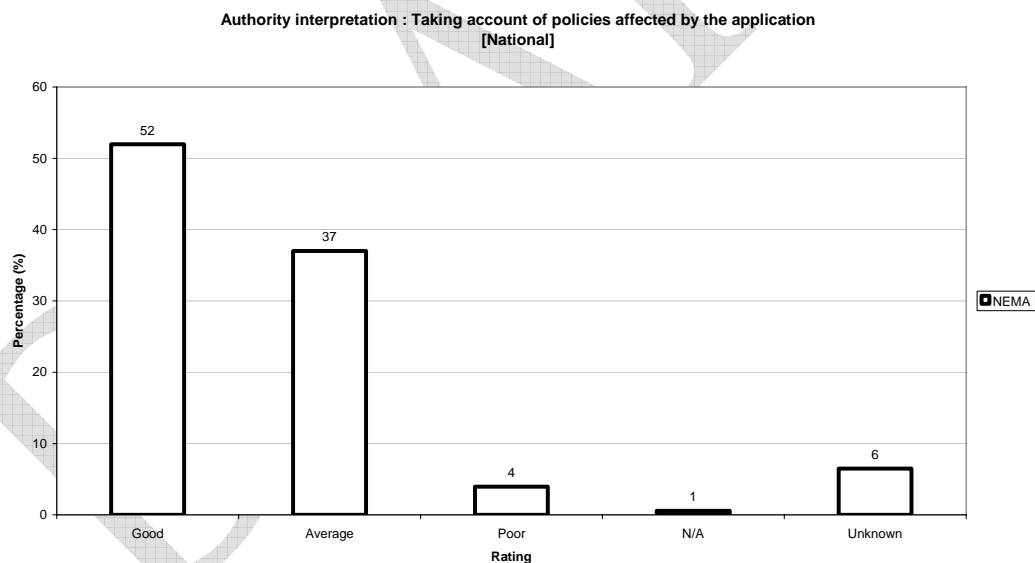


(b) Taking account of policies

In 52% of the cases evaluated, the decisions taken supported environmental policies that are in place to protect the environment against negative impacts and in a further 37% of cases the decisions taken considered environmental policies that are in place to protect the environment but did not support the policy. In 4% of the cases evaluated there was no indication that the decisions considered environmental policies in any way.

The Western Cape fared exceptionally well under this criterion with no decisions that did not consider policies.

In general, officials take decisions that support policies that are in place to the extent that it can be considered effective although there is still some room for improvement.

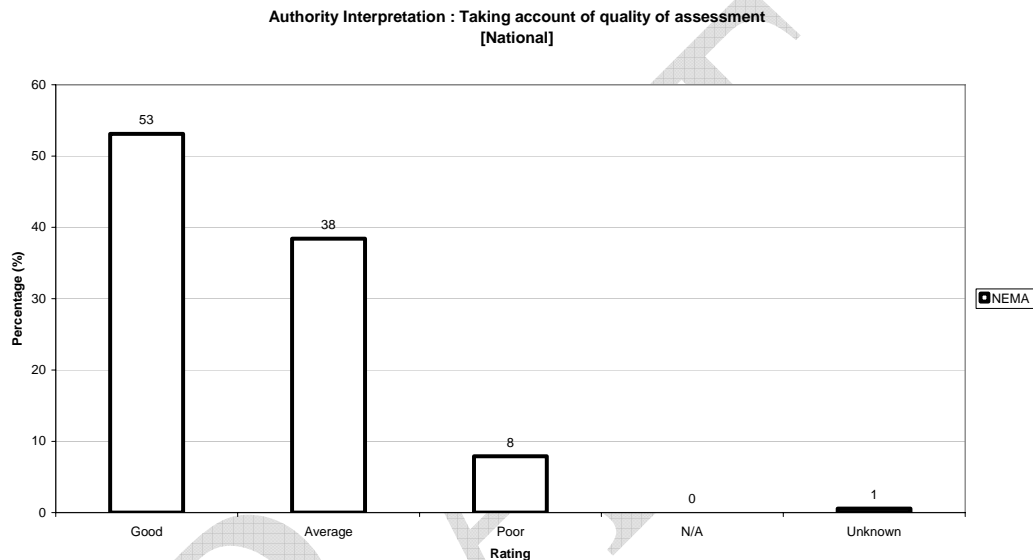


(c) Taking account of the quality of the EIA

In 53% of the cases evaluated there were a clear indication in the decisions made that the quality of the EIA documentation was taken into account and an indication of how it was that the quality of the EIA documentation was considered in the decisions. In approximately 8% of cases there was no evidence that the quality of the EIA documentation was considered. The Western Cape, KwaZulu-Natal, Mpumalanga, North West and Gauteng fared well under this criterion

while 33% of the cases in the Free State did not show any evidence that the quality of the EIA documentation was considered in the decision. There is also room for improvement in DEAT, Northern Cape and Eastern Cape.

This result indicates that the consideration of the quality of EIA is relatively effective although there is still some room for improvement.

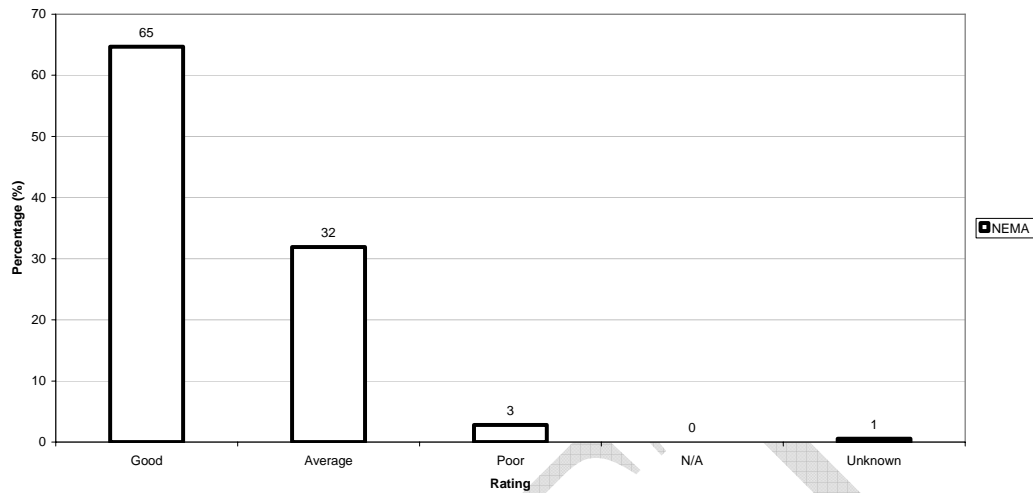


(d) Making an informed decision

In 65% of the cases evaluated the decisions indicated that the results of the assessment informed the decision to a large extent and in a further 32% of cases the decisions indicated that the results of the assessments informed the decisions to at least some extent. DEAT and the Western Cape fared very well under this criterion while most of the other authorities also performed well.

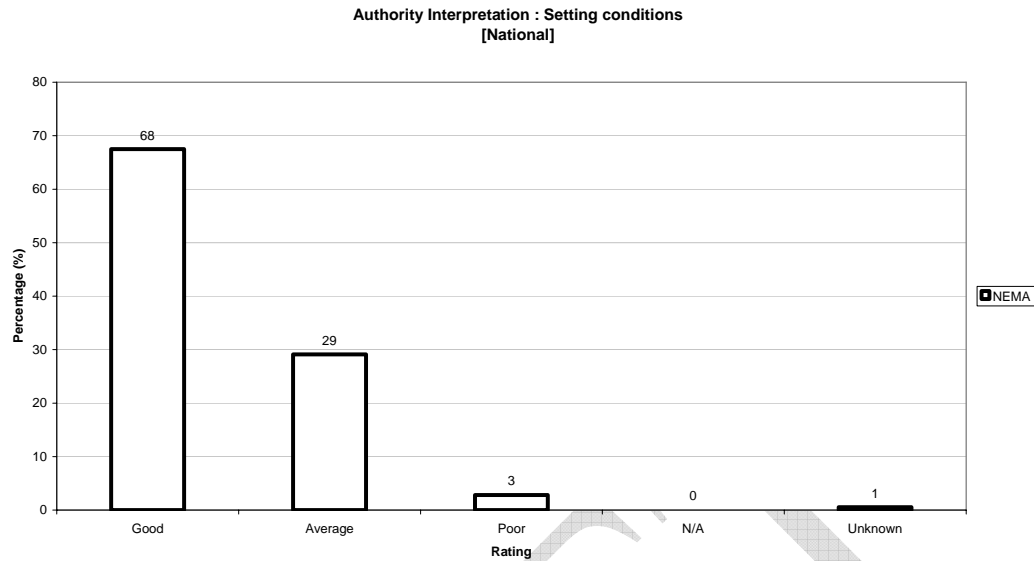
This result indicates that informed decisions are being made effectively in the majority of instances, although there is still some room for improvement.

Authority Interpretation : Making an informed decision
[National]



(e) Setting conditions

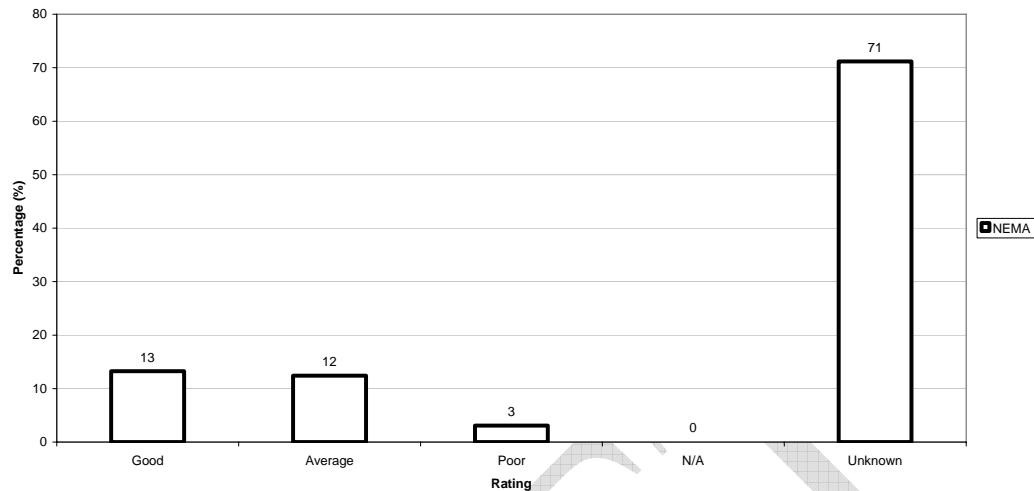
Almost 70% of the conditions of approvals that were issued with positive decisions are of an extensive nature. In many cases however the “comprehensiveness” of the conditions can be questioned as it is often unnecessary onerous and focused on pedantic post approval activities that should be performed instead of specifying desired outcomes that should be achieved in a way that leaves the most efficient and effective way in which it should be achieved to the applicant. The result is that applicants are being frustrated into complying with conditions in a manner that is very often not efficient or effective. In some cases the conditions also seek to avoid or minimize impacts that should in fact already have been addressed in the EIA.



(f) Monitoring and enforcement of conditions

From the information contained in the files that were evaluated compliance monitoring and ensuring the implementation of mitigation measures are not receiving adequate attention. This is one area where major improvement is necessary across the board. Several stakeholders also believe that the current “green scorpion” approach to compliance monitoring is unnecessarily abrasive and counterproductive in using “scoring sheets” instead of evaluating real performance and assisting applicants in meeting desired outcomes. There is also a general lack of records and links of such records to the EIA files which makes it impossible to evaluate this aspect properly.

Authority Implementation : Monitoring and enforcement of conditions
[National]



2.3 Estimation of effectiveness

Taking account of both the quality of the EIA documentation and the evaluation of the documents by the competent authorities the following criteria was used to determine the effectiveness of EIA in achieving the selected key objectives of EIA:

- The extent to which EIA managed to avoid negative impacts on the environment;
- The extent to which residual impacts were minimized through mitigation and other measures;
- The extent to which positive impacts were maximized;
- Contribution to the success of implementing or promoting relevant policies, plans and guidelines.

Based on the results that were achieved an estimate was made in the form of a range within which the effectiveness of the evaluated NEMA cases and the evaluated ECA cases fall. The exact figure is not important as there is some uncertainty that has to be catered for. What is important is where the ranges between the low and the high estimates lie.

Table C3: Effectiveness of EIA as an assessment instrument

Criteria (Please refer to Appendix B for the full description of the criteria)	Very effective (VE), Effective (E), unsure /marginal (M), Not effective (N), Very ineffective (VI)	NEMA (354 cases)	ECA (148 cases)
Impacts were avoided to the extent possible	VE	10%	6%
	E	42%	38%
	M	34%	32%
	N	9%	11%
	VI	4%	7%
Impacts were mitigated to the extent possible	VE	14%	9%
	E	47%	37%
	M	29%	36%
	N	6%	7%
	VI	3%	5%
The benefits from positive impacts were maximized	VE	6%	1%
	E	30%	25%
	M	43%	41%
	N	10%	15%
	VI	3%	7%
Contribution to the success of implementing or promoting relevant policies, plans and guidelines	VE	3%	1%
	E	33%	27%
	M	46%	43%
	N	10%	15%
	VI	4%	6%
Based on above, the estimated effectiveness of EIA	Low	46%	36%
	High	65%	55%

Based on the above survey results it is estimated that NEMA cases on average are effective in achieving the selected criteria for effectiveness between 46% and 65% of the time and ECA cases between 36% and 55% of the time. This is an important finding of the study.

2.4 The relative effectiveness of EIA in terms of the ECA and the NEMA

Both NEMA and ECA files were reviewed. While a comparison in performance is possible it must be noted at the outset that relevance of comparison is limited due to the following:

- The ECA and NEMA regulations are different in content and process and direct comparisons of performance of specific aspect may therefore not be equally appropriate in all instances;

- The relatively small sample size of the ECA cases in relation to the population size means that the results in respect to the ECA cases may not be as accurate as those of the NEMA cases;

Nevertheless, taking account of the above limitations, the following general trends seem to prevail:

- Overall there was a significant improvement in effectiveness and efficiency of EIA from the ECA regulations to the NEMA regulations;
- With regard to the quality of assessments the following trends were recorded:
 - The assessment of alternatives improved by at least 10%, which is largely due to the format of the NEMA regulations that encourages the assessment of alternatives in BARs and EIARs;
 - The assessment of direct impacts improved by at least 10% which is significant as it was already well considered under the ECA regime;
 - The assessment of indirect impacts improved by approximately 8%, which is significant but remains an area where more improvement is possible;
 - The assessment of cumulative impacts improved by over 20% from a low base primarily because of the requirement to address it in the NEMA regulations, but there remains significant room for improvement;
 - The overall avoidance of impacts improved marginally, with significant improvements in DEAT (29%), Western Cape (22%), and Northern Cape (Over 50% - starting from a low base);
 - The overall minimization of impacts that could not be avoided also improved marginally, it has been dealt with relatively effectively under the ECA Regulations already;
 - Although the maximization of positive impacts improved by more than 10% it is still not considered adequately in at least 30% of

cases and this could be improved by providing for it more directly in the revised regulations;

- There was a slight improvement in the meeting of legal requirements, especially in the extent to which it has been met, but it was already at a relatively good level under the ECA regime;
- The independence of practitioners remained constant with no real measurable change;
- The general quality of work presented improved significantly by almost 20% and can mostly be attributed to the specification of content in the NEMA regulations;
- There was a significant improvement of 30% in the meeting of legal requirements for public participation which can now probably be regarded as close to optimal;
- There was also a big improvement of almost 23% in meeting advertising requirements;
- The change in overall performance in respect of dealing with comments and responses were marginal but there are major variances across the various competent authorities. This variance indicates guidance is required around this aspect; and
- The role of comments from interested and affected parties in the formulation of alternatives has increased by almost 20% but it can still improve if more emphasis is placed on it;
- With regard to the authority evaluation and decision-making the following trends were recorded:
 - The extent to which authorities take information in the EIA documentation into account improved by 13% due to the obligations that the NEMA regulations place on officials and is now close to optimal;
 - The extent to which authorities took account of policies affected by applications improved by more than 10% and is getting close to optimal;

- The extent to which authorities took account of the quality of EIA in their evaluation and decision-making improved by approximately 18%, but there is still some room for further improvement;
- The extent to which authorities have made an informed decision improved by 12% and is getting close to optimal;
- The setting of conditions improved marginally and is close to optimal;
- There is almost no change in the monitoring and enforcement of conditions with a lot of room for improvement, which indicates that stronger regulations in this regard may be necessary;
- The confidence in the methodologies used in assessing impacts has improved by more than 10% but there remains significant room for improvement, which could be achieved by developing a standardized range of acceptable evaluation methodologies.
- Effectiveness of EIA in general:
 - While there was a marginal improvement of approximately 4% in avoiding impacts to the extent possible in almost 50% of the cases evaluated impacts were not avoided to the extent possible;
 - There was an improvement of more than 6% in the minimization of impacts but still room for improvement of at least 30%;
 - The maximization of positive impacts have improved by approximately 5% but there remains room for improvement of at least 50%;
 - There has been a marginal improvement in the contribution that EIA makes to the successful implementation and/or promotion of relevant policies plans and guidelines but there remains room for improvement of at least 50%.

2.5 *Relative performance of EIA for selected categories of activities*

For the purpose of comparison of the relative effectiveness of EIA across various categories of activities that was assessed in terms of the NEMA Regulations, the following 5 categories of activities were chosen:

- Electricity generation;
- water provision;
- residential development;
- construction of roads; and
- telecommunication masts.

These were assessed in terms of the quality of the assessment documents.

(a) **Quality of the assessment documents**

This section provides an assessment of the quality of documents between selected activity categories. The purpose of this assessment is to get an indication of the relative effectiveness of EIA as an instrument for different categories of activities.

Table C4: Quality of the assessment documents submitted for the selected categories of activities

Criteria (Please refer to Appendix B for the full description of the criteria)	Good (G), Average (A), Poor (P)	Electricity generation (8 cases)	Water provision (12 cases)	Residential development (73 cases)	Roads (41 cases)	Telecom masts (38 cases)
Consideration of alternatives	G	13%	55%	33%	39%	32%
	A	38%	14%	37%	17%	37%
	P	50%	9%	15%	7%	11%
Assessment of direct impacts	G	25%	59%	63%	63%	53%
	A	63%	32%	32%	24%	37%
	P	13%	9%	5%	10%	8%
Assessment of indirect impacts	G	0%	27%	34%	51%	26%
	A	38%	55%	49%	32%	50%
	P	63%	18%	16%	15%	21%
Assessment of cumulative impacts	G	0%	5%	16%	22%	13%
	A	13%	27%	32%	12%	21%
	P	87%	32%	41%	44%	45%
Consider policies, plans, guidelines	G	13%	41%	34%	41%	26%
	A	50%	36%	49%	46%	45%

REVIEW THE EFFECTIVENESS AND EFFICIENCY OF THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) SYSTEM IN SOUTH AFRICA : DRAFT REPORT 19 NOVEMBER 2008

Criteria (Please refer to Appendix B for the full description of the criteria)	Good (G), Average (A), Poor (P)	Electricity generation (8 cases)	Water provision (12 cases)	Residential development (73 cases)	Roads (41 cases)	Telecom masts (38 cases)
	P	37%	23%	15%	12%	26%
Avoidance of impacts	G	12%	55%	27%	51%	34%
	A	50%	23%	55%	39%	39%
	P	38%	22%	18%	10%	21%
Minimization of impacts	G	25%	59%	38%	59%	37%
	A	13%	36%	51%	34%	42%
	P	62%	5%	11%	7%	18%
Maximization of positive impacts	G	13%	27%	21%	51%	16%
	A	25%	36%	48%	27%	37%
	P	62%	36%	32%	22%	39%
Meeting basic legal requirements	G	38%	45%	68%	76%	53%
	A	49%	50%	27%	20%	37%
	P	13%	5%	4%	5%	8%
Independence of practitioner	G	38%	64%	73%	85%	71%
	A	62%	36%	18%	15%	18%
	P	0%	0%	4%	0%	8%
General quality of work	G	50%	41%	63%	78%	50%
	A	13%	59%	34%	17%	37%
	P	37%	0%	3%	2%	11%
Public participation	G	38%	45%	78%	71%	61%
	A	38%	50%	16%	12%	24%
	P	24%	5%	5%	17%	13%
Advertising	G	25%	50%	74%	63%	58%
	A	50%	45%	19%	17%	24%
	P	25%	5%	7%	20%	16%
Comments and responses	G	38%	41%	51%	61%	26%
	A	25%	50%	19%	7%	24%
	P	37%	9%	23%	29%	32%
Role of comments in formulating alternatives	G	13%	32%	45%	61%	18%
	A	38%	32%	18%	7%	21%
	P	49%	36%	27%	29%	39%

From the above it is clear that the quality for EIA documents is relatively good and in line with the general findings for water provision, residential development and roads. Documents for electricity generation did not perform well and it is questionable if EIA is an effective instrument for the assessment of the impact of electricity generation facilities where EIA is used on its own. An approach where strategic impact assessment (SEA), environmental management frameworks (EMF) as well as Sector Specific Strategic Environmental Plans (SSSEP) is used to create effective contexts for these types of activities may be more appropriate. The relatively bad performance of telecom masts seems to question the relevance of the criteria for EIA quality to the type of activity and would suggest

that other instruments should be considered for these types of activities. (Consultant must qualify and expand on this statement). Unless these types of activities occur in sensitive environments, they can be better dealt with through the application of standards or be incorporated within the SEA processes for local spatial development frameworks/plans (LSDF/SDP).

(b) Authority evaluation of EIA documents for the selected categories of activities

This section provides an assessment of the evaluation of documents by authorities between selected activity categories. The purpose of this assessment is to get an indication of the relative effectiveness of the evaluation of EIA documents for different categories of activities.

Table C5: Authority evaluation of EIA documents for the selected categories of activities

Criteria (Please refer to Appendix B for the full description of the criteria)	Good (G), Average (A), Poor (P)	Electricity generation (8 cases)	Water provision (22 cases)	Residential development (73 cases)	Roads (41 cases)	Telecom masts (38 cases)
Taking account of the information in the EIA documentation	G	50%	55%	62%	83%	61%
	A	38%	45%	37%	17%	29%
	P	13%	0%	1%	0%	8%
Taking account of policies affected by the application	G	0%	45%	51%	68%	55%
	A	63%	45%	38%	22%	34%
	P	13%	5%	11%	10%	8%
Taking account of the quality of the EIA documentation	G	38%	36%	47%	76%	45%
	A	38%	59%	47%	22%	45%
	P	25%	5%	6%	2%	8%
Making an informed decision	G	38%	59%	63%	88%	61%
	A	63%	41%	36%	12%	29%
	P	0%	0%	1%	0%	8%
Setting conditions	G	63%	59%	63%	90%	66%
	A	38%	42%	36%	10%	24%
	P	0%	0%	1%	0%	8%
Monitoring and enforcement of conditions	G	13%	5%	14%	15%	11%
	A	25%	5%	14%	2%	21%
	P	62%	90%	73%	82%	68%

The evaluation of the performance of the authority evaluation across the selected activity categories follows the trends that was established overall and reflected in Table C2. The evaluation of the roads category is however of a significantly higher standard and can probably be used as a benchmark for the evaluation of other categories in future.

(c) Effectiveness of EIA as an assessment instrument from the selected categories of activities

The overall effectiveness of EIA as an instrument for the assessment of environmental impacts across the selected activity categories are indicated in Table C6 below:

Table C6: Effectiveness of EIA as an assessment instrument from the selected categories of activities

Criteria (Please refer to Appendix B for the full description of the criteria)	Very effective (VE), Effective (E), unsure /marginal (M), Not effective (N), Very ineffective (VI)	Electricity generation (8 cases)	Water provision (22 cases)	Residential development (73 cases)	Roads (41 cases)	Telecom masts (38 cases)
Impacts were avoided to the extent possible	VE	0%	5%	11%	10%	16%
	E	13%	59%	40%	49%	34%
	M	63%	18%	36%	32%	39%
	N	13%	9%	11%	5%	5%
	VI	13%	5%	1%	2%	0%
Impacts were mitigated to the extent possible	VE	0%	9%	14%	17%	5%
	E	25%	68%	41%	49%	45%
	M	25%	14%	38%	29%	39%
	N	50%	9%	5%	2%	5%
	VI	0%	0%	1%	0%	0%
The benefits from positive impacts were maximized	VE	0%	9%	4%	5%	3%
	E	13%	36%	25%	59%	13%
	M	38%	32%	49%	27%	61%
	N	38%	9%	3%	5%	5%
	VI	13%	0%	4%	0%	0%
Contribution to the success of implementing or promoting relevant policies, plans and guidelines	VE	0%	0%	7%	5%	0%
	E	25%	50%	42%	41%	37%
	M	50%	27%	41%	44%	45%
	N	13%	14%	5%	7%	13%
	VI	13%	5%	3%	0%	3%
Based on above, the estimated effectiveness of EIA across categories	Low	19%	59%	33%	42%	23%
	High	41%	70%	53%	59%	46%

The overall effectiveness of EIA across the different activity categories, using the criteria indicated in Table C6 are not very high and there is a lot of room for improvement. For reasons already mentioned EIA seems not to be an effective instrument for electricity generation and telecommunication masts. Other

instruments or the use of additional instruments should be considered for these types of activities. They can also be used as indicators of the types of activities that may require the use of other instruments. In other words, activities where EIA will perform better if it is undertaken within a strategic context and on the other hand activities which are of little significance unless they occur in sensitive areas which can be better dealt with through standards.

2.6 *The relative performance of specific instrument used in EIA in South Africa*

The purpose of this section is to give an indication of the relative performance of specific “types” of EIA that are or have been commonly used in South Africa.

(a) **The quality of the assessment documents submitted**

The quality of the documents under each of the three types of EIA is assessed in this section.

Table C7: Quality of the assessment documents submitted in respect of different types of assessment

Criteria (Please refer to Appendix B for the full description of the criteria)	Good (G), Average (A), Poor (P)	Basic Assessment (257 cases)	Full EIA, NEMA and ECA (131 cases)	ECA Scoping (74 cases)
Consideration of alternatives	G	32%	40%	20%
	A	39%	35%	31%
	P	13%	21%	34%
Assessment of direct impacts	G	52%	62%	45%
	A	33%	34%	41%
	P	13%	5%	14%
Assessment of indirect impacts	G	31%	37%	16%
	A	44%	41%	45%
	P	23%	21%	38%
Assessment of cumulative impacts	G	21%	15%	3%
	A	24%	23%	12%
	P	44%	52%	72%
Consider policies, plans, guidelines	G	31%	25%	16%
	A	47%	50%	46%
	P	21%	24%	36%
Avoidance of impacts	G	37%	43%	26%
	A	42%	40%	39%
	P	20%	17%	32%
Minimization of impacts	G	42%	48%	28%

Criteria (Please refer to Appendix B for the full description of the criteria)	Good (G), Average (A), Poor (P)	Basic Assessment (257 cases)	Full EIA, NEMA and ECA (131 cases)	ECA Scoping (74 cases)
	A	45%	41%	50%
	P	12%	11%	20%
Maximization of positive impacts	G	30%	30%	7%
	A	37%	39%	47%
	P	32%	32%	43%
Meeting basic legal requirements	G	59%	55%	49%
	A	33%	38%	41%
	P	7%	7%	11%
Independence of practitioner	G	68%	73%	62%
	A	25%	24%	31%
	P	4%	3%	3%
General quality of work	G	58%	56%	34%
	A	33%	38%	55%
	P	7%	6%	11%
Public participation	G	69%	66%	39%
	A	24%	24%	36%
	P	6%	8%	36%
Advertising	G	69%	66%	39%
	A	24%	24%	36%
	P	6%	8%	23%
Comments and responses	G	50%	51%	20%
	A	21%	27%	22%
	P	20%	18%	53%
Role of comments in formulating alternatives	G	44%	44%	19%
	A	17%	27%	22%
	P	29%	24%	53%

The performances of “full EIAR” and BAR are very similar and it tends to indicate that they are relatively suitable instruments for the activities they are applied to. In both instances there are however significant room for improvement in terms of effectiveness. The old scoping and “extended scoping” reports underperformed significantly but is now irrelevant since scoping is no longer a decision phase in EIA in South Africa.

(b) Authority evaluation of EIA documents submitted in respect of different types of assessment

The purpose of this section is to assess the relative performance of the different types of assessment in their evaluation by authorities.

Table C8: Authority evaluation of EIA documents submitted in respect of different types of assessment

Criteria (Please refer to Appendix B for the full description of the criteria)	Good (G), Average (A), Poor (P)	Basic Assessment (257 cases)	Full EIA, NEMA and ECA (131 cases)	ECA Scoping (74 cases)
Taking account of the information in the EIA documentation	G	56%	44%	24%
	A	35%	51%	61%
	P	8%	5%	11%
Taking account of policies affected by the application	G	56%	37%	42%
	A	33%	44%	34%
	P	3%	9%	14%
Taking account of the quality of the EIA documentation	G	56%	44%	24%
	A	35%	51%	61%
	P	8%	5%	11%
Making an informed decision	G	67%	56%	50%
	A	30%	42%	43%
	P	3%	2%	4%
Setting conditions	G	69%	61%	65%
	A	28%	36%	26%
	P	2%	3%	4%
Monitoring and enforcement of conditions	G	12%	18%	11%
	A	11%	17%	14%
	P	77%	65%	76%

The BARs performed better than the EIARs due to the fact that it was done according to a set format that made the evaluation thereof by authorities significantly more effective than the evaluation of EIRs.

(c) Effectiveness of EIA as an assessment submitted in respect of different types of assessment

The purpose of this section is to give an indication of the general effectiveness of the different types of assessment.

Table C9: Effectiveness of EIA documents submitted in respect of different types of assessment

Criteria (Please refer to Appendix B for the full description of the criteria)	Very effective (VE), Effective (E), unsure /marginal (M), Not effective (N), Very ineffective (VI)	Basic Assessment (257 cases)	Full EIA, NEMA and ECA (131 cases)	ECA Scoping (74 cases)
Impacts were avoided to the extent possible	VE	11%	9%	3%
	E	40%	44%	38%
	M	35%	34%	32%
	N	9%	10%	15%
	VI	4%	2%	8%
Impacts were mitigated to the extent possible	VE	12%	20%	4%
	E	47%	41%	41%
	M	32%	31%	32%
	N	6%	5%	12%
	VI	3%	2%	7%
The benefits from positive impacts were maximized	VE	5%	6%	1%
	E	30%	31%	19%
	M	44%	41%	46%
	N	8%	12%	22%
	VI	3%	4%	8%
Contribution to the success of implementing or promoting relevant policies, plans and guidelines	VE	3%	3%	1%
	E	36%	28%	16%
	M	45%	50%	47%
	N	11%	9%	18%
	VI	3%	4%	7%
Based on above, the estimated effectiveness of EIA across categories	Low	46%	46%	31%
	High	66%	66%	51%

The relative general effectiveness of BARs and EIARs is very similar with little to choose between them. The effectiveness of both however has significant room for improvement.

2.7 Time efficiency of the EIA process

The time efficiency of all the cases (NEMA and ECA) that were evaluated was determined by recording the following dates in a database:

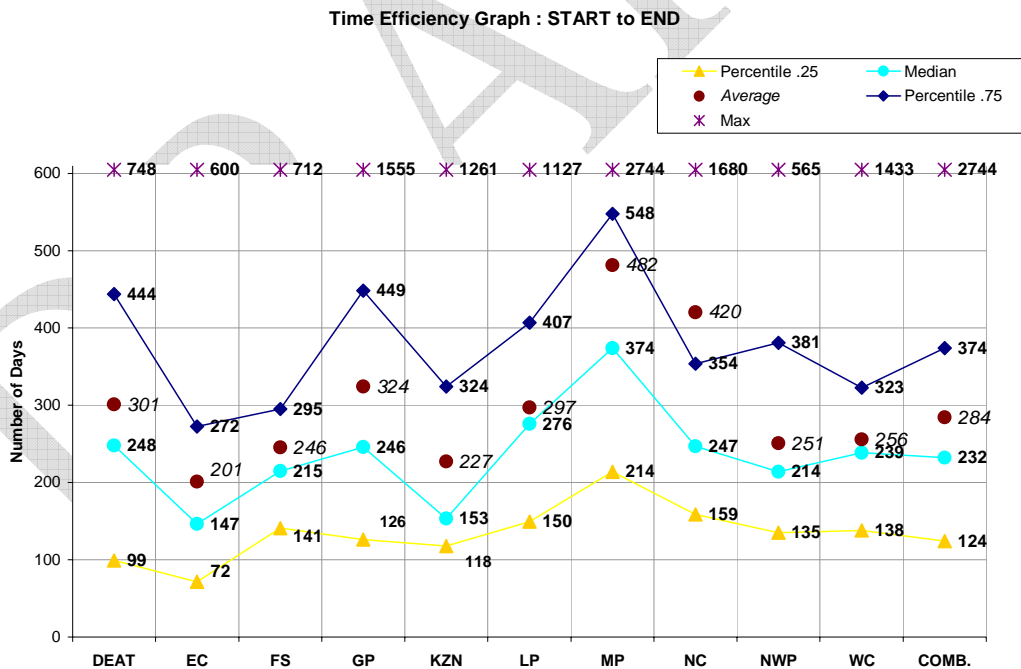
- The date on which the process started, normally the start of the drafting of document or appointment of the consultant or sometimes even the date of application;

- the date on which the documents were submitted for decision-making to the authorities;
- the time that the documents were referred back for revision or addition (if applicable); and
- the date of the decision.

From this information the following were determined:

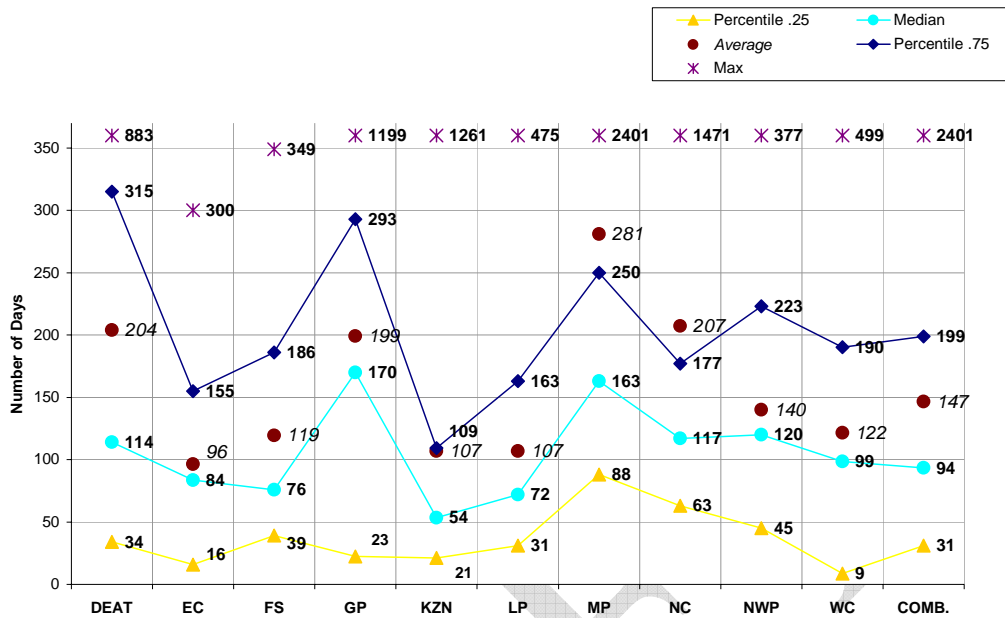
- The time the EIA processes took from start to finish in (calendar days);
- the time it took to complete the EIA documentation by the EAP; and
- the time it took to evaluate and make the decision by the competent authority.

This was done for all the competent authorities and the results are displayed in the graphs below.

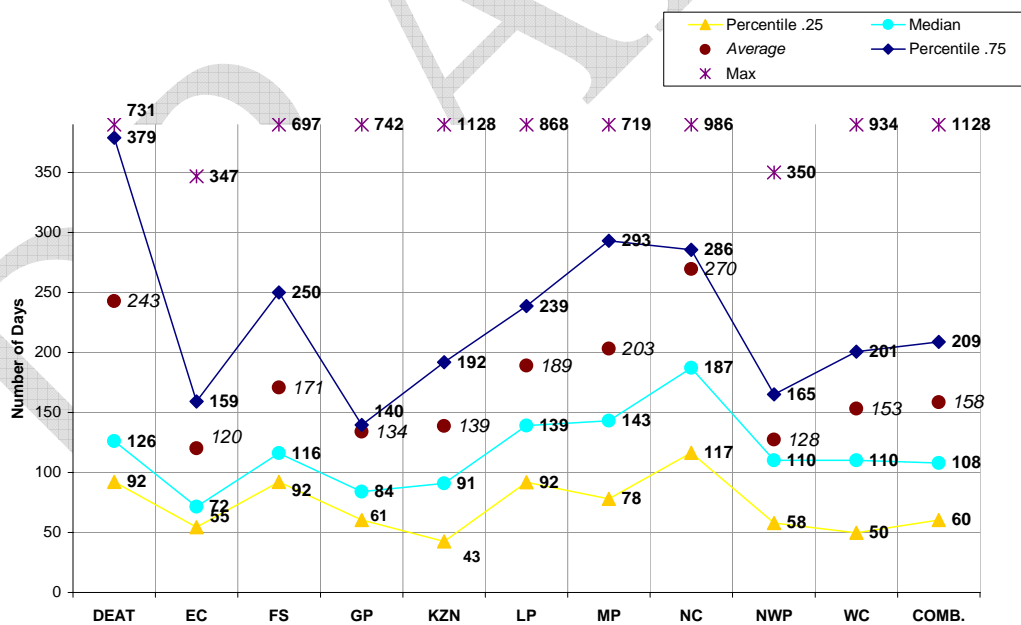


REVIEW THE EFFECTIVENESS AND EFFICIENCY OF THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) SYSTEM IN SOUTH AFRICA : DRAFT REPORT 19 NOVEMBER 2008

Time Efficiency Graph : REPORT START TO REPORT END



Time Efficiency Graph : REVIEW START TO END



The average time it took to complete an EIA process from start to finish was 284 days. The average time it took to compile an EIA document and application was 147 days. On average authorities took 158 days to evaluate the EIA and to make a decision. The longest a process took was 2744 days and the longest it

took to compile an EIA document and application was 2401 days, while the longest it took to evaluate and decide on an application was 1128 days.

To aim for an authority review period somewhere between the national combined average of 158 days and the national combined median of 108 days seems reasonable.

It is also clear that the trends are heavily influenced by a minority of applications that take much longer than the rest. This indicates that there is a need for special processes to deal with problem cases such as controversial matters; highly technical or complex matters or highly specialized matters.

3. Views and perceptions

3.1 *General views that were expressed*

A collation of prominent views from various sources, including communications with the department, submissions to the Portfolio Committee in Parliament, newspaper articles, publications, speeches, submissions to the project and personal communications have been compiled and are reflected under the headings below. These views are important because they represent an accumulation of thoughts over a long period of time and in itself represent a finding on the current state of thought that dominate the effectiveness and efficiency debate in South Africa. It is necessary to address these views in the process of developing the EIM system in South Africa because as long as they are not addressed appropriately and comprehensively, skepticism over the EIA process in South Africa is likely to remain. It is however also important to note that there are significant contradictions between some of the views. These contradictions are indicative of the fact that some of the issues can only be resolved through iterative discussions that involve all the interest groups.

These views correspond to a very large degree with the views that were collated in the general questionnaire as presented under section 3.2 of the report. Most of the views also refer to issues that relate to the broader development process of the EIM system and not to EIA specifically.

(a) Resources and capacity

The following views were collated under this heading:

- Government (national and provincial) has not allocated adequate human and material resources to make legislation work;
- the high turnover rate of staff of competent authorities means that institutional capacity to effectively and efficiently implement EIA remains low despite efforts to train and capacitate officials; and
- a “highly proficient group of environmental consultants” should be “recruited” to bolster the competency and improve the status of departments administering EIA regulations.

(b) Political commitment and governance

The following views were collated under this heading:

- The South African society is complacent due to the lack of clear action from politicians and authorities;
- the political heads of the environmental departments, at national and provincial level, are politically not senior enough and therefore unable to press for important environmental considerations to take precedence over development;
- there is a need for a formally structured high level body on which government and stakeholders are represented to discuss, and distil issues and suggestions relating to EIM; and
- the current degree of “street-level bureaucracy” in authorities that abuses power in terms of unreasonable process requirements, setting unjust conditions, continuously over complicating matters and generally obstructive behaviour towards applicants and their consultants is not acceptable.

(c) Making the EIA system more effective

The following views were collated under this heading:

- There should be a move to a “tiered EA system” in which SEA should play a prominent role;

- 'the place' of impact assessment within broader governance and institutional systems and legal frameworks should be interrogated as the effectiveness and efficiency of impact assessment depends to a large extent on how EIA is embedded in these systems;
- there is a need to look at the opportunities for incorporating impact assessment at a relatively high level (i.e. in spatial planning as a top priority) and minimizing requirements for project-level EIA where there is existing legislation to regulate unacceptable negative impacts, provided that it can be enforced;
- there is a need to look at integrating authorisation processes as there are too many different processes using different criteria at the moment, allowing the sequencing of authorisations to be used as leverage for the approval of development;
- EIA is the wrong instrument for ensuring the conservation of natural and cultural elements that should rather be protected through direct proactive interventions of the state and not in a reactive punitive manner when landowners want to develop their land;
- a risk averse approach to EIA and development where it is easier for an authority to say "no" than "yes" is inappropriate for a developing country such as South Africa;
- DEAT, the provinces and other government departments dealing with the environment in South Africa, seems to be unable to effectively coordinate different pieces of legislation to form a comprehensive unified vision for environmental protection and management – it remains a collection of loose thoughts and approaches that often does not fit together properly;
- the current EIA process has an unreasonable NGO bias that results in "run away" EIAs that include completely unnecessary and expensive information and assessment;
- if government cannot meet the timeframes it sets for itself, there should be an automatic authorisation of applications – business and the

economy should not be expected to carry the cost of government incompetence;

- the provision to request more information or specialist work in BAs should be removed as it is abused by officials who turn BAs into full EIAs thereby negating the purpose of BA to serve as a rapid assessment tool for relatively small projects;
- government needs to set the spatial context for environmental impact management to enable applicants to select appropriate sites instead of sitting on information and doing reactive site evaluations when they review applications;
- other more appropriate and less onerous instruments should also be introduced and be accepted by the competent authorities to assist them in decision-making;
- the requirement to assess alternatives are often illogical, unpractical and unnecessarily expensive and should be done away with as officials generally do not have the capacity to make reasonable judgements in this respect;
- the notion of compensative investment for development that has a negative impact on the environment (including the “offset” policies that are being introduced in certain provinces) as a condition of authorisation is not acceptable to business in South Africa and should not be allowed by DEAT;
- EIA should stop meddling in aspects such as social and economic impacts for which the competent authorities have neither the mandate nor the necessary skills, and that grossly and unnecessarily intervenes in the mandates of other authorities that are much better positioned to make decisions of that nature;
- EIA is currently used as the only environmental management instrument other than measuring compliance with limited standards. This is one of the key challenges in the implementation of the EIA regulations because

they are used to address issues that should be dealt with through other instruments like:

- Environmental Management Frameworks;
 - Strategic Environmental Assessments;
 - Environmental Management Programmes;
 - Environmental Risk Assessments;
 - Environmental Feasibility Assessments;
 - norms or standards; and
 - spatial development tools.
- Basic Assessments were introduced in an attempt to streamline the process in situations of lower environmental risk but the forms are not necessarily fit for the purpose, in that a single form is used for all types of application. This has resulted in the form being used as a check list and if all boxes are not ticked the form is returned, which is obviously not the intention. It is proposed that more focused forms be developed (for example to be requesting information on fauna and flora in an established industrial zone is clearly not appropriate);
 - In the light of the fact that since the advent of the EIA regulations a number of specialist environmental laws requiring assessments for licenses have been promulgated, it is considered time to review the renewal of licenses as a trigger for EIAs as this leads inevitably to duplication of requirements;
 - much greater use should be made of spatial development tools and the attempt to do this in the revised regulations that was published for comment, is recognized. The spatial development tools themselves need to be reviewed to make them compatible with such an approach (the Land Use Management Bill provides a useful platform for this to occur); and
 - potentially significant impacts of activities that are not listed are being missed in the current lists of activities.

(d) Sustainable development, biodiversity considerations and NEMA principles

The following views were collated under this heading:

- Given the sustainability imperative for development of the current policy and the integral part that ecological sustainability play, EIA does not adequately provide for early proactive consideration of biodiversity considerations;
- there is an urgent need for contextual references in respect to biodiversity and for unambiguous formal requirements that they be used in EIA;
- there is a need for a national policy on biodiversity off-sets in cases where irreplaceable residual loss of biodiversity cannot be avoided, minimized or remedied;
- in line with the Convention on Biological Diversity (CBD), EIA should ensure that the cost of conservation as a result of the intervention of the EIA process must be borne incrementally by the relevant organs of state at the levels at which the benefits of such conservation occur to society and to make use of the global environmental facility in instances where the benefits are global in nature;
- EIA should recognise and ensure compensation of individuals and private organisations that bear the cost of conservation as a result of the intervention of the EIA process that affect any existing primary right to the extent that it makes them as well off as they would have been without the intervention;
- failure to compensate individuals and private organisations for the cost of conservation as a result of the intervention of the EIA process would be inequitable and therefore, intolerable and unsustainable over the long term;
- the neglect of the consideration of the NEMA principles in EIA decision-making lead to flawed decision-making, increased conflict, loss of credibility and inevitably environmental degradation;
- EAPs have an obligation to collaborate with the authorities to advance the use of the NEMA principles in EIA decision-making;
- a formal mechanism should be introduced to ensure that the NEMA principles are adequately considered in EIA decision-making; and

- the EIA system is also used as an instrument in managing sustainable development which has two unintended consequences, namely that the instrument results in the competent authority straying into the mandates of other departments thus resulting in duplicate regulatory requirements and enforcement and that the socio economic implications of the development are not properly addressed as the EIA tool, is not necessarily appropriate for this purpose.

(e) Project process issues

The following views were collated under this heading:

- There is a need to 'look backwards' to see how impact assessment has developed over time and why (the drivers of this change) as well as the need to look forward to 'what one wants impact assessment to achieve';
- South Africa must learn more from the international context of EIA including what is regarded as effective and efficient;
- the project failed to adequately involve a broad spectrum of stakeholders in South Africa, from a range of government departments, Treasury, the development sector, consultants (through IAIAAs, ACTRP, SAPI, ICB, etc.), academic and research institutions and NGOs; and
- EIA is currently ineffective and inefficient in South Africa. Everybody knows that and it does not need to be investigated any further to prove it and the attention of the project and further development of a strategy for EA in South Africa should rather be focused on reducing the negative impact of EIA on the Gross Domestic Product (GDP).

(f) Proposals to improve effectiveness and efficiency

The following views were collated under this heading:

- The courts focus on procedure and largely neglect substance with regard to EIA and that the law (appeals, judgements, precedents, etc) does not support sustainable development and EIA as a tool, but rather making it more complex, 'administrative' or 'mechanistic' instead of paying due attention to the spirit and intent of EIA;

- EIA should lead to better proposals and that changes in proposals in response to the identification of potentially significant impacts should be reflected in the EIAR;
- EIA decisions should clearly uphold and document the NEMA principles and support The Best Practicable Environmental Option (i.e. not just the one that contributes most to economic growth and some employment);
- decisions should include explicit and auditable conditions with enforceable checks and balances to ensure that development stays on track;
- the principles of NEMA and the requirements for sustainable development are too onerous for a developing country such as South Africa and that EIA should be limited to prescribing reasonable and affordable mitigation for development proposals; and
- EIA should resolve issues to the extent that when it is submitted for a 'decision' it is only a matter of deciding on conditions of authorisation.

(g) Cost of EIA

The following views were collated under this heading:

- The time it currently takes to complete the EIA process and the unnecessary volumes of information it requires has a direct negative impact on South Africa's attractiveness as an investment location and leads to significant immeasurable direct and indirect losses in Foreign Direct Investment (FDI);
- it is important to note that from a business perspective both effectiveness and efficiency are directly linked to cost to the developer and that the current approach leads to increased or unnecessary costs in the following ways:
 - Increased cost of actual assessment as a result of inappropriate demands being placed by NGOs and no attempt by the competent authority to achieve a more balanced outcome;
 - increased cost of assessment by escalation to full EIA at the discretion of the competent authority;

- increased construction costs as a result of escalation due to lengthy delays;
- increased consultancy costs as a result of ever increasing demands for more information;
- storage of imported equipment due to delays;
- increased consultancy fees due to duplication of requirements; and
- increased costs of monitoring requirements due to duplication of requirements.

(h) Conditions of approval

The following views were collated under this heading:

- The conditions in authorisations are increasingly being used as a check list by the green scorpions and due to the long delays being experienced, successful applicants are reluctant to appeal against the conditions even when they are clearly inappropriate;
- in general the conditions are clearly cut and pasted from other documents and often do not make sense. There is no evidence in many cases that the contents of specialist studies or environmental management plans which form part of the assessment process are incorporated into the conditions (one of the key outcomes of the EIA process is the identification of appropriate mitigation measures, which in turn should form part of the authorisation);
- the result of the current approach to conditions is that companies end up implementing the environmental management plan on the one hand and trying to comply with the check list in the authorisation to avoid prosecution by the green scorpions, which is clearly inefficient and not an appropriate approach to legislation; and
- in order to address the concerns about conditions, it may be an idea to allow the applicant to present a draft set of authorisation conditions based on the specialist studies as part of the application for the competent authority to consider.

3.2 Responses received from the general questionnaire

(a) Summary of results

Key results in the table below are shaded and provide a reasonable indication of areas that are of concern and should, amongst other things, be addressed to make EIA in South Africa more effective and efficient.

Table C10: Summary of general questionnaire results

	Completely	Mostly	Only partially	Not at all	Do not know	
5. To what extent does the current EIA process in South Africa serve your stated purposes?	1.75%	15.79%	73.68%	8.77%	0%	
6. To what extent does the current EIA process in South Africa meet your stated objectives?	0%	14.29%	58.93%	25.00%	1.79%	
	Far to many	Too many	Just right	Too few	Far too few	Do not know
9. Would you say that the number of activities that require authorisation is :	7.84%	29.41%	37.25%	17.65%	0.00%	7.84%
	All	Most	Some	A Few	None	Do not know
12. Should activities on the current lists of activities (2006) be rephrased?:	6.52%	8.70%	41.30%	13.04%	17.39%	13.04%
	Always	Most cases	Some cases	Few cases	Never	Do not know
13. The EIA documentation provided by applicants/environmental assessment practitioners fails to contain enough detail information about the activity to facilitate the identification of potential impacts that may result from it.	6.00%	26.00%	48.00%	16.00%	0%	4.00%
14. The purpose & need for a given activity is clearly investigated by the EIA process.	2.00%	30.00%	28.00%	30.00%	8.00%	2.00%
	Strongly agree	Agree	Neither	Disagree	Strongly disagree	Do not know
15. The establishment of the desirability of an activity in terms of its scale & type within its proposed broader locality context is important in the EIA process.	51.02%	38.78%	4.08%	4.08%	2.04%	0%

REVIEW THE EFFECTIVENESS AND EFFICIENCY OF THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) SYSTEM IN SOUTH AFRICA : DRAFT REPORT 19 NOVEMBER 2008

16. Proposed activities, including their need & desirability should go through early "screening" for compatibility with plans, standards & guidelines in the areas they are proposed, prior to the identification & assessment of impacts & alternatives.	68.52%	22.22%	1.85%	5.56%	1.85%	0%
17. The comprehensiveness of the EIA process should be determined by the scale & value of the activity.	16.67%	33.33%	9.26%	20.37%	18.52%	1.85%
18. The comprehensiveness of the EIA process should be determined by the sensitivity of the environment.	56.86%	29.41%	5.88%	5.88%	1.96%	0%
19. EIA processes for activities that are small in scope or in environments that are not sensitive should be limited to completing forms or questionnaire supported by confirmation of specialists where needed.	23.53%	45.10%	5.88%	13.73%	9.80%	1.96%
21. The identification of alternatives must be limited to feasible (alternatives that meet the purpose and need of the applicant).	30.77%	21.15%	3.85%	26.92%	17.31%	0.00%
22. Alternatives should consider and be appropriate to the broader context of the site.	43.40%	45.28%	7.55%	1.89%	1.89%	0.00%
23. The EIA process gives adequate attention to the identification & assessment of alternatives.	9.26%	33.33%	7.41%	37.04%	9.26%	3.70%
24. Existing requirements to identify and assess alternatives have made real contributions to protect South Africa's environment.	1.92%	21.15%	30.77%	19.23%	15.38%	11.54%
25. The identification and assessment of alternatives should be a mandatory part of the process.	40.38%	30.77%	9.62%	13.46%	5.77%	0%
26. Alternatives should only be required in instances where significant impacts are anticipated or identified.	18.87%	20.75%	7.55%	33.96%	18.87%	0%
27. The need to identify alternatives should be left to the discretion of the competent authority.	1.85%	16.67%	12.96%	25.93%	40.74%	1.85%
28. The need to identify alternatives should be left to the discretion of the independent practitioner.	7.27%	12.73%	16.36%	23.64%	38.18%	1.82%
29. The need to identify alternatives should be left to the discretion of the applicant	7.55%	1.89%	13.21%	18.87%	56.60%	1.89%
30. Environmental assessment practitioners usually conduct inadequate assessment of the information that is supplied in specialist studies and other specialist inputs in considering potential impacts of activities.	11.54%	38.46%	19.23%	25.00%	1.92%	3.85%
31. "Full" specialist studies are a cumbersome and often unnecessary part of the EIA process and should be replaced by focussed specialist inputs.	9.43%	28.30%	18.87%	16.98%	16.98%	9.43%
32. The concept of "cumulative impact" is adequately integrated into the EIA process.	11.54%	11.54%	13.46%	21.15%	34.62%	7.69%
33. The concept of "cumulative impact" should be limited to the potential effect of indirect impacts of the activity on off-site environmental/service resources that can be measured.	1.89%	22.64%	11.32%	30.19%	28.30%	5.66%
34. Every EIA process must address cumulative impacts.	32.69%	40.38%	5.77%	15.38%	1.92%	3.85%

REVIEW THE EFFECTIVENESS AND EFFICIENCY OF THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) SYSTEM IN SOUTH AFRICA : DRAFT REPORT 19 NOVEMBER 2008

35. The consideration of cumulative impacts is important for sustainable development.	60.78%	33.33%	3.92%	0.00%	0.00%	1.96%
36. Cumulative impacts should be addressed at a strategic level and not in individual EIA processes.	17.65%	29.41%	9.80%	25.49%	11.76%	5.88%
37. Cumulative impacts should only be considered in EIAs where the proposed activity is inconsistent with the surrounding broader context of the area in which it is proposed.	3.85%	9.62%	11.54%	50.00%	21.15%	3.85%
	All	Most	Some	A Few	None	Do not know
38. EIA requirements for public participation are excessive.	3.77%	20.75%	15.09%	22.64%	32.08%	5.66%
39. Practitioners fail to record or respond to comments from the public in sufficient detail.	5.66%	18.87%	43.40%	16.98%	1.89%	13.21%
40. Environmental authorizations provide reasons for accepting or rejecting comments from the public.	11.32%	9.43%	32.08%	15.09%	15.09%	16.98%
	Strongly agree	Agree	Neither	Disagree	Strongly disagree	Do not know
41. Statutory public participation are ambiguous: they do not sufficiently define what kinds of meetings should take place or what type of communication should occur at those meetings.	7.27%	20.00%	25.45%	32.73%	1.82%	12.73%
42. Public participation rarely contributes to the quality of an EIA process.	5.88%	13.73%	7.84%	33.33%	31.37%	7.84%
43. EIA processes generally serve to motivate projects rather than assess whether or not activities should be permitted.	25.93%	46.30%	9.26%	12.96%	3.70%	1.85%
44. EIA processes tend to generate mitigation measures rather than assess whether or not activities should be permitted.	20.37%	50.00%	18.52%	7.41%	0.00%	3.70%
45. Officials usually do not deviate from the findings of the EIA process in their decisions	11.11%	35.19%	18.52%	25.93%	1.85%	7.41%
46. Competent authorities often use the EIA process to manipulate local development decision-making.	13.46%	19.23%	7.69%	21.15%	3.85%	34.62%
47. Competent authorities never approve activities that have significant unmitigated or residual impacts on the environment.	7.55%	5.66%	9.43%	47.17%	16.98%	13.21%
48. The appeal authority (Provincial Member of the Executive Council or the Minister) often interferes in the duties of the competent authority (the official (s) to which decision - making has been delegated).	16.33%	20.41%	4.08%	12.24%	6.12%	40.82%
49. Environmental authorizations contain sufficient conditions to ensure that the environmental impacts of an activity are managed appropriately.	0.00%	50.00%	17.31%	13.46%	9.62%	9.62%
50. Competent authorities rarely, if ever, conduct inspections to ensure that the conditions of environmental authorisations are followed.	16.98%	39.62%	11.32%	18.87%	7.55%	5.66%

REVIEW THE EFFECTIVENESS AND EFFICIENCY OF THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) SYSTEM IN SOUTH AFRICA : DRAFT REPORT 19 NOVEMBER 2008

	All	Most	Some	A Few	None	Do not know
51. Similar applications for environmental authorisations will tend to receive similar decisions.	1.96%	52.94%	25.49%	1.96%	1.96%	15.69%
	Strongly agree	Agree	Neither	Disagree	Strongly disagree	Do not know
52. The EIA process should be integrated more closely with other licensing or authorisation processes.	43.40%	43.40%	0.00%	7.55%	0.00%	5.66%
53. EIA processes have outlived their usefulness: there are other instruments that are more appropriate for the purpose.	9.26%	5.56%	12.96%	31.48%	33.33%	7.41%
54. EIA processes tend to focus on administrative requirements rather than ensuring sustainable development.	18.87%	41.51%	26.42%	3.77%	3.77%	5.66%
55. Government uses the EIA process to collect information that it needs for other functions but which is not necessary to assess environmental impact.	0.00%	11.76%	13.73%	19.61%	13.73%	41.18%
56. The EIA process is flexible enough to result in an appropriate level of assessment consistent with the level of the predicted impact	1.96%	35.29%	15.69%	27.45%	9.80%	9.80%
57. The EIA process succeeds to inform decision making by authorizing appropriate development proposals.	1.89%	30.19%	20.75%	24.53%	15.09%	7.55%
58. Officials responsible for processing applications for environmental authorisation are not sufficiently qualified or experienced for this type of work.	17.31%	50.00%	19.23%	9.62%	0.00%	3.85%
59. Practitioners are not sufficiently qualified or experienced for types of assessments they conduct.	11.11%	37.04%	18.52%	20.37%	3.70%	9.26%
60. Practitioners "recycle" (cut-and-paste) their work for multiple applications, thereby not applying their minds to the real impacts of individual applications.	20.75%	49.06%	13.21%	5.66%	5.66%	5.66%
61. Applicants/proponents interfere in the assessment process, undermine the independence of practitioners, and prevent an objective evaluation by officials.	21.57%	39.22%	13.73%	11.76%	3.92%	9.80%
	Highly effective	Effective	Neither	Ineffective	Very ineffective	Do not know
62. Reflecting on your responses to points 3 to 42 above, please indicate your view in respect to the effectiveness of the EIA process in South Africa in meeting the goals and objectives of EIA.	1.89%	35.85%	22.64%	24.53%	7.55%	7.55%

REVIEW THE EFFECTIVENESS AND EFFICIENCY OF THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) SYSTEM IN SOUTH AFRICA : DRAFT REPORT 19 NOVEMBER 2008

	Strongly agree	Agree	Neither	Disagree	Strongly disagree	Do not know
64. Most applicants can afford the costs of an EIA.	26.92%	40.38%	9.62%	11.54%	3.85%	7.69%
65. The EIA process ensures that external costs of activities are largely borne by applicants and not by the environment and society ("THE polluter pays" principle).	9.43%	39.62%	7.55%	16.98%	16.98%	9.43%
66. The length of EIA processes results in severe time delays and has subsequent significant negative impacts on economic development.	11.76%	23.53%	9.80%	29.41%	19.61%	5.88%
67. There is an unnecessary hierarchy of officials involved in the review-evaluation-decision process.	7.84%	27.45%	17.65%	27.45%	11.76%	7.84%
68. The officials who review and evaluate EIAs do not possess the requisite skills or experience to manage the complexity of the EIA process.	13.46%	34.62%	28.85%	11.54%	5.77%	5.77%
69. The applicant processes of some of the competent authorities are too complex and onerous	7.69%	19.23%	23.08%	28.85%	1.92%	19.23%
70. The EIA process prevents quick previews of activities even in cases where there is readily available information or obvious circumstances that will clearly be the main assessment criteria.	6.00%	32.00%	14.00%	22.00%	8.00%	18.00%
71. Applications for environmental authorisation take much longer than comparable applications, such as mining permits, water permits or planning approvals	7.69%	19.23%	7.69%	23.08%	9.62%	32.69%
72. Applications for authorization take longer than necessary because other departments require environmental authorizations to be completed before processing an application.	6.12%	30.61%	18.37%	10.20%	6.12%	28.57%
73. Competent authorities are very good at coordinating applications for environmental authorisation with the requirements of other regulatory departments.	0.00%	14.29%	28.57%	24.49%	16.33%	16.33%
74. Competent authorities have sufficient staff to deal with applications efficiently.	0.00%	5.71%	5.71%	15.71%	38.57%	7.14%
75. Competent authorities have insufficient experience due to high level of staff turnover.	38.00%	36.00%	8.00%	2.00%	4.00%	12.00%
76. It is more important to improve EIA practice than to create manpower capacity in government.	6.00%	28.00%	32.00%	26.00%	6.00%	2.00%
77. The current application format contributes to efficiency by providing consistency and certainty in the requirements of competent authorities.	11.76%	49.02%	9.80%	7.84%	11.76%	9.80%
78. Authorities, other than the competent authority, cause major delays because they do not provide their inputs and comments within reasonable timeframes.	20.00%	46.00%	8.00%	4.00%	2.00%	20.00%
79. Applications for environmental authorisation take longer than necessary because officials ask for information on a piecemeal basis.	3.92%	31.37%	17.65%	15.69%	9.80%	21.57%

80. Applications for environmental authorisation take longer than necessary because practitioners are slow to respond to official requests for information.	8.00%	24.00%	18.00%	14.00%	12.00%	24.00%
81. Applications for environmental authorisation take longer than necessary because information provided by practitioners is inadequate and has to be supplemented.	28.00%	34.00%	10.00%	10.00%	0.00%	18.00%
82. Other government decision making process undermine or conflict with the EIA process.	17.65%	50.98%	9.80%	5.88%	0.00%	15.69%
83. Requiring the independence of environmental practitioners ensures that EIA processes are unbiased.	22.00%	24.00%	18.00%	18.00%	10.00%	8.00%
84. Professional registration of environmental practitioners will greatly increase the quality of EIAs.	30.00%	48.00%	14.00%	0.00%	2.00%	6.00%

(b) The most significant results

The results shown in Table C10 above, as well as the comments received from respondents, as reflected in Appendix E, forms the basis of the discussion of the most significant results below.

There is a large degree of consensus amongst those that responded to the general questionnaires that the following would make EIA more effective:

- The purpose and objectives of EIA should be clarified and stated in clearer terms to ensure that there is only one national interpretation of what it means;
- the establishment of the desirability of an activity in terms of its scale and type within its broader locality context is important in the EIA process and activities should go through early screening processes to ensure compatibility with plans, standards and guidelines, prior to the identification and assessment of impacts and alternatives;
- the comprehensiveness of the EIA (scope) should be determined by the sensitivity of environment and not necessarily by the nature of the activity, although it may also play a part;
- EIA processes for activities that are small in scope and that occur in environments that are not sensitive should be limited to completing forms or questionnaires, supported by specialist confirmation where needed;

- alternatives should consider and be appropriate to the broader context of the site;
- the identification and assessment of feasible and reasonable alternatives should be a mandatory part of the process and should not only be required in instances where significant impacts are identified or anticipated;
- the assessment of alternatives should be targeted towards improving proposals to the maximum extent possible and should not be limited to static comparative assessments of a preferred alternative to bogus unpractical options;
- neither the competent authority, the independent practitioner or the applicant should be allowed the discretion to identify alternatives on their own;
- every EIA process must address cumulative impacts as it is important for sustainable development and the assessment of cumulative impacts should not be limited to indirect impacts of activities on off-site environmental/service resources that can be measured.
- the concept of cumulative impacts should be better integrated into the EIA process;
- less activities that have significant unmitigated residual impacts should be authorised;
- more inspections should be done to check that conditions of authorisation are met;
- the EIA process should be integrated more closely with other licensing or authorisation processes;
- EIA processes should focus more on ensuring sustainable development than on administration;
- the capacity in terms of qualifications, experience and numbers of staff of competent authorities should be improved;

- the capacity in terms of qualification and experience of environmental practitioners should be improved;
- inappropriate recycling (cut and paste) of work of practitioners should be rooted out;
- interference by applicant/proponents in the assessment process often undermine the independence of practitioners and prevent the objective evaluation of EIA by officials, and must be prevented;
- overall the perception is that EIA is marginally effective and that it should not be discarded as an instrument as there is currently nothing better to take its place.

There is general consensus that the following would make EIA more efficient:

- the increase of the staff numbers across all authorities and the prevention of high staff turnovers through better compensation;
- the current application format is efficient and should remain as it provided consistency and certainty in respect to the requirements of the competent authority;
- authorities, other than competent authorities, to which applications are referred to for comment must be forced to provide their comments and inputs within certain time periods to prevent unreasonable delays;
- practitioners should involve authorities that will be required to provide inputs early in the EIA process to ensure that delays are avoided in the authority evaluation process;
- other government processes, and the DFA process in particular, undermine and conflict with the EIA process and should be addressed at the appropriate level; and
- professional registration of professionals working in the EIA field will greatly increase the quality of EIA's.

The following trends are perceived to prevalent in South Africa:

- EIA processes generally serve to motivate activities rather than assess whether or not activities should be permitted;

- EIA processes tend to generate mitigation measures rather than assess whether or not activities should be permitted; and
- competent authorities are relatively consistent in making decisions.

The following serious concerns have been expressed:

- There is a degree of corruption that seems to occur within certain competent authorities; and
- undue influence of politicians by applicants/proponents occurs too often; and
- Undue influence of junior to middle management officials by NGO's occurs too often.

4. Important strategic issues

4.1 *The contextual problem of EIA in South Africa*

This finding was collated from all the findings in the case file survey and also based on views received in response to the general questionnaire as well as other views expressed.

Despite a plethora of policies, guidelines and information documents across authorities in the environmental and development fields, the biggest single issue that affects the effectiveness of EIA negatively in South Africa is that it is often executed without taking sufficient account of the broader context within which the application occurs. This means that while EIA processes may meet the quality criteria, it often fails to make a real contribution to the quality of the decision that is made in the context of the specific area or sector within which it is made. The reasons for this, amongst others, include:

- A lack of adequate sector specific environmental policies, targets and goals;
- a lack of spatial environmental sensitivity delineation, especially at detailed local levels in areas that are under development pressure;
- a general lack of broad political commitment to the environmental cause at all levels of government but most specifically at the national level;

- failure to use all the legal mechanisms that are available in the current legislation;
- the absence of baseline information on environmental quality and agreed levels of acceptable change in relation to the baseline.

The early evaluation of case specific applications against the contextual elements that are going to make up the framework for the decision is crucial to ensure that:

- The purpose and the need of the applicant can be accommodated within the development and proposal of feasible and reasonable alternatives that are appropriate in scale and type to the local context;
- the planning and the design of activity can be incorporated at an early stage with the EIA.

In some cases government, including competent authorities do not make information available to assessments and rather hold back on it to use later during the assessment and decision stage. This is an extremely wasteful and unfair practice that should be rooted out.

4.2 *The contribution of EIA to sustainable development as defined in NEMA*

Very few participants in the questionnaire indicated that the purpose of EIA is to ensure or promote sustainable development, as discussed in Chapter B of this report. Only one person recognized the sustainable development imperative imposed by the Constitution and NEMA. This is indicative of the general ignorance amongst both officials and practitioners in respect to the sustainable development purpose of EIA and while it may be at the back of our minds it is seldom reflected deliberately and comprehensively in EIA documents or decision documents, except by mentioning it in passing.

The biodiversity conservation imperative that is set by NEMA as a cornerstone of sustainable development is also usually not adequately reflected in EIA processes, especially in respect to how the local site specific issues impacts on the broader biodiversity context.

4.3 *The contribution of EIA to implement environmental policies, plans and guidelines*

Nationally, across the competent authorities, the consideration of policies, plans and guidelines in EIA documents submitted by applicant are not as effective as it should be. In only about 30% of cases evaluated is it considered and clearly indicates the policies, plans and guidelines that have been taken into account. In just less than 50% of the cases evaluated, there was some indication that policies, plans and guidelines have been taken into account to some extent but not explicitly, while in more than 20% of the cases evaluated it was considered poorly or not at all. The larger provinces of Gauteng, KwaZulu-Natal and Western Cape fared significantly better than the other provinces with severe under performance experienced in the Free State and North West . There may be several reasons for this but it must be noted that provinces such as Western Cape and Gauteng have developed significantly stronger policy and guideline bases over time than the rest of the provinces and that a culture of taking account of these policies have started to develop.

Nationally, across the competent authorities, consideration of policies, plans and guidelines in the making of decisions by the competent authorities is relatively good and more than 50% of decisions supported environmental policies, plans and guidelines, while a further 37% of decisions considered policies plans and guidelines. Only in 4% of the cases policies plans and guidelines were not considered.

The contribution that EIA makes to the success of implementing or promoting relevant policies plans and guidelines is however not so certain. In very few cases, approximately 3% EIA makes a very effective contribution, while in 33% of the case it can be regarded as effective. In more than 45% of the cases the contribution is unsure or marginal, which means it is very difficult or even impossible to detect from the files whether it has made any contribution. In about 14% of cases it is ineffective. DEAT (71%) and Gauteng (54%) performed the best in this regard. In the Free State, Mpumalanga, North West and the Eastern Cape more than 65% of the EIAs were considered marginal, unsure or not effective in implementing or promoting relevant policies plans and guidelines.

4.4 Consideration of case law

The case specific questionnaires that were completed by officials indicate that case law is rarely considered in making decisions. The sample size was however too small to make a definitive finding. This aspect should be explored further.

5. Unanticipated and incidental findings

5.1 Variances in quality of EIA reports

In a few instances it was found that the same companies produced different quality reports for different authorities, which seems to suggest that there are cases where the quality of EIA is determined by the quality accepted by the authority.

5.2 Geographic or spatial influences on the effectiveness and efficiency of EIA

Conducting and evaluating EIAs in remote parts of South Africa is often very difficult and complicated by seemingly simple problems such as inadequate road access, very long distances, lack of telecommunication infrastructure and even the lack of electricity. In such cases the performance norms normally applied is not realistic and should not be applied rigidly.

5.3 Best performing EAPs

Of the top ten best performing EAPs that were evaluated, almost all of them focused on niches and only did certain types of work where they know the legislation, policies, general context, etc.

6. International comparisons

6.1 Overview of the EIA process

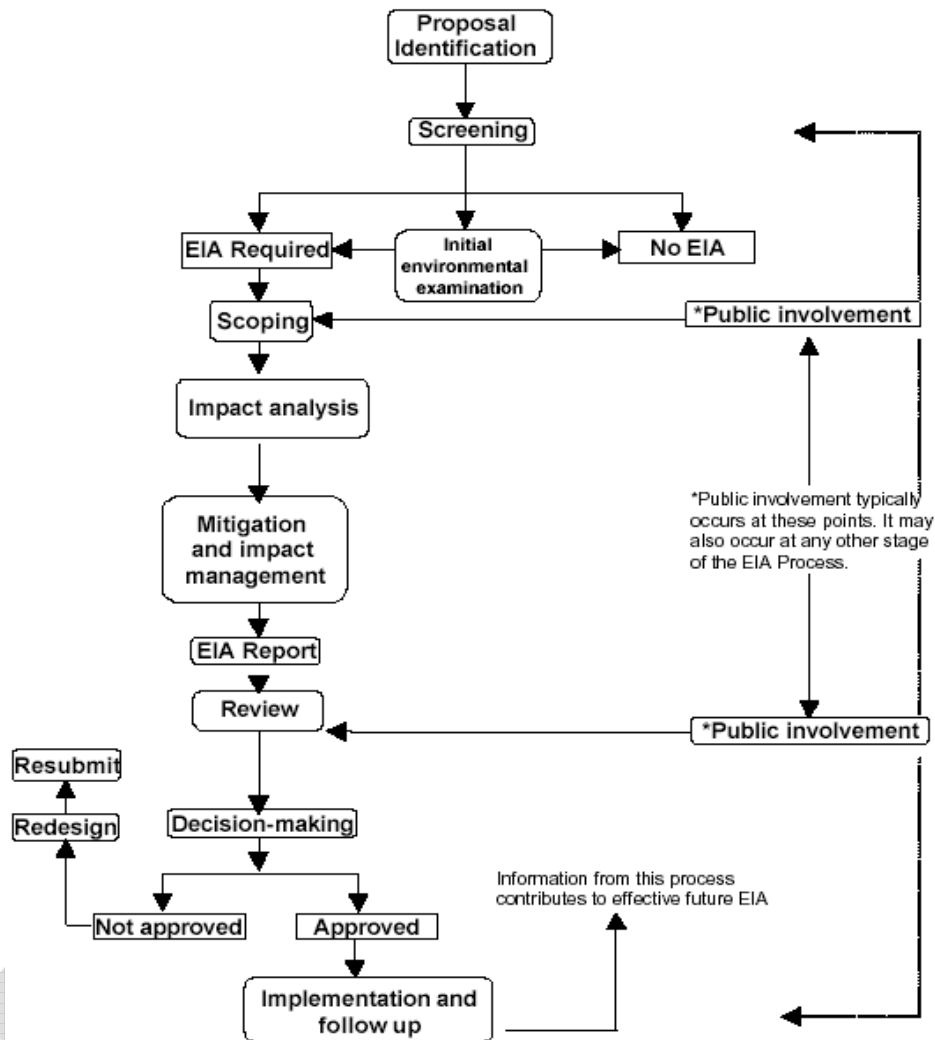
The stages of a typical EIA process will depend upon the requirements of the country or donor. However, most EIA processes conducted worldwide have a common structure and the application of the main stages is a basic standard of good practice.

The environmental impact assessment process generally consists of eight steps with each step equally important in determining the overall performance of the project. Typically, the EIA process begins with screening to ensure time and resources are directed at the proposals that matter environmentally, and ends with some form of follow up on the implementation of the decisions and actions taken as a result of an EIA report. The eight steps of the EIA process are presented in brief below:

- **Screening:** First stage of EIA, which determines whether the proposed project, requires an EIA and if it does, then the level of assessment required.
- **Scoping:** This stage identifies the key issues and impacts that should be further investigated. This stage also defines the boundary and time limit of the study.
- **Impact analysis:** This stage of EIA identifies and predicts the likely environmental and social impact of the proposed project and evaluates the significance.
- **Mitigation:** This step in EIA recommends the actions to reduce and avoid the potential adverse environmental consequences of development activities.
- **Reporting:** This stage presents the result of EIA in a form of a report to the decision-making body and other interested parties.
- **Review of EIA:** It examines the adequacy and effectiveness of the EIA report and provides the information necessary for decision-making.
- **Decision-making:** It decides whether the project is rejected, approved or needs further change.
- **Post monitoring:** This stage comes into play once the project is commissioned. It checks to ensure that the impacts of the project do not exceed the legal standards and implementation of the mitigation measures are in the manner as described in the EIA report.

The overview of the generalised EIA process is represented in figure C1.

Figure C1: Generalised EIA process



Source: The manual in perspective, EIA Training Resource Manual, United Nations Environment Programme, 2002.

6.2 Evolution of EIA

EIA is one of the successful policy innovations of the 20th Century for environmental impact management. Thirty-seven years ago, there was no EIA but today, it is a formal process in many countries and is currently practiced in more than 100 countries. EIA as a mandatory regulatory procedure originated in the early 1970s, with the implementation of the National Environment Policy Act (NEPA) 1969 in the US. A large part of the initial development took place in a

few high-income countries, like Canada, Australia, and New Zealand (1973-74). However, there were some developing countries as well, which introduced EIA relatively early - Columbia (1974), Philippines (1978). South Africa has a history of EIA application dating back to the 1970s. The EIA Committee of the Council of the Environment, set up in 1983, initiated research on EIA and published a document on integrated environmental management (IEM) (Council for the Environment 1989). The following decade of practical experience in applying IEM led to the publication of six IEM guideline documents. These documents, which are still widely used in South Africa, formed the basis of several hundred voluntary EIAs.

The EIA process really took off after the mid-1980s. In 1989, the World Bank adopted EIA for major development projects, in which a borrower country had to undertake an EIA under the Bank's supervision. EIA Regulations in South Africa were first promulgated in 1997, and have been subsequently revised. The current EIA Regulations were published in July 2006. South Africa is considered to be the most advanced country in the southern African region in terms of EIA (and SEA).

6.3 Comparative review of EIA procedures and practices in developed and developing countries as well as South Africa

The following table provides a comparative review of the procedures and practices utilized in the assessment of environmental impacts in developing countries around the world and those utilized in South Africa. The main aim of this comparison is to provide an understanding of how South Africa compares with other countries of a similar economic and social climate in the consideration of environmental issues when considering development.

Table C11: General comparison of South African EIA process with that in developed countries and in developing countries¹⁹

Developed countries	EIA in developing countries	EIA in South Africa
Well-framed EIA legislation in place. For instance, in Canada, Canadian Environmental Assessment Act	Lack of formal EIA legislation in many developing countries. For instance, EIA is not mandatory in many African	Formal legislation for EIA. Promulgated under the Environment Conservation Act in September 1997.

¹⁹ Adapted from http://www.cseindia.org/programme/industry/eia/introduction_eia.htm

REVIEW THE EFFECTIVENESS AND EFFICIENCY OF THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) SYSTEM IN SOUTH AFRICA : DRAFT REPORT 19 NOVEMBER 2008

Developed countries	EIA in developing countries	EIA in South Africa
regulates EIA while EU countries are guided by Directive on EIA (1985).	countries.	Revised legislation promulgated under the National Environmental Management Act (NEMA) in July 2006.
Active involvement of all participants including competent authority, government agencies and affected people at early stages of the EIA. This makes the process more robust and gives a fair idea of issues, which need to be addressed in the initial phase of EIA.	Limited involvement of public and government agencies in the initial phases. This often results in poor representation of the issues and impacts in the report, adversely affecting the quality of the report and the effectiveness of the process.	Requirement to involve all participants including competent authority, government agencies and affected people at early stages of the EIA. Mechanisms for and extent of involvement are however not well defined which results in considerable variation in processes.
Integrated approach to EIA followed. All aspects including environmental (biophysical), social and health taken into account.	Mainly environmental (biophysical) aspects considered. Poor on social or health aspects.	All aspects of the environment (including both biophysical and social criteria) are required to be assessed within the process.
Appropriate consideration of alternatives in EIA.	The consideration of alternatives is most often absent.	Consideration of reasonable and feasible alternatives is a basic requirement of the EIA process.
The process of screening is well-defined. For instance, in EU countries competent authorities decide whether an EIA is required for a project after seeking advice from the developer, NGOs and statutory consultees. In Japan, a screening decision is made by the authorising agency with respect to certain criteria. In Canada, the federal authority determines whether an environmental assessment is required or not.	In developing countries, the screening practice in EIA is weak. In most cases, there is a list of activities that require the undertaking of an EIA but without any threshold values.	Activities listed which require EIA processes (either Basic Assessment or full EIA depending on thresholds). Screening is lacking or absent.
Scoping process is comprehensive and involves consultation with all the stakeholders. In many countries like US, Netherlands, Canada and Europe, the involvement of the public and their concern are addressed in the scoping exercise. Besides this, funding organisations such as World Bank, ADB and ERDB have provision for consultation with the affected people and NGOs during identification of issues in scoping exercise.	Scoping process in most developing countries is very poorly defined. In many countries including China, Pakistan, etc. there is no provision for scoping. In some countries like in Nigeria and Indonesia, a terms of reference is followed for scoping while in other countries like Ghana, Taiwan and Chile, a general checklist is followed. In many countries where it is undertaken, there is no public consultation during scoping. Moreover, in most developing countries, scoping is often directed towards meeting pollution control requirements, rather than addressing the full	Scoping is required to identify issues and potentially significant impacts which must be assessed in more detail in the EIA phase. Consultation with authorities and affected parties is a requirement of the legislation.

REVIEW THE EFFECTIVENESS AND EFFICIENCY OF THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) SYSTEM IN SOUTH AFRICA : DRAFT REPORT 19 NOVEMBER 2008

Developed countries	EIA in developing countries	EIA in South Africa
	range of potential environmental impacts from a proposed development.	
Most reports in local language.	Most reports in English and not in the local language.	Most reports in English and not in the local language. In some case, executive summary is translated into local language.
A multi-disciplinary approach. Involvement of experts with expertise in a variety of disciplines.	Lack of trained EIA professionals often leads to the preparation of inadequate and irrelevant EIA reports in developing countries.	Preparation of EIA is done by EAPs with various skills levels. The selection criterion for the organisation is often fees/cost based rather than the on the expertise of EIA team.
Two tiers of EIA review: One done before decision-making and the second conducted after the completion of the EIA to check the adequacy and effectiveness of the EIA.	Poor review or monitoring by decision-making authorities.	Decisions on EIAs are undertaken by the national or provincial department of environmental affairs. Resource constraints are evident in many of these departments and result in extended periods for authorisation.
Expertise in EIA: The International Association for Impact Assessment (AIA) and other organisations demonstrate that there are a large number of individuals with the capability to design, conduct, review and evaluate EIAs from countries of the North. The major portion of teaching about environmental assessment also takes place in industrial countries.	The expertise in EIA is slowly developing. In most cases, students from the developing countries go to the developed countries to gain knowledge of the subject.	Expertise in this area has developed since the introduction of the EIA Regulations in 1997. There is no official professional body to which EIA practitioners are required to be registered and therefore there is no basic requirement for environmental consultants in terms of qualifications, etc. Professional bodies to which practitioners can subscribe include IAIA, the South African Council for Natural Scientists, etc.

From the above, it is clear that South Africa is more advanced than many developed countries in terms of the consideration of all aspects of the environment (both biophysical and social aspects) as part of development proposals. It is therefore concluded that the South African EIA system appears to be ahead of those used by other developing countries throughout the world.

6.4 Comparison of South African EIA process with that of other countries

The following series of tables provides a summary of the legal and administrative procedures of EIAs in South Africa as well as in various developing and developed countries, as well as an analysis of the key successes and challenges of the various processes reviewed. Where the information was available, reference is made to other tools which are or can be utilized in the assessment of environmental impacts as part of development proposals, as well as to measure which can be implemented to improve EIA effectiveness in the various countries.

Table C12: EIA process in South Africa

<p>Legal and administrative procedures of the EIA process</p>	<ul style="list-style-type: none"> • EIA Regulations in terms of Chapter 5 of the National Environmental Management Act, 1998. • Department of Environmental Affairs and Tourism (DEAT) administers EIA nationally; the nine provinces have their own structures which do most of the reviews & compliance monitoring. • The DEAT, being the lead agent for environmental management, is responsible for: <ul style="list-style-type: none"> • developing and enforcing compliance with environmental policy; • developing and implementing an integrated and holistic environmental management system; • coordinating and supervising environmental functions in all spheres of government; and • developing and enforcing an integrated and comprehensive regulatory system. • Key elements of the EIA process: <ul style="list-style-type: none"> • Basic Environmental Assessment (for activities listed in Listing Notice 1), whereby impacts are assessed within a single phased approach including the identification and assessment of direct, indirect and cumulative impacts associated with identified project alternatives OR • Scoping and Environmental Assessment (for activities listed in Listing Notice 2), whereby impacts are assessed within a two-phased approach including the identification (scoping phase) and assessment (EIA phase) of direct, indirect and cumulative impacts associated with identified project alternatives. This process requires the compilation of a draft Environmental Management Plan (EMP) as part of the process. • Review of BA process by regulating authorities at the end of the process. • Review of the EIA process by regulating authorities at the end of the scoping phase (which includes a plan for EIA), and again at the end of the EIA phase. • Provision for appeal of decision on proposed development to the Minister or MEC. • Mining activities are assessed in terms of the Minerals and Petroleum Resources Development Act (MPRDA).
<p>Key successes of the EIA process</p>	<ul style="list-style-type: none"> • Good framework conditions exist, such as Constitutional clauses and a functional democracy.

	<ul style="list-style-type: none"> • Despite many deficiencies in the process and in administrative capacity, EIA has made positive contributions to environmental management in South Africa.
Key challenges of the EIA process	<ul style="list-style-type: none"> • Reconciling the different processes and requirements for EIA under the National Environmental Management Act and the MPRDA. • Inappropriate engagement with poor, disadvantaged and rural communities. For example, stakeholder engagement processes are normally very Eurocentric (i.e. public meetings). • Scoping is too detailed and should not contain any assessment. It should be limited to capturing issues of concern, which then form the basis for environmental assessment. • The scientific and technical language used in EIAs is not comprehensible to the public. • EIAs relating to the expansion of an existing industrial operation, for example, focus on the potential impacts of the expansion alone, and seldom take into account existing environmental impacts. • The developmental and social needs of the majority of South Africans will in certain cases take priority over purely biophysical issues. • There are no transparent and rigorous criteria or frameworks for decision-making in EIAs. • Most provinces do not undertake post-EIA monitoring and auditing to ensure adherence to the conditions under which a development proposal was approved. • No provision in the legislation and no initiatives to monitor, collect, record and review the implementation of EIAs in South Africa. • No systematic processes at national and provincial government level to record, collect, document and review the performance of EIA administration and practice.
Other tools for assessment	<ul style="list-style-type: none"> • SEA undertaken to a limited extent (e.g. SEA of the proposed Industrial Development Zone at Coega, SEA of the East London Industrial Development Zone). • In 2000, published the only guidelines for SEA in the region. Provides a comprehensive outline of the key elements of an SEA process.
Measures to improve EIA effectiveness	<ul style="list-style-type: none"> • EIA should be strongly linked with, and integrated into, environmental management systems. • Post-implementation monitoring and auditing should be enforced. • For EIA to be credible and play a meaningful role, the capacity of the implementing authorities – in terms of both numbers and skills – needs to be improved. • Compile central database of baseline information accessible to all decision-making authorities, practitioners and developers. • Produce resource materials that are useful to EIA (e.g. atlas, profiles, biodiversity country study, state of the environment reports). • Implement post-authorisation monitoring of the implementation of the conditions of the authorisation.

Table C13: EIA process in Botswana

Legal and administrative procedures of the EIA process	<ul style="list-style-type: none"> • Environmental Impact Assessment Act No. 6 of 2005. Provides for the Environmental Impact Assessments to be used to assess the potential effects of planned developmental activities; to determine and to provide mitigation measures for effects of such activities as may have a significant adverse impact on the environment; to put in place a monitoring process and evaluation of the environmental impacts of implemented activities; and to provide for matters incidental to the foregoing.
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REVIEW THE EFFECTIVENESS AND EFFICIENCY OF THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) SYSTEM IN SOUTH AFRICA : DRAFT REPORT 19 NOVEMBER 2008

	<ul style="list-style-type: none"> • Administered by the National Conservation Strategy Agency. • Key elements of the EIA process: <ul style="list-style-type: none"> • A process commonly referred to as screening whereby lists of projects, programmes, policies or activities subject to an assessment or lists of environmental sensitive areas are drawn up; the threshold is determined or criteria set up to guide determinations of the significant effects on the environment; • a process known as scoping whereby the experts and interested parties such as decision-makers or local people are consulted to canvass their views on the proposed development in order to determine the important issues to be addressed in the assessment; • the impact assessment which includes evaluation of cumulative, long term, indirect and trans-boundary environmental impact of a project, programme or policy, possible alternative actions and measures to minimize the potential adverse effects; • periodic reviews to measure compliance with the conditions of an authorisation and assessment of the adequacy of prescribed mitigation measures; and • environmental impact assessment preparation lies with the proponent of the project, programme, policy or activity.
Key successes of the EIA process	<ul style="list-style-type: none"> • Major success has been in undertaking EIAs without legislation up to 2006, and in the absence of strong external pressure. This is because most of the funding for projects is provided by the Government. • Considerable success has also been achieved in training, but this needs to be supported further. • EIAs have had some impact on final project decisions. For example, they influenced the siting of dams in the case of the Letsibogo and Bokaas projects.
Key challenges of the EIA process	<ul style="list-style-type: none"> • EIA significantly increases the cost of projects. • In the past, external consultants or institutions often prepared EIAs in Botswana, sometimes with the assistance of local consultants. • No developed guidelines for a review process. • In some instances, the same consultant did both the engineering work and EIA study. • EIA does not always deal with issues such as who will benefit from local development opportunities and how. • Early EIAs rarely resulted in the preparation of an explicit environmental management plan (EMP) and this was a major deficiency from a procedural point of view because it did not allow easy monitoring.
Other tools for assessment	<ul style="list-style-type: none"> • No evidence of other tools used.
Measures to improve EIA effectiveness	<ul style="list-style-type: none"> • EIA practice in Botswana could be improved by: <ul style="list-style-type: none"> • Giving greater prominence to gender issues in EIA because projects' impacts often have gender disparities. • Ensuring the impartiality of EIA reviewers. In a small community such as Botswana this is a great challenge. • Ongoing education on EIA for all stakeholders, especially in the context of the recent legislation. This would assist its smooth implementation and remove the prevalent perception that legislation is always punitive. • Making EIA reports more widely available to demonstrate transparency and help EIA practice to evolve. • Developing capacity within the National Conservation Strategy Agency so that it can cope with the requirements of

	<p>the envisaged legislation.</p> <ul style="list-style-type: none"> In order to ensure that local people benefit and not outsiders, as sometimes happens, it may be necessary to develop, in conjunction with an EIA, a local development plan with active participation of the local people.
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Table C14: EIA process in Namibia

<p>Legal and administrative procedures of the EIA process</p>	<ul style="list-style-type: none"> Environmental Assessment Policy, 1995. Broad consensus on the need for EAs in Namibia. The EA policy stresses the need for the assessment of individual projects, programmes and policies. Environment Management Act, gazetted on December 27 2007. Administered by EIA Unit, Directorate of Environmental Affairs, Ministry of Environment and Tourism. Provides for assessment and control of activities which may have significant effects on the environment. In terms of this Act, a person may not undertake a listed activity, unless the person is a holder of an environmental clearance certificate in relation to that activity. Makes provision for a fine and/or imprisonment if a person fails to comply with this requirement. Key elements of the EIA process: <ul style="list-style-type: none"> Application for environmental clearance certificate. The Commissioner of the environment will then determine whether the proposed activity requires an assessment. If assessment is not required, the Commissioner can either accept the application and issue a clearance certificate, or refuse the application. If assessment is required, the Commissioner will determine the scope of the assessment and the methods and procedures for conducting the assessment. Commissioner provides the developer with his/her comments, together with a summary of comments received from the public. Provision for appeal of decision on proposed development to the Minister. In addition to the Environment Management Act, the Minerals (Prospecting and Mining) Act, 1992 (No. 33 of 1992) and the Petroleum (Exploration and Production) Act, 1991 (No. 3 of 1991) both require proponents to conduct EIAs for mining activities.
<p>Key successes of the EIA process</p>	<ul style="list-style-type: none"> Good framework conditions exist, such as Constitutional clauses, the Office of the Ombudsman, and a functional democracy. Large infrastructure projects, which usually require foreign funding, have generally been preceded by an EIA. This has been at the insistence of the lending agencies rather than by a desire to do so on the part of the ministry responsible. The government-owned power utility (NamPower), has, partly of its own accord, commissioned extensive EIAs for its major projects since 1999. The Environment Management Act has some very progressive components and ensures that the public have a key role in EIA. The Act was drafted following a consultative, home-grown process that has resulted in considerable local ownership. A fast-track EIA system is in place to deal with smaller projects (i.e. system is flexible). There is a systematic and transparent EIA review system (checklist template). Experience of the application of EIA has so far been good. This has improved awareness and attitudes. A number of well-qualified and experienced local consultants are available and can do most of the EIAs. Thus, there is minimal

REVIEW THE EFFECTIVENESS AND EFFICIENCY OF THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) SYSTEM IN SOUTH AFRICA : DRAFT REPORT 19 NOVEMBER 2008

	<p>importation of foreign experts. As a result, the quality of EIAs done in Namibia to date is regarded as high.</p> <ul style="list-style-type: none"> • Despite inadequate baseline data, a number of resource materials that are useful to EIA continue to be produced (e.g. atlas, profiles, biodiversity country study, state of the environment reports). • Has some very good local non-governmental organisations (NGOs) who have expertise in EIA and who are willing to become involved in local issues. • There is reasonably good multi-sectoral cooperation within Government, and between Government and others
Key challenges of the EIA process	<ul style="list-style-type: none"> • Many mining EIAs were post facto, having been conducted a number of years after the mine was established. • The Environment Management Act took over 12 years to be enacted. • The Environmental Assessment Policy and EIA legislation are not accessible to the general public and need to be popularized. • Inconsistencies across sectoral legislation still exist, with some laws contradicting each other in terms of EIA. • There are not enough safeguards for rehabilitation (e.g. a fund). • Falls short of establishing an all-powerful EIA agency (where the Minister would have the power to veto the implementation of a project). • The paucity of even post facto EIAs in the agricultural sector is surprising, considering the fact that most of the country is placed under some form of agriculture. • The Ministry for Environment and Tourism (MET) is very weak, and the EIA Unit depends on one or two people. Its functioning is, thus, very vulnerable to staff turnover. • Too much jurisdictional overlap and sectoral rivalry exist, although these are gradually diminishing. • EIA is selectively applied, being strict and highly sophisticated in some cases (e.g. oil and gas exploration), but ignored in others, especially those projects initiated by influential people (e.g. politicians). • Not enough use has been made of strategic environmental assessment, even though it is well known that project-level EIA (though good) does not generally address issues such as cumulative impacts. • Post implementation monitoring is weak, resulting in the EIA usually being regarded as a 'paper exercise': conducted primarily to satisfy an administrative or legal requirement.
Other tools for assessment	<ul style="list-style-type: none"> • Strategic level assessment of policies, plans, programmes and proposed new legislation from within Government, and usually from a ministry that is a member of the Sustainable Development Commission (SDC). • Very few SEAs • 'Fast-track' EIA in 1998 initiated to assist formerly disadvantaged people in gaining access to the mining industry, which has traditionally been dominated by multinationals. Under the system, Government waived its requirement for a full EIA, relying instead on the completion of a comprehensive environmental questionnaire that led to the setting of environmental conditions. The system was initially applied only to small-scale diamond prospecting along the Orange River, but has since been expanded to other projects including dimension stone. Once a 'small-scale' activity becomes large-scale, the more comprehensive EIA system is followed. Fast-track EIA has shown itself to have considerable potential in Namibia.
Measures to improve EIA effectiveness	<ul style="list-style-type: none"> • Need to harness limited skills base more effectively, and broaden this through ongoing capacity-building and efforts to raise

	awareness of EIA.
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Table C15: EIA process in India

<p>Legal and administrative procedures of the EIA process</p>	<ul style="list-style-type: none"> • Environmental (Protection) Act, 1986, promulgated an EIA notification making Environmental Clearance (EC) mandatory for expansion or modernization of any activity or for setting up new projects listed in Schedule 1 of the notification. • There have been 12 amendments made in the EIA notification of 1994. • Administered by Union Ministry of Environment and Forests (MEF) • Donor agencies operating in India like the World Bank and the ADB have a different set of requirements for giving environmental clearance to projects that are funded by them. • The MEF recently published new EIA legislation in September 2006. The notification makes it mandatory for various projects such as mining, thermal power plants, river valley, infrastructure (road, highway, ports, harbours and airports) and industries including very small electroplating or foundry units to get environment clearance. However, unlike the EIA Notification of 1994, the new legislation has put the onus of clearing projects on the state government depending on the size/capacity of the project. • Key elements of the EIA process: <ul style="list-style-type: none"> • Screening on the basis of a defined list. Determination of whether project will be cleared by the state government or the central government on the basis of threshold values. • Scoping by expert committee based on the information provided by the proponent. • EIA prepared by consultants
<p>Key successes of the EIA process</p>	<ul style="list-style-type: none"> • Screening done on the basis of a defined list. Threshold values on the size of the project used to decide whether the project will be cleared by the state government or the central government.
<p>Key challenges of the EIA process</p>	<ul style="list-style-type: none"> • Limited involvement of public and government agencies in the initial phases of the process. • No provision in place to cover landscape and visual impacts in the EIA regulations. • Consultation with public is optional and depends on the discretion of the expert committee. • Most reports in English and not in the local language. In some case, executive summary is translated into local language. • Selection criterion for the consultant organisation is fees/cost rather than the expertise of EIA team. • EIA review and monitoring is poor. The review agency called Impact Assessment Agency (IAA) lacks inter-disciplinary capacity. No representation of NGOs in IAA, which is a violation of the EIA notification. • The lack of timely availability of reliable and authentic environmental data has been a major bottle-neck in achieving the full benefits of EIA. There is no one agency that tracks data available amongst the various agencies and makes it available on one place in the form and manner required by environmental practitioners. This affects the time and efforts required in conducting EIAs by practitioners and also timely environmental clearances by the regulators.
<p>Other tools for assessment</p>	<ul style="list-style-type: none"> • Limited use of SEA
<p>Measures to improve EIA effectiveness</p>	<ul style="list-style-type: none"> • Central database of information available to regulators, practitioners and developers.

Table C16: EIA process in Armenia

<p>Legal and administrative procedures of the EIA process</p>	<ul style="list-style-type: none"> • Law on Environmental Impact Expertise (adopted in 1995), along with relevant laws and normative documents, created a basis for the introduction of a system of assessment of the potential impact of a proposed activity on the environment and human health. • The Law stipulates public involvement at all stages • The Law specifies the list of types of activities which are subject to environmental assessment. Establishment of the limit of indices for specified types of activities for conducting EAs is the prerogative of the Government. • Administered by the Minister of Nature Protection. • Key elements of the EIA process: <ul style="list-style-type: none"> • Submission of preliminary documentation on the proposed activity to the authorised state body (screening). After review of the information, the state body takes a decision on the need for an EIA. • EIA (known as Environmental Impact Expertise (EIE) in terms of a standard procedure. • Decision-making • A main component of the EIA system here, as in other CIS states is ecological expertise or environmental impact expertise (EIE). • The Law on Environmental Impact Expertise, along with the relevant laws and normative documents, created a basis for introduction of a system of assessment of the potential impact of the proposed activity on the environment and human health. The Law and relevant regulation defines the administrative part of the process, giving authority to the state body and its functions and general provisions on the EIE procedure. • The Law includes many other aspects of the environment, regulating various fields of the environmental activity e.g. Forest Code, the Land Code, the Water Code, laws on protection of atmosphere air, flora and fauna, urbanization, sanitary, etc. There has been much change to the administrative and criminal codes to ensure implementation of the requirements of the EIE legislation.
<p>Key successes of the EIA process</p>	<ul style="list-style-type: none"> • State Environmental Inspection at the Ministry of Nature Protection controls and takes measures for enforcement of the requirements of the legislation related to environmental protection.
<p>Key challenges of the EIA process</p>	<ul style="list-style-type: none"> • Due to a number of factors (e.g. the ambiguity of many provisions, lack of control mechanisms over activity of state bodies during examination of the project and in the process of decision-making) the provision for public participation in the Law may be hindered. • Low effectiveness relates to a number of possibilities relating to external factors, namely: incompetence of many employees of the state sector, high level of corruption, low living standards of the population, economic conditions, poor public participation from the side of the public, etc. that is common for the countries in transition. Some internal factors are described as the lack of /unclear EIE procedures, poor screening process, no scoping process, low activity of public participation, low level of documentation submitted for EIE, frequent delays in submission and decisions, low level of control over stages of implementation of proposed activity, low efficiency of the applied administrative measures, etc. • Consideration of alternatives is limited to large-scale facilities. • Scoping only partially implemented. • Law on Environmental Impact Expertise does not contain specific articles, provisions and procedures, including those related to the objective, activities, principles, subjects, frameworks of EIA and

	content of its reports.
Other tools for assessment	<ul style="list-style-type: none"> • None stated.
Measures to improve EIA effectiveness	<ul style="list-style-type: none"> • The procedure for conducting of public participation in the Law thus needs to be elaborated. • There should be clearly defined responsibilities of all the participants of the EIE process, exclusion of duplication of functions of state bodies, training of qualifies personnel both in governmental bodies and consulting firms involved in the development of EIA can be another important step toward raising the effectiveness of EIE.

Table C17: EIA process in Georgia

Legal and administrative procedures of the EIA process	<ul style="list-style-type: none"> • Constitution sets the basic rights and priorities in the field of environmental protection. • Law of Georgia on Environmental Permit, introduced in October 1996. • The EIA process based on various principles published in the Regulation on EIA. • EIA is applicable to activities listed in the Law of Georgia on Environmental Permit. • The EIA process consists of various stages from screening and scoping and ends in decision-making and monitoring. • Key elements of the EIA process: <ul style="list-style-type: none"> • Screening on the basis of four screening categories in order to determine the subsequent studies required. • Assessment – environmental studies, including the collection of information and the identification and assessment of impacts on all aspects of the environment. • Mitigation and impact management, which includes the identification and assessment of all risks, as well as opportunities for the reduction of environmental impacts. • Reporting • Reviewing by the State Ecological Expertise following the submission of an application by the project proponent. • Decision-making and environmental clearance. • Public participation in the EIA process is regulated by the law on Environmental Permit and Regulation on EIA.
Key successes of the EIA process	<ul style="list-style-type: none"> • Requirement on carrying out EIA for plans and programs stipulated by the La on Environmental Permits can be considered as an attempt to introduce the principles of SEA. The willingness of the Georgian Government to introduce the principles of SEA more sturdily into EIA practice in Georgia is noticeable.
Key challenges of the EIA process	<ul style="list-style-type: none"> • The law and the regulations are too generic and do not provide proper consultation with the affected communities and/or general public neither at the stage of EIA report preparation nor the decision-making process. • The right of the public on access to the environmental information is guaranteed by the Constitution of Georgia as well as the General Administrative Code of Georgia. Public participation is however limited due to the fact that the Law and Regulations are too generic and do not provide proper consultation with the affected communities and/or the general public neither at the stage of EIA report nor the decision making process. The consultation with potentially affected communities, general public or the state authorities other than MoE is neither considered by law nor practiced. • Absence of legal obligation to go through the scoping stage. • Often the people at the different stages of EIA lack the adequate knowledge and experience in EIA. This affects the quality of

	<p>report and the quality of review. Those participating in the review of reports lack the awareness of the purpose of EIA and its procedures.</p> <ul style="list-style-type: none"> • There is a certain ambiguity in the legislation regarding EIA permits. The Law on Environment Permit does not provide any explanation as to what clearance documents must be obtained or which should be issued before commencement of activities. There is no particular agency where complete information on all required clearance documents can be obtained. • In some instances, the same activity falls under different categories, or the types of activities are not clearly formulated, therefore leaving room for subjective use of judgement. • The effectiveness of the EIA system is significantly influenced by socio-economic and political conditions. Thus environmental protection enjoys only a formal support from the State and is regarded as the least priority. Environmental considerations are often set back in the decision making process, especially when the interest of individual in leadership positions are involved. • In many cases preparation of EIA reports starts when project design is already completed or when construction is already underway. • Little attention is paid to technology alternatives. Therefore, lack of information on modern technologies affects not only the quality of EIA reports, but also the EIA review process. • Legislation stipulates that there could be exemption from EIA. However, it does not specify how the environmental permit would be issued in such a case. • A major deficiency is the inability of administration to ensure effective post-decision monitoring and control due to the lack of structure Law that defines this process. The possibility of the conditions in the permits being bypassed is high due there being no clear mechanisms for monitoring and control.
<p>Other tools for assessment</p>	<ul style="list-style-type: none"> • Limited use of SEA.
<p>Measures to improve EIA effectiveness</p>	<ul style="list-style-type: none"> • The Law on Environmental Permit must be supplemented such that it is as detailed as possible in terms of defining procedures, roles and responsibilities of those involved in EIA processes. • The law could also serve as a framework for both EIA and SEA. • Define clear screening criteria and a clearly defined list of activities. • Scoping requirements should be introduced and well-shaped in the law. Wide-scale consultation at the scoping phase could reduce the likelihood of serious deficiencies of EIA reports and could help represent potential areas of conflict with the stakeholders. • Clearly indicate pre-conditions for exemption from EIA and the detailed procedures of taking such decisions. Requirements for public participation in such instances should also be indicated. • Introduce detailed rules of public participation at the different stages of the EIA process.

Table C18: EIA process in Australia

<p>Legal and administrative procedures of the EIA process</p>	<ul style="list-style-type: none"> • Environment Protection and Biodiversity Conservation Act Australian Government's • central piece of environmental legislation. • Planning Act 1982 later replaced by the South Australian Development Act 1993. • EIA used as a planning tool rather than an environmental management tool. • Environmental Protection Authority established by Parliament as
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	<p>an independent Authority with the broad objective of protecting the State's environment. This is undertaken through the process of providing overarching environmental advice to the Australian Government Minister for the Environment, Heritage and the Arts (the Minister) through the preparation of environmental protection policies and the assessment of development proposals and management plans, as well as providing public statements about matters of environmental importance.</p> <ul style="list-style-type: none"> • EIA is applicable to an action that has, will have or is likely to have a significant impact on any of the matters of environmental significance. Determined through consideration of the following: <ul style="list-style-type: none"> • Is the proposed action likely to have a significant impact on a matter of national environmental significance? • Is the proposed action likely to have a significant impact on the environment in general (for actions by Commonwealth agencies or actions on Commonwealth land) or the environment on Commonwealth land (for actions outside Commonwealth land)? • Allows for Minister to grant exemption under certain circumstances. • There are five different levels of assessment, depending on the significance of the project and how much information is already available. Each level involves considering technical information assembled by the proponent and comments made by the public. • Key elements of the EIA process: <ul style="list-style-type: none"> • Determine if an activity requires an EA • Person proposing to take the action makes a referral to the Australian Government Minister for the Environment and Water Resources via the Department of the Environment and Water Resources. • Minister makes a decision on whether approval is required under the EPBC Act and on process of assessment. • If the proposed activity is a controlled action, the action is subject to the assessment and approval process under the EPBC Act. • It is then determined whether the action can be assessed using: <ol style="list-style-type: none"> 1. A State/Territory assessment process accredited under a bilateral agreement? Bilateral agreements currently exist with Queensland, Western Australia, Tasmania, New South Wales and the Northern Territory. 2. An Australian Government assessment process accredited under a Ministerial declaration? There are currently no Ministerial declarations for Australian Government processes • This determines the process to be followed.
<p>Key successes of the EIA process</p>	<ul style="list-style-type: none"> • Intergovernmental Agreement on the Environment (IGAE, 1992) set out a schedule for EIA, recognizing and acknowledging the need for national participation in all facets of EIA and accepting the role of EIA in post-development environmental monitoring and management. This agreement forms a basis for EIA to become one of the most important and useful tools for environmental management in Australia. • The Australian Government has bilateral agreements with some State and Territory governments to accredit environment assessment processes that meet set standards. If an EPBC Act approval is needed, in addition to State or Territory government approval, it may be possible to undertake a single assessment process, avoiding duplication.

Key challenges of the EIA process	<ul style="list-style-type: none"> Monitoring and auditing remain the weakest areas in the Australian EIA system. Monitoring and auditing programmes are not strictly considered within most of the EIA processes in Australia but are rather requirements of the planning approval of projects.
Other tools for assessment	<ul style="list-style-type: none"> The Minister may agree to conduct a strategic assessment of actions that may be carried out under a proposed policy, program or plan. Strategic assessments Fisheries assessments
Measures to improve EIA effectiveness	<ul style="list-style-type: none"> Need to implement monitoring and auditing

EIA has not yet fulfilled its potential as a key tool in the promotion of sustainable development in southern Africa. The main reasons for this are the following:

- EIA is seldom used strategically and continues to be implemented in a highly variable way. Most laws are sectoral, there is inadequate cohesiveness between them and the structures in place to administer the implementation of EIA are often not effective.
- The sectors traditionally exposed to EIA are industries that are either resource-extractive (e.g. mining, oil and gas) or developments that are highly visible and require the construction of major infrastructure. Important sectors such as agriculture, fisheries and tourism receive very little attention in terms of EIA.
- There is the widespread impression that EIA is an obstructive process that prevents development and keeps people in poverty rather than one that promotes sustainable development and ensures that future generations will enjoy resource security and a good quality of life.
- The EIA process is often undermined by aspects of poor governance such as insufficient opportunities for public participation, limited access to information, inadequate freedom of speech and, in some cases, corruption.
- Representation at government multi-sectoral fora is often low-level and the committees seldom achieve strategic results. Most EIA units have neither the skilled staff nor the resources to fulfill their mandate. They are usually located in environment or nature conservation ministries, which generally have low political status and are often ignored by more powerful sectors such as agriculture, mining, water, trade and infrastructure. Moreover, there are

often conflicts of interest as, in many countries, the environment ministry includes other sectors such as tourism, agriculture, fisheries, water and even mining. Thus, the parent ministry itself is often the proponent, the policeman and the judge.

South Africa differs in this regard however as the EIA system which is implemented is:

- Implemented in terms of a published set of Regulations which stipulates the process to be followed for different development activities, as well as the responsibilities of the various players involved in the process, including structures required to administer the implementation of EIA.
- A wide range of activities are covered by the EIA Regulations. These relate to those activities which could detrimentally impact on the environment and not specific sectors (e.g. mining, oil and gas) or developments that are highly visible.
- The EIA process and NEMA promote adequate opportunities for public participation and access to information.
- The EIA Regulations require the involvement of all sectors of government (being the relevant Organs of State for a particular development project in question). This promotes representation at government multi-sectoral fora to achieve strategic, integrated results.

Regular monitoring and auditing is necessary to ensure that developers implement the agreed-upon mitigation measures that result from EIAs and to assess the effectiveness of these measures. Diversifying EIA to include strategic (including regional), cumulative, trans-boundary, and 'fast-track' environmental assessment would ensure that it improves strategic planning, project implementation and the growth of Africa's small-scale and informal sectors.

Monitoring and auditing plays a vital role in making EIA an effective environmental management tool. Environmental impact monitoring and impact auditing are two vital activities, which must be performed in order to assess an EIA's effectiveness at achieving environmental protection.

7. Other instruments

The following instruments have been identified as potential instruments that can be used to strengthen or build on EIM in South Africa:

- Environmental Impact Assessment (EIA):
 - Traditional EIA;
 - Basic Assessment; and
 - Activity/environment screening checklists;
- Strategic Environmental Assessment (SEA), which entails the systematic analysis of the environmental effects of development policies, plans, programmes and other proposed strategic actions and with the specific potential to serve as the process to be followed in establishing SSSEPs (mentioned below);
- Cost Benefit Analysis (CBA), including Environmental Cost Benefit Analysis (ECBA), which is appropriate to use as part of the EIA or SEA process where different types of activities compete for the same environmental resources;
- Cost Efficiency Analysis (CEA), which is an instrument especially suited to evaluate the efficiency of different approaches or methods to achieve the same objective in respect to an activity;
- Environmental Management Framework (EMF), as provided for in the EIA Regulations with the main purpose of establishing detailed local frameworks in order to set contexts in local areas, based on local priorities and issues, that are under pressure from development;
- Identified Geographical Areas and Specified Activities (IGASA), also referred to as “environment/activity matrixes”, as provided for in sections 24(2)(b) and (c) of NEMA which has the purpose of focusing effort on sensitive environments and to eliminate unnecessary assessments in areas that are not sensitive;
- Environmental Management Programme (EMP) with the purpose to manage identified impacts with the potential to also be used more extensively for

smaller activities in areas where the context and environmental sensitivity is well defined;

- Sector Specific Strategic Environmental Plan (SSSEP) which is a proposed new instrument to be developed, using SEA, by specific sectors to integrate the environmental aspects that affect that sector into a comprehensive plan that can provide a context for the evaluation of specific activities, especially strategic activities, in case specific EIAs;
- Risk Assessment (RA) which have the specific potential for evaluation of activities in non sensitive areas but where the activity has inherent risk to the environment in general;
- Spatial Development Framework (SDF), at various levels of detail which has the potential to become the main spatial development, including conservation, instrument;
- Standards:
 - Code of Practice, also referred to as “norms” (based on normative criteria), according to which certain activities have to be performed in order to avoid or minimize environmental impacts; and
 - Product Standard (based on quantifiable quality criteria) which must be met, especially in respect to the results that occur in terms of what is being produced by the activity.
- Policy Guidelines which may include:
 - Spatial Sensitivity Classification (for a specific type of activity);
 - Spatial Sensitivity Classification (in general);
 - Spatial Environmental Control Zoning;
 - Bioregional Assessment and Plan;
 - Air Quality Management Plan;
 - Development Guidelines/Policies;
 - Etc.

The current use of EIA is determined by lists of activities. The introduction of other instruments will necessitate a re-think as the effective use of most of the instruments will depend on a number of factors including:

- The nature and type of activities;
- the sensitivity of the environment; and
- the spatial and policy context of the areas in which the activities occur and the policy context of the activity itself.

The key to using the various instruments effectively is to use them in combination and in support of each other in a logical manner that is based on the strengths of each instrument as indicated. This should be informed by the objectives to be set for an environmental impact management system through the development of the strategy and action plan.

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Chapter D: Recommendations

1. Requirements to ensure sustainable development

While sustainable development may be achieved in an ad hoc way in a significant number of cases subjected to EIA, the lack of focus on sustainable development in the EIA process has to be changed. Where the nature of EIA limits its ability to address sustainability issues, it must in a comprehensive EIM system be complimented by instruments that are more appropriate for this purpose. It is recommended that this focus be strengthened by:

- A stronger emphasis on indirect and cumulative impacts in Environmental Impact Management. Whilst case specific EIAs should improve in their attention to these considerations, it is important that the context is set through strategic instruments such as environmental management frameworks, SEAs, policies, etc.;
- a focus on informing policies, programmes and plans for the areas within which EIAs are undertaken; and
- a stronger emphasis on the elements that underpins sustainable development as contained in the principles of NEMA.

2. Strategic approach

At the moment activities for which EIAs are being undertaken are more or less regarded on the same level. Nuclear power stations for example follow the same process as small housing developments irrespective of their relative strategic importance to the country. In order to establish a better perspective of relative strategic importance of projects and environmental aspects it is recommended that:

- Activities be categorised in terms of their strategic importance (including the inevitability of certain projects in terms of providing the infrastructure needs in South Africa);
- environments be categorised through the extensive use of the identification of geographical areas in terms of sections 24(2)(a) and (b)

of NEMA and the formulation of EMFs in local areas that are under specific and severe pressure of development;

- specific appropriate approaches be developed for specific circumstances to ensure effective and efficient environmental impact management (e.g. tailor made BA proforma reports for certain types of activities or in certain types of environments that does not require unnecessary information/assessment);
- the formulation of specific policies, targets or thresholds for specified development activities in certain areas that are sensitive to the specific activities; and
- setting institutional requirements to ensure that strategic approaches are implemented in the most efficient manner by officials.

3. Package of instruments

The improvement of the effectiveness and efficiency of case specific EIAs will largely depend on the ability of government to create the context within which the EIAs are undertaken and evaluated. This obligation goes much further than the competent authorities and should focus on the mainstreaming of environmental objectives and targets in the policies of all government departments.

The use of SEA as an instrument to create the required context should be explored. It is however important that the products to result from SEA exercises should be specified in detail to ensure that they result in practical outcomes.

It is recommended that a hierarchy of instruments be developed and agreed to. These instruments should compliment and supplement each other in a comprehensive system and logical and efficient pathways for specific activities or activities in identified sensitive areas should be created

4. A better screening mechanism

Further development of the EIM system should put an emphasis on the development of a better screening mechanism that places a stronger focus on activities with potential significant impacts on the environment and on sensitive environments. As a start the provisions of sections 24(2)(a) and (b) of NEMA should be implemented across the country as a matter of priority. Other matrix

based screening mechanisms that focus on establishing proper relationships between the nature of activities and the sensitivity of the environment should also be investigated. An early “check” of sites for sensitive elements by specialists, before any assessments are done should also be considered in at least some circumstances.

5. A holistic approach

Despite the problems of responsibilities allocated to the different spheres of government in South Africa, there should be a new drive to formulate a holistic approach that cater for EIM from strategic and policy level to project level in a manner that is sensible to the strategic needs of South Africa. This will however require the commitment of government as a whole.

6. Enhance the role of SEA in the development of SDFs

SDFs, especially LSDFs (local), are the most ideal spatial planning instruments into which environmental concerns should be integrated. The SEA processes that are currently required for SDFs are unfortunately mostly insufficient. With better SEAs or EMFs underpinning SDFs these spatial planning instruments can play a very important role in the avoidance of unnecessary impacts at especially local level as they should discourage applications in areas that are not suitable for such applications. This is however on the assumption that SDFs are implemented and adhered to when decisions are taken on development applications by all authorities

7. Compliance monitoring and enforcement

Compliance monitoring and enforcement of EMPs and conditions of authorisation require urgent attention. This is the one area where current EIA is not effective or efficient. It is recommended that compliance monitoring and enforcement be specifically addressed in the EIM strategy.

8. Delegation of decision-making

One of the key reasons for delays in decision-making is that the top management of most of the competent authorities is overloaded with the large number of applications that they have to consider. In many instances, especially where

there are EMFs or other guidelines in place it should be possible to delegate the authorisation of smaller activities to middle management without much risk.

9. Human resource development

The high turnover in personnel of departments and even in consultancies and the corporate sector is very disruptive to the development of capacity of both organisations and individuals and contributes significantly to both ineffectiveness and inefficiency. A concerted effort that involves all role players is required to create a sustainable flow of environmental managers in a way that creates capacity at all levels and also ensure career paths for employees. The EIM strategy would fail to address efficiency and effectiveness adequately if an actionable plan in this regard does not form part thereof.

10. Concluding remarks

10.1 Effectiveness of EIA in South Africa

The overall effectiveness of EIA in South Africa in meeting the requirements in terms of NEMA, is marginal at best. While the criteria are being met relatively well in some areas of jurisdiction, it is hardly the case for other instances. The interpretation of the regulations also varies significantly from authority to authority and it is doubtful that the “one size fits all” approach to EIA that has generally been adopted in South Africa can ever be implemented effectively across all authorities.

EIA is also not equally effective for all types of applications and consideration should be given to the use of other instruments, as indicated in the relevant chapter of the report.

EIA is currently however the only mechanism that considers the impact of activities on the environment specifically and as such fulfils an important role despite its shortcomings. The immeasurable role that the existence of EIA Regulations play in the choices people make in respect to activities should also not be underestimated.

10.2 Efficiency of EIA in South Africa

The EIA process in South Africa is implemented relatively efficiently if one considers the average time it takes to produce and evaluate EIAs. A relatively

small number of EIA's however take much longer than the average and skews the graphs above the average.

The performance time frames indicated in the EIA Regulations are optimistic and not attainable across the board. This is mostly due to the high number of applications that has to be considered rather than the time required to assess an individual matter. It is accordingly important to eliminate activities from the EIA process that can be equally well managed through other instruments.

Consideration should also be given to the circumstances of each authority and the factors that may place constraints on meeting deadlines.

In general the cost of EIA is not regarded as a major issue for large scale developments or activities undertaken by big corporates or government institutions. Poor persons, small businesses, entrepreneurs and communities however often cannot afford the EIA process and consider it as a hurdle to their ability to enter the development market or to become economically active. This issue must be addressed and ways to render assistance to these smaller players must be explored.

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